



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1574 OF 2025
IN APPEAL/310/2025

MANSING BALJNATH VERMA
VERSUS
THE STATE OF MAHARASHTRA

.....

Mr. Mukul S. Kulkarni, Advocate for the applicant.
Mrs. Uma Bhosale, A.P.P. for the respondent-State.

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

DATED : 29 JULY 2025

ORDER:-

1. By this application, the applicant seeks suspension of sentence of life imprisonment imposed on him by learned Additional Sessions Judge, Nandurbar in Sessions Case No. 35 of 2020.

2. Learned advocate for the applicant assailed the judgment and order of conviction stating that the case is based on circumstantial evidence and except the circumstance of recovery of cell phone and wallet of the deceased from the applicant, there is no other material on record to connect the applicant with the alleged crime. The said evidence is highly suspicious. In support of this submission he placed reliance on the judgment of Apex Court in the case of *Manoj Kumar*

Soni vs The State of Madhya Pradesh; AIR 2023 SC 3857. He further submitted that as PW-7 Javed has turned hostile, the prosecution could not prove motive for commission of the offence. According to him, the Test Identification Parade is vitiated due to procedural irregularities and the trial Court erred in relying on the same. He submitted that the applicant is arrested on 26.12.2019 and since then he was an under trial prisoner. Taking into consideration the period of incarceration of the applicant, he deserves to be released on bail. In support of the said submission, he relied on the judgment of the Apex Court passed in ***Criminal Appeal No. 2590 of 2023 (Suresh Dattatraya Sonawane vs State of Maharashtra and another)*** and judgment of this Court in ***Criminal Application No. 375 of 2025 (Deepak Govind Khile vs The State of Maharashtra)***, dated 13 February 2025.

3. On the other hand, learned A.P.P. supported the impugned judgment and order of conviction. He submitted that there is cogent and reliable evidence on record to prove the complete chain of circumstances against the applicant. He relied upon the observations of trial Court while convicting the applicant.

4. With the assistance of learned advocate for the applicant and learned A.P.P. we have perused the notes of evidence and the impugned judgment of the trial Court.

5. Applicant, along with two other accused, was charged for commission of murder of Indradev Omprakash Yadav, in the night of 22.12.2019. F.I.R. was lodged by Sunilbhai Girdhari Gupta, owner of transport company, whose truck the deceased was driving. Applicant was also working in the said transport company.

6. Record shows that homicidal death of deceased Indradev is proved by the prosecution in the evidence of PW-8 Medical Officer Dr. Thorat. The death is caused due to compression of neck with under scalp contusion (unnatural) (homicidal). In the inquest panchnama, a large handkerchief (गमछा) was found tied around the neck of the deceased which was used for strangulation. 'Last seen theory' is proved by prosecution by bringing on record CCTV footage, which shows that on 23.12.2019 between 2.30 a.m. and 3.10 a.m. accused, the deceased and their two friends entered in the Fountain Hotel, took dinner and returned back. CCTV footage is proved in the evidence of PW-1, owner of Fountain Hotel, panch PW-5 Anil, PW-13 PC Sonawane and PW-15 Investigating Officer.

PW-12 Nodal Officer Pravin Tanavade has stated that common tower location of the mobiles of accused and the deceased was found between 22.12.2019 and 23.12.2019 on four occasions i.e. (1) Navdeep Makhan Dusanch, NH3, Parola Chowfully, Near Gas Pump, Dhule (2) Gulab Patil, Gat No. 73/2, at post Kadji, Taluka Parola, District Jalgaon (3) Plot No. 25, Gat No. 484, at post Neri Budruk, Taluka Jamner, District Jalgaon and (4) Gat No. 258/1, Plot No. 42, Post Nerdigar, Taluka Jamner, District Jalgaon. The evidence of Nodal Officer is corroborated by documentary evidence. This witness has also proved that calls were exchanged between the deceased and the accused on 22.12.2019.

7. Though PW-7 Javed Shaikh has turned hostile, however, portion marked 'A' (Exh.138) in his statement shows that on 23.12.2019 at about 12.00 noon a truck bearing registration No. GJ-21-W-6971 came near his garage. One person came to him, asked his name as Javed and told that his name is Mansing and asked him about the purchase of 5 tons of iron rods. Javed told that he deals in small quantity of purchase and sale of scrap and refused to purchase the iron rods. Then the three persons sat in the truck and went away. On the same day, in the evening, PW-4 Shivbaksha Yadav met

PW-7 Javed and asked whether someone had come with the truck for selling iron rods. He told him that one person alongwith two friends had come. PW-4 showed him photo of deceased. He replied that he had not come. Then PW-4 showed him photo of Mansing. He confirmed that Mansing alongwith two friends had come for selling 5 tons of iron rods. PW-7 Javed has also admitted that his statement under Section 164 of the Code of Criminal Procedure was recorded in Navapur Court. When the said statement was shown to him, he admitted it to be the same and he also admitted his signature thereon. The said statement is at Exh.72. In this statement, PW-7 has stated that prior to 15 to 16 days Mansing had come to him with trailer vehicle and asked him about purchase of 5 tons of iron rods. He told that he purchases small 5 to 10 kgs of iron and he does not purchase big quantity. Thereafter Mansing went away and two persons were sitting in the vehicle alongwith Mansing. This further corroborates the prosecution case.

8. Wallet and mobile of the deceased were seized at the instance of applicant/accused under Section 27 of the Indian Evidence Act. Learned advocate for the applicant has submitted that though under panchnama (Exh.58) it is stated

that seizure panchnama commenced at 18.12 hrs on 28.12.2019 and within four hours the Investigating Officer and panchas reached Mumbai from Visarwadi Police Station and completed panchnama at 4.00 p.m. on 29.12.2019, it is unbelievable since the distance between Visarwadi and Mumbai is more than 350 kms. He has also relied on the decision of ***Manoj Kumar Soni*** (supra) which was rendered in the fact that there was not a single iota of evidence except the disclosure statements of accused and co-accused which, which supposedly led the Investigating Officer to the recovery of the stolen articles from accused and co-accused. It appears that in that case the police witnesses had not supported the prosecution case, and therefore, the Apex Court held that recovery at the instance of accused cannot be held to be credible in view of other evidence available on record.

In the present case, there is credible evidence of the panch witness Anil (PW-5) which is corroborated by the evidence of Investigating Officer (PW-15). Thus, the prosecution has proved recovery of mobile and wallet of the deceased from the accused.

Merely because in the endorsement below panchnama (Exh.58) it is stated that within four hours police

and panchas reached Mumbai from Visarwadi, that by itself is not sufficient to doubt the otherwise credible evidence of PW-5 panch and PW-15 Investigating Officer. The applicant is identified in identification parade by PW-9 Rameshwar. The said identification parade was held by PW-11 Naib Tahsildar. Applicant/accused has failed to give any explanation about the homicidal death of deceased who was in his company at the relevant time.

9. In the light of the aforesaid discussion, it is *prima facie* clear that the prosecution has proved complete chain of circumstances which establishes that the applicant is the author of crime in question. Prima facie, we are of the view that trial Court has properly appreciated the evidence while convicting the applicant.

10. Learned advocate for the applicant further submitted that taking into consideration the period of about six years of incarceration, he may be released on bail in view of decision of the Apex Court in the case of **Suresh Dattatraya Sonawane** and decision of this Court in the case of **Deepak Govind Khile** (supra).

In **Deepak Govind Khile** (supra), the accused was behind bars for 8 years and 7 months and the co-accused were

granted bail, and therefore, the sentence of the accused therein was suspended.

11. The Apex Court, in *Vijay Kumar vs Narendra and others; 2002 (9) SCC 364* held that, “*in cases involving conviction under Section 302 IPC, it is only in exceptional cases that the benefit of suspension of sentence can be granted*”. It is further held that, “*in considering the prayer for bail in a case involving serious offence like murder, punishable under Section 302 of IPC, the court should consider the relevant factors like the nature of the accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, and the desirability of releasing the accused on bail after they have been convicted for committing the serious offence of murder*”.

12. Taking into consideration the fact that applicant is convicted for committing murder of his colleague for money, the gravity of the offence and the reasons recorded by the trial Court, we are of the considered view that this is not a fit case to suspend the sentence of the applicant.

13. The application is, therefore, dismissed.

(SANDIPKUMAR C. MORE)
JUDGE

(NITIN B. SURYAWANSHI)
JUDGE