

Payalben vs State on 24 January, 2012

Author: Z.K.Saiyed

Bench: Z.K.Saiyed

Gujarat High Court Case Information System

Print

CR.MA/16209/2011

15/ 15 ORDER

IN
THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL
MISC.APPLICATION No. 16209 of 2011

For
Approval and Signature:
HONOURABLE
MR.JUSTICE Z.K.SAIYED

=====

PAYALBEN
BHAGVANDAS BHAGCHANDANI - Applicant(s)

Versus

STATE
OF GUJARAT - Respondent(s)

=====

Appearance
:
MR
SV RAJU FOR MR BHADRISH S RAJU for Applicant(s) : 1,
MR HL JANI
ADDITIONAL PUBLIC PROSECUTOR for Respondent(s) :
1,
=====

CORAM

:

HONOURABLE

MR. JUSTICE Z.K. SAIYED

Date

: 24/01/2012

CAV

ORDER

1. This application has been preferred under Section 439 of the Code of Criminal Procedure, 1973, for enlarging her on regular bail, in connection with the offence being CR No.I-243 of 2011 registered with Maninagar Police Station, Ahmedabad, for the offences under Sections 363, 364(A), 365 and 120(B) of the Indian Penal Code.

2. Learned Additional City Sessions, Ahmedabad rejected the bail application being Criminal Misc. Application No.4248 of 2011 on 5.11.2011. Thereafter, the applicant preferred bail application being Criminal Misc. Application No.15584 of 2011 before this Court, which the applicant has subsequently withdrawn. Thereafter, after filing of the charge-sheet in the matter, the applicant again preferred Criminal Misc. Application No. 4442 of 2011 before the learned Additional City Sessions Judge, Ahmedabad, which was rejected on 23.11.2011. The applicant, therefore, before this Court with this application for releasing her on regular bail.

3. Short facts of the case of the complainant are such that on 25.10.2011, Mr. Bharatbhai Bhugdomal Bhagchandani, father of the minor Aditya received one phone call of his wife that their niece namely Payal Bhagchandani and their son minor Aditya went on Aactiva scooter at 7:00 p.m., but they had not returned till later evening. Thereafter, Bharatbhai went to his home from his hotel and made

search, but he could not find out location of said Payal and Aditya. At about 8:45 p.m., one phone call came from unknown person stating that Payal and Minor Aditya were in his captivity and he demanded Rs. 1 Crore as ransom to release said Payal and Minor Aditya and he also threatened to kill them. Said Bharatbhai replied that he was unable to arrange said amount of Rs. 1 Crore in cash. On further discussion, said Bharatbhai agreed to pay Rs.25 Lakh to the kidnapper. Thereafter, said Bharatbhai informed the Maninagar Police Station and Crime Branch was intimated about this complaint. Thereafter, the police kept watch at several places as per information from the Bharatbhai. The complainant - Bharatbhai was called at Vishala Circle and subsequently, the place was changed and complainant was called at Sarkhej Cross Road and lastly, he was called at Karnavati Club in front of Iskon Ganthiya Shop, where said Payal and other accused Devendra and Dhwanik were present. The complainant handed over the money and at that time, the police caught them red-handed and thereafter, after getting information about Minor Aditya from Payal, co-accused Devendra and Dhwanik, the minor Aditya was rescued from the captivity. Thereafter, one Nishant was arrested from the office No.707 and 708 of Wall Street Tower, Nr. Gujarat College, Ahmedabad. In this connection with this offence, the present applicant is arrested. Other co-accused are arrested in connection of the said offence. The investigation is carried out and charge-sheet is filed.

4. Learned senior advocate Mr. S.V. Raju is appearing on behalf learned advocate Mr. Bhadrish S. Raju for the applicant. He submitted that present applicant lady is an innocent and she has been wrongly arraigned in the commission of the offence. He further submitted that the applicant hails from good family and is permanent resident of Ahmedabad City and she is aged about only 20 years, studying in T.Y. B.A. He also submitted that the present applicant is in custody since 26.10.2011 and she has no antecedent. Mr. Raju, learned senior advocate read the contents of complaint and statements of witnesses and submitted that the role of the present applicant is such that said Minor Aditya was with her. The applicant is in love with co-accused Nishat and therefore, the said co-accused Nishat called the applicant to come by making phone call and therefore, the applicant met the said accused Nishant, at that time, the minor Aditya was with her, who was kidnapped by the accused. The applicant is not habitual offender. He further submitted that even from the statements of the witnesses, it reveals that other co-accused have demanded money. The applicant is arrested at the place of Karnavati Club and she is not involved in the commission of the offence, but only she was present with minor Aditya. Learned senior advocate also read the provisions of Section 437 of the Code of Criminal Procedure.

5. Learned senior advocate Mr. Raju further submitted that the father of the applicant is not keeping well and he is under medical treatment. He also submitted that the statements of co-accused are not admissible in law and learned APP has no right to refer such statements of co-accused. He also submitted that the complainant has no objection, if the applicant is released on bail as the settlement between them is taken place. The complainant has no objection, if the bail is granted to the applicant.

6. Learned senior advocate Mr. Raju submitted that the applicant is a young lady and her case is required to be looked at differently by various statutory provisions in favour of woman. He also submitted that various decisions of the Hon'ble Apex Court reaffirming the special rights of women

to be granted bail and same discretionary powers are vested with this Court.

7. Learned senior advocate Mr. Raju relied upon the decision of Mohd. Khalid Vs. State of W.B. reported in (2002) 7 Supreme Court Cases 334, more particularly para Nos.31 and 32, wherein the Hon'ble Supreme Court has observed that "proof of conspiracy can be by direct evidence, though the same is rarely available, or by circumstantial evidence." He further submitted that the scope of confessional statement in light of the provisions under Section 10 of the Evidence Act, cannot be considered in favour of the prosecution. He also relied on para Nos.34, 37 and 38 of the said decision and submitted that the submissions of the learned APP cannot be considered.

8. Learned senior advocate Mr. Raju also relied upon the decision of S. Arul Raja Vs. State of Tamil Nadu reported in (2010) 8 Supreme Court Cases 233 and submitted that present applicant cannot be considered as co-conspirator. He also relied upon para Nos. 57 and 58.

9. Learned senior advocate Mr. Raju further relied upon the case of Maqsoodan Vs. State of Haryana reported in (2002) 10 Supreme Court Cases 97 and submitted that in that case, the appellant is lady and she was released on bail. In present case, the applicant is lady accused and considering her role in the commission of the offence that only the minor was with her, but no role is attributed against her and therefore, she is required to be released on bail.

10. Learned senior advocate Mr. Raju referred one another decision of Jayendra Saraswathi Swamigal Vs. State of T.N. reported in (2005) 2 Supreme Court Cases 13, wherein the Hon'ble Supreme Court observed that "Statement by one conspirator in absence of the other with reference to past acts done in actual course of carrying out of conspiracy." He also submitted that the statement under Section 10 of the Evidence Act is not admissible against the applicant - accused. He also submitted that the present applicant was also kidnapped by co-accused and she is wrongly booked by the police. He also submitted that in this case, the complainant has no objection if the applicant is granted bail, then the bail of the applicant may be considered in her favour by imposing suitable conditions.

11. Learned APP Mr. Jani forcefully opposed the bail application of the applicant. He submitted that the applicant is involved in the serious offences punishable under Sections 363, 364(A), 365 and 120(B) of the Indian Penal Code. Therefore, the bail is not required to be granted to the applicant. He drew the attention of para 3 of the complaint, which reflects the active role on the part of the applicant in the commission of the offence as a co-conspirator because the present applicant went on her Aactiva for outing, he took with her said Minor Aditya. The wife of the complainant made phone call to the applicant whose No.8128320505, when the applicant and said Minor Aditya were not returned back home, at that time, the phone of the applicant was switched off. It is submission of the learned advocate for the applicant that the applicant is in love with co-accused Nishant and therefore, present applicant took with her the said Minor Aditya on her Aactiva Scooter for the purpose of kidnapping said Minor Aditya only. The accused persons planned to get the sum of Rs.1 Crore by way of kidnapping said minor Aditya, from the complainant. He also submitted that the date of the offence and date of recording the statements of witnesses are required to be considered. The act committed by the applicant to give the result of the agreement with the co-conspirators.

Learned APP Mr. Jani also submitted that the conduct of the present applicant shows that she is one of the co-conspirator. He read the statements of Minaben, wife of the complainant, wherein she has stated that the applicant went for outing with Minor Aditya and after half an hour, said Minaben phoned to Payal, her phone was found switch off. Thereafter, said Minaben told her sister-in-law about Payal, her sister-in-law tried to contact the applicant through phone, but she could not contact the applicant as her phone was switched off. From her statement, it also reveals that by phone, the accused demanded Rs. 1 Crore for releasing the said Minor Aditya. Learned APP Mr. Jani also read the statement of witness Draupadiben, who is mother of the applicant. She also stated the same thing, which is stated by witness - Minaben. He also read statements of witnesses namely Satishabhai, Kavtaben. He also read the statement of applicant and said statement itself reveals that the applicant knew about kidnapping of Minor Aditya as accused Nishant phoned on 24.10.2011 to the applicant. The statement of the applicant also reveals that said accused Nishant is having huge amount of debt due to cricket betting and therefore, the accused made plan of kidnapping with a view to get the money from the complainant. The applicant admitted in statement that she is in love with said Nishant. Mr. Jani, learned APP also read the statement of said Nishant, accused and submitted said accused Nishant stated in his statement that he himself and his friends, co-accused, namely, Devendra, Dwanik are in huge amount of debt due said cricket betting. Therefore, they made plan to kidnap the said minor Aditya and for that, the applicant agreed, as the accused Nishant talked with the applicant about said plan. Learned APP Mr. Jani also read the statements of accused Devendra and Dwanik and they stated the aforesaid facts. Therefore, learned APP Mr. Jani stated that the applicant herself played active role in kidnapping the minor and therefore, bail to such kind of person, may not be granted, otherwise there is possibility of tampering with the evidence.

12. Learned APP Mr. Jani in support of his submissions, relied upon decision in the case of Mohmed Salim Abdul Rasid Shaikh Vs. State of Gujarat reported in 2001(2) GLR 1580 and submitted that police can use statement of accused as a clue, while investigating the offence. He therefore, submitted that in the present case, the statements of witnesses are important for establishing the case against the present applicant. The statements are corroborating with the contents of the complaint and therefore, there is no reason to disbelieve the case of prosecution. He also submitted that looking to the role of the present applicant in commission of the offence, the bail of the applicant cannot be considered because the offence which is committed, only and only with the help of present applicant and by illegal way, the accused persons with the help of applicant, tried to get the huge amount of Rs. 1 Crore from the complainant. This is really heinous act on the part of the applicant and due to such act on her part, the life of minor Aditya would be put at risk. Therefore, the bail of the applicant may be rejected.

13. Heard both the parties and perused the application along with papers. I have also carefully perused the order dated 5.11.2011 passed by the learned Additional City Sessions Judge in Criminal Misc. Application No.4248 of 2011. The learned Additional City Sessions Judge has observed in para Nos. 8 to 11 in the said order as under:

"8.

In view of the above facts, carefully perusing the FIR and the police papers, it is revealed that the applicant Payal was in love with Nishant for the last one and half years and she was going for tuition to the house of Piyush Mangde where coaccused Nishant also used to come for tuition. Payal and Nishant came in contact with each other for the last two years and for the last one and half year, they were in love and frequently used to go for outing and gradually developed intimacy. At that time, Payal came to know that Nishant was involved in illegal activity of cricket betting (satta) and he incurred a huge debt and he was in the dire need of money. Further, it is revealed that on 24.10.2011, Nishant sent some sms to Payal from his mobile in Hindi stating that he was going to kidnap Payal and Aditya. Payal also replied from her mobile whether he was serious or playing prank on her. Again, Nishant sent an sms that none would play prank at mid night i.e at 11.30 p.m and he was certainly going to kidnap them. Payal replied to the sms that why Nishant was willing to kidnap Aditya who is a small child of tender age to which, Nishant replied that father of Aditya is a rich person and he would give money for release of his son i.e ransom money. Nishant also stated in his sms that he was willing to enjoy Diwali with this money, so he is going to kidnap Payal and Aditya. Further, Nishant told to meet at Anjali Cinema Petrol Pump on the following day, so Payal went on Aactiva to meet Nishant at 3.30 p.m. On the next day, at this time, Nishant told Payal to come with Aditya in the evening. Thereafter, Payal came back home and again she received a message in her mobile from Nishant to come with Aditya at any costs. Thereafter, on 25.10.2011 at about 6.30 p.m, Payal took Aditya on her Aactiva and came to Anjali Cinema Petrol Pump where Nishant was not present, but Payal was intimated to come little ahead in the nearby street. Nishant met her and asked her to follow. As she was following Nishant other co accused Devendra and Dhwanik met her and Dhwanik sat on her Aactiva scooter as pillion rider and thereafter, Nishant took them to the office Nos.707 and 707 at seventh floor, situated at Wall Street Tower, near Gujarat College, Ahmedabad. Thereafter, Nishant sent Dhwanik and Devendra out and asked them to lock the office from outside. Further, Nishant told Payal that he had demanded Rs.1 crore as ransom from Bharatbhai to release minor Adi (Aditya) but Bharatbhai had denied and he was prepared to pay only Rs.10 lakh. Again, Dhwanik came in the office and took Payal with him thereafter on her Aactiva and they went to Law Garden where Devendra was present and again contacted the complainant Bharatbhai, at this time Payal also talked with Bharatbhai. Thereafter, Devendra and Dhwanik had talks with the complainant on phone and they asked Bharatbhai to come at different place and ultimately, called up the complainant at Karnavati Club with money and Bharatbhai came there with Rs.25 lakh and handed over the money. As the police was informed and alerted, Payal and other coaccused persons were caught red handed.

9. Normally, woman accused requires sympathy while deciding bail application, but this is an exceptional case, where this court is unable to show any mercy or sympathy towards Payal as the whole incident was preplanned and Payal was handglove with other accused. Payal being a student of T.Y.B.A aged 20 years, despite knowing very well that Nishant was indulged in illegal activity of cricket betting and had incurred

huge debt, continued love affair with Nishant for the last one and half years, As a citizen, it was the duty of Payal to inform the Police as soon as she came to know that Nishant was involved in the offence of cricket betting. instead of informing the Police about his illegal activities, Payal continued her love affair and encouraged Nishant, a person of criminal mentality, by providing him golden ornaments stolen by her from her own house which belonged to her mother. By stealing golden ornaments worth more than Rs.25 lakh Payal crossed all the limits as she did not spare her own mother, who gave her birth. No woman would like to give birth to such daughter like Payal.

10. This is not the incident which occurred all of a sudden. Payal had enough opportunity as she was knowing about illegal activity of Nishant for the last more than one and half years. Further, before 24 hours, i.e on 24.10.2011, she received several sms from Nishant on her mobile stating that he was definitely going to kidnap Aditya. She did not even care to talk to her parents or inform his uncle, the complainant Bharatbhai. On the contrary, she entered into conspiracy with coaccused with cool temperament and cold-bloodedly she took minor Aditya with her and handed over to Nishant, a person of criminal mentality and endangered the life of Aditya. Payal did not for a moment thought of what mental agony and pain would be suffered by her own parents as well as the parents of the minor Aditya who were none but her real uncle and aunt.

11. Perusing the punishment provided for the alleged offence under section 364 (A) of the IPC (kidnapping for ransom), the punishment for the said offence is death or life imprisonment and fine. Accordingly the offence is of a serious nature. So if the applicant is released on bail, wrong signal would go to the society as day by day, such incidents of kidnapping for ransom are increasing. If the applicant Payal is released on bail, the possibility cannot be ruled out that Payal with the help of other coaccused and their relatives, would try to tamper with the prosecution evidence so as to save herself from the possible punishment of death or life imprisonment and fine. Further, looking to the special circumstances of this offence, the possibility cannot be ruled out that if the applicant is released on bail, she may commit suicide or her own safety would be endangered as several other coaccused involved in the offence, would try to save themselves from the serious punishment of death sentence or life imprisonment."

14. I have also perused the statements of witnesses produced on record as well as charge-sheet papers. It appears from the papers that the applicant Payal is in love with accused Nishant since one and half years. Said Payal was going for tuition to the house of one Piyush Megde, where the accused Nishant used to come for tuition. Accused Nishant along with other co-accused are in debt for huge amount due to bad habit of in playing cricket betting. Therefore, all the accused persons planned to kidnap minor Aditya, who is son of his girl friend Payal, applicant herein, with the help of applicant Payal. Therefore, Nishant sent SMS on 24.10.2011 to the applicant informing about kidnapping of the minor Aditya with a view to obtain ransom from the complainant. The applicant Payal also

replied to Nishant that whether he was serious about such kidnapping of minor Aditya. The accused Nishant also sent SMS to applicant Payal for meeting at Anjali Cinema and thereafter, the applicant - Payal went on Aactiva to meet Nishant at 3:30 p.m. The accused Nishant also told the applicant Payal to come with minor Aditya at any costs. Thereafter, on 25.10.2011, the applicant went on Aactiva with minor Aditya and reached at Anjali Cinema. Thereafter, Nishant and other co-accused namely Devendra and Dwanik took the applicant and minor at the office Nos. 707 and 708, Wall Street Tower, Nr. Gujarat College. The accused Nishant phoned the complainant for demanding Rs.1 Crore as ransom amount for releasing the minor Aditya. The complainant denied about the said amount and he told that he was ready to pay Rs.10 Lac. Thereafter, accused persons Devendra and Dwanik talked with complainant on phone and ultimately, the complainant was called at Karnavati Club with the sum of Rs.25 Lacs. The complainant informed the police and therefore, the complainant reached at Karnavati Club, the police caught the accused persons including applicant Payal. In such a manner, the applicant committed the offence alleged with the help of other accused.

15. The applicant is a lady accused and she despite knowing very well that her boy friend namely Nishant was indulged in cricket betting and incurred huge debt, she continued love affair with said Nishant. Said applicant did not take care to inform the police about illegal activity of the Nishant. It is really surprising that the applicant continued love affairs with said Nishant and encouraged the said Nishant by giving golden ornaments of her mother stolen by the applicant from her own house. Therefore, said Payal crossed all the limits while committing such kind of heinous act and she did not care of her own mother, who gave her birth. Even after receiving SMS from the accused Nishant, she entered into conspiracy with co-accused, but she has not taken care of minor Aditya and she has also not informed the family members about the plan of accused Nishant and she took the minor with her on Aactiva for outing and thereafter, she handed over the minor to the accused persons. As a woman, the said Payal would not have committed such type of offence, but she kept aside all the relationship with the family member, by extending help to the accused persons, who are in need of huge amount due to cricket betting. Even the applicant has not thought about minor child, who has no concern with the activity in which the applicant and other accused are involved. Therefore, the submission of learned senior advocate Mr. Raju that the applicant is lady accused and considering her role, she may be released on bail, is not acceptable. He has also relied upon the decision of Maqsoodan (Supra), but in the said case, the applicant of that case was involved in less serious offence. Therefore, bail was granted to her. But in the present case, no doubt, the applicant is a lady accused, but she is involved in a very serious offence. Therefore, the facts of the cited case are not applicable to the present case. The applicant is aged about 20 years, studying in T.Y. B.A., is no ground for bail because at the very younger age, she committed such wrong and tried to put the life of the minor in danger. If she has not extended any kind of help to the accused, then such type of crime would not have occurred and the family members of the complainant would not be put in difficulties.

16. Even the learned senior advocate Mr. Raju submitted that the statement of the co-accused cannot be considered during the hearing of bail. The said submission of the learned senior advocate is not acceptable. In the case of Mohmed Salim Abdul Rashid Shaikh V. State of Gujarat reported in GLR 2001(2) 1580, this Court observed that "police can use such statement as a clue while investigating the offence and interrogating other accused persons." Herein the accused statements

are very material, as in the commission of the offence, the applicant played role to handover the minor to the accused and she stolen ornaments of Rs.25 Lac. Therefore, the alleged offence firstly committed by the applicant and thereafter, after handing over the minor to the accused, the accused started ransom from the complainant. Therefore, here the statements of the accused only reflect the plan made by the accused along with applicant. The applicant though knew the plan of the accused, she has not informed the police as well as her family members. From the statements of the accused, the base of the plan of kidnapping has come out and therefore, here in this case, statements of co-accused are very important.

17. If the applicant is released on bail, there is possibility of tampering with the evidence so as to save herself from the serious charges levelled against her. The trial Court has rightly observed in its order that "Further, looking to the special circumstances of this offence, the possibility cannot be ruled out that if the applicant is released on bail, she may commit suicide or her own safety would be endangered as several other coaccused involved in the offence, would try to save themselves from the serious punishment of death sentence or life imprisonment." Learned trial Judge has rightly rejected the bail of the applicant and I am in total agreement with the reasons assigned by the learned trial Judge. Even the statements of the witnesses are corroborating with the facts and circumstances of the case and FIR, lodged by the complainant. In the society, now such type of offences are increasing day to day and due to wrong on the part of such type of persons, the life of someone would be put to danger. Therefore, the applicant is not entitled for bail.

18. In view of the above observations, the bail application of applicant is rejected. Rule is discharged.

(Z.K.SAIYED,J.) ynvvas FURTHER ORDER After pronouncement of the order, learned senior advocate Mr. S.V. Raju for the applicant submitted that the observations made in the order by this Court may not come in the way of applicant during trial.

In view of the above, the trial Court will decide the matter in accordance with law, without being influenced by the order of this Court.

(Z.K.SAIYED,J.) ynvvas