



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

**CRIMINAL APPLICATION NO. 2190 OF 2025
IN CRIMINAL APPEAL No. 254/2025**

**DNYANESHWAR HARIBHAU KUMBHAKARNA
VERSUS
THE STATE OF MAHARASHTRA**

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*Advocate for Applicant : Mr. Yogesh G. Birajdar
APP for Respondent/State: Mr. A.S. Shinde*

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

DATED : 25th AUGUST, 2025

ORDER:-

1. Applicant-accused is convicted under Section 302 of the Indian Penal Code and is sentenced to suffer imprisonment for life by learned Additional Sessions Judge-2, Hingoli in Sessions Trial No. 54 of 2019. By this application, the applicant prays for suspension of his substantive sentence of imprisonment.

2. It is the prosecution case that on 28th March 2019, at about 12.30 p.m. accused and deceased Afsar were doing the Masonry work, at that time, Afsar spat on the accused. A quarrel ensued and the accused took spade from the spot and hit Afsar on head and face. Due to said assault, Afsar suffered grievous injuries. He was taken to the hospital, and during the treatment he expired at 4.45 p.m.

3. The First Information Report was lodged by the father of the deceased and crime No. 62 of 2019 under Section 302 of the Indian penal Code was registered. On completion of investigation, charge sheet was filed. The accused was charged under Section 302 of the Indian Penal Code.

4. In support of charge, prosecution has examined 17 witnesses and the trial Court convicted the accused as aforesaid.

5. Heard learned Advocate the appellant/ accused and learned A.P.P. for the State.

6. Learned Advocate for the accused strenuously submitted that the trial Court has failed to appreciate the evidence on record in the proper perspective. Even if the prosecution case is accepted as it is, admittedly the incident has occurred due to grave and sudden provocation on the part of the deceased, as the deceased spat on the accused. Therefore the accused has assaulted the deceased with spade which was on the spot, as the deceased and accused were doing masonry work. He submits that the case of the accused squarely falls under the First Exception of Section 300 of the Indian Penal Code. He further submits that the accused is in jail since 22.03.2019 and has completed more than six and half years imprisonment. He, therefore, prayed for release of applicant-accused on bail during period of

appeal.

7. Learned A.P.P. on the other hand, vehemently opposed the prayer of the applicant-accused contending that merely spitting on the person of the accused cannot be said to be a grave sudden provocation. Considering the manner in which accused has assaulted the deceased, he is not entitled for the relief of suspension of substantive sentence, He, therefore, prayed for dismissal of the application.

8. With the able assistance of learned Advocate for the applicant/accused and learned A.P.P. we have perused the record.

9. The evidence on record reveals that the incident has occurred due to grave and sudden provocation given by the deceased to the accused. Due to spitting of the deceased on the accused, the quarrel ensued between them and the accused assaulted the deceased. On *prima facie* appreciation of evidence on record, we are of the view that, the case of the accused falls in the first explanation of Section 300 of the Indian Penal Code. So far, the accused has undergone more than 6 and ½ years of imprisonment. Considering the pendency of jail appeals, his appeal is not likely to be heard in the near future, therefore, we are inclined to allow the application. Hence, the following order :-

ORDER

- (i) The application is allowed.
- (ii) Pending hearing and final disposal of the present Criminal Appeal, substantive sentence of life imprisonment imposed on the applicant Dnyaneshwar Haribhau Kumbhakarna by the learned Sessions Judge-2 Hingoli in Sessions Case No. 154 of 2019 is hereby suspended.
- (iii) The applicant be released on personal bond of Rs. 25,000/- with one surety in the like amount.

10. Fess of the learned Advocate for the applicant and expenses incurred by him be paid to him as per schedule within four weeks from today.

(SANDIPKUMAR C. MORE)
JUDGE

(NITIN B. SURYAWANSHI)
JUDGE

Y.S. Kulkarni