

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2417 OF 2023

Aniket Samdhur	...Applicant
<i>Versus</i>	
The State of Maharashtra	...Respondent

WITH
INTERIM APPLICATION NO.3894 OF 2023
IN
CRIMINAL BAIL APPLICATION NO.2417 OF 2023

Gajanan Shrikant Ogale	...Applicant
<i>Versus</i>	
The State of Maharashtra	...Respondent

Ms. Sana Raees Khan a/w. Mr. Aditya Parmar, Mr. Abhijeet Singh and Mr. Aniket Pardeshi, Advocates, for the Applicant.
Mr. Prasanna P. Malshe, APP, for the Respondent-State.
Mr. Aniket Nikam i/b. Mr. Amit Icham, Advocates, for the Intervenor in IA/3894/2023.
Mr. Atul Shete, A.P.I., Pimpri Police Station present.

CORAM: MADHAV J. JAMDAR, J.
DATED : 18th MARCH 2024

PC:-

1. Heard Ms. Khan, learned Counsel for the Applicant and Mr. Malshe, learned APP for the Respondent-State and Mr. Nikam, learned Counsel for the Intervenor.

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.	765 of 2022
2.	Date of registration of F.I.R.	09/09/2022
3.	Name of Police Station	Pimpri, District-Pune
4.	Section/s invoked	302, 364, 364(A), 120-B, 201, 363, 34 of the I.P.C., 1860
5.	Date of incident	08/09/2022
6.	Date of arrest	10/09/2022
7.	Date of filing of Charge-sheet	06/12/2022

3. As per the prosecution case, the incident in question occurred on 8th September 2023. The Applicant who is Accused No.2 and Accused No.1-Manthan Bhosale in collusion with each other, hatched a criminal conspiracy to kidnap the Informant's son-Aditya Gajanan Ogale, aged 7 years, to demand a ransom and to kill him. Accordingly, they kidnapped Aditya Ogale in a I-10 car bearing No. MH-14 FM-4188 of Accused No.1-Manthan, and they killed him. The mortal remains of the deceased Aditya Ogale were put in a plastic bag and kept in the boot of a car and then were hidden on the terrace of an abandoned building. The Applicant

and co-Accused demanded Rs.20 Crore by WhatsApp and destroyed the evidence.

4. It is the submission of Ms. Khan, learned Counsel for the Applicant that the Applicant is not named in the F.I.R. The Applicant is a 21 years old man with no criminal antecedents. He is enrolled as a student. There is a delay of more than 6 hours in lodging the F.I.R.. She submitted that initially the F.I.R. was lodged only under Section 363 of the *Indian Penal Code, 1860* and the Applicant was arrested only on suspicion. She submitted that the entire case is based on circumstantial evidence. She submitted that motive, if any, is attributed to Accused No.1 as the Accused No.1 was in relationship with the victim's elder sister and the Applicant has been implicated merely because he is a friend of the Accused No.1. It is her submission that the Applicant is not visible in the C.C.T.V. footage of the car and that the mortal remains have been recovered at the instance of the Accused No.1. She therefore, submitted that this is a case of circumstantial evidence and that there is no incriminating material against the Applicant. Therefore, bail be granted.

5. On the other hand, Mr. Malshe, learned APP for the Applicant and Mr. Nikam, learned Counsel for the Intervenor submitted that there is sufficient material to implicate the Applicant. Both of them pointed out statements of various witnesses and submitted that there are strong circumstances against the present Applicant. They pointed out the supplementary statement dated 10th September 2023 of the Informant-Gajanan Shrikant Ogale who is the father of the victim, the panchnama regarding C.C.T.V. footage (Page-304), statement of Pradeep Rajbhar (Page-111), Test Identification Parade memorandum (Pages-418 to 420), statement of Sagar Shivaji Panmand (Page-109), statement of Shafidmiya Pirmiya Begampalli (Page-166), Arnold Jonny (Page-121), Aditya Anil Eghe (Page-123), Sanket Pravin Pophale (Page-399), recovery panchnama (Page-162). On the basis of above statement of various witnesses and the material collected during the investigation, it is the contention of Mr. Malshe, learned APP for the Respondent-State and Mr. Nikam, learned Counsel for the Intervenor that there is following material against the present Applicant:-

(a) The deceased Aditya a 7 year old boy was abducted on 08/09/2022 at about 7.15 pm from the precincts of Green Field Society. The complainant (Pg. 31) states that he was informed by one Tanmay that the deceased was seen to be talking to a boy who was wearing black cloths and was wearing a mask. The CCTV Footage at Pg. 304 corroborates this fact wherein the Applicant is seen talking with the deceased moments before his abduction.

(b) The statement of the complainant (Pg. 31) refers to some extortion messages received by the complainant on his mobile from the WhatsApp No. 7068421681. The said number is in the name of one Pradip Rajbhar. The said Pradip Rajbhar in his statement (Pg. 111) mentions that 2 unknown persons had met him on 26/08/2022 and one of them had taken his mobile for some time while the other person engaged the said witness in a conversation. This witness further states that after some time the mobile of this witness was returned back. It is important to note that this witness identified the Applicant and the co-accused in the TIP (Pg. 419).

(c) The investigation reveals that the accused persons had downloaded whatsapp in their old mobile handset with the help of Hotspot. Further, the accused persons took the mobile of Pradip Rajbhar under the pretext of calling their friend and at that time the accused persons used the mobile number of this witness in the already downloaded whatsapp and used the OTP to activate the whatsapp on that mobile number. Thereafter they deleted the said OTP. The whatsapp of this number (the number which was in the name of Pradip Rajbhar) was used to send extortion messages to the father of the deceased. (Pg. 201 – Seizure Panchanama)

(d) Further, the statement of witness at Pg. 109 reveals that the aforesaid WhatsApp number was registered in a Vivo Company Y 21 L mobile handset on 26/8/2022. The investigation revealed that the IP address of the aforesaid Vivo Company mobile belonged to one Asha Kiran Bhosale i.e., mother of accused no. 1. Further, u/s 27 of the Evidence Act the aforesaid Mobile handset is recovered at the behest of Accused No. 1 (Pg. 135).

- (e) Also u/s 27 Evidence Act, the Accused No. 1 showed the spot where the body of the deceased was disposed off. Pursuant thereto the body was found dumped in a plastic goni on the terrace of a dilapidated building. (Pg. 68).
- (f) Investigation also revealed that the accused no. 1 Manthan Bhosale was making a farce of helping in the search efforts of the deceased boy and in that process it could be seen that the Accused No. 1 was misleading the people who were involved in the rescue efforts. (Pg. 128)
- (g) Witness-Shafid Miya Pirmiya Begampalli (Pg. 166) states that on 01/09/2022, two persons had come to his workshop for the purpose of putting the black film on the glasses of their I -10 car. This witness has identified the Applicant in TIP. (Pg. 419). The relevance of this witness is that the accused person with a prior planning had put black screen on the glasses of their car so that nobody could see who is sitting in the car. The deceased was taken in this car after he was abducted.

- (h) Witness Arnold (Pg. 121) states that at about 6.45 pm on 08/09/2022 he had seen the deceased in the company of the Applicant near the I-10 car which was having the black film on the glasses.
- (i) Witness Aditya Dighe states that on 05/09/2022 the Applicant purchased a plastic goni for Rs. 20 from him. (Pg. 123). This witness also identifies the said plastic goni which was shown to him by the police. The body of the deceased was found dumped in this very plastic goni (*recovery statement of the accused no. 1- Pg. 68 and the seizure panchanama – Pg. 101*). The fact the Applicant bought the plastic goni few days before the incident again shows the prior planning between the accused persons.
- (j) Witness at (Pg. 399) Sanket Phopade says that on 08/09/2022 he saw 2 unknown persons carrying a plastic sack towards a dilapidated building opposite metal junction. The body of the deceased is eventually found on the terrace of the said dilapidated building in a plastic sack. Further this witness has identified the applicant in TIP (Pg. 419).

(k) Under section 27 of Evidence Act the Applicant has shown the spot from where the deceased was kidnapped and also the route taken thereafter (Pg. 162).

On the basis of above circumstances, it is the contention of Mr. Malshe, learned APP and Mr. Nikam, learned Counsel for the Informant/Intervenor that there are very strong circumstances against the Applicant. They submitted that in the incident in question Aditya, a boy of 7 years was kidnapped to demand a ransom and he has been killed by the Applicant and the Accused No.1. They submitted that the crime is committed with complete planning and therefore Bail Application be rejected.

6. Mr. Malshe, learned APP for the Respondent-State submitted that apart from the above aspects, in fact, the Applicant is of a criminal nature and that he should not be granted bail. He submitted that the Applicant is also co-Accused in the offence bearing C.R. No.857 dated 28th December 2023 registered at Yerwada Police Station, Pune City. He submitted that the Informant-Shrikant Kanif More, who is a Police Constable of jail, is an eye-witness to the incident who has lodged the said F.I.R.. He

submitted that another under-trial prisoner namely Mahesh Chandanshive has been assaulted by one Mahesh Mane and the present Applicant and he succumbed to the injuries and that they have committed offences punishable under Sections 302, 323, r/w 34 of the *Indian Penal Code, 1860* and also punishable under Sections 4 and 25 of the *Arms Act, 1959* and Section 45 of the *Prisons Act, 1894*. He therefore submitted that the Bail Application be rejected.

7. A perusal of the statements of various witnesses pointed out by the learned APP and the learned Counsel appearing for the Intervenor shows that there is strong incriminating material against the present Applicant. The offence is very serious and *prima facie* appears to have been committed with premeditation. Apart from that, the Applicant has a criminal tendency. He has committed another offence of murder within the jail.

8. The Supreme Court has, in the case of *Deepak Yadav vs. State of U.P.*¹, reiterated the factors to be taken into consideration

¹ (2022) 8 SCC 559

while adjudicating an Application for granting bail. Relevant paragraph No.22 reads as under:-

“22. As reiterated by the two-Judge Bench of this Court in Prasanta Kumar Sarkar v. Ashis Chatterjee [Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765] , it is well-settled that the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail.”

9. If the above parameters are applied to the present case, it is clear that this is not a fit case to grant bail.

10. Accordingly, the Bail Application is rejected.

11. In view of the disposal of the Bail Application, nothing survives in the Interim Application and the same is disposed of as such.

[MADHAV J. JAMDAR, J.]