

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

**INTERIM APPLICATION NO. 539 OF 2025
IN
CRIMINAL APPEAL NO. 1183 OF 2022**

Bhimrao Devrao Rathod & Anr. ..Applicants
Versus
The State of Maharashtra ..Respondent

**WITH
INTERIM APPLICATION NO. 546 OF 2025
IN
CRIMINAL APPEAL NO. 611 OF 2021**

Rahul Bhimrao Rathod ..Applicant
Versus
The State of Maharashtra ..Respondent

**WITH
INTERIM APPLICATION NO. 544 OF 2025
IN
CRIMINAL APPEAL NO. 269 OF 2021**

Raju Mahadeo Chavan ..Applicant
Versus
The State of Maharashtra ..Respondent

Dr. Yug Mohit Chaudhary a/w. Hasan Nizami for Applicants.

Mr. Hitesh P. Mutha for Applicant in Appeal/269/2021.

Ms. Geeta P. Mulekar, APP for State/Respondent.

**CORAM : SARANG V. KOTWAL &
SHYAM C. CHANDAK, JJ.**

DATE : 17 JULY 2025

PC :

1. A common order is passed in all these applications.
2. These applications are filed by the applicants who are the Accused Nos.1 to 4 in Sessions Case No.263 of 2015 before the Additional Sessions Judge, Solapur. The main prayer in all these applications is, to stay the portion in clause (02) of para 100 of the Judgment and order dated 05.02.2020 passed by the learned Sessions Judge, Solapur, in Sessions Case No.263 of 2015 to the extent of sentencing the Applicants (original Accused Nos.1 to 4) to suffer rigorous imprisonment for the remainder of their natural life, under section 302 of the I.P.C.
3. The Applicants have filed separate criminal Appeals challenging the Judgment and order dated 05.02.2020 passed by the learned Additional Sessions Judge, Solapur, in Sessions Case No.263 of 2015. The operative part of the order of the impugned Judgment and order is as follows:

"ORDER

01. The accused No. 1. Bhimrao Devrao Rathod, No. 2. Rahul Bhimrao Rathod, No. 3. Raju Mahadeo Chavan and No. 4. Roshan Bhimrao Rathod are hereby convicted under section 235(2) of the Cr.P.C., for the offence punishable under section 302, 307 and 397 r.w. 34 of IPC.
02. Accused Nos. 1 to 4 are sentenced to suffer rigorous imprisonment for remainder of their natural life and to pay fine of Rs. 25,000/- (Rupees Twenty Five thousand) each, I/D to undergo further rigorous imprisonment for three years, for the offence punishable under sec. 302 of IPC.
03. Accused Nos. 1 to 4 are further sentenced to suffer rigorous imprisonment for life and to pay fine of Rs. 15,000/ (Rupees Fifteen thousand) each, I/D to undergo further rigorous imprisonment for two years, for the offence punishable under sec. 307 of IPC.
04. Accused Nos. 1 to 4 are further sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs.10,000/- (Rupees Ten thousand) each, I/D to undergo further rigorous imprisonment for one year, for the offence punishable under sec. 397 of IPC.
05. Accused are in the custody since 15.05.2015 till today. Therefore, they are entitled to get set off of said period as provided u/s. 428 of Cr.PC.
06. Accused No. 1 is in central jail Yerwada, No. 2 is in central jail Kalmaba-Kolhapur, No. 3 is in central jail Nashik, accused No.4 is in central jail Aurangabad. They shall suffer sentence of imprisonment in the same jail.
07. Respective Jail Authorities are directed, accused No. 1 to 4 shall not be brought together at any time, in any jail, for any reason.
08. The muddemal property i.e. Article Nos. 1 to 6, 9, and 10

being worthless, be destroyed as per rules, after appeal period.

09. The Article Nos. 12 mobile phone, No. 13, 16, 17 and 19 Golden ornaments belonged by informant be returned back to her, after appeal period.
10. The Article Nos.15 mobile phone and No.14 and 18 Golden ornaments belonged by deceased be returned back to her legal heirs, after appeal period.
11. The Article Nos.7 and 11 is same mobile phone belonged by accused No.1 be returned back to him, after appeal period.
12. The Article Nos. 8 cruiser Jeep No. MH13/AZ 8196 be returned to Sitabai Bhimrao Rathod, after appeal period.
13. The copy of judgment be provided to accused free of costs. The Jail Authority, Solapur and P.I. of Kamati Police Station are directed to make necessary arrangement to supply the copy of judgment to each accused in their respective Jails and report the compliance."

4. These particular applications pertain specifically to the clause (02) of the said order. Learned counsel appearing for the Applicants submitted that a serious prejudice is caused to the accused because of the use of words "remainder of their natural life". He submitted that, because of this terminology, the Applicants would be deprived of their rights in respect of getting parole and furlough as per the rules. Therefore, they are seriously

prejudiced because of this terminology. Learned counsel submitted that, it is well settled through the Judgments of the Hon'ble Supreme Court that, the Sessions Court has no power to modify the sentence and to add the meaning to the words "imprisonment for life". Learned counsel relied on the Judgment of the Hon'ble Supreme Court in the case of **Vikas Chaudhary Versus State of Delhi**¹. He also relied on the order passed by a division bench of this Court on 19.06.2023 in Criminal Interim Application No.1725 of 2023 in Criminal Appeal No.127 of 2021.

5. Learned APP submitted that, if the only apprehension for the accused is that they may not get parole and furlough during pendency of their Appeals, then this Court can clarify that they can get the benefit of parole or furlough as per the rules. But at this stage, it may not be necessary to stay that particular clause of the operative order of the impugned judgment.

6. We have considered these submissions. The case pertains to the incident dated 03.05.2015. The first informant and her sister Sunanda were given a lift in a jeep by the accused. On the

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way, Sunanda was murdered and the first informant Reshma was seriously injured. The accused who were travelling in that jeep had committed this offence for committing robbery of the ornaments of both the sisters. After a full fledged trial, the learned Judge passed the impugned Judgment and order, as mentioned earlier.

7. At this stage, learned counsel is not insisting for stay of the operative part of the said order in its totality, but he insisted that the wording “remainder of their natural” needs to be stayed in view of the Hon’ble Supreme Court’s Judgment in **Vikas's** case. In that Judgment, the Hon’ble Supreme Court had considered the issue whether the trial Court could award life imprisonment till remainder of the convict's life. Paragraph-3 of the said Judgment records the background of that case which reads thus:-

"The trial Court convicted the three accused persons for the commission of offence under Sections 302, 364A, 201, read with Section 120B IPC. A-1 and A-2 (present appellants) were also convicted under Section 411, with A-1 additionally being convicted for offences punishable under Sections 420, 468 and 471 IPC. They were sentenced to life imprisonment for the remainder of their natural life, and an additional condition was imposed on A-1 and A-2 - that they would not be entitled to any parole, remission, or furlough, before completing 30 years of imprisonment. They were also

sentenced to each pay Rs.2,10,000 as fine, and Rs.4,00,000 as compensation to the victim's family."

After considering the law on this subject, the Hon'ble Supreme Court referred to another Judgment of the Hon'ble Supreme Court in the case of *Union of India v. Sriharan @ Murugan*². After considering this Judgment, the Hon'ble Supreme Court in **Vikas's** case has discussed this issue in paragraphs-17 and 18 as follows:-

"17. It is thus clear that Sriharan (supra), approved an alternative third sentencing option in cases where the accused are convicted of serious and grave crimes which carried with it the option of capital sentence. Realising that a life sentence per se can lead to early release of accused upon their undergoing the minimum sentence prescribed under Section 433A, and highlighting that the asymmetry in state rules with respect to minimum incarceration in different kinds of life sentences, this court decided to retain to itself (and the High Courts) the option of imposing what Sriharan termed as "special" or "fixed term sentences". This was seen as serving the following purposes:

- (a) As a feasible alternative in capital cases where the Court was of the opinion that death sentence is inappropriate, and:
- (b) That the Court was of the opinion that there were elements in the crime and or the conduct of the criminal which warranted imposition of a mandatory sentence beyond a minimum of 14 years prescribed

by the Code of Criminal Procedure.

- (c) Where the court felt, independently, that the serious nature of the crime and the manner of its commission warranted a special sentence, whereby the state's discretion in releasing the offender, should be curtailed so that the convict is not let out before undergoing a specified number of years, of incarceration.

18. It is hence clear that the trial courts, are foreclosed from imposing such a modified or specific term sentence, or life imprisonment for the remainder of the convict's life, as an alternative to death penalty. The court, when trying an offence punishable by death penalty or life imprisonment, has merely these two options. While the principles evolved in Sriharan (supra) are clear, there are nevertheless issues which still remain unexplored and unresolved. Whenever the state proposes and urges for imposition of death sentence, it has to, per force provide material to facilitate the court to carry out the exercise of balancing the aggravating factors with the mitigating circumstances – the test propounded in Bachan Singh and examined in many cases; the recent trend being that the reformatory element acquires equal attention. The obligation to carry out this balancing interest is upon the courts imposing the sentence in the first instance, i.e., the trial courts; the prosecution (per Bachan Singh) is also under an obligation to show that the mitigating circumstances are absent especially that there are no chances of reformation of the accused. Since this exercise is mandated whenever a heinous capital crime is committed, at the stage of conviction, the court has no idea that the prosecution may urge for capital sentence. When that stage occurs, and the prosecution seeks a capital sentence, the court has to carry out the exercise of conducting a review of aggravating circumstances (which are already on the record, being factors that lead to the conviction of the accused) and balancing the mitigating circumstances (which are not matters of the record and have to be adduced by the prosecution and the accused)."

Thus, quite clearly the Hon'ble Supreme Court has observed that the Trial Courts are foreclosed from imposing such a modified or specific term sentence, or life imprisonment for the remainder of the convict's life, as an alternative to death penalty. A Division Bench of this Court in the aforementioned case has also taken a similar view and has granted a similar relief to the Applicants in that case; which is claimed before us. In spite of objection of the learned APP, we are inclined to allow these applications.

8. Hence, the following order:

ORDER

- i) In the operative part clause (2) of the impugned Judgment and order dated 05.02.2020 passed by the learned Additional Sessions Judge, Solapur, in Sessions Case No.263 of 2015, the wordings "remainder of their natural" and the effect of these wordings are stayed.
- ii) It is clarified that, we have not granted bail, and we have not suspended the sentence of the applicants, but we have only stayed the effect of

the wordings “remainder of their natural”.

iii) With the result, by way of interim relief, the clause (2) of the operative part would mean thus:
"Accused Nos.1 to 4 are sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.25000/- each and in default to undergo further R.I. for three years for the offence punishable U/s.302 of the I.P.C.

iv) All the Applications are disposed of.

(SHYAM C. CHANDAK, J.)

(SARANG V. KOTWAL, J.)