

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL (AGAINST CONVICTION) NO. 1121 of 2026
With
CRIMINAL MISC.APPLICATION (FOR SUSPENSION OF SENTENCE)
NO. 1 of 2026
In R/CRIMINAL APPEAL NO. 1121 of 2026

=====

KAPILBHAI CHANDRAKANT MALANI

Versus
STATE OF GUJARAT

=====

Appearance:

MR MEET D PANSURIA(10170) for the Appellant(s) No. 1
MS.C.M.SHAH, APP for the Opponent(s)/Respondent(s) No. 1

=====

CORAM:HONOURABLE MS. JUSTICE S.V. PINTO

Date : 08/05/2026

ORAL ORDER

ORDER IN CRIMINAL APPEAL :

Admit. Learned APP Ms.C.M.Shah waives service of notice of admission for the respondent no.1 – 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 430 of the BNSS, 2023, the applicant - accused is seeking suspension of the order of fine imposed pursuant to the judgment of conviction

rendered on 16.04.2026 by the learned Special (Electricity) Judge and 2nd Additional Sessions Judge, Jamnagar (hereinafter referred to as 'the Trial Court') in Special Electricity Case No. 82 of 2024 for the offence punishable under Section 135 of the Electricity Act, 2003, whereby, the applicant came to be held guilty but the learned Trial Court extended the benefit of probation and released the applicant on a probation of two years and fine quantified at three times the amount of electricity bill to be paid within thirty days and in default to undergo simple imprisonment of one year.

3. Heard learned advocate Mr. Meet D. Pansuria for the applicant and learned APP Ms.C.M.Shah for the respondent – State and perused the impugned judgment and order passed by the learned Trial Court and the paper book produced by the learned advocate for the applicant.

4. Learned advocate Mr. Meet D. Pansuria for the applicant has submitted that applicant has been convicted under the provision of the Electricity Act; however, the applicant has been granted probation, the imposition of substantial fine operates harshly and immediate recovery would cause undue prejudice. It is further contended that the appeal raises arguable issues and, therefore, the order of execution of sentence of fine deserves to be suspended.

5. Per contra, learned APP Ms.C.M.Shah has opposed the application contending that the fine imposed under the

statute is mandatory in nature and forms an integral part of the sentence, and merely because the benefit of probation is granted, the accused cannot claim suspension of fine as a matter of right.

6. Having considered the rival submissions and perused the record, it emerges that the Trial Court, while recording conviction, has already taken a lenient view by extending the benefit of probation, thereby suspending the substantive sentence of imprisonment. The fine imposed is not merely ancillary but is statutorily linked with the offence involving theft or unauthorized use of electricity, intended to ensure deterrence and restitution.

7. The Apex Court in Central Bureau of Investigation Versus Ashok Sirpal in Criminal Appeal No. 4277 of 2024 in Para 5 and 6 has observed as under:

“CONSIDERATION OF SUBMISSIONS

5. Section 389 of the CrPC reads thus:
“389. Suspension of sentence pending the appeal; release of appellant on bail.—

(1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond:

Provided that the Appellate Court shall, before releasing on bail or

on his own bond a convicted person who is convicted of an offence punishable with death or imprisonment for life or imprisonment for a term of not less than ten years, shall give opportunity to the Public Prosecutor for showing cause in writing against such release:

Provided further that in cases where a convicted person is released on bail it shall be open to the Public Prosecutor to file an application for the cancellation of the bail.

(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of an appeal by a convicted person to a Court subordinate thereto.

(3) Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall, —

- (i) where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years, or
- (ii) 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 subsection (1); and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.

(4) When the appellant is ultimately sentenced to imprisonment for a term or to imprisonment for life, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.”

The power of suspension of sentence under Section 389 of the CrPC (Corresponding to Section 430 of the Bharatiya Nagarik Suraksha Sanhita, 2023) is vested in the Appellate Court dealing with an appeal against the order of conviction. On a plain reading of subsection (1), the Appellate Court has the power to suspend the execution of a sentence or order appealed against. If the appellant/accused is in confinement, there is a power vesting in the Appellate Court to release him on bail pending the final disposal of the appeal. In case of offences covered by the first proviso to subsection (1) of Section 389, there is a mandate to give an opportunity to the Public Prosecutor to show cause in writing against such release before releasing a convicted person on bail. As stated earlier, the substantive sentence imposed on the respondent is rigorous imprisonment for seven years. In addition, there is a direction to pay a fine of Rs.95,00,000/-. There are five kinds of punishment provided in Section 53 in Chapter III of the IPC, which reads thus:

“53. “Punishments”.—

The punishments to which offenders are liable under the provisions of this Code are—

First—Death;

Secondly—Imprisonment for life;

Thirdly—[* * *];

Fourthly—Imprisonment, which is of two descriptions, namely: —

(1) Rigorous, that is, with hard labour;

(2) Simple;

Fifthly—Forfeiture of property;

Sixthly—Fine.”

Section 64, which is a part of the same chapter III, reads thus:

“64. Sentence of imprisonment for nonpayment of fine In every case, of an offence punishable with imprisonment as well as fine, in which **the offender is sentenced to a fine**, whether with or without imprisonment,

and in every case of an offence punishable with imprisonment or fine, or with fine only, in which the offender is sentenced to a fine,

It shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.”

(emphasis added)

Sections 4 and 8(2) of the Bharatiya Nyaya Sanhita, 2023, are the corresponding Sections. Section 64 of IPC uses the expression ‘offender is sentenced to a fine’. Moreover, the fine is one of the five punishments provided in Section 53. Thus, it is evident that the direction to pay a fine issued against the convicted accused is also a sentence. Under Section 64, the Court is empowered to direct that in default of payment of the fine, the offender shall suffer imprisonment for a specific term as directed therein. Therefore, there can be a sentence of fine and a further sentence in default of compliance with the sentence of fine.

6. In paragraph no.36 of the decision of this Court in the case of Satyendra Kumar Mehral, this Court held thus:

“36. We, however, make it clear that the appellate court while exercising power under Section 389 CrPC can suspend the sentence of imprisonment as

well as of fine without any condition or with conditions. There are no fetters on the power of the appellate court while exercising jurisdiction under Section 389 CrPC. The appellate court could have suspended the sentence and fine both or could have directed for deposit of fine or part of fine.”

Thus, while convicting an accused, if a direction is issued against him to pay a fine, such a direction can be suspended in the exercise of power under sub section (1) of Section 389 of the Cr.P.C.”

8. It is thus well settled that under Section 389 of the Code of Criminal Procedure, though the appellate court possesses the power to suspend the sentence including fine, such discretion is to be exercised judiciously and not in a routine manner, particularly when the Trial Court has already extended the benefit of probation.

9. In the present case, this Court finds that the applicant has already received the benefit of probation and it reflects the Court’s lenient approach. As per the submission of learned advocate for the applicant, the insistence on immediate recovery of fine which is three times the amount of bill would cause undue hardship;

10. However, considering that the appeal is admitted and to balance equities, it would be appropriate to grant limited protection.

11. The application is partly allowed on condition that the applicant deposits 50% of the amount of fine within a period of 16 weeks from today before the learned Trial Court and the recovery of the remaining fine amount shall remain stayed till final disposal of the appeal.

12. Rule made absolute to the aforesaid extent. Direct service is permitted.

(S. V. PINTO,J)

F.S. KAZI