

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

**INTERIM APPLICATION NO. 422 OF 2024
IN
CRIMINAL APPEAL NO. 977 OF 2023**

Nilesh Narayan Shedge @ Bablu)
Age : 45 years, Occ: Vendor/Broker)
R/at: Sion Laxmibaug, Kadarbhai Chawl)
Room No.116, Mumbai 400 022)
(Accused presently in Nashik Central Prison))
Convict No. C-11814) ... Applicant

Versus

- 1 Central Bureau of Investigation)
New Delhi,)
(RC1 (S)- 2016/SCU.V/SC-II/CBI/))
New Delhi, through the office of Special Public)
Prosecutor, Mumbai)
)
- 2 State of Maharashtra)
(Through the Office of Public Prosecutor)) ... Respondents

**WITH
INTERIM APPLICATION NO. 2659 OF 2025
IN
CRIMINAL APPEAL NO. 237 OF 2019**

Abhijit Kashinath Shinde)
Age : 38 years, Occ: Nil)
R/at: Sion Laxmibaug, Kadarbhai Chawl)
Room No.105, Mumbai 400 022)
(presently in Chatrapati Sambhajanagar)
Central Prison, Convict No.C- 8349) ... Applicant

Versus

- 1 Central Bureau of Investigation)
New Delhi,)
(RC1 (S)- 2016/SCU.V/SC-II/CBI/))
New Delhi, through the office of Special Public)
Prosecutor, Mumbai)

- 2 State of Maharashtra)
 (Through the Office of Public Prosecutor)) ... Respondents

**WITH
 INTERIM APPLICATION NO. 2588 OF 2025
 IN
 CRIMINAL APPEAL NO. 239 OF 2019**

Sachin Suresh Gaikwad)
 Age : 42 years, Occ: Nil)
 R/at: Sindhi Society, Chembur, Nav Jivan)
 Mitra Mandal, Chembur Mumbai 400 071)
 Accused presently in Amravati Central Prison) ... Applicant

Versus

- 1 Central Bureau of Investigation)
 New Delhi,)
 (RC1 (S)- 2016/SCU.V/SC-II/CBI/))
 New Delhi, through the office of Special Public)
 Prosecutor, Mumbai)
- 2 State of Maharashtra)
 (Through the Office of Public Prosecutor)) ... Respondents

**WITH
 INTERIM APPLICATION NO. 2645 OF 2025
 IN
 CRIMINAL APPEAL NO. 348 OF 2019**

Mangesh Damodar Aagvane @ Mangya)
 Age – 31 years, Occupation – Manager,)
 Residing at Delight Galaxy Caterers,)
 r/o. Gyan Ashram, Mahakali Gufa,)
 Opp. Canosa High School,)
 Andheri (East), Mumbai.)
 (Presently lodge in Aurangabad Central)
 Prison) ... Applicant

Versus

- 1 The Central Bureau of Investigation,)
 New Delhi)

2 The State of Maharashtra

) ... Respondents

Mr. Subir Sarkar a/w Mr. Sumit Erande, Advocate for the Applicants in IA/422/2024 & IA/2659/2025.

Mr. P.N. More a/w N.C. Kamble, Ruchika Deora Advocate for the Applicant in IA/2588/2025.

Mr. Pradip Gharat, Special P.P. for the Respondent/CBI.

Mr. Mayur S. Sonavane, APP for the Respondent/State.

Mr. Santosh Deshpande, Advocate for the Applicant in IA/2645/2025 in Appeal/348/2019.

CORAM : RAVINDRA V. GHUGE
&
GAUTAM A. ANKHAD, JJ.

RESERVED ON : 02nd SEPTEMBER, 2025

PRONOUNCED ON : 06th OCTOBER, 2025

FINAL ORDER :- (PER : RAVINDRA V. GHUGE, J.)

1. These four Applications have been filed by four persons, who have been convicted and sentenced for murder, under Sections 302 and 120-B of the Indian Penal Code ('IPC'), Sections 3(1)(i), 3(2) and 3(4) of the Maharashtra Control of Organised

Crime Act, 1999 (**'MCOC Act'**), Sections 3, 25 and 27 of the Arms Act and Sections 37(1-A) and 135 of the Maharashtra Police Act, 1951, vide Judgment and Order delivered by the Special MCOC Court on 02nd May, 2018 in MCOC Special Case Nos.19 of 2011, 07 of 2012 and 15 of 2016.

2. By the Judgment dated 2nd May, 2018 running into 598 Pages, 9 Accused have been convicted for the offence punishable under the Sections adverted to herein above, and they were sentenced to suffer multiple rigorous imprisonment for life and to pay a cumulative fine of Rs. 27 Lakhs.

NARRATION OF THE CRIME

3. On 11th June, 2011 at 3:00 p.m., the Accused were alleged to have committed the murder of Jyoti Nipendra Kumar Dey @ J. Dey, a Senior Crime Journalist, who also indulged in investigative Journalism and was associated with a reputed daily 'Mid-Day', published from Mumbai. He had reported news items in relation to the alleged criminal activities indulged into by Accused No.12, Rajendra Sadashiv Nikalaje @ Chota Rajan @ Nana @ Seth @ Sir, who is reported to be a dreaded gangster. It was alleged that

the murder of J. Dey was carefully scripted and the conspiracy was brought into effect by minute planning, right from the stage of sending Accused Nos. 01 to 04, to Nainital to procure two revolvers and 25 live cartridges from Accused No.9.

4. Accused No.5 (Arun Dake) and Accused No.9 (Deepak Sisodiya) had recorded their confessional statements under Section 18 of the MCOC Act. In all, there were 14 Accused. Two are still absconding and one has died. Eventually, with the Judgment of the Special Court, two of the Accused were acquitted and nine were convicted.

5. After the incident occurred on 11th June 2011, Accused Nos.3 and 4 were arrested on 26th June, 2011. After interrogation, the other Accused were also arrested, except the two who absconded. Accused No.1, namely Rohee Tangappan Joseph @ Rohi @ Satish Kalya, had fired five bullets on the target, Shri J. Dey. He was pronounced dead on arrival at the hospital. 155 witnesses were examined. The murder weapon, two empty shells of the bullets that were fired, one bullet found embedded in the ribcage of the deceased, recovery of motorcycle and the raincoat, the vehicle

used for going to Nainital, the CDR and the CCTV footage, were a part of the evidence against the Accused.

SUBMISSIONS ON BEHALF OF THE APPLICANTS

6. It is the argument of the learned Advocates appearing on behalf of the Applicants that there was no eye witness to the crime and the entire case of the prosecution is dependent upon the confessional statements of Accused No.5, Arun Dake and Accused no. 9, Deepak Sisodiya, that were recorded before the Deputy Commissioner of Police under Section 18 of the MCOC Act. The Bail Applications of Accused No.1, who fired the bullets while riding pillion on the motorcycle and the driver of the motorcycle, who is Accused No.5, were considered by this Court. The Bail Application of Accused No.1 was rejected. The Bail Application of Accused No.5, who had filed the Application along with the four Applicants before us, withdrew the Application.

7. The learned Advocates representing these Applicants have tendered their brief written notes, which we have perused in the light of the record before us. The primary reason for seeking bail is on the ground of long incarceration for around 14 years and with

remission, around 16 years. In the written notes of arguments, we find that the grounds taken by the Applicants and the reference to the oral and documentary evidence in brief, virtually was with the intention that this Court should appreciate the evidence threadbare, at the stage of the hearing for suspension of sentence and grant of bail. In support of their contention, reliance is placed on the observations of the Hon'ble Supreme Court in Criminal Appeal No.308 of 2022, dated 25th February, 2022 (*Saudan Singh V/s. The State of Uttar Pradesh*) and Criminal Appeal No.2987 of 2023, dated 25th September, 2023 (*Dinesh @ Paul Daniel Khajekar V/s. The State of Maharashtra & Anr.*).

8. The learned Advocates for the Applicants have made a valiant attempt to point out discrepancies in the evidence and the case of the prosecution by referring to the entries of the five bullets in the body of the victim. They have referred to X-ray plates, the drawings, four exit holes, one bullet that got stuck in the ribcage, no blood was found on the spot, alleged lead was not shown to the witness, five entry holes and five exit holes are seen on the clothes etc., in order to persuade us to re-appreciate the evidence recorded before the Trial Court on the basis of which the Judgment of

conviction has been delivered.

SUBMISSIONS ON BEHALF OF THE PROSECUTION

9. The learned Special P.P., Shri. Gharat has also tendered his brief written notes. He contends that the conspiracy is clearly established. Section 2(1)(a)(i) pertains to abetment, active participation as a member of an organized crime syndicate and involvement in a conspiracy punishable under Section 120-B of the IPC. He highlighted the meticulous planning and the object to eliminate the target, procurement of two revolvers and 25 live bullets from Nainital, identifying the target to be eliminated, marking his daily routine and carrying out a sort of dress rehearsal. On the day the crime was committed at 3:00 p.m. (on 11th June, 2011), it was raining heavily. The raincoat used by the person who fired the bullets, was also recovered. The CDR records, hotel registers and payments made at Nainital were also traced out. He, therefore, submits that re-appreciation of evidence at the stage of hearing an Application for seeking bail and suspension of sentence, is impermissible in law.

ANALYSIS AND CONCLUSIONS

10. The Hon'ble Supreme Court in *Janardan Ray V/s. The State of Bihar and Anr. Etc., in Criminal Appeal Nos.1892-1893 of 2025*, has held in its Judgment dated 9th April, 2025 that in the face of the settled position of law, the High Court would commit a gross error in appreciating the evidence already appreciated by the Trial Court, at the time of considering the Applications seeking suspension of sentence pending the Appeal, in a case of conviction under Section 302 of the IPC. In such cases, the initial presumption available to the Accused before conviction, would not be available to him after conviction. The High Court would not suspend the sentence, by re-appreciating the evidence at the stage of Section 389 by trying to pickup a few lacunae or loopholes, here or there in the case of the prosecution.

11. The Hon'ble Supreme Court in *Janardan Ray (Supra)* referred to the Judgments in *Omprakash Sahni V/s. Jai Shankar Chaudhary and Another, (2023) 6 SCC 123*, *Kishori Lal V/s Rupa, (2004) 7 SCC 638*, *Vijay Kumar V/s. Narendra, (2002) 9 SCC 364* and *Ramji Prasad V/s. Rattan Kumar Jaiswal (2002) 9 SCC 366*, and observed in Paragraph Nos.6 and 7, as under :-

"6. In our opinion, the decision of this Court in the case of *"Omprakash Sahni Vs. Jai Shankar Chaudhary and Anr., (2023) 6 SCC 123"* clinches the issue involved in the present appeals. It has been observed while considering the scope of Section 389 of Cr.P.C as under:-

"30. In *Kishori Lal v. Rupa* [*Kishori Lal v. Rupa, (2004) 7 SCC 638*], this Court has indicated the factors that require to be considered by the courts while granting benefit under Section 389CrPC in cases involving serious offences like murder, etc. Thus, it is useful to refer to the observations made therein, which are as follows: (SCC pp. 639-40, paras 4-6)

"4. Section 389 of the Code deals with suspension of execution of sentence pending the appeal and release of the appellant on bail. There is a distinction between bail and suspension of sentence. One of the essential ingredients of Section 389 is the requirement for the appellate court to record reasons in writing for ordering suspension of execution of the sentence or order appealed against. If he is in confinement, the said court can direct that he be released on bail or on his own bond. The requirement of recording reasons in writing clearly indicates that there has to be careful consideration of the relevant aspects and the order directing suspension of sentence and grant of bail should not be passed as a matter of routine.

5. The appellate court is duty-bound to objectively assess the matter and to record reasons for the conclusion that the case warrants suspension execution of sentence and

grant of bail. In the instant case, the only factor which seems to have weighed with the High Court for directing suspension of sentence and grant of bail is the absence of allegation of misuse of liberty during the earlier period when the accused-respondents were on bail.

6. The mere fact that during the trial, they were granted bail and there was no allegation of misuse of liberty, is really not of much significance. The effect of bail granted during trial loses significance when on completion of trial, the accused persons have been found guilty. The mere fact that during the period when the accused persons were on bail during trial there was no misuse of liberties, does not per se warrant suspension of execution of sentence and grant of bail. What really was necessary to be considered by the High Court is whether reasons existed to suspend the execution of sentence and thereafter grant bail. The High Court does not seem to have kept the correct principle in view."

31. In *Vijay Kumar v. Narendra* [*Vijay Kumar v. Narendra*, (2002) 9 SCC 364] and *Ramji Prasad v. Rattan Kumar Jaiswal* [*Ramji Prasad v. Rattan Kumar Jaiswal*, (2002) 9 SCC 366], it was held by this Court that in cases involving conviction under Section 302 IPC, it is only in exceptional cases that the benefit of suspension of sentence can be granted. In *Vijay Kumar* [*Vijay Kumar v. Narendra*, (2002) 9 SCC 364], it was held that in considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302 IPC, the court should consider

the relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, and the desirability of releasing the accused on bail after they have been convicted for committing the serious offence of murder.

32. *The aforesaid view is reiterated by this Court in Vasant Tukaram Pawar v. State of Maharashtra [Vasant Tukaram Pawar v. State of Maharashtra, (2005) 5 SCC 281] and Gomti v. Thakurdas [Gomti v. Thakurdas, (2007) 11 SCC 160].*

33. *Bearing in mind the aforesaid principles of law, the endeavor on the part of the court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the trial court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. If the answer to the abovesaid question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually takes very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the court can arrive at prima facie satisfaction that the conviction may not be sustainable. The appellate court should not reappreciate the evidence at the stage of Section 389 CrPC and try to pick up a few lacunae or loopholes here or there in the case of the prosecution. Such would not be a correct approach."*

7. *Having regard to the aforesaid settled legal position, we are of the opinion that the High Court has committed gross error in appreciating the evidence already appreciated by the Trial Court at the time of considering the applications seeking suspension of sentence pending the appeal. Since this was a case of conviction under Section 302 IPC, the initial presumption available to the accused before conviction, would not be available to him. The High Court could not have suspended the sentence, reappreciating the evidence at the stage of Section 389 and trying to pick up a few lacunae or loopholes here or there in the case of prosecution. The consideration of High Court to the submission made on behalf of the accused that he had not misused the liberty during the trial or that the appeal was not likely to be heard in near future, could not be said to be the proper consideration for suspending the sentence of the accused, who have been convicted for the serious offence under Section 302, IPC. It is only in rare and exceptional circumstances, the benefit of suspension of sentence should be granted by the appellate court to the accused convicted for the serious offence under Section 302, IPC.”*

12. The learned Advocates for the Applicants have laid great stress on the incarceration of the Applicants for 14 years, as the primary reason for considering the prayer for grant of bail by suspending the sentence. They contend that having spent 14 years in jail, is a good ground for grant of bail.

13. The learned Special P.P., Shri. Gharat points out an order passed by this Court on **7th January, 2019** in Criminal Application No.1402 of 2018, filed by ***Deepak Dalvirsingh Sisodiya***

V/s. The State of Maharashtra and Anr., (Deepak Sisodiya has recorded his confessional statement, which is proved in evidence). In the said Judgment, at a *prima facie* stage, the learned Division Bench of this Court recorded that the Applicant has been convicted for playing a role in the conspiracy for committing an offence, covered by the provisions of the MCOC Act. It is not possible to record any finding at this stage that the Applicant has not committed any offence. Whether the confessional statement is trustworthy, can be considered at the final hearing stage. At an interim stage, the Court cannot go in depth and analyze the evidence by re-appreciating the evidence recorded before the Trial Court. The confession does show that the Applicant has taken active part in the activity of the organized crime syndicate, knowingly. This Court refused bail to the said Applicant.

14. Deepak Sisodiya approached the Hon'ble Supreme Court to challenge the first order of rejection of his Application for bail, in Special Leave Petition (Criminal) Diary No(s).28336 of 2019. By an order dated 25th November, 2019, the Special leave Petition was dismissed. He was granted liberty to file a bail application before the High Court after three months. That is how

the second bail application was filed.

15. The said Applicant, Deepak Sisodiya again moved an Interim Application No.1 of 2020. The same was rejected by the order dated 29th September, 2020. The ground that the Applicant did not misuse the liberty granted to him when he was on bail during the trial, was held to be of no assistance to him. This aspect was considered by the Hon'ble Supreme Court in *Janardan Ray (Supra)*, concluding that such a ground in the backdrop of the Applicant having participated in organized crimes, cannot be a reason for granting bail, when the offence committed is of murder punishable under Section 302 of IPC.

16. Accused No.1, Satish Kalya had moved an Interim Application No.1584 of 2021 for seeking bail and suspension of sentence. By a speaking order dated 6th November, 2023, the said Application was rejected. He approached the Hon'ble Supreme Court in Petition(s) for Special Leave to Appeal (Crl.) No(s).5243 of 2024. The same was dismissed by an order dated 12th November, 2024.

17. It has been proved before the Trial Court that these Applicants were a part of an organized crime syndicate, which was said to be ruling the 'Underworld'. It is also held that they carefully scripted a conspiracy and moved as per their plans, right from traveling to Nainital, procuring fire arms and bullets, identifying the target, dress rehearsing by carefully noting the daily movements of the target, performed reiki which amounts to an act of surveying the location to assess its suitability for committing a criminal offence and they achieved the object of eliminating the target in the first attempt.

18. In the above circumstances and the Judgment of the Hon'ble Supreme Court in *Janardan Ray* (supra), the learned Advocate for the Applicants cited the following Judgments and Orders, which would not support the prayer for suspension of sentence and grant of bail :-

- a) The order dated 20th October, 2023, passed in Interim Application No.4520 of 2022 in Criminal Appeal No.808 of 2023 (*Raju Satyanarayan Zha @ Raju Hamal V/s. State of Maharashtra*), by the Division Bench of this Court;

- b) The order dated 19th December, 2023, passed in Interim Application No. 3953 of 2023 in Criminal Appeal No. 568 of 2022 (*Siraj Fakruddin Ansari @ Foreigner Vs. The State of Maharashtra*), by the Division Bench of this Court;
- c) The order dated 3rd July, 2024, passed in Interim Application No. 1959 of 2024 in Criminal Appeal No. 602 of 2024 (*Nisar Kadar Shaikh Vs. The State of Maharashtra*), by the Division Bench of this Court;
- d) The order dated 3rd July, 2024, passed in Interim Application No. 349 of 2023 and Interim Application No. 352 of 2023 in Criminal Appeal No. 279 of 2024 (*Rahim Munawar Pathan Vs. The State of Maharashtra & Ors.*), by the Division Bench of this Court;
- e) The order dated 1st April, 2024, passed in Interim Application No. 4229 of 2023 in Criminal Appeal No. 516 of 2019 (*Suresh Maruti Kamble Vs. State of Maharashtra*), by the Division Bench of this Court.

19. The learned Special P.P., Shri. Gharat has referred to the guidelines framed by the State Government, known as the ‘Remission and Commutation Rules, 2010’ with reference to

persons convicted under the special laws including the **MCOC Act**, the Prevention of Terrorism Act (**'POTA'**) and the Terrorist and Disruptive Activities (Prevention) Act (**'TADA'**) (the latter two having being repealed), which indicate that one life term under such act would mean that the convict will have to serve 40 years imprisonment. Two life sentences would mandate 50 years of imprisonment and 60 years for more than two life imprisonment.

20. The Accused who have been convicted, are awarded the following sentences :-

Accused No.1, Satish Kalya, along with the other convicts, have been awarded five sentences to suffer rigorous imprisonment for life. The Special Court has awarded further sentences of various durations to the convicts, as is apparent from Clause No.6 and 7 of the judgment. All substantive sentences are to run concurrently. All of them have been granted a set-off under Section 428 of the Cr.P.C. for the period of detention already undergone as undertrials.

21. With regard to the first Applicant, Nilesh Narayan Shedge, there are three previous crimes registered against him under

Section 379, 323 and 34 of the IPC, in different Police Stations.

The second Applicant Abhijit Kashinath Shinde does not have any offence previously registered against him. He was driving the motorcycle on which Accused No.4 was the pillion rider. The mobile phone and SIM Card used in the crime, were recovered from him. He had also travelled to the Nainital with the party for procurement of two revolvers and 25 live cartridges.

The third Applicant, Sachin Suresh Gaikwad has one more crime registered against him under Section 323, 324, 504, 506(2), read with Section 34 of the IPC. Though there is no offence previously registered against him, he was driving the motorcycle and Accused No.2 was the pillion rider when the crime of murdering Journalist, J. Dey took place.

In these circumstances, we do not deem it appropriate to suspend the sentence and grant bail to either of them.

22. In view of the above, **all these Interim Applications are rejected.**

(GAUTAM A. ANKHAD, J.)

(RAVINDRA V. GHUGE, J.)