

Nikita

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.1258 OF 2025
IN
CRIMINAL APPEAL NO.704 OF 2016

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Dattatraya @ Baba Arvind Bhad

...Petitioner

versus

The State of Maharashtra

...Respondents

Ms. Shivani Veer a/w Mr. Onkar Bajaj i/b Ms. Vrushali Maindad for the
for the Applicant.

Mr. Anand Shalgaonkar, APP for the State.

CORAM : M.S. KARNIK &
SHARMILA U. DESHMUKH, JJ.

DATE : 9th SEPTEMBER, 2025.

PC:

1. Heard learned Counsel for the Applicant and learned APP for the State.
2. This is an Application for suspension of sentence under Section 389 of the Cr. P.C. The Applicant is the original Accused No.1. The Applicant is convicted for committing the offence under Section 302 of the Indian Penal Code, 1860. It is the prosecution case that the Applicant had committed the murder of the husband of the Accused No.2. The Trial Court held that the Accused No.1 and Accused No.2

were in relationship and that it is the Accused No.1 and 2 who committed the murder of the husband of Accused No.2. There are no eye witnesses to the incident. Case is based on circumstantial evidence.

3. Applicant is in custody since 30th March, 2015. The judgment and order of conviction of Trial Court is dated 31st August, 2016.

4. Learned APP while opposing the application for bail relied upon the decision of the Hon'ble Supreme Court in the case of Janardan Ray Vs. The State of Bihar & Anr. ETC. dated 9th April, 2025 in Criminal Appeal No.1892-1893 of 2025. The Hon'ble Supreme Court in Kishori Lal Vs. Rupa (2004) 7 SCC 638 has held that one of the essential ingredients of Section 389 of the Cr. P.C. is the requirement for the Appellate Court to record reasons in writing for ordering suspension of execution of the sentence or order appealed against. The requirement of the recording reasons in writing clearly indicates that there has to be careful consideration of the relevant aspects and the order of suspension of sentence and grant of bail should not be passed as a matter of routine. It is further held that the Appellate Court is duty bound to objectively assess the matter and to record reasons for the conclusion that the case warrants suspension of execution of the sentence for grant of bail.

5. In the present case, the conviction is based on the circumstantial evidence. In the light of the law laid down by the Supreme Court in the

case of Janardan Ray (supra), it is not open for us to suspend the sentence by re-appreciating the evidence at the stage of Section 389 and try to pick up few lacunae or loop holes here or there in the case of prosecution. The Applicant is convicted for the serious offence under Section 302 of the IPC.

6. The factor which weighed us is that Applicant is in custody for more than ten and half years and the appeal may take some time to be heard finally. We intend to hear the appeal itself at earliest.

7. List the appeal for final hearing on **7th November, 2025** at 4.00 p.m.

8. Considering that the Applicant is in custody for more than ten and half years, and in the facts and circumstances of the case, we are inclined to suspend the sentence.

9. Application is therefore allowed on the following conditions:

- a) Sentence imposed by the Trial Court on the Applicant in Sessions Case No.58 of 2015 registered with Vairag Police Station Solapur stands suspended.
- b) Applicant is directed to be released on bail on his furnishing PR. bond in the sum of Rs.25,000/- with one or two sureties in the like amount.
- c) Applicant shall remain present at the time of final hearing of the appeal.

d) Applicant shall not establish any contact with the victim's family members.

10. The Interim Application is disposed off.

[SHARMILA U. DESHMUKH, J.]

[M.S. KARNIK, J.]