

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**CRIMINAL MISC.APPLICATION (FOR SUSPENSION OF SENTENCE) NO.
2 of 2024**

In R/CRIMINAL APPEAL NO. 2152 of 2024

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VISHNUKUMAR LAXMANBHAI PRAJAPATI & ORS.

Versus

STATE OF GUJARAT & ANR.

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Appearance:

ANKIT M MODI(7418) for the PETITIONER(s) No. 1

MR KISHAN R CHAKWAWALA(9846) for the PETITIONER(s) No. 1,2,3

MR RAJESH R DEWAL(1024) for the RESPONDENT(s) No. 2

MR. JAY MEHTA, APP for the RESPONDENT(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE ILESH J. VORA

and

HONOURABLE MS. JUSTICE S.V. PINTO

Date : 03/12/2024

IA ORDER

(PER : HONOURABLE MS. JUSTICE S.V. PINTO)

1. By way of the present application under Section 389 of the Code of Criminal Procedure, 1973, the applicants - accused are seeking suspension of sentence and release on regular bail during pendency of the present appeal against the judgment and order of conviction dated 07.03.2024 passed in Special Atrocity Case No. 4 of 2020 by the learned 5th Additional Sessions Judge, Mehsana, whereby, the present applicants - accused were sentenced to life imprisonment (rigorous) and fine of Rs. 1,50,000/- each and

in default, one year simple imprisonment for the offence punishable under Sections 302 read with Section 114 of IPC and life imprisonment (rigorous) and fine of Rs. 50,000/- each and in default, six months simple imprisonment for the offence punishable under Sections 3(2)(5) of Schedule Caste and Schedule Tribes (Prevention of Atrocity) Act. The learned Trial Court as pleased to order that both the sentences shall run concurrently.

2. Learned Advocate Mr. Bhargav Bhatt for learned advocate Mr. Kishan R. Chakwawala for the applicants submits that the applicants are in custody for more than four years and seven months and the applicants have a good case on merits as the case against the applicants rests entirely on circumstantial evidence, but in the evidence, there are no circumstances that point towards the guilt of the applicants. The complainant who is the father of the deceased has stated that on 12.02.2020, he received a call from Naroda Police Station that his son was arrested by them and thereafter on 13.02.2020, he received a call and was informed that his son had expired. That he went to the

Mehsana Civil Hospital and saw the injuries on the dead body of his son and came to know that his son was beaten and he had expired due to the injuries as he was physically and mentally tortured and beaten by the applicants. Learned Advocate submits that the medical officer who has performed the post mortem on the body of the deceased has stated that the injuries were simple in nature and individually not sufficient to cause death and the prosecution has failed to prove a direct nexus between any individual injury caused to the deceased and the cause of death. The prosecution has failed to prove that the cause of death is directly attributed to the injuries caused by the applicants and there is no evidence that the present applicants are involved in the offence beyond reasonable doubts. Learned Advocate further submits that the learned Trial Court has not appreciated that the applicants have not been identified by any person and PW30 has stated that he could not find anyone causing injury to any person and from the CD he could not identify the applicants and the identification of the applicants was on the basis of

assumptions. Learned Advocate further submits that there was a misconduct committed by the deceased as it appears from the record that he had escaped from the Zonal Safety Home and pursuant to regaining the custody, hurt was caused which was neither grievous nor sufficient to cause death and under the circumstances, the ambit of the offence either falls within the realm of Section 324 or Section 330 of the Indian Penal Code. The postmortem note fails to prove that the death was homicidal and considering the long period of incarceration of the applicants and the evidence on record, the applicants have a good case on merits. Learned Advocate submits that the applicants have given the respondent no. 2 - original complainant an amount of ₹5 lakhs each and an amount of ₹15 lakhs has been given as compensation and the respondent no. 2- original complainant has accepted the same and has also filed an affidavit to that effect. Hence, considering the case on merits and the long period undergone, the application of the applicants may be considered and the applicants be released on bail on any terms and conditions as this Hon'ble Court

deems fit.

2.1 Learned Advocate for the applicants has relied upon the decision of the Apex Court in **Criminal Appeal No. 125 of 2021 (arising out of SLP (Cri.) No. 6174/2020)** with **Criminal Appeal No. 126 of 2021 (arising out of SLP (Cri.) No. 6224/2020)** in the case of **Pravat Chandra Mohanty V. The State of Odisha & Anr.**

3. Learned Advocate Mr. Rajesh Dewal for the respondent no. 2 - original complainant has produced the acknowledgment affidavit of the original complainant.

4. Learned APP Mr. Jay Mehta for the respondent – State has strongly objected to the submissions made by the learned advocate for the applicants and has submitted that the learned Trial Court has rightly convicted the present applicants as they have been involved in a very serious offence and has requested this Court to dismiss the present application.

5. We have examined the case records and have considered the submissions made by both the rival parties

and find that the Medical Officer - PW14 – Dr. Rakesh Padmaraj has been examined at Exh. 47 and he has conducted the post-mortem on the body of the deceased. He has narrated all the injuries that were found on the body of the deceased and during the cross-examination has admitted that the external injuries were simple injuries and were skin deep or muscle deep and the individual injuries were not sufficient to cause death. The witness has also admitted that in the postmortem note, he has not opined as to whether the injuries were sufficient to cause death. Considering the entire evidence of the prosecution, we find that the arguments of the learned Advocate for the applicants deserve consideration and we are persuaded to exercise discretion in favour of the applicants for the purpose of substantive order of sentence.

6. Having considered the peculiar facts and circumstances of the present case and considering the backlog of the appeals pending before this Court, the chance of the appeal being heard in near future is extremely remote and considering the role attributed to the applicants and the

evidence against the applicants, as also the fact that the applicants are in custody since long, we deem it appropriate that this is a fit case to suspend the sentence imposed upon the applicants and enlarge them on bail pending the Criminal Appeal.

7. Accordingly, the present application is allowed. The judgment and order of conviction dated 07.03.2024 passed in Special Atrocity Case No. 4 of 2020 by the learned 5th Additional Sessions Judge, Mehsana, is suspended during pendency of the appeal and the applicants are ordered to be released on bail on furnishing personal bond of Rs.25,000/- (Rupees Twenty Five Thousand Only) with surety of the like amount to the satisfaction of the trial court and on the following conditions:

- (i) shall not take undue advantage of liberty or misuse liberty;
- (ii) shall not leave India without prior permission of this Court;
- (iii) shall furnished 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;

- (iv) shall maintain law and order;
- (v) shall not indulge in any activity leading to breach of public peace and tranquility;
- (vi) shall deposit the amount of fine, if not deposited, before his release;

8. In view of the above, the present application stands disposed of. Direct service is permitted.

(ILESH J. VORA,J)

(S. V. PINTO,J)

VASIM S. SAIYED