

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2961 OF 2019

Gopal Irappa Gaddaki, Age 20 years,
Occ.Education, R/o.Bugadikatti,
Tal.Gadhinglaj, District Kolhapur.
(Presently lodged at Jail)

Applicant

versus

The State of Maharashtra

Respondent

Mr.Satyavrat Joshi with Nitesh Mohite, Advocates, for applicant.
Mr.H.J.Dedhia, APP, for Respondent-State.

CORAM : PRAKASH D. NAIK, J.

DATE : 3rd February 2020

PC :

1. The applicant is arrested in CR No.439 of 2019 registered on 14th June 2019 with Islampur Police Station, District Sangli for offences punishable under Section 363 of Indian Penal Code. Subsequently, Sections 364(A), 365, 120(B) r/w 34 of Indian Penal Code were added. The complaint was lodged by Balaso Dhondiba Khamkar.

2. In the FIR it is alleged that the son of the complainant aged about ten years is a student of 5th standard. He was attending tuition classes. On 3rd May 2019 at about 10 am the complainant's son was dropped at Jawahar Navodaya Tuition Class by his mother. The complainant was on duty at the school. While returning home he went to the class of his son. He noticed that the class was over and his son had already left the class. He made inquiries with the father of the teacher who is conducting the classes, who informed the

complainant that his son has left walking. The complainant tried to locate his son. However, in spite of search he was not found. Hence, the FIR was lodged against unknown person. Investigation proceeded. The statements of witnesses were recorded. Supplementary statement of complainant was recorded on 8th June 2019. On 4th June 2019 the victim child was traced at Shiye Phata. The statements of various other witnesses were recorded. The statement of victim was recorded. On completing investigation charge sheet was filed. The applicant preferred application for bail before the Sessions Court at Islampur. The said application was rejected by order dated 4th October 2019.

3. Learned advocate for applicant submitted that the applicant has not played any role in kidnapping the victim. There is no direct evidence against applicant. The FIR was lodged against unknown person. The applicant is a student. He is 20 years old boy. No calls were made for demanding ransom from the parents or any other relatives of the victim. No harm was caused to the victim. He safely returned to his parents. The offence u/s 364A is not made out. He relied upon the decision of this Court in the case of Philips Fadrick D'souza and another Vs. State of Maharashtra and another (2009-CRI.L.J.-89) and submitted that the offence u/s 364A consists of aggravated form of kidnapping or abduction. The purpose and intent of kidnapping or abduction is to demand ransom or to compel doing of or abstention from doing any act. The said purpose must exist at time when act of kidnapping or abduction takes place. It is submitted that there was no test identification parade to identify the applicant.

4. Learned APP submitted that the offence is of serious nature. The applicant was involved in kidnapping the boy aged about ten years. The victim was taken to various places. Involvement of the applicant is corroborated by CCTV footage. The conspiracy was hatched with co-accused Sunil Kadam who is related to victim. There are strong circumstances showing involvement of the applicant.

5. After perusal of the documents on record, it appears that the applicant along with the co-accused Sunil Kadam and another accused had kidnapped the victim. The accused Sunil Kadam was close relative of the victim. The child did not make hue and cry as co-accused was known to him. The statement of victim refers to talk of ransom. The investigation revealed that the accused hatched conspiracy and kidnapped the child. Although the child has returned home, the intentions of the accused were clear. The evidence on record will have to be appreciated during trial and this is not the case to give finding that offence u/s 364(A) of IPC is not made out. The intention to commit offence is implicit in the statement of victim. In the decision relied upon by learned counsel for applicant, it was observed that whether such a purpose existed at that time will have to be deduced from all the attendant circumstances. The said decision was delivered in an appeal against conviction while appreciating evidence recorded by Trial Court.

6. The victim was found at Shiye Phata. He was dropped by two persons who left the place. The material on record mentions that the victim was taken to several places. He was kept in a hotel room. The supplementary statement of the complainant was recorded on 8th June 2019. In that statement he stated that on 3rd June 2019 he

received call from his nephew Sunil Kadam who wanted to meet him. At 4.25 pm Sunil Kadam went to the school where the complainant was working. The complainant was busy discussing about the admission of son of a lady known to him. At about 4.50 pm, the complainant closed the library of school. He was leaving the school. Sunil Kadam kept him busy with discussion. He also told the complainant that he would pick up the victim from school. The complainant told him not to do so. He rushed to the school. However, there was delay and the students and teacher of the class had left. The victim was not in the class. He tried to search him but could not trace him. On 4th June 2019 his wife received a call that her son is safe and in their custody. The complainant and his wife went to police station and took custody of the victim. The statements of various witnesses were recorded. The applicant was arrested. He showed the place where the victim was kept. The CCTV footage of Shivtej Hotel where the victim was kept was recovered vide panchanama. The CCTV footage shows presence of victim as well as applicant and other persons in the hotel. The co-accused Omkar showed the place where the conspiracy was hatched. The accused showed places where they had met. The CCTV footage recording place of conspiracy was also recovered. The statement of victim child was recorded. He has stated that three persons approached him and told him that his father has sent them to pick him. He was made to sit in the car and taken towards Kolhapur. He was taken to Shivtej Hotel room. The door of hotel room was locked from outside. The child kept on asking as to when they would leave. A person named Gopal Gaddaki (applicant) was present. He closed victim's mouth with handkerchief. The victim pretended that he is sleeping. He heard the conversation between Gopal and some

person who had called him. He heard the conversation that Gopal was telling the person on the call that if the father of the victim pays money, he will be released, otherwise he should not be released. Thereafter on the next day he was dropped on the road.

7. The statement of Akshay Jaundal was recorded on 7th June 2019. He has stated that he is conducting Hotel Shivtej. He knows the accused Sunil Kadam. He received call from Sunil Kadam on 3rd June 2019. He requested for one room for keeping a boy who has threat to his life. Two persons would accompany him. Sunil Kadam and one person came to hotel. He introduced Omkar Suryavanshi. Two others came. Sunil told their names as Gopal Gaddaki and Vilas Varai. They boarded room at hotel. He was requested not to make entry. They brought victim boy. He was kept in room which was locked from outside. The applicant was at hotel. On 4th June 2019 they left the hotel with boy. Next day police came for inquiry. The statement of Sunil Mane who was also working in the said hotel, also corroborates his version and refers to the confinement of the child in the hotel. Thus, there is sufficient evidence against applicant showing complicity in crime. Hence, no case for grant of bail is made out. Hence, I pass following order :

ORDER

- (i) Criminal Bail Application No.2961 of 2019 is rejected.

(PRAKASH D. NAIK, J.)