



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

CRIMINAL APPLICATION (APPA) NO.208 OF 2025
IN
CRIMINAL APPEAL NO.112 OF 2025

Asif Sheikh Haider Sheikh

Vs.

State of Maharashtra, through Police Station Officer, Police Station
Sewagram, District Wardha

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. P. K. Dahat, Counsel for the appellant.
Ms, M. A. Barabde, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 01/04/2025

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

2. The appellant was prosecuted for the offence punishable under Section 307 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 10 years and fine of Rs.5,000/-, in default to suffer simple imprisonment for further six months.

3. Heard learned Counsel for the appellant who submitted that appellant is the father of the injured. Due to the matrimonial dispute between him and his wife, he is falsely implicated by taking disadvantage that his daughter has sustained the injury accidentally. He submitted that the appellant

has already undergone three years of the imprisonment and the appeal would take its own time for its final disposal. In the meantime, if sentence is executed, the appeal would become infructuous. In view of that, the execution of the sentence be suspended and he be released on bail.

4. Learned APP strongly opposed for the same and submitted that considering the evidence adduced by the mother of the injured, the trial Court has convicted the present appellant. At this stage, there is nothing on record to show that the appellant has every chance of success in the present appeal. In view of that, the application deserves to be rejected as appeal itself is devoid of merits. In view of that, she prayed for rejection of the application.

5. After hearing both sides and on perusal of the impugned judgment as well as the various depositions from which the learned Counsel for the appellant pointed out that there are various omissions and contradictions which go to the root of the matter and the appellant has every chance of success in the present appeal. But if sentence is executed, the appeal would become infructuous. In view of that, he prayed for suspension of sentence.

6. On perusal of the entire evidence and the impugned judgment from which the learned Counsel for the appellant has pointed out that he has many arguable points in the present appeal. Admittedly, at

this stage, reappreciation of the evidence is not permissible. What is to be seen is whether the appellant has pointed out that he has many arguable points and he would be successful in the appeal. The Hon'ble Apex Court in the case of **Omprakash Sahni vs. Jai Shankar Chaudhary and another Etc. in Criminal Appeal Nos. 1331-1332 of 2023 decided on 2nd May of 2023** dealt with this issue and held that "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 reappreciate the evidence at the stage of Section 389

of the CrPC 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. In the light of the above observation of the Hon'ble Apex Court and considering the submissions made by the learned Counsel for the appellant, who has pointed out from the evidence and the impugned judgment that he has many arguable points in the present appeal and also shown inconsistency in the evidence which is sufficient at this stage to held that the appellant has chance of success in the present appeal. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

- (i) The application is allowed.
- (ii) The execution of sentence passed in Sessions Case No.73/2021 is hereby suspended till disposal of the appeal.
- (iii) The appellant shall be released on bail on executing PR Bond in the sum of Rs.25,000/- with one solvent surety of the like amount.

The application is disposed of.

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Appeal be listed for final disposal after preparation of the paper book.

(URMILA JOSHI-PHALKE, J.)