



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 2412 OF 2023
(Bail Application)
ALONGWITH
INTERIM APPLICATION NO. 2413 OF 2023
(Suspension of sentence)
IN
CRIMINAL APPEAL NO. 863 OF 2023

Vijay Dinkar Wadale @ Ram ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Saumitra Salunke a/w Ms. Swapnali Chavan i/b Mr. P.R.Yadav for
the Applicant.

Mrs. P.P.Shinde, A.P.P for the Respondent-State.

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.**
DATE : 29th NOVEMBER, 2023

P.C. :

1. Heard learned Counsel for the parties.
2. By these applications, the applicant seeks suspension of his

sentence and enlargement on bail, pending the hearing and final disposal of his aforesaid appeal.

3. The applicant vide Judgment and Order dated 12th April 2022, passed by learned Additional Sessions Judge, City Civil & Sessions Court, Mumbai, in Sessions Case No. 671 of 2015, has been convicted and sentenced alongwith other accused as under:-

- for the offence punishable under Section 364A r/w 120B of the Indian Penal Code, to suffer imprisonment for life and to pay fine of Rs.5,000/- each, in default, to suffer simple imprisonment for five months;
- for the offence punishable under Section 386 r/w 120B of the Indian Penal Code, to suffer rigorous imprisonment for seven years and to pay fine of Rs.1,000/- each, in default, to suffer simple imprisonment for one month;
- for the offence punishable under Section 452 r/w 120B of the Indian Penal Code, to suffer rigorous imprisonment for five years and to pay fine of Rs.1,000/- each, in default, to

suffer simple imprisonment for one month;

- for the offence punishable under Section 342 r/w 120B of the Indian Penal Code, to suffer rigorous imprisonment for six months.

- All the substantive sentences were directed to run concurrently.

4. Learned Counsel for the applicant seeks bail on the ground of parity. He submits that the applicant who is only alleged to have been present in the Qualis vehicle, at the time of kidnapping, stands on a far better footing than co-accused Ajit Atmaram Apraj @ Saheb @ Ajitbhai. Learned Counsel for the applicant, thus, seeks bail on the ground of parity with co-accused – Ajit (Original Accused No.3) and another co-accused Anita Deepak Salve (Original Accused No.7).

5. Learned APP, when questioned with regard to the material *qua* the applicant, submits that the allegations as against the applicant is that he was present in the Qualis, at the time, when the child was

kidnapped.

6. Perused the papers. According to the prosecution, a child aged 3 years, was kidnapped by the accused on 17th January, 2014 and that the accused, after kidnapping the child, demanded ransom. It is further alleged that after parting with the ransom amount, the child was dropped near City Star Hotel, pursuant to which, his mother took the custody of the child.

7. The prosecution, in support of its case, has examined several witnesses, including P.W.1 – Rahul Waradkar and P.W.18 – Mrunal Waradkar, parents of the victim child.

8. It appears from the evidence of P.W.11 – Reshma Siddharth Jadhav that the child was kidnapped from her custody. The said witness was working as a maid servant at the relevant time in the house of P.W.1 - Rahul and P.W.18 - Mrunal. According to P.W.11 – Reshma, some persons entered the house of the first informant and

kidnapped the child. It appears that thereafter, ransom was demanded from the parents, after which, the child was handed over and when the ransom amount was paid, the child was released.

9. It is the prosecution case that the accused Nos.3,4,5 and 6 came in a Qualis vehicle and kidnapped the son of the first informant. It is further alleged by the prosecution that the accused Nos.1,4 and 5 entered the first informant's house and kidnapped the child. Admittedly, the applicant is not alleged to have entered the house and kidnapped the child. His role is that of being present in the Qualis vehicle, at the time of kidnapping.

10. We, vide order dated 24th August, 2022 suspended the sentence of the co-accused Ajit Atmaram Apraj (Original Accused No.3) and enlarged him on bail after noting in paragraphs 5, 6, 7 and 8 as under;

“5. As far as confession made by the accused No.2 – Sapan is concerned, a perusal of the said confession prima-facie shows that there is non-compliance of provisions of Section 164 Cr.PC. Apart from the same, it appears that the

accused No.2 – Sapan had subsequently retracted the said confession and had also sent a letter through jail to the Court retracting the said statement, stating therein that it was obtained by coercion. Learned APP has not been able to point out from the confession recorded under Section 164 Cr.PC., that the said confession was recorded in question and answer form by the Magistrate and that time was given to the said accused – Sapan, to ponder whether he wanted to make the confession.

6. *From the evidence of PW1 – Rahul Waradkar, father of the boy, who was kidnapped, it appears that his son, aged 3 years was kidnapped on 17th January 2014; that on the very same day, he lodged an FIR and that on 23rd January 2014, the boy was dropped off by the accused at City Star Hotel, on receiving the ransom amount of about Rs.81 lakhs. A perusal of the evidence of the said witness i.e. PW1 – Rahul Waradkar shows that till 25th January 2014, the said witness had not informed the police about his son having being found or handed over by the accused to them. Neither has the said witness shown from where the said amount of Rs.81 lakhs was collected by him, for paying the ransom amount. The evidence of PW1's wife i.e. PW18 – Mrunal Waradkar also shows that she had not informed the police, how the amount of Rs.81 lakhs was arranged by her husband i.e. Rahul Waradkar and that she had not intimated the police on phone that her son was found on 23rd January 2014. The said witness has further deposed that she neither visited the police station with her son nor informed the police about the same on the said date i.e. 23rd January 2014.*

7. *In the background of the aforesaid evidence that has come on record, of PW1 – Rahul Waradkar and PW18 – Mrunal Waradkar that they had not informed the police that their son was handed over to them by the accused on 23rd January 2014 and that the police were informed of the same*

only on 25th January 2014, the evidence of PW6 - Tekbahadur Shah and PW7 – Bhushan Parulekar, will have to be considered. As far as PW6 - Tekbahadur Shah and PW7 – Bhushan Parulekar, are concerned, they appear to be chance witnesses. According to the said witnesses, they saw a Qualis vehicle on the said date, in which three persons came; that one lady got down from the said vehicle alongwith the child and took the child to the City Star Hotel and returned back sans the child. Their evidence further shows that soon thereafter, the police arrived at the spot, pursuant to which, their statements were recorded on 23rd itself. The said witnesses i.e. PW6 - Tekbahadur Shah and PW7 – Bhushan Parulekar have identified the accused for the first time in the Test Identification Parade which was held in June/July 2015 i.e. after almost 1 ½ year of the incident. The said evidence of these witnesses will have to be considered, having regard to the admissions that have come in the cross-examination of both the witnesses i.e. PW1 – Rahul Waradkar and PW18 – Mrunal Waradkar, that they had not informed the police that the accused were to drop their son at the hotel City Star Hotel, on 23rd January 2014 had informed the police only on 25th January 2014.

8. As noted above, there is also nothing on record to show how and from where, PW1 – Rahul Waradkar had arranged such a huge amount of Rs.81 lakhs i.e. the ransom money, to be paid to the accused.”

11. As far as co-accused Ajit is concerned, it is the prosecution case that he has obtained a Qualis vehicle and dropped the child, after allegedly receiving the ransom amount. There is recovery of Rs.3,00,000/- and the Qualis vehicle at his instance.

12. As far as co-accused Anita is concerned, whose sentence has also been suspended, she has alleged to have dropped the child. It is pertinent to note that P.W.10 – Rishikesh Tendulkar has identified the applicant after about one year and five months.

13. The applicant is in custody since 8th May, 2015 i.e. around eight years and five months. The appeal is of the year 2023 and is not likely to be heard in the immediate near future.

14. Hence, considering what is observed hereinabove, the applications are allowed and the applicant's sentence is suspended and he is enlarged on bail, pending the hearing and final disposal of his Appeal, on the following terms and conditions :-

ORDER

- i) The Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.15,000/- with one or two local sureties in the like amount;

ii) The Applicant shall report to the trial Court, once in three months on the day/date specified by the trial Court, till his Appeal is finally disposed of;

iii) The Applicant shall keep the trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time;

iv) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

15. The Applications are allowed in the aforesaid terms and are accordingly disposed of.

16. Matter to be listed on **21st December, 2023**, to verify whether the applicant has been able to avail of the bail considering what is disclosed to us by the learned Counsel for the applicant that the applicant is an orphan.

17. All concerned to act on the authenticated copy of this order.

GAURI GODSE, J.

REVATI MOHITE DERE, J.