

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

Interim Application No.1141 of 2025

In

Criminal Appeal No.317 of 2025

Ijaj Shaikh @ Ijaj Salim Khan

@ Ajaj Mohammed Salim

Age: 33 years, Occ: Labour,

R/o.Room No.1105, Ganesh Chawl,

Bhimnagar, Maharashtra Nagar,

Mankhurd (West), Mumbai - 88

[At present Mumbai Central

Prison at Mumbai]

... Applicant

versus

The State of Maharashtra

Through Police Station Officer

Trombay Police Station, Pune

... Respondent

Ms Krishma Joshi, along with Mr Akash Chikate and Mr Tanmay Kate i/b. Sangram Jadhav, for the applicant.

Ms Manisha Tidke, APP, for the respondent/ State.

PSI Nitin Palande, Trombay Police Station.

Coram: R.N. Laddha, J.

Date: 9 April 2025.

P.C.:

Heard Ms Krishma Joshi, the learned Counsel appearing on behalf of the applicant; and Ms Manisha Tidke, the learned

Additional Public Prosecutor representing the respondent/
State.

2. The applicant faced trial in Sessions Case No.752 of 2022 before the Additional Sessions Judge, Mumbai, for the offences punishable under Sections 326, 307, 504 and 506 (II) of the Indian Penal Code ('IPC') and Sections 37(1)(a) and 135 of the Maharashtra Police Act, 1951 ('Police Act'). By the judgment and order dated 25 November 2024, the applicant was acquitted of the offences punishable under Sections 504 and 506 (II) of the IPC and Sections 37(1)(a) and 135 of the Police Act and convicted for the offences punishable under Sections 326 and 307 of the IPC. The applicant was sentenced to suffer rigorous imprisonment for five years and pay a fine of Rs.3,000/-, with default stipulations, for the offence punishable under Section 307 IPC. No separate sentence was imposed upon the applicant for the offence punishable under Section 326 IPC.

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

4. Ms Krishma Joshi, the learned Counsel appearing for the applicant, emphasising the alleged shortcomings of the

prosecution case, contends that the testimonies of the prosecution witnesses lack credibility and fail to inspire confidence. The medical evidence does not align with the key allegations. The learned Counsel further submits that the maximum sentence imposed upon the applicant is five years, and the applicant has been in custody since 17 May 2022. The applicant is willing to comply with any conditions this Court imposes and fully cooperate with the appeal proceedings if released on bail. In support of her contentions, Ms Joshi cites the Hon'ble Supreme Court's decision in *Narcotic Control Bureau v. Lakhwinder Singh*¹.

5. Ms Manisha Tidke, the learned Additional Public Prosecutor representing the respondent/ State, opposing the applicant's request and referring to the seriousness of the offence, submits that the evidence on record, more particularly the testimony of the injured witness, strongly supports the prosecution's case and does not warrant suspension of the sentence and the applicant's release on bail.

6. This Court has considered the rival submissions canvassed across the Bar and perused the records.

¹ 2025 INSC 190

7. 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 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.”

8. Similarly, in *Atul v. State of Madhya Pradesh*³, the Hon'ble Supreme Court observed as follows:

“Before parting with order, we must note here

² (1999) 4 SCC 421

³ Criminal Appeal No.579 of 2024 dated 2 February 2024.

that notwithstanding several decisions of this Court holding that when there is a fixed term sentence and especially when the appeal is not likely to be heard before completing entire period of sentence, normally suspension of sentence and bail should be granted. We find that in several deserving cases, bail is being denied. Such cases should never be required to be brought before this Court.”

9. In the present case, the applicant is directed to undergo rigorous imprisonment for a period of five years. While this Court acknowledges the arguments advanced by the learned APP, it is essential to recognise that the applicant has been languishing in jail since 17 May 2022 and has already served over two years and ten months of the sentence. The records do not suggest if any exceptional circumstances exist to justify the refusal of the relief prayed for. Further, the appeal challenging the conviction has been filed in 2025 and is unlikely to be heard in the near future due to the pendency of the older appeals. If relief is denied at this stage, the applicant is likely to serve the entire sentence. In these circumstances, a case is made out for suspension of sentence and release on bail during the pendency of the appeal. Hence, the following order:

ORDER

(i) The sentence imposed upon the applicant vide the judgment and order dated

25 November 2024 passed by the Additional Sessions Judge, Mumbai, in Sessions Case No.752 of 2022, 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.

10. The interim application stands disposed of accordingly.

(R.N. Laddha, J.)