

Ms. Aniketa Aher Sawant for Applicant.
Mr. Tanveer Khan, APP for Respondent - State.

CORAM : MANISH PITALE, J.
DATE : OCTOBER 01, 2024

Heard Ms. Sawant, learned counsel for the applicant and Mr.Khan, learned APP for the respondent-State.

2. The applicant has approached this Court seeking bail as he was arrested on 03.07.2015 in connection with FIR No.246 of 2015 registered with Rabale Police Station, Navi Mumbai, initially for offence under Section 363 of the Indian Penal Code, 1860 (IPC). Upon completion of investigation and filing of charge-sheet, the applicant is facing prosecution for offences under Sections 302, 201 and 363 of the IPC.

3. Initially, a missing person's complaint was lodged in the context of the eight year old niece of the applicant. The informant is the mother of the child. Upon investigation being conducted, the investigating authority zeroed in on the applicant as the person responsible for the child going missing. He was arrested on 03.07.2015 and it is at his behest that the body of the child was found. On the basis of the material that came on record during the course of investigation, including statements of various witnesses, the aforementioned offences were

registered against the applicant.

4. The learned counsel for the applicant submits that this is a case of circumstantial evidence and there is no eyewitness to the incident. It is submitted that the statements of witnesses, who claim to have last seen the applicant with the victim, cannot be said to be reliable as there are discrepancies in such statements. It is further submitted that the *panchanama* pertaining to the CCTV footage of a nearby toll *naka*, when compared with the statements given by the driver and conductor of the school bus, who dropped the victim child near her house, show that the presence of the applicant, at the time when the victim child was dropped by the school bus, can be said to be improbable. It is submitted that the chain of circumstances indicated by the prosecution in the present case is not complete and that in any case, each link of the chain of circumstances cannot be said to be sufficiently made out by the material on record.

5. Apart from the aforesaid submissions, it is submitted that the applicant has suffered incarceration for a long period of nine years and three months. The list of witnesses in the charge-sheet shows that the prosecution intends to examine 72 witnesses and only 30 witnesses have been examined so far. The applicant does not have any criminal antecedents. It is submitted that the applicant is suffering from brain tumor in respect of which, reliance is placed on a document at page 274 of the application. It is also submitted, on instructions, that recently, the applicant has undergone surgery for brain tumor and he is presently admitted in the ICU of J.J. Hospital. In such circumstances, it is submitted that this Court may consider allowing the bail application.

6. The learned APP, on the other hand, submits that there is enough material to support the last seen theory invoked by the prosecution against the applicant. He was known to the victim child, being her uncle,

and therefore, she accompanied him. The motive in the present case is said to be a dispute between the children, which led to dispute between the elders in the family. It is submitted that the prosecution has sufficient material to indicate that it is only the applicant, who can be held responsible for the incident in question. It is submitted that long incarceration, in itself, cannot be a ground to enlarge the applicant on bail as the maximum punishment in the present case can be upto imprisonment for life. It is also submitted that 30 witnesses are already examined and the prosecution may not examine all the 72 witnesses, thereby indicating that the trial may be completed within a reasonable period of time.

7. As regards the health condition of the applicant, it is submitted that appropriate instructions can be obtained.

8. This Court has considered the rival submissions in the light of the material placed on record. It is an admitted position that the applicant, having been arrested on 03.07.2015, he has already undergone incarceration for a long period of nine years and three months. The trial has commenced with about 30 witnesses having been examined, but the prosecution intends to examine further witnesses, which indicates that the trial may not be completed in the foreseeable future.

9. The present case is indeed a case of circumstantial evidence and the prosecution has invoked last seen theory against the applicant. There are witnesses, who have made statements as regards the applicant being seen with the victim on 29.06.2015, when she went missing. There is some substance in the contention raised on behalf of the applicant that the CCTV footage of the nearby *toll naka* does not clearly match up with the timing stated by the driver and the conductor of the school bus, which dropped the victim child near her house. Nonetheless, the aforesaid aspects of the matter would have to be thrashed out at the stage

of trial.

10. This Court is of the opinion that since the applicant does not have any criminal antecedents and the motive in the present case, according to the prosecution, appears to be some family dispute, it cannot be said that the applicant is a hardened criminal. In fact, he has already undergone incarceration for long period of nine years and three months with the trial still being conducted. Although in practical terms, the prosecution may not end up examining all the 72 witnesses, it can be said that there are still substantial number of witnesses to be examined by the prosecution.

11. The document on record at page 274 does indicate that the applicant is suffering from brain tumor. The learned counsel appearing for the applicant, on instructions, has made a responsible statement that recently, the applicant has undergone surgery in respect of the brain tumor and presently, he is said to be admitted in the ICU at J.J. Hospital. The health condition of the applicant is also a factor, required to be taken into consideration in the facts and circumstances of the present case.

12. Considering the aforesaid material, this Court is convinced that bail can be granted. Accordingly, the application is allowed in the following terms:-

- (A) The applicant shall be released on bail in connection with in connection with FIR No.246 of 2015 registered with Rabale Police Station, Navi Mumbai, on furnishing P.R. Bond of Rs.50,000/- with one or two sureties in the like amount to the satisfaction of the trial Court;
- (B) The applicant shall cooperate with the trial Court for expeditious disposal of the trial;
- (C) The applicant shall not tamper with the evidence of the

prosecution. He shall not influence the informant, witnesses or any other person concerned with the case;

- (D) Upon being released on bail, the applicant shall immediately, and in any case within a week, furnish the details of his active mobile number and residential address to the trial Court and update about the same, if there is any change.

13. Needless to say, violation of any of the aforesaid conditions would make the applicant liable to face proceedings for cancellation of bail. It is also clarified that the observations made in this order are limited to the question of grant of bail to the applicant in the present application and that the trial Court shall proceed further, without being influenced by the observations made in this order.

14. At this stage, the learned counsel for the applicant prays for cash security till the surety is furnished.

15. The applicant is permitted to furnish cash security of Rs.50,000/- for a period of four weeks.

16. The bail application stands disposed of accordingly.

(MANISH PITALE, J.)

Minal Parab