

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 4561 OF 2024**

Nitesh Govardhan Wala	...	Applicant
versus		
The State of Maharashtra	...	Respondent

Mr. S.S. Sawalkar, for the Applicant.

Mr. P.P. Jadhav, APP, for the State.

**CORAM: N.J.JAMADAR, J.
DATE : 9th JANUARY 2025**

PC.

1. Heard the learned Counsel for the parties.
2. The Applicant, who is arraigned in C.R.No.500 of 2021 registered with Narpoli Police Station, Thane, for the offences punishable under Section 302, 120B, 201, 182, 114 read with Section 34 of the Indian Penal Code 1860 ("the Penal Code") has preferred this application to enlarge him on bail.
3. Prabhakar Ganji (the deceased) was the husband of Shruti Ganji, the co-accused. There was marital discord between the deceased and Shruti. The latter desired to dissolve the marriage. However, the deceased was not willing to put an end to their marital bond. Shruti was allegedly in a relationship outside marriage with the Applicant (A3).

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4. The prosecution alleges, the Applicant, Shruti Ganji (A1) and her friend, Priya Nikam (A2), hatched a conspiracy to kill the deceased by employing a contract killer. Accused No.4 and two absconding accused were hired for the said purpose. There were meetings between Accused Nos. 1 to 4 and the absconding Accused at Bhalchandra Snacks Corner. Shruti Ganji (A1) had pledged her gold ornaments with Sinduri Jewellers and obtained a sum of Rs.1,00,000/-to pay the same to Accused No.4 and the absconding Accused.

5. On 31st July 2021, Accused No.4 and the absconding Accused hired the car of the deceased on the pretext that they were to travel to Mumbai. On the way, they asked the deceased to halt the car and one of the absconding Accused strangulated the deceased with nylon rope while Accused No. 4 and another absconding Accused caught hold of the deceased. As the investigation revealed the complicity of the Applicant, he came to be arrested on 3rd August 2021.

6. Mr. Sawalkar, the learned Counsel for the Applicant, submitted that there is no material to connect the Applicant with the crime. The prosecution case rests on circumstantial evidence. There are no circumstance which have conclusive incriminating tendency qua the Applicant. In any event, Shruti Ganji (A1) and Priya Nikam (A2), the alleged co-conspirators, have been enlarged on bail by this Court by Orders dated 2nd May 2024 and 21st August

2024. The Applicant is also entitled to the same dispensation.

7. It was further submitted that the Applicant has been in custody since more than three years and it is unlikely that the trial can be concluded within a reasonable period. Thus on the count of long incarceration as well, the Applicant deserves to be enlarged on bail.

8. Mr. Jadhav, the learned APP, resisted the prayer for bail. It was submitted that there is adequate material to show that the Applicant was in a relationship outside marriage with Shruti Ganji (A1). There are statements of witnesses to show that the Applicant was in a relationship with Shruti. As the deceased was killed pursuant to a well planned conspiracy and that too by hiring contract killers, the Applicant does not deserve to be enlarged on bail.

9. I have perused the report under Section 173 of the Penal Code and the documents annexed with it. Evidently, the case rests on circumstantial evidence. The Applicant is alleged to be a confederate in the conspiracy. The genesis of offences also appears to be in the matrimonial dispute between the deceased and Shruti Ganji (A1). By an Order dated 2nd May 2024 this Court was persuaded to enlarge, Shruti Ganji (A1) on bail observing, *inter alia*, as under:

“8. I have carefully considered the report under Section 173 of the Code of Criminal Procedure, 1973 the documents annexed with it and the submissions canvassed across the bar. Evidently, the case rests on circumstantial evidence. The circumstances arrayed against the applicant are the pledging of the gold ornaments, taking part in the meetings wherein the conspiracy was allegedly hatched and sharing the photograph of the deceased.

9. The first two circumstances, prima facie, appear to the contentious as the jeweller Hiralal had not known the applicant. It does not appear that TI parade was held to establish the identity of the applicant as one of the persons, who had accompanied accused no. 2 – Priya, whom the said witness had known from before.

10. The statement of the Ashish Chauhan is also required to be appreciated in the light of the fact that a number of customers would visit the hotel, on a given day, and no test identification parade was held to establish the identify of the applicant as one of those persons, who had visited the said hotel on the day the conspiracy was allegedly hatched.

11 That leaves, the circumstance of retrieval of the photograph of the deceased from the mobile phone handset of accused no. 4 which was allegedly forwarded by the applicant.

12. It is trite, in a case based on circumstantial evidence the circumstances should be of a conclusive tendency and lead to no other inference than that of the guilt of the accused. The third circumstance arrayed against the applicant is prima facie compatible with the innocence of the applicant.

13. Evidently there was marital discord between the applicant and the deceased. However, on that count alone, an inference of complicity in the alleged offences cannot be drawn. In any event, whether the circumstances arrayed against the applicant sustain her guilt, would be a matter for adjudication at the trial.

14. The applicant has been in custody since 1st August 2021. The Court is informed that charge has not yet been framed. It is unlikely that the trial can be concluded within a reasonable period. I am, therefore, inclined to exercise discretion in favour of the applicant.

10. In the context of the charge, which stems from the marital discord, *prima facie* it appears that Shruti Ganji (A1) was the principal confederate. After appreciating the circumstances arrayed against Shruti Ganji (A1), this Court was persuaded to exercise the discretion in her favour. The aforesaid reasons which weighed with this Court in releasing Shruti Ganji (A1) and Priya Nikam (A2) on bail, govern the case of the Applicant for bail with equal force.

11. The Applicant has been in custody since 3rd August 2021. Having regard to the large pendency of cases, it is unlikely that the trial can be concluded within a reasonable period. I am, therefore, persuaded to exercise the discretion in favour of the Applicant.

15. Hence, the following order :

ORDER

- (i) The Application stands allowed.
- (ii) The Applicant, Nitesh Govardhan Wala, be released on bail in C.R. No. 500 of 2021 registered with Narpoli Police Station, Thane for the offences punishable under Sections 302, 120B, 201, 182(A) and 114 read with Section 34 of Indian Penal Code, 1860 ("the Penal Code") on furnishing a P.R. Bond in the sum of Rs.30,000/- with one or two sureties in the like amount, to the satisfaction of the trial Court.
- (iii) The Applicant shall mark his presence at Narpoli Police Station, Thane on the first Monday of every month between 10.00 am to 12.00 noon for a period of two years or till conclusion of trial, whichever is earlier.
- (iv) The Applicant shall not tamper with the prosecution evidence and/or give threat, promise or inducement to the first informant and any of the persons acquainted with the facts of the case, so as to dissuade them from disclosing facts to the Court or any police officer.

(v) The Applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(vi) The Applicant shall regularly attend the proceedings before the jurisdictional Court.

(vii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the Applicant and the co-accused and the trial court shall not be influenced by any of the observations made hereinabove.

Application disposed.

(N.J.JAMADAR, J.)