



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPA) NO. 430/2024

IN

CRIMINAL APPEAL NO. 17/2024

Mukesh @ Chyati S/o. Kishor Taywade Vs. State of Maharashtra

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A. K. Bhangde, Advocate for Applicant/Appellant.
Mr. S. S. Doifode, A.P.P. for Non-applicant/State.

CORAM : VINAY JOSHI AND MRS.VRUSHALI V. JOSHI, JJ.
DATED : 30/04/2024.

. This is an application seeking suspension of execution of sentence of accused No.1 Mukesh @ Chyati S/o. Kishor Taywade, who has been convicted by the Trial Court for the offence punishable under Sections 363, 364-A read with Section 34 of the Indian Penal Code and sentenced to suffer imprisonment for life.

2. The learned Counsel for the applicant claimed suspension on merits as well as parity stating that the co-accused, accused No.5 - Durwas and accused No.7 - Tayyub have been released by this Court having similar material. Moreover, it is submitted that the only evidence against the applicant is prior T.I. parade, which has been conducted after 7 months from the occurrence.

3. The State resisted this application by contending that the informant (PW-2) has specifically stated the name of the applicant as a kidnapper and the person kidnapped (PW-3) has identified the applicant in prior T.I. parade.

4. With the assistance of both the sides, we have examined the relevant material. It is the case of kidnapping by unknown persons for ransom. The informant (PW-2-father) is not the eye witness to the occurrence, however, he says that later on he learnt that his son has been kidnapped by his acquainted fellow accused No.6 - Pradip along with accused No.1 Mukesh. Besides that PW-3 a minor in T. I. Parade has identified accused No.1 - Mukesh (applicant), accused No.3 - Ishaq, accused No.5 - Durvas and accused No.7 - Tayyub. We have considered the said material against accused No.7 - Tayyub in detail while suspending his sentence in our order dated 20.12.2023 passed in Criminal Application No.682/2023. We have particularly observed that prior T. I. Parade is a process of investigation, which was conducted after 7 months from the occurrence.

5. We have gone through the related evidence of PW-3, who was initially unable to define the role of applicant - Mukesh though identified. The material against the applicant is similar to co-accused Tayyub, who has been released on bail. Besides that no other material is brought on record to show the complicity of accused No.1 Mukesh. We have taken a note that the applicant - Mukesh is in jail from 06.05.2016 i.e. for near about 7 years. Having regard to the material against the applicant, an arguable case particularly on the point of identity has been made out.

6. In view of the above, we deem it appropriate to exercise our judicial discretion on merits as well as on the

ground of parity. The application is allowed. The execution of substantive sentence passed against the applicant Mukesh @ Chyati S/o. Kishor Taywade (accused No.1) stands suspended till the disposal of the appeal.

7. In the meantime, the applicant - Mukesh @ Chyati S/o. Kishor Taywade shall be released on bail on his furnishing PR bond of Rs.50,000/- with one surety in the like amount. The applicant Mukesh shall attend the concerned Police Station on first Monday of each month between 10.00 a.m. to 2.00 p.m., till disposal of the appeal.

8. The application stands disposed of in the above terms.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)