



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

CRIMINAL APPLICATION APPA NO.551 OF 2025

IN

CRIMINAL APPEAL NO.311 OF 2025

Kayyum Mohammed s/o Abdul Bashir and anr

..VS..

State of Mah., thr.PSO PS Sitabuldi, Tahsil and District Nagpur

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders

Court's or Judge's Order

.....
**Shri Anil Mardikar, Senior Counsel assisted by Shri A.C.Jaltare, Adv. for
applicants.**

Shri S.S.Hulke, Addl.PP. for the State.

CORAM : URMILA JOSHI-PHALKE & NIVEDITA PMEHTA, JJ.

DATE : 28/04/2026

1. Heard.
2. This is an application for suspension of sentence and for grant of bail.
3. By judgment and order dated 9.4.2025 passed by learned Additional Sessions Judge-6, Nagpur, present applicants/appellants are convicted for offence under Section 302 read with 34 of the IPC and sentenced to suffer rigorous imprisonment for life each and to pay fine Rs.5000/-, in default to suffer simple imprisonment for one month each.
4. As per the case of the prosecution, deceased Javed was brother of informant Naved Ansari Javed. He was dealing with auto and property business. On 12.10.2009, he left the house

and he was allegedly assaulted by present applicants/appellants by giving repeated blows on his person. On the basis of the said report, the police have registered the crime against present applicants/appellants.

5. During investigation, the Investigating Officer has recorded statements of various witnesses and after completion of the investigation, submitted chargesheet against present applicants/appellants.

6. The trial court, after recording evidence, held present applicants/appellants guilty for the offence as aforesaid.

7. Learned Senior Counsel for present applicants/appellants has taken us through the entire evidence recorded before the trial court.

At the end of submissions, learned Senior Counsel for present applicants/appellants submitted that he is not pressing the present application as far as applicant No.1 Kayyum Mohammed s/o Abdul Bashir is concerned.

Learned Senior Counsel submitted that there is absolutely no material against applicant No.2 Jahir Ahmed s/o Abdul Bashir in the evidence though the prosecution has examined as many as 15 witnesses. He has taken us through the evidence of PW1 Khalil

Khan; PW2 Mohd.Danish; PW3 Imran Khan, PW6 Dhnyaneshwar Shende, PW10 Ravi Bagde, and PW14 Imtiyaz Raheman and submitted that the evidence of these witnesses shows that appellant Nos.1 and 2 have also received injuries in the said incident. Thus, at the most, it can be said that it is a free fight between two members and during that, the deceased might have sustained injuries.

He has also invited our attention towards material omission which came in the evidence of PW6 Dhnyaneshwar Shende to the extent that PW6 Dhnyaneshwar Shende has stated that it was appellant No.1 who was sitting on the person of the deceased and assaulting him. His cross examination shows that it was omission which was not stated by him before the Investigating officer while recording his statement. Thus, he submitted that the entire evidence sufficiently shows that present applicants/appellants have also sustained injuries and, therefore, appreciation of the evidence by the trial court was not proper and conviction is erroneous one.

He submitted that both applicant/appellants were on bail during the trial and there is no complaint as far as misuse of liberty is concerned. Therefore, he submitted that appellant No.2 be released on bail by suspending his sentence.

8. Learned APP for the State has strongly opposed the said contentions and submitted that that the deceased has sustained 14 injuries on his person. The evidence of PW1; PW2; PW6; PW10, and PW14 sufficiently shows the involvement of the both applicants/appellants in the above said crime. He specifically invited our attention towards the evidence of PW14 and the postmortem report and submitted that the role of applicants/appellants reveals from the evidence of this witness and considering the principles laid down for considering application under Section 389 of the CrPC, the application deserves to be rejected.

9. After hearing learned counsel appearing for both the sides and perusing the entire evidence pointed out by learned Senior Counsel for present applicants/appellants as well as learned APP for the State, admittedly, at this stage, re-appreciation of the evidence is not permissible. What is to be seen is, whether appellant No.2 has made a ground to show that there are chances of acquittal at the hearing stage of the appeal and the detention of the appellant No.2 would be purposeless. In view of that, if the evidence on record is perused, it shows that PW1 and PW3 have specifically stated that appellant Nos.1 and 2 have also received the injuries in the said incident.

10. Perusal of the entire evidence of PW3, PW4, PW6, and PW10 shows that as far as appellant No.2 is concerned, no specific role is attributed to him. Admittedly, his presence is shown by these witnesses, however there is no specific evidence on record as to the role of appellant No.2 is concerned.

11. Bearing in mind the principles of law and the endeavour required to be taken into consideration are, whether appellant No.2 has made out a case to show that there are chances of acquittal.

12. This principle is also laid down by the Hon'ble Apex Court in the case of in Criminal Appeal Nos.1331-1332 of 2023 (**Omprakash Sahni vs. Jai Shankar Chaudhari**) decided on 2.5.2023 wherein in paragraph No.33 it is observed 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 this court, he should not be kept behind the bars for a pretty long time till 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 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.”

13. In the light of the above propositions laid down by the Hon’ble Apex Court, if the evidence is taken into consideration, admittedly, learned Senior Counsel for applicants/appellants has pointed out, as far as applicant No.2 is concerned, to show that there are chances of acquittal and, therefore, the principle laid down that in such cases, he should not be kept behind the bars for pretty long time till conclusion of the appeal and therefore, the prayer of appellant No.2 deserves to be allowed. Accordingly, we proceed to pass following order:

ORDER

(1) The criminal application is **partly allowed**.

(2) The execution of the sentence imposed by judgment and order dated 9.4.2025 passed by learned Additional Sessions Judge-6, Nagpur shall stand suspended during the pendency of the appeal to the extent of applicant No.2 Jahir Ahmed s/o Abdul Bashir.

(3) Applicant No.2 Jahir Ahmed s/o Abdul Bashir shall be released on bail on execution of a P.R.Bond in the sum of Rs.25,000/- with one solvent surety of the like amount.

The application to the extent of applicant No.1 is **disposed of as not pressed.**

The application stands **disposed of.**

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Place this appeal along with Criminal Application APPA No.554/2025 in Criminal Appeal St.No.5385/2025 after vacations.

JUDGE

JUDGE

!! BrWankhede !!