

Monika Upadhyay vs State on 30 September, 2020

Author: Suresh Kumar Kait

Bench: Suresh Kumar Kait

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ BAIL APPLN. 2597/2020

MONIKA UPADHYAY

Through

..... Petitioner

Mr. R. K. Bachchan with Mr.
Awadesh Dubey, Adv.

versus

STATE

Through

..... Respondent

Mr. Izhar Ahmad, APP for State
Mr. Rahul Mehra, Standing Counsel
(Crl). With Mr. Chaitanya Gosain,
Adv.
DCP Rajesh Deo, Legal Cell

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT
ORDER

% 30.09.2020 The hearing has been conducted through video conferencing.

1. The present petition has been filed by the petitioner under Section 438 Cr.P.C. read with Section 482 Cr.P.C. for grant of anticipatory bail in case FIR No. 84/2019, registered at Police Station Najafgarh.

2. Learned APP has raised preliminary objection that on 24.10.2019, proceedings u/s 82 Cr.P.C. were initiated and petitioner was declared PO on 17.12.2019. Thus, the present petition is not maintainable.

3. As per status report on 19.04.2019, CCTV footage of complainant's office was checked, it was clearly visible in the CCTV footage that the petitioner and staff of packers and movers were taking away the articles.

Petitioner and her husband were absconding, therefore, NBWs were issued against them on 10.09.2019, Co-accused Santosh Upadhyaya (husband of petitioner) was formally arrested on 17.02.2020 who disclosed that he had argument with the complainant regarding monetary issue, he had also taken the property documents of the complainant with him to Banaras and his wife had taken away articles from the flat of the complainant.

4. Learned APP further submits that some of the stolen items were also recovered from a flat where Santosh was living as a tenant. Thereafter, Santosh was granted regular bail. On 25.09.2020 (after filing of the present petition) petitioner joined the investigation and stated that she was living as a tenant in flat no. 301 and there were no articles of the complainant in that flat, and had purchased flat no. 502 from the complainant. She paid for the same partly in cash and remaining amount she transferred in the account of the complainant. She further stated that complainant had taken the original GPA documents from her at gunpoint. And that she had left the said flat after informing the complainant, and she have the bills of the articles that she took away. She also stated that she will provide bank statement, property documents, bills of the articles etc. On 26.09.2020, petitioner further joined the investigation and provided copy of the rent agreement, copy of ownership documents and bills related to cylinder. However, she has not yet provided the bills for the articles that were recovered from her husband and the details and proof of payment made to the complainant.

5. Case of the petitioner is that petitioner has been cooperating with the investigation and also has call recordings with IO and photographs to prove the same. The complainant allured the accused persons to shift in the said flat. Accordingly, they shifted there in January 2017. The rent agreement was made for a period of 21 Months.

6. Counsel for the petitioner submits that on 23.10.2017, Agreement to Sell, General Power of Attorney and Will were executed by the complainant in the favour of petitioner's husband for a total consideration of Rs.28,00,000/-, the said amount was paid mostly in cash, and only an amount of Rs.1,16,500/- was transferred in the bank account of the complainant. The learned counsel has further drawn the attention of the court on the relevant documents filed along with the petition corroborating the submission.

7. As stated by learned counsel for petitioner, before 06.09.2018 petitioner was threatened by the complainant to vacate the rented premises. Petitioner has also filed a complaint against the Complainant on 27.09.2019.

8. In view of the above, since there is transaction between the petitioner and the complainant, therefore, the case of the complainant is not clear at this stage. However, without commenting on the merits of the prosecution case and keeping in view the peculiar facts of the case, I am of the view that petitioner deserves anticipatory bail.

9. Accordingly, the SHO/IO concerned is directed that in the event of arrest, the petitioner/applicant shall be released on bond on his furnishing a personal bond in the sum of Rs.25,000/-. The petitioner shall cooperate with the investigation and make herself available for interrogation by police officer, as and when required.

10. Before parting with the order, it is relevant to mention that nothing contained in this order shall be construed as an expression on the merits of the case.

11. The petition is, accordingly, allowed and disposed of.

12. Vide order dated 09.09.2020, this Court passed as under:

"8. Before parting with the present petition, it is important to mention here that even today, this Court is facing problem because the audio or video connection of the IOs from the Police Station is not proper, therefore, the IOs are unable to provide the required assistance to the Court. Firstly, the IOs don't join the proceedings on time and when the Court asks any question from the IO, then learned APP asks him to join, thereafter, a lot of time is wasted in the process of joining and even after joining, I find that the audio and video quality is so poor due to which, no assistance is being rendered to the Court.

9. Accordingly, I hereby direct the Commissioner of Police, Delhi to make proper arrangements in every District so that in said place proper audio, video and internet connection could be provided. The Commissioner of Police, Delhi is further directed to ensure that the IOs join the respective matters through video conferencing immediately when it starts to avoid wasting the time of the Court."

13. Pursuant to the said order, status report has been filed by Dy. Commissioner of Police, Legal Cell, Delhi dated 17.09.2020 whereby stated as under:

"2. That the Investigating Officers had been attending Courts through the computer facility available at Police Station or through their personal arrangements, such as, Laptop, Tab etc. Since they have to attend to multiple Courts, as required, they log on to various Courts one after another.

3. In order to streamline the arrangement for virtually attending the Court, the Commissioner of police, Delhi has already got Video Conferencing Room created in every District from where the investigation officers can attend respective court on video conference. The IOs have further been directed to use the facility in the video Conference Room to attend the Courts virtually. A copy of the directions is enclosed at Annexure 'A'.

4. It is further submitted that smooth functioning of the Court hearing through video-conference is squarely dependent upon and subject to connectivity like signal strength, bandwidth, etc. Although, Delhi Police has made adequate arrangements to facilitate the IOs to attend virtual courts, but due to insufficient speed of the internet connection provided by the Internet Service Provider (ISP), the IOs may sometimes find it difficult to virtually attend the Courts seamlessly which may lead to inconvenience to the Courts.

5. A letter has been issued to the Senior Deputy Director General, Delhi Licensing Service Area, Department of Telecommunication to direct all the service providers to provide seamless connectivity to all Video Conference Rooms and, if required additional boosters be installed to improve the quality of internet connectivity. Copy

of the letter may please be seen at Annexure B."

14. It is brought to the notice of this Court by learned standing counsel that Ministry of Home Affairs, CIS Division, Government of India, had issued a letter dated 07.09.2020 whereby stated as under:

"1. The undersigned is directed to say that BharatNet is a project to create network to connect all the Gram Panchayats (GPs) by broadband. This project is under implementation and the infrastructure created will be a national asset, accessible on a non-discriminatory basis to the service providers. The project aims to provide affordable broadband services to citizens and institutions in rural and remote areas, in partnership with States and the private sector, towards realization of the vision of Digital India.

2. BharatNet project is being implemented by Government of India for providing high speed broadband connectivity to all the Gram Panchayats (GPs) in the country. Work covering more than 1,00,000 GPs has already been completed and Phase-II work is under implementation for connecting remaining GPs.

3. For BharatNet Phase-1, CSC e-Governance India Ltd. (a Special Purpose Vehicle under the Ministry of Electronics & Information Technology) has been assigned the work of provisioning of 5 Fibre to the Home (FTTH) connections to Government Institutions such as Anganwadi, Health & Wellness Centres, Government Schools, Public Distribution system, Post offices and Police Stations etc. It has been observed that during the provisioning of FTTH connections to the Government Institutions, following issues are being faced by the CSC teams (Common Service Centre):

i. Government institutions at GP level are not aware about the scheme and they ask for the letter issued by their respective state authority in this regard. ii. Some institutions are not able to provide documents required for KYC for providing FTTH connection. iii. Power connection is also required at Government institutions for FTTH connection.

4. In view of above, suitable instructions may kindly be issued to sensitise the concerned Government Institutions at GP level to accept and provide necessary cooperation in provisioning at FTTH connections.

5. This issues with the approval of the Competent Authority."

15. As stated by learned standing counsel that Commissioner of Police, Delhi is endeavour to make the system perfect and therefore, seeks time to file further status report to make the system better for adopting BharatNet, Phase-1, CSC e-Governance India Limited as per letter dated 07.09.2020 by the Ministry of Home Affairs.

16. Since the Ministry has already issued a letter dated 07.09.2020, Commissioner of Police, Delhi is directed to make arrangements so that there will be no issue of internet and other problems for smooth functioning of the Court.

17. Learned standing counsel seeks two weeks' time to file the status report to this effect.

18. Let needful be done at least two days before the next date of hearing with an advance copy to the other side.

19. Renotify on 21.10.2020 for further directions.

20. Copy of this order be transmitted to the Commissioner of Police, Delhi for information and necessary compliance.

21. The order be uploaded on the website forthwith.

SURESH KUMAR KAIT, J SEPTEMBER 30, 2020 ms