
(2012) 08 DEL CK 0329
In the Delhi High Court
Case No : Bail Application 1226 of 2012

Nachiketa Kapoor

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 30-08-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438
Penal Code, 1860 (IPC) — Section 120B, 420, 467, 468, 471

Citation : (2012) 7 AD 253 : (2012) 4 JCC 2286

Hon'ble Judges : P.K. Bhasin, J

Bench : Single Bench

Advocate : N.K. Kaul, with Ms. Ekta Sikri, Mr. Akshy Chandra, Mr. Prannoy Dey, Mr. Sudeep Dey, Ms. Naomi Chandra and Mr. Kapil Rustagi, for the Appellant; Sidharth Luthra, A.S.G. with Mr. Dayan Krishnan, ASC, Ms. Devina Sehgal and Ms. Shreya Sinha, Mr. Joy Tirkey, Addl. DCP/Crime Branch, Ins. Keshav Mathur, SIT/Crime Branch, for the Respondent

Judgement

P.K. Bhasin, J.—Strange are the ways of life but for the applicant Nachiketa Kapur, who has approached this Court for the protection of his life and liberty to move around as a free citizen of the country which liberty was for almost a decade too well insulated and protected from every quarter but now is in great danger, it can be said that not just strange are the ways of life but very very strange are the ways of life. Here is a gentleman who has been the most wanted person in many important Ministries/Departments of the Government of India and has been the blue-eyed child of many at the helm of affairs in those Ministries/Departments which included even the National Security Council. They all have been wanting to associate him with their Ministries and Departments. He has been the Officer on Special Duty (OSD) in the Ministry of Tourism, Government of India and then as desired by the then Minister of that Ministry he was made the private secretary(PS) of the Minister. It appears that this man has been playing different games and had been getting rewarded also for playing those games successfully and his vast experience in playing the games

successfully in different Government Departments got him an entry into the Commonwealth Games also, a mega sports event which was held recently in our country. Of course, that entry ticket given to him was not for playing any game on the sports turf but for playing some indoor games(which time only will tell) in the Organising Committee which was constituted by the Government for the successful completion of the mega sports event. Though the country won many laurels for holding the Commonwealth Games but after the curtains were drawn on that event a large scale of frauds committed by many persons associated with that event surfaced. Now the Courts are flooded with cases relating to those frauds and the investigators claim to have found that actually those persons who were given the responsibility of the success of the Commonwealth Games had actually succeeded in amassing "common wealth" for themselves. It appears that this great man Nachiketa Kapur also played some games during his short stint with the Organising Committee of the Commonwealth Games but this time he does not appear to have won any appreciation from those who had got him the entry ticket in this mega and highly prestigious national project of all times but he became so dear to the Delhi Police that it also now wants to avail of his services and the expertise in playing different games which he had acquired during his long association with different Ministries/Departments of the Government of India and the Ministers, bureaucrats etc. But see the irony of fate, though the police is also now wanting to avail of his services by associating him with the police department but that is sought to be done only after arresting him since the people in different Ministries/Departments of the Government and the persons at the helm of affairs there and for whom he mattered the most and with whom he had been very very closely associated all these years are now after his blood and want him to go to jail.

2. Having given a brief background of the applicant Nachiketa Kapur I now come to the circumstances leading to the filing of this anticipatory bail application by him.

3. On 30th July, 2012 the Crime Branch registered an FIR against the applicant-accused under Sections 420/467/468/471/ 120-B IPC on the allegations that he had managed to get a job in the Organising Committee of Commonwealth Games in July, 2009 by submitting along with his resume a photocopy of a degree of Delhi University which showed that he had graduated from Delhi University in the year 1994 but it had been found that the degree on the basis of which he was claiming himself to be a graduate was a forged degree.

4. The applicant apprehending his arrest by the police moved the Sessions Court for anticipatory bail but his application u/s 438 Cr.P.C. was dismissed by the learned Additional Sessions Judge on 16th August, 2012. Now, he has moved the present application for anticipatory bail before this Court and the same has been very strongly opposed by the State.

5. Mr. Neeraj Kishan Kaul, learned senior counsel appearing for the applicant-accused, strongly argued that no case whatsoever has been made out for the

arrest of the applicant-accused since the police claims to have already found that he had at the time of joining the Organising Committee of Commonwealth Games submitted a photocopy of a degree purporting to have been issued by the Delhi University showing that he had graduated from Delhi University in the year 1994 but actually he was a school drop-out and graduation degree being used by him was a forged and bogus document. Thus, Mr. Kaul submitted, no custodial interrogation of the applicant-accused was required to be done by the police and he was sought to be arrested for oblique motives. It was also submitted that even otherwise this is a case where the only allegation against the applicant-accused was that he had got employment in the Organising Committee of the Commonwealth Games by falsely representing that he was a graduate from Delhi University and submitting along with his resume a forged document purporting to be a photocopy of his graduation degree issued by Delhi University and so this was not such a serious case, which too had been registered against him after two years of his resigning from the Organising Committee, that his arrest was required as well as justified. It was also contended that the father of the applicant-accused is suffering from advanced stage of cancer and, therefore, that was an additional consideration for taking a favourable view by this Court by granting anticipatory bail to the applicant-accused.

6. A perusal of the bail application shows that the applicant-accused is also claiming that he is being made a scapegoat by the police at the instance of some influential persons who want him to indulge in various malpractices in which they themselves were indulging and he was apprehending grave danger to his life at their hands. The applicant-accused has also claimed in this application that the FIR against him had been registered at the instance of an "influential politician whom the applicant was working earlier. He was being harassed ever since he left her employment" At another place in the application it has also been averred that " This time she got the forged documents planted against the applicant and got this case registered through the OC, CWG."

7. It is not in dispute that the applicant has referred to the politician with whom he had admittedly worked as "she" since actually he had worked with a lady Minister.

8. In the bail application the applicant-accused has also pleaded that there was no occasion for him to have produced any forged degree while getting employment in the Commonwealth Games Project since he was never required to produce any degree and in any event he had actually graduated from Open University in Karnataka after passing 10th from open school in 1991 and 12th also from Open School in 2001.

9. Opposing this bail application strongly Mr.Siddhartha Luthra, learned Additional Solicitor General submitted that this was not as simple a case as was sought to be projected from the side of the applicant-accused and in fact there is much more which has come to the notice of the police. It was submitted that it is not that the applicant-accused had managed to get employed with the

Organising Committee of the Commonwealth Games by producing forged documents showing him to be a graduate from Delhi University while in fact he was a school drop-out but earlier to that in the year 2004 he had gained entry into the office of the National Security Advisor, which takes care of the security of the country, and at that time also he had produced the same forged documents which showed him to be a graduate from Delhi University. Subsequently he left the office of the National Security Advisor and gained entry in the Ministry of Tourism and then in the Ministry of Women and Child Development as Officer on Special Duty to the then Minister. Learned Additional Solicitor General further contended that the applicant-accused had also got an endorsement of ECNR(Emigration Check Not Required) in his passport, which endorsement is made only in case of persons who possess some minimum qualification, by producing the same fake graduation degree. Mr. Luthra also submitted that this background of the applicant-accused clearly shows that he is such a big fraud that he could manage his entry into many Government Departments, including the National Advisory Council which takes care of the security of the nation and so a highly sensitive department of the Government of India, and he has been drawing huge amount of salaries from the public exchequer despite the fact that he was not even eligible to get any Government job and now that all his frauds have come to light the police needs to go very deep into the matter to find as to how this school drop-out could manage to gain entry into many Government Departments and also as to who were the public servants who had helped him in getting Government jobs and for what motives.

10. It was also submitted by the learned Additional Solicitor General that it is not that only the applicant's role was being investigated by the police but roles of all other persons, howsoever high position they might be occupying or might have occupied, with whom he had been associated in different Ministries and Departments of the Government shall be probed seriously and, therefore, the grievance of the applicant-accused that he only was being targetted and made a scapegoat at the instance of some influential people is totally baseless. Mr. Luthra submitted that the allegations against the accused are very serious and it has become a matter of serious concern as to how all this has been happening in various Ministries/Departments of the Government the truth has to be found out at any cost and so custodial interrogation of the applicant-accused is must as during that interrogation the police is likely to reach upto other people also involved and associated with him in the commission of the serious offence of gaining Government jobs fraudulently and thereby causing huge loss to the public exchequer.

11. Responding to the submissions of the learned Additional Solicitor General that it was not simply a case of the accused having got entry into the Commonwealth Games Project but he had earlier also gained jobs with many departments of the Government of India on the basis of forged graduation degree, Mr. Kaul, learned senior counsel for the applicant-accused submitted that this Court should proceed to examine the matter only on the basis of the

allegation made in the FIR lodged on behalf of the Organising Committee of Commonwealth Games and in the FIR the only allegation was that the applicant-accused had got employment in the Commonwealth Games Project by producing a zerox copy of a forged degree of Delhi University and the other so called frauds allegedly committed by the applicant-accused and orally brought to the notice of the this Court during the course of this bail application should not be taken into consideration. It was also submitted that from these facts highlighted only during the course of oral submissions of the learned Additional Solicitor General and which are totally missing from the FIR should be kept out of consideration by this Court and further that all this also shows that the police is now digging old graves just to please those influential people in the Government who are now after his blood.

12. I have given my thoughtful consideration to the rival submissions of the learned senior counsel for the applicant-accused and learned Additional Solicitor General for the State and have also gone through the police file which was made available for perusal by this Court.

13. A perusal of the police file showed that the police had received a complaint sometime in the year 2010 that the applicant-accused had got the job in the Organising Committee of Commonwealth Games by producing a forged degree and not only that it had also been complained against him that he had become even the OSD to the Minister in two Ministries on the basis of forged degree. It was also alleged against him that he was also indulging in human trafficking. The lady Minister with whom he had worked as an OSD had also asked for an enquiry in that regard in July, 2011. The police at that time did not decide to either register an FIR or to arrest the applicant-accused. However, the concerned Minister was not satisfied with the police inaction and so she kept on demanding a serious and thorough enquiry into the matter. Then some enquiry was made and it came to be found out that the applicant-accused had furnished copy of a forged degree while getting job in the Commonwealth Games Project and so FIR was registered against him.

14. However, till date the police has not even approached anyone from the two Ministries of the Government where the applicant-accused had got himself appointed as an OSD to the Minister to find out as to on what basis he was given that appointment. The police has also not so far examined anyone from the office of the Organising Committee of Commonwealth Games to find out from there also as to how the applicant-accused had got job there and how it was being claimed that he had furnished forged documents. Similarly no body has been examined till date by the police to find out as to how he could get entry into the National Security Council. Nobody has been examined even to test the veracity of the allegation that the applicant-accused was indulging in human trafficking also as was being claimed by one Mohd. Younus Siddiqui. Police file also does not show that the investigating officer had brought on record the reasons for the arrest of the applicant-accused which had to be done as per the decision of the

Supreme Court reported as Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Others, (see para 88 of the judgment) and which reasons are to be considered by the Court at the time of hearing of bail application of the concerned accused.

15. So, considering all the facts and circumstances I am of the view that before any final decision is taken as to whether the police should be permitted to arrest the applicant-accused or not, the investigating officer should first be called upon to bring on record the reasons which are prompting him to arrest the applicant-accused for his custodial interrogation and the police should also be given time to collect material from different ministries/departments wherever the applicant-accused had been working to find out by examining the persons who had been giving employment to him in those departments/ministries and thereafter a final decision shall be taken by this Court on this anticipatory bail application. And it is hoped that considering the fact that the police itself is claiming it to be a matter of senior concern as to how the applicant-accused had been getting entry into the Ministries and Government Departments the investigating agency shall not feel shy in contacting each one of the concerned person/public servant howsoever highly placed. This application shall now be taken up again on 7th September, 2012. Considering the fact that the police did not even make any attempt to arrest the applicant-accused despite the fact that there were allegations against him in the year 2010 also it is now ordered that if in the meanwhile the applicant-accused is arrested he shall be released on bail till the next date only subject to his furnishing a personal bond in the sum of Rs. 25,000/- with one surety in the like amount to the satisfaction of the arresting officer. The applicant-accused, however, shall report to the investigating officer tomorrow at 4 p.m. and on any other date also which the investigating officer would fix for his appearance before him. It is, however, made clear that this grant of interim relief to the applicant-accused and direction to him to report to the investigation is not an expression of opinion of this Court on his entitlement to get regular anticipatory bail.