IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

913 **CRIMINAL APPLICATION NO. 2833 OF 2017**
IN
CRIMINAL APPEAL NO.227/2017

ANITA W/O DHANAJI NAVGIRE
VS
THE STATE OF MAHARAHSTRA.
...
Advocate for applicant: Mr.Govind Kulkarni h/f Mr.R.S. Deshmukh.
APP for the State : Mrs.S.S. Raut.
...

AND/WITH

CRIMINAL APPLICATION NO. 2882 OF 2017
IN
CRIMINAL APPEAL NO.230/2017

MOHAMMAD ABDUL HAQ S/O MOHD. ABDUL GANI
VS
THE STATE OF MAHARAHSTRA.
...
Advocate for applicant: Mr.Jogdand Patil Vijay B.
APP for the State : Mrs.S.S. Raut.
...

AND/WITH

CRIMINAL APPLICATION NO. 2883 OF 2017
IN
CRIMINAL APPEAL NO.231/2017

SAMIRKHAN S/O SIKANDARKHAN
VS
THE STATE OF MAHARAHSTRA.
...
Advocate for applicant: Mr.Nilesh S. Ghanekar.
APP for the State : Mrs.S.S. Raut.
...

AND/WITH

CRIMINAL APPLICATION NO. 2904 OF 2017
IN
CRIMINAL APPEAL NO.240/2017

1. SHAIKH MATIN S/O SHAIKH MASOOD.
2. SAYYAD SHAHABUDDIN S/O SAYYAD RASHID.
3. MOHAMMAD JAFFAR S/O MOHAMMAD JILANI.
VS
THE STATE OF MAHARAHSTRA.
...
Advocate for applicant: Mr.Jogdand Patil Vijay B.
APP for the State : Mrs.S.S. Raut.
...
AND/WITH

CRIMINAL APPLICATION NO.2958/2017
IN
CRIMINAL APPEAL NO.258 OF 2017

NASRUIN W/O BABARKHAN
VS
THE STATE OF MAHARASHTRA.
...
Advocate for appellant : Mr.A.K. Bhosle.
APP for State : Mrs. S.S. Raut.
...
CORAM : V.L. ACHLIYA, J.
Dated: JUNE 16, 2017
…

The applicants – appellants have preferred these applications seeking

suspension of sentence and release on bail during pendency of their appeals, for the reasons set out in their respective applications.

2. Heard learned Counsel for the applicants and learned APP appearing for the respondent - State, perused the impugned judgment and order passed by the trial Court.

3. The learned Counsel for the applicants submit that conviction of the appellants – applicants is not sustainable in law for the reason that the evidence as adduced no way proves the offences punishable under Sections 363, 366 and 120-B of the IPC. They submit that the story of the prosecution itself cannot be accepted in the light of the evidence on record that the prosecutrix was kidnapped by the accused. It is pointed out that the prosecutrix has deposed in her evidence that from Aurangabad she was initially taken to Badnapur. Later on, she was taken to Pune, Ajmer, Nashik and Manmad. The alleged incident occurred on 16.12.2011. Accused No.1 and the prosecutrix were brought from Manmad on 27.12.2011. By referring the testimony of

the prosecutrix, the learned Counsel submit that if really the prosecutrix was forced to give up custody of her guardian and kidnapped in the manner stated by the prosecutrix, then prosecutrix had several opportunities to escape. So also she had an opportunity to seek help of people around. It is submitted that age of the prosecutrix was 16 years at the time of incident. Age of the accused No.1 at the time of incident was 19 years. It is contended that there was affair between the accused No.1 and prosecutrix. Prosecutrix had given up custody of her guardian as they were trying to settle her marriage against her wish. It is therefore, contended that conviction of applicants is not maintainable and the applicants - accused have good case to succeed in appeals. Learned Counsel representing the accused Nos.2 to 7 submit that by no stretch of imagination, it can be inferred that they had entered into criminal conspiracy with accused No.1 to kidnap the prosecutrix. On the face of the evidence on record, at the most it can be said that they have helped the accused by providing vehicle, shelter etc. It is contended that during trial, the applicants were on bail. At the time of

commission of offence, accused Nos.1 and 3 were in the age group of 19 years and accused No.2 was 22 years old. By considering age and the nature of offence, learned Counsel submit that the applicants be enlarged on bail.

4. On the other hand, learned APP appearing for the State strongly opposed the applications with contention that there is cogent and convicting evidence to sustain conviction. She submits that the prosecutrix has fully supported the case of the prosecution. Testimony of the prosecutrix is fully corroborated by other witnesses. At the time of incident, prosecutrix was 16 years of age. The evidence on record reflects that prosecutrix was put under threats of causing bodily harm to herself as well as her parents. Due to continuous threats, to the prosecutrix to kill herself as well as her parents, she could not made any attempt to escape from the custody of the accused. She further submits that if the accused are enlarged on bail, there is every likelihood that they may cause threats to the prosecutrix as well as her parents. She, therefore, urged to reject the applications.

5. In order to appreciate the submissions advanced, I have perused the impugned judgment. Accused No.1 to 7 were tried for committing offence under Sections 363, 366 and 120-B of the IPC. On conclusion of trial, accused Nos.1 to 3 are held guilty of offences punishable under Sections 363, 366 and 120-B of IPC. For committing offence punishable under Section 363 IPC, they are sentenced to undergo R.I. for three years, for committing offence under Section 366 IPC, they are sentenced to undergo R.I. 4 years and for the offence punishable under Section 120-B of IPC, they are sentenced to undergo R.I. for 2 years. Accused Nos.4 to 7 are convicted for the offences punishable under Sections 366 and 120-B of IPC and each of them is sentenced to undergo R.I. for four years and two years respectively. It is apparent on the face of record that prosecutrix is alleged to have been kidnapped on 16.12.2011. She was traced along with accused No.1 on 27.12.2011 at Manmad and brought to the Police Station. At the time of commission of offence, age of the prosecutrix was 16 years and age of accused No.1 was 19 years. The role attributed to accused

Nos.2 to 3 is that they have actively participated in the act of commission of offence of kidnapping the prosecutrix. So far as the role attributed to accused Nos.4 to 7 is concerned, they are claimed to have helped accused No.1 by providing shelter, car etc. It reflects from the testimony of the prosecutrix that during the period from 16.12.2011 to 27.12.2011, she travelled with the accused No.1 at various places which include Pune, Ajmer, Nashik and Manmad. She travelled in private car, bus and other modes of transport. During their stay at Pune and Ajmer, they stayed in lodges. Prima facie, there appears to be force in the submission of the learned Counsel for applicants that the prosecutrix had opportunity to escape, if really she was taken against her wish from the lawful custody of her parents. It appears that there was affair between prosecutrix and accused No.1. The possibility of prosecutrix having left house at her own due to affair with accused No.1 cannot be ruled out. In my view, there is arguable case to be considered in appeal. During trial, the applicants were on bail. It is no where the case of the prosecution that the applicants have breached the

conditions of bail during trial. Looking to the nature of offence and sentence awarded, I am of the view that applicants be enlarged on bail subject to certain conditions, as it may not be possible to immediately take up the appeal for final hearing. In case, the sentence awarded to the applicants is not suspended and applicants are not released on bail, there is every likelihood that their appeals may become infructuous. I am, therefore, inclined to entertain the application. Hence, the following order:

ORDER

(1) Pending disposal of the appeals, the execution of substantive sentences stand suspended subject to deposit of fine amount.

(2) Pending disposal of the appeals, the applicants be released on bail on each of them furnishing bail in the sum of Rs. 50,000/- (Rupees fifty thousand) each with one surety in the like amount, on following conditions.

(i) Pending disposal of the appeals, the applicants shall attend City Chowk Police Station,Aurangabad on last day of each month.

(ii) The applicants shall not indulge into any offence of similar nature during the pendency of the Appeal.

(iii) The applicants shall furnish the names of their three close relatives with their addresses and phone numbers.

(iv) The applicants shall not make any attempt to contact the prosecutrix or her family members and cause threats to them.

(v) In case, they contact the prosecutrix or her parents and cause threats, in any manner, the bail granted to the applicants shall be liable to be cancelled.

(3) In the event of breach of any of the conditions of bail, the bail granted to the applicants will be liable to be cancelled.

(4) Bail be furnished in the trial Court.

(5) The Officer In-charge of the City Chowk Police Station, Aurangabad is directed to submit report of compliance of conditions of bail after every six months.

6. Criminal Applications stand disposed of in above terms.

(V.L. ACHLIYA,J)

kadam/