



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

CRIMINAL APPLICATION (APPA) NO. 205 OF 2025

IN

CRIMINAL APPEAL NO. 111 OF 2025

(Bisan s/o Raghunath Shinde & Ors.

Vs.

State of Maharashtra, Thr. P.S.O. Walgaon, Amravati, Dist. Amravati.)

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. M.V. Rai, Advocate for the Appellants.

Mr. A.B. Badar, APP for the Respondents/State.

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

DATED : 18th APRIL, 2026

1. By this Application, the Applicants/Appellants are seeking suspension of sentence.

2. The Applicants have challenged the judgment and order passed by the Additional Sessions Judge, Amravati in Sessions Trial No. 169/2022 dated 15.10.2024 by which the Applicants are convicted for the offence punishable under Section 302 read with Section 34 of IPC and sentenced to suffer R.I. for life imprisonment and to pay fine of Rs. 5,000/- and in default to suffer R.I. for 6 months each.

3. Heard learned Counsel for the Applicants who submitted that these are the Applicants who are the original accused Nos. 2 and 3 and only role attributed to them by the prosecution is that they caught hold the deceased and the other co-accused has executed the act by giving blow of knife

on his person. He submitted that, the entire case of the prosecution is relied upon the evidence of PW4. However, the role of the present Applicants is by way of an omission which is proved omission in view of the cross-examination in para 4 of the evidence of PW-4 namely Ganga Kanhaiyya Pawar. Except the evidence of sole eyewitness there is no other material to connect the present Applicants with the alleged offence. However, even accepting that it came in by way of an omission. He submitted that, he has many arguable points in the present Appeal as far as the present Applicants are concerned, and therefore, the sentence be suspended and the Applicants be released on bail.

4. Learned APP strongly opposed the said contentions and submitted that in furtherance of the common intention the death of the deceased is caused by the present Applicants as well as the co-accused. The entire case is rested on the medical evidence, recovery panchnama at the instance of the co-accused and the evidence of the sole eyewitness. Thus, considering the evidence, at this stage re-appreciation of the evidence is not permissible, and therefore, the Application deserves to be rejected.

5. After hearing both the sides and on perusal of the evidence of PW-4 as well as PW-3 who is the Medical Officer, which shows that the death of the deceased is homicidal one. As per the prosecution case, the role attributed to the present Applicants is only to the extent of catching hold to the deceased. On perusal of the evidence of PW-4 which shows that she has narrated the role of the present Applicants in chief examination but during cross-examination she has

admitted that she has not disclosed the role of the present Applicants to the Investigating Agency while recording the statement. Thus, it is a proved omission regarding the role of the present Applicants. Admittedly, re-appreciation of the evidence is not permissible at the stage of considering the Application for suspension of sentence.

6. The observation of the Hon'ble Apex Court in the case of ***Omprakash Sahni Vs. Jai Shankar Chaudhary & Anr. Etc., in Criminal Appeal Nos.1331-1332/2023***, is relevant wherein the para No.30 the Hon'ble Apex Court has observed as under:

“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 CrPC 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.”

7. In the case in hand, the entire evidence of the prosecution relied upon PW-4 and considering the omission narrated by her, admittedly, the Applicants are having arguable points in the present Appeal and the Appeal would

take its own time for its final disposal.

8. In view of that, the Application for suspension of sentence deserves to be allowed. Accordingly, we proceed to pass the following order:-

ORDER

- i. Criminal Application (APPA) No. 205/2025, is hereby **allowed**.
- ii. The execution and implementation of the sentence passed in Sessions Trial No. 169/2022 dated 15.10.2024 to the extent of the present Applicants, is hereby suspended till the disposal of the Appeal.
- iii. The Applicant No.1 – Bisan s/o Raghunath Shinde and Applicant No.2-Rajesh s/o Raghunath Shinde, shall be released on bail on executing P.R. Bond in the sum of Rs.25,000/- each with one solvent surety in the like amount.
- iv. The Applicants shall attend the Court of Additional Sessions Judge, Amravati till the disposal of the Appeal on 5th of every month.
- v. The Applicants shall further place on record their detail address alongwith the address proof and name of two relatives alongwith their address proof before the Trial Court.

CRIMINAL APPEAL NO. 111 OF 2025

1. Office to prepare the Paper Book and list the Appeal after preparation of Paper Book.

(NIVEDITA P. MEHTA, J.)

(URMILA JOSHI-PHALKE, J.)