

BHALCHANDRA
GOPAL DUSANE

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2255 OF 2023

Rahul Ravindra Wani ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Kuldeep U. Nikam a/w Mr. Om N. Latpate, Advocates for the Applicant.

Mr. P.H. Gaikwad, APP for the Respondent-State.

P.S.I., S.A. Daule, Sinnar Police Station, Nashik Rural, present.

CORAM : MADHAV J. JAMDAR, J.

DATED : 2nd February 2024

P. C.

1. Heard Mr. Nikam, learned Counsel appearing for the Applicant and Mr. Gaikwad, learned APP appearing for the Respondent-State.
2. This regular Bail Application is preferred under Section 439 of the *Code of Criminal Procedure, 1973*. The relevant details are as follows:-

1.	C. R. No.	09 of 2023
2.	Date of Registration of F.I.R.	5 th January 2023
3.	Name of Police Station	Sinnar Police Station, Dist. Nashik
4.	Section/s invoked	363, 364-A, 387 r/w 34 of <i>Indian Penal Code, 1860</i>
5.	Date of incident	5 th January 2023
6.	Date of arrest	6 th January 2023
7.	Date of filing Charge-sheet	4 th April 2023

3. As per the prosecution case, as reflected in the F.I.R. and in the investigation papers, the victim returned from her school at about 5.15 p.m. and went to the ground for playing at 6.00 p.m. with his friends. After that when he was returning to his house at about 7.00 p.m., two persons lifted him and put in a car and that a third person was driving the car. Thereafter the victim was taken to different locations and ultimately at about 10.00 p.m., he was brought outside the farm house belonging to the family of the present Applicant. The present Applicant is the Accused No.4. As per the prosecution case, Accused Nos.1, 2 and 3 have actually participated in the kidnapping in question and in making the ransom demand by a phone call to the mother of the victim. As far as the role of the present Applicant is concerned, he received a phone call from Accused No.1 at about 10.07 p.m. and the Accused Nos.1 to 3 brought the said car outside the farm house and the Applicant questioned Accused Nos.1 to 3 about their arrival near his farm house and told them to immediately leave the same. The prosecution case further shows that Rushikesh Annasaheb Wani i.e. cousin of the present Applicant has told Accused Nos.1 to 3 that the said boy should immediately be handed over to his parents or else he would inform the Police about the same. Accordingly at about 12.30 hrs. in the midnight, the victim went to his parents place.

4. Mr. Nikam, learned Counsel appearing for the Applicant submitted that there is no role attributed to the present Applicant in the actual crime. He submitted that at the most, the offence may be of harbouring the Accused Nos.1 to 3 and that the same is a bailable offence. To substantiate the said contention, he has relied on the Order of a learned Single Judge of this Court in the case of *Mahendra Tanwade v. State of Goa*¹. He submitted that the actual offence had occurred approximately between 7.15 p.m. to 7.30 p.m. when the victim was kidnapped in a car and at about 7.30 p.m. when phone call was made by Accused No.1 to the mother of the victim-boy. He submitted that at about 10.07 p.m., the Applicant received a phone call from Accused No.1 and thereafter Accused Nos.1 to 3 arrived near the said farm house. Thereafter Accused Nos.1 to 3 within few minutes left the said farm house along with the victim boy. He submitted that there is no incriminating material on record against the Applicant.

5. On the other hand, Mr. Gaikwad, learned APP pointed out statement of a witness – Rushikesh Wani and submitted that the intention was to keep the victim boy at the said farm house and therefore bail be not granted.

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6. Perusal of the record shows that the offence was committed on 5th January 2023. The Applicant has been arrested on 6th January 2023. The Charge-sheet has been filed on 4th April 2023. As per the Charge-sheet, there are 46 witnesses to be examined by the Prosecution. Mr. Nikam, learned Counsel appearing for the Applicant submitted that only the Charge has been framed and that trial has not commenced yet. Since as per the Charge-sheet, there are 46 witnesses proposed to be examined by the prosecution, therefore, considerable time will be required for conclusion of the trial.

7. As far as merits are concerned, even if the case of the prosecution is accepted as it is, prima facie the offence of kidnapping was committed at about 7.15 p.m. to 7.30 pm. on 5th January 2023 and the demand was made at 7.30 p.m.. The role of the Applicant starts at about 10.07 p.m. on 5th January 2023 when he received a phone call from Accused No.1. There is nothing on record to show that the Applicant is involved in the crime from 7.15 p.m. onwards or even in the conspiracy to commit the offence in question. Even if the prosecution case is accepted as it is, the Accused Nos. 1 to 3 brought the victim in the said car outside the family farm house of the Applicant. The said car was parked at this location for a few minutes and the Applicant told Accused No.1-Roshan Nandu Chavan that he should not have brought the said car to the said place.

8. Therefore, the material on record shows that the Applicant may not be involved in the actual commission of the offence of kidnapping and that he may at the most be involved in harbouring the Accused Nos.1 to 3 alongwith the child. It is further significant to note that even in the test identification parade too, the victim-boy has not identified the present Applicant. The victim-boy has not attributed any role to the present Applicant. The trial is likely to take a considerably long time.

9. Mr. Nikam, learned Counsel appearing for the Applicant states that as several witnesses are residing in the same locality as that of the Applicant, the Applicant will therefore not reside within Nashik district and that the Applicant will reside at the house of sister of brother-in-law i.e. at C/o. Mr. Balasaheb Raghuji Thorat, Dharangaon, Taluka-Kopargaon, District-Ahmednagar.

10. The Applicant does not appear to be at risk of flight.

11. The Applicant does not have any criminal antecedents.

12. Accordingly, the Applicant can be enlarged on bail by imposing conditions. In view thereof, the following order:-

ORDER

(a) The Applicant-Rahul Ravindra Wani be released on bail in connection with C. R. No.09 of 2023 registered with the Sinnar Police Station, Taluka-Sinnar, District-Nashik on

his furnishing P. R. Bond of Rs.25,000/- with one or two solvent sureties in the like amount.

(b) The Applicant shall not enter the Nashik District after being released on bail, except for reporting to the Investigating Officer, if called and for attending the trial.

(c) On being released on bail, the Applicant shall furnish his cell phone number and residential address to the Investigating Officer and shall keep the same updated, in case of any change thereto.

(d) The Applicant shall report to the Kopergaon Police Station, Taluka-Kopergaon, District-Ahmednagar once every week, on every Sunday between 11.00 a.m. and 1.00 p.m. till the conclusion of the trial. The Police Inspector of Kopergaon Police Station, Taluka-Kopergaon, District-Ahmednagar to communicate details thereof to the Investigating Officer.

(e) The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade such a person from disclosing the facts to the Court or to any Police personnel.

(f) The Applicant shall not tamper with the evidence and shall not contact or influence the Complainant or any witnesses in any manner.

(g) The Applicant shall attend the trial regularly. The Applicant shall co-operate with the Trial Court and shall not seek unnecessary adjournments thereat.

(h) The Applicant shall surrender his passport, if any, to the Investigating Officer.

13. The Bail Application is disposed of accordingly.

14. It is clarified that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this Order.

[MADHAV J. JAMDAR, J.]