

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3741 OF 2021

Mahavir Arjun Gharbudave ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr. Shailesh Chavan, for the Applicant
Mr. Ajay Patil, APP for the State.

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CORAM : N. J. JAMADAR, J.
DATE : MAY 11, 2022
(VACATION COURT)

P.C.:

1. This is an application to enlarge the applicant on bail in C.R. No.245 of 2020 registered with Kudal police station, Dist. Sindhudurg.

2. The indictment against the applicant is that on 9th December, 2020 Mahesh Javkar, the father of Govind Javkar, the first informant, was allegedly abducted by the applicant and three co-accused, for ransom.

3. Mahesh Javkar deals in the business of building construction. On 9th December, 2020 he was carrying a sum of Rs. 5 lakhs for paying the same to Mr. Umesh Mhadalkar, the contractor. He was traveling in a vehicle i.e. Scorpio, bearing registration No. MH-01 PA 5740. His driver Mr. Deu Karangutkar was at the wheel of the vehicle. At that time, one white Ertiga car intercepted the vehicle of

Mahesh. Three persons alighted from the said Ertiga. Mahesh and his driver were pulled out of the vehicle. Driver Deu was assaulted by two persons. Mahesh was again pushed into the rear portion of the Scorpio. The abductors took the car towards Kankavali. They claimed themselves to be the officers of the Crime Branch. They assaulted Mahesh by fist blows. They asked Mahesh to clear the transactions which he had with Sumitra Chafekar and Vikas Kadam. One of those assailants identified himself as Rane and asked Mahesh to pay the former's sister a sum Rs. 72 lakhs. Scorpio was intercepted by police at Fonda check post. Mahesh was rescued.

4. In the meanwhile, Deu Karangutkar informed the first informant about the said occurrence. Thereupon, the first informant lodged report with police, leading to registration of C.R. No.245 of 2020 for the offences punishable under sections 395, 394, 364A, 341 read with 34 of Indian Penal Code, 1860 (Penal Code). The applicant was apprehended along with the co-accused at the Fonda check post. Post completion of investigation, charge-sheet has been lodged for the offences punishable under sections 395, 394, 364A, 341 read with 34 of the Penal Code.

5. Mr. Shailesh Chavan, the learned counsel for the applicant, would urge that the offence punishable under section 395 of the Penal Code is not prima facie made out. Number of persons who

allegedly abducted Mahesh and committed robbery was not five or more. The learned counsel further submitted that the allegations in the first information report as well as the statement of Mahesh recorded under section 161 of the Code of Criminal Procedure, 1973 do not indicate that Mahesh was abducted for the purpose of ransom. In fact, there is no allegation that the assailants robbed Mahesh of the cash amount, which he was allegedly carrying, or of any other property. The applicant has been in custody since 10th December, 2020. Investigation is complete and charge-sheet has been lodged. In the circumstances, the applicant deserves to be enlarged on bail, submitted the learned counsel for the applicant.

6. Mr. Patil, learned APP, on the other hand, resisted the application. Inviting the attention of the Court to the memorandum of Test Identification parade, wherein the applicant was identified as one of the persons who had abducted Mahesh, by Mr. Deu, the driver of the Scorpio, the learned APP submitted that having regard to the nature of the accusation, the applicant does not deserve to be enlarged on bail.

7. The statement of the victim Mahesh Javkar recorded on 10th December, 2020 indicates that there were four persons in the Eartiga car which intercepted his Scorpio. Three persons alighted from the said Eartiga car. Two of them assaulted Mr. Deu, the

driver. Eventually, three persons were apprehended by the police when the Scorpio was intercepted at Fonda check post. This claim of the victim, prima facie, runs counter to the prosecution version that five or more persons jointly committed or aided the commission of robbery.

8. I also find substance in the submission of Mr. Chavan, learned counsel for the applicant, that the statement of the victim does not indicate that the assailants attempted to rob him of the cash or valuable property. On the contrary, the tenor of the statement of the victim, prima facie, indicates that the assailants allegedly assaulted the victim with a view to coerce him to settle the issues which the victim had with Sumitra Chafekar and Vikas Kadam, and pay a certain amount to the sister of one of the assailants.

9. Undoubtedly, the applicant came to be apprehended on the spot. However, in the totality of the circumstances, since the investigation is complete and charge-sheet has been filed, at this juncture, there does not seem any justifiable reason not to exercise the discretion in favour of the applicant. The apprehension on the part of prosecution can be taken care of by imposing appropriate conditions. Hence, the following order.

ORDER

- 1] The application stands allowed.
- 2] The applicant Mahavir Arjun Gharbudave be released on bail in connection with C.R. No. 245 of 2020 registered with Kudal police station, Sindhudurg on furnishing a P.R. Bond in the sum of Rs. 25,000/- with one or two solvent sureties in the like amount to the satisfaction of the learned Sessions Judge, Sindhudurg.
- 3] The applicant shall furnish, on an affidavit before the learned Sessions Judge, his current address and the cell phone number, also incorporating therein an undertaking to keep the same updated in the event of any change.
- 4] The applicant shall not tamper with prosecution evidence and/or give threat or inducement to any of the prosecution witnesses.
- 5] The applicant shall not leave the country without prior permission of the learned Sessions Judge.
- 6] The applicant shall regularly attend the proceeding before the jurisdictional Court.
- 7] The application stands disposed.

(N. J. JAMADAR, J.)