



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

CRIMINAL APPLICATION (APPA) NO. 991/2025

IN

CRIMINAL APPEAL NO. 611/2024

**Amol s/o Pandurang Borkar Vs. State of Maharashtra, Through Police Station
Officer, Police Station Lakadganj, Nagpur**

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. Sunil Manohar, Senior Advocate a/b Mr. U.P. Dable, Advocate for Applicant / Appellant
Mrs. H.N. Prabhu, APP for Respondent

CORAM: NIVEDITA P. MEHTA, J.

DATED : 24th DECEMEBER 2025

1. The present application is filed under Section 430 of the Bharatiya Nagarik Suraksha Sanhita, 2023, by the applicant seeking suspension of the substantive sentence imposed upon him pending disposal of the appeal. The applicant was convicted by the learned Adhoc District Judge-6 and Additional Sessions Judge, Nagpur, in Sessions Case No. 49/2015, vide judgment and order dated 18.10.2024.

2. The applicant stands convicted and sentenced as under:

(i) Section 304-B of the Indian Penal Code – sentenced to suffer rigorous imprisonment for 10 years and to pay a fine of Rs.5,000/-, in default to suffer rigorous imprisonment for six months;

(ii) Section 498-A read with Section 34 of the Indian Penal Code – sentenced to suffer rigorous imprisonment for two years and to pay a fine of Rs.3,000/-, in default to suffer rigorous imprisonment for one month.

3. This is the second application for suspension of sentence. The earlier application, being Criminal Application (APPA) No. 1057/2024, came to be rejected by this Court by order dated 10.01.2025. The said order was carried to the Hon'ble Supreme Court, which by order dated 28.02.2025, passed in the Special Leave Petition, observed as under:

“At this stage, learned counsel for the petitioner does not wish to press this Special Leave Petition seeking liberty to renew the prayer before the High Court after nine months.

Accordingly, the Special Leave Petition is dismissed as not pressed with liberty as prayed for.”

4. Learned Senior Counsel appearing for the applicant submits that the applicant was on bail throughout the course of the trial and has not misused the liberty so granted at any point of time. It is contended that the applicant has scrupulously complied with all the conditions imposed by the trial Court, which itself demonstrates that he is not likely to abscond or misuse liberty if the sentence is suspended.

5. Learned Senior Counsel further submits that while rejecting the earlier application for suspension of sentence, this Court has, in paragraph 9 of the said order, itself recorded certain material aspects of the prosecution case. It is pointed out that the marriage between the applicant and the deceased was solemnized on 07.06.2014, whereas the death occurred on 09.09.2014. Though the parents of the deceased have alleged that she was subjected to ill-treatment on account of demand of Rs.2,00,000/- for purchase of a vehicle, no specific instances, dates, or particulars of such alleged cruelty have been brought on record. According to the learned Senior Counsel, the evidence led by the prosecution remains vague and general in nature and lacks the specificity required to attract the provisions of Section 304-B of the Indian Penal Code.

6. With regard to the medical evidence, learned Senior Counsel has drawn attention to the testimony of PW-11, the Medical Officer, who has categorically stated that no external injuries were found on the person of the deceased when she was brought to the hospital. He further invited the attention of this Court to the evidence of PW-12, Assistant Professor in the Department of Forensic Medicine and Toxicology, who conducted the post-mortem examination. During cross-examination, PW-12 admitted that the age of the injuries mentioned in the post-mortem report was not specified, though it could have been mentioned. He

further stated that the colour of injuries depends upon the skin colour of the injured person and candidly admitted that he could not state the skin colour of the deceased Sonali prior to her death. According to the learned Senior Counsel, these admissions create serious doubt regarding the medical opinion relied upon by the prosecution.

7. Learned Senior Counsel further submits that there is no cogent evidence on record detailing the alleged demand of dowry. The prosecution witnesses have made only general and omnibus allegations regarding demand, without establishing that the deceased was subjected to cruelty or harassment soon before her death, which is a sine qua non for invoking Section 304-B of the IPC.

8. It is also pointed out that the Chemical Analyzer's report categorically reveals that no poison was detected in the viscera collected during the course of investigation, thereby ruling out poisoning and further weakening the prosecution case.

9. On the aforesaid grounds, learned Senior Counsel submits that the essential ingredients of Section 304-B of the IPC are not prima facie attracted. In the absence of proof of specific acts of cruelty or harassment soon before death, the presumption under Section 113-B of the Indian Evidence Act cannot be mechanically invoked, and consequently, Section 106

of the Indian Evidence Act would also not come into play.

10. In support of his submissions, learned Senior Counsel has placed reliance on the judgment of the Hon'ble Supreme Court in *Karan Singh v. State of Haryana, reported in 2025 SCC OnLine SC 214*, to contend that vague and general allegations, uncorroborated by independent or medical evidence, are insufficient to sustain a conviction under Section 304-B of the IPC.

11. It is lastly submitted that the applicant has an arguable case on merits, and has already undergone incarceration for about one year and ten months. In these circumstances, learned Senior Counsel submits that continued detention of the applicant during pendency of the appeal would cause serious prejudice, and therefore prays that the substantive sentence be suspended pending final disposal of the appeal.

12. Per contra, learned Additional Public Prosecutor submits that the earlier application for suspension of sentence was rejected and, in the absence of any substantial change in circumstances, the present application is not maintainable. It is contended that at this stage the Court cannot reassess the evidence, as that would amount to reviewing the earlier order. She further submits that the death has occurred within a short period of marriage and, therefore, the presumption under Section 113-B of the Indian

Evidence Act squarely applies. It is also contended that the applicant being a legal professional, the possibility of misuse of liberty cannot be ruled out. Reliance is placed on the judgment in ***Ashok Punalik Gavade v. State of Maharashtra, reported in 2019 SCC OnLine Bom 155*** to contend that the second application for suspension of sentence is not maintainable.

13. I have carefully considered the rival submissions, perused the record, and examined the legal position governing suspension of sentence pending appeal. It is settled law that while considering an application for suspension of sentence, the appellate court is not expected to undertake a detailed re-appreciation of evidence, but is required to assess whether the appeal raises debatable and arguable issues, and whether continued incarceration of the convict during pendency of the appeal would cause undue prejudice.

14. The applicant was on bail throughout the trial and there is no material on record to indicate that he misused the liberty so granted. The Hon'ble Supreme Court, while dismissing the earlier Special Leave Petition, expressly granted liberty to renew the prayer after nine months. Thus, the present application cannot be said to be barred or not maintainable.

15. The submissions advanced by the learned Senior Counsel bring forth palpable and arguable

issues, particularly with regard to the nature of evidence relating to cruelty and harassment, the medical and forensic evidence, and the applicability of the statutory presumption under Section 113-B of the Evidence Act. These aspects cannot be conclusively determined at this stage and would require detailed examination at the time of final hearing of the appeal.

16. However, the reliance placed by the learned Additional Public Prosecutor on the decision in *Ashok Punalik Gavade v. State of Maharashtra* (Supra) does not advance the case of the prosecution in the facts of the present matter. In the said decision, the subsequent application for suspension of sentence was found to be impermissible in the absence of any liberty or change in circumstances, and where the second application was founded on the very same grounds which had been earlier considered and rejected. In the present case, the earlier order of rejection was carried to the Hon'ble Supreme Court, and the Special Leave Petition came to be dismissed as not pressed with express liberty to the applicant to renew the prayer after a stipulated period. The grant of such liberty constitutes a material and significant change in circumstance, entitling the applicant to seek reconsideration of the prayer for suspension of sentence.

17. Further, the present application is not a mere repetition of the earlier one, but is required to be examined in the light of the period of incarceration

already undergone by the applicant, coupled with the time likely to be taken for disposal of the appeal. The consideration of these factors does not amount to re-appreciation of evidence or review of the earlier order, but falls within the permissible scope of scrutiny under Section 430 of the Bharatiya Nagarik Suraksha Sanhita, 2023. Therefore, the ratio laid down in *Ashok Punalik Gavade* (supra) is clearly distinguishable on facts and does not operate as a bar to the maintainability or consideration of the present application.

18. The applicant has already undergone a substantial period of incarceration. Considering the pendency of criminal appeals and the time likely to be taken for final disposal, continued incarceration at this stage would result in irreversible prejudice, if ultimately the appeal succeeds.

19. The Hon'ble Supreme Court, in *Jamnala v. State of Rajasthan & Anr.*, SLP (Crl.) No. 69/2025, held thus:

“10. One would expected the High Court hearing an application under Section 389 of Cr.P.C. for suspension of sentence to examine prima facie there was anything palpable on the record to indicate if the accused had a fair chance of overturning the conviction in Omprakash Sahni v. Jai Shankar Chaudhary and Another; this Court had the following to say on the scope of Section 389 of the Cr.P.C.

“23. The principle underlying the theory of criminal jurisprudence in our

country is that an accused is presumed to be innocent till he is held guilty by a Court of competent jurisdiction. Once the accused is held guilty, the presumption of innocence gets erased. In the same manner, if the accused is acquitted, then the presumption of innocence gets further fortified.

24. From perusal of Section 389 CrPC, it is evident that save and except the matter falling under the category of sub-section (3) neither any specific principle of law is laid down nor any criteria has been fixed for consideration of the prayer of the convict and further, having a judgment of conviction erasing the presumption leaning in favour of the accused regarding innocence till contrary recorded by the Court of competent jurisdiction, and in the aforesaid background, there happens to be a fine distinction between the prayer for bail at the pre-conviction as well as the post-conviction stage viz. Sections 437, 438, 439 and 389(1) CrPC.

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 abovesaid 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 takes 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 CrPC and try to pick up a few lacunae or loopholes here or there in the case of the prosecution. Such would not be a correct approach.”

20. The principles laid down by the Hon’ble Supreme Court in *Jamnalal v. State of Rajasthan & Anr.*, (supra) clearly indicate that where the appellate court finds something palpable on record suggesting fair chances of success, suspension of sentence may be granted, subject to appropriate safeguards.

21. Without expressing any opinion on the merits of the appeal, and bearing in mind the seriousness of the offence, this Court is of the considered view that the balance tilts in favour of granting suspension of sentence, subject to stringent conditions to secure the presence of the applicant and to prevent misuse of liberty.

22. Accordingly, the application is allowed. The substantive sentence imposed upon the applicant by the learned Adhoc District Judge-6 and Additional Sessions Judge, Nagpur, in Sessions Case No. 49/2015, vide judgment and order dated 18.10.2024, is hereby suspended, subject to the following terms and conditions:

- I. The applicant / appellant shall be released on bail on furnishing PR bond of Rs.25,000/- with

solvent surety in the like amount before the trial Court.

II. The applicant shall report before the concerned trial Court on the first day of every calender month until further orders.

III. The applicant shall furnish his current residential address and mobile number to the concerned Sessions Court and shall inform the Court about change of address or contact number forthwith.

IV. The applicant shall appear before this Court at the time of final hearing of this Appeal.

The application shall stand disposed off.

CRIMINAL APPEAL NO. 611/2024

Heard.

ADMIT.

Issue notice to the respondent, returnable on
13.01.2026.

The learned APP waives service of notice.

Call for R & P

(NIVEDITA P. MEHTA, J.)