

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 9 OF 2024

Vishal Chandrakant Trimbake

.. Applicant

Versus

State of Maharashtra

.. Respondent

.....

- Ms. Mayuri Hatle a/w Mr. Mandar Surve for Applicant
- Ms. Rajeshree V. Newton, APP for State
- Mr. Hanumant Humbe, API, Mahatma Phule Chowk Police Station, Kalyan

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 10, 2025

P. C.:

1. Heard Ms. Hatle, learned Advocate for Applicant and Ms. Newton, learned APP for State.

2. Applicant - accused has filed the present Application for regular bail under Section 439 of the Code of Criminal Procedure, 1973 (for short, "**Cr.P.C.**") in connection with Crime No. I 438/2021 registered with Mahatma Phule Chowk Police Station, Kalyan under Sections 363, 370(4) and 34 of the Indian Penal Code, 1860 (for short, "**IPC**") and Sections 80 and 81 of the Juvenile Justice (Care and Protection of Children) Act, 2015. Applicant is arrested on 08.06.2021.

3. Date of the incident is intervening night of 05.06.2021 and 06.06.2021. According to prosecution at about 1.35 a.m. at midnight,

first informant – mother of the victim child had got up from her sleep and went to answer nature's call but when she returned, the child was found missing.

4. Prosecution case is that present Applicant and his friend namely accused No. 2 both were instrumental in picking up the child and handing it over to the other accused persons for the purpose of trafficking and sale. The only material which the prosecution as placed before the Court is in the form of CCTV footage which according to the prosecution case shows that at about 1.35 a.m., present Applicant – accused No. 1 alongwith accused No. 2 were both seen moving near the incident spot along with somebody or something held in the hands of the present Applicant presumed to be a child that they had kidnapped after which they boarded the auto-rickshaw and went to the house of accused No. 4 and handed over the child to the wife of accused No. 4. Statement of the auto-rickshaw driver is appended at page No. 70 of the Application which is the only witness statement indicting the accused apart from the CCTV footage.

5. Ms. Hatle has placed before me the orders enlarging all other accused on bail in the present crime. She would submit that if the orders relating to enlarging accused Nos. 2 to 6 appended at page Nos. 107 onwards of the Application are seen, the role of those accused persons *prima facie* appears to be far greater and serious than

the present Applicant. Insofar as the present Applicant's role is concerned, she would submit that it is on parity with the role of accused No. 2 who has also been enlarged on bail by order dated 13.03.2024 which has been placed by her before the Court. She would submit that at the highest for the indictment and the role of Applicant in the present crime, the maximum punishment that would be eventually suffered by him if the Applicant is convicted would be for 7 years and not more and in that regard, she would persuade the Court to consider long incarceration of the Applicant pending trial since he is in incarceration since 08.06.2021 and as of today he has undergone a period of detention for 3 years 9 months and 3 days.

6. Learned APP on taking instructions would oppose the present Application *prima facie* on the ground that the case of the Applicant is against the society at large and the Applicant has conspired with the other accused and it needs to be considered by the Court for rejection of the Application. On the ground of the status of trial, she would fairly submit that charges have not been framed as yet. In that event, long incarceration of the Applicant needs to be considered pending trial as also right to speedy trial and personal liberty as enshrined under Article 21 of the Constitution of India. However on the issue of parity, considering that all other accused have been enlarged on bail, I do not see any reason as to why the present Applicant in the *prima*

facie facts and circumstances of the present case delineated herein above should not be enlarged on bail. *Prima facie* Applicant has made out a case for grant of bail. Hence, Bail Application is allowed subject to the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs. 15,000/- with one or two sureties in the like amount;
- (iii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court;
- (iv) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (v) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;
- (vi) Applicant shall co-operate with the conduct of trial and attend the trial Court on all dates unless specifically

exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;

(vii) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;

(viii) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner; and

(ix) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

7. It is clarified that the observations made in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

8. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]