

Sessions Case No. 35/2021
State Vs. Kerba+ 3

Order below application vide Exh.33 for discharge of
accused No. 4 Gajanan @ Babya Laxman Sawant under
Section 227 of Cr.P.C.
(Passed on dated 9.11.2021)

1. Read the application for discharge and reply of the Ld. Public Prosecutor at Exh.38. Ld. P.P. has strongly opposed the application. Heard, Ld. Adv. Shri. D.Y. Enakphale for accused No.4 and Ld. Public Prosecutor, and they have argued as per the submissions made in the application and reply respectively.
2. Ld. Advocate for the accused No.4 has relied upon the ratios laid down in the following authorities.
 - i) In a case of **Shaikh Ahmed Vs. State of Telangana** vide Cri. Appeal No.533/2021 **decided on 20.6.2020**, the Hon'ble Supreme Court has held that,
'In addition to first condition either condition (ii) or (iii) has to be proved, failing which conviction under Section 364-A of I.P.C. can not be sustained.'
 - ii) In a case of **Baldev Sing Vs. State of Punjab** vide Cri. Appeal No.553/2008 **decided on 6.5.2009**, the Hon'ble Supreme Court has held that-

'It is now, however, well settled that a conspiracy ordinarily is hatched in secrecy. The court for the purpose of arriving at a finding as to whether the said offence has been committed or not may take into consideration the circumstantial evidence. While however, doing so, it must be born in mind that meeting of the mind is essential, mere knowledge or discussion would not be.'

- iii) In a case of **Gajanan Sawant Vs. State of Maharashtra** vide Cri. Bail Appln. No.677/2021 **decided on 12.8.2021** by the Hon'ble Bombay High Court, Bench at Aurangabad has observed about the ingredients to prove the offence punishable under Section 364-A of I.P.C. while deciding the bail application of applicant/accused No.4.

3. Perused the Charge-sheet and documents on record. It transpires that the accused Nos. 1 to 3 alongwith the accused No.4, in furtherance of their common intention, they hatched the criminal conspiracy, the accused Nos. 1 to 3 kidnapped the victim male child aged 5 years in the Santro Car bearing No.MH-12-CK-1423 while playing on the public road infront of the house of informant situated at Sangvi on 11.9.2020 at about 5.15 p.m. in order to demand the ransom of Rs.50,00,000/- to the informant. Police Station, Renapur has filed the chargesheet for the offences punishable under Section 363, 364-A, 120-B and 34 of I.P.C. against the accused including the accused No.4 after the completion of investigation in crime No.579/2020, which was registered on 11.9.2020 in pursuance of the report of the

informant Devidas Sawant. Victim male child is the grand-son of the informant. According to the prosecution, accused No.1 is the main culprit who hatched the criminal conspiracy and accused Nos. 1 to 3 have actively participated in kidnapping the victim child. Prosecution has alleged that accused No.4 Gajanan @ Babya has provided the location of victim child and movements of the informant and his parents to the accused No.1 after the kidnapping the victim child. Accused No.1 has allegedly released the kidnapped male child by taking him on motorcycle to the village Chata in night hours of dated 12.9.2020.

4. Informant and Accused No.4 are resident of Sangvi, so the accused No.4 might be well acquainted with the economical condition and family members of the informant. As per the statements of witnesses Sanjay Kadam and Vishal Gharat, accused No.4 has assisted the accused Nos.1 to 3 for kidnapping the victim boy for alleged ransom amount. Investigating officer has collected the C.D.R. of mobile handset of the accused No.4, in which the accused No.4 has made communication with the accused No.1 Kerba on dated 6.9.2020, 7.9.2020. 8.9.2020 & 11.9.2020. Prima-facie, it appears that accused No.4 was in contact with accused No.1 by way of mobile communication during the period of commission of offence. Needless to say that criminal conspiracy is hatched in secrecy, so circumstantial evidence required to be taken into consideration to see the meeting of mind of accused to commit

the crime. Moreover, it is the matter of evidence as to whether the circumstantial evidence in the form of C.D.R. and oral evidence of witnesses would be sufficient to prove the alleged offences against the accused No.4.

5. Considering the above material on record, prima-facie, it shows the involvement of the accused No.4 in commission of alleged offences. Unless the evidence of prosecution witnesses is recorded, it could not be said that the accused No. 4 has been falsely implicated and he has no concern with the alleged offences. At this juncture, it could not be said that there was no involvement of the accused No.4 in the commission of alleged offences.

6. Under these facts and circumstances, the prosecution has produced the prima-facie sufficient material on record to frame the charges of alleged offences against the accused No. 4. Consequently, it could not be said that there are no sufficient grounds to proceed the matter further against the accused No.4. The ratios laid down in the authorities as cited supra by the Ld. Advocate for the accused No.4 is not applicable to the facts and circumstances of the case in my hand, at this stage. Thus, accused No. 4 is not entitled for discharge under Section 227 of Cr.P.C. from the alleged offences. In result, application vide Exh. 33 for discharge of accused No.4 is liable to be rejected. Hence, I proceed to pass the following order.

ORDER

Application vide Exh.33 for discharge under Section 227 of Cr.P.C. filed by the accused No. 4 Gajanan @ Babya Laxman Sawant, is hereby rejected.

**Dated : 9.11.2021.
Latur.**

**Sd/-
(D. P. Ragit)
Additional Sessions Judge-2, Latur.**