

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION (BAIL) NO. 124 OF 2019

Maxson Rosario	...	Applicant
Versus		
State and another	...	Respondents

Ms. Dolorosa Tulkar, Advocate for the applicant.

Shri S.R. Rivankar, Public Prosecutor for the respondents.

Coram:- NUTAN D. SARDESSAI, J.
Reserved on : 02nd May, 2019.
Pronounced on : 03rd May, 2019.

ORDER:

The applicant has invoked the jurisdiction of this Court under Section 439 CrPC seeking his release on bail and questioning the order dated 15/03/2019 passed by the learned Additional Sessions Judge, Panaji rejecting his bail application.

2. Heard Ms. D. Tulkar, learned Advocate for the applicant who submitted that though he was charged with the offences under Sections 364A and 394 IPC which otherwise were serious offences, the same was not so in the given facts of this case. The complaint was lodged against unknown persons on 23/01/2019 while the applicant was placed under arrest almost

a month later on 21/02/2019. She adverted to the impugned order wherein the learned Additional Sessions Judge had made a reference to the recovery of a motorcycle unlike the complaint which was totally silent on the use of a motorcycle in the commission of the offence. In any event, it was her contention that the involvement of the vehicle in the crime was not at all established on behalf of the State. The call records of the mobile of the applicant by themselves were not sufficient to connect him with the crime. She placed reliance in **Jehan Mistri v/s. State** (Criminal Application Bail No. 194 of 2013) apart from that in **Dheeraj Singh v/s. State** [2005(83) DRJ 255] and pressed for his release on bail.

3. Shri S.R. Rivankar, learned Public Prosecutor on behalf of the State submitted that the offence under Section 364A was a heinous offence and that too under Section 394 IPC. The victim had lodged the complaint on 23/01/2019 alleging the commission of the offences against him. He too adverted to the complaint and submitted that the investigation revealed the involvement of the applicant who was besides identified during the course of the Test Identification Parade. The call details too

showed that the applicant was in constant touch with the main accused. Two of the persons involved in the crime were arrested while two were absconding. The stolen property was yet to be recovered and therefore looking to the seriousness of the crime, he was not entitled to the benefit of the bail. Ms. Tulkar, learned Advocate for the applicant in reply submitted that the ingredients of the offence under Section 364A IPC were not made out as there was no demand for ransom. If at all the case of the State had to be believed that the main accused and the applicant were in constant touch with each other, it belied the call detail records which was contrary to that position. Once again she pressed for the release of the applicant on bail and rested her case.

4. I have heard Ms. Tulkar, learned Advocate and Shri S.R. Rivankar, learned Public Prosecutor, considered the ingredients of the offences under Section 364A and 394 IPC apart from the judgments in **Jehan Mistri** and **Dheeraj Singh**(supra), and the records of investigation placed for my perusal.

5. The complaint was lodged by Krishna Kumar Handa i.e.

the victim himself who had narrated his case at length how he had been lured to the spot by four persons and that they had taken him in a swift car to the spot for finalisation of the deal and thereafter during the course of the inspection of the bungalow forcibly pushed him in the bedroom, caught his neck from backside and thereafter his hands, legs and mouth were tied with the help of rope. These persons had thereafter snatched his mobile phone, wallet containing ATM cards, Credit Card and other original documents like the Aadhar Card and the Pan Card apart from the RC book of his motorcycle and scooter, driving license, cash, the keys of his car and gold finger ring. Besides that they had forcibly taken the pin number of the ATM cards by threatening him with a wooden danda. They had also demanded cash of ₹1,00,00,000/- and again tied his mouth and fled with the valuables. His complaint also indicates that a short while later he had managed to free himself, asked for help and that he was thereafter released from captivity by the police followed by the complaint against the four persons about whom he had furnished a detailed description.

6. The investigation reveals that the main suspect who had

contacted the complainant/victim had been detained and was identified by the complainant. He was found in constant contact with the applicant herein and as such it cannot be heard on behalf of the applicant that being in constant contact on mobile ruled out the possibility of they having been together in the crime. Moreover, a cursory perusal of the investigation would reveal that the main accused and the applicant were in touch not only prior to the date of incident but also subsequent to the date of the incident and as such he was traced and placed under arrest. The applicant too has been identified by the complainant during the course of the Test Identification Parade as to be one of the persons who was instrumental in the said crime apart from the main offender Vivek.

7. In **Jehan Mistri**(supra), a learned Single Judge of this Court had made an observation in the facts of that case that although call details revealed that there was contact between the applicant and the co-accused, there was admittedly no evidence of any conversation between the applicant and the co-accused or any voice identification and in that circumstance concluded that it could not be said that the applicant was an

abettor to the offence. These findings were in the peculiar facts of that case and have no application to the facts of the present case.

8. **Dheeraj Singh**(supra), was primarily relied upon to buttress a contention that in the absence of any demand being made for ransom, the ingredients of the offence under Section 364A IPC were not made out. In the facts of the present case the complainant had stated in his complaint that the applicant and the three others had demanded cash of ₹1,00,00,000/- without specifying from whom such a demand was made. Assuming at the highest that this demand for ransom was not in consonance with the ingredients of the offence under Section 364A, it is a matter of record that the complainant was kidnapped and kept in detention and threatened to be subjected to hurt giving rise to a reasonable apprehension that he may be either put to death or hurt although there was no demand made on a third party to do or abstain from doing any act or to pay the ransom. Nonetheless the offence of kidnapping is a serious offence apart from that of robbery with hurt as contemplated under Section 394 IPC.

9. Shri Rivankar, learned Public Prosecutor had otherwise shown the call details between the mobile of the applicant and the main accused Vivek showing that they were in constant touch with each other not only prior to the commission of the crime but also subsequent thereto. The applicant too has been identified by the complainant in the course of the Test Identification Parade as one of the persons involved in the said crime against him of kidnapping and committing hurt in the course of robbery. The fact that he is in judicial custody and that his detention is not required to be continued to trace an absconding accused is not a ground to order his release on bail looking to the seriousness of the crime. Last but not the least, the stolen property is yet to be recovered which though by itself is not a ground to justify the detention of the applicant in custody. Nonetheless in the given facts and circumstances, it would not entitle the applicant to be enlarged on bail. i therefore do not find any merit in the application which is hereby dismissed.

NUTAN D. SARDESSAI,J.