

(2021) 09 DEL CK 0285

In the Delhi High Court

Case No : Bail Application No. 2970 Of 2021

Anil Kumar Rathore

APPELLANT

Vs

State (Govt. Of Nct Of Delhi)

RESPONDENT

Date of Decision : 20-09-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 120B, 147, 148, 149, 195, 323, 383, 384, 386,
387, 388, 389, 427, 452, 504, 506

Citation : (2021) 09 DEL CK 0285

Hon'ble Judges : Rajnish Bhatnagar, J

Bench : Single Bench

Advocate : Ramesh Gupta, Bharat Sharma, Dr. MP Singh, K.K.Manan, Gaurav Kakar, Udit Bali

Final Decision : Dismissed

Judgement

Rajnish Bhatnagar, J

1. The present petition is filed by the petitioner under Section 438 Cr.P.C. seeking anticipatory bail in case FIR No. 582/2021 under Sections 387/120-B IPC registered at Police Station Rajouri Garden.

2. Brief facts of the case are that on 07.07.2021 complainant received a call on WhatsApp from one international number i.e. +1(250)9994923 on his mobile number +919810373333. It is submitted that the complainant was near Rajouri Garden Metro Station and was travelling from Defence Colony via metro when he received the said call. He was terrified after receiving the said call and was left numb for some time and he is under constant threat even while making the instant complaint. The caller identified himself as Kala Jatheri and said that "Tu sunny walia chattarpur wale ki bohot pairvi karta hai, agar dobara uske saath dikha to tujhe aur tere bete ko khatam kar denge. Ab 2 din mein 50 lakh rupay ka intezaam kar aur hum batayenge kisko aur kahan dene hai agar apni aur apne parivaar ki jaan bachana chahta hai to, Sumit Walia ko to hum jaan se maareng

hi tu apna dekh liyo agar paise nahi diye to tere ko jaan se maar denge agar dobara sumit ke sath dikha to, aur mere baare mein youtube pe check kar liyo." He further stated that, Sumit Walia @ Sunny is a resident of Farm no. 2, Silver Oak Lane, Satbari, Mehrauli, Delhi and some illegal construction and plotting was being done in adjacent farm no. 5, Silver Oak Lane, Satbari by Mr. Amit Vaid and his associate Anil Rathore (petitioner herein). On the complaint made by mother of Sumit Walia, illegal construction got demolished by civil authorities and also FIR was registered against Amit Vaid. He further submitted that the complainant had helped Sumit Walia to get demolish the said illegal construction and they have hired the Gangster Kala Jatheria and made call to him for extortion and life threat.

3. I have heard learned senior counsel for the petitioner, learned APP for the State and learned senior counsel for the complainant. I have also perused the status report filed on behalf of the State.

4. It is submitted by the learned senior counsel for the petitioner that petitioner has been falsely implicated in this case, and he had not made any telephone call. It is further submitted that petitioner is not directly linked to the complainant but is known through the person namely Sumit Walia. It is further submitted that complainant made the present complaint to DCP concerned and not to the PCR, and the petitioner has no connection with the alleged Kala Jatheria gang. It is further submitted by learned senior counsel that petitioner had joined the investigation on 09.07.2021 and also gave his statement to the concerned I.O. It is further submitted by the learned senior counsel for the petitioner that the applicant/petitioner is an innocent person and has clean past antecedents. It is further submitted by learned senior counsel for the petitioner that the wife of the petitioner had gone to police station to hand over the mobile phone of the petitioner to IO. It is further submitted by the learned senior counsel for the petitioner that Section 383 IPC is not applicable in the facts and circumstances of the present case as the alleged extortion call has not resulted in delivery of goods i.e. transfer of money, more so if the IO wanted to take out any information regarding the alleged incident/call he could have interrogated the other person namely Amit Vaid who is stated to be in judicial custody in Uttar Pradesh in another case. Learned senior counsel for the petitioner further submitted that prosecution is continuously forcing the petitioner to submit the mobile phone of the petitioner but for this purpose the custody of the petitioner is not required, and he has relied upon Jagdish Nautiyal Vs. State (Bail Appln. No. 1317/2012 decided on 29.11.2012). Learned senior counsel for the petitioner has also relied upon ISAAC ISANGA MUSUMBA AND ORS Vs. State of Maharashtra and Ors. (2014) 15 SCC 357.

5. On the other hand, it is submitted by learned APP for the State and learned senior counsel for complainant that allegations against the petitioner are grave and serious in nature. It is further submitted by learned APP that the custody of the petitioner is required to take his voice sample for sending the same to FSL as

one pen-drive containing audio recording of the threat calls has been taken into police possession through seizure memo during the course of investigation. It is further submitted that the petitioner has not come to the Court with clean hands and in the present bail application it has been stated by the petitioner that he has clean past antecedents, which is completely untrue as he has a case pending bearing FIR No. 466/2021 dated 25.06.2021, PS Anoop Shehar, District Buland Shahar, U.P, under sections 147/148/149/195/452/323/504/506/427/120B IPC. It is further submitted by learned APP and learned senior counsel for the complainant that petitioner had not joined the investigation even after directions of the Court vide order dated 19.07.2021. Further it is submitted that the FIR is registered under Section 387/120B IPC and the delivery of goods is not an essential ingredient for the applicability of Section 387 IPC. It is submitted by learned APP for the State, and learned senior counsel for the complainant that Section 383 IPC starts with "Whoever intentionally...", and there is no dispute that there was no delivery of property or valuable security to the petitioner by the complainant, but one of the primary ingredient of extortion is extending threat, fear and injury by the petitioner in the mind of the complainant which is complete, therefore, the offence of extortion is admitted to be committed even in the absence of other ingredient i.e. delivery of property or valuable security to the petitioner.

6. It is further submitted by learned APP and learned senior counsel for the complainant that anticipatory bail was rejected by the Sessions court vide order dt. 29.07.2021. It is further submitted that Anticipatory Bail application has also been dismissed by the Ld. Court of District Judge, District Buland Sahar, U.P. vide order dated 04.08.2021 in case FIR No. 466/2021 dated 25.06.2021, PS Anoop Shehar District Buland Shahar, U.P, under section 147/148/149/195/452/323/504/506/427/120B IPC. Learned APP and learned senior counsel for the complainant also relied upon order dated 23.07.2021 passed by Sh. Vishal Singh, ASJ (West), Tis Hazari Courts, Delhi wherein the interim protection which was granted to petitioner vide order dated 19.07.2021 was revoked/cancelled.

7. Learned senior counsel for the complainant has relied upon Radha Ballabh and Ors Vs. State of UP 1995(2) Crimes 473(SC); Birju Paswan and Ors. Vs. The State of Bihar MANU/DH/0193/2016; Sudha Tripathi Vs. State of M.P. and Ors. 2019 CrLJ3993, to bring home the point that even if there is no essence of delivery of the valuable security in favour of the petitioner, the attempt to commit extortion is made out.

8. It is pertinent to mention here that two orders passed by learned ASJ are important and are reproduced hereunder:-

Order dated 19.07.2021:-

"Let the I.O. obtain necessary details from Facebook and Whatsapp. In the meantime, applicant/accused shall surrender his mobile phone, untempered in

any regard to data of at least previous three months, to the I.O. The applicant/accused shall remain protected from arrest till further orders subject to cooperation with the I.O. in Investigation of the case"

Order dated 23.07.2021:-

"2. Now the IO has reported that in pursuance of order dated 22/07/2021 he visited the house of accused at Noida, U.P, on the same day. The daughter of the accused was found present at home and she reported that accused Anil Kumar Rathore was present at home from 19/07/2021 to 21/07/2021. The neighbours of the accused also stated that they saw accused Anil Kumar Rathore at his home on 21/07/2021.

When the IO visited the house of accused on 22/07/2021 in pursuance of orders of this Court, the accused was absent and did not meet the IO.

3. The Court needs to observe here that this is very grave case related to threatening and extortion call made to the complainant, disclosing imminent danger to his life from a dreaded gangster at behest of the accused and his associate/ co-accused Amit Vaid. Through order dt. 19.07.2021, the accused was granted interim protection from arrest and was directed to immediately join investigation and cooperate with the IO to facilitate discovery of necessary evidence surrounding the offence.

4. The immediate joining of investigation was deemed crucial as any delay in joining of investigation creates scope for destruction of evidence. This is precisely what has happened in present case, taking undue advantage, of judicial order dated 19/07/2021, accused Anil Kumar Rathore made himself scarce to investigation agency. He switched off his mobile number so that IO could not contact him despite repeated efforts for three days, he did not visit the police station nor made a mobile call to the IO.

5. On 22/07/2021, his counsel Sh. Hari Shankar advocate tried to contact him at the directions of the Court but his phone remained switched off. Accused Anil Kumar Rathore has palpably abused the process of law by refusing to join investigation despite judicial orders.

6. Most likely, in the meantime, crucial evidence may have been destroyed by him. The deliberate non-cooperation by the accused and mocking at criminal justice system has rendered the accused completely undeserving of favourable indulgence of the Court or protection from arrest.

7. Accordingly, the protection granted to accused Anil Kumar Rathore from arrest through order dated 19/07/2021 stands revoked/cancelled with immediate effect, IO/SHO PS Rajouri Garden shall be at liberty to arrest accused Anil Kumar Rathore. The application for grant of anticipatory bail is already fixed for hearing on 29/07/2021."

9. A plain reading of definition of extortion under Section 383 IPC discloses the

following essential ingredients:

- (i) accused intentionally put the victim to fear of injury to his/her person or to any other person;
- (ii) thereby accused dishonestly induces a person put to fear;
- (iii) deliver to person any property/valuable security.

10. In the instant case, the petitioner herein was granted interim protection by learned ASJ vide order dated 19.7.2021, and he was directed to join investigation which he had not joined and absconded, thereafter application was moved by the IO informing the Court in this regard, and subsequently, the interim protection granted to the petitioner was withdrawn by the Sessions Court vide order dated 23.07.2021. All the relevant orders have been reproduced hereinabove. A perusal of all the order shows that petitioner has scant respect for the courts. The Sessions Court has given enough indulgence to the petitioner, but he failed to honour the indulgence shown by the court and he tried to mislead and hoodwink the court by his acts, and the said conduct is evident from the orders passed by the Sessions Court.

11. It is pertinent to mention here that this Court had even refused to give transit anticipatory bail to the petitioner. As far as the submission by learned senior counsel for the petitioner is concerned that the IO has not interrogated the other co-accused person namely Amit Vaid, no benefit can be given to petitioner in this regard.

12. The offence of extortion is dealt with in IPC from Section 383 to Section 389 as an aggravated form of theft and which are essentially divided into two categories of extortion. The extortion as defined in Section 383 IPC is complete with satisfaction of all the three ingredients as dealt with and made punishable under Sections 384, 386 and 388 IPC. One can say that these three Sections get attracted when the offence of extortion is committed on satisfaction of all the three aforesaid ingredients of Section 383 IPC with the only offence being degree of gravity.

13. Now coming to the other category of extortion where the transaction of extortion is not complete due to the last ingredient i.e. delivery of property/valuable security being missing, despite the former two ingredients of fear of injury and inducement being satisfied. These sections are Sections 385, 387 and 389 IPC and the common point in the three sections is expression "whoever, in order to the committing of extortion.....". The words employed in these three sections make the legislative intent clear that they relate to a situation where the accused in order to commit extortion pushed the victim in fear of injury to cause inducement and not to leading to any delivery of property/valuable security in favour of the accused.

14. The petitioner in the instant case has been charged under Section 387 of IPC and this relates exclusively to the instance of admitted extortion where the entire

transaction of extortion as defined in Section 383 IPC is not complete.

15. Keeping in view the entire facts and circumstances, and also the fact that petitioner has threatened the complainant and the fact that he is a member of Kala Jatheria Gang, thereby instilling fear in the mind of the complainant. Moreover, petitioner has not joined the investigation despite the indulgence granted by the Session Court. Perusal of the orders passed by the Session Court has much to say about the conduct of the petitioner and coupled with the fact that petitioner has concealed the fact about his past antecedents that there is a case against him in Anoop Sheher Bulandshehar. The judgments relied upon by the counsel for the petitioner are distinguishable on facts and are not applicable to the case of the petitioner. Therefore, the application being devoid of any merits is hereby dismissed.

16. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case.