

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

BAIL APPLICATION NO.1063 OF 2024

Yashwant *alias* Anil Lakshman Gaikwad .Applicant

Versus

The State of Maharashtra .Respondent

Mr. Kishan Chaudhari a/w. Mr. Rayabhau Chaudhari, Advocates, for the Applicant.

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

Mr. Nilesh Bokephode, PSI-Pimpri Police Station, present.

CORAM: MADHAV J. JAMDAR, J.

DATE: 01.04.2024

P. C.

1. Heard Mr. Kishan Chaudhari, learned Counsel for the Applicant and Mr. Gaikwad, learned APP for the Respondent-State.

2. This regular Bail Application is preferred under Section 439 of the *Code of Criminal Procedure, 1973*. The relevant details are as follows:-

1	C. R. No.	428 of 2019
2	Date of registration of F.I.R.	15/03/2019
3	Name of Police Station	Pimpri, Pune
4	Section/s invoked	302, 341, 143, 147, 148 & 149 of the <i>Indian Penal Code, 1860</i> ; 37(1) & 135 of the <i>Bombay Police Act, 1951</i> ; 4 & 25 of the <i>Arms Act, 1959</i> .
5	Date of incident	15/03/2019
6	Date of arrest	15/03/2019
7	Date of filing Charge-sheet	10/06/2019

3. As per the prosecution case, the incident in question occurred on the intervening night of 14th March 2019 and 15th March 2019. The deceased, the informant, and other eye-witnesses were returning from the company premises in a tempo-traveller vehicle which had been provided by the company for travelling to the residence of employees. At that time, two unknown persons stopped the said tempo traveller and one of them slapped the deceased. The deceased then alighted the vehicle and other co-Accused came there and assaulted the deceased with kicks and fist blows. One of them assaulted the deceased with a chopper and then all the assailants fled from the spot. The deceased succumbed to the resultant injuries. The role attributed to the present Applicant is that he had slapped the deceased and thereafter instigated other Accused persons to assault the deceased.

4. Mr. Chaudhari, learned Counsel for the Applicant submitted that there are a total of 4 Accused. Three of them have been enlarged on bail. The Applicant is Accused No.2. Accused No.3-Swapnil Kamble has been granted bail by Order dated 5th February 2020 passed by a learned Single Judge [Prakash D. Naik, J.] in Bail Application No.3058 of 2019. The Accused No.4-Amar Vijay Kedari has been granted bail by Order dated 15th September 2023 passed by learned Additional Sessions Judge, Pune, below Exhibit 36 in Sessions Case No.622 of 2019. Accused No.1-Dharmesh *alias*

Dharmya Shamkant Patil has been granted bail by this Court by order dated 28.02.2024 passed in B.A. No.2012 of 2023. He submitted that F.I.R. was lodged against unknown persons. He submitted that in the Test-Identification Parade, the Applicant Accused No.2-Yashwant Gaikwad has been identified by the Informant as well as the eye-witnesses. However, he submitted that the only role attributed to the present Applicant is that he had slapped the deceased and thereafter instigated other Accused persons to assault the deceased. He submitted that the Applicant was arrested on 15th March 2019 and was released on bail during the COVID-19 pandemic on 26.05.2020. He submitted that he surrendered to the jail authorities on 19.07.2023. He submitted that till date, there is no progress in the trial and even the charge is also not framed yet.

5. On the other hand, Mr. Gaikwad, learned APP strongly opposed the Bail Application and also filed an affidavit-in-reply opposing the same. He submitted that the Applicant was released on temporary bail due to COVID-19 pandemic in May 2020 but he was again arrested on 19.07.2023 in F.I.R. No.294 of 2023. He submitted that in the Test-Identification Parade, witnesses have identified the Applicant and there is recovery of blood-stained clothes at his instance therefore no case is made out for granting bail and bail be refused.

6. As far as antecedents are concerned, Mr. Chaudhari, learned Counsel for the Applicant pointed out the said F.I.R. on page No.309 and submitted that the said incident took place when the Applicant

and his friends were under the influence of alcohol and the F.I.R. was lodged for the offences punishable under Sections 324, 323, 504 r/w. 34 of the *Indian Penal Code, 1860*. He submitted that the Applicant has been granted bail in the said case.

7. A perusal of the record shows that the incident in question has taken place on the intervening night of 14th March 2019 and 15th March 2019 and the Applicant was apprehended on the very day i.e. 15th March 2019. The Charge-sheet was filed on 10th June 2019. The Applicant has been incarcerated for about one year and nine months excluding the COVID-19 bail. As far as the progress in the trial is concerned, even the charge is also not framed yet. As per the prosecution case, there are a total of 39 witnesses proposed to be examined. Therefore the trial will not conclude shortly and it will take a considerably long time.

8. This is a case where the F.I.R. was lodged against unknown persons. Although the Informant and eye-witnesses have identified the Applicant, the role attributed to the Applicant is that he had slapped the deceased and thereafter instigated other Accused persons to assault the deceased.

9. As far as the antecedent is concerned, the Applicant has been granted bail in all the cases. There is substance in the contention of learned Counsel for the Applicant that said incident took place when the Applicant and his friends were under the influence of alcohol and the F.I.R. was lodged for offences punishable under Sections 324,

323, 504 r/w. 34 of the *Indian Penal Code, 1860*.

10. The Applicant is incarcerated in this case for more than one year and 9 months. There is no possibility of conclusion of the trial in the near future and in fact the trial has not commenced and even the charges are also not framed yet. Accordingly, the Applicant is entitled to be released on bail.

11. As most of the witnesses are from District-Pune and the antecedent is from District-Pune and are registered at Pimpri Police Station, Pune, the Applicant shall not enter District-Pune. Mr. Chaudhari, learned Counsel for the Applicant, after taking instructions, stated that the Applicant will reside at the residence of Mr. Amrut Pralhad Waghmare, R/o. Laxman Nagar, Lindi Road, Beed – 431 122 (Maharashtra) and will attend the Beed City Police Station.

12. The Applicant does not appear to be at risk of flight.

13. Accordingly, the Applicant can be enlarged on bail by imposing conditions. In view thereof, the following order:-

ORDER

(a) The Applicant - Yashwant *alias* Anil Lakshman Gaikwad be released on bail in connection with C.R. No.428 of 2019 registered with the Pimpri Police Station, District-Pune on his furnishing P.R. Bond of Rs.25,000/- with two solvent sureties in the like amount.

(b) The Applicant shall not enter the Pune district after being released on bail, except for reporting to the Investigating Officer, if called and for attending the trial.

(c) On being released on bail, the Applicant shall

furnish his cell phone number and residential address to the Investigating Officer and shall keep the same updated, in case of any change thereto.

(d) The Applicant shall report to the Beed City Police Station, District-Beed once every week, on every Sunday between 11.00 a.m. and 1.00 p.m. till the conclusion of the trial. The Police Inspector of Beed City Police Station, District-Beed to communicate details thereof to the Investigating Officer.

(e) The Applicant shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case so as to dissuade such a person from disclosing the facts to the Court or to any Police personnel.

(f) The Applicant shall not tamper with the prosecution evidence and shall not contact or influence the Complainant or any witness in any manner.

(g) The Applicant shall attend the trial regularly. The Applicant shall co-operate with the Trial Court and shall not seek unnecessary adjournments thereat.

(h) The Applicant shall surrender his passport, if any, to the Investigating Officer.

14. The Bail Application is disposed of accordingly.

15. It is clarified that the observations made herein are *prima facie* and the Trial Court shall decide the case on its merits, uninfluenced by the observations made in this Order.

[MADHAV J. JAMDAR, J.]