

Santosh

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

**BAIL APPLICATION NO. 401 OF 2022
WITH
INTERIM APPLICATION NO. 1721 OF 2022**

Mahesh Vitthal Waghmode ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr. Shailesh Chavan, for the Applicant.

Mr. P. H. Gaikwad, APP for the State.

CORAM: N. J. JAMADAR, J.

DATED : 7th July, 2022

ORDER:-

1. The applicant, who has been arraigned in CR No.173 of 2021, registered with Baramati City Police Station, for the offences punishable under Sections 120B, 364A, 365, 384, 386 and 324 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code"), has preferred this application to enlarge him on bail.

2. The prosecution case runs as under:

(a) Pruthviraj Dnyandev Chavan (the first informant) is the friend of Krushnaraj Jachak (the victim). On 13th March, 2021, the first informant and victim had gone to a ground near Pansare Dream City to play Pub-G. Few persons came thereat

in a white Toyota Etios. A person, who was sitting on the rear seat of the car, alighted armed with a bamboo stick. He gave two blows by the said stick on the first informant's leg. Another person made the victim to forcibly sit in the car. The first informant was also pushed into the car. The person, who was on the wheel of the car had covered his face by handkerchief. The said person inquired with the other persons as to why the first informant was being taken. The first informant disclosed his identity. Thereupon, those persons forcibly took away his mobile phone handset, and the key of the motorcycle from the victim. The first informant was thereafter dropped off. The first informant noted that the car had a yellow number plate with "MH-14". However, he could not note its complete number.

(b) After the other friends of the first informant came thereat, they went to the father of the victim. They could not contact the victim, as his mobile phone was switched off. At about 9.30 pm. a call was received by the father of the victim. The victim told his father that he was not aware as to where he was as cloth was tied over his eyes and the persons who were with him were demanding money. Another person took the mobile phone from the victim and told that he had abducted the victim as on account of the harassment by the victim a girl had

committed suicide at Panchgani. The caller demanded ransom of Rs.5 Crore lest the victim's father would loose the victim. Hence, the first informant approached the police station and lodged the report.

3. Eventually, the police party apprehended the applicant and the co-accused. It transpired that the applicant and the co-accused had abducted the victim in a car, which was forcibly taken away from witness Santosh Udage, who was driving the said car bearing No.MH-14/HG-7818 on daily hire charges basis. The said witness was also assaulted and kept in confinement by the applicant.

4. I have heard Mr. Chavan, the learned Counsel for the applicant and Mr. Gaikwad, the learned APP for the State, at some length.

5. Mr. Chavan submitted that from the own showing of the prosecution, the applicant was not the person, who had abducted the victim. Santosh Putge, driver of the car, in which the victim was allegedly abducted categorically stated that the applicant was the person who kept a vigil on him after the co-accused robbed him and took away the car. Even the victim has stated that two persons were already present at the spot where he was initially brought in the car, from the place of

abduction. It was further submitted that first informant could not identify the applicant in the IT Parade. Though the victim has professed to identify the applicant yet no role has been attributed to the applicant on the strength of which the victim could identify the applicant. In the circumstances, the applicant deserves to be enlarged on bail.

6. The learned APP countered the submissions made on behalf of the applicant. It was urged that the victim and all the accused were apprehended by police after a demand for ransom was made by the accused. A huge demand of Rs.5 Crore was made by giving threat of eliminating the victim. The statements of the first informant, victim and Santosh Putge constitute adequate material to make out *prima facie* complicity of the applicant. Thus, the applicant does not deserve the exercise of the discretion.

7. The first informant's version, *prima facie*, does not seem to connect the applicant with the actual abduction as the first informant could not identify the applicant in the TI Parade. The statements of the victim and Santosh Putge, the driver of the car, throw light on the alleged role of the applicant.

8. The victim states that after he was abducted, he was taken to a hilly area. When the cloth tied over his eyes was removed,

he found himself near a temple. Two persons were waiting thereat. The two other persons who had abducted him were also present thereat. After two hours, they left the said place in the said car. As the vehicle stopped, they alighted from the car and found that there was no diesel in the car. Eventually police came and all the persons, who accompanied him, were arrested.

9. If the statement of Santosh Putge, the driver of the car, is read in conjunction with the statement of the victim it becomes evident that the applicant was one of those two persons, who were waiting near the temple, where the victim was initially brought. Santosh Putge states that after the persons who hired the car had liquor at a secluded place, Gaurav Shete assaulted him and took away the key of the car, cash of Rs.2,500/- and mobile phone handset. His hands and legs were tied and a cloth was tied over his eyes. He was made to sit on the rear seat of the car. They stopped the car in the hilly area. He was dropped off the car. One of them, whose name was Waghmode, the applicant, stayed back with him. The applicant did not allow him to move at all. After about two days, the rest of the accused came back along with the car and took him and Waghmode in the car. At that time, he found that a boy whose eyes were also tied by a cloth was present in the car. The

accused were intermittently abusing and assailing the said boy. The car stopped as the diesel was over. Thereafter they all proceeded by foot and police came and apprehended all the accused.

10. The statement of Santosh Putge thus *prima facie* establishes the identity of the applicant as the person who stayed back with him, till the co-accused brought the victim in the said car. If the statement of the victim that when he was first taken to a place near a temple, two persons were already present thereat is considered in juxtaposition with the statement of Santosh Putge, *prima facie*, the role attributed to the applicant appears to be distinct from the one attributed to co-accused who actually abducted the victim.

11. There is a time-lag between the two events. Santosh Putge states that after he was robbed of the cash, valuables and car, the applicant kept vigil on him for about two days and thereafter the co-accused met them along with the victim. If this sequence of event is considered then *prima facie* it does not appear that the applicant was the person who abducted the victim on 13th March, 2021. The first informant could not identify the applicant in the TI Parade. Though the victim identified the applicant yet the role of abducting the victim was

not attributed to the applicant as the reason for the said identification.

12. It is true that the applicant stands charged for the offence punishable under Section 120B of the Penal Code as well. Whether the applicant can be roped in with the co-accused for the offence of kidnapping for ransom by invoking the doctrine of constructive criminality? Did the applicant share the common intention to kidnap the victim for ransom? are the matters for evidence and trial. At this stage, however, in the light of the distinct role attributed to the applicant, in my considered view, a *prima facie* case for exercise of discretion in favour of the applicant is made out.

13. The applicant has been in custody since 16th March, 2021. The applicant was reported to be suffering from tuberculosis. In the aforesaid view of the matter, I am persuaded to release the applicant on bail.

14. Thus, the following order:

: O R D E R :

- (i) The application stands allowed.
- (ii) The applicant Mahesh Vitthal Waghmode be released on bail on furnishing a P. R. Bond in the sum of Rs.30,000/-, with one or two sureties in the like amount

to the satisfaction to the learned Additional Sessions Judge, Baramati.

(iii) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses.

(iv) The applicant shall cooperate with the investigation and attend the Baramati City Police Station on the first Monday of every alternate month for the period of one year in between 10.00 am. to 1.00 pm.

(v) The applicant shall furnish his permanent residential address and contact details to the Police Inspector, Baramati City Police Station and intimate the change, if any.

(vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.

(vii) By way of abundant caution, it is clarified that the observations made hereinabove are confined to the consideration of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the co-accused.

In view of disposal of BA/401/2022, Interim Application No.1721/2022, does not survive and stands disposed.

All concerned to act on an authenticated copy of this order.

[N. J. JAMADAR, J.]