IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 324 OF 2026

Mohd. Akhtar Raja Mohd.
Israil Ansari & anr. ..Appellants

Versus

The State of Maharashtra ...Respondent

WITH
INTERIM APPLICATION NO. 1084 OF 2026

AND
INTERIM APPLICATION NO. 1085 OF 2026

WITH
INTERIM APPLICATION NO. 1086 OF 2026

WITH
INTERIM APPLICATION NO. 1087 OF 2026

Mr. Ashokvardhan Purohit, a/w Ms. Nikhita Waghela, for the Appellants/Applicants.

Smt. R S Tendulkar, APP for Respondent – State.

SAINATH SANJAY BODKHE
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Date: 2026.09.10 19:40:40 +0530

CORAM : N. J. JAMADAR, J.
HEARD ON : 03rd September 2026
PRONOUNCED ON : 10th September 2026

ORDER :-

IA/1084/2026, 1085/2026, 1086/2026, 1087/2026

1. Heard the learned Counsel for the parties.

2. These applications are preferred seeking suspension of the sentence and to enlarge the applicants on bail during the pendency of the appeal.

3. By a judgment and order dated 26th February, 2026, passed by the learned Sessions Judge, Greater Mumbai, the applicants Mohd. Akhtar Raja Mohd. Israil Ansari (A-1) and Abdul Hamid Abdul Latif Qureshi (A-2) have been convicted for an offence punishable under Section 394 r/w Section 34 of the Indian Penal Code, 1860 ("IPC") and sentenced to suffer rigorous imprisonment for 10 years and pay fine of Rs.5,000/- each, with default stipulation.

4. The gravamen of indictment against the applicants was that, on 15th March, 2016, at about 08:45 p.m., while Nisar Ahmed Qureshi – the first informant (PW-1), and his son Mohd. Maqsood Qureshi (PW-2), were on their way home on a motorcycle bearing Registration No. MH 01 AB 2694, near Postal Colony, Eastern Express Highway, two motorcyclists waylaid them.

5. Abdul Hamid Qureshi (A-2) was riding the motorcycle. Mohd. Akhtar Ansari (A-1) was the pillion rider. Mohd. Akhtar Ansari (A-1) allegedly assaulted Nisar Qureshi - informant (PW-1) by means of a chopper and Abdul Hamid (A-2) gave a blow by

means of an iron rod on the head of Mohd. Maqsood Qureshi (PW-2). As Mohd. Maqsood Qureshi (PW-2) fell down and Nisar Qureshi (PW-1) sustained bleeding injuries, the accused decamped with the bag containing cash of Rs.1,90,000/- (Rupees One Lakh Ninety Thousand).

6. The applicants were sent for trial for having committed the offences punishable under Sections 392, 394, 397 r/w Section 34 of IPC.

7. After appraisal of the evidence and the material on record, the learned Sessions Judge was persuaded to acquit the applicants for the offences punishable under Sections 392 and 397 of IPC, and convict them for an offence punishable under Section 394 r/w Section 34 of IPC, and sentence them, as indicated above.

8. Mr. Ashokvardhan Purohit, the learned Counsel for the applicants, submitted that, the impugned order of conviction suffers from legal infirmity as the applicants have been acquitted of the offence of robbery punishable under Section 392 and, yet, convicted for an aggravated offence punishable under Section 394 of IPC. Secondly, the informant – Nisar Qureshi (PW-1) and Mohd. Maqsood Qureshi (PW-2) had sustained simple injuries. Thirdly, there is no material to

connect the applicants with the alleged offences as the first informant – Nisar Qureshi (PW-1) and Mohd. Maqsood Qureshi (PW-2) had not known the assailants from before. Fourthly, though the incident allegedly occurred on a busy expressway, yet the prosecution could not examine any independent witness. Thus, the conviction of the applicants is based on surmises and conjectures rather than legal evidence. Therefore, the applicants have a strong chance of success in the appeal and, hence, the sentence be suspended and the applicants be enlarged on bail.

9. Smt. Tendulkar, the learned APP, resisted the submissions on behalf of the applicants. It was urged that, the learned Sessions Judge, after careful evaluation of the evidence, has recorded sustainable findings of guilt. The accused have been found guilty of grave offences. Therefore, at this stage, the alleged infirmities in the findings recorded by the learned Sessions Judge cannot be examined. Thus, the applications be rejected.

10. It is true, while considering the aspect of suspension of sentence, the Appellate Court is not expected to embark upon an exercise of meticulous evaluation of the evidence with a view to picking up the lacunae or loopholes in the prosecution case. The Appellate Court is expected to examine whether the

applicants have a fair chance of success in the appeal. Upon appraisal of the material on record, if the Appellate Court forms a *prima facie* opinion that, there is a possibility of the case resulting in acquittal, the Appellate Court may exercise the discretion to suspend the sentence.

11. A slightly different approach is required to be adopted where the sentence is of a fixed term. Ordinarily, if the convict has been sentenced to suffer a fixed term sentence, the Appellate Court may justifiably exercise the discretion to suspend the sentence, unless there are exceptional circumstances. Lest, the right of appeal may become illusory as by the time the Appellate Court takes up the appeal for final hearing, in a given case, the appellants might have undergone the entire or a substantial part of the substantive sentence.

12. A useful reference, in this context, can be made to the judgments of the Supreme Court in the cases of ***Bhagwan Rama Shinde Gosai & ors. Vs. State of Gujarat***[1] and ***Aasif @ Pasha Vs. The State of U. P.***[2], wherein the aforesaid principle has been enunciated.

13. On the aforesaid anvil, reverting to the facts of the case at hand, this Court *prima facie* finds that, there are grounds

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1 (1999) 4 SCC 421

2 CRI. APPEAL/3409/2025 dt. 06/08/2025

which may warrant serious consideration at the time of final adjudication of the appeal, on the crucial aspect of the identity of the applicants as the perpetrators of the alleged offences. Firstly, the prosecution case as to the identity of the applicants rests on the testimony of the informant – Nisar Qureshi (PW-1) and Mohd. Maqsood Qureshi (PW-2). As regards the identity of the applicants as the robbers, in the examination-in-chief itself, the informant – Nisar Qureshi (PW-1) deposed that, the accused were shown to him at Nehru Nagar Police Station and, thereafter, he had identified one of the accused in the Test Identification Parade. In the cross-examination also, Nisar Qureshi (PW-1) candidly conceded that, the accused were shown to him at the Police Station before T. I. Parade.

14. Vijay Madhav Rikame (PW-7), the Executive Magistrate, who conducted the T. I. Parade, deposed that the informant – Nisar Qureshi (PW-1) identified Mohd. Akhtar Raja Mohd. Israil Ansari (A-1) and did not identify Abdul Hamid Abdul Latif Qureshi (A-2). Since Nisar Qureshi (PW-1) was forthright in asserting that, the accused were shown to him at the Police Station before T. I. Parade, *prima facie*, the identification of even Mohd. Akhtar Ansari (A-1) in the T. I. Parade, loses credibility.

15. Though Mohd. Maqsood Qureshi (PW-2), professed to identify Abdul Hamid Qureshi (A-2), yet, the identification was in the dock only. Mohd. Maqsood Qureshi (PW-2) did not participate in the T. I. Parade.

16. Secondly, the evidence of discovery which was sought to be pressed into service to connect the accused with the offences, also appears *prima facie* debatable. Two of the public witnesses to the discovery purportedly made by Mohd. Akhtar Ansari (A-1) and Abdul Hamid Qureshi (A-2) did not subscribe to the prosecution version. Though, Israr Hussain @ Pappu Abdul Rehman Qureshi (PW-8), another public witness, deposed to the discovery, yet, his testimony *prima facie* does not refer to the disclosure statement purportedly made by the Abdul Hamid Qureshi (A-2). *Prima facie*, there is no link evidence to establish the nexus between the cash of Rs.10,000/- purportedly recovered at the instance of Mohd. Akhtar Ansari (A-1) and the cash of Rs.1,90,000/- allegedly robbed of the informant – Nisar Qureshi (PW-1).

17. Cumulatively, this Court finds that, the submission on behalf of the applicants that, they have a fair chance of success in the appeal, cannot be brushed aside lightly. The aforesaid

aspects may warrant serious consideration at the final adjudication of the appeal.

18. As the applicants have succeeded in making out a *prima facie* case and the applicants have been sentenced to suffer a fixed term sentence, and having regard to the large pendency of cases, it is unlikely that this appeal can be taken up for hearing and final disposal in the near future, this Court is inclined to exercise the discretion in favour of the applicants. It is also necessary to note that, the applicants were on bail during the trial, barring the initial 5 months period from their arrest, and it was not the case of the prosecution that the applicants had abused their liberty.

19. Hence, the following order :-

: : O R D E R : :

(i) The Interim Applications stand allowed.

(ii) The substantive sentence imposed on the Applicants - Mohd. Akhtar Raja Mohd. Israil Ansari and Abdul Hamid Abdul Latif Qureshi, by the learned Sessions Judge, Greater Mumbai, in Sessions Case No. 523/2016, arising out of CR No. 64/2016 registered with Nehru Nagar Police Station, stands suspended till the final disposal of the appeal.

(iii) The Applicants – Mohd. Akhtar Raja Mohd. Israil Ansari and Abdul Hamid Abdul Latif Qureshi, be enlarged on bail on furnishing a PR Bond in the sum of Rs.25,000/- and a surety in the like amount each, to the satisfaction of the learned Sessions Judge.

(iv) The Applicants shall mark their presence at Nehru Nagar Police Station, on the first Monday of October and April every year, till the disposal of the appeal.

(v) The applicants shall not contact or give threat or inducement to the injured, first informant and any other prosecution witness.

(vi) The applicants shall furnish their residential address and phone numbers, to the Investigating Officer and shall keep him informed in case of any change therein.

(vii) The applicants shall not leave India without prior permission of this Court.

(viii) The Applicants shall attend the proceedings in this appeal, as and when directed.

[N. J. JAMADAR, J.]