

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/CRIMINAL REVISION APPLICATION (AGAINST CONVICTION -  
NEGOTIABLE INSTRUMENT ACT) NO. 1160 of 2026**

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IT DISTRIBUTOR THRO DUSHYANT GIRDHAR GOPAL TONDON & ORS.  
Versus  
STATE OF GUJARAT & ANR.

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Appearance:

MR KURVEN K DESAI(7786) for the Applicant(s) No. 1,2,3  
MR PRANAV DHAGAT, APP for the Respondent(s) No. 1

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**CORAM:HONOURABLE MS. JUSTICE GITA GOPI**

**Date : 23/04/2026**

**ORDER**

1. By way of the present application under Section 438 read with Section 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the applicant has prayed for conversion of non-bailable warrant into bailable warrant, which was ordered to be issued by the learned Additional Chief Judicial Magistrate, Ahmedabad on 21.11.2025 in Criminal Case no. 82302 of 2022.
2. Learned advocate for the applicant submitted that the applicant is desirous of challenging the conviction order and sentence of the same date passed under Section 138 of the Negotiable Instruments Act, 1881.

3. Learned advocate for the applicant submitted that since non-bailable warrant has been issued and the sentence could not be suspended for the appeal to be preferred, the order of non-bailable warrant comes in the way of the applicant to move the Appellate Court to challenge the conviction judgment.
4. The impugned order came to be passed in-absentia and therefore, non-bailable warrant under Section 418(2) of the Code of Criminal Procedure, 1973 would be issued.
5. Having considered the provisions of Section 418(2) of the Cr.P.C. and as per the instructions, learned advocate for the applicant submitted that the non-bailable warrant has not yet been executed to the applicant and hence, made a prayer to allow file the appeal before the Appellate Court challenging the judgment of conviction and sentence.
6. In the case of **Lallan Singh and others Vs. State of Uttar Pradesh**, the Hon'ble Supreme Court made the observations in paras 10, 10.1, 10.2 and 10.3, which are elicited as under:-

"10. The legal position as to the process that should follow an order or conviction is much too clear to require any special emphasis. We say so because Chapter XXXII of the Code of Criminal

Procedure, 1973, prescribes the process and the procedure to be followed for execution of sentence of death and/or other sentences awarded to convicts. We may in particular refer to Sections 417, 418, 472 and 420 Cr.PC which deal with the power to appoint place of imprisonment of the convict, the execution of sentence of imprisonment and the direction of warrant for execution as also the persons with whom the same has to be lodged:

10.1 Section 418 of the Code in particular deals with execution of sentence imprisonment and inter alia empowers and obliges the court passing the sentence to forthwith forward a warrant to the jail or other place in which he is, or is to be, confined, and, unless the accused is otherwise confined in such jail or other place to forward him to such jail or other place with a warrant. In terms of sub-section (2) of Section 418, where the accused is not present in the Court when sentence of imprisonment as is mentioned in sub-section (1) is pronounced, the Court is required to issue a warrant for his arrest for the purpose of forwarding him to jail or other place in which he is to be confined and in such cases the sentence shall commence on the date of his arrest. There is thus no gainsaying that upon conviction of an accused and sentence of imprisonment awarded to him, the Court concerned is expected to commit him to jail in terms of a warrant that would authorities him confinement for the period he is to undergo such imprisonment. We have no reason to believe that this procedure is not followed invariably in all such cases where the convict is not present before the Court concerned and is required to be committed to imprisonment for undergoing the sentence.

10.2 We also believe that the process of issuing warrant to apprehend the convict is followed diligently in keeping with the spirit underlying Section 418 Cr.PC.

10.3 The difficulty, in our opinion, arises when the warrants so issued by the Court concerned remain unexecuted. This happens not only in cases where the accused has been convicted and sentenced by the trial Court but also where an appeal or revision preferred against the conviction is eventually dismissed by the High Court. There is no manner of doubt that even in such cases, the Court is under an obligation after receipt of an intimation about the dismissal of the appeal or revision preferred by the convicts, to follow the procedure under Section 418 Cr.PC for apprehension of the accused, in case he has not surrendered voluntarily, and to commit him to jail to undergo the sentence awarded to him. Experience, however, shows that when warrants are forwarded to the police for execution the same remain unexecuted for years as noticed by us in the case at hand where despite the dismissal of the appeal filed by two of the life convicts, held guilty of a double murder, had remained at large for considerably long period."

6. The single Judge of Kerala High Court in case of **Jain Babu Vs. K.J. Joseph**, reported in **2009(1) Crimes (HC) 629**, observed that if the accused is not on bail, execution of the sentence cannot be suspended under section 389(3) Cr.P.C. to enable him to prefer an appeal. The Apex Court has further dealt with the situation, where during trial the accused is exempted from personal attendance, and judgment is pronounced in his absence. Para-30 of the said judgment is quoted hereunder for ready reference:

"30. If the accused is not on bail, execution of the sentence cannot be suspended under Section 389(3) Cr.P.C to enable an accused to prefer an appeal. The courts will be obliged to straight away execute the sentence. This may amount to denial of the right of an accused to get the sentence suspended to enable him to prefer an appeal, at it is apprehended by some counsel. I find no merit

in this apprehension. In a case where the accused is exempted under Section 205 Cr.P.C and the judgment of conviction is pronounced in his absence just, reasonable and orderly procedure mandates that the court must direct the accused to appear before court on a specified day for execution of sentence. Imbibing the mandate of Section 389(3) Cr.P.C, any reasonable Magistrate must post the case for appearance of the accused only on such a date, which will ensure that the accused gets reasonable time to prefer an appeal in the meantime. Further, I am unable to accept the contention that the language of Section 389(3) Cr.P.C would bar the suspension of sentence in a 138 prosecution, when the presence of the accused is exempted under Section 205 Cr.P.C. Under Section 389(3) Cr.P.C. when the accused is on bail, the sentence can be suspended. It will be succumbing to the tyranny of linguistic technicality to assume that when a court has chosen to exempt an accused from personal appearance and the obligation to seek bail, he will not be entitled to the benefit or advantage to which a person released on bail will be entitled to. The expressions "being on bail" and "is on bail" appearing in Section 389(3)(i) and (ii) Cr.P.C. must be read and understood reasonably to include an accused from whom bail has not been demanded at all and who enjoys his freedom. A judicial functionary who is unable to find space to extend the benefit of Section 389(3) Cr.P.C to an accused who enjoys his freedom, who is not in custody, who has not been directed even to offer bail and who has been exempted from personal appearance under Section 205 Cr.P.C is definitely missing the woods for the trees. He lacks orientation in human rights jurisprudence and does lack the training to jump over insignificant fences. Sentence imposed on an

exempted accused, in whose absence judgment is pronounced need not be executed till the next date of posting. On such next date he must be directed to appear in person or produce order of suspension if any from the appellate court. An exempted accused who has been directed only to appear to receive judgment must be held to be a person to whom the benefit of Section 389(3) Cr.P.C is available, he having been exempted already from the obligation to appear and offer bail. This apprehension is thus found to be without substance."

7. Section 418(2) of Cr.PC provides that where the accused is not present in Court when he is sentenced to such imprisonment as is mentioned in sub-section (1), the Court shall issue a warrant for his arrest for the purpose of forwarding him to the jail or other place in which he is to be confined; and in such case, the sentence shall commence on the date of his arrest. Section 419 of Cr.P.C. refers that every warrant for the execution of a sentence of imprisonment shall be directed to the officer in charge of the jail or other place in which the prisoner is, or is to be, confined. The impugned order of the learned Additional Chief Judicial Magistrate, Ahmedabad does not note as to whether the warrant for execution of sentence had been executed, though proved to be ordered by the Court.

8. Section 389(3) of Cr.P.C., expresses that if the convicted person satisfies the Court by which he is convicted, that he intends to present an appeal, the Court shall, where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years, or, where the offence of which such person has been convicted is a bailable one, and he is on bail, order that the convicted person be released on bail, unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the appellate Court under sub-section (1) of Section 389 of Cr.P.C., and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.
9. In the referred judgment of **Jain Babu** (supra), the expressions "being on bail" and "is on bail" appearing in Section 389(3) (i) and (ii) Cr.P.C. is said to be read and understood reasonably to include an accused from whom bail has not been demanded at all and who enjoys his freedom. Further observations leads to the judicial functionary unable to find space to extend the benefit of Section 389(3) Cr.P.C. to an accused who enjoys his freedom, who is not in custody, who has not been directed even to offer bail.

10. In view of the observations made in the case of **Ishwarbhai Hirabhai Chunara Vs. State of Gujarat**, in Special Criminal Application (quashing) no.9113 of 2016, this Court also deems fit to grant an opportunity to the applicant-accused to appear before the Appellate Court and on the date of appearance, it would be open for the applicant to file an application under Section 389(3) Cr.P.C. making a prayer for provisional bail to enable him to prefer criminal appeal before the Sessions Court against the conviction and sentence. The delay condonation application, if necessary, may again be preferred and reheard on merits.
11. In view of the same, the non-bailable warrant to face the sentence is converted into bailable warrant of Rs.10,000/-.
12. Accordingly, the present application stands disposed of. Direct service permitted.

Maulik

**(GITA GOPI,J)**