

(2025) 12 GUJ CK 0065

Gujarat High Court

Case No: R/Criminal Appeal (For Quashing Of Order/Stay) No. 2285 Of 2025

Jayaben @ Aniben W/O
Soparbhai Nagariyabhai Rathva
& Anr

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision: Dec. 4, 2025

Acts Referred:

- Bharatiya Nagarik Suraksha Sanhita, 2023-Section 491, 493, 495
- Indian Penal Code, 1860-Section 114, 120(B), 201, 302, 323, 506(2), 507

Hon'ble Judges: Sanjeev J.Thaker, J

Bench: Single Bench

Advocate: PM Dave, Safwankhan M Sindhi, Shruti Pathak

Final Decision: Allowed

Judgement

Sanjeev J.Thaker, J

1. ADMIT. Learned APP waives service of notice of admission on behalf of respondent State.
2. The appellants have preferred the present criminal appeal under Section 495 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short "B.N.S.S.") being aggrieved by the order dated 11.07.2025 passed below Exhibit 150 and 151 by 3rd Additional Sessions Judge, Panchmahal at Halol in Sessions Case No.65 of 2022.
3. The facts relevant and essential for the case are that the learned Judge vide Judgement and order dated 09.07.2025 was pleased to initiate proceedings under Section 491 of B.N.S.S.2023 against the appellant with regard to issuance of non-bailable warrant for non-appearance on the day of pronouncement of judgment and order dated 27.06.2025 and forfeiture of their personal bond amounts.

4. In view of the charge-sheet dated 22.06.2022, which came to be filed against accused persons and the case was registered. Thereafter on 17.04.2023, charges under Section 302, 323, 506(2), 507, 120(B), 201, 114 of the Indian Penal Code came to be framed against the accused persons and on 19.03.2024, the evidence started and it is the case of the appellant that throughout the trial, accused persons cooperated and remained present and lastly the matter was kept for pronouncement on 27.06.2025, and as the appellants could not remain present, the learned Judge has issued non-bailable warrant and subsequent to that, impugned judgment and order dated 11.07.2025 has been passed.

5. It is further the case that the wife of the appellant no.2 and mother of appellant no.1 was suffering from cancer and on the day of pronouncement of the judgment an order dated 27.06.2025, she was severely ill and completely bedridden and hence, on the said date the appellant no.2 remained present during the first session while appellant no.1 was taking care of her severely ill mother and as all the accused were not present in the morning session, the learned Judge kept the matter in the second session and in view of the deteriorating health of the wife of the appellant no.2, he could not inform anyone and left the Court and on the next day i.e. 28.06.2024, the wife of the appellant no.2 and mother of appellant no.1 succumbed to death and the appellants got held up in the last rites and during the interregnum period, the learned judge issued non-bailable warrant against the appellants. The appellant accused appeared before the Court on 07.07.2025 and moved an application for cancellation.

6. The learned judge passed an order on 09.07.2025 against which the accused filed their explanation-cum reply under Exhibit-153 and without considering the explanation-cum reply, the learned judge invoked the provisions of Section 493 of the B.N.S.S., 2023, considering the default in payment of forfeited bond amount and by that awarded 6 months of civil imprisonment to both the appellants and in the absence of civil prison, accused were sent to criminal jail, locker rooms. Being aggrieved by the said order, the present appeal has been filed.

7. The learned Counsel for the appellants submit that the Court below has failed to take into consideration the relevant facts and circumstances, due to which the appellants could not remain present and the appellants failed to comply with the conditions of the bail order.

8. The Appellate Court has not taken into consideration the fact that, the appellants have all throughout co-operated in the trial and it is only because of the ill health of the mother and wife, the appellants could not remain present on the said 27.06.2025.

9. It has been argued that the Court below has postponed the matter with regard to quantum of sentence on the accused after the accused undergo the sentence of 6 months Civil Jail.

10. Having heard, learned advocate for the appellant and having taken into consideration the order passed below Exhibits 150 and 151 dated 11.07.2025. This Court will have to take into consideration the fact that the appellants by an order dated 09.07.2025, were directed to furnish a bond of Rs.10,000/- failing which undergo six months civil imprisonment.

11. Considering the fact of the present case and the fact that the mother and wife of the appellants have expired on 28.06.2025, and the reasons that have been assigned of not remaining present on 27.06.2025 and considering the fact that the appellants are in civil prison from 09.07.2025. I have gone through the reasons and I am convinced with the same. In the overall facts and circumstances of the case, considering the fact that the appellant no.1 who was present in the first session and the fact that the wife and mother expired on 28.06.2025 and considering the financial condition of the accused and their conduct and reasons which led the accused of not remaining present and not submitting the bond of Rs.10,000/-, taking a humanitarian approach, this Court is inclined to exercise leniency in favour of the appellants.

12. Accordingly the impugned order dated 11.07.2025 passed below Exhibits 150 and 151 is hereby quashed and set aside, the appellant no.1 shall deposit an amount of Rs.5,000/-and appellant no.2 shall also deposit an amount of Rs.5,000/-within a period of five days from the date of this order, before the Trial Court.

13. This appeal is allowed in the above referred terms. The applicants are required to be released from Civil Prison and the 3rd Additional Sessions Judge, Panchmahal at Halol to hear the appellant for their conviction and sentences and pass appropriate final order of conviction and sentence at the earliest.