

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

**BAIL APPLICATION NO. 3374 OF 2022**

Baban @ Babdya Nagesh Wani ...Applicant  
vs.  
The State of Maharashtra ...Respondent

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Mr. Pandit Kasar - Advocate for the Applicant  
Mrs. M. R. Tidke - APP for the Respondent-State  
API Yogesh B. Patil – Mahatma Fule Chauk Police Station, Kalyan

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**CORAM : S. M. MODAK, J.**

**DATE : 21<sup>st</sup> MARCH, 2023**

**P. C. :-**

1. Heard learned Advocate for the Applicant and learned APP.
2. The Applicant has earlier withdrawn his bail application no. 2773 of 2021 on 15/11/2021. Now this fresh bail application is made on account of parity because this Court has granted bail to accused-Irshad Shaikh and accused-Rahmat Pathan. Those orders are annexed.
3. It is submitted that the role of those accused is similar to that of present Applicant. Whereas according to the learned APP his role is different because he was standing on the road at the spot

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having knife in his hand. The F.I.R. is lodged by the injured on 18/10/2020. He was assaulted by two persons who have covered with the faces. He was assaulted with fists, blows and knife. He suspected that this assault must have been by accused Rahmat and present Applicant on account of dispute occurred six years back. Offence is initially registered under Sections 326, 323 read with 34 of the Indian Penal Code but charge-sheet is filed under Sections 307, 120B, 326, 323 read with 34 of the Indian Penal Code.

4. I have read the papers just to ascertain whether role of this Applicant is similar to accused as referred above. It is true that the accused-Rehmat is having criminal antecedents just like the present Applicant. This is referred in the order dated 01/02/2023 against the Applicant-Rehmat in para no. 4. It is true that first informant could not see the assailants but one Danish Khan, nephew of the first informant on 18/10/2020 at about 8.30 p.m. had seen some of the persons standing on the road. They were interacting with each other. This was on the date of the incident that is why nephew also confirmed that assault on his uncle is by Rehmat and present Applicant. The nephew came on the spot after getting knowledge. He went in search of the assailants, he had seen the

Applicant, one Raja More and two other unknown persons one of those unknown person was possessing the knife. This is additional circumstance.

5. The role always cannot be similar but we have to see what is materials alleged against the Applicant. I do not find that the Applicant can be denied bail. This Court as per order dated 10/10/2022 for Applicant - Irshad has also discussed about the statement of the Danish Khan and Mohd. Khan recorded on 22/10/2020 and 23/10/2020. The applicant can be granted a bail. Hence following order:

### **ORDER**

- (a) The Applicant – Baban @ Babdya Nagesh Wani arrested in connection with C.R. No. 518 of 2020 registered at Mahatma Phule Chowk Police Station, Kalyan, Thane for the offence punishable under Sections 326, 323 read with 34 be released on bail on furnishing PR bond and surety bond in the sum of Rs.25,000/-.
- (b) The Applicant shall not threaten the prosecution witness.
- (c) The Applicant to attend Mahatma Phule Chowk Police station from 3.00 p.m. to 05.00 p.m. on first Saturday of every month for one year.
- (d) The Applicant is directed to provide surety which is having residence in Kalyan Taluka.

- (e) Needless to say, violating of the condition above will make the Applicant liable for cancellation of bail.
6. Application is disposed of in the aforesaid terms.
7. All the parties to act on an authenticated copy of this order.

**[S. M. MODAK, J.]**