

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC. APPLICATION (FOR SUSPENSION OF SENTENCE)

NO. 1 of 2026

In R/CRIMINAL APPEAL NO. 779 of 2026

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PRAVINKUMAR BALVANTRAM VANA (BISHNOI)

Versus

STATE OF GUJARAT

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Appearance:

MR. AAMIR S PATHAN(7142) for the PETITIONER(s) No. 1

MR. KISHAN H DAIYA(6929) for the PETITIONER(s) No. 1

MR. BHARGAV PANDYA, APP for the RESPONDENT(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE VIMAL K. VYAS

Date : 30/07/2026

IA JUDGMENT

1. RULE. Learned APP Mr. Bhargav Pandya waives service of notice of rule for and on behalf of the respondent – State.

2. By way of filing the present application under the provisions of Section 430 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the applicant-convict (i.e. original accused no.1) seeks suspension of sentence imposed upon him vide judgment and order of conviction and sentence dated 28.02.2026 passed by the learned Special (NDPS) Judge & 10th Additional Sessions Judge, Surat, in Special NDPS Case No.23 of 2022.

3. By the aforesaid judgment and order of conviction and sentence, the applicant-accused came to be held guilty and convicted for the offences punishable under Sections 8(c), 22(c) and 29 of the NDPS Act, and consequently, he has been ordered to undergo sentence as under : -

Section	Imprisonment	Fine (Rs.)	In default of payment of fine
8(c), 22(c) and 29 of the NDPS Act	Rigorous Imprisonment for 10 years	1,00,000/-	Rigorous imprisonment for one year

4. It appears from the jail remarks that the present applicant-convict has already undergone 03 years, 04 months and 08 days of incarceration, as on date, out of the total sentence of ten years.

5. At the outset, learned advocate Mr. Aamir Pathan appearing for the present applicant, while taking this Court through the factual matrix of the case, has submitted that the present applicant has been held guilty and convicted for the alleged offences. Consequently, the trial Court has imposed upon the present applicant-accused a fixed term of sentence of rigorous imprisonment for 10 years along with the fine. Learned advocate has further submitted that the trial court has

not taken into consideration that the mandatory provisions of Section 50 of the NDPS Act have not been complied with. It is further submitted that the applicant-convict is ready and willing to deposit the amount of fine imposed by the trial Court.

6. Learned advocate Mr. Pathan has submitted that the present applicant-accused has already undergone more than three years of incarceration, out of the total sentence of ten years. Furthermore, learned advocate has submitted that the trial Court has not taken into consideration all the aforesaid facts and has not even appreciated the entire evidence in its true perspective.

7. It is submitted that since the applicant has preferred the present appeal in the year 2026, and the same came to be admitted recently by a Coordinate Bench of this Court on 28.04.2026, there are very remote chances of the hearing of the appeal in the near future. He has, therefore, urged that considering the aforesaid, the applicant-convict has at least an arguable case for suspension of sentence.

8. Learned advocate for the applicant, while placing reliance upon the judgment of the Supreme Court in the case of

Bhagwan Rama Shinde Gosai Vs. State of Gujarat, reported in **1999 (4) SCC 421**, has urged that since the trial Court has convicted and sentenced the applicant-accused for a fixed term of rigorous imprisonment of ten years along with the fine, and since there are very remote chances of the hearing of the appeal in the near future, the present application may be allowed and the applicant-convict may be released on bail by suspending their sentence, during the pendency and hearing of the Criminal Appeal.

9. Vehemently opposing the present application filed by the present applicant-convict, learned APP Mr. Bhargav Pandya appearing for the respondent - State has submitted that the application is not required to be entertained since the applicant-accused has been convicted for the alleged serious offences. Learned APP has submitted that the trial Court, after precisely appreciating the evidence; both, ocular as well as documentary, has convicted the present applicant-accused for the alleged offences. Learned APP has further submitted that considering the gravamen and seriousness of the offence, as well as considering the evidence of the prosecution witnesses, which clearly establish the complicity of the present applicant-

convict in the alleged offence, the present application may not be entertained and the same may be rejected.

10. Having gone through the submissions advanced by the learned advocates for the respective parties and having considered the entire material on record, it *prima facie* appears that the alleged incident had occurred in the year 2021, and the trial Court, after appreciating the evidence; both, ocular as well as documentary, has convicted the applicant-accused for the alleged offences. The applicant is ready and willing to deposit the amount of fine imposed by the trial Court.

11. The jail remarks suggest that the present applicant-convict has already undergone 03 years, 04 months and 08 days of incarceration as on date out of the total sentence of ten years.

12. Considering the gravamen and seriousness of the offence, this Court has carefully scaled the entire evidence adduced by the prosecution. Having considered the evidence of the complainant (PW-19), the trapping officer (PW-6) as well as the FIR (Exh.69), panchnama (Exh.60) and Section 50

resolution (Exh.80), it prima facie appears that the mandatory provisions of Section 50 of the NDPS Act have not been complied with in its true perspective and the same have been violated.

13. In this regard, this Court has considered the ratio laid down by the Apex Court in the cases of **Mehboob Shah vs. State of Madhya Pradesh**, reported in **(2026) INSC 729** and **Ranjan Kumar Chadha vs. State of Himachal Pradesh**, reported in **AIR 2023 SC 5164**.

14. Since the appeal has been preferred recently in the year 2026, and there are very remote chances of the hearing of the appeal in the near future, in the considered opinion of this Court, the applicant-convict has an arguable case for suspension of sentence.

15. At this juncture, it would be apt to refer to the judgment of the Supreme Court in the case of **Bhagwan Rama Shinde Gosai vs. State of Gujarat (supra)**, wherein, the Supreme Court has held as under :-

“3. When a convicted person is sentenced to fixed period of sentence and when he files appeal under any statutory right, suspension of sentence can be considered by the appellate court liberally unless there are exceptional circumstances. Of course if there is any statutory restriction against

suspension of sentence it is a different matter. Similarly, when the sentence is life imprisonment the consideration for suspension of sentence could be of a different approach. But if for any reason the sentence of limited duration cannot be suspended every endeavour should be made to dispose of the appeal on merits more so when motion for expeditious hearing the appeal is made in such cases. Otherwise the very valuable right of appeal would be an exercise in futility by efflux of time. When the appellate court finds that due to practical reasons such appeals cannot be disposed of expeditiously the appellate court must bestow special concern in the matter suspending the sentence, so as to make the appeal right meaningful and effective. Of course appellate courts can impose similar conditions when bail is granted."

16. The Supreme Court, in the case of **Atul @ Ashutosh vs. State of Madhya Pradesh [Criminal Appeal No. 579 of 2024 arising out of SLP (Crl.) No. 1049/2024 decided on 02.02.2024]** has held as under : -

"5. Before parting with order, we must note here that notwithstanding several decisions of this Court holding that when there is a fixed term sentence and especially when the appeal is not likely to be heard before completing entire period of sentence, normally suspension of sentence and bail should be granted. We find that in several deserving cases, bail is being denied. Such cases should never be required to be brought before this Court."

17. The Supreme Court, in the case of **Vishnubhai Ganpatbhai Patel & Anr. vs. State of Gujarat [Criminal Appeal No.3415 of 2023 arising out of S.L.P. (Criminal) No(s). 12853/2023 decided on 03.11.2023]** has held that :-

"In our view, the High Court ought to have favourably considered the prayer for grant of suspension of sentence when there were no antecedents and more than 40 per cent of the sentence has been undergone.

We may note here something about the approach of the High Court while dealing with the application for suspension of sentence. Before the High Court, surprisingly, a submission was made on behalf of the State that

sentence undergone only post conviction should be considered and therefore, a submission was made that the appellants had undergone only 05 months and 27 days. The High Court has accepted the said submission by recording that the appellants have not even completed 01 year of sentence. Apart from the fact that the said approach is incorrect, we may note here that there is no hard and fast rule which requires an accused to undergo sentence for a particular period before his prayer for suspension of sentence is considered."

18. Keeping in mind the aforesaid observations of the Supreme Court, as well as, the jail remarks and the fact that there are very remote chances of the hearing of the appeal in the near future, without entering into the merits of the case, this Court is of the considered opinion that the present applicant-convict has carved out a case for suspension of his sentence. Hence, this Court is inclined to grant the present application and to suspend the sentence imposed upon him, during the pendency and final hearing of the appeal.

19. The application is allowed. The sentence imposed *vide* judgment and order of conviction and sentence dated 28.02.2026 passed by the learned Special (NDPS) Judge & 10th Additional Sessions Judge, Surat, in Special NDPS Case No.23 of 2022, is hereby suspended pending hearing and final disposal of the Criminal Appeal qua the present applicant-convict.

20. The applicant-convict shall be released on bail by

executing a fresh bond of Rs.15,000=00 (Rupees Fifteen Thousand) with one surety of the like amount to the satisfaction of the trial court, on the following conditions, that:

- (a) he shall not take undue advantage of his liberty or misuse his liberty;
- (b) he shall not leave the State of Gujarat without the prior permission of this 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 this Court;
- (d) he shall proceed with the Criminal Appeal as and when it may be listed;
- (e) he shall mark his presence once in every month before the concerned Police Station without fail;
- (f) he shall deposit the amount of fine imposed by the trial Court within a period of four weeks from the date of receipt of copy of this order;

21. The authorities are directed to release the present applicant-convict, if he is not required in any other case.

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

(VIMAL K. VYAS, J)

DEEPAK GEHLOT