

CRIMINAL APPEAL NO 497 OF 2025

ORDER BELOW EXH 5

1. Perused the application. Heard learned Advocate for the appellant – accused. Considered the provisions of Section 430 (1) of the Bhartiya Nagarik Suraksha Sanhita, 2023.

2. The appellant – accused has been convicted by the learned 5th 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. 4563 of 2024 by judgment and order dated 17/04/2025. Upon such conviction, he has been sentenced to undergo simple imprisonment for 1 year. He has also been directed to pay Rs. 50,000/- as compensation to the complainant within three months from the date of judgment and order and in default of payment, to undergo simple imprisonment for a period of 6 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.

3. It is pertinent to note that the appellant – accused is in judicial custody in execution of the sentence of imprisonment. 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 against the appellant – accused is required to be suspended pending the appeal and the accused released on bail subject to certain terms and conditions.

4. 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 compensation awarded by the Trial Court is Rs. 50,000/- which the appellant – accused has deposited today to show his *bona fide* as per Purshish brought on record by the appellant at Exh. 8 alongwith a payment receipt for Rs.50,000/-.

5. 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 5th Additional Chief Judicial Magistrate, Jamnagar *vide* judgment and order dated 17-04-2025 in Criminal Case No. 4563 of 2024 is suspended.

3. The appellant – accused stands released on bail subject to the following conditions:

- (a) He shall furnish bond in the sum of Rs. 1,00,000/- with one surety of like amount before the learned Trial Court.
- (b) He shall remain present on all the dates notified for the appeal either personally or through his authorized Advocate.
- (c) He shall furnish complete residential address of self and that of the surety along with the proof like latest electricity bill.
- (d) He shall furnish the contact number of self as well as that of his surety.
- (e) He shall furnish the details of his nearest police station as well as that of his surety.

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

4. The sentence of compensation is also suspended.

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

6. Copy of this order be sent to the learned Trial Court.

7. The learned Trial Court would be at liberty to give time to the appellant-accused and the surety for furnishing residential proof and the solvency certificate.

Pronounced in the open Court today

i.e. 29th September, 2025.

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

4th Additional District And Sessions Judge.

Date : 29-09-2025

Code No. GJ00818