

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 3461 OF 2024
IN
CRIMINAL APPEAL NO. 946 OF 2024

Ganpat Daji Pawar. ...Applicant.

Versus

The State of Maharashtra. ...Respondent.

Mr. Umesh Rajesh Jamdar i/b Mr. C. R. Sonecha for the Applicant.
Mr. Shrikant Yadav, APP for the Respondent-State.

Coram : Madhav J. Jamdar &
Pravin S. Patil, JJ.

Date : March 7, 2026.

P. C. :

1. Heard learned Counsel appearing for the Applicant and learned APP for the Respondent-State.
2. This is an application for suspension of sentence imposed on the Applicant by learned Additional Sessions Judge, Vita, Taluka : Khanapur, District : Sangli in Sessions Case No.274 of 2024 9 (Old Sessions Case No. 17 of 2022) vide judgment and order dated 19th July 2024 and seeking release of the Applicant on bail.
3. It is the submission of learned Counsel appearing for the Applicant that the incident has taken place on a spur of moment when both, the Applicant, i.e., husband and the deceased, i.e., wife, were

under the influence of liquor. To substantiate his contention, he relies upon the evidence of PW-6-Dr. N. S. Pawar, who has deposed in the cross-examination that in the stomach of deceased, he had found dark fluid having smell of alcohol. Learned counsel also submits that the Applicant has no criminal antecedent and relief sought in the interim application be granted.

4. On the other hand, learned APP strongly opposed the relief sought in the interim application. He pointed out the evidence of PW-2, who is daughter of the sister of deceased. Her age at the time of testimony appears to be 5 to 6 years. She has stated in evidence that the Applicant and deceased were quarreling and the Applicant was demanding money from the deceased for liquor and in that quarrel, the incident had taken place.

5. Before considering the rival submissions, it is necessary to set out the parameters for considering the application under Section 389 of the Code of Criminal Procedure, 1973 as held by the Hon'ble Supreme Court in ***Shivani Tyagi v. State of U.P.***¹. The relevant paragraph is paragraph no.9, which reads as under :

“9. We have already referred to the mandate under Section 389 Cr.P.C. that the order passed invoking the said provision should reflect the reason for coming to the conclusion that the convicts are entitled to get suspended their sentence and consequential release on bail. In the decision in State of

1 2024 SCC OnLine SC 842

Haryana v. Hasmat, this Court held that in an appeal against conviction involving serious offence like murder punishable under Section 302, IPC the prayer for suspension of sentence and grant of bail should be considered with reference to the relevant factors mentioned thereunder, though not exhaustively. On its perusal, we are of the opinion that factors like nature of the offence held to have committed, the manner of their commission, the gravity of the offence, and also the desirability of releasing the convict on bail are to be considered objectively and such consideration should reflect in the consequential order passed under Section 389, Cr.P.C. It is also relevant to state that the mere factum of sufferance of incarceration for a particular period, in a case where life imprisonment is imposed, cannot be a reason for invocation of power under Section 389 Cr.P.C. without referring to the relevant factors. We say so because there cannot be any doubt with respect to the position that disposal of appeals against conviction, (especially in cases where life imprisonment is imposed for serious offences), within a short span of time may not be possible in view of the number of pending cases. In such circumstances if it is said that disregarding the other relevant factors and parameters for the exercise of power under Section 389, Cr.P.C., likelihood of delay and incarceration for a particular period can be taken as a ground for suspension of sentence and to enlarge a convict on bail, then, in almost every such case, favourable invocation of said power would become inevitable. That certainly cannot be the legislative intention as can be seen from the phraseology in Section 389 Cr.P.C. Such an interpretation would also go against public interest and social security. In such cases giving preference over appeals where sentence is suspended, in the matter of hearing or adopting such other methods making an early hearing possible could be resorted. We shall not be understood to have held that irrespective of inordinate delay in consideration of appeal and long incarceration undergone the power under the said provision cannot be invoked. In short, we are of the view that each case has to be examined on its own merits and based on the parameters, to find out whether the sentence imposed on the appellant(s) concerned should be suspended during the pendency of the appeal and the appellant(s) should be released on bail."

6. Thus, the Hon'ble Supreme Court has held that factors like the nature of offence held to have been committed, the manner of its commission, the gravity of offence, and also the desirability of releasing

the convict on bail are to be considered objectively and such consideration should reflect in the order passed under Section 389, of the Code of Criminal Procedure, 1973.

7. This is a case where admittedly both, the Applicant and deceased had consumed liquor when the incident took place. In this regard, it would be pertinent to refer to the deposition of PW-2 who is an eye-witness, who has deposed as under :

"My maternal aunt Kanta was residing near canal. At that time, I was residing with her. My mother was not there at that time. I can identify the hut and canal in photograph if shown to me. The accused was also residing with us. Quarrels used to take place between the accused and my maternal aunt. In one night, quarrel between the accused and my maternal aunt had taken place. I had seen that quarrel. The accused was demanding money from my maternal aunt for liquor. The accused had also beaten my maternal aunt. He was beating her by scythe (Koyata) and stick. He had given blows of scythe (Koyata) on the face of my maternal aunt and by stick on the knees of my maternal aunt. Due to the blows of Koyata, the blood was oozing from the face of my maternal aunt. My maternal aunt had tried to stop the blood by putting cloth bags on the wounds. My maternal aunt had not given money to the accused. At the time of quarrel, I had awakened from the sleep. After the quarrel, the accused had fled away. He had left the stick in the hut."

[Emphasis added].

8. Insofar as the manner in which the offence has been committed, it is relevant to refer to paragraph 53 of the impugned judgment and order dated 19th July 2024, which reads as under :

"53. If above legal preposition is considered, it is obvious from evidence on record that the accused has not committed the offence with previous planning and it was not pre-meditated murder. As the deceased was quarreling with the accused and she was also hurling abuses, the accused was mentally disturbed. It may be said that the offence was committed under influence of extreme mental and emotional disturbance....."

[Emphasis added].

9. Thus, the learned Additional Sessions Judge has observed that the Applicant has not committed the offence with previous planning and it was not a pre-meditated murder; and as the deceased was quarreling with the accused and she was also hurling abuses, the accused was mentally disturbed and thus the offence took place under the influence of extreme mental and emotional disturbance. It is also observed that the accused was not having criminal antecedents.

10. The Applicant is behind the bars since 24th September 2021 and considering the pendency of old appeals in this Court, appeal filed by the Applicant is not likely to come up for final hearing in near future.

11. Thus, in the facts and circumstances, the case is made out for suspension of sentence and release of the Applicant on bail during the pendency of appeal. Hence, we pass following order :

[a] The sentence imposed on Applicant by learned Additional Sessions Judge, Vita, taluka – Khanapur, district : Sangli vide judgment and order dated 19th July 2024 passed in Sessions Case No. 274 of 2024 (Old Sessions Case No. 17 of 2022) is suspended till the final disposal of Criminal Appeal No.946 of 2024.

[b] The Applicant be released on furnishing PR bond in the sum of Rs.25,000/- with one or more solvent sureties of like amount in connection with Sessions Case No. 274 of 2024 (Old Sessions Case No. 17 of 2022).

- [c] Till the disposal of Criminal Appeal, the Applicant shall report to the Trial Court on the 1st Monday of every quarter commencing from April 2026.
- [d] The Applicant shall attend this Court when the appeal is listed for final hearing.
- [e] The Applicant shall pay the fine as imposed by the trial Court, within one week from today.

12. Interim application stands disposed of.

[Pravin S. Patil, J.]

[Madhav J. Jamdar, J.]