

(2012) 09 GUJ CK 0129

In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 13833 of 2012 in Criminal Appeal No. 1480 of 2012

Gopsing Baharbhai Patel and 1

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 28-09-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 389
Penal Code, 1860 (IPC) — Section 114

Citation : (2012) 09 GUJ CK 0129

Hon'ble Judges : M. R. Shah, J

Bench : Single Bench

Advocate : M.A. Kharadi s - 2, for the Appellant; L.B. Adbhi Addl. Public Prosecutor for Respondent : 1, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice M.R. Shah

1. RULE. Mr. L.B. Dabhi, learned Additional Public Prosecutor waives the service of notice of rule on behalf of the respondent - State. In the facts and circumstances of the case and with the consent of the learned advocates appearing on behalf of the respective parties, present application is taken up for final hearing today.

2. Present application u/s 389 of the Code of Criminal Procedure has been preferred by the applicants-original accused to suspend the sentence imposed by the learned trial court and to release them on bail.

3. At the outset, Mr. Kharadi, learned advocate appearing on behalf of the applicants - original appellants/accused does not press the present application QUA applicant No. 1 herein - Gopsing Baharbhai Patel at this stage, with a liberty to file an appropriate application for bail, if the appeal is not heard within a reasonable time and the said applicant No. 1 has undergone approximately more

than 50% of the sentence.

4. Permission as prayed for is granted. Present application is dismissed with above liberty so far as the applicant No. 1 herein - Gopsing Baharbhai Patel is concerned.

5. So far as the applicant No. 2 - original accused No. 2 - Arjunbhai Mathurbhai Patel is concerned, in the facts and circumstances of the case and considering the fact that he has been convicted for the offence u/s 114 of Indian Penal Code and ordered to undergo Rigorous Imprisonment for a period of one year with fine of Rs. 100/-, and in default to make payment of fine, further Rigorous Imprisonment for a period of three months and considering the role attributed to him and as it is reported that he was on bail during the trial and has not misused the liberty granted to him, case of the applicant No. 2 herein is required to be considered for releasing him on bail. In view of the above, present application is allowed so far as the applicant No. 2 - original accused No. 2 is concerned, and the applicant No. 2 herein - original accused No. 2 - Arjunbhai Mathurbhai Patel is hereby ordered to be released on bail, on same bail fresh bond on the same terms and conditions on which he was released on bail during trial. Rule is made absolute so far as the applicant No. 2 - original accused No. 2 - Arjunbhai Mathurbhai Patel is concerned and rule is discharged so far as the applicant No. 1 herein is concerned.

Direct Service is permitted.