

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL (AGAINST CONVICTION) NO. 2968 of 2025
With
CRIMINAL MISC.APPLICATION (FOR SUSPENSION OF SENTENCE) NO.
1 of 2025
In R/CRIMINAL APPEAL NO. 2968 of 2025

=====

RANCHODBHAI @ BALVANTJI POPATJI THAKOR
Versus
STATE OF GUJARAT & ANR.

=====

Appearance:

MR AMIT N CHAUDHARY(5599) for the Appellant(s) No. 1
MR TUSHAR CHAUDHARY(5316) for the Opponent(s)/Respondent(s) No. 2
MS. C.M. SHAH, APP for the Opponent(s)/Respondent(s) No. 1

=====

CORAM:HONOURABLE MS. JUSTICE S.V. PINTO

Date : 06/01/2026

ORAL ORDER

ORDER IN CRIMINAL APPEAL:

Admit. Learned APP waives service of admission for and on behalf of the respondent State.

ORDER IN CRIMINAL MISC. APPLICATION:

1. **RULE.** Learned Additional Public Prosecutor appears and waives service of notice of rule on behalf of the respondent-State.

2. By way of the present application under Section 430 of the Bharatiya Nagarik Surakhsha Sanhita, 2023, the applicant - accused is seeking suspension of sentence and

release on regular bail during pendency of the present appeal against the judgment and order of conviction dated 07.11.2025 passed in Special POCSO Case No. 12/2019 by the learned 5th Additional Sessions Judge and Special (POCSO) Judge, Dindori at Banaskantha, whereby, the present applicant - accused was sentenced to seven years rigorous imprisonment and fine of Rs. 5,000/- each and in default, three months rigorous imprisonment for the offence punishable under Section 71 read with Sections 363 and 366 of Indian Penal Code and ten years rigorous imprisonment and fine of Rs. 10,000/- each and in default, six months rigorous imprisonment for the offence punishable under Section 71 of IPC read with Section 26 of the General Clauses Act read with Sections 42, 4 and 6 of the POCSO Act read with Section 376 of Indian Penal Code. The learned Trial Court was pleased to order that both the sentences shall run concurrently.

3. Heard learned advocate Mr. Amit Chaudhary for the applicant, learned advocate Mr. Tushar Chaudhary for the respondent no. 2 and learned APP Mr. C.M. Shah for the

respondent no. 1 State.

4. Learned Advocate Mr. Amit Chaudhary for the applicant submits that the applicant has been sentenced for a fixed period and as far as the merits of the case are concerned, the victim was 17 years and 3 months old as per the case of the prosecution on the date of the incident. In the entire evidence there is no iota of evidence regarding the date of birth of the victim and the evidence that is on record is the school leaving certificate of Liberty Secondary and Higher Secondary School, Bhabar but the age has not been proved beyond reasonable doubts by the prosecution. The Investigating Officer has stated that he did not make any efforts to get the birth certificate from the concerned authority and the complaint was filed on 08.04.2019 and the school leaving certificate has been issued on 05.04.2019. Moreover, if the evidence of the victim is perused, even in the statement recorded under Section 164 of the Code of Criminal Procedure, 1973, she has stated that she was residing in Gayatri Hostel, Radhanpur Highway at Bhabar and as her school was away from the hostel, a van was kept

to commute from the hostel to the school and the applicant was the van driver and she had developed a friendship with him which had thereafter culminated into a love affair. The victim has herself stated that she of her own free will had gone to Surendranagar and resided there for two to three days and thereafter, she came to know that her father had filed a case against the applicant and they returned to Bhabar Police Station. Moreover, she has stated that as she had a love affair with the applicant of her own free will, she had physical relations with him and he had never forcibly taken her away or had committed any sexual assault against her will on her. Even in her deposition, she has stated that no forcible act was ever committed on her and in the deposition of the father of the victim, it has also emerged on record that earlier the victim had eloped and they did not file any complaint at that time. Learned advocate further submits that the present appeal is not likely to be heard in near future and hearing of the same would take some long time and hence, no purpose would be served by keeping the applicant in jail for indefinite period with hardened

criminals. The applicant has a good case on merits and hence, the application may be allowed and the applicant be enlarged on bail pending hearing and final disposal of the captioned Criminal Appeal.

5. Learned APP for the respondent – State and learned advocate Mr. Tushar Chaudhary have jointly objected to the submissions made by the learned advocate for the applicant and have submitted that the learned Trial Court has rightly convicted the present applicant as he has been involved in a very serious offence, however, necessary orders may be passed in the interest of justice.

6. On perusal of the impugned judgment and order and the paper book produced on record by the learned advocate for the applicant, the evidence regarding the date of birth of the victim is in the form of the school leaving certificate and the Investigating Officer has stated that he has not investigated about the birth certificate of the victim. Moreover, in her statement recorded under section 164 of Code of Criminal Procedure, 1973 the victim has narrated

the details about her love affair with the applicant and voluntarily she had left the company of her parents and had gone and had joined the company of the applicant. As per the case of the prosecution, the victim was 17 years and 3 months on the date of the incident but the date of birth has not been proved and the arguments of learned advocate for the applicant deserve consideration.

7. At this juncture, it would also be fit to refer to the judgment of the Apex Court in the case **Bhagwan Rama Shinde Gosai Vs. State of Gujarat** reported in **(1999) 4 SCC 421**, wherein, it has been held that when the appellants have been sentenced for a fixed period and when the appellate Court finds that due to practical reasons such appeal cannot be disposed of expeditiously the appellate Court must bestow special concern in the matters of suspending the sentence. And without entering into the merits of the case, as the appeal is filed within time, this Court is of the opinion that the application requires consideration and accordingly, is allowed. The order of execution of sentence in the judgment and order dated

07.11.2025 passed in Special POCSO Case No. 12/2019 by the learned 5th Additional Sessions Judge and Special (POCSO) Judge, Diyodar at Banaskantha is suspended during pendency of the Criminal Appeal and the applicant is ordered to be released on bail on furnishing personal bond of Rs. 25,000/- (Rupees Twenty Five Thousand Only) with surety of the like amount to the satisfaction of the trial court and on the following conditions that the applicant;

- (i) shall not take undue advantage of liberty or misuse liberty;
- (ii) shall furnish the present address of his residence to the Court concerned at the time of execution of the bond;
- (iii) shall maintain law and order;
- (iv) shall not indulge in any activity leading to breach of public peace and tranquility;
- (v) shall deposit the amount of fine, if not deposited, before his release;
- (vi) the applicant shall be released if not required in any other case.

8. In view of the above, the present application stands disposed of. Rule is made absolute to the aforesaid extent. Direct service is permitted.

VASIM S. SAIYED

(S. V. PINTO,J)