

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2149 OF 2015

Sayyad Issak Kadar

... Applicant

Vs.

The State of Maharashtra

... Respondent

Mr.K.S. Labana for the Applicant

Ms.Rutuja Ambekar, APP, for Respondent – State

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **APRIL 7, 2016**

P.C.:

1. The application is moved for bail as the applicant-accused is facing charges under sections 302, 363, 364A, 201, 120B r/w 34 of the Indian Penal Code at C.R. No.I – 91 of 2014 at Bazarpeth police station, Thane on 17.4.2014. It is the case of the complainant that he is a resident of Sunder Nagar, Kalyan. The deceased Rohan was a 12 year old boy and was his son. On 17.4.2014, his son Rohan was playing in the society. Since he did not return, after some time, they searched for him, however he was not found. Therefore, the complainant Uttambhai Guchai approached the police and gave a missing report. The offence was registered initially under section 163 of the Indian Penal Code. On the next day i.e., on 18.4.2014, he received phone call on his cell from a landline that his son was in his custody and a demand of Rs.50 lakhs was

made. Thereafter, the offence was registered under section 364A. On enquiry, a watchman Sopan K. Bansode of the society informed the police that one person wearing helmet, arrived on a motor cycle at around 11.30am in the society. He saw his face and Rohan went alongwith that person on the motor cycle. Thereafter, the police collected Call Data Records (CDRs) of the cellphone and the phone from where he received demand. They also came across the CCTV footage and found that the accused No.1 Ishtiyak Shaikh is the one who took away Rohan on that day on his motor cycle. He was arrested. Thereafter, at his instance, seizure panchanama was drawn under section 27 of the Evidence Act of all the parts of the body of Rohan which were thrown at different places in a gunny bags in a gutter. Thereafter, other three accused including the present applicant-accused Sayyad Kadar was also arrested immediately in April, 2014. Hence, this application for bail.

2. The learned Counsel for the Applicant has submitted that there is no sufficient and reliable evidence against the applicant-accused of either kidnapping or of murder. He submitted that accused No.1 and the present applicant-accused are friends and accused No.1 was introduced by the applicant-accused to the complainant and the applicant-accused did not enquire and contact the complainant after kidnapping of his son. Only on the basis of these circumstances, the applicant-accused is arrested. The learned Counsel further submitted that he is not the one who was seen in

the CCTV footage going away with the deceased. He submitted that it was accused No.1 who is seen in the CCTV footage. The learned Counsel further submitted that one Nilesh Salve, who was an electrician and who was earlier arrested and made co-accused is exonerated as the police have filed report under section 169 of the Code of Criminal Procedure against him. The learned Counsel further prayed that the applicant-accused is in the prison since last one year and he is to be released.

3. Learned Prosecutor while opposing this bail application, has argued that the applicant-accused is a master mind of this offence. He has planned the kidnapping and murder. She submitted that though the applicant-accused himself has not done any act, he arranged the kidnapping and murder and therefore, he does not deserve bail. She submitted that the applicant-accused was the one who introduced the main culprit Ishtiyak Sheikh to the complainant and therefore, accused No.1 got access to the family of the deceased and the deceased. She relied on the FIR, wherein the complainant has mentioned that on 17.4.2015, when his son was missing, though the applicant-accused was a family friend and he was aware about such kidnapping, he did not come to the house of the complainant for two days. She further submitted that apart from these two circumstances, there was continuous communication between the applicant-accused and the co-accused Ishtiyak when the

incident has occurred i.e., on 17.4.2015 and the next day i.e., on 18.4.2015. She submitted that moreover, the police have collected CCTV footage from one Mahavir Stores. He was near the flat where the deceased boy was kept and was murdered. From the said CCTV footage, it is found that the applicant-accused was continuously going out and coming back on one white colour Active motor cycle on 19.4.2014 nearly for 6 times and the said Activa was seized. The police have collected letter from RTO that the said vehicle stands in the name of the applicant-accused. A report about the blood stains and pieces of gunny bag found on the vehicle was sought and the DNA test shows that the blood is of the deceased. Thus, all these circumstances which show that the applicant-accused was involved in the commission of the crime and not to be released.

4. Perused the FIR, the CDRs of the cellphone of the applicant-accused and the accused No.1. The submissions of the relevant witnesses, details of CCTV footage and other documents. The applicant-accused and the accused No.1 are friends and the applicant-accused was introduced by him. Two days after the incident of kidnapping, the applicant-accused did not contact the complainant though he was aware of the fact of kidnapping. This definitely is a suspicious circumstance. Besides this, as pointed out by the learned Prosecutor, the call details of 17.4.2014 and 18.4.2014 disclose that the applicant-accused and accused

No.1 were in contact with each other and there were 7 to 8 calls between these two persons. The evidence of DNA of the blood and gunny bag and so also the CCTV footage of white Acura clearly shows that the vehicle of the applicant-accused was used by the applicant-accused for the purpose of transportation and disposing off the body of the deceased. It is a brutal murder and the CDRs and the association of the applicant-accused and accused No.1 is to be accepted as it is placed by the prosecution. However, these circumstances prima facie are not sufficient to point out that the applicant-accused himself was involved in the murder. There is no major evidence against the applicant-accused to show that he was on the spot or in the flat where the boy was locked. The parts of the body of the deceased were found in different gunny bags at different places. However, the recovery is at the instance of the accused No.1 and other accused. Co-accused Nilesh Salve is exonerated. In his statement recorded by the police, he does not say anything about the applicant-accused. The vehicle of the applicant-accused i.e., white colour Acura was used in the offence, however, accused No.1 and the applicant-accused are admittedly friends and they are in the business and, therefore, use of Acura cannot be said at this stage that was with the knowledge of the applicant-accused.

5. Considering the overall circumstantial evidence against the applicant-accused, at this stage, I am inclined to grant bail to the

applicant-accused. Accordingly, the application is allowed in the following terms:

- i) The applicant-accused shall be released on bail upon furnishing P.R. Bond in the sum of Rs.100,000/- (Rupees One Lakh only) with one or two solvent sureties in the like amount;
- ii) The applicant-accused shall not tamper with the evidence or pressurise the complainant or the witnesses;
- iii) The applicant-accused shall not indulge into any criminal activity and shall attend on all the Court dates;
- iv) The applicant-accused shall not abscond or leave India without prior permission of the Court and furnish his permanent address to the Investigating Officer alongwith documentary proof of his address.
- v) In the event of breach of any of the above conditions, the prosecution will be at liberty to move the Court for cancellation of bail.

(MRIDULA BHATKAR, J.)