

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

***CRIMINAL INTERIM APPLICATION NO.1512 OF 2022
(Suspension Application)***

WITH

***CRIMINAL INTERIM APPLICATION NO.1511 OF 2022
(Bail Application)***

IN

CRIMINAL APPEAL NO.508 OF 2022

Ajit Atmaram Apraj @Saheb @Ajitbhai

...Applicant
(Orig. Accused)

Versus

State of Maharashtra

...Respondent

Mr. Rajendra S. Bidkar a/w Mr. C. J. Joveson and Ms. Simran Patil,
for the Applicant.

Mr. V. B. Konde-Deshmukh, A.P.P for the Respondent – State.

***CORAM : REVATI MOHITE DERE &
SHARMILA U. DESHMUKH, JJ.***

DATE : 24th AUGUST 2022

P.C. :

1. Heard learned counsel for the parties.
2. By these applications, the applicant seeks suspension of his sentence and enlargement on bail, pending the hearing and final

disposal of his aforesaid appeal.

3. The applicant alongwith other accused vide Judgment and Order dated 12th April 2022, passed by learned Additional Sessions Judge, City Civil & Sessions Court, Mumbai, in Sessions Case No. 671 of 2015, has been convicted and sentenced as under:-

- for the offence punishable under Section 364A r/w 120B of the Indian Penal Code, to suffer imprisonment for life and to pay fine of Rs.5,000/- each, in default, to suffer simple imprisonment for five months;
- for the offence punishable under Section 386 r/w 120B of the Indian Penal Code, to suffer rigorous imprisonment for seven years and to pay fine of Rs.1,000/- each, in default, to suffer simple imprisonment for one month;
- for the offence punishable under Section 452 r/w 120B of the Indian Penal Code, to suffer rigorous imprisonment for five years and to pay fine of Rs.1,000/- each, in default, to suffer simple imprisonment for one month;

- for the offence punishable under Section 342 r/w 120B of the Indian Penal Code, to suffer rigorous imprisonment for six months.
- All the substantive sentences were directed to run concurrently.

4. Perused the papers with the assistance of the learned counsel for the parties. The prosecution in support of its case relies (i) on a confession allegedly made by the accused No.2 – Sapan Suken Chakravarti. The said confession is recorded under Section 164 of the Code of Criminal Procedure; (ii) on the evidence of PW6 – Tekbahadur Shah and PW7 – Bhushan Parulekar, who have identified the applicant as sitting in the Qualis vehicle, which was used to drop the kidnapped child, at the City Star Hotel; (iii) on the money seized from PW17 – Kiran Choudhari i.e. Rs. 3 lakhs out of Rs.81 lakhs. It is alleged that the applicant used the money to purchase the land; and (iv) recovery of the Qualis vehicle used in the commission of the offence, at the instance of the applicant.

5. As far as confession made by the accused No.2 – Sapan is concerned, a perusal of the said confession *prima-facie* shows that there is non-compliance of provisions of Section 164 Cr.PC. Apart from the same, it appears that the accused No.2 – Sapan had subsequently retracted the said confession and had also sent a letter through jail to the Court retracting the said statement, stating therein that it was obtained by coercion. Learned APP has not been able to point out from the confession recorded under Section 164 Cr.PC., that the said confession was recorded in question and answer form by the Magistrate and that time was given to the said accused – Sapan, to ponder whether he wanted to make the confession.

6. From the evidence of PW1 – Rahul Waradkar, father of the boy, who was kidnapped, it appears that his son, aged 3 years was kidnapped on 17th January 2014; that on the very same day, he lodged an FIR and that on 23rd January 2014, the boy was dropped off by the accused at City Star Hotel, on receiving the ransom amount of about Rs.81 lakhs. A perusal of the evidence of the said witness i.e. PW1 –

Rahul Waradkar shows that till 25th January 2014, the said witness had not informed the police about his son having being found or handed over by the accused to them. Neither has the said witness shown from where the said amount of Rs.81 lakhs was collected by him, for paying the ransom amount. The evidence of PW1's wife i.e. PW18 – Mrunal Waradkar also shows that she had not informed the police, how the amount of Rs.81 lakhs was arranged by her husband i.e. Rahul Waradkar and that she had not intimated the police on phone that her son was found on 23rd January 2014. The said witness has further deposed that she neither visited the police station with her son nor informed the police about the same on the said date i.e. 23rd January 2014.

7. In the background of the aforesaid evidence that has come on record, of PW1 – Rahul Waradkar and PW18 – Mrunal Waradkar that they had not informed the police that their son was handed over to them by the accused on 23rd January 2014 and that the police were informed of the same only on 25th January 2014, the evidence of PW6

- Tekbahadur Shah and PW7 – Bhushan Parulekar, will have to be considered. As far as PW6 - Tekbahadur Shah and PW7 – Bhushan Parulekar, are concerned, they appear to be chance witnesses. According to the said witnesses, they saw a Qualis vehicle on the said date, in which three persons came; that one lady got down from the said vehicle alongwith the child and took the child to the City Star Hotel and returned back sans the child. Their evidence further shows that soon thereafter, the police arrived at the spot, pursuant to which, their statements were recorded on 23rd itself. The said witnesses i.e. PW6 - Tekbahadur Shah and PW7 – Bhushan Parulekar have identified the accused for the first time in the Test Identification Parade which was held in June/July 2015 i.e. after almost 1 ½ year of the incident. The said evidence of these witnesses will have to be considered, having regard to the admissions that have come in the cross-examination of both the witnesses i.e. PW1 – Rahul Waradkar and PW18 – Mrunal Waradkar, that they had not informed the police that the accused were to drop their son at the hotel City Star Hotel, on 23rd January 2014 had informed the police only on 25th January

2014.

8. As noted above, there is also nothing on record to show how and from where, PW1 – Rahul Waradkar had arranged such a huge amount of Rs.81 lakhs i.e. the ransom money, to be paid to the accused.

9. The prosecution has also alleged that Rs.3 lakhs was seized from PW17 – Kiran Choudhari and that the said money was handed over by the applicant to the said witness. A perusal of the evidence of the said witness also does not further the prosecution case to show, that the said money was the ransom money received from PW1 – Rahul Waradkar. It is also pertinent to note that PW25 – Diwakar Sawant, PI attached to Aarey Police Station has in his cross-examination stated that 'it is true to say that if there is participation of police in rescue operation of child then there may be a entry in station diary (Exhibit – 150 colly.) and that there was no entry in Exhibit – 150, regarding participation of the police in the rescue operation on

23rd January 2014.

10. The applicant is in custody, for more than 7 years. The appeal has been admitted by this Court vide order dated 10th June 2022 and the same is not likely to come up for the hearing in the immediate near future.

11. Considering what is observed hereinabove, the applications are allowed and the applicant's sentence is suspended and he is enlarged on bail, pending the hearing and final disposal of his Appeal, on the following terms and conditions :-

ORDER

- i) The Applicant be enlarged 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 his Appeal is

finally disposed of;

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 his 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.

12. The Applications are allowed in the aforesaid terms and are accordingly disposed of.

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

SHARMILA U. DESHMUKH, J.

REVATI MOHITE DERE, J.