

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.280 OF 2025

Harshal Nana Kene ... Applicant

V/s.

The State of Maharashtra ... Respondent

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WITH
INTERIM APPLICATION NO.1660 OF 2025
IN
BAIL APPLICATION NO.280 OF 2025

Mahesh Dashrath Gaikwad ... Applicant

In the matter between

Harshal Nana Kene ... Applicant

V/s.

The State of Maharashtra ... Respondent

Mr. Aabad Ponda, Senior Advocate i/by Mr. Rahul Arote for the applicant in BA.

Mr. Abhishek Kulkarni with Mr. Sagar Wakale for the applicant-intervenor in IA.

Mr. Ashish Chavan, Special PP with Mr. Mayur Mohite and Mrs. Megha S. Bajoria, APP for the respondent-State.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 5, 2025

P.C.:

1. By the present application filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as "BNSS"), the applicant is seeking regular bail in connection with Crime Register No. 171 of 2024 registered with Hill Line Police

Station, Ulhasnagar. The applicant has been arrested in the said crime for offences punishable under Sections 307, 120(B), 143, 147, 148, 149, 109, 323, and 504 of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”) and also under Section 30 of the Arms Act.

2. As per the record, the incident appears to be a result of political rivalry. One Ganpat Kalu Gaikwad, who is a sitting Member of the Maharashtra Legislative Assembly from Kalyan (East) constituency, is alleged to have political enmity with Mahesh Gaikwad, who is an ex-Corporator of Kalyan Dombivli Municipal Corporation and is also stated to be the Kalyan East City Head of a rival political party. The rivalry between the two is long-standing, and in the days preceding the incident, specifically on 31st January and 1st February 2024, there were altercations between both factions.

3. It is the case of the prosecution that on 2nd February 2024, members of both groups gathered at Hill Line Police Station, allegedly pressing for registration of FIRs against each other. At about 9.30 p.m., when Mahesh Gaikwad, Rahul Patil, and Chainu Jadhav (the first informant) were seated inside the cabin of the Senior Police Inspector, Ganpat Gaikwad along with Vicky Ganatra entered the cabin. In view of rising tension and verbal confrontation between the two sides, police officers including Senior PI Anil Jagtap tried to defuse the situation. However, the situation escalated, and Senior PI Jagtap had to step out of the cabin to control the chaos.

4. It is alleged that during this turmoil, Ganpat Gaikwad suddenly took out a revolver concealed at his waist and fired multiple rounds at Mahesh Gaikwad and Rahul Patil with an intention to kill them. Both sustained grievous injuries. Ganpat also fired towards the informant Chainu Jadhav. Thereafter, when Mahesh Gaikwad fell to the ground, Ganpat allegedly sat on his chest and struck multiple blows with the butt of his revolver on his head, thereby inflicting further grievous injuries.

5. It is further alleged that at this juncture, the present applicant (Harshal Kene) entered the cabin of the Senior Police Inspector and fired four rounds from his own revolver aimed at Mahesh Gaikwad. The applicant also allegedly slapped the informant and forced him to flee from the police station. Along with accused Kunal Patil, the applicant is said to have restrained the bodyguard of Mahesh Gaikwad to prevent him from intervening in the assault, and also assaulted the said bodyguard with fists and attempted to snatch his firearm. The prosecution has alleged that the applicant and the other co-accused were members of an unlawful assembly and actively aided the primary assailants in causing terror inside the police station premises.

6. Shri Ponda, learned Senior Advocate appearing for the applicant, submitted that the applicant was working as a bodyguard for co-accused Ganpat Gaikwad, who is alleged to have opened fire inside the cabin of the Senior Police Inspector. It is the prosecution's own case that the initial incident of firing had already occurred when the applicant entered the cabin. Drawing the Court's attention to the CCTV footage and its transcript,

learned Senior Advocate pointed out that the applicant entered the cabin approximately eight seconds after the first round of gunshots were heard from inside. According to him, upon entering the cabin, the applicant allegedly witnessed his employer Ganpat Gaikwad in blood-stained clothes, having sustained injuries. It is thereafter, as per the prosecution's case, that the applicant allegedly fired three shots on the injured person.

7. Learned Senior Advocate submitted that the applicant has been in judicial custody since 3rd February 2024. From a perusal of the CCTV transcript, it is evident that the applicant was not present inside the cabin at the time when the initial act of firing took place. He submitted that, as per the prosecution, the applicant had fired four rounds, out of which three had allegedly struck the injured. However, it is important to note, according to the applicant, that such act was not a premeditated offensive move, but a reflexive act in defense of the person of the co-accused, who appeared to have sustained serious injuries.

8. In support of his submission, learned Senior Advocate relied upon Sections 96, 97, 100, and 101 of the Indian Penal Code to contend that any act committed in exercise of the right of private defense does not amount to an offence. He submitted that every person has a right to protect his own body or the body of another from an offence that affects human body. He argued that under Section 100 IPC, such right of private defense may extend to even causing the death of another person, if the assailant's act gives rise to a reasonable apprehension that it may result in death or grievous hurt. Further, under Section 102 IPC, such right of private

defense arises the moment a person reasonably apprehends danger to his or another's body and continues so long as the apprehension of such danger persists.

9. Learned counsel therefore submitted that the applicant acted in a sudden situation, having found his employer grievously injured, and fired with the bona fide intention to defend him. He submitted that the act of the applicant was neither pre-planned nor carried out in conspiracy but was an act committed in the heat of the moment, with the intent to avert further harm.

10. Without prejudice to the above submission, learned Senior Advocate further submitted that even if the Court comes to the conclusion that the applicant had exceeded his right of private defense, then also, in view of Exception 2 to Section 300 of IPC, the same would not amount to murder. He submitted that culpable homicide committed in excess of the right of private defense, if done in good faith, does not amount to murder and is punishable under Section 308 IPC, which provides for imprisonment up to ten years.

11. Learned Senior Advocate then placed reliance on the judgment of the Supreme Court in *Darshan Singh vs. State of Punjab*, (2010) 2 SCC 333, and submitted that the Apex Court has categorically held that the right of private defense is available not only to protect oneself but also to protect another person, and such right arises instantly when a person is faced with an imminent threat. In such situations, a person is not expected to weigh the precise force required and, if the force used slightly exceeds the

legitimate right, it does not take away the protection altogether, but may reduce the gravity of the offence.

12. He therefore contended that in the present case, the applicant had no criminal intention, nor any premeditation to cause harm. His action was spontaneous, triggered by the sight of his employer having sustained gunshot injuries. The applicant has already undergone incarceration for a period of over one and a half years. Considering the period of custody and the nature of the applicant's alleged role, he prayed that the applicant be released on regular bail, subject to appropriate conditions.

13. Per contra, the learned Special Public Prosecutor vehemently opposed the grant of bail to the applicant. It is submitted that the incident in question was not a sudden outburst or reaction, but a well-planned and premeditated criminal conspiracy hatched by the applicant and co-accused Ganpat Gaikwad to eliminate the injured witness, Mahesh Gaikwad. What is even more alarming, as pointed out, is that the entire incident occurred inside the Hill Line Police Station itself, that too within the cabin of the Senior Police Inspector, thereby showing utter disregard for the rule of law and constitutional machinery.

14. It is further submitted that the entire sequence of events has been captured on the CCTV cameras installed in the police station premises, and the applicant's direct involvement in the assault is clearly visible therein. The learned Special P.P. pointed out that the applicant was not a passive bystander but an active participant in the offence. He was not only physically present at the spot but also

took part in the commission of the offence and instigated the violence. It is specifically contended that after co-accused Ganpat Gaikwad fired bullets at Mahesh Gaikwad and Rahul Patil, and when Mahesh Gaikwad fell to the ground while trying to escape, the applicant entered the cabin, following the police officers, and also fired gunshots at Mahesh Gaikwad using his personal revolver.

15. The learned Special P.P. further submitted that the CCTV footage clearly shows the applicant entering the cabin and firing at the injured. The revolver used by the applicant was seized from his possession, and the empty cartridges and barrel swabs of the firearm were forwarded to the Forensic Science Laboratory (FSL), Kalina. The ballistic expert's report has since confirmed that the bullets recovered were indeed fired from the applicant's revolver. Thus, the forensic evidence supports the prosecution case and corroborates the eyewitness accounts.

16. It is further submitted that there are multiple eyewitnesses who have given statements narrating the specific role played by the applicant in the incident. Their statements are consistent with the CCTV footage and forensic evidence. It is also pointed out that the revolver used by the applicant is a licensed firearm registered in his name, and hence, the use of such a weapon in the commission of an offence inside a police station demonstrates calculated and deliberate action.

17. Mr Abhishek Kulkarni advocate for informant submitted that the CCTV footage clearly show the presence of the applicant at the scene of offence inside the police station. According to the

informant, the applicant is seen standing near the injured Mahesh Gaikwad at the very moment when co-accused Ganpat Gaikwad was physically assaulting him with the butt of his pistol. It is alleged that the applicant was not only a mute spectator but in fact supported and aided the co-accused during the incident.

18. I have considered the submissions advanced on behalf of the applicant and the prosecution, as well as the material placed on record including the CCTV footage transcripts, FSL reports, and witness statements. The incident, as alleged, is grave and serious in nature. The act of opening fire within the precincts of a police station, that too inside the chamber of the Senior Police Inspector, *prima facie* reflects a brazen attack with utter disregard to the authority of law.

19. It is not disputed that co-accused Ganpat Gaikwad, a former MLA, allegedly opened fire at Mahesh Gaikwad and others inside the police station. The present applicant, who is his licensed bodyguard, entered the cabin soon thereafter and, as per the prosecution, also fired bullets from his revolver at the already injured Mahesh Gaikwad. The ballistic report received from FSL, Kalina, confirms that the bullets recovered from the spot were fired from the applicant's firearm. This scientific evidence supports the version of the prosecution and cannot be ignored at this stage.

20. At this stage, it is also necessary to record that when the learned Senior Advocate appearing for the applicant sought to rely upon the provisions of Sections 96 to 101 of the Indian Penal Code, pertaining to the right of private defense, he was specifically

informed by the Court that raising such a plea at the stage of bail would require the Court to prima facie examine whether the ingredients of those provisions are attracted in the facts of the present case. Upon being so informed, the learned Senior Advocate fairly stated that he was conscious of the consequences of such a submission and did not object to the Court recording prima facie findings in relation to the applicability of Sections 96 to 101 of the IPC. Accordingly, this Court has examined the said defense in the context of the material available on record and has, for the limited purpose of deciding this bail application, arrived at a prima facie conclusion that the act attributed to the applicant does not fall within the protective ambit of the right of private defense as contemplated under the said provisions.

21. The applicant has sought to justify his act by invoking the right of private defense as provided under Sections 96 to 102 of the Indian Penal Code. It is his case that upon witnessing co-accused Ganpat Gaikwad in a blood-stained condition, he believed that further danger to life existed, and therefore, in order to protect him, he fired shots. However, the plea of private defense cannot be accepted at face value merely on the basis of an assertion made during a bail hearing. The availability and extent of the right of private defense depend upon the specific facts, circumstances, and immediacy of threat perceived at the relevant time, which can only be determined during the course of trial after detailed appreciation of the oral and documentary evidence.

22. At this prima facie stage, the material placed on record presents a picture contrary to the version put forth by the

applicant. The CCTV footage, which has been relied upon both by the prosecution and the informant, clearly records the sequence of events leading up to and after the incident. It shows that the applicant did not enter the chamber of the Senior Police Inspector during the initial altercation but arrived several seconds later, after the main firing incident had already taken place and after the victims had sustained serious bullet injuries.

23. From the footage, as well as from the statements of eyewitnesses, it is evident that instead of taking any step to control the volatile situation, or alerting the police officers who were present on the spot, the applicant is seen directly entering the chamber and firing upon the injured victim Mahesh Gaikwad, who was already lying on the floor and visibly in a helpless condition. There is no material placed before the Court to show that the applicant or Ganpat Gaikwad was attacked, provoked, or threatened by the injured at that point of time. There is no record to suggest that the victim had any weapon in his hand, or posed any danger, or even moved aggressively towards the applicant or Ganpat Gaikwad. On the contrary, the victim had already collapsed on the ground due to prior gunshot wounds.

24. In such a situation, the applicant's contention that he acted in the exercise of the right of private defense appears, on the face of it, to be an afterthought. The version put forth by the applicant is not supported by the surrounding circumstances, nor does it find prima facie backing from the material on record. The CCTV footage clearly indicates that by the time the applicant entered the chamber, the main incident of firing had already taken place, and

the injured person, Mahesh Gaikwad, was lying on the ground, having already sustained bullet injuries.

25. Under the scheme of the Indian Penal Code, Sections 96 to 102 lay down the law relating to the right of private defense. These provisions make it clear that such a right is available only when there exists an imminent or reasonable apprehension of danger to one's own life or the life of another. The right arises at the moment when a person is faced with an impending threat and is required to act instantly to prevent harm. It does not survive once the threat has subsided or when the aggressor is no longer in a position to cause injury.

26. In the present case, there is no material to show that the applicant himself or Ganpat Gaikwad was in any danger or that the injured was in a position to attack or retaliate. The injured victim was already wounded, lying motionless, and surrounded by police personnel and others. In such circumstances, the act of the applicant in firing additional rounds at a person who was already incapacitated cannot be construed as an act of defense. It does not appear to be a reaction to repel any threat but rather an aggressive and excessive act, which borders on retaliation or intended harm.

27. The law is well-settled that the right of private defense is not a disguise for vengeance. It is a protective shield not an offensive weapon. When the threat has ceased or the aggressor is disabled, the law does not permit further use of force under the garb of self-defense. The conduct of the applicant, as captured in the footage and described by eyewitnesses, indicates a conscious and

deliberate act of violence rather than an instinctive act to save anyone from harm.

28. Furthermore, the fact that this entire incident took place inside a police station, a place meant for public safety and law enforcement, aggravates the seriousness of the conduct. The act of the applicant in choosing to use a firearm at such a sensitive location, at a time when the alleged assailant (co-accused Ganpat Gaikwad) had already disengaged, further indicates that the firing by the applicant was not spontaneous or defensive in nature, but aggressive. This conduct not only fails to attract the protection of the right of private defense but, at this stage, strongly supports the allegations of intentional involvement in a violent offence.

29. Further, forensic evidence in the form of ballistic report confirms that the shots fired by the applicant did hit the victim, thereby causing additional injuries. The act of firing multiple rounds at an already injured and defenseless person, particularly in the presence of police personnel, does not, at this stage, appear to be in exercise of any bona fide right of private defense. On the contrary, it prima facie indicates conscious participation in a assault upon the victim.

30. It is settled law that the right of private defense is a protective right, not a license to retaliate or to inflict excessive harm. The manner in which the applicant has acted, entering the police chamber with a licensed firearm and firing further rounds, does not prima facie suggest that his act was in defense of his person or that of another, but appears to be an act of aggression.

Whether this act exceeded the right of defense or was altogether outside its scope is a question that must be examined at trial. At this stage, however, the claim of private defense is not borne out from the available material and, hence, cannot be accepted as a mitigating factor in considering the bail prayer.

31. Hence, taking an overall view of the material available, including the CCTV footage, eyewitness accounts, and the absence of any immediate or grave provocation against the applicant at the relevant time, this Court finds no substance in the defense of private defense as raised by the applicant, for the limited purpose of considering bail. Whether or not the defense would ultimately succeed can only be determined upon full trial, but as of now, it does not inspire confidence to grant liberty to the applicant.

32. In the present case, the applicant seeks to rely on the *Darshan Singh (supra)* judgment to justify his act of firing upon the already injured Mahesh Gaikwad, allegedly in defense of co-accused Ganpat Gaikwad.

33. In *Darshan Singh*, the Supreme Court reaffirmed and clarified the contours of the right of private defense. Key principles laid down are that the right of private defense is a recognized right under law, not to be narrowly construed. A person should not be expected to weigh in “golden scales” the precise force needed to repel an attack. Right of private defense arises when there is immediate and reasonable apprehension of danger to life or body. It is available to protect oneself or another person, and can extend to causing death if the circumstances fall within Section 100 IPC.

However, this right does not extend to acts of aggression, retaliation, or revenge, particularly after the threat has ceased. The onus is on the accused to establish that the right was exercised in the circumstances contemplated under the IPC.

34. In *Darshan Singh*, the right of private defense was upheld because the accused was attacked and faced a real threat. In contrast, in the present case, the applicant entered the scene after the threat had already subsided. The injured was lying on the ground, already shot, and unarmed. There is no material to show that any threat was posed to the applicant or anyone else at that moment.

35. The Supreme Court in *Darshan Singh* made it clear that once the danger is over, the right of private defense ceases to exist. In the present facts, the act of firing upon an already injured and incapacitated person cannot be said to be done to avert danger, but rather appears to be a retaliatory act. This is expressly not protected under the ratio in *Darshan Singh*.

36. *Darshan Singh* also clarifies that use of excessive force not in proportion to the threat perceived may disqualify a person from claiming full benefit of the defense. Here, the use of a revolver to fire multiple rounds at a person lying on the ground, without any immediate threat, would not fall within the scope of proportionate or justifiable force.

37. In *Darshan Singh*, the act was considered in the context of sudden attack. In the present case, the applicant was not even part of the initial confrontation. He entered the room after the main

firing had occurred. This time gap and absence of immediate provocation weakens the claim of any spontaneous act done under fear. Rather, the conduct appears to be a continuation of a assault, as alleged by the prosecution.

38. In *Darshan Singh*, the threat was to the accused himself. In the present case, the applicant fired to allegedly protect another (Ganpat Gaikwad), who was himself the aggressor and not shown to be under any immediate danger at that moment. Therefore, the applicant's role as a second wave attacker is factually distinguishable from the facts in *Darshan Singh*.

39. Although the judgment in *Darshan Singh* emphasizes that the right of private defense must be protected when exercised genuinely, it also draws a clear boundary, that it cannot be used as a disguise for vengeance or retaliation, and that it ends once the danger ceases.

40. In the facts of the present case, the act of the applicant firing on an already injured person, without any immediate or reasonable apprehension of harm, does not satisfy the tests laid down in *Darshan Singh*. The judgment, therefore, does not assist the applicant at the bail stage, as his conduct prima facie falls outside the protective umbrella of Section 96–102 IPC.

41. The incident has taken place inside the police station, which is expected to be a place of security and protection for citizens. The conduct of the applicant, as emerging from the material on record, shows a calculated action in support of his employer and not an impulsive act of defense. The law does not permit a person,

even with a licensed weapon, to take law into his own hands in such a manner.

42. The offence alleged against the applicant is punishable under Section 307 of IPC (attempt to murder), along with other serious charges including unlawful assembly and criminal conspiracy. The weapon used in the offence is a licensed revolver registered in the applicant's name, thereby further aggravating the seriousness of the matter. Merely because the applicant has undergone a certain period of incarceration does not entitle him to bail when the gravity of the offence remains high.

43. In view of the totality of the circumstances, the nature and gravity of the offence, the material prima facie indicating the applicant's active role, and the possibility of tampering with evidence or influencing witnesses, I am of the considered opinion that the applicant is not entitled to be released on bail at this stage.

44. Accordingly, the bail application stands rejected.

45. It is clarified that the observations made in this order are only for the purpose of considering the bail application, and shall not be construed as an expression on the merits of the case at the stage of trial.

46. In view of this order, all pending interim application(s) stand disposed of.

(AMIT BORKAR, J.)