



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (APPA) NO. 334/2024

IN

CRIMINAL APPEAL No. 175/2024

**Baban S/o Vaijinath Sontakke and Prakash s/o Vaijinath Sontakke
Vs. The State of Maharashtra, Through Police Station Officer, Police
Station, Mehkar, District Buldhana**

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. Anil Mardikar, Senior Advocate a/b Mr. V.R. Deshpande, Adv. for Applicant
Mr. A.R. Chutke, APP for Respondent – State
Mr. Nikhil Tekade, Adv. for Complainant

**CORAM: URMILA JOSHI PHALKE AND
NIVEDITA P. MEHTA, JJ.**

DATED : 12.06.2026

1. By this application, the applicant is seeking suspension of sentence and release him on bail.

2. Heard Mr. Anil Mardikar, learned Senior Counsel for the applicant – applicant, who submitted that the application is only to the extent of the original accused No.2 namely Prakash s/o Vaijinath Sontakke. He submitted that he was prosecuted for the offences punishable under Sections 143, 147, 148, 302, 504 r/w 149 of the Indian Penal Code (In short, IPC) and sentenced to undergo rigorous imprisonment for life for the offence punishable under Section 302 R/w 34 of IPC for committing murder of Digambar Sontakke and fine of Rs. 10,000/-, in default of payment of fine, shall suffer simple imprisonment for six months. He invited our attention towards the evidence of PW 1 - Jayshri Ashok

Sontakke and PW 6 - Police Patil – Ganesh Puri and PW 8 is the auto-rickshaw driver in whose auto-rickshaw the deceased was taken to the Hospital. He submitted that the evidence of these two witnesses i.e. PW 6 and PW 8 show that PW 1, who allegedly an eye witness of the incident was not present when they approached to the spot of incident. Thus he submitted that the presence of PW 1, who is wife of the deceased at the spot of incident at the relevant time itself is doubtful. He further submitted that the evidence of Medical Officer also shows that the vital injury is attributed to the accused No.1 i.e. Baban. Thus even accepting the allegations of evidence as it is, the offence under Section 302 of IPC is not made out against the present applicant. In view of that no purpose would be served by keeping him behind the bar. The appeal would take its own time for final disposal. He submitted that in view of that execution of sentence be suspended and applicant be released on bail.

3. Per contra, learned APP for the respondent – State and learned counsel for the respondent No.2 – original complainant raised strong objections on the ground that PW 1 is wife of the deceased is a natural witness. Her presence on the spot was established during the trial. Her evidence is corroborated by the medical evidence. At this stage, the appreciation of evidence is not permissible. In view of that application deserves to be rejected.

4. After hearing both the sides and on perusal of the entire evidence, which was pointed out by both the sides, it reveals that though PW 1 has stated that she was present at the time time of incident, however, the

cross-examination of PW 6 and PW 8 show that she subsequently came at the spot of incident. Thus at this stage, the learned Senior Counsel for the applicant rightly pointed out that her presence on the spot of incident appears to be doubtful. Admittedly, re-appreciation of the evidence is not permissible while considering application for suspension of sentence. What is to be seen whether the appellant / applicant is able to show that he is having any chance of success in the present appeal. At this stage, observations of the Hon'ble Apex Court in the case of ***Omprakash Sahni Vs. Jai Shankar Chaudhary and another***, reported in ***(2023) 6 SCC 123***, is relevant, wherein it is observed after referring catena of decisions that "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 the 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 CrPC.”

5. In the case in hand, after going through the entire evidence whatever pointed out by the learned Senior Counsel for the applicant that the presence of PW 1 – Jayshri itself is doubtful, who claimed to be eye witness of the incident as well as the medical evidence is not sufficient to attribute any vital blow by the present applicant to the deceased, which resulted into his death is requires to be accepted. In view of that, the application deserves to be allowed. Accordingly, we proceed to pass the following order.

ORDER

- I. Criminal Application (APPA) No. 334/2024 is allowed.
- II. The execution of the sentence passed in Sessions Trial No. 582/2019 against accused No.2 Prakash s/o Vaijinath Sontakke is hereby suspended, till disposal of the appeal.
- III. Applicant Prakash s/o Vaijinath Sontakke is hereby released on bail on executing PR bond of Rs. 25,000/- with one surety on the like amount.
- IV. Applicant shall furnish the names of his two relatives along with relevant documents before the trial Court.
- V. He shall attend the trial Court on 5th day of every month before the trial Court and the trial Court shall record his presence, till the disposal of the

appeal.

VI. Even applicant No.2 i.e. Prakash s/o Vaijinath Sontakke shall not tamper, pressurize the witnesses or in any manner contact with the witnesses, till disposal of this appeal.

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Appeal be listed for final disposal after preparation of paper book.

(NIVEDITA P. MEHTA, J.)

(URMILA JOSHI PHALKE, J.)

MP Deshpande