

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL NO. 2004 of 2019****With****CRIMINAL MISC.APPLICATION (FOR SUSPENSION OF SENTENCE) NO.
1 of 2019****In R/CRIMINAL APPEAL NO. 2004 of 2019**

=====

MUKUNDBHAI SHANTILAL PATEL

Versus

STATE OF GUJARAT

=====

Appearance:

MR YOGESH LAKHANI, LD. SENIOR ADVOCATE WITH

MR. RAHUL R DHOLAKIA(6765) for the Appellant(s) No. 1

MS MOXA THAKKAR, APP for the Opponent(s)/Respondent(s) No. 1

=====

CORAM: HONOURABLE MR.JUSTICE R.P.DHOLARIA**Date : 10/10/2019****COMMON ORAL ORDER**Order in Criminal AppealHeard. **ADMIT.**

The formal service of notice of admission is waived by learned APP for and on behalf of the respondent-State.

Order in Criminal Misc. Application No.1 of 2019

1. Rule. Learned APP waives service of notice of rule for and on behalf of the respondent-State.

2. This application is filed by the applicant seeking suspension of sentence imposed by the judgment and order dated 23.09.2019 passed in Special Electricity Case No.13 of 2017 by learned 13th Special Judge & Additional Sessions Judge

Vadodara at Savli and to release him on bail during the pendency of the aforementioned Criminal Appeal.

3. Mr. Yogesh Lakhani, learned Senior Advocate pointed out that during the trial, the applicant was on bail and the actions of checking as well as seizure etc. came to be challenged by way of preferring Special Civil Application before this Court and that petition is yet pending before this Court and in the said writ petition, without prejudice to the rights and contentions, the petitioner-present applicant herein had already deposited Rs. 34 lakhs which is more than the alleged bill issued by the electricity company, though the learned trial Court without appreciating other evidence available on record, solely based upon the findings on the premises of surmises and conjunctures, without appreciating the evidence, convicted the present applicant and imposed 3 times penalty thereof.

4. Learned APP Ms. Moxa Thakkar strongly opposed for grant of suspension of sentence and argued that the present applicant is involved in huge pilferage of electricity and therefore, judicial discretion may not be used in his favour.

5. Heard Mr. Yogesh Lakhani, learned Senior Advocate with Mr. Rahul Dholakia, learned advocate for the applicant and Ms. Moxa Thakkar, learned APP for the respondent-State.

6. Having heard learned advocates appearing for the respective parties and having gone through the materials available on record as well as perused the impugned judgment and having considered the fact that the applicant has already deposited Rs.34 lakhs before the electricity company which is

more than the alleged bill of pilferage issued against him and further the fact that the applicant is sentenced for a short period of 2 years only, this Court is of the considered opinion that present application requires consideration and prayer in terms of bail is allowed. The sentence imposed by the judgment and order dated 23.09.2019 passed in Special Electricity Case No.13 of 2017 by learned 13th Special Judge & Additional Sessions Judge Vadodara at Savli is hereby suspended pending hearing and final disposal of the Criminal Appeal and further the impugned judgment rendered by the learned trial Court for recovery of fine which is 3 times of penalty is also hereby stayed till the conclusion of the afore mentioned appeal. The applicant shall be released on bail by executing fresh bond of Rs.15,000/- (Rupees Fifteen Thousand only) and one surety of the like amount to the satisfaction of trial court on condition that he shall proceed with the Criminal Appeal as and when it may be listed, and he shall surrender his passport, if having, before the learned trial court and shall not leave India without prior permission of this Court. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(R.P.DHOLARIA, J)

TAUSIF SAIYED