

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

BAIL APPLICATION NO.3328 OF 2022

Sadashiv @ Shiva Paraji Gaikwad

Age 30 years,

R/o: Vadalgaoon, Savitribai Phule Nagar,

Mhada Colony, A7 BD, Room No.39,

Nashik

(At present Nashik Road Central Prison,

Nashik)

... Applicant.

Versus

The State of Maharashtra

(At the instance of PI Ghoti Police

Station)

.. Respondent.

...

Mr Piyush Toshnival a/w Adv. Aniket Nikam i/b Adv. Amit Icham,
Advocate for the Applicant.

Mr M.G.Patil, APP for the State.

...

CORAM : R. N.LADDHA, J.

DATE : 23 DECEMBER 2022

P.C.:

Heard learned Counsel for the parties.

2. By this application, the Applicant is seeking bail in
connection with C.R.No.I-55 of 2022 registered at Ghoti Police

Station, Nashik, against the Applicant and other accused for the offences punishable under Sections 302, 201, 120-B r/w 34 of the Indian Penal Code, 1860.

3. Mr Piyush Toshnival, learned Counsel appearing on behalf of the Applicant, submitted that the Applicant has been languishing in jail since 01.05.2022. The investigation is complete for all intent and purpose, and the charge sheet has been filed. It is submitted that the trial is not yet started. It is submitted that the statement of the witnesses Akila, Amin and Masoom show that these witnesses did not know what happened in the intervening night of 25.4.2022 to 26.4.2022. Their statements do not mention the presence of the deceased with the Applicant. There is no nexus between the present Applicant and the deceased. It is submitted that the memorandum of the co-accused is the only material against the present Applicant, but the same is not admissible. There is no recovery at the behest of the Applicant. Further, there appears to be no CDR. No motive was attributed to the Applicant. It is submitted that no one had last seen the Applicant with the deceased. No role of assault was attributed to the Applicant. The Applicant has roots in Society. It is submitted that there is no possibility of the Applicant fleeing away or tampering with the witnesses, and if he is enlarged on bail, he will not misuse the liberty of bail.

4. Mr M.G.Patil, learned Additional Public Prosecutor appearing for the State, submitted that the offence was committed in well-planned design by the Applicant and other accused. There is material on record that all the accused had hatched a conspiracy to eliminate the deceased Mujahid. It is submitted that at the time of the assault, the Applicant was holding the hands of the deceased.

5. This Court has perused the Application, Charge Sheet filed along with the documents placed on record. It reveals from the record that the Applicant has been behind bars since 1.5.2022. The investigation is complete, and the charge sheet is filed. The case is based on circumstantial evidence. There are no eyewitnesses to the incident. The interrogation of the Applicant is already over, and there is nothing further left to investigate. Admittedly, an actual assault was by the co-accused. There appear no blood stains on the clothes of the Applicant. Based on the memorandum of the co-accused Rameshwar, the Applicant was apprehended. As per the prosecution's case, co-accused Rameshwar assaulted the deceased with a knife. Admittedly, there were criminal antecedents against the Applicant. However, that cannot be a ground to reject the bail.

6. In such a situation, this Court is convinced that bail can be granted to the Applicant, subject to appropriate

conditions.

7. Given the above, the Application is allowed in the following terms :

ORDER

- a) The Applicant Sadashiv alias Shiva Paraji Gaikwad shall be released on bail in C.R.No. I-55 of 2022 registered at Ghoti Police Station, Nashik, on furnishing a P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount to the satisfaction of the concerned Court.
- b) The Applicant shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses.
- c) The Applicant shall furnish the permanent address and contact details to the Inspector of Police of the concerned Police Station and intimate the change, if any.
- d) The Applicant shall regularly attend the proceedings before the trial Court.

8. Needless to say, violating any of the conditions above will make the Applicant liable for cancellation of bail.

9. It is made clear that the observations made herein are prima facie, and the trial Court shall decide the case on its own merits, in accordance with the law, uninfluenced by the observations made in this order.

10. All the parties to act on an authenticated copy of this Order.

[R. N. LADDHA, J.]