

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1450 OF 2016

Shri Mithun Unnikrishnan Pille ...	Applicant
Vs.	
The State of Maharashtra ...	Respondent

Mr.Raja Thakare i/b. Mr. Bharat Manghani, Advocate for the applicant.
Mrs. P.P.Shinde,APP, for the State.
P.I. Sunil Jadhav, Crime Branch, Unit-IV, Antop Hill, present.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 17th February, 2017.

P.C.

Heard. This is an application under Section 439 of Cr.P.C.
The applicant herein is arrested on 13.11.2014 by DCB CID Unit No.IV in
C.R. No.102 of 2014. The investigation is completed and charge-sheet is
filed and according to the learned APP, charge is framed.

2. It is the case of the prosecution that on 4.6.2014, one Vitthal
Gore lodged a report at Sion Police Station contending therein that one
Swamminarayan Satwani was working as a watchman in the Central
Railway Welfare Hall, G.T. Nagar, Sion. The complainant – Vitthal Gore
was the owner of the said Hall. He had reported to the police that on
3.6.2014, as usual, Swaminarayan Satwani had gone out for purchasing
vegetables at about 7 p.m. and has not returned. The name of a friend of

the missing person was also mentioned as Abdulbhai whose cellphone number was given by the informant and it shows that he was residing at Mumbra, Thane. According to the complainant, probability that the missing person had gone for a pilgrimage or to his native place. That Mr. Satwani was handicapped and was suffering from disability of his left leg. He was the original resident of Rajsthan.

3. At about the same time, a report was lodged at Rajasthan on 21.10.2014 by the wife of the missing person. She had disclosed that on 5th June, he had received a phone call from cellphone No.09694299425, wherein her husband had asked her to arrange for Rs.31 lakhs as he has been kept in custody by some persons and that they would not release him unless the amount is paid. She had expressed her inability to arrange for Rs.31 lakhs, but he had insisted upon her to arrange the same by hook or crook. On 6th June 2014 also the missing person had called upon his wife and reiterated his request. On 7th June, an unknown person had spoken to the wife of the missing person and demanded ransom. The outer limit pay was upto 9th June. The missing report was filed at Rajasthan.

4. On 29.10.2014, Jayesh Satwani, son of the missing person lodged a report reiterating the demand of ransom. It appears that one Vishal was arrested on 10.11.2014. At his instructions and on the basis of a

memorandum under Section 27 of the Indian Evidence Act, the remnants of a dead male person was found on 15.11.2014. They were skeletal remnants of a 65 year old Hindu person. The body was received for post-mortem in form of separated bones, soil, ribs, tissues, preserved for chemical analysis, bones and teeth were preserved for DNA profiling and the body was sent for anatomical examination. The offence was registered under Section 364A, 302 of the Indian Penal Code.

5. In the course of investigation by DCB CID Unit, the statement of one Pravin H. Jadhav was recorded. he had disclosed to the police that on 3.6.2015, his friend Dugade had called upon him in his car to Badlapur Police Station. Just before he reached the station, he had met Vishal and Mithun the present applicant. According to the witness, he was informed by Vishal that there is a handicapped person who needs care and needs to be taken to a particular place. They had been to the Hall from where Vishal and another person went inside and had brought Satwani. Thereafter, Satwani was made to sit in the car. Satwani was being guarded by Vishal and the present applicant. That Mr. Satwani was raising hue and cry. The applicant and Vishal as well as Anwar were asking him to keep quiet. They had gone to the house of Abid.

6. The learned counsel for the applicant vehemently submits that

the present applicant cannot be attributed with the knowledge of Satwani being abducted as it was within the special knowledge of Vishal who informed them that they have to take the said person to a particular place. According to the learned counsel for the applicant, the driver was also informed accordingly and that the applicant was asking Mr. Satwani to keep quiet only because he was previously informed that he was a mentally deranged person.

7. According to the learned counsel for the applicant, this is a case of circumstantial evidence in which only circumstance against the present applicant is that he was last seen in the company of the deceased and other two persons. That he cannot be held liable for the offences punishable under Section 302 of IPC and therefore, he deserves to be enlarged on bail.

8. Perused the papers of investigation. It appears that on 13.11.2014, the statement of Vithal Gore was recorded. he had disclosed to the police that in March 2014, Satwani was enquiring about the trading of scrap material. He admits that he had lodged the missing report. He had also enquired with Aniket gore and Ajay Vakode as to what exactly had happened on 3.6.2014 and Aniket Gore had disclosed to him that on the said date at 7.30 p.m., when they were all chit-chatting with Satwani, one

unknown person entered the hall. he had threatened Satwani. That two persons who had entered and threatened Satwani on account of being involved in settling matters. They dragged Satwani outside the hall under coercion. They had not immediately followed Satwani, but by th time they left the Hall and in search of Satwani, he was not found. They had enquired about him at various places but they could not be found. Aniket had suspected that Satwani has been abducted by the said two persons. Aniket Gore in his statement under Section 161 had given the description of the two persons who had entered into the Hall land had forcibly taken Satwani outside the Hall. It is pertinent to note that despite the fact that Vitthal Gore had knowledge that Satwani has been abducted. The missing report which was lodged showed that Satwani had left the hall for purchasing vegetables and had not returned back to the hall. It was suspected that he had gone to some pilgrimage or to his native place. It is surprising that neither Vithhal Gore nor Aniket Gore nor Santosh Rajput had informed that Satwani had been abducted by two persons. One fails to understand the reason for misleading the police by stating that Satwani had left the hall voluntarily, although there are eye-witnesses who had actually seen that Satwani was abducted. It is further pertinent to note that the missing report filed by Vitthal Gore does not form part of the charge-sheet and has been perused by

this Court. From the records of the I.O. the said report was therefore registered as missing report. It is only when the reports were lodged at Rajasthan that some action was taken. The papers of investigation do not indicate that the cellphone number of Satwani or his friend Abdul were tracked by the police to find out the whereabouts of Satwani since it is clear from the missing complaint filed at Rajasthan that Satwani was carrying his cellphone along with him. In the eventuality that the police had plunged into action at the relevant time, the police in all probability could have saved the life of the helpless handicapped. Be that as it may, as far as the present applicant is concerned, it would be difficult to hold that the applicant had no knowledge as to what has happened with Satwani.

9. The learned APP submits that the voice sample of all the accused were taken. However, the voice sample of Abid had matched. The applicant was last seen in the company of the deceased.

10. The learned counsel for the applicant submits that the statement of Prakash Jadhav cannot be relied upon as a gospel truth. In fact, he would be an accomplice as he was also in the company of the deceased as much as the present applicant. The disappearance of Satwani would be within the special knowledge of all the four persons who were in the said car. Three of them are accused and the statement of Prakash

Jadhav is recorded under Sections 161 and 164 of Cr.P.C. In the course of recording of evidence, the learned Sessions Judge may, on the basis of the substantive evidence recorded of the witnesses, call upon Prakash Jadhav under Section 319 of Cr.P.C. However, that would be an eventuality at the time of trial. As on today, the material in the nature of last seen together would be an incriminating evidence and the role attributed to the present applicant cannot be distinguished from that of Vishal or Anwar because he was not identified at the test identification parade since it is a case of the prosecution that two persons had entered into the Hall and had lifted Satwani, whereas one person was waiting outside the hall.

11. Hence, for the reasons stated above, this Court is of the opinion that the applicant does not deserve to be enlarged on bail.

12. The observations are restricted to an application under Section 439 of Cr.P.C. and shall not be considered at the time of trial.

Application stands rejected.

(SMT. SADHANA S.JADHAV, J.)