

GJBK010023902022

**IN THE DISTRICT & SESSIONS COURT, BANASKANTHA
AT PALANPUR**

Order below Exh.5

IN

Criminal Appeal No.123/2022

In the matter of

Kamleshkumar Jayantilal Parmar..Appellant

V/s.

Valubhai Parthibhai Bhutadiya ..Respondent

1. Present appellant- original accused is convicted by learned Chief Judicial Magistrate, Palanpur in Criminal Case No.1437/2019 under section 138 of Negotiable Instruments Act on 09.09.2022 for simple imprisonment of one year and ordered to pay Rs.3,00,000/- to the complainant towards compensation within one month, in case of default, he has to undergo further simple imprisonment of six months.
2. Being aggrieved and dissatisfied, present appellant has assailed the order of conviction and sentence recorded by the trial Court by

way of the present criminal appeal within limitation, under section 374 of Cr.P.C. interlia, he has submitted an application below Exh.5 under section 389 of Cr.P.C., during the pendency of the present appeal to enlarge accused on bail and to suspend the implementation and execution of impugned order.

3. L.A. Mr. D. M. Songara appeared for the appellant. I have heard L.A. Mr. Songara. He has submitted that learned trial court has not properly appreciated the evidence, though reply of notice was also given however merely based on the presumption, convicted the accused, even witnesses are also not examined and reason put forward for lending money is also false, complainant is failed to prove source of income and legally enforceable debt, witness examined below Exh.4 also does not support the case of the complainant, cheque was stolen though learned trial court has ignored the evidence produced on record. These all contentions deserve consideration and Record and Proceedings of trial court is required to be examined.

4. As present offence is bailable and compoundable one. During the entire trial, accused is remained on the bail and when offence, which is bailable one and he is

remained through out on the bail, therefore, considering the provision of law under section 148(1) of Negotiable Instruments Act and keeping in mind the aforesaid fact, I am inclined to allow the present application and suspend the order of sentence passed by learned trial Court during the pendency of appeal, I pass the following order.

O R D E R

- (1) This application is hereby allowed.
- (2) Order of sentence passed by learned Chief Judicial Magistrate, Palanpur dated 09.09.2022 in Criminal Case No. 1437/2019, is suspended during the pendency of appeal, subject to deposit **Rs.60,000/- (Rupees Sixty Thousand) within seven days.**
- (3) **The accused namely Kamleshkumar Jayantilal Parmar** is hereby enlarged on bail during pendency of this appeal on submitting **personal bond of Rs.15,000/- (Rupees Fifteen Thousand only) with one surety of like amount** before this Court, subject to the following conditions:
 - (i) Appellant-accused shall invariably remain present before this Court on each hearing date;
 - (ii) Appellant-accused shall cooperate in disposal of appeal and **shall not prolong the proceedings;**

- (iii) Appellant-accused shall not leave territory of Gujarat State without prior permission of Court;
- (iv) Appellant-accused shall submit his residential address and permanent mobile number, which he shall not change without prior permission of this Court, and if in case of necessity address/mobile number being changed, appellant-accused shall immediately inform new address/new mobile number detail to this Court.
- (v) Accused shall have to provide his UID Adhar details as residential proof.
- (vi) Breach of any of the above conditions shall lead to cancellation of the bail.
- (4) Copy of this order be sent to the learned trial Court.
- (5) R & P of trial court be called for.

Pronounced in the Open Court today this 7th day of **October, 2022**.

Place: PALANPUR.

Date: **07/10/2022**

VISHAL

(Hasmukh D. Suthar)
Sessions Judge,
B.K. DISTRICT, PALANPUR
Unique ID : GJ00911