

1**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
NAGPUR BENCH, NAGPUR.**CRIMINAL APPLICATION [BA] NO. 86/2021.**

Nilesh Chandrashekhar Nakhate

-VERSUS-

The State of Maharashtra

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri R.M. Daga, Advocate for the Applicant.
Shri S.A. Ashirgade, A.P.P. for the Non-applicant.

CORAM : VINAY JOSHI, J.**DATE : MARCH 25, 2021.**

Hearing was conducted through Video Conferencing and the learned Counsel agreed that the audio and visual quality was proper.

2. The applicant came to be arrested by Gadge Nagar Police Station, District Amravati in connection with Crime No. 803/2019 registered on 04.11.2019 relating to offence punishable under Sections 143, 147, 149, 307 and 452 of the Indian Penal Code. Besides usual grounds, the applicant/accused claims bail by invoking the rule of parity. Moreover, it is contended that for near about 2 years, the applicant is in jail and as the investigation is complete, he deserves for bail.

3. The State has resisted the bail by filing reply affidavit. The learned A.P.P. would submit that the applicant is the prime assailant,

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and there are consistent statement of eye witnesses specifying his role. Moreover, the State has pointed out certain antecedents of the applicant to support the rejection of bail.

4. Informant Madhuri, wife of the injured (Umesh), lodged a report on the date of occurrence itself. She has stated that on that day around 5.15 p.m., the applicant along with his associates entered her house and assaulted her husband - Umesh by knife, leaving him in pool of blood. She was also assaulted by means of sticks for which she was also admitted in the hospital.

5. Shri Daga, the learned Counsel for the applicant / accused submitted that there are inconsistencies in the statement of the informant Madhuri. He has pointed that in initial statement [FIR], the informant stated that, at relevant time the applicant Nilesch and one Santosh Soni came to her house along with three other assailants. However, in her supplementary statement recorded on the following day, she stated that, the applicant along with Santosh Soni and one Nikku Kachre came to her house. It is pointed out that in the earlier statement, it was alleged that the applicant and Santosh Soni dealt knife blows, whilst in the supplementary statement, she differently stated that the applicant and Nikku Kachre assaulted her husband by knife, whilst Santosh Soni was instigating others.

6. True, in her prior statement the informant has assigned a role to Santosh Soni of assaulting by knife, while in the subsequently

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statement, she added one more assailant and changed the role of Santosh Soni as instigator. However, it is to be noted that I am not considering entitlement of Santosh Soni for bail, but, the question is about entitlement of the applicant Nilesh Nakhate for bail. In both the statements, the informant Madhuri has consistently stated that applicant Nilesh Nakhate entered her house and repeatedly dealt knife blows on Umesh. Besides that injured Umesh has specifically stated that the applicant Nilesh Nakhate repeatedly dealt knife blow at his person. Moreover, the police have recorded statement of daughter of the informant, who has equally stated that the applicant dealt knife blows. Therefore, the submission of Shri Daga, does not carry any weight.

7. To the next, Shri Daga, the learned Counsel for the applicant has argued on the rule of parity. He would submit that co-accused Santosh Soni has been released on bail by the Sessions Court vide order dated 06.10.2020. As discussed above, the supplementary statement of the informant and the statement of injured has assigned a role of instigator to Santosh Soni, whilst the applicant was alleged to had dealt repeated knife blows, therefore, the role of the applicant being grave and distinct, the rule of parity does not apply.

8. While resisting bail, the learned A.P.P. has submitted a crime chart containing antecedents of the applicant/accused. Bare perusal of the said chart indicates that in past the applicant was involved in several bodily offences of which details are as below :

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Sr.No.	Crime No. and Offence.
1.	Crime No.642/2017. Sections 307 read with 34 of the Indian Penal Code.
2.	Crime No.256/2012. Sections 324 read with 34 of the Indian Penal Code.
3.	Crime No.813/2018. Sections 302, 324,143, 147, 148, 149 of the Indian Penal Code.
4.	Crime No.649/2019. Sections 326, 504 read with 34 of the Indian Penal Code.

9. Perusal of the chart, indicates that the applicant was continuously involved in bodily offences. The learned counsel for the applicant has not disputed registration of those crimes against the applicant/accused. However, he would submit that mere antecedents or pending criminal cases would not be a ground for rejection of bail. In this regard he has relied upon a decision of the Supreme Court in case of **Prabhakar Tiwari .vrs. State of Uttar Pradesh and another (2020) 11 SCC 648.**

In the said case, the Supreme Court has discussed the scope of jurisdiction of the Appellate Court in setting aside the order of grant of bail. In that context it is expressed that pendency of several criminal cases themselves cannot be the basis for refusal of bail. There can be no dispute about the said proposition, however, the antecedents have to be taken into account, coupled with all other relevant facts and circumstances.

10. The first information report disclose that in past also the applicant had assaulted the informants nephew. The crime chart as

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reproduced above disclose that Crime No.642/2017 was registered for attempting to commit murder of Sumit Kothari, who is nephew of the informant. This instance particularly indicates that all the time the applicant was involved in committing bodily offences and was prone to freely use deadly weapons. Certainly said tendency has to be taken into account coupled with the direct evidence which is collected during the course of investigation.

11. Relying on the decision of the Supreme Court in case of **Bhausaheb Nagu Dhavare .vrs. State of Maharashtra and another - 2001 (3) Crimes 410 SC**, Shri Daga, the learned Counsel submitted that the injured Umesh was already discharged from the hospital and there are no prospects of offence being escalated to higher counts, hence, applicant is entitled for bail.

In said case relating to the offence punishable under Section 307 of the Indian Penal Code, bail was granted by observing that there are no prospects of escalation of offence. However, the said observation was based on facts. In case at hand, the applicant has repeatedly assaulted the injured by means of knife due to old rivalry. During the course of investigation the police have seized blood stained knife at the instance of the accused. Injury certificate discloses four incised wounds and all injuries were of grievous nature. Therefore, merely because the injured was discharged from the hospital, on that sole ground the applicant cannot be mechanically released on bail.

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12. The offence is of serious nature, prima facie there is strong material against the applicant. Considering the antecedents of the applicant, there are high chances of tampering and pressurizing the prosecution witnesses. Possibility of repetition of the offence of similar nature cannot be ruled out. In view of that, there is no merit in the application, the same is therefore, rejected.

JUDGE

Rgd.

**Rakesh
Dhuriya**

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by Rakesh
Dhuriya
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