IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL (AGAINST CONVICTION) NO. 1394 of 2026

With
CRIMINAL MISC.APPLICATION (FOR SUSPENSION OF SENTENCE) NO. 1 of 2026
In R/CRIMINAL APPEAL NO. 1394 of 2026

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SULEMAN UMARBHAI IBRAHIMBHAI DAL
Versus
STATE OF GUJARAT

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Appearance:
MR RUCHIT J VYAS(10687) for the Appellant(s) No. 1
MS. ASMITA PATEL, APP for the Opponent(s)/Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE VIMAL K. VYAS**

Date : 15/10/2026

ORAL JUDGMENT

1. The present Criminal Appeal has been filed by the appellant-accused under Section 415 of the Bharatiya Nagarik Suraksha Sanhita, 2023, challenging the judgment and order dated 03.03.2026 passed by the learned Special (Electricity) Judge and 2nd Additional Sessions Judge, Jamnagar, in Special (Electricity) Case No.158 of 2023.

2. By the aforesaid judgment and order dated 03.03.2026, the trial court held the appellant-accused guilty of the offence

punishable under Section 135 of the Electricity Act, 2003, and, instead of sentencing him forthwith, ordered him to be released on probation for a period of two years upon his furnishing a surety bond of Rs.25,000=00 for good conduct.

3. The trial court further ordered the appellant-accused to pay a fine equal to three times the amount of the electricity theft bill within a period of 30 days, and in default of payment of the amount of fine, the appellant-accused shall have to undergo simple imprisonment for one year.

4. During the course of hearing, learned advocate Mr. Ruchit Vyas appearing for the appellant-accused has submitted that he is not challenging the order on merits as the trial court, instead of directly sentencing the appellant-accused, has granted the benefit of probation and released him on probation for a period of two years upon his furnishing a surety bond of Rs.25,000=00 for good conduct.

5. Learned advocate Mr. Vyas would submit that the

sentence of fine also carries with it the consequence of imprisonment in case the appellant-accused fails to pay the amount of fine. He has submitted that when the trial court has given the benefit of probation to the appellant-accused, then the order to pay fine, and in making default of it, to undergo imprisonment, would frustrate the very object of the provisions of the Probation of Offenders Act, 1958.

6. In support of his submissions, learned advocate Mr. Vyas has relied upon the decision of the Supreme Court rendered in the case of ***Ishar Das vs. The State of Punjab***, reported in AIR 1972 SC 1295, wherein, in paragraphs-11 and 12, the Supreme Court held as under :

> *"11. Mr.Mahajan has argued that if the trial magistrate took the view that the accused-appellant in view of his age, should not be sentenced to undergo imprisonment, the learned magistrate should still have imposed the sentence of fine as prescribed by sub-sec. (1) of Section 16 of the Act. In this respect we are of the opinion that a sentence of fine also carries with it the consequence of imprisonment in case the accused fails to pay the fine. As the object of Probation of Offenders Act is to avoid imprisonment of the person covered by the provisions of that Act, the said object cannot be set at naught by imposing a sentence of fine which would necessarily entail imprisonment in case there is a default in payment of fine.*
>
> *12. The High Court in the present case did not consider the provisions of the Probation of Offenders Act and its attention does not appear to have been invited to the mandatory provisions of section 6 of the that Act. In view of the fact that the accused was*

> *less than 20 years of age and appeared to be in a repentant mood, the trial court took action under section 4 of the Probation of Offenders Act. The High Court, in our view, was in error in interfering with the above order of the trial magistrate. We, therefore, accept the appeal, set aside the order of the High Court and restore that of the trial magistrate."*

7. It appears that at the time of hearing on the aspect of sentence, the attention of the trial court was not drawn by learned advocate appearing for the accused, to the judgment of the Supreme Court in the case of ***Ishar Das*** (*supra*), which has been relied upon before this Court.

8. Therefore, without entering into the merits of the case, this Court is of the considered opinion that it would be in the interest of justice to remand back the matter to the trial court for decision afresh, taking into consideration the decision of the Supreme Court rendered in the case of ***Ishar Das*** (*supra*).

9. On the facts and in the circumstances of the case, the judgment and order dated 03.03.2026 passed by the learned Special (Electricity) Judge and 2nd Additional Sessions Judge, Jamnagar, in Special (Electricity) Case No.158 of 2023 is hereby quashed and set-aside. The matter is remanded back to the trial

court for decision afresh, in accordance with law, after taking into consideration the aforesaid aspect and after affording opportunity of hearing to both the sides.

10. Registry is directed to sent back the records and proceedings of the case to the concerned trial court.

11. It is needless to clarify that this Court has not gone into the merits of the case.

Order in Cr.M.A. No.1 of 2026 (suspension of sentence)

In view of the order passed in the main appeal, the present Criminal Misc. Application seeking suspension of sentence would not survive and the same stands disposed of, accordingly.

(VIMAL K. VYAS, J)

AMAR SINGH

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: AMAR SINGH(HC01081), PRIVATE SECRETARY, at High Court of Gujarat on 15/10/2026 17:22:17