

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

**CRIMINAL APPLICATION NO.1391 OF 2018
IN
CRIMINAL APPEAL NO.795 OF 2013**

Sandip Dnyandeo Kamble

..Applicant

Vs.

State of Maharashtra

.. Respondent

**WITH
CRIMINAL APPEAL NO.186 OF 2013
WITH
CRIMINAL APPEAL NO.744 OF 2013**

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Mr.Daulat Khamkar, Advocate for the Applicant.

Mrs.P.P. Shinde, APP for the Respondent-State.

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**CORAM : B. P. DHARMADHIKARI AND
PRAKASH D. NAIK, JJ.**

DATE : APRIL 03, 2019.

P.C.:

Accused no.1 in prison having completed about nine years in jail is before this Court seeking interim bail. Learned counsel for the applicant submits that there is no possibility of matter being heard in near future. He also points out that no application for bail was made earlier by the applicant.

2 Submission is that, conviction is based mostly on circumstantial evidence as evidence of P.W.22 Yesu Pawar

relied upon by the trial Court has been procured and under Section 161 of Cr.P.C., his statement was recorded after detaining him and his wife in custody for about three years. It is further submitted that victim boy alleged to be kidnapped did not identify accused no.1 or even accused no.3 in Court.

3 Learned APP has invited our attention to order dated 26th November, 2015 passed in Criminal Application No.1377 of 2015. That application was filed by accused no.2 in his Appeal No.744 of 2013 for bail. After due consideration, that application has been rejected.

4 We have perused evidence of kidnapped boy. His evidence shows that he was kidnapped by accused persons to whom he has addressed as Raju Kaka and Balu Kaka. He has also deposed in Court that he identified them in Test Identification Parade. However, he could not identify them in Court, when his deposition was recorded.

4 Perusal of evidence of P.W.22 Yesu Pawar shows that accused no.2 happens to be acquainted with him and he arrived at his residence along with victim boy and accused

no.1. In cross-examination, he has stated that police had detained him and his wife in custody. However, he has denied that his statement or evidence was false.

5 While taking decision on bail application of the accused no.2 Nitin on 26th November, 2015, this Court has already looked into the evidence of P.W.22. We cannot at this stage threadbare appreciate entire material. The police Authorities have suspected involvement of P.W.22, as accused persons went to his residence with kidnapped boy. That by itself does not mean that P.W.22 has deposed incorrectly. Similarly, inability of victim to identify accused persons in Court by itself cannot derogate, atleast at this stage, from the case of prosecution. Age of victim boy at the time of offence was about 5 and ½ years.

6 In this situation, we find no case made out warranting intervention. Application is rejected.

(PRAKASH D. NAIK, J.)

(B.P. DHARMADHIKARI, J.)