

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

Interim Application No.444 of 2025

In

Criminal Appeal No.893 of 2024

Krushna Shambhu Chauhan

Age:28, Occupation: Labourer,

Residing at: L & T Colony,

Colony No.4, Wadkhal,

Taluka: Pen, District: Raigad,

(At present Alibag Dist Jail)

... Applicant

versus

1. State of Maharashtra

(through Wadkhal Police Station)

2. Kirandevi Dilip Bharti

Age: 33 years,

R/at. Maniharpur at Post Jamira,

Dist. Devriya, Uttar Pradesh

... Respondents

Mr Gaurav Parkar, for the applicant.

Ms Manisha R Tidke, APP, for respondent No.1/ State.

Mr Amandeep Singh Sra, for respondent No.2 (Legal Aid).

Coram: R.N. Laddha, J.

Date: 11 March 2025.

P.C.:

The applicant (accused No.4) faced the trial in Sessions Case No.15 of 2021 before the Additional Sessions Judge, Alibaug, Raigad, for offences punishable under Sections 302, 307, 323, 324, 504 and 506(2) read with 34 of the Indian

Penal Code ('IPC') and Sections 3(1)(r), 3(2)(v), and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('the Atrocities Act'). By a judgment and order dated 3 May 2024, the applicant was convicted for the offences punishable under Section 304(II) and 323 of the IPC and acquitted of the offences punishable under Sections 302, 307, 324, 504, and 506(2) read with 34 of the IPC and Sections 3(1)(r), 3(2)(v) and 3(2)(va) of the Atrocities Act. The applicant was sentenced as follows: (i) rigorous imprisonment for seven years and a fine of Rs.5,000/- (with default stipulations) for the offence punishable under Section 304(II) of the IPC; and (ii) rigorous imprisonment for three months and a fine of Rs.2,000/- (with default stipulations) for the offence punishable under Section 323 of the IPC. The sentences were directed to run concurrently.

2. Aggrieved, the applicant preferred an appeal before this Court, and by way of the present application, seeks suspension of the sentence and release on bail.

3. Mr Gaurav Parkar, the learned Counsel appearing on behalf of the applicant, points out the alleged deficiency in the prosecution's case and submits that the testimony of the prosecution witnesses lacks credibility and fails to inspire

confidence. The learned Counsel submits that there was scuffle between the parties and the alleged injury was not on the vital part of the body. The applicant was 21 years old at the time of the incident and has been languishing in jail since 11 January 2021. The applicant is willing to cooperate fully with the appeal proceedings, and prays for his release on bail pending the outcome of the appeal. In support of his contentions, the learned Counsel cites the decision in ***Babarao v. State of Maharashtra***¹.

4. Ms Manisha Tidke, the learned Additional Public Prosecutor representing respondent No.1/ State, and Mr Amandeep Singh Sra, the learned Counsel appearing for respondent No.2, jointly opposing the applicant's request, refer to the seriousness of the charge on which the applicant has been convicted and contend that the evidence on record strongly supports the prosecution's case and does not warrant the grant of bail.

5. In ***Bhagwan Rama Shinde Gosai v. State of Gujarat***², 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

¹ 1994 SCC OnLine SC Bom 24

² (1999) 4 SCC 421

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.”

6. Similarly, in ***Narcotic Control Bureau v. Lakhwinder Singh***³, the Hon’ble Supreme Court observed as follows:

“5.Therefore, in our view, if a case is made out for the grant of suspension of sentence and/or bail in deserving cases on merits, the Court is not powerless to grant relief of suspension of sentence and bail pending an appeal, even if an accused has not undergone

³ 2025 INSC 190

half of the sentence. There cannot be a rule of thumb that a convict cannot be released on bail pending an appeal against conviction unless he has undergone half of substantive sentence.

6. In the case of fixed-term sentences, if the Courts start adopting a rigid approach, in a large number of cases, till the appeal reaches the stage of the final hearing, the accused would undergo the entire sentence. This will be a violation of the rights of the accused under Article 21 of the Constitution. Moreover, it will defeat the right of appeal.”

7. The maximum imprisonment imposed upon the applicant is seven years. While this Court acknowledges the arguments presented by the learned APP and the learned Counsel for respondent No.2 regarding the gravity of the offence and the post-conviction stage of the proceedings, it is essential to recognise that the applicant has already undergone imprisonment for four years and two months. Admittedly, there was a scuffle and the applicant was only 21 years old at the time of the incident. Moreover, 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. In these circumstances, the applicant is entitled to the relief of suspension of sentence pending the appeal and grant of bail. Hence, the following order:

ORDER

(i) The sentence imposed upon the applicant vide judgment and order dated 3 May 2024 passed by the Additional Sessions Judge, Alibaug, Raigad, in Sessions Case No.15 of 2021, stands suspended during the pendency of the appeal.

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

(iii) The applicant shall inform and update the investigating officer about his residential address and contact details.

8. The interim application stands disposed of accordingly.

[R.N. Laddha, J.]