



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

CRIMINAL APPLICATION (APPA) NO. 289 OF 2026

IN

CRIMINAL APPEAL NO. 184 OF 2026

(Vishal @ Falli Pruthwilal Gupta

Vs.

State of Maharashtra, Thr. Police Station Officer, Police Station,
Wathoda, Nagpur)

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. Adwait S. Manohar, Advocate for the Applicant/Appellant.
Mr. Nikhil Joshi, 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 who is accused No.2 is seeking suspension of sentence which is imposed in Sessions Trial No. 289/2021 dated 23/24.02.2026 by the Additional Sessions Judge-3, Nagpur by which the present Applicant was convicted of the offence punishable under Section 302 and 201 read with Section 34 of the Indian Penal Code and sentenced him to suffer life imprisonment.

2. By this Application, the Applicant has contended that he was arraigned as an accused on an allegation that on 29.12.2020 at about 1.15 p.m., the Complainant Abdul Sattar Sheikh Ibrahim claims to have been received the information about the murder of his son Mohammad Akib in the area which is situated behind Swami Narayan Mandir near Boudha

Vihar. It is further alleged that, the Police came to his house and disclosed that his son has been murdered in the Shrawan Nagar area and hence the Complainant visited the spot of incident, where he saw that his son was lying in pool of blood. After knowing the said incident he enquired and he came to know that there was a quarrel between his son and the present Applicant alongwith the other co-accused on the pretext of a money transaction. On that count, the present Applicant allegedly gave a blow of rafter on his head from the backside and other co-accused gave repeated blow of knife on the other parts of body, due to which he has sustained the injuries and succumbed to death. According to prosecution PW-2/Soheb and PW-3/Subham are the eyewitnesses of the said incident. The Investigating Officer also collected the material evidence, the weapons were seized at the instance of the accused persons and after completion of the investigation, the charge-sheet was submitted against the accused persons including the present Applicant.

3. In support of the prosecution case, the prosecution has examined in all 16 witnesses and after appreciating the evidence the present Applicant is convicted as aforestated.

4. Heard learned Counsel for the Applicant, who submitted that the role attributed to the present Applicant is that he has given a blow of rafter on head of the deceased, however, the medical evidence is contrary to that. The medical evidence shows that, only the injury which was sustained by the deceased on his cheek is possible by wooden rafter. Thus, there is a contradictory evidence in the

nature of oral evidence and medical evidence. He further submitted that, PW-2 and PW-3 are shown to be the eyewitnesses namely Soheb Israil Sheikh and Subham Gajbhiye but their statements are recorded after two days. During trial PW-3/Subham has not supported the prosecution case. He further submitted that, PW-2/Soheb was present at the time of inquest panchnama as well as the seizure of clothes of the deceased. At that time he has not disclosed that he has witnessed the incident. Thus, he submitted that considering the contradictory evidence which is oral evidence and the medical evidence, the evidence of the Medical Officer PW-4 which specifically states that, only the injury No. 14 is possible by the article like wooden rafter. The evidence of PW-2/Soheb who has not disclosed the incident immediately to the Police and his statement was recorded after two days of the incident. There is a possibility of embellishment as well as concoction of story. The role of the present Applicant is limited i.e. also contradictory by the medical evidence. Thus, the present Applicant has every chance of success in the present Appeal. He submitted that, even accepting the reappreciation of evidence is not permissible but what the Applicant has to show to the Court at this stage that he is having fair chances of acquittal which requires to be considered if the Applicant has shown the fair chances of acquittal, and therefore, there is no purpose to keep him behind the bars for long period i.e. till the disposal of the Appeal.

5. Learned APP strongly opposed the said contention and submitted that, in furtherance of the common intention

the Applicant and the other co-accused has committed the murder of the deceased, and therefore, the Application for suspension of sentence deserves to be rejected.

6. He also invited our attention towards the evidence of PW-2, PW-3 and the medical evidence and submitted that it was the act in furtherance of common intention, and therefore, the liability of the present Applicant requires to be considered and hence the Application deserves to be rejected.

7. After hearing both the sides and on perusal of the entire evidence on record there is no dispute regarding the fact that the medical evidence shows that the injury sustained by the deceased on cheek is only possible by wooden rafter. All other injuries are either stab wounds or chop wounds or the incised wounds which are not possible by the weapon like wooden rafter.

8. Learned Counsel for the Applicant, has rightly pointed out that the statement of the eyewitnesses i.e. PW-2/ Soheb was recorded after two days though he was present at the time of the inquest panchnama as well as at the time of seizure of clothes of the deceased. The evidence further shows that, his statement was recorded by the Investigating Agency as he was brought by the father of the deceased to the Police Station. Thus, considering all these aspects, admittedly, at this stage, the learned Counsel for the Applicant has succeeded in showing that the Applicant has every chance of success in the present Appeal.

9. Therefore, in view of the observations of 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.”

10. By applying the ratio laid down by the Hon'ble Apex Court while considering the application under Section 389 of Cr.P.C., admittedly, the learned Counsel for the Applicant has pointed out that the Applicant has fair chances of acquittal, and therefore, the Application deserves to be allowed. Accordingly, we proceed to pass the following order.

ORDER

- i. The Criminal Application (APPA) No. 289/2026 is **allowed**.
- ii. The execution and implementation of the sentence imposed in Sessions Trial No. 289/2021 by judgment and order dated 23/24.02.2026 by the Additional Sessions Judge-3, Nagpur, is hereby suspended till the disposal of the Appeal.
- iii. The Applicant-Vishal @ Falli Pruthwilal Gupta shall be released on bail on executing P.R. Bond in the sum of Rs.50,000/- with one solvent surety in the like amount.
- iv. The Applicant shall attend the District and Additional Sessions Court-3, Nagpur, on 5th of every month till disposal of the Appeal.
- v. The Applicant shall furnish his address alongwith his address proof alongwith the names of his two relatives and their address proof.
- vi. The Applicant shall not leave the jurisdiction of District Court Nagpur till disposal of the Appeal without prior permission of the Court.

CRIMINAL APPEAL NO. 184 OF 2026

1. R & P is already received.
2. Office to prepare the paper book expeditiously and after preparation of the paper book Appeal be listed for final disposal.

(NIVEDITA P. MEHTA, J.)**(URMILA JOSHI-PHALKE, J.)**