

Santosh

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

BAIL APPLICATION NO. 1440 OF 2022

Bala alias Prashuram Ganpat Raut ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. Pandit Kasar, for the Applicant.

Ms. Pallavi Dabholkar, APP for the State.

CORAM: N. J. JAMADAR, J.

DATED : 13th July, 2022

ORDER:-

1. This is an application for bail under Section 439 of the Code of Criminal Procedure, 1973 ("the Code"). The applicant is arraigned along with co-accused in CR No.490 of 2021, registered with Sinhgad Road Police Station, District Pune, for the offences punishable under Sections 394, 323, 427, 504 and 506 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code") and Sections 4 read with 25 of the Arms Act, 1959 and Section 135 read with Section 37(1) of the Maharashtra Police Act, 1951.

2. The indictment against and the applicant and the co-accused is that on 20th November, 2021, at about 11.00 pm. the applicant and his two associates came to Hotel Rebel foods Pvt.

Ltd. and ordered food. Bireswar Das, the Manager of the Hotel, who was at the cash counter, asked the applicant and co-accused to place the order on-line. The applicant and co-accused claimed that they were the local Dons and threatened the Manager to hand over the cash in the cash counter to one of them. Bireshwar Das resisted. Laxman Sonawane, the first informant, who works as the delivery boy in the said hotel, tried to intervene. Thereupon the applicant and the co-accused assaulted the first informant. Bireswar Das went into the kitchen of the hotel. The applicant and co-accused followed him. Co-accused Teja gave fist blows on the head of Bireswar Das. The applicant took out a scythe, which was concealed at his waist, and attempted to give a blow on the head of Bireswar Das. The latter took evasive action. The blow fell on the left arm of the Bireswar Das. Other employees and persons came thereat. While leaving the hotel, the applicant and co-accused committed mischief and damaged property, and threatened the Manager out of his life. Hence, the report.

3. The applicant came to be arrested on 9th December, 2021. Post completion of investigation, charge sheet has been lodged.

4. In the intervening period co-accused Teja came to be released on bail by the learned Sessions Judge. However, the learned Sessions Judge declined to exercise the discretion in

favour of the applicant as there were specific allegations of assaulting the injured Bireswar Das by means of a scythe. It was further noted that the said scythe came to be recovered pursuant to discovery made by the applicant.

5. Mr. Kasar, the learned Counsel for the applicant, submitted that the refusal to exercise the discretion in favour of the applicant is unsustainable as the injured Bireswar Das had suffered a simple injury. Even the said injury does not co-relate with the assault allegedly mounted by the applicant by means of scythe.

6. The learned APP, on the contrary, resisted the prayer for bail on the ground that apart from overwhelming material to show the complicity of the applicant there are antecedents which dis-entitle the applicant from being released on bail.

7. It seems the gravamen of indictment against the applicant is that he assaulted the injured Bireswar Das by means of a scythe. The injury certificate issued by Sasoon General Hospital, Pune, indicates that Bireswar Das had sustained following injuries:

- “1. H/o blunt trauma to head, back, Lt. Shoulder and Lt. Hand.
2. Abression on Lt. Hand 3 X 0.1 cm.”

8. The injuries were designated as simple. The Medical Officer opined that the injuries were probable by hard and blunt object.

9. Evidently, the injured Bireswar Das does not seem to have suffered an injury by a sharp weapon. Moreover, the said injuries were probable by hard and blunt object.

10. In this backdrop, the endeavour of the prosecution to make a distinction between the role attributed to co-accused Teja and the applicant, on the basis of the use of the deadly weapon, enters in the realm of controversy.

11. As regards the antecedents of the applicant, Mr. Kasar pointed out that in one of the prosecutions leading to Special Case No.371/2017, the applicant has been acquitted by the learned Sessions Judge, Pune.

12. In the circumstances of the case, having regard to the nature of the material pressed into service against the applicant, especially in the context of the medical evidence, a *prima facie*, case for exercise of discretion in favour of the applicant is made out. The apprehension on the part of the prosecution, which found favour with the learned Additional Sessions Judge, can be taken care of by imposing conditions.

13. Hence, the following order:

: O R D E R :

- (i) The application stands allowed.
- (ii) The applicant – Bala alias Prashuram Ganpat Raut be released on bail, in CR No.490/2021, registered with Sinhagad Road Police Station, 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 Magistrate.
- (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 mark his presence at Sinhgad Road Police Station, Pune, on the first Monday of every alternate month in between 10.00 am. to 12.00 noon., for the period of one year or till framing of the charge, whichever is earlier.
- (v) The applicant shall regularly attend the proceedings before the jurisdictional Court.

(vi) 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.

(vii) All concerned to act on an authenticated copy of this order.

[N. J. JAMADAR, J.]