



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

**CRIMINAL APPLICATION NO.4504 OF 2024
IN CRIMINAL APPEAL NO.990 OF 2024**

Nishant Haribhau Yadav APPLICANT

VERSUS

The State of Maharashtra RESPONDENT

....
Senior Advocate Mr. V. D. Sapkal i/b Mr. S. R. Sapkal & Mr. Y. A.
Jadhav, Advocate for Applicant
Mr. S. J. Salare, APP for Respondent-State

....

**WITH
CRIMINAL APPLICATION NO.672 OF 2025
IN CRIMINAL APPEAL NO.1043 OF 2024**

Nitin Haribhau Yadav APPELLANT

VERSUS

The State of Maharashtra RESPONDENT

....
Mr. A. D. Ostwal, Advocate for Applicant
Mr. S. J. Salgare, APP for Respondent-State

....

**CORAM : SANDIPKUMAR C. MORE AND
MEHROZ K. PATHAN, JJ.**

RESERVED ON : 09/10/2025

PRONOUNCED ON : 24/12/2025

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

1. Both these applications are filed by Accused No. 1, Nishant Haribhau Yadav and Accused No. 2, Nitin Haribhau Yadav, respectively, seeking suspension of their substantive sentence of imprisonment during the pendency of their appeals and their release on bail, mainly on the ground of long incarceration.

2. Admittedly, both the applicants–appellants are in jail for a period of about 11 years and both have been convicted for the offence of committing the double murder of Ashwini and Ashok. For that purpose, both the applicants have been convicted under Section 302 read with Section 34 of the Indian Penal Code and sentenced to suffer double life imprisonment, which shall run consecutively.

3. Learned Senior Counsel Mr. V. D. Sapkal, as well as learned counsel Mr. Ostwal, while arguing, made it clear that they are seeking suspension of sentence and release on bail of the applicants solely on the ground of long incarceration, by relying on the following judgments/orders.

A) *Deepak Govind Khile vs. The State of Maharashtra in Criminal Application No.375 of 2025 in Criminal Appeal No.1143 of 2024, dated 13/02/2025 of this Bench;*

- B) *Dinesh @ Paul Daniel Khajekar vs. The State of Maharashtra and another, Criminal Appeal No.2987 of 2023 [arising out of S.L.P. (Cri.) No.10320 of 2023] dated 25/09/2023;***
- C) *Sudan Singh vs. State of U. P. (2023) 17 SCC 446;***
- D) *Vipul vs. State of U. P., 2022 SCC OnLine SC 1686;***
- E) *Khoob Lal vs. State of U. P. (2021) 12 SCC 555;***
- F) *M. Radha Hari Seshu vs. State of Telangana (2020) 8 SCC 114;***
- G) *Kashmira Singh vs. State of Punjab (1977) 4 SCC 291;***
- H) *Muthuramalingam vs. State (2016) 8 SCC 331 and***
- I) *Muthuramalingam vs.State (2016) 8 SCC 313.***

4. Learned Senior Counsel Mr. Sapkal and learned counsel Mr. Ostwal, by relying on the aforesaid judgments, sought suspension of the sentence of the applicants–accused and their release on bail. On going through the aforesaid judgments, it transpires that the sum and substance thereof is that where there is long incarceration of the accused and the appeal is not likely to be heard in the near future, then, irrespective of the merits of the case, the accused are entitled to be released on bail by suspending their sentence during the pendency of the appeal. Even Coordinate Benches of this Court, in view of the judgments of the Hon'ble Apex

Court in the cases of **(i) Saudan Singh vs. State of Uttar Pradesh [2022 SCC OnLine SC 697]; (ii) Suleman vs. State of Uttar Pradesh, Criminal Appeal No. 491 of 2022 [arising out of SLP (Cri.) No. 1451 of 2022] dated 25th March 2022; and (iii) Dinesh @ Paul Daniel Khajekar vs. State of Maharashtra and another, Criminal Appeal No. 2987 of 2023 [arising out of SLP (Cri.) No. 10320 of 2023] dated 25th September 2023**, have released accused persons merely on the ground of long incarceration by suspending their substantive sentence of imprisonment.

5. However, the learned APP strongly opposed the applications by placing reliance on the following recent judgments.

A) Omprakash Sahni vs. Jai Shankar Chaudhary and another, (2023) 6 SCC 123 &

B) Shivani Tyagi vs. State of U.P. and another, Criminal Appeal Nos.1957-1961 of 2024 [arising out of S.L.P. (Cri.) Nos.3484-3488 of 2024] dated 05/04/2024

6. In the case of **Omprakash Sahni vs. Jai Shankar Chaudhary and another** (*supra*) the Hon'ble Apex Court has held thus :

“Benefit of suspension of sentence can be granted only in exceptional cases in cases involving conviction under Section 302 and, further, the court should consider the relevant factors like the nature of accusation made against the accused, the manner of commission of crime, the gravity of the offence and the desirability of releasing the accused on bail after having been convicted for committing the serious offence of murder.”

Moreover, the Hon’ble Apex Court in the case of **Shivani Tyagi vs. State of U.P. and another** (supra) has observed as thus:

*“9. We have already referred to the mandate under Section 389 of Cr.P.C. that the order passed invoking the said provision should reflect the reason for coming to the conclusion that the convicts are entitled to get suspended their sentence and consequential release on bail. In the decision in **State of Haryana v. Hasmat**, this court held that in an appeal against conviction involving serious offence like murder punishable under Section 302, IPC the prayer for suspension of sentence and grant of bail should be considered with reference to the relevant factors mentioned thereunder, though not exhaustively. On its perusal, we are of the opinion that factors like nature of the offence held to have committed, the manner of their commission, the gravity of the offence, and also the desirability of releasing the*

convict on bail are to be considered objectively and such consideration should reflect in the consequential order passed under Section 389, Cr.P.C. It is also relevant to state that the mere factum of sufferance of incarceration for a particular period, in a case where life imprisonment is imposed, cannot be a reason for invocation of power under Section 389 of Cr.P.C. without referring to the relevant factors. We say so because there cannot be any doubt with respect to the position that disposal of appeals against conviction, (especially in cases where life imprisonment is imposed for serious offences), within a short span of time may not be possible in view of the number of pending cases. In such circumstances if it is said that disregarding the other relevant factors and parameters for the exercise of power under Section 389, Cr.P.C., likelihood of delay and incarceration for a particular period can be taken as a ground for suspension of sentence and to enlarge a convict on bail, then, in almost every such case, favourable invocation of said power would become inevitable. That certainly cannot be the legislative intention as can be seen from the phraseology in Section 389, Cr.P.C. Such an interpretation would also go against public interest and social security. In such cases giving preference over appeals where sentence is suspended, in the matter of hearing or adopting such other methods making an early hearing possible could be restored.

We shall not be understood to have held that irrespective of inordinate delay in consideration of appeal and long incarceration undergone the power under the said provision cannot be invoked. In short, we are of the view that each case has to be examined on its own merits and based on the parameters, to find out whether the sentence imposed on the appellants(s) concerned should be suspended during the pendency of the appeal and the appellant(s) should be released on bail.”

and finally set aside the order of the High Court suspending the sentence and enlarging them on bail and also directed the appellants–accused to surrender before the Trial Court for the purpose of their committal to judicial custody. As such, it appears that the Hon’ble Apex Court, in the aforesaid judgments relied upon by the learned APP, has taken the view that mere long incarceration of the appellants–accused cannot, as a matter of right, be a ground for their release on bail and that the facts and circumstances of each case are required to be taken into consideration while exercising power under Section 389 of the Cr.P.C. Therefore, the sum and substance of these recent judgments is that in cases where life imprisonment is imposed for the commission of the offence of murder, the invocation of power

under Section 389 of the Cr.P.C. cannot be exercised without adverting to the merits of the case.

7. In the instant case, the applicants–accused have been convicted for committing double murder and, therefore, cannot be released on bail merely on the ground of long incarceration, as stated above, in light of the observations of the Hon’ble Apex Court in the judgments of ***Omprakash Sahni vs. Jai Shankar Chaudhary and another*** (*supra*) and ***Shivani Tyagi vs. State of U.P. and another*** (*supra*), relied upon by the learned APP. In view of the same, both the applications stand rejected and are disposed of accordingly.

(**MEHROZ K. PATHAN, J.**)

(**SANDIPKUMAR C. MORE, J.**)