

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

CRI. BAIL APPLICATION NO. 215 OF 2016

Gajabhai Nathabhai Parmar @ Gafdasbhai
Nathabhai Hadiyal ... Applicant.

V/s.
The State of Maharashtra ... Respondent.

**WITH
CRI. BAIL APPLICATION NO. 964 OF 2016**

Thackereibhai Lakdirbhai Makwana ... Applicant.

V/s.
The State of Maharashtra ... Respondent.

Mr. Jayesh A. Vithlani, Advocate for the Applicant in BA-215/16.
Mr. Shivdatta L. Vaiswa i/by Mr. Ram A. Yadav, Advocate for
the Applicant in BA-964/16.
WPSI-Yogita M. Narkhede (Indira Nagar Police Station, Nasik
City) is present.

**CORAM : A. M. BADAR, J.
DATE : 21st JUNE, 2016**

P.C. :

1 Both Applicants/accused in Crime No. I-150 of 2015 for the offences punishable under sections 363, 366, 366(A), 370, 376 r/w. 34 of the Indian Penal Code and under sections 4, 8, 16 of Protection of Children from Sexual Offences Act, registered with Indira Nagar Police Station, Nashik, by these applications are praying for releasing them on bail

during pendency of the trial. Applicant-Gajabhai Parmar @ Gafdasbhai Hadiyal has filed bail application no. 215 of 2016; whereas bail application no. 964 of 2016 is filed by applicant-Thackereibhai Makwana.

2 Heard both the learned counsel appearing for Applicants/accused. Learned counsel appearing for applicants argued that though the informant and the victim girl have stated the role allegedly played by applicants in kidnapping the victim girl and thereafter they arranged her marriage by selling her, the victim girl in her statement under section 164 of Criminal Procedure Code, has not even named the present applicants. According to learned counsel considering the nature of offence alleged against the present applicants their pre-trial detention is not warranted.

3 As against this, learned APP for the State argued that statement of one-Chamanbhai Dayabhai Parmar shows the active role played by the present applicants apart from the FIR alleged by the mother of the victim. He further argued that even in Gujarat State accused-Rijwana had lodged report against both the applicants/accused.

4 Now the investigation is over and the charge-sheet has already been filed. Perused the chargesheet. The victim girl was reported to be 16 years of age at the time of

commission of alleged offence, her date of birth being 20.09.1999. The FIR is lodged by her mother-Shannu Ejyaz Pathan on 25.09.2015. It is averred therein by her that accused-Rijwana had kidnapped her minor daughter and after search, she could found the accused Rijwana at Palanpur Ashram in Gujarat. According to the informant, she came to know that her minor daughter is married to one of the accused. The informant alleged that her minor daughter was kidnapped by Rijwana, Amrin, Tausiff, Aktar, Saheb (Sarpanch) and Dhootiwale Kaka. They sold her daughter for Rs.1.20 lakhs to one person for the purpose of marriage. Statement of victim girl is also recorded by the investigating officer. She has stated in her statement under section 161 of Cr.P.C. that one person to whom she addressed as Dhootiwale Kaka, had sold her to one-Pintuji M. Thakur and received consideration of Rs. 1.20 lakhs. The victim girl further stated that then said amount was handed over to Sarpanch Saheb. According to the prosecution case, the applicant-Gajabhai Parmar is Sarpanch Saheb, whereas the applicant - Thackereibhai Makwana is Dhootiwale Kaka.

5 Learned APP could not point out any material from the charge-sheet to show that either the informant or the victim girl had identified applicants - Gajabhai and Thackereibhai as Sarpanch Sahib or Dhootiwale Kaka respectively. Be that as it may, the statement of the victim girl

was recorded under section 164 of the Cr.P.C.. In that statement, the victim girl has not attributed any role to the present applicants, even if they were to be considered as “Sarpanch Sahib” and “Dhootiwale Kaka”, as per the version of the prosecution. The statement of Chamanbhai D. Parmar indicates that he is not a witness to the incident but he heard something when informed to him by the employee of Bhiladi Police Station about the incident in question.

6 Considering the nature of the offences against both applicants as well as nature of the role attributed to them by the prosecution, their pre-trial detention is not warranted and hence, the following order :-

ORDER

- i. Both the bail applications are allowed.
- ii. Both Applicants/accused in Crime No. I-150 of 2015 for the offences punishable under sections 363, 366, 366(A), 370, 376 r/w. 34 of the Indian Penal Code and under sections 4, 8, 16 of Protection of Children from Sexual Offences Act, registered with Indira Nagar Police Station, Nasik be released on bail during pendency of the trial on execution of P.R. Bond in the sum of Rs. 1,00,000/- each and on furnishing one or two sureties in the like amount by each of them.

- iii. As a condition of this order, both Applicants / accused are directed that they shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of accusation against them so as to dissuade such person from disclosing such facts either to the Court or to any police officer and that applicants shall not tamper with the prosecution evidence in any manner.
- iv. The Applicants should not commit the offence of similar nature in future.
- v. The applicants should co-operate for expeditious disposal of the trial.

Both these applications are disposed of accordingly.

(A. M. BADAR, J.)

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