

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL APPEAL (AGAINST CONVICTION) NO. 1136 of 2026****With****CRIMINAL MISC.APPLICATION (FOR SUSPENSION OF SENTENCE) NO.  
1 of 2026****In R/CRIMINAL APPEAL NO. 1136 of 2026**=====  
**AVESH AYUBBHAI DASTAN & ANR.****Versus****STATE OF GUJARAT**  
=====

Appearance:

MR RAMNANDAN SINGH(1126) for the Appellant(s) No. 1,2

MR LB DABHI APP for the Opponent(s)/Respondent(s) No. 1  
=====**CORAM:HONOURABLE MS. JUSTICE GITA GOPI****and****HONOURABLE MR.JUSTICE L. S. PIRZADA****Date : 08/06/2026****ORAL ORDER****(PER : HONOURABLE MS. JUSTICE GITA GOPI)****Order in Criminal Appeal**

**Admit.** The learned A.P.P. waives service of notice of admission for the respondent - State.

**Order in Criminal Misc. Application**

1. The application is moved for suspension of the sentence where, both the applicants - accused came to be convicted by judgment and order dated 04.05.2026 passed by the learned Sessions Judge, Court No.1, Ahmedabad City in Sessions Case

No.104 of 2018.

2. The learned Sessions Judge has convicted the accused Nos.1 to 3 for the offence under Section 395 of Indian Penal Code for 10 years rigorous imprisonment with the fine of Rs.10,000/- each with a default stipulation of further six months simple imprisonment in failure to pay the fine amount. Further, all the three accused were convicted for the offence under Section 397 of Indian Penal Code for five years rigorous imprisonment with the fine of Rs.5000/-, in failure of payment of fine amount, to undergo three months simple imprisonment. The set-off was granted under Section 427 of the Code of Criminal Procedure.

3. Learned advocate Mr.Ramnandan Singh for the applicants submitted that the trial had been conducted against five accused persons, while the conviction is only of three accused persons. It is submitted that considering the said fact, the conviction becomes vulnerable.

4. Referring to the facts of the case, learned advocate Mr.Ramnandan Singh stated that the prosecution failed to prove any prior conspiracy hatched by the accused, while the

facts on record also suggest that the victim and the accused are related to each other.

5. Learned advocate Mr.Ramnandan Singh stated that the case is of dacoity of an amount of Rs.24,300/- which has not been recovered though the arrest was within 2 to 3 days of the alleged incident. Learned advocate Mr.Ramnandan Singh also referred to the document at exh.103 by the original complainant where, the prayer has been made for releasing the accused on the ground of settlement.

6. Resisting the arguments, learned A.P.P. Mr.L.B. Dabhi submitted that the facts of the case suggest that the complainant has sustained injuries, which have been caused to the complainant with baseball and knife. The accused were identified. It is stated that the complainant had given relevant evidence before the trial Court to come to the conclusion of conviction of accused Nos.1 to 3 and it is stated that there is no ground for suspending the sentence.

7. Having considered the submissions raised, in the facts, it appears that the complainant and the accused are related to each other. Further, no recovery of the cash amount has been

made. Considering that there is an allegation of threatening by pistol, no recovery of such pistol has been made in the present matter. The baseball and knife were sent for F.S.L. report.

8. Considering the fact that two of the accused have been acquitted and there is no charge under Arms Act and that the grounds are to be agitated on merits, hence, sentence is required to be suspended.

9. Accordingly, present application is allowed. Rule is made absolute to aforesaid extent. The sentence of the applicant awarded vide judgment and order dated 04.05.2026 passed by the learned Sessions Judge, Court No.1, Ahmedabad City in Sessions Case No.104 of 2018 is suspended during the pendency of the Criminal Appeal and the applicants shall be released on bail on their furnishing a personal bond of Rs.10,000/- each with one surety of the like amount to the satisfaction of the trial Court subject to the following conditions:-

- (i) To surrender the passport;

- (ii) Not to leave India without prior permission of the concerned trial Court;
- (iii) To maintain law and order.

10. The applicants shall appear before this Court as and when appeal is taken for final hearing and shall not change their address and in case of change in address, shall inform to the concerned police station as well as to this Court.

Direct service permitted.

**(GITA GOPI,J)**

**(L. S. PIRZADA, J)**

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