

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL REVISION APPLICATION NO. 1025 of 2023**

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ANIS BABU ANSARI

Versus

STATE OF GUJARAT

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Appearance:

MR.AMIT R JOSHI(6682) for the Applicant(s) No. 1,2,3

MRUGESH A VYAS(8363) for the Applicant(s) No. 1,2,3

NOTICE UNSERVED for the Respondent(s) No. 2

MR LB DABHI APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**Date : 25/08/2023****ORAL ORDER**

1.1 The present application is filed by the applicants against the order of conviction and sentence dated 21.10.2021 passed by the learned Chief Judicial Magistrate, Chief Court, Surat passed in Criminal Case No.122 of 2001 whereby the learned Chief Judicial Magistrate, Surat convicted the applicants for an offence under Sections 325 and 114 of Indian Penal Code and sentenced them for one year simple imprisonment and imposed fine of Rs.1,000/- and in default of payment of fine ordered three months rigorous imprisonment. Learned Magistrate also

convicted and sentenced the applicants for offence under Sections 323 and 114 of Indian Penal Code and sentenced them for one month simple imprisonment and ordered all sentenced to be run concurrently.

1.2 This order of conviction and sentenced was assailed by the applicants before the learned 14th Additional Sessions Judge Surat by preferring Criminal Appeal No.365 of 2021 wherein the learned Sessions Judge, Surat vide judgment and order dated 28.07.2023 confirmed the order of conviction and sentence passed by the learned Chief Judicial Magistrate, Chief Court, Surat in Criminal Case No.122 of 2001.

1.3 Against these above two orders of conviction and sentence the applicants have preferred this application.

2.1 Learned advocate for the applicant does not press this application qua applicant no.1 viz. Anis Babu Ansari.

2.2 Insofar as applicant nos.2 and 3 viz. Mahammad

Rasid Babi Ansari and Mahammad Juber Babu Ansari respectively are concerned, learned advocate for the applicants submitted that both the applicants remained on bail all throughout.

2.3 Learned advocate for the applicants disputed about appreciation of evidence the evidence does not fall within purview of Section 325 of IPC and there is lack of evidence and during the entire period the applicants remained on bail.

3. Learned APP Mr.Dabhi opposed this application and submitted that looking to the nature of offence this application may not be entertained and rejected at threshold.

4. Heard learned advocate for the applicants and learned APP for the respondent State.

5. Having heard learned advocates for the respective parties and having considered the documents produced on record, it appears that during the trial, the

applicants remained in bail all throughout and it also appears from the evidence on record that except the allegation made against the applicants, no other allegation has been leveled.

6. The legal parameters for suspension of sentence have also been laid down by the Apex Court in the case of Angana & anr. Vs. State of Rajasthan, reported in (2009) 3 SCC 767, wherein, the Hon'ble Apex Court has held in para 14 that:

“14. When an appeal is preferred against conviction in the High Court, the Court has ample power and discretion to suspend the sentence, but that discretion has to be exercised judiciously depending on the facts and circumstances of each case. While considering the suspension of sentence, each case is to be considered on the basis of nature of the offence, manner in which occurrence had taken place, whether in any manner bail granted earlier had been misused. In fact, there is no strait jacket formula which can be applied in exercising the discretion. The facts and circumstances of each case will govern the exercise of judicial discretion while considering the application filed by the convict under Section 389 of Criminal Procedure Code.”

7. In view of the above, the applicants have made out arguable case and hence, this Court is of the view that the case of the applicants deserves consideration. This Court has also considered that there is no possibility of early hearing of the appeal in the Court below.

8. In view of the above, the present application is partly *allowed*. The substantive sentence imposed upon the present applicant nos.2 and 3 viz. Mahammad Rasid Babi Ansari and Mahammad Juber Babu Ansari respectively by learned 14th Additional Sessions Judge Surat vide judgment and order dated 28.07.2023 passed in Criminal Appeal No.365 of 2021 and confirming the order of conviction and sentence passed by the learned Chief Judicial Magistrate, Chief Court Surat in Criminal Case No.122 of 2001, is suspended till the final hearing of the present application and the applicants no.2 and 3 viz. Mahammad Rasid Babi Ansari and Mahammad Juber Babu Ansari respectively shall be released on bail by executing a fresh bond of Rs.15,000/- (Rupees Fifteen

Thousand Only) each with one surety of the like amount to the satisfaction of the trial Court, on the conditions that the applicants :-

- (a) shall not take undue advantage of liberty or misuse liberty;
- (b) shall not leave India without prior permission of this Court.
- (c) 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.
- d) shall proceed with the Criminal Appeal as and when it may be listed.

9. Rule qua applicant nos.2 and 3 viz. Mahammad Rasid Babi Ansari and Mahammad Juber Babu Ansari respectively returnable on 20.09.2023. Learned APP Mr.Dabhi waives service of notice of Rule on behalf of respondent State.

Direct service is permitted.

(HASMUKH D. SUTHAR,J)

MISHRA AMIT V.