

(1991) 09 GUJ CK 0010
In the Gujarat High Court

Satish Jagdishchandra Mistry and Another	APPELLANT
Vs	
State of Gujarat	RESPONDENT

Date of Decision : 25-09-1991

Acts Referred:

Penal Code, 1860 (IPC) — Section 363, 363, 364, 364

Citation : (1992) 1 GLR 3

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Judgement

B.J. Shethna, J.—Mr. Saiyed submitted that in this case, F.I.R. was lodged after two days of the alleged incident of kidnapping and abducting minor child "Rocky", but no explanation is forthcoming from the complainant for such an inordinate delay. Therefore, the petitioners should be released on bail.

It is true that the F.I.R. is lodged after more than 48 hours of the incident and no explanation is given in the complaint for lodging it late by Rekhaben the mother of minor child Rocky. But, that itself would not be a ground for releasing the present petitioners on bail at this stage. The explanation for lodging F.I.R. late could be given by the complainant only at the time of recording her evidence during trial. In this case, the fact remained that a minor son of the complainant was kidnapped on 23rd. One can imagine the state of mind of the parents whose minor son is kidnapped, they will be under trauma. Before rushing to the Police, such persons would try to find out the child by any other way. They may have that apprehension in their mind that if they will approach Police, the life of their child would be in danger. Therefore, they may avoid to approach Police immediately. But when they failed in their all attempts and no alternative left with them then only they will approach the Police. In this case, also father of minor Rocky is a Doctor and naturally he would not like to take risk of approaching Police when his son is kidnapped by unknown person, under apprehension that if he will approach the Police, life of his son may be in danger. Therefore, he may not be ready to take that risk of approaching Police

immediately. However the mother is mother. She cannot wait for long time without her child and therefore in this case mother has approached the Police after two days of the incident. Therefore, delay of even 48 hours in lodging F.I.R. in this case would not be a ground to release the petitioners on bail.

2. Mr. Saiyed also submitted that no test identification parade is held in this case and therefore identity of the petitioners is not proved, therefore, no Court is going to convict them and the trial is going to result into acquittal of the petitioners. Therefore, he has submitted that this Court should release the petitioners on bail during the trial. But, that would not be a ground for acquitting the petitioners by the Court, if otherwise, the case is proved against them by the prosecution. On the contrary, the learned Additional Sessions Judge after considering entire material on record and the statements of the witnesses, has come to the conclusion that there is a prima facie case against the petitioners for the offence punishable under Sections 363 and 364 of I.P.C. Therefore, the petitioners cannot be released on bail by this Court, particularly when they are involved in such a serious offence of kidnapping a minor child of 10 years old only.

3. Mr. Saiyed next contended that Police has merely labelled Sections 363 and 364 of I.P.Code against the petitioners, so that the petitioners may not get bail. According to him, at the most offences, if any, as per F.I.R. itself would be under Sections 347 and 384 of I.P.C. which are punishable under to three years only. Therefore, the petitioners should be released on bail.

4. From the bare reading of F.I.R. it has become clear that the prima facie case is made out against the petitioners under Sections 363 and 364 of I.P.C. u/s 364, punishment of life imprisonment is provided. And, in this case, if ultimately, prosecution succeeds in proving its case against the petitioners, then no lenient view can be taken at the time of imposing sentence on the accused by the Court, who have kidnapped such a minor child only for the purpose of getting Rs. 6 Lacs from the parents. The way in which such type of offences are increasing in our society, it is a high time for the Court to take strict and serious view of the matter while passing an order of sentence on conviction, so that it may set an example to others so that no body will even think of committing such offences. Therefore, there is no substance in this contention also and it fails and rejected.

4A. Mr. Saiyed further submitted that when other co-accused--Raffiq who was an active participant of the offence and who was similarly situated with the petitioner No. 2-accused is released on bail by the Sessions Court. Therefore, this Court should release the petitioner No. 2 on bail. There is nothing on record to show that under what circumstances, Raffiq was released on bail by the Sessions Court.

5. In my view the learned Sessions Judge, has rightly rejected the bail application of the present petitioners for which he has assigned good reasons. Apart from that, considering other facts, and circumstances of the case, such

accused persons should not be released on bail who have kidnapped a minor child of aged 10 only and detained him with them for three days only for the purpose of knowking out Six Lacs rupees from parents. Therefore in my view, merely because one of the co-accused who is released on bail by the Sessions Court by different order would not be a ground for this Court to release the petitioners on bail.

6. Lastly Mr. Saiyed has relied upon the well-known judgment of the Supreme Court reported in Gudikanti Narasimhulu and Others Vs. Public Prosecutor, High Court of Andhra Pradesh, wherein the Supreme Court has laid down principle of Bail or Jail. Relying upon this judgment, Mr. Saiyed submitted that this Court should release the petitioners on bail. However, the said judgment will not apply in such cases where the accused are involved in such a serious offences like kidnapping, abducting of a minor child or offences of bride-burning or any other offences affecting entire society at large.

7. In my view, the Court should refuse bail to such accused persons when there is a prima facie case against the accused. If such accused persons are not released on bail then only it will have its deterrent effect on others also, they would also think twice before indulging themselves in commission of such offences and they will not indulge themselves in commission of such offences. If the accused persons involved in such serious offences are released on bail by the Courts, then other persons may inspire from that and they may also indulge themselves in commission of such serious offence with the feelings in their mind that even if they are arrested, the Courts are there to release them on bail. Such situation should not be allowed to lake place. Unfortunately, since last few years, Courts have become rather liberal in granting bail in such serious offences, without properly appreciating principle of Bail or Jail. In my view this is one of the reasons why since last several years, rate of crimes has accelerated to such an extent that it has become very difficult for a common man to live in the society with the feelings of safetiness of himself or for his family members. Therefore, in such serious offences, the bail application should not be lightly entertained by the Courts below, when there is a prima facie case.

8. Mr. Saiyed, lastly submitted that the petitioners are very young and at threshold of their life and therefore they should be released on bail. If the young persons indulged in such type of serious and heinous offences, then eventhough they may be at the threshold of their career, that by itself will not be a ground to release them on bail. Because, if they are not checked at this stage, they will turn out to be a habitual offender in future. Therefore, this contention of Mr. Saiyed also fails and rejected.

9. In view of the above discussions, I do not see any merit in any of the aforesaid submissions made by Mr. Saiyed in this ease. Accordingly this application fails and is rejected.