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PART V

Bills introduced in the Gujarat Legislative Assembly

(To be translated into Gujarati and the translation to be published in the *Gujarat Government Gazette*. The date of publication to be reported.)

The following Bill is published with the consent of the Speaker given under the proviso to rule 127A of the Gujarat Legislative Assembly Rules:-

THE GUJARAT SPECIAL COURTS BILL, 2024.

GUJARAT BILL NO. 15 OF 2024.

A BILL

to provide for the constitution of special courts for the speedy trial of certain class of offences and for confiscation of the properties accumulated out of the commission of such offences.

It is hereby enacted in the Seventy-fifth year of the Republic of India as follows:-

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Gujarat Special Courts Act, 2024. Short title and commencement.
- (2) It shall come into force on such date as the State Government may, by notification in the *Official Gazette*, appoint.
2. (1) In this Act, unless the context otherwise requires,— Definitions.
 - (a) “accumulation of property” means the property, which is derived or obtained directly or indirectly, by a person as a result of commission of an offence, if the total value of the property involved therein exceeds one crore rupees;
 - (b) "authorised officer" means any former judicial officer not below the rank of Additional Sessions Judge, nominated by the State Government for the purpose of section 13;

- (c) "Sanhita" means the Bharatiya Nyaya Sanhita, 2023; 45 of 2023.
- (d) "declaration", in relation to an offence, means a declaration made under section 5 in respect of such offence;
- (e) "offence" means any act or omission made punishable by any law for time being in force with imprisonment for a term of 3 years or more.
- (f) "person" includes –
- (i) an individual,
 - (ii) a Hindu Undivided Family,
 - (iii) a company,
 - (iv) a firm,
 - (v) an association of persons or a body of individuals, whether incorporate or not,
 - (vi) every artificial juridical person, not falling within any of the preceding sub-clauses,
 - (vii) any agency, office or branch owned or controlled by any of the above persons mentioned in the preceding sub-clauses;"
- (g) "property" means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located;
- (h) "Special Court" means a Special Court constituted under section 3 for trial of offences under this Act.
- (2) Words and expressions used herein and not defined but defined in either the Sanhita or in the Bharatiya Nagarik Suraksha Sanhita, 2023 shall have the meanings respectively assigned to them in the Sanhita or the Bharatiya Nagarik Suraksha Sanhita, 2023, as the case may be. 46 of 2023.
46 of 2023.

CHAPTER II

CONSTITUTION OF SPECIAL COURTS

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| Constitution of Special | 3. | (1) The State Government may, with the concurrence of the Chief Justice of the High Court of Gujarat, by notification in the <i>Official Gazette</i> constitute one or more Special Courts for such area or areas, or for such cases or class or group of cases, as may be specified in the notification. |
| | | (2) A Special Court shall be presided over by a Judge nominated by the State Government with the concurrence of the High Court of Gujarat. |
| Cognizance of cases by Special | 4. | A Special Court shall take cognizance of and try such cases as are instituted before it or transferred to it under section 10. |
| Declaration of cases to be dealt with under this Act. | 5. | Where the State Government, on the basis of the report of the investigating officer received through the concerned officer not below the rank of Superintendent of Police, has reason to believe (the reasons for such belief to be recorded in writing) that there is accumulation of property by a person, the State Government shall make a declaration to that effect. |
| Effect of declaration. | 6. | (1) On such declaration being made, notwithstanding anything in the Sanhita or any other law for the time being in force, any prosecution in respect of the offence shall be instituted only in a Special Court. |
| | | (2) Where any declaration made under section 5 relates to an offence in respect of which a prosecution has already been instituted and the proceedings in relation thereto are pending in a Court other than Special Court, such proceedings shall, notwithstanding anything contained in any other law for the time being in force, stand transferred to Special Court for trial of the offence in accordance with this Act. |

- 46 of 2023.
7. A Special Court shall have jurisdiction to try any person alleged to have committed the offence in respect of which a declaration has been made under section 5, either as principal, conspirator or abettor and for all the other offences and accused persons as can be jointly tried therewith at one trial in accordance with the Sanhita. **Jurisdiction of Special Courts as to trial of offences.**
8. (1) A Special Court shall, in the trial of such cases, follow the procedure prescribed by the Bharatiya Nagarik Suraksha Sanhita, 2023 for the trial of warrant cases before a Magistrate. **Procedure and powers of Special Courts.**
- (2) Save as expressly provided in this Act, the provisions of the Sanhita shall, in so far as they are not inconsistent with the provisions of this Act, apply to the proceedings before a Special Court and for the purpose of the said provisions, the persons conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.
- (3) A Special Court may pass, upon any person convicted by it, any sentence authorised by law for the punishment of the offence of which such person is convicted.
9. (1) Notwithstanding anything in the Sanhita, an appeal shall lie from any judgment and sentence of a Special Court to the High Court of Gujarat. **Appeal against order of Special Court.**
- (2) Except as aforesaid, no appeal or revision shall lie in any court from any judgment, sentence or order of a Special Court.
- (3) Every appeal under this section shall be preferred within a period of thirty days from the date of judgment and sentence of a Special Court:
- Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied for reasons to be recorded in writing that the appellant had sufficient cause for not preferring the appeal within the period.
10. Notwithstanding the other provisions of this Act, it shall be open to the High Court to transfer cases from one Special Court to another Special Court. **Transfer of cases.**
11. (1) A Special Court shall not adjourn any trial for any purpose unless such adjournment is, in its opinion, necessary in the interests of justice and for reasons to be recorded in writing. **Special court not bound to adjourn trial.**
- (2) The Special Court shall endeavour to dispose of the trial of the case within a period of one year from the date of its institution or transfer, as the case may be.
12. A Judge appointed under section 3 to preside over a Special Court may act on the evidence recorded by his predecessor or partly recorded by his predecessor and partly recorded by himself. **Presiding Judge may act on evidence recorded by his predecessor.**

CHAPTER III

CONFISCATION OF PROPERTY

13. (1) On the basis of the declaration made under section 5, the State Government may authorise the investigating officer to make an application to the authorised officer for confiscation of the property, referred to in the said declaration. **Application for confiscation.**
- (2) An application under sub-section (1)—
- (a) shall be accompanied by one or more affidavits, stating the grounds on which the belief, that the said person has committed the offence, is founded and the estimated value of the property believed to have been procured by means of the offence; and
- (b) shall also contain any information available as to the location for the time being of any such property, and shall, if necessary, give other particulars considered relevant to the context.

**Notice for
confiscation.**

- 14.** (1) Upon receipt of an application made under section 13, the authorised officer shall serve a notice upon the person in respect of whom the application is made (hereafter referred to as “the person affected”) calling upon him within such time as may be specified in the notice, which shall not be ordinarily less than thirty days, to indicate that there is no accumulation of property at his end, the evidence on which he relies and other relevant information and particulars, and to show cause as to why all or any of such property, should not be confiscated to the State Government.
- (2) Where a notice under sub-section (1) to any person specifies any property as being held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person.
- (3) Notwithstanding anything contained in sub-section (1), the evidence, information and particulars brought on record before the authorised officer, by the person affected, shall not be used against him in the trial before the Special Court.

**Confiscation
of property in
certain cases.**

- 15.** (1) The authorised officer may, after considering the explanation, if any, to the show cause notice issued under section 14 and the materials available before it, and after giving to the person affected (and in case where the person affected holds any property specified in the notice through any other person, to such other person also) a reasonable opportunity of being heard, by order, record a finding whether all or any other properties in question have been acquired illegally.
- (2) Where the authorised officer specifies that some of the property referred to in the show cause notice are acquired by means of the offence, but is not able to identify specifically such property, then it shall be lawful for the authorised officer to specify the property which, to the best of his judgment, have been acquired by means of the offence and record a finding, accordingly, under sub-section (1).
- (3) Where the authorised officer records a finding under this section to the effect that any property has been acquired by means of the offence, he shall declare that such property shall, subject to the provisions of this Act, stand confiscated to the State Government free from all encumbrances:

Provided that if the market price of the property confiscated is deposited with the authorised officer, the property shall not be confiscated.

- (4) Where any share in a Company stands confiscated to the State Government under this Act, then, the Company shall, notwithstanding anything contained in the Companies Act, 2013 or the Articles of Association of the Company, forthwith register the State Government as the transferee of such share.
- (5) Every proceeding for confiscation of property under this Chapter shall be disposed of within a period of six months from the date of service of the notice under sub-section (1) of section 14.
- (6) The order of confiscation passed under this section shall, subject to the order passed in appeal, if any, under section 17, be final and shall not be called in question in any Court of law.

18 of 2013.

**Transfer to be
null and void.**

- 16.** Where, after the issue of a notice under section 14, any property referred to in the said notice are transferred by any mode whatsoever, such transfer shall, for the purposes of the proceedings under this Act, be void and if such property is subsequently confiscated to the State Government under section 15, then, the transfer of such property shall be deemed to be null and void.

Appeal.

- 17.** (1) Any person aggrieved by any order of the authorised officer under this Chapter may appeal to the High Court within thirty days from the date on which the order appealed against was passed.

- (2) Upon any appeal preferred under this section the High Court may, after giving such parties, as it thinks proper, an opportunity of being heard, pass such order as it thinks fit.
- (3) An appeal preferred under sub-section (1) shall be disposed of preferably within a period of three months from the date it is preferred.

- 18.** (1) Where any property has been confiscated to the State Government under this Act, the concerned authorised officer shall order the person affected, as well as any other person, who may be in possession of the property to surrender or deliver possession thereof to the concerned authorised officer or to any person duly authorised by him in this behalf, within thirty days of the service of the order:

Power to take possession.

Provided that the authorised officer, on an application made in that behalf and being satisfied that the person affected is residing in the property in question, may instead of dispossessing him immediately from the same, permit such person to occupy it for a limited period to be specified on payment of market rent to the State Government and thereafter, such person shall deliver the vacant possession of the property.

- (2) If any person refuses or fails to comply with an order made under sub-section (1), the authorised officer may take possession of the property and may, for that purpose, use such force as may be necessary.
- (3) The property confiscated under this Act shall vest in the State Government and the same may be dealt with in the manner as may be prescribed by rules by the State Government.

- 19.** Where an order of confiscation made under section 15 is modified or annulled by the High Court in appeal or where the person affected is acquitted by the Special Court, the property shall be returned to the person affected and in case it is not possible for any reason to return the property, such person shall be paid the price thereof so confiscated with the interest at the rate of five percent per annum thereon calculated from the date of confiscation.

Refund of confiscated property.

CHAPTER IV MISCELLANEOUS

- 20.** No notice issued or served, no declaration made and no order passed, under this Act shall be deemed to be invalid by reason of any error in the description of the property or person mentioned therein, if such property or person is identifiable from the description so mentioned.
- 21.** The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force.
- 22.** Save as provided in sections 9 and 17 and notwithstanding anything contained in any other law, no suit or other legal proceedings shall be maintainable in any Court in respect of any property ordered to be confiscated under section 15.
- 23.** No suit, prosecution or other legal proceedings shall lie against any person for anything in good faith done or intended to be done in pursuance of this Act.
- 24.** (1) The State Government may, by notification in the Official Gazette, and subject to the condition of previous publication, make rules to carry out the purposes of this Act.
- (2) All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as may be they are made, and shall be subject to rescission by the State Legislature or to such modification as the State Legislature may make, during the session in which they are so laid or the session immediately following.
- (3) Any rescission or modification so made by the State Legislature shall be published in the *Official Gazette*, and shall thereupon take effect.

Notice or order not to be invalid for error in description.

Act to be in addition to any other law.

Bar to other proceedings.

Protection of action taken in good faith.

Power to make rules.

Notifications
under section 3
and declarations
under section 5
to be laid.

25. Every notification made under sub-section (1) of section 3 and every declaration made under section 5 shall be laid, as soon as may be, after they are made, before the State Legislature.

STATEMENT OF OBJECTS AND REASONS

A large number of persons indulge in commission of offences and accumulate huge property other than their lawful sources of income as a result of commission of offences. They continue to use the property and income generated from such property for expanding their criminal activities. The delay in criminal proceedings and forfeiture of property allows such persons to continue with their criminal activities adversely impacting criminal justice system. Therefore, there is an urgent need to set up a Special Court for expeditious confiscation of above mentioned properties identified in connection with the investigation of a criminal case.

Keeping in view of the above legal or moral obligation of the State to curb such criminal activities, it has been felt necessary to have a special legislation for constituting an Special Court to conduct the proceedings for confiscation of properties against the persons indulging in such activities.

This Bill seeks to enact the said Act to achieve the aforesaid objects.

The following notes on clauses explain, in brief, some of the important provisions of the Bill:-

- Clause 1.-** This clause provides for short title and commencement of the Act.
- Clause 2. -** This clause defines certain terms used in the Bill.
- Clause 3. -** This clause provides for the constitution of Special Courts.
- Clause 4. -** This clause provides for the Cognizance of cases by Special Courts.
- Clause 5. -** This clause provides for declaration of cases to be dealt with under this Act, in cases of accumulation of property by a person.
- Clause 6. -** This clause provides that where any declaration made under section 5 relates to an offence in respect of which a prosecution shall be instituted only in a Special Court.
- Clause 7.-** This clause provides for the jurisdiction of Special Courts as to trial of offences.
- Clause 8.-** This clause provides the procedure and powers of Special Courts.
- Clause 9.-** This clause provides for filing an Appeal against the order of the Special Court.
- Clause 10.-** This clause provides for the powers of the High Court to transfer cases from one Special Court to another Special Court.
- Clause 11.-** This clause provides that a Special Court shall not adjourn any trial for any purpose unless such adjournment is, in its opinion, necessary in the interests of justice and for reasons to be recorded in writing.
- Clause 12.-** This clause provides that a presiding Judge may act on the evidence recorded by his predecessor or partly recorded by his predecessor and partly recorded by himself.
- Clause 13.-** This clause provides for the application to be made by an investigating officer to the authorised officer for confiscation of the property.
- Clause 14.-** This clause provides for the notice to be served upon the person in respect of whom the application for the confiscation of the property is made.
- Clause 15.-** This clause provides for the confiscation of the property in certain cases as mentioned therein.
- Clause 16.-** This clause provides that any property transferred, during the period of notice of confiscation of such property, is made and subsequently such property is confiscated to the State Government, in such cases the transfer of such property shall be deemed to be null and void.
- Clause 17.-** This clause provides for filing an Appeal to the High Court by an aggrieved person, against the order of the authorised officer.
- Clause 18.-** This clause provides for the powers of the authorised officer to take possession of the confiscated property.

- Clause 19.-** This clause provides for refund of confiscated property to the person affected, in the circumstances as mentioned therein.
- Clause 20.-** This clause provides that notice or order not to be invalid for error in description.
- Clause 21.-** This clause provides that the provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force.
- Clause 22.-** This clause provides for Bar to other proceedings.
- Clause 23.-** This clause provides for protection for action taken in good faith.
- Clause 24.-** This clause empowers the State Government to make rules to carry out the purposes of the Act.
- Clause 25.-** This clause provides that every notifications under section 3 and declarations under section 5 shall be laid before the State Legislature.

HARSH SANGHAVI,

FINANCIAL MEMORENDUM

Sub-clause (b) of *Clause 2* of the Bill provides to nominate the authorised officer. Hence, the Bill, if enacted and brought into force would involve expenditure from the Consolidated Fund of the State. However, at present, it is not possible to ascertain the exact amount of grant to be made available for such purpose.

HARSH SANGHAVI,

MEMORANDUM REGARDING DELEGATED LEGISLATION

This Bill provides for delegation of legislative powers in the following respects: -

- Clause 1. -** Sub-clause (2) of this clause empowers the State Government to appoint, by notification in the *Official Gazette*, the date on which the Act shall come into force.
- Clause 3. -** Sub-clause (1) of this clause empowers the State Government, with the concurrence of the Chief Justice of the High Court of Gujarat, to constitute, by notification in the *Official Gazette*, one or more Special Courts for such area or areas, or for such cases or class or group of cases, as may be specified in the said notification.
- Clause 18.-** Sub-clause (1) of this clause empowers the State Government to prescribe the manner in which the property confiscated under the Act shall vest in the State Government.
- Clause 24.-** This clause empowers the State Government to make, by notification in the *Official Gazette*, rules for carrying out the purposes of the Act.

The delegation of legislative powers as aforesaid is necessary and is of normal character.

Dated the 17th August, 2024.

HARSH SANGHAVI.

By order and in the name of the Governor of Gujarat,

K. M. LALA,

Secretary to the Government of Gujarat,
Legislative and Parliamentary Affairs Department.

Gandhinagar,
Dated the 17th August, 2024.

