



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION NO.266 OF 2025

IN

CRIMINAL APPEAL NO.143 OF 2025

SURENDRA @ NANU S/O SHESHMAN PATEIL – IN JAIL

VS

STATE OF MAHARASHTRA THR PSO. PS. GITTIKHADAN, NAGPUR

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

Court's or Judge's order

Mr. S.V. Bhutada, Advocate for the applicant/s
Mr. Sagar Ashirgade, Addl. P.P. for the non-applicant/State

CORAM : ANIL S. KILOR AND PRAVIN S. PATIL, JJ.

DATE : 21th APRIL, 2025

1. This is an application filed under Section 389 of the CrPC for suspension of sentence and to grant bail.

2. In this appeal, a challenge is raised to the legality and correctness of the judgment and order dated 26.12.2024, passed by Additional Sessions Judge-9, Nagpur in Sessions Case No.616 of 2019, convicting the applicant/appellant-Surendra @ Nanu, along with the accused No.1-Raja, for the offence punishable under Section 302 read with 34 of the Indian Penal Code and directed to suffer Rigorous Imprisonment for life and to pay fine of Rs.5,000/- each and in default, to suffer Simple Imprisonment for 6 months. Further, the applicant along with the accused No. 1 convicted for the offence punishable under Section 294 read with 34 of the Indian Penal Code and directed to

suffer Rigorous Imprisonment for 3 months. The applicant and co-accused have been acquitted for the offence punishable under Section 4/25 of the Arms Act.

3. It is the case of the prosecution that the informant-Dinesh and the deceased-Anand @ Baba Chaudhari were the neighbour. It is stated in the report that on 23.06.2019 at about 7.00 p.m. when the informant was talking with one Yogesh Somkuwar, the deceased joined them and in between one white car came there. The accused No.1-Raja and accused No.2-Surendra @ nanu (the present applicant) were inside the car. The accused No.1 hurled abuses through the window of the car and thereafter, both the accused got down from the car and proceeded towards pan shop where the deceased was standing. Then, the accused No.1 went towards the deceased Baba who also came towards him. Then, the accused No.1 took out the knife from the waist of the present applicant and inflicted a blow in the stomach of the deceased. It is stated that thereafter, accused No.1 ran away from the spot of occurrence. Then, the deceased was taken to the Mayo hospital where he was declared as dead.

4. We have heard the learned counsel for the applicant and the learned Addl. PP for the State.

5. The learned counsel for the applicant points out that

except the allegation that the applicant was present on the spot of occurrence and the accused No.1 took out the knife from his waist and inflicted a blow on the stomach of the deceased, there is no role or any overtact attributed to the present applicant. He therefore, points out the deposition of Dinesh @ Papa Ramraj Yadav-informant (PW 2), who admitted that though he told to the police that Raja took out the knife from the waist of Nanu, it is not mentioned in the statement given to the police.

6. The learned counsel for the applicant further points out the cross-examination of the Investigating Officer, wherein he deposed that the informant did not tell him that Raja took out the knife from the waist of Nanu. He therefore, submits that as there is nothing against the present applicant, the learned trial Court committed error in convicting him and accordingly, he prayed for granting suspension of sentence and bail to the applicant.

7. On the other hand, the learned Addl.PP strongly opposed the application and submits that the offence is serious and as the trial Court has held against the applicant, hence, this Court may not suspend the sentence.

8. We have perused the record and the judgment, convicting the applicant under Sections 302 and 294 of the IPC. From the case of the prosecution as well as from the

oral evidence of the witnesses, it is evident that no role or any overtact is attributed to the applicant in the alleged offence. Except the presence of the applicant, there is nothing to show that there was any motive or intention of the applicant to commit murder of the deceased.

9. Furthermore, considering the evidence of the Investigating Officer as well as the informant (PW 2), it is evident that in the statement of the informant given under section 161 of the CrPC, there is no mention of the alleged fact that the accused No.1 took out the knife from the waist of the applicant and inflicted a blow in the stomach of the deceased, because of which he died.

10. Thus, after considering findings recorded by the learned Additional Sessions Judge in the judgment, we are of the opinion that applicant-appellant is having arguable case and reappreciation and reappraisal of the evidence is necessary in the present case. There is no likelihood that this matter would come up for final hearing in near future. Accordingly, I pass the following order:

- i. The Criminal Application is **allowed**.
- ii. The sentence imposed by the learned Additional Sessions Judge-9, Nagpur in Sessions Case No. No.616 of 2019, vide judgment and order dated 26.12.2024, is suspended qua the present applicant-

Surendra @ Nanu s/o Sheshman Patel, till disposal of the appeal.

iii. Bail as in the trial Court with fresh Bond.

The application is disposed of accordingly.

(PRAVIN S. PATIL, J.)

(ANIL S. KILOR, J.)