

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.916 OF 2024

Samadhan Kewalrao Jagtap ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr. Milan Desai i/b. Mr. Troy Patel, for the Applicant.
Mr. B.V. Holambe-Patil, APP, for the Respondent/State.
Mr. S.R. Salunkhe, PSI, Kurar police station.

CORAM : N. J. JAMADAR, J.
DATE : MARCH 05, 2024

P.C.:

1. Heard the learned counsel for the applicant and the learned APP for the State.
2. The applicant who is arraigned in C.R. No. 584 of 2023 registered with Kurar police station for the offences punishable under sections 363 and 370 read with 34 of Indian Penal Code, 1860 seeks to be enlarged on bail.
3. The first informant stays on the footpath below Times of India bridge, Malad (E), Mumbai along with his family consisting of wife, a son and two daughters. On the night intervening 25th and 26th September, 2023 when the first informant woke up during midnight, the younger daughter, who was 2 years and 3 months of age, was found missing. The first informant thus lodged a report of kidnapping.
4. At about 6.00 pm on 26th September, 2023 the said girl child

was found at Dadar railway station. Sujata Dabade, a lady police constable attached to Dadar Railway station stated that a person who identified himself as Irfan Khan (accused No. 1) had brought the said child to Dadar police station and asserted the he had found the child wandering on the railway platform.

5. The investigation revealed that the said co-accused and the applicant, were involved in trafficking. The applicant came to be apprehended. In the personal search of the applicant, a mobile phone handset was found. The transcript of the conversation between the applicant and the co-accused Irfan indicate that the co-accused Irfan had offered to sell the said child to the applicant.

6. The prosecution alleges during the course of investigation, it further transpired that the applicant has been indulging in offences of child trafficking. A statement of Shahana Yusuf was pressed into service in support of the allegations that, few months prior to the occurrence in question, the applicant had facilitated the sale of two small children from the persons who were the residents of Gujrat and Aurangabad.

7. The learned counsel for the applicant submitted that there is no material to connect the applicant with the alleged offence of kidnapping and child trafficking. The statement of WPC indicates that the co-accused Irfan Shaikh had brought the said child to the

police station.

8. The learned APP resisted the prayer for bail. Reliance was placed on transcript, which according to learned APP, indicates that the applicant was involved in the offence of child trafficking.

9. I have perused the material on record. The applicant is sought to be roped in on the basis of transcript of Whatsapp conversation between the applicant and the co-accused, and the statement of Shahana Yusuf. The transcript of the conversation does not indicate that the applicant had either kidnapped the child or that the child was found in the custody of the applicant. On the contrary, the co-accused Irfan Shaikh had stated that the father of the child was with the said co-accused.

10. In the circumstances, there is no prima facie material to establish the nexus between the applicant and the alleged incident of kidnapping of the child. The statement of Shahana Yusuf indicates that the applicant had allegedly facilitated the sale of the child to childless couples. The statement of Shahana Yusuf does not have any incriminating tendency qua the incident in question.

11. In any event, investigation is complete. Charge sheet has been lodged. Further detention of the applicant in the backdrop of the nature of the accusations, does not seem warranted.

12. I am, therefore, impelled to exercise the discretion in favour of

the applicant.

Hence, the following order.

ORDER

- 1] The application stands allowed.
- 2] The applicant be released on bail in C.R. No. 584 of 2023 registered with Kurar police station, on furnishing a P.R. Bond of Rs. 30,000/- with one or more sureties in the like amount.
- 3] The applicant shall mark his presence at Kurar police station on the first Monday of every alternate month between 11 am to 1 pm till conclusion of the trial.
- 4] The applicant shall not indulge in any identical offence for which he has been arraigned in this crime.
- 5] The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.
- 6] The applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.
- 7] The applicant shall regularly attend the proceedings before the jurisdictional Court.
- 8] By way of abundant caution, it is clarified that the

observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

(N. J. JAMADAR, J.)