

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3385 OF 2023

Nikhil Dattatray Joshi ...Applicant

vs.

The State of Maharashtra ...Respondent

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WITH

BAIL APPLICATION NO.281 OF 2024

Sagar Raju Chinchole ...Applicant

vs.

The State of Maharashtra ...Respondent

Mr. Raviraj Parmane (through VC) a/w. Mr. Shubham Singh, for the Applicant in BA No. 3385 of 2023.

Mr. Meghashyam Kocharekar, for the Applicant in BA No. 281 of 2024.

Mr. Prashant Jadhav, APP, for the Respondent No. 1/State.

CORAM : N. J. JAMADAR, J.

DATE : APRIL 03, 2024

P.C.:

1. Heard the learned counsel for the applicants and the learned APP for the State.

2. The applicants who are arraigned in C.R. No. 56 of 2023 registered with Nijampura police station for the offences punishable under sections 120-B, 364A, 341, 342, 384, 385, 387, 170, 171, 420, 467, 468, 469, 471, 201 read with 34 of Indian Penal Code, 1860 seek to be enlarged on bail.

3. The first informant deals in the business of Herbal products under the name and style of 'Panchratna'. On 27th January, 2023 at

about 10.30 pm while the first informant was on his way home, a white 'Ertiga' car intercepted him. Two persons alighted from the said car and called the informant by his name. They represented themselves to be police. The first informant was forced into the car. There were five persons in the car. They started to abuse, assault and threaten the first informant. He was threatened that he would be implicated in a prosecution. Initially a ransom of Rs. 10 lakhs was demanded. Eventually, the first informant agreed to pay Rs. 2 lakhs in cash and a sum of Rs. 3 lakhs after 8 days. At about 3.45 am after the brother in law of the first informant brought cash amount of Rs. 2 lakhs, the first informant was released amidst threat that if he reported the matter to anybody, he would be killed.

4. On 4th February, 2023 an unknown person again called the first informant and demanded the balance ransom of Rs. 3 lakhs. The first informant lodged a complaint on 6th February, 2023.

5. On 11th February, 2023 upon being informed that the suspects in C.R. No. 56 of 2023 were to come near Bhiwandi in a 'Wagon R' car, the police conducted a surveillance. The applicants along with co-accused Sanjay Mhatre and Kailas Patange were apprehended. Incriminating articles including forged identity card, police caps and cane were recovered from the car especially from the possession of co-accused Kailas Patange.

6. During the course of investigation, the applicants made disclosure leading to recovery of cash amount of Rs. 7,000/- and Rs, 4,500/- purportedly a part of the amount allegedly extorted from the first informant.

7. Mr. Kocharekar, the learned counsel for the applicant Sagar Chinchole (accused No.4) submitted that the applicant has been apprehended on the basis of suspicion. The first informant had not known the persons who allegedly abducted him and demanded ransom. The test identification parade was held on 29th March, 2023. Though the memorandum of test identification parade records that the first informant identified the applicant, yet no specific role has been attributed to the applicant. The recovery of a sum of Rs. 7,000/- pursuant to the discovery allegedly made by the applicant is too fragile a circumstance to rope in the applicant. As the applicant is in custody since 11th February, 2023 and the trial is unlikely to conclude in near future, the applicant be enlarged on bail.

8. Mr. Parmane, the learned counsel for the applicant Nikhil Joshi (accused No.3) supplemented the submissions of Mr. Parmane. It was submitted that only a sum of Rs. 4,500/- has been allegedly recovered pursuant to the discovery made by the applicant. In fact, the role attributed to the applicant is that of being

the driver of the 'Ertiga' car. Inviting attention of the Court to the statement of Suresh Walke, the owner of the 'Ertiga' car which was allegedly used to abduct the first informant, Mr. Parmane submitted that Mr. Suresh Walke has stated that the applicant used to take the said car on hire on regular basis to ferry passengers. Therefore, that cannot constitute an incriminating circumstance.

9. As against this, Mr. Jadhav, learned APP stoutly opposed the prayer for bail. It was submitted that a clear case of kidnapping for ransom is made out. The applicants and the co-accused were apprehended on 11th February, 2023 along with incriminating articles which substantiate the accusation that the applicants and the co-accused had impersonated themselves as police personnel. Emphasis was laid on the arrest panchanama which records the articles found from the possession of the applicants and the co-accused. Reliance was also placed on the memorandum of test identification parade which records that the first informant identified the applicants.

10. I have carefully perused the material on record and considered submissions canvassed across the bar. The fate of the prosecution case apparently hinges on the identification of the persons who had allegedly abducted the first informant. The first informant alleged that he was forced to board the 'Ertiga' car. The

identity of the 'Ertiga' car would also assume significance.

11. I have perused statement under section 164 and the FIR. The first informant clearly states that he did not note the number of the 'Ertiga' car. Prima facie, the identity of the car in which the applicant was allegedly abducted is in the arena of uncertainty. Secondly, the identity of the applicants as the persons who abducted the first informant is sought to be substantiated on the basis of identification in test identification parade. The second circumstance pressed into service is the recovery of the cash amount of Rs. 7,000/- and Rs. 4,500/- from the applicants Sagar Chincholi (accused No. 4) and Nikhil Joshi (accused No. 3), respectively.

12. I find substance in the submissions on behalf of the applicants that in the absence of any other evidence to connect the applicants with the alleged offences, the circumstance of identification in the test identification parade alone, may not be of decisive significance. Likewise, the recovery of the amounts of Rs. 7,000/- and Rs. 4,500/- pursuant to the disclosure statement made by the applicants by its very nature appears to be not sturdy enough to bear the weight of accusation. The statement of the owner of the car which was allegedly hired by Nikhil Joshi (accused No. 3) is compatible with the innocence of the applicant Nikhil as well.

13. In the aforesaid view of the matter, the pivotal question as to whether the applicants were the persons who abducted the first informant would be a matter for evidence and trial. Investigation seems to be complete. Charge-sheet has been lodged. The applicants have been in custody for more than a year. Further detention of the applicants, therefore, does not seem warranted. The applicants also appear to have roots in society. Possibility of tampering with evidence and fleeing away from justice appears remote.

14. I am, therefore, inclined to allow the applications.

Hence, the following order.

ORDER

1] The applications stand allowed.

2] The applicants be released on bail in C.R. No. 56 of 2023 registered with Nijampura police station, on furnishing a P.R. Bond of Rs. 30,000/- with one or more sureties in the like amount, each.

3] The applicants shall mark their presence at Nijampura police station on the first Monday of every month between 11 am to 1 pm for a period of three years or till conclusion of the trial whichever is earlier.

4] The applicants 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.

5] The applicants shall furnish their contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

6] The applicants shall regularly attend the proceedings before the jurisdictional Court.

7] 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.

Applications disposed.

(N. J. JAMADAR, J.)