

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL REVISION APPLICATION (AGAINST CONVICTION -
NEGOTIABLE INSTRUMENT ACT) NO. 177 of 2024**

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PATEL CHINTANBHAI PUNAMCHANDBHAI

Versus

STATE OF GUJARAT

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Appearance:

MR.ALOK M THAKKAR(6510) for the Applicant(s) No. 1

SUREN B PATEL(8420) for the Applicant(s) No. 1

for the Respondent(s) No. 2

MS JIRGA JHAVERI, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MS. JUSTICE S.V. PINTO**Date : 02/02/2024****ORAL ORDER**

1. Rule. Learned APP waives service of notice of rule for the respondent – State.
2. By way of present application under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973, the applicant original accused is seeking suspension of execution of judgment and order of sentence dated 23/01/2020 passed by the learned Additional Chief Judicial Magistrate, Patan in Criminal Case No.427 of 2016 as well as judgment and order dated 29/11/2023 passed by the Sessions Judge, Patan in Criminal Appeal No.16 of 2020 and release on regular bail during pendency of the present revision application.

3. The applicant is the original accused of Criminal Case No.427 of 2016 filed by the original complainant under Section 138 of the Negotiable Instrument Act and at the end of trial, the applicant original accused has been convicted and sentenced to simple imprisonment for a period of nine months for the offence under Section 138 of the Negotiable Instruments Act vide judgment and order dated 23/01/2020 passed by the learned Additional Chief Judicial Magistrate, Patan in Criminal Case No.427 of 2016 and has been ordered to pay to the complainant the amount of cheque within a period of sixty days from the date of order.
- 3.1. Being aggrieved by the same, the applicant original accused filed Criminal Appeal No.16 of 2020 and vide judgment and order dated 29/11/2023, the learned Sessions Court, Patan was pleased to reject the said application of the applicant original accused and confirm the order passed by the learned Magistrate Court, Patan.
- 3.2. Being aggrieved by the aforesaid orders, the present application is filed by the applicant with a prayer to quash the orders and acquit the applicant and has further prayed for stay of the execution of the impugned orders of sentence and release on regular bail during the pendency of present Criminal Revision Application.
4. Learned advocate for the applicant submits that the

applicant has already deposited 20% of the amount of cheque before the learned Sessions Court, Patan and the applicant is ready to settle the matter with the original complainant. Learned advocate for the applicant further submits that the applicant is ready and willing to deposit another 30% of the cheque amount but as the applicant is recently undergone knee surgery, the applicant requires some time to deposit the same. Learned advocate for the applicant also submits that the present revision application is not likely to be heard in near future and hearing of the same would take some long time and hence, no purpose would be served by keeping the applicant in jail for indefinite period with hardened criminal. The applicant has a good case on merits and hence, execution of the order of the sentence may be suspended and the applicant may be released on regular bail on appropriate terms and conditions.

- 4.1. Learned advocate for the applicant submits that the applicant is ready and willing to deposit another 30% of the amount of the cheque before the concerned court below within eight weeks from the date of his release and also ready to abide by all the conditions that may be imposed.
5. Learned APP appearing for the respondent-State has objected to the present application and has submitted that the order of sentence is just and proper and no

interference is required in the order passed by the learned Sessions Court confirming the judgment and order passed by the learned Magistrate Court and hence, present application may be rejected.

6. Heard learned advocates appearing for the respective parties and perused the relevant documents produced on record.
7. At this juncture, it would also be fit to refer to the judgment of the Apex Court in the case **Bhagwan Rama Shinde Gosai Vs. State of Gujarat** reported in **(1999) 4 SCC 421**, wherein, it has been held that when the appellate court finds that due to practical reasons such appeal cannot be disposed of expeditiously the appellate court must bestow special concern in the matters of suspending the sentence. And without entering into the merits of the case, in view of the fact that the applicant is ready and willing to deposit another 30% of the amount of the cheque before the concerned court below within a period of eight weeks from the date of his release, this court is of the opinion that the application requires consideration.
8. Accordingly, prayer in terms of para-7(C) is granted. The execution of order of sentence dated 23/01/2020 passed by the learned Additional Chief Judicial Magistrate, Patan in Criminal Case No.427 of 2016 as

well as order dated 29/11/2023 passed by the Sessions Judge, Patan in Criminal Appeal No.16 of 2020 is suspended during pendency of the present Criminal Revision Application and the applicant is ordered to be released on regular bail on furnishing personal bond of **Rs.25,000/-** (Rupees Twenty Five Thousand Only) with surety of the like amount to the satisfaction of the trial court and on the following conditions:

- (i) shall deposit 50% of the amount of the cheque i.e. Rs.4,09,500/- within a period of eight weeks from the date of release before the concerned court below and any amount deposited by the applicant before the learned Sessions Court, Patan shall be given a set off in this amount;
- (ii) shall file an undertaking that he will deposit the amount as ordered by this Court before the concerned court below within a period of one week from the date of his release;
- (iii) shall not take undue advantage of liberty or misuse liberty;
- (iv) shall not leave India without prior permission of this Court;
- (v) shall furnish the present address of his residence to the Court concerned at the time of execution of the bond and shall not change the residence without the prior permission of this Court;
- (vi) shall maintain law and order;

(vii) shall not indulge in any activity leading to breach of public peace and tranquility.

9. Direct service is permitted.

(S. V. PINTO,J)

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