

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.486 OF 2025

Dattatray Namdeo Pawar	.. Applicant
Versus	
State of Maharashtra	.. Respondent

WITH
BAIL APPLICATION NO.726 OF 2025

Vinesh Raju Advani	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

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- Mr. Rajiv Patil, Senior Advocate a/w. Mr. Vishal Laxman Kolekar, Mr. Harasharaj Jagtap, Mr. Shubham Kadam, Ms. Kiran Jadhav, Mr. Harshvardhan Patil, Ms. Aikiya Shaikh, Ms. Akansha Dave and M. Kochharekar, Advocates i/by Randhir Kale for Applicant in Bail Application No.486 of 2025.
 - Mr. Suraj Naik, Advocate for Applicant in Bail Application No.726 of 2025.
 - Mr. Hitendra J. Dedhia, APP for Respondent in both Bail Applications.
 - PSI – Shahu Kaldate, Ambernath Police Station.

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 26, 2025

P.C.:

1. Heard Mr. Patil, learned Senior Advocate for Applicant in Bail Application No.486 of 2025; Mr. Naik, learned Advocate for Applicant in Bail Application No.726 of 2025 and Mr. Dedhia, learned APP for Respondent in both Bail Applications.

2. Common order is passed in both the aforesaid Bail Applications. In Bail Application No.486 of 2025, Applicant is

arraigned as Accused No.2 whereas in Bail Application No.726 of 2025, Applicant is arraigned as Accused No.9.

3. These are Applications under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking Bail in connection with C.R. No.1252 of 2024 registered with Ambarnath Police Station for offences punishable under Sections 140, 60, 49, 55, 56 and 3(5) of the Bharatiya Nyaya Sanhita, 2023; Sections 3, 4 and 25 of the Arms Act, 1959 and Sections 37(1) and 135 of the Maharashtra Police Act, 1951.

4. While granting bail to one of the co-accused namely Accused No.10 in Bail Application No.547 of 2025, I heard learned Advocate appearing for Accused No.9 as his Bail Application was tagged and heard together on that date. In that order, a direction was given by this Court to learned Advocate for Applicant i.e. Accused No.9 to file the additional Affidavit to show his nexus with Accused No.10, as also with Accused No.1. On merits, nexus and proximity of Accused No.10 with Accused No.1, bail order was granted after ascertaining the role of Accused No.10.

5. Mr. Naik, learned Advocate for Applicant in Bail Application No.726 of 2025 has filed additional Affidavit dated 05.03.2025 of the wife of Applicant on his behalf placing on record the details of business and work carried by Accused No.9. On perusing the Affidavit it is *prima facie* seen that Accused No.9 was running a shop in the name

and style of 'Balaji Dresswala' and as side business he used to also sell SIM Cards of Vodafone-Idea and Airtel Limited to retail customers. At the time of selling of said SIM Cards, the procedure undertaken by Accused No.9 has been duly explained. The said procedure which was undertaken by Accused No.9 is identical to the procedure carried out by Accused No.10 who has been granted bail by this Court by order dated 28.02.2025.

6. What is *prima facie* gathered from the prosecution case *qua* Accused No.9 is that he had no direct nexus whatsoever with Accused Nos.1 to 8 or Accused No.11 in the present case. As a seller of SIM Cards all that Accused No.9 was required to do was to collect the relevant information and forward the same to the concerned Company i.e. either Vodafone-Idea or Airtel Limited for further action. The seller of SIM Cards does not have any investigating powers to investigate, examine and determine the veracity of documents submitted by the party purchasing the SIM card. The fact that Accused No.9 was holding activation ID for demonstration provided by Vodafone-Idea and Airtel Limited is *prima facie* established from the material placed on record, as also the bank statement of the Applicant placed on record.

7. In that view of the matter, *prima facie* no role can be attributed directly which is seen by the Court to Accused No.9 due to

the sale of the subject SIM Card in question in the present case which was used by other co-accused persons and which was bought in the name of Sunita Prajapati. Admittedly prosecution has not made any investigation in that direction, neither the role of Accused No.9 is *prima facie* substantiated as he having any nexus to the Accused No.1 or the said Sunita Prajapati whose documents were submitted. The statement of learned Prosecutor was noted by Court in the previous Bail order dated 28.02.2025 that investigation is still going on in that regard.

8. The case of prosecution *qua* Accused No.9 is that he had an indirect role in the present crime and the said role is attributed to him for selling the SIM Card but *prima facie* there is no incriminating material which is shown to the Court to show any *prima facie* complicity of Accused No.9 in the crime of kidnapping. From the record available in the charge-sheet, nexus or knowledge attributed to Accused No.9 is not *prima facie* seen and in that view of the matter considering the aforesaid *prima facie* observations, role of Accused No.9 is on parity with Accused No.10 and he has made out a case for bail. Accused No.9 is therefore directed to be released on bail.

9. In so far role of Accused No.2 is concerned, Mr. Patil, learned Senior Advocate for Applicant would make four specific submissions and persuade the Court to consider the same on *prima facie*

consideration of the material placed before the Court in the charge-sheet. He would submit that according to the prosecution case Accused No.2 was known to Accused No.1 since both of them were employees of Mumbai Fire Brigade and there were certain failed dealings and ventures between them unconnected with the present crime in question. He would submit that Accused No.2 was stationed in Kurla Fire Brigade Station and Accused No.1 was working at Andheri Fire Brigade Station. He would submit that according to prosecution case, Accused No.2 was residing in the same building in which the victim in the present crime was residing with his family. The victim in the present crime is a 20 year old boy who was allegedly kidnapped by five Accused persons according to the victim's statement which is recorded. Case of prosecution against Accused No.2 from the charge-sheet is that Accused No.2 gave / shared information about the victim with Accused No.1 who executed the present crime alongwith the other co-accused.

10. *Prima facie*, when question was put to Mr. Patil, as also Mr. Dedhia, learned APP to apprise the Court of the nature of information given and whether such information was identified and directly related to the commission of the present crime, both of them have informed the Court that there is no specific, direct or any incriminating material which would lead to a belief that Accused No.2 gave specific information to Accused No.1 for the present crime. In fact case of

prosecution *prima facie* is that there was no direct role of Accused No.2 in the present crime, but he supplied information on phone to Accused No.1.

11. Mr. Patil has persuaded the Court to consider one more aspect namely that there were 5 persons who abducted the victim as per his statement and kept him in bondage for some time before his release, but the prosecution has not conducted any Test Identification parade for identification of the said 5 persons in order to get Accused No.2 identified if was complicit in the crime.

12. To this Mr. Dedhia, learned APP in his usual fairness would submit that role of Accused No.2 was that of providing information and even though he may not have directly participated in commission of the crime, his role cannot be ruled out. According to the prosecution, his role is based on Call Data Records (CDR) which are appended to the charge-sheet. Admittedly transcript of the CDRs are not appended to *prima facie* show any incriminating material of Accused No.2's complicity in the crime.

13. Though Mr. Dedhia, learned APP would persuade the Court to consider the proximity of Accused No.2 with Accused No.1 on the basis of a previous First Information Report registered against them in December-2024, he would in fairness submit that same is wholly unconnected to the present crime. In view of the above *prima facie*

observations case of prosecution against Accused No.2 is based on CDRs, however the same can be proved by the prosecution at the time of trial.

14. In the decision of the Delhi High Court in the case of *Phundreimayum Yas Khan Vs. State (NCT of Delhi)*¹ Court has observed that disclosure statement of co-accused is *per se* not admissible without there being any corroboration thereof. Relevant paragraph No.24 therein reads thus:-

“24. The case of the prosecution, in so far as the applicant is concerned, is circumstantial, i.e. based solely on disclosure statement of the co-accused Sayed Javed Hussain which is per se not admissible without there being any corroboration. The prosecution has not been able to establish any connection between the subject offence and the location/CDRs of the accused persons, where the applicant is alleged to be present at the time when the contraband was collected by Sayed Javed Hussain. Merely because the applicant had been having frequent calls with the co-accused, would not be sufficient to hold that applicant is guilty of the subject offence.”

15. In the case of *State Vs. Pallulabid Ahmad Arimutta*², the Supreme Court, *inter alia*, observed that the CDR details of the some of the accused or the allegations of tampering evidence on the part of accused is an aspect that will be examined at the stage of trial. Hence the statements made under Section 67 of the NDPS Act, 1985 cannot be considered at the stage of bail.

16. The Supreme Court in the case of *Bharat Chaudhary Vs.*

1 2023 SCC OnLine 135.

2 SLP (Cri.) No. 3242 / 2022 dated 10.01.2022.

*Union of India*³, has held that printouts of WhatsApp messages downloaded from the mobile phone or device seized cannot be treated as sufficient material to establish live link between the accused person under the Narcotic Drugs and Psychotropic Substances Act, 1985 at the stage of bail. It also held that statement of co-accused cannot be relied upon under Section 67 of NDPS Act.

17. In view of the aforesaid *prima facie* observations, Accused No.2 has made out case for grant of bail.

18. Both Applicants before me namely Accused No.2 and Accused No.9 are granted bail on the following terms:-

- (i) Both Applicants are directed to be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- each with one or two sureties in the like amount;
- (ii) Before their actual release from jail, Applicants shall furnish their address where they propose to reside after their release from jail to the concerned Police Station and also to the trial Court;
- (iii) After their release from jail, Applicants shall report to the Investigating Officer as and when called for;
- (iv) Applicants shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to

³ (2021) 20 SCC 50.

mark their presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicants shall mark presence on the next working day;

- (v) 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 does so, it will entitle the prosecution to apply for cancellation of this order;
- (vi) Applicants shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vii) Applicants shall not influence any of the witnesses or tamper with the evidence in any manner; and
- (viii) 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.

19. It is clarified that the observations made in this order are limited for the purpose of granting Bail only. They shall not be construed as observations on merit. The trial shall be adjudicated on the strength of evidence led by parties and strictly on its own merits

being uninfluenced with any of the *prima facie* observations made herein above in this order.

20. Bail Application No.486 of 2025 and Bail Application No.726 of 2025 are allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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