

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

CRIMINAL BAIL APPLICATION NO.757 OF 2020

Suhas Sharad Kanade

.... Applicant

versus

State of Maharashtra & Anr.

.... Respondents

.....

- Mr.Imtiyaz Patel, Advocate for Applicant.
- Mr.S.R.Agarkar, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 30th SEPTEMBER, 2020

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.256/2019 registered with Mahim Police Station, Mumbai, under sections 170, 341, 364A, 365, 384, 394, 395, 506 r/w 34 of the Indian Penal Code.

2. The FIR is lodged by one Harshad Manjarekar on 31/07/2019. The Applicant was arrested on 02/08/2019 and since then he is in custody. The investigation is over and the charge-sheet is filed.

3. Heard Mr.Imtiyaz Patel, learned counsel for the Applicant and Mr.S.R. Agarkar, learned APP for the State. With the assistance of learned counsel and learned APP I have gone through the charge-sheet.
4. The FIR mentions that on 26/07/2019, at around 04.00 p.m., he started from his house at Mahim and was proceeding towards Bandra in his Innova car. He was carrying Rs.2,00,000/- in the glove compartment. The car was driven by his driver Akshay Pujari. When their car reached near Sion bridge, it was intercepted by a Wagon R car. Three unknown persons got down from the car. They forcibly pulled the driver Askhay out of the car. The first informant was made to sit on the backside. After that the Wagon R car and the informant's Innova car were driven together. Subsequently, the Wagon R car went to some other place. The first informant was taken towards Karnala. The unknown persons initially demanded Rs.5 Crores for his release. It was brought down to Rs.3 Crores and then to Rs.90 lakhs. At about 10.30 p.m., they stopped at a road-side restaurant. One of the unknown persons made a phone call to

the Applicant's driver and demanded Rs.50 lakhs. The driver Akshay showed willingness to pay Rs.2 lakhs. The accused did not accept that proposal. They removed Rs.2 lakhs kept in the car. They removed his gold articles, which he was wearing. The informant was carrying keys to his locker. The accused called informant's driver Akshay near a bridge at Vashi Toll Naka. The key was given to Akshay. Akshay went to the informant's house and brought Rs.10 lakhs, which was kept at a designated place. On 27/07/2019 at about 04.30 a.m. the informant was allowed to go. After that this FIR is lodged.

5. The FIR mentions description of three unknowns persons, who had abducted the informant.
6. The investigation was carried out. During the course of the investigation statement of informant's driver Akshay was recorded on 09/08/2019. In that statement Akshay has stated that he would be able to identify the accused. However, he has not given any description of the unknown person. The investigation continued and finally the charge-sheet was filed.

7. Learned counsel for the Applicant submitted that the evidence against the Applicant is very weak. The Applicant was not one of the three persons who had got down from the Wagon R car and had abducted the informant. There was no occasion for the informant to see the persons who did not get down from Wagon R car. He submitted that the description of only those accused who got down from the car is mentioned in the FIR. Akshay's statement does not mention any description at all. There is no recovery from the accused.
8. On the other hand, learned APP submitted that the Applicant was identified in the identification parade held on 30/10/2019 by both, the first informant as well as Akshay. He submitted that the investigation reveals the Applicant's role even subsequent to the abduction. He submitted that the CDR shows that the Applicant was in the area of Mahim, when the Applicant was abducted and thereafter there was constant communication between the Applicant and other accused.

9. I have considered these submissions. There is no recovery of any amount or articles from the present Applicant, though it is the informant's case that the accused took Rs.12 lakhs and other gold articles. The important evidence is Applicant's identification. In the identification parade by the informant and his driver Akshay. The FIR mentions description of only three persons. Those persons had actually abducted the informant. It is not the case of the Applicant that the Applicant was one of them. The Applicant was always sitting in the car when the informant had seen that car. The informant has not given his description in the FIR. Akshay's statement is recorded belatedly on 09/08/2020. Even in that statement no description of any of the accused is given. Significantly the Applicant was arrested on 02/08/2019 before Akshay's statement was recorded. In spite of such arrest, the identification parade was held much later on 30/10/2019. In this background particularly when no description was given either by the informant or Akshay, such identification in the present case appears to be a weak piece of evidence. There is no recovery from the Applicant.

Therefore the only circumstance for consideration is about CDR. However, since main circumstances are not incriminating against the present Applicant, the circumstance of CDR by itself will not ultimately prove the case against the present Applicant. It does not complete the chain of circumstances. Therefore the Applicant deserves to be released on bail.

10. All these observations made in this order are mentioned only for the purpose of deciding this bail application. Trial court shall not be influenced by this order while deciding the trial.

11. Hence, the following order :

ORDER

- (i) In connection with C.R.No.256/2019 registered with Mahim Police Station, Mumbai, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.

- (ii) Looking at the prevailing circumstances, it may not be possible to the applicant to furnish sureties immediately. Therefore, initially the applicant is permitted to furnish cash bail for the same amount. The applicant will have to furnish the sureties, as directed, within three months from today.
- (iii) The Applicant shall attend the concerned police station on 1st Monday of every month between 01.00 p.m. to 02.00 p.m till conclusion of the trial and shall cooperate with the investigation.
- (iv) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)