

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO. 438 OF 2021

1. Laxman s/o. Sukhdev Rathod.

2. Ghansham s/o. Sukhdev Rathod. .. **APPLICANTS**

VERSUS

The State of Maharashtra. .. **RESPONDENT**

...

Mr.S.J.Salunke, Advocate for the applicants

Mr.V.S.Badakh, APP for the respondent-State.

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CORAM: MANGESH S. PATIL, J.

DATE : 19.06.2021

P.C.

1] After filing the charge sheet, the applicants are seeking bail under Section 439 of the Criminal Procedure Code in Crime No.296 of 2018 registered with Sirsala Police Station, Taluka Parli, District Beed, for the offences punishable under sections 364A, 347, 323, 504, 506 r/w. 34 of the Indian Penal Code.

2] In sum and substance the allegations as can be understood from the papers of the investigation are to the effect that the informant owned a Jeep. The applicants are in the business of providing sugar cane cutting labours. Under the pretext of carrying labourers to a place in Karnataka they

hired his vehicle and made him to take labourers to Karnataka. After reaching there, however, he was wrongfully confined and assaulted by declaring that his paternal uncle owed an amount of Rs.2,00,000/- to the accused persons and they would not let him go unless the money was paid. It is alleged that he was made to work as labourer and his vehicle was used as taxi. It is then alleged that somehow the informant could flee and reach his native. The attempts were made to lodge the complaint with the Police but since no cognizance was taken of his grievance, he filed a private complaint. A direction was issued by the Magistrate under Section 156 (3) of the Criminal Procedure Code. Pursuant thereto, the present FIR was got filed and the offence was registered.

3] Learned Advocate for the applicants submits that they are being falsely implicated. The allegations in the FIR are full of improbabilities and exaggerations. It is unlikely that a person could be wrongfully confined as alleged for a period of more than 8 months, without there being any attempt by the family members to trace him out or without providing him an opportunity to escape particularly when, even according to him, he was made to work as labourer for a period of more than 8 months.

4] Learned Advocate would further point out from various papers annexed to the application that the applicants

were very well present in the village to the knowledge of the society at large and have never remained in hiding. In fact, they are oblivious of any registration of the crime and it is only when they were arrested that they became aware about its registration. There are no criminal antecedents. The trial is also not likely to get over in the near future. They are ready to co-operate the Investigating Officer and though the offence is serious; considering quality of material, they may be granted bail.

5] Learned APP opposes the application. He submits that the offence is punishable upto death. At this juncture, there is nothing to disbelieve the informant. There is no ground attributing him of having any ulterior motive to falsely implicate the applicants. He need not be disbelieved at this juncture. As allegation of having confined the informant in different State for as many as more than 8 months is clearly indicative of the power of the applicants and other co-accused who are still absconding. The Investigating Officer had no alternative but to file the charge sheet against all the accused by invoking the provisions of Section 299 of the Criminal Procedure Code as none of them was traceable. The investigation to the extent of the applicants is still going on and releasing them on bail is likely to prejudice the investigation as the other accused are to be traced and even the vehicle has to be recovered.

6] I have carefully gone through the papers of the investigation. Without intending to comment upon the quality of material, it is important to note that the offence has been registered after an enormous time after the informant had gone missing. To repeat it is being alleged that he was confined for a period of more than 8 months, during which he was working as agricultural labourer and his vehicle was used as Taxi.

7] True it is that there are several witnesses corroborating the informant's version about the applicants having hired his vehicle. One cannot comprehend as to why and how if they were aware about this fact including the father and other family members, no immediate steps would have been taken to trace out him within a reasonable time after he had left the native.

8] Even if one accepts version of the prosecution that the informant was unable to set the law in motion since the police machinery was not cooperating him, still that would not obviate responsibility on the prosecution to explain this material circumstance regarding period of more than 8 months during which the informant was allegedly confined but the family members had not taken any steps *albeit* they state that they were aware about the applicants having hired his vehicle and he having accompanied them when he was last seen.

9] Considering all the aforementioned facts and circumstances, though the offence punishable under Section 364A of the IPC is punishable upto death, the facts and circumstances discussed herein above make the applicants entitled to bail with suitable conditions :

10] The application is allowed. The applicants shall be released on bail on their executing personal recognizance for an amount of Rs.50,000/- [Rs. Fifty Thousand only] each and furnishing a solvent surety in the like amount, subject to the following conditions :

a] They shall attend the concerned Police Station every Saturday between 10.00 a.m. to 11.00 a.m. starting from 26.06.2021 till filing of the supplementary charge sheet and shall co-operate the Investigating Officer.

b] They shall not try to contact the informant or witnesses and shall not influence them.

11] Bail before the trial Court.

[MANGESH S. PATIL, J.]

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