



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

CRIMINAL APPLICATION NO.475 OF 2025

IN

CRIMINAL APPEAL NO.265 OF 2025

(Maroti s/o Laxman Nehare Vs. The 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.D. Patil, Advocate for the appellant.
Ms S.S. Dhote, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JULY 22, 2025.

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

2. The appellant was prosecuted of the offence punishable under Section 302 read with Section 34 of the Indian Penal Code on an allegation that on the day of incident, the present appellant along with the other co-accused on account of previous dispute assaulted the deceased Roshan with an axe, small crowbar, stick and barked stick and caused his death. On the basis of the said report, police have registered the crime against the present appellant and the other co-accused. After completion of the investigation, the charge-sheet was filed and the evidence is adduced by the prosecution. On the basis of the evidence, learned trial Court held that the appellant is guilty of the offence punishable under Section

304 Part-II read with Section 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs.70,000/- in default of payment of fine he shall suffer rigorous imprisonment for one year. The fine amount is not paid by the present appellant.

3. Learned Counsel for the appellant submitted that as far as the role of the present appellant is concerned, which is limited to the extent that he has assaulted by means of crowbar. There is general allegation levelled by the eye-witness who is the informant in the said incident namely Jyoti. On the basis of the said evidence, the trial Court has held the appellant guilty. In fact, the general allegation is levelled by the eye-witnesses that the present appellant and other co-accused have assaulted the deceased, and therefore, the deceased has sustained the injury i.e. fracture of mandible and contusion to the pinna. However, the death of the deceased is caused due to the rupture of the spleen. The evidence on record shows that he was a heavy drinker and that may be the reason of expansion of the spleen and due to the fall also the spleen can be ruptured. Thus, the appellant is having many chance of success in the present appeal but the appeal would take its own time for its final disposal. In the meantime, if sentence is executed the purpose of preferring the appeal would frustrate. In view of that, he be released on bail and the execution of sentenced be suspended.

4. Learned APP strongly opposed the application on the ground that at this stage the evidence is not to be assessed. What is to be seen whether there is any possibility of acquittal of the present appellant on the basis of the evidence recorded before the trial Court. She submitted that considering there is consistent evidence as to the assault on the deceased by the eye-witnesses on the basis of which the appellant is convicted, therefore, the application deserves to be rejected.

5. I have heard learned Counsel for both the parties and perused the entire record especially the evidence of the eye-witnesses. There is allegation that the present appellant and the other co-accused in furtherance of their common intention assaulted the deceased and deceased succumbed to the death. It is also evidence on record that the present appellant was in habit of drinking alcohol. The evidence of Medical Officer also supports the said contention. The evidence of the eye-witnesses also shows that present appellant as well as other co-accused have assaulted by means of stick, crowbar and the wooden log. As far as the external injuries sustained by the deceased is concerned it is a fracture of mandible and the contusion on pinna. Even accepting the allegation as it is, it can be considered that the said injuries are possible by crowbar which is which is attributed to the present appellant. At the stage of considering the application for suspension of sentence, the observation of the Hon'ble

Apex Court in the case of ***Omprakash Sahni Vs. Jai Shankar Chaudhary in Criminal Appeal No.1331-1332/2023 decided on 02/05/2023*** along with the connected appeals dealt with the aspect of suspension of sentence in para No.33 which is reproduced hereunder :

“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 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.”

6. By applying this principle to the present matter, it appears that the appellant has pointed out from the impugned judgment as well as from the evidence that he has many chances of success in the present appeal. The appeal would take its own time for its final disposal. In the meantime, if sentence is executed the purpose of preferring the appeal would frustrate. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass following order :

(i) The application is allowed.

(ii) The execution of the sentence vide order dated 30/08/2024 passed by the Additional Sessions Judge, Wardha in Sessions Case No.43/2015 is hereby suspended till final disposal of the appeal.

(iii) The appellant – Maroti s/o Laxman Nehare be released on bail on executing P.R. Bond in the sum of Rs.50,000/- (Rs. Fifty thousand) with one surety, in the like amount on condition that he shall deposit 50% of the fine amount before the trial Court within four weeks.

7. The application stands disposed of.

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Heard.

2. **ADMIT.**

3. Learned APP waives notice for the State.

4. R. & P. is already received.

5. Place the appeal before the Court after preparation of the paper book.

(URMILA JOSHI-PHALKE, J.)

**Divya*