

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (BAIL) NO.295 OF 2014

Rupesh Falkar alias Uday
S/o. Sudham Falkar,
33 years of age, Indian,
R/o. Monte Hill,
Margao, Salcete, Goa.
(Presently at Sub-Jail Sada,
Bogda, Vasco-da-Gama, Goa).

.... Applicant.

Versus

1. State of Goa,
Through Public Prosecutor,
High Court Complex,
Panaji- Goa;
2. Police Inspector / S.H.O.,
Margao Town Police Station,
Margao, Salcete, Goa.

.... Respondents.

Mr. Raunaq Rao, Advocate for the applicant.

Mr. Mahesh Amonkar, Additional Public Prosecutor for the respondents.

Coram:- U. V. BAKRE, J.

Date : 29th January, 2015.

ORDER:

Heard Mr. Rao, learned Advocate for the applicant and Mr. Mahesh Amonkar, learned Additional Public Prosecutor for the respondents.

2. The applicant, who is arrested on 19/09/2011 in Crime No.

324 of 2011 registered at Margao Town Police Station for offence under Section 120-B and 364-A of the Indian Penal Code ('I.P.C.', for short) and Section 8 of Goa Children's Act, 2003 ('Children's Act', for short), has filed the present application for bail.

3. On 19/09/2011, at 15.00 hours Shri Vidhyadhar Mallya lodged complaint at Margao Town Police Station alleging that on the same date at about 13.25 hours the applicant kidnapped his minor son namely Vivek Mallya aged 11 years from near Anges Academy, Fatorda, Margao for ransom and demanded ₹ 20,00,000/- for release of the said minor son.

4. The applicant has stated that the investigation is already completed and charge sheet has been filed on 16/12/2011 and that the case is pending before the Children's Court at Panaji as Special Case No. 54 of 2011. The applicant has stated that the prosecution has cited altogether 55 witnesses and till today 14 witnesses have been examined. He has stated that the evidence that has already come on record and also that which is yet to come does not establish any prima facie case against the applicant. He submitted that the applicant belongs to a respectable family and is permanent resident of Goa and therefore there is no likelihood of his absconding. He stated that he undertakes to abide by any

conditions that may be imposed on him.

5. The Investigating Officer has filed a detailed reply resisting the application for bail. It is alleged that the statement of victim boy namely Vivek Mallya and of other witnesses directly prove the involvement of the present applicant in the crime. It is stated in the reply that the victim boy is still under the fear of accused persons and he is hesitating to go to his school and if the applicant is released on bail the victim boy will stop going to the school and may go in deep depression. It is also stated in the reply that the investigation revealed that after receiving the ransom money, the intention of the accused person was not to release the victim boy but to kill him because he was knowing the applicant and if released he would inform the identity of the applicant to his parents. It is submitted that various material witnesses have not yet been examined and if released on bail the applicant may threaten those witnesses.

6. Mr. Rao, learned Counsel for the applicant submitted that the applicant is in custody for the last more than three years. He further pointed out that the evidence on record proves that no money was paid to the applicant or to the other accused and in such circumstances the offence under Section 364-A of I.P.C. is not

attracted. He submitted that the recovery of knife, scissors and rope was not at the instance of the applicant but the said articles were found in the car. The learned Counsel relied upon the following:

- i. Judgment dated 23/03/2009 passed by learned Single Judge of Delhi High Court in Bail Application No. 1937 of 2008 (*Sharif v/s. State*)
- ii. *Jugnu Singh Vs. State of Chhattisgarh* [(2006) 1 Crimes 688]
- iii. *Dheeraj Singh Vs. State* [(2005) 121 DLT 342] and
- iv. Judgment dated 14/03/2006 of this Court in Criminal Application no. 341 of 2006 (*Rajesh Babanandan Shah @ Damchya V/s. State of Maharashtra*)

7. On the other hand, Mr. Amonkar, learned Additinal Public Prosecutor, argued that in the present case there is direct evience of eye witnesses. He pointed out that the applicant and the other accused were caught red handed with the victim boy. He submitted thasty though the money was not paid to the accused persons, however, the same waas demanded and even arrannged for. Learned Additional Public Prosecutor urged that the intention of the kidnappers was to kill the boy after receiving the money and therefore had carried with them the knife, pair of scissors and rope. He submitted that the applicant does not deserve bail.

8. The offence under Section 364-A of I.P.C. is punishable with death or imprisonment for life and also fine. Thus, the offence is grave and serious in nature and the same has been committed against the minor child who is a special child as duly certified by the Institute of Psychiatry and Human Behaviour, Bambolim.

9. The victim boy namely Vivek Mallya has been examined as PW2 and he has clearly identified the applicant as the person who came near the car and told the driver of the car namely PW3 that his vehicle is not in proper condition and when PW3 went to see vehicle of accused no.1 and tried to start the same, the applicant came to the car in which the victim boy- PW2 was sitting and told him that PW3 had taken his car to garage and that he would drop him at home. Thus, it is the applicant who kidnapped the victim boy. The applicant was earlier working with father of the victim boy as a loader and therefore the victim boy was well acquainted with the accused. The statement of PW2 is fully supported by PW3. The demand of ₹ 20,00,000/- is proved by PW1, Mr. Vidhyadhar Mallya, the father of the victim boy. At this stage, I need not go to scrutinise the evidence on record to find out whether the same would be sufficient for conviction or not. It is seen that there is direct evidence against the applicant which has been already recorded and there is further evidence which is yet to come on

record. The evidence of PW8, Mardan Patel reveals that he had sold knife, pair of scissors and rope to the applicant and the co-accused. These three articles were found in the car by which the victim boy was kidnapped. The applicant and the other accused were chased and caught with the boy. In the circumstances above, it can certainly be said that there is strong prima facie evidence against the applicant, in a case which is of a serious nature.

10. In all the cases relied upon by the learned Counsel for the applicant, the co-accused was/were already released on bail and even otherwise there was no direct evidence against the applicant. In the present case, the applicant and the co-accused were caught red handed along with the kidnapped boy in the car and they were caught after chasing them. Though the ransom amount was not paid to the applicant and the co-accused, however there is ample evidence to establish that an amount of ₹ 20,00,000/-, as demanded, was arranged by the complainant and was also sent through PW3 for being paid to the accused persons. In such circumstances, it cannot be said that Section 364-A of I.P.C. is not attracted.

11. In such circumstances, this is not a fit case for releasing the applicant on bail at this stage since the victim boy who is a special

child is stated to be under depression and it is stated that if the applicant is released on bail he may go in deep depression and may stop going to the school. There is also apprehension that the applicant may tamper with the remaining witnesses.

12. In the circumstances above, the application is rejected.

U. V. BAKRE, J.

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