



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

**CRIMINAL APPLICATION NO.897 OF 2025
IN
CRIMINAL APPEAL NO.49 OF 2025**

Kamal Kumar Balsure,
Age : 34 years, Occupation : Homemaker,
R/o Tapse Chincholi, Tq.Ausa,
Dist. Latur.

...APPLICANT
(Accused No.2.)

-VERSUS-

The State of Maharashtra.

...RESPONDENT

...
Shri Sudarshan J. Salunke, Advocate for the Applicant.
Shri S.J. Salgare, APP for the Respondent/ State.
...

**CORAM : R.G. AVACHAT
&
PRAFULLA S. KHUBALKAR, JJ.**

DATE : 19th March, 2025.

ORAL ORDER (Per Prafulla S. Khubalkar, J.) :-

1. Heard the learned Advocate Shri Sudarshan J. Salunke for the applicant/ accused No.2 and the learned Advocate Shri S.J. Salgare, APP for the respondent/ State.

2. This is an application under Section 389 of the Code of Criminal Procedure, 1973, for suspension of substantive sentence and grant of bail.

3. The applicant/ appellant has filed Criminal Appeal No.49/2025 challenging the judgment and order of conviction and sentence dated 22.10.2024 passed by the Additional Sessions Judge-3, Latur, in Sessions Case No.15/2023 whereby, the appellant along with three other accused persons are convicted for the offences punishable under Sections 302 r/w 34 and 120-B r/w 34 of the Indian Penal Code and they are sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.10,000/- each, in default to suffer imprisonment for one year.

4. The applicant has challenged the conviction and sentence by filing the instant appeal raising several grounds. The appeal is admitted by order dated 15.01.2025.

5. The learned Advocate Shri Salunke for the applicant submits that this applicant, who was accused No.2 in the trial, has been wrongly convicted and there was no direct evidence establishing her guilt. The prosecution case is based on circumstantial evidence and there are no circumstances much

less, admissible evidence to prove the guilt of this applicant beyond reasonable doubt. He submits that only because of her illicit relations with accused No.1 (Vishnu Shankar Landge @ Somwanshi), her name is involved in the serious offence of murder. He submits that the applicant is a woman, who is in custody since 03.11.2022 and was in jail throughout the trial. She is a lady and mother of two minor sons. He submits that the fine of Rs.10,000/- has already been deposited. He also submits that the appeal is not likely to be heard for final hearing in near future and, therefore, requests for suspension of sentence and grant of bail during the pendency of the appeal.

6. As against this, the learned APP Shri Salgare strongly opposes the instant applicant. He submits that the Sessions Judge has rightly passed the judgment of conviction holding the applicant guilty in offence of Sections 302 and 120-B of the Indian Penal Code. The offences are serious in nature. Evidence on record established that this applicant had made several phone calls to accused No.1 Vishnu on the date of incident and prior thereto. He submits that the Sessions Judge has rightly appreciated evidence considering the role of this applicant

in the crime. He, therefore, prays for rejection of this application.

7. We have considered the rival submissions, perused the application and paper book.

8. It has to be seen that conviction of the applicant is on account of evidence of her repeated phone calls with accused No.1 Vishnu during the period of incident. On the basis of evidence of Call Detail Record (CDR) showing phone calls of this applicant with accused No.1 Vishnu, it is inferred by the Sessions Judge that this applicant is involved in the offence of murder. There is no direct evidence about any other role of this applicant. It is pertinent to note, there is no evidence of phone calls of this applicant with accused Nos.3 and 4, who have committed the offence. Only because of her continuous contact with accused No.1 Vishnu, who was alleged to be her paramour and against whom evidence was found, she is also held guilty along with accused No.1 and other accused persons.

9. The applicant is a lady and mother of two minor children. She is in jail since last two and half years. She has raised several grounds in the appeal. The appeal is admitted and is not likely to be listed for final hearing in near future.

10. In view of the above, we are of the view that the applicant needs to be enlarged on bail during the pendency of the appeal by suspending her sentence. Hence, we pass the following order:

ORDER

(a) This Criminal Application is allowed.

(b) The substantive sentence imposed upon the applicant/ appellant (Kamal Kumar Balsure) vide the judgment and order dated 22.10.2024 passed by the Additional Sessions Judge-3, Latur, in Sessions Case No.15/2023, is suspended during the pendency of the present Appeal.

(c) The applicant/appellant (Kamal Kumar Balsure) be released on bail on her furnishing P. R. Bond of Rs.15,000/- (Rupees Fifteen Thousand Only) with one surety in the like amount.

(d) Bail before the Trial Court.

(e) The applicant to remain present before the Trial Judge once in six months, till final hearing and disposal of the appeal, starting from the date she tenders bail papers and, thereafter, the Trial Judge to fix dates for her subsequent

appearances.

(f) In case of two consecutive defaults on the part of applicant/appellant to remain present before the Trial Court, the Trial Court to inform this Court about the same and in that case, the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicant.

11. The Criminal Application is, accordingly, disposed of.

kps

(PRAFULLA S. KHUBALKAR, J.)

(R.G. AVACHAT, J.)