

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**BAIL APPLICATION NO.1564 OF 2023**

SHRI PRASAD BABURAO GIRI  
VERSUS  
THE STATE OF MAHARASHTRA

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Mr. M. S. Kulkarni, Advocate for the Applicant.  
Mr. K. S. Patil, APP for Respondents-State.

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**CORAM : S. G. CHAPALGAONKAR, J.**

**RESERVED ON : 15<sup>th</sup> SEPTEMBER, 2023.**  
**PRONOUNCED ON : 06<sup>th</sup> OCTOBER, 2023.**

**ORDER:-**

1. The applicant seeks regular bail in connection with Crime No.19/2017 registered with Parner Police Station, Dist. Ahmednagar for the offences punishable under Sections 302, 120-B, 143, 147, 148, 149, 109, 212, 465, 468, 201 of the Indian Penal Code and Sections 3/25, 4/25, 27 of the Arms Act and Sections 3(1) (i), 3 (1) (ii), 3(2), 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (for short 'MCOCA, 1999').

2. The investigation was set in motion on the basis of the report dated 21.01.2017 given by Ranganath Kisanrao Varal alleging that his nephew Sandeep @ Gondya Macchindra Varal was elected Sarpanch and active in local politics. On 21.01.2017 at about 02.10 pm while he, alongwith his nephew, Akash were proceeding from Rajasthani Sweets Shop, they heard the noise of firing bullets. Just ahead, they saw Rahul Sable, Nagesh Lokhande, Girish @ Giryra and 5-6 unknown persons with weapons like swords and choppers in their hands. They attacked Sandeep, fired bullets and pelted stones towards him. The accused

persons were moving around with swords in their hand and recklessly firing to create terror. Thereafter, all the accused persons flee away. The injured Sandeep was immediately shifted to private hospital. He had suffered severe injuries on right hand, neck, chin and face, bullet were passed in his stomach. The Doctor, on examination declared him dead. It is, therefore, reported that the accused persons have caused death of the Sandeep.

3. The investigation progressed in the matter. On 28.01.2017 the applicant is arrested as one of the suspect. After completion of the investigation, charge-sheet was filed and Special Case (MCOCA) No.2/2017 was registered before the Special Judge, Nashik, which is subsequently transferred to Special Judge, Ahmednagar and registered as Special Case (MCOCA) No.569/2020.

4. The applicant had moved his application for grant of regular bail before the Special Court, which came to be rejected vide order dated 14.01.2019. The applicant approached this Court vide Bail Application No.264/2020, however withdrew the same. The applicant filed present successive application for grant of bail mainly on two grounds:

(i) The co-accused persons have been recently released on bail, which is a changed circumstance to seeks bail on parity.

(ii) The applicant is behind the bar for more than 6 years. There is no progress in the trial and likely to take much more time. The applicants right of the speedy trial, referable Article 21 of the Constitution of India, has been infringed. The indefinite incarceration of under trial prisoner is not permissible.

5. Mr. Kulkarni, learned Advocate appearing for the applicant would submit that the main accused i.e. Pravin Ananda Rasal, who is alleged to be a gang leader and instigator has been released on bail by order of this Court in Bail Application No.1529/2022 dated 22.12.2022. He would further submit that the trial could not be commenced, although charge-sheet is filed on 19.04.2017. The applicant is languishing in jail for more than 6 years. More than 156 witnesses have been cited by the prosecution. Till this date, the trial is not commenced. He would further submit that, although the applicant is named by the eye witnesses, the allegations against him are vague. He would submit that for similar reason, the co-accused persons are enlarged on bail. Therefore, he urges for release of applicant on bail.

6. The learned APP vehemently opposes the prayer. He would submit that the offence is serious. The incident took place in a public place in day light. The accused persons used deadly weapons like fire arms, swords etc. They created terror in the society by such activity. The offences punishable under Sections 302 r/w. 120-B of the Indian Penal Code, so also the offence punishable under the Arms Act and MCOCA, 1999 are invoked. The role of the applicant is prominent. He used fire arms. The evidence of eye witnesses suggests that the applicant was holding fire arm and fired bullets towards victim Sandeep.

7. Having considered the submissions advanced, it is apparent that the applicant is behind the bar since his arrest on 28.01.2017. Till this date, the trial is not progressed. Some of the accused persons are enlarged on bail. Perusal of the FIR would show that the applicant is named in the FIR alongwith co-accused

persons. His earlier Bail Application has been rejected by the Special Court, so also Bail Application No.264/2020 filed before this Court has been withdrawn on 20.10.2020. The statement of Akash @ Tinkya Vijay Varal, an eye witness of the incident, clearly depicts that the applicant fired bullets on Sandeep using his pistol. The witness Ramdas Varal also confirms that the applicant had opened fire with intention to create terror. Considering the specific attribution against the applicant and the material indicating his active participation in the commission of the offence, there is no case on merit to release the applicant on bail.

8. The learned Advocate appearing for the applicant contends that the main accused/conspirator Pravin Ananda Rasal and another accused Bhaiya @ Rushikesh Subhash Bhosale are released on bail, hence, case of applicant needs consideration on parity. However, perusal of the order dated 22.12.2022 in Bail Application No.1529/2022 filed by the Pravin Rasal, would show that the evidence against him was in the form of voice samples so as to brand him gang leader, the statement of co-accused under Section 18 of the MCOCA, 1999 and recovery under Section 27 of the Evidence Act. This Court observed that he is not attributed role in actual to Sandeep. Even confessional statement of the co-accused nowhere refers the applicant and recovered articles under Section 27 of the Evidence Act do not depict blood stains. Accordingly, his application has been favorably considered. So far accused Bhaiya @ Rushikesh Subhash Bhosale is concerned, this Court observed in order dated 26.04.2023 that no specific role is attributed against the applicant. The allegation against him is hitting Sandeep by stone or bricks and creating terror by swinging sword. In that facts the accused Bhaiya @ Rushikesh Subhash

Bhosale is granted bail. So far as other accused persons namely Swapnil Rasal, Anil Chavan and Sachin Rasal are concerned, they are attributed with peripheral roles like providing weapons, financial assistance and deterring the witnesses from aiding the deceased. There is no allegation against them regarding participation in assault against the deceased. In the present case, the applicant is named in the FIR. The eye witnesses have specified his role in firing bullets towards the deceased, so also create terror through random fire. The role of the applicant is not comparable with the role of the accused persons enlarged on bail. Therefore, the principles of parity would not assist the applicant.

9. The last contention raised on behalf of the applicant is that the trial is not progressed for more than 6 years of filing charge-sheet and there cannot be indefinite incarceration of the applicant, which violates rights of the accused guaranteed under Article 21 of the Constitution of India. It is true that, under trial prisoners have right of speedy trial and it is duty of the prosecution to complete the trial within reasonable period and to assist the Court for disposal of the case within reasonable period. However, even looking present case from that angle, in view of the voluminous evidence against the applicant depicting his active role, gravity and nature of the offence, release of the applicant at this stage would hamper the smooth trial. The possibility of tampering the evidence and threatening of witnesses cannot be ruled out. In that view of the matter, there is no merit in the application. Hence, it is rejected.

**(S. G. CHAPALGAONKAR)**  
**JUDGE**