

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL REVISION APPLICATION (AGAINST CONVICTION -
NEGOTIABLE INSTRUMENT ACT) NO. 946 of 2023**

With

**CRIMINAL MISC.APPLICATION (REGULAR BAIL) NO. 1 of 2023
In R/CRIMINAL REVISION APPLICATION NO. 946 of 2023**

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KAMLESH RAMNIKLAL SHAH

Versus

KALABEN K. SHAHI W/O VINODBHAI DAHYABHAI SHAHI

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Appearance:

MR NILESH M SHAH(780) for the Applicant(s) No. 1

NOTICE NOT RECD BACK for the Respondent(s) No. 1

MS ASMITA PATEL, APP for the Respondent(s) No. 2

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CORAM: HONOURABLE MS. JUSTICE S.V. PINTO

Date : 12/12/2023

ORAL ORDER

Order in Criminal Revision Application:-

1. Mr. Ramnandan Singh, learned advocate submits that he has instruction to appear for respondent no.1 and seeks permission to file appearance. Permission, as sought for, is granted. Registry to accept the same.

2. Heard learned advocates appearing for the respective parties.

3. **Rule.** Mr. Ramnandan Singh, learned advocate waives service of notice of Rule on behalf of respondent no.1. Learned APP waives service of notice of rule for the respondent - State.

4. Present revision application be placed for hearing along with Criminal Revision Applications Nos.573 of 2021, 574 of 2021 and 576 of 2021.

Order in Criminal Misc. Application:-

1. Mr. Ramnandan Singh, learned advocate submits that he has instruction to appear for respondent no.1 and seeks permission to file appearance. Permission, as sought for, is granted. Registry to accept the same.

2. **Rule.** Mr. Ramnandan Singh, learned advocate waives service of notice of Rule on behalf of respondent no.1. Learned APP waives service of notice of rule for the respondent - State.

3. By way of present application under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973, the applicant original accused is seeking stay of execution of order sentence dated 08/10/2015 passed by the learned Additional Judicial Magistrate First Class, Vapi in Criminal Case No.878 of 2008 as well as order dated 28/06/2023 passed by the learned 4th Additional Sessions Judge, Valsad at Vapi in Criminal Appeal No.15 of 2020 (Old Criminal Appeal No.53 of 2015) and release on regular bail during pendency of the present revision application.

4. The applicant is the original accused of Criminal Case No.878 of 2008 filed by the original complainant under

Section 138 of the Negotiable Instrument Act and at the end of trial, the applicant original accused has been convicted and sentenced to undergo simple imprisonment for a period of one year for the offence under Section 138 of the Negotiable Instruments Act vide judgment and order dated 08/10/2015 passed by the learned Additional Judicial Magistrate First Class, Vapi in Criminal Case No.878 of 2008 and has been ordered to the compensation of Rs.9,00,000/- (double of the cheque amount) to the complainant within a period of thirty days and in default of said payment to undergo further three months imprisonment.

4.1. Being aggrieved by the same, the applicant original accused filed Criminal Appeal No.15 of 2020 and vide order dated 28/06/2023, the learned 4th Additional Sessions Judge, Valsad at Vapi was pleased to reject the said application of the applicant original accused and confirm the order passed by the learned Magistrate Court and further directed that applicant to surrender before the learned trial court within a period of ten days.

4.2. Being aggrieved by the aforesaid orders, the present application is filed by the applicant with a prayer to quash the orders and acquit the applicant and has further prayed for stay of the execution of the impugned orders of sentence and release on regular bail during the pendency of present Criminal Revision Application.

5. Learned advocate for the applicant submits that the

present applicant is in jail since 13/10/2023. Learned advocate for the applicant further submits that the applicant is ready and willing to deposit the entire amount of the cheque being amount of Rs.4,50,000/- within a period of two days before the registry of this Court before his release and also ready to abide by all the conditions that may be imposed. Learned advocate submits that Mr. Raj K. Shah, son of the present applicant accused is personally present before the Court and is ready and willing to deposit entire amount of the cheque being Rs.4,50,000/- before the registry of this Court.

5.1. Learned advocate for the applicant submits that the present revision application 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 applicant in jail for indefinite period with hardened criminal. The applicant has a good case on merits and hence, execution of the order of the sentence may be suspended and the applicant may be released on regular bail on appropriate terms and conditions.

6. Learned APP appearing for the respondent-State has objected to the present application 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 Court confirming the judgment and order passed by the learned Magistrate Court and hence, present application may be rejected.

7. Heard learned advocates appearing for the respective parties and perused the relevant documents produced on record.

8. 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 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, in view of the fact that the applicant is ready and willing to deposit entire amount of the cheque being amount of Rs.4,50,000/- within a period of two days before the registry of this Court before his release, this court is of the opinion that the application requires consideration.

9. Accordingly, the execution of order of sentence dated 08/10/2015 passed by the learned Additional Judicial Magistrate First Class, Vapi in Criminal Case No.878 of 2008 as well as order dated 28/06/2023 passed by the learned 4th Additional Sessions Judge, Valsad at Vapi in Criminal Appeal No.15 of 2020 (Old Criminal Appeal No.53 of 2015) is suspended during pendency of the present Criminal Revision Application and the applicant is ordered to be released on regular 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 deposit entire amount of cheque being Rs.4,50,000/- within a period of two days before the registry of this Court before his release and on depositing such amount, the applicant shall be released on bail.
- (ii) shall not take undue advantage of liberty or misuse liberty;
- (iii) shall not leave India without prior permission of this Court;
- (iv) 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;
- (v) shall maintain law and order;
- (vi) shall not indulge in any activity leading to breach of public peace and tranquility.

10. On deposit of the amount as aforesaid, the registry of this Court shall invest the said amount in the FDR with any nationalized bank initially for a period of one year and it shall be renewed from time to time till the final disposal of the present criminal revision application. The FDR shall be kept in custody of the Nazir of this Court and no any advance or loan shall be disbursed on the said deposited amount without the order of this Court.

11. Present application stands disposed of. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(S. V. PINTO,J)

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