

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

BAIL APPLICATION NO.1402 OF 2023

Rahul Anil Shinde

.Applicant

Versus

The State of Maharashtra

.Respondent

Mr. Piyush Toshniwal i/b. Mr. Ashish P. Pawar, for the Applicant.

Ms. Veera Shinde, APP, for the Respondent – State.

Mr. Mahesh Kadam, PSI-Shivajinagar Police Station, Kolhapur present.

CORAM: MADHAV J. JAMDAR, J.

DATE: 01.07.2024

P. C.:

1. Heard Mr. Toshniwal, learned Counsel appearing for the Applicant and Ms. Shinde, learned APP for the Respondent – State.
2. This is the second bail Application preferred by the present Applicant under Section 439 of *Code of Criminal Procedure, 1973* (“CrPC”). The first bail Application was decided by a learned Single Judge (Coram: Vinay Joshi, J.), by which the same was rejected by Order dated 02.05.2022 passed in B.A. No.4306 of 2021. The learned Single Judge is presently at the Nagpur Bench.
3. This matter is placed before this Court as a co-accused-Mohasin Irshad Sanadi was granted bail by this Court by Order dated 22.04.2024 passed in B.A. No.1600 of 2024.
4. The relevant details insofar as the present Applicant are as follows:

1.	C.R. No.	41 of 2021
2.	Date of registration of F.I.R.	24.01.2021
3.	Name of Police Station	Shivajinagar, Kolhapur
4.	Sections invoked	302, 143, 147, 148, 149, 323, 504, 506 of the I.P.C., 1860; 4 and 25 of the Arms Act, 1959;
5.	Date of incident	23.01.2021
6.	Date of arrest	24.01.2021
7.	Date of filing of Charge-sheet	20.04.2021

5. In the Order rejecting the first bail Application dated 02.05.2022, paragraph nos.3 to 6 of the Order dated 02.05.2022 passed by the learned Single Judge are relevant and read as under:

“3. At the instance of report lodged by the informant dated 24.01.2021 the crime was registered. The incident was outcome of local political rivalry. The victim has specifically stated the incident naming several assailants. The role assigned to the applicant is that at the relevant time, he has assaulted the deceased – Sandeep by means of wooden circular instrument used in handloom work. There are several eye witnesses, who co-equally stated the specific role of applicant.

4. It is the prosecution case that at the relevant time, all 10-15 persons have accosted the deceased – Sandeep and started to assault. The main accused – Kumar Kamble dealt a knife blow whilst one Rohan Kurane used sickle in the assault. Another assailant – Shahrukh dealt Sword at the head and face. Whilst the applicant assaulted by one wooden instrument. Rest have beaten by fist blows and kick and therefore, the report.

5. Perusal of P. M. note indicates that they were in all 16 injuries on the person of the deceased which are CLW as well as insized wounds. Prima facie, it is apparent that in the public view, 10-15 persons assaulted by means of a dangerous weapon and committed his murder out of political rivalry.

6. *The applicant's learned counsel would submit that the applicant allegedly used a small sized wooden stick which cannot be termed as dangerous weapon. Moreover, by such instrument, grievous hurt cannot be caused. The wooden instrument was sent for medical examination from which it can be gathered that, it was a circular wooden solid stick having width of 3.5 cm. Particularly, at the end of stick, metal clip and iron pins were fitted. The Medical officer opined that the said stick can cause lacerated wound, fracture bone etc. Though, there are no specific allegations of use a sharp edged weapon, however, in furtherance of common object of the assembly, the act is committed by all. Moreover, prima facie, there is material to indicate that the applicant has actively participated in the assault by holding a stick having metal clip at its end. There is ample material on record to show applicant's direct role. The offence is of serious nature. There are high chances of tampering, as incident was outcome of political rivalry. In view of that this is not a fit case to grant bail. Hence, Application stands rejected."*

(Emphasis added)

6. It is the main contention of Mr. Toshniwal, learned Counsel for the Applicant that the Applicant is in jail since 24.01.2021. He therefore submitted that prolonged incarceration is the ground on which he is seeking bail. He further submitted that this Court had granted bail to co-accused-Mohsin Irshad Sanadi. He therefore submitted that the Applicant be granted bail.

7. On the other hand, Ms. Shinde, learned APP for the Respondent-State vehemently opposed the Bail Application. She submitted that as far as merits are concerned, the learned Single Judge had already rejected the Bail Application by Order dated 02.05.2022. She submitted that the learned Single Judge while rejecting the Bail Application had highlighted the role of the present

Applicant and the nature of weapon used in the offence in question. She submitted that the Applicant had used a circular wooden stick having diameter 3.5 cm and having a metal clip and iron nails at the extreme end of the said stick. She submitted that the incident in question has taken place due to political rivalry. Apart from that, she submitted that the charge has already been framed on 29.11.2023. She submitted that Section 164 CrPC statements of four witnesses have been recorded and that the prosecution will examine total 12 witnesses including those 4 witnesses. She submitted that the Respondent-State will make an endeavour to conclude the trial within a period of one year from today. Ms. Shinde, learned APP on instructions from the investigating officer also makes a statement that all the Accused who are in custody will be presented in-person or through V.C. before the learned trial Court on every date of hearing. She also relied on the Order of the Supreme Court of India dated 14.09.2023 passed in Petition for Special Leave to Appeal (Crl.) No.6205 of 2023, by which the bail Application of a co-accused has been rejected.

8. This is a case where the learned Single Judge has already rejected the Bail Application of the Applicant on merits. The motive is political rivalry between two groups. There are about 4 eye-witnesses to the offence in question. The statement of the Informant shows that a major role has been attributed to the present Applicant. As noted by the learned Single Judge in the Order dated 02.05.2022, a very

peculiar nature of weapon has been used in the offence in question. It is also pointed out by Ms. Shinde, learned APP for the Respondent-State that there is a criminal antecedent being C.R. No.122 of 2020 registered for offences punishable under Sections 326, 143, 147, 148, 149, and 504 of the *Indian Penal Code, 1860* with the Shivajinagar Police Station, Kolhapur.

9. Thus, no case is made out for grant of bail to the Applicant. Insofar as the contention of Mr. Toshniwal, learned Counsel for the Applicant that a co-accused-Mohasin Irshad Sanadi was granted bail, it is to be noted that in paragraph no.7 of the order granting him bail, it is specifically observed that the only role attributed to the said co-accused was that he assaulted the Deceased with a stone. In the present case, the role attributed to the present Applicant is that he has used the weapon and the peculiar nature of the weapon was taken into consideration by the learned Single Judge while dismissing the first Bail Application.

10. Accordingly, the Bail Application stands rejected. However, the Applicant is at liberty to prefer a fresh Bail Application after a period of one year, if the trial is not concluded by this time.

[MADHAV J. JAMDAR, J.]