

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

Interim Application No. 191 of 2025

in

Criminal Appeal No. 1293 of 2024

1. Bhauso Bajirao Dalavi
Aged 67 years, Occ: Retired,
R/at.: Satave, Tal. Panhala,
Dist: Kolhapur.

2. Saurabh Bhauso Dalavi
Aged 20 years, Occ: Student,
R/at: Satave, Tal. Panhala,
Dist: Kolhapur.

3. Patangrao Vilas Dalavi
Aged 33 years, Occ: Business
R/at.: Satave, Tal. Panhala,
Dist: Kolhapur.

4. Ajay Vijay Dalavi
Aged 26 years, Occ: Student,
R/at.: Satave, Tal. Panhala,
Dist: Kolhapur

... Applicants

Versus

1. The State of Maharashtra
(At the instance of Shirala Police Station)

2. Dipak Hande
Aged 49 years
(At the instance of Shirala Police Station)

... Respondents

Mr Satyavrat Joshi, along with Mr Samay Pawar, Mr Priyesh More, Mr Ishan Paradkar, Mr Yash Fadtare, Mr Ashish Kachole

and Mr Aryan Lokhande, for the applicants.
Ms Sangita E Phad, APP, for the respondent/ State.

Coram: R.N. Laddha, J.

Date: 13 March 2025

P.C.:

The applicants faced trial in Sessions Case No.126 of 2021 before the Additional Sessions Judge, Kolhapur, for the offences punishable under Sections 302, 364 and 341 read with 34 of the Indian Penal Code ('IPC'). By a judgment and order dated 12 November 2024, the applicants were acquitted of the offences punishable under Sections 302 and 364 read with 34 of the IPC and convicted for the offences punishable under Sections 325, 341 and 367 read with 34 of the IPC. They were sentenced as follows: (i) rigorous imprisonment for five years and a fine of Rs.10,000/- (with default stipulations) for the offence punishable under Sections 325 read with 34 of the IPC, (ii) simple imprisonment for one month and a fine of Rs.500/- (with default stipulations) for the offence punishable under Sections 341 read with 34 of the IPC, and (iii) rigorous imprisonment for five years and a fine of Rs.10,000/- (with default stipulations) for the offence punishable under Sections 367 read with 34 of the IPC. All sentences were directed to run concurrently.

2. Aggrieved thereby, the applicants preferred an appeal before this Court and, by the present application, seek suspension of sentence and release on bail.

3. Mr Satyavrat Joshi, the learned Counsel appearing on behalf of the applicants, points out the alleged shortcomings of the prosecution's case and contends that the testimony of the prosecution witnesses lacks credibility and fails to inspire confidence. The examined witnesses were interested witnesses. Further, the learned trial Court failed to appreciate the discrepancies in the testimony of the prosecution witnesses and their statement recorded by the investigating officer. The learned Counsel submits that the applicants were arrested on 9 September 2021 and have been languishing in jail since then. The learned counsel, on instructions, undertakes that during the pendency of the appeal, the applicants will not enter the village where they reside.

4. Ms Sangita Phad, the learned Additional Public Prosecutor representing the respondent/ State, opposing the applicants' request, refers to the seriousness of the charge on which the applicants have been convicted and argues that the evidence on record strongly supports the prosecution's case and does not warrant the grant of bail.

5. This Court has given anxious consideration to the rival contentions and perused the records.

6. In ***Bhagwan Rama Shinde Gosai v. State of Gujarat***, (1999) 4 SCC 421, the Hon'ble Supreme Court observed as follows:

“3. When a convicted person is sentenced to a fixed period of sentence and when he files an appeal under any statutory right, suspension of sentence can be considered by the appellate court liberally unless there are exceptional circumstances. Of course, if there is any statutory restriction against suspension of sentence it is a different matter. Similarly, when the sentence is life imprisonment the consideration for suspension of sentence could be of a different approach. But if for any reason the sentence of a limited duration cannot be suspended every endeavour should be made to dispose of the appeal on merits more so when a motion for expeditious hearing of the appeal is made in such cases. Otherwise the very valuable right of appeal would be an exercise in futility by efflux of time. When the appellate court finds that due to practical reasons such appeals cannot be disposed of expeditiously the appellate court must bestow special concern in the matter of suspending the sentence so as to make the appeal right, meaningful and effective. Of course, appellate courts can impose similar conditions when bail is

granted.”

7. The applicants are required to undergo the maximum imprisonment of five years. The alleged incident occurred in September 2021. While this Court acknowledges the arguments presented by the learned APP regarding the seriousness of the offence and the current post-conviction stage of the proceedings, it is essential to recognise that the applicants have already undergone imprisonment of three years and six months out of the five-year sentence. The appeal has been filed in 2024 and is unlikely to be heard in the near future due to the pendency of the older appeals. If, at this juncture, the applicants are denied relief, they are likely to complete the entire term of the sentence before the appeal is heard. In these circumstances, a case is made out for suspension of the sentence and release on bail. Hence, the following order:

ORDER

(i) The sentence imposed upon the applicants vide the judgment and order dated 12 November 2024 passed by the Additional Sessions Judge, Sangli, in Sessions Case No.126 of 2021, stands suspended during the pendency of the appeal.

(ii) The applicants shall be released on bail upon executing a PR Bond of Rs.25,000/- each and furnishing two or more sureties in the like amount.

(iii) The applicants shall refrain from entering Satave, Tal. Panhala, Dist. Kolhapur, till the disposal of the appeal.

(iv) The applicants shall inform and update the investigating officer of their residential details and contact information.

8. The interim application stands disposed of accordingly.

(R.N. Laddha, J.)