

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

943 BAIL APPLICATION NO.677 OF 2021

GAJANAN @ BABYA LAXMAN SAWANT
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Satej S. Jadhav, Advocate h/f. Mr. Manish P.
Tripathi

APP for Respondents: Mr. V.S. Badakh.

CORAM : V.G. BISHT, J.

ORDER RESERVED ON : 10th August.2021
ORDER PRONOUNCED ON : 12th August, 2021.

ORDER:

1] This application has been filed by the applicant under Section 439 of the Cr.PC. to enlarge him on bail in connection with Crime No.0579/2021 registered with Police Station, Renapur, Dist. Latur under Section 363, 364A, 120B r/w. 34 of IPC.

2] On 1.9.2020, the informant, alongwith his grand-sons, namely, Devesh (aged 7 years) and Riyansh(aged 5 years) and his driver Prakash Dubal, had been to village Sangvi. On 11.9.2020, at about 5.30 p.m. the said grand-sons had gone to play in the Galli. However, lateron he could not locate his grand-son - Riyansh. Lateron, he was given to understand that a Santro Car had come nearby his house. There were 3 persons in the car which sped up towards village Sindhgaon. He, accordingly, lodged the report.

3] During the course of investigation, it was revealed that the grand-son, namely, Riyansh, was kidnapped by the present applicant and others for ransom.

4] Mr. Tripathi, learned counsel for the applicant vehemently submitted that none of the accused, including the applicants are named in the FIR. The only evidence collected during the course of investigation was the CDR report, wherein, the present applicant/accused was found conversating with the other accused. The learned counsel, then emphasized that the child in question was recovered by the police without there being any harm to his body or person and was accordingly handed over to his parents. The learned counsel vehemently submitted that the Investigating officer wrongly added section 364A, 120-B and 34 of IPC. The learned counsel next submitted that the applicant is a permanent resident of the village wherein the police station is situated and thus, he will be easily available for trial.

4] The learned APP also invited my attention to the statements of the prosecution witnesses, namely, Vishal Dattatray Bharat and Komal Dattatray Bharat, wherein one of the accused, namely, Kerba Laxman had rung them up and informed that he is visiting their house after kidnapping the boy. The said accused was reprimanded and was asked not to visit their house.

5] Mr. Badakh, learned APP, on the other hand submitted that the present applicant/accused is an accomplice to the conspiracy and enabled the other accused to commit the offence of kidnapping for ransom.

6] While considering the application for grant of bail, the nature of the alleged offence, the nature of the accusation, the severity of the punishment, the possibility of securing presence of the accused at the trial or the likelihood of the accused fleeing from justice, the antecedents of and the circumstances which are peculiar to the accused and lastly the prima facie ingredients of the offence are required to be borne in mind.

7] Except the CDR report, it appears, prima facie, that there is no concrete evidence gathered against the present applicant. What is relevant to be kept in mind here is that the child in question was safely recovered and handed over to the parents without there being any injury or harm to his health or the person. There is also no evidence against the present applicant that he was in some way, directly or indirectly, involved in demanding the ransom.

8] In *Malleshi vs. State of Karnataka (2004)8 SCC 95*, the Honourable Apex Court has held that :-

“To attract the provisions of Section 364A, what is required to be proved is:

- (1) that the accused kidnapped or abducted the person;
- (2) kept her under detention after such kidnapping and abduction; and
- (3) that the kidnapping or abduction was for ransom”.

9] Apparently, as far as the present applicant is concerned, prima facie, the prosecution has not been able to satisfy the establishment of the aforesaid ingredients of Section 364-A. Moreover,

no criminal antecedents are brought on record. It is also not in dispute that the accused is the permanent resident of the village and there is nothing on record to suggest that he would flee from justice, if released on bail.

10] For the aforesaid reasons, I am inclined to allow the present application. Hence, the order :-

: O R D E R :

[a] The application is allowed.

[b] The applicant be released on bail in connection with Crime No.0579 of 2020 registered at Renapur Police Station, on his executing PR bond in the sum of Rs. 25,000/- and on furnishing one or more sureties in the like amount, on the following conditions :-

[i] He shall not tamper with the evidence or influence the witnesses.

[ii] Bail before trial court.

**[V.G. BISHT]
JUDGE.**

grt/-