



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

**919 CRIMINAL APPLICATION NO.1624 OF 2025
IN
CRIMINAL APPEAL NO.331 OF 2025**

Nayyum S/o. Jumma Pathan,
Age: 50 years, Occu: Labour,
R/o. Dharampuri, Tq. Parli,
District – Beed.

.... Applicant

Versus

The State of Maharashtra

.... Respondent

.....
Mr. Akash D. Gade, Advocate for the Applicant
Mr. B. B. Bhise, APP for the Respondent - State

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CORAM : NEERAJ P. DHOTE, J.
DATE : 19.09.2025

PER COURT :

1. This is an Application for suspension of substantive sentence imposed by the learned Additional Sessions Judge, Ambajogai, in Sessions Case No.27/2017, vide Judgment and Order dated 17/03/2025, convicting the Applicant for the offence punishable under Section 307 of the Indian Penal Code, 1860 [hereinafter referred to as 'IPC'] and sentencing to suffer rigorous imprisonment for ten [10] years and to pay a fine of Rs.25,000/-, in default, to undergo four months' imprisonment; and for the offence punishable under Section 506 of IPC, sentencing to suffer rigorous imprisonment for three [03] years and to pay a fine of Rs.5000/-, in default, to undergo two months' imprisonment.

2. The case of Prosecution, in brief as revealed from the Judgment of the learned Trial Court, is as under :

[I] The first Informant, who is an injured witness, was residing with his family comprising the wife and four children, in Village Salunkwadi, Taluka Ambajogai, District Beed. He is having an agricultural land, where he used to go to sleep in the night. The Applicant / Appellant used to visit the Informant's house to meet his wife. The Informant suspected the relations between the Applicant and his wife. He warned the Applicant not to visit his house. Due to the grudge, the Applicant assaulted the Informant by one heavy weapon in the night of 28/12/2016, while he was sleeping in his agricultural field. The Informant informed his employer. The Informant was taken to the Hospital for treatment. On 03/01/2017, on the statement of the Informant, the Crime bearing No.03/2017 came to be registered for the offence punishable under Sections 307, 326, 504, 506 and 120-B of IPC.

3. It is submitted by the learned Advocate for the Applicant that, from the evidence on record, the identity of the assaulter was not established beyond doubt. The history given to the Medical Officer by the Applicant was of assault by unknown persons. There is delay of five [05] days in lodging the Report and since the Informant did not like the Applicant visiting his house in his absence, the Applicant has been falsely implicated. The Applicant was on bail during the trial and has a good case on merits. Therefore, the Application be allowed.

4. The Application is opposed by the learned APP. He submits that, the Applicant is named in the FIR. The evidence of the Informant is

corroborated by the medical evidence, which shows that, he has suffered grievous injuries. The identity of the Applicant is established, and therefore, the learned Trial Court has rightly convicted the Applicant and the Application be rejected.

5. The case largely hinges on the testimony of the Informant, who is also the injured victim and examined as PW – 2. In his evidence, he deposed of assault by the Applicant in the midnight of 28/12/2016 by a sharp axe. The evidence shows that, he knew the Applicant as he used to visit his house in his absence to meet his wife. The evidence on record i.e. DW No.1 – Dr. Mohankumar Bhagwanrao Mulgir, who at the relevant time, i.e. on 29/12/2016, was working in the Casualty Department of the SRTR Government College and Hospital, Ambajogi, shows that, the Informant came to the Casualty Department at 02:30 a.m. with five injuries and gave the history of attack by unknown person. His evidence shows that, the Informant was well oriented. Further, the evidence of PW – 11 Dr. Hanumant Goroba Kinikar examined by the Prosecution shows that, at the relevant time i.e. on 29/12/2016, he was working in the Sahyadri Accident and Neuro Care, Latur, where the Informant was brought and was admitted by his relatives. On examination, he found seven injuries on his person. The evidence on record goes to show that, from SRTR Government Hospital, Ambejogai, the Informant was shifted Hospital at Latur. The communication dated 29/12/2016, which is admitted by the Defence at Page No.68 of the

paper-book, is a letter from a Policeman of Shivajinagar Police Station, Latur, addressed to the Police Station Bardapur, Taluka Ambejogai, District Beed, informing about the admission of the Informant and stating that, on taking the statement, no complaint was made. The said statement is not brought on record. This shows that, the Informant was in a position to give the statement. However, there is a delay of five [05] days in lodging the FIR by the Informant against the Applicant.

6. From the above evidence on record, the Applicant is having arguable case on merits. The Applicant was on bail during the trial. The Appeal is of the year 2025 and would not come up for final hearing in near future. The sentence awarded to the Applicant is term sentence. Hence, I am inclined to suspend the sentence imposed upon the Applicant. Hence, the following order :

ORDER

- [I] Criminal Application is allowed.
- [II] The substantive sentence imposed upon the Applicant, namely, Nayyum S/o. Jumma Pathan, by the learned Additional Sessions Judge, Ambajogai, vide Judgment and Order dated 17/03/2025, passed in Sessions Case No.27/2017, is hereby suspended till the final disposal of the Appeal.
- [III] The Applicant be released on bail on furnishing P.R. bond of Rs.15,000/- [Rupees Fifteen Thousand] with one surety in the like amount.

[IV] The Applicant shall co-operate in early disposal of the Appeal.

[V] Bail before the Trial Court.

[VI] Criminal Application stands disposed off accordingly.

[NEERAJ P. DHOTE, J.]

Sameer/September-2025