

Rajubhai Rambhai Aagath .. Applicant

Versus

The State of Maharashtra .. Respondent

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Mr. Aniket Nikam with Aashish Satpute, Piyush Toshniwal,
Vivek Aote i/b Amit Ichan for the applicant.
Mrs. Anamika Malhotra, APP for the State.
API Dhanraj Chaudhari from Unit-X, DCB CID, Mumbai.

CORAM: BHARATI DANGRE, J.
DATED : 26th SEPTEMBER, 2022

P.C:-

1 Heard Advocate Aniket Nikam for the applicant and
Mrs. Anamika Malhotra, APP for the State.

2 The applicant is facing charge for the offence punishable u/s.302, 201, 364, 354 read with Section 34 of the IPC, and he being arrested on 12/12/2019, seek his release on bail, alleging his false implication, and on the ground that the material in the charge-sheet fall short of his further incarceration.

3 The prosecution case which surface on record through
charge-sheet reveal that one Vishal Suresh Panchal recorded his
statement in furtherance to a missing report filed by his father

Suresh Panchal in Andheri Police Station, reporting about his paternal uncle Deepak Panchal. He stated that on 28/9/2019, when he was at home, his uncle Deepak Panchal went out for some work and he returned on the next day morning at 7.30 am and again left around 10 am, informing that he would be back after two days. Despite repeated attempts to establish contact by the complainant on his phone, his phone remained switched off for three days and therefore, missing complaint was filed.

4 During his search, information was gathered that one friend of his uncle, Kumar Anna, resident of Versova informed that on 28/9/2019, Deepak Panchal had borrowed a sum of Rs.50,000/- from him, on the ground that he was in urgent need of money. Further, one Parimal Rai informed that his uncle was indulging in betting and he had borrowed money from one Jayantibhai, who was also from Gujarat.

During investigation, it was further revealed by Parimal Rai that Deepak Panchal had borrowed money from Jayantibhai for the purpose of betting and on 29/9/2019, he had repeatedly called him and told him that persons working for Jayanti bhai, by name Karan and one Millat were forcibly taking him along with them since he did not return the money. It thus surfaced that Deepak Panchal was abducted and the FIR was registered.

5 Though Mr.Nikam would vehemently submit that the applicant is innocent, the material in the charge-sheet indicate otherwise.

Apart from Jayanti bhai, role of Karan Parmar, the present applicant has surfaced as the third person who was a participant in the act of kidnapping the deceased and thereafter, eliminating him and throwing his body in order to conceal the crime. Statement of several witnesses form part of the charge-sheet, which clearly indicate the involvement of the applicant in the act of kidnapping of the deceased.

One Parimalsinh Balrajsingh Raj is a witness who has revealed the entire happenings from the day when the deceased went missing.

He disclosed that in a party hosted by his friend, he was introduced to Jayanti Patel, a contractor by profession and even Deepak Panchal working as an engineer in Mumbai Airport, was also introduced. During the birthday party, they stayed in the same room and the witness was informed that Jayanti Patel was into finance and whenever he need any money, he can be contacted. Thereafter, he developed proximity with Deepak Panchal and the relationship took shape of a family relationship.

On one occasion, in the year 2017, when the witness was in need of money, he contacted Deepak Panchal, who arranged a sum of Rs.40 lakhs from Jayantibhai @ 2% interest.

Deepak Panchal was given a sum of Rs.Five lakhs by him since he had helped him out. For some reason, he was not successful in the business and was unable to return the money and thereafter, Jayantibhai was persistently demanding the amount and accused Parimalsinh of giving commission of Rs.10 lakhs to Deepak Panchal. He was repeatedly asked to meet Jayantibhai but he was avoiding, which resulted in Jayantibhai instituting 138 proceedings against him. Since then, Jayantibhai was agitated by Deepak and Parimalsinh and was in search of them.

He narrated about an incident dated 17/9/2019, when Jayantibhai with the help of his son Pratik and Karan, had forcibly abducted him and confined him in their farm house and demanded money, pursuant to which, he asked his wife to transfer Rs.One lakh in his account, and he paid cash amount of Rs.50,000/- in order to secure his release.

6 The witness further narrated that on 29/9/2019, when he was present in Gujarat, he received phone call from the number of Karan and Deepak Panchal spoke to him. He disclosed that he was in the car of Jayantibhai and Karan was abusing and assaulting him on the count, that Rs.Five lakh was given to him as commission, and the amount was being asked back. Deepak told him to inform Jayantibhai that he had paid Rs.2.5 lakh. He persuaded Karan not to trouble him, but the phone was disconnected. When the witness again made a phone call on the mobile phone of Deepak, it was answered by Karan

and he was threatened that unless he repay the amount due to Jayantibhai, Deepak Panchal would not be released. He, therefore, gathered the impression that on paying the money, Dinesh Panchal would be released, but when he read the newspaper of 24/11/2019, he came to know that Deepak Panchal was dead, and he suspected that this was an act by Jayantibhai, as in the past, he was also abducted and confined in the farm house.

7 Another witness Milansinh Narendrasinh Vanath, in whose birthday party, Deepak Panchal, Parimalsinh and Jayantibhai were present and introduced to each other, is also compiled in the charge-sheet. He also corroborate the version of kidnapping of Parimalsinh by Jayantibhai on 27/9/2019. He received a phone call from Karan on 28/9/2019 who told him that Jayantibhai was in search of Parimalsinh and inquiries were made about him. On 29/9/2019, he received a Whatsapp call from the mobile of his girlfriend and he was taken by surprise since her number was given by him to Deepak Panchal. Immediately, thereafter, Parimalsinh called him and informed him that Jayantibhai and Karan had abducted Deepak Panchal, and he was abused and assaulted in the vehicle for money. He thereafter called on the number of Karan and requested to release Deepak Panchal, but he was not in a mood to listen and when he made an attempt to contact Deepak Panchal, his phone was switched off.

One Nayan Kavawala also corroborate the aforesaid two witnesses, who was in touch with Karan and requested to

release Deepak Panchal.

8 Another witness Gandabhai Ravari take the case of the prosecution further, when he state that about 2 ½ months back, Jayantibhai, his acquaintance requested him to accompany him to Mumbai, which he readily agreed to. He disclosed that when they started from Gujarat, Jayantibhai was accompanied with Karan and Raju i.e. the present applicant, who was driving the car. They stayed at Saurashtra Patel Samaj and on 29/9/2019, then proceeded towards Ahmedabad. One person was standing near the Fountain Hotel and the car in which they were travelling, stopped next to him and he was forced to sit in the car. After some time, Gandabhai realized that the person was Deepak and he was a mediator between Jayantibhai Patel and Parimalsinh in respect of money transaction. In the car, Karan and Raju were repeatedly asking for return of money due to Jayantibhai and they were abusive to Deepak. He de-boarded the car on the Highway at Anand at 5.00 p.m, in the evening, and the other persons moved ahead.

9 One Shashinath Mahendranath Jha gave his statement during the course of investigation and he stated that on 29/9/2010, he received a phone call from Jayantibhai, informing him that he along with his three friends, is likely to occupy his farm house on National Highway No.8. On receiving the permission, they arrived at the farm house at around 5.30 p.m and stayed there. On the next day, i.e. 30/9/2019, when

Shashinath knocked the door of the room in which Jayantibhai was staying, he was informed that he was taking rest, and since Shashinath was busy with his work throughout the day, at 6'O clock without informing him, Jayantibhai with his friends who was staying in his farm house, left.

10 One witness Krishna Shetty who was known to Deepak Panchal and was aware about the money being due and payable by him to Jayantibhai has also stated that Deepak had disclosed to him on 29/9/2019, that he was in need of Rs.One lakh for paying to Jayantibhai and Kumar Anna, his friend had given him only Rs.50,000/-. He appears to be under severe pressure.

11 Thus, the prosecution through the said witness has compiled its case in the charge sheet to the effect that the deceased Deepak Panchal was kidnapped by Jayantibhai, Karan and the present applicant Raju, and on after picking him from Ghodbunder, he was taken to the farm house on the National Highway and he was done to death. His body was found in Brahmini Dam on 22/11/2019, which was identified by Vishal Panchal.

The post mortem report has ascertained the time of death as one week to three weeks prior to the commencement of the post mortem examination, though the cause of death is given as 'Died due to drowning'.

12 Apart from this, the prosecution has also compiled the CDR establishing the contact between the deceased and the accused persons, which is also one of the circumstance, which incriminate the present applicant, as his location is established to be the same as the other two accused persons.

 As far as Milan @ Millat is concerned, his complicity was not found and therefore, no charge-sheet is filed against him.

13 The prosecution has therefore, *prima facie* established it's case that since the money was due and payable to Jayantibhai by the deceased, he was abducted and after assaulting, while being alive, he was put in a sack and along with a cement pole, was thrown in the dam. The presence of the applicant in the entire episode is clearly established through the charge-sheet. Considering his active involvement, the applicant do not deserve his release on bail.

14 Observations made above are *prima facie* in nature and limited for the purpose of adjudication of the present application, and shall in no way, bind the Sessions Judge while he is trying the applicant for the offence with which he is charged.

 Application is rejected.

(SMT. BHARATI DANGRE, J.)