

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.293 OF 2025
IN
CRIMINAL APPEAL NO.57 OF 2025

Krushna Dadasaheb Kamble	]	Applicant
versus		
The State of Maharashtra	]	Respondent

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Mr. Gaurav Bhawnani (through V.C.) a/w Mr. Rahul P. Sagar, for Applicant.

Ms. S.N. Deshmukh, A.P.P, for Respondent – State.

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CORAM : R.G. AVACHAT AND
AJIT B. KADETHANKAR, JJ.

DATE : 20th JANUARY, 2026.

ORAL ORDER: [PER R.G. AVACHAT, J.]:

1. Heard.
2. This is an application under section 389 of the Code of Criminal Procedure, 1973 (for short “Cr. P.C”) for suspension of substantive sentence imposed upon the applicant by the learned Sessions Judge,

Barshi in Sessions Case No.38 of 2019 vide his judgment and order dated 21st November, 2024 for the offence punishable under section 302 of the Indian Penal Code, 1860 (for short "I.P.C").

3. The applicant has been convicted for committing murder of an old lady from his very village and, therefore, sentenced to suffer imprisonment for life.

4. Learned Counsel for the applicant would submit that the case was based on circumstantial evidence. The only material that could be said to have connected the applicant with crime in question is so-called recovery of the spade. Pursuant to the disclosure statement made by the applicant, the spade found the blood stains of the blood group of the deceased. According to him, the motive was very scanty i.e the applicant apprehended that the deceased would lodge First Information Report against him for having committed theft of her cell phone. According to him, the applicant was just twenty years of age while the incident took place. He was on bail pending the trial. For little over three and half years, he is behind the bars. It will take time for the appeal to come up for final hearing. He, therefore, urged for grant of the application.

5. Learned A.P.P would, on the other hand, submit that the applicant committed an offence of murder of an old lady. Motive for commission of the offence was to prevent the deceased from lodging of crime against him for committing theft of her cell phone. She further adverted our attention to the evidence of one of the witnesses who testified that the deceased had informed him that the applicant had returned her cell phone. The deceased wanted to lodge the police report against the applicant and inform the same to some of the villagers. To prevent the said move, the applicant committed murder of the deceased. Then she invited our attention to the evidence of P.W.11 – Digambar Chavan who testified that at the relevant time, the applicant had been to his shop. He was in frightened state. According to the learned A.P.P, this is very much relevant as an incriminating circumstance. Then, she adverted our attention to the disclosure statement made by the applicant, pursuant to which, the spade came to be recovered from the field of the applicant's employer. According to her, Chemical Analyzer report indicates that spade to have stains of blood matching with blood group of the deceased. According to her, it being an offence of homicide and the applicant was behind the bars for just little over three years, the applicant may revive his prayer after a period of two years. She urges for rejection of the application.

6. We have considered the submissions advanced. Perused the relevant evidence on record. Admittedly, the case is based on the circumstantial evidence. The motive for the crime is that the applicant was alleged to have stolen the cell phone of the deceased. There is no concrete evidence to indicate that cell phone to have been recovered from the custody of the applicant. The evidence, on the contrary, indicates the cell phone have been found by the deceased. The statement of the deceased that she informed one of the witnesses that the applicant has returned her cell phone is how much relevant is a big question, because the statement of the deceased would only admissible in terms of section 32 (1) of the Indian Evidence Act, 1872. Although the same may be found to be somewhat relevant. There is evidence of some other witnesses to indicate that the deceased had told them the cell phone to have been found. She did not state in so many words that it was returned by the applicant back to her.

7. The prosecution heavily relied on the disclosure statement made by the applicant, pursuant to which, the spade was recovered. The blood stains were noticed on the spade, Chemical Analyzer report indicates that spade to have stains of blood matching with blood group of the deceased. According to him, disclosure statement was made three days

after the incident and two days after the arrest of the applicant. He would further submit that it is surprising as to how come the spade could be found within a radius of two or three feet from the crime scene after two to three days. According to him, this piece of evidence is, therefore, very much under clouds of suspicion.

8. Even, we accept the said disclosure statement as it is, it has been recorded in so many words therein that the applicant and the deceased were proceeding in a field. At that time, the deceased had abused the applicant in filthy language. It is the case of the prosecution that the deceased had suspected the applicant to have stolen her cell phone. The applicant denied the same. We are conscious of the fact that disclosure statement is relevant under section 27 and could be read in evidence only to the extent of recovery of the article to have been found in conformity with the disclosure statement (principle of confirmation by subsequent events). However, whatever has been stated by the applicant in his disclosure statement can be relied on by him in his defence. What has been stated by him in his disclosure statement was that the deceased had repeatedly abused him and even suspected him of stolen her cell phone. According to him, he did not commit theft of her cell phone. As such, even while appreciating the evidence during hearing of the appeal on

merits, the applicant either may have a good chance of acquittal or scaling down the offence, to be punishable under section 304, I.P.C, covered by Exception No.1 to section 302.

9. At the relevant time, the applicant was twenty years of age. Pending trial, he was on bail. Post conviction, he was behind bars for little over three and half years. The appeal is not likely to come up for hearing in near future, in due course. We are, therefore, inclined to allow the application in the following terms;

: ORDER :

(a) The substantive sentence imposed on the applicant by the learned Additional Sessions Judge, Barshi vide his judgment and order dated 21st November, 2024 in Sessions Case No.38 of 2019 shall remain suspended till the final disposal of Criminal Appeal No.57 of 2025;

(b) The applicant be released on furnishing a P.R bond in the sum of Rs.15,000/- (Fifteen Thousand only) with one or more solvent sureties in the like amount.

(c) Bail before the Trial Court.

10. The application stands disposed of.

[AJIT B. KADETHANKAR, J.]

[R.G. AVACHAT J.]