IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR LEAVE TO APPEAL) No. 18600 of 2026

In F/CRIMINAL APPEAL/34970/2026

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PARMAR SNEHLATABEN ASHOKBHAI
Versus
PARMAR PANKAJBHAI PUNJABHAI & ANR.

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Appearance:
MR ADITYA A ASTHAVADI(12915) for the Applicant(s) No.1
NOTICE SERVED for the Respondent(s) No.1
MS. C.M. SHAH, APP for the Respondent(s) No.2

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CORAM:**HONOURABLE MS. JUSTICE S.V. PINTO**

Date : 03/11/2026

ORAL ORDER

1. Notice is duly served to the respondent No.1, but none has appeared either in person or through an advocate.

2. The present application is filed by the applicant – original complainant seeking leave to file an appeal against the judgement and order dated 15.06.2026 passed by the learned 5th Additional Sessions Judge, Nadiad in Criminal Appeal No.386 of 2025, whereby, the learned Sessions Court was pleased to acquit the accused from the offence under Section 138 of Negotiable Instrument Act, 1881 (hereinafter referred to “the NI Act” for short).

3. Heard learned advocate Mr. Aditya A. Asthavadi for the applicant and learned APP Ms. C.M. Shah for the respondent No.2 - State.

4. Learned advocate Mr. Aditya A. Asthavadi for the applicant submits that the respondent No.1 had started a residential scheme namely - Asopalav Bunglows and is also running a business in the name of – Madhuri Multiservices. The applicant had booked one bunglow to be constructed on plot No.A/7 and the applicant had given Rs.25,00,000/- towards the price of plot, against the same, the applicant has given receipts of Rs.20,00,000/- and the applicant has given Rs.5,00,000/- in cash for which no receipt was given by the respondent No.1. As the respondent No.1 did not give the possession of the said plot, the applicant told the respondent No.1 to return the amount and the respondent No.1 has given two cheque of Rs.10,00,000/- each drawn on the Punjab and Sindh Bank, Anand Branch. The applicant had deposited the said cheques in the State Bank of India, Pawanchakki Road Branch, Nadiad, which returned with an endorsement “Funds Insufficient”. The demand statutory notice was given which was duly served but the respondent No.1 did not repay the amount within the stipulated period and hence, the applicant

filed the Criminal Case under Section 138 of the NI Act before the Court of Chief Judicial Magistrate, Nadiad which came to be registered as Criminal Case No.962 of 2017. The respondent No.1 was duly served with the summons and he appeared before the learned Trial Court and after his plea was recorded at Exh.16, the applicant stepped into the witness box and deposed on oath at Exh.19 and produced 14 documentary evidence in support of his case. After the closing pursis was filed by the learned advocate for the applicant, the further statement of the respondent No.1 was recorded, wherein, the respondent No.1 denied the evidence and did not step into the witness box but produced two documentary evidence in support of his case. After the arguments of both the learned advocates for the parties were heard, the learned Trial Court, by the judgement and order dated 01.03.2024, was pleased to find the respondent No.1 guilty for the offence under Section 138 of the NI Act and sentenced the respondent No.1 to simple imprisonment for six months, and fine of Rs.7000/- and in default, simple imprisonment for one month. The learned Trial Court was further pleased to order the respondent No.1 to pay an amount of Rs.20,00,000/- as compensation to the original complainant under Section 395(3) of the BNSS, 2023

and in default, further simple imprisonment for three months.

4.1 Being aggrieved by the same, the respondent No.1 filed Criminal Appeal No.386 of 2025 before the Sessions Court, Nadiad and after the arguments for both the parties were heard, the learned 5th Additional Sessions Judge, Nadiad by the impugned judgement and order dated 15.06.2026, was pleased to set aside the judgement and order of conviction and acquit the respondent No.1 from the offence under Section 138 of the NI Act. Learned advocate submits that the learned 5th Additional Sessions Judge, Nadiad has set aside the judgement and order of conviction. Learned advocate submits that the same set of evidence produced on record by the applicant have been appreciated in a different manner by both the Courts and the learned Sessions Court has not appreciated the evidence in proper perspective. Learned advocate submits that the applicant has a good case on merits and learned advocate urges this Court to allow the leave to appeal.

5. Learned APP Ms. C.M. Shah for the respondent No.2 - State has submitted that the learned Sessions Court has considered all the documents produced by the applicant and

has also considered the evidence and has passed the impugned order of acquittal considering the settled principles of law and hence, the leave to appeal may not be granted.

6. Considering the arguments of the learned advocate for the applicant as also both the judgements and orders, it appears that the same set of evidence have been appreciated by two different Courts in different manner and the issue requires consideration.

7. In the peculiar facts and circumstances of the case in the considered opinion of this Court the application deserves to be considered. Consequently, the application for leave to appeal is granted and disposed off accordingly.

(S. V. PINTO,J)

ROHAN SONI

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: ROHAN SONI(HC02356), ENGLISH STENO GRADE-II\, at High Court of Gujarat on 03/11/2026 16:44:40