

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****BAIL APPLICATION NO. 859 of 2021****(modified as per order dt.12/9/2022)**

Ansar Kamal Khan @ Rahul Jain @ .. Applicant
Sunil @ Asni

Versus

The State of Maharashtra .. Respondent

...

Mrs.Anjali Patil for the applicant.

Mr.S.H. Yadav, APP for the State.

PI Shri Sanjay Taralgatti AE Cell, DCB CID, Mumbai.

CORAM: BHARATI DANGRE, J.

DATED : 19th JULY, 2022

P.C:-

1 The applicant seek his release on bail on two grounds; firstly being his long incarceration, pending the trial and secondly, that barring the present applicant, all eight co-accused are released on bail by distinct orders.

 The applicant came to be arrested by DCB CID in connection with C.R.No. 108/2015 which invoke Section 364A, 342, 323, 387, 120B of IPC and Section 3 and 25 of the Arms Act.

2 The subject offence came to be registered on a complaint filed by the informant, a resident of Mumbai and

involved into business, alleging that he was lured by the accused persons for a deal in copper metal at a cheap rate and he was called to Delhi. According to the informant, by administrating threats to eliminate him, he was kidnapped and the ransom amount of Rs.30 lakhs was demanded, but in settlement, Rs.10 lakhs was accepted. After accepting the said amount, the accused persons left him and he received a phone call from one of the accused by stating that they wanted to return his phone.

3 The applicant was arrested on 14/10/2019 and was subjected to Test Identification Parade in Arthur Road Jail premises on 19/10/2019. So also, the other co-accused who were arrested, were also made to participate in the Test Identification Parade. On completion of investigation, the charge-sheet has been filed in December 2019, but it is informed that till date, charge is not yet framed.

4 On the last date, on being confronted to the orders passed releasing the eight co-accused on bail, the learned APP was asked to seek instructions whether the applicant is entitled for parity.

The learned APP Mr.Yadav state that he is not entitled to claim parity, since he is the key conspirator, who had hatched the entire episode of kidnapping and he has been specifically identified in the Test Identification Parade. He has invited my attention to supplementary statement of the

complainant recorded on 15/11/2019 when he specifically disclosed that the person whom he had identified as Ansar Kamal Khan @ Rahul Jain is the one who had threatened him and obtained the pin of his credit card and also effected purchases.

5 When the complaint is carefully perused, it is revealed that the applicant landed at Delhi Airport on 24/11/2015 and he contacted Rahul Jain who is the present applicant and a car was sent to receive him. When he boarded the said car, it proceeded towards Mathura and it was stalled at one place and was taken to a godown on the pretext that the goods are lying in the said godown. Thereafter, he was taken further and when the complainant felt suspicious, he asked to stop the car. Some 5 to 6 persons were standing nearby and they pulled the complainant out of the car and seized his belongings. The narration is that some of the accused persons pointed a revolver at him and threatened him, whereas the present applicant is alleged to have taken the pin number of the credit card.

The narration in the complaint is that the amount of Rs.10 lakhs was settled for the purpose of releasing him.

6 When the complaint is carefully perused, all other co-accused are alleged a specific role and despite the role being attributed, they came to be released on bail. All the accused persons have been identified in the Test Identification Parade, and this fact is noted in the respective order passed by this Court

as well as by the Sessions Court while releasing them on bail.

There is no reason why the benefit of the said order cannot be extended to the present applicant as it has been recorded in the order dated 8/10/2018, in case of co-accused Irshad Khan that the Test Identification Parade was conducted belatedly, and in any case, on completion of investigation, the charge-sheet has been filed. The applicant is incarcerated since 2019 and till date, the charge is not framed.

7 One can see the predicament of the present applicant who has to face the trial. However, considering the role attributed to him along with the role of the co-accused who are already released on bail, the applicant also deserve his release.

8 The learned APP state that there are antecedents against the present applicant and this was specifically noted by this Court while considering the Bail Application of Munsaid Harun Khan on 14/7/2017 and despite antecedents in form of C.R. invoking Section 307, he came to be released on bail.

The learned APP state that the present applicant has one antecedent in form of C.R. which invoke Section 420, 323, etc.

I do not think that the said antecedent would stall his release, in the wake of the material compiled against him in the charge-sheet and when he is awaiting his trial for last three years.

The observations made are prima facie in nature and limited to the decision of this application and the trial Court shall not feel itself bound by the above observations. Hence, the following order:-

ORDER

- (a) The Applicant – Ansar Kamal Khan @ Rahul Jain @ Sunil @ Asni in connection with C.R.No.108/2015 registered with DCB CID, shall be released on bail on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
 - (b) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer. The Applicant should not tamper with evidence.
 - (c) The Applicant is directed to report to the concerned police station once in a month on the first Saturday between 11.00 am to 1.00 p.m.
 - (d) The applicant should attend the trial Court on the date of hearing.
- 8 The Application is allowed in the aforesaid terms.

(SMT. BHARATI DANGRE, J.)