



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

CRIMINAL APPLICATION (APPA) NO. 2 OF 2026

in

CRIMINAL APPEAL NO. 593 OF 2025

[Sher Khan @ Banty S/o Sheikh Noor **vs.** The State of Maharashtra,
through P.S.O., P.S. Sakkardara, Nagpur]

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

Court's or Judge's orders

Mr. Bhushan Dafle, Advocate for the applicant/appellant
Mr. A. B. Badar, APP for the State/respondent

CORAM : ANIL L. PANSARE AND
NIVEDITA P. MEHTA, JJ.

DATE : 13-01-2026.

Heard.

2. The applicant is seeking to suspend sentence and to release him on bail. He has been convicted for the offence punishable under Section 302 of the Indian Penal Code.

3. We have gone through the testimony of eye witnesses i.e. PW. 9, PW. 10 and PW. 14. The testimony is consistent on the point of assault at the hands of applicant and his father. These witnesses have seen applicant inflicting injury by means of knife and his father by means of sharp edged weapon like sword (*sura*).

4. Learned counsel for the applicant submits that there is discrepancy in the testimony of these witnesses on the point of spot of incident. PW. 9 said that incident occurred near the house of applicant whereas PW. 14 deposed that PW. 10 Vatsala had come to her and informed that deceased, who is husband of PW. 14, is being beaten by means of sword in front of her house. Thus, according to counsel, the spot described by PW. 9 is in front of house of PW. 10.

4. The argument is not acceptable. PW. 14 has herself not described the place of incident. She spoke of spot as narrated by PW. 10, who in her substantive evidence has not described the spot. Thus, the spot of incident is not described by PW. 14.

5. We have gone through the spot panchanama. It appears that the spot of incident is located at thickly populated area surrounded by multiple structures which includes residence of applicant. The names of other residents is not clear. On this point, the trial Court has held as under :-

“38) Undisputedly, PW.No.14 Ranjana Sawarkar testified that she was informed by PW.No.10 Vatsala Chavan that her husband was being attacked in front of her house. Considering this along with the spot panchnama Exh.214 and the fact that the spot was only 10 to 15 houses away from Haridas Sawarkar's house, it indicates that the incident occurred in close proximity to the houses of PW.No.10 and PW.No.14. It is thus quite possible that when PW.No.10 first witnessed the incident, it was happening in front of her house, and when she returned with PW.No.14, the accused and deceased had moved slightly ahead near the neem tree. The all these locations are in close proximity and that the incident was sudden and shocking, it is not uncommon for lay witnesses to describe the spot with minor variations depending on their perception at the time. Therefore, such minor discrepancies regarding the exact location of the incident cannot, by themselves, render the prosecution case doubtful.”

6. Thus, the trial Court found that the locations described by the witnesses are in close proximity and in such circumstances, it is not uncommon for the witnesses to describe the spot with minor variations depending on their perception at the time of incident. We find this finding to be consistent with the law on appreciation of evidence. As regards assault, the

witnesses authoritatively stated that the applicant and his father are responsible for the death of P.W. 14's husband.

7. At this stage, learned counsel for the applicant has relied upon judgment of the Hon'ble Supreme Court in the case of *Kannaiya Vs. State of Madhya Pradesh [2025 SCC OnLine SC 2270]* wherein the Court in the facts before it held that prosecution therein failed to establish the genesis of the occurrence and the place of incident with any degree of certainty and accordingly, benefit was extended to the appellant therein.

8. In the present case, so far as genesis of occurrence is concerned, there appears no uncertainty. As regards place of incident, though there appears some discrepancy, the same is justified by the trial Court considering the fact that the location is in close proximity and therefore, the minor variance is acceptable.

9. Considering above, we are of the view that there is sufficient evidence against the applicant in the form of eye witnesses to hold that he is not entitled for suspension of sentence. The application is accordingly rejected.

(JUDGE)

(JUDGE)