

(2021) 08 DEL CK 0060

In the Delhi High Court

Case No : Bail Application No. 1516 Of 2021

Pankaj Goyal @Pankaj Kumar Goyal @Bittoo

APPELLANT

Vs

State Of Nct Delhi

RESPONDENT

Date of Decision : 16-08-2021

Acts Referred:

Indian Penal Code, 1860 — Section 34, 120B, 364A
Code Of Criminal Procedure, 1973 — Section 164

Citation : (2021) 08 DEL CK 0060

Hon'ble Judges : Subramonium Prasad, J

Bench : Single Bench

Advocate : Man Mohan Goel, Vishalakshi Goel, Kusum Dhalla

Final Decision : Disposed Of

Judgement

Subramonium Prasad, J

1. The petitioner seeks bail in FIR No.263/2020 dated 07.10.2020 registered at Police Station Prasad Nagar for offences punishable under Sections

364A/120B/34 IPC.

2. The brief facts leading to this bail application are as follows:

a) The complaint was filed by one Mrs. Laxmi stating that her husband, Mukesh Kumar (Victim), who had left to attend a meeting has been abducted

by some unknown persons on 06.10.2020 when he had gone for business meeting near INA, Delhi. She stated that on 06.10.2020, at about 3:15 PM,

she received a call from her husband who told her that he is in Bulandshahar, UP and asked her to arrange Rs.1-2 Lakh and if cash was not available

he asked her to arrange some jewellery of the same value. It is stated that the victim told the complainant to deliver the cash/jewellery along with the

cheque book of the victim to a person, namely Pankaj Goyal (petitioner herein), having mobile No.8800966272, near Shahdara Metro Station. It is

stated that the daughter of the victim took the cash/jewellery and the cheque book of the victim and delivered it to the petitioner herein. It is stated that

on the very same day, the complainant received another call from her husband who told her to arrange Rs.3-4 Lakh more and told her that only then

the kidnappers will release him. On the said complaint, FIR No.263/2020 dated 07.10.2020, was registered at Police Station Prasad Nagar for

offences punishable under Sections 364A/120B/34 IPC.

b) On investigation the victim was found and rescued from H.No.13, Gali No.1, Nandan Nagar, Transport Nagar, Meerut, U.P., on the evening of

07.10.2020. Accused Nitin Kansal was arrested. The said Nitin Kansal disclosed that his associate, namely the petitioner herein has received the

ransom from the daughter of the victim. He also disclosed that the petitioner resides at 104G, Gali No. 10, Balbir Nagar, Shahdara, Delhi. The

petitioner was arrested on 08.10.2020. The jewellery and the cheque book of the victim was recovered from his possession. The petitioner disclosed

that he received the jewellery and the cheque book from the daughter of the victim on the directions of his associate Nitin Kansal and got the

jewellery valued and sent the photographs of the jewellery to Nitin Kansal. The petitioner refused to participate in the TIP proceedings but he was

identified by the daughter of the victim. During investigation the mobile phone of Nitin Kansal was seized and analyzed. During the analysis, some

videos and photographs of the victim with an unknown lady were found, some videos were found in which the victim is seen sitting on the ground and

some persons are beating him. Whatsapp chat with the petitioner was also found which contained two photographs of the jewellery which were sent

by the petitioner to Nitin Kansal. Mobile phone of the petitioner was also seized which contained photographs of the ransom jewellery.

c) The statement of the victim was recorded under Section 164 Cr.P.C wherein he disclosed that he works as a commission agent with Amory

Cosmetics. He disclosed that Nitin Kansal is a distributor in the said company. He disclosed that Nitin Kansal got the distributorship of the company

through him in 2019. It is stated by the victim that in September, 2020 Nitin Kansal told him that items worth Rs.10-15 Lakhs, that he purchased from

the Amory Cosmetics, are lying in his godown. It is stated by the victim that Nitin Kansal told him to pay the amount and take back those items. It is

stated that on 11.09.2020, the victim along with Nitin Kansal went to the office of the company at Zirakpur where the issue was discussed with the

company Director. It is stated that on that day they stayed at a hotel in Zirakpur, where Nitin Kansal called a girl and fraudulently took his

photographs with her. It is stated that after that day Nitin Kansal called the victim many times and asked him to come to Meerut but the victim

refused. It is stated that one person, Vivek called the victim and said that he wants to do business with his company and they fixed a meeting for

06.10.2020 at INA. It is stated that when the victim reached INA he was kidnapped by the accused Nitin Kansal and his associates namely, Naveen

Singh, Robin Verma and Vivek. It is stated that the accused took him to Transport Nagar, Meerut and kept him in a godown. It is further stated that

the victim was beaten by all the accused persons. It is stated that Nitin Kansal showed the photographs of the lady, which were taken by him, to the

victim and blackmailed him and demanded Rs.9.75 Lakhs. It is also stated that a lady (Nisha Tayal) came there who introduced herself as an

Advocate and threatened the victim and asked him to pay the money.

d) Amit Kansal, Robin Verma, Naveen Singh and Vivek surrendered before the Court and they were taken into custody. Another accused Prashant

Tayal, son of Nitin Kansal was declared proclaimed offender by the Court on 01.03.2021. Accused Nisha Tayal, who is the petitioner in BAIL

APPLN.1290/2021 and Prashant Tayal surrendered before the Court on 09.03.2021 and were taken into custody.

e) The petitioner filed an application for bail before the Trial Court which was dismissed by the learned Metropolitan Magistrate vide order dated

14.10.2020. Thereafter the petitioner moved an application for regular bail before the Sessions Court which was dismissed by the learned Additional

Sessions Judge vide order dated 27.10.2020. The petitioner filed the third bail application before this Court which was dismissed as withdrawn vide

order dated 22.12.2020.

f) Charge-sheet was filed on 09.02.2021. Pursuant to charge-sheet the petitioner once again filed an application for bail which was dismissed by the

learned Additional Sessions Judge vide order dated 16.04.2021. Thereafter the

petitioner has filed the instant petition. On 06.05.2021, this Court directed that the instant bail application be taken up with BAIL APPLN.1290/2021 on 01.06.2021. But on 01.06.2021, arguments were advanced only in the instant petition and the BAIL APPLN.1290/2021 was adjourned to 07.07.2021 because the Court felt that the role of the petitioner in BAIL APPLN.1290/2021 and the petitioner herein were different.

3. Heard Mr. Man Mohan Goel, learned counsel for the petitioner and Ms. Kusum Dhalla, learned APP for the State and perused the material on record.

4. The learned counsel for the petitioner contends that the petitioner was completely unaware of the conspiracy of kidnapping the victim. He states that had the petitioner been aware of the conspiracy he would definitely have gone with muffled face and would have not disclosed his face or identity to the daughter of the victim. He further states that had the petitioner been a part of the conspiracy he would have deleted the photographs of jewellery from his phone. The learned counsel for the petitioner states that Nitin Kansal had told him to collect the jewellery and get it valued. The learned counsel for the petitioner states that the petitioner collected the jewellery, clicked its picture and sent it to Nitin Kansal and got it valued. He states that the petitioner did all these things without being aware of the fact that the victim had been kidnapped. He states that there is nothing on record or in the chargesheet which would indicate that the petitioner was aware of the conspiracy.

5. Per contra, Ms. Kusum Dhalla, learned APP contends that the petitioner is accused of a very heinous offence namely an offence under Section 364A under which the minimum punishment is imprisonment for life and the maximum punishment is death.

6. The facts which emerges from this case are that the role attributed to the petitioner is that he went near Shahdara Metro Station and collected jewellery/cash and the cheque book of the victim. The petitioner did not go to Meerut where the victim was kept in confinement. There is some force in the statement of the learned counsel for the petitioner that had the petitioner been aware that he is a part of the conspiracy would have gone in a muffled face to collect the jewellery/cash or at least taken the precaution to delete the photographs from his phone. At the first blush, it does not

appear from the disclosure statement of Nitin Kansal that the petitioner was aware of the conspiracy to abduct the victim for ransom. The petitioner's

case therefore stands on a different footing from those person who were present with the victim at the place where he was kept in confinement. The

fact as to whether the petitioner was aware of the conspiracy right from the beginning or not is a matter of trial. Undoubtedly, kidnapping for ransom

is a very heinous offence for which there are only two punishments:

a) imprisonment for life;

b) death.

The petitioner has no criminal antecedents. There are phone calls between Nitin Kansal and the petitioner. Jewellery and cheque book of the victims

have been recovered from the house of the petitioner. Photographs of jewellery have been recovered from the whatsapp chat between Nitin Kansal

and the petitioner. The petitioner and Nitin Kansal are friends for twenty years, but all this does not lead to an inference, at this stage, that the

petitioner was aware of the conspiracy to abduct the victim at the stage. The question as to whether the petitioner was a part of the conspiracy or not

will be decided in trial.

7. In *Mahipal v. Rajesh Kumar*, (2020) 2 SCC 118 the Supreme Court observed as under:

“12. The determination of whether a case is fit for the grant of bail involves the balancing of numerous factors, among which the nature

of the offence, the severity of the punishment and a prima facie view of the involvement of the accused are important. No straitjacket

formula exists for courts to assess an application for the grant or rejection of bail. At the stage of assessing whether a case is fit for the

grant of bail, the court is not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt the

commission of the crime by the accused. That is a matter for trial. However, the Court is required to examine whether there is a prima facie

or reasonable ground to believe that the accused had committed the offence and on a balance of the considerations involved, the continued

custody of the accused subserves the purpose of the criminal justice system. Where bail has been granted by a lower court, an appellate

court must be slow to interfere and ought to be guided by the principles set out

for the exercise of the power to set aside bail.â??

8. Since the petitioner's case can be distinguished from those accused who were with the victim at the place where he was kept in confinement and

since, at this stage, there is nothing on record to show that the petitioner was aware of the fact that his friend Nitin Kansal had abducted the victim for

ransom and the conduct of the petitioner, especially the fact that he took money/ jewellery from the daughter of the victim without muffling his face

and did not attempt to clear the photographs of jewelry from his phone does gives a strong indication that the petitioner was not aware that he was a

part of the conspiracy.

9. The charge-sheet has been filed. Whatever had to be recovered from the petitioner has been recovered. Charges are yet to be framed. The

petitioner is in custody for the past nine months. Keeping all these facts in mind, this Court is inclined to grant bail to the petitioner on the following

conditions:

a) The petitioner shall furnish a personal bond in the sum of ₹ 1,00,000/- with two sureties of the like amount, one of them being a relative of the

petitioner, to the satisfaction of the Trial Court/Duty Magistrate.

b) The petitioner shall not leave NCT of Delhi without prior permission of this Court.

c) The petitioner shall report to the concerned Police Station every day at 10:30 AM and should be released after completing the formalities within half

an hour.

d) The petitioner is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times.

e) The petitioner has given his address in the memo of parties and shall continue to reside at the same address. In case there is any change in the

address, the petitioner is directed to intimate the same to the IO.

f) The petitioner shall not, directly or indirectly, tamper with evidence or try to influence the witnesses.

g) Violation of any of these conditions will result in the cancellation of the bail given to the petitioner.

10. It is made clear that the observations made in this order are only for the purpose of grant of bail and cannot be taken into consideration in the trial.

11. Accordingly, the bail application is disposed of along with the pending applications, if any.