

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (BA) NO. 499 OF 2018

(Tayyub s/o Shamsher Sheikh vs. The State of Maharashtra thr. PSO, PS Sonegaon, Nagpur)

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

Court's or Judge's orders.

CORAM : M.G. GIRATKAR, J.
DECEMBER 07, 2018.

Heard Shri A.S. Mardikar, learned Senior Advocate with Shri L.B. Khergade, learned counsel for the applicant and Shri C.L. Lokhande, learned APP for the non-applicant – State.

The applicant is arrested on 09.01.2016 for the offence punishable under Sections 363, 364(A), 120(B) read with Section 34 of the Indian Penal Code and under Section 3 of Maharashtra Control of Organized Crime Act (MCOC Act) and since then he is in jail.

Shri Mardikar, learned Senior Advocate has submitted that the offence under MCOC Act is not attracted because only one offence is registered against the present applicant. He has pointed out crime chart. The learned counsel has pointed out the following orders of this Court i.e. Criminal Application (BA) No. 424 of 2016 dated 07.07.2016, Criminal Application (BA) No. 608 of 2016 dated 19.08.2016 and Criminal Application (BA) No. 860 of

2016 dated 08.12.2016 and the judgment of the Apex Court in the case of State of Maharashtra vs. Shiva alias Shivaji Ramaji Sonawane & Ors., reported at (2015) 14 SCC 272. The case before the Apex Court was after the conviction.

At this stage, it appears that the applicant is involved in the same type of offence and the offence punishable under Section 363, 364, 120-B of the IPC was registered against him and the other accused. The role played by the applicant is to be seen.

The learned Senior Advocate has submitted that the other accused are already released on bail. The learned counsel for the applicant has pointed out that the procedure prescribed in the Criminal Manual for Identification Parade is not followed. The confession of co-accused is not admissible against the present applicant. The learned counsel has submitted that the other accused who played the material role are released on bail and as the applicant is in jail from 09.01.2016, therefore, he is entitled to bail.

Shri Lokhane, learned APP has submitted that earlier bail application came to be withdrawn by the applicant. The applicant has played material role in the commission of crime, hence, the application is liable to be rejected. He has pointed out the confessional statement made by the co-accused under Section 18 of the MCOC Act where he has stated that the applicant has played material role. Lastly, he has submitted that prima facie material is

available against the present applicant, hence, the application needs to be rejected.

Perused the report. The report actually does not disclose the name of any of the accused because the complainant – father was not aware who kidnapped the victim Chaitanya. The father of Chaitanya lodged a report, therefore, there is no question of disclosing the name of any of the accused. The statement of Chaitanya shows that the applicant has played the material role. He was kidnapped by the applicant, was kept in a dark room and he was threatened to be killed by the applicant. The police obtained the mobile number of the accused and it was kept on track. When the police patrolling party was searching for the accused, the applicant was found carrying Chaitanya on his motorcycle. The statement of Police Officers Shri Kakde and Afzal Khan show that they found the applicant carrying Chaitanya on his motorcycle. The statement of Chaitanya show that fortunately he was saved. The applicant was about to kill Chaitanya for ransom for crores of rupees from his father.

The objection raised at this stage in respect of not following the procedure as per Criminal manual for I.D. parade, cannot be considered because Criminal manual is a guideline for the judicial officers and it is not a law. There may be irregularity, but the I.D. Parade clearly shows that Chaitanya identified this person and other accused also.

All this evidence on record clearly show that the applicant is the main accused who kidnapped Chaitanya, kept him in a dark room, his both eyes were closed and he was threatened to be killed if he tried to ran away. Thereafter the applicant was carrying Chaitanya to Madhya Pradesh on his motorcycle. Fortunately police party found him on the way and the applicant was caught along with Chaitanya and rescued him.

All this evidence is sufficient at this stage to reject the bail application of the applicant. Hence, the following order :

Criminal Application is rejected.

JUDGE

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