

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1714 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

=====

- 1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**
- 2 To be referred to the Reporter or not ? **-No.**
- 3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**
- 5 Whether it is to be circulated to the civil judge ? **-No.**

=====

POPATSING CHAMANSING SOLANKI - Applicant(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

=====

Appearance :

MS DR KACHHAVAH for Applicant(s) : 1, MR KAMLESH KACHHAVAH for Applicant(s) : 1,
 PUBLIC PROSECUTOR for Respondent(s) : 1,
 RULE SERVED BY DS for Respondent(s) : 2,
 DS AFF.NOT FILED (R) for Respondent(s) : 3,

=====

CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 29/12/2005

ORAL JUDGMENT

1.Popatsing Chamansing Solanki, petitioner has filed this petition under Article 226 of the Constitution of India

challenging the order dated 19/11/2005 passed by the appellate authority in Externment Appeal No.54 of 2005 and also externment order passed by the Sub Divisional Magistrate, Gandhinagar i.e. Respondent No.3 dated 15/2/2005. Petition was filed on 6/12/2005.

2.This Court (Coram:K.M.Mehta, J.) has issued rule which was returnable on 23/12/2005. On behalf of respondent, Mr.L.R.Pujari, learned APP appears so, with consent of parties, matter has been taken up for hearing to this Court.

3.Heard, Mr.Kachhavah, learned advocate for the petitioner in this behalf. He has stated that though there are several grounds, he has confined to only one ground i.e. ground of delay. He has stated that show cause notice has been issued on 17/4/2004. The petitioner has filed his reply on 5/8/2004. However, the authority has passed an order of externment on 15/2/2005. Though order has been passed on 15/2/2005, the Sub Divisional Magistrate has not given any reason as to why there is delay in passing the order. The authority has not filed any affidavit in this behalf.

4. In view of the judgment of this Court in the case of Dilaji Bharthaji Vihol v. Deputy Commissioner of Police and another, in Special Criminal Application No.1451 of 2005 decided by this Court (Coram:K.M.Mehta, J.) on 1/12/2005 and judgment of this Court (Coram:K.M.Mehta, J.) in Special Criminal Application No.1547 of 2005 decided today, the petition is required to be allowed.

5. In view of the aforesaid reasons, petition is allowed. Order of externment dated 15/2/2005 is quashed and set aside and order dated 19/11/2005, confirming the order of externment is also quashed and set aside. Rule is made absolute with no order as to costs. Direct service is permitted.

(K.M.MEHTA, J.)

(ila)