

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.447 OF 2015

Vinod Baburam Pal alias Bindiya .Applicant

v/s.

The State of Maharashtra .Respondent

Mr.Amit Munde, Advocate, for the Applicant

Mrs.S.S.Kaushik, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 25.08.2015

P.C.

. Heard learned counsel for the applicant
and the learned APP for the respondent – State.

2. By this application, the applicant
seeks his enlargement on bail in connection with
C.R.No.398 of 2012 registered with the Kopar
Khairane Police Station, Navi Mumbai, for the
alleged offences punishable under Sections 385,
386, 364A, 395 r/w.34 of the Indian Penal Code,
1870. Subsequently, sections 3(2), 3(1)(ii),
3(2), 3(4) of the MCOC Act came to be applied.

3. According to the prosecution, the incident in question took place on 30.11.2012 at about 6.00 p.m.. The complainant, Santosh Maniram Rathod had lodged a complaint on 01.12.2012 alleging two incidents; one of 02.10.2012 and the other of 30.11.2012. He has alleged that on 02.10.2012 he had visited the Sessions Court at Thane with his friends. According to him, after finishing Court work at about 12.45 p.m. when he was leaving the Court premises, Imran Mohammad Rouf Khan alias Kalya (original accused No.1) and his associates came there, took him in a car to a bungalow at Lodha Heaven, Dombivali and demanded Rs.2,00,000/- from him. He has alleged that out of fear the said amount of Rs.2,00,000/- was given by him, pursuant to which he was let off. He has alleged that the persons, who were present along with the accused No.1 were Pratik Shivpuje, Natya, Hrishi and Rajmohan. Thereafter, on 30.11.2012,

it is alleged by the complainant, that he had gone in the evening to the garage to pick up his Swift car bearing No.MH-43/AB/2111 and after making payment, as he was about to leave, one Swift Desire car bearing No.MH-43/AL/4500 came there. It is alleged that Imran alias Kalya (O.A.No.1), Pratik Shivpuje (O.A.No.2), Natya (wanted accused No.6), Hrishikesh (O.A.No.7) and Rajmohan (O.A.No.5) got down from the said vehicle. The complainant has further alleged that when Imran asked him to sit in the car, he realized the purpose for taking him in the car, and hence tried to run away from the spot. However, the accused are alleged to have held him and he was made to sit in the car and the car proceeded in the direction of Thane. The complainant has alleged that Imran – (O.A.No.1) made a phone call and asked someone to come and wait near Kalwa, Shivsena Shakha. He has alleged that when they reached Kalwa, Shivsena Shakha,

Imran asked Hrishi and Rajmohan to get down from the vehicle and were asked to go and bring the complainant's car. It is alleged that the unknown person who was called by Imran, sat at the wheel to drive. It is alleged that thereafter, the complainant was taken to Kasaiwada and kept in a room. It is alleged that Imran demanded a ransom of Rs.5,00,000/- from the complainant. According to the complainant, the co-accused threatened the complainant with a chopper. Thereafter, it is alleged that the accused kept his Swift car and asked him to go and get the ransom money. He has alleged that he could not arrange the money and as Imran also did not call, he lodged a complaint. It appears in the second incident although an amount of Rs.5,00,000/- was demanded and later reduced to Rs.2,00,000/-, no amount was paid, even according to the complainant.

4. Learned counsel for the applicant submitted that in the FIR lodged by Santosh Rathod, the name of the applicant does not find place. He submitted that even in the first supplementary statement which was recorded on 02.12.2012, the name of the applicant has not been disclosed. He submitted that in the third supplementary statement which was recorded on 16.01.2013, there is a reference to one 'Bindiya', supposedly the applicant and in the third supplementary statement which was recorded on 24.01.2013, the complainant has stated that he learnt from the police about the Swift car which was recovered from the present applicant and that the name of Bindiya was Vinod Baburam Pal. He submitted that though the applicant was arrested on 18.01.2013, no identification parade of the applicant was held. He submitted that as far as recovery of the Swift car belonging to the complainant is concerned, the said car was

recovered from an open plot of land, belonging to CIDCO. He submitted that the case of the complainant is false as is evident from the fact that on 02.10.2012 all Courts were closed, being "Gandhi Jayanti". He submitted that the applicant is aged 19 years and that except for one case registered against him in 2011, for an offence punishable under Section 392 of the Indian Penal Code, for chain snatching, the applicant has no antecedents.

5. Learned APP opposed the bail application. She submitted that the present applicant has been named by the complainant in the second and third supplementary statements. She submitted that after the complainant was abducted, he was taken to a room, which belonged to one Qureshi. According to Qureshi, he had taken the room on rent for himself and that Imran Khan (O.A.No.1) would come there with his

friends; and that on 30.11.2012, Imran Khan had come with the co-accused and the complainant and all had left the room after 2-3 hours. There is a reference to 'Bindiya' also being present with the co-accused. Learned APP further submitted that a perusal of this statement shows that the present applicant had also gone to the room along with the other accused and the complainant.

6. Perused the charge sheet. Admittedly, the applicant's name does not find place in the first incident, which is alleged to have taken place on 02.10.2012. Even in the second incident which is dated 30.11.2012, the complainant has neither disclosed the name of the present applicant nor given his description. It is only in the second supplementary statement which was recorded on 16.01.2013, that for the first time, the name of the present applicant is disclosed

as 'Bindiya'. The reference to the name of the present applicant is as under :-

“मला इमरान काल्या व त्याचे साथीदारांनी जबरदस्तीने पळवून नेताना कळवा शिवसेना शाखेजवळ इमरान काल्याने मोबाईल फोन करून बोलाविलेला इसम याचे नांव व पत्ता मला माहिती नाही. परंतु मी त्यास ओळखत असून त्याचे टोपण नांव बिंदया असे असल्याचे मी आठवून सांगत आहे.”

On 24.01.2013, the third supplementary statement of the complainant was recorded which reflects, that he learnt from the police that the present applicant was arrested and that the full name of 'Bindiya' was Vinod Baburam Pal. According to the said statement, he learnt from the police that the Swift car bearing No.MH-43/AL/4500 was shown by the present applicant to the police. Admittedly, the present applicant has not been put up for identification and hence, has not been identified by the complainant. The statement of Qureshi is recorded on 17.01.2013,

after almost two months. In the statement, there is a reference to 'Bindiya' having come along with Imran, Hrishi, Pratik, Rajmohan, Natya, others and the complainant. It is pertinent to note that even if the present applicant is stated to have come along with the other co-accused and the complainant on 30.11.2012, the complainant himself does not make reference to any 'Bindiya' being involved in the commission of the offence in the FIR or in the 1st supplementary statement. The Swift car was recovered from an open spot i.e. from the land belonging to CIDCO. Even otherwise, the car which was used for kidnapping the complainant, does not belong to the applicant or his family members.

7. Considering the material that has come on record, prima facie it appears that there are reasonable grounds for believing that the

applicant is not guilty of the alleged offences. The applicant is aged 19 years and has been in custody since the date of his arrest i.e. 18.01.2013 for almost two and half years. As far as the antecedents of the applicant are concerned, there appears to be one case registered against him for an offence under Section 392 of the Indian Penal Code. The said case pertains to a chain snatching incident and the applicant has been enlarged on bail in the said case.

8. Considering the material on record, the applicant is enlarged on bail on the following terms and conditions:

ORDER

(i) The applicant be released on bail in connection with C.R.No.398 of 2012 registered with the Kopar Khairane Police Station, Navi Mumbai, on executing P.R.Bond in the sum of

Rs.15,000/- with one or two solvent sureties in the like amount;

(ii) The applicant shall not tamper or attempt to contact the complainant or any witness concerned with the said case;

(iii) The applicant shall attend the Court on all dates of hearing;

(iv) The applicant shall inform his latest place of residence and mobile number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the Kopar Khairane Police Station, Navi Mumbai;

(v) The applicant to co-operate with the conduct of the trial;

(vi) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

9. It is made clear, that the observations are prima facie for the purpose of deciding the application and the learned Judge shall conduct the case on its own merits, uninfluenced by the observations made herein.

10. The Application is allowed in the aforesaid terms and is accordingly disposed of.

Parties to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)