



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APPA) NO.475 OF 2026

IN

CRIMINAL APPEAL NO.322 OF 2026

[Prakash @ Pakya Bhim Kosare ..Vs.. The State of Maharashtra, through
P.S.O., P.S., Wathoda, Nagpur]

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri. Adwait S. Manohar, Advocate for Applicant/Appellant.
Ms. Shamsi Haider, Addl. P. P. for Respondent/State.

CORAM : URMILA JOSHI-PHALKE AND RAJ D. WAKODE, JJ.

DATE : 24th AUGUST, 2026.

1. By this application, the applicant/appellant, who is accused No.1, is seeking suspension of sentence which is imposed in Sessions Case No.289 of 2021 dated 24.02.2026, by the Additional Sessions Judge-3, Nagpur, by which the present appellant was convicted of the offence punishable under Sections 302 and 201 read with Section 34 of the Indian Penal Code and sentenced him to suffer life imprisonment.

2. By this application, the applicant has contended that he was arraigned as an accused on an allegation that on 29.12.2020 at about 01.15 p.m., the complainant Abdul Sattar Sheikh Ibrahim claims to have been received the information about the murder of his son Mohammad Akib in the area which is situated behind Swami Narayan Mandir near Boudha Vihar. It is further alleged that, the Police came to his house and disclosed that his son has been murdered in Shrawan Nagar Area, and hence, the complainant visited the spot of incident, where he saw that his son was lying in pool of blood. After knowing the said incident, he enquired and he came to know that there was a quarrel between his son and the present applicant alongwith the other co-accused on the pretext of money transaction. On that count, the present applicant allegedly gave a blow of knife on the person of

deceased alongwith the other co-accused, due to which deceased sustained the grievous injuries and succumbed to the death. According to prosecution, PW-2/Soheb and PW-3/Subham are the eyewitnesses of the said incident. The Investigating Officer also collected the material evidence, the weapons were seized at the instance of the accused persons and after completion of the investigation, the charge-sheet came to be submitted against the accused persons including the present applicant.

3. In support of the prosecution case, the prosecution has examined in all 16 witnesses and after appreciating the evidence, the present applicant is convicted as aforestated.

4. Heard learned counsel for applicant, who submitted that, the role attributed to the present applicant is that he has given a blow by knife on a person of the deceased. However, the evidence of the eyewitnesses is not sufficient as the general statement is made as far as the present applicant is concerned regarding the blow of knife. He submitted that this Court, while releasing the other co-accused namely Vishal @ Falli Pruthwilal Gupta on bail, has considered the evidence of PW-2 as well as PW-3 and already observed that the applicant accused has arguable case, and thereafter, released the one of the co-accused on bail by suspending the sentence. He submitted that, similarly, if the evidence of these witnesses is taken into consideration, there is contradictory evidence as far as the role of the present applicant is concerned. He submitted that a general statement has been made that the present accused had also inflicted a blow by means of a knife on the person of the deceased.

5. Learned counsel for applicant invited our attention to the chief-examination as well as the cross-examination of PW-2 and PW-3 and submitted that PW-3 has specifically admitted that he approached the Police Station for recording his statement as the father of the deceased had taken him there. Similarly, PW-2 has stated that he disclosed the name of the

accused as the police had disclosed the name of the present accused. Thus, he submitted that, considering the evidence, the eyewitnesses who have witnessed the incident have not disclosed the incident immediately to the Police, though they were available, and their statements were recorded after two days, for which no explanation has been put forth. Thus, he submitted that, considering the inconsistencies in the evidence of the prosecution, the applicant is having an arguable case in the present appeal. In view of the same, keeping him behind bars would be against the principles of natural justice. He submitted that, in view of the well-settled law laid down by the Hon'ble Apex Court, if the applicant can point out that he has a chance of success in the appeal, then it would not be appropriate to keep him behind bars till the disposal of the appeal. In view of the same, the application deserves to be allowed.

6. Learned Addl. P. P. strongly opposed the said contention and submitted that, considering the evidence of the two eyewitnesses, which is consistent and supported by the medical evidence, at this stage, the applicant has not made out a case for releasing him on bail by suspending the sentence.

7. After hearing both the sides and on perusal of the entire evidence on record, there is no dispute regarding the fact that the deceased died a homicidal death. Stab injuries are also seen on the person of the accused. The only aspect to be considered is whether the present applicant was involved in assaulting the deceased and was the perpetrator of the crime. The injuries are in the nature of stab wounds or chop wounds or incised wounds, which, admittedly, are possible by a weapon like a knife.

8. Learned counsel for the applicant has rightly pointed out that the statement of the eyewitness, i.e. PW-2/Soheb, was recorded after two days, though he was present at the time of the inquest panchnama as well as at the time of seizure of the clothes of the deceased. In the cross-examination, he pointed out that PW-3 has approached the Police Station as the father of the

deceased had brought him to the Police Station. Thus, he submitted that the cross-examination is sufficient to show that, though they have witnessed the incident, they had not approached the Police Station on their own to record their statements. Thus, he submitted that, considering the inconsistencies in the evidence, admittedly, the applicant has an arguable case in the present appeal, and therefore, he has every chance of success in the present appeal, and therefore, keeping him behind bars is not appropriate. He also referred the decision of *Omprakash Sahni Vs. Jai Shankar Chaudhary & Anr. in Criminal Appeal Nos.1331-1332/2023, decided on 02.05.2023*, wherein it is observed in para 33 as under:

“33. Bearing in mind the aforesaid principles of law, the endeavour on the part of the Court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the Trial Court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. If the answer to the above said question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually take very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the Court can arrive at a prima facie satisfaction that the conviction may not be sustainable. The Appellate Court should not reappreciate the evidence at the stage of Section 389 of the CrPC and try to pick up few lacunas or loopholes here or there in the case of the prosecution. Such would not be a correct approach.”

9. By applying the said ratio laid down by the Hon'ble Apex Court while considering the application under Section 389 of Cr.P.C., admittedly, the learned counsel for the applicant has pointed out that the applicant has fair chances of acquittal, and therefore, the application deserves to be allowed. Accordingly, we proceed to pass the following order :

ORDER

- i) Criminal Application (APPA) No.475 of 2026 is
allowed.

ii) The execution and implementation of the sentence imposed in Sessions Case No.289 of 2021 by the judgment and order dated 24.02.2026 by the Additional Sessions Judge-3, Nagpur, is hereby suspended till the disposal of the Appeal.

iii) The applicant - Prakash @ Pakya Bhim Kosare shall be released on bail on executing P.R. Bond in the sum of Rs.50,000/- with one solvent surety in the like amount.

iv) The applicant shall attend the District and Additional Sessions Court-3, Nagpur, on 5th of every month till disposal of the Appeal.

v) The applicant shall furnish his address alongwith his address proof alongwith the names of his two relatives and their address proof.

vi) The applicant shall not leave the jurisdiction of District Court, Nagpur, till disposal of the Appeal without prior permission of the Court.

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10. R and P is already received.

11. Office to prepare the paper-book expeditiously and after preparation of the paper-book, Appeal be listed for final disposal.

(RAJ D. WAKODE, J.)

(URMILA JOSHI-PHALKE, J.)

TAMBE.