

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

**CRIM. INTERIM APPLICATION NO. 3641 OF 2024  
WITH  
CRIM. INTERIM APPLICATION NO.4767 OF 2024  
IN  
CR. APPEAL NO. 390 OF 2020**

Shankar Dattatray Shirke ...Applicant  
Versus  
The State Of Maharashtra And Anr ...Respondents

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Mr. Priyal G Sarda for the Applicant  
Mr. V. A. Kulkarni, APP for the Respondent No. 1-State  
Mr. Mohammand M. Abdi for the Respondent No. 2

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**CORAM : M. M. SATHAYE, J.**

**DATED : 22<sup>nd</sup> NOVEMBER 2024**

**P.C.:**

1. Heard learned Counsel for the Applicant/Convict, learned APP for the Respondent No. 1 - State and learned Counsel for the Respondent No. 2-Victim, who was assaulted.
2. By the impugned order of conviction dated 27/02/2020, the present Applicant/Accused No. 1 – Shankar Dattatraya Shirke is convicted for the offence punishable u/s. 326 r/w. 34 of the Indian Penal Code, 1860 and has been sentenced to suffer rigorous imprisonment of 7 years alongwith sentence of rigorous imprisonment of 1 year for the offence punishable u/s. 504 of the Indian Penal Code.
3. By IA/3641/2024, the Applicant is seeking suspension of sentence and

grant of interim bail during the pendency of the above Appeal, which is already admitted and pending for final hearing. This is second application by the Applicant.

4. It appears that during the pendency of the earlier Application (IA/1199/2020) filed for same relief, the Applicant was released on Covid bail. On 18/01/2022, learned APP on instructions of the concerned police station, informed this Court that the Applicant has committed another grave offence punishable u/s. 302 of the Indian Penal Code ('IPC' for short) and the earlier Application was withdrawn on 19/01/2022. In this backdrop the present application is filed.

5. Learned Counsel for the Applicant submitted that the Applicant has already suffered detention for about 2 years and 9 months. He submitted that Accused No. 2 (Vishal Kisan Chavan) has been granted bail by this Court under order dated 16/07/2024 in IA/2649/2024. He submitted that P.W. No. 3-Victim/Suresh Jadhav (present Respondent No. 2) has not identified the Applicant. He further submitted that if the cross-examination of the P.W. No. 5-Doctor is perused, it can be said that out of 6 injuries to the victim, 5 are simple injuries. On these grounds, the Applicant is pressing for interim bail. He has relied upon the order of the Hon'ble Supreme Court in cases of **Jitendra & Ors. vs. State of Uttar Pradesh**<sup>1</sup> and in the matter of **Atul @ Ashutosh vs. State of Madhya Pradesh**<sup>2</sup> in support of his case.

6. On the other hand, learned APP for the Respondent No. 1 with the assistance of the learned counsel for the Respondent No. 2, has submitted that when the Applicant was on Covid bail, he has misused the liberty and

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1 . Special leave to Appeal (Crl.) No. 7162/2024 Order dated 04/10/2024

2 . Criminal Appeal No. 579 of 2024 Order dated 02/02/2024

has involved himself in graver offence for which charge-sheet has already been filed on 12/02/2021 in which the role attributed to the present Applicant is use of iron rod and stone for the offence punishable u/s 302 r/w. 34 of the IPC and u/s. 4 & 24 of the Arms Act. Certified copy of the said charge-sheet is placed on record. It is submitted that this ground itself sufficient to reject the present Application.

7. It is further submitted that if the evidence of the P.W. No. 1 and P.W. No. 3 is perused, then the role attributed to the present Applicant for assault using iron rod as well as enmity between the parties is clearly made out. It is further submitted that medical evidence is sufficient in the form of deposition of P.W. No. 5 and P.W. No. 6 – Doctors to prove that the victim has suffered grave injuries on head. It is submitted that no parity can be claimed by the Applicant as role of the Accused No. 2 as roles are different.

8. I have heard learned Counsel for the parties and perused the record.

9. It is sought to be contended by learned Counsel for the Applicant that he has not been arrested for last 2 ½ years under the charge-sheet relied upon by the Respondents. He submits that unless he is taken in the remand, he cannot be called as accused and therefore it cannot be said that Applicant has misused his liberty or that there is an antecedent.

10. Perusal of the charge-sheet shows that the present Applicant was absconding at the relevant time and process was issued and thereafter standing non-bailable warrant was also issued against the Applicant. It is not disputed that the Accused has surrendered in the present offence on 21/07/2022, which is apparently after withdrawal of earlier application for bail as well as filing of the charge-sheet and issuance of process and non-

bailable warrant.

11. In such circumstance, in my view there is sufficient indication that the accused has got himself involved in the another incident, though alleged, of graver nature. The present Appeal is arising out of the conviction u/s. 326 of the IPC, however, the charge-sheet filed against him during the pendency of the Covid Bail is u/s. 302 of the IPC and u/s. 4 & 5 of the Arms Act. This is itself, in my opinion is sufficient to infer misuse of liberty

12. Also perusal of the deposition of the two doctors would show that victim has suffered grievous hurt on the head which is described as CLW on occipito parietal region bleeding 6cm x 1cm and CLW on occipito parietal region stitched with 8 stitches.

13. So far as the order in the case of **Atul @ Ashutosh (supra)** is concerned, the Applicant convicted therein had undergone 50% of the sentence, which is not the present case, and therefore distinguishable. So far as the order in the case of **Jitendra & Ors (supra)** is concerned, in that case, another trial was pending where the accused was on bail. In the present case, when the charge-sheet for another case was filed, the Applicant was absconding and non-bailable warrant was required to be issued and thereafter for the reasons best known to the Applicant, on which I need not comment at this stage, the Applicant has chosen to surrender himself in the present offence in July 2022. This clearly distinguishes the present case from the said order relied upon by the Applicant. Therefore both orders relied upon by the Applicant do not advance the case of the Applicant. In any case, it is trite that interim bail is a matter of discretion of the Court based on facts of each case.

14. Considering the gravity of the offence, its social impact, facts and circumstances narrated above, and though alleged but apparent involvement of the Applicant in another grave offence while on covid bail, I am not inclined to grant bail to the Applicant.

15. IA/3641/2024 for interim bail is rejected.

16. By IA/4767/2024, the Applicant prayed to bring the aforesaid order dated 18/01/2022 on record. I have already considering the said order. Hence IA/4767/2024 is also disposed of.

**(M. M. SATHAYE, J.)**