

Order below Exh.4 in Criminal Appeal

No.12/2025

- [1] The present application has been filed on behalf of appellant seeking bail under Section 415(3) of the Bhartiya Nagarik Suraksha Sanhita (BNSS), during the pendency of present appeal as well as seeking suspension of sentence. A perusal of Section 415(3) of the Bhartiya Nagarik Suraksha Sanhita (BNSS), reveals that Section 415(3) of the Bhartiya Nagarik Suraksha Sanhita (BNSS), encompasses the application filed on behalf of appellant.
- [2] It has been averred in the above-mentioned application that the appellant has challenged the impugned judgment of the **Ld. Judicial Magistrate First Class, Bardoli, in Criminal Case No.146/2017, dated 22/10/2024**, for the offence punishable **u/s.138 of the Negotiable Instruments Act**, convicting him for **simple imprisonment for two year** and directed him to pay Rs.8,63,469/- is awarded to the complainant as compensation and in default, has awarded simple imprisonment of 30 days. Therefore, he has prayed to suspend the sentence passed by the **Ld. Judicial Magistrate First Class, Bardoli** and also to release him on bail
- [3] Learned Advocate for the appellant has submitted that the appellant has sufficient grounds to challenge the conviction and order of sentence and, therefore, he has preferred the present appeal against the said Order and has further submitted that he could not remain present before the learned trial court due to unavoidable circumstances, hence, present judgment came to be passed by the learned trial

court in his absence. Therefore conviction warrant came to be issued against him. In pursuance of which, appellant/accused surrendered before the concerned police station and since then he is in judicial custody. Therefore, he has requested the Court to grant him bail till the final disposal of the present appeal and also to suspend the sentence passed against him.

- [4] I have heard the Learned Advocate and also perused the documents filed alongwith the bail application and it transpires that the appellant/accused did not remain present before the learned trial court. Consequently, final judgment came to be passed on 22/10/2024 and appellant /accused was convicted. Thereafter the appellant surrendered in pursuance of conviction warrant. Therefore, present application came to be filed.
- [5] Considering the fact that the accused has been convicted and sentenced by the **Learned Judicial Magistrate First Class, Bardoli** for the offence committed **u/s. 138 of the Negotiable Instruments Act**, in consequence of conviction warrant issued against him. Therefore he was arrested and he is in judicial custody. Hence, it would be just and proper if the accused is released on bail till pendency of the appeal and the order of sentence is suspended during the pendency of present appeal. Hence, by taking recourse to provisions of section 389 (1) Cr.P.C. following order ensues:

ORDER

- (1) The present Application Exh.4 stands allowed subject to appellant/ originally accused submitting surety bond in sum of Rs.1,00,000/- with one surety of like amount subject to following conditions:

(A) The appellant(s)/ originally accused shall remain present before this Court regularly during pendency of present appeal.

(B) The appellant(s)/ originally accused shall submit his/her/their mobile phone number and residence address along with authenticated documentary proof.

(C) The appellant shall deposit **20% amount of the compensation** within a period of **60 days** in the **Trial Court.**

(D) Upon submission of surety bonds as aforesaid a Yadi be sent to concerned Jail Authorities to release the appellant-originally accused if he is not required in any other case.

Yadi to be sent to the concerned learned Trial Court for necessary information and compliance of this order.

Signed and pronounced in the open Court today on this **30th day of January, 2025** at Bardoli.

Date : 30/01/2025
Place: Bardoli.

(Preet Kamal Tirath Ram)
6th Additional District Judge,
Surat at Bardoli.
UID. No.GJ 01594