

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL (AGAINST CONVICTION) NO. 626 of 2026
With
CRIMINAL MISC.APPLICATION (FOR SUSPENSION OF SENTENCE) NO.
1 of 2026
In R/CRIMINAL APPEAL NO. 626 of 2026

=====

BASIR MUSABHAI KHAFI
Versus
STATE OF GUJARAT

=====

Appearance:

M S PADALIYA(7406) for the applicant(s) No. 1

MS. C.M. SHAH, APP for the Opponent(s)/Respondent(s) No. 1

=====

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 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 execution of sentence and release on regular bail during pendency of the

present appeal against the judgment and order of conviction dated 27.02.2026 passed in Special (Electricity) Case No. 116 of 2024 by the learned Special (Electricity) Judge & 2nd Additional Sessions Judge, Jamnagar, whereby, the present applicant - accused was held guilty, however, instead of imposing a substantive sentence, the accused was ordered to be released on probation of good conduct for a period of two years, upon furnishing a bond of Rs. 25,000/- (Rupees Twenty-Five Thousand only) with one surety of the like amount and executing a personal bond. The accused was further directed to pay, within a period of 30 days, a fine equivalent to three times the amount of the electricity theft bill and in default of payment of such fine, the accused shall undergo simple imprisonment for a further period of one year.

3. Heard learned advocate Mr. M.S. Padaliya for the applicant and learned APP Ms. C.M. Shah for the respondent State.

4. Learned Advocate Mr. M.S. Padaliya for the applicant

submits that the impugned judgment and order of conviction passed by the learned Trial Court is illegal, erroneous and contrary to the provisions of law, inasmuch as the prosecution has failed to establish its case beyond reasonable doubt by leading cogent and convincing evidence. It is submitted that there is no iota of evidence on record connecting the present applicant with the alleged offence under Section 135 of the Electricity Act, 2003, and the conviction is based on mere assumptions and presumptions. Learned advocate further submits that the material evidence, such as the alleged muddamal wire, meter and laboratory report, have not been produced before the Trial Court and no independent witnesses have been examined, thereby creating serious doubt about the prosecution case. It is also submitted that there are material contradictions and omissions in the deposition of the complainant and other witnesses and that the mandatory provisions of Section 135(1-A) of the Electricity Act and Section 100 of the Code of Criminal Procedure, 1973 have not been complied with. Learned advocate further submits that the applicant is

ready and willing to pay 50% of the amount of fine within eight weeks and has, therefore, urged that the applicant has a strong prima facie case in the appeal and the appeal is likely to succeed, and hence, the fine imposed upon the applicant deserves to be suspended pending the hearing and final disposal of the appeal.

5. Learned APP Ms. C.M. Shah for the respondent – State has opposed the application and submitted that the learned Trial Court has rightly appreciated the oral as well as documentary evidence on record and has recorded the conviction by assigning cogent and convincing reasons. It is submitted that the offence under Section 135 of the Electricity Act is a serious economic offence affecting public revenue and no leniency is required to be shown. It is further submitted that sufficient evidence has been led by the prosecution to establish the guilt of the applicant and merely because certain alleged discrepancies are pointed out, the same would not vitiate the entire prosecution case at this stage. Learned APP has, therefore, submitted that no case is made out for suspension of sentence and the present

application deserves to be rejected.

6. On perusal of the paper book produced on record by the learned advocate for the applicant as also the judgement and order of conviction, the applicant has been convicted for the offence punishable under Section 135 of the Electricity Act, 2003 and has been ordered to be released on probation for a period of two years with a condition to pay a fine equivalent to three times the amount of the electricity theft bill within a period of thirty days, and in default, to undergo simple imprisonment for a period of one year. Considering the submissions advanced by the learned advocate for the applicant, particularly with regard to the alleged absence of cogent and convincing evidence, material contradictions in the prosecution case, and non-compliance of mandatory provisions of law, and without entering into the merits of the case at this stage, this Court is of the opinion that the applicant has made out a prima facie case for suspension of fine pending the appeal. At the same time, considering the nature of offence and the opposition by learned APP, it would be appropriate to impose suitable conditions. The

order of execution of sentence of fine passed by the learned Trial Court in Special (Electricity) Case No. 116 of 2024 dated 27.02.2026 shall remain suspended during the pendency of the appeal, subject to the following conditions:

- A. The applicant shall deposit 50% of the total fine amount before the Trial Court within a period of eight (8) weeks from the date of this order.
- B. Upon such deposit, the applicant shall be released on the fresh bail bond and surety of the same amount as ordered by the learned Trial Court.
- C. In case of failure to deposit the aforesaid amount within the stipulated period, this order of suspension of fine shall stand automatically vacated without further reference to this Court.
- D. The amount so deposited shall be subject to the final outcome of the appeal.

7. 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)