

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

+ **BAIL APPL. No.1380/2011**

Date of Decision : 21.11.2011

PRAMOD KUMAR

..... Petitioners

Through: Mr.Siddharth Luthra,
Sr.Adv. with Mr.Ratan
K.Singh, Mr.Gaurav
Dudeja, and Mr.
Yashwant Singh,
Advocates.

Versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr.Sunil Sharma, APP
Mr.K.L.Tiwari, Mr.Vinod
Tiware and Mr.Pankaj
Singh, Advocates.

CORAM :

HON'BLE MR. JUSTICE V.K. SHALI

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

V.K. SHALI, J.(oral)

1. This is a petition for grant of regular bail in respect of FIR No.62/2011 u/s 365 IPC registered by PS Pul Prahlad Pur in respect of which charge-sheet has already been filed in a competent Court. It has been stated in the

charge-sheet that the matter is being investigated further in terms of Section 173 (8) Cr.P.C. as whereabouts of the missing person Ashutosh Kumar have still not been traced and supplementary charge-sheet may be filed.

2. Briefly stated facts of the case are that on 10.03.2011 complainant Jai Prakash lodged a report which was recorded vide DD entry No.38 at PS Pul Prahlad pur regarding missing of his son Ashutosh Kumar. He was stated to be aged around 22 years and working with M/s Pramod Logistic Services situated at 216-B Land Container Depot, Tuglakabad, Delhi. Mr. Jai Prakash was reportedly informed by one Azhar Ali, a roommate of Ashutosh that the latter did not turn up since 04.03.2011. It may be pertinent to mention here that the petitioner, Pramod Kumar is the proprietor of M/s Pramod Logistic Services. After about a week or so, on 18.03.2011 Jai Prakash gave another statement that on 04.03.2011 at about 4:00 PM his son was seen seated in the car of his employer Pramod Kumar. On the basis of

this information a case of suspected kidnapping of his son was registered and the matter was investigated.

3. The investigations have revealed the following circumstantial evidences against the petitioner:

(i) Pramod Kumar made the last call on the mobile of the victim Ashutosh which showed that the location of mobile phone of both, the victim as well as the employer was at ICD, Tuglakabad.

(ii) The last location of the mobile of the victim shows that it was somewhere near Tigri where the petitioner is residing.

(iii) The victim was lastly seen with the petitioner in his car by the co-employees.

(iv) The petitioner did not inform either the parents of the victim about the missing of their son or his conduct was not contemporaneously matching with that of a normal person or an employer who would have made some sincere efforts to have his employee located.

(v) The petitioner refused to undergo polygraph test.

4. The investigating agency obtained the call details of the mobile numbers 991067752 and 9266747649 both purportedly belonging to the victim Ashutosh and the mobile number 9910167720 belonging to the petitioner which confirmed the aforesaid fact that the petitioner had apart from being last seen in the company of the victim had also made the last call on one of his mobile numbers. The victim has also stated to have spoken to her girlfriend by the name of Parul on two telephone numbers 9250803934 and 9910800266. The analysis of these call details showed that Pramod Kumar as has been stated hereinabove had spoken to the victim lastly at about 3:27 PM on 04.03.2011 and the victim had also received call of his girlfriend on his other mobile at 3:35 PM which lasted about six minutes. The victim has purported to have sent an sms to one mobile number 9311055725 at 8:57 PM. The location of the said dispatch of the SMS is also shown to be in Tigri where the petitioner resides.

5. On the basis of the aforesaid facts the prosecution has arrested the petitioner on 07.09.2011 and after obtaining two days police remand he has been remanded to judicial custody and a charge u/s 365 IPC has been filed. It may also be pertinent to mention that the petitioner had filed two bail applications one before the learned MM and the other before Additional Sessions Judge, South East, Saket, and both of which were rejected on 12.09.2011 and 19.09.2011 respectively. The complainant had also filed a writ petition in the High Court for issuance of writ of Habeas Corpus which was disposed of after the arrest of the present petitioner.
6. The learned senior counsel Mr.Siddharth Luthra has prayed for bail of the present petitioner on the ground that there is absolutely no evidence against the present petitioner warranting the continued incarceration of the petitioner in jail. It is contended by him that in any case the petitioner is charge-sheeted for an offence u/s 365 IPC which carries maximum sentence of seven years and the nature of evidence which has been gathered against

the petitioner is at best only circumstantial which is inconclusive and incomplete so far as the complete chain of events is concerned and therefore the petitioner deserves to be enlarged on bail. Even while analyzing the circumstantial evidence it was contended by Mr. Siddharth Luthra, the learned senior counsel that the prosecution has stated that the petitioner did not undergo polygraph test and the non submission of the petitioner to the polygraph test has been held as a circumstance against the petitioner.

7. It was contended that the Supreme Court in ***Selvi & Ors. Vs. State of Karnataka*** (2010) 7 SCC 263 has categorically observed that the polygraph test, tantamounts to the violation of the constitutional right of the accused under Article 20 (3) of the Constitution and therefore this circumstance of refusing to undergo lie detector test could not be relied upon against the petitioner.
8. It was contended by Mr. Luthra, the learned senior counsel that the other evidence is the 'SMS' purported to

have been received by Mr.Ram Kumar at about 8:57 PM from the victim. But the said sms is stated to have been deleted by Mr.Ram Kumar and it is contended that if the investigating agency wanted it could have very well retrieved the message from the service provider but this has deliberately not been done.

9. It was also contended that Sumit Mewati who is the witness to the effect that he had seen the victim in the company of the petitioner is testifying something which the petitioner himself is relying upon. It is stated that it is the case of the petitioner that he had been with the victim around the time in question in his car where he had handed over the money to him with a view to attend to the official work. It is therefore contended that this cannot be taken as a circumstance against the petitioner. It is also contended by Mr.Luthra that the petitioner has roots in the society and there are absolutely no chance of his tampering with the evidence or fleeing away from the processes of law, and therefore, he be enlarged on bail.

10. As against this learned APP has vehemently opposed the grant of bail to the petitioner. It has been contended by him that in case the petitioner is released on bail he will influence the witnesses, one of whom happens to be his employee only. This witness has already made a statement u/s 161 Cr.P.C. to the effect that they had seen the victim in the company of the present petitioner. Therefore, it is stated that the petitioner may not be enlarged on bail. Further it is stated that further investigation is still being conducted to find out the whereabouts of the victim and it is possible that once he is released on bail, he may meddle with the evidence.
11. I have carefully considered the submissions made by the learned counsel for the parties and gone through the statement of the witnesses recorded u/s 161 Cr.P.C. like Deepak, Ram Kumar, Sumit Mewati as well as Parul. The case is still at the threshold as the charges against the petitioner are yet to be framed and the evidence is yet to be recorded. In my considered opinion the release of the petitioner on bail at this stage will result in an attempt to

influence the witnesses specially the ones who are working with the petitioner. Moreover, the conduct of the petitioner in the investigation has not at all been co-operative. This is reflected from the statement of Parul, girl friend of the victim, who has stated that despite the fact that she had approached the petitioner who happened to be the employer of the victim in order to get the information regarding the whereabouts of her friend Ashutosh but the answers which were given to her were totally evasive.

12. Ram Kumar another witness has also testified that the victim had actually resigned and joined some other company but after persuasion he had been made to re-join the company M/s Pramod Logistic Services. The victim is purported to have revealed to his uncle Ram Kumar that Pramod was not treating him well and was threatening him consistently. The location of mobile phone of the victim both at the time when the message is purported to have been received by him from Ram Kumar and at the time when the last call was made on

his cell phone or at the time of his disappearance clearly indicate that something is being hidden by the present petitioner and he is not truthful. The victim has still not been located, dead or alive and the case is based on circumstantial evidence against the petitioner. I feel that in case the petitioner is released on bail at this stage when material witnesses are yet to be examined, he is likely to influence the witnesses especially those who are either working under him. I accordingly dismiss the petition of the petitioner at this stage; however, the petitioner shall be free to file a fresh application for bail after the recording of the statement of the material witnesses.

13. Dismissed.

NOVEMBER 21, 2011
mr

V.K. SHALI, J.