

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL BAIL APPLICATION (BA) NO. 1315 OF 2020

Nikhil @ Golu s/o Lalsingh Maliye

..vs..

State of Maharashtra, thr. P.S.O.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Adwait S. Manohar, Advocate for Applicant.
Mrs. S.S. Jachak, A.P.P. for Non-applicant/State.

CORAM : **VINAY JOSHI, J.**
CLOSED FOR ORDER : **19.03.2021**
DATE OF PRONOUNCEMENT : **23.03.2021**

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

2. The Applicant/accused Nikhil alias Golu Lalsingh Maliye was arrested by Police Station, Kalmeshwar, District Nagpur in Crime No.469 of 2020 registered for the offence punishable under Sections 307, 452, 143, 144, 147, 148, 149, 120-B of the Indian Penal Code and Section 3 read with 25 of the Arms Act, 1959. This is first bail application in this Court after filing of charge-sheet, since learned Sessions Judge has rejected bail application vide it's order dated 23.10.2020.

3. The said crime arises out of First Information Report lodged by Nitin alias Nitesh Krushnaji Bagde dated 20.07.2020. The first informant was the friend of injured Ganesh Meshram. It is stated that on 20.07.2020, around 11.20 am, informant received phone call of Priyanka

Meshram (wife of Ganesh Meshram) informing that she herself and her husband Ganesh Meshram sustained bullet injuries. Immediately, informant rushed to the house of injured Ganesh Meshram at Kalmeshwar who was found sitting injured in front of his house. Informant enquired with Ganesh Meshram about the things, on which the later disclosed that three to four assailants came from Nagpur and fired bullets on him as well as at his wife namely Priyanka. Immediately, injured Ganesh Meshram was shifted to the Hospital whilst by the time Priyanka was already shifted to the Hospital. The Informant learnt in the Hospital from near-by people that at the instance of Applicant Nikhil @ Golu and one Faruqe Jabiullaha Khan, three to four assailants went to the house of injured Ganesh Meshram and had fired bullets from country made revolver.

4. Besides usual grounds like innocence, false implication, inadequacy of evidence, learned Advocate A.S. Manohar has canvassed some additional grounds in support of his claim for bail. It is his submission that, at the time of occurrence, Applicant Nikhil @ Golu was not present at the house of injured Ganesh Meshram at village Kalmeshwar. On the contrary, at the time of occurrence, Applicant Nikhil @ Golu had been on a tour to the place namely Khawasa in Madhya Pradesh. He would submit that the prosecution case as it stands is totally *interse* inconsistent. He mean to submit that as per first information, Applicant Nikhil @ Golu hatched conspiracy and deputed assailants on the job. He has also pointed out supporting police papers wherein similar story has been stated regarding deputing assailants on the mission. As

against this, Advocate A.S. Manohar took me through the statement of injured Ganesh Meshram who differently stated the incident. Injured in his statement dated 02.08.2020, has disclosed that at the relevant time Applicant Nikhil @ Golu came to his house with his two companion. Applicant was holding knife whilst his one of the associate fired bullets from country made revolver and third assailant was arm less. Thus, it is vehemently argued that First Information Report dated 20.07.2020, no where discloses presence of Applicant Nikhil @ Golu on the spot and the same story was reflected in the remand application dated 17.08.2020 (page 353) and in prosecution reply to the bail application filed in the Sessions Court dated 23.09.2020. On that basis, it is canvassed that the statement of injured shown to be recorded on 02.08.2020, has changed the initial story and therefore, according to him, it was to falsely implicate the Applicant.

5. In response, learned A.P.P. has nothing much to explain the inconsistency. It is only submitted that on the date of occurrence, when the informant met to the injured Ganesh Meshram, he was in badly injured condition and therefore, it is not expected from him to narrate the incident in detail. Certainly, at relevant time Ganesh Meshram had sustained two bullets injuries, one at his thigh and another at his back and therefore, there is possibility of giving brief information about the occurrence. However, *prima facie* the submission made by Advocate A.S. Manohar carries substance since Applicant was well acquainted with injured Ganesh Meshram. Since I am dealing with bail application, it is not advisable to

express any opinion on this aspect, but this aspect will be taken into account.

6. Learned advocate A.S. Manohar took me through the C.D.R. location report (page 399) to strengthen his submission that Applicant was not at all present at Kalmeshwar at the relevant time. The said report shows location of other co-accused at Kalmeshwar, however, the report does not show Applicant's location at Kalmeshwar during crucial period. Learned A.P.P. responded the submission by stating that the Applicant was seasoned criminal and therefore, there is possibility that he had not carried his cell phone to conceal his presence. I do not wish to make any comment on this aspect, but it would suffice to say that C.D.R. location chart primarily supports the Applicant's contention.

7. Learned advocate A.S. Manohar submitted that at relevant time, the Applicant was at Khawasa with his friends and for that purpose he has produced some documents to show that he was in the Hotel at Khawasa. Precisely, he endeavored to establish plea of *alibi*. Learned Sessions Judge has devoted few paragraphs to discard the plea of *alibi* while rejecting bail application vide order dated 23.10.2020. The ground of *alibi* does not impress much since the matter is looked from the limited angle and yet full fledged trial has to begin. Needless to say that onus lies on accused to establish plea of *alibi* which is matter of trial.

8. Injured Ganesh Meshram stated that at relevant time, applicant came to his house by holding knife whilst another assailant fired at him with country made revolver.

The statement of injured Ganesh Meshram at the most has assigned the role to the Applicant of accompanying assailants on the spot. In other words, as per the case of injured, the Applicant had not assaulted or fired bullets on him. Already, it is expressed above that, the initial story as emerges from First Informant Report is quite distinct than what has been stated by injured. First Information Report clearly excludes the presence of Applicant on the spot rather the first information was on the line that the Applicant hatched conspiracy and deputed few hired goons for eliminating injured Ganesh Meshram. Moreover, the police papers as referred above, runs on similar line. Certainly, said aspect requires consideration while dealing with bail application

9. The State while resisting bail by affidavit-in-reply, has narrated the prosecution case and stated about the strong motive for Applicant to commit a crime. It is the prosecution case that in past, the Applicant had committed murder of one Sumit Chavhan who was the friend of injured Ganesh Meshram. One Ajinkya Naware who was also friend of injured Ganesh Meshram was the crucial witness in the murder case of Sumit Chavhan in which the Applicant was accused. According to the prosecution, the Applicant was pressurizing the injured Ganesh Meshram that he should insist Ajinkya Naware to withdraw his case. In other words, Applicant was suggesting that informant's friend namely Ajinkya Naware should not support the prosecution case in Sumit Chavhan murder case. At said instance, there was dispute between the Applicant and the injured Ganesh Meshram, and as he did not listen, the Applicant hatched conspiracy and tried to eliminate

Genesh Meshram. Precisely, it was the motive for the Applicant to make deadly assault on injured Ganesh Meshram and at his wife Priyanka Meshram. True, always motive is one of the relevant factor in criminal trial. However, the motive in isolation cannot be termed as decisive factor to either decide the fate of trial on bail application. The entire episode discloses that there were criminal cases against the Applicant as well as against the injured Ganesh Meshram who appears to be indulging into anti social activities.

10. Apart from that, the State strongly resisted bail by pointing towards antecedents of the Applicant. In paragraph 9 of the affidavit-in-reply, a crime chart has been given to show that several criminal cases were registered against the Applicant and therefore, it is not safe to enlarge him on bail. In response, learned Counsel for the Applicant has filed rejoinder along with the copies of judgments to show that in most of the cases, the Applicant came to be acquitted. Particularly, the Applicant was acquitted from the charges of murder and attempt to murder by the then Courts. It is submitted that till date the Applicant is not convicted in any case. Moreover, learned Counsel for the Applicant submits that in present case, some co-accused against whom several cases are pending, were released on bail. To be specific, he would submit that there were 13 cases against the co-accused Abhishek s/o Mangesh Giri, 8 cases against the co-accused Himanshu s/o Ravishankar @ Ravi Chandrakar, however, they are released on bail. Moreover, learned Counsel for the Applicant by placing reliance on the order of this Court in case of *Rakesh Tukaram Koshti vs. The State of*

Maharashtra passed in Bail Application No. 1723 of 2018 dated 05.09.2018, has submitted that the Rule of parity would squarely apply if, the co-accused having similar antecedent was released on bail.

11. Learned A.P.P. submitted that the Applicant has secured the acquittals in earlier cases by pressurizing the witnesses. The Applicant if release on bail, he would pressurize the prosecution witnesses, therefore, his detention is necessary. Moreover, learned A.P.P. added that while the Applicant is in jail in existing case, he had hatched conspiracy to commit murder of one Nilesh Naidu. In that regard, learned A.P.P. has filed a fresh report dated 26.02.2021 submitted by Kalmeshwar Police. Perusal of said report indicates that in Nilesh Naidu murder case, the Police suspected involvement of Applicant, however, the did not find any material against him. Thus, in absence of any cogent material, submission in that regard cannot be accepted.

12. Prima facie, it reveals that the applicant's direct role has not been disclosed in initial report, though he was well acquainted with injured. During the course of investigation, nothing has been recovered at the instance of applicant. Already investigation is complete and charge-sheet has been filed. Several co-accused namely Faruqu Jabiullaha Khan, Shovin s/o Arvind Makode, Himanshu s/o Ravishankar @ Ravi Chandrakar, Abhishek s/o Mangesh Giri, Ankit @ Yashwant s/o Tulshiram Nimje, Gaurav s/o Ajay Pillay, Sandip Deogir Giri were already released on bail. Having overall view of the matter, particularly nature of accusation, supporting evidence and

release of co-accused on bail, the applicant has made out a case for grant of bail.

13. The matter never ends here but one has to give due regard to the antecedents of applicant. Though he was acquitted in most of the criminal cases, the fact remained that he was consistently involved in series of criminal cases relating to bodily offence including homicidal death. Certainly, in such peculiar fact, the Court must give due regard to the antecedents of the accused while releasing him on bail. As per prosecution case, the very motive for the existing crime was a bid to pressurize the witness of another murder trial. Thus, long list of antecedents, pursued me to put him on stringent conditions so as to eliminate the chances of tampering with. In view of that, following order:

- (a) The Applicant/accused namely Nikhil @ Golu s/o Lalsingh Maliye is released on bail on his furnishing P.R. bond of Rs.50,000/- with solvent surety in the like amount.
- (b) The Applicant/accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the prosecution witness or evidence.
- (c) The Applicant/accused shall not enter into the limits of Nagpur district except attending the Court proceedings pending against him, till conclusion of trial.

- (d) The Applicant/accused shall provide his residential address where he intent to stay out side Nagpur district, and his cell phone number to concerned Investigating Officer.
- (e) The Applicant shall not change his residential address without prior intimation to the Investigating Officer.

JUDGE

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