

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**CRIMINAL MISC.APPLICATION (FOR SUSPENSION OF SENTENCE) NO.
1 of 2023
In R/CRIMINAL APPEAL NO. 563 of 2023**

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RAJESHBHAI BHAVANBHAI MARU
Versus
STATE OF GUJARAT
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Appearance:

MR SALIM M SAIYED(5172) for the PETITIONER(s) No. 1
MS JIRGA JHAVERI, APP for the RESPONDENT(s) No. 1
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CORAM:HONOURABLE MS. JUSTICE S.V. PINTO

Date : 09/01/2024

IA ORDER

- 1. Rule.** Learned APP waives service of notice of Rule on behalf of the respondent-State.
- By preferring present application under Section 389 of the Code of Criminal Procedure, applicant original accused has prayed to suspend the judgment and order of conviction and sentence dated 19/01/2023 passed by the learned Sessions Court No.1, Ahmedabad in Sessions Case No.128 of 2022 and release the applicant on bail till the hearing and final disposal of the present Criminal Appeal.
- Vide the aforesaid judgment and order of conviction and sentence dated 19/01/2023, the learned Sessions Court was pleased to convict the present applicant and

sentenced to rigorous imprisonment for a period of three years and fine of Rs.2,000/- and in default of payment of fine, further simple imprisonment for seven days for the offences punishable under Section 498(A) of the Indian Penal Code; rigorous imprisonment for a period of seven years and fine of Rs.5,000/- and in default of payment of fine, further simple imprisonment for fifteen days for the offences punishable under Section 306 of the Indian Penal Code. It was also ordered that both the sentences were to run concurrently.

4. Heard learned advocate for the applicant and learned APP for the respondent-State.
5. Learned advocate for the applicant submits that the Criminal Appeal preferred by the applicant appellant is admitted by the co-ordinate bench of this Court vide order dated 13/03/2023 and it would take considerable long period for final hearing of this appeal and therefore, the impugned judgment and order of conviction and sentence is required to be suspended and the applicant may be released on bail during the hearing and final disposal of the present Criminal Appeal.
6. In support of his case, learned advocate for the applicant has relied upon the reported decision dated 01/10/2020 of the Hon'ble Supreme Court in case of **Gurcharan Singh vs. The State of Panjab** in Criminal Appeal No.40 of 2011. Learned advocate has submitted that the

deceased had a small child and she was suffering from the postpartum depression and the applicant had examined Dr.Bhaveshkumar Manharlal Lakdawala at Exh.39 as defense witness no.3. That the witness Dr.Bhavehkumar Manharlal Lakdawala was psychiatric who was treating the deceased and he has stated on oath that the deceased was being treated for postpartum depression and a patient of postpartum depression had an tendency to commit the suicide. That the learned trial court has observed in the judgment that there was no evidence regarding any abatement to suicide or any evidence that the applicant was mentally and physically harassing the deceased as the applicant and the deceased had a love marriage and the parents of the deceased were not very happy with the said marriage. That in fact there is evidence on record to show that the parents of the deceased were not co-operating with her and she was not happy about that and hence when the applicant had produced evidence on record to show that the deceased was suffering from postpartum depression and was been treated for the same, the learned trial court ought to have acquitted the applicant. That the applicant has good case on merits and the judgment of the learned trial court is erroneous and suffers from patent infirmities. That the applicant was on bail during the trial and he has aged parents and hence suspension of sentence be considered.

7. Learned APP for the respondent-State has objected the

submissions made by learned advocate for the applicant and submitted that after recording evidence of the prosecution, the learned Sessions Court has rightly convicted the present applicant and therefore, the prayer made in this application may not be granted by this Court.

8. 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 appellate court finds that due to practical reasons such appeal cannot be disposed of expeditiously the appellate court must be bestow special concern in the matters of suspending the sentence.
9. Having heard learned advocate for the present applicant accused as well as learned APP for the respondent-State, it appears that final hearing of the present criminal appeal would take considerable time and till then, the presence of the present applicant accused is not required in judicial custody. Hence, prayer made by the present applicant accused in the present application requires consideration qua suspension of the sentence and release on bail till hearing and final disposal of the present criminal appeal.
10. For the aforesaid reasons, present application stands allowed. Pending hearing and final disposal of

aforesaid Criminal Appeal, execution of order of sentence dated 19/01/2023 passed by the learned Sessions Court No.1. Ahmedabad in Sessions Case No.128 of 2022 shall be suspended and the applicant is ordered to be released on bail on furnishing personal bond of Rs.10,000/- (Rupees Ten thousand only) with surety of the like amount to the satisfaction of the trial court and on the following conditions:

- (i) shall pay the fine if not paid before release;
- (ii) shall not take undue advantage of liberty or misuse liberty;
- (iii) shall not leave India without prior permission of this Court;
- (iv) 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;
- (v) shall maintain law and order;
- (vi) shall not indulge in any activity leading to breach of public peace and tranquility.

11. Present application stands disposed of accordingly.
Rule is made absolute. Direct service is permitted.

(S. V. PINTO,J)

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