

ITEM NO.29

COURT NO.16

SECTION II-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SPECIAL LEAVE PETITION (CRIMINAL) Diary No.27298/2024

(Arising out of impugned final judgment and order dated 06-12-2023 in CRLMA(SOS) No.1/2023 passed by the High Court of Gujarat at Ahmedabad)

BHUPATJI SARTAJJI JABRAJI THAKOR

Petitioner(s)

VERSUS

THE STATE OF GUJARAT

Respondent(s)

(With IA No.136862/2024-CONDONATION OF DELAY IN FILING and IA No.136863/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.136864/2024-EXEMPTION FROM FILING O.T. and IA No.136865/2024-PERMISSION TO RAISE ADDITIONAL QUESTION OF LAW)

Date : 05-07-2024 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE UJJAL BHUYAN
(VACATION BENCH)

For Petitioner(s) Mr. Rauf Rahim, Sr. Adv.
Mr. Ali Asghar Rahim, Adv.
Mr. Shekhar Kumar, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

1 Delay condoned.

- 2 The petitioner herein along with a co-accused was put to trial in Sessions Case No 30 of 2018 for the offence of murder punishable under Section 302 of the Indian Penal Code. Pending trial, the petitioner was on bail. Upon conclusion of the trial, the trial court held the petitioner guilty of the offence and sentenced him to undergo life imprisonment. However, the co-accused came to be acquitted.
- 3 It appears that the conviction is based on the evidence of a solitary eye witness. The petitioner preferred Criminal Appeal No 1816 of 2023 in the High Court, challenging the judgment and order of conviction passed by the trial court. The appeal has been admitted. The petitioner also preferred criminal miscellaneous application under Section 389 of the Code of Criminal Procedure seeking suspension of the substantive order of sentence of life imprisonment. The High Court declined to suspend the substantive order of sentence of life imprisonment by way of the impugned order.
- 4 In such circumstances referred to above, the petitioner is before this Court with the present petition.
- 5 We have heard Mr Rauf Rahim, the learned senior counsel appearing for the petitioner.
- 6 When an accused is put to trial and is held guilty of the offence with which he is charged, the first thing that happens is that the presumption of innocence comes to an end. Till the accused is not held guilty, the law presumes him to be innocent. This is a well settled principle of criminal jurisprudence.
- 7 There is a fine distinction between a sentence imposed by the trial court for a fixed term and sentence life imprisonment. If a sentence is for a fixed term, ordinarily, the appellate court may exercise its discretion to suspend the operation of the same liberally unless there are any exceptional circumstances emerging from the record to decline. However, when it is a

case of life imprisonment, the only legal test which the Court should apply is to ascertain whether there is anything palpable or apparent on the face of the record on the basis of which the court can come to the conclusion that the conviction is not sustainable in law and that the convict has very fair chances of succeeding in his appeal. For applying such test, it is also not permissible for the court to undertake the exercise of re-appreciating the evidence. The emphasis is on the word “palpable” and the expression “apparent on the face of the record”.

- 8 The High Court while declining to suspend the substantive order of sentence of life imprisonment has discussed the *prima facie* case established against the appellant herein before the trial court. In such circumstances referred to above, it is difficult for us to find any fault with the impugned order.
- 9 However, the learned counsel for the petitioner pointed out few mitigating circumstances as regards the family of the petitioner convict. It was pointed out that the petitioner has to maintain his widowed daughter-in-law and three minor children of the widow. The family is in a pathetic condition. The appeal is of the year 2023 and will take its own time before it is taken up for hearing.
- 10 Issue notice for the purpose of hearing the State as regards the plea for bail considering the mitigating circumstances pointed out by the learned counsel appearing for the petitioner, returnable in four weeks.
- 11 Liberty to serve the Standing Counsel for the State of Gujarat, in addition.

(CHETAN KUMAR)
A.R. -cum-P.S.

(SAROJ KUMARI GAUR)
Assistant Registrar