



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPA) NO. 104 OF 2025 IN
CRIMINAL APPEAL NO. 737 OF 2024

Suraj s/o Ramesh Goyar Vs State of Maharashtra

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. A.M. Jaltare, counsel for applicant/appellant.

Mr. VA. Thakre, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 29/01/2025.

1. By preferring this application, the appellant is seeking suspension of sentence and releasing the appellant on bail.

2. The appellant has preferred the present appeal before this court against the order of conviction passed in Sessions Case No. 79/2023 on 08/10/2024, by which the learned trial Court convicted the present appellant for the offence punishable under Section 307 read with Section 34 of the Indian Penal Code, 1860, and sentenced him to suffer rigorous imprisonment for ten years and to pay fine amount of Rs. 50,000/-, in default, to suffer further rigorous imprisonment for one year.

3. Heard learned counsel for the appellant, who submitted that the application for suspension of sentence of the other co-accused is already considered by this Court. He further submitted that the appeal would take its own time

for its final disposal. In the meanwhile, if the sentence is executed, the appeal would become infructuous. He submitted that limited punishment is there. From the impugned judgment also, he pointed out that he has many arguable points in the present appeal. In view of that, sentence be suspended, and the appellant be released on bail.

4. Learned APP strongly opposed the said application and submitted that the evidence on record sufficiently shows that it was the present appellant who has given four repeated blows by means of a knife on the stomach of the injured, due to which the injured has sustained the injuries. He also pointed out from the medical evidence that the said patient has sustained multiple stab injuries on his stomach, and the injured was operated for the said incident. The injuries, as per the evidence of the medical officer, were sufficient to cause death in the ordinary course of nature. He submitted that considering the role of the present appellant, it is not a fit case wherein the sentence can be suspended.

5. After hearing both sides and on perusal of the evidence on record, it reveals that the vital role is attributed to the present appellant, who allegedly assaulted the injured by means of a knife by giving repeated blows on his stomach. As far as the aspect of suspension of sentence is concerned, at this stage re-appreciation of the evidence is not permissible. What is to be seen is whether the appellant

has made out a case to show that he has every chance of success in the present appeal.

6. The Hon'ble Apex Court has held with this issue in the case of ***Omprakash Sahni vs Jai Shankar Chaudhary and another in Criminal Appeal Nos. 1331-1332 of 2023 decided on 02/05/2023***, wherein in para No. 33, it is observed as under;

“33. Bearing in mind the aforesaid principles of law, the endeavour 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 above said 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 take 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 a prima facie satisfaction that the conviction may not be sustainable. The Appellate Court should not re-appreciate the evidence at the stage of Section 389 of the Cr.P.C. and try to pick up few lacunas or loopholes here or there in the case of the prosecution. Such would not be a correct approach.”

7. Considering the law laid down by the Hon'ble Apex Court in the present case and considering the evidence

against the present appellant, at this stage, no case is made out for suspension of sentence. In view of that, the application deserves to be rejected. Accordingly, I proceed to pass the following order.

a] The criminal application (APPA) No. 104/2025 is rejected.

Criminal Appeal No. 737 of 2024

1. The appeal is already admitted. The record and Proceedings is already received in connected Criminal Appeal No. 600/2024.
2. Both appeals be listed before this Court after preparation of the paper-book.
3. The Registry to expedite the preparation of the paper-book.

[URMILA JOSHI-PHALKE, J.]