



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

CRIMINAL APPLICATION (APPA) NO. 637 OF 2025
IN
CRIMINAL APPEAL NO. 359 OF 2025
Mukeshlalaji Mahato 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. C.B. Barve, Advocate for the Applicant/Appellant.
Mr. S.S. Doifode, APP for the Respondent/State.

CORAM : ANIL L. PANSARE AND RAJ D. WAKODE, JJ.
DATE : 3rd DECEMBER, 2025.

The applicant/appellant has filed the application under Section 430 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), seeking suspension of sentence. The applicant has been convicted for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (IPC).

2. We have gone through the evidence. There are three eyewitnesses viz. PW-4, PW-5 and PW-6. Their testimony is consistent. Their evidence indicates that the victim, a minor, had quarrel with the son of the applicant, who is also a minor and is being tried separately before the Juvenile Justice Board. The trial is pending.

3. As stated earlier, there occurred quarrel between the minor co-accused and the victim. They indulged into a scuffle. Their friends separated them away. The minor co-accused went back but while going threatened the victim of seeing him again.

The victim and his friends were then sitting in a lane. After about half an hour, the applicant, minor co-accused, and other juvenile came on motorcycle and scooty. They all got down and rushed towards the victim and started beating him. At that time, the minor co-accused took out knife and assaulted victim on buttock. The applicant and another juvenile continued beating him. The friends of the victim pleaded to let him go. Thereafter, the assailants/accused ran away. These witnesses have withstood the cross-examination. Thus, there is no reason to disbelieve their testimony.

4. In addition to above, there is another witness, PW-14, who came at the spot after the incident. He was removing the victim to the hospital and while taking to hospital, the victim disclosed to him that he was assaulted by the applicant, his son (co-accused) and the third juvenile. Thus, the testimony of three eyewitnesses is further substantiated by oral dying-declaration.

5. The argument is that the applicant has been convicted taking aid of Section 34 of IPC. The trial of juvenile (co-accused) has not yet commenced and, therefore, the finding is erroneous. Another limb of argument is that the assault itself was not on the vital part and, therefore, there was no intention to commit murder.

6. As against, learned APP submits that there is no bar to conduct trial of an accused where the trial of co-accused (juvenile) is pending before another forum.

7. We agree with this submission. The applicant could not point out to us any provision by which there constitutes a bar to commence and conclude the trial of an accused where the trial of co-accused (juvenile) is pending. So far as the conviction of the applicant, taking aid of Section 34 of IPC is concerned, considering the evidence, the finding appears to us to be in tune with law of evidence.

8. The clinching evidence against the applicant is that he has accompanied his son to commit a crime. Thus, the crime was premeditated. The applicant accompanied his son and his son's friend. Most importantly, all the three rushed towards the victim and started beating him. The applicant did not make any effort to prevent his son from inflicting injury with knife; rather, he continued beating the victim while his son was inflicting injury. Thus, the evidence indicates a common intention in terms of Section 34 of IPC.

9. The Hon'ble Supreme Court in ***Om Prakash Sahni Vs. Jai Shankar Chaudhary and another [2023 (6) SCC 123]***, while expanding law on suspension of sentence, 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.”

10. Thus, the Court is under an obligation to see 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 a fair chance of acquittal. If the answer is in the affirmative, the sentence should be suspended.

11. In the present case, for the reasons stated above, we do not find that there are fair chances of acquittal, rather the evidence indicates otherwise. It's a different matter to consider whether the case falls in exception, which will be considered at the time of final hearing. However, on the question of acquittal, the chances appear to us to be remote.

12. That being so, there is no merit in the application. The same is accordingly rejected.

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13. Process the appeal for hearing in accordance with Rules.

(RAJ. D. WAKODE, J.)

(ANIL L. PANSARE, J.)