

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION (DIRECTION) NO. 9258 of 2025**

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HIMANSHUBHAI ASHWINBHAI KOTECHEA
Versus
STATE OF GUJARAT & ORS.

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Appearance:

MR VISHAL K ANANDJIWALA(7798) for the Applicant(s) No. 1
MR ROHAN SHAH, APP for the Respondent(s) No. 1
MR JM PANCHAL, SR. ADVOCATE with MR Dwijen Pandya for the
Respondent(s) No. 2,3,4

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CORAM: HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 21/07/2025
ORAL ORDER

1. Mr. Dwijen Pandya, learned advocate submits that he has instructions to appear on behalf of the respondent No.2 to 4. Registry to accept his vakalatnama.

2. Rule. Learned advocates waive service of Rule for the respective respondents.

3. By way of this application under Section 528 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), the applicant has prayed to quash and set aside the impugned order dated 06.06.2025 passed in Criminal Misc. Application No. 660 of 2025 by the learned Principal District and Sessions Judge, Morbi, and seeks transfer of Sessions Case No. 5 of 2023, pending before the District and Sessions Court, Morbi, to the Court of the previously presiding officer.

4. Heard Mr. Vishal Anandjiwala, learned advocate for the applicant; Mr. J.M. Panchal, learned Senior Advocate assisted by

Mr. Dwije Pandya, learned advocate for respondent Nos. 2 to 4; and the learned APP for the respondent-State.

5. Learned advocate for the applicant submits that the applicant is the complainant in Sessions Case No. 5 of 2023 pending before the learned Sessions Judge, Morbi, wherein respondent Nos. 2 to 4 are accused. It is submitted that the evidence has already been recorded, and the matter was pending before the Second Additional Sessions Judge, Morbi, where final arguments were concluded on several occasions, and the matter was kept for further reply. However, subsequently, by an inadvertent administrative order, the matter came to be transferred to the court of the learned Sessions Judge. Therefore, it is requested that the matter be sent back to the presiding officer who has already heard the matter, to save judicial time and to ensure expeditious disposal of the trial. It is further submitted that a transfer application filed before the learned Sessions Judge came to be dismissed, and subsequently, the learned Sessions Judge was transferred. It is submitted that the administrative order passed for transferring the matter is legally unjustifiable, and the reasons assigned therein are causing delay in the trial, thereby prejudicing the applicant.

6. Mr. Panchal, learned Senior Advocate appearing for respondent Nos. 2 to 4, has opposed the application on the ground that the party has no right to choose the forum, and once the learned Sessions Judge has chosen to conduct the trial himself, the question of prejudice does not arise. He, therefore,

requested dismissal of the present application.

7. The learned APP for the respondent-State has submitted that the Court may pass an appropriate order.

8. Having heard the learned advocates for the respective parties and having perused the documents on record, including the Rojkam, it appears that initially the matter was heard by the Second Additional Sessions Judge, Morbi, being Sessions Case No. 5 of 2023 from 3rd January 2023 onwards. The accused are under trial prisoners. After recording evidence, the then learned Sessions Judge was transferred, and the matter was placed before the newly appointed Second Additional Sessions Judge, Morbi, who heard arguments from the respective parties. After recording further statements on 2nd March 2024, the matter was kept for further arguments. The Special Public Prosecutor, appointed in the case, made his submissions, which were concluded, and thereafter, on 1st February 2025, the accused produced their written statements. The learned advocates for the accused submitted their oral arguments between 1st February 2025 and 3rd May 2025. Thereafter, the matter was transferred from the court of the then 2nd Additional Sessions Judge to another court, and subsequently, an application under Section 448 of the BNSS was filed before the learned Sessions Judge for re-transfer of the proceedings, which came to be dismissed. Thereafter, the learned Sessions Judge was also transferred.

9. Upon perusal of the Rojkam clearly reveals that the then

Second Additional Sessions Judge, who has now been posted as an Additional Sessions Judge at the same station, he is also available at Morbi, and that without any cogent reason, the case was transferred at the stage of final arguments, despite the accused being undertrial prisoners. Considering that substantial judicial time has already been invested and spent by the said Judge in hearing the matter hence, it would be appropriate to direct that the said the then 2nd Additional Sessions Judge, now posted as Additional Sessions Judge has to conclude the trial to avoid further delay. It is further directed that both the parties are directed to cooperate for expeditious disposal of the trial and learned Sessions Judge is also directed to dispose of the matter keeping in mind the provisions of Section 392 of the BNSS.

10. In the result, the application is allowed. The impugned order dated 06.06.2025 passed in Criminal Misc. Application No. 660 of 2025 by the learned Principal District and Sessions Judge, Morbi, is hereby quashed and set aside. Rule is made absolute to the aforesaid extent. Direct service is permitted.

ALI

(HASMUKH D. SUTHAR,J)

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: ISTAYAK ALI(HC01093), PRIVATE SECRETARY, at High Court of Gujarat on 21/07/2025 19:04:24