



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

CRIMINAL APPLICATION NO.353 OF 2025

IN

CRIMINAL APPEAL NO.189 OF 2025

(Gajanan Latari Tonge and ors. 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. Y.R. Kinkhede, Advocate for the appellants.
Mr. C.A. Lokhande, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JULY 7, 2025.

By this application, the appellants are seeking suspension of sentence and releasing them on bail.

2. Learned Counsel for the appellants submitted that the appellants were prosecuted of the offence punishable under Sections 307 read with Section 34 of the Indian Penal Code. After appreciating the evidence adduced before the trial Court, the trial Court held all the appellants guilty of the offence punishable under Section 307 of IPC and sentenced to suffer rigorous imprisonment for 7 years and fine of Rs.2000/- in default rigorous imprisonment for three months each for the offence punishable under Section 307 read with Section 34 of the IPC.

3. Being aggrieved and the dissatisfied with the same, present appeal is preferred along with the

application for suspension of sentence.

4. Learned Counsel for the appellants submitted that there was a previous dispute between both the parties. Out of that previous dispute, in a sudden fight sudden quarrel, the injured has sustained the injuries. He is discharged from the hospital immediately thereafter. Thus, there was no intention to cause the death of the said injured. The Medical Officer has also not mentioned in the MLC that the injuries sustained by the injured are sufficient to cause death in the ordinary course of nature. Thus, there are many arguable points in the present appeal. The appeal would take its own time for its final disposal. In the meantime, if sentence is executed, the appeal would become infructuous.

5. Learned APP strongly opposed the same on the ground that considering the evidence on record i.e. the evidence of the eye-witnesses which makes out the case against the present appellants. The appeal itself is devoid of merits and liable to be rejected. In view of that, the application for grant of bail deserves to be rejected.

6. I have heard learned Counsel for both the sides and on perusal of the evidence on record it reveals that as far as appellant Nos.2 and 3 are concerned except their presence no overt act is attributed to them. As far as appellant Nos.1 and 4 are concerned specific role is attributed to them. At this stage, re-appreciation of the

evidence is not permissible but the Court has to see whether the appellant has *prima facie* case to show that they are having chances of acquittal in the present appeal. This aspect is considered by the Hon'ble Apex Court in the case of ***Omprakash Sahni Vs. Jai Shankar Chaudhary [(2023) 6 SCC 150]*** wherein the Hon'ble Apex Court by referring the various decisions held as under:

“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.”

7. In view of above observation of the Hon'ble Apex Court if the evidence which is produced before the Court is seen, there is specific evidence as far as appellant Nos.1 and 4 are concerned. As far as the role of appellant Nos.2 and 3 are concerned admittedly, they have made out of case for suspension of sentence. Accordingly, I proceed to pass following order :

(i) The application is partly allowed.

(ii) The application in respect of appellant Nos.1 and 4 is hereby rejected.

(iii) The execution of the sentence vide order dated 13/03/2025 passed by the Additional Sessions Judge-2, Kelapur, District Yavatmal in Sessions Case No.47/2011 is hereby suspended in respect of appellant Nos.2 and 3, till final disposal of the appeal.

(iv) The appellant Nos.2 and 3 by name 2) Vinod Gajanan Tonge and 3) Pramod Gajanan Tonge be released on bail on executing PR. Bond in the sum of Rs.25,000/-

(Rs. Twenty Five thousand) each with one surety each, in the like amount.

8. The application stands disposed of.

CRIMINAL APPEAL NO.189 OF 2025

Heard.

2. **ADMIT.**

3. Learned APP waives notice for the State.

4. Call for R. & P.

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

(URMILA JOSHI-PHALKE, J.)