

Himanshu Pandey @ Ribbu vs State Of U.P. on 11 December, 2023

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2023:AHC:234198

Court No. - 76

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 29372 of 2023

Applicant :- Himanshu Pandey @ Ribbu

Opposite Party :- State of U.P.

Counsel for Applicant :- Pratibha Jaiswal, Surendra Kumar Chaubey

Counsel for Opposite Party :- G.A., Pradeep Kumar Srivastava

Hon'ble Vikram D. Chauhan, J.

1. Learned A.G.A. for the State submits that instructions have been received and has no objection in case the bail application is heard on merits.
2. Heard learned counsel for the applicant, Sri Pankaj Kumar Asthana, Advocate holding brief of Sri Pradeep Kumar Srivastava, learned counsel for the informant, learned A.G.A. for the State and perused the record.
3. It is submitted by learned counsel for the applicant that as per allegation in the First Information Report, it is alleged that applicant had demanded Rs.10,00,000/- as extortion money and when the informant has refused to give money, applicant has taken away the informant and the informant was released after two days on the promise of delivery of Rs.20,00,000/-. It is submitted that no amount was delivered as per prosecution case. It is further submitted that at the best, offence would come under Section 385 IPC where the maximum punishment provided is two years. It is further submitted that although there are allegation with regard to assault, however, in Section 323 IPC, maximum punishment provided is one year. On the aforesaid basis, learned counsel for the

applicant submits that the applicant is entitled to be released on bail. The criminal history of the applicant has been explained in paragraph no.8 of the affidavit, which are of the year 2011 and 2012 and the same does not pertain to same offence. Applicant is languishing in jail since 1.6.2023 and in case he is released on bail, he will not misuse the liberty of bail and will cooperate in the trial.

4. Learned counsel for the informant has opposed the bail application and submits that applicant is being prosecuted under Section 386 IPC. Learned counsel for the informant admits that no amount was paid as extortion money to the applicant, however, he submits that there was a demand of extortion, therefore, Section 386 IPC would be applicable. Learned counsel for the informant further submits that under Section 383 IPC, in respect of extortion, the delivery of amount is not necessary. It is submitted by learned counsel for the informant that call location of the informant and the applicant were found to be same during investigation and the applicant has previous criminal history. It is also submitted that there are Whatsapp chat between the informant and accused, which would show that both informant and accused were negotiating extortion.

5. Learned A.G.A. for the State has opposed the prayer for bail and submits that in the present case, no extortion money has been received by the applicant and the only demand was made.

6. On a pointed query being made to learned AGA as to whether provision of Sections 385 or 386 IPC would be attracted in the present case, learned AGA submits that provision of Section 385 IPC would be applicable as no extortion money has been paid.

7. Learned AGA for the State has pointed out the criminal antecedents of the applicant. No material or circumstance has been brought to the notice of this Court with regard to tampering of evidence or intimidating of witness in previous criminal cases. In *Ash Mohammad Vs. Shiv Raj Singh*, (2012) 9 SCC 446, the Apex Court in para 30 has observed:-

"We may hasten to add that when we state that the accused is a history-sheeter we may not be understood to have said that a history-sheeter is never entitled to bail. But, it is a significant factor to be taken note of regard being had to the nature of crime in respect of which he has been booked."

8. In the case of *Prabhakar Tewari Vs. State of U.P. and another*, 2020 (11) SCC 648, the Hon'ble Supreme Court has observed that pendency of several criminal cases against an accused may itself cannot be a basis for refusal of bail.

9. In so far as criminal antecedents of the applicant is concerned, it is not the case of the State that applicant might tamper with or otherwise adversely influence the investigation, or that he might intimidate witnesses before or during the trial. The State has also not placed any material that applicant in past attempted to evade the process of law. If the accused is otherwise found to be entitled to bail, he cannot be denied bail only on the ground of criminal history, no exceptional circumstances on the basis of criminal antecedents have been shown to deny bail to accused, hence, the Court does not feel it proper to deny bail to the applicant just on the ground that he had criminal antecedent.

10. The principle that Bail is a rule and Jail is an exception has been well recognised by Apex Court more specifically on the touch stone of Article 21 of the Constitution. The said principle has been reiterated by the Apex Court in Satyendra Kumar Antil Vs. Central Bureau of Investigation and another, 2022 (10) SCC 51. Learned AGA has not shown any exceptional circumstances which would warrant denial of bail to the applicant.

11. No material, facts or circumstances has been shown by learned AGA for the State that the accused may tamper with the evidence or witnesses or the accused is of such character that his mere presence at large would intimidate the witnesses or that accused will use his liberty to subvert justice or tamper with the evidence.

12. It is settled principle of law that the object of bail is to secure the attendance of the accused at the trial. No material particulars or circumstances suggestive of the applicant fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like have been shown by learned AGA for the State.

13. Learned AGA for the State has not shown any material or circumstances that the accused/applicant is not entitled to bail in larger interests of the public or State.

14. It is to be seen in the present case that the allegation against the applicant is to the effect that applicant has demanded extortion money from the informant and have abducted the informant, however, informant was released by the applicant on the promise of delivery of Rs.20,00,000/-. It is admitted case of the prosecution and the learned counsel for the informant that the aforesaid extortion amount was not paid to the accused persons. In respect of offence, applicant is being prosecuted under Section 342 IPC where the maximum punishment provided is one year and in Section 323 IPC also, the maximum punishment provided is one year.

15. Insofar as Section 386 IPC is concerned, it is to be seen that as per Section 383 IPC, the extortion has been defined. Section 383 IPC is quoted hereunder:

"383. Extortion - Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits "extortion."

16. It is further to be noted that delivery of property or valuable security is an essential ingredients in respect of offence of extortion. In the present case, the extortion money has not been paid and therefore, the offence under Section 385 IPC would be applicable. The provision of Section 385 IPC is quoted hereunder:

"385. Putting person in fear of injury in order to commit extortion - Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

17. In *Dhananjay @ Dhananjay Kumar Singh Vs. State of Bihar & another*, reported in (2007) 14 SCC 768, the Supreme Court has held as under:

"5. Section 384 provides for punishment for extortion. What would be an extortion is provided under Section 383 of the Indian Penal Code in the following terms:

"383. Extortion:- Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits "extortion".

6. A bare perusal of the aforementioned provision would demonstrate that the following ingredients would constitute the offence :

1. The accused must put any person in fear of injury to that person or any other person.
2. The putting of a person in such fear must be intentional.
3. The accused must thereby induce the person so put in fear to deliver to any person any property, valuable security or anything signed or sealed which may be converted into a valuable security.
4. Such inducement must be done dishonestly."

18. As per admitted case, the amount has not been transferred in favour of the accused, as such, Sections 385 / 387 IPC may be attracted instead of Section 386 IPC.

19. Considering the facts and circumstances of the case, nature of offence, evidence, complicity of the accused, submissions of learned counsel for the parties and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

20. Let the applicant Himanshu Pandey @ Ribbu involved in Case Crime No.189 of 2023, under Sections 386, 342, 323 IPC, Police Station Kotwali Chunar, District Mirzapur be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to the following conditions:-

- i. The applicant will not tamper with the evidence during the trial.
- ii. The applicant will not pressurize/intimidate the prosecution witness.

iii. The applicant will appear before the trial court on the date fixed, unless personal presence is exempted and/or the applicant shall make himself available for interrogation by a police officer as and when required.

iv. The applicant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.

v. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

vi. The applicant shall not leave India without the previous permission of the Court.

vii. In the event, the applicant changes residential address, the applicant shall inform the court concerned about new residential address in writing.

21. In case of breach of any of the above condition, the prosecution shall be at liberty to move bail cancellation application before this Court.

Order Date :- 11.12.2023 D. Tamang