

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL (AGAINST CONVICTION) NO. 369 of 2026
With
CRIMINAL MISC.APPLICATION (FOR SUSPENSION OF SENTENCE) NO.
1 of 2026
In R/CRIMINAL APPEAL NO. 369 of 2026

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AMIT DINESHBHAI PADHIYAR
Versus
STATE OF GUJARAT & ANR.

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Appearance:
MR NIKHILESH J SHAH(3007) for the Appellant(s) No. 1
NOTICE SERVED for the Opponent(s)/Respondent(s) No. 2
MR. ADITYA JADEJA, APP for the Opponent(s)/Respondent(s) No. 1

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CORAM:HONOURABLE MS. JUSTICE S.V. PINTO

Date : 05/05/2026

ORAL ORDER

ORDER IN CRIMINAL APPEAL:

Notice is served to the respondent no. 2 but the respondent no. 2 has not appeared either in-person or through an advocate.

Admit. Learned APP waives service of admission for and on behalf of the respondent State.

ORDER IN CRIMINAL MISC. APPLICATION:

Notice is served to the respondent no. 2 but the respondent no. 2 has not appeared either in-person or through an advocate.

1. **RULE.** Learned Additional Public Prosecutor appears

and waives service of notice of rule on behalf of the respondent-State.

2. By way of the present application under Section 430 of the Bharatiya Nagarik Surakhsha Sanhita, 2023, the applicant - accused is seeking suspension of sentence and release on regular bail during pendency of the present appeal against the judgment and order of conviction passed by the learned Special Judge (POCSO) & Additional Sessions Judge, Jamnagar in Special POCSO Case No. 42/2018 dated 05.05.2025, whereby, the present applicant - accused was sentenced to the following term:

Offence u/s	Sentence	In default of payment
376 of IPC and Section 4 and 6 of POCSO Act	Rigorous imprisonment for 10 years and fine of Rs. 10,000/-	Simple imprisonment for 1 year
363 of IPC	Simple imprisonment for 3 years and fine of Rs. 2000/-	Simple imprisonment for 6 months
366 of IPC	Simple imprisonment for 5 years and fine of Rs. 2000/-	Simple imprisonment for 6 months

All the sentences were ordered to run concurrently.

3. Heard learned advocate Mr. Nikhilesh Shah for the applicant and learned APP Mr. Aditya Jadeja for the

respondent State.

4. Learned Advocate Mr. Nikhilesh Shah for the applicant submits that if the entire evidence is perused it is on record that the applicant and victim were in a relationship for some time and it has emerged that the victim left her parental home on her own free will and joined the company of the applicant and they had resided together for three days but because of their different religious beliefs, the parents of the victim did not admit to their relationship and a false case has been filed against the applicant. Learned advocate submits that the prosecution has not been able to prove the age of the victim beyond reasonable doubts and even though the school leaving certificate of the victim is on record, the date of birth of the victim is not proved beyond reasonable doubts. Learned advocate further submits that the present appeal 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 criminals. The applicant has a good case on merits and hence, the

application may be allowed and the applicant be enlarged on bail pending hearing and final disposal of the captioned Criminal Appeal.

5. Learned APP for the respondent – State has strongly objected to the submissions made by the learned advocate for the applicant and has submitted that the learned Trial Court has rightly convicted the present applicant as he has been involved in a very serious offence.

6. On perusal of the impugned judgment and order of conviction as also the paper book produced on record by the learned advocate for the applicant it appears that the victim and the applicant were of different religious beliefs and they were in a relationship and the victim had left the company of her parents on her own free will and joined the applicant and they had resided together for three days. The victim has admitted to the relationship and as far as the age is concerned, the age of the victim has not been proved beyond reasonable doubts and the arguments of the learned advocate for the applicant deserve consideration.

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 appellants have been sentenced for a fixed period and 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, as the appeal is filed within time, this Court is of the opinion that the application requires consideration and accordingly, is allowed.

8. The order of execution of sentence passed by the learned Special Judge (POCSO) & Additional Sessions Judge, Jamnagar in Special POCSO Case No. 42/2018 dated 05.05.2025 is suspended during pendency of the Criminal Appeal and the applicant is ordered to be released on 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 that the applicant;

- (i) shall not take undue advantage of liberty or misuse liberty;
- (ii) shall furnish the present address of his residence to the Court concerned at the time of execution of the bond;
- (iii) shall maintain law and order;
- (iv) shall not indulge in any activity leading to breach of public peace and tranquility;
- (v) shall deposit the amount of fine, if not deposited, before his release;
- (vi) the applicant shall be released if not required in any other case.

9. In view of the above, the present application stands disposed of. Rule is made absolute to the aforesaid extent. Direct service is permitted.

VASIM S. SAIYED

(S. V. PINTO,J)