

(2023) 03 GUJ CK 0089

In the Gujarat High Court

Case No : Criminal Misc.Application (For Suspension Of Sentence) No. 5 Of 2022
In R/Criminal Appeal No. 1154 Of 2021

Bhaylubha Nirubha Gohil

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 20-03-2023

Acts Referred:

Indian Penal Code, 1860 — Section 114, 307, 326, 427, 450, 506(2)
Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(2)(5)

Citation : (2023) 03 GUJ CK 0089

Hon'ble Judges : S.H.Vora, J;S.V. Pinto, J

Bench : Division Bench

Advocate : Hardik A Dave

Final Decision : Allowed

Judgement

S.H.Vora, J

1. Rule. Learned A.P.P. waives service of Rule for the respondent – State.

2. Heard submissions made at bar.

3. This is a case where, the applicant is convicted by the learned trial Court for the offence punishable under Section 307, 326 r/w 114 of the IPC and sentenced to undergo 5 years SI with fine of Rs.1,000/- in default to undergo one month SI; under section 450 of the IPC to undergo 3 years SI with fine of Rs.1,000/- in default to undergo one month SI; under section 427 of the IPC to undergo 6 months SI with fine of Rs.200/- in default to undergo 10 days SI; under section 506(2) of the IPC to undergo 1 year SI with fine of Rs.500/- in default to undergo 1 month SI; under section 3(2)(5) of the Atrocity Act to undergo 5 years SI with fine of Rs.1,000/- in default to undergo 1 month SI. The applicant has filed appeal before this Court which came to be admitted. The applicant has also moved present application for suspension of sentence.

4. Upon considering the submissions made at bar, it appears that applicant is sentenced for a fixed period and the appeal is not likely to be heard in near future, present application for suspension of sentence can be considered in view of the decision rendered in case of Bhagwan Rama Shinde V/s. State of Gujarat (1999)4 SCC 421 as there are no exceptional circumstances pointed out by the learned A.P.P. to refuse/decline the application. The applicant is imposed sentence of 05 years and against that the applicant has suffered sentence of 1 year 5 months 17 days as on 19.03.2023. Considering the fact that the applicant has undergone more than about one and half years of the sentence as of now, present application deserves consideration.

5. Therefore, pending appeal, judgment and order of sentence imposed upon the applicant dated 22.07.2021 passed by the learned 5th Additional District & Sessions Judge (Special Judge), Bhavnagar in Special Atrocity Case No.4 of 2013 is hereby suspended and the applicant shall remain on bail pending hearing of the appeal on furnishing bail bond of Rs.20,000/- to the satisfaction of the learned Sessions Court concerned and on further conditions to (i) not to leave limits of Gujarat State (ii) attend hearing of the appeal regularly and (iii) pay the fine amount within 7 days from today, if not paid till date.

6. Accordingly, present application is allowed. Rule is made absolute to the aforesaid extent.