

(2022) 06 UK CK 0079

In the Uttarakhand High Court

Case No : Second Bail Application No. 119 Of 2022

Ashish Vashisth

APPELLANT

Vs

State Of Uttarakhand

RESPONDENT

Date of Decision : 21-06-2022

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 188, 269, 270, 420, 467, 468, 471
Epidemic Diseases Act, 1897 — Section 3
Disaster Management Act, 2005 — Section 53
Code Of Criminal Procedure, 1973 — Section 439
Constitution Of India, 1950 — Article 21

Citation : (2022) 06 UK CK 0079

Hon'ble Judges : Alok Kumar Verma, J

Bench : Single Bench

Advocate : Pushpa Joshi, Chetna Latwal, S.S. Adhikari, Balvinder Singh

Final Decision : Dismissed

Judgement

Alok Kumar Verma, J

1. The present second bail application has been filed for grant of regular bail in connection with the Case Crime No.593 of 2021, registered with Police Station Kotwali Nagar, District Haridwar for the offence under Sections 188, 269, 270, 420, 467, 468, 471, 120B of IPC, Section 3 of the Epidemic Diseases Act, 1897 and Section 53 of the Disaster Management Act, 2005.

2. The First Bail Application (No.2349 of 2021) was rejected on 25.03.2022.

3. According to the present matter, Dr. Shambhu Kumar Jha, Chief Medical Officer, Haridwar lodged a First Information Report on 17.06.2021 with the allegations that a complaint was made by a person to the Indian Council of Medical Research (in short, "I.C.M.R.") that his Aadhar Card Number and Mobile Number were used for conducting Rapid Antigen Test, but, no sample was given by him. The said complaint was sent back by the I.C.M.R. to the Health Department of Uttarakhand on 14.05.2021. During the investigation, evidence

are found that the name of the sample collection centre for Rapid Antigen Test was shown as "M/s. Max Corporate Service Kumbh Mela" and sample was tested by "Nalwa Laboratories Pvt. Ltd.", Hisar. The co-accused Sharat Pant and his wife Smt. Mallika Pant (co-accused) were partners of "M/s. Max Corporate Services". The co-accused Sharat Pant and Smt. Mallika Pant executed an MoU with "Nalwa Lab", Hisar and "Dr. Lalchandani Lab", Delhi stating that their company is registered under the Companies Act, 1956. The co-accused Sharat Pant submitted an affidavit dated 11.01.2021 stating therein that "Dr. Lalchandani Labs", and "Nalwa Laboratories Pvt. Ltd." belong to him (co-accused Sharat Pant) and by misleading the Kumbh Mela Officer, got the contract for testing of Covid-19 from the Government, whereas, their firm was not authorized to conduct test for Covid-19 as per the guidelines of ICMR due to lack of testing lab with their firm.

4. During the investigation, evidence are found to the effect that the present applicant-accused Ashish Vashisth was a Director of Pathology Lab, "Delphia" in Bhiwani, Haryana. The present applicant alongwith co-accused persons had prepared forged testing report, uploaded on Web-portal of I.C.M.R. and submitted bills of about Rs.4 Crore, out of which, the present applicant along with co-accused persons had withdrawn Rs.15,41,670/-.

5. On 25.03.2022, Mr. Arvind Vashisth, the learned Senior Advocate, appearing for the present applicant had submitted that the applicant-Ashish Vashisth was the Director of the Pathology Lab, "Delphia" in Bhiwani, Haryana. The Invex Company of Bombay engaged the applicant-Ashish Vashisth to facilitate conducting the Rapid Antigen Test during Maha Kumbh Mela. The present applicant was associated with "Max Corporate Services", who was having tender of Covid-19 Test in Kumbh Mela. The applicant had provided manpower to "Invex" and "Max Corporate Services" for Rapid Antigen Test. The learned Senior Advocate had argued that there was no contract between the applicant-Ashish Vashisth and the State Administration. The applicant never raised any bill. He had not received any amount from the Government or from the "Max Corporate Services". The learned Senior Advocate had submitted that no fake report regarding Rapid Antigen Test was uploaded by the applicant on Web-portal of I.C.M.R. The applicant has been implicated in the present matter and he is in judicial custody since 22.07.2021.

6. On 25.03.2022, Mr. T.C. Agarwal, the learned Deputy Advocate General for the State, had opposed the submissions of the learned Senior Advocate and had submitted that during the investigation, evidence are found against the present applicant to the effect that the present applicant along with co-accused persons had prepared the forged testing report. The present applicant had no authority to prepare testing report. The present applicant along with co-accused persons had deputed unauthorized persons for the aforesaid testing. The present applicant along with co-accused persons had submitted the forged bills of testing and they tried to grab the Government money around Rs.4 Crore, out of which, the

present applicant along with co-accused persons had withdrawn Rs.15,41,670/-. The said amount was deposited in the account of "Max Corporate Services"; the firm of the co-accused persons, namely, Sharat Pant and Smt. Mallika Pant. Mr. T.C. Agarwal, the learned Deputy Advocate General for the State had submitted that two forged registers and one laptop were recovered at the instance of the present applicant Ashish Vashisth.

7. On 25.03.2022, Mr. T.C. Agarwal, the learned Deputy Advocate General for the State had submitted that during the investigation, the Investigating Officer had recorded the statements of more than 19 independent witnesses, under Section 161 of the Code of Criminal Procedure, and all of them disclosed the role of the present applicant in this crime. There is no evidence on record that the police had any enmity with the present applicant. So there is no reason to implicate the applicant, rather, his involvement is fully established from the evidence, collected by the Investigating Officer.

8. The learned counsel for the State had argued that the Government was engaged in saving the lives of the people in the critical situation of Covid-19, while the present applicant alongwith the co-accused persons were engaged in taking advantage of those circumstances illegally.

9. On 25.03.2022, this Court had made the following order:

"4. Section 439 of the Code of Criminal Procedure, 1973, confers very wide powers regarding bail. But, while granting bail, the High Court is guided by the same considerations as other court. That is to say, the gravity of the crime, the character of the evidence and such other grounds are required to be taken into consideration.

5. The Society has a vital interest in grant or refusal of bail because, criminal offence is the offence against the society. On the other hand, personal liberty under Article 21 of the Constitution of India is very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case. Therefore, the Court must balance numerous factors, including balance the Society at large with the interest of the applicant (accused).

6. In the case of Kalyan Chandra Sarkar vs. Rajesh Ranjan, (2004) 7 SCC 528, the Hon'ble Supreme Court has held that the law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non application of mind.

7. In the case of State of U.P. vs. Amarmani Tripathi, (2005) 8 SCC 21, the

Hon'ble Apex Court has held that it is well settled that the matters to be considered in 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 charge, (iii) severity of the punishment in the event of conviction, (iv) danger of the accused absconding or fleeing, if released on bail, (v) character, behavior, means, position and standing of the accused, (vi) likelihood of the offence being repeated, (vii) reasonable apprehension of the witnesses being tampered with, and (viii) danger, of course, of justice being thwarted by grant of bail.

8. Therefore, while dealing with an application for bail, there is a need to indicate in the order, reasons for prima facie considering why bail is being granted particularly where an accused is charged of having committed a serious offence. Any order devoid of reasons suffers from non-application of mind as observed by the Hon'ble Supreme Court in *Ram Govind Upadhyay Vs. Sudarshan Singh and others*, (2002)3 SCC 598.

13. A ratio decidendi of the judgment of the Hon'ble Supreme Court in *Anil Kumar Yadav vs. State (N.C.T.) of Delhi and another*, 2018 (1) CCSC 117 is that in serious crimes, the mere fact that the accused is in custody for more than one year, may not be a relevant consideration to release the accused on bail.

14. It would be inappropriate to discuss the evidence in depth at this stage. At this stage, detailed appreciation of evidence shall affect the trial. But, from the perusal of the evidence, collected during the investigation by the Investigating Officer, it prima facie appears that the applicant-accused was involved in this crime. No reason is found to implicate the applicant.

15. Therefore, there is no force in the submissions of the learned counsel for the applicant and no good ground has been made out for enlarging the applicant on bail at this stage. The bail application is liable to be rejected. Consequently, the bail application is rejected accordingly.

16. It is clarified that the observations made regarding the bail application are limited to the decision of the bail application, in the light of the facts provided by the parties at this stage, as to whether the bail application should be allowed or not. The said observations shall not effect the trial of the case."

10. Heard Mrs. Pushpa Joshi, the learned Senior Advocate assisted by Mrs. Chetna Latwal, the learned counsel for the applicant and Mr. S.S. Adhikari, the learned Deputy Advocate General assisted by Mr. Balvinder Singh, the learned Brief Holder for the State.

11. Smt. Pushpa Joshi, the learned Senior Advocate appearing for the applicant, submitted that there is no evidence on the record that the applicant's Company "Delphia" was engaged with the Government of Uttarakhand regarding any Covid testing services in Haridwar; there is no documentary evidence, such as MOU, authorization letters or any other agreement between the "Delphia" and the

Government of Uttarakhand; there is no evidence on the record that the data was uploaded in the I.C.M.R. portal by the applicant; the applicant is suffering from bronchial asthma and back pain. Mrs. Pushpa Joshi, the learned Senior Advocate, further submitted that the wife of the applicant is also suffering from back pain. She submitted that the applicant, proprietor of "Delphia Laboratory" is tenant of shop nos.1 to 3, situated at Bhiwani, since 01.03.2018, and, a legal notice dated 28.03.2022, for recovery of rent and eviction, has been given by the landlord. She further submitted that the applicant had taken loan from State Bank of India and a legal notice dated 05.01.2022 has been received from the said Bank.

12. The learned counsel for the State opposed the second bail application of the applicant and submitted that the second bail application is not maintainable. He submitted that the applicant is being treated from AIIMS, Rishikesh through Jail Authority. He further submitted that the applicant has not mentioned regarding the alleged illness of his wife and the alleged notice of the landlord in his second bail application, whereas, no plea was taken by the applicant on 25.03.2022 regarding the said notice dated 05.01.2022 of the Bank.

13. In State of Maharashtra Vs. Captain Buddhikota Subha Rao, AIR 1989 SC 2292, the Hon'ble Supreme Court has observed, ".....Once that application was rejected there was no question of granting a similar prayer. That is virtually overruling the earlier decision without there being a change in the fact-situation. And when we speak of change, we mean a substantial one which has a direct impact on the earlier decision and not merely cosmetic changes which are of little or no consequence."

14. In "Satya Pal vs. State of Uttar Pradesh", 1998 Supreme (All) 437, the Hon'ble Supreme Court has held that the second bail application cannot be allowed on those very facts that were available to the accused while the first bail application was moved and rejected.

15. In State of Madhya Pradesh Vs. Kajad, (2001)7 SCC 673, the Hon'ble Supreme Court has held that it is true that successive bail applications are permissible under the changed circumstances. But without the change in the circumstances, the second bail application would be deemed to be seeking review of the earlier judgment which is not permissible under criminal law.

16. The applicant had opportunity to raise all his contentions on the previous occasion. It is not open to the applicant to make successive bail applications even on the grounds already rejected by this Court.

17. On overall consideration of the application and in the light of the fact that any change in the circumstances is not established, after rejection of the first bail application on merit, I do not find any change in the circumstances to entertain present second bail application. The second bail application does not deserve to be entertained. Consequently, the present second bail application is rejected at the admission stage.