



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

CRIMINAL APPLICATION (APPA) NO.316 OF 2025
IN
CRIMINAL APPEAL NO.166 OF 2025

Baban Shamrao Shinde and another
Vs.
State of Maharashtra through Police Station Officer, Police Station
Washim (Rural)

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

Court's or Judge's orders

Mr. R. M. Daga, Counsel for the appellants.
Mr. Anant Ghogre, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 03/04/2025

1. By this application, the appellants are seeking suspension of sentence and releasing them on bail in connection with Crime No.32/2024 registered with Police Station Washim (Rural) for the offence punishable under Sections 302, 304-B, 498-A read with Section 34 of the Indian Penal Code.

2. The appellants were prosecuted for the offence punishable under Sections 302, 304-B and under Section 498-A read with Section 34 of the Indian Penal Code. The present appellants are the in-laws of the deceased. The crime is registered on the basis of the report lodged by uncle of the deceased alleging that the present appellants, who are in-laws of the deceased harassed her by

demanding the amount of Rs.5,00,000/- for purchasing the vehicle and due to the harassment she was assaulted and caused her death. On the basis of the said report, police have registered the crime. After completion of the investigation, the charge-sheet was submitted.

3. Learned Counsel for the appellants submitted that during the trial, the evidence was adduced by examining as many as 11 witnesses. The entire evidence adduced against the present appellants is of a general nature. No specific instances are narrated by any of the witnesses. Merely because they are family members and residing in the same house, they are arraigned as an accused. The appeal would take its own for its final disposal. The appellants are old aged persons. Considering the nature of the evidence against them, the appellants have every chance of success in the present appeal, but in the meantime, if sentence is executed, the appeal would become infructuous. In view of that, they be released on bail by suspending the sentence.

4. Learned APP opposed the said application and submitted that considering the allegation against the present appellants and the evidence adduced to that effect which shows that the appellants continuously harassed the deceased and she was assaulted in the matrimonial house. The death of the

deceased is caused in the matrimonial house within seven years of marriage. The presumption is also attracted against them. The appeal is devoid of merits. In view of that, the application for suspension of sentence deserves to be rejected.

5. On hearing both sides and on perusal of the impugned judgment as well as the evidence which is produced on record for the perusal shows that the appellants are acquitted for the offence punishable under Section 302 of Indian Penal Code but they are held guilty for the offence punishable under Sections 304-B of Indian Penal Code and sentenced to suffer rigorous imprisonment of 8 years each and also convicted for the offence punishable under Section 498-A of the Indian Penal Code and sentenced to suffer rigorous imprisonment for two years each and fine of Rs.2000/- each, in default of payment of fine, simple imprisonment for seven days each.

6. On perusal of the evidence and the impugned judgment it reveals that the submissions made by the learned Counsel for the appellants has some substance that he is having chance of success in the present appeal. Moreover, the appeal would take its own time for its final disposal. In the meantime, if sentence is executed then the appeal would become infructuous. As far as the suspension of sentence is concerned, admittedly, at this stage

reappreciation of the evidence is not permissible. What is to be seen whether the applicant has any chance of success in the present appeal.

7. 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** by referring its various decisions it is 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.”

8. In the above observation of the Hon’ble Apex Court and after considering the facts of the present case, the appellants have succeeded in showing that they have many chance of success in the present appeal. In view of that, the application for suspension of sentence 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 Trial No.37/2024 is hereby suspended till disposal of the appeal.
- (iii) The appellant **No.(1) Baban Shamrao Shinde and No.(2) Parvatabai Baban Shinde** shall be released on bail on executing PR Bond in the sum of Rs.25,000/- each with one solvent surety of the like amount.

The application is disposed of.

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- 1. Heard.
- 2. **Admit.**
- 3. Learned APP waives notice for the State.
- 4. Call for record and proceedings.

(6)

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

(URMILA JOSHI-PHALKE, J.)

Sarkate