

Santosh

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

BAIL APPLICATION NO. 1474 OF 2022

Dnyaneshwar Baban Ozarkar ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr. Piyush Toshnival, i/b Harshal Patil, for the Applicant.

Mr. P. H. Gaikwad, APP for the State.

CORAM: N. J. JAMADAR, J.

DATED : 13th July, 2022

ORDER:-

1. By virtue of this application under Section 439 of the Code of Criminal Procedure, 1973 ("the Code") the applicant seeks to be enlarged on bail.

2. The applicant and the co-accused are arraigned in CR No.543 of 2020, registered with Paud Police Station, District Pune, for the offences punishable under Sections 307, 326, 323, 341 and 504 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code") and Sections 4 read with 25 of the Arms Act, 1959.

3. The indictment against the applicant and the co-accused runs as under:

Dilip Ozarkar (the first informant) is the resident of Ozarkarwadi, Rihe, Taluka Mulshi, District Pune. On 12th December, 2012, the first informant and his friends Ashok Ozarkar and Malhari Ozarkar had gone to the land situated at Gat No.326 to show the same to Narayan Dhondiba Murkute, who had evinced interest therein. At about 5.15 pm. while they were on their way to home, the applicant and co-accused Pravin Ozarkar, Prashant Ozarkar and Aakash Ozarkar accosted them. They questioned the first informant and his friend as to whose land they were intending to sale. They abused the first informant and his associates Ashok and Malhari. Co-accused Pravin Ozarkar was armed with a sword, Prashant had a scythe. Prashant gave a blow by means of scythe on the right hand of the first informant. The applicant Dnyaneshwar was armed with a chopper and co-accused Pravin was armed with a sword. The applicant and Pravin unleashed blows by means of the respective weapons on the head of Malhari. Ashok Ozarkar was also assaulted by Prashant and Aakash by means of scythe and knife. Villagers intervened and the first informant and injured Malhari and Aakash were rescued. After having treatment at Paud Rural Hospital, the first informant lodged the report. Post completion of investigation, charge-sheet has been lodged.

4. In the intervening period co-accused Pravin Ozarkar came to be released on bail. Thereupon the applicant preferred second bail application (ABA/8400/2021) before the learned Additional Sessions Judge, Pune. The learned Additional Sessions Judge was of the view that the role attributed to the applicant was specific, and distinct from that attributed to co-accused Pravin. Hence, the learned Additional Sessions Judge declined to exercise the discretion.

5. I have heard Mr. Toshnival, the learned Counsel for the applicant, and Mr. Gaikwad, the learned APP for the State, at some length. With the assistance of the learned Counsels, I have perused the report under Section 173 of the Code of Criminal Procedure, 1973 and the documents annexed with it.

6. Mr. Toshnival would urge that the role attributed to the applicant cannot be said to be distinct from that of co-accused Pravin Ozarkar, who was ordered to be released on bail. After few days of admission, the injured Malhari was discharged from hospital. The injured Malhari had not suffered grievous injury. The investigation is complete for all intent and purpose. Therefore, the applicant deserves to be released on bail.

7. In opposition to this Mr. Gaikwad, the learned APP, strenuously submitted that the injuries sustained by the

Malhari were life threatening. There is overwhelming material on record in the form of report of the first informant and statements of injured and eye witnesses to the effect that the applicant gave blows by means of chopper on the head of the injured Malhari. The said chopper has been recovered pursuant to the disclosure statement made by the applicant. Thus, the applicant does not deserve bail.

8. I have carefully perused the allegations in the first information report and the statement of injured witnesses Ashok Ozarkar and Malhari Ozarkar. The first informant and the injured witnesses were in unison on the point that the applicant was armed with a chopper and Pravin Ozarkar, the co-accused, was armed with sword. They have categorically asserted that the applicant assaulted Malhari by means of the chopper and co-accused Pravin assaulted Malhari by means of sword. The rest of the witnesses to the occurrence have also attributed the same role to the applicant and co-accused Pravin.

9. It would be contextually relevant to note that the discharge summary of Malhari, issued by Symbiosis University Hospital and Research Centre, indicates that Malhari had sustained following injuries:

“CLW over forehead extending to sculp region 15 X 1 cm.

CLW over upper and lower lips.”

10. Discharge summary further shows that Malhari was admitted in Hospital on 12th December, 2020 and discharged on 19th December, 2020.

11. In the backdrop of the aforesaid nature of the injuries sustained by Malhari, the claim for parity is required to be appreciated. Evidently, Malhari sustained only two injuries. The witnesses are in unison on the point that both applicant and Pravin, the co-accused, assaulted injured Malhari by means of sharp weapons. The applicant gave blows by means of chopper, whereas Pravin assaulted Malhari by means of Sword.

12. At this juncture, as both the applicant and Pravin were allegedly armed with sharp weapons and unleashed blows by means of those weapons, it would be, *prima facie*, difficult to draw a distinction between the role attributed to the applicant and Pravin. It would be a matter for trial as to which of the blows resulted in the first injury, CLW over forehead extending to scalp region.

13. The investigation seems to be complete. The applicant is in custody since 12th December, 2021. Further detention of the applicant does not seem to be warranted. The applicant appears to have roots in society to bind him down to his place of abode and avocation. I am, therefore, persuaded to exercise the discretion in favour of the applicant, subject to certain conditions.

14. Hence, the following order:

: O R D E R :

- (i) The application stands allowed.
- (ii) The applicant – Dnyaneshwar Baban Ozarkar be released on bail, in CR No.543/2020, registered with Paud 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 Sessions Judge, Pune.
- (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 not enter the limits of village Ozarkarwadi, Rihe, Taluka Mulshi, District Pune, for the

period of one year or till the recording of the evidence of the injured witnesses, 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.]