

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (BA) 390 OF 2021

(Prathmesh @ Datta Sanjay Gorle..vs.. State, thr PSO, PS Wadi, Nagpur)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Mr. R.H. Rawlani, counsel for applicant.
Mr. N.S. Rao, APP for non-applicant/State.

CORAM: ROHIT B. DEO, J.

DATE: 02.09.2021

Heard.

2. The applicant Prathmesh @ Datta Sanjay Gorle is seeking bail in connection with Crime 326/2018, registered with Police Station, Wadi, Nagpur, for offences punishable under sections 363, 364(A), 120-B, 387, 109, 114 of Indian Penal Code ("IPC") read with section 3(1)(ii), 3(2), 3(4) of Maharashtra Control of Organized Crime Act, 1999 ("MCOCA Act").

3. The gist of the accusation is that the applicant played a prominent role in kidnapping Harshit Pal, then aged 17 years, for ransom.

4. The father of the victim lodged report dated 3.10.2018 stating that the victim is missing since the evening hours of 2.10.2018 and that the apprehension is that he is kidnapped.

5. The victim was recovered by the police from the custody of accused 1 Chandran. Initially First Information Report was registered under section 363 of the IPC and later on, the penal provisions of sections 364(A), 120-B, 387, 109 and 114 of IPC were invoked. During the course of investigation, after obtaining the requisite approval and sanction, provisions of the MCOC Act were invoked.

6. The submission of the learned counsel Mr. R.H. Rawlani is that the version of the victim is doubtful. Mr. R.H. Rawlani invites my attention to the statement of the victim purportedly recorded by the Madhya Pradesh Police on 7.10.2018 which names only accused 1 Chandran. Mr. Rawlani would submit, that it is only in the elaborate statement dated 8.10.2018 recorded at the Wadi

Police Station, that the victim has named the accused other than Chandran, and has elaborated the roles played. Mr. Rawlani would further submit that the financial status of the father of the victim was modest and it is inconceivable that a huge ransom would be demanded. Inviting my attention to certain statements, Mr. Rawlani would submit that the possibility that the victim played some role in the episode and that the kidnapping was farcical, cannot be excluded.

7. Mr. N.S. Rao, the learned APP would submit that since the provisions of MCOC Act are invoked, the applicant shall have to satisfy the twin test envisaged under section 21(4) of the Act. Considering the material on record, it would not be permissible for this Court to record a satisfaction that the applicant is not involved in commission of offence under the MCOC Act, nor would it be possible to record a satisfaction that the applicant is not likely to commit an offence under the Act, if released on bail, is the submission of Mr. N.S. Rao.

8. Adverting to the submission canvased by Mr. N.S. Rao, since I am of the considered view, that even if the entitlement to bail is considered *de hors* the stringent provisions of the MCOC Act, the applicant is not entitled to bail, it would not be necessary to dilate on the question whether the provisions of MCOC Act are rightly invoked. Particularly so, since the applicant has approached the Hon'ble Division Bench with a contention that the provisions of MCOC Act could not have been invoked.

9. Lest the applicant is prejudiced, I would refrain from discussing the material on record minutely. In my considered view, there are at least three circumstances which deter me from exercising discretion. The first is that there is overwhelming material on record to link the applicant with the crime. I am not in a position to give credence to the theory that the victim was a party to a 'staged' kidnapping. The second circumstance is that the applicant is a history-sheeter. In two crimes, chargesheets are filed and the offences alleged are serious. In so far as the third offence is concerned, there is an ongoing

investigation and the chargesheet is not submitted as yet. Considering the adverse antecedents of the applicant, it would be difficult to exercise discretion, even if the entitlement to bail is tested, not only on the basis of the stringent provisions of the MCOC Act, but under section 439 of the Code of Criminal Procedure, 1973 ("Code"). The third circumstance is that given the criminal antecedents, the possibility that the applicant would be in a position to influence or pressurize the witnesses or to otherwise tamper with the evidence, is a real possibility.

10. The offence alleged is extremely serious and if the trial culminates in conviction, the punishment could be life sentence.

11. No case is made out for exercise of discretion, the application is dismissed.

JUDGE