

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL (AGAINST CONVICTION) NO. 614 of 2026
With
CRIMINAL MISC.APPLICATION (FOR SUSPENSION OF SENTENCE) NO.
1 of 2026
In R/CRIMINAL APPEAL NO. 614 of 2026

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PARTH GANESH MANDALIYA
Versus
STATE OF GUJARAT

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Appearance:
RONITH JOY(9560) for the Appellant(s) No. 1
MS. C.M SHAH, APP for the Opponent(s)/Respondent(s) No. 1

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CORAM:HONOURABLE MS. JUSTICE S.V. PINTO

Date : 27/03/2026

ORAL ORDER

ORDER IN CRIMINAL APPEAL:

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

ORDER IN CRIMINAL MISC. APPLICATION:

1. Rule. Learned APP Ms. C.M. Shah waives service of notice of rule for the respondent – State.
2. By way of present application under Section 430 of the BNSS the applicant - accused is seeking suspension of sentence and release on regular bail during pendency of the present appeal application against the judgment and order of conviction in Special NDPS Case No. 17/2020 passed by

the learned Special Court Judge (NDPS) & 10th Additional Sessions Judge, Surat on 04.12.2025 whereby, the learned Judge has sentenced the applicant – original accused to undergo to rigorous imprisonment of ten years and fine of Rs. 1,00,000/-, and in default, simple imprisonment of one year for the offence punishable under Sections 8(c) read with 20(b)(ii)(c) of the Narcotics Drugs and Psychotropic Substances Act (hereinafter referred to as ‘the NDPS Act).

3. Heard learned advocate Mr. Ronith Joy for the applicant – accused and learned APP Ms. C.M. Shah for the respondent – State.

4. Learned advocate Mr. Ronith Joy for the applicant – accused submits that the conviction and sentence is essentially under Sections 8(c) read with Section 20(b)(ii)(c) of the NDPS Act. Learned advocate submits that the applicant was arrested on 16.01.2020 and out of ten years sentence, the applicant has already completed more than half of the awarded sentence i.e. substantial period of 6 years, 1 month and 15 days in jail. In support of his

submission, learned advocate for the applicant has placed reliance upon the decision of the Hon'ble Apex Court in cases of **Mossa Koya Vs. State (NCT of Delhi)** reported in **2021 SCC Online 3110**, **Saudan Singh Vs. State of Chhatisgarh** passed in **Special Leave to Appeal (Crl) No. 4633 of 2021** and **Bhagwan Rama Shinde Gosai Vs. State of Gujarat** reported in **(1999) 4 SCC 421**. Learned advocate further submits that 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 execution of order of the sentence may be suspended and the applicant may be released on regular bail on appropriate terms and condition.

5. Learned APP for the respondent – State has strongly objected to the submissions made by the learned advocate for the applicant and has submitted the jail remarks which shows that the applicant has undergone 6 years, 1 month and 15 days in jail and that learned Trial Court has rightly

convicted the present applicant as he has been involved in a very serious offence and has requested this Court to dismiss the present application.

6. The Apex Court, in the case of **Mossa Koya Vs. State (NCT of Delhi)** reported in **2021 SCC Online 3110**, has observed in Paragraph Nos. 12 and 13, as under:

“12. We appreciate the submission of the Additional Solicitor General that offences under the NDPS Act are of a serious nature and the case is at the post conviction stage. Yet the Court cannot be unmindful of the fact that the appellant has undergone 8 years out of the total sentence of 10 years. The appeal is unlikely to be heard early. In all probability, the entire sentence would have been undergone by the time the appeal is heard. The decisions on the basis of which the High Court of Delhi has declined to grant suspension of sentence, are, at the highest, a broad guideline and cannot be placed on the same pedestal as a statutory interdict. With the pendency of the work in the High Court, it may not be feasible to expedite the disposal of the appeal within a short period.

13. In the circumstances, particularly, since the appellant has undergone 8 years out of ten years of the total sentence which has been imposed on him, we are of the view that a fit and proper case has been made out

for the suspension of the sentence under Section 389 CrPC.”

7. Considering the observations made by the Apex Court in the case of *Mossa Koya* (Supra) and on perusal of the impugned judgment and order of conviction and also the paper book produced on record by the learned advocate for the applicant, without entering into the merits of the case, this Court is of the opinion that since the applicant – accused has already remained in jail for more than 6 years, 1 month and 15 days and hearing of the appeal may take further time and in view of direction given by the Apex Court in the case of **Mossa Koya Vs. State (NCT of Delhi)** and particularly, in the case of **Saudan Singh Vs. State of Uttar Pradesh** reported in **2021 SCC Online SC 3259**, wherein, it has been held that the convict is in custody in cases other than life sentence cases and in those cases again the broad parameter of 50% of the actual sentence undergone can be the basis for grant of bail. 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. So as to make the appeal right meaningful and effective. In light of the aforesaid facts that as the appellant has already undergone sufficient time behind the bars and hearing of the appeal is likely to take sometime further, the judicial custody of the appellant would be the violation of Article 21 of the Constitution of India.

8. Accordingly, present application is allowed. The order of execution of sentence in Special NDPS Case No. 17/2020 passed by the learned Special Court Judge (NDPS) & 10th Additional Sessions Judge, Surat on 04.12.2025 is suspended during pendency of the 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 learned 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 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;
- (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 before his release;
- (vii) 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)