

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

**INTERIM APPLICATION NO. 4384 OF 2024
IN
APPEAL NO. 720 OF 2022**

Nimesh Ashok Tanna ... Applicant
Versus
The State of Maharashtra ... Respondent

**WITH
APPEAL NO. 720 OF 2022**

Mr. Shirish Sawant a/w Ms. Swati Singh i/by Rajeev Sawant & Associates for the Applicant.

Ms. Pallavi N. Dabholkar, APP for Respondent-State.

**CORAM : MANISH PITALE AND
MANJUSHA DESHPANDE, JJ.
DATE : 3rd DECEMBER 2025**

P.C. :

. Heard learned counsel for the applicant (original appellant), as also the learned APP.

2. By this application, the applicant is seeking suspension of sentence and release on bail. The applicant was convicted and sentenced for life imprisonment under Section 302 of the Indian Penal Code, 1860 (IPC) as per the impugned judgment and order dated 20th May 2022 passed by the Court of Additional Sessions Judge, Palghar. This is the second bail application filed on behalf of the applicant. The first application was not pressed and liberty was given to the applicant to move after one year. The said application was disposed of by order dated 4th September 2023.

3. The learned counsel for the applicant submitted that the worst case scenario for the applicant in the present case could be a conviction under Section 304 Part II of the IPC and considering the fact that the applicant, as on 31st August 2024, had already undergone sentence for more than 8 years with remission, a case for being enlarged on bail, during the pendency of the appeal, is made out.

4. It was further submitted that the investigating officer i.e. PW10 in the present case, conceded in cross-examination that the car allegedly used by the applicant, during the incident, was never seized under a *panchanama*. It was submitted that in the face of such admission given by the investigating officer, the conviction of the applicant was not justified.

5. It was further submitted that there were no independent witnesses in the present case, although, the incident is said to have taken place on a highway. The two alleged eye-witnesses i.e. PW1 and PW2 were friends of the deceased and hence, interested witnesses. The third alleged eye-witness i.e. PW4, in the first place, was shown as an accused and in her initial statement, she had not stated anything against the applicant, but subsequently she took an u-turn and then she was cited as a witness by the prosecution. It is submitted that in the face of such material and evidence on record, the applicant could not have been convicted by the trial Court.

6. Reliance was placed on judgment of the Supreme Court in

the case of ***Chunni Bai v/s. State of Chhattisgarh*** (*Judgment and Order dated 28th April 2025 passed in Criminal Appeal arising from Special Leave Petition (Crl.) No. 13119 of 2024*) and in the case of ***Jai Karan Yadav v/s. State (NCT of Delhi) through SHO*** (*order dated 23rd November 2022 passed in Criminal Appeal No. 2038 of 2022*). It was submitted that in both the cases, concerning far worse allegations and circumstances against the accused persons, the Supreme Court was pleased to modify the judgment and order to convert the conviction from under Section 302 of the IPC to Section 304 Part II of the IPC. In the said judgment and order, the Supreme Court took note of the fact that the accused had remained behind bars for 12 years.

7. On the other hand, the learned APP vehemently opposed the bail application. It was submitted that there were three eye-witnesses in the present case, who had described in graphic detail the incident in question, which pointed towards the intention of the applicant to cause the death of the victim. It was submitted that PW4 was initially threatened by the father of the applicant, due to which, she did not divulge true facts, but later she did state the correct facts and in cross-examination, all the three eye-witnesses stuck to their versions. It was further submitted that *panchanama* at exhibit 53, records seizure of the car as well as the broken parts of the car used by the applicant, during the course of the incident and PW3 was the *panch* witness, who deposed in the context of the said *panchanama* at exhibit 53. Hence, the seizure

of the vehicle was sufficiently proved and therefore, there is no substance in the contentions raised on behalf of the applicant.

8. As regards reliance placed on the aforesaid judgments and orders of the Supreme Court, it is submitted that they could be distinguished on facts and that in the present case, intention of the applicant can be gathered by the manner in which the incident took place, which led to death of the victim. On this basis, it is submitted that the instant application deserves to be dismissed.

9. We have considered the rival submissions. The record shows that three eye-witnesses came forward to support the prosecution version. PW1 and PW2 were persons travelling with the victim inside his Brezza Car when the incident took place. PW4 was accompanying the applicant in his Honda WRV car, at the time of the incident. It is a matter of record that PW4 initially gave a different version and subsequently made statement in support of the prosecution case. It is stated in her deposition that when she described the incident to the father of the applicant, she was threatened with dire consequences if she revealed the truth. According to the said witness PW4, it was in this background that she initially gave a different version of the incident.

10. We have perused the evidence of the three eye-witnesses i.e. PW1, PW2 and PW4. All the three witnesses have consistently described the incident, which shows that the car driven by the applicant gave two dashes to the car of the victim. The three eye-witnesses have said that when the victim alighted from the car and

during the course of second dash, he was injured and was lying on the road, the applicant turned his car and ran over the body of the victim. The said three eye-witnesses have remained consistent in their versions, even under the strain of cross-examination. The manner in which the incident is described and the fact that the victim suffered injuries on his head, abdomen and other parts of the body, *prima facie* shows that the applicant with full intention acted in a manner that caused serious injuries to the victim, leading to his death.

11. It would have been a different matter if the incident had occurred due to speeding of vehicle and an accident or a dash had taken place between two vehicles. The description of the incident by the eye-witnesses *prima facie* demonstrates intentional act on the part of the applicant in running over the victim to cause his death.

12. As regards seizure of the vehicle i.e. Honda WRV car of the applicant, at this stage, we are not impressed with the portion of the cross-examination of the investigating officer relied upon by the learned counsel for the applicant, particularly in the light of seizure *panchanama* at exhibit 53, which specifically records that the Honda WRV car was seized and the evidence of the *panch* witness (PW3) concerning the said *panchanama* at exhibit 53.

13. There is substance in the contention raised by the learned APP that the judgments and orders of the Supreme Court relied upon by the learned counsel for the applicant, are distinguishable

on facts. In the said cases, the Supreme Court also took note of the fact that the material on record did not clearly bring out an intention on the part of the accused to cause the death of the victim and that benefit of doubt to that extent could be given.

14. We have already noted hereinabove that the evidence of three eye-witnesses *prima facie* shows intention on the part of the applicant to cause the death of the victim and hence, the said judgments and orders of the Supreme Court can be of no avail.

15. In view of the above, the application is dismissed.

16. Considering the fact that by now, the applicant has suffered imprisonment with remission for a period of about 9 years, it would be appropriate that the appeal is taken up for final hearing.

17. In view of the above, it is directed that the appeal shall be included in the list of final hearing matters in the week commencing from 19th January 2026.

(MANJUSHA DESHPANDE, J.)

(MANISH PITALE, J.)