

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL INTERIM APPLICATION NO. 1541 OF 2022
WITH
CRIMINAL INTERIM APPLICATION NO. 1542 OF 2022
IN
CRIMINAL APPEAL NO. 516 OF 2022**

Anita Deepak Salve ...Applicant/Appellant
Versus
State Of Maharashtra ...Respondent

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Mr. C.J. Joveson i/by Ms. Akshada Pasi, Advocate for the
Applicant/Appellant.

Mr. Ajay Patil, APP for the Respondent – State.

Mr. Prakash Sawant, API, Dahisar (C) Police Station, Mumbai.

**CORAM : A.S. GADKARI AND
PRAKASH D. NAIK, JJ.
DATE : 25th NOVEMBER, 2022.**

PER COURT:

1. These are applications for suspension of sentence and enlargement of applicant on bail during pendency of Criminal Appeal No.516 of 2022.

2. The Applicant is convicted for the offence under Section 364-A r/w 120-B of Indian Penal Code (for short “IPC”) alongwith the other accused and sentenced to suffer imprisonment for life.

She is further convicted for offence under Section 386 r/w 120-B of IPC, 452 r/w 120-B of IPC and 342 r/w 120-B of IPC and sentenced to suffer rigorous imprisonment for seven years, five years and 6 months respectively for each offence.

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3. The case of the prosecution is that the victim child aged around three years was kidnapped by the accused on 17th January, 2014. There was demand of ransom and after parting with the ransom amount the child was dropped near a hotel. The mother took the custody of the child. During the course of investigation, the accused were arrested. On completing investigation charge-sheet was filed.

4. PW-1 Rahul Waradkar and PW-18 Mrunal Waradkar are the parents of victim child. Child was kidnapped from the custody of PW-11. She was working as maid servant in the house of PW-1 and PW-18. Some persons entered into the house of first informant and kidnapped the child. Thereafter, there was demand of ransom and after parting the amount child was released. The prosecution is relying on the confession of accused No.2 who had stated that there was meeting of accused No. 3, 4, 5 and 6 in Qualis vehicle. In the said meeting it was decided to kidnap the son of first informant. There was conspiracy between them to kidnap the child. Thus, undisputedly the applicant was not present in the said meeting and not a conspirator to kidnap the child. The accused No. 1, 4 and 5 entered into the house of informant and kidnapped the child. As per confession of accused No.2, he was looking after

the child in day time and accused No.4 and 5 were looking after the child during the child and his absence. Accused No.4 and 5 accepted ransom. The accused no.2, 3 and 7 went to hotel City Star, Dindoshi and accused No.7 (Applicant) dropped the child at hotel City Star while accused No.2 informed child's mother about rescuing child.

5. The accused No.3 Ajit Atmaram Apraj @Saheb @Ajit Bhai had preferred an application for suspension of sentence and grant of bail before this Court which has been allowed vide order dated 24th August, 2022. While granting bail to the said accused, this Court dealt with confession of accused No.2 and evidence of PW-6 and PW-7. The case of prosecution against accused No.3 is that he was sitting in Qualis vehicle, which was used to drop the kidnapped child at City Star Hotel. PW-7 has identified the said accused as a person sitting in Qualis vehicle. The said vehicle was recovered from him. The prosecution case against the present applicant is that she got down from the aforesaid vehicle and dropped the child for being rescued by child's mother. The prosecution is relying upon confession of accused No.2 and evidence of PW-6 and PW-7. This Court had observed that there is discrepancy in the confession of accused No.2. There is non-compliance of provisions of Section

164 of Cr.P.C. The confession was retracted. PW-1 Rahul Waradkar, father of child lodged FIR on 17th January, 2014. child was dropped by accused at City Star Hotel on receiving ransom of Rs.81,00,000/- (Eighty One lakhs). Till 25th January, 2014 PW-1 did not inform police about his son having being found or handed over by accused to them. The witness did not show from where the amount of Rs.81,00,000/-(Eighty One Lakhs) was collected by him for paying ransom amount. PW-18 Mrunal Waradkar, mother of child stated that they had not intimated the police on phone that her son was found on 23rd January, 2014. She did not visit police station with her son on same day, nor informed police about the same. PW-6 Tekbahadur Shah and PW-7 Bhushan Karolekar appear to be chance witnesses. According to them they saw a Qualis vehicle on the said date in which three persons came and one lady got down from the said vehicle alongwith the child and took the child to City Star Hotel and returned back without the child. The said witnesses had identified accused No.3 for the first time after one and half year of the incident in test identification parade. The evidence of these witnesses will have to be considered having regard to the admission that have come in the cross-examination of PW-1 and PW-18 that they had not informed the Police, that the accused were to drop their son at hotel City Star on 23rd January,

2014 and that informed about it to police only on 25th January, 2014. The prosecution is relying upon evidence of PW-6 and PW-7 against the Applicant.

6. Learned Advocate for the applicant submitted that the applicant was on bail during the trial. She has been taken into custody on the date of pronouncement of the Judgment by the trial Court. She has not misused the facility of bail. Applicant is entitled for bail on the ground of parity as accused No.3 has been granted bail by this Court.

7. There is no evidence to show that applicant had participated in meetings where alleged conspiracy was hatched. The applicant was not involved in kidnapping the child from the house of PW-1 and PW-18. The prosecution is relying on confession recorded under 164 of Cr.P.C. and evidence of PW-6 and PW-7. This Court had noted discrepancies in confession of accused no.2 and evidence of PW-1, PW-18, PW-6 and PW-7 while granting bail to accused No.3. The applicant is entitled to be released on bail on similar grounds. The applicant was on bail during trial. It is not reported that she has misused the facility of bail. Considering the evidence on record and factual aspects as above, we are inclined to suspend the sentence of imprisonment and grant bail to

the applicant pending appeal against conviction.

ORDER

- i. The sentence of imprisonment imposed vide Judgment and order dated 12th April, 2022 passed by learned Additional Sessions Judge, City Civil and Sessions Court Mumbai, while convicting the applicant in Sessions Case No. 671 of 2015 is suspended and the applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two local sureties in the like amount;
- ii. The applicant shall report to the trial Court, once in three months on the day/date specified by the trial Court, till her appeal is finally disposed off;
- iii. The applicant shall not contact the complainant, witnesses or any person concerned with the case;
- iv. The applicant shall report to the Senior Police Inspector, Unit-12, on the first Saturday of every month between 10:00 a.m. and 12:00 noon, until further orders;
- v. The applicant shall keep the trial Court informed of her current address and mobile contact number and/or change of residence or mobile details, if any, from time to time;

vi. 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.

vii. The applications are allowed in the aforesaid terms and are accordingly disposed off.

viii. All concerned to act on the authenticated copy of this order.

[PRAKASH D. NAIK, J.]

[A.S. GADKARI, J.]