

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL (AGAINST CONVICTION) NO. 1007 of 2024

With

CRIMINAL MISC.APPLICATION (FOR SUSPENSION OF SENTENCE) NO.
1 of 2024

In R/CRIMINAL APPEAL NO. 1007 of 2024

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ARUNBHAI OCHHAVLAL SHAH

Versus

STATE OF GUJARAT

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Appearance:

MR. JAY M THAKKAR(6677) for the Appellant(s) No. 1

MS JIRGA JHAVERI, APP for the Opponent(s)/Respondent(s) No. 1

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CORAM: **HONOURABLE MS. JUSTICE S.V. PINTO**

Date : 06/05/2024

ORAL ORDER

ORDER IN CRIMINAL APPEAL :

Admit. Learned APP waives service of notice of admission for the respondent – State.

ORDER IN CRIMINAL MISC. APPLICATION :

1. Rule. Learned APP waives service of notice of rule for 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 in Special (POCSO) Case

No. 45 of 2022 passed by the learned 2nd Additional Sessions Judge and Special POCSO Judge, Anand on 26.04.2024, whereby, the applicant was sentenced to rigorous imprisonment of 1 year and fine of Rs.5,000/- and in default, simple imprisonment of 2 months for the offence punishable under Section 354(A)(1) of the IPC and rigorous imprisonment of 3 years and fine of Rs.5,000/- and in default, simple imprisonment of 2 months for the offence punishable under Section 8 of the POCSO Act. The learned Trial Court has further ordered that both the sentences were to run concurrently.

3. Learned advocate for the applicant – accused submits that the after passing the conviction order by the learned Special Judge, the applicant has preferred application under Section 389 (3) of the Code for suspending the sentence upto the appeal period and vide order dated 26.04.2024, the learned Sessions Judge has suspended the sentence upto appeal period. The learned advocate further submits that the applicant was on bail during the trial and has paid the amount of fine. The present appeal is not likely to be heard in near future and hearing of the same would take a long time and hence, no purpose would be served by keeping the applicant in jail for indefinite period with the hardened criminals. The applicant has a good case on merits and hence, the order of the sentence may be

suspended and the applicant may be released on regular bail on appropriate terms and condition.

4. Learned APP for the State has objected to the present application to grant suspension of sentence and has submitted that the order of sentence is just and proper and no interference is required in the order passed by the learned Special Judge and hence, present application may be rejected.
5. Having heard learned advocate for the respective parties and perused the document produced on record, without entering into the merits of the case, this court is of the opinion that the arguments advanced by the learned advocate for the applicant requires consideration and hence, the present application is allowed. The execution of the sentence passed in Special (POCSO) Case No. 45 of 2022 passed by the learned 2nd Additional Sessions Judge and Special POCSO Judge, Anand on 26.04.2024 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 not leave India without prior permission of this Court;
- (iii) shall furnish the present address of his residence to the Court concerned at the time of execution of the bond and shall not change the residence without the prior permission of this Court;
- (iv) shall maintain law and order;
- (v) shall not indulge in any activity leading to breach of public peace and tranquility.

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

F.S.KAZI.....

(S. V. PINTO, J)