

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 2535 OF 2024

SANTOSH
SUBHASH
KULKARNI

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Swapnil Bhairu Aavkirkar

...Applicant

Versus

State of Maharashtra

...Respondent

Mr. Vaibhav Gaikwad, for the Applicant.

Mr. Avinash Naik, APP for the State.

CORAM: N. J. JAMADAR, J.

DATED: 8th JULY, 2024

ORDER:-

1. Heard the learned Counsel for the parties.
2. The applicant, who is arraigned in C.R. No.283 of 2023 registered with MIDC Police Station, Mumbai, for the offences punishable under Sections 120B, 364(A), 323, 504, 506 and 398 of the Indian Penal Code, 1860 ("the Penal Code") and Section 37(1) read with Section 135 of the Mumbai Police Act, 1951, has preferred this application to enlarge him on bail.
3. Anupkumar Shetty (the victim) was the lessee of hotel Veera Residency. Mahaveer Yadav (the first informant) was working as a Receptionist in the said hotel. In the month of July, 2022 the victim had given the said hotel to Vijay Aavkirkar (A1) for conducting the business therein. In the month of

December, 2022 the victim took back the said hotel from Vijay (A1). In connection with the said transaction, Vijay (A1) claimed a certain amount from the victim.

4. On 24th April, 2024 at about 3.15 pm., Vijay (A1) accompanied by his four unknown associates had come to hotel Veera Residency and inquired about the victim. After the friends of the victim left the hotel at 5.00 pm, Vijay (A1) entered into the cabin of the victim and snatched away the mobile phone of the victim. Two of the unknown associates of Vijay (A1) also barged into the cabin and started to abuse and assault the victim. One of them took out a pistol and fired in the air. The other snatched away the leather bag which the victim was carrying. When the other staff of the hotel came thereat, Vijay (A1) and his associates restrained them by pointing weapons and took away the victim with them. Vijay (A1) was armed with a knife and the three associates of Vijay (A1) had pistols. Eventually, Vijay (A1) came to be apprehended along with the applicant when they had come to collect the ransom.

5. Mr. Gaikawad, the learned Counsel for the applicant, submitted that the applicant has been roped in for being the brother of Vijay (A1). No role of abduction or threatening the victim has been attributed to the applicant. The applicant

allegedly accompanied Vijay (A1), for a while, when the victim was abducted.

6. The learned Counsel for the applicant submitted that the aforesaid role attributed to the applicant is not borne out by the material on record. In the Test Identification Parade, the first informant did not identify the applicant. Nor did the victim Anupkumar Shetty identify the applicant in the Test Identification Parade. Therefore, the applicant also deserves the same dispensation as has been extended to Chandrakant Aavkirkar (A2).

7. The learned APP resisted the prayer for bail. It was submitted that the statement of Parminder Singh Arora indicates that the applicant was apprehended alongwith Vijay (A1) while they had come to collect the ransom amount.

8. While releasing Chandrakant (A2), to whom the very same role was attributed, this Court had observed, *inter alia*, as under:

“8. Evidently, the FIR was lodged against Vijay Awakirkar (accused No. 1) and his unknown associates. The first informant as well as the victim had described the features of those unknown associates of Vijay Awakirkar (accused No. 1). However, the memorandum of test identification parade indicates that neither the first informant, nor the victim, nor another witness, Sufandani Lashkar, identified the applicant as one of the associates of Vijay Awakirkar (accused No. 1) in the test identification parade. Prima facie, there is no material to establish the identity of the applicant as one of the

associates of Vijay Awakirkar (accused No. 1). Nor anything could be recovered at the instance of the applicant to connect him with the alleged offences.

9. It is imperative to note that the pistols, which were found in possession of the kidnappers, did not turn out to be firearms but toy guns. Nor the knife which was allegedly used by Vijay Awakirkar (accused No. 1) satisfied the description of the 'arms' under the Arms Act, 1959. Therefore, the charge for the offences punishable under Arms Act, 1959 was dropped.

10. Prima facie, it appears that there was a commercial transaction between Vijay Awakirkar (accused No. 1) and the victim. The victim was allegedly abducted to recover the amount which the victim allegedly owed to Vijay Awakirkar (accused No. 1).

11. In these circumstances, in the absence of any other material to connect the applicant with the alleged offences, especially in the backdrop of the fact that neither the victim, nor any of the alleged eye witnesses identified the applicant in the test identification parade, a prima facie case for exercise of discretion is made out. The applicant appears to have roots in society. The antecedents of the applicant do not appear to be such as to disentitle him from the relief of bail."

9. Interestingly, the same role of the applicant being the person, who had accompanied Vijay (A1), while they were allegedly apprehended by the police, was attributed to Chandrakant (A2). Evidently, the first informant and Anupkumar Shetty, who was allegedly abducted, did not identify the applicant as one of the associates of Vijay (A1). It also does not appear that the Test Identification Parade was conducted to establish the identity of the applicant, by Parminder Singh.

10. In the aforesaid view of the matter, the fact that the applicant was one of the persons, who had boarded the car alongwith Vijay (A1) while the victim was being abducted, appears to be a matter for adjudication at the trial. In any event,

the role attributed to the applicant is that of boarding the car for a brief period. No overt act has been attributed to the applicant. Thus, the reasons which weighed with this Court in releasing Chandrakant (A2) govern the case of the applicant as well. I am, therefore, inclined to exercise discretion in favour of the applicant.

11. Hence the following order:

: O R D E R :

- (i) Application stands allowed.
- (ii) The applicant be released on bail in C.R. No.283 of 2023 registered with MIDC, Mumbai police station, on furnishing a P.R. Bond of Rs. 30,000/- with one or more sureties in the like amount.
- (iii) The applicant shall mark his presence at MIDC, Mumbai 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.
- (iv) 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.
- (v) 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.

- (vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.
- (vii) 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.]