

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

CRIMINAL BAIL APPLICATION NO.3145 OF 2019

Vilas Barma Warai

....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Kuldeep U. Nikam, for the Applicant.

Smt. A. A. Takalkar, APP for the Respondent- State.

Mr. D. R. Patil, Islampur Police Station, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 24th February, 2020

P.C.:

1. The applicant is arrested in C.R.No. 439 of 2019 registered on 14th June 2019 with Islampur Police Station, District Sangli for offence 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 a.m. 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 counsel for the applicant submits that the applicant has been falsely implicated in this case. There is no involvement of the applicant in the crime. It is submitted that, there was no test identification parade. The prosecution is relying on the Panchnama dated 13th June 2019 with regards to the identification of the persons in the CCTV footage by the victim child. It is submitted that there is no occasion for the child to know the name of the accused. Thus,

the identification through CCTV footage by referring the name of the applicant cannot be relied upon. It is further submitted that the name was disclosed in the news published in the newspaper and thus, without any evidence, the name of the applicant which was taken as it was known to the witnesses. It is further submitted that the Investigating Officer has sought details of CDR in respect to the co-accused and not of the applicant as there was no involvement of the applicant. No role has been assigned to the applicant. The applicant is not concerned with the crime in any manner. It is further submitted that the offence under Section 364(A) would not be attracted in this case. There was no call for ransom nor there was any threat to life of the victim. The applicant is in custody from the date of arrest. There are no criminal antecedents against the applicant. The case of the applicant can be distinguished from the case of co-accused Gopal Gaddaki whose application has been rejected. The applicant's involvement is disclosed during the course of investigation. The applicant has been identified in the CCTV footage by the victim child.

4. Learned APP relied upon the statement of the manager of the hotel recorded on 7th June 2019. The said witness has stated that, Sunil Kadam has introduced Gopal Gaddaki and Vilas Warai (applicant) as person who visited hotel. Thus, it cannot be disputed

about the identity of the applicant as the person who involved in the crime.

5. I perused the documents on record. Akshay Jaundal is the manager of hotel where the victim was kept. He has furnished details about the incident keeping the victim in the hotel room on instructions given by the co-accused. The said witness has clearly stated that, he was knowing Sunil Kadam. The name of accused Gopal Gaddaki and the applicant were disclosed to him by Sunil Kadam which shows that the applicant was present at hotel where the victim had detained. The identification of CCTV footage no infirmity can be found at this stage in respect to the evidence corrected by the Police. Submissions that the offence under Section 364(A) cannot be considered at this stage. I have perused the statement of the victim and other material on record. In these circumstances, no case for grant of bail is made out.

ORDER

(i) Bail Application No.3145 of 2019 stands rejected and disposed of.

(PRAKASH D. NAIK, J.)