

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 3231 OF 2026
IN
CRIMINAL APPEAL NO. 677 OF 2021**

Vikas Jayprakash Jaiswal	...Applicant
Versus	
The State of Maharashtra (Tulinj Police stn., Mumbai)	...Respondent

Ms. Payoshi Roy a/w. Mr. Ulkesh Gangurde and Ms. Sanskruti Hebalkar,
for the Applicant.
Ms. Pallavi Dabholkar, APP for the State.

VISHAL
SUBHASH
PAREKAR

CORAM : **MANISH PITALE AND
SHREERAM V. SHIRSAT, JJ.**

DATE : **14th OCTOBER, 2026**

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P.C.: (Per Shreeram V. Shirsat J)

1. The applicant has filed this application seeking suspension of sentence pending the appeal. The applicant is the original accused who has been convicted for the offence punishable under Section 302 of the IPC and has been sentenced to undergo life imprisonment and to pay a fine of Rs. 5,000/- and, in default, to undergo further imprisonment of three and half years. The applicant is also convicted for the offence punishable under Section 323 of the IPC and sentenced to undergo imprisonment for a

period of six months and to pay a fine of Rs. 500/- and, in default, to undergo imprisonment for a period of one and half months and under Section 506(2) IPC and is sentenced to undergo imprisonment for one year and to pay a fine of Rs. 1,000/- and, in default, to undergo imprisonment for a period of three months.

2. Taking exception to the said judgment and order dated 4th February 2020, the applicant/appellant has preferred an appeal, being Appeal No. 677 of 2021, which is pending before this Court.

3. The Ld. Counsel for the Applicant at the outset pointed out that earlier during the COVID period, the applicant had preferred an application for bail, however, this Court was not inclined to release the applicant on bail and therefore the bail application came to be rejected vide order dated 13.10.2020 and liberty was granted to the Applicant to seek early hearing of the Appeal, if the Appeal was not heard within a year. It was further pointed out that even the SLP challenging the said order passed by this court came to be dismissed.

4. The Applicant has once again approached this court for grant of bail and suspension of sentence pending the appeal.

5. Brief facts of the prosecution case are as under:

It is the case of the prosecution that on 10th November 2017 at about 9:00 a.m., the complainant had left for her work when she received a call on the mobile of her colleague from the applicant informing her that their son Piyush, aged 4 years, had stopped breathing and he was being taken to the Government Hospital at Nalasopara and that the complainant should reach there at the earliest. It is further the case that when she reached the hospital, the applicant informed that the son was dead. It is further the case that when the complainant asked about how their son died, he informed that their son Piyush was bathing in the bathroom and while playing he put his head into the water which was in the bucket, because of which water entered his nose and mouth, and he died. It is further the case that as the complainant had a doubt, she asked her son Rishaan and daughter Sonakshi, as to what exactly had happened, to which it was informed to her that around 9:30 a.m., after she had left for work, the applicant was furious as the deceased had been to the neighbour's house, because of which the applicant assaulted the deceased by broom and hand and put his head into the bucket filled with water. After some time, when there was no movement from the deceased, he brought the deceased outside and tried to remove water from the stomach, and thereafter took him to the hospital. It is further the case that the

applicant threatened the two children that they should not reveal about it to anyone. It is further the case that the complaint came to be lodged against the applicant.

6. After completing the investigation, the charge-sheet came to be filed and thereafter the trial commenced. The prosecution examined 11 witnesses and the defence examined one witness. The Trial Court convicted the applicant vide order dated 04.02.2020.

7. The learned counsel for the applicant submitted that the prosecution could not bring on record any admissible evidence against the Applicant and that the Applicant has been erroneously convicted. It has been submitted that none of the prosecution witnesses have supported the case of the prosecution and the conviction is based on inadmissible statements under Section 161 of the Cr.P.C. given to the police. It was further submitted that nothing was brought on record to show that the applicant was at home at the time of the incident, whereas PW-1 has deposed that she along with her husband had gone for work, and as he had forgotten his wallet, he came back home when he noticed that the deceased was drowned which is also corroborated by other witnesses. The learned counsel further submitted that there are no criminal antecedents and he is

incarcerated for more than seven years, and therefore, on such skimpy evidence, the applicant deserves to be released on bail pending the appeal.

8. Per contra, the learned APP submitted that the applicant was the step-father and, therefore, he had a motive to commit the murder. She further submitted that there is overwhelming evidence against the applicant and the Sessions Court has rightly convicted the applicant. She submitted that the witnesses have been won over by the applicant and they have turned hostile for the obvious reason that the applicant is their father. She further submitted that even if the evidence of these witnesses is ignored, there is ample material to sustain conviction and, therefore, the applicant may not be released on bail. She further submitted that instead of releasing the applicant on bail, the appeal be taken up for final hearing.

9. We have perused the evidence on record.

10. PW 1 has deposed that on the day of the incident, she herself and the Applicant had left for work at the same time in the morning and as the Applicant had forgotten his purse he went home to get his purse. PW 2 has deposed that he was playing downstairs and when his father i.e. the Applicant came home he asked the Applicant as to why he had come and the applicant had told that he had forgotten his purse. He has further deposed that when he went up along with the Applicant, he found Piyush

(deceased) lying in the bathroom on the floor after which the Applicant took Piyush to the hospital. Thus, PW 1, PW 2 are consistent on the point that the Applicant was not at home when the incident happened, although according to the prosecution, these two witnesses have not supported the case of the prosecution.

11. PW 2 and PW 5 are also consistent on the point that they are not aware as to how the deceased died and have further deposed that they had not seen the applicant pressing head of the deceased inside a bucket.

12. PW 5, the sister of the deceased has deposed that the deceased was in the habit of taking dip in the water. She has further denied that the Applicant caught hold of the deceased, brought him from the neighbor's house, took him to the bathroom and drowned him in the water. In the cross examination, PW 3 has stated that the deceased used to get fits. She has further deposed in the cross examination that after the parents would leave, Piyush used to bathe himself and that the deceased used to sit in the bucket and they used to take him out of the bucket. She has also answered in the cross examination that it is true that the deceased used to put his face inside the water and they had removed him out. She has further deposed that she does not know how the deceased expired as she had gone down to play. She has also deposed that there was a big bucket in their

house in which the deceased could go inside the bucket entirely. The evidence of PW 5 gets corroborated by DW 1, the sister of PW 1, who has also deposed that she was aware that the deceased would get fits/convulsions.

13. PW 6 is the doctor who conducted the post-mortem of the deceased. He has opined that the probable cause of death was asphyxia due to drowning. He has further deposed that due to epilepsy, it is possible that one may fall and drown in water, and this is possible in the case of the deceased. He has further deposed that if such a thing happens, it may result in suffocation. He has further deposed that injuries at 3 and 4 could be caused while playing and it is possible that after getting an epilepsy convulsion, it may result in unconsciousness.

14. Taking into consideration the evidence that has come on record, the presence of the Applicant at the time of incident is doubtful. The deceased was suffering from epilepsy as deposed by PW3 and the doctor having opined that due to epilepsy, it is possible that one may fall and drown in water and this is possible in the case of the deceased, *prima facie*, we find that the applicant has made out a case for grant of bail and suspension of sentence pending the appeal.

15. Considering the aforesaid and the fact that the applicant is incarcerated for more than seven years and since we are unable to take up the aforesaid appeal for final hearing, the application is allowed and the sentence of the applicant is suspended and the applicant is enlarged on bail pending the hearing and final disposal of the aforesaid appeal on the following terms and conditions.

Hence, the following order.

ORDER

1. The Application is allowed.
2. The sentence imposed on the applicant by the Addl Sessions Court, Vasai vide judgment and order dated 4/2/2020 in Sessions case 29/2018 is suspended till the final disposal of the criminal appeal
3. The applicant be enlarged on bail on furnishing a P.R. bond of Rs. 50,000/- with one or two sureties in the like amount.
4. The Applicant is directed to mark his attendance at the Tulinj Police Station, on the first Monday of every month for a period of one year initially and thereafter once in six months till

the disposal of the appeal, preferably on the first Monday of January and June of every year. In case of two consecutive defaults in complying with the aforesaid condition, the prosecution will be at liberty to file an application for cancellation of bail.

5. The Applicant is directed to furnish his residential address and phone number and inform the police if there is any change in the address or phone number.

6. The Applicant shall not leave the State of Maharashtra without informing the concerned officer of the Tulinj Police Station.

7. The Applicant shall not leave the country without prior permission of this Court and shall deposit his passport, if any, with this Court.

8. The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case.

9. The Applicant shall not misuse his liberty and/or flout any of the conditions imposed herein.

10. The Applicant shall not commit any offense during the period of his release.
11. The Applicant shall make himself available at the time of the final hearing of the appeal.
12. The Applicant shall deposit the fine amount as directed by the Trial Court before his release.
13. The Application for bail and suspension of sentence is disposed of.
14. All other pending applications, if any, stand disposed of.

(SHREERAM V. SHIRSAT, J.)

(MANISH PITALE, J.)