

Prashant Tayal vs State Of Nct Of Delhi on 3 January, 2022

Author: Subramonium Prasad

Bench: Subramonium Prasad

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ BAIL APPLN. 4351/2021
PRASHANT TAYAL

..... Petitioner

Through: Mr. Man Mohan Goyal, Advocate.

versus

STATE OF NCT OF DELHI

..... Respondent

Through:

Mr. Amit Chadha, APP for the State
with SI Sanjay Kumar, Police Station
Prasad Nagar.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
ORDER

% 03.01.2022

1. This petition has been filed under Section 439 Cr.P.C. seeking grant of regular bail in FIR No. 263/2020 dated 07.10.2020 registered at P.S. Prasad Nagar for offences under Section 364A/120B/34 of the Indian Penal Code, 1860 (hereinafter, "IPC").

2. The facts, in brief, leading to this petition are as follows:

a) On 07.10.2020, one Laxmi (wife of the victim, Mukesh Kumar) lodged a complaint wherein she alleged that her husband, who was working at Mzuhi Gold Company, had left for his office at 8:30 A.M. on 06.10.2020. It is stated that at 3:15 P.M. on 06.10.2020, the Complainant received a call from her husband/victim who stated that he was in Bulandshahar, Uttar Pradesh, and asked her to arrange for Rs 1-2 lakhs, and if cash was not available, then to arrange for jewellery. He asked her to reach Shahdara Metro Station with the cash and/or jewellery, and informed her that somebody would collect it. It is stated that the Complainant was also asked to handover the victim's cheque book.

b) It is stated that consequent to the phone call, the Complainant handed over jewellery worth about Rs. 3 lakhs along with cheque book at 4:30 P.M to a person, namely Pankaj Goyal (co- accused). It is stated that at 9:30 P.M., the Complainant received another call from the victim, asking her to arrange Rs. 3-4 lakhs more, and that only then would the kidnappers release him. On the said compliant, FIR No. 263/2020 dated 07.10.2020 was registered at Police Station Prasad Nagar for offence under Section 364A IPC.

c) On investigation, the victim was found and rescued from House No. 13, Gali No. 1, Nandan Nagar, Transport Nagar, Meerut, Uttar Pradesh on the evening of 07.10.2020. Accordingly, accused Nitin Kansal was arrested and he disclosed that his associate, Pankaj Goyal, had received the ransom from the daughter of the victim, and accordingly, Pankaj Goyal was arrested on 08.10.2020 and the jewellery as well as the cheque book were recovered from his possession. Goyal disclosed that he had received the jewellery and the cheque book on the directions of accused Nitin Kansal.

d) The statement of the victim under Section 164 Cr.P.C.

delineates the role of accused Nitin Kansal who was allegedly the distributor in the company, Amory Cosmetics, wherein the victim works as a commission agent. The disclosure statement as well as the supplementary disclosure statement of accused Nitin Kansal was recorded wherein he stated that the Petitioner herein had withdrawn cash from the ATM using the victim's debit card.

e) Chargesheet was filed on 09.02.2021. It is stated that the Petitioner herein filed an anticipatory bail application, being Bail Appln. No. 474/2021, which was dismissed vide Order dated 25.02.2021. It is stated that the Petitioner herein was declared proclaimed offender on 01.03.2020. Subsequently, it is stated that the Petitioner surrendered before the competent Court on 09.03.2021 and has been in custody since then.

3. It is stated that, before filing of supplementary charge-sheet, regular bail application filed by the Petitioner before the Ld. Trial Court was dismissed vide Order dated 09.07.2021, and that the second regular bail application of the Petitioner herein filed before the Ld. Trial Court after filing of the supplementary chargesheet was dismissed vide Order dated 03.12.2021. Consequently, the Petitioner herein has approached this Court by way of the instant regular bail application.

4. Mr. Man Mohan Goyal, learned Counsel appearing for the Petitioner herein, submits that the Petitioner surrendered on 09.03.2021 and has been in custody since then. He submits that the Petitioner has been falsely implicated in the instant case by the victim and that there is no incriminating evidence against him. Mr. Man Mohan Goyal argues before this Court that co-accused Pankaj Goyal, who had received the ransom amount from the daughter of the victim, has already been released on bail vide Order dated 16.08.2021 of this Court in BAIL APPLN. 1516/2021. He submits that, therefore, the Petitioner herein should be granted bail as well on the ground of parity.

5. Mr. Man Mohan Goyal submits that investigation related to the present FIR, i.e. FIR No. 263/2021, is already complete, and that chargesheet as well as supplementary chargesheet have been filed. He states that there is no reason to keep the Petitioner herein in prolonged custody as he is no longer required for interrogation and investigation. He submits that there is no possibility of the Petitioner herein tampering evidence or threatening the witnesses. He further argues that the Petitioner herein was working for his company, namely M/s Q3 Technologies on the day of the alleged incident, and that a certificate has been issued by the company to that effect.

6. The learned Counsel for the Petitioner submits that the Petitioner herein and the accused Nitin Kansal had been on friendly terms for over 20 years, and that accused Nitin Kansal had merely

asked the Petitioner herein to withdraw some amount that he had duly done in good faith. The learned Counsel for the Petitioner submits that the sole allegations against the Petitioner herein are on the basis of the supplementary disclosure statement of accused Nitin Kansal and that the same cannot be taken into consideration as per Section 25 of the Indian Evidence Act. He states that the statement of the victim recorded under Section 164 Cr.P.C. does not mention the Petitioner herein. Mr. Man Mohan Goyal further submits that the CCTV footage of the ATM upon which the prosecution is relying cannot form the basis for the continued custody of the Petitioner herein as the Petitioner is barely visible in the footage and that veracity of the footage will be a matter of trial.

7. The learned Counsel for the Petitioner submits that the father of the Petitioner herein is 40% disabled and is undergoing medical treatment. He further states that the mother of the Petitioner has also been in custody since 09.03.2021, and that the family is on the verge of starvation. In light of the above submissions, the learned Counsel for the Petitioner seeks grant of regular bail.

8. Per contra, Mr. Amit Chadha, learned APP for the State, submits that Petitioner herein has been accused of a very serious offence, i.e. under Section 364A IPC for which the punishment is either life imprisonment or death penalty. She vehemently opposes the bail application on the ground that the Petitioner herein played an active part in the commission of the offence.

9. Heard Mr. Man Mohan Goyal, learned Counsel for the Petitioner, Mr. Amit Chadha, learned APP for the State, and perused the material on record.

10. The material on record reveals that the Petitioner herein was actively involved in the commission of the offence and had withdrawn an amount of Rs. 12,000/- at the ATM using the debit card of the victim. Furthermore, the Petitioner was also visible in the CCTV footage retrieved from the ATM of IDFC First Bank, Meerut, Uttar Pradesh. However, the authenticity of the CCTV footage is a matter of trial. Further, the CDR of the Petitioner is corroborative of the statement of the victim under Section 164 Cr.P.C. The veracity of the CDR is also to be discerned during the course of trial. While the Petitioner herein refused to participate in the TIP, however, it is to be noted that he was identified by the victim from his photograph. The Petitioner herein had also been declared proclaimed offender on 01.03.2021, and subsequently surrendered himself before the Court on 09.03.2021.

11. It is pertinent to note at this juncture that offence under Section 364A, which entails kidnapping for ransom, etc., is undoubtedly a heinous offence wherein the two prescribed punishments are life imprisonment or death penalty. While considering an application for grant of bail, one of the factors that needs to be taken into account is the seriousness of the offence. In *Gurcharan Singh and Ors. v. State*, (1978) 1 SCC 118, the Supreme Court had categorically held that in granting or non-granting of bail in a non- bailable offence, the primary consideration is the nature and gravity of the offence. Furthermore, there cannot be an inexorable formula in the matter of granting bail and, at this stage, the Court can only go into the question of whether a prima facie case is established (See also *Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav and Anr.*, (2004) 7 SCC 531).

12. Furthermore, this Court does not find weight in the contention of the learned Counsel for the Petitioner that the Petitioner herein should be granted regular bail on the ground that his co-accused Pankaj Goyal has been granted regular bail vide Order of this Court dated 16.08.2021. While the allegation against co-accused Pankaj Goyal is limited to collecting of jewellery and the cheque book from the daughter of the victim from Delhi, the allegation against the Petitioner herein is that he not only threatened the victim, but was also present in Meerut where the victim was rescued and he had also withdrawn the amount of Rs. 12,000/- from the ATM with the debit card of the victim. The role of the co-accused Pankaj Goyal is dissimilar to the role of the Petitioner herein, and therefore, the ground of parity for grant of regular bail cannot be countenanced by this Court.

13. In view of the above observations, taking into account the prima facie role of the Petitioner as well as the seriousness of the offence, this Court is, therefore, not inclined to grant bail to the Petitioner herein at this stage.

14. Accordingly, this petition is dismissed with the aforementioned observation, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J.

JANUARY 03, 2022 S. Zakir