



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Twenty First day of April Two Thousand Twenty Two

PRESENT

The Hon`ble Dr Justice G. JAYACHANDRAN

CRIMINAL ORIGINAL PETITION Nos.9035 & 9037 of 2022

KUMARAGURU

[PETITIONER / ACCUSED
CRL.O.P.Nos.9035/2022]

RAJESH KUMAR

[PETITIONER / ACCUSED
CRL.O.P.No.9037/2022]

Vs

THE STATE REP BY ITS,
THE INSPECTOR OF POLICE,
PERUR POLICE STATION,
COIMBATORE DISTRICT
CRIME NO.118 OF 2022

[RESPONDENT
IN BOTH PETITIONS]

For Petitioner : M/S.D.ALEXIS SUDHAKAR Advocate
[IN BOTH PETITIONS]

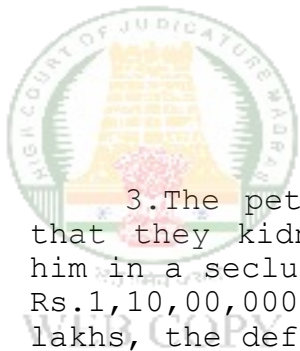
For Respondent : M/S.G.V.KASTHURI, Additional public Prosecutor
[IN BOTH PETITIONS]

PETITION FOR BAIL 439 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioners in both these petitions, who were arrested for the alleged offences under sections 294(b), 342, 323, 364(A) and 506(ii) IPC in Crime No.118 of 2022 on the file of the respondent police, seek bail.

2.Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondent.



3.The petitioners were arrested on 18.03.2022 on the allegation that they kidnapped the defacto complainant and wrongfully confined him in a secluded place for the purpose of collecting ransom. A sum of Rs.1,10,00,000/- was demanded and only after the payment of Rs.35 lakhs, the defacto complainant was set free.

4.Learned counsel for the petitioners would submit that admittedly the defacto complainant was not subjected to any physical injury and the alleged payment of Rs.35 lakhs as ransom has not been proved and therefore, the petitioners cannot be prosecuted under Section 364A IPC, since the ingredients of Section 364 A IPC is not available in this case. In support of his submissions, the learned counsel would rely upon the judgment of the Hon'ble Supreme Court rendered in Shaik Ahmed Vs State of Telangana. The learned counsel for the petitioner relying upon para 12 and 20 of the said judgment would submit that in a case where there is hurt or death caused to the captive, Section 364 A IPC will not get attracted. For the purpose of clarity, those two paragraphs relied by the learned counsel for the petitioners are extracted below:

"12. We may now look into section 364A to find out as to what ingredients the Section itself contemplate for the offence. When we paraphrase Section 364A following is deciphered:-

(i) "Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction"

(ii) "and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt,

(iii) or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom"

(iv) "shall be punishable with death, or imprisonment for life, and shall also be liable to fine."



...20. This court held that when the provisos 1 & 2 are separated by conjunctive word "and", they have to be read conjointly. The requirement of both the proviso has to be satisfied to avail the benefit. Paragraph 8 is as follows:-

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"8. The language of the rule is plain and simple. It does not admit of any doubt in interpretation. Provisos (i) and (ii) are separated by the use of the conjunction "and". They have to be read conjointly. The requirement of both the provisos has to be satisfied to avail the benefit. Clauses (a) and (b) of proviso (ii) are separated by the use of an "or" and there the availability of one of the two alternatives would suffice. Inasmuch as cement and asbestos fibre used by the appellants in the manufacture of their finished excisable goods are liable to duty under different tariff items, the benefit of pro forma credit extended by Rule 56-A cannot be availed of by the appellants and has been rightly denied by the authorities of the Department.

5. This Court on going through the judgment and the interpretation given by the Hon'ble Supreme Court on Section 364 A IPC would find that the as it is in the statute, as on date has not been considered in a proper prospective. Section 364 A IPC, after the amendment through Act 24 of 1995 with effect from 26.05.1995 reads as below:

"364A. Kidnapping for ransom, etc.—Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine."

6. As this statute stands, it is not necessary that the present kidnap or abduction should be put to death or hurt. A reasonable apprehension that such person may put to death or hurt is sufficient. In the case on hand, as per the defacto complainant, he was put under a reasonable apprehension that he will be injured or put to death and in the said fear, a sum of Rs.35 lakhs has been extorted from him before setting him at liberty.

7. The learned Additional Public Prosecutor for the respondent would submit that there are eight accused involved in this case and except these two petitioners, others are absconding and the money which was extorted from the defacto complainant is not yet recovered and therefore, if the petitioners are released on bail, they may abscond like the other accused and steal the prosecution time.



8. Taking note of the said objection and the nature of the crime committed, this Court holds that it is not an appropriate time to release the petitioners herein, since the investigation is at very crucial stage and six out of eight accused are still at large and to be secured, the criminal original petitions for bail are dismissed.

-sd/-
21/04/2022

This order, on being produced, be punctually observed and carried into execution by all concerned

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Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE INSPECTOR OF POLICE,
PERUR POLICE STATION,
COIMBATORE DISTRICT

2 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+2 CC to M/S.D.ALEXIS SUDHAKAR Advocate on payment of necessary charges SR.Nos.5979 & 5978

CRL OP.9035 & 9037/2022

Date :21/04/2022

JPA 26/04/2022