

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

INTERIM APPLICATION NO.312 OF 2025

IN

CRIMINAL APPEAL NO.641 OF 2024

Sharad Bhausahab Kalaskar
Aged: 31 years, Occu. : Agriculture,
R/o: Village Kesapuri, Post. Daulatabad,
Taluka & Dist. Aurangabad.
[Presently lodged in Kalamba Central,
Prison Kolhapur]

.....Applicant/Org.
Accused No.3

V/s.

1. State Of Maharashtra
2. Central Bureau of Investigation,
Special Crime Branch,
A-2, Wing, 8th Floor, CGO Complex,
C.B.D. Belapur, Navi Mumbai-400 614.Respondents

Mr. Niteen V. Pradhan, Senior Advocate a/w. Ms. Shubhada Khot, Adv. Shahan Pradhan, Mr. Virendra Ichalkaranjekar, Mr. Siddh Vidya i/b Ms. Ameeta Kuttikrishnan, Ms. Shambhavi Desai, Mr. Danish Patel & Ms. Gayatri Pore for the Applicant in IA 312/25.

Mr. Sandesh Shukla a/w. Mr. Amit Singh, Mr. Bhushan Bhadgale, Ms. Ashlesha Suryavanshi and Ms. Janhavi Jadhav i/b Mr. Omkar Nevgi for the Intervener in IA 2802/24.

Mr. Amit Munde a/w. Mr. Jai Vohra, Mr. Shantanu Nakashe for the Respondent-CBI.

Mr. Ashish I. Satpute, APP for the Respondent-State.

CORAM : A. S. GADKARI AND

RANJITSINHA RAJA BHONSALE, JJ.

DATE OF RESERVE : 23rd DECEMBER, 2025.

DATE OF PRONOUNCEMENT : 29th APRIL, 2026.

ORDER (Per : A. S. GADKARI, J.) : -

1) This is an Application under Section 389(1) of the Criminal Procedure Code, 1971, by the Original Accused No.3, for suspension of sentence and releasing him on bail during the pendency of his Appeal.

2) The Applicant is convicted under Section 302 read with 34 of the Indian Penal Code, 1860 ('I.P.C.') and under Section 3(25) of the Indian Arms Act and is sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.5,00,000/- (Rupees Five Lacs Only), in default of payment of fine to suffer further simple imprisonment for one year, by the learned Additional Sessions Judge, Pune, in Sessions Case No.706 of 2016, by its Judgment and Order dated 10th May, 2024.

2.1) By the same Judgment, the Applicant is acquitted of the offence punishable under Section 120B of the I.P.C. and under Sections 27(1) and 27(3) of the Indian Arms Act and under Section 16 of the UAPA Act.

3) Heard Mr. Niteen Pradhan, learned counsel for the Applicant, Mr. Ashish Satpute, learned APP for the Respondent No.1, State, Mr. Amit Munde, learned Special P.P. for Respondent No.2, C.B.I. and Mr.Sandesh Shukla, learned counsel for the Intervenor. Perused record.

4) It is the prosecution case that, Dr. Narendra Dabholkar (Deceased), was rationalist, social worker and crusader against superstition. He founded 'Maharashtra Andhashraddha Nirmoolan Samiti'. He was also

instrumental in pursuing the Government's 'Anti Superstition Bill'. The organization like Sanatan Sanstha and its sister organizations were opposing the said bill. That, there was enmity/hatred against Dr. Narendra Dabholkar by Sanatan Sanstha. Dr. Narendra Dabholkar was shot dead on 20th August, 2013, at about 7:20 a.m. (7:30 a.m.) on Omkareshwar Bridge, by two unidentified assailants, within the jurisdiction of Deccan Police Station, Pune City.

5) PS.I. Navnath B. Rangat, (PW No.3), lodged First Information Report i.e. C.R. No.154/2013 with Deccan Police Station, Pune City against unknown persons for the offence punishable under Section 302 read with 34 of the I.P.C. and under Sections 3(25) of the Indian Arms Act. The investigation of the said crime was subsequently transferred to Respondent No.2, C.B.I. under the Orders of this Court, dated 9th May, 2014. The C.B.I. registered the crime as RC. 4/(S)/2014/Mum. of 2014 of C.B.I. SCB Mumbai and conducted further investigation. During the course of investigation, the Applicant came to be arrested on 3rd September, 2018. After completion of investigation, the Respondent No.2 filed charge-sheet before the trial Court. The motive behind the crime as alleged by prosecution is, ideological differences between the organization of deceased i.e. Andhashraddha Nirmoolan Samiti and the accused who are associated with Sanatan Sanstha.

6) The prosecution in support of its case examined in all 20 witnesses. The trial Court by its impugned Judgment and Order dated 10th May 2024, has convicted and sentenced the Applicant as noted hereinabove.

7) Mr. Pradhan, learned counsel appearing for the Applicant submitted that, in the second charge sheet filed on 13th February, 2019, the applicant and co-accused were shown as assailants using two firearms without any valid, cogent, logical reason and any substantial factual matrix, supported, by direct or circumstantial evidence. That, the Test Identification Parade of the Applicant has not been conducted providing any sanctity for his identification as contemplated under Section 9 of the Indian Evidence Act, 1872. He submitted that, the identity of the Applicant was tried to be established on the basis of photograph, when the Applicant was in custody. He submitted that, the alleged eyewitnesses i.e. PW No.6 and PW No.14 have propounded unreasonable theories about the personal identification of the Applicant/Accused. That, the trial Court has relied upon on the said evidence which is without any corroboration. He submitted that, the trial Court has committed an error in relying on the photo identification of the Applicant in C.B.I. office, which is contrary to the settled principles of law. That, the firearm used in the present crime has not been recovered from any of the accused persons. That, the alleged weapon used in the present crime was seized by the Assistant Commissioner of Police, Crime Branch,

Thane, in Crime No.620 of 2013, registered with Mumbra Police Station at the instance of accused Mr. Nagori and Mr. Khandelwal on 20th August, 2013, and the same is shown to have been used in the present crime. He submitted that, the ballistic expert has not been examined by the prosecution. That, the two important Officers who had taken part in the investigation were not allowed to enter the witness box merely at the whims and fancies of the prosecution. He submitted that, the identity of the Applicant is seriously doubted. He therefore prayed that, the Applicant be released on bail during the pendency of Appeal.

8) Mr. Munde, learned Special P.P. appearing for Respondent No.2, C.B.I. submitted that, Mr. Kamble (PW No.6) and Mr. Kelkar (PW No.14) are the eyewitnesses in the present crime. That, the said two witness have seen the Applicant and co-accused shooting from a firearm on the person of Dr. Dabholkar. He submitted that, the Accused No.2 Mr. Sachin Ambure, has given an extra-judicial confession to Mr. Somnath Dhyade (PW No.10). Mr.Munde, fairly conceded to the fact that, there is no recovery of weapon in the present crime. He submitted that, the identification of accused by showing his photographs is not hit by the provisions of Cr.P.C.. He submitted that, identification of the accused by showing him photographs is not a substantive piece of evidence. It is only by virtue of Section 9 of the Indian Evidence Act, the same i.e. the act of identification becomes admissible in Court. He submitted that, even if the Test Identification of the Applicant is

conducted by showing photographs, no prejudice is caused to the case of prosecution. Mr. Munde, submitted that, there is no recovery of weapon used in the present crime cannot be a ground to disbelieve the version of the eyewitnesses. The recovery of the weapon used in the commission of an offence is not a necessary criteria to convict the accused, if there is a direct evidence in the form of eyewitness is available. He submitted that, identification of Applicant by the eyewitnesses in the Court is substantive piece of evidence.

In support of his contentions he relied on following decisions :-

i) Umar Abdul Sakoor Sorathia Vs. Intelligence Officer, Narcotic Control Bureau, reported in (2000) 1 SCC 138.

ii) Siddhartha Vashisht Alias Manu Sharma Vs. State (NCT Delhi), reported in (2010) 6 SCC 1.

iii) State Through the Inspector of Police Vs. Laly @ Manikandan & Another Etc. reported in AIR 2022 SC 5034.

8.1) He submitted that, the trial Court has rightly taken into consideration the evidence of PW Nos.6 and 14 while convicting the Applicant. He therefore prayed that, the Application may be rejected.

9) Mr. Shukla, learned counsel appearing for the intervenor vehemently opposed the Application. He submitted that, the evidence of Mr. Navnath Rangat, (PW No.3), the informant Police Officer; Mr. Kiran Kamble (PW No.6) and Mr. Vinay Kelkar (PW No.14) is reliable. He

submitted that, PW Nos.6 and 14 are the eyewitness to the incident and their presence at the scene of offence cannot be doubted. He submitted that, as per the version of PW No.14, initially the sketch of the suspect was drawn. That, after the arrest of Applicant on 3rd September, 2018, his identity has been established initially by showing the photograph to the said witnesses. That, the said two witnesses have identified the Applicant in Court as the assailant of the deceased. That, the identification of Applicant in the Court by the said two witnesses is a substantive piece of evidence. He submitted that, even otherwise Photo Identification and Test Identification Parade are only aids in the investigation and do not form substantive evidence. The substantive evidence is the evidence in Court on oath. He submitted that, mere absence of Test Identification Parade would not, *ipso facto*, render the prosecution case to be false or unsustainable in law. He submitted that, in the matter of appreciation of evidence of witnesses, it is not the number of witnesses, but the quality of their evidence which is important, as there is no requirement in the law of evidence stating that, a particular number of witnesses must be examined in order to prove or disprove a fact. That, the legal system has laid emphasis on the value provided by each witness, as opposed to the multiplicity or plurality of witnesses. He submitted that, at the time of considering an application under Section 389 of Cr.P.C. the Court has to undertake the exercise to ascertain whether convict has fair chances of acquittal and what is to be

looked into is something palpable. That, to put it in other words, something which is very apparent or a 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.

In support of his contentions he relied upon on the following decisions :-

- i) Mullagiri Vajram & Others Vs. State of Andhra Pradesh, reported in 1993 Supp (2) SCC 198 : 1993 SCC (Cri) 496.*
- ii) Malkhansingh And Others Vs. State of M.P, reported in (2003) 5 SCC 746.*
- iii) Rabindra Kumar Pal Alias Dara Singh Vs. Republic of India, reported in (2011) 2 SCC 490.*
- iv) R. Shaji Vs. State of Kerala, reported in (2013) 14 SCC 266.*
- v) Prakash Vs. State of Karnataka, reported in (2014) 12 SCC 133.*
- vi) Omprakash Sahni Vs. Jai Shankar Chaudhary & Another, reported in (2023) 6 SCC 123.*
- vii) Mohd. Naushad Vs. State (Government of NCT of Delhi), reported in (2024) 12 SCC 494.*

9.1) Mr. Shukla, submitted that, there are four antecedents at the discredit of Applicant. He therefore prayed that, the present Application may therefore be rejected.

10) The crucial point involved in the present Application is the identity of the Applicant by the prime witnesses of prosecution namely Mr. Kiran Kamble (PW No.6) and Mr. Vinay Kelkar (PW No.14).

11) PW No.6 in his testimony has stated that, on 20th August, 2013, he was serving as Sweeper in Pune Municipal Corporation. On 20th August, 2013, he was deputed on Sambhaji Udyan Kothi for brooming the road between Onkareshwar Temple to Khati Vadapao place. That, on 20th August, 2013, he came for his work at the said place at about 06:30 a.m. That, he was doing the brooming work. After his work, he sat on the road divider. His co-worker Meerabai was brooming at the road divider at about 07:15 a.m, when he heard a noise like fire cracker. His attention was drawn towards the noise. He saw that, two boys were firing on an aged person. The said person fell down. The said boys were running towards the side of police chowky. That, those two boys went towards a motorcycle which was parked beside the police chowky and fled away on the motorcycle. Out of two boys one boy was highted whereas the another was somewhat of short height. He has identified the Applicant in the Court. That, after the incident he rushed towards the aged person who was lying down on the road. The said person was lying in the pool of blood. Thereafter, he and Meerabai went for taking tea. Thereafter he went to Modern Colony to complete his remaining work. His statement was thereafter recorded by Police Officer Mr. Phuge.

11.1) That, he was also called by C.B.I. Officer Mr. Singh. He has seen the photographs and identified those persons as he had seen them on the bridge while shooting the aged person. The said photographs are at Exhibit Nos. 331 to 334.

11.2) In his cross-examination, PW No.6 has admitted that, he used to take tea at same place on completion of their work on the bridge. The said hotel is situated at some distance from police chowky on the south side. An omission that, 'he had stated to police that, on hearing noise like fire crackers his attention was drawn towards the noise. I had also stated that, out of the two boys one was highted and another was somewhat of short height' has been brought on record. That, the time gap between the bullets was one to two minutes or one to two seconds.

11.3) It be noted here that, the trial Court has noted that, at this juncture this witness is not clear between the seconds and minutes.

11.4) That, he had identified the photographs of palm size. Those were photographs of two persons, two each. That, he cannot not see the identification marks on the face of those persons. That, there was mustache to both of them. That, the bike of the two boys who were running was about 60 feet away from the deceased. That, he had seen those boys from the distance of about 15 feet. That, the police had shown him sketches of persons in addition to the sketch drawn as per description by him. This witness has admitted that, he did not remember whether the sketch was

shown to him on 2nd September, 2013. This witness was shown a sketch in file No.1 at page No.40. He has stated that, the same sketch is not similar to the one which was drawn as per the description given by him. The said sketch is at Exhibit.345.

11.5) It be noted here that, the statement of this witness under Section 164(5) of Cr.P.C. was recorded on 22nd April, 2019, by the learned Judicial Magistrate First Class, Pune, is at Exhibit No.335. In paragraph No.8 thereof, this witness has stated that, he was thereafter called at the office of Commissioner of Police, Pune. There the police inquired with him regarding the said incidence. At that time he had told the police that, he had seen nothing of the said incident.

12) PW No.14 in his testimony has deposed that, the Shaniwar Peth Police Chowky was in front of his house. On 20th August, 2013, after morning walk he returned home at about 07:00 a.m.. After relaxing he went to the balcony to remove his Vest (Baniyan). At that time he saw an aged person proceeding on Balgandharva Bridge. Two other persons were walking behind him. At the end of the bridge, in front of his house there is Onkareshwar Temple and on the another end of the bridge there is Balgandharva Theatre. That, on seeing the aged person walking, within one to two and half minutes he heard noise of bullet shots. He looked at the place from where he heard the noise and saw the aged person was lying on the ground. That, the two boys following him were running on the reverse

direction and they came towards his house. At that time, he had seen 2-3 monkeys passing from the railing of the bridge. That, the two boys to whom he saw running, went towards the police chowky and stopped there. Those two boys took out a motorcycle besides the police chowky and they ran away towards Ramanbag School, passing from his balcony. At that time he saw the number of the motorcycle which was 7756. He described those two boys as between the age group of 25 to 30 with whitesh complexion. That, one of the said boy was having a black coloured sack bag on his back. That, within sometime people gathered at the spot. Police also arrived. There was a lady police and two gents. The PW No.14 went there. The aged person was lying on the ground. He told the lady police about the incident and thereafter he went to his office. That, thereafter he was called by police Officer Mr.Bhamre. He narrated the incident to him. His statement was recorded on the same day by police Officer Mr. Joshi. This witness has identified the assailants as the persons present in the Court. That, on 27th December, 2018, the C.B.I. Officer Mr. Singh, called him at C.B.I. Office at Khadki. He showed some photographs to this witness. That, the photographs were spread on table. Mr. Singh, asked him as to whether there are photographs of the persons to whom he had seen at the time of incident. There were 10 to 12 photographs on the table. From those photographs PW No.14 had taken out 2 photographs of 2 different persons. On being asked by Mr.Singh, he told him that, the faces seen in the

photographs were matching to the extent of 80 to 85%. The said photographs are at Exhibit Nos.460 and 461.

12.1) In his cross-examination, he has admitted that, the sketches of the persons were drawn by police firstly on the day of incident with his help. That, he did not remember as to whether one more sketch was drawn as per the details given by him on 30th January, 2015. That, he alongwith Mr. Meenanath, were called at C.B.I. Office, Khadki approximately after one year of the incident. At that time, some sketches were shown to him and their signatures were obtained on the back side of those papers. The sketch is at Exhibit No.475. That, the sketch has resemblance of 70 to 80% . This witness has admitted that, the sketch was not drawn as per the description given by him. That, on 20th August, 2013, a sketch was drawn as per the description given by him of the person who was driving vehicle. This witness has given an admission that, it did not so happen that, during inquiry by C.B.I. Officer he told that, the person in the sketch at Exhibit No.475 was driving the vehicle and he passed from his house. The portion marked 'A' from his statement given to C.B.I. dated 4th September, 2016, was read over to him and this witness has admitted that, 'it is incorrect.' That, he has spectts since the year 2015-2016 for reading. That, he went to the spot of the incident after about 20 to 25 minutes after the incident occurred.

12.2) He has admitted that, when the assailants came towards him and when they started motorcycle, he was standing at the same place in the balcony. That, after assailants went away, he did not stop in the balcony. He then went for bath and thereafter he went to the spot. That, he did not wait to see whether anybody is helping the injured. He did not disclose the incident immediately to anybody in the house. This witness has admitted that, it would be correct to say that, after taking bath he was about to leave for office and with that preparation he came out from house. That, it can be said that, his behavior of not responding immediately to be happening was incorrect. That, his office was adjoining to his house.

12.3) It be noted here that, this witness has witnessed the incident in question while standing in his balcony from a distance of about 500 meters. While identifying the Applicant from the photograph at Exhibit No.461, he has stated at the end that, "I Vinay Kelkar hereby declare that assassination incident took place 5 years ago and distance took place is too far away from me. I declare that suspects resemble the faces of criminals, however, I cannot be identified entirely by me", date 27th December, 2018.

13) A bare perusal of evidence of these two witnesses would clearly indicate that, both the witnesses are chance witnesses. Though they had seen the ghastly assault on the deceased, both the witnesses chose to give preference and complete their daily chores of life and thereafter leisurely approached the police to give information. According to us, the conduct of

these two witnesses is not of the men of common prudence and raises doubt in the mind of the Court about their witnessing the incident.

14) There is another facet to the present case. The incident in question has occurred on 20th August, 2013 at about 07:30 a.m. The Applicant was arrested on 3rd September, 2018. His identity was tried to be established through these two witnesses by showing them photographs of the accused persons. Though the investigating agency had every opportunity to conduct Test Identification Parade of the Applicant, the investigating Officer chose to establish identity of the Applicant by showing his photographs to the witnesses when he was already in custody. PW No.6 has identified the photographs of Applicant (Exh.333) on 25th December, 2018, whereas PW No.14 has identified the Applicant from the photograph (Exh.461) on 27th December, 2018. As the prosecution has tried to establish the identity of the Applicant through the said two prime witnesses by showing them his photographs while he was already in their custody, according to us, the said identification loses its sanctity.

15) The Hon'ble Supreme Court in the case of *Prakash (supra)*, has held that, an identification parade is not mandatory nor can it be claimed by the suspect as a matter of right. That, purpose of pre-trial identification evidence is to assure the investigating agency that the investigation is going on in the right direction and to provide corroboration of the evidence to be given by the witness or victim later in Court at the trial. That, if the suspect

is a complete stranger to the witness or victim, then an identification parade is desirable unless the suspect has been seen by the witness or victim for some length of time.

16) The Applicant is behind bars since 3rd September, 2018 and at pretrial and post conviction stage has undergone more than seven and half years in incarceration. Taking into consideration the pendency of Appeals, the likelihood of taking up Appeal of the Applicant for final hearing in near future is remote.

17) After taking into consideration the over all view of the Application, we are of the opinion that, during the pendency of his Appeal, the substantive sentence imposed upon him can be suspended and the Applicant be released on bail.

17.1) Hence, the following Order :-

- i) During the pendency of Appeal preferred by the Applicant, the substantive sentence imposed upon the Applicant vide Judgment and Order dated 10th May, 2024, passed by the learned Additional Sessions Judge, Pune in Sessions Case No.706 of 2016 (Exh No.670), is suspended and the Applicant be released on bail on his furnishing PR bond of Rs.50,000/- with one or two local sureties in the like amount.

- ii) Before his release from jail, the Applicant shall give his prospective residential address and the mobile and/or landline number on which he or his any close relative can be contacted.
 - iii) After his release from jail, the Applicant shall attend the Deccan Police Station, Pune City, on every first Monday of each month between 10.00 a.m. and 1.00 p.m. initially for a period of one year and thereafter on every first Monday between 10.00 a.m. and 1.00 p.m. of every third calendar month i.e. four times in a year, till the disposal of Appeal.
 - iv) In case of two consecutive defaults in complying with the aforesaid conditions, the prosecution is at liberty to file application for cancellation of bail.
- 18) Application is allowed in the aforesaid terms.

(RANJITSINHA RAJA BHONSALE, J.)

(A.S. GADKARI, J.)

- 19) After this Order is pronounced, learned counsel for the Intervener requested this Court to stay the effect and implementation of the

present Order to enable him to test its correctness before the Hon'ble Supreme Court. As we have expressed doubt about the identity of the Applicant as one of the assailants, in our Order the said prayer is rejected.

(RANJITSINHA RAJA BHONSALE, J.)

(A.S. GADKARI, J.)