

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

+ **CRL.REV.P. 336/2011**

% Decided on: 15th March, 2012

VIKRAM @ PINKI Petitioner
Through Mr. Jitender Saini, Mr. Mohinder
Saini, Advs.
versus

STATE Respondent
Through Mr. Mukesh Gupta, APP for State
with SI Rakesh Malik, Spl. Cell,
Lodhi Colony.

+ **CRL.REV.P. 387/2011**

MANOJ BHADANRI & ANR Petitioner
Through Mr. Gurmit Singh, Mr. Vishal Soni,
Advs.
versus

STATE Respondent
Through Mr. Mukesh Gupta, APP for State
with SI Rakesh Malik, Spl. Cell,
Lodhi Colony.

+ **CRL.REV.P. 297/2011 & Crl.M.A. 7626/2011 (stay)**

RISHI OM SHARMA @ RISHI Petitioner
Through Mr. Shiv Kumar Sharma, Mr. Ashok
Jain, Advs.
versus

STATE Respondent

Through Mr. Mukesh Gupta, APP for State
with SI Rakesh Malik, Spl. Cell,
Lodhi Colony.

Coram:
HON'BLE MS. JUSTICE MUKTA GUPTA
MUKTA GUPTA, J. (Oral)

Crl.M.A. 10292/2011 (delay) in CRL.REV.P. 387/2011

For the reasons stated in the application the delay of 29 days in filing the revision petition is condoned.

Application is disposed of.

CRL.REV.P. 336/2011

CRL.REV.P. 387/2011

CRL.REV.P. 297/2011 & Crl.M.A. 7626/2011 (stay)

1. By the present petitions the Petitioners Vikram @ Pinki, Manoj Bhandari, Shamsher Singh @ Bittoo and Rishi Om Sharma challenge the order dated 5th April, 2011 directing and framing charge under Section 120-B read with Section 364-A IPC against the Petitioners.
2. Learned counsel for the Petitioners contends that the case of the prosecution against the Petitioners is based on intercepted conversation. As per the intercepted conversations there is no evidence that the abduction was being committed or that the alleged abduction was for the purpose of demanding ransom. Further, no prior permission for interception was taken contrary to the provisions of Indian Telegraph Act and Rules. Apart from the conversation there is no evidence against the Petitioners. The essential ingredients of Section 364-A i.e. demand of ransom have not been alleged. Even the statements of the persons allegedly conspired to be kidnapped does

not implicate the Petitioners. On the facts at best planning was going on and no offence was committed. No overt act is alleged in the charge-sheet. Relying upon *State of Kerala Vs. P. Sugathan & Anr.* 2000(2) *Apex Court Journal* 550 (S.C.); *K. Hasim Vs. State of Tamil Nadu* AIR 2005 SC 126 and *Netra Pal Vs. State (NCT of Delhi)* 2001 (4) *Crimes* 387 it is contended that to fasten a liability of criminal conspiracy, mere intention is not sufficient and an overt act is also required to be attributed.

3. Learned APP on the other hand contends that the conversations between the Petitioners and co-accused were intercepted on 2nd, 3rd and 4th July, 2008. As per the intercepted conversation it is clear that the Petitioners along with the co-accused had entered into a conspiracy to kidnap Amarnath Bajaj and Subhash Bajaj, the two brothers and were following them. Not only the conspiracy, the Petitioners had attempted the same as well. The Petitioners also stated the amount of money to be received from the persons kidnapped. For an offence of conspiracy only the meeting of minds has to be proved whereas in the present case there are definite overt acts done by the Petitioners and the co-accused as per the intercepted conversation. Hence, there is no infirmity in the impugned order. The petitions be dismissed.

4. Briefly the case of the prosecution is that on 27th May, 2008 one software engineer namely Anurag Ranjan was abducted from the area of PS Ambedkar Nagar on which FIR No. 239/2008 under Section 364-A/323/120-B IPC and 25/27 Arms Act was registered. The investigation was entrusted to Special Cell. During the course of investigation on 31st May, 2008 one accused namely Mohd. Hasan Raza was arrested from Saidulajab, New Delhi. On his identification and instance two more accused persons namely

Praveen Mathur and Sunil Sharma were arrested. At the instance of accused Praveen Mathur the victim was rescued from the captivity of accused Rakesh Sharma, Sarvesh and Hemant. Two country made pistols and ammunitions were recovered from the accused persons. During the course of investigation accused Mohd. Hasan Raza revealed that the arms and ammunitions were supplied to them by one Vikram @ Pinki resident of Rewari, Haryana. He gave the mobile number of Vikram @ Pinki as 9991714842. In order to arrest Vikram @ Pinki technical surveillance of mobile number of Vikram @ Pinki and his associates was mounted. During the interception of telephone calls it was revealed that Vikram @ Pinki along with one Bittoo was planning to abduct a renowned businessman of Tilak Nagar, Delhi. Accordingly on 4th July, 2008 FIR No. 41/2008 under Section 120-B IPC read with 364-A IPC was registered at PS Special Cell relating to the present case. On 4th July, 2008 on the basis of specific input received through telephonic surveillance of mobile No. 9971721821 used by one Shamsher Singh Saini @ Bittoo it was revealed that accused Shamsher Singh Saini would come at Shivaji Marg, Janakpuri-East, Metro Station along with his associate Deepak to execute the abduction. Accordingly a trap was laid and Shamsher Singh @ Bittoo and Deepak Ahlawat were apprehended from Janakpuri-East, Metro Station and one English revolver with 6 cartridges of .32 bore caliber and one country made pistol with 2 live cartridges of 8 MM caliber were recovered from their possession respectively. One motorcycle and two mobile phones each were also recovered. On further investigation and interception of telephone calls it was revealed that another accused Manoj Bhandari was coordinating the whole gang from Ludhiana to commit the abduction of a businessman. Manoj Bhandari roped in one Akhtar

Hussain @ Raja to get the movement details of the businessman. He introduced Akhtar Hussain @ Raja and Rakesh Kumar with Shamsher Singh Saini. Manoj Bhandari bore all the expenses incurred in the planning and execution of the plan. He conveyed all the vital information provided by Akhtar Hussain about the businessman to Shamsher Singh Saini. On 8th July, 2008 at the instance of Shamsher Singh Saini, Manoj Bhandari was arrested from Ludhiana and the mobile phones used for committing the offence were also recovered. During interrogation Akhtar Hussain revealed that he has provided one family photograph of businessman to Manoj Bhandari which he gave to Shamsher Singh Saini. At the instance of Shamsher @ Bittoo 4 photographs of the businessman who was to be abducted were recovered from his rented house at Janakpuri. He also informed about the studio from which he got the photographs developed. From the investigation and interception it was revealed that Rishi Om Sharma was providing all the logistics to Shamsher Singh Saini @ Bittoo. He also reached the office of businessman two three times with Shamsher Singh Saini. He also provided all the vital information and the Delhi location of the person to be abducted to Vikram and Shamsher Singh. On 21st August, 2008 Rishi Om Sharma was apprehended at Shivaji Marg near Tagore Garden Metro Station and a mobile phone along with three SIM cards were recovered from his possession. During investigation and interception it was revealed that Vikram introduced Manoj Bhandari to Shamsher Singh Saini and on 31st October, 2008 Vikram was apprehended at Rewari, Haryana. At the instance of Vikram @ Pinki his mobile phone was also recovered. Vikram disclosed the involvement of another accused in the matter.

5. Specimen voice samples of the accused were sent to CFSL, CBI, CGO Complex to be compared with the interceptive conversation and as per the expert report, voice of the Petitioners including Rishi Om Sharma matched with the voice of their intercepted calls. After investigation charge-sheet was filed and by the impugned order charges under Section 120-B read with 364-A and 25 Arms Act were framed against the Petitioners and the Petitioner Shamsher Singh was charged for offence under Section 474 IPC additionally.

6. This is a case where on the basis of intercepted conversation the prosecution have foiled the attempt of the Petitioners to kidnap the businessman. In this regard the interception dated 2nd July, 2008 between Shamsher Singh Saini @ Bittoo and Rishi Om Sharma clearly shows that Rishi Om Sharma was at Karol Bagh and calling Shamsher Singh Saini within 5-10 minutes at Mahavir Nagar. Shamsher Singh Saini stated that Bajaj is sitting in his office and Rishi Om Sharma should enter the office on the pretext of property. Rishi Om Sharma stated that since they have gone earlier they should go, and it was fixed that they would meet at Janakpuri-East Metro Station. Further, Shamsher Singh asked Deepak to take his motorcycle and come to Janakpuri-East Metro Station immediately, however with the helmet. Shamsher Singh Saini was further talking to Deepak and telling to quietly go inside and see how many people were sitting and that one Bajaj was sitting with the white clothes. He even asked that whether he had seen the photographs, on which Deepak replied in the positive. Shamsher Singh Saini further stated that after seeing he should come to the next Gali at the Metro Station under which he was standing and he should see him properly. Thereafter, Shamsher Singh Saini and Raja spoke on the

phone and Raja gave description of the colour of the pant, shirt etc. to him. Thus, from the interception it is clear that the Petitioners in conspiracy recceeded the prospective victims. Intercepted conversation between Shamsher Singh Saini and Manoj Bhandari have been recorded on 3rd July, 2008 wherein Saini had stated that they were sitting inside, that the entire area had been searched, either they were hiding at Ludhiana or at apartments. Saini further spotted the victim and stated that the victim was sitting in the flat and the position was different from the earlier date. Saini also stated that immediately on getting to know that the victim has been kidnapped the victim would immediately open the mouth and say 10 lakhs, 50 lakhs, 20 lakhs whatever they want they should take and leave him. They further discussed how to enter the premises. Shamsher Singh Saini stated that he had got 6 English pistols and further stated that when they will go to show the location they will enter. Saini stated that he and Rishi were involved in the planning and the next day this would be their target. Saini stated that when he will make them sit they will offer 2-4 crores on their own. In the intercepted conversation dated 4th July, 2008 between Shamsher Singh Saini and Manoj Bhandari further plannings are being discussed where-after Shamsher Singh Saini was apprehended.

7. As per the CFSL reports the voice samples of the Petitioners have matched with the voice recorded in the compact disk. Further corroboration is made from the call data records. Statement of the victims to be abducted were also recorded who also stated that on the particular day they were wearing the same dress and were at the positions when the accused were receeding. Thus, there is ample evidence on record to show that the Petitioners along with the co-accused conspired to commit the offence under

Section 120-B IPC read with Section 364-A IPC.

8. The contention raised by the Petitioners that there is no overt act and merely be meeting of minds the charge of Section 120-B IPC read with Section 364-A cannot be foisted on them is fallacious and contrary to the law laid down by the Hon'ble Supreme Court. In *Pramatha Nath Talukdar Vs. Saroj Ranjan Sarkar AIR 1962 SC 876* their Lordships held:

“The position, therefore comes to this. The gist of the offence of criminal conspiracy is in the agreement to do an illegal act or an act which is not illegal by illegal means. When the agreement is to commit an offence, the agreement itself becomes the offence of criminal conspiracy. Where, however, the agreement is to do an illegal act which is not an offence or an act which is not illegal by illegal means, some act besides the agreement is necessary. Therefore, the distinction between the offence of abetment by conspiracy and the offence of criminal conspiracy, so far as the agreement to commit an offence is concerned, lies in this. For abetment by conspiracy mere agreement is not enough. An act or illegal omission must take place in pursuance of the conspiracy and in order to the doing of the thing conspired for. But in the offence of criminal conspiracy the very agreement or plot is an act in itself and is the gist of the offence. Willes, J. observed in *Mulcahy v. The Queen* (1868) L.R. 3 H.L. 306 at p.317:

"When to agree to carry it into effect, the very plot is an act in itself, and the act of each of the parties, promise against promise, *actus contra actum*, capable of being enforced, if lawful, punishable if for a criminal object or for the use of criminal means."

Put very briefly, the distinction between the offence of abetment under the second clause of s. 107 and that of criminal conspiracy under s. 120A is this. In the former offence a mere combination of persons or agreement between them is not enough. An act or illegal omission must take place in pursuance of the conspiracy and in order to the doing of the thing

conspired for; in the latter offence the mere agreement is enough, if the agreement is to commit an offence.”

9. In *Noor Mohammad Mohd. Yusuf Momin Vs. The State of Maharashtra* AIR 1971 SC 885 their Lordships held:

“7. So far as Section 34, I.P.C. is concerned, it embodies the principle of joint liability in the doing of a criminal act, the essence of that liability being the existence of a common intention. Participation in the commission of the offence in furtherance of the common intention invites its application. Section 109, I.P.C. on the other hand may be attracted even if the abettor is not present when the offence abetted is committed provided that he has instigated the commission of the offence or has engaged with one or more other persons in a conspiracy to commit an offence and pursuant to that conspiracy some act or illegal omission takes place or has intentionally aided the commission of an offence by an act or illegal omission. Turning to the charge under Section 120-B, I.P.C. criminal conspiracy was made a substantive offence in 1913 by the introduction of Chapter V-A in the Indian Penal Code. Criminal conspiracy postulates an agreement between two or more persons to do, or cause to be done an illegal act or an act which is not illegal, by illegal means. It differs from other offences in that mere agreement is made an offence even if no step is taken to carry out that agreement. Though there is close association of conspiracy with incitement and abetment the substantive offence of criminal conspiracy is somewhat wider in amplitude than abetment by conspiracy as contemplated by Section 107, I.P.C. A conspiracy from its very nature is generally hatched in secret. It is, therefore, extremely rare that direct evidence in proof of conspiracy can be forthcoming from wholly disinterested quarters or from utter strangers. But, like other offences, criminal conspiracy can be proved by circumstantial evidence. Indeed, in most cases proof of conspiracy is largely inferential though the inference must be founded on solid facts. Surrounding circumstances and antecedent and subsequent

conduct, among other factors, constitute relevant material. In fact because of the difficulties in having direct evidence of criminal conspiracy, once reasonable ground is shown for believing that two or more persons have conspired to commit an offence then anything done by anyone of them in reference to their common intention after the same is entertained becomes, according to the law of evidence, relevant for proving both conspiracy and the offences committed pursuant thereto.”

10. Thus, the mere agreement between the Petitioners and the co-accused to commit the offence of kidnapping constitutes the offence of criminal conspiracy. Further there is ample evidence on record to show that in furtherance of the conspiracy the participants thereof committed overt acts of collecting weapons, receiving the area etc. Thus, the decisions relied upon by the Petitioners are of no avail to them as the same relate for proving whether an accused is a part of a criminal conspiracy or not. Conspiracies are hatched in secrecy. Thus, direct evidence to prove conspiracy is seldom available and the same has to be inferred from circumstantial evidence. It is in these contexts that the Courts look for an overt act as a manifestation of the criminal conspiracy. In the present case there is sufficient direct evidence available in the form of intercepted conversation to prove the offence of criminal conspiracy. Hence, I find no merit in the present petitions.

11. Petitions and applications are accordingly dismissed.

(MUKTA GUPTA)
JUDGE

MARCH 15, 2012
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