IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (RECALL) NO. 9842 of 2026
In R/CRIMINAL REVISION APPLICATION/403/2012

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DEVESH GIJUBHAI VYAS
Versus
STATE OF GUJARAT & ANR.

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Appearance:
MR GC RAY(721) for the Applicant(s) No. 1
MR VARUN G RAI(7135) for the Applicant(s) No. 1
MR HARDIK MEHTA, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**

Date : 17/06/2026

ORDER

[1.0] Present application is filed with a request to recall and set aside the order dated 17.04.2026 passed by this Court in Criminal Revision Application No.403 of 2012 and to restore the same to its original file and number.

[2.0] Heard learned advocate for the applicant and learned APP appearing for the respondent – State of Gujarat.

[3.0] Learned advocate for the applicant has submitted that though he had filed sick note on 17.04.2026, the matter was decided on merits in his absence. Further, he has submitted that matters arising out of the same offence are pending before this Court, wherein adjournment was granted. Hence, he has requested to allow the present application and recall the order dated 17.04.2026.

[4.0] Having heard learned advocate appearing for the respective parties, it appears that present application is filed by the applicant seeking recall of the order dated 17.04.2026. Perusing the order dated

17.04.2026, it appears that learned advocate for the applicant as well as the applicant did not remain present and sick note was filed by the learned advocate appearing for the applicant. In paragraph 1 of the order dated 17.04.2026, it is clearly stated that the applicant remained absent but circumstances show that due to sickness note filed, learned advocate for the applicant remained absent and same was not mentioned or pointed out and due to this reason, this Court considered the revision application in light of the decision of the Hon'ble Supreme Court in the case of **Taj Mohammad vs. State of Uttar Pradesh** in **Criminal Appeal No.2421 of 2023 decided on 11.08.2023** and dismissed the revision application merely based on concurrent findings recorded by the Courts below. As no opportunity to point out or indicate the circumstances arising out of sick note and as the same was not reflected in the order dated 17.04.2026, though review is not permissible considering the bar under Section 362 of the CrPC since, once order is passed, the Court becomes *functus officio* and would have no power to review or recall or alter the order.

[4.1] However, considering the peculiar facts and since other matters arising out of the same offence are pending before this Court and as the learned advocate for the applicant could not remain present due to his sickness and could not assist the Court, considering the age of the applicant, in the larger interest of justice, this Court deems it expedient to afford one more opportunity to the applicant though only circumstance of filing sick note by learned advocate for the applicant is not enough under Rule 132 of the Gujarat High Court Rules but considering decision of Hon'ble Supreme Court in the case of **Vishnu Agarwal vs. State of U.P.** reported in **(2011)14 SCC 813,** without further entering into merits, present application is considered.

[5.0] In view of above, present application is allowed. Order dated 17.04.2026 passed by this Court in Criminal Revision Application No.403/2012 is hereby recalled and matter is restored to its original file with specific observation that as and when the revision application is listed, the applicant shall place on record his correct address and whereabouts and shall remain present before the Court and proceed with the revision application without prolonging the matter since it has been found from the docket sheet that applicant remained absent after filing of the matter.

Registry to place Criminal Revision Application No.403/2012 before appropriate Bench.

(HASMUKH D. SUTHAR, J.)

Ajay

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: AJAY CHANDRAN MENON(HC00939), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 17/06/2026 17:52:18