

HIGH COURT OF UTTARAKHAND AT NAINITAL

First Bail Application No. 966 of 2023

Rajesh Kumar Applicant

Versus

State of Uttarakhand Respondent

Present:-

Mr. Aditya Singh, Advocate for the applicant.

Ms. Manisha Rana Singh, A.G.A. for the State.

Hon'ble Ravindra Maithani, J. (Oral)

Applicant Rajesh Kumar is in judicial custody in FIR No. 08 of 2022 (Case Crime No. 9 of 2022) under Section 7 of the Prevention of Corruption Act, 1988 ("the Act"), P.S. Vigilance Sector, Dehradun. He has sought his release on bail.

2. Heard learned counsel for the parties and perused the record.

3. Sanjay Singh had purchased a plot. Its mutation was pending. Revenue Sub Inspector and other revenue officers' report was pending. Sanjay Singh approached the Revenue Sub Inspector and at one stage, he met the applicant, who at the relevant time was Registrar Kanoongo. According to the prosecution, the

applicant demanded money. Finally on 29.10.2022, a trap was made. The applicant received Rs.2,800/- from Sanjay Singh, which was recovered. The handwash turned pink. An FIR was lodged accordingly.

4. Learned counsel for the applicant would submit that the alleged recovery was made from a room, which was occupied by various other Government employees and other persons; the alleged recovery was not made from the person of the applicant; it was allegedly recovered from a drawer; the area was accessible to many other persons; therefore, it cannot be said that the recovery was made from the applicant.

5. It is argued that the alleged recovery is hit by the provisions of Section 27 of the Act. Mere recovery does not make out any offence. He would also submit that on 21.10.2022, according to the prosecution some demand was made by the applicant, which was recorded, but Sanjay Singh tells the Investigating Officer that the conversation has been deleted from the original device; it is argued that the conversation cannot be proved even by the secondary evidence; there is no independent witness to the trap, though they were available; transaction was not seen by any witness; initial complaint has not been

made against the applicant; it was made against the co-accused. Hence, it is a case for bail.

6. Learned counsel for the applicant has placed reliance on the principle of law, as laid down in the cases of Neeraj Datta v. State (Government of NCT of Delhi), (2023) 4 SCC 731; Manjunath and others v. State of Karnataka (Criminal Appeal No. 866 of 2011) and Rajesh and another v. State of Madhya Pradesh, (Criminal Appeal No. 793-794 of 2022).

7. In the case of Neeraj Datta (*supra*), in para 88.4, the Hon'ble Supreme Court observed as hereunder:-

“88.4. (d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:

(i) if there is an *offer to pay by the bribe-giver* without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a *case of acceptance* as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.

(ii) On the other hand, *if the public servant makes a demand* and the bribe-giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is a *case of obtainment*. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Sections 13(1)(d)(i) and (ii) of the Act.

(iii) In both cases of (i) and (ii) above, the offer by the bribe-giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other

words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Sections 13(1)(d)(i) and (ii), respectively of the Act. Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe-giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe-giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Sections 13(1)(d)(i) and (ii) of the Act.”

8. In the case of Manjunath (*supra*), the recovery was made from a place accessible to the public. Such recovery was not relied upon by the trial court. The order the trial court was upheld by the Hon’ble Supreme Court.

9. In the case of Rajesh (*supra*), the provisions of Section 27 of the Evidence Act, 1872 has been interpreted. In that case recovery was made at the instance of a person, who was neither an accused nor in custody at the relevant time. In the case of Rajesh (*supra*), the Hon’ble Supreme Court, *inter alia*, held that in order to prove the recovery under Section 27 of the Evidence Act, it has to be shown that the person was an accused and was in custody at the relevant time when disclosure was made.

10. Learned State counsel would submit that Sanjay Singh has stated that the conversation has been kept by him in a pen drive and in a device. It is argued that initially the applicant had kept the money in the top drawer, but subsequently, he replaced it and put it on third drawer.

11. It is a stage of bail. Much of the discussion is not expected of. The discussion is being made with the caveat that any observation made in this order shall not have any bearing at the trial.

12. It is true that initially Sanjay Singh had approached the Revenue Sub Inspector, but at one stage on 23.10.2022, Sanjay Singh had met the applicant when he demanded money from him. This is what Sanjay Singh has stated to the Investigating Officer. There is a transcript of the conversation. Although, at one stage, Sanjay Singh has stated that the conversation has been deleted from the original device. But, there is another conversation of 28.10.2022. The Court refrains to examine the conversation between the applicant and Sanjay Singh, which took place on 28.10.2022 and which is part of the record. They speak of money. Sanjay Singh has stated that he gave Rs.2,800/- to the applicant. It

was recovered from the drawer of the table of the applicant. The handwash turned pink. What would be the effect of non-presence of shadow witness when the money was transacted? What would be the impact of the absence of other witnesses? that would find scrutiny at the stage of trial.

13. Having considered, this Court is of the view that it is not a case fit for bail. Accordingly, the bail application deserves to be rejected.

14. The bail application is rejected.

(Ravindra Maithani, J)
29.12.2023

Sanjay