

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 471 OF 2026
IN
CRIMINAL APPEAL NO. 189 OF 2026

Akash alias Akshay alias Rocky
Ashok Bhalekar,
Age: 22 Years, Occu.: Nil,
Residing at : Dudulgaon,
Alandi road, Pune
Originally r/o. Manjari, Taluka : Latur,
District : Latur.

...Applicant.

Versus

The State of Maharashtra
Through tembhurni Police Station,
Solapur.

...Respondent.

Ms. Shivani Kondekar (Through VC) with Ms. Purva Patil, for the Applicant.
Ms. Mahalaxmi Ganpathy, APP for the Respondent-State.

Coram : Sharmila U. Deshmukh &
Neeraj P. Dhote, JJ.

Reserved on _: August 24, 2026.
Pronounced on : August 27, 2026.

P. C. :

1. This is an application for suspension of sentence imposed by the learned Additional Sessions Judge, Barshi in Sessions Case No. 63 of 2021 by judgment and order dated 5th March 2025 convicting and sentencing the Applicant/Appellant as follows:

"1. Accused No.1 Kirtimala Aagatrao Kale, Age-22 years, accused

No.4 Aagatrao Laxman Kale, Age - 70 years, and accused No. Akash alias Akshay alias Rocky Ashok Bhalekar, Age-22 years are hereby convicted for offence punishable under sec. 302 r/w sec.34 of IPC, they are hereby sentenced to suffer Rigorous life imprisonment each and pay fine of Rs.3,000/-(Rs. Three thousand only) each and in default of fine, they shall suffer S.I. for two month each vide sec. 258(2) of B.N.S.S.2023. 22 years,

2. Accused No.1 Kirtimala Aagatrao Kale, Age accused No.4 Aagatrao Laxman Kale, Age - 70 years, and accused No.6 Akash alias Akshay alias Rocky Ashok Bhalekar, Age-22 years are hereby convicted for an offence punishable under sec. 120(b) r/w sec.34 of IPC and they are hereby sentenced to suffer Rigorous imprisonment for 14 years each and pay fine of Rs.2,000/-(Rs. Two thousand only) each in default of fine, they shall suffer S.I. for one month each vide sec.258(2) of B.N.S. S.2023.

3. Accused No.1 Kirtimala Aagatrao Kale, Age 22 years, accused No.4 Aagatrao Laxman Kale, Age - 70 years and accused No.6 Akash alias Akshay alias Rocky Ashok Bhalekar, Age -22 years are hereby convicted for an offence punishable under sec. 201 r/w sec.34 of IPC and they are hereby sentenced to suffer Rigorous imprisonment for three years each and pay fine of Rs.1,000/-(Rs. One thousand only) each in default of fine, they shall suffer S.I. for 15 days each vide sec. 258(2) of B.N.S.S.2023.

4. All these sentences shall run concurrently.

5. The bail bonds of accused No.4 and 6 be surrendered.

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2. The prosecution's case is that, one Laxmibai was murdered. The

report upon which the Crime No. 50 of 2021 for the offense punishable under Sections 302, 201, 120B read with 34 of the Indian Penal Code came to be registered with the Tembhurni Police Station, Taluka Madha, District Solapur was lodged by the sister of deceased Laxmibai. It is the case of prosecution that, deceased's daughter Komal was married to one Somnath Kale, who died in an accident. Said Komal was residing with her in-laws. The co-convict Agatrao Laxman Kale was the father-in-law of Komal. Komal was not allowed to meet her mother-deceased Laxmibai or anybody else from her parents' family. The in-laws of Komal were suspecting that deceased Laxmibai used black magic resulting in death of Somnath and deceased Laxmibai was intending to get Komal married for the second time. Therefore, all the convicts committed murder of Laxmibai in the evening of 30th January 2021.

3. After investigation, the charge-sheet came to be submitted and the Applicant/Appellant with co-convicts were tried and sentenced.

4. It is submitted by learned advocate for the Applicant, who is the original Accused No. 6, that the only evidence against the Applicant was in the nature of Last Seen. The other co-convicts are enlarged on bail, as their sentence is suspended by this Court. The report of the chemical analyzer in respect of the seized articles shows that, the blood grouping was inconclusive. No Test Identification Parade was conducted during the investigation and the Applicant was identified by the witnesses for

the first time in the Court. The Applicant was having a good case on merits and hence, the application be allowed.

5. It is submitted by learned APP that, the evidence of the witnesses, who saw the deceased lastly with the Applicant and the co-accused shows that, the Applicant was not an unknown person. The evidence of witness examined by the prosecution goes to show that, the deceased was lastly seen with the Applicant. The co-convicts, who are granted bail, stand on a different footing. No case is made out for suspension of sentence and hence, the application be rejected.

6. With the assistance of learned counsel appearing for both the parties, we have perused the deposition of the witnesses examined by the prosecution. The cause title of the Judgment passed by the learned Trial Court goes to show that Accused No. 2-Samadhan and Accused No. 3-Priti alias Guddi were the Child in Conflict with Law.

7. The evidence in respect of the last seen is that of PW-2-Karan Sanjay Bhosale. His evidence shows that, he was the son-in-law of deceased Laxmibai. The Child in Conflict with Law Priti alias Guddi was the sister-in-law of Komal, who is the daughter of deceased Laxmibai. The said Guddi arranged for the meeting between deceased Laxmibai and Komal on 30th January 2021. The P.W.No.2-Karan, deceased Laxmibai and other witnesses had been to Dagad-Akole with deceased

Laxmibai. The deceased Laxmibai received phone call from Guddi. The P.W.No.2 and deceased Laxmibai went towards the house of Guddi on the motorcycle. When they stopped at the bridge, he saw Guddi and the Applicant on one black scooty. This witness and deceased Laxmibai followed the said scooty. After traveling for 5 to 6 kilometers, the scooty stopped. This witness was not allowed to accompany deceased Laxmibai. The deceased Laxmibai accompanied Guddi and the Applicant.

8. The evidence of P.W.No.2-Karan goes to show that, he identified the Applicant as the said person, who was with Guddi with whom deceased had proceeded further. The suggestion that, he saw the Applicant for the first time in the Court is denied. Though it has come in the cross-examination that during the investigation, the Applicant was shown by the police, the dead body was found immediately on the next day. *Prima facie*, the time gap between the last seen and tracing of the dead body is not much. The cause of death as per the Medical Officer was "cardio-respiratory arrest due to injury to vital organs trachea, oesophagus and multiple fracture in the body" with eight external injuries mentioned in the column 17 and three injuries mentioned in the column 18 of the post-mortem report. As deceased did not return home, a report was lodged on 31st January 2021, i.e., the very next day by P.W.No.-1-Tai, in which the Applicant is named as the accused. This *prima facie* shows that, the Applicant was not an unknown person. The

cross-examination of the P.W.No.2-Karan do not show inconsistency with his previous statement. Undisputedly, the case of the Applicant is that of total denial.

9. The order by which the co-convicts Aagatrao and Kirtimala are released on bail shows that, evidence against them is not that of last seen with the deceased. Therefore, the ground of parity is not available to the Applicant. Considering the evidence available on record against the Applicant, no case for suspension of sentence is made out. Hence the following order:

ORDER

(i) The Interim Application is rejected.

[Neeraj P. Dhote, J.]

[Sharmila U. Deshmukh, J.]

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signed by
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