

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION



CRIMINAL APPEAL NO(S). 3415 OF 2023  
(ARISING OUT OF S.L.P. (CRIMINAL) NO(S).12853/2023)

VISHNUBHAI GANPATBHAI PATEL & ANR.

APPELLANT(S)

VERSUS

STATE OF GUJARAT

RESPONDENT(S)

O R D E R

Heard the learned counsel appearing for the parties.

Leave granted.

An application for suspension of sentence pending appeal has been rejected by the impugned order dated 20<sup>th</sup> June, 2023. The appellants were convicted for the offences punishable under Section 304 Part I read with Sections 114, 506(2) and 504 of the Indian Penal Code, 1860. The maximum substantive sentence is rigorous imprisonment for 10 years. The appellants have undergone sentence for approximately 04 years and more. The appeal is of the year 2023 which is unlikely to be heard before the entire period of sentence of the appellants is over.

In our view, the High Court ought to have favorably 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.

Accordingly, the Appeal is allowed.

We direct that the appellants shall be produced before the Trial Court within a period of one week from today. The Trial Court shall enlarge the appellants on bail on appropriate terms and conditions till the final disposal of the appeal before the High Court.

.....J.  
(ABHAY S.OKA)

.....J.  
(PANKAJ MITHAL)

NEW DELHI;  
November 03, 2023.

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s). 12853/2023  
(Arising out of impugned final judgment and order dated 20-06-2023 in CRLMA(SOS) No. 1/2023 in R/Criminal Appeal No.60/2023 passed by the High Court of Gujarat at Ahmedabad)

VISHNUBHAI GANPATBHAI PATEL & ANR. Petitioner(s)

VERSUS

STATE OF GUJARAT Respondent(s)

(IA No.206062/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.206065/2023-EXEMPTION FROM FILING O.T.)

Date : 03-11-2023 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ABHAY S. OKA  
HON'BLE MR. JUSTICE PANKAJ MITHAL

For Petitioner(s) Mr. Tejas Barot, Adv.  
Mr. Shamik Shirishbhai Sanjanwala, AOR  
Mr. Shantanu Parmar, Adv.

For Respondent(s) Mr. Kanu Agarwal, Adv.  
Ms. Swati Ghildiyal, AOR  
Ms. Devyani Bhatt, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Leave granted.

The Appeal is allowed in terms of the signed order. The operative portion of the order reads thus:

"Accordingly, the Appeal is allowed.

"We direct that the appellants shall be produced before the Trial Court within a period of one week from today. The Trial Court shall enlarge the appellants on bail on appropriate terms and conditions till the final disposal of the appeal before the High Court."

Pending applications stand disposed of accordingly.

(ASHISH KONDLE)  
COURT MASTER (SH)

(AVGV RAMU)  
COURT MASTER (NSH)

[THE SIGNED ORDER IS PLACED ON THE FILE]