

MHAK010005262026



Reg. Cri. Appeal No. 63/2026
Dipak Panjabrao Devkate Vs. MGR Traders

Order below Exh. No. 05.

[Passed on 06th March, 2026]

The appellant/accused has moved this application U/s.430 of Bhartiya Nagarik Suraksha Sanhita, 2023 seeking suspension of sentence of imprisonment of (06) Six months and fine of Rs. 7,34,069/- imposed by judgment dtd. 17.01.2026 passed by Ld.ACJM (Court No.10), Akola.

02] Per contra, the respondent No.1/complainant has strongly opposed the application on the count that at the time of pronouncement of sentence, the appellant was absent, the Ld. Magistrate already has issued arrest warrant U/s. 418 (2) of Cr.PC. for execution of sentence and therefore, unless and until the appellant appears before the Ld. Magistrate, gets cancelled said warrant and seeks suspension sentence U/s.389 (3) of Cr.PC., the appellate court cannot entertain the appeal and his application seeking suspension of sentence.

03] The Ld. counsel for the respondent NO.1 in order buttress his submission has invited my attention to the ratio laid down by Hon'ble High Court of Gujrat in the case of "**Ishwarbhai Hirabhai Chunara Vs. state of Gujarat**" [Laws (GJH)-2017-2-263]. The Ld. counsel for respondent No.1 further also invited my

attention to the ratio laid down by Hon'ble High Court of Gujarat in the case of "**Vala Vanrajbhai Anakbhai Vs. State of Gujarat**" [Laws (GJH) – 2023 -2-1448]. Per contra, the Ld. counsel for the appellant to substantiate his submission that the appellate court has ample power to suspend the sentence has relied on the ratio laid down by the Hon'ble High Court of Bombay in the case of "**Mr. Anand Gokuldas Gaonkar Vs. State of Goa & Anr**", [2025 ALL MR (Cri) 126].

04] I have given due consideration to said rival submissions raised from both the sides. Therefore question before this Court is that whether the appellate court can entertain the application for suspension of sentence U/s.430 (1) of BNSS in the situation when the Trial Court has pronounced the judgment of conviction in absence of accused and when the accused has not moved any application to the Trial Court U/s. 430 (3) of BNSS and when arrest warrant for execution of sentence is already issued as per Section 458(2) of BNSS.

05] In order to find out answer to said question, I have minutely scrutinized the ratio laid down by the Hon'ble High Court of Gujarat in the case of "**Ishwarbahi Chunara**" as referred supra. In the said case, the questions before the Hon'ble High Court were as follows :-

- (I) Whether on account of absence of applicant/accused herein on the date of pronouncement of judgment, the judgment would become invalid in view of provisions of Section 353 of Cr.PC.
- (II) Whether the Trial Court was justified in issuing non-bailable warrant of arrest of the applicant/accused

herein having noticed that the accused was not present at the time of pronouncement of judgment and order of conviction and sentence.

- (III) Whether the non-bailable warrant issued by the Trial Court for the arrest of applicant/accused herein could be said to be for the purpose of execution of the sentence of imprisonment, as provided U/s. 418 of Cr.P.C.
- (IV) Whether the Trial Court was justified in rejecting the application filed U/s. 389(3) of the Code or declining to pass an appropriate order on such application for the purpose of suspension of substantive order of sentence to enable applicant/accused herein to file an appeal before the Sessions Court on the ground of his absence before the Court.
- (V) **Whether the Sessions Court was justified in refusing to register the appeal filed by the applicant/accused herein through his advocate challenging the judgment and order of conviction and sentence on the ground that the accused has not surrendered before the Trial Court and the Trial Court had not passed any order U/s. 389 (3) of the Code suspending the substantive order of the sentence passed by the Trial Court to enable the accused to prefer an appeal before the Appellate Court.**
- (VI) **Whether the Sessions Court was justified in insisting for personal presence of the applicant/accused herein for the purpose of registration of the appeal.**

06] Considering the case in our hand, it appears that only the question Nos. (V) and (VI) are relevant to present case. The Ld. counsel for respondent No.1 tried to submit that the Hon'ble High Court has observed that the Sessions Court rightly refused to register the appeal and therefore in such situation, the law laid down is that the accused initially must have to appear before the Trial Court and seek suspension of sentence U/s. 389 (3) of Cr.P.C. when the judgment of conviction is pronounced in his absence and then must present the appeal to the Sessions Court.

07] I have given due consideration to said submissions. I am

not much impressed by the same. The reason is that, in the said particular facts and circumstances of the said case, when the judgment is pronounced in absence of accused, when the Ld. Trial Court has issued the warrant and declined to pass any order on the application U/s.389(3) of Cr.P.C. and when the Sessions Court refused to register the appeal in absence of accused, the Hon'ble High Court has taken the said view. In said particular facts and circumstances of the said case, the Hon'ble High Court has accorded chance to the accused by converting non-bailable warrant into bailable warrant and to appear before the Ld. Trial Court for moving fresh application U/s. 389(3) of Cr.P.C. The Hon'ble High Court has not laid down the law of procedure by observing that in such situation the practice should be followed to initially appear before the Trial Court and to move the application U/s.389(3) of Cr.P.C. and till said compliance, the Sessions Court shall not entertain the appeal and shall not entertain the application for suspension of sentence U/s. 389(1) of Cr.P.C.

08] Moreover, in the case our hand, the respondent No.1 has not prayed for dismissal of the appeal or return of appeal on the ground that it is wrongly registered as the accused not appeared before Ld. Trial Court and not get suspended his sentence by moving application U/s. 389(3) of Cr.P.C. In the case our hand, the fact is that though the judgment is pronounced in absence of accused but he has directly moved appeal to the Sessions Court and the same is already registered. Not only that, but the notice is also issued to the respondent No.1 and he appeared before the Court. Therefore, it is sufficient to show that now the appeal is registered and admitted as

per Section 426 of BNSS. Therefore, in the case our hand, there is no any issue with regard to refusal to register or illegal or wrong registration of present appeal before the Court. Per contra, it appears that the said stage is already crossed and the appeal is admitted by the Court. Therefore, the question before this Court is not with regard to wrong or illegal registration of the appeal but it is with regard to fact whether the Appellate Court can suspend the sentence after admission of the appeal when the accused not moved any application to the Ld. Trial Court for suspension of sentence and not get canceled arrest warrant issued for execution of sentence U/s.458(2) of BNSS. Therefore, as the question before this court is absolutely different from the questions in the case of “**Ishwarbhai Chunara**” as referred supra, I am of the opinion that the said ratio laid down by the Hon’ble High Court of Gujarat cannot be applied to case in our hand.

09] Therefore, now to answer to said question before this court, it is necessary to see the ratio laid down by our Hon’ble Parent High Court in the case of “**Aanand Gaonkar**” as referred supra. In the said case, the accused was already undergone the sentence and the execution of sentence was started and he was behind the bar. In said situation, the Ld. Session Court had taken view that as the accused is already undergone the sentence and it is executed, it cannot be suspended. The Hon’ble High Court has turned down the said view and laid down that the provision of Section 389 of Cr.P.C. (Sec. 430 of BNSS) gives ample power to the Sessions Court to suspend the sentence even if, the appellant/accused is committed to prison by the court sentencing him. Such powers could be exercised in all the

appeals under said provision challenging the conviction. There is no bar or restriction on the power of the Court to suspend such a sentence and release the appellant on bail even if he is committed to prison for serving sentence awarded by Ld. Trial Court. Once appeal is admitted the Appellate Court is entitled to consider whether the sentence is required to be suspended and appellant could be released on bail.

10] Therefore, considering the said ration laid down by Hon'ble parent High Court, it is crystal clear that on admission of appeal the Appellate Court has ample power to suspend the sentence even if, it is executed and the accused is committed to prison. In the case our hand, only the warrant for execution of sentence is issued by Ld. Trial Court U/s. 458 (2) of BNSS. Therefore, it is very initial stage in which even the execution of sentence is not started or commenced. Therefore, when the Appellate Court has ample power to suspend the sentence even if the accused is committed to prison and the execution is started, then definitely the Appellate Court also has power to suspend the sentence as initial stage when only the warrant for execution of said sentence is issued by Trial Court. Therefore, in my considered opinion, the ratio laid down by our Hon'ble Parent High Court in the case of "**Anand Gaonkar**" as referred supra squarely applies to case in our hand and for the said reason, I have no hesitation to hold that this Court has ample power to suspend the sentence of the appellant and mere his absence before the Ld. Trial Court at the time of pronouncement of judgment and issuance of arrest warrant by Ld. Trial Court for execution of said sentence cannot restricts the powers of this Court U/s. 430(1)

of BNSS and therefore it is not necessary for the appellant firstly to appear before the Ld. Trial Court and to get cancelled warrant issued against him.

11] At this juncture, it is also pertinent to note here that if the provision of Section 430(1) and (3) of BNSS are minutely scrutinized then it appears that the powers to suspend sentence is vested only with Appellate Court as provided by Sec. 430(1) of BNSS. The Ld. Trial Court which is the first convicting Court only has power to release the accused on bail for such a period as will afford sufficient time to present appeal and obtain the orders of appellate Court U/s. 430 (1) of BNSS and if the Ld. Trial Court grants the bail, then it has deeming effect of suspension of sentence. In nutshell, only the Appellate Court is vested with the power to suspend the sentence and the Ld. Trial Court has power to release the accused on bail so he can seek suspension of sentence from the Appellate Court. Therefore, the said powers of Appellate Court of suspension of sentence U/s.430(1) of BNSS are absolute and cannot be limited or restricted by the powers of Ld. Trial Court to release the accused on the bail U/s. 430(3) of BNSS. Therefore, the failure of accused to avail the remedy of bail U/s.430(3) of BNSS cannot disentitled him from availing the remedy of suspension of sentence from the Appellate Court U/s.430 (1) of BNSS.

12] Therefore, in view of above discussion, I am of the considered opinion that when the present appeal is already admitted then the present Appellate Court has ample power to suspend the sentence by exercising the powers vested U/s. 430(1) of BNSS and

the non availment of remedy by the accused before Ld. Trial Court U/s.430(3) of BNSS and issuance of arrest warrant by Ld. Trial Court for execution of said sentence U/s.458(2) of BNSS cannot limit or restrict the said powers of Appellate Court in any way. Therefore, I found no force in the submissions raised on behalf of respondent No.1 that unless and until the appellant appears before the Ld. Trial Court and get cancelled arrest warrant issued for execution of sentence, the present application cannot be entertained.

13] Therefore, now it is necessary to decide, the entitlement of appellant for suspension of sentence. It cannot be ignored that when the accused has preferred the appeal against the judgment of conviction then generally he cannot be kept behind the bar till decision of the appeal. Moreover, as per the contention of appellant he has good case on merit. Therefore, considering the said submission, the appeal is admitted and it will take some time to decide finally. In the meantime, if the sentence is not suspended then the appeal will become infructuous. Therefore, in my considered opinion the appellant is entitled for suspension of sentence as prayed. At the same time, while doing so, it is also just and necessary to direct the appellant to deposit 20% of fine amount imposed by Ld. Trial Court. Hence the order:-

- ORDER -

- 01]** The application at Exh. 05 is allowed.
- 02]** The sentence of imprisonment imposed by Ld. ACJM (Court no.10) Akola in S.C.C. No.4644/2024 is hereby suspended vide Section 430(1) of BNSS till decision of appeal.

..9..

- 03]** The appellant to furnish bail in the nature of P. R. Bond of Rs. 25,000/- and solvent surety of like amount.
- 04]** The appellant to deposit 20% of the amount of fine (i.e. 20% of amount of Rs.7,34,069/-) imposed by Ld. ACJM (Court No. 10) Akola within 60 days from the date of this order.

Date : 06.03.2026

(Rahul A. Shinde)
D.J.-3 and ASJ, Akola

Certificate.

I hereby certify that the contents of this PDF File are same word for word as per original order.

Name of Steno	:-	S. D. Tekade (Steno Gr.-2)
Court's name	:-	District Judge-3, Akola.
Date of dictation	:-	06.03.2026
Signed by Presiding Officer on	:-	07.03.2026
Uploaded on	:-	10.03.2026