

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL (AGAINST CONVICTION) NO. 849 of 2026****With****CRIMINAL MISC.APPLICATION (FOR SUSPENSION OF SENTENCE) NO.****1 of 2026****In R/CRIMINAL APPEAL NO. 849 of 2026**

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HARKHABHAI VIRAMBHAI GAGABHAI THAKOR**Versus****STATE OF GUJARAT & ANR.**

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Appearance:**MR. PIYUSH M VALA(14238) for the Appellant(s) No. 1****RONITH JOY(9560) for the Appellant(s) No. 1****MR. ADITYA JADEJA, APP for the Opponent(s)/Respondent(s) No. 1**

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CORAM:HONOURABLE MS. JUSTICE S.V. PINTO**Date : 21/04/2026****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 415 of the Bharatiya Nagarik Surakhsha Sanhita, 2023, the applicant - accused is seeking suspension of sentence and release on

regular bail during pendency of the present appeal against the judgment and order passed in Sessions Case No.21 of 2021 by the learned Additional Sessions Judge, Patan at Radhanpur on 21.02.2026, whereby, the present applicant - accused was sentenced to imprisonment for 10 years and fine of Rs.3,000/- and in default, simple imprisonment for 03 months for the offence punishable under Section 304 of Indian Penal Code.

3. Heard learned advocate Mr. Ronith Roy for the applicant and learned APP Mr. Aditya Jadeja for the respondent State.

4. Learned Advocate Mr. Ronith Roy for the applicant submits that the applicant has been sentenced for a fixed period of 10 years and the applicant has already completed more than half of the awarded sentence i.e. substantial period of 5 years and 10 days in jail and the application may be considered in light of the decisions of the Apex Court in the case of **Saudan Singh Vs. State of Chhatisgarh** passed in **Special Leave to Appeal (Crl) No. 4633 of 2021** and also in the case of **Atul @ Ashutosh V. State of Madhya Pradesh in Criminal Appeal No. 579 of 2024 on 02.02.2024**. Learned advocate submits that the present appeal is not likely to be heard in near future and hearing of

the same would take some 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 suspension may be allowed and the applicant be enlarged on bail pending the hearing and final disposal of the captioned Criminal Appeal.

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 5 years and 10 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 Atul @ Ashutosh (Supra), has observed as under:

“Heard learned counsel for the parties.

Leave granted.

Out of fixed term sentence of five years, the appellant-accused has already undergone half of the sentence. The appeal against conviction of the year 2022 is not likely to reach before he completes the entire sentence. Hence, a

case is made out for grant of suspension of sentence pending the appeal and grant of bail. For that purpose, the appellant shall be produced before the Trial Court within a period of one week from today. The Trial Court shall enlarge the appellant on bail on appropriate terms and conditions till the final disposal of the appeal before the High Court. 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. The appeal is allowed in the afore-stated terms. Pending application(s) shall stand disposed of.

7. Perused the documents produced on record. Without entering into the merits of the case, this Court is of the opinion that since the applicant - accused has already undergone more than half of the awarded sentence i.e. substantial period of 5 years and 10 days in jail and since hearing of the appeal may take further time and in view of direction given by the Apex Court 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 and also in view of the decision in the case of Atul @ Ashutosh (Supra), wherein, it has been held that out of fixed term sentence of 10 years, the accused has already undergone more than half of the sentence and appeal is not likely to be heard before he completes the entire sentence and therefore, a case is made out for grant of suspension. 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 be 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 passed in Sessions Case No.21 of 2021 by the learned Additional Sessions Judge, Patan at Radhanpur on 21.02.2026, 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 trial court and on the following conditions:

- (i) shall not take undue advantage of liberty or misuse liberty;
- (ii) shall furnish the present address of his residence to the Court concerned at the time of execution of the bond;
- (iii) shall maintain law and order;
- (iv) shall not indulge in any activity leading to breach of public peace and tranquility;
- (v) shall deposit the amount of fine, if not deposited, before his release;
- (vi) the applicant shall be released if not required in any other case.

9. In view of the above, the present application stands disposed of. Direct service is permitted. Rule is made absolute to the aforesaid extent.

ROHAN SONI

(S. V. PINTO,J)