



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

CRIMINAL APPLICATION (APPA) No. 190 2025
IN
CRIMINAL APPEAL NO. 611 OF 2024

Amol s/o Pandurang Borkar and another 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. D.V. Mahajan, counsel for applicants.

Mr. D.V. Chauhan, Public Prosecutor (Senor Counsel) with Ms. Ritu Sharma, APP for State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 20/02/2025.

1. By this application, the applicants/appellants are seeking temporary bail to perform the last rites of his deceased father.

2. By judgment dated 18/10/2024 passed by the learned Additional Sessions Judge, Nagpur in Sessions Case No. 49/2015, wherein the appellants are convicted for the offence punishable under Section 304-B read with Section 34 of the Indian Penal Code and sentenced to suffer R.I. for ten years and to pay fine of Rs. 5,000/-, in default, to suffer S.I. for six months is under challenged.

3. The application of the present appellants/applicants for suspension of sentence is already rejected, and the same is pending before the Hon'ble Apex Court.

4. Now, this application is filed by the appellant No.1 on the ground that his father expired on 20/02/2025 at 08.00

a.m. and there is no other male member in the Family to perform his last rites and therefore, he be released on interim bail to perform the last rites ceremony of his father.

5. The said application is strongly opposed by the State on the ground that considering the circumstances under which the appellant was prosecuted, and on the basis of appellant is convicted, the application deserves to be rejected.

6. Heard learned counsel for both the parties. Perused the earlier order passed by this Court on the suspension of sentence. Now, the application is only filed on the ground that, he be permitted to attend the last rites of his father, who died today itself, and there is no other adult member in the family to perform the last rites. Admittedly, the appellant is behind bar, and now his father died, and considering the circumstance that there is no other male member in the family to perform the last rites, but the question is whether only that aspect would be sufficient to release him on a temporary bail. The fundamental right within the meaning of Article 21 of the Constitution of India is to be considered while considering the prayer of the present appellant/applicant.

The appellant/accused is the only male member in the family and he has every right to take part in the funeral ceremony of his parent, which will fall within the purview of Article 25 of the Constitution of India. Of course, this cannot be in absolute right, but as the appellant/applicant has already lost his father, and no prejudice will cause if he is released to attend the funeral or last rites of his father. In view of that, the

prayer of the present applicant/appellant deserves to be allowed.

7. The submission on behalf of learned counsel that since the appellant had prayed for temporary bail to participate in the last ritual, and he has to attend the other ritual also, and therefore, specific prayer was made to release the applicant on bail for temporary period.

8. In the above circumstances, considering that appellant/accused has to participate in the last rites of his father as well as other rituals also, he has to perform and therefore, on the humanitarian ground, his prayer deserves to be considered.

9. In support of his contention, he placed reliance in the case of ***Surendra Pundalik Gadling Vs Senior Inspector of Police [2021 SCC OnLine Bom 3679]***, wherein Division Bench of this court has considered this aspect and observed that in the prevailing social conduct the first death anniversary of an immediate family member has an element of religious, personal and emotional supplement. The appellant has not been able to participate in the delay of rights rituals in connection with death of his mother.

10. In the light of the above observations in the present case also, the appellant has lost his father having regard to the above circumstances and considering he is the only male member in the family, and there is reasonable ground to believe that the appellant has made out a case of temporary

bail. However, some condition requires to be imposed. Considering the same, I proceed to pass following order.

ORDER

- a] The application is allowed.
- b] The appellant – Amol Pandurang Borkar shall be released on temporary bail from 20/02/2025 till 07/03/2025 purely on humanitarian ground to attend the last ritual and other rituals, which are to be performed within 15 days on furnishing P.R. Bond in the sum of Rs. 50,000/- with one or two sureties in the like amount to the satisfaction of this Court.
- c] The appellant shall attend Lakadganj Police Station once in a day from 21/02/2025 till 06/03/2025 between 10.00 to 02.00 p.m. and the Lakadganj Police Station shall record his presence.
- d] The appellant shall surrender before the Central Prison, Nagpur on 07/03/2025 at 11.00 a.m
- e] The appellant shall not leave the limits of Nagpur District
- f] The relatives of the appellant shall produce the death certificate declaring him death before Superintendent of Central Prison, Nagpur to show the aspect of the death of his father.
- g] Application is **disposed of**

- h] The order be immediately communicated to Jail Superintendent Central Prison Nagpur.
- i] The Registrar (Judicial) shall accept the surety forthwith.

[URMILA JOSHI-PHALKE, J.]