

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 4478 OF 2025

IN

CRIMINAL APPEAL NO. 1148 OF 2022

1. Nilesh Ramkrishna Mhatre	}	
Aged : 42 years, Occ.: Service		
2. Malti Ramkrishna Mhatre	}	
Aged : 60 years, Occ.: Housewife	}	
Both residing at : Kasarbhat,	}	
Post Aajiwali, Taluka : Pen,	}	
District : Raigad.	}	...Applicants
	}	(Original Accused Nos.1 & 3)

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V/s.

1. The State Of Maharashtra	}	
At the instance of New Panvel	}	
Police Station	}	
2. Hiranman Chahaya Tawari	}	
Age : 70 years	}	
Residing at : Rawe, Post Rawe	}	
Taluka : Pen, District : Raigad.	}	Respondents

Mr. Rahul S.Arote, for the Applicants/Appellants.

Ms. Sangita Phad, APP, for the Respondent/State.

Mr. Vaibhav Sugdare for Respondent No. 2 (through VC).

**CORAM : MANISH PITALE &
SHREERAM V. SHIRSAT, JJ.**

DATE : 16th JANUARY 2026.

ORDER: (PER SHREERAM V. SHIRSAT, J).

1. This is an application for suspension of sentence and bail filed by the Applicants, pending the appeal, who have been convicted for the offence punishable under section 302, 304B, 498A with 34 of the Indian Penal Code.

2. The present bail application has been filed primarily on the ground that the applicants have undergone 10 years of actual imprisonment and it is urged that considering the judgement of the Hon'ble Supreme Court, in the case of '*Sudhan Singh versus State of Uttar Pradesh*',¹ the applicants deserve to be released on bail.

3. The Applicants herein are the original accused who were arrested on 16 December 2015. After the conclusion of the trial, the Sessions Court Panvel vide order dated 28 September 2022, convicted the Applicants for the offences punishable under section 302, 304B, 498A with 34 of the IPC. The Applicants against the order of conviction, have filed Criminal Appeal being Criminal Appeal No 1148 of 2022, which was admitted by this Court vide order dated 20 March 2023 and is pending before this Court for hearing and final disposal.

1 (2022) SC online SC 697

4. The first application for bail and suspension of sentence filed by the Applicant No 2, along with the Appeal was permitted to be withdrawn and liberty was granted by this Court (Coram: A.S. Gadkari and Prakash Naik JJ), that if the appeal is not taken up for hearing within a period of one year, then the applicant was granted liberty to file fresh bail application.

5. The Applicant no. 2 thereafter had filed an application for suspension of sentence and releasing the applicant on bail during the pendency of the appeal which came to be rejected by this Court on merits (Coram: A. S . Gadkari and Dr. Neela Gokhale JJ), vide order dated 20 August 2024.

6. The Applicants thereafter preferred another bail application, however the same was not pressed, but a request was made to list the appeal for final hearing on the ground that the applicants are in custody for more than nine and half years. The Application was allowed to be withdrawn and the matter was directed to be listed on the weekly final hearing board in the week commencing from 28th of July 2025. Till date, the appeal could not be heard.

7. The Applicants have filed application for bail on the ground that the Applicants have completed 10 years of actual imprisonment

and therefore in the view of the judgement of the Hon'ble Supreme Court, in the case of '*Sudan Singh versus State of Uttar Pradesh*', (supra) the applicants deserve to be released on bail.

8. Apart from the judgement of '*Sudhan Singh versus state of Uttar Pradesh*', (supra) the Ld. Counsel for the Applicants has also relied upon the following judgements.

- a. 'Ranjeet Raut vs. State of GNCT Delhi',².
- b. 'Mohammed Shereef vs. State of Kerala',³
- c. 'Suleman vs. State of Uttar Pradesh',⁴
- d. 'Vinod Ramniklal Shah vs. The State of Maharashtra',⁵
- e. 'Omprakash Sahni vs. JaiShankar Chaudhary & Anr. Etc.',⁶

9. Per contra the Ld. Additional Public Prosecutor has vehemently opposed the application for bail and has submitted that earlier the bail applications have been rejected on merits and there being no change of circumstances, the bail application cannot be entertained and deserves to be rejected.

10. The Additional Public Prosecutor has relied upon the judgement of '*Preet Pal Singh versus State of Uttar Pradesh*'.⁷

2 Special Leave Petition (Criminal) Diary No. 22968 of 2020

3 Criminal Appeal No. 1733 of 2024.

4 (2022) SCC OnLine SC 714.

5 Criminal Appeal No. 594 of 2022.

6 (2023) Live Law (SC) 389.

7 AIR 2020 Supreme Court 3995.

11. We have gone through the application for bail and the judgement cited by the Ld. Counsel for the Applicants and the Ld. APP

12. The ruling of the Apex court relied upon by the Ld. Counsel for the Applicant in the case of '***Sudan Singh versus State of Uttar Pradesh***', (supra) is very clear where the Hon'ble Supreme Court has observed in para 9 and 10 as under

“ 9. The second category of cases can be one where the person has served out more than 10 years of sentence. In these cases also at one go bail can be granted unless there are any extenuating circumstances against him.

“10. We are quite hopeful that the High Court will adopt the aforesaid practice and thus prevent the Supreme Court to be troubled with such matters”.

13. The Supreme Court has in no uncertain terms observed that where the person has served out more than 10 years of sentence, then the bail can be granted unless there are any extenuating circumstances against him.

14. The Ld. APP has not pointed out any extenuating circumstance which can persuade this court to take a diametrical view of not releasing the applicants on bail despite having undergone 10 years of actual imprisonment.

15. The Additional Public Prosecutor has relied upon the

judgement of '*Preet Pal Singh versus State of Uttar Pradesh*' (*supra*) and has invited the attention of this court to following paragraphs of the said judgement which is reproduced here in below.

“24. The Short question that arises for consideration in this appeal is , whether the High Court was justified in directing release of the Respondent No 2 on bail , during the pendency of his appeal before the High Court.

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“27. As the discretion under Section 389(1) is to be exercised judicially, the Appellate Court is obliged to consider whether any cogent ground has been disclosed, giving rise to substantial doubts about the validity of the conviction and whether there is likelihood of unreasonable delay in disposal of the appeal, as held by this Court in Kashmira Singh v. State of Punjab, (1977) 4 SCC 291 (AIR 1977 SC 2147) and Babu Singh and Ors. V. State of U.P., (1978) 1 SCC 579 (AIR 1978 SC 527).

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35. In *Ajay Kumar Sharma* three-Judge Bench of this Court relied on *Chaman Lal v. State of U.P.* (supra) and set aside order of bail granted by the High Court holding, that it was well settled that even though detailed examination of the merits of the case may not be required by the courts while considering an application for bail, at the same time exercise of discretion has to be based on well settled principles and in a judicious manner and not as a matter of course.

36. There is a difference between grant of bail under Section 439 of the Cr. PC in case of pre-trial arrest and suspension of sentence under Section 389 of the Cr. PC and grant of bail, post conviction. In the earlier case there may be presumption of innocence, which is a fundamental postulate of criminal jurisprudence, and the courts may be liberal, depending on the facts and circumstances of the case, on the principle that bail is the rule and jail is an exception, as held by this Court in *Dataram Sing v. State of U.P. and Anr.* (supra). However, in case of post conviction bail, by suspension of operation of the sentence, there is a finding of guilt and the question of presumption of innocence does not arise.

Nor is the principle of bail being the rule and jail an exception attracted, once there is conviction upon trial. Rather, the Court considering an application for suspension of sentence and grant of bail, is to consider the *prima facie* merits of the appeal, coupled with other factors. There should be strong compelling reasons for grant of bail, notwithstanding an order of conviction, by suspension of sentence, and this strong and compelling reason must be recorded in the order granting bail, as mandated in Section 389(1) of the Cr. PC.”

16. The Ld. APP has also invited the attention of this court to

the judgement of the Hon'ble Supreme Court in the case of '***Om Prakash Sagar Vasi Jai Shankar Chaudhary***' (supra) and referred to para 33 and 34 of the said judgement which is reproduced herein below “.

“ 33 Bearing in mind the aforesaid principles of law, the endeavour on the part of the Court, therefore, should be to see as to whether the case presented by the 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. If the answer to the above said question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually take very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the Court can arrive at a prima facie satisfaction that the conviction may not be sustainable. The Appellate Court should not reappreciate the evidence at the stage of Section 389 of the Cr. PC and try to pick up few lacunas or loopholes here or there in the case of the prosecution. Such would not be a correct approach.

“34. In the case on hand, what the High Court has done is something impermissible. High Court has gone into the issues like political rivalry, delay in lodging the FIR, some over-writings in the First Information Report etc. All these aspects, will have to be looked into at the time of the final

hearing of the appeals filed by the convicts. Upon cursory scanning of the evidence on record, we are unable to agree with the contentions coming from the learned Senior Counsel for the convicts that, either there is absolutely no case against the convicts or that the evidence against them is so weak and feeble in nature, that, ultimately in all probabilities the proceedings would terminate in their favour. For the very same reason we are unable to accept the contention coming from the convicts through their learned Senior Counsel that, it would be meaningless, improper and unjust to keep them behind the bars for a pretty long time till they are found not to be guilty of the charges.

17. There cannot be any doubt about the proposition of law laid down with respect to the rulings relied upon by the Ld. APP. However, the facts of the cases referred hereinabove by the Ld. APP are different and even the facts are not such where the Appellants have undergone 10 years of actual imprisonment and therefore these judgments will be of no avail to the Ld. APP.

18. In view of the above, considering the fact that the Appellants have undergone a period of 10 years of actual imprisonment and there are no extenuating circumstances pointed out, this court relying upon the observations made in the case '***Sudan Singh versus State of Uttar Pradesh***', (supra), is inclined to release the applicants on bail and suspend the sentence on the following terms

and conditions.

ORDER

- i. Interim Application No 4478/2025 is allowed and disposed of;
- ii. During the pendency of the Criminal Appeal No 1148/2022, the sentence of imprisonment imposed vide judgment and order dated 28.9.2022 passed by the Additional Sessions Judge, Panvel-Raigad in Sessions Case No. 198 of 2019 is suspended and the applicants are directed to be released on bail on executing PR Bond in the sum of Rs. 50,000/ with one or more sureties in the like amount;
- iii. The applicant shall attend New Panvel Police Station once in two months on first Monday of the month between 11:00a.m. to 1:00p.m till final disposal of the appeal.
- iv. The Applicants shall not leave the country without prior permission of this court.
- v. The Applicant shall deposit the passport, if any with the New Panvel Police station.

19. Interim Application is disposed of.

(SHREERAM V. SHIRSAT, J)

(MANISH PITALE,J)