

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Bail Appl.No.1238/2008**

% **Date of Decision : 15.07.2008**

Shyam Petitioner
Through: Mr.Manu Sharma, Advocate.

Versus

State NCT of Delhi Respondent
Through : Mr.Amit Sharma, APP for the State.
Mr.Pradeep Jain, Advocate for the
complainant.

CORAM :-

* **HON'BLE MR. JUSTICE ANIL KUMAR**

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| 1. Whether reporters of Local papers may be allowed to see the judgment? | NO |
| 2. To be referred to the reporter or not? | YES |
| 3. Whether the judgment should be reported in the Digest? | YES |

ANIL KUMAR, J.

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This is a petition under Section 439 of the Criminal Procedure Code for grant of bail in FIR No.62/2008, P.S.Lodhi Colony, under Section 365 IPC. Petitioner is in custody since 24th March, 2008.

Some of the relevant facts as per the first information report are that Ms.Sweta Chauhan aged 23 years, daughter of Sh.M.L.Chauhan is alleged to have gone to IILM for her MBA class on 10th March, 2008 and

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was not found in the evening on the same day when her brother went to pick her up. Her mobile phone was also found to be switched off. The allegation made is that one Mukul Bhadana @ Sonu, r/o.Village Kotla Mubarakpur may have abducted her and confined her at secret location.

It is alleged that on the intervening night of 12th /13th April, 2008 the father and brother of the girl accompanied by 8-10 persons had found the girl Shweta Chauhan and Mukul Bhadana at a village in 24, Pargana, North Bengal and had taken them from there. On 13th April, 2008, Mukul Bhadana was brought to Delhi by Indigo flight whereas Ms.Shweta Chauhan was brought to Delhi by a separate flight by her father. The statement of Ms.Sweta Chauhan was recorded under Section 161 of Criminal Procedure Code on 14th April, 2008.

The complainant, father of Ms. Shweta Chauhan was unwilling to produce the girl, however, pursuant to the efforts made, she was produced before the court of Sh.Satish Kumar on 15th April, 2008 and her statement was recorded on 16th April, 2008. In the statement under Section 164 of Criminal Procedure Code it was stated by her that she was asked to come to a Maruti Zen car near her examination centre. When she went to the Maruti Zen car, two friends of Mukul Bhadana including the applicant Shyam were present. The Maruti Zen car allegedly belonged to Satish, one of the friend of Mukul Bhadana who

was present there. Ms. Shweta Chauhan stated that Mukul Bhadana alongwith the applicant and another friend of Mukul Bhadana, Satish, took her forcibly to Palwal where she was shifted to another Maruti 800 car which was a taxi and which was driven by Raju @ Doctor. The statement of Shweta further reveals that she was allegedly threatened of her life by Mukul Bhadana and a handkerchief was waived in front of her nose by Mukul Bhadana which made her senseless. Satish and the applicant, Shyam, is also alleged to have shouted at her. From Palwal Satish and the applicant, Shyam, came back, however, Ms. Shweta Chauhan and Mukul Bhadana reached Aligarh. From Aligarh they reached Howrah by Purba Express and from there along with Razaaq, a Bengali Muslim, by a local train to Khaspur. There Mukul Bhadana and Shweta Chauhan were apprehended by father of Ms. Shweta.

After the statement of Ms. Shweta Chauhan was recorded under Section 164 on 16th April, 2008, on 17th April, 2008 she is alleged to have committed suicide.

The police recorded the statement of villagers of Village Khaspur, District 24 Pargana North (West Bengal) which reveal that Shweta was living with Mukul Bhadana and she was freely moving there. The statement of owner of the Hotel at Aligarh where Shweta and Mukul Bhadana stayed before catching Purba Express was also recorded.

The learned counsel for the petitioner has contended that the principal accused is Mukul Bhadana and the alleged car in which late Ms.Shweta Chauhan was allegedly abducted was recovered at the instance of another accused Satish @ Pandit and no allegations were made against the accused. The learned counsel contends that the charge sheet stipulates that from consideration of the details of the calls made from the mobile phones of Late Ms.Shweta Chauhan, bearing numbers 9899603444 and 9971518340 and the mobile phone no.9911461788 of the accused Mukul Bhadana, it is apparent that the deceased Shweta Chauhan was known to Mukul Bhadana for a considerable period and a number of calls were made to Mukul Bhadana. The accused Mukul Bhadana had also been visiting the residence of the deceased.

The learned counsel for the petitioner in the circumstance contends that deceased Shweta Chauhan who was about 23 years of age could not be forcibly taken away in broad daylight against her wishes and she had all the opportunities of raising cries for help. It is contended that in the entirety of facts and circumstances there is no culpability on the part of the petitioner and there has been no allegation that she was confined by the petitioner or at his instance. At the maximum what can be argued is that the petitioner along with Satish @ Pandit had arranged for a car in which the petitioner, Shyam, also went

up to Palwal, which does not reflect any conspiracy on the part of the petitioner.

The petitioner is stated to be a peace loving and law abiding citizen and nothing has been recovered at his instance and he is not likely to hamper the course of investigation or trial or misuse the liberty granted to him in case he is released on bail.

The learned counsel for the petitioner has also relied on the status report dated 26th June, 2008 revealing that the deceased Shweta Chauhan was living with the accused Mukul Bhadana according to the statements of the villagers recorded there and she was freely moving there. The learned counsel has referred to the statement of Kumari Mamta a fellow student of deceased and the statements of the villagers of village Khaspur, District 24 Pargana North (West Bengal).

The application is opposed by the State and the counsel for the complainant, father of the deceased. The learned Additional Public Prosecutor, Mr.Sharma contends that the statement of the deceased recorded under Section 164 of the Criminal Procedure Code on 16th April, 2008 to the effect that the accused Mukul Bhadana showed her a knife and threatened her to be quiet and something was put in the handkerchief before her, inhaling of which made her senseless is corroborated by the statement of the taxi driver namely Raju recorded under Section 161 wherein he has stated that when the accused Mukul

Bhadana had come with Ms.Shweta Chauhan she was scared (*ghabrai hui*).

The learned counsel for the State, however, could not refute that the details of the mobile phone numbers of the deceased and Mukul Bhadana reveal the relationship between the two for a considerable period and that the role attributable to the petitioner Shyam is that he was in the car with another accused Satish when Mukul Bhadana is alleged to have taken the deceased from New Delhi to Palwal and they had also shouted at her, as Mukul Bhadana had told her to be quite in the car which belonged to other accused Satish.

The learned counsel for the complainant, Mr.Jain very vociferously contended that the status report dated 26th June, 2008 was filed in the habeas corpus petition filed on behalf of the complainant, father of the deceased Shweta Chauhan. The learned counsel also emphasized on the statement given by the deceased on 16th April, 2008 under Section 164 contending that the applicant with other accused Satish had shouted at her when the accused Mukul Bhadana had showed her the knife and had threatened to kill her unless she went with him. In her statement she also revealed that after they reached Palwal the applicant went back and thereafter Mukul Bhadana and the deceased Shweta Chauhan went by a blue Maruti

which was a taxi and they reached Aligarh and thereafter they took a train Poorva Express.

Statement of the villagers of the Village Khaspur, District 24 Pargana North (West Bengal) reveal that the deceased Shweta Chauhan was living with Mukul Bhadana as husband and wife and some of the villagers had also developed intimacy with the deceased and had even visited some areas. The statement which has been recorded is not only of the person in whose house the two had stayed but other villagers also and the statement of one of the owners of the hotel at Aligarh has also been recorded which also reveal intimacy between them.

From the perusal of the record and the circumstances peculiar to the petitioner and that the petitioner has no antecedent criminal history and considering other circumstances relevant for grant of bail, it is a fit case where the petitioner should be released on bail.

Consequently, the petitioner is released on bail on furnishing a personal bond for a sum of Rs.30,000/- with one surety of like amount to the satisfaction of the concerned trial Court. The application stands disposed of.

Dasti.

July 15, 2008
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ANIL KUMAR, J.