

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.672 OF 2017

TULSIRAM SONARAM SAINI)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Atul Sarpande, Advocate for the Applicant.

Ms.J.S.Lohokare, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 10th NOVEMBER 2017

P.C. :

1 The applicant / accused in Crime No.I-269 of of 2016 registered with Police Station Vartak Nagar, Thane, for offences punishable under Sections 363, 364, 307, 323, 504 read with 34 of the Indian Penal Code (IPC), by this application is seeking his release on bail during pendency of his trial.

2 Heard the learned advocate appearing for the applicant/accused. He drew my attention to the First Information

Report lodged (FIR) by the present applicant/accused against the First Informant in the instant case and argued that in the sessions case arising out of this FIR lodged by the applicant/accused in the year 2012, the present First Informant is shown as absconding accused. The applicant/accused was, infact, kidnapped by the First Informant in the year 2012 leading to registration of Crime No.I-370 of 2012 against him and the First Informant was behind bars for some period. This has resulted in lodging the subject FIR falsely against the present applicant/accused in order to take revenge against her. The learned advocate further argued that in all three statements of First Informant are there on record and all statements are contradictory. He further argued that the incident in question is highly improbable because if a girl aged 12 years is thrown from the bridge, there is no possibility of her survival. With this, the learned advocate argued that on completion of investigation, the applicant/accused is entitled to be released on bail.

3 The learned APP opposed the application by pointing out the nature of the crime and the circumstance in which it is committed.

4 I have considered the rival submissions and also perused the entire charge-sheet. The applicant/accused was arrested on 5th July 2016. The crime in question is registered on the basis of the report lodged by Nirmala Tulsiram Saini. She is wife of the present applicant/accused. They are living separately. The First Informant is having 9 years old daughter named Ekta (who is the victim of the crime in question) from her first husband named Parvin Singh, whom she had divorced. From the present applicant/accused, First Informant Nirmala Saini is having a son named Hritik. It is seen that the First Informant is working in a bar for earning livelihood and returns home late in the night. On 30th June 2016, she lodged a report disclosing that on 29th June 2016, she reached home after work at about 11.00 p.m., and noticed that her 9 years old daughter Ekta - from her ex-husband, missing from home. Her neighbour Rahul Gaikwad told her that

the present applicant/accused Tulsiram Saini had taken Ekta with him. The First Informant tried to contact the applicant/accused but the applicant/accused threatened her. This is how, at 5.00 a.m. of 30th June 2016, the First Informant - the mother, lodged report against the present applicant/accused alleging kidnapping of her 9 years old daughter named Ekta.

5 Considering the nature of offence, case of the prosecution mainly rests on version of the victim child. Her statement was recorded on 30th June 2016 itself. She was found by a witness named Ramesh Bhoir, who is working as a security guard with Mohan Water Edge Building on the bank of river Ulhas. Statement of Ramesh Bhoir shows that during the course of his duty as a security guard, he was patrolling by side of Ulhas river at about 5.45 a.m. on 30th June 2016. He heard cries of a girl by calling him as “uncle uncle”. Despite efforts, he could not locate the girl. He called the Round Officer and both of them climbed on the bridge of Ulhas river. They noticed a girl aged about 8 to 10 years holding aquatic weeds in the river and her

entire body except her head was found to be submerged in the water. Ramesh Bhoir rescued that girl with the help of others and she was taken out from the water. Upon being asked, the rescued girl informed Ramesh Bhoir and others that her “Papa” had thrown her in the water. This witness stated that because of submergence of her body for a long time in water, it had turned whitish and wrinkly. Statement of this witness shows that Ekta had suffered skin maceration.

6 Statement of the victim girl, who is aged about 9 years, shows that she addressed the present applicant/accused as her “Papa”. She reported that a day earlier, on the pretext of providing school bags and books to her, the present applicant/accused took her, called his friend and by motorcycle she was taken in the evening hours to a river bed. Then, the present applicant/accused caught hold of her hands and his friend held her by legs. By oscillating her body by holding her extremities, she was then thrown in the water. The victim girl further stated that she could manage to grab aquatic weeds in the

bed of the river and anyhow survived that night. She stated that on the next day, on noticing the watchman she shouted in order to grab his attention and that is how she was rescued. Intention of the applicant/accused and the overt act committed by him reflects his attempt to commit murder of his stepdaughter Ekta.

7 Statement of Rahul Gaikwad was that the present applicant/accused had kidnapped the victim girl from home on 29th June 2016.

8 It is said that the devil does not come red cape and pointy horns, but sometimes, looks like a normal person. The act, alleged by the prosecution, of the applicant/accused, who is though not a biological father of the child but was accorded the status no less than that of a biological father by the child, is heinous. The child had absolute faith in her father and accompanied him based on that trust. The applicant/accused committed a heinous act by kidnapping the child by breaching the sacred trust of the child, asking the child to accompany him for

the purpose of buying books for her. Taking her to a river and throwing her in the river and leaving her there in the dark of the night to die is nothing but an act of the devil disguised as a human.

9 Nature of allegations and the manner in which the crime is committed are relevant considerations for grant of bail. In the case in hand, as the applicant/accused had kidnapped a minor female child, aged about 9 years, from lawful guardianship of her guardian mother, and then in a very brutal manner attempted to kill her by throwing her in the river, this court is not assured that the applicant/accused would not commit commission of similar offence in the wake of sour relations between him and the mother of the victim girl. Hence, the order :

ORDER

- 1) The application is rejected.
- 2) Needless to mention that these observations are prima facie in nature and shall have no bearing on the trial.

(A. M. BADAR, J.)