

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL (AGAINST CONVICTION) NO. 567 of 2025****With****CRIMINAL MISC.APPLICATION (FOR SUSPENSION OF SENTENCE) NO.
1 of 2025****In R/CRIMINAL APPEAL NO. 567 of 2025**

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BALUBHAI LALLUBHAI SURTI

Versus

STATE OF GUJARAT

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Appearance:

MR KUNAL S SHAH(5282) for the Appellant(s) No. 1

MR.TIRTHRAJ PANDYA, APP for the Opponent(s)/Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE VIMAL K. VYAS**

Date : 04/03/2025

ORAL ORDER**Order in Criminal Appeal:**

1. **Admit.** Learned APP Mr.Tirthraj Pandya waives service of notice of admission for and on behalf of the respondent-State.
2. The registry shall call for the records and proceedings along with the entire set of the paper book from the concerned trial court.

Order in Criminal Misc. Application:

1. **RULE.** Learned APP Mr.Tirthraj Pandya waives service of notice of rule for and on behalf of the respondent-State.
2. By way of filing the present application under the provisions of Section 430 of the of the Bharatiya Nagarik Suraksha Sanhita, 2023, the applicant-convict (i.e. the original accused) seeks suspension of sentence imposed upon him *vide* judgment and order of conviction and sentence dated 21.02.2025 passed by the learned 12th Additional Sessions Judge, Surat, in Special (A.C.B) Case No.12 of 2010.

3. By the aforesaid judgment and order of conviction and sentence, the applicant-accused came to be held guilty and convicted for the commission of offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, (for short, "the P.C. Act"), and consequently, the applicant-accused has been ordered to undergo sentence as under :

Section of the PC Act	Imprisonment	Fine (Rs.)	In default of payment of fine
7	Simple imprisonment for three years	5,000	Simple Imprisonment for three months
13(1)(d) r/w Sec. 13(2)	Simple imprisonment for three years	5,000	Simple Imprisonment for three months

4. The appeal preferred by the applicant came to be admitted by this Court today itself.

5. At the outset, learned advocate Mr.Kunal Shah appearing for the present applicant-accused has submitted that at the end of the trial, the applicant has been convicted for the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the P.C. Act and sentenced him for a fixed term of simple imprisonment for three years with fine. Learned advocate Mr.Shah has further submitted that the applicant was on bail during the trial and the amount of fine has already been paid before the trial court. It is submitted that the trial Court has suspended the sentence for a period of 30 days vide order dated 21.02.2025 passed below application Exh.70.

6. Learned advocate Mr.Kunal Shah while placing reliance on the judgment of the Supreme Court in the case of **Bhagwan Rama Shinde Gosai Vs. State of Gujarat**, reported in **1999 (4) SCC**

421, has urged that since the appeal came to be admitted by this Court today itself and there are very remote chances of the hearing of the appeal in the near future, the present application may be allowed and the applicant-convict may be released on bail by suspending his sentence, during the pendency and hearing of the Criminal Appeal.

7. Vehemently opposing the application filed by the present applicant-convict, learned APP Mr.Tirthraj Pandya appearing for the State has submitted that the application is not required to be entertained since the applicant-accused has been convicted for a serious offence under the provisions of the Prevention of Corruption Act. He has submitted that the trial court, after precisely appreciating the evidence; both, ocular as well as documentary, has convicted the present applicant-accused for the alleged offence. Thus, he has urged that the present application may not be entertained and the same may be rejected.

8. Having heard the learned advocates appearing for the respective parties and having perused the evidence as pointed out by them, it appears that the criminal appeal against the sentence preferred by the applicant has been admitted by this Court today itself. It appears from the record that the present incident had occurred in the year 2010 and the trial Court, after appreciating the evidence; both, ocular as well as documentary, found the applicant-accused guilty of the alleged offence and thought it fit to impose a fixed term of sentence of simple imprisonment for three years. Record reveals that the applicant was on bail during the trial and the amount of fine has already been paid before the trial Court. Further, it appears from the record that the trial Court has suspended the sentence for a period of 30 days vide order dated 21.02.2025

passed below application Exh.70. Moreover, the criminal appeal came to be admitted by this Court today itself and there are very remote chances of the hearing of the appeal in the near future.

9. At this juncture, it would be apt to refer to the judgment of the Supreme Court in the case of **Bhagwan Rama Shinde Gosai vs. State of Gujarat (supra)**, wherein, the Supreme Court has held as under :-

“3. When a convicted person is sentenced to fixed period of sentence and when he files appeal under any statutory right, suspension of sentence can be considered by the appellate court liberally unless there are exceptional circumstances. Of course if there is any statutory restriction against suspension of sentence it is a different matter. Similarly, when the sentence is life imprisonment the consideration for suspension of sentence could be of a different approach. But if for any reason the sentence of limited duration cannot be suspended every endeavour should be made to dispose of the appeal on merits more so when motion for expeditious hearing the appeal is made in such cases. Otherwise the very valuable right of appeal would be an exercise in futility by efflux of time. When the appellate court finds that due to practical reasons such appeals cannot be disposed of expeditiously the appellate court must bestow special concern in the matter suspending the sentence, so as to make the appeal right meaningful and effective. Of course appellate courts can impose similar conditions when bail is granted.”

10. The Supreme Court, in the case of **Atul @ Ashutosh vs. State of Madhya Pradesh [Criminal Appeal No. 579 of 2024 arising out of SLP (Crl.) No. 1049/2024 decided on 02.02.2024]** has held as under : -

“5. Before parting with order, we must note here that notwithstanding several decisions of this Court holding that when there is a fixed term sentence and especially when the appeal is not likely to be heard before completing entire period of sentence, normally suspension of sentence and bail should be granted. We find that in several

deserving cases, bail is being denied. Such cases should never be required to be brought before this Court."

11. The Supreme Court, in the case of ***Vishnubhai Ganpatbhai Patel & Anr. vs. State of Gujarat [Criminal Appeal No.3415 of 2023 arising out of S.L.P. (Criminal) No(s). 12853/2023 decided on 03.11.2023]*** has held that :-

"In our view, the High Court ought to have favourably considered the prayer for grant of suspension of sentence when there were no antecedents and more than 40 per cent of the sentence has been undergone.

We may note here something about the approach of the High Court while dealing with the application for suspension of sentence. Before the High Court, surprisingly, a submission was made on behalf of the State that sentence undergone only post conviction should be considered and therefore, a submission was made that the appellants had undergone only 05 months and 27 days. The High Court has accepted the said submission by recording that the appellants have not even completed 01 year of sentence. Apart from the fact that the said approach is incorrect, we may note here that there is no hard and fast rule which requires an accused to undergo sentence for a particular period before his prayer for suspension of sentence is considered."

12. Therefore, keeping in mind the aforesaid observations of the Supreme Court and the fact that there are very remote chances of the hearing of the appeal in the near future, without entering into the merits of the case, this Court is of the considered opinion that the present applicant-convict has carved out a case for suspension of sentence. Hence, this Court is inclined to grant the present application and to suspend the sentence imposed upon the applicant-convict, during the pendency and final hearing of the appeal.

13. The application is allowed. The sentence imposed *vide*

judgment and order of conviction and sentence dated 21.02.2025 passed by the learned 12th Additional Sessions Judge, Surat, in Special (A.C.B) Case No.12 of 2010, is hereby suspended pending hearing and final disposal of the Criminal Appeal.

14. The applicant-convict shall be released on bail by executing a fresh bond of Rs.15,000=00 (Rupees Fifteen Thousand) with one surety of the like amount to the satisfaction of the trial court, on the following conditions, that :

- (a) he shall not take undue advantage of the liberty or misuse the liberty;
- (b) he shall not leave India without the prior permission of this Court;
- (c) he 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;
- (d) he shall proceed with the Criminal Appeal as and when it may be listed.

15. Rule made absolute to the aforesaid extent. Direct service is permitted.

prk

(VIMAL K. VYAS, J)