

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.4273 OF 2023

Rustom Mustafa Shah

...Applicant

vs.

The State of Maharashtra

...Respondent

VISHAL
SUBHASH
PAREKAR

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Mr. Sandeep Sherkhane, for the Applicant.

Mr. R.M. Pethe, APP, for the Respondent/State.

Mr. Utkarsh Vaze, API, DCB CID, Unit, 9 Bandra.

CORAM : N. J. JAMADAR, J.

DATE : APRIL 02, 2024

P.C.:

1. The applicant who is arraigned in C.R. No. 51 of 2023 registered with DCB CID, Bandra for the offences punishable under sections 386, 364A, 323, 504, 506(ii) and 170 read with 34 of Indian Penal Code, 1860 seeks to be enlarged on bail.

2. The gravamen of indictment against the applicant and the co-accused is that on 30th June, 2023 at about 8.40 pm while the first informant and his friend had been to Therapy Hotel, one of the co-accused took the first informant away representing himself to be an officer of the Anti Narcotic Cell, Ghatkopar and stated that the first informant had committed an offence of drug trafficking. Despite resistance of the friend of the first informant, the co-accused made the first informant board the auto rickshaw. There were two auto rickshaws. The applicant was driving one of those auto rickshaws.

The first informant was pushed into one auto rickshaw. Two of the co-accused sat beside the first informant. They threatened, abused and assaulted the first informant and made him handover his mobile phone. By making him operate his Gpay account, a sum of Rs. 5,30,000/- was extorted from the first informant.

3. In the process, the applicant and the co-accused moved the first informant around in the auto rickshaw the entire night intervening 30th June and 1st July, 2023. The first informant was intermittently assaulted, abused and even taken to his home by giving threats of prosecution. The first informant was made to handover two cheques. An effort was also made to withdraw an amount of Rs. 20 lakhs from the account of the applicant by tendering the cheques. As the said effort did not materialize, the first informant was left at Marole-Andheri.

4. On the next day, two of the co-accused visited the house of the applicant and threatened the mother of the applicant. After realizing that the co-accused impersonated themselves as police, the first informant lodged the report.

5. The applicant and the co-accused came to be arrested. During the course of investigation, test identification parade was held. The applicant as well as the co-accused were identified by the first informant.

6. Mr. Sandeep Sherkhane, the learned counsel for the applicant submitted that the role attributed to the applicant is that of being a driver of one of the auto rickshaws. The first informant has nowhere alleged that the applicant either abused, assaulted or threatened the first informant. The co-accused had hired the auto rickshaw of the applicant. Thus, having regard to the role attributed to the applicant and the period of incarceration as well as the fact that the applicant is suffering from HIV, the applicant be enlarged on bail.

7. As against this, Mr. Pethe, the learned APP opposed the prayer for bail. It was submitted that the applicant was very much privy to the offence of kidnapping for ransom. Taking the Court through the allegations in the FIR and the manner in which the first informant was made to transfer the amount by operating the UPI account, by withdrawing the amount from ATM and also made to deliver the signed cheques, Mr. Pethe urged that the applicant and the co-accused extorted huge amount by putting the first informant in fear of false prosecution as well as death. Therefore, having regard to the gravity of the accusation, the applicant does not deserve to be enlarged on bail

8. I have carefully perused the material on record and considered the submissions canvassed across the bar.

9. I find substance in the submission of learned APP. It is not a case of carrying the co-accused as passenger in auto rickshaw from one destination to another, simplicitor. Prima facie, there is material to indicate that in pursuance of a well planned conspiracy, two auto rickshaws were kept ready and two persons in the uniform of auto rickshaw driver including the applicant, drove those auto rickshaws. The first informant has categorically asserted that immediately after making him board the auto rickshaw, the co-accused started to abuse, threaten and assault him. Initially he was taken to a place near Kokilaben Hospital, Versova. At that point of time, the applicant and two co-accused who were boarding the auto rickshaw of the applicant, came in the auto rickshaw, in which the first informant was sitting, and threatened that he would be prosecuted for drug trafficking and to save himself, he must pay the ransom. What accentuates the situation is the fact that the first informant was moved around throughout the night in the auto rickshaw and his mobile phone was used to transfer the amounts to the Gpay account of the associates of the co-accused. The money trail lends support to the claim of the first informant. Kidnapping for ransom disguised as police is a grave offence.

10. Evidently, the first informant had ample opportunity to note the features of the persons who kidnapped him as he was with them

for more than 12 hours. The identification of the applicant by the first informant, therefore, cannot be brushed aside, at this stage, as importable.

11. It is pertinent to note that the complicity of the applicant is prima facie borne out from the call data record which indicates that on the night of the occurrence and the following day, the applicant had been in touch with co-accused Diapk Jadhav, Sachin Malhotra, Dilip Munjalkar and Pankaj Pal. The frequency of the calls and that too in proximity to the alleged occurrence belies the contention on behalf of the applicant that his role was limited to that of driving the auto rickshaw, in which the co-accused allegedly traveled. A very strong prima facie case of kidnapping for ransom is made out against the applicant and the co-accused.

12. I am, therefore, not inclined to exercise the discretion in favour of the applicant.

Hence, the following order.

ORDER

1] The application stands rejected.

2] 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.)