IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL APPEAL NO. 156 of 2012

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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BHUPENDRAKUMAR NAGINBHAI MAYAVANSHI & ANR.
Versus
STATE OF GUJARAT

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Appearance:
MR GAJENDRA P BAGHEL(2968) for the Appellant(s) No. 1,2
MR BHARGAV PANDYA APP for the Opponent(s)/Respondent(s) No. 1

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

Date : 16/01/2026

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE R. T. VACHHANI)

1. Feeling aggrieved and dissatisfied with the judgment and order of conviction and sentence dated 12.08.2011 passed by the learned Additional Sessions Judge, Bharuch in Sessions Case No.42 of 2009 for the offences punishable under Section 302 and 201 of the Indian Penal Code, whereby the appellants – accused has been sentenced for the offence punishable under Section 302 and 120-B of the IPC to undergo imprisonment for life with fine of Rs.2,000/-, in default, to undergo six months RI and for the offence punishable under Section 201 of the IPC to

undergo five years imprisonment with fine of Rs.500/-; in default to undergo three months RI, the appellants have preferred the present appeal under Section 374 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 Complainant, Devendrasinh Bhupatsinh Varachhiya, on 26.12.2008 at about 8:30 a.m., had gone to his place of office at Ankleshwar. While he was present on duty, at about 5:15 p.m., he received a mobile phone call from Motisingh Ganpatsinh Matieda from Ganesh Sugar Factory, Vatariya. Thereupon, the complainant immediately came from Ankleshwar to the Vatariya Sugar Factory. After his arrival, Motisingh took the complainant on his vehicle to the outskirts of Vatariya village and showed him the dead body of his younger brother, Manish. Insects were crawling over the dead body, and injuries caused by a sharp-edged weapon were noticed on the abdomen and chest.

2.2 Upon lodging the complaint at Valiya Police Station and during the course of investigation, it transpired that accused No. 1, Bhupendrabhai Naginbhai Mahyavanshi, was having a love affair with witness Pankajkumari. Pankajkumari and the Manish-deceased brother of the complainant, were both studying together at Shikshan Bharati College, Surat. As a result, there were frequent messages and incoming and outgoing telephone conversations between the deceased and Pankajkumari, which was not acceptable to Bhupendra. With a view to removing Manish from the way, on 20.12.2008 the accused Bhupendra, with an intention to kill the deceased Manish, came from his house to Kamrej, collected information from the college regarding the off-campus

activities of the deceased and Pankajkumari, and, on the pretext of giving a camera to Pankajkumari, met her at the college. After obtaining the mobile number from the call details, called accused No. 2-Prakash on his mobile phone and called him at Kamrej. Thereafter, they came to know that the deceased was proceeding to his native place Valiya. Accordingly, the accused persons, riding on the Honda motorcycle bearing registration No. GJ-19-N-460 belonging to accused Bhupendra, proceeded from Kamrej and stood waiting in advance for the arrival of the deceased near the Valiya–Ankleshwar crossroads situated close to National Highway No. 8. Upon the arrival of the deceased, the accused took him into his confidence and told him that they were going to drop him at Valiya. On this pretext, the deceased was made to sit on the motorcycle. While proceeding from Vatariya Sugar Factory towards Valiya, they diverted on the Kachcha road leading towards village Badabeda where Bhupendra stopped the motorcycle on the roadside on the pretext of discussing matters relating to Pankajkumari and also under the guise of answering the call of nature. While conversing, Bhupendra took the deceased inside an adjoining agricultural field within the limits of village Naldhari, near a Samdi tree, and at about 6:45 p.m., Bhupendra took out from his pocket a weapon resembling an iron strip and inflicted incriminate blows on the abdomen and chest of the deceased Manish, causing fatal injuries and thereby resulting in his death. Thus, the accused persons, having hatched a criminal conspiracy, committed the murder of the deceased Manish and, with the intention of causing disappearance of evidence, abandoned the dead body at the spot.

2.3. Accordingly, FIR being CR No.133 of 2008 came to be registered with Valiya Police Station. The Police after investigation charge-sheeted the accused for the aforesaid offences before the learned JMFC, Court. However, as the said Court lacks jurisdiction to try offence under Section

302 IPC, the case was committed to the Sessions Court. On conclusion of evidence on the part of the prosecution, the learned Sessions Court put various incriminating circumstances appearing in the evidence to the respondent-accused so as to obtain explanation/answer as provided under Section 313 of the Code. In the further statement, the respondents-accused denied all incriminating circumstances appearing against them as false and further stated that he is innocent and a false case has been filed against him. After examining the evidence, witness testimonies and submissions from both sides, the learned Sessions Court recorded the finding convicting the respondent-accused.

3. We have heard learned Advocate for the appellants – convict and learned APP for the respondent-State and minutely examined oral and documentary evidence adduced and produced before the learned Sessions Court concerned.

4. Learned advocate appearing for the appellants – accused has submitted that since the entire case of the prosecution rests on the circumstantial evidence, the prosecution has failed to prove its case beyond the reasonable doubt and does not prove that the entire chain and therefore, learned Sessions Court has erred in convicting the appellant – accused. It is further submitted that if the FIR in question is seen at the first instance, the complainant gave the name of the accused on the basis of the presumption of doubt and as such no specific role or description of the accused having seen at the place of offence pointing out the role of the accused in commission of the crime. It is therefore submitted that when the conduct of the prosecution witnesses are highly unnatural and improbable and inconsistent and therefore, learned Sessions Court ought to have awarded the benefit of doubt to the appellant – accused.

4.1 It is further submitted that the learned Sessions Court has awarded the conviction on the appellants – accused on the basis of the scientific evidence and on the basis of the confessional statement made by the accused before the Police which has no evidentiary value in the eye of law. It is further submitted that as such no witness who has last seen the accused together before the commission of crime has come forward and therefore, the theory on the basis of which the conviction has been recorded is erroneous and therefore the appellants – accused ought to have been acquitted.

4.2 It is further submitted that the learned Sessions Court has heavily relied upon the contents of the Panchnama drawn post the incident in question and the evidence of the Investigating Officer to hold the appellants – accused guilty for the offence of murder. Whereas, the case of the prosecution rests on the last seen together theory where no such independent witness is examined before the Court who have seen the deceased and the accused together prior to commission of the offence in question and therefore, it is submitted that present appeal may be allowed and the conviction and sentence recorded by the learned Sessions Court may be set aside.

4.3 In support of his submissions, learned advocate for the appellants – accused has relied upon the decision in case of ***Laxman Prasad Alias Laxman vs. State of Madhya Pradesh [(2023) 6 SCC 399]*** and ***Munikrishna alias Krishna etc. vs. State by Ulsoor PS [2022 SCC OnLine SC 1449]*** and has submitted that as per the ratio laid down by the Hon'ble Apex Court if one link in chain of circumstances to be missing and not proved, the conviction based on circumstantial evidence is required to be set aside.

4.4 By making the above submissions, learned advocate for the appellants – accused would submit to allow this appeal and to quash and set aside the judgment and order of conviction and sentence.

5. Mr.Ronak Raval, learned APP appearing for the respondent – State submits that the impugned order of conviction and sentence does not require to be interfered with as the learned Sessions Court has after thorough appreciation of evidence has come to the conclusion and recorded the conviction of the appellant – accused on the basis of the evidence adduced before the Court. It is further submitted that the evidence produced on record proves the involvement of the accused in the commission of crime in question. He has further submitted that evidence of the witnesses examined before the Court has supported the case of prosecution and narrated the incident as it was happened. It was submitted that no such omission or contradiction in the evidence of the said witnesses have come on record to discard their evidence. He has further submitted that the prosecution witnesses have deposed before the Court narrating the entire chain of sequence whereby the involvement of the accused is proved which corroborates with the scientific evidence produced and proved by the prosecution and therefore, the judgment and order of conviction and sentence may not be interfered with.

6. Heard the learned Advocate for the appellant – accused Mr.Gajendra Baghel and learned APP Mr.Ronak Raval for the respondent – State and perused the deposition of witnesses as also documentary evidence placed on record as well as the order passed by the learned Sessions Court.

7. At the outset, if the case on hand is seen, it is a case of a circumstantial evidence and while leading the case, the prosecution is

required to establish mainly three links of chain (i) motive; (ii) last seen; and (iii) recovery of weapon of assault, showing involvement of the accused. Thus, while dealing with the evidence on record, the Court concerned is required to appreciate as to whether the aforesaid three aspect is completed to prove the case of prosecution or not and if no then the benefit of that would go to the accused as the prosecution has failed to prove its case beyond reasonable doubt while missing to complete the entire of circumstance.

8. Now, reverting to the facts of the case on hand is concerned, it appears from the record that PW 6 – Devendrasinh Bhupatsinh Varachhiya was examined at Exh.30. This witness has deposed in his testimony that as usual he went to his job at Ankleshwar on 26/12/2008 and he received a phone call of his uncle asking whereabouts of Manish to which he replied that Manish used to come at interval of every 15 days and thereafter again second time phone call came asking him to come at Vatariya Sugar Factory and he went there and thereafter they both had gone in a car to an agricultural field situated near Ganesh Sugar Factory where the Police was present and showed him one dead body and asked to identify the said dead body; to which he replied that it was his younger brother – Manish which was assaulted with sharp edged weapon. This witness has thereafter gone to the Police Station and lodged the complaint which was produced at Exh.31. This witness has been cross-examined but nothing indicating that he was having any personal knowledge that deceased younger brother was having any love affair with Kumudben or his younger brother wanted to marry with her.

Thus, the evidence of this witness does not indicate as to whether there was any friendship or love affair of the deceased which is the cause of his death.

9. PW 10 – Vipul Narendrabhai Tadvi has been examined at Exh.39. Witness has deposed in his testimony that he knew deceased – Manish as they were studying together since 12th Standard, as also three years in the college. Witness has deposed in his testimony that it was Saturday and as usual, he went to Surat College from Kosamba and after relieving from the College, he came to Ankleshwar in Memu Train and to go to Valiya Village, he came out from the Station and sat in the jeep car which came to be estopped to fill-in the diesel at GIDC Petrol pump which was situated behind the ST Bus Depo where Valiya Chokdi is situated. This witness has further deposed that he sat in the front seat of the jeep car and he saw Manish opposite to Petrol pump; he was accompanied with two other persons and there was motorcycle nearby them and they all three were talking to each other. Manish carried one board and bag in his hand where suddenly one person came on motorcycle, met these three persons and went away in two minutes and thereafter Manish started to proceed on the motorcycle; that means three persons went on the motorcycle after having seated. This witness has further deposed that some time was consumed to fill-in the diesel in the jeep car and thereafter Jeep car started to proceed at Valiya and jeep overtook the motorcycle near Gujarat Guardian School. The motorcycle was running at the speed of 30 to 40 kilometer and Motorcycle was having red colour strip. Manish was accompanied with two other persons out of which one was of medium height and another was of moderate height. This witness did not identify the said two persons and having seen in the Court room, he did not specifically say that it was that of two persons. This witness has deposed that since he knew Manish long ago and therefore, he identified him; but two persons were totally unknown. Since the face side of Manish was towards him and rest of two persons' face was towards Manish. Witness has deposed in his testimony that thereafter after about six days, he came to his home Valiya and came to know about committal of murder of

Manish. The police recorded his statement. This witness has been cross-examined by the other side wherein he has admitted that he saw Manish and two other persons for about five to seven minutes and it was not dark in spite of it was winter.

Nothing indicating the involvement of the accused persons came out from the evidence of this witness in spite of the fact that witness has deposed to have seen two unknown persons accompanied the deceased – Manish prior to commission of offence and thus the evidence of this witness is not indicating of the fact of accused having last seen together with the deceased.

10. PW No.11 – Ramsinh Kesarsinh Verma has been examined at Exh.40. Witness has deposed in his testimony that incident took place on 20/12/2008 and on that day, he went to Ankleshwar from Valiya and after finishing his work in the evening, he came to Valiya Chokdi and at that time, on the opposite side of the road, he saw Manish alongwith two other persons on the motorcycle. It was red strip on the motorcycle and Manish carried bag on his shoulder. He also carried one Black board. After the jeep was arrived, he went away. He saw two unknown persons accompanied Manish were present at the Mamlatdar's Office and the said two persons were present in the court and he identified them. Witness has deposed that Police recorded his statement.

This witness has been cross-examined by the other side wherein he has admitted that prior to attending the Besna ceremony of the deceased – Manish, witness had gone to the Police Station. Thus, the evidence with regard to identification of the accused by this witness during the TI parade can be said to be vitiated as there may be chances of this witness having seen the accused while had been to the Police Station and

therefore the evidence of this witness cannot be said to be helpful to the prosecution.

11. Thus, as can be seen from the evidence of the above two witnesses upon which the heavy reliance has been placed by the learned Sessions Court to record the conviction of the appellants-accused, no direct evidence to link the accused with the crime in question has been emerged and without naming the accused persons merely on the basis of assertion claiming to be accused persons accompanied with the deceased prior to commission of offence complaint came to be lodged. No doubt, these witness claimed to have stated of having seen the deceased - Manish with the two other persons (unknown persons) on the motorcycle prior to commission of offence; but the witnesses were unable to name them while the offence came to be registered. None of the above two witnesses have named the accused persons while seeing them with the deceased prior to commission of offence. Furthermore, PW 11 has deposed to have gone to the Police Station prior to attending the Besna Ceremony of the deceased and thus identification during the TI parade of the accused by the said witness also comes under the shadow of doubt and therefore the evidence in regards to identification of the accused during TI parade would not come to the rescue of the prosecution as the same is not creditworthy. The learned Sessions Judge has materially erred in relying upon the evidence of these witness as the involvement of the appellants – accused is not proved in commission of the crime in question from the evidence of these witnesses. Furthermore, the evidence in regards to TI parade is concerned, it appears that after seven days of arrest of the accused, the said TI parade was conducted by the Police through Executive Magistrate and thus there may be chances of accused having seen by the witnesses cannot be ruled out and therefore, such TI parade has no evidentiary value in the eyes of law.

12. Furthermore, insofar as the motive part i.e. love affair / friendship of the deceased-brother of the complainant with Pankajkumari is concerned, the said witness has been examined at as PW 12 at Exh.41 and she has not supported the case of the prosecution and has been declared as hostile, as she refused to identify the accused – Prakash. During the course of cross-examination, this witness has also denied the fact that there was love affair between her and Bhupendrabhai and having asked as to whether Bhupendrabhai likes or not of her having friendship with deceased-Manish; she stated that it was not true. Thus, the motive part i.e. to eliminate the deceased from the way, the accused had killed the deceased was also not proved beyond all reasonable doubt since the person with whom the so-called relationship was claimed has denied the said fact and therefore, the prosecution has measurably failed to prove the motive part of the case of prosecution.

13. It further appears from the record that the learned Sessions Judge has relied upon the police statement recorded under Section 161 of the Code of Criminal Procedure by the Police of one Dashrathbhai Balubhai Vasava stating that accused – Bhupendra was present and accused – Prakash made him to introduce and deceased – Manish was also present and has further stated that they went to drop Manish at Valiya. The said Dashrathbhai has been examined as PW 7 at Exh.32; however, the said witness has been declared hostile by the prosecution; although the learned Sessions Judge has relied upon the statement made under Section 161 of the Cr.PC before the Police by the person who has been examined as prosecution witness and has been declared hostile hostile by the prosecution before the Court which can be said to be stage without any substance as the statement made before the Police are used only for the purpose of corroboration and cannot take place of evidence.

14. At this juncture, it would be apt to note that as per the decision of the Hon'ble Apex Court in the case of ***Renuka Prasad vs. the State Represented By Assistant Superintendent of Police [2025 INSC 657]***, it has been unequivocally held that a statement under Section 161 of Cr.PC is not a substantive piece of evidence. Relevant observations made in paragraph No.25 to 26 reads thus:

> "*25. Section 162 of the Criminal Procedure Code, 1898 was dealt with in **Kali Ram v. State of H.P.** to hold that the provision makes it plain that 'the statement made by any person to a police officer in the course of an investigation cannot be used for any purpose except for the purpose of contradicting a witness, as mentioned in the proviso to sub-section (1) or for the purposes mentioned in sub-section (2)' (sic para-17). The said principle was reiterated with reference to Section 162 under the Criminal Procedure Code, 1973 in **R. Shaji v. State of Kerala**. It was held by this Court that 'statements under Section 161 Cr.P.C. can be used only for the purpose of contradiction and statements under Section 164 Cr.P.C. can be used for both corroboration and contradiction' (sic para-25). It was further held that though the object of the statement of witness recorded under Section 164 is two-fold, there is no proposition that if the statement of a witness is recorded under Section 164 before a Magistrate, the evidence of such witness in Court should be discarded. **Rajendra Singh v. State of U.P.,** was a case in which the High Court, as in the present case, relied upon the statements of six witnesses, recorded by the IO under Section 161 Cr.P.C., to enter a finding that the respondent could not have been present at the scene of crime, as he was present in the meeting of the Nagar Nigam at Allahabad. It was unequivocally held that 'a statement under Section 161 Cr.P.C. is not a substantive piece of evidence. In view of the proviso to sub- section (1) of Section 162 Cr.P.C., the statement can be used only for the limited purpose of contradicting the maker thereof in the manner laid down in the said proviso' (sic para-6). It was*

found that the High Court committed a manifest error of law in relying upon wholly inadmissible evidence in recording a finding on the alibi claimed by one of the accused.

26. The statements made by the IOs regarding the motive, conspiracy and preparation comes out as the prosecution story, as discernible from the Section 161 statements of various witnesses who were questioned by the police during investigation; which statements are wholly inadmissible under Section 162 of the Cr.P.C. Merely because the IOs spoke of such statements having been made by the witnesses during investigation, does not give them any credibility, enabling acceptance, unless the witnesses themselves spoke of such motive or acts of commission or omission or instances from which conspiracy could be inferred as also the preparation, established beyond reasonable doubt. We are unable to find either the motive, the conspiracy or the preparation or even the crime itself to have been established in Court, at the trial through the witnesses examined before Court. The witnesses had turned hostile, for reasons best known to themselves. The only inference possible, on the witnesses turning hostile is that either they have been persuaded for reasons unknown or coerced into resiling from the statements made under Section 161 or that they had not made such statements before police officers. Merely because the story came out of the mouth of the IO, it cannot be believed and a legal sanctity given to it, higher than that provided to Section 161 statements under Section 162 of the Cr.P.C."

Thus the learned Sessions Judge has not considered the settled principles of law and relied upon the such statement made before the Police under Section 161 of the Cr.PC and thereby come to the conclusion while recording conviction of the appellant which is against the settled proposition of law.

15. It would also come on record that as per the case of the prosecution, the blood stains part of the clothes of the deceased was found in cut condition; whereas as per the FSL Report the clothes sent for examination were not cut condition and thus it also speaks volume about the case of the prosecution. It also appears from the record that muddamal so recovered was sent to FSL on 03/01/2009 whereas the alleged incident took place on 20/12/2008 and accused came to be arrested on 20/01/2009 which also speaks volume as to the fact of sending the muddamal prior to arrest of the accused. However, learned Sessions Judge has not considered the said aspect and recorded the conviction on the basis of the statement made by the witness before the Police which has no evidentiary value in the eye of law as said witness was also declared hostile by the prosecution.

16. Considering the aforesaid two aspects, the learned Sessions Judge has believed the theory of last seen together to link the accused with the crime in question and hold the accused guilty, as also considering the statement recorded before the Police which is not admissible in the eye of law which in the considered opinion of this Court cannot be made basis for recording conviction of the appellants on the theory of last seen together.

17. In light of the appreciation of the aforesaid evidence, it appears that this is not a case where the entire chain of circumstantial evidence is completed as required under the law so as to indicate the guilt of the accused and also exclude any other theory of crime. In the case on hand, the learned Sessions Judge has failed to notice such aspect as to whether any such motive is proved by the prosecution as alleged since the prime witness PW 11 with whom the love affair / friendship of the deceased was claimed has not been proved as the said witness has not supported

the case of prosecution and declared hostile. Likewise, the two witnesses who claimed to have seen the deceased with the accused prior to commission of crime also failed to name to the accused persons at the time of registration of offence and identify the accused before the Court and thus the entire story of the prosecution comes under the shadow of doubt.

18. In a case of circumstantial evidence, the chain is required to be completed as mandated under the law so as to indicate the guilt of the accused while discarding any other theory of the crime. If one of the link goes missing and not proved, in view of the settled law on the point, the conviction is required to be interfered with. At this stage, with profit, we may refer to the decision in case of ***Laxman Prasad Alias Laxman (supra)*** where the Hon'ble Apex Court after referring to ***Sharad Birdhichand Sarda vs. State of Maharashtra [(1984) 4 SCC 116]*** and ***Shailendra Rajdev Pasvan vs. State of Gujarat [(2020) 14 SCC 750]*** has quashed the conviction by making observations in paragraph 2 to 4 as under:

> *"2. The present one is a case of circumstantial evidence. The prosecution led evidence to establish three links of the chain: (i) motive, (ii) last seen, and (iii) recovery of weapon of assault, at the pointing out of the appellant. The High Court, while dealing with the evidence on record, agreed with the finding of motive and the last seen, however, insofar as the recovery of the weapon of assault and bloodstained clothes were concerned, the High Court in para 18 of the judgment held the same to be invalid and also goes to the extent to say that the recovery which has been made does not indicate that the appellant has committed the offence. Still, it observed that looking to the entire gamut and other clinching evidence against the appellant of last seen and motive, affirmed the conviction.*

3. We do not find such conclusion of the High Court to be strictly in accordance with law. In a case of circumstantial evidence, the chain has to be complete in all respects so as to indicate the guilt of the accused and also exclude any other theory of the crime. The law is well settled on the above point. Reference may be had to the following cases:

(1) Sharad Birdhichand Sarda v. State of Maharashtra,
(ii) Shailendra Rajdev Pasvan v. State of Gujarat.

4. Thus, if the High Court found one of the links to be missing and not proved in view of the settled law on the point, the conviction ought to have been interfered with."

19. In view of the settled law that one must look for a complete chain of circumstances and not on snapped and scattered links which do not make a complete sequence. The circumstances from which the conclusion of guilt is drawn should be fully proved, and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete, and there should be no gap left in the chain of evidence; in the present case, the chain is not completed.

20. Furthermore, there is no eyewitness to the incident. Based on suspicion, the complainant lodged an FIR against the present appellants, and the arrest was made based on suspicion; there was no concrete material against the appellants to prove his involvement in the commission of crime and merely on the suspicion their involvement was tried to be shown which cannot take the place of evidence. From the evidence so produced by the prosecution and as examined by the learned Sessions Court, the prosecution has failed to prove its case. Though the prosecution has heavily relied upon the phone calls between the deceased

and the accused; but location of the mobile phone calls were not found to have been proved by the prosecution which also smacks a doubt on the said piece of evidence. The conduct of the witnesses identifying the only deceased who was accompanied with the accused prior to his murder also comes under the cloud of doubt.

21. 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 Sessions Court, the present appeal deserves to be allowed and is accordingly allowed. The judgment and order recording conviction and sentence dated 12.08.2011 passed by the learned Additional Sessions Judge, Bharuch in Sessions Case No.42 of 2009 for the offences punishable under Sections 302, 120-B and 201 of the Indian Penal Code is quashed and set aside.

21.1 The appellants are ordered to be set at liberty, forthwith, if not required in any other case.

21.2 Bail Bond shall stand discharged. Records and Proceedings, if any, be remitted to the Court concerned forthwith.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

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Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: MANISHKUMAR JYOTINDRA SOMPURA(HC00189), Principal Pvt. Secretary, at High Court of Gujarat on 16/01/2026 11:17:08