

(2025) 12 GUJ CK 1811
In the Gujarat High Court

Case No : Criminal Misc.Application (For Suspension Of Sentence) No. 4 Of 2025
In R/Criminal Appeal No. 1307 Of 2023

Chandrakant @ Chandresh Natubhai Bhailalbhair Patel APPELLANT
Vs

State Of Gujarat RESPONDENT

Date of Decision : 09-12-2025

Acts Referred:

Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 430(1)
Indian Penal Code, 1860 — Section 302

Citation : (2025) 12 GUJ CK 1811

Hon'ble Judges : Ilesh J. Vora, J;R. T. Vachhani, J

Bench : Division Bench

Advocate : Utkarsh J Dave, Bhargav Pandya

Final Decision : Allowed

Judgement

R. T. Vachhani, J

1. Rule. Learned APP waives service of Rule on behalf of respondent State. By consent, Rule is fixed forthwith.

2. By way of this application under Section 430(1) of BNSS, 2023, the applicant herein, seeks suspension of sentence awarded to him by the Sessions Court concerned for the offence punishable under Sections 302 of the Indian Penal Code.

3. The present appeal and the application for suspension of sentence arise from the judgment and order dated 15.09.2022, passed by the Learned Sessions Judge, Anand, in Sessions Case No. 3 of 2021, wherein the appellant has been convicted for life and a fine of Rs. 5,000/- for the offence punishable under Section 302 of the IPC.

4. Facts and circumstances giving rise to file present application as is appearing from the application that it had been alleged in the charge-sheet that the appellant was in an illicit relationship with original accused No.3, who was the

wife of the deceased. Moreover, to remove the only obstacle between them, the appellant in criminal conspiracy with original accused No.2, accused No. 3 killed the deceased, after inviting him over to the field and strangulating him in his Maruti Alto car with the arms of his jacket and then riding on his chest, even as original accused No. 2 caught hold the legs of the deceased. Thereafter, they threw the dead body out of the car in the fields of village Pansora. Accordingly, the complaint was filed.

5. Learned Advocate Mr.Utkarsh Dave appearing for the applicant has submitted that previously, the applicant moved an application being CR.MA No.2 of 2023 in CR.A No.1397 of 2023 seeking suspension of sentence which came to be withdrawn by an order dated 11/07/2023 with a permission to file a fresh application after reasonable time. Thereafter, the present applicant has moved an application being CR.MA No.2 of 2024 in CR.A No.1397 of 2023 seeking suspension of sentence wherein as per order dated 19/11/2024, the said application came to be withdrawn with a permission to file a fresh application after a period of six months from the date of passing of that order. Under the aforesaid circumstances, the present application seeking suspension of sentence has been filed.

5.2 Learned advocate for the applicant has further submitted that case of the prosecution mainly rests on the circumstantial evidence and the considering the evidence on record, the prosecution has failed to prove to establish the complete chain of circumstance showing involvement of the accused in commission of the crime and therefore there may be chances of acquittal of the applicant. It is further submitted that since the co-accused involved in the offence in question have been acquitted by the learned Sessions Court and therefore there may be chances of the appellant being acquitted at the hearing of the appeal, as also considering the period of incarceration undergone by the applicant upto now i.e. about to six years (05 years and 09 months), it is therefore prayed to allow this application and to suspend the order of sentence.

6. On the other hand, Mr.Bhargav Pandya, learned Additional Public Prosecutor has supported the impugned judgment and order of conviction as passed by the trial Court. The applicant accused and others held guilty for the offence of murder and the court below while recording the conviction, has not committed any error, either on law or on facts and therefore, court may not entertain this application.

7. We have examined the case records and considered the submissions made at the bar. Having heard the learned advocates appearing for the respective parties, as submitted by learned advocate for the applicant – accused, it transpires that the entire case of the prosecution rests on the circumstantial evidence; the factum as to the frequently connected with the chain or the breacking thereof seems to be the entire gamut of the case on hand and other two accused persons involved in the offence in question came to be acquitted by the learned Sessions Court, therefore considering the overall facts and circumstances of the

case and the period of incarceration undergone by the applicant upto now i.e. about to six years (05 years and 09 months), we are persuaded to exercise our discretion in favour of the applicant convict for the purpose of substantive order of sentence. We have considered the submissions made at the bar and considering the period of incarceration which the applicant has undergone upto now i.e. 05 years and 09 months i.e. about to six years as per the jail record submitted by the learned APP, as discussed in the preceding paragraph, in such circumstances, we are inclined to exercise our discretion in favour of the applicant convict for the purpose of substantive order of sentence.

8. Accordingly, present application is allowed. The sentence of the applicant awarded vide judgment and order dated 15.09.2022 passed by the Learned Sessions Judge, Anand, in Sessions Case No. 3 of 2021 is suspended during the pendency of the Criminal Appeal and the applicant shall be released on bail on his furnishing a personal bond of Rs.25,000/-with one surety of the like amount to the satisfaction of the trial Court subject to conditions that:

- (a) he shall not take undue advantage of the liberty or misuse the liberty;
- (b) he shall not leave India without the prior permission of the concerned Sessions Court;
- (c) he 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 the concerned Sessions Court.
- (d) he shall proceed with the Criminal Appeal as and when it may be listed.

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