



**Order Below Exh.4 in Criminal Appeal No.352 of 2025**

In the matter of

**Jakirhusain Gafurbhai Memon**

**... Appellant**

V/s

**Rugnathsinh Balavantsinh Bhati & The State**

**... Respondents**

01. 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.
02. 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 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, that this is a fit case where the sentencing must be suspended till the final conclusion of the present appeal, that the convict herein is ready to part with the

payment of fine or compensation to the tune of **20%**, that the appeal may obtain any conclusion, which may go in favour of either the respondent or appellant, that till final conclusion of appeal, the incarceration of the convict herein would not be just and proper, that the convict herein has had very good merits, which may impact the final conclusion and consequently, the convict herein may be extended benefit of his liberty till the conclusion of the present appeal by suspending the sentence.

03. Learned advocate for the respondent herein would urge before the Court that the accused herein has already been convicted, that his right to consider innocence till trial takes place has already been gone, that there is superb case on merits against the convict herein, that there is no lacuna on merits, which may ultimately lead in making available any sort of benefit to the convict herein and consequently, the present request of suspending sentence may not be acceded to.
04. Regard being had to entire record and proceedings, it seems that the learned trial Court has handed down conviction to the convict herein. After handing down conviction, the learned trial Court has suspended the sentence for approaching the present Court till date. The right, which is accrued in Sub-section 3 of Section 430 of Bhartiya Nagrik Suraksha Sanhita, 2023 is still in vogue. Furthering the same remedy, further this Court operates under Sub-section 1 of

Section 430 of Bhartiya Nagrik Surksha Sanhita. The final conclusion of the present appeal could be in composition or on merits, in both the scenario, the outcome whereof is not crystallized as it could be anything namely either conviction or acquittal. The appeal has been preferred recently only, which may take a long time as in near future, it may not get concluded. Consideration of factual aspects from any angle leads the present Court to conclude that at this moment, putting the convict for suffering of incarceration would be unjust and improper provided the convict may amenable to fulfill certain conditions, which are imposed upon him. 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, empowers the appellate Court to suspend either order of conviction itself or suspension of sentence, 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 by suspending the sentence.

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

**:: FINAL ORDER ::**

01. The present application seeking to have suspension of sentence, stands allowed on furnishing bond of Rs.10,000/- (Rupees Ten Thousand only) and surety of

like amount subject to fulfillment of the following conditions:

- (i) The convict herein shall deposit **20%** amount of cheque of **Rs.1,90,000/-** i.e. **Rs.38,000/- (Rupees Thirty Eight Thousand only)** as per the provisions of Section 148 (1) of the Negotiable Instruments Act within **60 days** from the date of pronouncement of this order.
- (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 own conduct impinging upon the letter and spirit of the present order.

**Pronounced in the open Court on 27<sup>th</sup> October, 2025, under my hand and seal.**

Date: 27/10/2025  
Place: Himmatnagar

**(Kanubhai R. Rabari)**  
**Sessions Judge**  
**Sabarkantha at Himmatnagar**  
**UIC No. GJ00477**

Pramod S. Goyal\*\*\*