
(2022) 03 UK CK 0104

In the Uttarakhand High Court

Case No : First Bail Application No. 2349, 2942, 2943 Of 2021

Ashish Vashisth & Others

APPELLANT

Vs

State Of Uttarakhand

RESPONDENT

Date of Decision : 25-03-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 439
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

Citation : (2022) 03 UK CK 0104

Hon'ble Judges : Alok Kumar Verma, J

Bench : Single Bench

Advocate : Arvind Vashisth, Hemant Singh Mehra, T.C. Agarwal, Rohit Dhyani, Navneet Kaushik

Final Decision : Disposed Of

Judgement

Alok Kumar Verma, J

1. These three bail applications have been filed under Section 439 of the Code of Criminal Procedure, 1973 for regular bail in connection with the First Information Report No. 593 of 2021, registered with Police Station Kotwali City, Haridwar, 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. Facts, to the limited extent necessary, are that the informant Dr. Shambhu Kumar Jha, Chief Medical Officer, Haridwar lodged an FIR 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 to the effect 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. Mr. Sharat Pant and his wife Smt. Mallika Pant (accused persons) were partners of "M/s. Max Corporate Services". These two persons, namely Mr. 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. Mr. Sharat Pant, the applicant-accused had submitted an affidavit dated 11.01.2021 stating therein that "Dr. Lalchandani Labs", and "Nalwa Laboratories Pvt. Ltd." belong to him (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. The applicant-accused Ashish Vashisth was a Director of Pathology Lab, "Delphia" in Bhiwani, Haryana. The applicants 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, they had withdrawn Rs.15,41,670/-.

3. Heard Mr. Arvind Vashish, the learned Senior Advocate assisted by Mr. Hemant Singh Mehra, the learned counsel for the applicant-Ashish Vashisth, Mr. Navneet Kaushik, the learned counsel for the applicants, Sharat Pant and Smt. Mallika Pant and Mr. T.C. Agarwal, the learned Deputy Advocate General assisted by Mr. Rohit Dhyani, the learned Brief Holder for the State and perused the record.

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.

9. Mr. Arvind Vashisth, the learned Senior Advocate appearing for the applicant-Ashish Vashisth, 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 to facilitate conducting the Rapid Antigen Test during Maha Kumbh Mela. He 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. There was no contract between the applicant-Ashish Vashisth and the State Administration. The applicant never raised any bill. He has not received any amount from the Government or from the "Max Corporate Services". No fake report regarding Rapid Antigen Test was uploaded by him on Web-portal of I.C.M.R. He has been implicated in this matter and he is in judicial custody since 22.07.2021.

10. Mr. Navneet Kaushik, the learned counsel for the applicants, namely Sharat Pant and Smt. Mallika Pant, submitted that these two applicants were partners of "Max Corporate Services", a registered firm. On 31.12.2020, the State Government invited the "Expression of Interest" from the interested parties for conducting the Covid tests in Kumbh Mela. The certificates of authorization were issued by "Nalwa Laboratories Pvt. Ltd.", Haryana and "Dr. Lalchandani Lab Ltd", New Delhi. These two Labs authorized the firm of these two applicants to participate on their behalf in Covid-19 Rapid Antigen Test and Rapid RT-PCR Test. Therefore, the firm of these two applicants submitted its "Expression of Interest" for its authorization for testing in Maha Kumbh Mela, which was accepted by the Kumbh Mela authorities and the State Government. The firm of these two applicants entered into a "consortium Agreement" dated 10.03.2021 with "Nalwa Laboratories" and "Dr. Lalchandani Labs". These two laboratories carried out the work of Rapid Antigen Test and RT-PCR Test. All technical work relating to test performed by "Nalwa Lab". The State Government authorized the applicants' firm

to conduct the Rapid Antigen Test, which includes actual sample collection, testing and feeding the data through the respective labs. All the said collection exercise were conducted under the supervision of the local health authorities as well as police authorities. Actual work was conducted by the "Nalwa Laboratories" and after conducting the tests, "Nalwa Laboratories" forwarded the data of tests along with bills to "Invex Health Pvt. Ltd.". The "Invex Health Pvt. Ltd." raised the bills and the applicants' firm only submitted the bills to the State authorities for payment. The firm of the applicants never involved in testing and feeding data. Their firm was merely a coordinator between the Government and the said two labs. The applicants co-operated with the Investigating Agency during the investigation. There is not even a prima facie case against the applicants. The applicants are falsely implicated and they are in judicial custody since 08.11.2021.

11. Per contra, Mr. T.C. Agarwal, the learned Deputy Advocate General appearing for the State, opposed the submissions of the learned counsel appearing for the applicants. He submitted that during the investigation, evidence are found against all three applicants-accused persons to the effect that these persons had prepared the forged testing report. The applicant-Sharat Pant had submitted an affidavit before the concerned officer of the State stating therein that the Lab of Dr. Lalchandni and Nalwa Laboratories Lab belong to him, whereas the applicants had no authority to prepare testing report. The applicants deputed unauthorized persons for the aforesaid testing. They submitted the forged bills of testing. They tried to grab the Government money around Rs.4 Crore, out of which, they had withdrawn Rs.15,41,670/-. The said amount was deposited in the account of "Max Corporate Services"; the firm of the applicants-accused Sharat Pant and Smt. Mallika Pant". Two forged registers and one laptop were recovered at the instance of the applicant-Ashish Vashisht. The applicants Sharat Pant and Smt. Mallika Pant uploaded the fake reports regarding Rapid Antigen Test on Web-portal of I.C.M.R. from the I.D. of their firm "Max Corporate Services".

12. Mr. T.C. Agarwal, the learned Deputy Advocate General for the State, further submitted that during the investigation, the Investigating Officer 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 applicants in this crime. There is no evidence on record that the police had any enmity with the applicants. So there is no reason to falsely implicate the applicants, rather, their involvement is fully established from the evidence, collected by the Investigating Officer. The learned counsel appearing for the State further submitted that the Government was engaged in saving the lives of the people in the critical situation of Covid-19, while these three applicants-accused persons were engaged in taking advantage of those circumstances illegally.

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 applicants-accused persons were involved in this crime. No reason is found to implicate the applicants.

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

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