

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 6917  
of 2024**

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NAKHVA FARUKBHAI ISMAILBHAI @ FAROOQ MAULANA  
Versus  
STATE OF GUJARAT & ORS.

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**Appearance:**

MR RAHUL SHARMA with MR UTKARSH J DAVE(10620) for the  
Applicant(s) No. 1  
for the Respondent(s) No. 2,3  
MR UTKARSH SHARMA ADDITIONAL PUBLIC PROSECUTOR for  
the Respondent(s) No. 1

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**CORAM:HONOURABLE MR. JUSTICE NIRZAR S. DESAI****Date : 19/06/2024****ORAL ORDER**

1. Heard learned advocate Mr. Rahul Sharma with  
learned advocate Mr. Utkarsh J. Dave appearing  
for the petitioner and learned Additional Public  
Prosecutor Mr. Utkarsh Sharma appearing for the  
respondent - State.

2. By way of this petition, the petitioner has  
prayed for the following reliefs :-

"(A) Admit and allow this petition;

(B) Issue a writ of certiorari or any

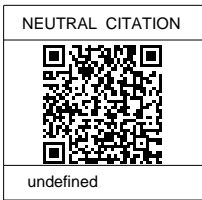


other writ, order or direction to quash and set aside the impugned FIR dated 26.08.2022, registered vide Cr. No. 11210005221266/2022 of the Athwalines Police Station, Surat City, U/s 387, 465, 468, 471, 34 and 120B of the IPC (ANNEXURE'A') and all other subsequent proceedings thereto, QUA the petitioner herein;

(C) By way of interim relief, direct that no charge-sheet be field against the petitioner without the permission of this Hon'ble Court;

(D) For such other and further orders as may be deemed fit and proper in the interest of justice."

3. Learned advocate Mr. Rahul Sharma appearing for the petitioner states that an FIR which was registered in the year 2022, to be precise on 26.8.2022 against one Sajju Kothari @ Mohammad Sajid Kothari and others, wherein the present petitioner is arraigned as an accused No.3. According to learned advocate Mr. Rahul Sharma, though the FIR is very lengthy and relates to a dispute related to some property, the only role attributed to the present petitioner is that at one point of time, in the office of accused No.1 along with other accused, the present applicant



was also present and he was carrying a revolver and with his active participation and in connivance with each other, all three accused persons have committed the offence in question and therefore, considering the fact that there is no specific date is mentioned as well as the only role attributed to the present petitioner is of pointing a revolver at the first informant in a meeting which has taken place at the office of accused No.1 with the complainant and as the offence is committed long back and there is a delay in registration of FIR, no specific role of the present petitioner is coming forward and therefore, FIR qua the present petitioner is required to be quashed and set aside.

4. Learned Additional Public Prosecutor Mr. Utkarsh Sharma appearing for the respondent - State states that the petition is affirmed on 25.4.2024 and was presented before this Court on 13.6.2024, however, the fact that the charge-sheet is already filed on 19.5.2024 is not



brought to the notice of the Court and learned Additonal Public Prosecutor Mr. Utkarsh Sharma states that in view of the fact that the charge-sheet is already filed and the charge-sheet discloses the active participation of present petitioner in the offence in question, now, this petition may not be entertained in view of the filing of charge-sheet, in view of catena of decisions of this Court as well as the Hon'ble Supreme Court.

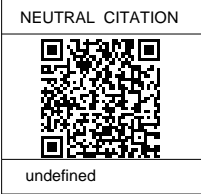
5. Learned advocate Mr. Rahul Sharma states that merely because charge-sheet is filed, is no bar in entertaining in petition under Section 482 of Cr. P.C. and that view also has been taken by the Hon'ble Supreme Court in catena of decision. Learned advocate Mr. Rahul Sharma relies upon a decision of the Hon'ble Supreme Court reported in (2008) 15 SCC 582 in case of **State of Andhra Pradesh Versus M. Madhusudan Rao** and more particularly, relied upon paragraph No.30 of the aforesaid decision and by relying upon paragraph



No. 30, he pointed out that the object and importance of prompt lodging of First Information Report is necessary, any delay in registration of First Information Report would be considered in favour of the accused person as the FIR is absolutely vague as far as the role of present applicant is concerned, no specific date or time is mentioned in the FIR and the only allegation against the present applicant was that he was carrying a revolver with him in a meeting that had taken place in the office of accused No.1.

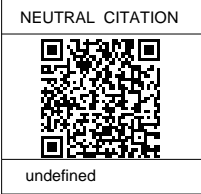
6. Learned advocate Mr. Rahul Sharma also states that the present FIR is nothing but the abuse and misused of process of law as the same is registered just with a view to recover the proceeds of crime.

7. As according to learned advocate Mr. Rahul Sharma appearing for the petitioner, the FIR itself indicates that the first informant for recovery of some amount in stead of a taking a



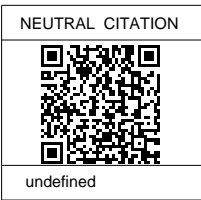
legal course had approached the accused No.1 and therefore, in view of the intention of first informant, the FIR qua the present applicant is required to be stayed/quashed.

8. Learned Additional Public Prosecutor Mr. Utkarsh Sharma pointed out that the accused No. 1 viz. Sajju Kothari @ Mohammad Sajid Kothari is a history sitter, against whom there are 35 FIRs are registered and he is right now in the jail on account of a case registered against him under the Gujarat Control of Terrorism and Organised Crime Act (GUJCTOC Act). Learned Additional Public Prosecutor Mr. Utkarsh Sharma states that considering the fact that the present applicant is alleged to be member of the gang of the aforesaid accused No.1 who has at once terrified the entire city of Surat. It requires a great courage to get an FIR registered against him and considering the fact that the FIR against the aforesaid persons including the petitioner was registered after an



order passed by the Police Commissioner, Surat on 23.8.2022 reference of which is made in column No.8 of the FIR. The delay may not be a ground to stay the investigation or further proceedings qua the present petitioner, considering the past criminal history of accused No.1 and considering the fact that the present applicant is a close aid of accused No.1. He also states that once the charge-sheet is filed and role of the present applicant is crystallized, the present applicant may if he chooses so may file an application for discharge if according to the present applicant, the present applicant has not played any role in the offence in question. He therefore prayed for dismissal of this petition.

9. I have heard learned advocates for the parties and perused the record. On perusal of record, I found that even bare reading of FIR discloses an offence committed by the present applicant. Now the aforesaid facts are fortified as the charge-



sheet is filed against the present applicant as well. Therefore, prima-facie there is a reason to believe that the present applicant has actively participated in the offence in question. Considering the aforesaid aspect as well as considering the fact that the prima-facie offence has already been disclosed and active participation of the present applicant is believed as charge-sheet is filed, I don't deem it appropriate to entertain this petition by exercising extraordinary powers under Section 482 of Criminal Procedure Code read with Article 226 of Constitution of India. Accordingly, the present petition is required to be dismissed and same is dismissed.

**(NIRZAR S. DESAI,J)**

Pallavi