

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL APPEAL (AGAINST CONVICTION) NO. 977 of 2024**

With  
**CRIMINAL MISC.APPLICATION (FOR SUSPENSION OF SENTENCE) NO.  
1 of 2024**  
In **R/CRIMINAL APPEAL NO. 977 of 2024**

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MOHMAD SARUKH S/O. MOHMAD JAGANMIYA BADAI & ANR.  
Versus  
STATE OF GUJARAT

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Appearance:

MS URVASHI K MEHTA(11469) for the Appellant(s) No. 1,2  
MR. BHARGAV PANDYA, APP for the Opponent(s)/Respondent(s) No. 1

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**CORAM:HONOURABLE MS. JUSTICE S.V. PINTO****Date : 03/05/2024****ORAL ORDER****ORDER IN CRIMINAL APPEAL:**

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

**ORDER IN CRIMINAL MISC. APPLICATION:**

1. Rule. Learned APP waives service of notice of rule for and on behalf of the respondent State.
  
2. By way of present application under Section 389 of the Code of Criminal Procedure, 1973, the applicant - accused

is seeking suspension of sentence and release on regular bail during pendency of the present appeal against the judgment and order of conviction dated 28.03.2024 passed in Special (POCSO) Case No. 05 of 2019 by the learned Special Judge (POCSO) and 2<sup>nd</sup> Additional Sessions Judge, Gandhidham, whereby, the present applicant – accused was sentenced to five years rigorous imprisonment and fine of Rs. 5,000/- and in default, one month simple imprisonment for the offence punishable under Section 363 read with Section 114 of Indian Penal Code, seven years rigorous imprisonment and fine of Rs. 5,000/- and in default, one month simple imprisonment for the offence punishable under Section 366 read with Section 114 of Indian Penal Code. Both the sentences were ordered to run concurrently.

3. Learned Advocate Ms. Urvashi K. Mehta for the applicant submits that in the entire evidence of the prosecution, the only allegation against the present accused is that he was the friend of the main accused and he was present with the main accused who eloped with the victim. That from the entire evidence, it appears to be a case of love

affair between the main accused and the victim and during the examination-in-chief of the victim at Exh. 90, she has categorically stated that the present applicant did not commit any offence with her. That the allegation of rape is against the accused no. 1 and deceased accused no. 3. That the applicant is a young boy of 21 years and the applicant has a good case on merits and the applicant has been convicted for a fixed term 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.

4. Learned APP for the respondent – State has strongly objected to the submissions made by the learned advocate for the applicant and has submitted 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.

5. Having heard learned advocate Ms. Urvashi K. Mehta for the applicant as well as learned APP Mr. Bhargav Pandya

for the respondent – State, it appears that Criminal Appeal against the sentence preferred by the applicant has been admitted by this court and the said Criminal Appeal is not likely to be heard within near future. As per the contention of the learned advocate for the applicant, the applicant has a good case on merits.

6. 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 appellant has been sentenced for a fixed period and 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. And without entering into the merits of the case, this court is of the opinion that the application requires consideration and accordingly, is allowed. The execution of the sentence in the judgment and order of conviction dated 28.03.2024 passed in Special (POCSO) Case No. 05 of 2019 by the learned Special Judge (POCSO)

and 2<sup>nd</sup> Additional Sessions Judge, Gandhidham is suspended during pendency of the Criminal Appeal and the applicant is ordered to be released on bail on furnishing personal bond of Rs. 10,000/- (Rupees Ten Thousand Only) with surety of the like amount to the satisfaction of the trial court and on the following conditions that the applicant;

- a) shall maintain law and order;
- b) shall not indulge in any activity leading to breach of public peace and tranquility.
- c) shall not leave India without prior permission of this Court.
- d) shall pay the fine, if not paid.

7. Rule is made absolute. Direct service is permitted.

VASIM S. SAIYED

**(S. V. PINTO,J)**