

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL (AGAINST CONVICTION) NO. 1971 of 2025****With****CRIMINAL MISC.APPLICATION (FOR SUSPENSION OF SENTENCE) NO.
1 of 2025****In R/CRIMINAL APPEAL NO. 1971 of 2025**

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PATEL JAYKUMAR BHIKHABHAI

Versus

STATE OF GUJARAT

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Appearance:

MR NITINBHAI M DESAI(13406) for the Appellant(s) No. 1

MR.KIRIT R CHAUDHARI(3745) for the Appellant(s) No. 1

MS. ASMITA PATEL, APP for the Opponent(s)/Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE VIMAL K. VYAS**Date : 04/08/2025****ORAL ORDER****Order in Criminal Appeal**

ADMIT. Learned APP Ms. Asmita Patel waives service of notice of admission on behalf of the respondent – State.

Records and proceedings along with the paper-book shall be called for from the concerned trial Court.

Order in Cr.M.A. No. 1 of 2025

1. RULE. Learned APP Ms. Asmita Patel waives service of notice of rule for and on behalf of the respondent – State.

2. By way of filing the present application under the

provisions of Section 430 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the applicant-convict (i.e. the original accused No.2) seeks suspension of sentence imposed upon him vide judgment and order of conviction and sentence dated 25.07.2025 passed by the learned Sessions Judge, Mehsana, in Sessions Case No. 145 of 2021.

3. By the aforesaid judgment and order of conviction and sentence, the applicant-accused came to be held guilty and convicted for the commission of offences punishable under Sections 323 and 326 of the Indian Penal Code as well as under Section 135 of the G.P. Act, and consequently, the applicant-accused has been ordered to undergo sentence as under : -

Section	Imprisonment	Fine (Rs.)	In default of payment of fine
326 of IPC	Simple Imprisonment for 5 years	5,000	Simple Imprisonment for 6 months
323 of IPC	Simple Imprisonment for 6 months	500	Simple Imprisonment for 1 month
135 of G.P. Act	Simple Imprisonment for 1 month	100	Simple Imprisonment for 7 days

4. However, after appreciating the evidence on record, the trial Court has acquitted the applicant-accused from the charge for the offences punishable under Sections 307, 504, 506(2), 114 of the Indian Penal Code.

5. It appears that the applicant-accused is in jail since 25.07.2025. The appeal came to be admitted by this Court today itself.

6. At the outset, learned advocate Mr. Kirit R. Chaudhari appearing for the present applicant-accused has submitted that initially the applicant-accused was charged for the offence punishable under Sections 307, 326, 323, 504, 506(2), 114 of the Indian Penal Code as well as under Section 135 of G.P. Act, however, at the end of the trial, the trial Court has acquitted him from the charge for the offences punishable under Sections 307, 504, 506(2), 114 of the Indian Penal Code, and convicted him only for the offence punishable under Sections 323 and 326 of the Indian Penal Code as well as under Section 135 of the G.P. Act, and imposed a fixed term of sentence of simple imprisonment for five years along with fine. Learned advocate has submitted that the applicant-accused has already deposited the amount of fine as imposed by the trial Court and he was on bail during the trial.

7. Learned advocate Mr. Chaudhari has referred to the evidence of the complainant Niravkumar Ishwarbhai Patel (PW-1); the injured witness Ishwarbhai Mohanbhai Patel (PW-16) along with the evidence of the Medical Officers Dr. Sahdevdan Jabardan Gadhvi (PW-6) and Dr. Narayanbhai Patel (PW-7), and has submitted that it clearly reveals from the medical evidence that the injury sustained by the injured was simple in nature, however, as the injured was suffering from high blood pressure, and due to sudden blood pressure shoot at the time of the incident, he suffered an internal hemorrhage. Learned advocate

has further submitted that this clearly suggests that the intention of the applicant was not to cause any serious injury to the injured witness, and, therefore, no ingredients of Section 307 of the Indian Penal Code are attracted. It is submitted that if the evidence of the complainant (PW-1) be read along with the evidence of the injured eye-witness (PW-16), material contradictions surface. Learned advocate has, therefore, submitted that the applicant-accused has atleast an arguable case for suspension of sentence.

8. Learned advocate Mr. Chaudhari while placing reliance on the judgment of the Supreme Court in the case of ***Bhagwan Rama Shinde Gosai Vs. State of Gujarat***, reported in **1999 (4) SCC 421**, has urged that since the trial court has convicted and sentenced the applicant-accused for a fixed term of simple imprisonment for five years along with a fine, and since there are very remote chances of the hearing of the appeal in the near future as the same has been admitted by this Court today itself, the present application may be allowed and the applicant-convict may be released on bail by suspending his sentence, during the pendency and hearing of the Criminal Appeal.

9. Vehemently opposing the application filed by the present applicant-convict, learned APP Ms. Asmita Patel appearing for the State has submitted that the application is not required to be entertained since the applicant-accused has been convicted for the serious offences under Sections 326 and 323 of the

Indian Penal Code. Learned APP has submitted that the trial court, after precisely appreciating the evidence; both, ocular as well as documentary, has convicted the present applicant-accused for the alleged offence. Learned APP has further submitted that the evidence of the prosecution witnesses clearly establishes the complicity of the present applicant-convict in the alleged offence. Thus, she has urged that the present application may not be entertained and the same may be rejected.

10. Having heard the learned advocates appearing for the respective parties and having perused the evidence as pointed out by them, it appears from the record that initially the applicant-accused was charged for the offence punishable under Sections 307, 326, 323, 504, 506(2), 114 of the Indian Penal Code as well as under Section 135 of G.P. Act, however, at the end of the trial, the trial Court has acquitted him from the charge for the offences punishable under Sections 307, 504, 506(2), 114 of the Indian Penal Code, and convicted him only for the offence punishable under Sections 323 and 326 of the Indian Penal Code as well as under Section 135 of the G.P. Act, and imposed a fixed term of sentence of simple imprisonment for five years along with fine. It appears that the criminal appeal against the sentence preferred by the applicant has been admitted by this Court today itself.

11. It appears from the evidence of the complainant

Niravkumar Ishwarbhai Patel (PW-1), the injured witness Ishwarbhai Mohanbhai Patel (PW-16) and the evidence of the Medical Officers Dr. Sahdevdan Jabardan Gadhvi (PW-6) and Dr. Narayanbhai Patel (PW-7) that the injury sustained by the injured was simple in nature, however, as the injured was suffering from high blood pressure and due to sudden blood pressure shoot at the time of incident, he suffered an internal hemorrhage. From the record, it appears that the intention of the applicant was not to cause any serious injury to the injured, and therefore, no ingredients of Section 307 of the Indian Penal Code are attracted. Further, if the evidence of the complainant (PW-1) be read along with the evidence of injured eye-witness (PW-16), material contradictions surface.

12. Record reveals that the applicant-accused has already deposited the amount of fine as imposed by the trial Court and he was on bail during the trial. It also appears that the applicant-accused is in jail since 25.07.2025. It further appears from the record that the present incident had occurred in the year 2021 and the trial Court, after appreciating the evidence; both, ocular as well as documentary, has convicted the applicant-accused for the alleged offence. Since, the Criminal appeal preferred by the applicant-accused has been admitted today itself by this Court, there are very remote chances of the hearing of the appeal in near future. Therefore, in the considered opinion of this Court, the applicant-accused has an arguable case for suspension of sentence.

13. At this juncture, it would be apt to refer to the judgment of the Supreme Court in the case of ***Bhagwan Rama Shinde Gosai vs. State of Gujarat (supra)***, wherein, the Supreme Court has held as under :-

“3. When a convicted person is sentenced to fixed period of sentence and when he files appeal under any statutory right, suspension of sentence can be considered by the appellate court liberally unless there are exceptional circumstances. Of course if there is any statutory restriction against suspension of sentence it is a different matter. Similarly, when the sentence is life imprisonment the consideration for suspension of sentence could be of a different approach. But if for any reason the sentence of limited duration cannot be suspended every endeavour should be made to dispose of the appeal on merits more so when motion for expeditious hearing the appeal is made in such cases. Otherwise the very valuable right of appeal would be an exercise in futility by efflux of time. When the appellate court finds that due to practical reasons such appeals cannot be disposed of expeditiously the appellate court must bestow special concern in the matter suspending the sentence, so as to make the appeal right meaningful and effective. Of course appellate courts can impose similar conditions when bail is granted.”

14. The Supreme Court, in the case of ***Atul @ Ashutosh vs. State of Madhya Pradesh [Criminal Appeal No. 579 of 2024 arising out of SLP (Crl.) No. 1049/2024 decided on 02.02.2024]*** has held as under :-

“5. Before parting with order, we must note here that notwithstanding several decisions of this Court holding that when there is a fixed term sentence and especially when the appeal is not likely to be heard before completing entire period of sentence, normally suspension of sentence and bail should be granted. We find that in several deserving cases, bail is being denied. Such cases should never be required to be brought before this Court.”

15. The Supreme Court, in the case of ***Vishnubhai Ganpatbhai Patel & Anr. vs. State of Gujarat [Criminal Appeal No.3415 of 2023 arising out of S.L.P. (Criminal) No(s). 12853/2023 decided on 03.11.2023]*** has held that :-

"In our view, the High Court ought to have favourably considered the prayer for grant of suspension of sentence when there were no antecedents and more than 40 per cent of the sentence has been undergone.

We may note here something about the approach of the High Court while dealing with the application for suspension of sentence. Before the High Court, surprisingly, a submission was made on behalf of the State that sentence undergone only post conviction should be considered and therefore, a submission was made that the appellants had undergone only 05 months and 27 days. The High Court has accepted the said submission by recording that the appellants have not even completed 01 year of sentence. Apart from the fact that the said approach is incorrect, we may note here that there is no hard and fast rule which requires an accused to undergo sentence for a particular period before his prayer for suspension of sentence is considered."

16. Therefore, keeping in mind the aforesaid observations of the Supreme Court as well as considering the jail remarks and the fact that there are very remote chances of the hearing of the appeal in the near future, without entering into the merits of the case, this Court is of the considered opinion that the present applicant-convict has carved out a case for suspension of sentence. Hence, this Court is inclined to grant the present application and to suspend the sentence imposed upon the applicant-convict, during the pendency and final hearing of the appeal.

17. The application is allowed. The sentence imposed *vide* judgment and order of conviction and sentence dated 25.07.2025 passed by the learned Sessions Judge, Mehsana, in Sessions Case No. 145 of 2021, is hereby suspended pending hearing and final disposal of the Criminal Appeal qua the applicant-accused only.

18. The applicant-convict shall be released on bail by executing a fresh bond of Rs.15,000=00 (Rupees Fifteen Thousand) with one surety of the like amount to the satisfaction of the trial court, on the following conditions, that :

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

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

(VIMAL K. VYAS, J)

AMAR SINGH

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: AMAR SINGH(HC01081), PRIVATE SECRETARY, at High Court of Gujarat on 04/08/2025 17:35:53