

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

**INTERIM APPLICATION NO. 2409 OF 2021
IN
CRIMINAL APPEAL NO. 828 OF 2021
WITH
CRIMINAL APPEAL NO. 828 OF 2021**

Kalim Ishak Ansari Applicant
v/s.
The State of Maharashtra Respondent

Mr. Amresh Sharma a/w. Mr. Vishal Khetre for the Applicant.
Mr. S.V. Gavand, APP for the State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 12th OCTOBER, 2021.

P. C. :-

ORDER IN CRIMINAL APPEAL NO. 828 OF 2021 :-

. Heard. Admit. Call for the record and proceedings. Learned APP waives service on behalf of Respondent – State. Paper book to be filed within a period of six months.

ORDER IN INTERIM APPLICATION NO. 2409 OF 2021 :-

2. This is an Application under section 389 of Cr.P.C. filed for suspension of substantive sentence imposed by judgment dated 21/09/2021 in Sessions Case No.332/2018.

3. By the impugned judgment, the Applicant has been held guilty of offence under section 387 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for seven years with fine of Rs.10,000/- in default to undergo rigorous imprisonment for six months.

4. Heard Mr. Amresh Sharma, learned counsel for the Applicant and Mr. S.V. Gavand, learned APP for the State. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

5. The Applicant herein and the co-accused – Narendra Jaiswal were prosecuted for offences under Section 363, 364-A, 387 r/w. 34 of the Indian Penal Code. It was the case of the prosecution that the Applicant and the co-accused along with two children in conflict with law in furtherance of common intention kidnapped the minor son of the first informant for ransom and had kept him under detention under the threat of causing his death. It is also alleged that the Applicant and the co-accused had demanded money from the first informant by threatening to cause the death of the victim. The learned Judge, after considering the evidence adduced by the prosecution, acquitted the

Applicant and the other co-accused of offences under sections 363 and 364-A r/w. 34 of the Indian Penal Code. The Applicant is convicted for offence under section 387 of the Indian Penal Code mainly on the basis of the FSL report at Exhibit – 78.

6. It may be mentioned that the evidence of the first informant reveals that he had received a call on his mobile phone no.9987418428 from phone no.7045393552 demanding sum of Rs.1,00,000/- if he wanted his son back. The first informant reported the matter to the police station. He was advised to download voice recording App in his mobile. Accordingly, the first informant – PW1 downloaded voice recording App in his mobile phone. He recorded the calls received from the Applicant & forwarded the same to Crime Branch on Whatsapp. He also collected the data of all the calls and voice recording in a pen drive and submitted the same to the police station. The first informant suspected that the calls were made by the Applicant herein. The Applicant was arrested and his voice sample was taken in presence of pancha witnesses. Subsequently, the pen drive and the voice sample was forwarded to CFSL for examination. The expert has opined that the questioned voice of the speaker is similar to the specimen voice. On the basis of this report at Exhibit – 78, the learned

Judge has concluded that the calls were made by the Applicant herein.

7. It is pertinent to note that the phone no.7045393552 is in the name of one Sunilkumar Jokhuraam Saroj. Said Sunilkumar Saroj has not been examined and there is no prima facie material to show as to how the Applicant had come in possession of the phone which was in the name of said Sunilkumar Saroj. Though the first informant has stated that he had collected the data of the calls and voice recording in pen drive and handed over to the Investigating Officer, there is no prima facie material on record to indicate that the said pen drive was seized in presence of panchas. Under the circumstances, prima facie, it would not be safe to place implicit reliance on the CFSL report at Exhibit – 78 which is the only incriminating material against the Applicant.

8. Considering the nature of the accusations and the evidence in support thereof, in my considered view, this is a fit case for suspension of substantive sentence and release the Applicant on bail. Hence, the Interim Application is allowed on following terms and conditions :-

- (a) The substantive sentence imposed by judgment dated 21/09/2021 in Sessions Case No.332/2018 is suspended pending

hearing of the Appeal ;

(b) The Applicant is ordered to be released on bail on furnishing P.R. bond in the sum of Rs.20,000/- (Rupees Twenty Thousand only) with one or two sureties in the like amount to the satisfaction of the Trial Court ;

(c) The Applicant shall report to the trial Court once in six months on the day/date specified by the trial Court, till the Appeal is finally disposed of ;

(d) The Applicant shall keep the Trial Court informed of his current address and mobile contact numbers and/or change of residence or mobile details, if any, from time to time ;

(e) If there are two consecutive defaults in appearing before the Trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

9. The Interim Application stands disposed of in above terms.

**PREETI
H JAYANI**

(SMT. ANUJA PRABHUDESSAI, J.)

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