



N.C.No.2023:DHC:4120

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 01.06.2023

Pronounced on: 07.06.2023

+ **BAIL APPLN. 1033/2023**

SHAH ALAM

..... Petitioner

Through: Mr. Aditya Singh, Adv.

Versus

STATE GOVT OF NCT OF DELHI

..... Respondent

Through: Mr. Amit Sahni, APP for the State.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. This is a bail application under Section 439 CrPC seeking regular bail in FIR No.394/2020 under Sections 364A/365/342/323/506/102B/34 IPC registered at PS New Ashok Nagar. The case of the prosecution is that the mother of the victim on 03.09.2020 made a complaint to the police at 10:02 p.m. that the victim, her daughter, aged about 24 years went to HDFC Bank, Sector-02, Noida, U.P at about 01:30 p.m.with her ATM, passbook and cheque book and she has not returned home and despite searching for her, the victim could not be found. She suspected that some unknown person has kidnapped her daughter by luring her. On the basis of the said complaint, FIR was registered under Section 365 IPC.



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2. Subsequently, on 03.09.2020 itself, the father of the victim went to the Police Station and stated that his daughter has been kidnapped for ransom and the kidnapper has demanded Rs. 40 lacs and threatened to kill his daughter, in case the demand is not fulfilled.

3. The father of the victim also produced few video recordings as well as Whatsapp messages regarding the demand for ransom. On the basis of the statement of the father, Sections 364A/506/342/323/120B/34 IPC were also added in the case.

4. Search was made for the victim with the help of location and CDR of victim's mobile number and the victim was recovered on 04.09.2020 from the custody of accused persons namely, Simpal Srivastav and her boyfriend Shah Alam (petitioner herein) from Village Chhalera, Sector-44, Noida (U.P). The said accused persons were arrested on 04.09.2020.

5. The victim and the accused persons were medically examined at Lal Bahadur Shastri Hospital. The disclosure statement of the accused persons as well as the statement of the victim, were also recorded. recoveries were effected at the instance of the accused persons from Village Chhalera, Sector-44, Noida, U.P as well as from B-579, Gali No.5 Sangam Vihar, Delhi. The mobile phone of father and younger sister of the victim were also seized.

6. The statement of victim under Section 164 CrPC was recorded and subsequently Sections 506/342/323 IPC were also added. Voice samples of the petitioner was sent to FSL, Rohini. After completion of necessary



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investigation charge sheet was filed against the accused persons under Sections 364A/365/342/323/506/120B/34 IPC.

7. During investigation statement under Section 164 CrPC of the victim was recorded wherein she alleged that she was kidnapped by both the accused persons for ransom and she was also beaten by them. Her mobile phone was also taken by the accused person from which the calls were made and Whatsapp messages were sent demanding ransom. She was also threatened by the accused person and was wrongly confined.

8. The learned counsel for the petitioner submits that the petitioner is a young man of about 26 years having no criminal antecedents. He is in custody since 04.09.2020 and belongs to a very poor family.

9. He submits that FIR in question was registered at 22:02 hours whereas the case of the prosecution is that the Whatsapp messages / calls demanding ransom were received by the victim's sister/father between 02:20 p.m. to 04:50 p.m. on 03.09.2020 and these facts are conspicuously absent in the FIR recorded.

10. He further submits that the delay of five to six hours as well as the non-mentioning of the messages and the ransom calls in the FIR itself creates serious doubt as regards the prosecution's version.

11. Inviting attention of the Court to the Arrest memo of the petitioner, he contends that the arrest memo neither bears the signatures any of the petitioner's family member or any respectable member of the locality in terms of the mandate of Section 41B CrPC despite the fact that the petitioner was allegedly arrested from a densely populated area and the building itself



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has as many as 14 rooms. He further submits that the petitioner was arrested from Noida (U.P.) and the guidelines of interstate arrest as laid down by this Court in Sandeep Kumar V. State of GNCT Delhi, 2019 SCC OnLine Del 11901, were not followed, in as much as, the local police of U.P. was not contacted nor a diary entry was made in that regard. He submits that this itself creates doubt about petitioner's arrest.

12. He also submits that there are gaps in the story of the prosecution. He submits that the victim in her statement u/s 161 CrPC has stated that she was beaten by accused persons whereas the MLC clearly records that "*No fresh external injuries seen through naked eye examination*". Furthermore, it is submitted that in the building where the victim was allegedly kept, there are as many as 14 flats and it is highly improbable that the hue and cry of the victim would go unnoticed at such a place.

13. *Per contra*, the learned APP submits that the petitioner has committed a serious offence by kidnapping the victim for ransom, which is punishable with life imprisonment. He, therefore, urges that the petitioner is not entitled to grant of bail and the application ought to be dismissed.

14. I have heard the learned counsel for the petitioner as well as the learned APP for the State and have perused the record.

15. It is trite that the seriousness of an offence is not the only criteria for denial of bail. A person who has not been convicted should only be kept in custody, if there is a possibility that he or she might abscond or tamper with evidence or threaten the witness. Merely because the offence is of a serious



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nature, cannot be the ground to curtail the personal liberty of an under trial for an indefinite period.

16. In so far as the submission of the learned APP that the offence under section 364A IPC is punishable with death, or imprisonment for life, suffice it to say that it is only the powers of the Magistrate, while dealing with the applications for grant of bail, that are regulated by the punishment prescribed for the offence in which the bail is sought. Generally speaking if punishment prescribed is for imprisonment for life and death penalty and the offence is exclusively triable by the Court of Session, the Magistrate has no jurisdiction to grant bail unless the case is covered by the provisos attached to section 437 of the Code.¹ There are no such limitations circumscribing the jurisdiction of the High Court or the Court of Session while exercising the powers under Section 439 CrPC.

17. At this stage, it may also be apt to refer to the decision of the Hon'ble Supreme Court in *Sanjay Chandra vs. CBI*, (2012) 1 SCC 40, wherein the limited circumstances under which the liberty of an under trial could be circumscribed, were articulated in the following words:-

“The object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The Courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. Detention in custody pending completion of trial could be a

¹ Prahlad Singh Bhati v. State (NCT of Delhi), (2001) 4 SCC 280



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cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In India, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the propose of giving him a taste of imprisonment as a lesson."

18. In the present case, the charge sheet has already been filed and no recovery is required to be made from the petitioner who is in custody since 04.09.2020, which is almost two years and nine months.

19. The examination-in-chief of the victim has already been recorded. There are 23 witnesses cited by the prosecution and it will take long time to conclude the trial. At the stage of the trial, imprisonment cannot be prolonged only for the purpose of teaching the accused a lesson. The case of the prosecution and the defense of the accused persons is yet to be tested at trial.

20. It is not the case of the prosecution that any injury was caused by the accused persons to the victim. Even the MLC of the victim records that "no fresh external injuries seen through naked eye examination".



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21. It is also not the case of the prosecution that the petitioner is a habitual offender or hardened criminal, who in the event of being enlarged on bail, may flee from justice or again indulge in such activities.

22. At this stage, without going into the merits of the case, this court is of the opinion that regard being had to the above discussion, the petitioner has made out a case for the grant of bail. Accordingly, the petition is allowed and the petitioner is admitted to bail on his furnishing a personal bond in the sum of Rs. 20,000/- with one surety bond of the like amount subject to the satisfaction of the learned Trial Court / CMM / Duty Magistrate, further subject to the following conditions:-

- a) *As the Petitioner/applicant is a permanent resident of Azamgarh, U.P. he will furnish his permanent address to the IO concerned and shall leave the Delhi only after prior intimation to the IO.*
- b) *Petitioner/applicant shall appear before the Court as and when the matter is taken up for hearing.*
- c) *Petitioner/applicant shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the Investigating Officer concerned. The mobile location be kept on at all times.*
- d) *Petitioner/applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with the, victim or any member of the victim's family.*

23. The petition stands disposed of.



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24. Nothing stated therein above shall be construed to be an expression of opinion on the merits of the case.

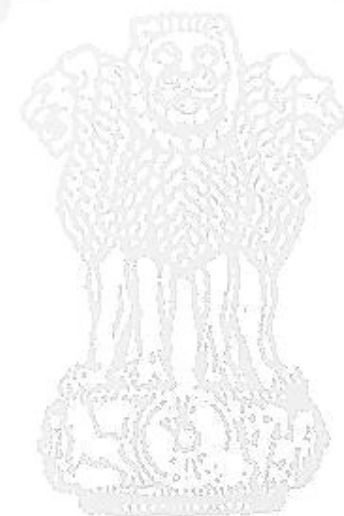
25. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance.

26. Order *dasti* under the Signatures of the Court Master.

27. Order be uploaded on the website of this court.

JUNE 07, 2023/dss

VIKAS MAHAJAN, J



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