

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

903 CRIMINAL APPLICATION NO.1598 OF 2021  
IN APPEAL/361/2021  
WITH  
CRIMINAL APPLICATION NO.676 OF 2022

NIHAL @ BABA MUSARAF SHAIKH

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. A.B. Ghule, Advocate for applicant

Mr. R.D. Sanap, APP for respondent

Mr. N.B. Narwade, Advocate for assist to PP

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CORAM : SMT. VIBHA KANKANWADI AND  
ABHAY S. WAGHWASE, JJ.

DATE : 15<sup>th</sup> FEBRUARY, 2023

**ORDER :** (PER : SMT. VIBHA KANKANWADI, J.)

1 Criminal Application No.676 of 2022 filed for assist to PP stands allowed and disposed of.

2 Present application has been filed by original accused No.2 in Sessions Case No.41/2020 for the suspension of sentence that was imposed on him by learned Additional Sessions Judge, Ahmednagar after holding him guilty for committing offence punishable under Section 364-A read with

Section 34 of the Indian Penal Code on 22.04.2021. The applicant has been sentenced to undergo imprisonment for life and to pay fine of Rs.10,000/- (Rupees Ten Thousand only), in default to suffer rigorous imprisonment for six months.

3           With the help of the able assistance of learned Advocate for the applicant, learned APP and learned Advocate representing original informant we have gone through the record. It will not be out of place to mention here that the application for suspension of sentence bearing Criminal Application No.3173 of 2022 filed by accused No.1, who has also been convicted similarly, came to be rejected by this Court on 17.10.2022. However, we are required to consider the role played by each of the accused and the evidence that has come against him and, therefore, we do not find that rejection of that application is a hurdle for considering the application by this applicant.

4           The original victim is said to be a well known businessman from Ahmednagar. He is aged around 70 when the incident took place. It has been contended that around 5.40 to 5.45 a.m. on 18.11.2019 he was proceeding to Makka Masjid by walk. When he was in front of gate of S.T. Colony, a car came front his back side and stopped near him. Accused No.1 Azhar was driving the said car and there were three companions including

the present applicant inside the car. Accused Azhar was known to the victim and he told victim that he should occupy seat in the car, but victim refused and then one accused sitting besides the driver seat in the said car, who was stout and blackish in complexion in the age group of 19 to 20 alighted, who embraced victim and the two other accused persons helped him by alighting from the car in forcibly boarding the car. Though the victim shouted for help, nobody came. His shirt was torn and cap was fallen on the earth. Accused Azhar took the car towards Aurangabad, then to Jalna. It is then stated that Azhar by pointing revolver to the victim asked him to keep quiet. Accused has given missed calls on the mobile of the wife of victim, and then when the wife of the victim gave call, victim had told her that he would come home within two hours. Accused persons had taken the car about 25 k.ms. away from Jalna towards Nanded. There was a Dargah beside the Highway. It is then stated that accused Azhar demanded ransom of Rs.25,00,000/- by threatening to kill the victim. Victim, due to fear of life, agreed to pay Rs.10,00,000/- and the remaining amount within 2-3 days. Then, again the accused took the car towards Jalna. Accused Azhar had then made phone call to one Haji Najeer for arrangement of money. Then victim had requested to accused to leave him and stated that if he is allowed to go to Ahmednagar, then only he can make the arrangement for the money. The accused believed in those words of the victim and took the car to a cloth shop at Jalna. Victim

had removed his torn shirt and the accused gave him new shirt. It is then also stated that the accused has given his firearm to another accused and asked him to keep watch on the victim. Victim and accused had alighted from the car and went to cloth shop. Thereafter, the accused had dropped the victim at S.T. Bus stand, Jalna. Victim had then noted the number of the car. Victim then boarded Jalna-Pune bus and before reaching Aurangabad he had given phone call to his wife from the cell phone of co-passenger, which was received by his son. In the process of hurry to reach house though the bus was taking time, he changed the bus and proceeded, but at Jeur Toll Plaza the police were checking the vehicles and they found victim there. Therefore, he was taken by police to S.P. Office, Ahmednagar and then to Tophkhana police, where a detailed statement was recorded. Before that his son had lodged First Information Report.

5           At this stage we have scanned the evidence and found that except the victim nobody has identified the present applicant. As regards the victim is concerned, it is to be noted that he was admittedly not knowing the present applicant prior to the incident. It is stated that he was knowing the accused Azhar, who was also one of the businessman from Ahmednagar in the same locality. It is a part of evidence that the victim has identified the applicant in the Identification Parade. Questions have been raised as regards

the admissibility of the said Identification Parade. Here, ultimately it has been transpired that the alleged amount of ransom was never paid. Rather the victim says that though he was abducted for ransom, but then when he told accused Azhar that, that if he is released then he will make arrangement for the money and upon this statement Azhar agreed to release him. It is also then stated that Azhar had purchased new shirt for victim and in his statement under Section 164 of the Code of Criminal Procedure it is also stated that accused Azhar had given amount of Rs.600/- as the bus fare. This situation is definitely required to be appreciated. Further, it is stated that in the CCTV footage of S.T. stand the present applicant is seen. Mere presence at the spot will not amount to offence. What we are unable to find out in the investigation is the communication between accused Nos.1 and 2 prior to the incident. The Investigating Officer in his testimony has not thrown light upon this aspect, because unless the evidence in respect of Section 34 of the Indian Penal Code is proved, the present applicant cannot be held liable under Section 364-A of the Indian Penal Code. This is on the background that the victim was not at all knowing the present applicant. Under such circumstance, whether he could have participated in the crime, is a question. When these facts are required to be considered, then, even though the present applicant was not released on bail throughout the trial, however, on the basis of the evidence that is adduced he deserves to be released on bail by

suspending the sentence. It would take long time to take up his appeal for final hearing. The applicant is aged around 20 as on today. Hence, following order.

**ORDER**

1            Application stands allowed and disposed of.

2            The substantive sentence awarded against the applicant in Sessions Case No.41/2000 by learned Additional Sessions Judge, Ahmednagar on 22.04.2021 stands suspended till the final hearing and disposal of Criminal Appeal No.361 of 2021.

3            Applicant Nihal @ Baba Musaraf Shaikh be released on P.R. of Rs.50,000/- (Rupees Fifty Thousand only) and two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand only) each.

4            The applicant shall not commit any criminal activity.

5            The applicant shall remain present before the learned Trial Judge once in six months, till final hearing and disposal of the appeal, commencing from the date he tenders bail papers and thereafter, the Trial Judge to fix dates for his subsequent appearances.

6            In case of two consecutive defaults on the part of the applicant to

remain present before the Trial Court, the Trial Court to inform this Court about the same and in that eventuality, the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicant.

7                      Bail before the Trial Court.

8                      Criminal Application No.676 of 2022 stands disposed of.

( Abhay S. Waghware, J. )

( Smt. Vibha Kankanwadi, J. )

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