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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2432 OF 2015

Sikandar Mirza		..Applicant.
Vs.		
The State of Maharashtra	..	..Respondent

Mr. Dinesh Tiwari a/w Swapnil Ambre and Raghav Malhotra for applicant.
Ms. Vidya Kasle, Special P.P. with Ms. P.P. Shinde APP for State.

CORAM: A.S. GADKARI, J.

DATE : 22nd February 2016.

P.C.

1 The applicant is seeking bail in CR No. 56 of 2015 registered with DCB CID, Unit-10, Mumbai under Sections 120(B), 384, 388, 379, 376(2)(A)(i)(ii)(iii), 365, 366, 354(A)(1), 354(A)(2), 170, 341, 342, 347, 323, 324, 327, 509, 506(2), 201, 211, 414, 34, 114 of IPC.

2 The alleged incident in question took place in the intervening night of 2.4.2015 and 3.4.2015. It is the prosecution case that, the accused persons in furtherance of their conspiracy abducted the complainant and her associate from outside the Hotel namely Holiday Inn, Andheri, Mumbai under the pretext that they are the Police Officers attached to Sakinaka

Police Station and the complainant and her associate Kanvaldeep Singh were indulging in immoral trafficking activities. After the complainant/victim girl was abducted, her associate was directed to bring ransom of Rs.4 lacs if she did not want to face any prosecution for an alleged act of immoral trafficking. That some of the accused persons who were in fact the police officers, outraged the modesty of the victim girl and also committed an offence as contemplated under Section 376 of IPC. After taking into consideration the seriousness of the offence, the investigation of the present crime was directed to be carried out by the DCB, CID, Mumbai under the supervision of the higher authority. After completion of the investigation, police have filed the chargesheet.

3 Heard the learned Counsel for the applicant and the learned Special P.P. for the State and with their able assistance I have perused the entire record annexed to the present application.

4 The prosecution case qua the applicant is that, the applicant by using his PAN Card and Credit Card booked Room No.632 in Holiday Inn Hotel. It is the further prosecution case that the co-accused were to take the victim girl to the said room in furtherance of their conspiracy when the applicant was present at the said room. It appears from the record that the alleged incident took place in two parts, firstly booking of a room in Hotel

Holiday Inn and as per conspiracy to take the victim girl to the said room by the co-accused Tanveer Hashmi. When the said attempt of taking the victim girl to the said room was failed or averted by the victim, she came out of the said Hotel and thereafter the co-accused abducted her firstly to Sakinaka Police Station and then to a Police Chowki which was in the vicinity.

5 The prosecution has relied on three circumstances against the applicant. Firstly the applicant by using his PAN Card and Credit Card booked the room No.632 in the Hotel Holiday Inn along with co-accused Tanveer Hashmi. Secondly, applicant was allegedly present in the said room when the co-accused Tanveer Hashmi forced the victim girl to accompany him to the said room and lastly the applicant was in contact with the accused No.8 Ayesha who impersonated herself to be a lady police officer in the entire crime.

(i) As far as the using of Credit Card by the applicant while booking the said room is concerned, it is the only circumstance against the applicant to connect him in the alleged conspiracy in the entire crime. Admittedly, there is no allegation as against the applicant of either kidnapping or rape.

(ii) There is no evidence on record which in fact points out the

fact that the applicant was in fact inside the said room No.632 at that relevant time. The prosecution has relied on the statement of the staff member by name Miss. Ashwidi Nair who has stated that on 3.4.2015 at about 3.58 a.m. one person by name Raj given a phone call from his mobile phone which was connected to room No.632 and the person therein said “yes Skikandar speaking”. Apart from the said statement, there is no evidence on record to show the presence of the applicant in the said room.

(iii) To substantiate the third circumstance that the applicant was in contact with accused No.8 Ayesha, the prosecution has relied upon CDR of the mobile phone of accused No.8 Ayesha bearing No.9619172289. That a few phone calls alleged to have been made by accused No.8 Ayesha to the present applicant on his mobile phone bearing No.9892011702 in the said intervening night. It is to be noted here that the prosecution has not brought on record any circumstance or evidence to show that the SIM Card having the same number in hand-set was in use and occupation of the applicant herein. It also appears from the record that the prosecution has till date failed to bring on record that the said mobile number which was allegedly used by the applicant was in operation at the place of incident. Therefore the presumption of the prosecution that the said mobile phone was in use and occupation of the applicant which is tried to be established by the

statement of the witnesses appears to be preposterous.

6 As stated above, except the circumstance that the applicant booked the said room in the Hotel Holiday Inn by using his Credit Card and by supplying the photo copy of his PAN Card, prima facie it appears that there is no legal evidence against the applicant in the entire crime as of today.

7 It is to be noted here that the co-accused by name Javed Ibrahim Shaikh who has been attributed with role of collecting ransom amount from the associate of the complainant namely Kanvaldeep has been released on bail by this Court. It appears that the role played by the present applicant is lesser than the role played by Javed Shaikh. In view of the same, the applicant has made out a case for his release on bail.

8 Hence, the following order:-

(i) The applicant be released on bail in CR No. 56 of 2015 registered with DCB CID, Unit-10, Mumbai on his furnishing PR bond of Rs.50,000/- with one or two local solvent sureties in the like amount.

(ii) After his release from jail, the applicant shall attend the Office of DCB, CID Unit No.10, Mumbai on every 1st and 3rd Saturday of the month between 10.00 a.m. to 12.00 noon till the completion of trial.

(iii) The applicant shall submit the documents of proof of his

residence to the Investigating Officer and to the Trial Court including his mobile number, if any.

(iv) The applicant shall not tamper with evidence and/or influence the prosecution witnesses.

(v) The application is allowed in the aforesaid terms.

(A.S. GADKARI,J.)