

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3543 OF 2023

Mohammad Hanif Mohammad Iqbal Memon ...Applicant

vs.

The State of Maharashtra ...Respondent

Mr. Arif Khan a/w. Ms. Shilpa Sharma and Ms. Reema Swami, for
the Applicant.

Mr. S.R. Agarkar, APP, for the Respondent/State.

Mr. S.B. Ithape, PSI, Azad Maidan police station.

CORAM : N. J. JAMADAR, J.

DATE : APRIL 08, 2024

P.C.:

1. The applicant who is arraigned in C.R. No. 730 of 2022 registered with Azad Maidan police station for the offences punishable under sections 363, 370(1)(4) read with 34 of Indian Penal Code, 1860 and section 84 of the Juvenile Justice (Care and Protection of Children) Act, 2015 seeks to be enlarged on bail.

2. The indictment against the applicant and the co-accused is that on 26th October, 2022 between 1 to 3 am the applicant allegedly kidnapped the two month old daughter of the first informant from her lawful guardianship. The applicant's wife Afreen changed the clothes of the child and forwarded the photographs of the said child to the mobile phone of Santosh Dhumale, who attempted to sell the child to a childless couple. The applicant came to be arrested on 22nd October, 2022 along with co-accused Afreen (accused No. 2),

and Santosh Dhumale (accused No. 3). Post completion of investigation, charge sheet has been lodged.

3. Mr. Khan, the learned counsel for the applicant, submitted that even if the prosecution case is taken at par, the offence punishable under section 370 of the Penal Code cannot said to have been prima facie made out, as the child was not abducted for the purpose of exploitation. The offence punishable under section 363 of the Penal Code is bailable. The applicant suffers from abject poverty. In fact, the first informant had known the applicant as they all reside on the footpath. There was no intention to kidnap and sell the child, as alleged.

4. As against this, Mr. Agarkar, learned APP, submitted that the applicant was seen in the CCTV footage along with the child. The applicant was, in fact, seen in the CCTV while lifting away the child from the footpath. There is also material to show that the photograph of the child was shared by the co-accused. Thus, a very strong prima facie case is made out against the applicant. Therefore, the applicant does not deserve to be enlarged on bail.

5. I have perused the report under section 173 of the Court and the material on record.

6. Prima facie there is material to show that the applicant had taken away the child. It further appears that the photograph of the

child was shared by accused Nos. 2 and 3. However, in the circumstances of the case, whether an offence punishable under section 370 of the Penal Code can be said to have been made out appears to be debatable as it would be a matter for trial as to whether the child was kidnapped for the purpose of exploitation. The applicant was apprehended purportedly along with the child on the day of the alleged kidnapping. It does not appear that the applicant had sold the child to any person. At best, a case of attempt to sell the child can be said to have been prima facie made out.

7. The material on record does not indicate that the applicant has antecedents. The applicant has been in custody since more than 18 months. It is unlikely that the trial can be concluded within a reasonable period. Thus having regard to the nature of accusation and the material pressed into service against the applicant, I am persuaded to exercise discretion in favour of the applicant.

Hence, the following order.

ORDER

1] The application stands allowed.

2] The applicant Mohammad Hanif Mohammad Iqbal Memon be released on bail in C.R. No. 730 of 2022 registered with Azad Maidan 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 Azad Maidan 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 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.

5] 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.

6] The applicant 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.

Application disposed.

(N. J. JAMADAR, J.)