

Ashish Kumar@Pintoo vs State on 25 March, 2022

Author: Prateek Jalan

Bench: Prateek Jalan

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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:25th March,

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BAIL APPLN. 26/2022

ASHISH KUMAR@PINTOO

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Through: Ms. Dolly Sharma, Advocate

versus

STATE

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Through: Ms. Meenakshi Dahiya, APP
for the State with SI Mani
Kr., PS-Ranhola.

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CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

1. By way of this application under Section 439 of the Code of Criminal Procedure, 1973 ["CrPC"], the applicant seeks regular bail in FIR No. 609/2017, dated 08.09.2017, registered in Police Station Ranhola, originally under Section 363 of the Indian Penal Code, 1860 ["IPC"].

2. The FIR was registered on the complaint of one Subhash Gupta, which stated that, on 07.09.2017 at about 6:45 PM, his son Santosh (aged about five and half years old) had gone out to play near his house but did not return.

3. The petitioner was arrested in connection with this offence on 09.09.2017 and remains in continuous judicial custody since then.

4. The charge sheet was filed on 05.12.2017, wherein the statement of the complainant was recorded that his son was last seen on 07.09.2017 with his tenant Surender Kumar. It is alleged that, upon receiving a call from the complainant, who called from the telephone of one Raju Prasad, Surender Kumar demanded a ransom of 10 lakhs. As far as the present petitioner is concerned, the charge sheet records that the complainant also received a call made by the petitioner, and demanded the

aforesaid amount, failing which the petitioner threatened to kill the child of the complainant. The mobile number was traced to an address in Ludhiana.

5. The investigating team thereafter proceeded to Ludhiana, where two persons were spotted on the street, along with a boy, who was identified by the complainant as his son. The two persons were apprehended and thereafter interrogated and found to be Surender Kumar and the petitioner herein. After interrogation, it is stated that three accused, i.e. Surender Kumar, Sunil Kumar and the petitioner were arrested. The mobile phones of the three accused have also been taken by the police in their custody.

6. Ms. Dolly Sharma, learned counsel for the petitioner, submitted that the trial of the petitioner is in progress and seven out of twenty witnesses cited by the prosecution have already been examined. She stated that all the material witnesses have been examined and only police officials were left to be examined. Ms. Sharma emphasized that the cross examination of PW-7-Raju Prasad, who is the only independent witness, did not support the prosecution's case, and that the prosecution had not placed any evidence of a telephone call from the petitioner to demand ransom. Ms. Sharma also relied on an order dated 01.05.2019 by which co-accused-Sunil Kumar has been granted bail by the Sessions Court. The Sessions Court recorded that the material evidence had already been examined and that the said accused has no prior criminal involvement. Ms. Sharma also cites the order in Pankaj Goyal @ Pankaj Kumar Goyal @ Bittoo vs. State of NCT Delhi [BAIL APPLN. 1516/2021, decided on 16.08.2021] wherein bail was granted to an accused in an FIR registered under Sections 364A/120B/34 of the IPC.

7. Ms. Meenakshi Dahiya, learned Additional Public Prosecutor, submitted that the role of Sunil Kumar was entirely different from the petitioner, in whose custody the child was ultimately found. She further submitted that the petitioner is named in the statement of the child recorded under Section 164 of the CrPC and he has also identified the petitioner. It is also stated in the Status Report that an application filed by the petitioner for bail was rejected by the Sessions Court on 08.11.2017. Ms. Dahiya further submitted that the offence pertains to kidnapping of a minor child which is a serious offence, and the petitioner ought not to be enlarged on bail.

8. Ms. Dahiya confirmed, upon instructions from the Investigating Officer ["IO"], that the petitioner has no criminal antecedents.

9. Having heard learned counsel for the parties, I am of the view that this is a fit case for grant of bail to the petitioner at this stage. Although, the role attributed to the petitioner in the commission of the offence is different to the role attributed to Sunil Kumar, that is not a conclusive consideration. The trial, being at an advance stage with only official witnesses left to be examined, the chances of the petitioner being able to influence witnesses is low. He has no criminal antecedents which might weigh with the Court to deny bail. He has already been in custody for approximately four and half years.

10. Although the offence with which the petitioner is charged is no doubt is a serious offence, the Supreme Court has made it clear that the seriousness of the charge cannot be the sole ground to

deny bail to an accused. The judgment of the Supreme Court in Sanjay Chandra vs. Central Bureau of Investigation (2012) 1 SCC 40 [paragraphs 21 to 25] may be referred to in this connection. The said judgment has also, very recently, been followed by this Court in Surender Singh Bhati vs. The State [BAIL APPLN. 3750/2021, decided on 17.01.2022].

11. The status report in the present case does not disclose any apprehension with regard to the petitioner tampering with evidence or being a flight risk.

12. Keeping all these factors in mind, it is directed that the petitioner is released on bail, subject to the following conditions: -

A. The petitioner will furnish a personal bond in the sum of 50,000/- with two sureties with like amount to the satisfaction of the Trial Court, one of whom must be a blood relative or the spouse/parent-in-law of the petitioner. B. The petitioner will give all his mobile numbers to the IO and keep them operational at all times.

C. The petitioner will give the address where he intends to reside to the IO and will inform the IO and the Trial Court in the event of any change in his address.

D. The petitioner will appear before the Trial Court on each date of hearing.

E. The petitioner will not directly or indirectly tamper with the evidence and will not contact the complainant or his family members or any of the witnesses in any manner. F. Violations of any of these conditions will result in cancellation of bail granted to the petitioner by this order.

13. It is made clear that the observations in this order are only for the disposal of the application for bail and will not prejudice the parties in the trial.

14. A copy of this order be communicated to the concerned Jail Superintendent electronically for information.

PRATEEK JALAN, J.

March 25, 2022 'Bp' /