

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL (AGAINST CONVICTION) NO. 2790 of 2024

With

CRIMINAL MISC.APPLICATION (FOR SUSPENSION OF SENTENCE) NO. 1 of 2024

In R/CRIMINAL APPEAL NO. 2790 of 2024

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NAVALSINH DESHALJI KER JADEJA & ORS.

Versus

STATE OF GUJARAT

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Appearance:

MR PREMAL S RACHH(3297) for the Appellant(s) No. 1,2,3,4

MS ROMA I FIDELIS(3529) for the Opponent(s)/Respondent(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 : 11/02/2025

ORAL ORDER

ADMIT. Learned APP Ms.Asmita Patel waives service of notice of admission for and on behalf of the respondent no.1 – State. Learned advocate Ms.Roma I.Fidelis waives service of notice of admission for and on behalf of the original complainant.

ORDER IN CRIMINAL MISC. APPLICATION NO.1 OF 2024

1. RULE. Learned APP Ms.Asmita Patel waives service of notice of rule for and on behalf of the respondent no.1 – State.

Learned advocate Ms.Roma I.Fidelis waives service of notice of rule for and on behalf of the original complainant.

2. The present application has been preferred by the applicants-convicts (i.e. the original accused nos.1, 5, 6 and 7) under the provisions of Section 389 of the Code of Criminal Procedure, 1973, seeking suspension of sentence imposed upon them *vide* judgment and order of conviction and sentence dated 08.11.2024 passed by the learned Sessions Judge, Jamnagar, in Sessions Case No.20 of 2011.

3. By the aforesaid judgment and order of conviction and sentence, the applicants-convicts have been held guilty for the commission of offences punishable under Sections 143, 147, 148, 307, 323, 325, 504 read with Section 149 of the Indian Penal Code as well as under Section 135(1) of the Gujarat Police Act, and consequently, they have been sentenced to undergo imprisonment as under :

Section under IPC	Imprisonment	Fine Amount	In default of payment of fine
143	Rigorous Imprisonment for six months	-	-

147	Rigorous Imprisonment for six months	-	-
148	Rigorous Imprisonment for one year	-	-
307 r/w 149	Rigorous Imprisonment for seven years	5000	Simple Imprisonment for one year
323 r/w 149	Rigorous Imprisonment for one year	1000	Simple Imprisonment for one month
325 r/w 149	Rigorous Imprisonment for two years	1000	Simple Imprisonment for one month
504 r/w 149	Rigorous Imprisonment for two years	-	-
135(1) G.P.Act	Rigorous Imprisonment for six months	-	-

4. It is the case of the prosecution that on 06.11.2010, the complainant and other family members had gone to attend the after death rituals of one of their relatives, at that time in the night hours, the present applicant no.2 - accused no.5, namely, Pruthvirajsinh Jadeja, had come to their house in an inebriated condition, and by knocking the door with a sword, he created a ruckus and threatened as to why they don't keep relationship with them and thereafter he went away. On 10.11.2010 at around 9:30 in the night hours, one Vanrajsinh Pravinsinh Jadeja (PW-26) had come to the house of the complainant and informed that all the accused persons, armed with weapons, have gathered near the house of the accused no.2 - Kishorsinh Amarsinh Rathod and they have called Dilipsinh Viraji Jadeja

(PW-21) (i.e. the injured eye-witness and son of the complainant), therefore, the complainant along with all other family members had reached at the house of the accused no.2 – Kishorsinh Amarsinh Rathod. It is the case of the prosecution that thereafter, all the accused persons got agitated and started assaulting the complainant and other family members with weapons like '*dhariya*', knife, dagger '*gupti*', Axe, etc. and caused serious injuries to them. The injured persons were immediately taken to the hospital for treatment.

5. A complaint in this regard came to be lodged by the complainant (PW-20) Hulasba Viraji Jadeja vide Exh.155 on 11.11.2010, which was registered as I-CR.No.144 of 2010 before the Panchkoshi B-Division Police Station, Jamnagar. The prosecution had examined, in all, 31 witnesses and adduced 15 documentary evidence. The trial court, after appreciating the evidence, has convicted the present applicants-accused for the offences punishable under Sections 143, 147, 148, 307, 323, 325, 504 read with Section 149 of the Indian Penal Code as well as under Section 135(1) of the Gujarat Police Act, and consequently, sentenced them to suffer rigorous imprisonment for seven years.

6. After arguing the matter for some time, since this Court was not inclined to consider the case of the present applicant no.1 – Navalsinh Deshalji Ker Jadeja (i.e. the original accused no.1) considering the fact that he had inflicted a knife blow on the flank of the injured eye-witness (PW-21) Dilipsinh Viraji Jadeja, which also got corroborated from the evidence of the Medical Officers (PW-1) Dr.Nilesh Kailashgiri Goswami and (PW-19) Dr.Dipak Bhagwanprasad, who in their evidence have clearly deposed that the injured had received serious injuries on the flank (8cm x 1cm sharp incised wound on the left hypochondriac region), learned advocate Mr.Premal Rachh appearing for the present applicants-convicts has submitted that he is not pressing the present application qua the applicant no.1 – Navalsinh Deshalji Ker Jadeja (i.e. the original accused no.1) and seeks permission to withdraw the same with a liberty to file afresh.

7. Permission as prayed for is granted. Application stands disposed of as withdrawn qua the present applicant no.1 – Navalsinh Deshalji Ker Jadeja (i.e. the original accused no.1) with a liberty to approach this Court after a period of one year

from the date of this order if the appeal is not heard by that time.

8. Learned advocate Mr.Premal Rachh, while making his submissions on behalf of the present applicants (i.e. the original accused nos.5, 6 and 7) at the outset, has submitted that although the alleged incident had occurred on 10.11.2010, the complaint was filed on 11.11.2010 and the charge was framed on 30.09.2011, yet the prosecution could not examine and record the evidence of the injured eye-witnesses, namely, Viraji Hajaji and Anirudhsinh Viraji Jadeja, since both of them had passed away on 12.01.2015 and 30.12.2019, respectively. Mr.Rachh has, therefore, submitted that the evidence of the star-witnesses is not available on record.

9. While referring to the evidence of the complainant (PW-20) Hulasba Viraji Jadeja, learned advocate Mr.Rachh has submitted that if the evidence of the complainant, who is the eye-witness, is read in juxtaposition with the evidence of the other eye-witnesses, material omissions and contradictions surface from their evidence.

10. Learned advocate Mr.Rachh has submitted that it is alleged that the present applicant-accused nos.5, 6 and 7 had inflicted '*gupti*' and Axe blows on the injured Viraji Hajaji and Anirudhsinh Viraji Jadeja. However, it appears from the record that although the incident had occurred on 10.11.2010 and the charge was framed on 30.09.2011, yet the prosecution could not examine and record the evidence of the injured eye-witness, namely, Anirudhsinh Viraji Jadeja, since both of them had passed away on 12.01.2015 and 30.12.2019, respectively. Therefore, the evidence of the injured star-witnesses is not available on record. It further appears from the record that the evidence of the complainant and other injured witnesses suffer from major contradictions since there is discrepancies in their evidence regarding the name of the accused persons, the weapons used by the accused and the injuries caused by them to the injured eye-witnesses. So, their evidence is not in consistent with the version of the prosecution.

11. Learned advocate Mr.Rachh has also submitted that the two other eye-witnesses, namely, (PW-26) Vanrajsinh Pravinsinh Jadeja and (PW-27) Hiteshgiri Amrutgiri Goswami, have also not supported the case of the prosecution. Learned advocate

Mr.Rachh has, therefore, submitted that while appreciating the overall evidence; both, documentary as well as oral, it appears that the trial court has committed an error in convicting the present applicants-accused for the serious offence punishable under Section 307 read with Section 149 of the Indian Penal Code. Hence, he has urged before this Court that considering the aforesaid as well as considering the fact that the trial court has sentenced the present applicants-accused to undergo a fixed term of rigorous imprisonment for seven years, the present application may be allowed and the applicants-convicts may be released on bail by suspending their sentence, during the pendency and final hearing of the Criminal Appeal.

12. Vehemently opposing the present application, learned APP Ms.Asmita Patel has submitted that the present application is not required to be entertained since the applicants-accused have been convicted for a serious offence punishable under Section 307 read with Section 149 of the Indian Penal Code. She has submitted that the trial court, after precisely appreciating the evidence; both, ocular as well as documentary, has convicted the present applicants for the alleged offence. Learned APP has further submitted that the evidence of the complainant (PW-20)

Hulasba Viraji Jadeja, the injured eye-witnesses (PW-21) Dilipsinh Viraji Jadeja as well as the witnesses (PW-25) Chhatrapalsinh Natubha Jadeja, (PW-26) Vanrajsinh Pravinsinh Jadeja and (PW-27) Hiteshgiri Amrutgiri Goswami, clearly establishes the complicity of the present applicants-convicts in the alleged offence. Thus, she has urged that the present application may not be entertained and the same may be rejected.

13. Learned advocate Ms.Roma Fidelis appearing for the original complainant, while opposing the present application, has adopted the arguments canvassed by the learned APP for the State and has submitted that looking to the seriousness of the offence, the present application may not be entertained and the same may be rejected.

14. Heard learned advocates for the respective parties and also perused the evidence as pointed out by them. It is an admitted fact that the case of the prosecution rests upon the direct evidence of the eye-witness. This Court has also scaled the evidence led by the prosecution along with the impugned judgment of the trial court. *Prima facie*, it appears from the

evidence of the complainant (PW-20) Hulasba Viraji Jadeja and the injured eye-witnesses (PW-23) Ritaba Dilipsinh Jadeja that the only role attributed to the present applicants-convicts is that of inflicting a 'gupti' and Axe blows on the injured Viraji Hajaji and Anirudhsinh Viraji Jadeja. However, it appears from the record that although the incident had occurred on 10.11.2010 and the charge was framed on 30.09.2011, yet the prosecution could not examine and record the evidence of the injured eye-witnesses, namely, Viraji Hajaji and Anirudhsinh Viraji Jadeja, since both of them had passed away on 12.01.2015 and 30.12.2019, respectively. Therefore, the evidence of the injured star-witnesses is not available on record. It *prima facie* appears from the record that the evidence of the complainant and other injured witnesses suffer from major contradictions since there is discrepancies in their evidence regarding the name of the accused persons, the weapons used by the accused and the injuries caused by them to the injured eye-witnesses and their evidence is not in consistent with the version of the prosecution.

15. Considering the aforesaid as well as considering the fact that the trial court has convicted and sentenced the present applicants-accused for a fixed term of rigorous imprisonment for

seven years so also the fact that the appeal preferred by the present applicants-convicts has been recently admitted by this Court on 05.12.2024 and there are very remote chances of the hearing of the appeal in the near future, the present applicants-accused have carved out an arguable case.

16. 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**, reported in 1999 (4) SCC 421, 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.”

17. 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.”

18. On the facts and in the circumstances of the case, this Court is inclined to grant the application qua the present applicants-accused nos.5, 6 and 7, namely, Pruthavirajsinh Navalsinh Ker Jadeja, Bhikhubha Deshalji Ker Jadeja and Ajitsinh Deshalji Ker Jadeja.

19. The application is allowed. The sentence imposed *vide* judgment and order of conviction and sentence dated 08.11.2024 passed by the learned Sessions Judge, Jamnagar, in Sessions Case No.20 of 2011, is hereby suspended pending hearing and final disposal of the Criminal Appeal qua the present applicants-accused nos.5, 6 and 7, namely, Pruthavirajsinh Navalsinh Ker Jadeja, Bhikhubha Deshalji Ker Jadeja and Ajitsinh Deshalji Ker Jadeja.

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

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

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

/MOINUDDIN

(VIMAL K. VYAS, J.)