

Sanni Malik @ Sanni Jaat vs State Of U.P. on 10 August, 2016

Author: Harsh Kumar

Bench: Harsh Kumar

HIGH COURT OF JUDICATURE AT ALLAHABAD

Reserved

A.F.R.

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 29519 of 2015

Applicant :- Sanni Malik @ Sanni Jaat

Opposite Party :- State Of U.P.

Counsel for Applicant :- N.K. Srivastava,Rajesh Kumar Sharma

Counsel for Opposite Party :- Govt. Advocate,Sushil Shukla

Hon'ble Harsh Kumar,J.

Heard Sri N.K. Srivastava, Sri Rajesh Kumar Sharma, learned counsel for the applicant, Sri Sushil Shukla, learned counsel for the first informant, learned AGA for the State and perused the record.

Learned counsel for the applicant contended that the applicant is not named in F.I.R. and has been falsely implicated on the basis of disclosure statement of co-accused persons; that as per prosecution case, a missing report was given by Smt. Sonia wife of Kapil Gupta (hereinafter referred as K.G.) on 22.9.2011 at 1:45 p.m., stating that her husband K.G. left his office F-37, Sector-6, Noida at about 7:00 p.m. on 21.9.2011 for his residence at 349 Sector-15A, Noida by his black colored Mercedes Car No.H.R. 99TEMP 01319 but did not reach home; that the above missing report was converted into case crime no.682 of 2011 when the missing person K.G. returned home on 24.9.2011; that the first informant in her statement under section 161 Cr.P.C. has stated that on 22.9.2011 at about 10:30 p.m., a call was received at mobile no.9871576860 of her Jethani Purnima from mobile no.9811055733 of her husband who informed that he has been kidnapped and asked for making

arrangements of Rs.5 crores, as ransom money, failing which the kidnappers will cause his death and on his another call, when she asked him of his welfare, the phone was disconnected and again her husband called Vijay on his mobile no.9810103577 inquiring about the arrangements of Rs.5 crores, if have been made as above; that it has also been stated by the first informant that the kidnappers also talked her on mobile of Vijay and told her to hand over the ransom amount in two bags under the denomination of currency notes of Rs.1000/- and to come alone else upon informing the police even the dead body of her husband will not be traced/recovered; that it has further been stated by first informant that she sought permission from the kidnappers to come with driver, as she will not be able to come alone and when she reached the desired place with the ransom amount of Rs.5 crores in the midnight, she was further called to keep two bags on the ground and leave, and when she was returning back, in the light of vehicle seen three miscreants, who emerged out from the sugarcane fields and taken away the two bags full of currency notes worth Rs.5 crores back to sugarcane fields; that in the statement of kidnapped K.G. under section 161 Cr.P.C. at Annexure No.3 from page 23 to 25, he has narrated the story of his kidnapping and has given the names of miscreants, who were allegedly calling each other and made demand of Rs.15 crores as ransom and did not agree to reduce the demand below from Rs.5 crores; that the above kidnapped person has stated that after covering his eyes, he was dropped at Noida near Sector-15A of his residence and could reach home at about 8:00 p.m. and that he was released after taking ransom amount of Rs.5 crores.

Much emphasis has been given by learned counsel for the applicant on above statement of K.G. filed at Annexure No.3, submitting that the kidnapped person/victim has given the names of various miscreants, but did not name the applicant, as stated in para 9 of the affidavit to the bail application and so the case of applicant is clearly distinguishable; that the name of applicant has come for the first time in the confessional statement of co-accused Kapil, Vinay and Anshul (filed at Annexure No.5), upon their arrest in police party encounter under section 307 IPC on 12.10.2011 (after a period of 20 days of incident); that there is virtually no evidence against the applicant, who is a student and was studying in B.B.A. from Hemwati Nandan Bahuguna Garhwal University, Deharadun as regular student, and copy of his mark sheet has been filed at Annexure No.6; that moreover on the date of incident of kidnapping of K.G., the applicant was at Dehradun and during a visit to Market with uncle Ravindra Malik, he met with an accident sustaining serious injuries on his face and nose and was admitted in Government Hospital at Deharadun, as mentioned in para 13 of the affidavit to bail application; that getting information of accident of applicant, his father shifted him to M.G. Hospital & Trauma Centre, Meerut, where he remained admitted for 6 days for treatment of fracture; that the father of applicant is a defence personal and due to unwanted harassment by police, he obtained compulsory retirement; that the entire prosecution story is false, concocted and highly improbable; that nothing incriminating has been recovered from the possession of applicant and the amount of ransom money is alleged to have been recovered from other persons; that the applicant was implicated in case crime no.703 of 2011, under section 147, 148, 149, 307, IPC and case crime no.121 of 2011, under sections 364-A IPC, in both of which, he has been granted bail by this Court vide orders dated 9.9.2015 and 30.10.2015 passed in Criminal Misc. Bail Application Nos.32631 of 2015 and 33031 of 2015, respectively, copies of which were produced for perusal during arguments; that the applicant undertakes that he will not make misuse the liberty of bail; that the applicant is in custody since 18.12.2014.

Learned AGA as well as learned counsel for the first informant vehemently opposed the prayer of bail and contended that the applicant has moved bail application with absolutely false and incorrect allegations and concealing the true facts; that the applicant has deliberately filed a false and incorrect copy of statement of the kidnapped "K.G." at Annexure No.3 to the affidavit and has made a specific allegations in para 9 of the affidavit to bail application maliciously and mischievously that he did not name applicant as one of the miscreants and further dishonestly and deliberately with malafide intention to misguide the Court for procuring bail, in the statement of K.G. left some space "BLANK with dots" between the names of co-accused persons "Kapil" and "Sumit" at page 24; that the correct and complete copy of statement of kidnapped K.G. has been filed at Annexure No.4 to the counter affidavit filed by first informant, wherein at page 21, there is clear mention of names of "Monu" and "Sanni" at above dotted space between the names of "Kapil" and "Sumit"; that thus the applicant has not only left the space with dots in statement of K.G. at Annexure No.3, malafidely and mischievously, but has also dared to make specific false averments in para 9 of the affidavit to the bail application, that the kidnapped person did not disclose the name of applicant as one of the miscreants; that the above concealment has been made deliberately, mischievously and with mala fide intentions with an attempt to play fraud on the Court for procuring the bail; that similarly in para 29 of the affidavit given in support of bail application, it has been clearly mentioned that applicant has no criminal history, while apart from this case, the applicant is involved in as many as three more cases, including those of heinous crimes under sections 307 and 364-A IPC, detailed in para 18 of the counter affidavit and on being caught for making false statement and mischievous concealment, he has claimed to have obtained bail in above cases during pendency of his bail application; that apart from above, the applicant has also made a false plea of alibi in para 13 of the affidavit and in order to support above false plea of alibi, has forged and fabricated the documents with regard to his injuries allegedly sustained in accident in Dehradun Market, at the time when K.G. was kidnapped in Noida; that the medical reports at Annexure No.7 are false and do not support the above false plea of alibi; that the father of applicant being an influential person, has obtained a prescription (Outdoor Patient Ticket) of applicant by exercising his influence and further to strengthen the above false plea of alibi, got him admitted to L.L.R.M., Medical College, Meerut and obtained false medical reports in order to make a ground for getting his worthy criminal son released on bail; that the medical reports are self contradictory and do not show applicant's admission in Dehradun Hospital rather only reference has been obtained thereon; that the medical report at page 45 A-8 showing "Linear undisplaced fracture in left temporo-parietal region" is against the allegation in para 13 about alleged injuries on face and nose; that the applicant is alleged to have fallen forward getting his face and nose injured and under any imagination of medical jurisprudence, on falling of a person with the face on ground there can be no probability of sustaining even linear fracture in left tempoor-parietal region; that the applicant continued to abscond for a long period of three years and despite putting reward over his head and issuance of process under sections 82 & 83 Cr.P.C., his arrest could be made only by Special Task Force, from the State of Madhya Pradesh; that the averments made in para 15 of the affidavit to bail application dated 19.7.2015 about having no knowledge of the incident in question are absolutely false and in contradiction to the fact that the applicant had filed a Writ Petition No.24330 of 2011 before this Court for quashing of F.I.R., which was dismissed vide order dated 22.12.2011, copy filed at Annexure No.18 to the counter affidavit and it is yet one more attempt to misguide the Court and denying knowledge of case upto 2015 inspite of fact of having complete knowledge since lodging of

F.I.R. in 2011; that the role of applicant is fully identical and is not distinguishable from his associates, the other co-accused, namely, Sandeep, Pushpendra @ Pintu, Braham Singh, Anshul Sharma and Sajeev Kumar, whose bail applications have been rejected on merits vide orders dated 5.9.2012, 5.9.2012, 22.4.2013, 24.9.2015 and 5.7.2016, passed in Criminal Misc. Bail Application Nos.14342 of 2012, 21567 of 2012, 8117 of 2012, 6936 of 2015 and 9236 of 2013, respectively copies of which have been filed as Annexure No.17 to the counter affidavit and of order dated 5.7.2016 produced for perusal during hearing; that the second bail application of co-accused Pushpendra @ Pintu was also rejected by this Court vide order dated 8.11.2013 passed in Criminal Misc. Bail Application No.9359 of 2013 while the third bail application of co-accused Anshul Sharma was rejected by this Court vide order dated 24.9.2015 passed in Criminal Misc. Bail Application No.6936 of 2015, copies of which have been filed collectively at Annexure No.17 to the counter affidavit; that the trial is in progress and if the applicant is released on bail, he will certainly make misuse the liberty of bail and will disappear/underground; that the recovery of entire amount of Rs.5 crores paid as ransom, has been recovered from the associates of applicant while he managed to escape and obtained some fabricated medical reports in order to make a false plea of alibi; that the applicant is not a student, rather is involved in criminal activities since before the crime in question; that the bail application of applicant is misconceived and is liable to be rejected.

Upon hearing the parties counsel and perusal of record, I find that the bail has been sought mainly on the following grounds viz.(i) the applicant is not named in F.I.R., (ii) he was not named by kidnapped person K.G., (iii) plea of alibi that at the time of incident in District Gautam Budh Nagar (Noida) he met with an accident at District Dehradun sustaining multiple injuries on nose and face, (iv) he could not appear before the Court for a period of 3 years, because prior to 18.12.2014, he had no knowledge of the case, and that (v) he is a student and has no criminal history.

In a case of kidnapping on the point no.(i), the fact of applicant having been not named in F.I.R. is immaterial and on point no.(ii) as far as the medical reports which are alleged to have been obtained in support of false plea of alibi, since correctness of above report is to be decided by trial court upon evidence adduced during trial, so no opinion is being expressed. However on point nos.(ii), (iv) and (v), the averments made in affidavit given in support of bail application are apparently false and incorrect on face of the record and have been found to be wholly wrong and incorrect. In view of submissions made at Bar, I am of the considered view that on above points deliberate false statements have been made by and on behalf of applicant (i) by filing incorrect copy of statement of kidnapped K.G. at Annexure No.3 to the affidavit, concealing the correct statement with an attempt to misguide the Court and procure bail by playing fraud on Court (ii) by giving false statement that the applicant has no criminal history while he has criminal history of heinous offences including one more case of similar nature under section 364-A IPC to his credit and (iii) by giving yet another false statement of having no knowledge of proceedings upto 18.12.2014 despite the fact that he had filed writ for quashing of F.I.R. of this case which was dismissed vide order dated 22.12.2011, since when he remain absconding and the plea of having no knowledge of the proceedings is palpably wrong.

It is settled principle law as has been laid down by the Apex Court in catena of judgments as well as in (2013) 7 SCC 452, C.B.I. Vs. Vijay Sai Reddy and (2013) 7 SCC 439, Y.S. Jagan Mohan Reddy Vs. C.B.I., that the relevant grounds for consideration for grant of bail are "(a) nature of accusation and

evidence (b) severity of punishment which conviction will entail (c) character and circumstances which are peculiar to accused (d) reasonable possibility of securing presence of accused at trial, (e) reasonable apprehension of witnesses being tampered with, and (f) larger interests of public/State and other similar consideration etc. It is pertinent to mention that admittedly the applicant is a person of criminal antecedents and case crime no.703 of 2011, under sections 147, 148, 149, 307 IPC and case crime no.121 of 2011, under sections 364-A IPC (similar heinous offence), are to his credit and despite his securing bail in above cases, in view of his involvement in similar nature of crimes since before the present case crime no.682 of 2011, under section 364-A IPC, there is no reason to believe that in case of release, he will not be further involved in similar or other offences and will not tamper the prosecution evidence or that his release will be in larger public interest, rather there is every likelihood of misuse of liberty of bail by the applicant as well as of his absconding in order to delay and defraud the trial. Hence in view of the submissions made by learned counsel for the parties, complicity of accused, severity of punishment, deliberate wrong submission of facts with concealment of true facts by the applicant, as mentioned above, I find that applicant has not come with clean hands and has not acted fairly rather has made an attempt to procure bail by concealment of true facts and playing fraud on the Court. In view of the facts and circumstances, considering the seriousness of matter and repeated false statements of applicant on various points, without commenting the on the merits of the case, I do not find it a fit case for bail. The bail application of applicant Sanni Malik @ Sanni Jaat in S.T. No.53 of 2015, case crime no.682 of 2011, under sections 364-A, 120-B, 34 IPC, PS. Sector 20 Noida, District Gautam Budh Nagar, is liable to be rejected and is rejected accordingly.

Order Date :- 10/08/2016 Tamang