



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1197 OF 2026
IN
CRIMINAL APPEAL NO. 221 OF 2026

Ramdas Dattarao Wankhede

... Applicant

Versus

The State of Maharashtra

... Respondent.

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Mr. V.R. Dhorde h/f. Mr. Amol G. Kale, Advocate for Applicant.

Mrs. Saie Swapnil Joshi, APP for Respondent - State

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 22 APRIL 2026

PRONOUNCED ON : 24 APRIL 2026

ORDER :

1. Instant application is for suspension of sentence and grant of bail during pendency of appeal arising out of judgment and order of conviction dated 24.02.2026 passed by learned Sessions Judge, Hingoli in Sessions Case No. 22 of 2013.

2. It is submitted that, applicant was tried vide above sessions case for offence punishable under sections 307 and 504 read with section 34 of Indian Penal Code. That, on conviction, maximum sentence awarded is of five years. It is his further submission that, present applicant is accused no.2 and main accused his father is no more. He pointed out that, alleged incident in question has taken place on 14.12.2012, during which deceased

had laid the pipe for pumping water from the canal. That, accused persons, who had reached there, had objected and had insisted for removal, which resulted into heated altercation, followed by assault. It is submitted that, initially only deceased accused was present and he was said to be armed with sickle and he used it. That, as against present applicant, there are allegations of use of stick and chain, but injuries suffered are on the back and moreover simple in nature.

3. He further submitted that, here, there is strong case in appeal as there is variance in the testimony of PW1, PW2 and PW3, who are said to be crucial witnesses. Therefore, prosecution witnesses are not consistent. It is pointed out that, one of the medical expert has admitted the injuries to be as a result of fall from motorcycle. He further submitted that, applicant was granted bail by this court. That, initially crime was registered for offence punishable under section 324 of IPC, but subsequently it was converted into section 307 of IPC. As there are no immediate prospects of hearing the appeal, which is of the current year, he urges for relief of suspension of sentence and grant of bail.

4. Learned APP would strongly oppose on the ground that, on full-fledged trial and appreciation, conviction has been recorded for a grave offence of section 307 of IPC. According to her, there is direct eye witness account. That, offence of attempt of murder is proved. She would submit

that, section 34 of IPC has been invoked and there is specific observation to that extent in paragraph 42 and 43 of the judgment, and as such, it is her submission that, common intention is proved. That, there is use of article like stick and chain. According to her, in view of judgment in the case of ***Omprakash Sahni v. Jai Shankar Chaudhary & Anr.***, 2023 LiveLaw (SC) 389, the Hon'ble Apex Court has laid down the principles to be borne in mind while suspending the sentence and grant of bail and she specifically invited attention of this Court to the observations in clause no.6 of paragraph 30, which pertains to observation of the Hon'ble Apex Court in the case of ***Kishori Lal v. Rupa and Ors.*** (2004) 7 SCC 638 and would submit that, in view of above observations, relief as prayed may not be granted.

5. Heard. Perused the papers. Admittedly, present applicant is accused no.2 and he was charge sheeted and tried vide Sessions Case No. 22 of 2013 by the learned Sessions Judge, Hingoli and vide judgment and order dated 24.02.2026 charges for offence punishable under sections 307 and 504 read with section 34 of IPC are held to be proved and sentence of five years seems to be awarded by learned trial Judge.

6. Now, before this Court application is for suspension of sentence and grant of bail by invoking section 389 of Cr.P.C.. Relief is urged for primarily on the ground that applicant is accused no.2. Attention of this

court is invited to the medical certificate of the injured. Medical certificate shows there to be five injuries and injury nos.1 and 2 are attributed to deceased accused no.1, whereas remaining three injuries, which are certified to be simple in nature are attributed to present applicant, who is son of deceased.

7. The contention is raised that, when incident took place, that time only deceased accused no.1 was present and that presence of applicant later on, has not been seriously disputed at this stage, and merely it is submitted that, learned trial Judge has recorded a conviction by applying section 34 of IPC. Equally learned counsel for applicant would submit that, there is variance in the statement of PW1, PW2 and PW3. Therefore, there is point which needs to be addressed, but at the stage of appeal. There is no denial that the applicant was armed with stick/chain, but injuries attributed to him are contusion and are certified to be simple in nature. This court had granted bail and copy of order dated 31.01.2013 is placed on record. Statement is made across the bar that, applicant was on bail during trial and the operative part of trial Courts' judgment shows that, he was directed to surrender the bail bond. Resultantly, during trial applicant was on bail. At the time of incident, he was in his late twenties.

8. Though the citation of the Hon'ble Apex Court relied by the learned APP in the case of *Omprakash Sahni* (supra) in paragraph no. 33 on

comes across observations that, the endeavour on the part of the Court, therefore, should be to see as to whether the case presented by 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 and if the answer is in affirmative, as a necessary corollary it was said that, if ultimately the convict appears to be entitled to have an acquittal at the hands of the court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usual take very long for decision and disposal and it is cautioned that while undertaking the exercise to ascertain whether the convict has fair chance of acquittal, what is to be looked into is something palpable and it is further held that, to put it in other words, something which is very apparent or gross on the face of record, on the basis of which, the Court can arrive at a *prima facie* satisfaction that the conviction may not be sustainable. It is further added that, the appellate Court should not re-appreciate the evidence at the stage of section 389 of Cr.P.C. and try to pick up few lacunas or loopholes here or there in the case of the prosecution and such would not be a correct approach.

9. The above observation comes from the Hon'ble Apex Court in the case wherein there was challenge to the grant of suspension of sentence and grant of bail in the crime involving for offence punishable under sections 302, 120-B, 506 read with section 34 of IPC and section 27 of the Arms Act, 1959. Here, incident seems to have taken place all of a sudden

i.e. on account of laying pipe for drawing water from canal. Present applicant reportedly joined later and was not there since inception. Allegations against him are of use of stick/chain, but as stated above, medical evidence against him is for contusion and simple injuries. It is pointed out that, there is variance in the direct eye witness account on the point of occurrence and role. Learned Trial Judge seems to have applied section 34 of IPC and has convicted applicant also.

10. Therefore, keeping in mind the above principles laid down by the Hon'ble Apex Court, nature of accusations, role attributed to applicant for causing simple injuries, and that he was on bail during trial by virtue of order of this court itself, and more particularly appeal being of 2026, obviously as there are no immediate chances of hearing the appeal, relief of suspension of sentence and grant of bail deserves to be granted. Hence, the following order is passed :

ORDER

- I. Criminal Application stands allowed.
- II. The substantive sentence imposed on the applicant Ramdas Dattarao Wankhede in Sessions Case No. 22 of 2013 by learned Sessions Judge, Hingoli on 24.02.2026 stands suspended till the final hearing and disposal of Criminal Appeal No.221 of 2026.
- III. The applicant be released on P.R. Bond of Rs.15,000/- (Rupees Fifteen Thousand Only) with two solvent sureties in the like amount.

IV. The applicant shall not commit any criminal activity.

V. The applicant shall remain present before the learned trial Judge once in six months, till final hearing and disposal of the appeal, commencing from the date he tender bail papers and thereafter, the trial Judge to fix dates for his subsequent appearances.

VI. In case of two consecutive defaults on the part of the applicant to remain present before the trial court, the trial court to inform this court about the same and in that eventuality, the prosecution would be at liberty to file an application for cancellation of bail granted to the applicant.

VII. Bail before the trial court.

(ABHAY S. WAGHWASE, J.)