

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

Interim Application No.1790 of 2025

in

Criminal Appeal No.255 of 2025

Mahmmad Eklakh Mahammad Sharif @ Kalya

Age: 28 years, Occ: Labour,

R/o. Hinglaj Nagar Galli No.1,

Near Ali Murtuja Masjid, Malegaon,

Tal. Malegaon, Dist: Nashik,

At present Nashik Central Jail.

... Applicant

(Orig. Accused No.1)

versus

1. The State of Maharashtra

Through Police Inspector,

Ayesha Nagar Police Station,

Malegaon, Dist.: Nashik.

2. Shahid Ahemad Abdul

(Original Complainant)

Age: 46 years, Occ: Labour,

R/o. Ramzanpura,

Aminabad Nagar,

Dyane Shivar, Malegaon,

Tal. Malegaon, Dist : Nashik.

... Respondents

Mr Mahendra Sandhyanshiv, for the applicant.

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

Ms Sampada S Patil, i/b. Mr Nikhil Hire, for respondent No.2.

PSI Kiran Vitthal Jagdale, Ayesha Nagar Police Station,
Malegaon, Nashik Rural, is present.

Coram: R.N. Laddha, J.
Date: 8 May 2025

P.C.:

. Heard Mr Mahendra Sandhyanshiv, the learned Counsel appearing on behalf of the applicant, Ms Manisha Tidke, the learned Additional Public Prosecutor representing respondent No.1/State, and Ms Sampada Patil, for respondent No.2.

2. The applicant faced trial in Sessions Case No.44 of 2021 before the Additional Sessions Judge, Malegaon, for the offences punishable under Sections 147, 148, 307 read with Section 149 of the Indian Penal Code ('IPC'). The applicant was sentenced to suffer rigorous imprisonment for five years and a fine of Rs.10,000/-, with default stipulations.

3. The learned Counsel appearing on behalf of the applicant highlights the alleged shortcomings in the prosecution case and contends that the testimony of the prosecution witnesses lack credibility and fail to inspire confidence. He submits that the inconsistency in the evidence of PW-5 and P-6 creates doubt as to the nature of the injuries. The learned Counsel further submits that the applicant was on bail during the trial. The applicant is ready to comply with any conditions imposed by this Court and cooperate with the revision proceedings if released on bail.

4. The learned Additional Public Prosecutor representing respondent No.1/State and the learned Counsel for respondent No.2, opposing the applicant's request, argues that the offence is grave and the evidence on record strongly supports the prosecution case. They further submit that the applicant has criminal antecedents.

5. This Court has given anxious consideration to the rival contentions canvassed across the Bar and perused the record.

6. In *Bhagwan Rama Shinde Gosai v. State of Gujarat, (1999) 4 SCC 421*, 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.”

7. Upon perusing the records, it appears that the maximum period of imprisonment imposed upon the applicant is five years. The sentence is a short one. The alleged incident occurred in 2020. There appear to be contradictions in the evidence of the prosecution witnesses. The applicant was on bail during the trial. The appeal is filed in 2025 and is unlikely to be heard in the near future due to the pendency of the older appeals. Considering the allegations, nature of the offence and the sentence imposed, this Court deems it appropriate to suspend the applicant's sentence and release him on bail during the pendency of the appeal. Hence, the following order:

ORDER

(i) The sentence imposed upon the applicant vide judgment and order dated 27 January 2025 passed by the Additional

Sessions Judge, Malegaon, in Sessions Case No.44 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.50,000/- and furnishing one or more sureties in the like amount.

(iii) The applicant shall inform and update the concerned police station about his residential address and contact details.

8. The interim application stands disposed of accordingly.

(R.N. Laddha, J.)