



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 5394 OF 2024
IN
CRIMINAL APPEAL NO. 1084 OF 2019

Rameshkumar Gopalkrishna Nair ... Applicant/Appellant
V/s.
State of Maharashtra ... Respondent

WITH
INTERIM APPLICATION NO. 3981 OF 2024
IN
CRIMINAL APPEAL NO. 859 OF 2024

Kadar Miran Ahmad Shaikh ... Appellant
V/s.
State of Maharashtra ... Respondent

WITH
INTERIM APPLICATION NO. 5389 OF 2024
IN
CRIMINAL APPEAL NO. 1324 OF 2023

Gopesh Gopinath Nair ... Appellant
V/s.
State of Maharashtra ... Respondent

Mr. Siddhartha R. Ronghe with Suyog V. Nair, for the
applicants/appellants.

Mr. S.V. Walve, APP, for the State.

PI-Shri Amol Kale, L.T. Marg Police Station, Present.

CORAM : N.J. JAMADAR &
S.G. DIGE, JJ.

DATE : 11H JUNE 2025.

PC:

1. Heard the learned counsel for the applicants.
2. These applications are for suspension of sentence. Two earlier applications were disposed as withdrawn.
3. The applicants were prosecuted in Sessions Case No. 247 of 2009 for an offence punishable under Section 364-A read with 34 of the Indian Penal Code, 1860 (the penal code) for having abducted Arvind Sangave (PW.2) for ransom.
4. By a judgment and order dated 26th October 2018, the learned Additional Sessions Judge, Greater Bombay was persuaded to convict the accused for the offence punishable under Section 364-A read with Section 34 of the Penal Code and sentence them to suffer imprisonment for life and pay fine of Rs.10,000/- each, with default stipulation.
5. Being aggrieved the applicants have preferred appeals.
6. These applications are preferred with the assertion that the

applicants have been custody for more than eight years. The learned Sessions Judge committed an error in appreciating the evidence with regard to the fulfillment of the ingredients of the offence punishable under Section 364-A of the Penal Code. The learned Sessions Judge has unjustifiably discarded grave lacuna in prosecution case. Despite a direction for expedite hearing of the appeals, the appeals could not be heard. It is unlikely that the appeals can be heard within a reasonable period. Therefore, the sentence be suspended and the applicants be enlarged on bail.

7. The prosecution has resisted the applications.

8. By an order dated 8th May 2025, we had directed the State to file an affidavit with regard to the current residence of the victim and the threat perception.

9. The Investigating Officer has filed an affidavit. It appears that the Investigating Officer has recorded the statements of the victim as well as the first informant and they have stated that they do not perceive any threat to their safety.

10. We have perused the material on record. The genesis of the alleged offence appears to be in the business transactions of a

partnership firm of which the accused No.1 and the wife of P.W.2 were partners.

11. Prima facie it appears that, it is debatable whether the second ingredient of the offence punishable under Section 364-A of the Penal Code is satisfied. A useful reference, in this context, can be made to a decision of the Supreme Court in the case of ***Shaikh Ahmed Vs. State of Telangana***¹, wherein it was, inter alia, enunciated that the following ingredients must be satisfied before a conviction can be sustained under Section 364-A of the Penal Code :

“33. After noticing the statutory provision of Section 364A and the law laid down by this Court in the above noted cases, we conclude that the essential ingredients to convict an accused under Section 364A which are required to be proved by prosecution are as follows :

- (i) Kidnapping or abduction of any person or keeping a person in detention after such kidnapping or abduction; and
- (ii) threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt or;
- (iii) causes hurt or death to such person in order to compel the Government or any foreign State or any Governmental organization or any other person to do or abstain from doing any act or to pay a ransom.

34. Thus, after establishing first condition, one more condition has to be fulfilled since after first condition, word used is “and”. Thus, in addition to first condition either condition (ii) or (iii) has to be proved, failing which conviction under Section 364A cannot be sustained.”

¹ AIR 2021 SCC 3062

12. The aforesaid judgment was followed by the Supreme Court in the case of *Neeraj Sharma v/s State of Chhattisgarh* ²

13. Even otherwise, we find that Rameshkumar Gopalkrishna Nair (A1), the Applicant in Interim Application No.5394 of 2024, and Gopesh Gopinath Nair (A2) the Applicant in Interim Application No.5389 of 2024 have undergone more than 8 years of sentence, and Kadar Miran Ahmad Shaikh (A3) - the applicant in Interim Application No. 3981 of 2024 has undergone more than ten years of sentence.

14. Having regard to the period of incarceration and the unlikelihood of the appeals being decided in near a future, in our view, the applicants deserve to be enlarged on bail during the pendency of these appeals.

15. Hence, the following order:

ORDER

- i) The applications stand allowed.
- ii) The substantive sentence stands suspended.
- iii) The applicants be released on bail on furnishing a P.R.Bond Rs.30,000/- each with one or more sureties in the

² (2024) 3 SCC 125

like amount.

iv) The applicants shall not contact the first informant and victim for any purpose whatsoever.

v) The applications stand disposed.

(S.G. DIGE, J.)

(N.J. JAMADAR, J.)