

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

**CRIMINAL APPLICATION NO. 1262 OF 2019
IN
CRIMINAL APPEAL NO. 807 OF 2019**

Iliyas Fajhar Khan

...Applicant/
Org.Accused No.2.

vs.

The State of Maharashtra

...Respondent

Mr.Gaurav Bhawnani i/by Khan Abdul Wahab for the applicant.
Mr. J.P. Yagnik, APP for the State.

**CORAM : B. P. DHARMADHIKARI &
SANDEEP KASHINATH SHINDE, JJ.**

DATE : 04/09/2019.

P.C.:

Heard learned Counsel for applicant/original
accused no.2 Iliyas and Learned APP.

2. Contention of accused No.2 is facts by prosecution
fall short to make out an offence under Section 364(A) IPC
read with 120-B thereof.

3. Learned APP submits that evidence of victim PW-3
is more clear in this respect. He has taken us through his
examination-in-chief, particularly, paragraph 5 for this

purpose.

4. Abduction is integral part of offence envisaged under Section 364-A. We find that prosecution nowhere alleges that PW-3 victim was either by force or deceitful means made to go from Railway Station to a Dhaba where prosecution claims that he was detained. The evidence read out by the Learned APP does not throw light on this aspect.

5. The facts show that to examine a business proposal, some gold was given by accused persons to brother of PW-3. Brother of PW-3 came from Delhi to Mumbai. He claimed that on way, he lost that gold.

6. The facts further show that for business prospects, accused persons had contacted that brother and hence, said brother forwarded PW-3 to meet accused persons. It appears that accused persons met victim at Railway Station and then all of them, together proceeded to a Dhaba to have lunch. At Dhaba, accused persons realized that PW-3 had not brought with him necessary amount and their gold was lost. They, therefore, detained PW-3 at that Dhaba and made a call to brother demanding the money.

7. The facts further show that brother ultimately agreed to give the money and he also went to Delhi for that purpose. The spot at which, money is to be delivered to the accused persons by the brother and journey to that spot is

also disclosed in evidence of PW-3. However, entire material does not show that PW-3 was made to go from any place. Hence, there is no abduction, prima facie, in the matter. At the most, provisions of Section 348 IPC could have been invoked.

8. Offence under Section 348 IPC is punishable with three years with imprisonment for three years. Applicant has already put in over five years in jail.

9. In this situation, we inclined to release him on bail on following terms and conditions.

ORDER

(a) The applicant shall execute personal bond in the sum of Rs.20,000/- before the trial court for proper behaviour and for remaining present on due dates before the Court in the present matter with two independent sureties in the like amount;

(b) He shall give address at which he shall always be available during the pendency of this appeal along with his contact numbers;

(c) Similar details in relation to his sureties shall also be furnished;

(d) He shall not in any way directly or indirectly attempt to contact or pressurize either complainant or any of the

witnesses in the matter;

(e) He shall keep vakalatnama of his advocate alive and valid till the appeal is finally decided by this Court and shall not be entitled to any fresh notice at the stage of final hearing;

(f) He shall report to the Superintendent/Registrar of Sessions Court, Mumbai on first working Monday in every two months as a condition of his release;

(g) His failure to observe any of the terms and conditions shall entitle the respondent State to take him in custody forthwith;

(h) Application is accordingly allowed and disposed of.

(SANDEEP KASHINATH SHINDE, J.)(B. P. DHARMADHIKARI, J.)