

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

***INTERIM APPLICATION NO.2522 OF 2025
IN
CRIMINAL APPEAL NO.714 OF 2025***

Dashrath Chimaji Jamdade

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Vipul Dushing a/w Mr. Tanmay Kate i/b Mr. Nitin Bhalerao and
Mr. A. R. Chikate for the Applicant.

Ms. P. P. Shinde, Addl.PP for the Respondent-State.

PSI – Yuvraj Patil from Baramati Taluka Police Station, Pune is
present.

***CORAM : REVATI MOHITE DERE &
SANDESH D. PATIL, JJ.***

DATE : 20th SEPTEMBER 2025

P.C. :

1. Heard learned Counsel for the parties.
2. By this application, the applicant seeks suspension of his
sentence and enlargement on bail, pending the hearing and final
disposal of his aforesaid appeal.

3. The applicant, vide Judgment and Order dated 30th June 2025, passed by the learned Additional Sessions Judge, Pune, in Sessions Case No. 466 of 2019, has been convicted for the offence punishable under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life and to pay fine of Rs.1,000/-, in default, to suffer simple imprisonment for one month.

4. Learned counsel for the applicant submits that the applicant has been convicted only on the basis of the recovery evidence i.e. (i) recovery of an axe, which is suspicious and (ii) that he could not discharge his burden under Section 106 of the Evidence Act.

5. Learned Addl.PP opposes the application. She, however, does not dispute the said fact, that apart from the said evidence, there is no other evidence adduced by the prosecution. She states that the two eye-witnesses i.e. PW1 nephew of the applicant and PW2 wife of the applicant have turned hostile.

6. Perused the papers. Admittedly the prosecution has not brought on record the evidence vis-a-vis motive for the applicant to cause the death of his son nor is there any evidence of last seen. The only evidence that the prosecution has relied upon is recovery of an axe at the instance of the applicant from outside the house of the applicant after almost seven days of the incident i.e. on 22nd January 2019. It is pertinent to note that the incident took place on 15th January 2019; that the police prepared the spot panchanama of the scene of offence i.e. of the house of the applicant on 18th January 2019. It appears that the panch who was present at the spot panchanama is also a panch of the recovery panchanama, which was prepared on 22nd January 2019. The axe in question which was allegedly recovered, was from an open space and close to the spot from where the panchanama was done on 18th September 2019. Apart from the said evidence of recovery, the learned Judge has convicted the applicant, as the applicant had not discharged his burden under Section 106 of the Evidence Act. We may note that the burden lies on the prosecution to prove its case beyond reasonable doubt and

that the burden of Section 106 of the Evidence Act will be used as an additional circumstance in the chain of circumstances led by the prosecution.

7. Considering the aforesaid, the application is allowed and the applicant's sentence is suspended and he is enlarged on bail, pending the hearing and final disposal of his aforesaid appeal, on the following terms and conditions :-

ORDER

- i) The Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;
- ii) The Applicant shall report to the trial Court, once in four months i.e. on the first Saturday, till his Appeal is finally disposed of;
- iii) The Applicant shall keep the trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time;

iv) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

8. Interim Application is allowed in the aforesaid terms and accordingly disposed.

. All concerned to act on the authenticated copy of this order.

SANDESH D. PATIL, J.

REVATI MOHITE DERE, J.