

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

BAIL APPLICATION NO.1572 OF 2023

Shashank *alias* Batlya Shankar Ambike .Applicant

Versus

The State of Maharashtra .Respondent

Ms. Shubhangi Parulekar (through VC), Advocate, for the Applicant.
Ms. Veera Shinde, APP, for the Respondent – State.
Mr. Swapnil Patil, P.S.I., Yerwada Police Station, Pune, present.

CORAM: MADHAV J. JAMDAR, J.
DATE: 19.03.2024

P. C.

1. Heard Ms. Parulekar, learned Counsel for the Applicant and Ms. Shinde, 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.	121 of 2022
2.	Date of registration of F.I.R.	18.03.2022
3.	Name of Police Station	Yerwada, Pune
4.	Section/s invoked	307, 323, 506 r/w. 34 of the I.P.C., 1860; Section 4 & 25 of the Arms Act, 1959; 37(1), 135 of the Maharashtra Police Act, 1959
5.	Date of incident	18.03.2022
6.	Date of arrest	12.06.2022
7.	Date of filing of Charge-sheet	18.06.2022

3. As per the prosecution case, the incident in question has occurred on 18.03.2022 at about 3.45 p.m. on a public road in front of the Concentrix Corporation, Tech Park One, Yerwada, Pune. At the time of the incident, one Mr. Tushar Khaire alongwith his friends were dancing on the road by playing music on a bluetooth speaker. At that time, five persons including co-Accused – Nikhil Misal, Rupesh Misal, the present Applicant – Shashank Ambike and a juvenile joined that dancing. At that time, co-Accused – Nikhil Misal was holding a sickle while dancing. Therefore, Tushar Khaire objected to the co-Accused – Nikhil Misal holding a sickle and said that the Police would take action against all of them. On hearing this, co-Accused – Nikhil Misal threatened Tushar Khaire and told him that he would teach a lesson to Tushar Khaire. Thereafter, the co-Accused alongwith the present Applicant left the spot. After some time, the Accused persons returned to the said spot. Co-Accused – Nikhil Misal held the collar of Tushar Khaire and other co-Accused gave a blow with the said sickle on the head of Tushar Khaire. The present Applicant – Shashank Ambike dealt a blow of an iron rod on the head of Tushar Khaire with the intention to kill him. The other co-Accused also inflicted a blow of sickle on the head of Tushar Khaire. At that time, the Informant – Ganesh Khaire rushed to rescue Tushar Khaire and he was assaulted by the Accused. All the Accused brandished the weapons and created a terror by abusing and shouting loudly. Tushar Khaire was taken to the hospital by his friends. The informant lodged a complaint with

the Yerwada Police Station, Pune on the same day. The police investigated the crime and arrested the Accused and filed a Charge-sheet for the offences punishable under Sections 307, 323 and 506 r/w. 34 of the *Indian Penal Code, 1860* and under Section 4 and 25 of the *Arms Act, 1959* and under Sections 37(1) and 135 of the *Maharashtra Police Act, 1951*.

4. It is the contention of Ms. Parulekar, learned Counsel for the Applicant that the Applicant was arrested on 12.06.2022. There is no progress in the trial and even charge is also not framed. She submitted that although injuries are on the vital parts of the Injured person, however, the Applicant is not responsible for the same. She submitted that the injuries are simple in nature and no specific role has been attributed to the present Applicant. She submitted that there is no recovery at the instance of the present Applicant. She, therefore, submitted that bail may be granted to the Applicant.

5. On the other hand, Ms. Shinde, learned APP for the Respondent – State vehemently opposed the Bail Application. She submitted that there are five eye-witnesses to the incident excluding the Injured persons. She submitted that there are two injured persons in the incident and the present Applicant assaulted the Injured with an iron rod on the head with an intention to kill him. She submitted that there are three antecedents. Apart from that, the Applicant has committed misconduct in the jail. Ms. Shinde, learned APP for the Respondent – State pointed out paragraph nos.6 and 7 of the Order

dated 18.11.2022 passed by the learned Additional Sessions Judge, Pune below Exh. 20 in Sessions Case No.586 of 2022 by which the Bail Application of the Applicant was rejected. In paragraph nos.6 & 7 of the aforesaid order, the learned Judge had recorded antecedents as well as conduct of the Applicant in jail.

6. A perusal of the record shows that the incident in question has occurred on 18.03.2022. The offences were registered on 18.03.2022. The Applicant was arrested on 12.06.2022. Charge-sheet has been filed 18.06.2022.

7. It is true that the Applicant is incarcerated for one year and nine months and that there is no progress in the trial. However, it is to be seen that the Injured – Tushar Khaire had objected to the co-Accused – Nikhil Misal who was holding a sickle in his hand while dancing and that said Tushar only told him that the Police may take action against all of them as accused were dancing together with the Injured and others. The said Nikhil Misal immediately told said Tushar Khaire that he would teach a lesson to him and thereafter all the co-Accused and the Applicant left the spot. After some time, the accused persons alongwith the Applicant returned to the said spot. Co-Accused – Nikhil Misal caught hold of the collar of Tushar Khaire and other co-Accused gave a blow with a sickle on the head of Tushar Khaire. The present Applicant gave a blow with an iron rod on the head of Tushar Khaire. Thus, the Applicant has taken a major part in the offence. There are injuries on the head of Tushar Khaire which is

a vital part of the body.

8. The Applicant has the following three antecedents :-

(i) Crime No.2163/2020, registered at Yerwada Police Station, under Section 326 r/w 34 of I.P.C., 1860.

(ii) Crime No.68/2020, registered at Yerwada Police Station, under Section 395 of I.P.C., 1860.

(iii) Crime No.144/2021, registered at Vimantal Police Station, under Sections 307, 143, 147, 148, 504, 506, & 427 of I.P.C., 1860, Section 4 and 25 of the *Arms Act, 1959* and Section 37(1) r/w 34 of the Maharashtra Police Act, 1951.

9. In paragraph no. 7 of the said Order dated 18.11.2022, the learned Additional Sessions Judge, Pune has set out the conduct of the present Applicant in the jail. The said paragraph no.7 reads as under:-

*“7] Not even this, the Jail Superintendent, Central Jail, Yerwada has sent the three letters against this applicant/accused. The first letter dated 09.07.2022, bearing Outward No. 8183/2022 shows that this applicant/accused committed misconduct in the Jail by **beating to Sahil Ashok Rajput**. The second letter dated 20.07.2022, bearing Outward No. 8238/2022 shows that the applicant/accused committed misconduct in the Jail by **abusing and manhandling Sahil Ashok Rajput**. The third letter dated 05.09.2022, bearing Outward No. 9614/2022 shows that the applicant/accused along with co-accused has committed the offence in the Jail by **abusing and beating the Prisoner Vaibhav Tarange**. In this incident, the head injury is caused to the Prisoner Vaibhav Tarange. Hence, the matter was informed to the Police Station, Yerwada.”*

(Emphasis added)

Thus, it is clear that the Applicant is a habitual criminal.

10. Parameters of granting bail are well established. The Supreme

Court in the case of *Deepak Yadav vs. State of U.P.*¹, reiterated the factors to be taken into consideration while adjudicating an Application for granting bail. Relevant paragraph No.22 reads as under:-

“22. As reiterated by the two-Judge Bench of this Court in Prasanta Kumar Sarkar v. Ashis Chatterjee [Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765] , it is well-settled that the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail.”

11. In this case, the offence is punishable under Section 307 of the *Indian Penal Code, 1860* which prescribes a maximum punishment of imprisonment for life. By taking overall factors into consideration

¹ (2022) 8 SCC 559

namely that the manner in which the offence has been committed in broad day light to teach a lesson to the Injured as he requested co-Accused – Nikhil Misal to follow the law, and considering that there are three antecedents and the Applicant has committed misconduct in jail, by applying the aforementioned parameters to the facts of this case, no case is made out for granting bail to the Applicant.

12. However, as the Applicant is incarcerated since 12.06.2022, the learned Trial Judge is requested to dispose of the case expeditiously.

13. The Bail Application stands rejected.

[MADHAV J. JAMDAR, J.]