

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**CRIMINAL MISC.APPLICATION (FOR SUSPENSION OF SENTENCE) NO.
1 of 2023
In R/CRIMINAL APPEAL NO. 607 of 2023**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA

and

HONOURABLE MR. JUSTICE VIMAL K. VYAS

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

**ASHUMAL @ ASHARAM S/O THAUMAL SINDHI (HARPALANI)
Versus
STATE OF GUJARAT**

Appearance:

MR YOGESH LAKHANI, SR. ADVOCATE WITH MR ASHISH M DAGLI(2203) for the Applicant

MR BB NAIK, SR. ADVOCATE WITH MR. EKANT AHUJA (497) for the victim

MR RC KODEKAR, SP PP with MR LB DABHI APP for the Respondent No. 1

**CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA
and
HONOURABLE MR. JUSTICE VIMAL K. VYAS**

Date : 29/08/2024

**IA JUDGMENT
(PER : HONOURABLE MR. JUSTICE ILESH J. VORA)**

1. Rule. Learned APP waives service of Rule on behalf of respondent State. By consent, Rule is fixed forthwith.
2. By way of this application under Section 389(1) of the Code of Criminal Procedure, the applicant - Accused no.1 - Ashumal @ Asharam Thaumal Sindhi Harpalani, seeks suspension of sentence awarded to him by the Sessions Court concerned for the offences punishable under Sections 376(2)(C), 377, 354, 342, 357, 506(2) of the IPC.
3. The present appeal and the application for suspension of sentence arise from the judgment dated 31.01.2023 and order of sentence passed in Sessions Case No. 34 of 2014, whereby, the applicant herein was convicted and sentenced as under:

Section	Imprisonment	Fine	Default Sentence
376(2)(C)	Life	10,000	SI for 1 yr
377	Life	10,000	SI for 1 yr
354	1 yr	1,000	SI for 3 months
342	6 months	500	SI for 3 months
357	1 yr	500	SI for 1 month
506(2)	1 yr	1000	SI for 3 months

4. We have heard learned Senior Counsel Mr. Yogesh Lakhani, assisted by Mr. Ashish Dagli, learned advocate appearing for and on behalf of the applicant - accused, Mr. Bharat Naik, learned Senior Counsel assisted by Mr. Ekant Ahuja, learned advocate for the victim, Mr. R.C. Kodekar, learned Special Public Prosecutor with Mr. L.B. Dabhi, learned APP for the respondent State.
5. It appears from the material on record that, the applicant accused no. 1 along with 6 other co-accused were put to trial in the court of Additional Sessions Judge, Gandhinagar in Sessions Case No. 34 of 2014 for the offences punishable, as recorded in para-2 of this order.
6. At the end of the trial, the accused nos. 2 to 7 namely Bhartiben Asharam - daughter of applicant, Laxmiben Asharam - wife of Asharam, Nirmalaben Lalwani @ Dhel, Meeraben @ Baglo Kalwani, Dhruvben Gurudas and Jaswantiben Chaudhary were acquitted from all charges, whereas, the applicant Asharam held guilty by the trial Court.
7. The applicant accused has preferred the conviction appeal being Criminal Appeal No. 607 of 2023 along with the application for suspension of

sentence, which is subject matter of adjudication of this proceeding.

8. Before narrating the case of the prosecution, background facts of the applicant would necessary to refer so as to appreciate the rival contentions of the parties.

The applicant Ashumal Sirumalani Harplani known by his devotees as 'Asharam' was working on the path of spirituality and build his first ashram in 1972 in Motera Area of Ahmedabad and gradually he established the ashrams in major cities of the Gujarat as well as across the India and having thousands of followers and devotees. The activities of the ashram spread over in the other field like Mahila Ashram, manufacturing of Ayurvedic medicines and other allied products, printing press, and gurukul and therefore, he was in limelight because of his religious discourses and other social activities. In order to maintain the said activities, so many Sadhakas and/or Sevikas, joined with the applicant and activities of the ashram. The core activities of the ashram is to deliver religious discourses all over India either by himself or by their Sadhakas, who have been trained for delivering lecture on the different field of Hindu religion.

9. The brief facts of the prosecution are that the parents of the victim were devotees of the applicant - Asharam and used to take visit at Surat Ashram. The victim and her other siblings from the childhood were often taken by their parents for darshan at the ashram at Surat. The family of the victim had blind faith in the applicant and his religious activities. In these circumstances, the victim rendered her services as a Sevika and stayed in the ashram, Motera, Ahmedabad from 1997 to 2007. It is alleged that during the stay at Motera ashram, she was abused sexually and illegally confined by the applicant accused and the accused nos.2 to 7 were aided principal accused in commission of the alleged sexual activities. The details from 1996 to 2007 as narrated in the FIR by the victim which was allegedly registered on 07.10.2013 with the Chandkheda Police Station, reads thus:

(a) On the eve of Janmashtami (1996) the family of the victim had gone to Surat ashram for attending Satsang and other festivals. She met the applicant and by touching his feet, she sought blessings from the applicant. The applicant after seeing her, said that she having potential to become a great orator (Vakta) and he will make her a great orator. On the second

occasion i.e. in the year 1997, there was a Holi Shibir at Surat Ashram. The victim and his family had attended the Shibir and met the applicant. The applicant asked the victim to do rituals (anusthan) for about 11 days at Mahila Ashram, Motera, Ahmedabad. Due to faith and immense devotion towards the applicant, the parents of the victim agreed to send her at Ahmedabad ashram. On arrival at the ashram, she was given a Gurumantra 'Hari Om' and asked her to complete 3 lakhs chants of this Mantra in 11 days. She had completed the chants. After completion of Anusthan, she sought a permission to leave the Ashram but the head of the office namely accused Dhruvben did not allow her to leave the ashram because, the applicant wants her to become a great orator. She was introduced to the other accused and after 15 days, when her parents came to take her to Surat, the wife of the applicant - Accused no.3 convinced the parents that, for future life of the victim, her further stay is necessary in the ashram. The victim herself believed a lucky person and fortunate enough to stay in the ashram. Thereafter, she was entrusted the Ayurvedic department for preparing medicines etc. and had worked for 6 months. During her stay at the ashram at Ahmedabad, the applicant met her and recollected his memory saying that 'you are the same girl belongs to Surat'

and after 6 months also, when he met to the victim, he gave a garland of flower. The original accused no. 4 and 5 were close to the applicant and others.

- (b) In the year 2001, the accused nos. 4 and 5 being close confident sevikas of the applicant, met the victim and conveyed the message of applicant that, in order to become a orator (vakta), she along with other 10 girls were taken by the two confidential Sadhakas to the applicant at his farm house known as 'Shanti Vatika', which is at the distance of 2 to 3 Kms from the main ashram. At that time, the applicant selected the victim and one another girl 'Varsha' for becoming an orator and he said to the victim that, there is still exist materialistic life in you and to remove this worldly desire of materialistic life, he has to undertake the rituals (vidhi) for which he will call her.

The incident of sexual abuse and instances of unnatural sex and rape.

- (c) In the year 2001, on the eve of Gurupurnima, there was religious function held at Ahmedabad Ashram. The daughter of the applicant Asharam told the victim that, at about 2 o'clock, she will be taken at the private farm ' Shanti Vatika' because of call received from the applicant, The accused no. 2 sent the

accused Dhruvben to call the victim and one Tina. The accused no. 2 along with the victim and Tina went the farm of the applicant in a car. At the farm, the Sadhak-cook Akhil being a confidential person of the applicant was present there. He informed the applicant about the arrival of two girls. The applicant directed Akhil to leave the place and further directed the send two girls one after another. Tina was the first to meet the applicant in the room. After 10 minutes, she came out from the room and went with accused Bharti in the same car at the main ashram. The victim was called by the applicant in his room. The applicant was sitting on the bed. He asked the victim to do a massage by cow ghee. She started the head massage, meanwhile, the applicant molested her by making ugly gesture with the body of the victim, which she had resisted, as she did not like it. The applicant accused Asharam tried to convince her that, to become a great orator and to remove the worldly desire from her, such rituals are necessary. The applicant accused then asked her to remove her duppta, which she did not obey it. Then, the applicant forcefully removed it and said that for the divine upliftment, it is necessary for her to surrender to him. The victim was scared and begging to him to leave her but he did not let her go and pull her on the bed and said that, there is no body to save you and

thereafter, he pulled the cord of the Salvar and in the process of removing salvar by the accused applicant, the victim tried to escape from the other door of the room and before she could escape, the applicant grabbed her from behind and taken her on the bed and forced the victim to perform oral sex and after it, the applicant accused forcefully, did illicit intercourse and despite of her resistance, by abusing her sexually fulfill his lust. Thereafter, the accused asked the victim to wash her private part because of intercourse he made, she bleed profusely. She was threatened at that time, that you should not tell anyone about the said incident, otherwise he will finish her. The accused justified his act by saying that he wants to see her as a greater orator and to become orator, it is necessary to remove the worldly desire from her and that is why, he has done this act as a part of rituals. The accused by using cordless phone called the accused no.2 and after arrival of accused no.2 at the place, the victim was allowed to go with the accused no.2. She was left at Shaligram Society and from that place, she came back at the main ashram Motera on her bare foot.

- (d) After the incident, she suffered a shock and for two days, she had a fever and did not come out from her room. The other Sevikas viz. Accused nos.4 and 5 came before the victim and said that there is a

blessing of the accused on her for whatever you have received. The victim was offered milk and apple by the Sevikas and conveyed that she should do practice to become great orator. After one month of the said incident, attempt was made by the co-accused to bring her before the appellant accused but somehow she managed the things and thereafter, the wife of the applicant accused scolded her and slapped twice for not surrendering to the applicant accused. On the same day, afternoon, she was forcefully taken by the co-accused before the applicant-accused where the applicant-accused scolded her for not cooperating with him and tried to convince her not to share the earlier incident with anyone. Thereafter, she was declared qualified as an orator (Vakta) and as per the ashram program, she had attended and delivered religious discourses at the different places and when opportunity arose by the applicant accused, he used to ask sexual favour but due to fear, awe and influence, she could not able to tell anybody of the conduct and attitude of the accused and was fed up with the such kind of activities and endured all these till May-2007.

- (e) It is further alleged that she became extremely disgusted with this ashram life and thoughts often came to her mind to end her life by suicide or she

should have ran away from the ashram. The victim contacted one girl Uma Panday and discussed with her about her plan to run away from the ashram. Accordingly, in the year of 2007, she left the Ahmedabad Ashram and came at Surat.

- (f) The victim in her FIR had further stated that, in the year of 2009, she got married to one Tusharbai Vaisya and since then, she has been living with him at Surat. She had specifically stated in the FIR that the manner in which she was physically abused by the applicant accused and intimidated by him, that still does not wash out from her mind. She had further stated that due to status of the accused, his influence on the devotees and after knowing the facts about the subsequent incident in respect of persons who were spoken against the applicant, she did not have any courage to disclose the alleged incident to anyone. However, she gathered courage, when the applicant arrested by Jodhpur Police in connection with the complaint filed against him under Section 376, etc. and provisions of POCSO Act. It is further alleged that since long, she was thinking to file a complaint of her incident against the applicant, but she was scared of the applicant accused as the prestigious persons of the society and the higher rank police official were devotees of the accused and

having a reasonable apprehension in her mind that whether police will register a complaint or not and was also afraid that if the complaint would not be registered and if we were exposed, then the applicant and devotees would not let her live. She had also explained that if the accused had not been arrested and he succeeds in getting bail then, she will never lodge an FIR. It is further clarified in the FIR that the younger sister of the victim was also sexually abused by the son of the applicant viz. Narayansai at Surat Ashram and in the year of 2005, after leaving the ashram at Surat, she got married and living with her husband at Surat. It was further explained and clarified that in the year 2007, she had shared the alleged incident of rape with younger sister but thereafter, considering the influence of the applicant accused, and after such long time, people would not believe their plight and story, they decided not to report to the police. However, after arresting the applicant accused in Jodhpur case, both the sisters discussed the issue with the family including their husband, finally, gathered courage to lodge the complaint. The complaint reported to Surat Police Official and after registering the offence with Jhangirpura Police Station and on jurisdictional issue, the same was transferred to Chandkheda Police Station, Ahmedabad.

- (g) The Government formed a Special Investigation Team and accordingly, after arresting the applicant herein, the police agency found sufficient material against the applicant and others for the charge and accordingly, chargesheet came to be filed against 7 accused including the applicant herein for the offences as recorded above and same was culminated into Sessions Case No. 34 of 2014. The learned Additional Sessions Judge, Gandhinagar framed a charge on 28.03.2016. The trial Court had proceeded to record the evidence of the witnesses. The prosecution examined 54 witnesses in support of the charge and exhibited 110 documents. After recording the further statement of the accused under Section 313 of the Cr.P.C., the accused in their defense examined 13 witnesses and relied on 82 documents. The learned trial Court, after hearing the parties and upon analysis of the evidence on record, held guilty the applicant accused herein for the offence as recorded above and convicted and sentenced him to suffer life imprisonment. The other co-accused i.e. accused nos. 2 to 7 due to insufficient evidence, they have been acquitted from all charges.
- (h) The applicant accused no. 1 being dissatisfied with the judgment and order of conviction and sentence preferred the Criminal Appeal being 607 of 2023

along with present application for suspension of sentence and to grant the bail. The applicant was behind the bar since from his date of arrest i.e. 14.10.2013.

10. Mr. Yogesh Lakhani, learned Senior Counsel appearing for and on behalf of the applicant-accused assailing the judgment of conviction and sentence has submitted that the judgment of conviction and sentence is unjust, improper and being rendered by ignoring settled principle of criminal jurisprudence and there are patent infirmities, non-application of mind on the relevant material and taking moral view, the trial Court has recorded the conviction and ignored the acceptable and reliable evidence adduced by the accused and failed to objectively and dispassionately evaluate the evidence on record which has led to grave miscarriage of justice as the entire case of the prosecution appears to be fake, fabricated, concocted, afterthought and got up and the victim was instrumental of large conspiracy hatched by the persons who are against administration of ashram and applicant and the learned trial court erred in appreciating the version of the complainant whose evidence does not inspire confidence and she is not a witness of sterling quality and her evidence is not reliable and truthful and

without the corroboration to her deposition, the trial court could not have convicted the applicant in a serious charge of rape. In the aforesaid context, the following elaborate submissions being made:

The entire prosecution case is frivolous, concocted and got up.

- (a) The entire prosecution case appears to be fake, fabricated, concocted and got up and the story put forth by the victim seems to be improbable and in any circumstances it cannot be accepted and the victim is telling lie with oblique motive and she was instrumental of the larger conspiracy hatched by the persons who either removed from the ashram activities or left the ashram to extort money from the applicant and ashram.

In the aforesaid context, it was stated that, the first meeting as per prosecution case of the victim and applicant held in 1996 at Surat ashram and according to her statement, on the eve of Janmashtami, she attended the gathering. This statement is proved to be totally false, as the gathering of Janmashtami was held at Rajkot. PW-35 Rakesh Patel, PW-45 – Pragnesh Parekh admit that, the Janmashtami gathering of the year 1996 was held at Rajkot and sister of the victim DW-1 Gitaben

as well as the Editor of news paper ' Sanj Samachar' - DW-6, categorically stated that, the Janmashtami was held at Rajkot. The Investigating Officer - PW-55, did not have collected the evidence on this aspect. Thus, therefore, the very foundation of meeting with the applicant in the year 1996 is not established and story of giving book and assuring her to become great orator is also falsify by the evidence of the prosecution as well as defense witnesses. Thus, the facts of first meeting with the appellant in the year 1996 at Jhangirpura Ashram, Surat is not established.

It is the further case of the prosecution that the second meeting was held in the year 1997, at Jhangirpura Ashram, where, the victim was asked to do rituals (anusthan) for 11 days at Motera Ashram, Ahmedabad. In this aspect, the evidence of the victim is full of infirmities and there are material contradictions and omissions found in the evidence of victim. When the first meeting of the victim was not established by the prosecution, then, the question does not arise to recognize the victim by the applicant in the second meeting and thus, both the incidents of 1996 and 1997, as projected by the victim, are not proved and having been falsely stated with oblique motive.

(b) The incident of Gurupurnima allegedly held in the year 2001, is also false and fabricated, because, it is on record that lakhs of devotees remained present to offer reverence to the applicant-accused on the day of Gurupurnima and the gathering was held in the open area and on that day, behind the stage, the accommodation was made for the applicant to stay there and thus, the victim and other lady called at the 'Shanti Vatika' after 2 o'clock, which is at the distance of 3 kms from the ashram, is not believable as it is humanly impossible to call the victim at private farm - Shanti Vatika on the said day. The lady namely Tina, who had accompanied to the victim, has not examined by the prosecution to establish the incident as well as presence of the victim at the place of offence. The statement of Tina, though recorded, but is not part of the record. The IO PW-55 admitted that, it was the decision of the SIT not to cite Tina as a witness and disclose her statement. So far incident at Shanti Vatika is concerned, in the year of 2001, one Pragnesh @ Lalabhai had rendered his service as a cook and thereafter, between 2002 to 2004, one Rohitbhai had replaced Lalabhai and in the year 2004 onwards, one Akhil Gupta was the cook at the place. There is sufficient evidence to establish the fact that when incident occurred, Akhil was not working as a cook. Akhil was cited as a cook by the victim, with an

intention to create an evidence and lend support to the evidence of the victim. Akhil and his wife before registration of the FIR and after, were in custody of the ATS Police, Surat and their statements under Section 164 were taken and most peculiar fact is that, he was arraigned as accused and later on, he cited as witness and that too without following proper procedure. Thus, the witness Akhil was under compulsion of the police and he was falsely cited as a cook which shows that the story projected for alleged sexual assault after a period of 12 years, has no foundation and same is based on falsehood. The prosecution witnesses as well as defense witnesses have categorically stated that, at the time of incident, Pragnesh @ Lalabhai was working as a cook. The witnesses have also stated that, the driver as well as the security person were always accompanied to the accused round the clock. Akhil Gupta and his wife gave a statement under Section 164 because they were under the custody of the police and to save their further prosecution. Akhil though cited as a witness, but, before he could examined, he died pending the proceedings. The wife of Akhil namely Varsha-PW.51, declared hostile. In such circumstances, the learned trial court could not have relied upon the 164 statement of Akhil as the contents of statement has not been proved. The

entire sequence of the alleged sexual abuse being changed by the victim. In the FIR and her 6 further statements, while narrating the incident, she claimed that the applicant first committed oral sex on her and thereafter, committed sexual intercourse with her, whereas within a day, when statement under Section 164 came to be recorded, the narration of the incident changed and stated that, the applicant first committed sexual intercourse with her and then forced her to do oral sex. Thus, on the material aspect, there was improvement and material contradiction in the statement of the victim and testimony and also with other witnesses who have been examined. The learned trial court while evaluating the entire evidence of prosecution case, did not properly dealt with the issue raised by the defense and did not consider the omissions, contradictions and improvements made by the victim in her testimony. The incident of Modasa Ashram was also not disclosed in the FIR, however, the said incident was stated by her in the statement under Section 164. The I.O. PW.55 failed to investigate on this aspect as no statement of any girl who were present there being recorded by the I.O. Thus, therefore, the entire story put forth by the prosecution witnesses is wholly incredible and considering the shoddy investigation and delay of 12

years in lodging the complaint and in absence of corroboration in any corner to the deposition of the victim, it cast doubt upon the authenticity of the prosecution theory. The learned trial Court despite of sufficient evidence, in respect of conspiracy hatched by the prosecution witnesses and others against the applicant and in order to execute the common object of the conspiracy, the victim PW-27 and her sister PW-43, were instrumental in initiation of this prosecution. The persons, who had hatched the conspiracy were Jitu Soni, Mahendra Chavda - PW-32, Saroj Amrutbhai PW-46, Amrut Prajapati, Raju Chandak PW-26, Devendra Prajapati PW-48 as, they were forced to left the ashram by the applicant, as a result, being aggrieved with the decision, they were in search of lady who can file a false rape case, so as to tarnish the image of the applicant and send him behind the bar for life. The defense witness Exh. 699 - Vikramsinh Rathod, executed a sting operation and recording was done and produced at Exh. 703, to establish that, Raju Chandak, Mahendra Chavda and Amrut Prajapati and others were interested to lodge false case against the applicant Asharam, with a view to extort the huge amount. Thus, the victim being instrumental of this conspiracy, filed a false rape case against the applicant by creating false story of rape. The sister of the victim and brother in law admitted in

their deposition recorded in the case of Narayan Swami, that before lodgement of the FIR of present case, they had gone to Indore, where, they met Jitu Soni and others. Jitu Soni being a press reporter, against whom so many criminal cases are filed and pending before the different courts and he had also executed a sting operation of the victim and her sister. Thus, considering the totality of the prosecution case, the learned trial Court, did not have considered the facts of conspiracy and false case foisted upon the applicant herein.

(c) Delay in registering the FIR:

It was submitted that the learned trial Court committed an error while accepting the explanation for delay of 12 years in lodging the complaint by the victim. The learned trial Court did not have assigned sufficient reasons while condoning the delay and failed to access the circumstances like, the conspiracy hatched by the erstwhile Sevikas and Sadhakas of the ashram, withholding of the material evidence and considering the inordinate delay, the possibility of false story implicating the accused cannot be ruled out. In this context, it was submitted that, as per the prosecution case, in 2001, the victim PW-27, was taken to the house of the applicant

namely Shanti Vatika, where, she was sexually abused. The victim left the ashram in 2007. The victim in her deposition admits that, during the stay at the ashram at Ahmedabad, she used to travel throughout the country to conduct religious discourses at different places and twice she had been at her Surat home for the treatment of her ailment. Despite of ample opportunity to report the incident to the police or other authority, she did not do it and sat silent for about 12 years for which the only explanation is that, she was under apprehension and was scared because she was threatened by the accused. In 2008, on the incident of mysterious death of two minors, the Government has appointed an inquiry commission wherein the CBI published a notice to the general public inviting their attention of the incident and come forward to depose before the commission and their names will not be disclosed. The victim had an opportunity to lodge the complaint because there was a police protection to her, but she did not report it because as such there was no any incident as projected by the prosecution. The explanation offered are not satisfactory and convincing because when she left the ashram, she was not under influence of anybody and on this aspect, there is no discussion in the judgment and merely citing Section 478 of the Cr.P.C., the Court

satisfied with the explanation and relied on the testimony of the victim as well as witnesses. The sister of the victim along with the victim and their respective husbands met Raju Soni at Indore and thereafter, the complaint came to be filed by her which shows that, the FIR was filed with due deliberation and with oblique motive. Thus, therefore, the learned trial court without considering the truthfulness of the prosecution case and without considering the ground reality, accepted and condoned the delay and rejected the plea of false implication and vulnerability of the prosecution case. In the instant case as discussed above, there is a 12 years delay which throw a cloud of suspicion on the seeds of the prosecution case, because, the presence of the victim on the scene of offence on the eve of Gurupurnima, is not established. The lady Tina, who was with her, has not been cited as a witness nor her statement was produced with the chargesheet. The I.O. PW-55 admitted that, not citing Tina as a witness was the decision of the SIT. The presence of witness Akhil was also not established because, as per prosecution witnesses, the official cook of the applicant was Pragnesh @ Lala and the entry of Akhil as a 'cook' was after 2004. The driver of the car as well as of the applicant and security persons, were not examined. In addition to that, after the incident,

when victim was taken from the place of incident, she was left at Shaligram society. She had an opportunity to run away or did not raise the alarm nor tried to escape from the place and kept silence for 12 years which creates doubt about the veracity of the prosecution case and cast a serious doubt on the investigation and discredit the truthfulness of the prosecution version.

- (d) The evidence of victim is not wholly reliable and she cannot be held to be a sterling quality of witness.

It was submitted that, the victim PW.27 and her younger sister PW.43 were the party to the conspiracy hatched by the witnesses and despite of no such incident ever happened, she was telling lie and her conduct seems to be unnatural. The trial court committed a serious error in relying upon the sole testimony of the victim and convicted the applicant for the charge of rape. It was further submitted that, the evidence of prosecutrix is to be construed to be that of an injured witness so much so that no corroboration is necessary unless and until it is proved that her evidence is found to be absolutely true, trustworthy, reliable and inspiring confidence. In the facts of present case, the incident of first meeting of 1996 found to be false and thereafter,

also the another incident of meeting on holy shibir being tried to be projected that she was invited at Ahmedabad for 11 days anusthan. The prosecutrix-victim is not certain and confused about the timeline of the incident because she made improvement in her deposition in respect of offence of rape allegedly committed upon her on the eve of Gurupurnima. She also made material change on the sequence of rape and act of unnatural offence. There is a major contradiction in the FIR and 164 statement on the sequence of alleged act of rape and unnatural offence and despite of her version made in the FIR, she stuck to the contents of 164 statement of the aspect. The theory of rape on the eve of Gurupurnima prudently not believable because according to her statement, on that day, lakhs of devotees visited the ashram. The important witness one Tina who accompanied the victim and she was throughout with her before the rape was committed but somehow, she has not been cited as a witness, nor her statement provided to the defence and the I.O. admitted the said facts and further explained that, not to cite Tina was the decision of the SIT. It is also an admitted fact that the applicant always accompanied by driver, security person and when he at his farm Shantivatika, the cook always remained present. In the facts of present case, one Pragnesh @

Lala was in service as a cook at the time of incident and after 2004, Akhil Gupta replaced one Rohit. Thus, to lend support to the testimony of the victim about her presence and incident of rape, the prosecution despite having sufficient evidence, withheld it and did not examine them which creates a doubt on the story projected by the victim. The victim stayed at the ashram up to 2007 and before the incident, she already started to deliver religious discourses and she also admits the said fact by citing the incident of earthquake of January-2001. Thus, the theory projected that the accused under the guise of giving opportunity to the victim to deliver the religious discourse, lured her and abused sexually, cannot be believable because before the incident, she already entered into field of delivering religious discourses. The learned trial court while evaluating the evidence of the victim, did not consider the aforesaid aspect which touches the reliability and veracity of the statement of the victim. After the incident and filing of the chargesheet, the victim applied before the Court at Gandhinagar, and made a request to record her statement under Section 164 which request was rejected. Against the order, she filed a writ petition before this Court. In the said petition, she has stated on oath that no such incident was happened. The copy of the affidavit and petition is placed on record,

but, somehow the trial court has ignored it. Thus, the conduct of the victim seems to be unnatural and her version is not consistent from the beginning and is not accord with acceptable human behaviours allowing variations, then, her testimony become questionable and is not worthy of credence. There is ample evidence on record that, the victim and her sister had motive to falsely involve the accused because she was part of the conspiracy hatched by the witnesses. Thus, it is difficult to accept the version of the victim on its face value and that is the matter, then the Court should search for evidence direct or circumstantial which lend assurance to her testimony and considering the peculiar facts of the case, there are compelling reasons which necessitates looking for corroboration for her statement because her statement is not reliable and there is no ring of truth on the version of the prosecution case. In these circumstances, considering the material contradictions and inconsistencies in the evidence of victim and witnesses, the conviction based on the sole testimony of the victim is not sustainable.

- (e) Conduct and intention of the investigating agency to create a false evidence to implicate the accused in the false case:

It was submitted that the trial court despite of several admissions and instances of bias and shoddy investigation, did not assign proper reasons on this aspect. Before the registration of FIR, the victim and her sister went to Jhangirpura Police Station where they submitted a complaint, but somehow the facts of said complaint had been suppressed and the I.O. - P.W.55 failed to explain about non-production of the said complaint. The star witness Tina intentionally not cited as a witness because she does not support the case of prosecution. There is no investigation on the foundation facts with respect to Janmashtami celebration whether it was held at Rajkot or Surat. The persons who were associated with the applicant and somehow they left the ashram have played a major role in filing the false complaint of rape. The facts of sting operations were suppressed and not properly investigated. The mobile data of the victim and her sister as well as their respective husbands have not been collected. The witness Akhil Gupta who died later on, was detained with his family at ATS Surat Office for about 6 to 7 days and during his confinement, the statements under Section 164 were recorded and initially he was arraigned as accused and later on, when he supported the case, he along with his wife, cited as witnesses for which the police

agency did not follow the procedure prescribed which shows that, under the influence, the evidence was created against the applicant. It is on record that, with the aid of police, the husband of the victim got a job and house on rent. During the investigation, the witnesses were forced to give false evidence against the accused. The delay in lodging the FIR for about 12 years was also not properly investigated by the police. So far as incident of sexual abuse disclosed by the witnesses and the incident of Modasa relating to the abuse of the victim, the police did not record the statement of material witnesses to establish the factum of the incident. Thus, therefore, it is highly essential that an impartial and full investigation is made in case of grave offences because the power of investigating agency is large and expansive and there are inbuilt provisions in the procedural code to ensure that the investigation of criminal case is conducted keeping in mind the rights of the accused to a fair process of investigation. In the instant case, the investigation being made from the point view of the complainant and in an unfair manner which has violated the fundamental rights of the accused guaranteed under Article 21 of the Constitution of India of the right of fair trial.

In view of aforesaid submissions made hereinabove, the learned senior counsel has submitted that, the learned trial court failed to appreciate the material evidence adduced by the prosecution as well as the defence and on the basis of surmises and conjectures, convicted the applicant-accused and same is not sustainable in law; since 2013, the applicant-accused is in jail and entire case put up by the prosecution is doubtful on the reasons advanced hereinabove and there are fair chances of the appeal being allowed. The appeal is filed in the year 2023 and same is not likely to be heard and disposed of in a reasonable time and therefore, if the applicant is ultimately found to be innocent, then who will compensate the precious years of his life which he has spent in the jail. The applicant is presently in the Jodhpur Jail because of his conviction rendered by the Sessions Court, Jodhpur in a case filed by minor for allegedly abusing her sexually. The appeal against the conviction of the Jodhpur Court is pending before the High Court at Jodhpur, Rajasthan. The applicant aged about 85 years is suffering from heart ailment and was advised to undergo Coronary Artery Bypass Grafting by the Jodhpur AIMS Hospital and there is a risk involved in invasive surgery because of internal bleeding in the intestine and stomach, as a result, he could not underwent the

surgery and thereafter, upon inquiry, it came to notice that, Madhavbag Multidisciplinary Cardiac Clinic, Khopoli, Maharashtra treats the patient with heart ailment without any surgical intervention for which Rajasthan High Court recently vide its order dated 13.08.2024, granted emergency parole of 7 days at the risk and cost of the applicant. In these circumstances, it was submitted by learned senior counsel that considering the peculiar facts and circumstances of present case, case is made out to extent the benefit of suspension of sentence and grant of bail.

11. In support of the aforesaid submission, the learned senior counsel relied on judgments of this Court as well as Apex Court to contend that, the sole testimony of the evidence of the victim if it is not inspiring confidence, the conviction without corroboration to the testimony of the victim, cannot be sustainable in law. In our opinion, most of the citations relied are related to the appreciation of evidence which can be useful at the time of final disposal of the appeal, because at present we are dealing with the issue of suspension of sentence. However, heavy reliance is being placed by the defence on the recent judgments rendered in the case of ***Omprakash Sahani vs. Jaishankar Chaudhari***

(2023 6 SCC 123) to contend that, when the conviction is based on erroneous interpretation of evidence and there is a fair chances of acquittal, then accused should not kept behind the bar for a pretty long time and his case may be considered.

12. On the other hand, learned Special Public Prosecutor Mr. R.C. Kodekar vehemently opposed the contentions and contended that, the learned trial Court while convicting the applicant, has analyzed the entire evidence adduced by the prosecution and assigned sound reasons for the conclusion arrived at for the guilt of the applicant and therefore, the prosecution has successfully proved the charge against the applicant accused. The learned trial Court, after close scrutiny of the testimony of the victim PW-27 held that, the victim has gave vivid account of entire episodes and truthfully narrated the entire incident and there is no motive to falsely implicate the accused and therefore, once the court is satisfied that solitary evidence of the victim is inspired confidence, appears to be absolutely trustworthy and sterling quality, there is no need for further corroboration to lend support to the evidence of the victim. On the aspect of false and fabricated case of the prosecution, he would urge that, the evidence of the victim and her conduct is natural. The learned

trial Court has rightly disbelieved the press report on the aspect of program of Janmashtami and other factors, which do not affect the root of the prosecution. The evidence of the victim, so far main incident is concerned, despite of searching cross-examination by the defense, nothing could be brought on record to sake her version regarding the incident and her evidence is corroborated fully by her complaint and statement under Section 164 as well as evidence of her sister PW-43. On the contention of delay in lodging the FIR, it was submitted that, no period of limitation is provided in the statute for the offence punishable for more than 3 years and delay may not itself be a ground to discard the entire prosecution case because, the general rule of criminal justice is that 'crime never dies' and in a serious offences, the case cannot be thrown on board solely on the ground of delay and in the instant case, the learned trial Court, after examining the explanation offered by the victim, satisfied with the explanation, because, the victim was under fear of present applicant as being a so called religious spiritual preacher, his social status was so high and considering a large of devotees across the India, the victim was under fear and apprehension about her life and family, as she had closely seen the applicant and how he has dare to eliminate the person, who vocal

against him. Thus, the victim was right in her explanation that, after rejecting the bail of the applicant Asharam by the High Court as well as Supreme Court, she gathered courage to lodge an FIR, otherwise, it is difficult for her to live without protection and same has been digested and convinced by the Court. So far as, contention with regard to victim being a larger conspiracy hatched by the persons concerned, it was submitted that, the dispute of rival fraction has nothing to do with the act of rape committed by the accused upon the victim and therefore, learned trial court has rightly deal with the issue.

13. In view of the aforesaid submissions, made hereinabove, Mr. Kodekar, learned Special Public Prosecutor would urge that, the sentence of the applicant ought not to be suspended merely on the ground that, Appeal will not likely to be heard in a reasonable time. So far as, health issue, as raised by the applicant is concerned, it was submitted that, the applicant accused refused to take proper treatment from the AIMS, Jodhpur hospital. Thus, therefore, where the proper treatment administered to him by the concerned hospital and the medical ground, which has not been pleaded in the application and developed later on, cannot be relevant factor to

suspend the sentence. The applicant failed to get the prayer of suspension of sentence from Jodhpur High Court, Rajasthan, wherein, the medical ground raised herein has not been accepted, in view of proper treatment administered by the AIMS hospital and refusal of the applicant, to get the treatment with police escorts on his own costs. In these circumstances, it was submitted that, the grounds raised by the applicant - accused assailing the judgment and order of conviction, cannot be examined at this stage, because, the reappraisal of evidence while deciding the application of suspension of sentence is not permissible in law; the offence proved against the applicant is serious one, and it is directly affected to the society at large; since 2013 to 2023, the persons who were witness to the present case or case filed against Narayan Sai - son of applicant, either they have been seriously assaulted or killed. In these circumstances, it is submitted that, the granting the benefit of suspension of sentence, would further create the law and order situation and also, against the societal interest at large and therefore, no any exceptional ground is made out to grant the benefit of suspension of sentence as prayed.

14. Mr. Bharat Naik, learned Senior Counsel assisted by Mr. Ekant Ahuja, learned advocate, who has been appointed by the Court for able assistance in the matter, has submitted that, the issue whatever is raised hereinabove, in support of suspension of sentence is a question of reappraisal of evidence and same can be considered at the stage of final hearing. In the instant case, the learned trial Court, after appreciation of the evidence, believed the version of the victim, satisfied with the delay and case of the prosecution, and therefore, at this stage, no ground exist to take a different view, whatever taken by the trial Court and therefore, he urged that, considering the status of the applicant and his large number of devotees and the past incidents of causing injuries to the witnesses and killing some of them, would suggestive of the fact that, it is not desirable for the society at large to extend the benefit as claimed. In support of his contention, he placed reliance on the decision of Omprakash Sahani Vs. Jayshankar Chaudhary (supra) to contend that, there is nothing on record on the basis of which, this Court can arrive at the prima-facie satisfaction that the conviction may not be sustainable and by undertaking reappraisal of evidence, court cannot take a different view.

15. We have heard at length the learned counsels appearing for the respective parties and perused the case records.
16. Before adverting to the submissions and to ascertain, whether the applicant has made out a case for suspension of sentence, it is necessary to see the legal position.
- (i) Section 389(1) of the Cr.P.C., enjoins upon the Appellate Court the power to pass an order for the suspension of sentence or order of conviction during the pendency of an Appeal. The statutory provision says that, pending any appeal by convicted persons, the appellate Court may reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against, be suspended and also if he is in confinement, that he be released on bail or on his own bond. The Apex Court in **Rajesh Ranjan Yadav Vs. CBI (2007 (1) SCC 70)**, after referring its earlier decisions, [Kashmira Singh Vs. State of Punjab (1977 4 SCC 291) and Bhagirathsing Vs. State of Gujarat (1984 (1) SCC 284)] in para-10, observed that, there is no absolute and unconditional rule about when bail should be granted. The observations made in para-10 reads as under:

“Para-10: “In our opinion, none of the aforesaid decisions can be said to have been laid down any absolute and unconditional rule about when bail should be granted by the court and when it should not. It all depends upon the facts and circumstances of each case and it cannot be said that, there is any absolute rule that, because of long period of imprisonment has expired, bail must necessarily be granted.”

(ii) In the case of **Ash Mohammad Vs. Shivrajsinh @ Lalla Babu and another, (2012) 9 SCC 446**, the Supreme Court in para-30, while examining the societal interest and considering the antecedents examined the post conviction bail and discussed on the issue of desirability to suspend the sentence and grant of bail. Para-30 reads as under :

“30. We may usefully state that when the citizens are scared to lead a peaceful life and this kind of offences usher in an impediment in establishment orderly society, the duty of the court becomes more pronounced and the burden is heavy. There should have been properly analysis is criminal antecedents. Needless to say, imposition of condition is

subsequent to the order admitting an accused to bail. The question should be paused whether the accused deserves to be enlarged on bail or not and only thereafter, imposing conditions would arise. We do not deny for a moment that period of custody is relevant factor but simultaneously the totality of circumstance and criminal antecedents are also to be weighed. They are to be weighed in the scale of collective crime and desire. The societal concerned has to be kept in view in juxtaposition of individual liberty. Regard being had to the said parameter, we are inclined to think that the social concerned in the case at hand, deserves to be given priority over-lifting the restriction on liberty of the accused.”

[emphasis supplied]

(iii) In **Sidhartha Vashisht @ Manu Sharma Vs. State (NCT of Delhi)** reported in **(2008) 5 SCC 230**, referring the decision of Vijaykumar (2002) 9 SCC 364, the Supreme Court while examining the prayer of suspension of sentence emphasized that, in a case of involved in a serious offence, the court should consider all relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have committed, the

gravity of offence, the desirability of releasing the accused on bail after he has been convicted for committing serious offence and also bearing in mind that, when the accused has been found guilty then, initial presumption of innocence in his favour is no more available to the applicant and therefore, the appellate Court shall not suspend the sentence except only in an exceptional case and that too, in a case of existence of reasons to suspend the sentence.

(iv) Recently, Supreme Court while considering the scope of Section 389(1) of the Cr.P.C. in the case of **Omprakash Sahani Vs. Jayshankar Chaudhary (2023) 6 SCC 123**, after referring the earlier all decisions on this aspect, observed and held that, while dealing with the case of suspension of sentence and grant of bail, the appellate Court before allowing the prayer, should prima-facie come to a conclusion that, the conviction may not be sustainable. Para-33 is relevant to refer and same is reproduced hereunder:

“Para-33: Bearing in mind the aforesaid principles of law, the endeavour on the part of the Court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the Trial Court can be said to be a case in which, ultimately

the convict stands for fair chances of acquittal. If the answer to the above said question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually take very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the Court can arrive at a prima facie satisfaction that the conviction may not be sustainable. The Appellate Court should not reappreciate the evidence at the stage of Section 389 of the CrPC and try to pick up few lacuna or loopholes here or there in the case of the prosecution. Such would not be a correct approach.”

17. The applicant original accused no. 1 has challenged the legality of his conviction rendered by the Sessions Court, Gandhinagar, who held the

applicant guilty and sentenced for life. The FIR allegedly registered first on 06.10.2013 and was transferred to the Chandkheda Police Station, Ahmedabad and same was registered on 07.10.2013. Prosecution mainly relied on the testimony of the victim PW-27 and other oral as well as documentary evidence. We have carefully gone through the entire case records and the judgment impugned. Learned trial Court, in his judgment made six compartments and discussed at length each subject. In para-30, the learned trial Court discussed the oral evidence as per their subject mainly evidence of panch witnesses, the deposition of Videographer, medical evidence, the oral evidence of the witnesses including the victim and expert evidence along with evidence of police officials. Learned trial Court after analysis of the evidence adduced by the prosecution, closely examined the testimony of the victim in his judgment. Para-116 of the judgment speaks about the discussion and why the court is relying on the sole evidence of the victim and assigned proper reasons of the reliability of the evidence of the victim and does not find any infirmities, lacuna in her evidence. The learned trial Court on the issue of delay in lodging the FIR, fully satisfied with the explanation offered by the victim and considering the status of the applicant and fear atmosphere created by his devotees and

assessing the circumstances under which the delay occurred, held that, the delay is satisfactorily explained and it cannot be counted against the prosecution case and rejected the plea of false implication and vulnerability of the prosecution case. In order to examine truthfulness of the prosecution story and reliability of the evidence of the victim, the learned trial Court has examined the background facts of the ashram and its activities and assessed the character of the applicant by examining the evidence of the witnesses namely PW-43 Parul Thakkar, PW-46 Saroj Amrutbhai, PW-48 Devendra Prajapati, PW-51 Akhil Gupta, PW-28 Tushar Vaishya, PW-25 Arvind Patel, PW-24 Gopi Patel, PW-23 Jignesh Patel, PW-26 Raju Chandak, POW-32 Mahendra Chavla, PW-34 Vimlesh Thakkar, PW-35 Rakesh Patel, PW-49 Tushar Dixit. The said witnesses were associated with the ashram activities and applicant. They have thrown light on the pervert mind of the applicant and the activities undertaken on this aspect through his close aids. The defense witnesses examined have denied the allegations made against the applicant and tried to establish that, the prosecution is nothing but a larger conspiracy hatched by the witnesses and the victim and no such incident ever happened, as said by victim. However, fact remains that, daughter in law of the applicant PW-33 Janki Harplani, who is wife of

Narayan Sai had throw some light on the character of her father in law – present applicant and her husband Narayan Sai and she was firm that the girls were used to take to the applicant through his close aid and under the pretext of rituals, they were abused sexually. The witness Saroj Amrutbhai Ex. 46, has also thrown light on the character of applicant, as in the year 2000, when she met the applicant at Revadi, Delhi ashram, she was sexually abused by him. She has also stated that her husband who had protested and vocal against Asharam, he has been killed in his clinic at Rajkot. In view of the aforesaid, the learned trial Court came to conclusion that, there was a reason for the victim for not filing a prompt FIR and the explanation offered by her is convincing and truthful and her evidence is truthful and reliable and there is no any compelling reasons, which necessitate looking for corroboration of her statement and there is no difficulty on relying on her statement to convict the applicant.

18. We have cursorily scanned the evidence adduced before the trial Court and have perused the impugned judgment. We do not find at this stage any patent infirmity in the order of conviction and it cannot be said that the order prima-facie on face of it erroneous and something palpable wrong. In a matter

of conviction appeal, there always be some arguable points but that by itself cannot be a ground to held that the conviction may not be sustainable at the stage of deciding the prayer of suspension of sentence. We are of the firm opinion that, the grounds as raised, challenging the order of conviction, more particularly, false case being registered against the applicant, the delay in lodging the FIR and inter-se rivalry of the devotees and other grounds like conspiracy etc., required to be considered at the time of final hearing of the Appeal and at this stage, we are not agree with the contentions urged by learned counsel appearing for and on behalf of the applicant, because, ultimately, at the time of final hearing, the evidence has to be evaluated and weighed and at this stage, if we discuss and/or dealt with the all the grounds, it may cause prejudice either of the parties and therefore, considering the peculiar facts and circumstances of the present case, we confine ourselves not to discuss and examine the grounds on merits.

19. The contention about possible delay and disposal of appeal and age of the applicant and his medical condition in the facts of the present case, we do not found it relevant or material to grant relief of suspension of sentence. The reasons are as follows:

(i) The applicant presently in the Jodhpur jail, as he has been convicted and sentenced for act of rape and sexual abuse of minor. His appeal against the conviction is pending before the Jodhpur High Court. The fourth successive application of suspension arised from the conviction rendered by the Jodhpur Court, was rejected in the month of January, 2024, in the said application, the age factor as well as medical grounds were being raised but considering the refusal on the part of the applicant, not to participate in the treatment advised by the AIMS Hospital, Jodhpur and despite of consent on the part of the State to administered the medical treatment at Madhavbaug Hospital, Maharashtra, the applicant by way of affidavit, disclosed his intention not to undergo treatment with Madhavbaug hospital and insisted, to undergo treatment on his own. The Bench of Jodhpur High Court while rejecting the application, also observed that, if the applicant is permitted to take treatment on his own, then, there will be an issue of law and order. In these circumstances, we are of the firm view that, the medical issue whatever has been taken care of by the jail authority, Jodhpur and recently, on this ground, he has been granted parole by the Jodhpur High Court.

(ii) The ashram activities is still going on at different places all over India and huge number of devotees, who have deep faith towards the applicant are still associated with him. In that view of the matter, the following past antecedents were required to be referred :-

(a) in July, 2008, it was turning point for the ashram, because, in the month of July, 2 boys went missing from the ashram's Gurukul, Motera, Ahmedabad and their bodies were found on the banks of Sabarmati River, near Ashram and there was an allegation that they had been scarified by ashram through black magic.

(b) In August, 2013, a 16 year old girl, who was staying at applicant's ashram in Mannai village, Jodhpur, accused the applicant of sexually assaulting her on the night of 15.08.2013. The girl's parents, who are disciple of ashram had filed the complaint. On 25.04.2018, the Jodhpur Court found the applicant guilty of rape and pronounced a verdict of life imprisonment along with his two associates, who have been sentenced to 20 years imprisonment.

(c) Meanwhile, the present prosecution was launched by the victim and finally, the applicant was found guilty. Interestingly, the son of the applicant - Narayan Sai was arrested on the charge of rape, following the FIR filed by the victim, who is younger sister of present victim as she was sexually assaulted and abused during 2002 to 2005 at Surat ashram. In April, 2023, Narayan Sai was convicted by the Surat Court and sentenced to life.

(d) In the aforesaid background facts, during 2014-2015, there had been so many attacks against various witnesses and relatives of victims. The husband of Surat victim was seriously injured but somehow he could survive. The person who were associated with the ashram namely Rakesh Patel, was threatened and assaulted and one Bhagchandani, was also assaulted by unknown persons. One Mr. Amrit Prajapati, an Ayurvedic Doctor, who had worked with the ashram for 15 years, who had opposed the activities, and key witness of the present case, was killed in his clinic on 23.05.2014. The key witness Akhil Gupta, as per prosecution case, was cook of the applicant, was short dead

in January, 2015 and one Mahendra Chavla, the witness of present case, was shot by two attackers on 13.05.2015 at his village Hariyana Panipat and had suffered permanent disability.

(iii) The aforesaid instances clearly show that, after the prosecution lodged against the applicant in Gandhinagar, Gujarat as well as Jodhpur, Rajasthan and the prosecution against his son at Surat, Gujarat, would be the major grounds for occurrence of the aforesaid incident, which has direct bearing on the safety, peace of the witnesses including victim and her family and society at large. We may clarify that, it is not our intention to create an impression that the applicant and the ashram was responsible for the aforesaid incident. However, fact remains that the incidents were happened and two witnesses have lost their lives and some of them, as discussed above, suffered serious injuries. Thus, therefore, at this stage, considering the totality of the circumstances, the ground of possible delay in appeal and medical ailment, as well as 10 years completion in jail, in our view, may not be relevant in considering the prayer of suspension of bail. In such situation, the observations made by the Apex Court in case of Ash Mohammad (supra), is relevant to refer. It was observed that in such situation, it is duty of the Court to properly

analyses the antecedents of the accused and it should be weighed in scale of collective cry and desire of the society, as the societal concerned has to be kept in view in juxtaposition of individual liberty and societal concern deserve to be given priority over lifting the restrictions over the liberty of the accused. Thus, therefore, we do not find any exceptional ground to extend the benefit as prayed by the applicant - accused and for the reasons recorded above, no case is made out for suspending the substantial sentence and grant of bail.

20. In the result, we find no merit in the application and accordingly, it stands rejected. The observations made by us are purely prima-facie in nature and confine it for the adjudication of the issue raised herein. Rule is discharged.

(ILESH J. VORA, J)

(VIMAL K. VYAS, J)

P.S. JOSHI