

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 1853 OF 2026
IN
CRIMINAL APPEAL NO. 688 OF 2026

Ajay Shivaji Pawar

...Applicant

Versus

The State of Maharashtra

...Respondent

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Mr. Ajit Hon a/w Mr. Chetan Arvind Alai, Advocate for Applicant.

Ms. Sangita D. Shinde, APP for Respondent-State.

Mr. Sachin Chavan, PSI, Talegaon Dabhade Police Station.

CORAM: ***BHARATI DANGRE &
ASHISH S. CHAVAN, JJ.***

DATE : ***03rd SEPTEMBER 2026.***

PC.

1. The Applicant, who is arraigned as Accused No. 8 in the proceedings before the Trial Court has approached this Court seeking suspension of sentence imposed on him vide order and judgment dated 13.01.2026 convicting him for offense punishable under Sections 395, 396, 395, Section 397 of the Indian Penal Code ("IPC"). The Applicant was sentenced to suffer imprisonment for life and to pay a fine of Rs.5,000/- and in default to one year rigorous imprisonment for offence punishable under Section 395 of IPC. The Applicant was sentenced to

suffer imprisonment for life and to pay fine of Rs.5,000/- and in default to one year rigorous imprisonment for offence punishable under Section 396 of IPC. The Applicant was sentenced to suffer rigorous imprisonment for seven years for offence punishable under Section 397 of the IPC. All sentences are directed to run concurrently.

2. Heard, Mr. Ajit Hon, Advocate for the Applicant and Ms. Sangita Shinde, APP for Respondent-State, perused the Application and Appeal.

3. The case of the prosecution is that, on the intervening night between 24th and 25th April, 2017 at about 05:00 a.m., Rupesh Hanumant Garade, informant received a phone call on mobile phone from one Aadesh Garade informing him that, Tejashri, wife of Atrinandan @ Aaba Phale came in an injured condition in front of his house. Five to six persons had mercilessly beaten to death her husband, mother-in-law and father-in-law. Therefore, he immediately informed about the occurrence to Talegaon Dabhade Police Station by making a phone call and rushed to the place of occurrence. He saw Nathu Vithoba Phale lying on the cot, Atrinandan @ Aaba Nathu Phale lying on the floor under sofa set. Chabubai Nathu Phale had received serious injuries on her head. Blood was profusely oozing out of her head injuries. The neighbors gathered. Aadesh @ Munna Garade had taken Smt. Tejashri Phale to Pawana Hospital, Somatane for medical treatment. The cupboards were forcefully opened. They were in a state of disarray and

articles from the cupboards were lying on the floor indiscriminately. One spade having blood stains at various places was also lying in the house. One of the iron rods of the window of the kitchen room was forcefully removed. Police immediately rushed to the spot. On being asked, daughter PW No. 2, aged 09 years stated that on 25.04.2017 during 03.00 a.m. to 04.00 a.m., several unknown persons came in the house. She and her sister woke up by their entry. She saw 5 to 6 intruders in the house. One of them snatched the ear rings of her sister and herself. The other assaulted her grandmother with a knife on her face. They threatened her that they should go back to sleep, else they will be killed. Several more persons entered the house through the front door. They were armed with weapons. One of them hit the grand father with a pick-axe, he started bleeding from his head. Another person assaulted her grandmother on her head. The intruders ransacked the entire house. They assaulted Tejashri Phale, mother of PW No. 2 and snatched her Mangalsutra, Chain and golden ear tops. Due to the assault she fell unconscious. One Rupesh Garade, a neighbor lodged a complaint which came to be registered as FIR No. 145 of 2017 for offence punishable under Sections 395, 396, 397 of IPC against unknown persons. The investigation commenced. The dead bodies were sent for post mortem. Injury certificate of Tejashri Phale was obtained. The Applicant came to be arrested on 13.05.2017. He along with the other accused was put up

for Test Identification Parade which was conducted by the Deputy Tehsildar PW No. 13. PW No. 3 identified the Applicant in the Test Identification Parade. The PW Nos. 2 & 3 have identified the Applicant in Court. The defence of Applicant is that of denial and false implication.

4. On behalf of the Applicant it was submitted that no independent witnesses were examined. Although the statements of several immediate neighbours of the victims were recorded, they were not examined as witnesses. It was argued that this creates an element of doubt on the prosecution case which ought to have led to an adverse inference. There is discrepancy in the evidence of PW No. 2 as to the number of people who had broken into her house to commit robbery. There is unexplained delay in conducting the Test Identification Parade. One of the eye witnesses has admitted that there was no light at the time of the incident. In the Identification Parade, the identifying witness PW No. 3 has not described the role attributed to the Applicant. It was urged that in the light of the aforesaid submissions, the sentence be suspended and bail be granted pending Appeal.

5. *Per contra*, Learned APP Ms. Sangita Shinde, submitted that the evidence of PW No. 3 is on a higher pedestal since she is an injured witness. Her eye witness evidence is even otherwise clear and cogent. Most importantly, she has identified the Applicant in a Test Identification Parade which was conducted in accordance with the rules set out in the

Criminal Manual. The alleged delay in conducting the Test Identification Parade must be seen from the perspective of the fact that the Applicant was arrested on 13.05.2017 and the Test Identification Parade was conducted on 12.07.2017. The evidence of the PW No. 3 is clear that she could see the accused/Applicant in the light coming from the kitchen and hence her identification of the Applicant, both in the Test Identification Parade and the Court cannot be faulted. The offence is serious. Three persons have been done to death in cold blood, in a brutal manner. Hence, the Applicant does not deserve to be released on bail pending Appeal.

6. Appreciating rival submissions, following facts emerge. PW No. 2 and 3 are the eye witnesses. PW No.2 is the daughter of PW No. 3. She describes the events on the night of 24.04.2017, when her grandfather, grandmother, mother and father were sleeping after having dinner. She and her sister were awakened by a sound. She found that several persons had entered the house. One of them snatched the ear tops from her sister's ears. Another assaulted her grandmother with a knife. The intruders threatened both the sisters that they should go back to sleep or else they will be done to death. Another 4-5 persons entered and ransacked the house. Their mother (PW No. 3) who was also assaulted and had fallen unconscious, was taken to the neighbour's house when she regained consciousness. PW No. 2 has described the appearance of the

intruders to the police. She has identified the accused, particularly the Applicant in Court. PW No. 3 has corroborated the evidence of PW No. 2. She is the mother of PW No. 2. She also describes how the intruders were armed with knives, pick-axes and other deadly weapons, how they assaulted her father-in-law with a pick-axe, mother-in-law with a knife. She herself was assaulted on her face and head. Her Mangalsutra, chain and gold ear tops were snatched by the intruders. Due to her injuries, she fell unconscious. Around 5:00 am in the morning, she gained consciousness. She saw her in-laws and husband lying in a pool of blood. Her daughters took her to the neighbours residence. In Court, she has identified the weapons, the articles on the body of her in-laws and husband and her own ornaments which were snatched by the intruders. She has also deposed that she has identified the accused, particularly Applicant in Test Identification Parade. The evidence of both these eye witnesses is not shattered in cross examination. In fact, PW No.3 has deposed that she could see the intruders in the light coming from the kitchen. The evidence of PW No. 3 is further corroborated by the evidence of PW No. 13, Deputy Tehsildar and Special Executive Officer who was authorized to conduct the Test Identification Parade. He deposes that on 23.06.2017 he received a letter from Talegaon Dabhade Police Station requesting him to conduct Test Identification Parade. On 12.07.2017, he organized the Test Identification Parade in his office. He

has set out the procedure of conducting the Test Identification Parade which as per his deposition is in accordance with the rules laid out in the Criminal Manual. PW No. 3 has identified the Applicant in the Test Identification Parade. Apart from denials, there is nothing elicited in the cross-examination to cast a doubt on the conduct of the Test Identification Parade. Considering the argument of delay in conducting the Test Identification Parade, it is pertinent to note that the Applicant was arrested on 13.05.2017 and the Test Identification Parade was conducted on 12.07.2017. Immediately after arrest, on 23.06.2017, the Police Station had intimated the Deputy Tehsildar to conduct the Test Identification Parade which was conducted on 12.07.2017. Thus, there was no significant delay and the explanation by the Investigating Officer and the Deputy Tehsildar is sufficient to explain the delay. Thus, the Applicant has been identified by the eye-witness at the time of the incident, in the Test Identification Parade and finally in the Court. Her evidence inspires confidence. *Prima facie*, it reveals the complicity of the Applicant in the commission of an offence wherein 2 senior citizens and their son were brutally done to death by armed robbers. The Applicant was one among them. The medical evidence establishes the fact of homicidal death and the cause of death in all 3 persons was 'death due to head injury'. The medical evidence is in consonance with the eye witness evidence. The crime is committed in a brutal manner where

three persons are done to death in cold-blood while committing armed robbery. In the light of the aforesaid discussion, we are not inclined to suspend the sentence and admit the Applicant to bail pending Appeal.

7. Consequently, the Application for bail and suspension of sentence is rejected and disposed of accordingly.

ASHISH S. CHAVAN, J.

BHARATI DANGRE, J.