

VISHNUBHAI GANPATBHAI PATEL v. STATE OF GUJARAT , (2023-4)212 PLR 015 (SC)

SUPREME COURT OF INDIA

*Before: Justice Abhay S. Oka , Justice Pankaj Mithal.*

VISHNUBHAI GANPATBHAI PATEL & ANR. – Appellant(s)

*Versus*

STATE OF GUJARAT – Respondent(s)

Criminal Appeal No(s). 3415 of 2023 (arising out of S.L.P. (Criminal) No.12853/2023)

**Bail – Suspension – 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 – 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 – Indian Penal Code, 1860, Section 304 Part I read with Sections 114, 506(2) and 504.**

ORDER

(03.11.2023) – Heard the learned counsel appearing for the parties.

2. Leave granted.

3. An application for suspension of sentence pending appeal has been rejected by the impugned order dated 20th 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.

4. 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.

5. We may note here something about the approach of the High Court while dealing with the application for suspension 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.

6. Accordingly, the Appeal is allowed.

7. 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.

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