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2025:GUJHC:60640

**Reserved On : 09/10/2025**

**Pronounced On : 13/10/2025**

# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL REVISION APPLICATION (AGAINST CONVICTION) NO. 1856 of 2025**
**With**
**CRIMINAL MISC.APPLICATION (FOR SUSPENSION OF SENTENCE) NO. 1 of 2025**
**In**
**R/CRIMINAL REVISION APPLICATION NO. 1856 of 2025**
**With**
**CRIMINAL MISC.APPLICATION (DIRECTION) NO. 2 of 2025**
**In**
**R/CRIMINAL REVISION APPLICATION NO. 1856 of 2025**
**With**
**R/CRIMINAL REVISION APPLICATION NO. 1857 of 2025**
**With**
**CRIMINAL MISC.APPLICATION (DIRECTION) NO. 1 of 2025**
**In**
**R/CRIMINAL REVISION APPLICATION NO. 1857 of 2025**
**With**
**CRIMINAL MISC.APPLICATION (FOR SUSPENSION OF SENTENCE) NO. 2 of 2025**
**In**
**R/CRIMINAL REVISION APPLICATION NO. 1857 of 2025**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR. JUSTICE R. T. VACHHANI**

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| Approved for Reporting | Yes | No |
|---|---|---|
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GIRISH HARSUKHRAY VASAVADA & ANR
Versus
SHANKARLAL GOVINDJI JOSHI & ANR.

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Appearance:
Appearance:
**CR.R.A. NO. 1856 OF 2025:**
Mr. Mihir Joshi, Senior Advocate with Mr. Rahul Sharma. for Applicant.
**Cr.R.A. No. 1857 Of 2025:**
Mr. I. H. Syed, Senior Advocate With Mr. Rahul Sharma(8276) for Applicant.
Mr K. J. Panchal For The Respondent(S) No. 1

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Mr Mitesh Amin, Additional Advocate General with Mr Hardik Dave, Public Prosecutor for Respondent(S) No. 2

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CORAM:**HONOURABLE MR. JUSTICE R. T. VACHHANI**

**COMMON CAV JUDGMENT**

**ORDER IN CR.RA NO.1856 & 1857 OF 2025:**

By way of these captioned revision applications under Section 438 and 442 of the Bhartiya Nagrik Suraksha Sanhita, 2023 (for short "BNSS, 2023), the petitioners – accused seek to challenge the common judgment and order dated 24/09/2025 passed by the learned Principal District & Sessions Judge, Bhuj in Criminal Appeal No.40 and 41 of 2025 confirming the conviction and sentence recorded on 10/02/2025 in Criminal Case No.2216 of 1984 by the learned Principal Senior Civil Judge & Additional Chief Judicial Magistrate, Bhuj-Kutchh for the offence under Section 342 of the Indian Penal Code read with Section 114 and 34 of the Indian Penal Code and sentenced to undergo three months SI with fine of Rs.1,000/-; in default; 15 days SI came to be confirmed.

2. Heard the learned Senior Counsel Mr.Mihir Joshi appearing with Mr.Rahul Sharma and learned Senior Advocate Mr.I H Saiyed, appearing with Mr.Sharma for the respective petitioners and learned Additional Advocate General Mr.Mitesh Amin appearing with Mr.Hardik Dave, learned Public Prosecutor with Mr.K J Panchal, learned advocate appearing for the original complainant, the issued raised in the captioned revision application deserves consideration and requires judiciously appreciated.

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3. Hence, **RULE.**

**(R. T. VACHHANI, J)**

**ORDER IN CR.MA NOS.1 AND 2 OF 2025 IN CR.RA NO.1856 OF 2025 AND CR.MA NOS.1 AND 2 OF 2025 IN CR.RA NO.1857 OF 2025:**

1. The captioned applications are filed by the petitioners – accused seeking exemption from surrender in connection with the sentence imposed upon the petitioners – accused by the learned trial Court and further during pendency and till final hearing to extend the stay granted by the learned first Appellate Court vide order dated 24.09.2025 in Criminal Appeal No. 40 and 41 of 2025.

1.1 The petitioners – accused also seeks to suspend the sentence imposed upon the petitioners – accused on 10/02/2025 in Criminal Case No.2216 of 1984 by the learned Principal Senior Civil Judge & Additional Chief Judicial Magistrate, Bhuj-Kutchh and to release the petitioner – accused on bail pending the hearing of the revision applications.

2. At the outset, it is required to be noted that petitioners – accused, after pronouncement of the judgment and order by the learned first appellate Court confirming the conviction and sentence moved two different applications before the learned first appellate Court below Exhibit-17 and Exhibit-18 in CR.A No.40 of 2025 and Exhibit-18 and Exhibit-19 in CR.A No.41 of 2025 seeking to extend the benefit of

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Probation of Offenders Act and to stay the order of serving the sentence for a period of fifteen days. The learned first appellate Court after hearing the learned Counsels appearing for the respective parties at length has dismissed the applications seeking to extend the benefit under the Probation of Offenders Act; whilst allowing the application seeking stay against the order of sentence passed by the learned trial Court for a period of 15 days' with a view to obtain the appropriate orders by way of filing revision applications from the Hon'ble High Court of Gujarat and further directed to produce the copy thereof before the learned first appellate Court on the petitioners – accused executing a bail bond of Rs.50,000/- with two sureties of Rs.25,000/- each.

3. Thus, in the above background, the petitioners – accused has moved the captioned applications and sought for the relief as stated in the preceding paragraphs.

4. Heard learned Senior Counsel Mr.Mihir Joshi and learned Senior Counsel Mr.I. H. Saiyed, appearing with Mr.Rahul Sharma, learned advocate appearing for the petitioners-accused and learned Additional Advocate General Mr.Mitesh Amin appearing with Mr.Hardik Dave, learned Public Prosecutor for the respondent – State and Mr.K J Panchal, learned advocate appearing for the original complainant.

5. At the outset, it is sought to be canvassed by learned Senior Counsel Mr.Saiyed appearing on behalf of the petitioner – accused of CR.RA No.1857 of 2025 that the petitioner is a person with a distinguished service record and having achievements recognized by the

Government and also awarded with several medals. In support of his contentions, learned Senior Counsel Mr.Saiyed has taken this Court through the various supporting material annexed with the applications and submitted that petitioner – accused is decorated with several medals pursuance to his services rendered during his tenure and therefore, looking to this aspect, this Court may exercise the discretion in favour of the petitioner – accused and to grant the reliefs as prayed for.

5.1 Learned Counsels appearing for the respective petitioners – accused have jointly submitted that the order passed learned first appellate in absence of any charge for the offence punishable under Sections 409 read with Section 120-B of the Indian Penal Code convicting and sentencing the accused shows the total non-application of mind on the part of the learned Sessions Judge concerned and in the submissions of the petitioner-accused, it becomes nonest order.

5.2 It is further submitted on behalf of the petitioners – accused while referring to the provisions of Section 438 of the BNSS that the High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on bail or on his own bond pending the examination of the record. Thus, it is submitted that in view of the powers vested with this Court, the order passed by the

learned first appellate court suspending the order of sentence may be extended.

5.3 While relying upon the decision of Madras High Court in case of ***Easwaramurthy vs. N. Krishnaswamy [2006 SCC Online Mad 1231]***, it is submitted that on behalf of the petitioners – accused that pending revision application against the conviction and sentence for granting relief as to the suspension of sentence, the accused need not require to surrender and to undergo confinement and while dispensing with the surrender of the accused, if the revision application is filed, it can be said to be well within the purpose as contemplated under Section 397(1) of the Code of Criminal Procedure (for short "the Code").

5.4 While placing reliance upon the another decision of the Hon'ble Apex Court in the case of ***Sohan Lal vs. State of Himachal Pradesh*** rendered in Special Leave Petition (Criminal) Diary No.3009 of 2023 dated 30/01/2023, it is sought to be canvassed on behalf of the petitioners – accused that in the said case before the Hon'ble Apex Court, after upholding the conviction and sentence in the Criminal Appeal by the High Court, the petitioner therein moved the revision application which also came to be dismissed where petitioner has not surrendered and filed exemption application from surrendering which came to be allowed by the Hon'ble Apex Court.

5.5 Reliance was also placed upon the decision of the Hon'ble Apex Court in case of ***Bihari Prasad Singh vs. State of Bihar & Another [(2000) 10 SCC 346]*** and it is sought to be contended on behalf of the

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petitioners – accused that under the revisional powers under Section 401 of the Code, it does not include the authority to refuse to hear or entertain a matter on the ground that the accused had not surrendered and the High Court was not justified in rejecting the application for revision solely on the ground that the accused has not surrendered. Thus, it is submitted that it is not the *sine qua non* to first surrender after pronouncement and confirmation of the sentence by the learned first appellate Court and only thereafter, the bail can be granted by the High Court as in the present case the petitioner has not surrendered in view of the extension granted by the learned first appellate Court.

5.6 By making the above submissions on behalf of the petitioners – accused, it is submitted to allow the captioned applications.

6. Vehemently, opposing the reliefs prayed for in the captioned application, learned Additional Advocate General Mr.Mitesh Amin appearing with Mr.Hardik Dave, learned Public Prosecutor for the respondent – State would submit that in absence of the petitioners – accused having surrendered, the captioned applications deserves no merit. It is contended on behalf of the respondent – State that even as per the provisions of Section 389(3) of the Code, the first appellate Court has no power to suspend the sentence or to release the accused on bail on the ground to enable the accused to file a revision application before the Higher Court.

6.1 In continuation to the above submissions, it is sought to be contended that as per the scheme of provisions of Section 418 of the

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Code, which relates to execution of sentence of imprisonment, where the Court passing the order of sentence shall forthwith forward a warrant to the jail or other place in which he person-accused is to be, confined, and, unless the accused is already confined in such jail or other place, shall forward him to such jail or other place, with the warrant. While referring to sub-section (2) of Section 418 of the Code, it is contended that the said provision provides that where the accused is not present in Court when he is sentenced to such imprisonment as is mentioned in Sub-Section (1), the Court shall issue a warrant for his arrest for the purpose of forwarding him to the jail.

6.2 Thus, it is submitted that the learned first appellate Court, after dismissal of the appeal of the petitioners – accused is required to follow / honour the mandate of provisions of Section 418 of the Code and it becomes *functus officio* and has no power to extend the bail and to stay its own order confirming the conviction and sentence as the appellate Court has not been vested with any such power either to suspend its own order and / or to grant any time to accused to surrender since as per the scheme of Section 418 of the Code, the appellant Court is expected to direct the accused to surrender to serve the sentence imposed upon him and therefore, in his submissions, the learned first appellate Court has committed serious error of law.

6.3 In support of the above contentions, respondent – State relied upon the decision of this Hon'ble Court in case of ***Arvind Maneklal Bhagat vs. State of Gujarat [1986 LawSuit (Guj) 129]*** and invited attention of this Court to paragraph No.1 thereof and submitted that as per the ratio laid

down in the said case, it has been held that so far as release on bail for filing a revision application is concerned, there is no provision anywhere in the Code which would enable a Court of Appeal or trial Court to suspend the sentence or re-lease the accused on bail on the ground that he wants to file a revision application before the higher Court. Thus, in the submissions of the respondent – State, the order passed by the learned Sessions Judge granting 15 days' time to approach High Court deserves to be quashed and set aside and petitioner – accused may be asked to surrender to serve the sentence imposed upon.

6.4 In context to the submissions made on behalf of the petitioners – accused that in absence of any charge for the offence punishable under Sections 409 r/w 120-B of the IPC, the petitioners – accused is convicted and sentenced which shows the total non-application of mind on the part of the learned Sessions Judge concerned makes the said order as nonest order, it is submitted on behalf of the respondent – State that neither any charge is levelled nor any such trial is held qua the offence; however due to bona-fide and typographical error, such mistake has been occurred which can be rectified by making an appropriate applications by either of the party before the court concerned. To the contrary, though it was well within the knowledge of the petitioners – accused has raised such a contention before this Court and after pronouncement of the judgment by the learned first appellate Court; instead of drawing the attention to rectify such bona-fide mistake, moved two different applications seeking benefit under the Probation of Offenders Act as well as seeking extension of time to surrender and to stay the order of serving the sentence for a period of fifteen days and during the entire hearing of the said

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applications, learned Counsel representing the petitioner – accused of CR.RA No.1857 of 2025 herein was very well present before the learned first appellate Court; however not a single attempt is made to draw the attention of the learned first appellate Court to the said aspect. Thus, it is nothing but an afterthought to get such benefit of such bona-fide mistake by submitting that in absence of any charge qua offence under Section 409 r/w 120-B of the IPC, the order of sentence passed by the learned Sessions Judge becomes nonest order and thereby to seek the reliefs as prayed for in the captioned applications. It is further sought to be argued on behalf of the respondent – State that even after 15 days i.e. after passing order by the learned first appellate Court to approach this Hon'ble Court to uptill now, nothing has been done by the petitioners – accused to rectify such error and to the contrary such contention has been raised before this Hon'ble Court.

6.5 By making the above submissions, learned Additional Advocate General Mr.Mitesh Amin appearing with Mr.Hardik Dave, learned Public Prosecutor for the respondent – State would submit to dismiss the captioned applications.

7. Learned Advocate Mr.K J Panchal appearing for the original complainant while adopting the arguments canvassed by the respondent – State would also submit to dismiss the captioned applications.

8. Having heard the learned Counsel/s appearing for the respective parties and examining the record of the case, the core issue which requires to be considered is as to whether the learned first appellate

Court, after pronouncement of judgment and order of conviction and sentence, can stay its own order of sentence and to grant such protection by releasing the accused on bail to approach the Higher Courts and that too accused having remained absent and not surrendered before the learned first appellate Court at the time of pronouncement of sentence and in furtherance thereof, making applications before this Court by filing Criminal Revision Applications; seeks exemption from surrender and to extend the stay granted by the learned first appellate court.

9. To deal with the aforesaid issue, at the outset, it is required to be noted that once accused having convicted and sentenced by the learned trial Court which has been affirmed by the learned first appellate Court, in view of provisions of Section 418 of the Code of Criminal Procedure, 1973 (Section 458 of the BNSS) which relates for execution of sentence of imprisonment, the accused concerned is required to be sent jail for execution of sentence and thus the learned first appellate Court becomes *functus officio* after pronouncement of the order of sentence. For ready reference, Section 418 of the Code is quoted hereunder:

> *"**418. Execution of sentence of imprisonment.---** (1) Where the accused is sentenced to imprisonment for life or to imprisonment for a term in cases other than those provided for by section 413, the Court passing the sentence shall forthwith forward a warrant to the jail or other place in which he is, or is to be, confined, and, unless the accused is already confined in such jail or other place, shall forward him to such jail or other place, with the warrant;*
>
> *Provided that where the accused is sentenced to imprisonment till the rising of the Court, it shall not be necessary to prepare or forward a warrant to a jail and the accused may be confined in such place as the Court may direct.*
>
> *(2) Where the accused is not present in Court when he is sentenced to such imprisonment as is mentioned in Sub-Section (1), the Court shall issue a warrant for his arrest for the purpose of forwarding him to the jail or other place in which he is to be confined; and in such case, the sentence shall commence on the date of his arrest."*

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Sub-section (2) of Section 418 of the Code clearly provides that if the accused is not present in the Court when he is sentenced to such imprisonment as mentioned in sub-section (1), the Court shall issue a warrant for his arrest for the purpose of forwarding him to the jail.

10. Now, coming to the facts of the present case, as is evident from the record and as recorded by the learned first appellate Court, the petitioners – accused were not present before the learned first appellate Court at the time of pronouncement of the sentence and thereafter, moved two different applications seeking to extend the benefit under the Probation of Offenders Act and further to stay the order of serving the sentence for a period of fifteen days and the learned first appellate Court rejected the application to grant benefit under the Probation of Offenders Act and allowed the application seeking stay against the order of sentence for a period of 15 days while releasing petitioners – accused on bail. Thus, the learned Sessions Judge concerned in absence of any statutory powers conferred upon him committed serious error of law and has not followed the mandate of Section 418(2) of the Code.

11. Now, insofar as the submissions made by the rival parties on facts of the case are concerned, one of the argument sought to be canvassed by the petitioners – accused that in absence of any specific charge qua offence under Section 409 r/w 120- B of the IPC, the petitioners-accused were convicted and sentenced and therefore, the said order becomes nonest order; it cannot find any force since as submitted on behalf of the

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respondent – State that due to bona-fide and typographical error, such mistake has been occurred which can be rectified by making an appropriate applications by either of the party before the court concerned. The petitioners – accused has raised such a contention before this Court as if it was not well within the knowledge of the petitioners – accused. From the record, it appears that, after the pronouncement of the judgment by the learned first appellate Court; instead drawing the attention to rectify such bona-fide mistake, application seeking benefit under the Probation of Offenders Act as well as seeking extension of time to surrender and to stay the order of serving the sentence for a period of fifteen days have been moved and during the entire hearing of the said applications, learned Counsel representing the petitioner – accused of CR.RA No.1857 of 2025 herein was very well present; but nothing sort of any material appears to have been made to draw the attention of the learned first appellate Court to the said aspect and therefore, under the garb of making such submissions, the petitioners- accused would intend to seek such relief which cannot be granted by this Court. The petitioners – accused as well as the learned Counsel representing the petitioners – accused were very well aware about such bona-fide mistake; and it is for the petitioners – accused to move such application for rectification of such bona-fide which has not done in the present case during the interregnum period i.e. even after passing of 15 days' after pronouncement of the judgment by the learned first appellate Court till the filing of these revision applications, who otherwise claimed to be sufferer / affected party.

12. In context to the submissions made on behalf of the petitioner –

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accused of CR.RA No.1857 of 2025 that the petitioner is decorated with several medals pursuance to his services rendered during his tenure and therefore looking to this aspect, this Court may exercise the discretion in favour of the petitioner – accused cannot be examined at this stage, as the said aspect has nothing to do with the issue on hand. To the contrary, it would be appearing from the record that the petitioner – accused did not remain present before the learned first appellate Court at the time of pronouncement of judgment and gave an application for exemption, which came to be rejected by the learned Court concerned and later on, the application as noted herein above were moved to extent the benefit under the Probation of Offenders Act and to stay the order of serving the sentence for a period of fifteen days. Thus, this itself speaks volume about the conduct and demeanor on the part of the petitioner – accused by marching over the legal process of the Court.

13. While relying upon the decision of Madras High Court in case of ***Easwaramurthy (supra)***, it is contended that pending revision application against the conviction and sentence, the accused need not require to surrender. There is no dispute to the said proposition; but the said observations are made in relation to the cases under Section 138 of NI Act and other compoundable offences where there is possibility of compounding the offences within a short period and therefore, the said ratio also would not come to the rescue of the petitioners-accused.

14. In context to the reliance placed upon the decision in case of ***Sohan Lal (supra)***, it is sought to be contended that exemption application from surrendering came to be allowed by the Apex Court and

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therefore, accused may be also granted such relief. There is no dispute to the proposition also; but in the said case, the accused therein after exhausting all remedy of filing criminal appeal as well as revision moved the Apex Court. Whereas in the present case, neither the appeal is filed; nor the revision is dismissed and therefore, on the facts of the present case, the said ratio would not be made applicable.

15. Insofar as the decision of the Hon'ble Apex Court case of ***Bihari Prasad Singh (supra)*** pressed into service on behalf of the petitioners – accused that under the revisional powers under Section 401 of the Code, it is not the *sine qua non* to first surrender after pronouncement and confirmation of the sentence by the learned first appellate Court and only thereafter the bail can be granted by the High Court; cannot be applied to the facts of the present case as in the present case, the revision applications filed by the petitioners – accused are admitted and not dismissed. Whereas, in the case before the Hon'ble Apex Court the revision application was dismissed on the sole ground of accused having not surrendered. Thus, the said ratio also would not be made applicable to the facts of the present case.

16. It is not in dispute that to deal with the issue in the case of hand, the provisions of Section 397, 389 and 389(3) of the Code are provided for. However, subject to the conditions a Court convicting the accused to release the accused on bail and suspend the sentence in order to enable the convicted person to prefer an **appeal**. As such, the same cannot be considered rather impliedly read that the Court can suspend the sentence

in order to enable the accused to prefer the **revision application**. It is an admitted fact that in the facts of the present case learned first appellate court after pronouncement of sentence stayed its own order and granted 15 days' time to petitioner-accused to approach higher Courts by releasing him on bail. Thus, the powers exercised by the learned first appellate court extending time to surrender to enable the petitioners – accused to file revision application seems to be without any substance and powers so vested by the provisions contained in the Code. The sum and substance as amalgamated from the above discussions while equating with the proposition of law laid down by the Hon'ble Apex Court makes it crystal clear that so far as the release of accused on bail or to extend the time to surrender for filing revision application is concerned, there is no provision anywhere in the Code, which may enable the Court of appeal to suspend the sentence or to release the applicant – accused on bail solely on the ground that he intends to file a revision application before Higher Courts. The legislature has made specific provision as per sub-section (3) of Section 389 of the Code to release the accused on bail when he intends to prefer an appeal and as such there is no provision at all anywhere in the Code empowering the Court to release the accused on bail or suspend the sentence in case, he intends to file revision application the Court convicting the accused. Thus, in view of the aforesaid, it can be sum up that the legislature did not intend to confer any such power in such circumstances to the appellate Court to stay and / or suspend and to keep the order in abeyance or to extend the time to surrender to the accused so as to enable the accused to file revision application.

17. Resultantly, the reliefs granted by the learned first appellate Court

does not have any legs to stand in the eyes of law as after disposing the appeal, the learned first appellate Court becomes *functus officio* and seized with any power to exercise post disposal of the appeal. However, by doing so as in the present case, the learned Sessions Judge concerned has indirectly tantamount by suspending the sentence and releasing the convicted accused on bail. At this stage, I may refer to the relevant observations made in case of ***Arvind Maneklal Bhagat (supra)*** wherein in similar such circumstances, the co-ordinate Bench of this Court has made following observations in paragraph [4] while summing up the issue:

> "*[4] I may mention here that I have found in some other cases also that the Judges of the Court of Session have given directions similar to the one given by the learned Addl. Session Judge in the present case. Such directions cannot be given by the Court of Session while dismissing the appeal The Court of Session cannot give any such time for surrendering. The moment the Sessions Court dismisses the appeal, it follows that the accused whose appeal has been dismissed has to surrender to serve out the sentence imposed upon him. It is only the High Court which can pass appropriate orders in this regard. Order accordingly.*"

18. Since this Court has been dealing with similar such cases like the present one and have come across number of occasions where the learned first appellate Court in absence of any powers available under the law has extended the time to surrender to the accused concerned or to grant the time to file revision application after pronouncement of order of sentence, this Court feels that such directions cannot be issued by the learned first appellate Court; after pronouncement of order of sentence in absence of

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any legal immunity and the only recourse available with the learned first appellate Court is to forthwith relegate the case-papers to the Court concerned for execution of the sentence of imprisonment as per the provisions of Section 418 of the Code of Criminal Procedure, 1973 (Section 458 of the BNSS) and therefore, while reiterating the directions in case of ***Arvind Maneklal Bhagat (supra)***, it would be appropriate to direct the Registry, after obtaining the necessary orders from the Hon'ble the Chief Justice on administrative side to circulate this order through Electronic Mode amongst the learned Presiding Officer/s of the Court/s across the State of Gujarat and to bring to their notice the said aspect while passing such order.

19. For the foregoing reasons, the captioned applications deserve no merit and accordingly, they are rejected.

**(R. T. VACHHANI, J)**

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