

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1712 OF 2024

1. Rajji Ahmed Mohmad Sabir Husen
2. Mohmad Haider Muzim Shaikh
3. Mohmad Rehamtullah Nisharul Shaikh
4. Mohmad Amir Faruq Azam .. Applicants

Versus

State of Maharashtra & Anr. .. Respondents

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- Mr. Rajeshkumar Salpuram for Applicants
- Mr. Hitendra J. Dedhia, APP for State

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 24, 2025

P. C.:

1. Heard Mr. Salpuram, learned Advocate for Applicants and Mr. Dedhia, learned APP for State.

2. Applicants - accused have 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-332/2023 registered with Vartaknagar Police Station under Section 366 & 34 of the Indian Penal Code, 1860 (for short, "**IPC**"). Investigation is completed in the present crime and charge-sheet is filed. Applicants are in prison from 13.10.2023 i.e. for more than 15 months.

3. It is the case of the prosecution that prosecutrix was forcibly apprehended and kidnapped on 08.10.2023 by Applicants - accused.

It is stated in the FIR that when she was kidnapped, at that time one of her friend was with her whose name is Aliza Abbasi. FIR states that Applicant No. 1 came in a white coloured Wagon R car No. MH-02/E-0551 along with Applicant No. 2. Applicant No. 1 forced the prosecutrix to sit in the car saying that they were going for an outing to Talaopali area in Thane from where she was driven away against her wish. It is stated that Applicant No. 1 was forced her to marry him. However statement of the prosecutrix's friend which is recorded on the following day (appended at page No. 72) gives a completely contradictory picture. It states that Applicant No. 1 and prosecutrix knew each other since their college days and the prosecutrix used to regularly call her and share everything with her. On the date of the incident, prosecutrix had called her and told to come with her to eat Panipuri. At that time Applicant No. 1 came in the four wheeler car and took the prosecutrix and her friend together but after some distance, the Applicant and the prosecutrix decided to proceed alone due to which the friend of the prosecutrix and another friend of the Applicant got down from the car. *Prima facie*, reading of the statement of the friend of the prosecutrix clearly shows that Applicant was known to the prosecutrix. That apart another piece of evidence which is placed before me is the fact that that Applicant and prosecutrix thereafter proceeded to Bandra for their marriage.

Marriage Certificate is appended at Page No. 88 of the Application. Their marriage was performed by one Kazi / Priest / Maulavi whose name is Nivrul Huta Yakub Khan. He has recorded his statement and stated that Applicant No. 1 and prosecutrix approached him and he performed their marriage and issued the marriage certificate. That marriage certificate is dated 11.10.2023 and appended to the Application. What is crucial is the fact that the FIR is lodged four days after the date of the incident. That clearly shows that prosecutrix was in fact staying with the Applicant No. 1 during the above period. Applicant Nos. 2 to 4 are the friends of the Applicant No. 1. Their role is not spelt out in the FIR save and except to state that they accompanied the Applicant No. 1.

4. In view of the above, Applicants have made out a case for grant of bail. Hence, present Application is allowed in terms of prayer clause (a) subject to the following terms and conditions:-

- (i) Applicants are directed to be released on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- each (Rs. Twenty Five Thousand each) with one or two sureties in the like amount;
- (ii) Applicants shall report to the Investigating Officer of concerned Police Station once every month on the third

Saturday between 10:00 a.m. to 12:00 p.m. for three months and thereafter as and when called;

- (iii) Applicants 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 they do so, it will entitle the prosecution to apply for cancellation of this order;
- (iv) Applicants shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (v) Applicants shall not influence with any of the witnesses or tamper with the evidence in any manner;
- (vi) Applicants shall not make any attempt to re-associate with the victim in any manner either through any device or in person;
- (vii) Applicants shall keep the Investigating Officer informed of their current address and mobile contact number and / or change of residence or mobile details, if any, from time to time;
- (viii) Any infraction of the above conditions shall entail prosecution to apply for cancellation of this order.

5. It is clarified that the observations in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case.

6. Bail Application stands allowed and disposed.

Amberkar

[MILIND N. JADHAV, J.]

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