

GJSK010006422026



Order Below Exh. 5 in Criminal Appeal No. 161 of 2026

In the matter of

Fajalbhai Gafurbhai Memon

... Appellant

V/s.

Partner of Bharat Pulse Mill

A. Hamid A. Hakim Modasiya and The State

... Respondents

1. In the present matter, the convict happens to be the accused in original trial before the learned Trial Court. The learned Trial Court concluded the trial and convicted and sentenced the accused to undergo the imprisonment as well as fine prescribed therein. The appellant herein has come out with the present appeal, seeking to get himself acquitted from the impugned judgment and order.
2. The learned advocate for the appellant herein would urge before the present Court that the convict herein is absolutely innocent and done nothing for which he may suffer this sort of punishment, that the convict has already made compromise with the complainant herein, namely respondent in the present proceeding and the matter has been put to an end, that the present matter where the convict has been

convicted is nothing but a private prosecution wherein private interests are only involved, that the interest of private person who was aggrieved by the action of the convict herein, his grievances are already redressed, that this is a fit case where the sentencing must be suspended till the shape to be given to the composition which has been entered into by the parties.

3. Learned advocate for the respondent herein would urge before the Court that the parties have already arrived at compromise and nothing has been left in the matter, that empty incarceration would not yield anything except suffering to the convict herein, who is now as good as on the platform of acquittal on account of composition being already taken place, that in this background, the respondent herein who is at real grievance against the convict herein, has no objection if his plea for suspension of sentence be answered in an affirmative manner.
4. Regard being had to entire actual scenario, it appears that after filing this appeal the appellant herein did not remain present in the Court, consequently, non-bailable warrant was issued and the appellant herein has been in jail under the said warrant, but at present it appears that compounding of the matter has already been taken shape of, the party who is grieved by the action of convict, has already made composition with the convict herein and as a result thereof, the real aggrieved person has his entire grievances redressed.

The composition itself, coupled with the fact that the grievance of the real aggrieved person is redressed, this is a fit case where discretion under Section 430(1) of The Bhartiya Nagrik Suraksha Sanhita, 2023 must be exercised. This provision, engrafted in Section 430 of BNSS, empowers the appellate Court to suspend either order of conviction itself or suspension of sentence, ofcourse since parties have entered into compromise of the matter, entire order of conviction would in due course whittled down to nothing and therefore this is the proper stage wherein properly exercising the discretion of suspension of sentence, the present Court needs to extend benefit of enlarging the convict herein, on furnishing appropriate bail and personal bond.

5. Against the aforesaid backdrop, the present application requires to be granted and accordingly following final order is passed:

:: FINAL ORDER ::

1. The present application seeking to have suspension of sentence, stands allowed, subject to fulfillment of following conditions:
- (i) The convict herein shall furnish surety of **Rs.5,000/- (Rupees Five Thousand only)** and personal bond of the like amount;
 - (ii) The convict herein shall regularly remain present in the Court in attending the present proceeding in the

form of appeal, till its being fully concluded;

- (iii) The convict shall see to it that in any manner this proceeding may not suffer on account of his behaviour.

**Pronounced in the open Court on 7th
March, 2026, under my hand and seal.**

(Kanubhai R. Rabari)

Sessions Judge
Sabarkantha at Himmatnagar
UIC No. GJ00477

K_J_P

