

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.199 OF 2025

IN CRIMINAL APPEAL NO. 62 OF 2025

Rahul Bhikulal Kasat

Applicant

Versus

The State of Maharashtra

Respondent

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Mr. Rajendraa Deshmukh, senior advocate i/b Mr. Devang Deshmukh, Advocate for the applicant.

Mr. S.R. Wakale, A.P.P. for the respondent-State.

Mr. Sanjeev Deshpande, senior advocate i/b Mr. R.A. Karwa, Advocate assisting the Public Prosecutor.

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**CORAM : NITIN B. SURYAWANSHI AND
SANDIPKUMAR C. MORE, JJ.**

Closed for order on : 17 July 2025

Order pronounced on : 25 July 2025

ORDER (Per Sandipkumar C. More, J.) :

1. By this application, the applicant Rahul Bhikulal Kasat i.e. the appellant/original accused No.5 in Sessions Case No. 218 of 2021, is seeking suspension of substantive sentence imposed upon him under judgment and order dated 18.10.2024 in the aforesaid sessions case, passed by Additional Sessions Judge, Parbhani i.e. the learned trial Court and releasing him on bail during the pendency of appeal.

2. As per the prosecution case, deceased Suresh Karwa was living with his wife Seema i.e. PW-50 and son Yash. Present applicant/accused being a wealthy businessman from Selu, established cordial family relations with Karwa family. Thereafter he developed illicit relations with wife of the deceased. After some time wife of the deceased wanted to end the said relationship, but the applicant/accused threatened her for not to do so. He also threatened her that he would kill her family member. When the said fact was brought to the notice of the deceased by his wife, the deceased told her to keep calm. The applicant/accused then hatched conspiracy alongwith other accused for committing murder of Suresh Karwa. On 02.05.2021 when Suresh Karwa was returning from his agricultural field towards Selu, a scene was created near Khari bridge as if he was given dash by trax jeep driven by accused No.4 and thereafter accused No.2 Vinod hit Suresh with iron rod on head resulting into his death. Thereafter when the body of deceased Suresh Karwa was recovered, an offence of accidental death was registered by his brother Satish Karwa under Sections 304-A, 279 and 427 of I.P.C. initially. However, when the audio clip of conversation between applicant/accused and wife of deceased became viral, offence

under Section 302 and 120-B of I.P.C. was added to the earlier registered crime. Thereafter on completion of investigation, trial was conducted by the learned trial Court resulting into conviction of present applicant for the offence punishable under Sections 302 read with Section 34 and 120-B of I.P.C. Out of other accused, accused Nos. 2 to 4 were also convicted.

3. Learned senior counsel Mr. Deshmukh for the applicant/accused submitted that the present applicant is not at all involved in the alleged crime and Suresh i.e. deceased in the instant case, had in fact died due to accident caused by one truck bearing registration No. MH-22-AN-8085 as per initial report. He pointed out that PW1-Satish, who had lodged report of accident, has admitted that there are in fact two eye witnesses namely Khandu Banduke and Dadasaheb Lipane to the accident and their statements were also recorded by earlier Investigating Officer, but the prosecution, for false implication of the present applicant, suppressed those statements. According to him, present case is based on circumstantial evidence in form of electronic evidence which is not at all admissible since recovery of those instruments is highly doubtful and the panch witness to that discovery/recovery has not supported the same.

4. Learned senior counsel further pointed out that even the Medical Officer Sanjay Loya (PW-34) had initially recorded his opinion in respect of death of Suresh that the same was caused due to cerebral vascular damage to the brain due to severe head injury, secondary to road traffic accident, but the second Investigating Officer pressurized this medical officer to change the cause of death by showing him murder weapon i.e. crowbar and compelled him to change the opinion. Learned senior counsel also pointed out that only after this attempt on the part of second Investigating Officer, PW-34 Dr. Loya, at the instance of Civil Surgeon, Parbhani i.e. PW-43 Nagargoje, changed cause of death by deleting the words “secondary to road traffic accident”. He pointed out various admissions given by the Investigating Officer Shrawan Datta (PW-51) which, according to him, created suspicion over the prosecution story. Likewise, he also pointed out various admissions from the wife of deceased which revealed that the deceased was not having any objection in respect of her illicit relations with applicant/accused. Thus, he submitted that there are various shortcomings in the evidence of prosecution. According to him, the accused were not shown to the alleged eye witnesses for identification and the recovered weapon i.e. iron bar was also not sent for forensic opinion to

establish the fact that the same was used for giving blow on the head of deceased by the co-accused. According to him, applicant has been falsely implicated in the present crime on the basis of fabricated motive and tainted electronic evidence and with vengeance as he had exposed corruption in the police department. In support of his submissions, he placed reliance on the following judgments.

- (i) Chandrabhan Sanap vs State of Maharashtra, AIR 2025 SC 1103*
- (ii) Arjun Khotkar vs Kailas Kushanrao Gorantyal & others 2020 DGLS (SC) 508*
- (iii) Padman Bibhar vs State of Odisha, 2025 SCC OnLine SC 1190*
- (iv) Goverdhan and another vs State of Chattisgarh 2025 (3) SCC 378*
- (v) Jan Mohammad and another vs State of Bihar 1953 (1) SCC 5*
- (vi) Judgment of Apex Court in the case of Shivaji Kisan Narawane vs State of Maharashtra in Criminal Appeal No. 332 of 2025 arising out of SLP (Cri) No.17258 of 2024*
- (vii) Sujit Biswas vs State of Assam, AIR 2013 SC 3817*
- (viii) Rajesh & another vs State of Madhya Pradesh 2023 DGLS (SC) 1127*

5. On the contrary, learned A.P.P. Mr. S.R. Wakale strongly opposed the submissions made on behalf of the applicant/accused. According to him, the first F.I.R. in respect of accidental death of deceased was in fact hurriedly lodged when the conspiracy of killing the deceased was not

revealed. According to him, ample electronic evidence is available on record in the form of conversation of present applicant and other accused in respect of conspiracy. He pointed out that the present applicant/accused was continuously in touch with other accused through mobile phones and transcript of their conversation clearly indicated that the applicant and convicted co-accused hatched conspiracy for committing murder of deceased Suresh. He pointed out relevant portions of the judgment as to how the learned trial Court on the basis of such transcriptions held the applicant and other co-accused guilty. Learned A.P.P. thus justified the reasoning of learned trial Court in respect of conviction of applicant/accused. According to him, the present applicant/accused was an under trial prisoner since beginning, and therefore, he need not be released on bail during pendency of this appeal.

6. On the other hand, learned senior counsel Mr. S.B. Deshpande on behalf of the informant also opposed the application on the ground that as per testimony of PW-50 i.e. the wife of deceased Suresh, the applicant/accused was having strong motive to eliminate the deceased. He pointed out the evidence of bullock cart rider who had seen the co-

accused giving blow to the deceased. He also reiterated that as per the transcription of conversation among applicant and other convicted accused namely Vinod Ambhure, Vishal Patil and Rajubhau Khandagale, it has come on record as to how they hatched conspiracy for killing the deceased. According to him, all the submissions made by learned senior counsel Mr. Deshmukh for the applicant in respect of admissions given by prosecution witnesses, need to be considered at the time of final argument of the appeal. Accordingly, he prayed for dismissal of the application. In support of the submissions made at bar, learned senior counsel Mr. Deshpande also placed on record written notes of argument mentioning as to how the conspiracy as well as chain of circumstances is established by the prosecution against the applicant and co-accused.

7. Heard rival submissions. Also perused the entire record and proceeding of the original sessions case.

8. Admittedly, in respect of death of Suresh Karwa, initially prosecution had registered crime for the offence under Sections 304-A, 279 and 427 of I.P.C. considering it as an accidental death. However, due to conversation between

wife of deceased and applicant/accused, conspiracy among the accused revealed and thereafter on the basis of evidence collected by the prosecution, offence under Sections 302 and 120-B of I.P.C. was added in the initial crime, and on considering the evidence on record, learned trial Court has convicted this applicant for hatching conspiracy with accused Nos.2 to 4 for committing murder of Suresh Karwa. It is significant to note that the present applicant/accused was in custody throughout the trial after his arrest.

9. Learned senior counsel Mr. Deshmukh for the applicant is seeking release of applicant on bail and suspension of his substantive sentence during the pendency of this trial mainly on the ground that there are so many contradictions in the evidence of prosecution witnesses and some of the prosecution witnesses have given vital admissions creating doubt about the entire prosecution story. He pointed out that the conversation among the applicant and other convicted accused, which was considered by the learned trial Court for convicting them, was not at all trustworthy, since its extraction and seizure of concerned electronic device was highly doubtful and not supported by any independent witness. Learned senior counsel Mr. Deshmukh has also

relied on various judgments as mentioned above.

10. The observation in the case of ***Chandrabhan vs State of Maharashtra*** (supra) is in respect of circumstantial evidence and extra-judicial confession. Further, judgment in the case of ***Arjun Khotkar vs Kailas Gorantyal*** (supra) is in respect of necessity of certificate under Section 65-B of the Indian Evidence Act without which electronic evidence is of no use. Judgment in the case of ***Padman Bibhar vs State*** (supra) lays down the principal that suspicion however strong, cannot substitute proof. Further, the judgment in the case of ***Govardhan vs State*** (supra) speaks about liability of prosecution to adduce proof beyond all reasonable doubts to establish guilt of the accused. Judgment in the case of ***Jan Mohammad*** (supra) speaks about motive, whereas judgments in the cases of ***Shivaji Kisan Narwane*** and ***Sujit Biswas*** (supra) are on the point of appreciation of circumstantial evidence. Further, judgment in the case of ***Rajesh vs State*** (supra) has highlighted the aspect of defective investigation specially in respect of search and seizures. Though the benefit of doubt has been given in these judgments for the aspects mentioned therein, but it is extremely important to note that we are not considering the main appeal for final hearing.

What is under consideration at this juncture, is, whether the substantive sentence of the applicant can be suspended by releasing him on bail. The parameters for considering the bail application under Section 389 of the Code of Criminal Procedure are different than the consideration of entire matter in appeal to ascertain whether the accused is guilty.

11. Admittedly, there are certain admissions given by prosecution witnesses which may create doubt in respect of the manner in which investigation has been carried out. However, at the same time there is also important material on record in respect of conspiracy among applicant and other convicted co-accused, specially in the form of their conversation in respect of crime. The conversation brought on record by the prosecution indicates *prima facie* involvement of the present applicant in the crime. It is now settled that when the case is based on circumstantial evidence against the accused, then prosecution has to establish each and every link or circumstance leading to the guilt of accused. In the instant case, though certain admissions and contradictions are brought on record in the evidence of prosecution witnesses, but there is also *prima facie* material on record against the applicant and other

convicted co-accused. Therefore, though the contradictions and admissions are there on record, but the same cannot be considered in isolation. Moreover, from the evidence of PW-50 i.e. wife of the deceased, it can safely be inferred that the applicant was having motive to commit this crime. The entire evidence of prosecution has to be considered to ascertain whether the applicant is involved in the present crime. This can be possible only at the time of final hearing of appeal preferred by this applicant and appeal by other convicted co-accused. Under such circumstances and specially considering the material against the applicant in form of his conversation with other co-accused indicating the conspiracy hatched among them relating to charge against them, we do not consider that it is a fit case for grant of bail to the applicant/accused by suspending his substantive sentence. Resultantly, the application stands dismissed.

(SANDIPKUMAR C. MORE)
JUDGE

(NITIN B. SURYAWANSHI)
JUDGE