IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 215 of 2001

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA

and
HONOURABLE MR. JUSTICE R. T. VACHHANI

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Approved for Reporting	Yes	No

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STATE OF GUJARAT
Versus
YASMINBANU NOORMOHAMMED SHAIKH & ORS.

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Appearance:
MR JK SHAH, APP for the Appellant(s) No. 1
MR IM MUNSHI(1123) for the Opponent(s)/Respondent(s) No. 3
MR MH BAREJIA(142) for the Opponent(s)/Respondent(s) No. 1
NOTICE SERVED for the Opponent(s)/Respondent(s) No. 2

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CORAM:**HONOURABLE MR. JUSTICE ILESH J. VORA**
and
HONOURABLE MR. JUSTICE R. T. VACHHANI

Date : 02/12/2025
ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE R. T. VACHHANI)

1. Feeling aggrieved and dissatisfied with the judgment and order of acquittal dated 07.12.2000 passed by the learned City Civil and Additional Sessions Judge, Court No.5, Ahmedabad in Sessions Case No.135/1999, whereby the respondent-accused came to be acquitted for the offences punishable under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (“the NDPS Act” for short), the appellant – State has preferred the present appeal under Section 378 of the Code of Criminal Procedure, 1973 (“the Code” for short).

2. The brief facts leading to the filing of the present appeal are as under:

2.1. On 18.03.1999, at about 20.30 hours, the raiding party led by Police Inspector J.H. Solanki, in-charge of Dariapur Police Station, armed with prior information received by Police Inspector P.K. Trivedi and reduced the same into writing after informing the superior officer, along with two panch witnesses, raided the residential premises situated at Patel Pole, Dariapur, Ahmedabad, occupied by respondent No.1. Upon personal search of respondent No.1 in the presence of lady police constable, 2 grams 450 milligrams of brown sugar was recovered from a black purse concealed in her garments, and an additional 37 grams 850 milligrams of brown sugar in small packets was recovered from her house. During interrogation, respondent No.1 disclosed that respondent No.2 was her supplier of the contraband. Subsequently, respondent No.2 arrived at the premises, and upon his personal search, nothing incriminating was found. The raiding party then proceeded to Room No.12 of Sindhi Dharmashala near Kalupur, where respondent No.2 allegedly opened the lock with a key in his possession, leading to the recovery of 4013 grams 200 milligrams of brown sugar from bags inside the room. It was further revealed during investigation that respondent No.3 was the upstream supplier involved in the conspiracy. The total value of the recovered contraband exceeded four crores of rupees. The muddamal articles were seized, panchnama was drawn, arrest memos were issued to respondents Nos.1 and 2 on the spot, and a complaint came to be lodged.

2.2. The complaint was registered at Dariapur Police Station under Sections 21 and 29 of the NDPS Act. Respondents Nos.1 and 2 were

arrested on 18.03.1999 and remanded to judicial custody. Respondent No.3 was arrested later. After completion of investigation, a charge-sheet was filed.

2.3. As the offence under the NDPS Act was triable by the Court of Session, the case was committed to the City Civil and Sessions Court, Ahmedabad and registered as Sessions Case No.135/1999 for trial. Upon conclusion of the prosecution evidence, the trial court put various incriminating circumstances appearing in the evidence to the respondent-accused for their explanation under Section 313 of the Code. In their further statements, the respondent-accused denied all the incriminating circumstances as false and stated that they were innocent and had been falsely implicated. Respondent No.3 did not record a further statement due to lack of evidence against him. After examining the oral and documentary evidence and the submissions from both sides, the learned trial court recorded findings in favour of the respondent-accused and acquitted them of all charges.

3. We have heard the learned advocates for the respective parties and carefully examined the oral and documentary evidence adduced before the learned Sessions Court. During the course of the trial, the prosecution examined a total of 9 witnesses. The details of the oral and documentary evidence are as under:

~:: Oral Evidence ::~

Sr. No.	Particular	Exh.
1	Naranbhai Khubchand Soni – Panch Witness PW-1	14
2	Vasudev Chandulal Raval – Police Head Constable	16

	(Crime Writer) PW-2	
3	Gulabbhai Ambalal – Police Sub Inspector PW-3	19
4	Chandrikaben H. Malvia – Lady Police Constable PW-4	24
5	Pareshkumar Trivedi – Police Inspector (Information Receiver) PW-5	29
6	Jayeshbhai H. Solanki – Police Inspector (Complainant) PW-6	28
7	Mahesh Sevakram – Manager, Sindhi Dharmashala DW-1 (Examined by Defense)	39
8	Madanlal Fulchand – Weighing Expert PW-8	45
9	Magansinh G. Chauhan – Police Sub Inspector (Investigator) PW-9	46
10	Nitin R. Shah – Defense Witness DW-2	78

~:: Documentary Evidence ::~

Sr. No.	Particular	Exh.
1	Complaint lodged by Police Inspector J.H. Solanki	29
2	Report under Section 157 of the Code for registration of offence	21
3	Original Panchnama prepared at the place of incident	15
4	Copy of letter informing superior officers about the raid and information received	31
5	Arrest Memo of Respondent No.1 with copy supplied to relatives	32, 33
6	Arrest Memo of Respondent No.2	34

7	Report under Section 57 of the NDPS Act sent to superior officer	37
8	Application form and license for agency of Respondent No.2 with Unit Trust of India	82, 83, 85
9	Certificates of commission for Respondent No.2 as insurance agent	86 to 92

4. The learned APP appearing for the appellant – State submitted that the impugned judgment requires interference, primarily relying upon the depositions of the raiding party members and the panch witness examined as PW-1 at Exh.14, PW-4 at Exh.24, PW-5 at Exh.29 and PW-6 at Exh.28. Their testimonies, according to the prosecution, establish conscious possession of commercial quantities of brown sugar by respondents Nos.1 and 2, recovery from distinct locations, and conspiracy involving respondent No.3. It is not in dispute that the muddamal was weighed and valued exceeding four crores of rupees, as supported by the weighing expert's report (Exh.45). Hence, it was contended that the trial court erred in holding breaches of procedural safeguards under the NDPS Act as fatal and in acquitting the accused.

4.1. The learned APP further submitted that the evidence of other material witnesses, including the investigator PW-9 at Exh.46, corroborates the prosecution case, minor contradictions notwithstanding, and therefore, the acquittal warrants interference and conviction of the respondent-accused.

5. Mr. M.H. Barejia, learned advocate for respondent No.1, has strenuously urged that the prosecution case is riddled with fatal infirmities from the very inception: no conscious possession of the contraband has been established, the alleged recovery from her person and from her house suffers from blatant non-compliance with the

mandatory safeguards contained in Sections 42, 50 and 57 of the NDPS Act, no offer under Section 50 was ever proved to have been given to her in clear and unambiguous terms, the lady constable's evidence is wholly unreliable, the panchnama is a consolidated document prepared at Tambu Chowky long after the events thereby creating serious doubt about the integrity of the seized articles, the raiding officers have given contradictory versions on every material particular, the prosecution has failed to prove even her lawful occupation of the premises, and in view of the binding Constitution Bench decision in Mohinder Singh v. State of Punjab, (2018) 18 SCC 540 the breaches of Sections 42(2) and 50 are by themselves sufficient to vitiate the entire trial; he has, therefore, fully adopted the elaborate reasoning of the trial court and prayed that the acquittal recorded in favour of respondent No.1 be confirmed.

6. Learned advocate for respondent No.3, has adopted the submissions advanced by Mr. Barejia and has further contended that the name of his client figures in the case only through the alleged disclosure statement of respondent No.1 which is wholly inadmissible being hit by Sections 24, 25, 26 and 27 of the NDPS Act and constituting pure hearsay, no contraband was recovered from the possession of respondent No.3 nor at his instance, no independent evidence whatsoever has been produced to connect him with either respondent No.1 or respondent No.2 or with any transaction of narcotic drugs, there is not even an allegation of conspiracy properly established against the other two respondents, much less against respondent No.3, the investigation qua respondent No.3 is practically non-existent, and in the absence of any legally admissible material and in the face of gross violation of mandatory procedural safeguards pointed out by the trial court, the continued prosecution of respondent No.3 is a gross abuse of process; he has accordingly prayed that the acquittal of respondent No.3 be upheld and the appeal qua him be

dismissed with exemplary costs.

7. Having heard the learned advocates for both sides and perused the depositions of the witnesses, documentary evidence, and the judgment of the Sessions Court, it appears that the prosecution's case, though involving substantial recovery, is vitiated by non-compliance with mandatory provisions of the NDPS Act, rendering the entire search and seizure proceedings unreliable.

8. So far as the question of conspiracy is concerned, it is trite law that conspiracy cannot always be proved by direct evidence but must be inferred from circumstances and the conduct of the accused disclosing a common intention. In the present case, there is no evidence whatsoever on record to show how the respondents had conspired with each other or what overt act was committed by each in furtherance of any alleged common intention. The mere fact that respondent No.2 was found near the house of respondent No.1 or that muddamal was recovered from two different places cannot, without more, lead to an inference of conspiracy. The prosecution’s reliance on the alleged disclosure statement of respondent No.1 that respondent No.2 was supplying drugs to her is wholly inadmissible, being hit by Sections 24 and 27 of the NDPS Act and constituting hearsay evidence. No independent evidence of any meeting of minds or prior agreement has been brought on record. Accordingly, the charge of conspiracy under Section 29 NDPS Act completely fails.

9. On a careful scrutiny of the entire evidence, we find that the prosecution has miserably failed to establish conscious possession of the contraband by either of the respondents or to prove the recoveries in accordance with law. The NDPS Act being a special statute providing for

stringent minimum punishment, the legislature has consciously engrafted several mandatory safeguards in Sections 42, 50, 52, 55 and 57 to prevent misuse of power and to protect innocent citizens from false implication. It is settled law that strict compliance—both in letter and spirit—with these provisions is imperative, and breach of even a single mandatory provision vitiates the trial.

10. The deposition of the panch witness PW-1 Naranbhai Khubchand Soni (Exh.14), a rickshaw driver frequently summoned near Tambu Chowky, is sketchy, inconsistent and wholly unreliable. He admitted that the second panch was not present at Tambu Chowky, that the panchnama was prepared only after returning to Tambu Chowky summarising recoveries from two different places, and crucially, that no offer or option under Section 50 NDPS Act was ever communicated to either respondent. No prudent person can place any reliance on such perfunctory testimony, especially when it is bereft of corroboration from any independent source at the spots of recovery.

11. The evidence of lady constable PW-4 Chandrikaben H. Malvia (Exh.24) suffers from fatal infirmities. She claimed to have conducted the personal search of respondent No.1 and recovered 25 small packets along with currency from a concealed purse, yet she nowhere states that the mandatory option under Section 50 was offered to respondent No.1 to be searched in the presence of a Gazetted Officer or Magistrate. She remained completely silent about respondent No.2 and admitted that the raid continued after sunset without any warrant and that the panchnama was drawn at Tambu Chowky. Her mechanical identification of muddamal articles and failure to submit any written report of the lady search further erode the credibility of the entire search process. Non-compliance with Section 50 being fatal, no reliance can be placed on her

testimony.

12. The depositions of the two senior raiding officers, PW-5 Pareshkumar Trivedi (Exh.29) and PW-6 Jayeshbhai H. Solanki (Exh.28), are riddled with irreconcilable contradictions that strike at the very root of the prosecution case: there is contradiction as to who actually reduced the secret information into writing and whether PW-5 himself penned it; only a carbon copy of the forwarding letter under Section 42 (Exh.31) and of the Section 57 report (Exh.37) were produced without any acknowledgement or proof of receipt, and the superior officer DCP Sagwal was not examined; the officers gave divergent versions about whether the mandatory option under Section 50 was offered to respondent No.1; they offered mutually destructive accounts of why the raiding party waited at respondent No.1's house without any prior information about a third person, how respondent No.2 suddenly appeared, how a key to Room No.12 materialised from his pocket when nothing of the sort was found during his initial search, and where and in what manner the panchnama was actually prepared; these irreconcilable contradictions between two senior officers of the rank of Police Inspector and PSI, coupled with patent non-compliance with the mandatory provisions of Sections 42, 50 and 57 of the NDPS Act, completely demolish the prosecution story and render the entire search and recovery proceedings wholly unreliable.

13. Other prosecution witnesses add nothing of substance. PW-2 merely took custody of muddamal en route, PW-3 registered the crime, PW-8 weighed the muddamal later, and PW-9 carried out further investigation relying on inadmissible disclosure statements. On the contrary, defence witness Mahesh Sevakram (Exh.39) categorically stated that Room No.12 of Sindhi Dharmashala was allotted to one Bhupendra

Chauhan as per the register, and no raid was ever conducted there in his presence. No identification parade was held, no documentary evidence was produced to link respondent No.2 with the fictitious name Bhupendra Chauhan, and no independent witness from the Dharmashala was examined. Possession of respondent No.1 over her house was also not proved by any documentary evidence such as ration card, electricity bill, or statement of neighbours.

14. Though the quantity recovered is commercial and the offence is undoubtedly grave, gravity of the offence cannot compensate for glaring procedural illegalities and failure of the prosecution to prove basic facts. The muddamal remained unsealed and open while being shuttled between locations, raising a serious possibility of tampering. No search warrant was obtained despite the raid continuing after sunset on residential premises, and no resolution under Section 165 CrPC was passed. Statutory presumptions under Section 35 and Section 54 NDPS Act can be raised only after the prosecution first establishes the foundational facts beyond reasonable doubt—which it has utterly failed to do. The primary burden resting on the prosecution has not been discharged even to the extent of raising the presumptions, far less shifting any burden onto the respondents.

15. In view of the cumulative effect of the aforesaid infirmities—breach of mandatory provisions of Sections 42, 50 and 57; irreconcilable contradictions in the evidence of senior police officers; absence of independent corroboration; unreliable panch and lady constable evidence; failure to prove conscious possession or lawful recovery—we are of the considered opinion that the prosecution has failed to bring home the charges against either respondent beyond all reasonable doubt. The view taken by the trial court is not only a possible view but the only view that

can be taken on the evidence on record. In an appeal against acquittal, this Court would be slow to interfere unless the findings are shown to be perverse or based on no evidence. No such ground exists in the present case.

16. While referring the decision in **State of Gujarat v. Abdulgani Gulamrasul Bhatt, reported in 2017 (0) AIJEL-HC 238381** (Criminal Appeal No.1261 of 2006, decided on 03.11.2017), wherein, in a comparable scenario under the NDPS Act involving recovery of contraband, the acquittal was upheld due to glaring non-compliance with the mandatory procedural mandates under Sections 42 and 50 thereof. In that case, the raiding party neglected to commit the received information to writing and transmit it forthwith to the superior officer as enjoined by Section 42, while the personal search of the accused proceeded sans any informed intimation of the right to be searched before a Gazetted Officer or Magistrate under Section 50, engendering irreconcilable contradictions in the narratives of the raiding personnel and panchas, thereby impugning the integrity of the seizure and inflicting irremediable prejudice upon the accused. The Court underscored that the NDPS Act, as a rigorous special enactment prescribing draconian penalties, imperatively demands scrupulous observance of its safeguards to forestall capricious invocation of authority and safeguard the accused's right to a just adjudication, token adherence or conjectural absence of prejudice avails naught when the bedrock of search and seizure stands compromised.

17. Reinforcing the aforesaid exposition, we further place reliance on the decision in **State of Gujarat v. Mahendrakumar @ Mendo Krushnaprasad Dave, reported in 2022 (0) AIJEL-HC 245262** (Criminal Appeal No.590 of 2006, decided on 28.04.2022), where the

acquittal in an NDPS prosecution under Sections 8(c), 21 and 22 was affirmed owing to egregious breaches of Sections 42 and 50, coupled with testimonial inconsistencies that eroded the prosecution's foundational edifice. Therein, the informant-cum-complainant failed to contemporaneously record the secret information as mandated by Section 42, and no evidentiary vestige surfaced of apprising the accused of the Section 50 option to elect search before a Gazetted Officer or Magistrate —corroborated by the panch witness's avowal of ignorance thereof— despite the presence of an Executive Magistrate whose role devolved into ambiguity via contradictory depositions. The High Court, while re-appreciating the evidence, discerned material discrepancies in muddamal handling unmentioned in the complaint, suspicious interrogation protocols, and the accused's unexplained condition, holding that such lapses not only vitiate the recovery but also entitle the accused to the benefit of doubt where two plausible views emerge, as per settled jurisprudence in Vijaysinh Chandubha Jadeja v. State of Gujarat (2011) 1 SCC 609 emphasizing strict compliance with Section 50, and State of Rajasthan v. Ram Niwas (2016) 10 SCC 222 advocating the accused-favourable interpretation in acquittal appeals. The Court categorically posited that procedural infirmities in NDPS trials, absent rigorous proof of prejudice's irrelevance, inexorably impugn the trial's outcome, rendering appellate interference impermissible when the acquittal is neither perverse nor infirm.

18. The inexorable parallelism between the instant lis and the matrices in Abdulgani Gulamrasul Bhatt (supra) and Mahendrakumar @ Mendo Krushnaprasad Dave (supra) buttresses the trial Court's sagacious exculpation. As anatomized earlier, the unproven dispatch and receipt of Exh.31 under Section 42, the unrecounted Section 50 proffer in PW-4's (Exh.24) and PW-1's (Exh.14) renditions—despite PW-5's (Exh.29)

solitary and unsubstantiated averment—mirrors the unnoted information and uninformed search options in those precedents, engendering testimonial schisms akin to the muddamal omissions and witness ambiguities therein. The post-crepuscular foray sans warrant, the consolidated panchnama (Exh.15) at Tambu Chowky bereft of spot annotations, and PW-7's (Exh.39) disavowal of respondent No.2's Room No.12 tenancy replicate the procedural derelictions and evidential void that proved fatal, amplifying prejudice notwithstanding the contraband's valuation eclipsing four crores. Invoking the triad of Noor Aga v. State of Punjab (2008) 16 SCC 417, Vijaysinh Chandubha Jadeja (supra), and Arulvelu v. State (2009) 6 SCC 202, these authorities coalesce to affirm that mandatory NDPS stipulations brook no dilution; their infraction, conjoined with reasonable doubt from contradictory official narratives and unanchored possession, precludes Section 35 presumption and mandates upholding the acquittal, as two views palpably subsist, favouring the respondents.

19. We further place reliance on the Constitution Bench decision of the Supreme Court in **Mohinder Singh v. State of Punjab, (2018) 18 SCC 540**, which has authoritatively and finally settled the law regarding the mandatory nature of the safeguards contained in Sections 42 and 50 of the NDPS Act; the Constitution Bench, after exhaustively reviewing the entire previous case-law, has categorically held that the provisions of Sections 42 and 50 are mandatory and not directory, that any search or seizure conducted in breach thereof is wholly illegal and vitiates the trial ab initio, that under Section 42(2) the officer taking action on secret information must forthwith reduce the same into writing and send a copy to his immediate official superior, that mere oral intimation or a station diary entry is not compliance, that production of only a carbon copy without any acknowledgement, dispatch entry or proof of actual receipt

by the superior officer is wholly insufficient, and that such non-compliance causes grave prejudice to the accused by removing an important check on arbitrary police action and preventing superior oversight, likewise, on Section 50 there are plethora of decisions that the accused must be clearly, categorically and unambiguously informed of his legal right to be searched in the presence of a nearest Gazetted Officer or nearest Magistrate, that the informing must be specific and leave no room for doubt, preferably in writing, that a vague, casual or contradictory assertion of compliance is no compliance at all, and that failure to prove strict compliance beyond reasonable doubt renders the search illegal and the recovery inadmissible irrespective of whether actual prejudice is separately proved.

Applying this binding ratio directly to the facts of the present case, the prosecution has miserably failed on both fronts in a manner strikingly similar to Mohinder Singh: only carbon copies of the alleged forwarding letter under Section 42 (Exh.31) and the Section 57 report (Exh.37) have been produced without any acknowledgement, dispatch book entry or proof of receipt, and the concerned superior officer DCP Sagwal has not even been examined, constituting a clear and admitted breach of the mandatory requirement of Section 42(2); equally, neither the panch witness, nor lady constable Chandrikaben, nor the two raiding officers in a consistent manner have established that the respondents were ever clearly and unambiguously informed of their statutory right under Section 50—the contradictory versions of PW-5 and PW-6 themselves destroy any claim of compliance and fall squarely within the rule laid down in Mohinder Singh that vague or contradictory evidence of the offer is no evidence at all. In view of this authoritative Constitution Bench pronouncement, the entire search and seizure proceedings stand completely vitiated, the recovery of the alleged contraband is wholly inadmissible in evidence, and no conviction can possibly be founded

thereon; this ground by itself is sufficient to confirm the acquittal recorded by the trial court.

20. At this stage, this Court may refer to the decision of the Apex Court in the case of ***Rajesh Prasad v. State of Bihar and Another [(2022) 3 SCC 471]*** encapsulated the legal position covering the field after considering various earlier judgments and held as below: -

> *"29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order acquittal in the following words: (Chandrappa case [Chandrappa v. State of Karnataka, (2007) 4 SCC 415]*
>
> *"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:*
>
> *(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.*
>
> *(2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.*
>
> *(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.*
>
> *(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his*

innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

21. In the case of ***H.D. Sundara & Ors. v. State of Karnataka [(2023) 9 SCC 581]*** the Apex Court has summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of CrPC as follows: -

"*8.1. The acquittal of the accused further strengthens the presumption of innocence;*

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible."

22. In light of the above legal position and for the reasons recorded in the foregoing paragraphs, coupled with the fact that the case of the prosecution does not get support from the evidence recorded by the learned trial Court, the present appeal fails and is accordingly dismissed.

Records and Proceedings, if any, be remitted to the Court concerned forthwith.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

MVP

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: MITESH VIJAYBHAI PANCHAL(HCD0065), ENGLISH STENOGRAPHER GRADE TWO CLASS TWO, at High Court of Gujarat on 02/12/2025 14:59:21