

(2021) 09 DEL CK 0120

In the Delhi High Court

Case No : Bail Application No. 3295 Of 2021

Rajender Singh

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 21-09-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 41(1)(a), 41(1)(b), 41(c), 41(1)(d), 41(1)(e), 161, 164, 438
Indian Penal Code, 1860 — Section 34, 120B, 198, 199, 200, 307, 420, 468, 471, 506
Maharashtra Control of Organised Crime Act, 1999 — Section 3, 4
Arms Act, 1959 — Section 25, 27

Citation : (2021) 09 DEL CK 0120

Hon'ble Judges : Anu Malhotra, J

Bench : Single Bench

Judgement

Anu Malhotra, J

1. The applicant vide the present application under Section 438 of the Cr.P.C., 1973, seeks the grant of anticipatory bail in relation to FIR No. 151/2021, Police Station Special Cell (Lodhi Colony, Delhi) registered under Sections 120B/198/199/200/420/468/471 of the Indian Penal Code, 1860, submitting to the effect that he has been falsely implicated in the instant case and has no role whatsoever to play in relation to the allegations levelled against him qua the alleged commission of offences punishable under Sections 120B/198/199/200/420/468/471 of the Indian Penal Code, 1860.

2. The genesis of the FIR in the instant case is an interim bail application filed by the son of the present applicant, named Yogesh @ Tunda in relation to FIR No. 252/2018 Police Station Alipur under Sections 3 & 4 of the MCOC Act, wherein the son of the applicant herein filed an application seeking grant of interim bail on 28.05.2021 dated 27.05.2021 on the ground that his father, i.e., the applicant herein, had tested positive for COVID-19. The learned Trial Court directed the verification of the said report and it was found that the COVID-19 report was forged as the original report was negative for COVID-19 in as much as vide the

reply filed under signatures of the ACP/NDR (Special Cell, Delhi) Hridaya Bhushan, dated 28.05.2021 to the interim bail application filed by Yogesh @ Tunda, it was submitted to the effect that the actual COVID report was negative and the same had been verified through mail from Spice Health Headquarters, through physical verification from the testing lab as well as through the online access. The report from the Spice Health has been placed along with this status report that had been submitted by the State to the present application along with the reply to the interim bail application filed by Yogesh @ Tunda on the premise that his father, i.e., the applicant herein, is suffering from COVID 19. The report dated 26.05.2021 of the Spice Health Lab in relation to Rajender, aged 53 years, a Male with a Mobile No. 8383968884, shows a negative result in the SARS-CoV-2 Qualitative RT PCR test of the said Rajender, the Sample ID is mentioned as being 0708501579954 in relation to which the sample is indicated to have been received on 25.05.2021. The interim bail application filed by Yogesh, son of the present applicant herein dated 27.05.2021 was annexed, however, the Spice Health Lab report in relation to SARS-CoV-2 Qualitative RT PCR test of Rajender with Mobile No. 8178861975 in relation to sample ID No. 0708501579954 showed a positive result for the same.

3. Vide order dated 29.05.2021, the learned Trial Court called for a written explanation from the counsel for the applicant in the matter in view of the report of the Investigating Officer that a forged document had been filed by Yogesh @ Tunda to avail the grant of interim bail. The learned counsel for Yogesh @ Tunda, Mr. J.K. Sharma submitted his written explanation dated 07.06.2021 to the effect that one person named Gaurav S/o Sh. Ashok Aggarwal had approached him to move the interim bail application and that he, the counsel, had also represented the said Gaurav in his bail application in FIR 14/19, Police Station Alipur under Sections 307/506/120B/34 of the Indian Penal Code, 1860 read with Sections 25 & 27 of the Arms Act, 1959 in which case vide order dated 07.04.2021 in Bail Appln. No. 996/2021, the Court had granted bail to the said Gaurav and that that Gaurav had referred the interim bail application of the accused Yogesh @ Tunda and had sent a medical certificate confirming that the father of the accused Yogesh @ Tunda was COVID positive. Through his explanation, Mr. J.K. Sharma also submitted that on a general inquiry he was assured that the medical document was verifiable and a genuine document and as a counsel, he neither had reasons nor resources to verify the authenticity of the document in question, and that he was also instructed to and sent a duly filled in vakalatnama through his e-mail to the Jail Superintendent concerned and the same was duly attested and sent back to him through e-mail. The learned counsel Mr. J.K. Sharma further submitted that he had been promised to be paid the legal remuneration on the next date and thus he had sent the bail application supported by the medical documents as well as the vakalatnama online on 27.05.2021 but the said Gaurav could not be contacted and even on the date of the hearing of the bail application, nothing was heard neither from the said Gaurav in relation to his legal remuneration nor from anyone else which raised concerns in his mind and

since no one was coming forward, he had decided to withdraw the bail application in as much as he had felt confident that he had been used into moving the application on some pro bono basis.

4. It is further submitted through this explanation of the learned counsel Mr. J.K. Sharma that he appeared before the learned Trial Court but was shocked to learn that the police had verified the said medical document purported to have been in corroboration of the COVID positive status of the father of the accused Yogesh @ Tunda and that he the counsel had explained to the Court everything at the time of the hearing.

5. Vide order dated 07.06.2021, the learned Trial Court dismissed the bail application of Yogesh @ Tunda seeking grant of interim bail in relation to FIR 252/2018 Police Station Alipur registered under Sections 3 & 4 of the MCOC Act. However, the Ld.Trial Court directed the Commissioner of Police, Delhi to take necessary action in as much as the document had been forged and an attempt had been made to obtain a favourable order from the Court on the basis of that document observing further to the effect that prima facie cognizable offences had been committed and apparently there was a conspiracy to commit these offences which needed detailed investigation.

6. The present FIR No. 151/2021 is thus indicated to have been registered on 10.06.2021.

7. As per the status report submitted by the State dated 08.09.2021 qua the present anticipatory bail application, it was submitted by the State that Gaurav had been traced out and was arrested. During investigation, Gaurav disclosed that the source of the forged COVID report was the present petitioner Rajender, the father of the accused Yogesh @ Tunda and that subsequently Yogesh @ Tunda was also arrested in this case. As per the status report, during the investigation conducted, a witness named Prem Chand s/o Lallan was examined under Section 161 as well as Section 164 of the Cr.P.C., 1973 and the witness had stated that he had assisted the present petitioner for his COVID test and stated further that he had received the COVID negative report of the petitioner on his mobile phone as the petitioner herein had mentioned his mobile number during the test and stated that he had forwarded the COVID negative report of the present petitioner through whatsapp. The State thus submitted that it was clear that the present petitioner had received the COVID negative report from the witness Prem Chand and though the applicant herein had been called to join the investigation, he had not done so and his previous anticipatory bail application was dismissed by the learned Additional Sessions Judge on 26.08.2021.

8. Vide order dated 07.09.2021 in the present bail application in view of the submissions that had been made on behalf of the applicant i.e., the applicant herein, that he was willing to hand over his mobile phone to the Investigating Agency, the applicant, in the event of arrest, was directed to be released as an

interim measure subject to the terms and condition as imposed thereby to the effect that:

"? he shall appear before the Investigating Officer, PS Special Branch, Lodhi Road today itself by 4:30 PM;

? he shall not leave the city of Delhi under any circumstances;

? he shall keep his mobile phone on at all times;

? he shall drop a PIN on the google map to ensure that his location is available to the Investigating Officer;

? he shall commit no offence whatsoever. ",

which order is in existence till date having been extended vide orders dated 9.9.2021, 14.9.2021, 16.9.2021 and 20.09.2021.

9. During the course of submissions made in the present anticipatory bail application, a submission had been made on behalf of the applicant that he would be willing to hand over his mobile to the Investigating Agency in as much as the submissions made on behalf of the State were to the effect that as per the disclosure statement of Gaurav Aggarwal, the co-accused, dated 17.06.2021, i.e., the applicant herein, had made a whatsapp call to the said co-accused, Gaurav Aggarwal and had forwarded his COVID report on the mobile phone of the mother of Gaurav Aggarwal which report was forwarded by Gaurav Aggarwal to his counsel despite the knowledge that the said report was false and on the basis of this COVID report, the counsel had moved an application for bail for the accused Yogesh, whereafter, it was informed by the counsel to Mr. Gaurav Aggarwal, the co-accused, that the police had informed the Court that the COVID report of the father of Yogesh i.e. the COVID report of the applicant herein was false. As per his disclosure statement, the said Gaurav Aggarwal stated that he got frightened and he had deleted all the messages received from Yogesh and his father i.e. the present applicant herein, and had also deleted the whatsapp call, the report and the messages and had also deleted the report which he had forwarded to the counsel.

10. On behalf of the applicant it has thus been submitted that the disclosure statement of Gaurav Aggarwal is per se insufficient to incriminate the applicant in any manner in as much as Gaurav Aggarwal disclosed that he had deleted all messages received from Yogesh and his father, i.e., the present applicant herein from his mother's mobile and had also deleted the whatsapp calls and messages and the report which had been received which he had forwarded to the counsel.

11. Through its status report dated 13.9.2021, it was submitted by the State that the COVID positive report of the present applicant dated 26.5.2021 as purportedly issued by Spice Health as per the mobile phone of the applicant was received by him from one KK bearing No. 8882760812. On behalf of the State it is submitted that this mobile number belongs to Gaurav Aggarwal but that the

State is yet to verify the same. It is the avowed contention on behalf of the applicant that this number 8882760812 does not belong to the applicant and does not belong to Gaurav Aggarwal.

12. Along with the status report was also submitted the COVID positive report of the Spice Health Lab issued purportedly in favour of the applicant dated 26.5.2021 suggesting that the applicant herein was suffering from COVID and it is mentioned on this document that the PDF printout of the COVID positive report was forwarded purportedly by the petitioner to one Amanda Studio, the number of which studio was stated to be 9416315355.

13. Vide the status report dated 13.9.2021, the State had also submitted the screenshot of the PDF file of the positive COVID report opened in the phone of the petitioner received by the petitioner on whatsapp on 27.5.2021 from one K.K. (8882760812), and the printout of the PDF file of COVID positive report present in the phone of petitioner in whatsapp, received by the petitioner on whatsapp on 27.5.2021. Likewise, the State has also placed on record the screen shot of PDF file of the COVID positive report opened in the phone of the petitioner forwarded by the petitioner on whatsapp on 27.5.2021 to one Amanda Studio (9416315355) as well as the print out of the PDF file of the COVID positive report present in the phone of the petitioner in whatsapp as forwarded by the petitioner on whatsapp on 27.05.2021 to one Amanda Studio (9416315355).

14. The screen shots of the contact details of KK (8882760812) and whatsapp chats/photos between KK and the petitioner, i.e., the applicant herein, were also placed on record by the State inclusive of the contact details of Amanda Studio and the petitioner. The State has also placed on record the negative COVID report of the petitioner.

15. Vide the status report dated 15.9.2021, the State has placed on record the statement under Section 164 of the Cr.P.C., 1973 dated 31.7.2021 of the witness Prem Chand as well as the statement under Section 164 of the Cr.P.C., 1973 of the same witness dated 6.8.2021. Vide the statement under Sections 164 of the Cr.P.C., 1973 dated 31.7.2021 the witness Prem Chand stated that the matter related to the date 25.5.2021 and that he worked at a Mohalla Clinic Hub at the Dabri Mor and used to make Data Entries and his friend Deepak Tomar was working at the Mohalla Clinic at Kashmere Gate and his friend Deepak Tomar had asked him to get a COVID Test done of his relative which he, Prem Chand had declined to get done as he stated that at his Mohalla Clinic there were blood tests done and no COVID tests were conducted and had asked his friend to get the tests done at the Tikri Border and that he, Prem Chand, had gone to the Tikri Border Bus Stand and had got the COVID test done of Rajender (i.e., the applicant herein) who was the chacha of Deepak's friend Gaurav Aggarwal, the co-accused in the instant FIR.

16. It was also stated through the statement under Section 164 of the Cr.P.C.,

1973 by Sh. Prem Chand that the test was done at the camp at the bus stand at the Tikri Border and that the number (apparent reference to the mobile number for the said test was given as the number of Mr.Prem Chand and after two days he, Prem Chand received the report which showed a negative result which he had informed and stated that he had only helped.

17. Vide the statement dated 6.8.2021 under Section 164 of the Cr.P.C., 1973 the said witness Prem Chand reiterated that he was working at the Mohalla Clinic as a Data Entry Operator at the Dabri Mor Pocket 7 where he stated that blood and urine samples are collected and after making the data entry for the same they are sent to the main laboratory and mentioned of the common friend named Deepak Tomar who wanted to get the COVID test of the uncle of the common friend named Gaurav and that Rajender, i.e., the applicant herein, worked with the MCD, as informed by Deepak Tomar, he had COVID symptoms as a consequence of which he, Prem Chand, informed him that there were only blood and urine samples taken at his place and not of COVID and Deepak Tomar asked Prem Chand to find out whereafter they ascertained that the same could be done at the Tikri Border Bus Stand where there is a camp and that his friend Deepak asked him to help the person who was aged as he had a urine problem and thus on 25.5.2021 he, Prem Chand, went to the Tikri Border to help Rajender, i.e., the applicant herein, where Gaurav had brought him and during the testing Gaurav had got written the number of Mr.Prem Chand which he, Prem Chand, did not know and after two days he got the COVID Link with the address of Rajender at Janakpuri in which there was a COVID negative report and he, Prem Chand, had forwarded this COVID negative report vide a PDF to Rajender and had also informed Gaurav on the phone of the COVID negative report and after some days the Special Cell had made an enquiry from him telephonically and they had also showed him the photograph of Rajender whom he had identified and he, Prem Chand, had signed on the photograph of Rajender.

18. It is the avowed contention on behalf of the applicant that there are improvements and variations in the statement under Section 164 of the Cr.P.C., 1973 of Prem Chand dated 31.7.2021 and 6.8.2021. It is further submitted on behalf of the applicant that the applicant is a resident of Alipur as per the memo of parties of the present anticipatory bail application and that the COVID positive report purportedly of the applicant gives the address of Janakpuri and it is thus submitted on behalf of the applicant that the COVID positive and negative reports as submitted by the State through the status report do not relate to the applicant and that the applicant has been falsely implicated.

19. Inter alia, it has been submitted on behalf of the applicant that in as much as the applicant has handed over the mobile phone to the police, and in as much as there is no evidence that has been collected by the Investigating Agency to show that the applicant was in any manner involved in the user of the COVID positive report dated 26.05.2021 nor is there anything on the record produced by the Investigating Agency to show that the applicant was involved in the user of the

forged positive COVID report, nor was there anything to indicate any fabrication thereof by the applicant, nor was there any corrupt use by the applicant of any false COVID certificate by attempting to use it as a true certificate nor was there any declaration made by the applicant before the Court of any kind before the Court that he was suffering from COVID 19, and that there was also nothing to indicate that the applicant had used or attempted to use the COVID positive laboratory report which he knew to be false in any manner with it having been submitted on behalf of the applicant that none of the offences allegedly committed by the applicant were punishable beyond seven years and that thus the applicant be released on anticipatory bail.

20. It was further submitted on behalf of the applicant that the verdict of the Hon'ble Supreme Court in *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273, would wholly apply to the instant case and that the applicant is entitled to be released on anticipatory bail in as much as the applicant would abide by all the terms and conditions that are imposed by the Court.

21. On behalf of the State, the application is vehemently opposed by the learned APP for the State submitting to the effect that the State has essentially to conduct an inquiry and investigation in relation to the aspect of the alleged conspiracy entered into in the instant case for making of a false certificate issued by Spice Health Lab and for recovery of the devices used in such forgery and that the complicity of the applicant is brought forth through the statement under Section 164 of the Cr.P.C., 1973 of the witness Prem Chand.

22. As regards the reliance placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273, it is essential to advert to paragraphs 7.1, 7.2 and 7.3 of the said verdict which read to the effect:

7.1. From a plain reading of the aforesaid provision, it is evident that a person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. A police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts.

(emphasis supplied)

7.2. The law mandates the police officer to state the facts and record the reasons

in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. The law further requires the police officers to record the reasons in writing for not making the arrest.

7.3. In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 CrPC."

23. On a consideration of the submissions that have been made on behalf of either side, though the State is yet to verify whether the Mobile No.8882760812 belongs to Gaurav Aggarwal and the State is also yet to verify whether the mobile No. 9416315355 belongs to Amanda Studio, nevertheless, as has been rightly submitted on behalf of the State that the applicant's presence is required through his custodial interrogation to trace out the links in the chain of the alleged conspiracy for making of the false COVID 19 report and recovery of devices used in making such a forged certificate and of its user in Court for such fraudulent purposes for release of his son Yogesh @ Tunda qua FIR No. 252/2018 Police Station Alipur under Sections 3 & 4 of the MCOC Act on interim bail on the fake premise that he, i.e., the applicant herein, was suffering from COVID 19, and the interim bail application is thus rejected and the interim protection granted vide order dated 7.9.2021 and extended thereafter is withdrawn. The case diary of the State is directed to be returned.

Nothing stated hereinabove shall however affect the merits or demerits of the trial of the case.