

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

INTERIM APPLICATION NO. 3728 OF 2025

IN

CRIMINAL APPEAL NO. 402 OF 2017

Madhukar Bapu Karale.

...Applicant.

Versus

The State of Maharashtra.

...Respondent.

*Mr. Anush Shetty (thr. V.C.) and Mr. Rahul P. Sagar i/b Dr. Yug Mohit Choudhary
for the Applicant.*

Mrs. M. M. Deshmukh, PP and Mr. Avinash A. Naik, APP for the Respondent-State.

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

Date : April 1, 2026.

P. C. :

1. Heard Mr. Shetty, learned Counsel appearing for the Applicant and Mrs. Deshmukh, learned Public Prosecutor for the Respondent-State.

2. By this application filed under Section 389 of Code of Criminal Procedure, 1973, the Applicant who is convicted by learned Sessions Judge, Kolhapur in Sessions Case No. 53 of 2014 is seeking suspension of substantive sentence and release on bail during the pendency of appeal.

3. Mr. Shetty, learned Counsel appearing for the Applicant submitted that Applicant has completed more than 10 years of actual

imprisonment and he is in open prison.

4. Mr. Shetty further submitted that incident in question has taken place on a spur of moment, due to dispute regarding cutting of grass on agricultural land. He submitted that deceased is the real brother of Applicant; there are no criminal antecedents of Applicant. He, therefore, prayed for release of Applicant on bail by suspending the sentence.

5. Mrs. Deshmukh, learned PP, on the other hand, drew attention of this Court to the evidence of PW-3 and submitted that when the deceased was running away after the first assault by Applicant, the Applicant ran behind him and gave a blow on the chest of deceased. She submitted that considering the overall evidence on record, the Applicant does not deserve to be released on bail during the pendency of appeal and prayed for rejection of application.

6. Before considering the rival submissions, it is necessary to set out the parameters for consideration of application under Section 389 of the Code of Criminal Procedure, 1973 as laid down by the Hon'ble Supreme Court in ***Shivani Tyagi v. State of U.P.***¹. The Hon'ble Supreme Court has 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

1 2024 SCC OnLine SC 842

reference to the relevant 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 has also been held that 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.

7. Perusal of the record shows that the Applicant and deceased are real brothers; they along with their another brother were residing in adjoining houses, they were having common agricultural land and there was some dispute concerning the same.

8. The manner in which the incident has taken place, *prima facie* it appears that the same has taken place at the spur of moment as the Applicant informed deceased not to cut grass on the common agricultural land and the deceased was insisting to cut the same.

9. The Applicant has undergone about 10 years and 2 months of actual imprisonment. If remission period is taken into account, the imprisonment suffered by the Applicant is more than 15 years and 4 months.

10. In the light of above facts and circumstances and considering the law laid down by the Apex Court in ***Shivani Tyagi v. State of U.P.*** (supra), case for suspension of sentence and release of Applicant on bail during the pendency of appeal is made out. Hence, we proceed to pass following order :

- [a] The sentence imposed on Applicant by learned Sessions Judge, Kolhapur vide judgment and order dated 9th March 2017 passed in Sessions Case No.53 of 2014 shall remain suspended till the final disposal of Criminal Appeal No. 402 of 2017.
- [b] Applicant be released on his furnishing PR bond in the sum of Rs.25,000/- with one or more solvent sureties of like amount in connection with conviction in Sessions Case No. 53 of 2014.
- [c] Bail be submitted before the trial Court.
- [d] Till the Criminal Appeal is disposed of, Applicant shall report to the Trial Court on the 1st Monday of every month commencing from May 2026.
- [e] Applicant shall attend this Court when appeal is listed for final hearing.

11. Interim application stands disposed of.

[Pravin S. Patil, J.]

[Madhav J. Jamdar, J.]