



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

**909 CRIMINAL APPLICATION NO. 1164 OF 2025
IN APEAL/224/2025**

Hanumant s/o Bhimsh Kurhade,
Age : 38 years, Occu.: Labour,
R/o.: Chadchan, Tq. Indi, Dist. Vijaypur,
At present : Adatlane, Omerga,
Tq. Omerga, District : Osmanabad APPLICANT

VERSUS

The State of Maharashtra,
Through Police Station,
Taluka Police Omerga,
Tq. Omerga, District : Osmanabad

...
Mr. Bobade Sopan Gynba, Advocate for Appellant
Mr. S. J. Salgare, APP for Respondent-State

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

DATED : 16/10/2025.

P. C. :

1. The applicant – original accused is seeking suspension of his substantive sentence of life imprisonment and his release on bail during the pendency of this appeal.
2. Admittedly, the learned Additional Sessions Judge, Omerga, District Osmanabad, has held the applicant guilty of the offence

punishable under Section 302 of the Indian Penal Code in Sessions Case No. 3 of 2017.

3. Learned counsel for the applicant–accused submits that the incident took place in the heat of the moment and due to a sudden quarrel. He further submitted that there were only two injuries on the person of the deceased, who was the wife of the applicant. He added that there was no premeditation on the part of the applicant, as in the heat of the moment, he picked up a mortar, which is commonly found in household articles, and inflicted a single blow on the head of the deceased. He also relied on the following judgments.

A) *Madhusudan Satpathy vs. State of Orisa, 1992 CJ(SC) 396 &*

B) *Anbazhagan vs. State Represented by Inspector of Police, 2023 DGLS(SC) 740.*

In these judgments, there is a discussion regarding the conversion of the offence under Section 302 of the Indian Penal Code into an offence under Section 304, either Part I or Part II. Though it has been held that, in certain heated circumstances, an offence under Section 302 IPC can be converted into a lesser offence under Section 304 Part I or II, such conversion depends on the facts of each case.

4. In the present case, there is direct evidence from the son of the applicant, who stated that it was the applicant who initiated the quarrel with the deceased and initially assaulted her with an iron rod, causing a piercing injury to her cheek. Thereafter, when she fell down, the applicant struck a blow with a mortar on her head.

5. The post-mortem report and other material on record show that the injury sustained by the deceased on her head was grievous and sufficient in the ordinary course of nature to cause death. Furthermore, the assault was on a vital part of the body.

6. Learned counsel for the applicant submits that the applicant has been behind bars for the past eight years. However, the learned APP has placed on record a copy of the Name Roll from the concerned prison, i.e., Central Prison, Chhatrapati Sambhajnagar. On perusal of the same, it appears that the applicant was, in fact, released on *Corona parole* for about three years and has undergone actual imprisonment of only six years, including remission. It also appears from the Name Roll that the applicant surrendered after a delay of 658 days and therefore, an offence under Section 224 of the Indian Penal Code has also been registered against him. Considering the conduct of the applicant, including the delay in surrender and the fact that the fatal assault on the vital part of the

deceased was witnessed by his own son, we are not inclined to suspend his substantive sentence or grant him bail. The application is, therefore, rejected.

(MEHROZ K. PATHAN, J.) (SANDIPKUMAR C. MORE , J.)

VS Maind/-