

Mohit Kumar Kannoja vs State Of Uttarakhand on 30 July, 2020

Author: Sharad Kumar Sharma

Bench: Sharad Kumar Sharma

HIGH COURT OF UTTARAKHAND AT NAINITAL
Bail Application No. 704 of 2020

Mohit Kumar KannojaApplicant

Versus

State of Uttarakhand Respondent

With

Bail Application No. 705 of 2020

Rahul KannojaApplicant

Versus

State of Uttarakhand Respondent

With

Bail Application No. 706 of 2020

Shivam TiwariApplicant

Versus

State of Uttarakhand Respondent

With

Bail Application No. 709 of 2020

Ashish Kumar alias Aman KumarApplicant

Versus

State of Uttarakhand Respondent

With

Bail Application No. 720 of 2020

Anup KumarApplicant

Versus

State of Uttarakhand Respondent

Present :

Mr. Punit Kumar and Mr. Vikas Kumar Guglani, Advocate for the applicants.

Mr. Sandeep Tandon, Deputy Advocate General along with Mrs. Mamta Joshi, Brief Holder for the State of Uttarakhand.

Order Reserved: 17th July, 2020

Order Delivered : 30th July, 2020

JUDGMENT

Hon'ble Sharad Kumar Sharma, J.

(Via Video Conferencing) These are five Bail Applications, which are arising out of the registration of the F.I.R, being F.I.R. No.20 of 2019, as registered on 6th December, 2019, at Police Station Cyber Crime, District Dehradun, for commission of the offences under Sections 420, 120-B IPC as well as Section 66 of the I.T. Act.

2. Precisely, before venturing into the argument as extended by the learned counsel for the applicants, it is inevitable to consider the short backdrop of the set of allegations, levelled against the applicants, in the FIR, they are that the applicants, who are 15 in numbers, invariably belonging to the different parts of the Uttar Pradesh, particularly, Tehsil Chekari, District Kanpur, and some of them are even belonging to Saharanpur and Faizabad also, they had conspired together for committing of offence as complained of against them. What is being reflected from the record is that, there have been an earlier offence also registered against the accused persons as Case Crime No. 491 of 2019, at Police Station Rudrapur, District Udham Singh Nagar, with regard to the commission of the similar offence of fraudulently withdrawing money from various ATM machines, situated in different parts of the State, by use of fraudulently manufactured or procured ATM cards / PTM cards and various other documents, which were used by the accused persons in commission of the offence, under a well hatched conspiracy, and with a common intent of usurpation of public money.

3. The F.I.R. No. 491 of 2019, exclusively relates to the offence, which has been committed by the applicants as co-accused by withdrawing money from various ATM machines, which were situated at Mata Mandir Marg, Kashipur; Diwan Building Rudrapur; Verma Complex, Mukhani Chaurah, Kaladhuni; Transport Nagar, Rampur Road, Haldwani; Moon Hotel, Sadar Bazar, Ranikhet; Gopalji Complex, Sadar Bazar, Haldwani; and Nazibabad Road, Kotdwar Road, Pauri. As against the total withdrawal, which have been made from the said ATMs, approximately an amount of Rs. 2,60,61,600/- (Two crores sixty lakhs sixty one thousand six hundred only), is shown to have been wrongfully withdrawn from the aforesaid ATMs by use of fraudulent ATM /PTM cards, and the indulgence of the accused persons were shown to be covered by the CCTV camera footage, as well as from the banks internal inquiry, which was conducted by them, which projected the wrongful withdrawal of money, apart from the withdrawal of the money made from "Charge Back Process", amounting to Rs. 2,19,78,800/-, meaning thereby, an overall wrongful withdrawal, which has been wrongfully made by the gang of accused/applicant persons by laying down the well hatched conspiracy was shown to be of Rs. 4,80,40,400/-.

4. After commission of the offence, registered as Case Crime No. 491 of 2019, which was registered at P.S. Rudrapur, District Udham Singh Nagar, on 15th September, 2019, on a complaint, which was registered by Bipin Chandra Joshi, which were for the offences under Sections 420, 380 and 411 IPC, six accused persons, namely Kishan Kashyap, Ravi Kant, Rahul Kashyap, Jeetu Yadav, Ashish Kumar and Rohit Kashyap; were arrested on spot of commission of the aforesaid offence.

5. On account of the fact that three other accused persons, namely, Prabhat Diwedi, Nikhil Chaudhary and Satyarath Mishra, who applied for the bail for their alleged indulgence in the offence, which was registered as F.I.R. No. 20 of 2019, they have been released on bail by the orders of the Coordinate Bench of this Court in Bail Application No. 215 of 2020, Prabhat Diwedi Vs. State, whereby, these three accused persons named above, have been granted bail on 6th May, 2020, on the ground that the applicants were not named in the F.I.R., and on the ground that there were two FIRs, which were registered for the same cause of action or offence. Relevant part of the bail order is quoted hereunder :-

"Having been implicated in the Case Crime/FIR No. 20 of 2019, under Sections 420 and 120-B of the IPC and Section 66 of the Information Technology Act, PS Cyber Crime, District Dehradun, the applicant is in jail.

Learned Counsel for the applicant would contend that the applicant has been falsely implicated merely on the basis of doubt; applicant was not named in the FIR; two FIRs have been registered on the same cause of action and the appellant has been granted bail in the main case and there is no other pending case against the applicant except these two and he is in jail since 23.9.2019."

6. As far as the grant of bail by the Coordinate Bench of this Court by an order dated 6th May, 2020 is concerned, the same has been granted to the co-accused persons, namely, Mr Prabhat Dwivedi, Mr Nikhil Chobey and Mr Satyarth Mishra. At the time when the bail application was being considered by the Co-ordinate Bench, the chargesheet, which has now been placed on record in the present Bail Application was not there before the Court when the Bail Application, was being considered. In the chargesheet, being chargesheet No. 1 dated 4th February, 2020, it has been recorded that the aforesaid three persons, i.e. Satyarth Mishra Prabhat Dwivedi and Nikhil Chobey, they stayed in the Ambassador Hotel, on 22nd September, 2019, and from the CCTV footage of the said Hotel, these accused persons were found to be present there.

7. In relation to the offences registered as an FIR No. 20 of 2019, for which, the present Bail Applications has been preferred, it is on the rejection of the bail applications preferred by them before the learned Trial Court, which stood rejected vide its order dated 04.02.2020.

8. This Court is constrained and also judicially found to consider the arguments as extended by the learned counsel for the applicants, which is quite vivid in nature, particularly, at the stage when the Bail Application itself was being considered and since those were the arguments pressed by the learned counsel for the applicants, this Court is bound to deal with each and every argument as extended by them.

A. The first argument raised by the counsel for the applicants is that :

i. No recovery has been made with regard to the commission of the offence registered against them by way of F.I.R. No. 20 of 2019, for which, the bail has been sought. This argument of the learned counsel for the applicant that no recovery was made in commission of the offence in relation to the said incident, is being strongly refuted by the learned Government Advocate on the ground that if the recovery memo, Annexure-1, of the objection to the bail application, which relates to the Case Crime No. 491 of 2019, it shows that the accused persons named therein were also accused person in the present FIR, and they have been shown to be using the fraudulently procured ATM/PTM cards, voter ID and vehicles in commission of the offence, the recovery of articles made was commonly used, by same accused persons in commission of the two offences registered against them, which was in close proximity.

ii. The recovery of the aforesaid article, which has been made in commission of an offence of Case Crime No. 491 of 2019, has been simultaneously used by the accused in commission of the offence registered as Case Crime No. 20 of 2019. Now, on a comparative scrutiny of the recovery memo, the following recovery as detailed has been shown to have been made from the present applicants of the each of the Bail Applications iii. In Bail Application No. 704 of 2020, Mohit Kumar Kannoja Vs. State of Uttarakhand, if the recovery memo is taken into consideration (page 9 of the objection), it shows that five ATM cards of different banks, out of which, one ATM card of Axis Bank, three SBI, one of Bank of Baroda was recovered from his possession and the recovery of cash of Rs.18,500/- was made from him from right pocket of his trousers, the details of which are given in the recovery memo.

Apart from it, a mobile was also shown to have been recovered from his possession. This was recovery shown to have been made in Case Crime No. 491 of 2019. The learned Government Advocate, so far it relates to the Bail Application of the applicant to Bail Application No. 704 of 2020, has drawn the attention of this Court to the Entry-10, (page 24) of the objection i.e. CA-3, wherein, the recovery, which has been made in Case Crime No. 491 of 2019, it is the same ATM cards, which were used by the applicant in the commission of the offence, in different cities and location and that is why recovery memo has been titled as "List of ATM Cards recovered from all accused and used ATM of the Different Cities for Cash Withdrawal and charge Back".

iv. In Bail Application No. 705 of 2020, Rahul Kannoja Vs. State of Uttarakhand, in order to meet the argument extended by the learned counsel for the applicants that the recovery pertains to Case Crime No. 491 of 2019, the recovery, which has been shown to have been made from him is that of one mobile, 8 ATM cards, one voter ID and cash of Rs.20,000/- and he was also shown to be using the Car, which was also recovered, and which was shown to be used in the commission of the offence. Now co-relating to the numbers of cards recovered as detailed in the statement of Sub Inspector Bipin Chandra Joshi, (CA-4) to the objection, in relation to Rahul Kannoja, if CA-3 is taken into consideration, it yet again reflects that the same ATM cards, were used in the commission of the offence, registered as FIR No 20 of 2019, which could be very well scrutinized from a comparative study of CA-3, Entry- 3 and CA-4 to the objection. Meaning thereby, there happens to be an apparent recovery of the fraudulent ATM Cards, which was not validly issued in their name, which were used by the accused persons in the commission of the offence.

v. In Bail Application No. 706 of 2020, Shivam Tiwari Vs. State of Uttarakhand, Shivam Tiwari is shown to be a accused person and in order to meet the argument extended that there was no recovery made from the applicant and it was the recovery made pertains to Case Crime No. 491 of 2019, is yet again belied from the record itself, which has been placed by the Government Advocate, because if the statement of Sub Inspector Bipin Chandra Joshi, the recovery, which has been shown to have been made from Shivam Tiwari is that of one mobile, 6 PTM Cards, cash of

Rs.10,000/- and the motorcycle used in the commission of the offence was also recovered. If we compare the recovery from Case No. 491 of 2019, with CA-3 of the objection filed by the Government Advocate, particularly, Entry-8 (Page-22), it is once again the same ATM cards and the PTM cards, which were shown to have been used in the commission of the offence, meaning thereby there happens to be an apparent recovery against him.

vi. In Bail Application No. 709 of 2020, Ashish Kumar alias Aman Kumar Vs. State of Uttarakhand, the recovery, which has been shown is of the ATM/PTM cards, which were used by him in the commission of the offence in Case Crime No. 491 of 2019, two mobiles, four Adhar Cards and four ATMs and a car. These are the same ATM / PTM cards, which were shown to have been used in the commission of the offence registered as Case Crime No. 20 of 2019, because in Entry-5, (page-19) of annexure-3 to the counter affidavit, it yet again reflects that it was the same ATM/PTM cards, which was used by the applicant for the commission of the offence, and cash of Rs.49,000/- was also recovered.

vii. In Bail Application No. 720 of 2020, Anup Kumar Vs. State of Uttarakhand, as it would be reflected from CA-3 to the objection (Page-27), entry-15, he is shown to have used 4 ATM cards, 1 PTM card and a recovery of one mobile was made from him, and a case of Rs.40,000/- was also recovered.

9. The argument of the learned counsel for the applicant from this perspective that no recovery was made from the applicants to the aforesaid bail applications that since there was no recovery made from the applicant in relation to the commission of the offence registered as Case Crime No. 20 of 2019, they cannot be directly attributed to be involved in the commission of the offence. This argument of applicants Counsel, is not accepted by this Court for the reason being that apart from the CCTV footage, the recovery of the car, the recovery of motorcycle, the recovery of various ATM/PTM cards, which were used in the commission of the offence, which was used similarly in commission of the offence registered as Case Crime No. 491 of 2019 and 20 of 2019, itself, would show that there is direct nexus of the present applicants to have been engaged in the commission of the offence as registered against them. Also because there cannot be a sheer chance that all members of the conspiracy involved in commission of offence would hail from same locality of Chakeri, Kanpur, which itself reflects their direct nexus, and coordinated concerted efforts for committing of the offence. Hence, this argument that there happens to be no recovery from the applicants is not acceptable by this Court, because of the recovered articles were commonly used for commission of both of the offences.

B. The second argument of the learned counsel for the applicant is with regard to grant of the parity. As far as my view is concerned, the parity is not a binding precedent, which is bound to be accepted invariably as of precedent in all the cases. The parity, which has been sought by the applicants is from the bail order dated 06.05.2020, as annexed as (Annexure-2) to the Bail Application, being rendered by the Coordinate Bench in Bail Application No. 215 of 2020, on 6th May, 2020. The applicant though in the pleading of Bail Application has raised a plea in para 4 of the Bail

Application, which has reflected as if the said bail order passed on 06.05.2020, was in relation to the Case Crime 419 of 2019, registered at Police Station Rudrapur, District Udham Singh Nagar. But, in fact, the order itself speaks that it was a bail, which was granted to the three applicants therein was in relation to the FIR No. 20 of 2019. The applicant has not annexed the array of parties of the Bail Application in order to enable the Court to assess as to whom the bail was granted; but the copy of the same has been annexed by the Government Advocate in the counter affidavit. In the rejoinder affidavit, the bail order, which has been appended as granted in Bail Application No. 215 of 2020, it was in relation to three applicants, Prabhat Dwivedi, Nikhil Chobey, and Satyarath Mishra, against whom, no recovery has been shown to have been made, and apart from that, it was on the ground that they were not named in the FIR, and it was on that pretext that they have been granted bail in the main case. These reasonings may not be acceptable by this court for grant of parity to the applicant, of the present Bail Application.

10. As far as the said argument for the claim of parity in relation to the bail granted by the Co-ordinate Bench of this Court on 6th May, 2020, for Prabhat Dwivedi, Satyarth Mishra and Nikhil Chobey, this Court is not willing to accept the plea of parity for the reason being that if CA-3 to the Bail Application is taken into consideration, at Entry 11 (page 24), 6 ATM cards and one mobile were shown to have been recovered from Prabhat Dwivedi; at Entry 12 (page 25), 6 ATM cards and one mobile phone is shown to have been recovered from Satyarth Mishra and on Entry 13 (page

26), 6 ATM cards and one Mobile is shown to have been recovered from Nikhil. In fact, it seems that at the time when the Bail Application was considered on 6th May, 2020, for all the applicants therein, the aforesaid fact of recovery made from the applicants therein was not before the Court, when the bail was granted on 06.05.2020. Hence, on that ground itself, this Court is not agreeing to accept the plea of parity, which the applicants want to derive from the bail order dated 6th May, 2020, as granted by the Co-ordinate Bench of this Court in Case Crime No. 20 of 2019.

11. Another ground, which has been assigned by the Co-ordinate Bench while granting bail to the three applicants on 6th May, 2020, was on the ground that apart from the fact that the applicants are not named in the FIR, the finding which has been recorded was as if there were two FIRs, which have been registered for the same offence and same cause of action. This reasoning has been strongly refuted by the Government Advocate in para 5 of his objection to the present bail application, wherein, a specific plea has been taken that there were two distinct offences, which were committed at two different places and were registered at two different Police Stations. The first FIR pertains to the set of offences, which was committed by the accused applicants in District Udham Singh Nagar and which was registered on the basis of the information received from Mukhbir, and subsequent offences were absolutely independent offences, which were committed within the territorial area of District Dehradun, which was independent case altogether, as would also be apparent from the bank enquiry report that the recovery was made from the different ATMs situated in the District Dehradun.

12. Even otherwise also, the other bail applications, being Bail Application No. 449 of 2020, of a co-accused applicant Jeetu Yadav, which was granted by the Coordinate Bench of this Court, it was on the ground that no recovery was made from his possession and the involvement to the applicant

Jeetu Yadav in the commission of the offence was reflected from the CCTV footage of the ATM machines. The Bail Application No. 189 of 2020 for Kuldeep Pal was on the ground that he is not named in the FIR, there is no independent and direct witness of the recovery, and since these reasons they have been granted bail in FIR No. 491 of 2019, the Coordinate Bench granted the bail, which was rather an independent offence registered in District Udham Singh Nagar.

13. The reason for objecting the grant of bail to Jeetu Yadav and Kuldeep Pal, who were the co-accused persons in commission of the offence registered as an FIR No. 20 of 2019, the Government Advocate in support of his contention that a recovery was made from the aforesaid two applicants, who have been granted bail by the Co-ordinate Bench of this Court had submitted that as would be apparent from CA-3, i.e. list of ATM cards recovered from all the accused persons, which were used in different cities for the commission of the offences complained of against them. It could be seen that from CA-4 (page 18) Entry 4, shows that eight ATM cards and one Mobile; along with a cash of Rs. 20,000/- was recovered from Jeetu Yadav, and similarly, the other co-accused persons, who have been granted bail by the Coordinate Bench, i.e. Kuldeep Pal, the details of the recovery made from him are shown on CA-3, (page 22), Entry 9, where eight ATM cards and one mobile was recovered from him.

14. It is these facts, which were not brought and placed at that time before the Co-ordinate Bench, when the bail was granted to them, the parity of which, has been claimed by the present applicants. Hence, for the aforesaid reasoning, since there is a recovery and the fact of recovery was not brought to the knowledge of the Court at the time when the bail application was considered by the Co-ordinate Bench on 5th June, 2020, this Court is not inclined to accept the argument of parity on the said pretext, that the order passed on 5th June, 2020,

15. The parity, which has been sought by the applicant from Bail Application No. 708 of 2020, as granted by the Co-ordinate Bench of this Court on 16.06.2020, the Co-ordinate Bench has proceeded to grant the bail to the said applicant therein while recording a finding to the effect that the applicant of the said bail application, has come up with the case that it was Kuldeep Pal, who was assigned with the main role in commission of offence, its for that reason the Court has granted bail by the Co-ordinate Bench of this Court in Bail Application No.189 of 2020. Meaning thereby, the role of Kuldeep Pal, who was an applicant of Bail Application No. 189 of 2020, has been admittedly shown to be a person, who was indulged in commission of the offence and he had main role to play in it. Hence too, Kuldeep Pal, who has been granted bail was on the premise of a wrongful placement of records before the Court when the bail application was being considered.

16. There are other two Bail Application, being Bail Application Nos. 708 of 2020 and 906 of 2020, which too are almost based on the identical grounds of not being named in the FIR, and no recovery was made from them, apart from the fact that applicant therein had named other co-accused person as to be the main persons involved in the offence. This Court is of the view that the concept of parity while considering the Bail Application of indulgment of number of accused persons in commission of the criminal offence would always be dependent upon the gravity of the offence, their magnitude of involvement and the evidence on record to show the recovery made from them. As already dealt with above while recording my findings in Para-A of the present judgment (referred above), the

involvement and recovery has been specifically found to be there as per the contents of CA-3 and CA-4 of the objection, which was made from the applicants.

17. Since as per the objection preferred by the Government Advocate, the specific role has been assigned to the present applicants in commission of the offence and the same is corroborated by the recovery made from them, and the use of ATM/PTM cards, similarly their involvement in the commission of the offence of Case Crime No. 20 of 2019, this Court is not inclined to consider the aspect of parity, or extend the parities to them while considering bail applications, because the other bail orders were granted on the ground that they were not named and there was no recovery made from them, and it seems that entire case was not placed before the court, when the bail was being considered.

18. The learned counsel for the applicant submits that since in the two offences registered at Rudrapur and at P.S. Thana Cyber Crime Dehradun, since they indulge into the investigation of the same nature of offence, hence, the applicants cannot be said to be indulged in the commission of the common offence at two different places at the same point of time is not acceptable. The reason being that the details of the wrongful withdrawal of money by use of same ATM and PTM cards, which constituted to be part of FIR in Case Crime No. 491 of 2019, was in relation to the area, which was lying within the Kumaon Zone of District Udham Singh Nagar, District Almora and District Nainital. While the other offences, which were registered at Police Station Cyber Crime, Dehradun, the withdrawal are shown to have been made from various ATM machines lying within District Pauri, and District Dehradun, hence, the registration of the two FIRs at two different places, are exclusively relating to two different set of allegations and offences, though the ATM / PTM cards used might have been commonly used by same set of accused persons, who conspired for the commission of the offence. Hence, it cannot be said that it was the same set of allegation or offence, which has been registered by way of two FIRs at two different places, which will dilute the gravity of offence, which has been registered against the present applicants. As I am of the view that they were two independent crimes, committed at two different places and registered as an independent FIR.

19. Lastly, the applicants submits that in the Branches of the Banks, normally the annual audit is conducted in the month of March, with the close of Financial Year, and if at all there was any seriousness and sanctity in the gravity of offence levelled against the present applicants, it ought to have been reflected in the audit report submitted by the Auditors of the bank, as it has been pleaded in para 12 of the Bail Application. The audit of the books of accounts of Bank may not indulged in recording with precision the details of wrongful withdrawal made from different ATMs situated in the different parts of the State, hence, no flaw could be pointed out in the registration of the FIR and its ultimate investigation because the said wrongful withdrawal was made from different ATM cards, which could not be reflected in the audit report.

20. From the allegations, the circumstances and the conspiracy, which has been hatched by the present applicants, who are mainly resident of Chakeri Kanpur, it apparently shows that it was as a consequence of a well hatched conspiracy of duping the public money by wrongful withdrawal made by them by various ATM cards in different parts of the State and that too by use of the same ATM cards, in both the instances and offences. It all shows a deliberate intend to dupe the public money

at large, coupled with the fact that the recovery, which has been made from them, and when the use of ATM cards stand correlated with the offence registered as FIR No. 20 of 2019, the allegation prima facie stands apparent on the face of the record.

21. Hence, this Court is not inclined to grant the applicants bail at this stage. Hence, the Bail Application are rejected.

22. The recording of the above finding has become necessary for the Court because the counsel for the applicants had argued the above points, to be considered. However, it is made clear that the findings recorded hereinabove should not prejudice the minds of the Magistrate ceased with the Trial, that has to be decided independently on its own merit consideration.

23. Hence, the Bail Applications, stand rejected.

(Sharad Kumar Sharma, J.) 30.07.2020 Shiv