

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1377 OF 2015
IN
CRIMINAL APPEAL NO.744 OF 2013

Nitin Shamrao Samudre

.... Applicant /
Org. Accused No.2

Versus

The State of Maharashtra

.... Respondent

Mr. D.G. Khamkar for the Applicant.

Ms. Vrushali L. Maindad, i/by Mr. Abhijeet Desai, for
the Appellant in Criminal Appeal No.186 of 2013 and
Criminal Appeal No.795 of 2013.

Mr. H.J. Dedia, A.P.P., for the Respondent-State.

CORAM : SMT. V.K. TAHILRAMANI, ACTING C.J. &
DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 26TH NOVEMBER 2015.

P.C. :

1. This Criminal Application is preferred by original Accused No.2 seeking suspension of his substantive sentence of imprisonment and his release on bail during pendency of the Appeal.

2. As per prosecution case, a child by name Atharv, aged 5 ½ years, was kidnapped on 9th April, 2010. As per the direction of kidnappers, on 12th April, 2010, the amount of Rs.6,00,000/- was thrown from the local train and on the same day, at 7:45 pm, the child returned home safely. On the next day, i.e. 13th April, 2010, the cash amount of Rs.5,85,000/- was recovered from the house of original Accused Nos.1, 3 and 4. On the same day, Accused Nos.3 and 4 were arrested. Police arrested the present Applicant and original Accused No.1 on 23rd April, 2010. During police custody, the motor-cycle came to be seized at the instance of the Applicant on 25th April, 2010. The Applicant was also identified in the Test Identification Parade by the child Atharv. On the basis of this evidence, the Applicant, along with other co-accused, was convicted for the offences punishable under Sections 363, 364A, 384 and 120B of IPC. The maximum punishment imposed on the Applicant is that of R.I. for life and payment of fine.

3. The submission of learned counsel for the Applicant is that, in the evidence before the Court, the child Atharv has not identified the Applicant. The cash amount was also not recovered from the

Applicant or at his instance. Hence, prima facie, conviction of the Applicant cannot stand. Therefore, he deserves to be released on bail.

4. The learned A.P.P. has opposed this application and in our considered opinion, rightly so. It may be true that the child Atharv, who was hardly of the age of 5 ½ years, has not identified the Applicant in evidence before the Court, may be, because the evidence was recorded two years after the incident. However, he has identified the Applicant in the Test Identification Parade. Moreover, there is evidence of PW-22 Yesu Pawar, in whose house Accused No.1 and Applicant had taken the child after kidnapping him. His evidence reveals that Applicant is the son of his maternal aunt and on the day of incident, the Applicant had come to his house along with the child and Accused No.1 at Bhandgaon, Taluka Shrigonda, Dist. Ahmednagar. On enquiries, Applicant introduced them as his friends and child Atharv belonging to the friend. Child Atharv was calling the Applicant as Balu Kaka and also playing with him. On the next day, the Applicant left along with Accused No.1 and the child. In our considered opinion, this evidence of PW-22 Yesu Pawar is, at

this stage, sufficient to reject a submission of learned counsel for the Applicant that there is no substantive evidence against the Applicant.

5. In the light of the gravity of the offence and the punishment of life imprisonment imposed on the Applicant, also considering that during the trial also he was not on bail, this application deserves to be dismissed and, accordingly, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [ACTING CHIEF JUSTICE]