

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL REVISION APPLICATION NO. 309 of 2009**

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JAGDISHBHAI JAYANTIBHAI RATHOD**Versus****STATE OF GUJARAT**

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Appearance:**BAILABLE WARRANT SERVED for the Applicant(s) No. 1****MR NILESH R KOYANI(5129) for the Applicant(s) No. 1****MR. SOHAM JOSHI, APP for the Respondent(s) No. 1**

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CORAM:HONOURABLE MS. JUSTICE S.V. PINTO**Date : 05/08/2026****ORAL ORDER**

1] By way of the present Criminal Revision Application under Sections 397 and 401 of the Code of Criminal Procedure, 1973, the applicant has prayed for quashing and setting aside the judgment and order dated **28.05.2009** passed by the learned Additional Sessions Judge and Presiding Officer, Fast Track Court No.8, Gondal Camp at Upleta in Criminal Appeal No.12 of 2006, confirming the judgment and order dated **07.12.2006** passed by the learned Judicial Magistrate, First Class, Upleta in Criminal Case No.585 of 1999, whereby the applicant came to be convicted for the offences punishable under Sections **279, 337 and 338 of the Indian Penal Code** read with Sections **177 and 184 of the Motor Vehicles Act** and sentenced to undergo **simple imprisonment for a period of one month** and to pay a total

fine of **Rs.3,400/-**.

2] Heard learned advocate Mr. Nilesh R. Koyani for the applicant and learned Additional Public Prosecutor Mr. Soham Joshi for the respondent–State. Perused the impugned judgment and order passed by the learned Additional Sessions Judge and Presiding Officer, Fast Track Court No.8, Gondal Camp at Upleta in Criminal Appeal No.12 of 2006 as well as the judgment and order passed by the learned Judicial Magistrate, First Class, Upleta in Criminal Case No.585 of 1999.

3] At the outset, learned advocate for the applicant has fairly submitted that, having regard to the nature of the offences, the age of the applicant, the considerable lapse of time since the date of the incident and the favourable report submitted by the Probation Officer, Rajkot, the applicant does not wish to press the present Revision Application on merits insofar as the findings of conviction are concerned and confines his prayer to seeking the benefit of the provisions of the **Probation of Offenders Act, 1958**.

4] Learned Additional Public Prosecutor has opposed the application and submitted that the judgment and order passed by the learned First Appellate Court confirming the judgment and

order passed by the learned Trial Court are just and proper and do not call for any interference by this Court. However, learned APP has submitted that appropriate orders may be passed in accordance with law after considering the report submitted by the Probation Officer.

5] Learned advocate for the applicant submits that on 28.04.1990, the applicant was driving a luxury bus bearing Registration No. GJ-3-T-9816. It was alleged that the applicant drove the said vehicle in a rash and negligent manner on a public road, thereby endangering human life and causing injuries to the complainant. On the basis of the said allegations, the complaint came to be registered against the applicant for the aforesaid offences. After completion of investigation, the charge-sheet came to be filed before the learned Judicial Magistrate, First Class, Upleta. The learned Trial Court, after appreciating the oral as well as documentary evidence led by the prosecution and after hearing the parties, by judgment and order dated 07.12.2006, held the applicant guilty for the offences punishable under Sections 279, 337 and 338 of the Indian Penal Code and Sections 177 and 184 of the Motor Vehicles Act and sentenced him to undergo simple imprisonment for one month and to pay a total fine of Rs.3,400/-.

It is an admitted position that immediately after the judgment of conviction, the applicant deposited the entire amount of fine of Rs.3,400/- before the Nazir of the learned Trial Court, and the said payment is reflected in the judgment itself.

6] Being dissatisfied with the judgment and order of conviction and sentence, the applicant preferred Criminal Appeal No.12 of 2006 before the learned Additional Sessions Judge and Presiding Officer, Fast Track Court No.8, Gondal Camp at Upleta. By judgment and order dated 28.05.2009, the learned Appellate Court dismissed the appeal and confirmed the judgment and order passed by the learned Trial Court. Consequent upon dismissal of the appeal, the applicant was taken into judicial custody on 28.05.2009 and underwent part of the sentence. During the pendency of the present Revision Application, by order dated 07.07.2026, this Court issued aailable warrant against the applicant. Pursuant thereto, the applicant remained personally present before this Court on 08.07.2026 and executed the requisite bail bond before the concerned police authority.

7] When the matter was taken up for hearing on 22.07.2026, learned advocate Mr. Nilesh R. Koyani for the applicant submitted

that the applicant has already undergone part of the sentence after dismissal of the appeal and has also deposited the entire amount of fine. It is further submitted that the incident is of the year 1990 and more than three decades have elapsed. The applicant is presently about 55 years of age, has no criminal antecedents and is suffering from age-related ailments. Learned advocate has, therefore, fairly submitted that the applicant does not press the Revision Application on merits insofar as the concurrent findings of conviction are concerned and confines the prayer only for extending the benefit under the provisions of the **Probation of Offenders Act, 1958**.

8] Before advertng to the rival submissions, it would be apposite to reproduce Sections 4 and 11 of the Probation of Offenders Act, 1958, which read thus:

Section 4. Power of court to release certain offenders on probation of good conduct :- (1) *When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour:*

Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

(2) *Before making any order under sub-section (1), the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.*

(3) *When an order under sub-section (1) is made, the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the offender.*

(4) *The court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.*

(5) *The court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned.*

Section 11. Courts competent to make order under the Act, appeal and revision and powers of courts in appeal and revision :-(1) *Notwithstanding anything contained in the Code or any other law, an order under this Act, may be made by any court empowered to try and sentence the offender to imprisonment and also by the High Court or any other court when the case comes before it on appeal or in revision.*

(2) *Notwithstanding anything contained in the Code, where an order under section 3 or section 4 is made by any court trying the offender (other than a High Court), an appeal shall lie to the court to which appeals ordinarily lie from the sentences of the former court.*

(3) *In any case where any person under twenty-one years of age is found guilty of having committed an offence and the*

court by which he is found guilty declines to deal with him under section 3 or section 4, and passes against him any sentence of imprisonment with or without fine from which no appeal lies or is preferred, then, notwithstanding anything contained in the Code or any other law, the court to which appeals ordinarily lie from the sentences of the former court may, either of its own motion or on an application made to it by the convicted person or the probation officer, call for and examine the record of the case and pass such order thereon as it thinks fit.

(4) When an order has been made under section 3 or section 4 in respect of an offender, the Appellate Court or the High Court in the exercise of its power of revision may set aside such order and in lieu thereof pass sentence on such offender according to law:

Provided that the Appellate Court or the High Court in revision shall not inflict a greater punishment than might have been inflicted by the court by which the offender was found guilty.”.

9] This Court has independently examined the judgment and order dated **28.05.2009** passed by the learned Additional Sessions Judge and Presiding Officer, Fast Track Court No.8, Gondal Camp at Upleta in Criminal Appeal No.12 of 2006 as well as the judgment and order dated **07.12.2006** passed by the learned Judicial Magistrate, First Class, Upleta in Criminal Case No.585 of 1999. Upon appreciation of the evidence on record, this Court finds that the findings recorded by the learned Trial Court, as affirmed by the learned Sessions Court are based upon proper appreciation of the oral as well as documentary evidence and do not suffer from any perversity, manifest illegality or jurisdictional

error warranting interference in exercise of revisional jurisdiction. It is well settled that a Revisional Court does not sit as a second Appellate Court and would not ordinarily re-appreciate the evidence unless there exists a glaring defect resulting in miscarriage of justice. No such circumstance has been pointed out by the applicant. Accordingly, this Court finds no reason to interfere with the concurrent findings of conviction recorded by the Courts below and the conviction deserves to be maintained.

10] However, by order dated **22.07.2026**, this Court directed the Probation Officer, Rajkot to conduct an inquiry and submit a report regarding the suitability of the applicant for extending the benefit of probation. Pursuant thereto, the Probation Officer has submitted a detailed report after personally interviewing the applicant, verifying his residential status, obtaining police verification and making inquiries in the locality where the applicant resides.

11] A careful reading of the Probation Officer's Report reveals that the applicant is about 56 years of age and is earning his livelihood as a driver. His monthly income is approximately Rs.15,000/-. The applicant resides with his wife, whereas his son

and married daughter are residing separately. His parents are no more. The report further records that the applicant maintains cordial relations with his neighbours and family members and enjoys a good reputation in the locality. His behaviour has been found to be satisfactory. No physical or mental illness has been noticed during the inquiry. It has further been reported that the applicant has no addiction and is leading a peaceful family life.

12] The Probation Officer has also obtained verification from the concerned Police Station. The police verification clearly indicates that **no criminal antecedents** or involvement in any other criminal case have been found against the applicant. There is no adverse material regarding his conduct. On the contrary, the report records that the applicant belongs to a respectable family, is a law-abiding citizen and there exists every possibility that he would continue to maintain good behaviour in future.

13] The ultimate opinion expressed by the Probation Officer is that, considering the applicant's family background, social conduct, financial condition, police verification, character and behaviour, the applicant is a fit person to be released on probation and deserves to be extended the benefit of **Section 4(1) of the**

Probation of Offenders Act, 1958.

14] The Hon'ble Supreme Court of India in the case of **Sitaram Paswan And Anr. vs State Of Bihar**, reported in 2006(1) SCC (Cri) 787, has observed in para 8 as under: -

6. [Section 4](#) of the Probation of Offenders Act empowers the Court to release a convicted person on his entering into a bond with or without sureties on probation when he is found guilty of committing of any offence, not punishable with death or imprisonment for life. Relevant portion of [Section 4](#) of the Probation of Offenders Act, 1958 reads thus:

"Section 4 - Power of Court to release certain offenders on probation of good conduct - (1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the Court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period not exceeding three years, as the Court may direct, and in the meantime to keep the peace and be of good behavior."

For exercising the power which is discretionary, the Court has to consider circumstances of the case, the nature of the offence and the character of the offender. While considering the nature of the offence, the Court must take a realistic view of the gravity of the offence, the impact which the offence had on the victim. The benefit available to the accused under [Section 4](#) of the Probation of Offenders Act is subject to the limitation embodied in the provisions and the word "may" clearly indicates that the discretion vests with the Court whether to release the offender in exercise of the powers under [Section 3](#) or 4 of the [Probation of Offenders Act](#) having regard to the nature of the offence and the character of the offender and overall circumstances of the case. The powers under [Section 4](#) of the Probation of Offenders Act vest with the Court when any person is found guilty of the offence committed, not punishable with death or imprisonment for life. This power can be exercised by the Courts while finding the person guilty and if the Court thinks that having regard to the circumstances of the case, including the nature of the offence and the character of the offender, benefit should be extended to the accused, the power can be exercised by the Court even at the appellate or revisional stage and also by this Court while hearing appeal under [Article 136](#) of the Constitution of India.

15] In the present case, the incident had occurred on **28.04.1990**, almost three and a half decades ago. The applicant has already deposited the entire fine amount of **Rs.3,400/-**. After dismissal of the appeal on **28.05.2009**, he underwent part of the sentence before he came to be enlarged on bail by this Court. During all these years, no material has been placed on record to indicate that the applicant has indulged in any criminal activity. The Probation Officer's Report is wholly favourable and recommends release of the applicant on probation. The offences for which the applicant stands convicted are not punishable with death or imprisonment for life. The applicant has crossed the age of fifty-four years and is earning his livelihood by driving a truck. In the opinion of this Court, no useful purpose would now be served by directing the applicant to undergo the remaining sentence of imprisonment after such an extraordinary lapse of time.

16] Considering the nature of the offences, the sentence imposed, the long lapse of time since the incident, the favourable Probation Officer's Report, the absence of any criminal antecedents, the satisfactory conduct of the applicant, the recommendation made by the Probation Officer and the overall

facts and circumstances of the case, this Court is of the considered view that the applicant deserves to be extended the benefit of the provisions of the **Probation of Offenders Act, 1958**.

17] In the result, the Revision Application is partly allowed in the following terms: -

- (i) *The substantive sentence of simple imprisonment imposed upon the applicants is set aside.*
- (iii) *The applicant is directed to be released on probation of good conduct under Section 4 of the Probation of Offenders Act, 1958, executing a personal bond of Rs.10,000/- (Rupees Ten Thousand only) with one surety of the like amount before the learned Trial Court for maintaining peace and good behaviour for a period of one year.*
- (iv) *During the aforesaid period, the applicant shall appear and receive sentence when called upon to do so by the learned Trial Court and shall keep peace and be of good behaviour.*
- (v) *In case of breach of any of the conditions of the bond, it shall be open for the learned Trial Court to proceed in accordance with law.*
- (vi) *Fine, if already paid, shall remain undisturbed.*

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

(S. V. PINTO,J)

VISHAL MISHRA