

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 1081 OF 2019

Gufran Mohammed Arif Shaikh .Applicant

Vs.

The State of Maharashtra .Respondent

Mr. Mohsin Khan Latif Khan Pathan, Advocate, for the Applicant
Ms Veera Shinde APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 19.07.2019

P.C.

. Heard learned counsel for the parties.

2. By this Application, the Applicant seeks his enlargement on bail in connection with C. R. No. 47 of 2018 registered with the DCB CID Branch, Unit-4, Mumbai, for the alleged offences punishable under Sections 363, 364A, 328, 368, 324, 343, 506, 120B r/w 34 of the Indian Penal Code and under Section 37(1) of the Maharashtra Police Act.

3. Learned Counsel for the Applicant submits that the

Applicant is only a Rickshaw driver, who had no knowledge of the alleged conspiracy hatched by the co-accused. He submits that the Applicant is in custody since August, 2018 and that the Applicant has no antecedents.

4. Learned APP opposed the Application.

5. Perused the papers. On 03.08.2018, the victim boy, aged 13 years was kidnapped at 11.30 p. m. Co-accused – Shabina Khan is the real aunt of the victim boy, who had hatched a conspiracy to kidnap the victim boy. According to the prosecution, co-accused – Shabina Khan had taken the victim boy with her on that day and that on the way back, the accused No. 1 – Jahangir Shaikh came in an auto rickshaw driven by the Applicant and forcefully took the victim boy in the auto rickshaw. According to the prosecution, the victim boy called out to his aunt – Shabina Khan, however, she ignored the calls. It appears that the victim boy was first taken to the house of co-accused – Wiliam @ Soheli, where he was kept overnight and some substance was allegedly administered to him in Maza. On the next day, the victim boy was

taken to the premises of Sultan Khan and was kept there. On 06.08.2018, police received secret information and conducted a raid, pursuant to which the victim boy was rescued. It is argued by the learned counsel for the Applicant that no ransom was demanded and therefore, Section 364A would not be applicable. The victim boy, aged 13 years' s statement was recorded, both, under Sections 161 and 164 of the Cr.P.C. In his statement recorded under Section 164 of the Cr.P.C., the victim boy has in detail set out the manner in which he was kidnapped and where he was taken. He has stated that when he was going with his aunt – Shabina, he had noticed two people sitting on the rear seat of the auto rickshaw. He has further stated that on his return, he saw the same auto rickshaw coming behind him; that the said auto rickshaw stopped next to him and that one man pushed him inside the auto rickshaw; that the said person was holding a knife and gave a cut on his knuckle; that when he called out for his aunt, she turned her face. He has further stated that the person sitting inside the auto rickshaw gagged him and showed him a knife. He has further stated that the Applicant drove the rickshaw fast and that the said persons told him that if he shouted, they

would thrust the knife in his stomach, pursuant to which, he kept quiet. He has further stated that the person who held him started chatting on whatsapp and put on disco lights in the auto rickshaw and showed his face on the whatsapp call. He has further stated that thereafter, they took him to Govandi. As far as the Applicant is concerned, he has been identified by the victim boy in the Test Identification Parade. The victim boy also identified the auto rickshaw in which he was abducted.

6. Having perused the statements of the victim boy and of Irfan as well as CDR records, this is not a fit case to enlarge the Applicant on bail. The possibility of the Applicant tampering with the witnesses cannot be ruled out. Hence, the Application stands rejected.

7. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

(REVATI MOHITE DERE, J.)