



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

CRIMINAL APPLICATION NO.381 OF 2025

IN

CRIMINAL APPEAL NO.211 OF 2025

(Akash s/o Gunwanta Tijare 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

Ms A.M. Jaltare, Advocate for the appellant.
Ms S.V. Kolhe, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- APRIL 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 307 of IPC on an allegation that the informant is doing a labour work prior to one and half months before lodging of the report. On 31/01/2023 there was wedding procession in the family of Sunil Gajbhiye and sound system was on, at that time, there was dispute between the informant and present appellant. During that incident, he was assaulted by means of knife. On the basis of the said report, police have registered the crime against the present applicant. During investigation, the involvement of the present appellant is revealed. After completion of the investigation, the charge-sheet was filed.

3. On appreciation of the evidence the learned trial Court held the present appellant guilty of the offence

punishable under Section 307 of the IPC and sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.5000/- in default to suffer simple imprisonment for three months.

4. Learned Counsel for the appellant has pointed out from the impugned judgment that there is contradiction between the oral evidence and the medical evidence. He also pointed out from the cross-examination that the Medical Officer specifically observed that the injuries sustained by the injured are not possible by the weapon like knife. Thus, he has many arguable points in the present appeal. Moreover, the punishment imposed is of a limited period. 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 execution of the sentence be suspended.

5. Learned APP strongly opposed the application on the ground that considering the evidence of the injured who was assaulted by the present appellant by means of knife. Thus, no ground is made out for suspension of sentence.

6. I have heard learned Counsel for both the parties and on perusal of the impugned judgment and the evidence on record, the PW-1 is the injured witness who has narrated about the alleged incident. During his

cross-examination some admissions are also brought on record by the defence Counsel. Much stress is upon the medical evidence, and therefore, the learned Counsel for the appellant has pointed out from the evidence of PW-5 Dr. Shashank Gopalsingh Rathod who has admitted during his cross-examination that if the assault is by the knife it will cause stab injury and the injured has not sustained the stab injury. Similarly, the Medical Officer PW-8 has also admitted the same. Thus, he pointed out that he has many arguable points in the present appeal. Admittedly, at this stage, re-appreciation of the evidence is not permissible. What is to be seen is whether the appellant has any chance of success in the present appeal of acquittal. Said aspect is also dealt by 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 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.

7. In view of the observation of the Hon'ble Apex Court, the appellant has made out a case for suspension of sentence. 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 08/04/2025 passed by the Additional Sessions Judge-3, Nagpur in Sessions Case No.284/2023 is hereby suspended till final disposal of the appeal.

(iii) The appellant – Akash s/o Gunwanta Tijare be released on bail on executing P.R. Bond in the sum of Rs.25,000/- (Rs. Twenty Five thousand) with one surety, in the like amount.

(iv) The appellant shall attend the court of Additional Sessions Judge, Court No.4, Nagpur on 1st day of every month, till disposal of the appeal and the trial Court shall record his presence.

8. The application stands disposed of.

CRIMINAL APPEAL NO.211 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.)