

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1041 OF 2014

Nusrat @ Nasrat Ali Mohammad Idris Khan ... Applicant
Vs.
The State of Maharashtra ... Respondent

Mr. Mubin Solkar i/b. Ms. Tahera Abdul Rashid Quershi, Advocate for the applicant.

Mr. Arfan Sait, APP for the State.

I.O. Mr. S.U. Jadhav, A.P.I., Panvel Town Police Station present.

CORAM : MRS.MRIDULA BHATKAR, J.
RESERVED ON : JUNE 29, 2015
PRONOUNCED ON : JULY 3, 2015

ORDER:

This Application is moved for bail, as the applicant/accused is facing prosecution for the offences punishable under sections 302, 363, 364, 386, 394, 201, 411, 120B r/w. 34 of the Indian Penal Code, section 3 and 25 of Arms Act and under sections 3(1)(i)(ii), 3(2), 3(4) of Maharashtra Control of Organized Crime Act of 1999 in C.R. No. 212 of 2011.

2. It is the case of the prosecution that deceased Ashish Vedprakash Bansal, a businessman was kidnapped by the applicant/accused and other co-accused on 13th December, 2011. At 5 p.m., when Ashish Bansal was proceeding from his factory towards Mumbai along with his driver Nilesh Gopal Rikame in his Hyundai i-20 car, a dash was given to the his vehicle by one Chevrelet Optra car. The victim Ashish Bansal and his

driver were manhandled. The victim was abducted and taken in the car of accused persons. For releasing the victim, they made a demand of Rs.50,00,000/- ransom and he was compelled to make a phone call to his relatives for arranging the ransom money. Rs.41,00,000/- were received by them near Inorbit Mall at Vashi. In spite of receiving ransom of Rs.41,00,000/-, the victim was not let free but in an isolated place he was shot dead. The complainant/driver of Ashish Bansal was robbed off his cell phone and gold chain and left him in an isolated place. Hence, he gave the complaint. The applicant/accused was arrested on 24th December, 2011 and he is in custody since then. Hence, this Bail Application.

3. The learned counsel for the applicant/accused submitted that the applicant/accused is falsely implicated. He submitted that assuming that the applicant/accused was involved in kidnapping the deceased by stopping deceased's car by putting ahead his car and lifting him from the car, yet it cannot be said that he has conspired with other accused especially accused no. 1 Aamir Moiddin Khan of the murder of the deceased. The learned counsel argued that there is no evidence to show that the applicant has conspired with co-accused of the murder of Ashish Bansal. Thus, at the most, the charges of kidnapping and extortion can be levelled against the present applicant/accused. The learned counsel argued that the applicant/accused was in fact taken in custody on 18th

December, 2011 on suspicion of theft of Chevrolet Optra Car bearing No. MH-04 DR-837 and the said car was found on the street and seized by the police. Thereafter in the open C.R. the police apprehended him and kept him in the prison. The recovery panchnama shown in this case of the said car on 25th December, 2011 is completely bogus and manipulated document. The learned counsel submitted that the said case of theft of car was registered separately and was tried before the Learned Judicial Magistrate and the applicant/accused has been acquitted, therefore, the learned Judge disbelieved the recovery panchnama at the instance of the applicant/accused. The learned counsel relied on the deposition of one police personnel Bhagwan Jairam Sawant, who has stated in the evidence that accused Nusrat Ali was in their custody since 18th December, 2011 and panchnama was prepared on 25th December, 2011. However, there is manipulation by changing the date from 24th December, 2011 to 25th December, 2011. The learned counsel submitted that if that panchnama is disbelieved and discarded, then nothing remains in the case. He submitted that the prosecution relied on the evidence of identification, which cannot be believed. The complainant Nilesh Rikame was the driver of Ashish Bansal of I-20 car. In his complaint dated 14th December, 2011 he has stated that after a dash given by Chevrolet Optra car, other two cars came and surrounded them and thereafter he also mentioned that as his eyes were tied with cloth, he had no opportunity to see the driver of

Chevrolet Optra 837 Car. The learned counsel further argued that the supplementary statement dated 16th December, 2011 is full of details and it is completely a manipulated statement which is recorded subsequent to the arrest of the accused and shown as back dated statement and in that statement, the evidence is created against the applicant/accused. He further submitted that identification by the driver cannot be believed so also the identification by Gadekar is false. He submitted that there are contradictions in the Statement of Gadekar who claims that he handed over ransom to the applicant/accused. There is confusion whether he has handed over the amount to a person on the driver seat or to a person who was sitting near the driver seat. He further pointed out that recovery of Rs.3,50,000/- from the applicant is bogus. The police from Crime Branch told the applicant that if he would deposit Rs.3,50,000/- then they would release him, therefore, his wife sold the land at Village Mandoli, Tah. Raniganj for Rs.5,00,000/-, out of which Rs.3,50,000/- was paid to her on 30th December, 2011 and thereafter the said amount was deposited with the police and the police showed fake recovery on 1st February, 2012 of Rs.3,50,000/- and thus, the applicant/accused was falsely implicated in the present case. The learned counsel submitted that MCOC Act is not maintainable against the applicant/accused, as there is no such evidence committed by him earlier of the nature for such MCOC is applied in the case.

4. Learned APP Mr. Sait opposed the Application and submitted that the applicant is facing charges under MCOC Act. The applicant/accused along with co-accused have committed the murder of Ashish Bansal. There is sufficient evidence against the applicant/accused to accept ransom. The complainant has identified the applicant in the Test Identification Parade. The applicant/accused is a member of gang which is involved in two offences of stealing cars continuously. The applicant/accused has criminal antecedents of car theft. He submitted that the applicant/accused and co-accused have been committing an offence of car stealing on Inter-State level.

5. Perused the FIR and the charge sheet papers. In the FIR, the complainant has narrated how the incident has taken place. He and his master Ashish Bansal were kidnapped and subsequently there was a demand of ransom, which was fulfilled by the family members of Ashish Bansal. It is true that in the supplementary statement, the complainant has given many details in respect of kidnapping and whether such details can be given or not, is after all a matter which can be tested at the time of trial. Today, even keeping aside the supplementary statement, the complainant has stated that one Chevrolet Optra dashed the car and thereafter he identified the applicant/accused as driver of Chevrolet Optra. How long the complainant had the opportunity to see the applicant is a matter of appreciation of evidence at the trial. However, it is a fact that it

was not a routine accident but a deliberate dash and thereafter Ashish Bansal was kidnapped. Apart from this identification, the statement of Gadekar discloses a specific role played by the applicant/accused though there is some confusion in respect of whether the applicant/accused was sitting on a driver seat or on the side of the driver seat. The statement of Gadekar is an important evidence against the applicant/accused, as according to him, the applicant/accused has accepted the amount of ransom.

6. The submissions of learned counsel for the applicant that there is no evidence to show that the applicant/accused was involved in further conspiracy of killing Ashish Bansal cannot be appreciated at this stage because killing Ashish Bansal, *prima facie* is a next part of conspiracy. There are criminal antecedents against the applicant/accused. Thus, the submissions of learned counsel that the evidence of stealing of Chevrolet Optra 837 is to be discarded, as the applicant/accused is acquitted from that case are accepted and that evidence of car stealing is kept aside, yet there is *prima facie* sufficient evidence against the accused. I am of the view that it is not a case to grant bail. Hence, the Application for bail is rejected.

(MRS.MRIDULA BHATKAR, J.)