

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

+ **BAIL APPLN. 1290/2021**

Date of decision: 16th AUGUST, 2021

IN THE MATTER OF:

NISHA TAYAL

..... Petitioner

Through Mr.Pashupati Nath Razdan, Advocate
with Mr.Astik Gupta, Ms. Nandita
Pateria and Mr. Shashwat Prakash
Advocates

versus

STATE (NCT OF DELHI)

..... Respondent

Through Ms. Kusum Dhalla, APP for the State
with SI Sanjay Kumar, PS Prasad
Nagar

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This is a petition under Section 439 CrPC for grant of regular bail in FIR No.263/2020 dated 07.10.2020 registered at Police Station Prasad Nagar for offence under Section 364A IPC.

2. The facts in brief leading to the present bail application are as follows:-

a) A complaint was received from one Ms. Laxmi, W/o Sh. Mukesh Kumar R/o 16/284-H, Bapa Nagar, Hardhayan Singh Road, Karol Bagh, Delhi stating that her husband Mukesh Kumar left the house for the company in which he is working i.e. MZUHI Gold having its Head Office at SCF-1, Hill View Enclave, Peer Muchalla, Zikarpur.

- b) The complainant stated that her husband left the house stating that some people called him at INA for some work. It is stated that she received a phone call from him asking her to arrange about 1 or 2 lakhs at once and if cash is not available then arrange some jewellery etc. He also asked the complainant to come along with his cheque book at Shahdara Metro Station.
- c) The complainant has stated that Mukesh Kumar told her that one of his associate will meet her at Shahdara Metro Station and she will hand over jewellery and cheque book to him.
- d) The complainant has stated that Mukesh Kumar told that the name of his associate is Pankaj and he also gave his telephone number. She states that she handed over the jewellery of about Rs.3 lakhs to him at Shahdara Metro Station.
- e) It is stated that about 9:30 p.m. in the evening she received another phone call from her husband wherein he asked her to arrange 3-4 lakhs and told her that he will call in the morning. On the receipt of the said complaint, the present FIR was registered.
- f) Investigation revealed that the call of Mukesh Kumar was traced and he was found at H.No.13, Gali No.1, Nandan Nagar, Transport Nagar, Meerut, UP. Accused Nitin Kansal was arrested on the same day when Mukesh Kumar was rescued. Mukesh Kumar was taken to Lady Haringe Medical College and Smt.S.K. Hospital, New Delhi for medical examination.
- g) Mukesh Kumar gave his statement under Section 161 CrPC on 08.10.2020. In the statement under Section 161 CrPC he revealed that accused Nitin Kansal was interested in taking distributorship in the

company where Mukesh Kumar was working and Nitin Kansal was given the dealership. Goods were supplied to Nitin Kansal.

h) It is stated that in September, 2020 Nitin Kansal informed Mukesh Kumar that some of the goods supplied by the company are not being sold and are lying in his godown and Nitin Kansal wanted to end the agreement. He asked Mukesh Kumar to take back the goods and demanded Rs.10-15 lakhs. It is stated that Mukesh Kumar informed Nitin Kansal that he would take him to Zikarpur and talk to the owner of the company one Dinesh Singhala.

i) It is stated that on 10.09.2020, Mukesh Kumar and Nitin Kansal went on way to the office of the company where Mukesh Kumar was working, reached Mohali, Punjab and stayed at Artharb Hotel. It is stated that the next day they reached Zikarpur where the office of the company is situated and had a meeting with owner of the company.

j) It is stated that Nitin Kansal explained about the losses he suffered and was angry. It is stated that in the evening they stayed at Vashudev Hotel where Nitin Kansal called a girl in the hotel and had taken obscene photographs of Mukesh Kumar at the hotel.

k) It is stated that the petitioner was informed about the photographs. It is stated that Nitin Kansal forced him to visit Meerut but he refused to meet him and did not go to Meerut.

l) It is stated that in October, 2020, Mukesh Kumar received a phone call from a person, who introduced himself as Vivek. It is stated that the said Vivek told Mukesh Kumar that he wants distributorship of the company in Bareilly. It is stated that the said Vivek asked Mukesh Kumar to come at INA Metro Station on

06.10.2020. It is stated that at about 9:30 a.m. he reached INA Metro Station and called Vivek and started moving towards Kotla Mubarkpur where a silver colour car was parked in which Vivek was sitting and he asked him to sit in the said car and he was abducted. In his statement under Section 161 CrPC Mukesh Kumar stated that he was taken to a godown at Transport Nagar, Meerut, UP where Nitin Kansal met them and started hitting him and demanded money. He states that he made a call to his wife and asked to arrange money. The statement reveals that the cheque book and the money was brought by the daughter of Mukesh Kumar at Shahdara Metro Station and his daughter handed over money to accused Pankaj. In his statement under Section 161 CrPC, Mukesh Kumar stated that a lady came to the godown of the accused Nitin Kansal. Mukesh Kumar was informed that she is an Advocate. In the statement under Section 161 CrPC Mukesh Kumar stated that the lady took his signatures and made him acknowledge that the victim had come there on his own accord. It is stated that the lady told him to talk to the owner of the company and demanded money. He also stated that he was physically assaulted, his ATM card was taken away and the victim was forced to give pin number of the card. It is stated that they withdrew Rs.12,000/- from his card.

m) Nitin Kansal gave his disclosure statement which matches to what has been stated by Mukesh Kumar in the statement under Section 161 CrPC. Nitin Kansal further revealed that Vivek had contacted Mukesh Kumar. It is stated that Vivek, Robin and Naveen had gone to INA Metro Station in the car and abducted Mukesh to the

godown. In the disclosure statement he states that he put pressure on Mukesh Kumar to bring the money. The supplementary disclosure statement has been taken by the accused on 08.10.2020 and 09.10.2020.

n) In the supplementary disclosure statement dated 09.10.2020 it was disclosed by accused Nitin Kansal that when Mukesh Kumar was brought after abducting to his office in Meerut, he called the petitioner who is his aunt and an Advocate for threatening Mukesh Kumar in a legal way. It is stated that he asked his aunt to threaten Mukesh Kumar to get money from his house as soon as possible.

o) The statement of Mukesh Kumar under Section 164 CrPC was recorded on 13.10.2020. In the said statement also, it is stated by Mukesh Kumar that a lady who is an Advocate came and threatened him to give money and he was made to sign on a blank paper.

p) On the basis of the disclosure statement the petitioner was arrested. The petitioner filed BAIL APPLN. 793/2021 under Section 438 CrPC for grant of anticipatory bail. The said application was dismissed by order dated 05.03.2021 and the petitioner was directed to surrender on or before 09.03.2021. The petitioner also filed an application for bail before the learned Additional Sessions Judge, Tis Hazari Courts and the said application was dismissed by order dated 26.03.2021.

q) The petitioner has approached this Court by filing the instant bail application.

3. Heard Mr. Mr.Pashupati Nath Razdan, learned counsel for the petitioner and Ms. Kusum Dhalla, learned APP for the State and perused the

material on record.

4. Mr.Pashupati Nath Razdan, learned counsel for the petitioner states that the entire case of the prosecution is based on the disclosure statement of the accused Nitin Kansal which is inadmissible in evidence. He states that Mukesh Kumar has not named the petitioner and that the petitioner has not yet been identified in any TIP as the same has failed. He further states that the statement under Section 161 CrPC and 164 CrPC are at variance. He further states that the CDRs do not match and the fact that the petitioner's call data shows that the person was present at the spot is because of the fact that the petitioner lives in that area and therefore it is not very unnatural that the CDRs show the location of the petitioner at that place.

5. *Per contra*, Ms. Kusum Dhalla, learned APP contends that the petitioner is accused of a very serious and heinous offence of Section 364A IPC for which is punishable either by life imprisonment or death. She states that in the statement under Section 161 CrPC, it is clearly mentioned that the victim Mukesh Kumar was threatened by the lady who is an Advocate and the petitioner's identity has been fixed in the disclosure statement. She also relies on the calls made between accused Nitin Kansal and the petitioner. She states that even though TIP of the petitioner failed but she has been identified by the victim.

6. The petitioner is the aunt of the accused Nitin Kansal and Mukesh Kumar in his first statement under Section 164 CrPC has stated that a lady Advocate has threatened him. It has also come out in his statement under Section 161 CrPC that he was beaten. The presence of the petitioner in the same locality is disclosed by the location. The call detail records shows that there are about 10 calls between the main accused Nitin Kansal and the

petitioner herein on the date of the incident and the next day. What has been stated in statement under Section 161 CrPC has been reiterated by the victim in the statement given by him under Section 164 CrPC and the material reveals that there is no material improvement in the facts.

7. A perusal of the statements mentioned brings out the ingredients of the offence under Section 364A IPC. The Supreme Court in Shaik Ahmed v. State of Telangana reported as **(2021) SCC OnLine SC 436** laid down the ingredients to be proved by the prosecution for offences under Section 364A IPC. Paragraph 33 and 34 of the said judgment reads as under:-

"33. After noticing the statutory provision of Section 364A and the law laid down by this Court in the above noted cases, we conclude that the essential ingredients to convict an accused under Section 364A which are required to be proved by prosecution are as follows:—

(i) Kidnapping or abduction of any person or keeping a person in detention after such kidnapping or abduction; and

(ii) threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt or;

(iii) causes hurt or death to such person in order to compel the Government or any foreign State or any Governmental organization or any other person to do or abstain from doing any act or to pay a ransom.

34. Thus, after establishing first condition, one more condition has to be fulfilled since after first condition, word used is "and". Thus, in addition to first condition either condition (ii) or (iii) has to be proved, failing which conviction under Section 364A cannot be sustained."

8. The fact that the petitioner was abducted is proved by the fact that the petitioner was rescued from H.No.13, Gali No.1, Nandan Nagar, Transport Nagar, Meerut, UP and, the complainant stated that he made telephone call to deliver money and jewellery. It is stated that he was earlier kept in a godown. The victim has stated that he was threatened and was given beatings and therefore he was apprehensive of further beatings.

9. An offence under Section 364A IPC is a heinous offence punishable with life imprisonment or death. The consideration for granting bail under Section 439 CrPC are now fairly well settled and they are:-

- a) Nature and gravity of the offence which is determined by the punishment for that offence;
- b) The position and status of the accused with reference to the victim;
- c) Likelihood of the accused fleeing from justice;
- d) Tampering with evidence and influencing witnesses.

10. The Supreme Court has time and again stated that at the stage of granting bail, a detailed examination of evidence and elaborate documentation of the case need not be undertaken but the Court must indicate in its orders reasons for *prima facie* concluding why the bail is being granted or indicate as to why bail is being rejected. No straitjacket formula has been laid down by the Supreme Court.

11. As stated earlier, the nature of the offence of the petitioner who is accused of a very heinous offence, namely, Section 364A IPC for which the punishment is life imprisonment or death which is the maximum provided for in the Penal Code. The petitioner's role has been mentioned in the

statement under Section 161 CrPC and Section 164 CrPC of the victim. The victim was recovered not from Delhi but from Meerut. The petitioner is the aunt of the main accused. The call detail records shows that the petitioner and the main accused were in regular touch. The petitioner's photo has been identified by the victim and all these at this juncture gives rise to a *prima facie* case against the petitioner. The possibility of the petitioner coming out and tampering with evidence or threatening the witnesses cannot be ruled out. The petitioner is therefore not entitled to bail at least till the victim/Mukesh Kumar is examined. For the aforesaid reasons, the bail application of the petitioner is rejected.

12. The application is dismissed.

AUGUST 16, 2021

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SUBRAMONIUM PRASAD, J.