



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

CRIMINAL APPLICATION APPA NO.322/2026 IN CRIMINAL APPEAL NO.208/2026

Aakash s/o Dilip Jotange

..VS..

State of Mah., thr.PSO PS Dabki Road, Akola, Tahsil and District Akola

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

Court's or Judge's Order

.....
Shri S.S.Das, Counsel for the Applicant.

Mrs.Nandita Tripathi, 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 19.7.2024 passed by learned Sessions Judge, Akola in Sessions Case No.80/2022, the applicant is convicted for offence under Section 302 of the IPC and sentenced to suffer imprisonment for life and to pay fine Rs.10,000/-. He is further convicted for offence under Section 323 of the IPC and sentenced to suffer further rigorous imprisonment for one month.
4. Learned counsel for the applicant submitted that on the basis of the evidence of interested witnesses, the applicant is convicted by learned Sessions Judge. He submitted that learned Sessions Judge has not considered that there is no independent corroboration to the evidence of these witnesses and in absence of any corroboration, the applicant is convicted. He pointed out from the impugned judgment that he has many arguable points in the present appeal. He has also invited our attention towards the

evidence of PW1 and PW2, who are son and daughter of the deceased. He submitted that on consideration of evidence of these witnesses, it sufficiently shows that they are the interested witnesses. Thus, for all above these grounds, the execution of the sentence be suspended as the appeal will take its time for final disposal and in the meantime, if the sentence is executed, the appeal would become infructuous. In view of that, he prays for suspension of sentence.

5. Learned APP for the State has strongly opposed the said contentions and submitted that merely because PW1 and PW2 are relatives, is not sufficient to term them as interested witnesses. In fact, they are eyewitnesses and during cross examination, their evidence was not shattered and, therefore, the application deserves to be rejected. She submitted that at this stage, re-appreciation of the evidence is not permissible. On that count also, the application deserves to be rejected.

6. On hearing both the sides and perusing the impugned judgment as well as the evidence of PW1 and PW2, it shows that the impugned judgment is on the basis of the direct evidence and the circumstantial evidence. Perusal of the evidence of PW1 and PW2 shows that they are children of the deceased. They are also the natural witnesses.

7. At this stage, admittedly, re-appreciation of the evidence is not permissible.

8. What is to be seen is, whether there is sufficient material pointed out by learned counsel for the applicant to show that the applicant is having any chances of success in the present matter.

9. This aspect 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."

10. In the light of the above observations of the Hon'ble Apex Court, if the facts and the evidence is perused, admittedly, the direct evidence is there to connect the applicant with the crime.

11. At this stage re-appreciation of the evidence is not permissible and, therefore, no case is made out for suspension of sentence. In view of that, the application is **rejected**.

CRIMINAL APPEAL NO.208/2026

1. Heard.
2. **Admit.**
3. Call R&P, if not called.
4. Office to prepare the paper book.
5. List after preparation of the paper book.
6. Learned APP waives service.

JUDGE

JUDGE

!! BrWankhede !!