



A-667-2025

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

CRIMINAL APPLICATION NO. 667 OF 2025
IN CRIMINAL APPEAL NO. 380 OF 2025

(Santosh Hiralal Shahu Vs. State of Maharashtra)

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

Court's or Judge's orders.

Mr. A.V. Bobde with Ms Shubhada Jadhao, Counsel for the
applicant/appellant.

Mr. S.S. Doifode, A.P.P. for the non-applicant/respondent/State.

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CORAM : ANIL L. PANSARE AND
RAJ D. WAKODE, JJ.
DECEMBER 1, 2025

The applicant – original accused no.1 has filed the application under Section 430 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), seeking suspension of sentence. The applicant and the co-accused have been convicted for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (IPC).

2] The applicant and co-accused have, on 9/11/2020, committed murder of one Anil Palkar by assaulting him with knife and by kicks and fists blows.

3] The co-accused had filed similar such application vide Criminal Application No. 585/2024 In Criminal Appeal No. 327/2024. The Division Bench (Coram : Anil S. Kilor and Pravin S. Patil, JJ.) rejected the application finding that there is an eye witness. The relevant findings are as under :

“13. We have perused the record and the impugned judgment and order. PW. 1 is the eyewitness who has given complete account

about the commission of the offence. The learned trial Court has considered the ocular evidence of the PW. 1 in detail. Other eyewitnesses though not supported the prosecution case, however, it can be seen that P.W. 2 admitted that he himself, Anil Palkar, P.W. 1 and one other person had come to Gopal Nagar from the Farmhouse of Anil Palkar. He further speaks about the fact that they went near the Grocery Shop and also stated that the accused No.1 came on the spot and assaulted the deceased.

14. Thus, the evidence of P.W. 1 can be said as reliable evidence which has attributed the specific role to accused Nos. 1 and 2 in the commission of the offence.”

4] We have gone through the evidence of PW1 – Zuber. The quarrel occurred between accused persons and the deceased on a petty matter. The deceased was quarreling with a local vendor selling coconut on road. The accused persons came at the spot and asked the deceased as to why is he abusing the vendor. Thereafter, the accused persons and the deceased indulged into scuffle. The first accused, i.e., the applicant, went in grocery shop and came back with a knife and assaulted the deceased. Thereafter, accused no.2 took the knife from the hands of the applicant and further assaulted the deceased, who suffered sixteen injuries. The cause of death is multiple injuries on vital part. Thus, the applicant and co-accused targeted vital part of the body.

5] The argument put forth by the learned Counsel for the applicant is that since, the quarrel occurred at the spur of moment, the case will fall under exception to Section 300 of the IPC. He submits that the applicant has a good case because he was provoked by the deceased.

6] We, however, do not find that the evidence is indicating such status. There is absolutely nothing in the testimony of PW1 to show that on provocation, the applicant and co-accused have assaulted the deceased.

7] We have gone through the cross-examination as well to find that PW1 has withstood the same.

8] The Hon'ble Supreme Court in the case of *Om Prakash Sahni Vs. Jai Shankar Chaudhary and another* [2023 (6) SCC 123], wherein, the Court, after taking note of the settled principles of law, held thus :

“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.”

9] In the present case, considering the evidence of PW1 as also the reasons assigned by the Coordinate Bench of this Court while rejecting the application of the co-accused, we are of the considered view that the applicant has failed to make out a case.

10] The application is, accordingly, rejected.

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11] Process the appeal for hearing in accordance with Rules.

12] To be heard along with Criminal Appeal No. 327/2024.

(JUDGE)

(JUDGE)

Sumit