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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2475 OF 2021

Dayadaya! Harinarayan Mahato] .. Applicant

vs.

State of Maharashtra] .. Respondents

Mr.Sanjay Singh for Applicant.

Mr.S.V. Gavand, APP for State.

PI Anil Mule attached to D.N. Nagar Police Station present.

CORAM : BHARATI DANGRE, J

DATE : 27TH JULY, 2022.

P.C.

1] The applicant is charge-sheeted for the offences punishable under Sections 386, 387, 364A, 328, 363, 323, 504, 506 (ii), 120B read with 34 of the Indian Penal Code and under Section 37(1) and 135 of the Bombay Police Act.

2] In connection with CR No.34/2021 filed in D.N. Nagar Police Station on 25.01.2021 against three unknown persons, accused came to be arrested on 26.01.2021 and presently he is housed in Taloja Central Jail.

3] The subject crime came to be registered on the complaint of one Vinay Bansal, father of two minor children Veer and Vansh, aged 10 years, who are alleged to have been kidnapped for a ransom.

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4] The informant state that on 25.01.2021 his children did not return home on being taken to the Tennis class by the driver of the complainant. At around 20.16 p.m. the wife of the informant received a phone call on her mobile from No.+ 3777946 and the person speaking at the other end informed that the driver and her two children are in his custody and she was asked to keep the amount of Rs.1 Crore ready. However, subsequently when one of the child Veer made a phone call to his mother informing that he was in the Croma showroom, the informant and his wife brought him back.

5] The statement of Rachana Bansal came to be recorded on 12.03.2021. Statements of two minor children also form part of the charge-sheet and in sync they have stated that after they were done with the Tennis class and returning home with the driver (applicant), all of a sudden one person entered into the car and threatened the driver. It is alleged that the unknown person gave some tablets to be consumed. Vansh threw one of the tablet and pretended that other one he has chewed, but he threw the same. Veer consumed both the tablets. It is alleged that the unknown person tied their hands by a tape and warned the driver that he should look ahead and drive. When the car passed across PVR Cinemam Juhu, Veer was asked to get down from the car and he was taken in a bus where he was tied to one seat by a cloth and the unknown person left. However, he managed to get down from the bus and entered Croma showroom where with the help of security guard he established contact with his mother. As far as Vansh is concerned, he was made to sit in the Fortuner car though his brother was asked to step out and the car was kept parked near PVR Cinema. It is stated that, thereafter, unknown person and driver left the spot.

6] In order to establish the identity of the accused No.2, when the learned APP was asked as to whether any test identification parade was conducted and the minor children have been subjected to the same, the answer is in the negative.

7] In arraigning the applicant as accused, the material compiled in the charge-sheet is only recovery of one knife from him. It is not the case of the prosecution that the said knife has been used as weapon.

8] As far as allegation of hatching conspiracy is concerned, though learned counsel for applicant submits that accused No.2 was masked, there is no material to the effect as none of the minor children stated so. That is the reason given by the Investigating Officer as to why accused No.2 has not been subjected to Test Identification Parade.

9] Mr.Gavand, the learned APP, on instructions from the Investigating Officer stated that accused No.2 had stayed with the present applicant for last 15 days, but unfortunately even this remains only as a statement and there is no positive evidence to that effect compiled in the charge sheet except reference to a memorandum panchanama under Section 27, contents of which, in any case, are not admissible.

10] It is ultimately for the prosecution to establish its case beyond reasonable doubt when it puts the accused for trial. However, the scanty material compiled against the applicant in the charge-sheet do not establish his connection with the incident of kidnapping and demand of ransom. Hence, the applicant deserves to be released on bail. This is however subject to the stipulation that the applicant shall

render his cooperation to the Investigating Officer by reporting to the police station. Hence, the following order.

ORDER

- (a) Application is allowed.
- (b) Applicant – Dayadaya! Harinarayan Mahato shall be released on bail in connection with C.R.No.34 of 2021 registered at D.N. Nagar Police Station on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
- (c) The applicant shall report to the concerned Police Station on first Monday of trimester between 10.00 a.m. to 12.00 noon.
- (d) 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 and should not tamper with evidence.
- (e) It is made clear that the observations made above are restricted for determination of the application and the trial Court in any way shall not be influenced by the said observations, limited and restricted for this purpose.
- (f) The Applicant shall regularly attend trial, on every date, unless he is exempted.

[BHARATI DANGRE, J]