

Order below application vide Exh.51 for discharge vide
Section 227 of Cr.P.C. of accused Nos. 1 & 2 from the offence
punishable under Section 364-A of I.P.C.
(Passed on dated 27.4.2022)

1. Read the application for discharge of accused Nos. 1 & 2 and reply vide Exh.54 of the Ld. Public Prosecutor. Ld. P.P. has strongly opposed the application. Heard, Ld. Adv. Shri. D.Y. Enakphale for accused Nos.1 & 2, and he has argued as per the submissions made in the application. Ld. Public Prosecutor Shri. S.V. Deshpande has filed the written notes of arguments at Exh.55 and thereby he has made the submissions as per the reply.

2. Ld. Advocate for the accused Nos.1 & 2 has relied upon the ratios laid down in the following authorities.

i) In a case of **Shaik 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.
- iv) In a case of **Kalyan Chandra Sarkar Vs. Rajesh Nandan** vide **Cri. Appeal No.1129/2004, Decided on 18.1.2005**, the Hon'ble Supreme Court has held that,

'The decisions given by a superior forum, undoubtedly, is binding on the subordinate fora on the same issue given in bail matter unless of-course, there is a material change in the fact situation calling for a different view being taken.'

3. On perusal of charge-sheet, it transpires that on 11.09.2020, the accused Nos.1 to 3 alongwith accused No.4, in furtherance of their common intention, hatched a criminal conspiracy, kidnapped the male child aged 5 years in Santro Car bearing No.MH-12-CK 1423 while playing on public road in front of the house of the informant Devidas Sawant (grand-father of the victim child) in order to demand the ransom of Rs.50,00,000/- to the informant. In pursuance of the report of the informant, the Police Station, Renapur has registered the Crime No.579/2020 for the offence punishable under Section 363 of I.P.C. and thereafter added the offences punishable under

Sections 364-A, 120-B and 34 of I.P.C. in the said Crime, and prosecuted the accused Nos.1 to 4 for the alleged offences. It further transpires from the charge-sheet that the accused No.1 is the main culprit who hatched the criminal conspiracy, accused Nos. 1 to 3 have actively participated in kidnapping the child of aged 5 years and accused No.4 had provided the location of the said child and movements of the informant & his parents to the accused No.1 after the kidnapping of said child. Accused No.1 has allegedly released the kidnapped male child by taking him on motorcycle bearing No.MH-24-AM 4970 near the village Chata in night hours of dated 12.09.2020.

4. Accused Nos. 1 to 3 are the residents of Kalmatha, whereas the informant is resident of Sangvi. On the day of incident, the informant was at Sangvi alongwith two grandchildren including the victim boy being he possessed the agricultural land there. As per the statement of witness Parwati Kadam (grand-mother of accused No.1), her grand-son i.e. accused No.1 alongwith accused Nos.2 & 3 came to her cattle shed and they have one small boy, and accused No.1 stated to her that they have lifted the victim boy for money, but she asked him to reach the boy to his parents. As per the say of I.O., the witnesses Komal Gharat and Vishal Gharat have stated in their statements under Section 164 of Cr.P.C. that the accused Nos. 1 to 3 have told them about the commission of crime and asked her as to whether to bring the said kidnapped child towards

them, to which they had refused, and asked them to not to bring that child towards them. As per the statement of Sanjay Kadam (relative of the accused No.1), accused No.1 has made the extra judicial confession that he kidnapped the said child for making the demand of ransom of Rs.50,00,000/- to the informant and accused No.4 has co-operated for the said purpose to him. Accused No.1 might be well acquainted about the family members and economical condition of the informant so that they can give money in the form of ransom of Rs.50,00,000/- to them in case of kidnapping of child.

5. On perusal of the panchanama of audio conversation recorded in the mobile of accused No.3 in between the accused Nos.1 and 3 and statements of victim male child, Parwati Kadam (grand-mother of the accused No.1), Sanjay Kadam, Janardhan Mule and statements under Section 164 of Cr.P.C. of witnesses Komal & Vishal, prima-facie, it transpire that accused Nos. 1 to 3 have actively participated in commission of alleged offences.

6. As per the provisions of **Section 364-A of I.P.C.**, whoever **kidnaps** or abducts any person or **keeps a person in detention after such kidnapping** or abduction, and 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 causes hurt or death to such person **in order to compel** the Government or any foreign State or

international inter-governmental organisation or **any other person to do or abstain from doing any act or to pay a ransom**, shall be punishable with death or imprisonment for life and shall also be liable to fine.

7. It is submitted 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 oral and circumstantial evidence of witnesses would be sufficient to prove the alleged offence punishable under Section 364-A of I.P.C. against the accused Nos.1 & 2. Considering the ingredients of Section 364-A of I.P.C. and abovesaid facts & circumstances brought on record, prima-facie, it shows the involvement of accused Nos.1 & 2 in kidnapping a minor male child of 5 years from his house and their conduct gives rise to a reasonable apprehension to the said child that he may be put to death or hurt by keeping him under detention at remote place in order to demand the ransom of Rs.50,00,000/-. In view of above discussion and ratios laid down in the authorities as cited supra by the accused Nos. 1 & 2, it appear that an offence punishable under Section 364-A of I.P.C. is prima-facie attracted against the accused Nos.1 & 2.

8. Under these facts and circumstances, the prosecution has produced the prima-facie sufficient material on record to

frame the charge of alleged offences including the offence punishable under Section 364-A of I.P.C. against the accused Nos.1 & 2. Consequently, it could not be said that there are no sufficient grounds to proceed the matter further against the accused Nos.1 & 2 for the alleged offence. Thus, accused Nos.1 & 2 are not entitled for discharge under Section 227 of Cr.P.C. from the alleged offence punishable under Section 364-A of I.P.C. In result, application vide Exh.51 for discharge of accused Nos.1 & 2 is liable to be rejected. Hence, I proceed to pass the following order.

ORDER

Application vide Exh.51 for discharge vide Section 227 of Cr.P.C. from the offence punishable under Section 364-A of I.P.C. filed by the accused Nos. 1 & 2, is hereby rejected.

**Dated : 27.4.2022.
Latur.**

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