

Rohit Ghuge

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 2563 OF 2026
IN
CRIMINAL APPEAL NO. 700 OF 2026

Akshay @ Bhima Balu Diwate

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Aniket Vagal a/w Ms. Savvy Kolhekar a/w Ms. Juhi Kadu, Advocates
for the Applicant.

Ms.Sangeeta D. Shinde, APP for the Respondent-State.

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

DATE : 24th SEPTEMBER 2026.

PC.

1. The Applicant who is arraigned as Accused No. 2 in the proceedings before the Trial Court has approached this Court seeking suspension of sentence imposed on him vide order and judgment dated 27.06.2025 convicting him for offenses punishable under Section 302, and 201 r/w 34 of the Indian Penal Code, 1860 ("IPC") and bail pending Appeal. The Applicant was sentenced to suffer imprisonment for life and to pay a fine of Rs.5,000/-, in default of which to suffer simple imprisonment for a period of six months for the offences punishable u/s

302 r/w 34 of the IPC. The Applicant was sentenced to suffer rigorous imprisonment for a period of five years and to pay a fine of Rs.1,000/-, in default of which to suffer simple imprisonment for a period of three months for the offences punishable u/s 201 r/w 34 of the IPC. Both the sentences were ordered to run concurrently.

2. Heard, Mr. Vagal, 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, on 18.03.2017, at around 8.40 am, while PW No. 1 Informant- PSI of Sahakarnagar Police Station was on patrolling duty, a Beat Marshal informed him that an unknown person's body is lying in an open space at Vanshiv Vasti, Pune. It appeared that the unknown person was murdered by hitting his face with a stone. When PW No.1 reached the spot, he saw that a person was lying in a pool of blood at the said place and two large blood-stained stones were lying near him. Efforts were made to ascertain the identity of the deceased, however, it was not revealed. Therefore, the body of the deceased was sent for inquest and post mortem. Based on the complaint of PW No. 1, C.R. No. 92 of 2017 was registered against unknown persons for offences punishable u/s 302, 201, r/w 34 of the IPC. During the course of investigation, the relative of the deceased visited the police Station to inquire about the deceased. The officers directed the relatives to go to Sassoon Hospital, where they identified the deceased. It was

informed by the relatives that they had received a phone call that the deceased had damaged a motor vehicle and hence, in order to release him Rs. 2000/- were demanded by the caller. The phone number from which the said call was received was traced by the police to be that of the co-accused and subsequently the two accused came to be apprehended.

It is alleged by the prosecution that on the day of the incident i.e. 17.03.2017 at around 8.30 pm the accused were going towards a market on motor cycle when the deceased crossed the road due to which both the accused fell down, causing damage to their motor cycle. The accused demanded compensation from the deceased which was refused by him, which led to a quarrel between the accused and the deceased. It is the case of the prosecution that Accused no. 1 and the Applicant in connivance forced the deceased to get on their motor cycle and took him to the open space of Vanshiv Vasti. Accused No. 1 called relative of the deceased from his mobile phone and demanded Rs. 2,000/-. The prosecution alleges that since the amount was not received, the accused tied the neck of the deceased with a rope and assaulted him with a stone on his head, mutilating his face and killing him on the spot.

4. During the course of investigation, statements of witnesses were recorded, various panchnamas were drawn, the dead body was forwarded for post mortem, CDRs were obtained, voice samples were obtained, memorandum of recovery was drawn. The Applicant was arrested on the

same day i.e. 18.03.2017. 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 39 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 are no eye witnesses in the present case. It was also submitted that, there was no recovery as against the Applicant. It was further submitted that PW No. 5 who was a panch witness in the memorandum panchnama where the Applicant showed the spot of incident wrongly identified the Applicant in Court and therefore, his identification of the Applicant does not inspire confidence. It was also submitted that the Applicant has not made any calls to the PW No. 19 and 20 i.e. the relatives of the deceased

6. Learned APP Ms. Shinde, countered the aforesaid submissions by submitting that the death is proved to be homicidal. There is circumstantial evidence against the Applicant and the offence is grave in nature.

7. Appreciating rival submissions, following facts emerge. It is not in dispute that there is no eye witness to the incident. Thus, the entire substratum of the prosecution case rests only on circumstantial evidence. The alleged phone call made for extortion of monies from the relatives of

the deceased was not at the instance of the Applicant even as per the case of the prosecution. The only incriminating material against the Applicant is that the bottle of liquor which was found at the scene of offence was purchased by the Applicant from a liquor shop and the prosecution has relied on CCTV footage to show the same. *Prima facie*, we find that there is no evidence on record to fix the Applicant at the place of the offence around the time zone that the alleged murder has been committed.

8. In the wake of the aforesaid discussion, this is a fit case for suspension of sentence and grant of bail pending the Appeal. Hence, the following order.

:ORDER:

- i) The sentence imposed by the learned Additional Sessions Judge, Pune vide his judgment and order dated 27.06.2025, in Sessions Case No. 515 of 2017 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.
- vi) Infraction of any of the aforesaid conditions would entitle the State to move for cancellation of bail.

Interim Application No. 2563 of 2026 is disposed of in the aforesaid terms.

ASHISH S. CHAVAN, J.

BHARATI DANGRE, J.