

(2023) 06 DEL CK 0054

In the Delhi High Court

Case No : Bail Application No. 1594 Of 2022

Simpal Srivastav

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 07-06-2023

Acts Referred:

Indian Penal Code, 1860 — Section 34, 120B, 323, 342, 364A, 365, 506
Code Of Criminal Procedure, 1973 — Section 164, 437, 437(1), 437(1)(i), 439

Citation : (2023) 06 DEL CK 0054

Hon'ble Judges : Vikas Mahajan, J

Bench : Single Bench

Advocate : Krishan Kumar, Amit Sahni

Final Decision : Disposed Of

Judgement

Vikas Mahajan, J

1. This is a bail application under Section 439 CrPC seeking regular bail in FIR No.394/2020 under Sections 364A/365/342/323/506/102B/34 IPC registered at PS New Ashok Nagar. The case of the prosecution is that the mother of the victim on 03.09.2020 made a complaint to the police at 10:02 p.m. that the victim, her daughter, aged about 24 years went to HDFC Bank, Sector-02, Noida, U.P at about 01:30 p.m. with her ATM, passbook and cheque book and she has not returned home and despite searching for her, the victim could not be found. She suspected that some unknown person has kidnapped her daughter by luring her. On the basis of the said complaint, FIR was registered under Section 365 IPC.

2. Subsequently, on 03.09.2020 itself, the father of the victim went to the Police Station and stated that his daughter has been kidnapped for ransom and the kidnapper has demanded Rs. 40 lacs and threatened to kill his daughter, in case the demand is not fulfilled.

3. The father of the victim also produced few video recordings as well as Whatsapp messages regarding the demand for ransom. On the basis of the

statement of the father, Sections 364A/506/342/323/120B/34 IPC were also added in the case.

4. Search was made for the victim with the help of location and CDR of victim's mobile number and the victim was recovered on 04.09.2020 from the custody of accused persons namely, Simpal Srivastav (petitioner herein) and her boyfriend Shah Alam from Village Chhalera, Sector-44, Noida (U.P). The said accused persons were arrested on 04.09.2020.

5. The victim and the accused persons were medically examined at Lal Bahadur Shastri Hospital. The disclosure statement of the accused persons as well as the statement of the victim, were also recorded. Recoveries were effected at the instance of the accused persons from Village Chhalera, Sector-44, Noida, U.P as well as from B-579, Gali No.5 Sangam Vihar, Delhi. The mobile phone of father and younger sister of the victim were also seized.

6. The statement of victim under Section 164 CrPC was recorded and subsequently Sections 506/342/323 IPC were also added. Voice samples of co-accused Shah Alam was sent to FSL, Rohini. After completion of necessary investigation charge sheet was filed against the accused persons under Sections 364A/365/342/323/506/120B/34 IPC.

7. During investigation statement under Section 164 CrPC of the victim was recorded wherein she alleged that she was kidnapped by both the accused persons for ransom and she was also beaten by them. Her mobile phone was also taken by the accused person from which the calls were made and Whatsapp messages were sent demanding ransom. She was also threatened by the accused person and was wrongly confined.

8. The learned counsel for the petitioner submits that the petitioner is a young woman of around 23 yrs and her antecedents are clean. She is in custody for the last about three years. Reference is also made by the learned counsel for the petitioner to the proviso to Section 437(1)(i) CrPC to contend that even in cases where there is reasonable belief that the undertrial has committed an offence punishable with death or with imprisonment for life, the bar on granting bail in Clause (i) of Section 437 (1) CrPC stands statutorily excepted by the proviso to the Sub-section when the under trial is a woman. He submits that the petitioner being a young woman of around 23 years is entitled to the benefit of the said provision.

9. Additionally, it is submitted by the learned counsel for the petitioner that FIR in question was registered at 22:02 hours whereas the case of the prosecution is that the Whatsapp messages / calls demanding ransom were received by the victim's sister/father between 02:20 p.m. to 04:50 p.m. on 3.09.2020 and these facts are conspicuously absent in the FIR recorded.

10. He further submits that the delay of five to six hours as well as the non-mentioning of the messages and the ransom calls in the FIR itself creates serious

doubt as regards the prosecution's version.

11. Per contra, the learned APP submits that the petitioner has committed a serious offence by kidnapping the victim for ransom, which is punishable with life imprisonment. He, therefore, urges that the petitioner is not entitled to grant of bail and the application ought to be dismissed.

12. I have heard the learned counsel for the petitioner as well as the learned APP for the State and have perused the record.

13. It is trite that the seriousness of an offence is not the only criteria for denial of bail. A person who has not been convicted should only be kept in custody, if there is a possibility that he or she might abscond or tamper with evidence or threaten the witness. Merely because the offence is of a serious nature, cannot be the ground to curtail the personal liberty of an undertrial for an indefinite period.

14. In so far as the submission of the learned APP that the offence under section 364A IPC is punishable with death, or imprisonment for life, suffice it to say that it is only the powers of the Magistrate, while dealing with the applications for grant of bail, that are regulated by the punishment prescribed for the offence in which the bail is sought. Generally speaking if punishment prescribed is for imprisonment for life and death penalty and the offence is exclusively triable by the Court of Session, the Magistrate has no jurisdiction to grant bail unless the matter is covered by the provisos attached to section 437 of the Code [Prahlad Singh Bhati v. State (NCT of Delhi), (2001) 4 SCC 280]. The first proviso to Section 437(1) CrPC states that an accused may be released on bail, if such an accused is below the age of 16 years or is a woman or is sick or infirm.

15. There are no such limitations circumscribing the jurisdiction of the High Court or the Court of Session. On the contrary, the benefit of the first proviso to Section 437(1) CrPC can also be extended while exercising the powers under Section 439 CrPC. This being a welfare legislation, though introduced by way of a proviso, has to be applied while considering release on bail either by the Court of Sessions or the High Court, as the case may be [Satender Kumar Antil vs. CBI & Anr., (2022) 10 SCC 51].

16. At this stage, it may also be apt to refer to the decision of the Hon'ble Supreme Court in Sanjay Chandra vs. CBI, (2012) 1 SCC 40, wherein the limited circumstances under which the liberty of an under trial could be circumscribed, were articulated in the following words:-

"The object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The Courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly

tried and duly found guilty. Detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In India, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the propose of giving him a taste of imprisonment as a lesson."

17. In the present case, the charge sheet has already been filed and no recovery is required to be made from the petitioner who is in custody since 4.09.2020, which is almost two years and nine months.

18. The examination-in-chief of the victim has already been recorded. There are 23 witnesses cited by the prosecution and it will take long time to conclude the trial. At the stage of the trial, imprisonment cannot be prolonged only for the purpose of teaching the accused a lesson. The case of the prosecution and the defense of the accused persons is to be tested at trial.

19. It is not the case of the prosecution that any injury was caused by the accused persons to the victim. Even the MLC of the victim records that "no fresh external injuries seen through naked eye examination".

20. It is also not the case of the prosecution that the petitioner is a habitual offender or hardened criminal, who in the event of being enlarged on bail, may flee from justice or again indulge in such activities. Besides that, the petitioner is a young woman and is entitled to the benefit of the first proviso to Section 437(1) CrPC in the facts and circumstances of the present case.

21. At this stage, without going into the merits of the case, this court is of the opinion that regard being had to the above discussion, the petitioner has made out a case for the grant of bail. Accordingly, the petition is allowed and the petitioner is admitted to bail on her furnishing a personal bond in the sum of Rs. 20,000/- with one surety bond of the like amount subject to the satisfaction of the learned Trial Court / CMM / Duty Magistrate, further subject to the following conditions:-

a) Petitioner/applicant will not leave the city without prior permission of the Court.

b) Petitioner/applicant shall appear before the Court as and when the matter is

taken up for hearing.

c) Petitioner/applicant shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the Investigating Officer concerned. The mobile location be kept on at all times.

d) Petitioner/applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with the, victim or any member of the victim's family.

22. The petition stands disposed of.

23. Nothing stated therein above shall be construed to be an expression of opinion on the merits of the case.

24. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance.

25. Order dasti under the Signatures of the Court Master.

26. Order be uploaded on the website of this court.