

(2025) 12 BOM CK 1711
In the Bombay High Court
Case No : Bail Application No.3043 Of 2025

Rajesh Dhakal Rao

APPELLANT

Vs

State of Maharashtra & Anr

RESPONDENT

Date of Decision : 23-12-2025

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 120(B), 109, 117, 143, 144, 145, 152, 153, 188, 201, 269, 270, 271, 290, 342, 505
Prevention of Damage to Public Property Act, 1984 — Section 3, 5
Disaster Management Act, 2005 — Section 51, 52, 54
Epidemic Disease Act, 1897 — Section 2, 3, 4, 5, 135
Maharashtra Police Act, 1951 — Section 37

Citation : (2025) 12 BOM CK 1711

Hon'ble Judges : Dr. Neela Gokhale, J

Bench : Single Bench

Advocate : Saili Dhuru, Poonam P. Bhosale, Amit Munde, Jai Vohra, Sanjay Sehgal

Final Decision : Dismissed

Judgement

Dr. Neela Gokhale, J

1. The Applicant seeks his release on bail in connection with C.R. No.I-76 of 2020, dated 17th April, 2020, registered with the Kasa Police Station, Palghar, for the offence punishable under Section 307, 353, 332, 333, 341, 427, 147, 148 and 149 of the Indian Penal Code, 1860 ('IPC') and Section 3 and 5 of the Prevention of Damage to Public Property Act, 1984. Thereafter, Sections 302, 120B, 109, 117, 143, 144, 145, 152, 153, 188, 201, 269, 270, 271, 290, 342 and 505(2) read with Section 34 of the IPC and Sections 51(B), 52 and 54 of the Disaster Management Act, 2005 and Sections 2, 3, 4 and 5 of the Epidemic Disease Act, 1897 and Sections 135 read with Section 37 (1) and (3) of the Maharashtra Police Act, 1951 were applied. Upon investigation, the charge-sheet was filed against 126 persons including the present Applicant. Initially, the investigation was conducted by the officers of Kasa Police Station and thereafter,

was transferred to the State Crime Branch. Mr. Munde, learned Spl. PP, has informed that the investigation was recently transferred to the Central Bureau of Investigation ('CBI') on 8th August 2025 and by way of an amendment, the CBI is impleaded as Respondent No.2 in the present Application.

2. The facts of the case, in brief, are that while a lockdown was ordered and enforced in Palghar district on account of the Covid-19 pandemic, on 14th April 2020, at around 10:00 pm to 10:30 pm, a group of villagers attacked a private vehicle namely a white Eeco car. There were three passengers inside the car. The Police station received a call

reporting that a mob of about 400 to 500 villagers had assembled in Gadchinche, and had overturned the said Eeco car. The passengers were trapped inside. The three persons pleaded with the main assailants in the mob that they were proceeding for a funeral of their guru. However, the villagers were convinced that these passengers were thieves, abducting children from the village. The mob assaulted these three people, with wooden sticks, rods, and stones. The mob was violent and were even pelting stones at the police van and the police personnel, which had come to rescue the persons being assaulted. The incident took an ugly turn and the police were compelled to resort to firing in the air, in an attempt to disperse the crowd. The mob, even went to the extent of assaulting the policemen, in an attempt to restrain them from reaching the persons required to be saved. All three persons succumbed to their injuries. Ultimately, the main persons in the assault were identified and arrested. The FIR was registered. The present Applicant is stated to be one of the active assailants in the incident. The present Applicant was arrested on 30th April 2020.

3. The Applicant and another co-accused filed a joint application seeking bail before the Additional Sessions Judge, Thane, however, by order dated 26th November 2020, the bail application, insofar as the present Applicant is concerned, was rejected. He made a Bail Application bearing no. 2180 of 2021, before this Court, however, by order dated 1st April, 2022, the said Application was rejected. He, again made a Bail Application No. 3638 of 2024 before this Court, jointly with another co-accused, however, the Applicant by order dated, 7th January 2025, was permitted to withdraw the same. The other co-accused namely Ramdas Kase Rao, who was also a party to the Bail Application No.3638 of 2024, was enlarged on bail. The present Applicant was permitted to file a fresh application after six months. Hence, the Applicant has moved the present Application for the reliefs as prayed.

4. Ms. Saili Dhuru, learned counsel, appeared for the Applicant; Mr. Amit Munde, learned Spl. PP, appeared for the Respondent No.2 and Ms. Poonam Bhosale, learned APP represented the State. Ms. Dhuru has submitted her written arguments while Mr. Munde has submitted a compilation in addition to the Affidavit-in-Reply filed by the CBI.

5. Ms. Dhuru submits that the Applicant has essentially sought bail on two

grounds. i) On the principle of parity and ii) On the ground of long incarceration suffered by the Applicant. She further submitted that presuming, without admitting the case of the prosecution as it is, ingredients of Section 302 are not made out. The incident is a mob lynching incident that happened on the spur of the moment. There was no intention to murder the deceased. The villagers presumed the persons disguised as Sadhus, to be thieves, who were on a spree of abducting children. She submitted that as on date 42 persons, accused in the offence, are on bail and the role attributed to the present Applicant is similar to that of others enlarged on bail. The only difference between the persons enlarged on bail and the Applicant is that, the Applicant is also held responsible for assaulting a policeman and at best this alleged offence attracts Section 353 of the IPC with a maximum punishment of two years. The Applicant has already suffered incarceration of five and half years and hence he deserves to be enlarged on bail. Ms. Dhuru also submits that there are no witnesses in the present case. Witnesses have only affirmed presence of the Applicant at the location. She further submitted that the viral video panchanama is bereft of any evidentiary value. Lastly, she submitted that the act of assault was a collective action of 400 to 500 people and the injuries on the persons of the deceased as per the post-mortem report is a result of the mob assault, inflicted upon them. She submits that the Applicant is poor and has suffered five and half years of incarceration. In these circumstances, Ms. Dhuru prays that the Applicant be enlarged on bail.

6. Per contra, Mr. Munde, the learned Spl. PP, invited my attention to the role of the present Applicant. The role of the Applicant as it appears in the charge-sheet is as under:

- i) Applicant was carrying an iron axe in his left hand - CCTV footage and statement of witnesses.
- ii) Large stones were thrown at the Eeco car - CCTV footage and statement of witnesses.
- iii) Kalpavrikshagiri Maharaj fell near a pillar and was brutally beaten and injured by the Applicant - CCTV footage and statement of witnesses.
- iv) When Kalpavrikshagiri Maharaj came out of the forest post and approached a police vehicle to be saved, he was brutally beaten. Consequently, he suffered serious injuries and wounds - CCTV footage and statement of witnesses.
- v) The Eeco car was overturned with the assistance of co-accused. The overturned car's bonnet was repeatedly slashed with an axe - CCTV footage and statement of witnesses.
- vi) The other passengers in the car namely, Sushilgiri Maharaj and the driver Nilesh Telgade, sitting in a police vehicle were brutally beaten with sticks causing serious injuries and eventually died - CCTV footage and statement of witnesses.

vii) PSI - Sudhir Katore was assaulted while he was attempting to save the injured, his uniform was pulled, buttons were broken, he was beaten on his chest and back, with his hand and sticks, and was obstructed from the discharge of his duty - CCTV footage and statement of witnesses.

viii) The Applicant was inciting the mob to continue to commit the assault thereby increasing the intensity of the criminal acts - CCTV footage and statement of witnesses.

7. Further, Mr. Munde submitted that the Applicant and some of the co-accused hatched the incident and conspiracy and encouraged the mob by saying that if any thieves come, they will teach them a lesson. Mr. Munde submitted that all the acts of the Applicant are either captured on CCTV or have been affirmed by the witnesses including one Vikas Kanoja and Dinesh Sakharam Borsa. Mr. Munde placed the statements of the witnesses on record. He thus, submits that the offence is serious and attracts a sentence of life imprisonment or death. Hence, the Application be rejected.

8. I have heard learned counsel for the respective parties and perused the record of the case with their assistance. Since one of the ground on which Ms. Dhuru seeks bail for the Applicant is parity with some co-accused enlarged on bail it is necessary to consider the orders of this Court granting bail to the said co-accused.

9. Co-accused Ramdas Kase Rao and the present Applicant made a joint Bail Application before this Court. Vide order dated 7th January 2025, Ramdas Kase Rao was granted bail with an observation that the role attributed to him is similar to that of co-accused Mahesh Dhakal and another accused. Ramdas Kase Rao is enlarged on bail only on that ground. However, the Court refused bail to the present Applicant, since the degree of gravity of the actions of the present Applicant are much higher than Ramdas Kase Rao who was granted bail. In these circumstances, the Applicant withdrew his bail application and was permitted to reapply after six months. Ms. Dhuru, then relied on the bail order of Mahesh Dhakal Rao and other co-accused. Mahesh Rao and some of the accused are released on bail by order dated 2nd July 2024. Thus, relying on the bail order of Mahesh Rao, Ramdas Kase Rao was granted bail by order dated 7th January, 2025. But bail was refused to the present Applicant. Even by order dated 1st April 2022, vide which some other co-accused were granted bail, this Court clearly distinguished their role from that of the present Applicant. No overt act is attributed to the other co-accused. There are witnesses who have identified the Applicant as the person who physically assaulted the deceased with a wooden stick and an iron axe. He is also seen repeatedly hitting the overturned car, by standing on its bonnet. The material compiled against the present Applicant is based on the FSL report, matching the reference photographs with the image of the Applicant in the CCTV footage and video. Thus, there is sufficient material on record to implicate the present Applicant. Hence, the principle of parity will not apply to the present Applicant.

10. In a recent decision, the Supreme Court in the matter of Sagar v. State of UP and Anr. 2025 SCC OnLine SC 2584, has discussed the principles enunciated in its earlier decisions and by various High Courts regarding determination of bail on the principle of parity. The Supreme Court has affirmed the decision of the Karnataka High Court in Shri Narayanaswamy v. State of Karnataka 2017 SCC OnLine Kar 1066 and Calcutta High Court in Subires Bhattacharya v. CBI 2024 SCC OnLine Cal 11889. The observations of the Karnataka High Court in Narayansamy (Supra) are as under:-

"24. The law of Parity would be applied in granting bail to an accused, where the co-accused has been granted bail on similar set of circumstances. Law of Parity is a desirable rule where the case of accused/petitioner is identical with the co-accused, who is already enlarged on bail. Simply because the co-accused has been granted bail also cannot be the sole criteria for granting bail to another accused if they are standing on different footings.

25. Parity cannot be the sole ground for granting bail and if on scrutiny and examination of records in a given case it transpires that the case of the petitioner before the Court is identically similar to the accused, who has already been granted bail, then it would be desirable that petitioner should also be enlarged on bail. However, if material placed by the prosecution and further developments in the investigation unraveling changed circumstances, this aspect also requires to be taken into consideration and in such circumstances the principle of Parity as an universal application or a straight jacket formula cannot be applied."

11. The view of the Calcutta High Court in Subires (Supra) is as under:

"30. Parity cannot be the sole ground for granting bail even at the stage when the bail application of a co-accused is allowed. The Court has to satisfy itself that, on consideration of more materials placed, further developments in the investigations and other different considerations, there are sufficient grounds for releasing the applicant on bail. In deciding the aspect of parity, the role attached to the accused persons, their position in relation to the incident and to the victims is of utmost importance. Court cannot proceed on the basis of parity on a simplistic assessment, which again cannot pass muster under the law."

12. What flows from the above decisions, as also upheld by the Supreme Court in Sagar (Supra), is that parity cannot be the sole ground on which bail is granted. Furthermore, there can be different roles played - someone part of a large group, intending to intimidate; an instigator of violence; someone who throws hands at the other side; someone who fired a weapon or swung a machete - parity of these people will be with those who have performed similar acts, and not with someone who was part of the group to intimidate the other by the sheer size of the gathering, with another who attempted to hack away at the opposer's limbs with a weapon.

13. In this case, the Applicant has beaten the deceased with wooden stick, iron axe, hurled stones at them. He also thrashed the overturned car with sticks; he

caught the collar of a police official who was called to defuse the situation in the discharge of his duty, torn his shirt and buttons as well as assaulted him. He is also seen to have incited the mob by calling upon them to continue the ruckus. All these acts are caught on camera as well as evidenced by witnesses. The orders granting bail to some of the co-accused does not contain the specific roles of co-accused, save and except order dated 1st April 2022 in the matter of Vijay Pilela and some other co-accused. Their roles in the incident are quite distinct from that of the present Applicant.

14. One, Dinesh Borsa, a Sepoy has identified the Applicant in his statement given to the police. He has stated that he was present at the location and has personally seen the Applicant committing the act. Similarly, Vikas Kanoja, a shopkeeper running a grocery shop in the locality had also identified the present Applicant as a person who was assaulting the deceased with a wooden stick. The CCTV footage panchanama has also captured the Applicant holding an axe in his left hand, a torch in the other and waiting in ambush behind a tree near the forest chowki. The forensic report in respect of the CCTV footage is also positive. The Applicant is seen raising an axe and hitting the deceased.

15. Another witness namely Chitra Chaudhary, Sarpanch of the Gadchinchle Group Gram Panchayat, has, in her statement, given a graphic and detailed description of the

incident. She has stated that on 16th April 2020, when she was called to the location by the frightened people of the locality, saw the Eeco car parked opposite the forest chowki. 200 to 300 people had surrounded the car and were shouting that the passengers in the car are thieves. The Forest Officer, Abhijit Kadam was informed of the incident who told her to help contain the mob, while he would get the police. When she reached the car, she saw that the windows were rolled up. She saw some people in the mob deflating the tyres of the car and preparing to burn the car. People were throwing stones and hitting the passengers in the car with sticks. She tried to stop them, however, they pushed on the side and refused to listen to her. Few in the mob were carrying sticks, axe, iron rod and mace. The police came and helped the three passengers alight from the car and took them to the police jeep. One of the elderly person from the car needed help in walking. Immediately seeing the persons walking towards the police jeep, some from the mob threw stones at them, caught them, brutally beat them up with sticks and iron rod. They did not even spare the police personnel. The police were caught by their collars, their shirt buttons were ripped and they were stopped from discharging their duty. Even she herself, caught stones on her back. She then saw the bodies of the three passengers in a brutally injured state and lying outside the car in tatters. One of the persons actively beating the deceased is identified as the Applicant herein, by witnesses namely Vishnu L. Bhavar, Vikas Kanoja and Dinesh Borsa.

16. I have also perused the injury certificate of the police personnel, namely S.T. Katare, R.D. Salunke, S.R. Mukne, N.N. Dhodi, P.B. Padher and N.G. Waghod. All

of them have suffered considerable injury at the hands of the main accused. The post-mortem report in respect of Kalpavrikshagiri Maharaj is also on record. His clothes are stained in blood; he has suffered a blunt object injury, his face is swollen, tongue is protruded and he has suffered a skull fracture in addition to other serious injuries. The cause of death is recorded as head injury leading to sub-archnoid hemorrhage. The injuries are all on the vital parts. The cause of death Kalpavrikshagiri Maharaj also records a head injury and that of Sushilgiri Maharaj is recorded as sub-archnoid hemorrhage with injuries to his vital parts.

17. The role of all the accused is not identical. Some are part of the mob while some are accused of overt actions. The Applicant herein is one against whom there is material to demonstrate overt acts. Thus, the arguments of Ms. Dhuru seeking relief on the principle of parity must fail.

18. Insofar as the ground of long incarceration is concerned, admittedly, the Applicant has suffered incarceration of five and half years. By order dated 7th January 2025, he was permitted to reapply after six months. In this intervening period, the investigation is taken over by the CBI.

19. There is no denying the fact that the liberty of an individual is precious and is to be zealously protected by the Courts. Nonetheless, such a protection cannot be absolute in every situation. The valuable right of liberty of an individual and the interest of the society in general has to be balanced. Liberty of a person accused of an offence would depend upon the exigencies of the case. It is possible that in a given situation, the collective interest of the community may outweigh the right of personal liberty of the individual concerned. In this context, the following observations of this Court in *Shahzad Hasan Khan Vs. Ishtiaq Hasan Khan* (1987) 2 SCC 684, are quite apposite:

"Liberty is to be secured through process of law, which is administered keeping in mind the interest of the accused, the near and dear of the victim who lost his life and who feel helpless and believe that there is no justice in the world as also the collective interest of the community so that parties do not lose faith in the institution and indulge in private retribution."

20. Taking into consideration the nature, gravity and seriousness of the offence and the circumstances of the case, and the reasonable apprehension of the witnesses being tampered with or the evidence being lost otherwise, and the Applicant not being available to face the trial without undue delay, in my view, this is not a fit case nor in the interest of justice, that the Applicant should be enlarged on bail. In any case, the maximum sentence for the offence as alleged, is life imprisonment or death. Hence, the incarceration undergone cannot be termed as long incarceration, in the facts and circumstances of the present case.

21. The Application is accordingly dismissed.

22. Since the Applicant has suffered incarceration of five years and it is only recently that the investigation is transferred to the CBI, the CBI is directed to

conclude the investigation expeditiously and file appropriate report before the Trial Court. The Applicant is at liberty to renew his prayer for bail after the investigation is completed by the CBI.

23. It is made clear that the observations made herein are prima facie and are confined to this Application and the Trial Judge to decide the case on its own merits, uninfluenced by the observations made herein.