

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2827 OF 2023

Jayesh Shivaji Gaikwad

.Applicant

Versus

The State of Maharashtra

.Respondent

Mr. Aniket Vagal a/w Mr. Kunal M. Pednekar & Mr. Divesh Mehani,
Advocates for Applicant.

Ms. S. S. Kaushik, APP, for Respondent – State

CORAM: MADHAV J. JAMDAR, J.

DATE: 23.01.2024

P. C.

1. Heard Mr. Vagal, learned Counsel appearing for the Applicant and Ms. Kaushik, learned APP appearing for the Respondent-State.

2. This regular Bail Application is preferred under Section 439 of the *Code of Criminal Procedure, 1973*. By Order dated 24.08.2023 passed by a learned Single Judge (Coram : M. S. Karnik, J.), a co-accused has been granted bail. However, in view of the administrative decision as reflected in the Notice dated 19.01.2024 issued by the Registrar (Judicial – I) of this Court, the present Bail Application has been listed before this bench and accordingly I have taken up this matter for hearing.

3. 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.	527 of 2021
2.	Date of Registration of	22.09.2021

	F.I.R.	
3.	Name of Police Station	Chandwad Police Station, Nashik
4.	Sections invoked	302, 307, 326, 504, 506 r/w. 34 of the Indian Penal Code, 1860
5.	Date of Incident	22.09.2021
6.	Date of Arrest	22.09.2021
7.	Date of filing Charge-sheet	20.12.2021

4. As per the prosecution case, Mr. Nimba Gaikwad and Mr. Shivaji Gaikwad are siblings and the lands which came to their share are adjoining. There is a dispute between them on account of the *baandh* of their agricultural land. The houses of both families are adjacent to each other. The incident in question occurred on 22.09.2021 when a quarrel broke out on the said issue and when these two families were abusing each other, the present Applicant and his father i.e. co-accused - Shivaji Kashinath Gaikwad went running to their house. The Applicant brought a sickle and his father brought a sharp edged weapon. The Applicant assaulted the deceased - Mr. Sachin Gaikwad i. e. son of the informant and cousin brother of the Applicant with the sickle and struck blows on his head, hands and legs thereby grievously injured the deceased. The incident occurred on 22.09.2021 and the injured succumbed to the resultant injuries on 26.09.2021.

5. It is the contention of Mr. Vagal, learned Counsel appearing for the Applicant that the incident has occurred in a spur of the moment. He

submitted that although the Applicant is incarcerated since around two years and four months, there is no substantial progress in the trial. The charge has been framed on 29.08.2022. Although about 1 year and 4 months has elapsed after framing of charge, there is no progress in the trial ever since and even a single witness has not been examined yet. He submitted that as per the Charge-sheet, there are a total of 20 witnesses to be examined by the prosecution. Therefore, the trial will take a considerably long time. He submitted that the Applicant has no antecedents.

6. On the other hand, Ms. Kaushik, learned APP appearing for the Respondent - State vehemently opposes the Bail Application on the ground that the weapon used is a sickle and the injuries sustained by the deceased are on the vital part of his body. There are head injuries. She submitted that there are eye-witnesses to the incident. She submitted that the offence in question is punishable with imprisonment for life.

7. A perusal of the prosecution case shows that *prima facie*, the incident has occurred in a spur of the moment. Although the injuries are on vital parts of the body, the incident has occurred in a spur of the moment. There are a total of four accused. Except for the present Applicant, the remaining co-accused have been enlarged on bail. The present Applicant was arrested on 22.09.2021. The Charge-sheet was

filed on 20.12.2021. The charge in the present case was framed on 29.08.2022. For about 17 months, there is no progress in the trial.

8. In this case, a learned Single Judge (Coram : M. S. Karnik, J.) by Order dated 24.08.2023 passed in B. A. No. 1758 of 2023 granted bail to Accused No. 1 – Mr. Shivaji Kashinath Gaikwad.

9. It is an admitted position that the investigation has been completed and that the Charge-sheet has been filed on 20.12.2021. There are 20 witnesses as per the Charge-sheet. The trial is unlikely to conclude any time soon and is likely to take a considerably long time.

10. Mr. Vagal, learned Counsel appearing for the Applicant, on instructions, states that as several witnesses are residing in Taluka - Chandwad, District - Nashik, the Applicant will therefore not reside in Chandwad, District - Nashik and that the Applicant will reside at Saundane, Taluka - Malegaon, District - Nashik.

11. The Applicant does not appear to be at risk of flight. There are no antecedents.

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

ORDER

(a) The Applicant - Jayesh Shivaji Gaikwad be released on bail in connection with C. R. No. 527 of 2021 registered with the Chandwad Police Station, District- Nashik on his

furnishing P. R. Bond of Rs.25,000/- with one or two solvent sureties in the like amount.

(b) The Applicant shall not enter Taluka - Chandwad, District - Nashik after being released on bail, except for reporting to the Investigating Officer, if called.

(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 Malegaon Police Station, District - Nashik 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 Malegaon Police Station, District - Nashik 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 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.

13. The Bail Application is disposed of accordingly.

[MADHAV J. JAMDAR, J.]