

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

***INTERIM APPLICATION NO.2227 OF 2024  
IN  
CRIMINAL APPEAL NO.249 OF 2023***

Mukesh Kamleshkumar Shukla

.... Applicant/  
Appellant

***Versus***

U.T. of Dadra and Nagar Haveli and Anr.

.... Respondents

.....

Mr.Amit Icham, Advocate for the Applicant/Appellant.

Ms.S.S. Kaushik, APP for Respondent – State.

.....

***CORAM : BHARATI DANGRE &  
MANJUSHA DESHPANDE, JJ.***

***DATED : 16<sup>th</sup> JULY 2024.***

**ORDER (PER : Manjusha Deshpande, J.)**

1           The applicant is convicted under Sections 394, 364A, 342 and 506 read with Section 34 of the Indian Penal Code (IPC) and is sentenced to undergo imprisonment for life with fine, *vide* the judgment and order of the learned Sessions Judge, Dadra and Nagar Haveli, Silvassa, in Sessions Case No.8 of 2017. The applicant has filed this application for suspension of sentence and enlargement on bail.

On perusal of evidence of P.W.1, it *prima facie*, indicates that there are material omissions and improvements in his testimony.

P.W.1 is a victim who had been abducted by the accused persons. According to him on 23<sup>rd</sup> January, 2017 at about 06:00 p.m., he left the factory owned by him in Innova car to reach at a factory owned by his uncle Shri.Mahesh Saraf. When he hardly travelled a distance of about 100 meters, one person aged about 25 to 30 years was approaching from the opposite side on a black colour Pulsar Motorcycle wearing a black helmet and he was driving the motorcycle in a zigzag manner and he had to stop his Innova car.

The motorcyclist came near him, and when he switched off the ignition of the car, the motorcyclist took out key. No sooner he came out from the car, he was caught hold by the motorcyclist.

At this moment, three persons who were hiding behind a tree came near the car. On realizing the situation, he offered the car and the vehicle to the three miscreants, and asked them to leave him alone but, they started assaulting him. Out of the three persons, one of them snatched gold chain from his neck and another person sprayed some solution on his nose and face and the third person snatched his iphone.

3            These three unknown persons made him to sit in the rear seat of the car and two of them sat either side and one of them sat beside the driver seat and they started proceeding in the said car with speed towards Naroli. When they reached near the house of one Ashwinbhai Godawala, a person sitting to his right side took out money from his purse, which contained his

original pan card, driving licence and cash of Rs.1500/- to Rs.2000/-. The other person sitting beside him tore his shirt and tied it on his eyes and hands. Thereafter, they proceeded and travelled for about two hours. During their journey, they had breaks and made him lay down in the seat so that nobody would notice him.

4           After some time, he was shifted to another vehicle, which was already present on the highway. In the meanwhile, they had demanded ransom from his family members. He was confined in a room. While in the confinement, he escaped from the said room and made a call to his father. After he was rescued, his statement was recorded and offence was registered against the accused persons, on the description given by victim.

          After the trial, the present applicant was convicted alongwith others, and was sentenced to undergo life imprisonment.

5           From the evidence placed on record, on going through the deposition of P.W.1-victim, it transpires that the role attributed to the present applicant was that, he was amongst the three persons who were hiding behind the tree and upon being summoned by the accused no.7 who was riding the motorcycle, had come out from the hiding place and snatched the gold chain of informant. P.W.1 has stated that the accused no.7 tied his hands and assaulted him on his nose. The accused Nos.5 and 7 were sitting with him on the rear seat of the car. Accused no.3 contacted his family for demanding ransom while he was confined in the room. Therefore, from the

roles attributed to the accused persons, the only role which is attributed to the present applicant is that, he has snatched the gold chain from the victim. Therefore, the involvement of the present applicant was only in respect of snatching the gold chain.

6           It is the case of the prosecution that at the time of abduction of P.W.1 Bharat, accused no.7 came on black coloured Pulsar Motorcycle and stopped the vehicle of the informant. Thereafter, applicant and accused nos.3 and 6 came on the scene of offence.

In the cross examination of P.W.1, there are deviations from his statement recorded under Section 164 of Cr.P.C., which are brought on record. There are material omissions regarding the role attributed to the present applicant. The role attributed to the applicant was snatching of gold chain of informant, and sitting beside the informant in the car. But, in his cross-examination, there are material omissions.

7           Even otherwise, the co-accused in the offence i.e. accused no.4 Rohit @ Akash V. Dubey pending the Appeal filed by him has been enlarged on bail and the sentence is suspended, pending the Appeal *vide* order dated 13<sup>th</sup> March, 2024 (Coram : A.S. Gadkari and Shyam C. Chandak, JJ.). Similarly, accused no.6 Prakash @ Paru Sukharam Prajapati and accused no.7 are also released on bail, by suspending the sentence pending their Appeals *vide* order dated 30<sup>th</sup> April, 2024, passed by this Court (Coram : A.S. Gadkari and Shyam C. Chandak, JJ.).

The role attributed to the present applicant is similar to that of accused nos.4 and 6. Therefore, in our opinion, on the ground of parity, even the present applicant i.e. accused no.5 needs to be enlarged on bail.

The Applicant is behind bar since more than 7 years and the present Appeal is filed in the year 2024, and it is not likely to be decided in the near future. Hence, considering the long incarceration of the applicant/appellant, and *prima facie* case is being made out, the application of the applicant deserves consideration.

8 In view of the reasons mentioned as above, the Interim Application is allowed.

Hence, we pass the following order:

**:: ORDER ::**

- (i) The sentence of imprisonment imposed *vide* judgment and order dated 15<sup>th</sup> November, 2022, passed by the Sessions Judge, Dadra and Nagar Haveli, Silvassa in Sessions Case No.8 of 2017, arising out of C.R.No.11 of 2017, registered with Silvassa Police Station, Dadra and Nagar Haveli, Silvassa, is suspended during pendency of Criminal Appeal No.249 of 2023, preferred by applicant and the applicant is directed to be released on bail on executing P.R. Bond of Rs.25,000/- (Rupees Twenty Five Thousand only), with one or two local sureties in the like amount;

- (ii) After his release, the applicant shall attend Silvassa Police Station, Dadra and Nagar Haveli, Silvassa, on first Monday after every three month between 10:00 a.m. to 12:00 noon, during the pendency of the Appeal;
- (iii) In case of two consecutive defaults in complying with the aforestated conditions, the prosecution is at liberty to file an application for cancellation of bail;
- (iv) The Applicant shall inform his present residential address and telephone number to the trial Court, and update it time to time, if changed;
- (v) The Applicant shall make himself available at the time of final hearing of the Appeal.

9 Interim Application is allowed in the aforesaid terms and stands disposed of accordingly.

***(MANJUSHA DESHPANDE, J.)***

***(BHARATI DANGRE, J.)***