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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC. APPLICATION (FOR QUASHING & SET ASIDE FIR/ORDER) NO.309 of 2022
With
R/SPECIAL CRIMINAL APPLICATION NO.1225 of 2022
With
R/CRIMINAL MISC. APPLICATION NO.13662 of 2022
With
R/CRIMINAL MISC. APPLICATION NO.13667 of 2022
With
R/CRIMINAL MISC. APPLICATION NO.13496 of 2022
With
R/CRIMINAL MISC. APPLICATION NO.11426 of 2022
With
R/SPECIAL CRIMINAL APPLICATION NO.66 of 2022

FOR APPROVAL AND SIGNATURE :

HONOURABLE MR. JUSTICE NIRZAR S. DESAI

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Approved for Reporting	Yes	No
	YES	

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VARYAVA ABDUL VAHAB MAHMOOD
Versus
STATE OF GUJARAT & ANR.

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Appearance :

1. **CRIMINAL MISC. APPLICATION NO.309 OF 2022**
MR MTM HAKIM WITH MR ARJUN M JOSHI WITH MR ISA HAKIM for the Applicant.
MR MITESH AMIN, ADDITIONAL ADVOCATE GENERAL ASSISTED BY MR HARDIK A DAVE, PUBLIC PROSECUTOR WITH MR RONAK RAVAL AND TRUPESH KATHIRIYA, ADDITIONAL PUBLIC PROSECUTOR for the Respondent No.1 – State.
MR MAULIN RAVAL, SENIOR COUNSEL ASSISTED BY MRS YOGINI V PARIKH WITH MR HARSHESH KAKKAD AND MS RUCHIKA N KAKKAD for the Respondent No.2

2. **SPECIAL CRIMINAL APPLICATION NO.1225 OF 2022**
MR I. H. SYED, SENIOR COUNSEL ASSISTED BY MR MUHAMMAD QUASIM VORA & MR ANIQ A KADRI for the Applicant.
MR MITESH AMIN, ADDITIONAL ADVOCATE GENERAL ASSISTED BY MR HARDIK A DAVE, PUBLIC PROSECUTOR WITH MR RONAK RAVAL

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AND TRUPESH KATHIRIYA, ADDITIONAL PUBLIC PROSECUTOR for the Respondent No.1 – State.
MR MAULIN RAVAL, SENIOR COUNSEL ASSISTED BY MRS YOGINI V PARIKH WITH MR HARSHESH KAKKAD AND RUCHIKA N KAKKAD for the Respondent No.2

3. **CRIMINAL MISC. APPLICATION NO.13662 OF 2022**
MR I. H. SYED, SENIOR COUNSEL ASSISTED BY MR ANIQ KADRI WITH MR MUHAMMAD QUASIM VORA for the Applicant.
MR MITESH AMIN, ADDITIONAL ADVOCATE GENERAL ASSISTED BY MR HARDIK A DAVE, PUBLIC PROSECUTOR WITH MR RONAK RAVAL AND TRUPESH KATHIRIYA, ADDITIONAL PUBLIC PROSECUTOR for the Respondent No.1 – State.
MR R C KODEKAR MR PARTH A. BHATT WITH MR MAHARSHI PATEL & HARSH N. SHAH for the Respondent No.2

4. **CRIMINAL MISC. APPLICATION NO.13667 OF 2022**
MR I. H. SYED, SENIOR COUNSEL ASSISTED BY MR MUHAMMAD QUASIM VORA & MR ANIQ A KADRI for the Applicant.
MR MITESH AMIN, ADDITIONAL ADVOCATE GENERAL ASSISTED BY MR HARDIK A DAVE, PUBLIC PROSECUTOR WITH MR RONAK RAVAL AND TRUPESH KATHIRIYA, ADDITIONAL PUBLIC PROSECUTOR for the Respondent No.1 – State.
MR R C KODEKAR WITH MR N R KODEKAR & MR ATIT D THAKORE for the Respondent No.2

5. **CRIMINAL MISC. APPLICATION NO.13496 OF 2022**
MR I. H. SYED, SENIOR COUNSEL ASSISTED BY MR ANIQ A KADRI for the Applicant.
MR MITESH AMIN, ADDITIONAL ADVOCATE GENERAL ASSISTED BY MR HARDIK A DAVE, PUBLIC PROSECUTOR WITH MR RONAK RAVAL AND TRUPESH KATHIRIYA, ADDITIONAL PUBLIC PROSECUTOR for the Respondent No.1 – State.
MR MAULIN RAVAL, SENIOR COUNSEL ASSISTED BY MR HARSHESH R. KAKKAD WITH MR YASH J. PATEL for the Respondent No.2

6. **CRIMINAL MISC. APPLICATION NO.11426 OF 2022**
MR MTM HAKIM WITH MR ISA HAKIM for the Applicant.
MR MITESH AMIN, ADDITIONAL ADVOCATE GENERAL ASSISTED BY MR HARDIK A DAVE, PUBLIC PROSECUTOR WITH MR RONAK RAVAL AND TRUPESH KATHIRIYA, ADDITIONAL PUBLIC PROSECUTOR for the Respondent No.1 – State.
MR R C KODEKAR WITH MR ALKESH N SHAH WITH MR P. B. KHAMBHOLJA for the Respondent No.2

7. **SPECIAL CRIMINAL APPLICATION NO.66 OF 2022**
MR UMARFARUK M. KHARADI WITH MR MUHAMMAD QUASIM VORA for the Applicant.
MR MITESH AMIN, ADDITIONAL ADVOCATE GENERAL ASSISTED BY MR HARDIK A DAVE, PUBLIC PROSECUTOR WITH MR RONAK RAVAL AND TRUPESH KATHIRIYA, ADDITIONAL PUBLIC PROSECUTOR for the Respondent No.1 – State.

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CORAM:**HONOURABLE MR. JUSTICE NIRZAR S. DESAI**

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Date : 30/09/2025 & 01/10/2025
COMMON ORAL JUDGMENT

1. With the consent of learned advocates appearing for the respective parties, all these matters are taken up for final hearing today itself. Hence, Rule. Learned advocates appearing for the respective respondents waive service of rule on behalf of respective respondents.

1.1 In this group of petitions, seven in number, except Special Criminal Application No.66 of 2022, in all other petitions, each of the applicants have prayed for quashing and setting aside the **FIR No.11199003211359 of 2021 registered with Aamod Police Station, Dist. Bharuch** on 15.11.2021 for the offences punishable under Sections 120(B), 153(B)(1)(C), 153(A)(1), 295(A), 506(2), 466, 467, 468 and 471 of Indian Penal Code and Section 3(2)(5-A) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and Section 84C of the Information Technology Act, 2000.

Special Criminal Application No.66 of 2022 is filed by the applicant challenging the Summons dated 24.12.2021 issued by the respondent No.2 under Section 160 of the Criminal Procedure Code, 1973.

1.2 Yesterday i.e. on 29.9.2025, when the matters were taken up for hearing by this Court, the following order was passed :-

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> "With the consent of all learned counsels appearing for the respective parties and looking to the sensitivity of the matters, live streaming in these matters was stopped and the same shall not be telecast.
>
> I have heard Mr. I. H. Syed, learned Senior Counsel assisted by Mr. Kadri and learned advocate Mr. MTM Hakim appearing with Mr. Isa Hakim for the applicant. Learned Senior Counsel Mr. I. H. Syed has concluded his arguments and the submissions of learned advocate Mr. MTM Hakim are going on and hence, list these matters tomorrow i.e. 30.9.2025. These matters shall be taken up immediately after fresh matters."

2. At the outset, learned Senior Counsel Mr. I. H. Syed assisted by learned advocate Mr. Anik Kadri and learned advocate Mr. MTM Hakim appearing with Mr. Isa Hakim appearing for the applicants pointed out to the Court that this Court may defer hearing of these petitions as there is a stay granted by the Division of this Court in respect of Sections 3, 4, 4A to 4C, 5, 6 and 6A in respect of challenge to the virus of the amended Act of Gujarat Freedom of Religion Act, 2003 and when the said Act was amended in the year 2021, the amended Act was subject matter of challenge before the Division Bench of this Court by way of Special Civil Application No.10304 of 2021 and Special Civil Application No.10305 of 2021. It was also brought to the notice of the Court that the aforesaid order whereby certain Sections of the Act were challenged vide order dated 26.8.2021, were carried before the

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Hon'ble Supreme Court by the State of Gujarat by way of Special Leave Petition (Criminal) No.19945 and 19946 of 2021 and the same are pending before the Hon'ble Supreme Court. It was also submitted by learned Senior Advocate Mr. I. H. Syed and learned advocate Mr. MTM Hakim that thereafter, some transfer petitions are also filed before the Hon'ble Supreme Court and the same is also pending. However, it was fairly conceded by learned Senior Advocate Mr. I. H. Syed and learned advocate Mr. MTM Hakim that there is no transfer petition filed in respect of this set of petitions and there is no order whereby the hearing of the present petitions are stayed.

3. Mr. Mitesh Amin, learned Additional Advocate General assisted by Mr. Hardik A. Dave, learned Public Prosecutor assisted by Mr. Ronak Raval and Mr. Trupesh Kathiriya, learned Additional Public Prosecutors as well as Mr. Maulin Raval, learned Senior Advocate assisted by Mr. Harshash Kakkad and Ruchika Kakkad and Mrs. Yogini Parikh and Mr. Yash J. Patel and learned advocate Mr. R. C. Kodekar with Mr. Parthiv A. Bhatt and Maharshi Patel appearing for respective respondents have drawn attention of the Court that the order passed by the Division Bench of this Court does not stay the amended Sections 3, 4, 4A to 4C, 5, 6 and 6A completely and the aforesaid stay is operating only in respect of the cases of inter-faith marriage and on account of any conversion of religion which has taken place on account of some inter-faith marriage. Learned counsels appearing for the respective respondents have drawn attention of this Court to the order dated 19.8.2021 passed by the Division Bench of this Court in Special Civil Application No.10304 of 2021 and 10305 of 2021 and pointed out from the order itself and more particularly, from paragraph 9 of

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the said order which indicates that interim order is only on the line of arguments advanced by learned counsels and to protect the parties solemnizing marriage inter-faith from being unnecessarily being harassed. However, to bring more clarity, I deem it appropriate to reproduce the entire order dated 19.8.2021 passed in Special Civil Application No.10304 and 10305 of 2021 by the Division Bench of this Court whereby certain Sections of the amended Act were partly stayed as submitted by learned counsel appearing for the respective parties, which reads as under :-

> *"1. Both these Petitions, filed under Article 226 of the Constitution Of India challenge the vires of the Gujarat Freedom Of Religion Act, 2003 as amended by the Gujarat Freedom Of Religion (Amendment) Act, 2021 (hereinafter referred to as the "Freedom Of Religion Act,2021") have prayed for the following reliefs :-*
>
> *"(A) THIS HON'BLE COURT MAY BE PLEASED TO hold and declare Sections 2(a), 2(d), 3, 3A, 4, 4A, 4B, 4C, 5, 6, 6A of the impugned Gujarat Freedom Of Religion Act,2003 as amended by the Gujarat Freedom Of Religion (Amendment) Act, 2021 to be ultravires the Constitution;*
>
> *(B) Pending admission, hearing, and final disposal of the present application, this HON'BLE COURT MAY BE PLEASED TO stay the implementation of hold and declare Sections 2(a), 2(d), 3, 3A, 4, 4A, 4B, 4C, 5, 6, 6A of the impugned*

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Gujarat Freedom Of Religion Act,2003 as amended by the Gujarat Freedom Of Religion (Amendment) Act, 2021 to be ultravires the Constitution;

..."

2. On 5.08.2021, this Court had, after hearing Mr Mihir Joshi,learned Senior Advocate assisted by Mr.Muhammad Isa.M Hakim for the petitioners and Ms Manisha Lavkumar,learned Government Pleader assisted by Ms.Aishvarya Gupta, Learned AGP,on a request made by the Learned Government Pleader granted ten days' time to obtain instructions. As there is a challenge to the State enactment, notices were issued to the learned Advocate General also.

3. Today, when the matter was taken up for hearing, Mr Kamal Trivedi, learned Advocate General along with Ms. Manisha Lavkumar, learned Government Pleader assisted by Ms.Aishvarya Gupta, learned AGP, has appeared and at the outset requested for time to put in a response by way of an affidavit-in-reply.

4. Admit. Issue Notice. No notice be sent to the respondents as Ms. Aishvarya Gupta, learned AGP waives service of notice. For the State to file its reply, we grant 4 weeks' time and a further 2 weeks' time to the petitioners to put in their rejoinder. List on 30.09.2021.

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5. Mr. Mihir Joshi, learned Senior Advocate has pressed for interim relief inasmuch as the amended Section 3 of the Freedom Of Religion Act, 2003 (for short 'the 2003 Act'), per se, prohibits marriage on a presumption that such a marriage is for the purposes of conversion. The concept of marriage has no bearing on conversion. He would invite the attention of the Court to the penal provisions that can be triggered by lodging a complaint by any aggrieved person under Section 3A, 4A and 4B of the 2003 Act.

6. Mr .Kamal Trivedi learned Advocate General appearing for the State would submit that Section 3 of the 2003 Act cannot be read in abstract. According to him, marriage per se is not prohibited but a conversion actuated by fraud or allurement or a forcible marriage is prohibited. The focal point is conversion by force or a fraudulent marriage or a marriage by allurement. He would submit that once the scheme of the Act is seen the purpose is to prohibit unlawful conversion. The mechanism of investigation is well equipped by checks and balances as no prosecution is instituted except with the previous sanction of the District Magistrate. The offences under the Act shall not be investigated by an officer below the rank of a Deputy Superintendent Of Police. Mr. Trivedi, learned Advocate General has drawn our attention to the

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Statement of Objects and Reasons and also to the various provisions which provide for the balances and checks in the 2003 Act and has strongly contended that the statement made by Mr. Joshi, learned Senior Advocate is not tenable. According to him, without an element of fraud, allurement or coercion, a marriage inter-faith followed by conversion would not amount to unlawful conversion and as such would not be hit by the penal provisions.

7. Having heard Mr Mihir Joshi, learned Senior Advocate for the petitioners and Mr Kamal Trivedi, learned Advocate General for the State, at this stage, being conscious of the fact that subject to the detailed examination of the Vires of the Act under challenge, certain prima facie observations based on a plain reading of Section 3 of the 2003 Act need to be made. They are as under :-

(a) The Gujarat Freedom Of Religion Act, 2003 was initially an Act brought into force in April 2003. According to the then Section 3 of the 2003 Act, there was a prohibition of conversion of any person from one religion to another religion by use of force or allurement or by any fraudulent means.

(b) By the Amending Act of 2021, which was brought into force by way of a Notification dated 04.06.2021 a marriage itself is presumed to be a

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medium for the purposes of unlawful conversion if the marriage was by way of allurement, force or by fraudulent means. A plain reading of Section 3 would indicate that any conversion on account of marriage is also prohibited. The submission of Mr. Trivedi, learned Advocate General that the element of fraud, allurement or coercion which is sought to be brought in by reading the Statement of Objects and Reasons and the other provisions of the 2003 Act, may not be understood by a common man. The interpretation of Section 3 of the 2003 Act as Mr. Trivedi, learned Advocate General wants us to read would be a subject matter of adjudication but prima facie on a plain reading of Section 3 of the 2003 Act, we feel that marriage inter-faith followed by conversion would amount to an offffence under the 2003 Act. Marriage itself and a consequential conversion is deemed as an unlawful conversion attracting penal provisions.

(c) In the case of Shafin Jahan vs Ashokan reported in (2018) 16 SCC 368, the Supreme Court observed as under :-

"The right to marry a person of one's choice is integral to Article 21 of the Constitution. The Constitution guarantees the right to life. This right cannot be taken away except through a law which is substantively and procedurally fair, just and reasonable. Intrinsic to the liberty which the Constitution guarantees as a fundamental right is the ability of each individual to take decisions on matters central to the pursuit of happiness. Matters of belief and faith, including whether to believe are

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at the core of constitutional liberty. The Constitution exists for believers as well as for agnostics. The Constitution protects the ability of each individual to pursue a way of life or faith to which she or he seeks to adhere. Matters of dress and of food, of ideas and ideologies, of love and partnership are within the central aspects of identity. The law may regulate (subject to constitutional compliance) the conditions of a valid marriage, as it may regulate the situations in which a marital tie can be ended or annulled. These remedies are available to parties to a marriage for it is they who decide best on whether they should accept each other into a marital tie or continue in that relationship. Society has no role to play in determining our choice of partners."

(d) From the perception of the common man, it appears that merely because a conversion occurs because of marriage, it per se cannot be held to be an unlawful conversion or a marriage done for the purpose of unlawful conversion.

(e) Section 6A of the 2003 Act places the burden of proof on the parties entering into an inter-faith marriage to prove that the marriage was not solemnized on account of any fraud, allurement or coercion. This again puts the parties validly entering into an inter-faith marriage in great jeopardy.

(f) Prima-facie inter-faith marriages between two consenting adults by operation of the provisions of Section 3 of the 2003 Act interferes with the intricacies of marriage including the right to the choice of an individual, thereby infringing Article 21 of the Constitution Of India.

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> *8. We are therefore of the opinion that, pending further hearing the rigors of Sections 3, 4, 4A to 4C, 5, 6 and 6A shall not operate merely because a marriage is solemnised by a person of one religion with a person of another religion without force or by allurement or by fraudulent means and such marriages cannot be termed as marriages for the purposes of unlawful conversion.*
>
> *9. The above interim order is provided only on the lines of the arguments advanced by Mr. Trivedi, learned Advocate General and to protect the parties solemnizing marriage inter-faith from being unnecessarily harassed."*

4. When the aforesaid facts were brought to the notice of learned Senior Advocate Mr. I. H. Syed and learned advocate Mr. MTM Hakim, before the hearing could be started, this Court specifically put it to them that whether they want a reasoned order as to why the Court is taking up the matters, though it was brought to the notice of the Court that vires of the amended Act is now being examined by the Hon'ble Supreme Court, learned Senior Advocate Mr. I. H. Syed and learned advocate Mr. MTM Hakim have shown willingness to conduct the matters and they stated in no uncertain terms that they do not want to challenge any order whereby the Court intends to take up the matters for hearing and, therefore, with their express consent, the matters were taken up and were heard by this Court as they were also convinced that there is no stay against hearing of the present set of petitions.

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5. I deem it appropriate to writ all these in this order as the present order is being dictated in the open Court to bring more clarity about the circumstances in which the matters were taken up and heard by this Court.

6. The FIR which is under challenge is registered by one Mr. Pravinbhai Vasantbhai Vasava on 14.11.2021 wherein in all, 9 persons were arraigned as accused at the time when the FIR was registered and thereafter, upon investigation being carried out and at the time when charge-sheet was filed, in all 16 persons were arraigned as accused and upon instructions, it is stated by Mr. Hardik A. Dave, learned Public Prosecutor that the investigation in respect of 5 persons is not yet over and appropriate action in respect of filing of a report or charge-sheet will be filed soon, including two applicants, namely, Varyava Abdul Vahab Mahmood (applicant of CRMA No.309 of 2022) and Abdul Adam Patel @ Fefdawala Haji @ Abdullah (applicant of Criminal Misc. Application No.11426 of 2022) qua whom the charge-sheet is not yet filed. Same way, applicant of Special Criminal Application No.66 of 2022 is an advocate who has challenged the Summons and for rest of the applicants, charge-sheet is already filed and they are shown as accused.

7. As per the FIR, the complainant has stated that he and his family members are the residents of village Amod, Tal. Amod, Dist. Bharuch having agricultural land and doing agricultural activities. He stated that before about 15 years from the date of registration of FIR, one Shabbir Bekriwala and Samjbhai Bekriwala by giving temptations and alluring in respect of providing financial aid and on a promise to construct the house for him, converted one

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Ajit Chhaganbhai Vasava and changed his name to Abdul Aziz Patel and thereafter they provided financial aid to the said Ajit Chhaganbhai Vasava @ Abdul Aziz Patel and on the basis of the aforesaid financial aid and other kind of temptations, by misusing the poverty of the other Hindu families and their ignorance, the said Ajit Chhagan @ Abdul Azia Patel converted one Mahendra Jivanbhai Vasava who was given a new name of Yusuf Jivan Patel and Raman Barkat Vasava who was given new name of Aiyub Barkat Patel and thereafter, all the three persons together along with Shabbir Bekriwala and Samajbhai Bekriwala started alluring the other Hindu villagers of the village and by giving them temptation of constructing a new home, food-grain and cash, tempted them to convert to Islam. They also promised them to give job and they started to state so many things about the Hindu religion and Hindu Gods which are elaborately stated in the FIR, but I do not deem it appropriate to reproduce the exact version in this order as for considering the present case, only the part whereby the conversion has taken place by way of alluring various persons or not that is important and, therefore, though lot many things are stated in the FIR, I restrict myself only to the relevant portion of the FIR.

As per the FIR, in the year 2018, the complainant was converted into Islam and Abdul Aziz Patel used to teach him how to chant Kalma by taking him into an Ibadatgah made in the Government premises. As per the FIR, the complainant was taken to Surat one day and by misrepresenting before him, he was asked to give his thump impression on the said paper which was already typed and thereafter, his name was also changed to Salman Vasant Patel, his new Aadhar Card was prepared and as per the FIR, the

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said Abdul Aziz Patel is getting financial aid for getting the religion conversion from one Hasan Tisli, Abdul Aziz Patel and Fefdawala Haji Abdullah and all these three persons together have already converted around 100 persons belonging to 37 families from Hindu to Muslim community by alluring them by offering them money and other temptations and the said Abdul Aziz Patel has demolished his house constructed from Government aid and has converted into Ibadatgah (prayer hall). In the said Ibadatgah, one Ismail Achodvala @ Delavada who is a Maulvi, resident from Anand comes and converts the Hindus to Muslims and in the said Ibadatgah, Abdul Azia Patel and Fefdavala Haji Abdullah & Ismail Achodvala @ Delavada converts the Hindus, distributes money to them and ask them to read and chant Kalma. As per the FIR, in the last few years, Abdul Aziz Patel, Fefdawala and Ismail Achodvala @ Delavada have converted 15 persons named in the FIR from Hindu to Muslim and as per the FIR, the said conversion had taken place by way of supplying new house, cash benefits, providing job and food-grain and on the premise of second Nikaah and, therefore, the complainant and other Hindus were tempted to get converted to Islam and thereafter, the complainant came to know that this is a nation wide conspiracy to convert Hindus to Muslims and the same is going on on account of huge financial aid received by them from foreign country.

Upon knowing the correct facts, he started resisting about the same and, therefore, he was threatened by Abdul Aziz Patel, Ibrahim Puna Patel and Aiyub Barkat Patel and on 26.10.2021 at around 11.30 in the morning, he was threatened to kill as they have connections from Kashmir to Pakistan and, therefore, the complainant got scared and upon gathering the

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courage, FIR was registered against 9 persons named in the FIR. Thereafter, upon investigation, in all 16 persons were arraigned as accused and out of 16 persons, the applicants have preferred these petitions for quashment of the said FIR and charge-sheet as well as all consequential proceedings arising therefrom.

8. It is an undisputed fact that right from day one in each of the petitions, no relief was granted initially in favour of the applicants. For the first time, vide order dated 28.8.2024, the coordinate Bench of this Court passed following order in all the petitions, except Special Criminal Application No.66 of 2022, which reads as under :-

> "In view of sick note filed by learned advocates Mr. Harsh N. Shah and Yash J. Patel appearing for respondent No.2 in Criminal Misc. Application Nos.13662/2022 and 13496/2022 respectively, as a last chance, stand over to 05.09.2024.
>
> Learned advocate for the petitioner shall have liberty to file adjournment application before the learned trial Court which shall be considered decided on its own merits and in accordance with law."

9. It is brought to the notice of this Court by learned counsel appearing for the respective parties that only once the aforesaid relief was extended vide order dated 5.9.2024. Thereafter, the aforesaid relief was never extended and none of the advocates appearing for the respective parties could dispute the

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fact that the date on which the matters were taken up i.e. 29.9.2025, no relief was operating in favour of the applicants.

10. At the outset, it is brought to the notice of the Court by Mr. Mitesh Amin, learned Additional Advocate General, upon instructions, that there is no relief granted by this Court in favour of the applicants and the trial has already reached at an advanced stage and it is at the stage of framing of charge. However, the charge has not been framed yet.

11. In this factual background and in view of the above development in the trial, the matters were heard by this Court.

12. Mr. I. H. Syed, learned Senior Counsel appearing with Mr. Aniq Kadri with Mr. Mohmmed Kasim Vora for the applicants in Criminal Misc. Application Nos.13662 of 2022, 13667 of 2022, 13496 of 2022 and Special Criminal Application No.1225 of 2022, made following submissions :-

12.1 That the applicants at the best can be said to be victims of the religion conversion despite that they have been arraigned as accused which itself would go to suggest that the registration of FIR qua some of the applicants is misconceived. That the present complainant and others who are allegedly converted have converted to Islam on their own free will and there is nothing to indicate that they were converted on account of any pressure or allurement which are the two basic requirement for registration of an offence under Section 3 of the Act.

12.2 That by reading some of the statements of some of the

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witnesses and whose statements are part of charge-sheet papers and pointed out that all the statements of witnesses are stereo-typed in nature and the same would not constitute an offence.

12.3 That the period of offence relates back to the year 2006 to 2021 and alleged conversion had taken place in the year 2016 and 2018 whereas the amended Act has come into force in the year 2021 and, therefore, when Section 3A has been inserted by way of an amendment in the year 2021, prior thereto, there was no complaint registered against the present applicants and when the persons who are converted into Islam have not made any complaint, the complainant who claims to be an aggrieved person, can at the best file a complaint for himself but not for others and, therefore, registration of FIR qua the other persons and the nature of investigation is absolutely misconceived and misdirected and, therefore, registration of FIR of an offence against the present applicants right from the inception is erroneous and, therefore, the FIR qua the present applicants are required to be quashed and set aside.

12.4 That Section 6 of the Act provides for sanction before registration of an offence. However, in the instant case, prior sanction was not obtained before registering the offence against the present applicants and, therefore, in view of the settled proposition of law, if the offence is registered without prior sanction, such proceedings are nullity and, therefore, the FIR and all consequential proceedings arising thereto shall not be maintainable as this are invalid and, therefore, the impugned FIR as well as all consequential proceedings arising thereto are required to be quashed and set aside.

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12.5 In support of his submission, Mr. I. H. Syed, learned Senior Counsel relied upon the decision of the Hon'ble Supreme Court in the case of **Rabina Khate and others v. Union of India and others, 2004 (9) SCC 142** and by relying upon paragraph 8 thereof, he submitted that when prior sanction is not obtained for registration of offence, the trial is a nullity and, therefore, in the instant case also, as the State Government has failed to administer that the sanction was obtained prior to the point of registration of offence, the aforesaid decision would squarely applicable in the facts of the present case and, therefore, the impugned FIR as well as all consequential proceedings arising thereto are required to be quashed and set aside.

13. Mr. MTM Hakim, learned advocate appearing with Mr. Arjun Joshi and Mr. Isa Hakim for the applicants in Criminal Misc. Application No.309 of 2022 and 11426 of 2022 made following submissions :-

13.1 That the applicant of Criminal Misc. Application No.309 of 2022 is a Priest (Maulvi) and the only material against him till date is the fact that he has imparted education about 4 to 5 children of already converted people who were converted from Hindu to Muslim. He offered Water cooler, financial aid, mattress and food-grain. Except the statements whereby the witnesses have stated in the aforesaid facts against the present applicants, there is no material against the present applicants.

13.2 That the applicant had approached the Hon'ble Supreme Court by way of Special Leave to Appeal (Criminal)

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No.4208 of 2022 seeking anticipatory bail and vide order dated 17.2.2023, he was granted anticipatory bail.

13.3 That the offence is registered in the year 2021 and till date, no charge-sheet is filed against the present applicant and, therefore, looking to the limited allegations made against the present applicant of imparting religious education, no case can be said to have been made out against him. It cannot be said on the basis of very limited material that the applicant has committed any offence under the Act, more particularly, when the allegation against the present applicant is that he did not pressurize or has been involved in any sort of allurement which has resulted into conversion of religion and he has only imparted education and provided financial assistance and certain household needs like water cooler and mattresses and food-grain to the children who were admitted to Madressa where he was imparting education and, therefore, his activities are confined to the persons who are already converted from Hindu to Muslim and, therefore, looking to the scope of the Act, his act cannot be said to have been an offence and, therefore, the impugned FIR qua him is required to be quashed and set aside.

13.4 To make his submissions more precise, learned advocate Mr. MTM Hakim relied upon definition of ‘convert’ which is defined in Section 2 (b) of the Act whereby it is stated that convert means to make one person to renounce one religion and adopt another religion. Therefore, when a person has already renounced his religion and converted into another religion, the applicant is imparting education to his children and even if he has supplied some financial aid or any other benefit to the families, the

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same ought not to have been related to the conversion as that person has already been converted from one religion to another religion.

13.5 That there is no order of sanction against the present applicant and, therefore also, the entire trial qua the present applicant cannot be said to be legal and valid and, therefore, the same is required to be quashed and set aside.

13.6 As far as Criminal Misc. Application No.11426 of 2022 is concerned, learned advocate Mr. MTM Hakim submitted that the present applicant is a philanthropic and is associated with the charitable activities. He is the Trustee of a Trust, namely, Majlis Al Falah Trust (UK) which is registered in United Kingdom. The only allegation against the present applicant is that he was seen in a Video clip which has duration of around 6 minutes and in the entire video, it is alleged that the present applicant has addressed a gathering wherein he has assured all financial help and well being of the people who are already converted and, therefore, the act of the present applicant ought not to have been associated as an act to lure the people to convert as the same was post-conversion and, therefore, arraigning the present applicant as accused on the basis of small video clip would not give a clear idea and, therefore, no case can be said to have been made out against the present applicant to arraign him as an accused and, therefore, he is required to be protected.

13.7 Pursuant to a query from the Court that as can be seen from the investigation papers that prior to 15.11.2021, the date on which FIR was registered, the present applicant has visited India

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somany times but in that case, why he has chosen to remain in foreign country post registration of FIR and whether he is ready and willing to come to India or not, learned advocate Mr. MTM Hakim submitted that there is no law which can prevent a person from filing an application for quashing from foreign country as he is exercising his rights provided to any victim under the scheme of Act as well as by Constitution of India and, therefore, there is no bar for the accused person in preferring an application while he is in a foreign country. However, he could not answer that whether the applicant is ready and willing to come to India or not and make himself available for interrogation and investigation.

13.8 That no previous sanction which is mandatory as per the Scheme of the Act has been taken before registration of the FIR against the applicant of Criminal Misc. Application No.11426 of 2022 and, therefore, the impugned FIR qua him is required to be set aside.

13.9 Mr. MTM Hakim also drew attention of the Court to the extent of e-mails which are produced in the petition whereby the applicant of Criminal Misc. Application No.11426 of 2022 through his Solicitors had contacted the concerned Investigating Officer and demanded certain documents which can be seen from the emails exchanged that the documents were not provided to the applicant as per the emails. However, while the petition was filed, all the charge-sheet papers are annexed along with the petition and, therefore, at present, at the time when the petition was filed, the applicant through his lawyer was having all the documents with him.

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Except the above submissions, no other submissions were advanced on behalf of the applicants either by Mr. I. H. Syed, learned Senior Counsel or by learned advocate Mr. MTM Hakim.

14. As the Court time is over, the matters are kept tomorrow i.e. 1.10.2025 for further dictation of the order.

ORDER DICTATED ON 01.10.2025

15. Mr. Mitesh Amin, learned Additional Advocate General assisted by Mr. Hardik A. Dave, learned Public Prosecutor with Mr. Ronak Raval and Mr. Trupesh Kathiriya, learned Additional Public Prosecutors appearing for the respondent No.1 – State, made following submissions :-

15.1 That in this set of petitions, there is no requirement for the Court to minutely look at all the material available by way of charge-sheet papers as in a petition under Section 482 of the Code of Criminal Procedure, 1973, the Court is not conducting any trial, but all that the Court has to come to a *prima facie* conclusion is about the fact that whether a *prima facie* offence is made out by looking at the material or not. Therefore, scrutiny of the material is not required and that exercise is required to be left to the Trial Court.

15.2 That looking to the material produced by the applicants themselves in the form of charge-sheet papers, there is ample material to come to a conclusion that *prima facie* offence is made out coupled with the fact that at no point of time, no relief was granted to the applicants as well as considering the fact that the

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trial is at the stage of framing of charge and is pending since more than three years and, therefore, looking to the material available on record, which is in the form of statement, Video CD and Panchnama, a *prima facie* offence is made out against the present applicants and, therefore, this Court may dismiss these petitions.

15.3 That though counsels have argued the matter in respect of role of different accused and tried to segregate the role of different accused by submitting that a particular accused is allegedly have committed an offence only to certain extent, which cannot be said to be an offence, but at the stage of exercising the powers under Section 482 of CrPC, all that is required to be seen is whether a *prima facie* offence is made out or not and the role of each of the accused are not required to be segregated at this stage and if the accused persons against whom charge-sheet is filed, they are required to file an application for discharge whereas as per the Scheme of the Act itself, the segregation of the role of each of the accused persons can be done by the Trial Court, but at this stage, when the charge-sheet is filed and a voluminous material is placed on record about commission of an offence, unless the charge is framed in respect of each of the accused and unless the evidence is recorded except Trial Court without conducting the trial and without considering the evidence, segregation of the role under Section 482 Cr.PC is not permissible under the Scheme of the Act and, therefore, this Court may form a *prima facie* opinion about the commission of offence or the fact that no offence is committed either way and exercise the jurisdiction under Section 482 only to that extent.

15.4 As far as merits are concerned, Mr. Amin submitted

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that all that is required to be seen by the Court is the fact that Section 3A provides for registration of complaint by the aggrieved person or the relative of the complainant. Accordingly, FIR was registered on the basis of complaint filed by one Mr. Pravinbhai Vasantbhai Vasava and after registration of complaint, during the course of investigation, it was found that initially, Ajit Vasava was converted to Islam and thereafter he converted Mahendra and Raman Vasava and thereafter, all others were together in connivance with all other accused persons converted 100 persons of around 37 families to Islam by alluring them and by misleading them to renounce their religion and accept Islam. Therefore, though the said three persons were projected as victims, actually they are the accused persons as after they were converted to Islam, they lured other people and influenced them to convert into Islam and that is the reason that they are also arraigned as accused persons.

15.5 As far as Section 6 A of the Act which is subsequently amended in the year 2021, is a Section which is in respect of procedure laid down in the Act and, therefore, the same would operate retrospectively and even otherwise, the said Section has been stayed only qua inter-faith marriages and the aforesaid Section 6-A provides for the burden of proof to be caste on the accused person to prove his innocence. Therefore, at this stage, unless by leading evidence, the accused persons can provide their innocence. It cannot be said that no case is made out against them once the charge-sheet is filed having ample material against the applicants.

15.6 That as far as sanction is concerned, the sanction is

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already given by the District Collector vide order dated 25.7.2022. In support of his submissions, Mr. Mitesh Amin relied upon the decision of the Hon'ble Supreme Court in the case of **Dinesh Kumar v. Chairman, Airport Authority of India and others, (2012) 1 SCC 532**, more particularly paragraph 29 thereof, and submitted that once the sanction is granted, the validity and legality of such sanction is an issue to be raised in the course of trial and, therefore, the validity of sanction cannot be questioned in a proceedings under Section 482 CrPC once such sanction is already there.

15.7 As far as initiation of proceedings without sanction is concerned, Mr. Mitesh Amin pointed out that unless a person is charge-sheeted, there is no question of grant of any sanction as that person is not arrested and, therefore, as far as applicant of Criminal Misc. Application No.11426 of 2022 is concerned, as he has not even landed in India after registration of offence, there is no question of filing any charge-sheet or sanction would arise. However, looking to the sufficient material against him and considering the fact that he is not cooperating with the investigation, the offence against him can be said to have been made out.

15.8 By making the above submissions, Mr. Mitesh Amin, learned Additional Advocate General submitted that looking to the fact that except Varyava Abdul Vahab Mahmood (applicant of Criminal Misc. Application No.309 of 2022) and Abdul Adam Patel @ Fefdawala Haji @ Abdullah (applicant of Criminal Misc. Application No.11426 of 2022), all other applicants are charge-sheeted and there is ample material against them and therefore,

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there is a *prima facie* case and offence is made out against them and, therefore, this Court may dismiss the petitions and relegate them to face the trial.

16. Mr. Hardik A. Dave, learned Public Prosecutor appearing with Mr. Ronak Raval and Trupesh Kathiriya, learned Additional Public Prosecutors also opposed the petitions and made following submissions :-

16.1 On the aspect of delay, he submitted that Section 468 of CrPC specifically provides that limitation for registration of offence would apply only in case of offences wherein the maximum punishment is upto 3 years. In the instant case, offence is registered against the applicants carries punishment which may extend to 10 years and, therefore, the question of limitation would not come.

16.2 On the aspect of sanction, he submitted that the question of grant of sanction would arise only after charge-sheet is filed and then only, the prosecution can be said to have been launched. That unless a person is arrested, there is no question of filing charge-sheet and, therefore, it cannot be said that there is no sanction qua the applicants, namely, Varyava Abdul Vahab Mahmood (applicant of Criminal Misc. Application No.309 of 2022) and Abdul Adam Patel @ Fefdawala Haji @ Abdullah (applicant of Criminal Misc. Application No.11426 of 2022) as Mr. Fafdawala has never been arrested and after Varyava Abdul Vahab was granted anticipatory bail by the Hon’ble Supreme Court, the investigation is under way and appropriate report or charge-sheet will be filed very soon. However, looking to the material available against him,

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offence can be said to have been made out.

16.3 Mr. Dave read the definition of allurement and convert and relied upon language of Section 3 which provides that no person shall convert or attempt to convert, either directly or otherwise, any person from one religion to another by use of force or by allurement (or by any fraudulent means nor) shall any person abet such conversion. He further submitted that the act of Varyava Abdul Vahab Mahmood (applicant of Criminal Misc. Application No.309 of 2022) and Abdul Adam Patel @ Fefdawala Haji @ Abdullah (applicant of Criminal Misc. Application No.11426 of 2022) in particular would fall in the category of otherwise because even if it is argued that they were the person who provided some financial aid and other benefits, the same would influence the persons who are still Hindu to convert into Islam by influencing them that if they convert to Islam, they will get these benefits and therefore, allurement qua them is a continuous process as conversion is a continuous process which may influence the people to convert to that religion. Therefore, considering the aforesaid fact, unless and until it is provided by leading evidence that the aforesaid act would not fall within the scope of Section 3, those persons can be said to have been accused. As per Section 6 A of the Act, the burden to prove their innocence is upon the accused persons. Therefore, the aforesaid aspect being the matter of evidence, at this stage, when there is no sufficient material against those persons and when there is no clear admission even by the defence that whatever alleged against them is post conversion and, therefore, the same would not fall within the scope and ambit of Section 3 of the Act. The aforesaid facts are required to be decided by leading evidence and, therefore, the petitions qua those

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applicants may not be entertained.

16.4 As far as the contention about non-grant of sanction or whether the sanction granted by the concerned District Collector can be said to be proper sanction or not, learned Public Prosecutor Mr. Hardik A. Dave submitted that it should be left to the discretion of the learned Trial Court which can be considered during the trial and at this stage, the validity of the sanction may not be examined. Learned PP Mr. Dave relied upon the statements of the complainant, Rajubhai @ Anilbhai Dayhabhai Solanki (Witness No.27), Dharmeshbhai Chitubhai Vasava (Witness No.28), Vijaybhai Dhirajbhai Vasava (Witness No.29), Yogeshbhai Budhabhai Vasava (Witness No.30), Udesang Jesangbhai Vasava (Witness No.31), Vijaybhai Chandubhai Arya (Witness No.32), Rajeshbhai Arvindbhai Vasava (Witness No.33), Arvind Vasantbhai Vasava (Witness No.34), Jagdish Vasantbhai Vasava (Witness No.35), Panjabhai Raniyabhai Vasava (Witness No.36), Arjanbhai Dalsukhbhai Vasava (Witness No.37), Anilbhai Panchiya Vasava (Witness No.38), Mukeshbhai Dilipbhai Vasava (Witness No.39), Rohitbhai Rameshbhai Vasava (Witness No.40), Ashwin Dhirajbhai Vasava (Witness No.41). By relying upon the aforesaid statements, it is submitted that it would clearly establish a prima facie case against the applicants that offence has been committed by them in view of the sections under which the offence is registered. As far as the submission made on behalf of the applicants that the statements are stereo-typed, Mr. Dave submitted that Investigating Officer has recorded the statements of the witnesses as it is and there is no scope for the IO during the course of investigation to improvise or twist the statements of the witnesses. If the witnesses have given stereo-typed statements, then it can be tested only at the time of

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leading evidence and at this stage, unless and until those witnesses specifically deny the fact that they have not given any such statements, this Court may not interfere with the trial as till date, none of the witnesses have come forward before the Court stating that their statements recorded by the IO were not correct version and the IO has recorded a twisted statements. Hence, when there is no challenge to the statements of the witnesses, there is no reason for this Court to disbelieve those statements at this stage. It was further submitted that if the similar *modus operandi* to convert the people to a particular religion was followed by the accused persons, in a natural way, all the witnesses would narrate the same incident in almost same or similar manner and, therefore, there is no reason for any innovative narration of what has happened to them. On the contrary, it strengthens the case of the prosecution that all the statements are alike.

16.5 Lastly, Mr. Dave submitted that considering the fact that offence is registered under Section 120-B of the Indian Penal Code as well as considering the fact that it is alleged against the applicants that they have conspired a big nation wide conspiracy to convert people to a particular religion and, therefore, every person has a different role to play to take that conspiracy to next level and to succeed and, therefore, role of each accused can be considered at the stage of trial only and at this juncture, the same is required to be seen only as a conspiracy collectively and, therefore, this Court may not exercise its jurisdiction in respect of any of the applicants as their role and segregation of role of each of the accused persons is a matter of evidence at the stage of trial.

17. Mr. Maulin Raval, learned Senior Counsel assisted by

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Mr. Harshesh Kakkad and Mr. Yash J. Patel and Ms. Yogini Parikh appearing for the respondent No.2 made following submissions :-

17.1 That the issue involved is a very serious offence allegedly committed by the applicants and they have committed the offence collectively by performing different roles to achieve the ultimate result in respect of the conspiracy hatched by the applicants.

17.2 Mr. Raval relied upon the Panchnama of the CD recording which was recorded during the course of investigation wherein accused Mr. Kachvawala is seen propagating Islam and giving hate speech against Hinduism. If the conversion has taken place on the basis of pressurizing the complainant and by way of hate speech, the same cannot be said to be a valid conversion and, therefore, an offence can be said to have been committed on the basis of allurement in terms of foreign funding and various offerings. That has resulted into conversion of 37 persons from Hindu families to Islam and, therefore, looking to the sensitive nature of the offence, the trial is required to be conducted and without leading evidence, only on the basis of statements, which otherwise also would make out a prima facie offence, the reliefs prayed for by the applicants cannot be considered and allowed at this stage.

17.3 Mr. Raval relied upon the decision of the Hon'ble Supreme Court in the case of **Neeharika Infrastructure v. State of Maharashtra, (2021) 19 SCC 401**, more particularly, paragraphs 10.6 and 10.7, he submitted that looking to the scope of a petition for quashing under Section 482 of Cr.PC, this Court

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may not exercise the jurisdiction in favour of the applicants as looking to the material available on record and looking to the nature of offence, the applicants are required to be put to trial and when there is ample material available against them in the form of charge-sheet papers and when *prima facie* offence can be said to have been made out, all these petition may be dismissed.

17.4 Countering the allegation of the learned counsel for the applicants as filed the complaint beletedly for an offence which has been committed from 2006 to 2021 and the complainant remained silent upto 2021 and the FIR is registered only on 15.11.2021, by justifying the act of the complainant, Mr. Raval submitted that by virtue of amended Act of 2021, that right to register complaint has been given to the aggrieved party or to its first relatives. Here, in the instant case, the present applicants can be said to have been the victim himself and, therefore, he is an aggrieved party and, therefore, by virtue of operation of amended Section 3A of the Act, which has not been stayed by the Division Bench of this Court, the complainant has acquired right to register the FIR against the offence committed even in the past. Therefore, the same being a continuous offence, if read along with Section 3 of the Act, the complainant's act of registering the FIR cannot be termed as belatedly. Mr. Raval further submitted that during the course of investigation, as it is found that the applicant was converted by a few people, but also were instrumental in converting other persons, it cannot be said that scope of FIR should be confined only to the case of the complainant as during the course of investigation, it is found that it is not the present complainant alone who was the victim of the conspiracy, but there are other victims as well and, therefore, the entire issue has properly been investigated and,

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therefore, the applicants are required to be sent to face the trial by dismissing the petitions.

17.5 Mr. Raval further submitted that upon trying to get the exact meaning of word ‘Iman”, as per Google, it means "Iman" (or Iman) is an Arabic word meaning. In an Islamic context, it specifically refers to a believer's firm recognition and acceptance of God, His messengers, His books, the unseen, the Day of Judgment, and divine decree. The word also implies a deep spiritual conviction and integrity, and is a popular given name in Muslim cultures. By referring the above definition of ‘Iman’, Mr. Raval submitted that Abdul Adam Patel @ Fefdawala Haji @ Abdullah (applicant of CRMA No.11426 of 2022) who a seen addressing a gathering in the CD was aware about the fact that on account of his funding, the conversion has taken place and, therefore, the aforesaid speech of Mr. Fefdawala recorded in CD would *prima facie* indicate that conversion has taken place on the basis of allurement by way of foreign funding by Mr. Fefdawala and, therefore, an offence can be said to have been made out *prima facie* against Mr. Fefdawala.

17.6 Mr. Raval thereafter submitted that offence is registered under various Sections of the Indian Penal Code as well as Atrocities Act as well against the present applicants and, therefore, while exercising powers under Section 482 of CrPC, this Court is required to see offence as a whole and not just in light of a particular Section or Sections of a particular Act. The aforesaid segregation is permissible by the Trial Court at the stage of framing of charge or at the stage of trial after leading evidence. Therefore, all that is required to be seen at this stage by this Court is to consider that whether the material itself available with the

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Court constitutes an offence or not. As if this Court travels beyond the scope of the aforesaid legal proposition, then in that case, the Court would require to touch the merits of the matter and in that case, there is a possibility that the trial may get influenced either way and, therefore, this Court may restrict its exercise of powers under Section 482 only to the extent of examining as to whether a *prima facie* offence can be said to have been made out or not.

17.7 Mr. Raval relied upon the decision of this Court in the case of **Nadirkhan Babakhan Navabkhan Pathan v. State of Gujarat, 2004 (1) GLH 569**, more particularly paragraphs 14 and 15, and submitted that unless a person cooperates in the investigation and unless he is arrested, the investigation cannot proceed and unless the investigation proceeds further, there will not be any evidence against that person and, therefore, unless a person cooperates in the investigation or undertakes to cooperate in the investigation, this Court may not grant any relief to that person. The aforesaid submission was made specifically in respect of petition filed by Mr. Fefdawala has chosen not to file any application for anticipatory bail and though no relief is granted in this petition for quashing and considering the fact that after registration of offence on 15.11.2021, the said applicant has not landed to Indian soil and even shown willingness to cooperate with the investigation, according to Mr. Raval, no protection is required to be granted to him and not even his petition is required to be considered on merits looking to his conduct and hence, the same may be dismissed straightway looking to his conduct post registration of FIR.

17.8 Mr. Raval drew attention of this Court to the extent of

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emails exchanged between the Solicitor of the applicant Mr. Fefdawala and the Police Authority by pointing out at the answer given by the Police Authority on 24.11.2021 wherein it was categorically stated that prior to registration of offence, the applicant has visited India 25 times and, therefore, the Police Authority had insisted the aforesaid accused persons to come down to India and to participate in the investigation by extending his cooperation. However, the applicant has not come to India once thereafter and therefore, looking to his conduct, the petition filed by Mr. Fefdawala may be dismissed on the ground of his conduct itself without being considering the same on merits.

18. Mr. R. C. Kodekar, learned advocate appearing with Mr. Atit D. Thakore, Parthiv A. Bhatt, Maharshi Patel, Alkesh N. Shah & Mr. Pritesh Khambholja made following submissions :-

18.1 He relied upon the decision of the Hon'ble Supreme Court in the case of **Japani Sahoo v. Chandra Sekhar Mohanty, (2007) 7 SCC 394** and submitted that looking to the seriousness of the offence for which the punishment is provided is 10 years, the offence cannot be said to have been registered belatedly.

18.2 He further relied upon the decision of the Hon'ble Supreme Court in the case of **Punit Beriwala v. State of NCT of Delhi dated 29.4.2025 delivered in Criminal Appeal No.1834 of 2025**, more particularly paragraphs 36 to 40 and submitted that it is a settled law that delay in registration of offence with imprisonment of more than 3 years cannot be the basis of interdicting a criminal investigation. The delay will assume importance only when the complainant fails to give a plausible

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explanation and whether the explanation is plausible or not, has to be decided by the Trial Court only after recording the evidence. By making above submission, Mr. Kodekar submitted that as such, though there is no delay in registration of FIR looking to the fact that Section 3-A was amended only in the month of April 2021 and the FIR was registered on 15.11.2021. However, even if the matter is considered from the point of view of delay, then also, the aspect of delay is required to be left to the Trial Court and this Court may not quash or stay the proceedings only on the ground of delay without looking to the overall facts and circumstances of the case and material available on record. That there are antecedents reported against Mr. Fefdawala as FIR being I C.R. No.13 of 2021 is registered on 24.8.2021 against him with SOG Police Station, Vadodara in relation to foreign funding for converting the people to Islam and he is declared absconding and, therefore, looking to his overall conduct, no relief be granted in favour of Mr. Fefdawala.

18.3 Lastly, Mr. Kodekar submitted that ample chances were given to Mr. Fefdawala and even notice / summons under Section 41 of CrPC was also served upon him. However, despite the aforesaid fact, he has chosen not to cooperate with the investigation by remaining present, and, therefore, the petitions may be dismissed.

19. I have heard learned counsels appearing for the respective parties and perused the documents on record. I found that though the offence has taken place prior to the amendment in the year 2021, however, the offence is registered on 15.11.2021 and, therefore, the first and foremost submission advanced by learned counsels appearing for the applicants in relation to delay in

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registration of offence and, therefore, I would like to deal with the aspect of delay as to whether there is any delay in registration of offence or not and whether such delay can be considered by this Court and whether the registration of FIR and all further consequential proceedings thereto would be vitiated on account or delay or not. The second contention of the learned counsel for the applicants was in respect of locus of the complainant to file the complaint and whether the scope of such registration of FIR be confined only to the present applicant or can the IO take in his sweep other persons also be arraigned as accused which would include the applicants on the basis of FIR registered by the complainant in respect of his own conversion.

20. To answer the aforesaid contentions, let me first deal with the aspect of delay. Before that, it would be worthwhile to note that the amended Act of 2021 had come into force with effect from 22.5.2021/4.6.2021 and the FIR was registered on 15.11.2021. As discussed in the foregoing paragraphs, while the Act was amended, the same was subject matter of challenge as the vires of the Act was filed before the Division Bench of this Court by way of Special Civil Application No.10304 of 2021 and Special Civil Application No.10305 of 2021. But the Division Bench of this Court has only stayed the provisions of Sections 3, 4, 4A to 4C, 5, 6 and 6A only in respect of inter-faith marriage and for all other purpose, the Act has remained in force. It is important to note that the allegation by way of impugned FIR are not in respect of inter-faith marriage, but are in respect of conversion of people from Hindu to Muslim by way of pressurizing and allurement. Therefore, Section 3A which was also amended by virtue of Amended Act is required to be considered. Section 3 and 3A of the Act reads as under :-

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> "3. **Prohibition of forcible conversion** :-
>
> No person shall convert or attempt to convert, either directly or otherwise, any person from one religion to another by use of force or by allurement (or by any fraudulent means nor) shall any person abet such conversion."

> "3A. **Lodging of complaint** :-
>
> Any aggrieved person, his parents, brother, sister or any other persons related by blood, marriage or adoption may lodge a first information report with the police station having jurisdiction, against the person for an offence committed under this Act."

21. The unamended Act of 2003 provides for mechanism for registration of offence under the Act wherein Section 6 provides for prosecution for offence under the Act, which reads as under :-

> "**6. Prosecution to be made with the sanction of District Magistrate** :-
>
> No prosecution for an offence under this Act shall be instituted except by or with the previous sanction of the District Magistrate or any such other authority not below the rank of a Sub-Divisional Magistrate as may be authorised by him in that behalf."

22. From perusal of Section 3A, it would indicate that it

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specifically provides about who can file an FIR in respect of conversion which has taken place on account of the factors mentioned in Section 3 of the Act and Section 3A provides that any aggrieved person, his parents, brother, sister or any other persons related by blood, marriage or adoption may lodge a first information report with the police station having jurisdiction, against the person for an offence committed under the Act. From perusal of Section 3A, it would indicate that it is in respect of an offence committed in the past. Therefore, when there is no limitation prescribed under the Act for registering an offence under Section 3A, except Section 468 of CrPC which provides for limitation for registration of an offence, the issue of limitation is required to be considered. Section 468 of CrPC reads as under :-

> "468. Bar to taking cognizance after lapse of the period of limitation.
>
> (1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.
>
> (2) The period of limitation shall be -
>
> (a) six months, if the offence is punishable with fine only;
>
> (b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;
>
> (c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.
>
> (3) [For the purposes of this section, the period of limitation, in relation to offences which may be

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> tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.]"

23. The aforesaid Section would indicate that if for any offence the punishment is more than 3 years, in that case, Section 468 would not be applicable and such offence can be registered at any stage. Further, if the aforesaid submission made by learned counsels appearing for the State and prosecution, the decision of the Hon'ble Supreme Court in the case of **Japani Sahoo v. Chandra Sekhar Mohanty, (Supra)** wherein in paragraph 14, the Hon'ble Supreme Court has observed as under :-

> "14. The general rule of criminal justice is that "a crime never dies". The principle is reflected in the well- known maxim nullum tempus aut locus occurrit regi (lapse of time is no bar to Crown in proceeding against offenders). The Limitation Act, 1963 does not apply to criminal proceedings unless there are express and specific provisions to that effect, for instance, Articles 114, 115, 131 and 132 of the Act. It is settled law that a criminal offence is considered as a wrong against the State and the Society even though it has been committed against an individual. Normally, in serious offences, prosecution is launched by the State and a Court of Law has no power to throw away prosecution solely on the ground of delay. Mere delay in approaching a Court of Law would not by itself afford a ground for dismissing the case though it may be a relevant circumstance in reaching a final verdict."

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24. Even recently, the Hon'ble Supreme Court has in the case of **Punit Beriwala v. State of NCT of Delhi (Supra)** has observed in paragraph 36 to 40 as under :-

> "**DELAY CANNOT BE A GROUND FOR QUASHING THE PRESENT FIR**
>
> 36. Further, accepting the reasoning given by the learned Single Judge in the impugned order that 'there had been a delay in registration of the FIR and because of such delay, the allegations made by the Appellant are unbelievable' and the submissions of learned senior counsel for Respondent Nos.2 and 3 that no complaint/FIR should be entertained 'at this distance of time', would mean in effect in accepting the argument that delay is a sufficient ground for quashing of the present FIR/complaint.
>
> 37. It is settled law that delay in registration of the FIR for offences punishable with imprisonment of more than three years cannot be the basis of interdicting a criminal investigation. The delay will assume importance only when the complainant fails to give a plausible explanation and whether the explanation is plausible or not, has to be decided by the Trial Court only after recording the evidence. In this context, the Supreme Court in Skoda Auto Volkswagen (India) Private Limited v. State of Uttar Pradesh and Others (2021) 5 SCC 795 has held, "The mere delay on the part of the third respondent

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complainant in lodging the complaint, cannot by itself be a ground to quash the FIR. The law is too well settled on this aspect to warrant any reference to precedents.....”

38. Further, as per the allegations in the complaint/FIR during 2004-2020 the accused persons kept representing that they were in the process of getting the property unencumbered and converted to freehold. Upon the failure of the accused persons to show documents for clear title of the property, the Appellant had initially instituted a suit for specific performance, and it was only during the suit proceedings that it came to light that after the Agreement to Sell with the Appellant, the property was subsequently mortgaged to SREI Infrastructure Finance Limited and SREI Equipment Finance Limited and the same was subsequently sold to J.K. Paper Limited vide sale deed dated 02nd December 2021. The fact that Vikramjit Singh (Respondent No. 2) was the Karta of the Bhai Manjit Singh HUF at the relevant time was also allegedly revealed for the very first time through the aforesaid sale deed dated 02nd December 2021, certified copy of which was obtained by the Appellant on 28th December 2021. Consequently, the fact of misrepresentation and deception at the inception, that is, at the time of execution of the Receipt-cum-Agreement to Sell dated 12th April 2004, came to the knowledge of the Appellant (according to the complaint) only on 28th December 2021.

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> 39. The Appellant had, admittedly, filed the complaint before the Economic Offences Wing on 12th January 2022. Section 469 Cr.P.C. provides that the period of limitation commences from the date on which the offence comes to the knowledge of the person aggrieved. In the present case, as noted above, the Appellant became aware of the offence only on 28th December 2021. Consequently, *prima facie* there is no delay in filing the criminal proceedings.
>
> 40. Even otherwise, as the learned senior counsel for the Appellant has rightly pointed out, in terms of Section 468 Cr.P.C., there is no period of limitation for offences which are punishable with imprisonment of more than three years."

25. A conjoint reading of Section 468 along with the decisions referred above in the case of **Japani Sahoo and Punit Beriwala (Supra)**, would indicate that limitation would not act as bar in registration of offence if the punishment prescribed is more than three years. In the instant case, none of the learned counsels appearing for the applicants could point out that in respect of the offence registered against the applicants in respect of other Sections, maximum punishment prescribed was less than three years and, therefore, limitation would not come in the way atleast at this stage and the said aspect can be considered at the stage of trial. Therefore, the said contention raised by learned counsels for the applicants is rejected.

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26. As far as locus of the complainant is concerned, the language of Sections 3A and 6 reproduced above would make it clear that a person aggrieved can always file an FIR against such conversion if the conversion has taken place by way of pressurizing the complainant or by way of allurement. In the instant case, the complainant himself has stated that he was converted to Islam by offering various things, while narrating the incident in the FIR and, therefore, I do not deem it appropriate to reiterate the same. From the above, it appears that the complainant was allured and pressurized to convert to Islam and, thereafter, he had decided to file complaint for which he was prevented and threatened by the accused persons and, therefore, the submission that the complainant does not have locus to file the complaint also cannot be accepted.

27. As far as the contention with regard to scope of investigation is concerned, the FIR itself indicates that the complainant was lured to convert into Islam by three persons, Ajitbhai Chhaganbhai Vasava, Mahendra Jivanbhai Vasava and Raman Barkat Vasava who were originally Hindus and they were converted to Islam by other accused persons and, therefore, the submission that some of the accused persons who actually can be said to be victim of conversion could not have been arraigned as an accused cannot be accepted simply for the reason that had those persons after getting converted not indulged into any activity of further conversion, they could have been said to be victims of conversion. However, on account of their act of influencing and pressurizing and alluring other persons to convert to Islam, as can be seen from the FIR as well as statements of the witnesses, of course, those allegations are *prima facie* in nature for which today,

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upon examination of material produced, the Court is of the view that conversion of the victims indicates that a *prima facie* offence is made out. Therefore, it cannot be accepted that those persons who are arraigned as accused who are originally Hindus and subsequently were converted to Islam, can be said to be the victims on account of allegations made in the FIR as well as the material collected during the course of investigation by way of charge-sheet papers.

28. As far as the submission of learned counsels for the applicants that Section 6 of the Act provides for a prior sanction is concerned, the record indicates that though in the petition at the stage of filing of the petition, the order of sanction was not placed on record by learned advocates for the applicants and even subsequently also, till yesterday when the matters were heard, Mr. Mitesh Amin, learned Additional Advocate General had placed on record the order dated 25.7.2022 passed by the District Magistrate, Bharuch whereby sanction was granted to prosecute the accused persons. Therefore, the said submission also cannot be accepted. Further, learned Additional Advocate General had submitted that subsequent to grant of sanction would come only after filing of charge-sheet and, therefore, for registration of offence, sanction has not come and even the said has not been contemplated in the Act as well.

29. Mr. Mitesh Amin, learned Additional Advocate General has relied upon the decision of the Hon'ble Supreme Court in the case of **Dinesh Kumar v. Chairman, Airport Authority of India and others, (Supra)**, wherein the Hon'ble Supreme Court has observed in paragraph 9 as under :-

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> "9. While drawing a distinction between the absence of sanction and invalidity of the sanction, this Court in Prakash Singh Badal expressed in no uncertain terms that the question of absence of sanction could be raised at the inception and threshold by an aggrieved person. However, where sanction order exists, but its legality and validity is put in question, such issue has to be raised in the course of trial. Of course, in Prakash Singh Badal, this Court referred to invalidity of sanction on account of non-application of mind."

30. The above observations would indicate that when sanction order exists, its legality and validity in question, the said issues can be raised only during the course of trial. In the instant case, whether the sanction has rightly been granted or not, that is not the subject matter because the order of sanction was never on record and when this judgment is being dictated, the order of sanction dated 25.7.2022 is there and, therefore, the legality and validity of such sanction, all these questions can be agitated during the course of trial and this Court would restrain from observing anything about the validity of sanction. However, the fact remains that today, charge-sheet is filed and trial is going on and case is already pending for framing of charge, it will be for the applicants to raise the question of validity of sanction at the time of trial. Hence, when there is sanction, I do not see any reason to entertain the petitions only on the ground that the sanction is questionable and, therefore, I do not see any reason to interfere with the on-going trial.

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31. As far as the submission related to the accused persons qua whom charge-sheet is filed, those persons are alleged to be the victims of the conversion and, therefore, they ought not to have been arraigned as accused. However, considering the fact that after their conversion to Islam, it is alleged that those persons also indulged into activity of pressurizing and alluring other persons as alleged in the FIR and as can be seen from the papers available on record, it is their further act of converting further people around 100 in numbers of 37 families to Islam would *prima facie* make out an offence against them and, therefore, I do not see any reason to interfere with the trial.

32. As far as the applicants of Criminal Misc. Application No.13496 of 2022, Special Criminal Application No.1225 of 2022, Criminal Misc. Application No.13662 of 2022 and Criminal Misc. Application No.13667 of 2022 are concerned, upon reading of the submissions made by the accused persons as well as on overall evaluation of the material which is bulky in nature, the Court finds that a *prima facie* offence qua those applicants are made out and charge-sheet qua them is also filed, therefore, in view of settled proposition of law which has been canvassed and relied upon from time to time including in the case of **Neeharika Infrastructure v. State of Maharashtra (Supra),** it would indicate that there is some material against the applicants which constitutes an offence against the applicants and hence, at this juncture, I am not specifically stating about the material against each of the applicants as any observations made by this Court may influence the trial either way and, therefore, I do not find any reason to entertain the present petitions and hence, Criminal Misc.

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Application No.13496 of 2022, Special Criminal Application No.1225 of 2022, Criminal Misc. Application No.13662 of 2022 and Criminal Misc. Application No.13667 of 2022 are required to be dismissed and the same stand dismissed.

33. As far as the petition preferred by Varyava Abdul Vahab Mahmood, Criminal Misc. Application No.309 of 2022, the Court finds that of course, allegations against him are of alluring, the Court is also conscious of the fact that he has been enlarged on anticipatory bail by the Hon'ble Supreme Court in Special Leave to Appeal (Criminal) No.4208 of 2022 vide order dated 17.2.2023. Pursuant to the aforesaid order, the said applicant made himself available for interrogation and upon investigation, some material is found against him and it was submitted by Mr. Hardik A. Dave, learned Public Prosecutor that in view of language of Section 3 of the Act which provides for allurement directly or "otherwise", as the Court *prima facie* found that the action of the said applicant of tempting the children from Hindu were converted into Islam may be a *bonafide* act, but as far as providing the families of the children with water coolers, mattress, food-grain and monetary benefits would be a subject matter of investigation and as the charge-sheet is not yet filed, as investigation is not over yet, it would be too premature to come even to a *prima facie* conclusion. However, considering the fact that the investigation is going on in respect of the aforesaid accused and Mr. Mitesh Amin, learned Additional Advocate General has assured that approriate report / charge-sheet would be filed very soon upon completion of investigation, at this juncture, though *prima facie* offence can be said to have been made out, however, liberty is reserved in his favour to avail appropriate remedy, once the investigation is over

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and charge-sheet is filed. In view of the allegation of larger conspiracy and looking to the nature of allegation made against the present applicant, at this stage, I do not see any reason to entertain this petition and, therefore, Criminal Misc. Application No.309 of 2022 stands dismissed with the above liberty, only in case if the charge-sheet is filed against the present applicant.

34. As far as Special Criminal Application No.66 of 2022 is concerned, Mr. Mitesh Amin, learned Additional Advocate General, assisted by Mr. Hardik A. Dave, learned Public Prosecutor, upon instructions received from Mr. A. V. Shiyaliya, PSI, Aamod Police Station, Dist. Bharuch, that the applicants of the said petition who are aggrieved of issuance of witness summons will not be called for interrogation or recording statements and they will not be stated as witnesses as well.

In view of the above statement, learned advocate Mr. Kharadi, upon instructions, seeks permission to withdraw the said petition as the grievance of the applicants are redressed with a liberty to file appropriate petition in case of difficulty. Permission as prayed for is granted. Special Criminal Application No.66 of 2022 stands dismissed as withdrawn. It is made clear that this Court has not examined the merits of the case.

35. As far as the applicant of Criminal Misc. Application No.11426 of 2022 is concerned, Abdul Adam Patel @ Fefdawala Haji @ Abdullah, it is an undisputed fact that he is not an Indian citizen and settled in United Kingdom, even learned advocate Mr. MTM Hakim could not dispute the fact that prior to registration of offence, accused persons used to come to India frequently and post

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registration of offence, he has not come to India. He did not prefer any anticipatory bail application and except the present petition for quashing, at no point of time, as per the records, he has shown any willingness to cooperate in the investigation. The applicant was served with a Summons under Section 41-A of CrPC which was though responded, but the applicant has chosen not to remain present and made himself available for extending cooperation in investigation. Further, the applicant is also shown as absconding in respect of another offence being I C.R. No.13 of 2021 registered on 24.8.2021 against him with SOG Police Station, Vadodara and there also, as stated by Mr. Kodekar (copy of the FIR is not produced), the aforesaid fact could not be disputed by learned advocate Mr. MTM Hakim. In the said offence also, the allegation against the applicant are of serious nature and, therefore, looking to the overall conduct of the present applicant as well as considering the fact that allegation against the present applicant is that he was the person who was funding this, conversion of religion of a person from one religion to another religion by way of pressurizing and alluring. On perusal of the record as well as the Panch rojkam of CD, *prima facie* the Court finds that it is the present applicant who had funded or was instrumental in functioning the religious conversion by providing financial assistance and, therefore, *prima facie* can be said to have been made out against the present applicant. Further, the submission related to the applicant that no sanction is obtained qua the present applicant or the prosecution has not been instituted, cannot stand or cannot be considered in view of the fact that the present applicant has never been cooperative or has shown any willingness to cooperate with the investigation.

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It is also brought to the notice of the Court during the course of argument that against the applicant of Criminal Misc. Application No.11426 of 2022 i.e. Abdul Adam Patel @ Fefdawala Haji @ Abdullah, after Warrant under Section 70 of CrPC was issued, procedure has been initiated by the Investigating Officer for declaring him as proclaimed offender under Section 81 and 82 of the CrPC.

36. In this regard, decision relied upon by Mr. Maulin Raval, learned Senior Counsel of this Court in the case of **Nadirkhan Babakhan Navabkhan Pathan v. State of Gujarat (Supra),** would come into play. Relevant paragraphs 14 and 15 read as under :-

> "14. In view of the above, the argument of the learned counsel for the petitioner that there is no evidence worth the name in the statement submitted with the charge-sheet connecting the petitioner with the crime in question cannot be accepted in view of the fact that when charge-sheets were submitted in the court qua other accused, present petitioner was not available and hence, his names were shown as absconding absconding. It is obvious that there would not be any evidence at that point of time with the investigating agency except the statement of Mustak Aalambhai Parmar because the petitioner was not available for investigation. In this view of the matter, complaints qua the petitioner cannot be quashed as during the course of investigation, investigating officer has received some clue about

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the prima-facie involvement of the petitioner in the crime in question and, therefore, till the agency completes the investigation qua the present petitioner, it cannot be said that there is no evidence against the petitioner. On the one hand, the petitioner is not extending any co-operation in the investigation and has chosen to remain absconding though claiming to be a law abiding citizen and on the other hand, he is claiming benefit under Sec.482 of the Code of Criminal Procedure on the ground that investigation is over and charge sheet was filed.

15. It cannot be presumed at this stage that investigation is over and there is no evidence worth the name against the petitioner connecting him with the offences except the statement of co-accused especially when investigation qua the petitioner has not been completed due to his non-co-operation. Looking to the nature and the seriousness of offences, once the name of the petitioner has been disclosed, investigating agency should be permitted to carry out investigation further for reaching the roots of the offences and thereafter, if any other material involving the petitioner in the crimes in question is made available, then supplementary charge-sheet or appropriate report may be submitted. At that stage, petitioner can submit application under Section 227 of Cr.P.C. in the Court for discharging him without framing charge

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> as per the law laid down by the Apex Court. If at all the petitioner has got some other apprehension, he can recourse to the remedy available to him by preferring appropriate proceedings."

37. In view of the above observations which would make it clear that when the re are allegations of serious nature against the present applicant and investigation qua him could not be completed on account of his non-cooperation and absence, no relief can be granted to the applicant, more particularly, when the applicant though being a foreign national has visited India around 25 times prior to registration of offence and he is not cooperating the investigation post registration of FIR, I do not see any reason to entertain this petition and, therefore, as *prima facie* offence is made out against the applicant as well as on the basis of his conduct, the petition preferred by the applicant i.e. Criminal Misc. Application No.11426 of 2022 i.e. Abdul Adam Patel @ Fefdawala Haji @ Abdullah is also required to be dismissed and the same is dismissed with a liberty to the said applicant to avail appropriate remedy once investigation is over and charge-sheet is filed.

38. In view of the above discussion, Special Criminal Application No.66 of 2022 stands dismissed as withdrawn.

Criminal Misc. Application No.309 of 2022 filed by the applicant – Varyava Abdul Vahab stands dismissed with a liberty to to avail appropriate remedy once investigation is over and only in case if the charge-sheet is filed.

Criminal Misc. Application No.11426 of 2022 filed by

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the applicant - Abdul Adam Patel @ Fefdawala Haji @ Abdullah also stands dismissed with a liberty to the said applicant to avail appropriate remedy once investigation is over and only in case if the charge-sheet is filed.

Criminal Misc. Application No.13496 of 2022, Special Criminal Application No.1225 of 2022, Criminal Misc. Application No.13662 of 2022 and Criminal Misc. Application No.13667 of 2022 stand dismissed for the reasons stated in the foregoing paragraphs.

Rule discharged in each of the petitions.

39. It is clarified that the observations made by this Court in the present order are only tentative in nature and the same are *prima facie* observations and the learned Trial Court may not be influenced by any of the observations made by this Court during the course of hearing.

(NIRZAR S. DESAI,J)

SAVARIYA