

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2800 OF 2023

Ashok Baginath Giri

.Applicant

Versus

The State of Maharashtra

.Respondent

Mr. Amit Icham, Advocate, for the Applicant
Ms. Veera Shinde, APP, for the Respondent – State

CORAM: MADHAV J. JAMDAR, J.
DATE: 02.02.2024

P. C.

1. Heard Mr. Icham, learned Counsel appearing for the Applicant and Ms. Shinde, learned APP appearing 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.	295 of 2022
2. Date of registration of F.I.R.	01.11.2022
3. Name of Police Station	Mandrup Police Station, Solapur(Rural)
4. Sections invoked	302, 201, 323, 143, 147, 148 & 149 of the I.P.C., 1860
5. Date of incident	31.10.2022
6. Date of arrest	01.11.2022
7. Date of filing Charge-sheet	12.01.2023

3. As per the prosecution case, the deceased first asked Accused No.1 to send his wife to him and when other Accused took exception and confronted him for making indecent and offensive statements, the deceased told the present Applicant that if the wife of Accused No.1 will not go with him then the Applicant can send his wife instead. Therefore, as all the Accused i.e. Accused No.1, his wife i.e. Accused No.4, the present Applicant-Accused No.2, his wife-Accused No.5 and one Accused No.3 assaulted the present Applicant with a wooden stick. The deceased succumbed to the said injuries.

4. It is the contention of learned Counsel appearing for the Applicant that the incident has occurred in a spur of the moment. Co-accused i.e. Accused No.1-Abhiman Bajirao Sable who is having an identical role, has been enlarged on bail by this Court. It is the further contention of learned Counsel appearing for the Applicant that the deceased was in an intoxicated state and in such a situation, suddenly the deceased asked the present Applicant to send his wife with him. He submitted that therefore, there was a provocation from the deceased himself. He submitted that there is no motive and intention behind committing the offence in question. In fact, assault is not on the vital parts of the body. The weapon used is a wooden stick. He further submitted that the Applicant is working as a labourer in a sugar cane

plantation. He has four daughters three of which are minors. He further submitted that the Applicant was arrested on 01.11.2022 and he has no antecedents. He submitted that there are total five accused and all other four co-accused have been enlarged on bail.

5. Ms. Shinde, learned APP appearing for the Respondent – State vehemently opposed the Bail Application on the ground that there are eye-witnesses to the incident and that bail may not be granted to the Applicant.

6. However, a perusal of the record shows that the incident in question has occurred on 31.10.2022. F.I.R. has been lodged on 01.11.2022. Charge-sheet has been filed on 12.01.2023. As per the Charge-sheet, there are about 26 witnesses to be examined by the prosecution. There is no progress in the trial. The trial is unlikely to conclude any time soon and is likely to take a considerably long time.

7. *Prima facie*, there is substance in the contention of learned Counsel appearing for the Applicant that the incident in question has occurred in a spur of the moment as the deceased made offensive and indecent comments to the Applicant.

8. Mr. Icham, learned Counsel appearing for the Applicant states that as several witnesses are residing in the same locality as that of the Applicant, the Applicant will therefore not reside within District – Solapur and that the Applicant will reside at C/o.

Mr. Ashok Popat Puri, At Post - Morgaon, Taluka & District - Beed.

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

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

ORDER

(a) The Applicant - Ashok Baginath Giri be released on bail in connection with C. R. No.295 of 2022 registered with the Mandrup Police Station, District - Solapur (Rural) on his furnishing P. R. Bond of Rs.10,000/- with one or two sureties in the like amount.

(b) The Applicant shall not enter the Solapur 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 Neknoor Police Station, District - Beed once in three months, on Sunday between 11.00 a.m. and 1.00 p.m. till the conclusion of the trial. The Police Inspector of Neknoor 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 witnesses 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.

11. The Bail Application is disposed of accordingly.

12. It is clarified that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this Order.

[MADHAV J. JAMDAR, J.]