

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL APPEAL NO. 1377 of 2007**

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SHREE DILIP GAMBHIRLALJI BHAMBHI
Versus
STATE OF GUJARAT

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Appearance:

MR GAJENDRA P BAGHEL(2968) for the Appellant(s) No. 1

MR L R POOJARI, APP for the Opponent(s)/Respondent(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE A.G.URAIZEE

Date : 12/03/2019

ORAL ORDER

1. This appeal is directed against the judgment and order of Presiding Officer, First Fast Track Judge, Valsad in Special N.D.P.S.Case No. 1 of 2005 dated 28.09.2007, whereby the appellant is convicted for the offences punishable under Sections 8(C) and 22(C) of the N.D.P.S. Act, 1985 and was directed to undergo rigorous imprisonment of ten years with fine of Rs. 2,00,000/-. In default of payment of fine, the appellant was directed to undergo rigorous imprisonment of two years.

2. Mr. Gajendra Bhaghel, learned advocate for the appellant was not present when the matter was called out.

3. Heard learned Assistant Government Pleader for the respondent-State.



4. This Court on 10.04.2014, while disposing of Criminal Appeal No. 1377 of 2007 along with connected appeals, separated this appeal qua the present appellant. The Court recorded thus:

“Since the original accused No.-3 Dilip Gambhirlalji Bhambhi appellant of Criminal Appeal No. 1377 of 2007 is absconding, appeal in respect of the said accused No.3 is not taken up for hearing in absence of the instruction by him to the learned counsel Mr. Bhaghel who states that appeal of the said appellant be separated and the formal appeal memo for accused-Dilip will be filed by him. Accordingly, appeal of accused-Dilip is separated.”

5 Thereafter, the matter was listed from time to time but learned advocate for the appellant did not appear. Hence, this Court vide orders dated 24.02.2016, 01.04.2016 and 10.11.2016 issued non-bailable warrant against the appellant.

6. The learned Additional Public Prosecutor has submitted that the jail remarks clearly indicate that the appellant was released on parole leave for a period of 15 days and he was to report before the jail authority after the expiry of parole leave. However, he has not surrendered before the jail authority and is absconding since 06.06.2009.

7. This Court has recorded in order dated 29.01.2019 as under:



“Jail record indicates that while the applicant -accused was enlarged on parole in 2009, he absconded and he could not be apprehended.”

8. It is thus explicitly clear from the record that the appellant is convicted for the offences punishable under sections 8(C) and 22(C) of the N.D.P.S. Act, 1985 and has absconded while on parole leave and has thus misused the liberty granted by the jail authority by releasing him on parole . It also emerges from the jail remarks that the attempts to arrest the appellant have not yielded any results. Therefore, in view of the above, considering the decision of the Full Bench of this Court in the case of **Niraj Devnarayan Shukla v. State of Gujarat, 2015 (3) GLR 2442**, more particularly para 16 (iii) thereof, this Court is of the opinion that in the facts and circumstances of this case, without entering into the merits of the case, the present appeal is dismissed as this Court is satisfied that though the efforts have been made, the appellant is not traced out from 06.06.2009 and has shown total disrespect to the judicial system. However, it is observed that if, subsequently, the appellant surrenders or is arrested, he may file an application for restoration of the criminal appeal for hearing the same on merits.

9. The Investigating Agency as well as the State are hereby directed to continue all efforts to arrest the appellant-convict.



10. It goes without saying that this Court has not expressed any opinion on merits and the same is dismissed on the ground that the appellant is absconding since more than years.

11. With the above observations, the present appeal stands dismissed with the aforesaid liberty. R & P to be transmitted to the Trial Court forthwith.

(A.G.URAIZEE, J)

JYOTI V. JANI