

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1665 OF 2017

AJIT ATMARAM APRAJ

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Ayaz Khan i/b. Mr.Rajendra Bidkar, Advocate for the Applicant.

Mr.R.M.Pethe, APP for the Respondent – State.

Mr.Mahesg Nivatkar, Police Inspector, DCB, CID, Unit XII, Mumbai, present in the court.

CORAM : A. M. BADAR, J.

DATE : 13th NOVEMBER 2017

P.C. :

1 The applicant/accused in Crime No.3 of 2014 registered at Police Station Aarey, at the instance of Rahul Waradkar, for offences punishable under Section 342, 364, 452, 386, 387 and 120B 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 extensively. He drew my attention to the statement of Bhushan Parulekar, Birju and Tekbahadur Shah, allegedly recorded on 23rd January 2014 by the Investigator. Then, by taking me through the Station Diary Entry No.42 recorded on 24th January 2014 and Station Diary Entry No.17 recorded on 26th January 2014 filed in the charge-sheet, the learned advocate appearing for the applicant/accused argued that according to the prosecution case, police came to know about involvement of two persons and one lady in the offence of kidnapping Yug – a child aged about 3 years on 23rd January 2014, one of which according to the prosecution case is the present applicant/accused. Police, according to statements of these three witnesses, were knowing the fact that the kidnapped child was left at Hotel City Star, near Dindoshi, on 23rd January 2014 itself. If that is so, then the Station Diary Entry No.42 taken on 24th January 2014 belies the prosecution case on this aspect. This Station Diary Entry recorded on the date after alleged statements

of Bhushan Parulekar, Birju and Tekbahadur Shah, shows that for the first time, police came to know about return of kidnapped child Yug at about 17.15 hours of 24th January 2014. The Station Diary Entry shows that then First Informant Rahul Waradkar was contacted telephonically and was called to the Police station for giving the requisite information. By placing reliance on the Station Diary Entry No.17 dated 26th January 2014, the learned advocate for the applicant/accused argued that this Station Diary Entry of 26th January 2014 is to the effect that though investigation was made from waiter Birju of the City Star Hotel, nothing was revealed from it. In the backdrop of this factual situation, the learned advocate argued that alleged statement of Birju dated 23rd January 2014 is an antedated statement. It is argued that statements of all these three witnesses show that the investigation is not fair. It is argued that it is a wise presumption of law recognized by the legislature that official acts of police are regularly done and that presumption is attracted to the Station Diary Entry recorded in the Station Diary to the effect that their contents are true and correct. With this, the learned advocate

appearing for the applicant/accused argued that as there is presumption of correctness of Station Diary Entry No.42 dated 24th January 2014 and Station Diary Entry No.17 dated 26th January 2014, the entire case of the prosecution against the present applicant/accused is demolished. The learned advocate further criticized the recovery of Rs.3 lakh at the instance of the present applicant/accused by stating that according to the prosecution case, the applicant/accused has pointed out a person named Kiran Choudhary, but money was not recovered from the said person. It is further argued that recovery of Qualis vehicle is after fifteen months and no witness has stated the registration number of that Qualis vehicle during the course of investigation.

3 The learned APP opposed the application by pointing out the confession of co-accused Sapan Suken Chakravarty and argued that present applicant/accused is mastermind of the crime in question. It is further argued that the present applicant/accused is identified by the prosecution witness, who had seen him with the child near Hotel City Star. It is further argued that in the

earlier anticipatory bail applications of some of the accused, there are some observations regarding forgery of the Station Diary Entry but the learned APP could not produce copy of that order for perusal of this court.

4 Be that as it may, even if it is assumed that statements of three prosecution witnesses are antedated and are contrary to the events which took place at the concerned police station at the relevant time, confession of the co-accused Sapan Chakravarty shows that the present applicant/accused is kingpin of the crime in question and it was he, who had hatched the conspiracy for kidnapping Master Yug – a child aged about 3 years, from the custody of his lawful guardians i.e. father and mother.

5 Considering the evidence regarding confession of the co-accused which implicates the applicant/accused in the crime in question, no case for bail is made out. Hence, the order :

ORDER

i) The application is rejected.

- ii) Needless to mention that observations made in this order are prima facie in nature and they shall have no bearing on the result of the trial.

(A. M. BADAR, J.)