

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.169 OF 2016

Raja @ Rajesh Bhalchandra Gavari	...Appellant
Versus	
The State of Maharashtra & Ors.	...Respondents

WITH

**CRIMINAL APPLICATION NO. 470 OF 2016
IN**

CRIMINAL APPEAL NO.169 OF 2016

WITH

**CRIMINAL APPLICATION NO. 469 OF 2016
IN**

CRIMINAL APPEAL NO.208 OF 2016

Sou. Sushma Prakash Bhoir	...Applicant
Versus	
The State of Maharashtra	...Respondent

WITH

**INTERIM APPLICATION NO.4807 OF 2025
IN**

CRIMINAL APPEAL NO.169 OF 2016

Raja @ Rajesh Bhalchandra Gavari	...Applicant
Versus	
The State of Maharashtra	...Respondent

WITH

CRIMINAL APPEAL NO. 208 OF 2016

Ravichand @ Raja Madanchand Thakur	...Appellant
Versus	
The State of Maharashtra	...Respondent

WITH

CRIMINAL APPEAL NO. 214 OF 2016

Atul @ Batli Ashok Deshmukh & Anr. ...Appellants
Versus
The State of Maharashtra ...Respondent

WITH

CRIMINAL APPEAL NO. 228 OF 2016

Sujit Viththal Sutar ...Appellant
Versus
The State of Maharashtra ...Respondent

WITH

CRIMINAL APPEAL NO. 238 OF 2016

Jaideep Jaiwant Salvi ...Appellant
Versus
The State of Maharashtra ...Respondent

WITH

CRIMINAL APPEAL NO. 1473 OF 2018

Nitin Pandurang Vaiti ...Appellant
Versus
The State of Maharashtra ...Respondent

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- Mr. Girish Kulkarni, Senior Advocate a/w Ms. Pravada Raut i/b. Mr. Hrishikesh Mundargi, for the Applicant/Appellant.
- Dr. Dhanalakshmi S. Krishnaiyer, APP, for the Respondent-State.
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**CORAM : MANISH PITALE &
MANJUSHA DESHPANDE, JJ.**

DATE : 23rd DECEMBER 2025

P.C.:

1. Heard Mr. Kulkarni, learned senior counsel for the applicant (original appellant), and Dr. Dhanalakshmi S. Krishnaiyer, learned APP, for the Respondent-State.
2. By this application, the applicant is seeking a stay of conviction urgently in the light of the elections to the local bodies to be conducted in the near future. In fact, it is brought to our notice that as per the schedule of the election, the time period for submitting nomination papers is between 23.12.2025 and 30.12.2025.
3. It is submitted that unless stay of conviction is granted, as per the provisions of the Representation of the People Act, 1950, the applicant, as on today, due to the aforesaid conviction, stands disqualified from participating in such an election.
4. Considering the urgency in the matter, we took up the application for consideration. The learned senior counsel for the applicant relied upon the judgment of the Supreme Court in the case of *Ram Narang V/s. Ramesh Narang & Ors.*¹, to contend that

¹ (1995) 2 SCC 513

there is sufficient power available with this Court to consider granting stay of conviction. It is submitted that in the present case, this Court thought it fit to grant bail to the present applicant as per the order dated 04.10.2019. In the said order, certain observations were made indicating a prima facie case made out by the applicant.

5. It was submitted that a perusal of the record in the present case would show that the case of the applicant would fall within the category of an exceptional case for granting stay of conviction. In that context, the learned senior counsel for the applicant invited the attention of this Court to the charge framed by the Trial Court. It was contended that the specific role of the applicant was not brought out in the charge and general and omnibus statements were made while framing the charge, thereby indicating a fundamental defect in the proceedings before the Trial Court.

6. Apart from this, it was submitted that even if the evidence of the eyewitnesses, i.e., PW-2, PW-6, PW-7, PW-9 and PW-13, is perused, it becomes clear that in the worst case scenario, the role attributed to the applicant was that of allegedly obstructing some of the persons present at the time of the incident, including the

said eyewitnesses, while no overt act was attributed to him. It was submitted that even such statements can be said to be vague and therefore, a very strong prima facie case is made out by the applicant in his favour.

7. It was further submitted that the postmortem report and the evidence of the doctor PW-11 would show that all the injuries except two were attributable to the use of firearms. In fact, the cause of death also specifically recorded injuries caused by firearms, thereby indicating that no overt act was attributable to the applicant. It was emphasized that in the face of such general and vague statements made by the eyewitnesses, the applicant has made out a strong prima facie case in his favour for staying the conviction. There is every possibility of the applicant being acquitted when the appeal is finally heard. On this basis, it was submitted that this Court may consider allowing the application.

8. On the other hand, the learned APP submitted that the presence of the applicant was certainly established in the light of the testimonies of the said eyewitnesses. By placing reliance on Section 149 of the IPC, pertaining to unlawful assembly, it was

submitted that once the presence of the applicant was sufficiently established as a member of the unlawful assembly, he as a member of such an assembly, was equally guilty for the acts and consequently, the offences committed by other members of such an unlawful assembly.

9. It was submitted that as per law laid down by the Supreme Court in the cases of *K.C. Sareen V/s. CBI, Chandigarh*², and *Navjot Singh Sidhu V/s. State of Punjab & Anr*³, the applicant is required to make out an exceptional case in his favour and an application for stay of conviction is to be considered on parameters different from an application for suspension of sentence or grant of bail. On this basis, it was submitted that merely because the applicant has been granted bail by this Court cannot be a ground to allow the instant application seeking stay of conviction.

10. Reliance was also placed on recent order dated 20.11.2025 passed by the Supreme Court in Criminal Appeal SLP (Criminal) No.14790 of 2024 (*Victim Father V/s. State of Rajasthan & Anr*).

11. We have considered the rival submissions. In order to

² (2001) 6 SCC 584

³ (2007) 2 SCC 574

examine as to whether the prayer in the present application can be granted, we are of the opinion that the guidelines laid down by the Supreme Court while considering such applications need to be referred to.

12. It is settled law, as per the aforementioned judgments of the Supreme Court, that while considering such a prayer for the grant of stay of conviction, it is required that the applicant (appellant) makes out an exceptional case for the grant of such stay. The parameters while considering such an application are different from the parameters applied to an application seeking suspension of sentence and grant of bail. Thus, the fact that the applicant was granted bail by this Court cannot, in itself, be a ground for favourably considering this application.

13. It is relevant to note that the Supreme Court in the aforesaid order passed in the case of *Victim Father V/s. State of Rajasthan*, has gone to the extent of observing that an exceptional case amounting to a case that can be categorized as rarest of rare is to be made out by the applicant while seeking stay of conviction.

14. Thus, it is evident that the applicant in this case is also

required to satisfy an extremely high threshold for this Court to grant stay of conviction.

15. It is in this backdrop that we have considered the rival submissions. We have perused the evidence of the eyewitnesses, i.e., PW-2, PW-6, PW-7, PW-9 and PW-13, as also the evidence of the doctor PW-11 in the light of the postmortem report.

16. We find that the aforesaid eyewitnesses have all consistently named the applicant as one of the persons present at the time of the incident. One of the witnesses specifically stated that the applicant was carrying an iron rod. Although in cross-examination, one of the eyewitnesses did concede that in his statement recorded under Section 161 of the Cr.P.C., it did not come out in a clear manner that the applicant had obstructed that eyewitness and others at the time of the incident and the statement was only limited to attributing the role of an attempt on the part of the applicant to do so, the testimonies of the other eyewitnesses did clearly bring out the role of the applicant as a person along with other accused persons, who obstructed the said eyewitnesses at the time of the incident. It is in this context, that these eyewitnesses

have further stated about the role of the co-accused persons, who used the firearms to assault the victim. Therefore, even if the postmortem report and the evidence of the doctor PW-11 indeed show that death of the victim was attributable to injuries caused by firearms, the presence of the applicant prima facie is clearly established at the date and time of the incident. It is not as if the applicant is not at all named by the eyewitnesses. They have gone ahead to also attribute a role to the applicant in obstructing them, while the co-accused persons used firearms to assault the victim.

17. In this context, reliance placed on Section 149 of the IPC by the learned APP is justified. It is settled law, in terms of the aforesaid provision, that every member of an unlawful assembly is guilty of the offence, which has been committed in prosecution of the common object of that assembly. Thus, the applicant cannot claim that merely because an overt act of using of firearms to assault the victim was not attributed by the aforesaid eyewitnesses, this Court must accept his case of being an exceptional case for grant of stay of conviction.

18. We find that in the light of the evidence and testimonies of

the aforesaid eyewitnesses, the presence of the applicant is prima facie established. He, being a member of the unlawful assembly, cannot wriggle out of the consequences of being a member of such assembly by claiming that the actual role of assaulting the victim with firearms was not made out by the evidence in the testimonies of such eyewitnesses. We also find that the submission with regard to the framing of charge and even otherwise the applicant has failed to make out a prima facie case of failure of justice.

19. In such a situation, we are unable to reach a conclusion that the case of the applicant would fall within the category of being an exceptional case or rarest of rare case for this Court to allow the present application for stay of conviction.

20. In view of the above, the **interim application is dismissed.**

(MANJUSHA DESHPANDE, J.)

(MANISH PITALE, J.)