

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION (DIRECTION) NO. 3787 of 2026

=====

YASH JOSHI PROPRIETOR OF GIRIFN EVOTEK
Versus
STATE OF GUJARAT & ANR.

=====

Appearance:

MR SALIL M THAKORE(5821) for the Applicant(s) No. 1
MR SAGAR D VAGHASIYA(13308) for the Respondent(s) No. 2
MR. ROHAN RAWAL, APP for the Respondent(s) No. 1

=====

CORAM:HONOURABLE MR. JUSTICE M. R. MENGDEY

Date : 19/08/2026

ORDER

1. By filing the present petition under Article 226 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 for the following prayers:

“(A) Your Lordships may be pleased to admit and allow this application;

(B) Your Lordship may be pleased to allow this Special Criminal Application by directing the Learned Appellate Court to accept the appeal to be filed against the judgment passed by the Learned 11th Chief Judicial Magistrate Court at Surat being Cri. Case No. 21939 of 2020 on 13/1/2026 and if the delay is there, it may be decided on the same day along with the application of the suspension of sentence.

(C) Your Lordship may be pleased to direct the authority not to take any corrosive step till the final disposal of this application.”

2. The facts of the matter are such that; the petitioner herein came to be convicted for offence punishable under Section 138 of the Negotiable Instruments Act (“NI Act” for short) vide judgment and order dated 13.01.2026 passed by the learned 11th Additional Chief Judicial Magistrate, Surat in Criminal Case No. 21939 of 2020. After the order of conviction was pronounced by the learned trial court, the petitioner herein, submitted an application on 13.01.2026 itself under Section 389(3) of the Code of Criminal Procedure, requesting to stay the execution of the order of conviction, to enable the petitioner to prefer an appeal. The learned trial court suspended the order of conviction for a period of 30 days. The certified copy of the said order was made available on 17.01.2026. Thereafter, the petitioner presented an appeal against the order of conviction to the learned appellate court on 13.02.2026. It is the case of the petitioner that the learned appellate court refused to accept the appeal unless the petitioner surrenders to the custody of the learned trial court. Being aggrieved by the same, the petitioner is before this court by filing the present petition.

3. Heard Mr. Salil M. Thakore appearing for the petitioner and learned APP Mr. Rohan Raval appearing on behalf of the Respondent – State.

4. Rule. Learned APP waives service of Rule on behalf of the Respondent – State.

5. Learned Advocate Mr. Thakore submitted that, after the order of conviction was pronounced by the learned trial court, the petitioner had submitted an application for suspension of sentence before the learned

trial court itself, and the learned trial court had ordered the sentence to be suspended for a period of 30 days, to enable the petitioner to prefer an appeal against the order of conviction. Though the order was passed by the learned trial court on 13.01.2026, the certified copy of the said order was made ready on 17.01.2026, and therefore, since, the certified copy of the said order was also required to be produced before the learned appellate court while preferring an appeal, the period of 30 days, as ordered by the learned trial court, would start running from 17.01.2026. The petitioner had approached the learned Sessions Court for filing an appeal on 13.02.2026, that was well within the period of 30 days from 17.01.2026. Therefore, the appellate court ought not to have refused to accept the appeal of the petitioner unless he surrenders to the custody of the learned trial court. He therefore submitted to allow the present petition and direct the appellate court to accept the appeal of the petitioner without insisting for his presence in the custody.

6. Learned Advocate Mr. Sagar D. Vaghasiya appearing for Respondent No.2 has opposed the petition contending that the petitioner throughout has acted as per his own convenience in utter disregard to the period of limitation, and therefore, the learned appellate court has rightly refused to accept his appeal without him surrendering to the custody of the learned trial court. He submitted that, though the appellate court had refused to accept the appeal of the petitioner on 13.02.2026, the petitioner has approached this court by filing the present petition one month thereafter on 13.03.2026. He therefore submitted to dismiss the present petition.

7. Heard learned Advocates for the respective parties.

8. From the record, it appears that, vide judgment and order dated 13.01.2026, the petitioner herein, came to be convicted for an offence punishable under Section 138 of the NI Act, and immediately after pronouncement of the said judgment, the petitioner had submitted an application to the learned trial court for suspension of sentence under Section 389(3) of the Code of Criminal Procedure. The learned trial court allowed the said application and suspended the sentence for a period of 30 days, to enable the petitioner to approach the appellate court. The certified copy of the said order was prepared and kept ready on 17.01.2026, which was delivered to the petitioner on 22.01.2026. The petitioner was required to produce the said order before the appellate court along with the appeal, therefore, the learned Advocate appearing for the petitioner appears to be right in contending that the period between 13.01.2026 to 17.01.2026 would be available to the petitioner in addition to the period of 30 days, ordered by the learned trial court. The petitioner had approached the learned appellate court on 13.02.2026 for preferring an appeal, which was within the period of 30 days from 17.01.2026. The learned appellate court ought to have taken this aspect into consideration before refusing to accept the appeal of the petitioner, without him surrendering to the custody of the learned trial court. It is further contended in the memo of petition that the petitioner is ready and willing to deposit 20% of the disputed cheque amount before the learned appellate court. The petition therefore deserves consideration and hence the same is hereby allowed. The appellate court shall accept the appeal memo of the petitioner and register the same as Criminal Appeal, without insisting his presence before the learned trial court, if the petitioner deposits 20% of the amount of cheque at the time of filing of appeal

along with cost of Rs.10000/-, which shall be deposited by him with the concerned District Legal Services Authority.

Rule is made absolute to the aforesaid extent.

(M. R. MENGDEY,J)

J.N.W / 27