

ORDER BELOW Ex.5

- 1 The appellant has preferred Criminal appeal u/s 415 of the Bharatiya Nagrik Nyay Sanhita-2023 before this court challenging the order of conviction passed by the Ld.Chief judicial Magistrate, Modasa in Criminal Case No.1628/2013(main) along with Supplementary charge-sheet Criminal case No.2138/2013 and Supplementary charge-sheet Criminal Case No.1776/2013.
- 2 The appellant was convicted by the trial court for the offence punishable under Section 408, 465, 467, 468, 471, 474,201,114 of the IPC and U/s 2000 of the IT act. Aggrieved by the conviction and sentence, the appellant has preferred an appeal before this court. Along with the appeal, the appellant has filed this bail application Ex.5 u/s 430 of the BNSS-2023, contending that the conviction is unsustainable and that the appellant is entitled to bail during the pendency of the appeal.
- 3 The learned Advocate for the appellant argued that the conviction order of the trial court is fundamentally imperfect and is likely to be overturned on appeal. It is submitted that the trial court failed to properly appreciate the evidence and erred in applying the relevant legal principles. The advocate also highlights that the appellant has established the society and served as chairman in the society from 1996 to 2000. On 29-11-2012, the work of the Society was stopped for all practical purposes due to the atmosphere of suspicion about the management of the Society. Therefore, one Mr.

Amritbhai Shankarbhai Patel who is an official of the Government Department of the Government from 01-04-2001, investigated as per Clause - 86 of Gujarat Co-operative Societies Act regarding the functioning of the society for the period upto 31-03-2012. At the end of the investigation dated 09-04-2013, complaint alleging offenses under section-409, 420, 495, 497, 498, 471, 474, 114 etc filed by Mr. Amritbhai Shankarbhai Patel in Modasa Town Police Station. In which the appellant is not named as an accused nor is any allegation made against the appellant. Thereafter the Choksi Officer examined the administrations of the Society for the years 1998-1999 to 2000 and submitted another Choksi Report in which the name of the Appellant was later wrongly added in which the Appellant was shown as an accused. It is further submitted that the trial court erred in its appreciation of evidence and law, and there are strong grounds for appeal that raise serious doubts about the validity of the conviction. It is submitted that the appellant has already been in custody for a considerable period and, in the event of the appeal being allowed, the continued detention of the appellant would amount to a miscarriage of justice.

- 3.1 It is further submitted that throughout the entire proceedings, the appellant/applicant has been regularly present in the court on time at every date and has not abused any freedom granted by the trial court. It is further submitted that the

appellant/applicant is a permanent resident of Modasa City living with his family and is a senior citizen of 75 years of age and he was suffering from heart disease therefore, he was admitted in the hospital and stent in the arteries of his heart is placed. It is also submitted that he is also suffering from Cancer and at present his treatment is still continue. The applicant/appellant has deep roots in society and there is no likelihood of the appellant absconding or tampering with evidence if released on bail. The appellant has a clean antecedent and the possibility of the appeal being decided in the near future is unlikely due to the heavy pendency of cases. It is also submitted that the applicant/appellant is ready and willing to abide by any conditions to be imposed upon him. Therefore, it is urged that the appellant be granted regular bail during the pendency of the appeal.

- 4 The Notice was issued to other side. Ld.PP/Ad.PP, representing the State, has appeared before the Court and opposes the bail application, arguing that appellant was the chairman of the society and the conviction is based on solid and credible evidence and therefore the appellant does not deserve the discretionary relief of bail. It is submitted that the seriousness of the offense and the sentence imposed by the trial court must consider against the grant of bail. It is also submitted that if the appellant is released on bail, he may attempt to evade the legal process or influence witnesses.

L.PP/Ad.PP. Lastly submits that the appellant should continue to remain in custody until the final adjudication of the appeal.

5 I have heard Ld.advocate for the appellant and Ld.PP/Ad.PP for the state at length.

4 I have read the application, appeal memo and also the judgment and order of the Ld.Trial Court which are produced vide D-list Ex.6. As per the settled proposition of jurisprudence, it is always better to give an opportunity of appeal to the appellant. Upon considering the submissions made by both parties and the material on record, this court finds that the appellant has raised numbers of issues in the appeal, which require careful consideration at the stage of final hearing. Moreover there is bulky record in the appeal and that the appellant is in custody since 26.09.2024 and suffering from heavy disease like Cancer, and there is no immediate prospect of the appeal being disposed of in the near future due to the current backlog of cases. It is also admitted fact that the appellant is on bail throughout the trial. In view of the aforesaid facts and circumstances and having such valuable right of the appellant, it is required to suspend the judgment and order of the Ld.Trial Court till final disposal of the appeal and the appellant is entitled to be released on regular bail pending the final disposal of the appeal. Hence following order is passed in the interest to justice.

O R D E R

1. The present application Ex.5 is hereby ordered to be granted. The judgment and order of the Ld.Trial Court dt.26.09.2024 is hereby ordered to be suspended, till final disposal of the appeal and the appellant is ordered to be released on bail with following conditions:-

Conditions :

- 1 The applicant shall furnish a bond of Rs.25,000/- (Rupees Twenty Five Thousand Only) with his recent self-attested Photograph and one surety before this Court;
- 2 The appellant shall not leave India without prior permission of the court till the final disposal of the appeal ;
- 3 The appellant/accused shall remain present before this Court regularly, till the final disposal of the appeal.
- 4 Appellant is directed to co-operate in early disposal of the appeal.
- 5 The applicant shall surrender his passport before this court, if any, if not then they shall make a declaration by way of filing affidavit before this court;
- 6 Yadi be sent to the concerned jail authority and concerned court.
Signed and Pronounced in the open Court on this
8th day of October, 2024.

DATE: 08/10/2024
PLACE: MODASA

(Mrs.Asha Nileshkumar Anjaria)
Sessions Judge
Arvalli at Modasa
CODE NO.GJ00348