



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 7572 of 2026
With
CRIMINAL MISC.APPLICATION (FIXING DATE OF EARLY HEARING) NO.
1 of 2026
In R/SPECIAL CRIMINAL APPLICATION NO. 7572 of 2026
FOR APPROVAL AND SIGNATURE:
HONOURABLE MRS. JUSTICE M. K. THAKKER

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Approved for Reporting	Yes	No
	YES	

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SANDEEPKUMAR RADHAKRUSHNALAL SHRIVASTAV
Versus
STATE OF GUJARAT

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Appearance:
LD SR ADV. MR H.S.TOLIA WITH BIREN J PANCHAL(9300) for the
Applicant(s) No. 1
LD.PUBLIC PROSECUTOR MR HARDIK DAVE WITH MS MONALI BHATT,
ADDL. PUBLIC PROSECUTOR for the Respondent(s) No. 1

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CORAM:HONOURABLE MRS. JUSTICE M. K. THAKKER

Date : 05/10/2026

JUDGMENT

- 1 The present petition is filed challenging the order passed by the learned Special Court constituted under the Gujarat Protection of Interest of Depositors (in Financial Establishments) Act, 2003 (hereinafter referred to as the "GPID Act") in Criminal Case No.3 of 2024, whereby the learned Court has issued a proclamation under Section 82 of the Code of Criminal Procedure, with a direction to record the evidence under Section 299 of the Code of Criminal Procedure in the absence of the accused.



Factual Matrix:

- 2 The present petitioner is arraigned as an accused in connection with the FIR being I-C.R. No.12 of 2019 registered with Una Police Station, Gir Somnath, for the offences punishable under Sections 406, 409, 420 and 120B of the Indian Penal Code and Section 3 of the GPID Act. The petitioner was enlarged on anticipatory bail by this Court vide order passed in Criminal Misc. Application No.2236 of 2019. On completion of the investigation, the chargesheet came to be submitted before the learned Special Court at Rajkot, which was registered as GPID Criminal Case No.11 of 2019. It is submitted that, up to 09.05.2022, the petitioner had regularly appeared before the learned Court at Rajkot however, on 09.05.2022, the petitioner remained absent due to unavoidable circumstances, on account of which a bailable warrant came to be issued by the learned Court. Thereafter, on 30.05.2021, the petitioner remained present and filed an application seeking exemption from personal appearance, which came to be allowed by the learned Court. Thereafter, the petitioner remained absent on 09.06.2022, 15.02.2023 and 06.04.2023, and, therefore, a bailable warrant was again issued against the present petitioner. Subsequently, the case came to be transferred to the learned District and Sessions Court, Gir Somnath at Veraval, on

30.02.2024 pursuant to the notification issued by the Legal Department. On 16.05.2024, notice came to be issued by the learned Sessions Court at Veraval, however, the same remained unserved upon the petitioner. Therefore, on 08.11.2024, notice regarding the transfer of the case was again issued to the petitioner, his learned advocate and the surety, which was also returned without service upon the petitioner or his learned advocate. On 31.12.2024, the learned Sessions Court issued aailable warrant, as the notice had not been served, which was also returned without service. Thereafter, on 05.05.2025, a non-ailable warrant came to be issued against the petitioner and, subsequently, on 02.07.2025, proclamation under Section 82 of the Code of Criminal Procedure came to be issued against the petitioner. On the same day, notice was issued to Una Police Station, which was received, as reflected from the report dated 12.03.2026. Aggrieved by the aforesaid order dated 02.07.2025, the present petition has been filed.

- 3 Heard the learned senior advocate Mr. H.S.Tolia with learned advocate Mr. Biren Panchal for the petitioner and learned Public Prosecutor Mr. Hardik Dave with Ms. Monali Bhatt, learned Addl. Public Prosecutor for the respondent-State.



4 It is submitted by the learned senior advocate Mr. H.S. Tolia that the petitioner had continuously remained present before the learned Court at Rajkot and, upon transfer of the case to the learned Court at Veraval, the petitioner never received any notice regarding such transfer. It is submitted that, despite the notices and bailable warrants having remained unserved, the learned Court proceeded to issue a non-bailable warrant and, thereafter, issued the proclamation against the petitioner. It is further submitted by the learned senior advocate Mr. Tolia that the petitioner continues to reside at the same address which was furnished at the time of filing of the bail application and, when the petitioner had regularly remained present before the learned Sessions Court at Rajkot, there was no reason for him to deliberately remain absent before the learned Court at Veraval. It is submitted that, as observed in the impugned order, the police authority could not secure the presence of the petitioner, nor could it serve the notice upon the surety, and, therefore, the learned Court proceeded on the premise that the petitioner was evading arrest. It is further submitted that, at the same time, the learned Court directed that the evidence be recorded in the absence of the petitioner under Section 299 of the Code of Criminal Procedure, without recording any satisfaction with regard to the



efforts made by the police authority to serve the notice or the bailable warrant upon the petitioner. It is submitted by the learned senior advocate Mr. Tolia that, having regard to the language of Section 299 of the Code of Criminal Procedure, unless it is established that the accused has absconded, an order under the said provision cannot be passed. It is, therefore, submitted that, in the absence of any such satisfaction having been recorded by the learned Court, the impugned order is unsustainable and the same deserves to be interfered with and set aside, and the present petition deserves to be allowed.

5 Learned senior advocate Mr. Tolia, in support of the his submissions, has relied on the following decisions:

(1) **Ajitkumar s/o Vijay Prasad @ Parmeshwar and others vs. State of Bihar**, passed in Criminal Misc. No.66151 of 2023;

(2) **Sanjaykumar s/o Gauri Shankar Pandey vs. The State of Bihar and others**, passed in Criminal Misc. Application No.629/2018.

6 Learned Public Prosecutor Mr. Hardik Dave has submitted that the transfer notice was issued by the learned Court at Veraval on 14.11.2024, which forms part of the record below Exhibit 41. It is submitted

that thereafter, a bailable warrant came to be issued below Exhibit 43 on 27.01.2025, which remained unserved. It is submitted that the police authority had made attempts to serve the notice and the bailable warrant upon the present petitioner, however, as per the report submitted by Police Head Constable Mr. P.A. Parmar, who recorded the statement of one Ajaybhai Shamlal Mungar on 13.12.2024, the petitioner was residing at the address mentioned in the cause title. It is submitted that, after recording satisfaction to the effect that the petitioner was evading service of the notice and warrants, the learned Court was justified in issuing the non-bailable warrant and, thereafter, the proclamation under Section 82 of the Code of Criminal Procedure. In the aforesaid background, it is submitted that no interference is called for with the impugned order and the present petition deserves to be dismissed.

- 7 Having considered the submissions advanced by the learned advocates appearing for the respective parties and upon referring to the reasons assigned by the learned trial Court, it emerges that the following dates are required to be taken into consideration for determining the legality and validity of the impugned order:

Date	Particulars / Proceedings
19.02.2024	GPID Criminal Case No. 11 of 2019 came to be transferred to learned Special Designated Court, Gir-Somnath (Veraval).
16.05.2024	Notice came to be issued by the learned Court, Gir-Somnath (Veraval) to the Applicant, his advocate and surety / bailor stating the details of the transfer.
08.11.2024	Since notice was not returned back to the learned Court, the Hon'ble Court was pleased to reissue the notice to the Applicant, his advocate and surety / bailor.
31.12.2024	Notice issued to the Applicant was returned without service, therefore the learned Court was pleased to issue Bailable Warrant against the Applicant.
24.02.2025	Bailable Warrant issued to the Applicant came to be returned without any service.
13.03.2025	Since warrant could not be served to the Applicant, notice to the Investigation Officer came to be issued.
05.04.2025	Investigating Officer could not remain present and hence report on his behalf came to be filed. However, since the Applicant was not remaining present since long, Non-Bailable Warrant came to be issued against the Applicant.
Till 02.07.2025	Till 02.07.2025, the report for the service of the NBW issued against the Applicant was never filed before the learned Court. Thus, it is clear that the Applicant was neither served the notice nor the Bailable Warrant nor the Non-Bailable Warrant of the learned Court.
02.07.2025	Proceedings under Section 82 of CRPC came to be issued against present Applicant since the Police Machinery could not serve the Warrant and bring him before the learned Court.
12.03.2026	Una Police Station received the Notice in pursuance to the Order dt. 02.07.2025.
30.03.2026	Una Police Station has filed a report before the learned Court relating to the proceedings of Sec. 82 of CRPC.

8 On referring to the above dates, it emerges that the report was submitted by Head Constable Mr. Parmar on the basis of the statement recorded on 13.12.2024, wherein the person making the state-



ment is stated to be a resident of Siddharth Apartment, near Taxshila Residency, Nikol Road, Ahmedabad. The petitioners were previously staying at the address stated in the memo of the petition, however, at present, they are not residing at the said place, and the said witness is unable to inform the whereabouts of the petitioners. On referring to the said statement, this Court could not find any specific address or contact details of the said witness. Relying on the said statement, the learned Court has declared the petitioners as proclaimed offenders. It is required to be noted that, while passing the impugned order, the learned Court did not satisfy itself as to the factum of service of notice or the factum of service of the bailable warrant. It is stated in the impugned order that the petitioners are evading service of notice and, therefore, a proclamation under Section 82 is required to be issued. This Court has referred the section 82 of the Code of Criminal Procedure, which is reproduced hereinbelow:

“82. Proclamation for person absconding.—

(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of



publishing such proclamation.

(2) The proclamation shall be published as follows:—

(i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;

(c) a copy thereof shall be affixed to some conspicuous part of the Court-house;

(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

(4) Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under section 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the Indian Penal Code (45 of 1860), and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.

(5) The provisions of sub-sections (2) and (3) shall apply to a declaration made by the Court under sub-section (4) as they apply to the proclamation published under sub-section (1).”

9 In the case of **Inder Mohan Goswami vs. State of Uttaranchal**, reported in **(2007) 12 SCC 1** the Apex Court has held that issuance of the non-bailable warrant interferes with personal liberty and the courts should be extremely careful before issuing non-bailable warrants. It is further held that either bailable or non-bailable warrant should not be issued without proper scrutiny of facts and complete application of mind. What has to be ensured that the person concerned was made aware about the legal process pending against him. The relevant paragraph is reproduced herein below:

Personal liberty and the interest of the State

“50. Civilised countries have recognised that liberty is the most precious of all the human rights. The American Declaration of Independence, 1776, French Declaration of the Rights of Men and the Citizen, 1789, Universal Declaration of Human Rights and the International Covenant of Civil and Political Rights, 1966 all speak with one voice—liberty is the natural and inalienable right of every human being. Similarly, Article 21 of our Constitution proclaims that no one shall be deprived of his liberty except in accordance with procedure prescribed by law.

51. The issuance of non-bailable warrants involves inter-

ference with personal liberty. Arrest and imprisonment means deprivation of the most precious right of an individual. Therefore, the courts have to be extremely careful before issuing non-bailable warrants.

52. Just as liberty is precious for an individual so is the interest of the society in maintaining law and order. Both are extremely important for the survival of a civilised society. Sometimes in the larger interest of the public and the State it becomes absolutely imperative to curtail freedom of an individual for a certain period, only then the non-bailable warrants should be issued.

When non-bailable warrants should be issued

53. Non-bailable warrant should be issued to bring a person to court when summons or bailable warrants would be unlikely to have the desired result. This could be when:

- it is reasonable to believe that the person will not voluntarily appear in court; or
- the police authorities are unable to find the person to serve him with a summon; or
- it is considered that the person could harm someone if not placed into custody immediately.

54. As far as possible, if the court is of the opinion that a summon will suffice in getting the appearance of the accused in the court, the summon or the bailable warrants should be preferred. The warrants either bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The court must very carefully examine whether the criminal complaint or FIR has not been filed with an oblique motive.

10 For the issuance of a proclamation under Section 82 of the Code of Criminal Procedure, it is necessary that the Court must be satisfied, on the basis of the material available on record, that the person, despite having knowledge of the proceedings, is avoiding the process issued. The Court concerned should consider factors such as whether the accused was well aware of the non-bailable warrant of arrest issued against him and whether, despite efforts made by the officer concerned to execute the same by adopting fair or lawful means, the accused was evading arrest. Keeping in mind the aforesaid ratio, this Court has referred to the report submitted by the Head Constable, which formed the basis for issuance of the proclamation under Section 82 of the Code of Criminal Procedure. Head Constable Mr. Parmar had recorded the statement of one person, namely, Ajay Mungar, resident of Siddharth Apartment, who stated that he belonged to the same locality in which the petitioner was residing. Vide order dated 30.09.2026, this Court directed Mr. Parmar to produce the said person, namely, Ajay Mungar, before this Court. It was informed by the Police Inspector, Una Police Station, that no such person, namely, Ajay Mungar, was residing at the address mentioned in the statement and that no Siddharth Apartment was situated in the said area. Further, the statement did

not contain any contact number or specify the residential number of the said person. In view of the aforesaid circumstances, this Court noticed serious doubts regarding the genuineness of the statement, which were subsequently substantiated by the report submitted by the Police Inspector, Una Police Station.

11 It is informed by the learned Public Prosecutor Mr. Dave that the Superintendent of Police, Gir Somnath, has suspended the Head Constable Mr. P.A. Parmar with immediate effect for preparing a forged report and producing the same before the learned Court in judicial proceedings, thereby leading the learned Court to believe that the petitioner had absconded and was evading arrest. Resultantly, the impugned order under Sections 82 and 299 of the Code of Criminal Procedure came to be passed.

12 In the opinion of this Court, the departmental inquiry would not suffice, as, on the basis of such report, the petitioner was declared absconding and was constrained to approach this Court for quashing of the impugned order. In the aforesaid background, in addition to the departmental inquiry, criminal prosecution is also required to be initiated against the concerned police officer by the learned Court before which such report was submitted, after following due procedure prescribed under law. As the impugned or-

der came to be passed on the basis of the report submitted by the police officer, the same is hereby quashed and set aside. The petitioner shall appear before the learned Court on the next date of hearing, and the learned Court shall thereafter proceed to record the evidence in the presence of the petitioner.

12.1 The Superintendent of Police, Gir Somnath, is directed to conclude the departmental inquiry in accordance with law, in a manner that conveys a clear message to all police officers that any attempt to fabricate or create evidence while discharging their official duties shall be viewed seriously.

12.2 The learned Court at Veraval is directed to initiate criminal prosecution against Head Constable Mr. P.A. Parmar for producing a false report during judicial proceedings, after following the due procedure prescribed under law.

13 At the same time, the appropriate guidelines are required to be issued to the learned Courts before declaring the person as a proclaim offender, which are as follow:

(1) The police officer shall submit a report before the Court stating that the person against whom the warrant has been issued has absconded or is con-



cealing himself. Such concealment must be deliberate and with the intention of avoiding arrest. The mere fact that the police could not find the accused is not sufficient.

(2) Mere non-availability of the accused at the address is not sufficient unless it is established that the accused is deliberately concealing himself to avoid arrest.

(3) The police officer shall file an affidavit/status report disclosing the address, telephone number and email address, if available, of the accused against whom the warrant has been issued, along with the reasons for the inability to secure the presence of the accused before the Court.

(4) Where the warrant has been affixed to a conspicuous part of the house in which the person ordinarily resides, the police officer shall annex to the affidavit a photograph showing the affixation of the warrant. The photograph must be taken in such a manner as to clearly establish that the warrant has been affixed to the very house in which the person ordinarily resides.

(5) The Investigating Officer or the Police Inspector shall record in the case diary the names of at least two respectable persons residing in the locality of the



accused/suspect, along with their contact details, including their addresses and telephone numbers, who can verify that the address of the accused/suspect mentioned in the application seeking issuance of a warrant of arrest is correct and complete. Photocopies of the identity proofs of such persons shall also be obtained by the police officer concerned.

14The Registry shall circulate a copy of this order to all District Courts throughout the State of Gujarat, so that the District Judiciary may take note of the facts and circumstances recorded herein and ensure implementation of the aforesaid guidelines.

15Accordingly, present petition is allowed. Civil Application also stands disposed of.

M.M.MIRZA

(M. K. THAKKER,J)