

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION NO. 52/2023

Jitendra s/o Jaichand Jambhulkar .vs. State of Maharashtra through PSO PS.
Kalamna, Nagpur.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. T. H. Bewali, Advocate for applicant.
Mr. I. Damle, A.P.P. for non applicant.

CORAM : ANIL L. PANSARE, J.
DATE : FEBRUARY 1, 2023.

Learned Additional Public Prosecutor has tendered the
reply across the bar. It is taken on record.

2. The application has been filed under Section 439 of the Code of Criminal Procedure (For short, "Code"). The applicant has been arrested on 21.11.2022 in Crime No.639/2022, registered on 11.11.2022, with Police Station, Kalamna for the offences punishable under Sections 363, 369, 370, 34 and 120B of the Indian Penal Code and Sections 75, 81 and 84 of the Juvenile Justice (Care and Protection of Children) Act.

3. Having heard both the sides and having gone through the record, it appears that there are in all nine accused persons namely; Farjana alias Anjum Kureshi, Seema Parveen Ansari, Badal Madke, Sachin Patil, Shweta Ramchandra Saole alias Ayesha Khan, Yogendrakumar alias Monu Prajapati, Rita Yogendrakumar alias Monu Prajapati, Jitendra Jambulkar and Ravindra Khobragade.

4. The informant has three children. On 10.11.2022, accused Yogendra came to her house and took away her younger son aged 8 months on the pretext of giving eatables. He did not return back. The informant searched her son and went to the house of Yogendra but his house was locked. Since she could not find her son and Yogendra, she lodged report with Police Station Kalamna, Nagpur on 11.11.2022.

5. During the investigation, it is revealed that Yogendra passed over the child to accused – Seema Ansari. According to the prosecution, accused Farjana and Yogendra's wife Rita were also part of the said transaction. These four accused then met accused – Shweta alias Ayesha. Shweta is resident of Balaghat, Madhya Pradesh. Shweta took the child to the house of Badal Madke. Badal is acquainted with accused – Sachin Patil. It is also the case of the prosecution that Sachin and Shweta are also known to each others. It appears that Sachin had instructed Badal to find out the child. Once the child was given to Badal, Sachin and Shweta came to his house. It further appears that Badal had acquaintance with accused – Ravindra, the father-in-law of the applicant.

6. The applicant and his wife could not conceive the child after marriage. Their repeated attempts to conceive the child, despite medical treatment, failed. It appears that Ravindra has informed Badal that he is interested in adopting child for his son-in-law i.e. the present applicant and his daughter. Ultimately, the child was sold to Ravindra for Rs.2,50,000/- in the presence of applicant and his wife. The police party, during investigation, came to know that the last transaction is/was with

Ravindra and the child has been transferred to the applicant and his wife and accordingly they visited the house of the applicant. The applicant upon inquiry, informed that the child is sleeping in the room and handed over the child concerned police.

7. The applicant has come up with a case that he and his wife were in dire need of a child. They even approached the orphanage but the authority concerned refused to give them the child for adoption on the ground that they were age barred to adopt the child. Thus, left with no other alternative but having craving for a child, the applicant and his wife through the father-in-law of applicant managed to get the child and in doing so have landed in the present crime.

8. The learned A.P.P. has referred to the statement of witnesses including the statement of the wife of applicant to contend that the applicant and his father-in-law are involved in the crime. However, to a specific query as to whether there is any statement of witnesses which shows that the applicant, his wife or father in law were aware of the fact that the child in issue was abducted by the co-accused, he fairly states that there is no such statement. He, however, contends that once the applicant was made to know that he is not eligible to adopt the child and he being a Government servant he ought to have inquired about the source from where the child is brought and names of parents of the child before taking his custody. Thus, it is suggested that the applicant has knowledge that the child is abducted and therefore prayed for rejection of the application.

9. I have given thoughtful consideration to the submissions made by both the sides. So far as the role of the first seven accused is concerned, they appear to be hand in glove in abducting the child. The applicant and his wife and father-in-law of the applicant appears to have committed serious mistake by accepting the child from unknown persons without making any inquiry. The mistake appears to be because of the craving for the child and not with an intention to commit any offence. There is nothing in the statements of the witnesses to suggest that the applicant is responsible for the abduction of the child or that the child has been kidnapped or abducted with an intention of taking any movable property from the child or that the child has been abducted for the purpose of exploitation and that therefore it will be challenging for the prosecution to prove the offences under Sections 363, 369, 370, 34 and 120B of the IPC against the present applicant. Nonetheless, the said part of proving the intention should be left to the trial Court and the fate of the trial would ultimately decide whether the applicant is guilty of the commission of crime.

10. The applicant is working as driver in Maharashtra State Road Transport Corporation. There is no likelihood of his absconding. When inquired, learned counsel for the applicant submits that there are no criminal antecedents. The charge-sheet has been filed. It will take time to commence and conclude the trial. Nothing is to be recovered from the applicant. The child was produced before the Child Welfare Committee and the Committee has handed over the child to the original mother. Thus, no purpose will be served by keeping the

applicant behind the bars. The interest of prosecution could be protected by putting the applicant to appropriate terms.

11. The observations made in this order are prima facie in nature and are made for deciding the present application only. The learned Judge, who is seisin of the of the trial, shall not get influenced with the above observations.

12. Resultantly, following order is passed.

ORDER

(i) The application is allowed.

(ii) Applicant-Jitendra s/o Jaichand Jambhulkar, be released on bail, in Crime No.639/2022, registered with Police Station, Kalamna for the offences punishable under Sections 363, 369, 370, 34 and 120B of the Indian Penal Code and Sections 75, 81 and 84 of the Juvenile Justice (Care and Protection of Children) Act on he furnishing P.R. Bond in the sum of Rs.50,000/- with one solvent surety in the like amount.

(iii) The applicant shall, at the time of execution of bond, furnish his address and telephone/mobile number(s) to the Investigating Officer and the Court concerned and shall not change the residence till the final disposal of the case.

(iv) The applicant shall regularly attend the court and cooperate the learned trial Court to complete the trial for the above offences. The applicant shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.

(v) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or any Police Officer.

(vi) The Applicant shall maintain law and order.

(vii) In case of breach of any conditions, the learned trial court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.

The application is disposed of in the above terms.

(Anil L. Pansare, J.)

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