

Rohit Ghuge

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 2215 OF 2026
IN
CRIMINAL APPEAL NO. 377 OF 2026

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Anas Afsar Sayyad

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Ravi Dwivedi a/w Ms. Aishwarya Pandit, Ms. Sakshi Singh, Mr. Sainath Baji and Mr. Satish Shukla, Advocates for the Applicant.

Ms. Sangeeta Shinde, APP for the Respondent No.1-State.

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

DATE : 24th SEPTEMBER 2026.

PC.

1. The Applicant who is arraigned as Accused No. 1 in the proceedings before the Trial Court has approached this Court seeking suspension of sentence imposed on him vide order and judgment dated 17.09.2025 convicting him for offense punishable under Section 302 of the Indian Penal Code (“IPC”). The Applicant was sentenced to suffer imprisonment for life and to pay a fine of Rs. 25,000/-, and in default to suffer simple imprisonment for a period of one year for offence punishable u/s 302 of IPC. The Applicant was sentenced to suffer

rigorous imprisonment for a period of six months and to pay a fine of Rs. 5,000/- and in default to suffer simple imprisonment for a period of three months for offence punishable u/s 37 (1) (a) r/w 135 of the Bombay Police Act, 1951.

2. Heard, Mr. Dwivedi, for the Applicant and Ms. Shinde, APP for Respondent-State, perused the Application and Appeal.

3. The case of the prosecution in a nutshell is that the informant [PW No. 12], one Mr. Bhavesh, Mr. Rajesh [PW No. 13], Mr. Sumit and one Devji Kaka were working together at a pay and park contractor. While working, they noticed that some persons belonging to the Ghodapdev area would rashly drive motorcycles, and abruptly cross the informant and other employees, attempting to knock them and then flee away with speed.

On 01.07.2018, the informant, the deceased and another employee reported for duty at 08.00 a.m. and started their work. On that day, in the afternoon, the bike riders came driving in a rash manner, attempting to dash the informant and others. They again came at about 05.00 p.m. on their motorbikes, proceeding in speed. The informant, therefore, tried to stop the riders from driving rashly . In an attempt to do so, he caught hold of a pillion rider's hand, however, he escaped by giving a jerk, threatening them with dire consequences.

In about 5-10 minutes after this, the informant saw that 6 to 7 persons rushed at him and his co-workers. Those persons attacked the informant, the deceased and Rajesh [PW No. 13] with leather belts, fists and kicks. The informant and other injured persons tried to go towards the deceased to help him, but the assailants threatened them, therefore, they made a run for their respective homes. As a crowd gathered there, the assailants left the spot. Due to deadly blows, the deceased had become unconscious. The informant along with his friends shifted the deceased to Masina Hospital where the deceased succumbed to his injuries. The statement of PW No. 12 was recorded based on which FIR vide CR No. 146 of 2018 came to be lodged for offences punishable u/s 302, 324, 323, 143, 144, 147, 148, 149, 504 and 506 of the IPC and Sections 37 (1) (a) r/w 35 of the Maharashtra Police Act, 1951.

4. During the course of investigation, various panchamas were drawn, the dead body was forwarded for post mortem, injury certificate of PW No. 13 was obtained, Test Identification Parade was conducted, recovery memorandum panchnama was drawn. The Applicant was arrested on 03.07.2018. Investigation was concluded, chargesheet was filed. Case was committed to the Sessions Court. The Applicant pleaded not guilty and claimed to be tried. The prosecution examined 18 witnesses. No defence witnesses were examined by the Applicant. The defence of the Applicant was that of total denial and false implication.

5. On behalf of the Applicant it was contended that there were several material contradictions in the evidence of PW No.3, the spot panch witness, according to whose testimony the incident occurred between 1.00 pm and 2.00 pm which is in contradiction with the case of the prosecution according to which the incident occurred at about 5.00 pm. It was also argued that PW No. 3 and PW No. 4 [the panch witness to the recovery panchnama of the Applicant] are not independent witnesses as they are well acquainted with both the deceased and the informant. The Ld. Counsel for the Applicant contended that the Test Identification Parade suffers from patent illegalities and procedural infirmities. It was also submitted that the CCTV footage does not reveal the presence of the Applicant or any other witnesses alleged to have seen the incident. It was therefore submitted that the case of the prosecution suffers from serious lapses and irregularities and hence, the sentence of the Applicant deserves to be suspended pending Appeal and the Applicant deserves to be admitted to bail.

6. Learned APP Ms. Shinde, countered the aforesaid submissions by arguing that both, in the Test Identification Parade as well as in the Court, PW No. 12 has identified the Applicant. The death has been proved to be homicidal in nature and injured eye witness PW No. 13 has in court identified the Applicant as the person who has assaulted the deceased with the knife.

7. Although, the prosecution has relied heavily on the identification of the Applicant as the assailant who had assaulted the deceased with knife, the basis of the case against the Applicant i.e. his identification appears to be unreliable. Although PW No. 13, who is the injured eye witness claims to have identified the Applicant at the time of assault, he was not put up as the identifying witness in the Test Identification Parade. The incident happened in the year 2018 and PW No. 13 has identified the Applicant in Court for the first time in the year 2024 i.e. after a lapse of almost six years. It is a settled position of law that dock identification of an accused who is not known to the witness, especially after considerable lapse of time cannot be considered reliable. In so far as the identification of PW No. 12, informant, is concerned he was put up as an identifying witness in the Test Identification Parade conducted at Central Jail Arthur Road Mumbai on 03.08.2018. In his oral evidence he claims to have been called at Arthur Road Jail where he had identified the Applicant. However, the evidence of PW No. 6, Tahsildar who conducted the TIP reveals a sorry state of affairs of the manner in which the TIP was conducted and reduced to writing by way of a memorandum.

At the outset memorandum of TIP has been exhibited as substantive evidence without being proved by way of examination in chief. PW No. 6 has not been shown the memorandum nor any questions

have been asked to him about the contents of the said memorandum or the truth or such contents. He has not identified his signature on the memorandum. This procedure is not in consonance with the guidelines set out in the Criminal Manual issued by this Court and directions given therein from time to time on the manner of conducting Test Identification Parade. The memorandum of the Test Identification Parade is also not covered by Section 293 of Cr.P.C. which permits the reports of certain government scientific experts who are specifically enumerated therein, as substantive evidence. Thus, the learned Trial Court ought to have examined PW No. 6 Tehsildar and proved the TIP memorandum through him, in consonance with the Evidence Act. This, in our view is a serious procedural lapse in the manner in which the memorandum is proved before the Trial Court. Even otherwise, documents purporting to the memorandum of TIP are pre-printed formats which are filled up with details in handwriting. The Criminal Manual issued by this Court in Chapter-1 has set out exhaustive guidelines for holding Test Identification Parade followed by an illustrative draft of memorandum of Test Identification Parade.

A perusal of the Test Identification Parade memorandum in the present facts reveals that, the pre-printed format is not in consonance with the requirements of carrying out Test Identification Parade as set out in the Criminal Manual. Pertinently, in the entire format there is no

column or mention of the fact as to whether the identifying witness has actually identified the accused or not. The learned counsel for the Applicant has invited our attention to the deposition of PW No. 6 who admits that he has not read the guidelines about how to conduct Test Identification Parade as provided by the Criminal Manual. He also admits that he has no knowledge about the illustrative drafts provided for in the Criminal Manual, and that, he has not written whether the witness had identified the Applicant or not. This is another serious procedural lapse which undermines the identification of the Applicant in the Test Identification Parade. We can only wonder why the exercise of preparing some pre-printed formats was necessary to be done when the Criminal Manual itself provides for an instructive draft memorandum which can be used by the investigating agency. We can only hope and trust that, at least, in the future such procedural lapses are not committed by the investigating agency and the prosecuting machinery.

In the wake of the aforesaid discussion, it is evident that the identification of the Applicant by the PW No. 12 (first informant) suffers from material discrepancies. Although, there is alleged recovery of knife at the instance of the Applicant, the unreliability of identification of the Applicant is a circumstance which prompts us to suspend the sentence against the accused and admit him to bail on certain conditions. Hence, the following order.

:ORDER:

- i) The sentence imposed by the learned Additional Sessions Judge, vide his judgment and order dated 17.09.2025, in Sessions Case No. 100617 of 2018 is suspended during the pendency of the Appeal.
- ii) The Applicant be released on bail on executing PR bond in the sum of Rs.10,000/- (Ten Thousand only) with one local surety in the like amount to the satisfaction of the learned Trial Court.
- iii) The Applicant shall not leave the State of Maharashtra without prior permission of this Court.
- iv) The Applicant shall inform the Trial Court of his contact details and residential address alongwith changes therein, if any.
- v) The Applicant shall attend the Trial Court on such of the dates as directed by it to mark his presence. He shall first mark his presence on 05th October, 2026 and thereafter as per the directions of the Trial Court.
- vi) Infraction of any of the aforesaid conditions would entitle the State to move for cancellation of bail.

Interim Application No. 2215 of 2026 is disposed of in the aforesaid terms.

ASHISH S. CHAVAN, J.

BHARATI DANGRE, J.