



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

CRIMINAL APPLICATION (APPA) NO. 509 OF 2025

IN

CRIMINAL APPEAL NO. 623 OF 2024

(Rajesh S/o Tarachand Marbate

Vs.

State of Maharashtra, Thr. Police Station Officer, Tiroda, Gondia)

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. P.K. Bezalwar, Advocate for the Applicant/Appellant.

Mr. M.J. Khan, APP for the Respondent/State.

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

DATED : 05th MAY, 2026

1. By this Application, the Applicant/Appellant is seeking suspension of sentence and releasing him on bail.

2. Heard learned Counsel for the Applicant, who submitted that the crime was registered on the basis of report lodged on 28.06.2021 by PW-1/Babulal Shalikram Barve son of the deceased. It was alleged that, there was a verbal altercation between the deceased and the father of the accused on 27.06.2021. On 28.06.2021 at about 6.00 a.m., the deceased went to free the ducks. At that time, the accused came alongwith stick in his hand and by threatening him gave a stick blow on head and thereafter the deceased was immediately shifted to the Hospital, however, he succumbed to death.

3. Learned Counsel for the Applicant, submitted that the prosecution has examined as many as 11 witnesses, out of that 4 witnesses turned hostile. He submitted that, there was no intention to commit murder of the deceased only one single blow was given during the altercation, and therefore, the offence would not cover under Section 302 of IPC i.e. culpable homicide amounting to murder but it would cover under Section 304 of IPC i.e. culpable homicide not amounting to murder, for which the maximum punishment provided is imprisonment of 10 years which may extend to life. Thus, considering the circumstances under which the alleged incident has taken place the Applicant be released on bail by suspending the sentence.

4. Learned APP strongly opposed the said contention and submitted that, the defence of sudden fight and sudden quarrel is not available with the Applicant as the incident was not occurred on the earlier day but the facts of the case shows that on earlier day the altercation of words were between the deceased and the father of the accused and on the next day when the deceased in morning had been in his courtyard, the present accused came by holding stick in his hand and from the backside gave a blow on head, due to which the deceased has succumbed to the injuries. Thus, the intention of the accused revealed from the above circumstances, and therefore, it is a culpable homicide amounting to murder. The evidence on record sufficiently shows the involvement of the present Applicant. At this stage, reappreciation of the evidence is not permissible, and therefore, only aspect requires is to be seen whether the Applicant is having any

chance of success in the present Appeal. In view of that, the Application deserves to be rejected.

5. After hearing both the sides and on perusal of the impugned judgment as well as the evidence on record it reveals that, there was a dispute between the two families on account of taking water. On that count, on 27.06.2021 there was verbal altercation between the deceased and the father of the accused. On 28.06.2021 at about 06.00 a.m., the deceased went to free his ducks in his courtyard, at that time, the accused alongwith stick came there and gave a blow on head of the deceased. During investigation this incident was established by the prosecution by examining as many as 11 witnesses. Though some witnesses turned hostile during the trial, however, the evidence of Medical Officer which shows that the blow was so forceful that the internal injuries were sustained by the deceased. The Medical Officer further deposed that, all the injuries were antemortem in nature and were sufficient in ordinary course of nature and the opinion as to the cause of death is held. Thus, the prosecution has proved that the death of the deceased is homicidal one. The evidence of the witnesses and other circumstantial evidence which is adduced proves the guilt of the accused. Admittedly, at this stage, the reappraisal of the evidence is not permissible. What requires to be considered is whether the Applicant is able to show from the impugned judgment and evidence that there are any chances of acquittal on the basis of the evidence adduced.

6. This aspect was considered by the Hon'ble Apex

Court in the case of ***Omprakash Sahni Vs. Jai Shankar Chaudhary & Anr. in Criminal Appeal Nos. 1331-1332/2023, decided on 02.05.2023***, wherein it is observed in para 33 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 light of the above observations, in the case in hand the evidence of the eyewitness, the circumstantial evidence and the medical evidence sufficiently shows the involvement of the present Applicant in the alleged offence. The learned Trial Court has appreciated the evidence at length and come to the conclusion that the prosecution has proved its case against the present Applicant. Thus,

reappreciation of the evidence which is not permissible at this stage and the learned Counsel for the Applicant could not show from the entire record that he has any chance of acquittal in the present Appeal. In view of that, the Application deserves to be rejected. Accordingly, we proceed to pass the following order.

ORDER

- i. The Application is **rejected**.

CRIMINAL APPEAL NO. 623 OF 2024

1. R & P is already received. Paper book is ready.
2. List the Appeal for final disposal on **22.06.2026**.

(NIVEDITA P. MEHTA, J.)

(URMILA JOSHI-PHALKE, J.)