

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

BAIL APPLICATION NO. 924 OF 2022

Vikas Subhash Hatkar

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

WITH

BAIL APPLICATION NO. 690 OF 2022

Suraj Tukaram Mamidwar

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

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Mr. S.S. Gangakhedkar, Advocate for applicant in BA/924/2022

Mr. A.D. Hande, Advocate for applicant in BA/690/2022

Mr. S.P. Sonpawale, A.P.P. for respondent - State

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**CORAM : R.G. AVACHAT, J.
RESERVED ON : 06th SEPTEMBER, 2022
PRONOUNCED ON : 29th SEPTEMBER, 2022**

ORDER :

1. Both these applications for bail under Section 439 of Code of Criminal Procedure are being decided by this common order since they arise from one and the same crime. The applicants have been arrested in connection with Crime No. 154 of 2020 registered with Loha Police Station, Dist. Nanded for the offences punishable under Sections 363, 364-A, 349, 120-B, 323, 324, 504 and 506 read with Section 34 of the Indian Penal Code

and under Sections 3(1)(ii) and 3(4) of the Maharashtra Control of Organised Crimes Act, 1999 ('MCOCA').

2. Heard. Perused the First Information Report ("F.I.R.") and related police papers.

3. The F.I.R. has been lodged by mother of the victim on 05th August, 2020. The informant is the resident of Loha, Dist. Nanded. She is blessed with four children, two sons and two daughters. She works as labour to earn her living. Her minor son – Shubham (victim) had been to a flour mill near Balaji Mandir at Loha by 04:00 p.m. on 05th August, 2020. He did not return home until 07:00 p.m. The informant received a phone call of her son - Shubham by 07:30 p.m. informing her to have been kidnapped by some unknown persons and taken to a forest like area. He also informed his mother that the kidnappers were making demand of ransom. The informant thought it to be a prank. She however, received number of phone calls. The informant, therefore, approached Loha Police Station and lodged the F.I.R. same night.

4. The crime came to be registered and investigated as well. It was revealed that the applicants alongwith their associates had kidnapped the minor – Shubham, son of the informant and his cousin. Both the minors were even beaten up. Shubham was made to make number of phone calls to his

mother. A police team was, therefore, formed to track down the culprits. The applicants were located at *Maralak Shivar*. The police had to resort to rescue operation. Applicant – Vikas allegedly opened fire at police. The police had to respond in similar way. Applicant – Vikas was injured. He had, therefore, to be admitted to the hospital. A separate crime, being C.R. No. 95 of 2020 for the offences punishable under Sections 307, 353, 143, 148, 149 and 506 of the Indian Penal Code and under Sections 3/25 and 4/25 of the Arms Act, therefore, came to be registered against him and his associates. They were arrested in that crime. Then they were taken into custody in the present crime. Since it was found an offence of organised crime, provisions of MCOCA came to be invoked. On investigation, the charge-sheet has been filed.

5. Learned counsel for the applicants would submit that the informant is financially not sound. Had the applicant really wanted to kidnap anyone for ransom, they could have identified one, who was financially sound to meet their demand. According to learned counsel, both the minors, who were allegedly kidnapped, have now been in the safe hands of their parents. The applicants have been in jail for over two years. It is not known as to why the applicants have been arrested 8-10 days after the alleged offence. According to learned counsel, the offence in question is not an organised crime. Only with a view to detain the applicants behind the bars,

provisions of MCOCA have been invoked. It is submitted that applicant – Suraj has no criminal antecedents. On investigation, the charge-sheet has been filed. Pre-trial detention of the applicants is unwarranted. Both learned counsel, therefore, urged for grant of applications.

6. Learned counsel for the applicants relied on following authorities:-

I) ***Mohammad Azam Khan Vs. State of Uttar Pradesh, AIR 2022 SC 2391***, wherein following points are noted :-

Criminal trial – Bail – Interim bail – Grounds for bail – Nature of offence and delay in registering F.I.R. valid grounds for granting interim bail

II) ***Angela Harish Sontakke Vs. State of Maharashtra, (2021) 3 SCC 723***, pointing out following grounds :-

Cr.P.C. S.439 – Bail – Seriousness of charge – Same needs to be balanced with period of custody suffered and the likely period within which the trial can be expected to be completed – Statutory restrictions on right to bail imposed under provisions like S.43-D(5) of the UAPA

III) ***Sagar Tatyaram Gorkhe and Another Vs. State of Maharashtra, (2021) 3 SCC 725***, discussing following points :-

Cr.P.C. S.439 – Bail – Seriousness of charge – same by itself cannot be a ground of rejecting prayer for bail and it needs to be balanced with period of custody and the likely period for completion of trial

7. Learned A.P.P would, on the other hand, submit that the informant has no reason to lodge a false F.I.R. It has been lodged against unknown persons. It was only during investigation the applicants were located. The victims came to be rescued. During rescue operation, there was cross firing. Applicant – Vikas opened the fire first. He has criminal antecedents. Over 12-14 crimes have been registered against him. Applicant - Suraj is one of his associates. The offence in question has been committed by all of them as members of organised crime syndicate. He, therefore, urged for rejection of the applications.

8. Considered the submissions advanced. It is true that the informant is financially not sound. The applicants were not in know in the informant's financial status. The F.I.R. was lodged against unknown persons. It, therefore, cannot be observed that a false crime came to be registered based on the information given by the informant. The call data record indicates number of phone calls between the informant and her son- Shubham at the given time. The police have to resort to rescue operation after having located the victims, the applicants and their associates. There was exchange of fire. Both the applicants came to be overpowered. The victims were rescued from their custody. The offence punishable under Section 364-A i.e. kidnapping for ransom is a serious offence. Applicant – Vikas has criminal antecedents. Over 12-14 crimes have been registered

against him. Applicant – Suraj is his associate. His involvement in the present crime is also writ large. Although both of them are behind the bars for little over two years, considering seriousness of offence, this Court is not inclined to grant them bail at this stage. The trial Court is requested to frame the charge at the earliest and conclude the trial within a period of one year. If the trial could not be concluded within the time frame, the applicants may revive their prayer for bail.

9. In view of above, both the bail applications are dismissed.

(R.G. AVACHAT, J.)

SSD