

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL (AGAINST CONVICTION) NO. 279 of 2026
With
CRIMINAL MISC.APPLICATION (FOR SUSPENSION OF SENTENCE)
NO. 1 of 2026
In R/CRIMINAL APPEAL NO. 279 of 2026

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SANJAYBHAI MOTIBHAI VAGHARI

Versus

STATE OF GUJARAT & ANR.

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Appearance:

KRUTARTH K DESAI(9662) for the Appellant(s) No. 1
 DS AFFIDAVIT NOT FILED (FOR FRESH NOTICE)(4501) for the
 Opponent(s)/Respondent(s) No. 2
 MS CM SHAH, APP for the Opponent(s)/Respondent(s) No. 1

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CORAM:HONOURABLE MS. JUSTICE S.V. PINTO

Date : 06/05/2026

ORAL ORDER**ORDER IN CRIMINAL APPEAL :**

1. Heard learned advocate Mr. Krutarth K. Desai for the applicant, who appeared through Online Mode. The board shows that DS affidavit has not been filed by the learned advocate for the applicant. However, learned advocate submitted that he has filed DS affidavit in the Registry. On inquiry from the Registry, papers have been placed before this Court, wherein, DS affidavit is filed on 05.05.2026 and the papers shows that the notice has been served on 05.05.2026 to the respondent no. 2 – original complainant.

2. **Admit.** Learned APP Ms.C.M.Shah waives service of notice of admission for the respondent no.1 – State. The notice

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

ORDER IN CRIMINAL MISC. APPLICATION :

1. Rule. Learned APP waives service of notice of rule for the respondent – State.

2. By way of present application under Section 430 of the BNSS, 2023, the applicants – who are the complainant and the witnesses are 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 3rd Additional Sessions Judge & Special POCSO Judge, Bharuch in Special POCSO Case No. 92 of 2021 on 20.01.2026, whereby, the applicant was sentenced to rigorous imprisonment of 04 years and fine of Rs.20,000/-, and in default, simple imprisonment of 09 months for the offence punishable under Section 8 of the POCSO Act, rigorous imprisonment of 02 years and fine of Rs.5,000/-, and in default, simple imprisonment of 03 months for the offence punishable under Sections 11(4) and 12 of the POCSO Act, rigorous imprisonment of 03 years and fine of Rs.10,000/-, and in default, simple imprisonment of 06 months for the offence punishable under Section 506(2) of the IPC and rigorous imprisonment of 02 years and fine of Rs.5,000/-, and in default, simple imprisonment of 03 months for the offence punishable under Section 3(1)(w)(i) of the Atrocity Act. The learned Trial Court was pleased to further order that all the

sentences shall run concurrently.

3. Learned advocate for the applicants submits that the sentence is for a short period of four years and the applicant has already undergone 01 year and 01 months and 03 days . The present appeal is not likely to be heard in near future and hearing of the same would take a 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 order of the sentence may be suspended and the applicant may be released on regular bail on appropriate terms and condition.

4. Learned APP for the State has objected to the present application to grant suspension of sentence and has submitted that the order of sentence is just and proper; however, considering the quantum of sentence, appropriate order may be passed.

5. 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 sentence is for a fixed period, the appellate Court finds that due to practical reasons such appeal cannot be disposed of expeditiously the appellate Court must be bestow special concern in the matters of suspending the sentence and this court is of the opinion that the arguments of the learned advocate for the applicants require consideration and accordingly, is allowed. The execution of the

order of sentence passed by the learned 3rd Additional Sessions Judge & Special POCSO Judge, Bharuch in Special POCSO Case No. 92 of 2021 on 20.01.2026 is suspended during pendency of the appeal and the applicants are ordered to be released on bail on furnishing personal bond of Rs.10,000/- (Rupees Five Thousand Only) each with surety of the like amount to the satisfaction of the trial court and on the following conditions:

- (i) shall not take undue advantage of liberty or misuse liberty;
- (ii) shall not leave India without prior permission of this Court;
- (iii) shall furnish the present address of their 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;
- (iv) shall maintain law and order;
- (v) shall not indulge in any activity leading to breach of public peace and tranquility.
- (vi) shall deposit the amount of fine, if not deposited, before his release.
- (vii) shall be released, if he is not required in any other case.

6. Rule is made absolute. Direct service is permitted.

F.S. KAZI

(S. V. PINTO,J)