

CRIMINAL APPEAL NO 250 OF 2025

ORDER BELOW EXH. 5

1. Perused the application. Considered the provisions of Section 430 (1) of the Bhartiya Nagarik Suraksha Sanhita, 2023.

2. Learned Advocate Mr RN Singh for the present appellant - accused has submitted that the present appellant - accused has been in judicial custody for a period of more than one year and, thus, he has already undergone half the period of sentence as imposed upon the appellant – accused by the learner Trial Court.

3. On the other hand, learned Advocate Mr MJ Makwana for the original complainant has submitted that the whereabouts of the appellant – accused were not

available during the trial of the Criminal Case before the learned Trial Court, and, therefore, the trial had proceeded in the absence of the present appellant – accused. He has also submitted that, therefore, if he is released on bail, there is all likelihood that he would abscond again and evade the proceedings in the appeal. Against this submission, learned Advocate Mr. Singh for the appellant – accused, upon the direction of this Court, has produced an affidavit of the present appellant – accused giving his details of the present address which the house owned by his daughter. He has also annexed copy of Lease and License Agreement of the house as well as the copy of the latest Electricity Bill showing the address stated in the affidavit. Further, on Court's enquiry with regard to the fact that the appellant – accused did not participate in the trial and had caused delay in the disposal of the criminal case, learned Advocate Mr Singh for the appellant-accused

submitted that, in order to show his *bona fide*, the present appellant accused assures to deposit 10% of the cheque amount before this Hon'ble Court to be paid to the complainant within a period of 45 days from the date of his release, which would be in addition to the 20% of the amount of the cheque as well as the cost of Rs 20,000/- already deposited by the present appellant-accused as per the order dated 07-04-2025 passed by the Hon'ble High Court of Gujarat in Special Criminal Application No 13227 of 2024. Under these circumstances, he has submitted that the application may be allowed and the present appellant accused released on bail.

4. The appellant – accused has been convicted by the learned 11th Additional Chief Judicial Magistrate, Jamnagar for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, ***“the Act”***)

in Criminal Case No. 3707 of 2011 by judgment and order dated 03-12-2018. Upon such conviction, he has been sentenced to undergo simple imprisonment for a period of two years. He has also been directed to pay fine of Rs. 60 Lakhs which would to be paid as compensation to the complainant, and in default of such payment, to undergo simple imprisonment for a period of three months. Against the said judgment and order, the appellant – accused has preferred the present appeal. Along with the appeal, the appellant – accused has made the present application for suspension of sentence imposed upon him.

5. It is pertinent to note that the appellant – accused is in judicial custody in execution of the sentence of imprisonment for a period of one year as per the jail remarks called for by this Court. It is likely that the present appeal may take some time for its adjudication. Under

such circumstances, it is not justified to keep the appellant – accused further in judicial custody in execution of the sentence of imprisonment till the final disposal of appeal, as otherwise, it may frustrate the very purpose of his appeal. In the case of ***Atul @ Ashutosh Vs State of Madhya Pradesh***, Criminal Appeal No. 579 of 2024, the Hon'ble Supreme Court of India has noted that, when there is a fixed term sentence and especially when the appeal is not likely to be heard before completing the entire period of sentence, normally suspension of sentence and bail should be granted. Moreover, in the case of ***Satyendra Kumar Mehra @ Satendera Kumar Mehra Versus State of Jharkhand, 2018 (0) AIJEL-SC 61960***, the Hon'ble Supreme Court of India has clarified that, the Appellate Court, while exercising power under Section 389 of the Code of Criminal Procedure, 1973, can suspend the sentence of imprisonment as well as of fine without any condition or

with conditions. Therefore, I find that the further execution of sentence of imprisonment and fine against the appellant – accused is required to be suspended pending the appeal and the accused released on bail subject to certain terms and conditions.

6. Further, as noted earlier, this is an appeal against the judgment and order of conviction in an offence punishable under Section 138 of the Act. Under such circumstances, Section 148 of the Act empowers the Appellate Court to order the appellant – accused to deposit such sum which shall be a minimum of twenty per cent of the fine or compensation awarded by the learned Trial Court within sixty days from the date of the order. In the present case, the fine imposed by the Trial Court is Rs 60 Lakhs. The applicant – accused is required to pay Rs 12 Lakhs as 20% of Rs 60 Lakhs. However, he had paid an

amount of Rs 6 Lakhs as per the directions of the Hon'ble High Court of Gujarat, as referred to above. Thereafter, as per the statement made by the learned Advocate for the appellant – accused before this Court, the appellant – accused is directed to further deposit 10% of Rs 30 Lakhs which comes to Rs. 3 Lakhs within a period of 45 days from today. At this stage, it is pertinent to note that what the appellant – accused is required to pay is 20% of the amount of the fine or compensation and not 20% of the amount of the cheque. Therefore, the appellant – accused is required to pay a total of Rs 12 Lakhs out of which the appellant – accused has paid Rs 6 Lakhs and an assurance is now given to pay Rs 3 Lakhs more within a period of 45 days from the date of the order. Under such circumstances, the appellant – accused would be required to pay Rs 3 Lakhs within a period of 45 days from the date of this order and Rs 3 Lakhs more to be paid within a period of 60 days from the date of

this order. Except to this extent, the sentence of fine stands suspended.

7. Considering the aforesaid discussion, I pass the following order:

ORDER

1. The present application is allowed.
2. The further execution of the sentence of imprisonment passed by the learned 11th Additional Chief Judicial Magistrate, Jamnagar *vide* judgment and order dated 03-12-2018 in Criminal Case No. 3707 of 2011 is suspended.
3. The sentence of fine to the extent of 80% of the amount of the fine i.e. Rs 60 Lakhs which comes to Rs 48 Lakhs is also suspended subject to the condition as indicated hereinafter.

4. The appellant – accused stands released on bail subject to the following conditions:
- (a) He shall furnish bond in the sum of Rs. 3,00,000/- with two sureties of like amount before the learned Trial Court.
 - (b) He shall deposit an amount of Rs. 3 Lakhs i.e. 5% of the amount of the fine before this Court within a period of 45 days from today and another amount of Rs 3 Lakhs i.e. 5% of the amount of the fine before this Court within a period of 60 days from today.
 - (c) He shall remain present on all the dates notified for the appeal either personally or through his authorized Advocate.
 - (d) He shall furnish complete residential address of

self and that of the surety along with the proof like latest the electricity bill.

(e) He shall furnish the contact number of self as well as that of his surety.

(f) He shall furnish the details of his nearest police station as well as that of his surety.

(g) He shall not change his residential address without seeking permission of this Court.

8. Bail bonds be executed before the learned Trial Court.

9. Copy of this order be sent to the learned Trial Court with a direction to send a copy of this order immediately to the concerned Jail Authority as well as to appellant – accused through the concerned Jail Authority.

Pronounced in the open Court today

i.e. 26th May, 2025.

Place : JAMNAGAR **(SHAMNATH CHANDRAMOHAN VEMULLA)**

4th Additional District And Sessions
Judge.

Date : 26-05-2025

Code No. GJ00818