

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 799 OF 2022

Vilas Prabhakar Gaikwad ...Applicant

Versus

The State of Maharashtra ...Respondents

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Mr. Prashant Hagare, for the Applicant.

Mr. Ameet Palkar, APP for the State.

CORAM: N. J. JAMADAR, J.

DATED : 7th JULY, 2022

ORDER:-

1. The applicant, who is arraigned in CR No.1075 of 2021, registered with Indapuar Police Station, District Pune, for the offences punishable under Sections 307, 324, 323, 143, 147, 148, 149, 504 and 506 of the Indian Penal Code, 1860 ("the Penal Code"), has preferred this application for bail.

2. Atul Chandanshive (the first informant) resides at Vadapuri along with his family members. His uncle Sahebrao Chandanshive, resides in an adjacent house. On 12th December, 2021 at about 7.00 am. Vilas Prabhakar Gaikwad, the applicant herein, Vijay @ Dada Gaikwad, Prabhakar Rama Gaikwad, Sarika Vilas Gaikwad and Shubhangi Vijay @ Dada Gaikwad, the co-villagers had come in front of the house of the first

informant's uncle Sahebrao and an altercation ensued. The first informant attempted to pacify the tempers. The applicant started to abuse the first informant and with an intent to kill the first informant gave a blow by means of scythe on the face of the first informant. The blow fell on the first informant's nose. Co-accused Vijay caught hold of the first informant from behind. Co-accused Prabhakar assaulted him by fist and kick blows. First informant's uncle Sahebrao, cousin Vishal and sister-in-law Monika were also assaulted by the co-accused by means of fist and kick blows and stones. The first informant and injured approached the police station. The first informant lodged report.

3. The applicant came to be arrested. Post completion of investigation charge-sheet has been lodged. The applicant has preferred this application for bail asserting, *inter alia*, that the applicant has been falsely roped in as a report bearing No.1078 of 2021 for the offences punishable under Sections 143, 147, 148 149 of the Penal Code has been lodged by the applicant against the first informant and the injured in the instant case. In any event, the offence punishable under Section 307 of the Penal Code cannot be, *prima facie*, said to have been made out. Since the investigation is complete further detention of the applicant is not at all warranted.

4. I have heard Mr. Hagare, the learned Counsel for the applicant and Mr. Palkar, the learned APP for the State. With the assistance of the learned Counsels I have perused the report under Section 173 of the Code of Criminal Procedure, 1973 (“the Code”).

5. The learned Counsel for the applicant submitted that in respect of the very same occurrence the first informant had lodged a report against the members of the informant party. To give a counter-blast thereto, the applicant has been roped in by reporting an exaggerated version. Since the first informant and the injured have sustained simple lacerations, a case for the offence punishable under Section 307 of the Penal Code cannot be said to have been *prima facie* made out.

6. The learned APP, on the other hand, submitted that there is adequate material to support the complicity of the applicant. Thus, learned APP resisted the prayer for bail. Evidently, in respect of the very same occurrence, two first information reports i.e. CR No.1075/2021, in the instant case, and CR No.1078/2021, have been registered. A case and a counter case are essentially two versions of the same occurrence. The mere fact that a counter version is reported by the first informant does not by itself erode the credibility of the prosecution.

7. In the case at hand, it is imperative to note that the injury certificates of the first informant Atul and injured Sahebrao and Vishal indicate that each of them had sustained a laceration. Additionally, Vishal had sustained an abrasion over right eyebrow. All the injuries were simple and caused by hard and blunt object.

8. The first informant, in particular, sustained a laceration on the nose 1.1 X 3.2 cm. The said injury was allegedly suffered when the applicant attempted a blow by means of scythe. It does not, *prima facie*, appear that the injury suffered by the first informant was on account of blow by a sharp weapon. In any event, the injury was not grievous much less a life threatening one.

9. From the perusal of the allegations in the first information report and counter version reported by the applicant in CR No.1078/2021, it appears that there was a dispute over the right of access. An altercation led to fisticuffs and eventually a free fight ensued. None of the participants, however, seems to have sustained any grievous injury.

10. The investigation is complete for all intent and purpose. The alleged weapons of offence i.e. a stick and scythe seem to

have been recovered. Further detention of the applicant does not seem to be warranted.

11. The applicant being a permanent resident of Vadapuri, Taluka Indapur, appears to have roots in society. The possibility of fleeing away from justice seems to be remote. Apprehension of tampering with evidence and threatening the witnesses can be taken care of by imposing conditions. I am, thus, persuaded to exercise the discretion in favour of the applicant.

12. Hence, the following order:

: O R D E R :

- (i) The application stands allowed.
- (ii) The applicant – Vilas Prabhakar Gaikwad be released on bail in CR No.1075/2021, registered with Indapur Police Station, District Pune, on furnishing a P. R. Bond in the sum of Rs.30,000/-, with one or two sureties in the like amount, to the satisfaction of the learned Additional Sessions Judge, Baramati.
- (iii) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses.
- (iv) The applicant shall cooperate with the investigation and attend the Indapur Police Station on the first Monday of every

alternate month for a period one year or till framing of charge, whichever is earlier.

(v) The applicant shall furnish his permanent residential address and contact details to the Police Inspector, Indapur Police Station, within a week from the date of his release from prison and intimate the change, if any.

(vii) By way of abundant caution, it is clarified that the observations made hereinabove are confined to the consideration of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the co-accused.

[N. J. JAMADAR, J.]