

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL (AGAINST CONVICTION) NO. 1426 of 2024

With

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

In R/CRIMINAL APPEAL NO. 1426 of 2024

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DHARMENDRASINH PATHUBHA GOHIL & ORS.

Versus

STATE OF GUJARAT

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Appearance:

MR BHUNESH C RUPERA(3896) for the Appellant(s) No. 1,2,3

MR SM CHUDASAMA(3712) for the Appellant(s) No. 1,2,3

MS CM SHAH, APP for the Opponent(s)/Respondent(s) No. 1

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

Date : 05/07/2024

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. By way of present application under Section 389 of the Code of Criminal Procedure, 1973, the applicants - accused are seeking suspension of sentence and release on regular bail during pendency of the present appeal application against the judgment and order of conviction in Sessions Case No. 70 of 2019 passed by the learned Sessions Judge, Bhavnagar on 11.06.2024, whereby, the learned Sessions

Judge has sentenced the applicants – original accused to undergo one year rigorous imprisonment and fine of Rs.2,000/- and in default, simple imprisonment of two months for the offence punishable under Section 323 of the IPC, two years rigorous imprisonment and fine of Rs.2,000/- and in default, simple imprisonment of three months for the offence punishable under Section 324 of the IPC, one year rigorous imprisonment and fine of Rs.1,000/- and in default, simple imprisonment of one month for the offence punishable under Section 114 of the IPC and one year rigorous imprisonment and fine of Rs.1,000/- and in default, simple imprisonment of one month for the offence punishable under Section 135 of the G.P.Act.

3. Learned advocate for the applicant – accused submits that after the applicants were convicted by the learned Sessions Judge, Bhavnagar, the applicants had preferred an application below Exh.44 to suspend the sentence for appeal period accordingly, the learned Sessions Judge suspended the sentence for 30 days by order dated 11.06.2024. The learned advocate submits that the present appeal is not likely to be heard in near future and hearing of the same would take some long time and hence, no purpose would be served by keeping the applicants in jail for indefinite period with hardened criminals. The

applicants have a good case on merits and hence, the order of the sentence may be suspended and the applicants 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 Sessions Judge and hence, present application may be rejected.
5. Heard learned advocate for the respective parties and perused the document produced on record.
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 sentence is for a fixed period, the appellate Court finds that due to practical reasons such appeal cannot be disposed of expeditiously the appellate Court must be 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 arguments of the learned advocate for the applicants require consideration and accordingly, is allowed. The execution of the sentence in the judgment

and order of conviction in Sessions Case No. 70 of 2019 passed by the learned Sessions Judge, Bhavnagar on 11.06.2024 is suspended during pendency of the criminal appeal and the applicants are ordered to be released on bail on furnishing personal bond of Rs.25,000/- (Rupees Twenty Five Thousand Only) each with one 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.

7. Direct service is permitted.

F.S.KAZI.....

(S. V. PINTO, J)