

BHAGWAN RAMA SHINDE GOSAI AND ORS.

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v.

STATE OF GUJARAT

MAY 12, 1999

[K.T. THOMAS AND M.B. SHAH, JJ.]

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*Code of Criminal Procedure, 1973 : Section 389*

*Sentence—Suspension during pendency of appeal—Principles for—Expeditious disposal of appeal—Appellants convicted under Section 392 read with Section 397 I.P.C.—Appeal—Suspension of sentence not allowed by High Court—Appellant's motion for having their appeal expedited also declined by High Court—Appeal before Supreme Court—Held,—When the appellate court finds that due to practical reasons appeals cannot be disposed of expeditiously it must bestow special concern in the matter of suspending the sentence—In this case the High Court was not inclined to hear the appeal expeditiously—Consequently the sentence passed on appellants can be suspended on some stringent conditions—Accordingly, the sentence is suspended and it is directed that the appellants to be released on bail on each of them executing a bond.*

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 554 of 1999.

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From the Judgment and Order dated 29.9.98 of the Gujarat High Court in CrI. Misc. A.No. 3619 of 1998 in CrI. A.No. 42 of 1998.

Aseem Mehrotra and Yash Pal Dhingra for the Appellants.

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Ms. Hemantika Wahi and Mrs. Farah Sultana for the Respondent.

The following Order of the Court was delivered :

Leave granted.

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This is a case where appellants have been convicted by the trial court of the offence under Section 392 read with Section 397 and each of them was sentenced to rigorous imprisonment for 10 years. They filed an appeal before the High Court of Gujarat and moved for suspension of sentence, but that

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A was not allowed. At a later stage they again moved for suspension of sentence and that too was dismissed by the impugned order. Unfortunately, when they made a motion for having their appeal expedited that also was declined by the High Court on the premise that the High Court is having older appeals on the board.

B 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.

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E In this case as the High Court was not inclined to hear the appeal expeditiously we are of the view that the sentence passed on appellants can be suspended on some stringent conditions. We, therefore, suspend the sentence and direct the appellants to be released on bail on each of them executing a bond to the satisfaction of Additional Sessions Judge, Nadiad. We direct the appellants to report to Kapadwang Police Station on all Mondays and Thursdays between 4.00 P.M. and 6.00 P.M. until disposal of the appeal pending before the High Court.

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This appeal is disposed of in the above terms.

T.N.A.

Appeal disposed of.