

Amit Kumar Gupta & Monu vs State on 23 May, 2016

Author: P.S.Teji

Bench: P.S.Teji

* IN THE HIGH COURT OF DELHI AT NEW DELHI
Judgment delivered on : May 23, 2016

+ BAIL APPLN. 65/2016
AMIT KUMAR GUPTA & MONU Petitioner
Through: Mr.M.S.Ahluwalia, Advocate.

versus

STATE Respondent

Through: Mr.Amit Chadha, Additional Public
Prosecutor for the State.

Mr.Abhinav Agnihotri, Advocate for
Complainant.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

1. By this petition filed under Section 439 of Cr. P.C., the petitioner seeks bail in a case registered as FIR No. 373/2014 under Section 363/302/201/34 of Indian Penal Code, at Police Station New Usmanpur, Delhi.

2. The petitioner is charged with the offences of kidnapping and murdering a five year boy - Vasu Gupta, grandson of the complainant

- Ram Chandra Gupta. It is informed by the complainant that on 24.04.2014 in the evening at about 6.30 pm his grandson Vasu Gupta, aged 5 years, medium built, fair complexion, height about 3 ft., wearing black colour T-Shirt and cream colour pant had gone into the street from the house for playing, but did not return back. Search of child was made in the nearby area, but he could not be traced. Accordingly, the FIR in question was registered and investigation started.

3. During the course of investigation, on 25.04.2014 vide DD No.11-A, Police Station Gokalpuri, Delhi, an information regarding dead body of a child, whose description were similar to that of the kidnapped child was received. Father of the child was called in GTB Hospital Mortuary, where the dead body was identified as that of the kidnapped child i.e. Vasu. The suspected uncle of the

deceased - Amit Gupta @ Monu was interrogated. His activity from his mobile number 9891203060 was checked and it was found that he was continuously talking to mobile no.9210040738 since 24.04.2014 till the recovery of the dead body of Vasu. During interrogation, the petitioner - Amit Gupta admitted his involvement in the kidnapping for the fulfillment of his lust for money. He admitted that after kidnapping the child, he kept the child in his house and gave him a tab, cold drink with sleeping pills and also administered him forcibly 'musa ka gul', substance of which, lying in a box was also recovered. During investigation, one hair, some pills, one tab make Samsung, Coca Cola Bottle, one pillow cover with some blood stain were recovered from the house of the petitioner - Amit Gupta.

4. After completion of the investigation, the charge sheet has been filed in this case and the petitioner is charged with the offence punishable under Section 363/302/201/34 of IPC.

5. Mr.M.S. Ahluwalia, learned counsel for the petitioner contended that this case is registered in the year 2014, petitioner is in custody for the last one and half years, and there are more than 32 witnesses and out of them only one witness has been examined. It is further contended that even the impugned orders clearly states that the present case is based on circumstantial evidence and the star material witness, i.e., the complainant of the FIR in question has categorically deposed in his deposition that he never suspected the petitioner being involved in the offence.

6. Learned counsel for the petitioner further contended that there is rivalry between the complainant and his family as he wanted to buy their property and it is only after four days that he named the petitioner in the case and got him implicated. Regarding recovery, it is contended that the petitioner's house was sealed by the police on 27.07.2015 and the keys remained with the police till 29.07.2015 and for two days anything could have been planted in the house of the petitioner. It is further contended that the father of the deceased had lodged a case against one of his employees - Lalit and there is another employee - Hari, but the police did not examine them. It is further contended that the deceased boy was last seen at Mecca Masjid, who was taken by two persons and the said information was conveyed by two persons who were unloading the truck but he failed to inform the police instantly.

7. On the point of medical examination, it is contended that an allegation regarding administering tranquilizer to the deceased boy Vasu was made, but one of the FSL reports which is placed on record demonstrates that no tranquilizer has been found in the body of the deceased.

8. It is further contended that there is not a single piece of evidence either direct or indirect/circumstantial which points out the guilt of the petitioner. Even there is no evidence that the deceased Vasu entered into the house of the petitioner and the investigation officer miserably failed to adduce even a single witness who would have seen Vasu entering into the house of the accused. No public or independent witness has come forward and no person saw him removing the dead body of the deceased from the house of the petitioner.

9. Learned counsel for the petitioner further contended that the prosecution has failed to explain motive of murder and it is submitted that without motive no prudent man on earth can murder any

person. In support of his submission, reliance was placed on *Litta Singh & Anr. v. State of Rajasthan*, AIR 2013 SC 2554.

10. Lastly, it is contended that there is another FSL report, which is not being placed on record by the prosecution despite several repeated requests by the petitioner for the last more than one and half years and the petitioner is being kept in incarceration without the FSL report being placed before the Court and causing prejudice to the case of the petitioner. Moreover, trial of the case has started and there is no hope of FSL report being filed in near future, and the trial of the case may take time to conclude. Apart from the aforesaid, the petitioner is a permanent resident of Delhi, he has no criminal antecedents, no recovery has to be effected from him and charge sheet in the case has been filed, therefore, the petitioner ought to have been granted bail in the present case.

11. Mr. Amit Chadha, Additional Public Prosecutor for the State vehemently opposed the aforesaid contentions made on behalf of the petitioner and submitted that the petitioner is involved in a heinous crime and is facing charges of kidnapping and murdering of a young boy of 5 year only. Charge sheet has been filed and during investigation it is revealed that the petitioner was in continuous touch with the other co-accused on his mobile, till the dead body of deceased boy was recovered. The petitioner has also admitted his involvement in the kidnapping for fulfilling his lust of money. There is also disclosure by the petitioner that he gave the deceased cold drink with sleeping pills and when the deceased boy Vasu lost his consciousness, he forcibly administered 'musa ka gul' but due to fear of shouting he pressed the mouth of the child and murdered him.

12. Learned Additional Public Prosecutor for the State further submitted that the SIMs of the petitioner and other co-accused, box of Musa ka Gul and remaining substance of musa ka gul lying in a box were also recovered. A Santro Car No.DL-4CS 5041, one sandal of child Vasu Gupta were also recovered. Therefore, in such a situation, the present petitioner does not deserve for grant of bail.

13. I have heard the submissions and counter submissions made on behalf of both the sides. This Court is conscious of the fact that in the present case life of a 5 year child has been sacrificed, by first kidnapping, tendering tranquilizers, and thereafter murdering by pressing the mouth of the child. Surely, such kind of offences for fulfilling the lust of money should not be taken lightly. Though, the petitioner has controverted the prosecution story and also tried to create dents therein, but that can only be looked into during trial by leading cogent evidence. What this Court, at this stage of considering the bail application of the petitioner, has to see is, as to whether the petitioner has been able to make out a prima facie case for grant of bail.

14. In *Prasanta Kumar Sarkar v. Ashis Chatterjee* (2010) 14 SCC 496, the Hon'ble Supreme Court dealt with the basic principles laid down in catena of judgments on the point of granting bail. The Court proceeded to enumerate the factors:

9. ... among other circumstances, the factors [which are] to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
 - (ii) nature and gravity of the accusation;
 - (iii) severity of the punishment in the event of conviction;
 - (iv) danger of the accused absconding or fleeing, if released on bail;
 - (v) character, behaviour, means, position and standing of the accused;
 - (vi) likelihood of the offence being repeated;
 - (vii) reasonable apprehension of the witnesses being influenced; and
 - (viii) danger, of course, of justice being thwarted by grant of bail.
15. Considering the aforesaid facts and circumstances of the present case and the fact that the trial is at the evidence stage and in the considered opinion of this Court, it would not be just and fair to appreciate the evidence recorded before the Trial Court and adjudicate upon them, at the stage of considering the application for bail. Therefore, while perusing the charge sheet, and considering the gravity of offence, this Court is not inclined to grant bail to the petitioner at this stage.
16. Resultantly, in the considered opinion of this Court, the facts emerging from the record culminates into dismissal of the present bail application. Accordingly, the present bail application filed by the petitioner is dismissed at this stage.
17. Before parting with the order, this Court would like to place it on record by way of abundant caution that whatever has been stated hereinabove in this order has been so said only for the purpose of disposing of the prayer for bail made by the petitioner. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact or law arising for decision in the case which shall naturally have to be done by the Trial Court seized of the trial.
18. With aforesaid direction, the present bail application, filed by the petitioner stand disposed of.
- (P.S.TEJI) JUDGE MAY 23, 2016 pkb