

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2082 OF 2023

Nisar Ahmed Shahabuddin @ Chenny @ Kishor Giri	...Applicant
vs.	
The State of Maharashtra	...Respondent

**WITH
BAIL APPLICATION NO.2415 OF 2023**

Murli Nagraj Kalburgi @ Madhu Madan	...Applicant
vs.	
The State of Maharashtra	...Respondent

Mr. Saumitra Salunke i/b. Mr. Pradeep Yadav, for the Applicant in
BA No. 2082 of 2023.
Mr. Pintu Chaurasia, for the Applicant in BA No. 2415 of 2023.
Mr. S.R. Agarkar, APP, for the Respondent/State.
Mr. Chandrakant Gharge, API, Dindoshi police station.

CORAM : N. J. JAMADAR, J.
DATE : JANUARY 02, 2024

P.C.:

1. Heard the learned counsel for the applicants and the learned
APP for the State.
2. These applications are preferred for bail. The applicants have
been arraigned for the offences punishable under sections 120-B,
406 and 420 read with 34 of the Indian Penal Code, 1860 in C.R. No.
157 of 2022 registered with Dindoshi police station.
3. The first informant lodged report with the allegations that on
4th February, 2022 the co-accused Durga Chodnekar and Kishor

Giri, the applicant in BA No.2082 of 2023, induced him to handover cash amount of Rs. 2 Crores to Murli Kalburgi, the applicant in BA No. 2415 of 2023 at office 601, 6th Floor, Karishma Plaza, Near Asha Hospital, Daftari Road, Malad (E), Mumbai for transfer through angdia. The applicant Murli Kalburgi and the co-accused made a representation that the amount would be soon transferred through banking channel. However, the first informant realized that he was deceived as amount was not transferred even on the following day.

4. The learned counsel for the applicants submitted that the applicants are similarly circumstanced as the rest of the five co-accused who have been released on bail by the orders of this Court, the Court of Session and the learned Magistrate. The learned counsel for the applicant in BA No. 2415 of 2023 submitted that the applicant Murli is not the beneficiary of the alleged fraud. The applicant has been in custody since 10th March, 2022. Thus the applicant is also entitled the same dispensation as has been extended to the co-accused.

5. The learned counsel for Nisar @ Kishor, the applicant in BA No. 2082 of 2023, submitted that qua the applicant Nisar, recovery of Rs. 3 lakhs has been shown and that too from the wife of the applicant while the applicant was in judicial custody. The other co-accused from whom far more amounts were recovered have been

released on bail. The applicant Nisar has been in custody since 7th March, 2022.

6. It would be contextually relevant to note that the learned counsel for the applicants submitted that the documents seized by the investigating officer during the course of investigation indicated that the office premises where first informant was allegedly induced to part with the amount stands in the name of co-accused Yashwant Singh.

7. The learned APP resisted the prayer for bail. It was submitted that the role of the applicants is materially distinct. The first informant had specifically alleged that the amount was delivered to accused No. 1 Murli who had also passed receipt. Therefore, the applicants can not claim parity.

8. I have perused the allegations in the first information report and the material on record. Indeed it is alleged that on the inducement of the co-accused, the first informant had delivered cash amount of Rs. 2 crores to the applicant Murli. I have perused the order dated 8th September, 2023 passed by this Court, in BA No. 1437 of 2023 whereby the co-accused Durga Chodanekar was released on bail and the order dated 12th September, 2023, passed in BA No. 3165 of 2022, whereby the co-accused Yashwant Singh was released on bail.

9. While releasing the co-accused on bail, the Court had adverted to the punishment which the offences entail and the long period of incarceration of the co-accused and nature of the accusation. Prima facie, it appears that the first informant claimed to have delivered cash amount for remittance through banking channel. It is pertinent to note that when the amount were allegedly handed over to Murli, applicant Nisar @ Kishor Giri was not present at the said office. In the circumstances, the considerations of long period of incarceration in the context of the punishment which the offences entail make out a case for exercise of discretion in favour of the applicant. Since rest of the accused from whom also amounts have been recovered are released on bail, the applicant Nisar also deserves the same dispensation.

10. It is unlikely that the trial can be concluded within a reasonable period. In the aforesaid view of the matter, the applicants deserve the exercise of discretion.

Hence, the following order.

ORDER

1] The applications are allowed.

2] The applicants be released on bail in C.R. No. 157 of 2022 registered with Dindoshi police station, on furnishing a P.R. Bond of

Rs. 30,000/- with one or more sureties in the like amount.

3] The applicants shall mark their presence at Dindoshi police station on the first Monday of every alternate month in between 11 am to 1 pm for a period of two years or till conclusion of the trial, whichever is earlier.

4] The applicants shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.

5] The applicants shall furnish their contact numbers and residential addresses to the investigating officer and shall keep him updated, in case there is any change.

6] The applicants shall regularly attend the proceedings before the jurisdictional Court.

7] By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

(N. J. JAMADAR, J.)