



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO. 500 OF 2025
IN
CRIMINAL REVISION APPLICATION NO. 41 OF 2025**

Manoj Kachrual Jaiswal and Another ..APPLICANTS

VERSUS

State of Maharashtra and Another ..RESPONDENTS

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Mr. S.G. Ladda, Advocate for applicants

Ms V.S. Chaudhari, A.P.P. for respondent no.1 – State

Mr. A.B. Bhagat, Advocate h/f Mr. G.P. Darandale, Advocate for respondent no.2

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**CORAM : ABHAY J. MANTRI, J.
DATE : 20th SEPTEMBER, 2025**

PER COURT :

The applicants – original Accused Nos.1 and 2 have filed this revision application challenging the judgment and order dated 04th December, 2024 passed by learned Additional Sessions Judge -1, Aurangabad in Criminal Appeal No. 178 of 2011 thereby confirming the order dated 08th July, 2011 passed by learned Ad-hoc Assistant Sessions Judge-2, Aurangabad in Sessions Case No. 155 of 2008 whereby awarded the sentence of seven years for the offences punishable under Sections 304-B r/w 34 of the Indian Penal Code and other offences, wherein they have also filed an application for suspension of sentence and released the applicants on bail.

2. Heard learned counsel for the applicants, learned A.P.P. for Respondent No.1 - State and learned counsel for Respondent No.2.

3. It appears that by order dated 02nd May, 2025, this Court suspended the substantive sentence imposed against Applicant No.2 and released her on bail on the terms and conditions to the satisfaction of the trial Court. However, the application of Applicant No.1 remains pending. It does not appear from the said order that this Court has considered the application of the Applicant No.1 or rejected his application. Similarly, it is revealed from the order dated 04th August, 2025, that this Court was about to consider the application; however, due to the paucity of time, further hearing was adjourned.

4. Thrust of the argument of the learned counsel for the applicants is that as per Section 28 of the Code of Criminal Procedure, the learned Ad-hoc Assistant Sessions Judge was not empowered to conduct the sessions trial, as such he was not empowered to award the sentence life imprisonment, or try and entertain trial wherein punishment for more than ten years has been prescribed. He further drew my attention to Section 28 of the Code of Criminal Procedure as well as the judgment of this Court in ***Prabhakar L. Pawar Vs. State of Maharashtra, 2012 Cri. L.J. 4726***, and propounded that in view of the above mandate, the decision rendered by the learned Ad-hoc Assistant Sessions Judge is void ab initio. Lastly he canvassed that in view of the dictum in ***Kiran Kumar v. State of Madhya Pradesh, 2002 SCC (Cri) 1017*** if the maximum sentence imposed on the accused is for a period of seven years,

then that can be termed as short-term sentence, and therefore, held that “*the normal rule is that when the appeal is pending, the sentence should be suspended and the rejection is only by way of exception and be put forward for such rejection,*” and therefore, he urged that the sentence be suspended and applicant No. 1 be released on bail.

5. *Per contra*, learned A.PP. vehemently resisted the application and contended that as per Section 28 of the Code of Criminal Procedure, the Assistant Sessions Judge may pass any sentence authorised by law, except for a death sentence, imprisonment for life, or imprisonment for a term exceeding ten years. In the case in hand, the Ad-hoc Assistant Sessions Judge has awarded a punishment of seven years only. Therefore, it cannot be said that the Ad-hoc Assistant Sessions Judge was not empowered to impose the sentence. To substantiate her contention, she relied on the judgment in the ***State of Madhya Pradesh Vs. Bhooraji 2001 AIR (SC) 3372***, and more particularly on paragraph nos. 7 and 8 thereof and submitted that in view of the dictum laid down in the said judgment, it would not be proper to suspend the sentence. Hence, she urged the rejection of the application.

6. Learned counsel for Respondent No.2 adopted the arguments of learned A.PP.

7. It is pertinent to note that the Ad-hoc Assistant Sessions Judge-2, Aurangabad, has passed the order of conviction under Section 304-B of the Indian Penal Code, wherein the punishment is prescribed up to life

imprisonment, i.e. the sentence is more than ten years. It further reveals from paragraphs nos. 20 and 21 of the appellate court's judgment that the applicants have raised objections that the learned Ad-hoc Assistant Sessions Judge was not empowered to try and entertain the matter. Despite the same, he has delivered the judgment and thereby sentenced the applicants under Section 304B of the Indian Penal Code. However, learned Additional Sessions Judge-1 has not considered the said objection in its proper perspective and erred in holding that, "as per Section 28 (3) of the Code of Criminal Procedure, an Assistant Sessions Judge can pass a sentence less than ten years.

8. It further reveals from para 20 of the impugned judgment that the learned Additional Sessions Judge framed the charge and recorded the entire evidence as well as the statement of the accused persons under Section 313 of the Code of Criminal Procedure, and thereafter the Ad-hoc Assistant Sessions Judge delivered the impugned judgment. Thus, Prima facie, it seems that in view of the judgment of this Court in ***Prabhakar*** (supra) and section 28 of the Cr. P. C., the learned Ad-hoc Assistant Sessions Judge, was not empowered to try to entertain the trial.

9. It further appears from the record that during the trial, the applicants were on bail, and after being convicted by the trial Court, they were released on bail until the Additional Sessions Judge - 1 passed the order. Apart from that, by order dated 02nd May, 2025, this Court suspended the

sentence passed against Applicant No.2 and released her on bail.

10. In *Bhooraji* (supra), the facts were that prior to passing the judgment in *Gangula Ashok Vs. State of Andhra Pradesh, (2000) 2 SCC 504*, the trial under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, was conducted by an Additional Sessions Judge. Before pronouncement of the said judgment, there was no requirement that the case under the S.C.S.T. Act was to be tried by the Special Judge and after passing of the said judgment, the said procedure was changed, and therefore, the Hon'ble Supreme Court held that "*in such circumstances, it would not be any omission or even illegality in the procedure which does not affect the core of the case is not a ground for ordering a de novo trial.*" Further, the facts in the case at hand are distinct from those pointed out in the above judgment, and therefore, the law laid down in the said judgment is hardly of any assistance to learned A.P.P. in support of her contention.

11. Having considered the above discussions as well as provision of Section 28 of the Code of Criminal Procedure and the mandate laid down in the case of *Prabhakar* (supra), I am of the prima facie view that the sentence needs to be suspended till the revision is finally decided, as the question of law is involved in the present case, whether learned Ad-hoc Assistant Sessions Judge is empowered to try and entertain the trial in view of the mandate in Section 28 of the Code of Criminal Procedure.

12. Consequently, in my opinion, Applicant No.1 has also made out the case to suspend the sentence imposed on him. As a result, all the substantive sentences imposed against the Applicant No.1 – Manoj Kachrual Jaiswal by the Trial Court vide judgment and order dated 08th July, 2011 passed by learned Ad-hoc Assistant Sessions Judge-2, Aurangabad in Sessions Case No. 155 of 2008 and confirmed by the learned Additional Sessions Judge -1, Aurangabad vide judgment and order dated 04th December, 2024 passed in Criminal Appeal No. 178 of 2011 are hereby suspended till disposal of the revision application and accused – Applicant No.1 be released on bail. The Applicant No.1 is directed to furnish P.B. and S.B. of Rs. 50,000/- (Rupees Fifty Thousand) before the learned Additional Sessions Judge-1, Aurangabad.

Criminal application stands disposed of accordingly.

(ABHAY J. MANTRI, J.)

SSD