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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Judgment Delivered On: 19.04.2022*

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CRL.L.P. 81/2022**STATE**

..... Petitioner

versus

GAURANSH GODIYAL @ SANDEEP & ANR.

..... Respondents

Advocates who appeared in this case:

For the petitioner : Mr. Ashish Dutta, APP for the
State with Sub – Inspector
Prabhakaran, P.S.: Dabri.

For the respondent : None

CORAM:**HON'BLE MR. JUSTICE SIDDHARTH MRIDUL****HON'BLE MR. JUSTICE RAJNISH BHATNAGAR****J U D G M E N T****SIDDHARTH MRIDUL, J. (OPEN COURT)****Crl.M.A.2621/2022 (Delay)**

The present application under Section 5 of the Limitation Act, 1963, has been filed on behalf of the State/petitioner seeking condonation of 35 days' delay in filing the leave to appeal petition.

In view of the reasons stated in the application, which is duly supported by an affidavit, the same is allowed. The delay of 35 days in filing the accompanying leave to appeal petition is condoned.

The application is disposed of accordingly.

CRL.L.P. 81/2022

The present criminal leave petition within the meaning of the provision of Section 378 (3) of the Code of Criminal Procedure, 1973,



assails the judgment dated 27.04.2021 rendered by Additional Sessions Judge-02, South West, Dwarka, New Delhi in FIR No. 343/2014 under Sections 323/341/364(A)/506(ii)/34 IPC, registered at Police Station Dabri, Delhi; whereby the learned trial court had acquitted the respondents No.1 and 2, namely, Gauransh Godiyal *alias* Sandeep and Sandeep Tehlan respectively, for the alleged commission of offences under the afore-noted provisions.

In a nutshell, it is the case of the prosecution that the respondents No.1 and 2, namely, Gauransh Godiyal *alias* Sandeep and Sandeep Tehlan respectively, abducted Nirmal Upadhaya son of Sh. Girish Chand Upadhaya for ransom, in a White Accent Car bearing No. HR26-BH-4141 at 11.15 PM on 11.05.2014 from House No. RZ-G-45A, G-Block, Gali No.1, Vijay Enclave, New Delhi, and in furtherance of their common intention gave beatings to the latter by *danda*, leg and fists blows, and threatened to eliminate him thereby intimidating him to affix his thumb impressions on blank papers. It is further a case of the prosecution that after kidnapping Nirmal Upadhaya for ransom, the respondents No.1 and 2 namely Gauransh Godiyal *alias* Sandeep and Sandeep Tehlan respectively restrained him in a farm house for ransom during the course of the commission of the offence of kidnapping for ransom they voluntarily caused hurt on the person of Nirmal Upadhaya.

The genesis of the investigation conducted by the police is the receipt of DD No.6-A on 12.05.2014 by Sub-Inspector Sunder Singh, PW-3 whereby it was informed that Nirmal Upadhaya the son of the caller Mr.Girish Chand Upadhaya had been taken by his acquaintance



two hours ago but had not returned home and that a demand of Rs.1.5 lacs was being made from Mobile No. 9268224488.

On the very same night, Nirmal Upadhaya , (hereinafter ‘the complainant’) was medically examined at Deen Dayal Upadhaya Hospital vide MLC Ex.PW5/A. Immediately thereafter, the complainant gave his statement under section 161 Cr.P.C Ex.PW1/A wherein he stated that he was operating a Shiksha Abhiyan Educational Society (in short ‘SAE Society’) as Franchisee for Gauransh Godiyal *alias* Sandeep, respondent no.1 herein since 30.03.2009. The complainant further stated that every year he imparted education to 50-60 students and that the consideration received by Gauransh Godiyal *alias* Sandeep for the granting of the Franchisee was in the amount of Rs.51,600/-. It was further stated by the complainant that whilst granting the Franchisee, Gauransh Godiyal *alias* Sandeep had given written assurance on the letter head of SAE Society qua the refund of the amount afore-stated. Gauransh Godiyal *alias* Sandeep is also alleged to have told the complainant that if he imparts training to 80 students per year, he will be funded to the tune of Rs.50,000/- per month by the SAE Society.

The complainant lastly alleged that despite training 80 students per year, Gauransh Godiyal *alias* Sandeep did not keep his end of the bargain, and the complainant had to run the Franchisee from fees received from the students who were trained at the SAE Society. The complainant alleged that upon his requesting Gauransh Godiyal *alias* Sandeep to reimburse him in terms of the commercial arrangement agreed to, by and between the parties, the latter gave him a loan of Rs.50,000/- requiring him to run the institute from 04.06.2013. The



complainant alleged that he had repaid the loan amount of Rs.40,000/- in eight monthly installments of Rs.5000/- each to Gauransh Godiyal *alias* Sandeep, however, the latter asked for a further sum of Rs.2.5 lacs on the loan amount of Rs.50,000/-. The complainant was then alleged to have asked for the refund of his reserve amount of Rs.51,600/- whereupon Gauransh Godiyal *alias* Sandeep alongwith his partner Sandeep Tehlan are alleged to have come to the complainant's house at 11.15 pm at the night of 11/12.05.2014, and asked him to arrive at a settlement whilst sitting in their white colour Accent Car. The complainant's case is that as soon as he sat in the car, he was driven to Pushpanjali Farm House near the Indira Gandhi International Airport area where he was blind folded, and his abductor threatened to kill him in the event he did not accede to their demand for money. The complainant in this behalf also alleged that the respondents started demanding Rs.1.5 lacs from his family members as ransom and when the demands were not acceded to, they took him to one other unknown farm house where he was allegedly beaten with a *danda* over his left leg and visited with fists and leg blows on the person. The complainant alleges that at this time Gauransh Godiyal *alias* Sandeep received a call from Police Station Dabri, whereafter the latter stopped beating the former and instead asked him to sign on a blank paper to the effect that he had obtained a loan of Rs.3,00,000/-. The complainant also alleged that respondents asked his family for ransom on the phone for his release at which point of time the father of the complainant informed the PCR at 100 number herein-before mentioned as DD No. 5B Ex.PW3/A.



Subsequent upon the investigation, and arrest of the respondents No.1 and 2 namely Gauransh Godiyal alias Sandeep and Sandeep Tehlan respectively, resulted in framing of charges against them for the first mentioned offences on 07.08.2018.

In order to establish their case against the respondents beyond reasonable doubt the prosecution examined five witnesses *in-toto*. The star witness examined on behalf of the prosecution is the victim - PW-1 himself. The other formal witnesses including the Investigating Officer, PW-3 were also examined on behalf of the prosecution although it is pertinent to observe at this stage that the father of the complainant who is alleged to have called the PCR at 100 number alleging that the complainant had been kidnapped for ransom, was not examined for reasons best known to the prosecution.

Having heard learned counsel on behalf of the State, and perused the record, learned trial court vide the impugned judgment dated 27.04.2021 found as follows:-

“26 Before testing ingredients of offences under Section 64A/506(II)/323/341/34 IPC on factual matrix of present case, let me first analyze as to whether facts of present case inspire sufficient confidence so as they require to be tested on ingredients of these sections.

27 Initial acquaintance of complainant/PW-1 with accused Gauransh Gudiyal appears to be atleast from year 2009. Complainant in his examination-in-chief deposed that he had taken franchisee from accused Sandeep @Gauransh Gudiyal in year 2009 after giving Rs. 51000/-. Complainant has stated this amount to be Rs. 51,600/- in his statement Ex. PW-1/A. Complainant in his cross-examination by State again reiterated this amount to be Rs. 51000/- and not Rs. 51,600/-. So, complainant has taken different stand so far as amount paid by him to accused Sandeep @Gauransh Gudiyal for taking franchisee of computer institute is concerned before court vis a vis Ex. PW-1/A.



28 Complainant in his examination-in-chief has deposed that he told accused Sandeep @Gauransh Gudiyal after four years that he was not in a condition to further run the institute, then accused Sandeep @Gauransh Gudiyal gave him Rs. 50,000/- to run the institute. He deposed that from fees received from students, he returned amount of Rs. 50,000/- to accused Sandeep @Gauransh Gudiyal in installments of Rs. 4,000/- or Rs. 5,000/- every month. Later on regarding the same amount, complainant in his examination-in-chief again stated that he had already returned about Rs. 40,000/- out of sum of Rs. 50,000/- given to him by accused Sandeep @Gauransh Gudiyal and he was not having capacity to return balance amount of Rs. 10,000/-. State has not re-examined complainant with regard to aspect as to which of his statement qua return of amount of Rs. 50,000/- to accused Sandeep @Gauransh Gudiyal is correct.

29 Complainant in his examination-in-chief deposed regarding date of incident to be 10.05.2014. Complainant in his cross-examination by state denied that incident took place in the intervening night of 11th and 12th May, 2014. He volunteered that incident took place on night of 10.05.2014. Perusal of DD No. 5B Ex. PW-3/A which is first record of acquaintance of complainant asking for money shows that the same has been lodged at 1:07 AM on 12.05.2014 wherein factum of complainant being taken away by his acquaintance has been mentioned to be of two hours earlier which shows that alleged incident is of intervening night of 11th and 12th May, 2014 and not of 10.05.2014. Even MLC of complainant Ex. PW-5/C is dated 12.05.2014 which as per prosecution story is immediately after the alleged incident. Complaint given by complainant Ex. PW-1/A is also dated 12.05.2014. Complainant in his examination-in-chief further deposed that he with his family went to police station on the same night and lodged report there. Complainant/PW-1 in his cross-examination on behalf of accused Sandeep @ Gauransh Gudiyal stated that on the night of incident, he had given complaint in PS. From contradictory statements of complainant, date of alleged incident has become doubtful and tempering in Ex. PW-1/A, Ex. PW-3/A and Ex. PW-5/A cannot be ruled out.

30 Further, complainant in his examination-in-chief has deposed alleged ransom amount got asked by complainant at instance of accused from his family members to be Rs. 2.5 lacs. Complainant in his cross-examination by state has denied that accused demanded Rs. 1.5 lacs from his family members. As per Ex. PW-1/A and Ex. PW-3/A, the alleged ransom amount demanded by accused persons was Rs. 1.5 lacs. There is contradiction between ransom



amount deposited by complainant before court and that stated in Ex. PW-1/A and Ex. PW-3/A which reduces credit of complainant as witness.

31 Complainant in his cross-examination by state admitted that when call from PS Dabri was received by accused Sandeep @ Gauransh Gudiyal, then accused stopped beating him. Similar is stance of complainant in Ex. PW-1/A. Surprisingly, IO in the charge-sheet has not mentioned name of police official who called at mobile of accused Sandeep @ Gauransh Gudiyal after which alleged beating of complainant was stopped nor has cited him as witness thus leaving a very important link in prosecution story unestablished. IO has further failed to bring on record CDRs of mobiles of the said police official or that of accused Sandeep @ Gauransh Gudiyal which could have led credibility to prosecution story.

32 IO on his part left further deficiency in investigation. He failed to record statement of family member of complainant (As per deposition of complainant, it appears to be his brother) from whom alleged demand of ransom was made by accused Sandeep @ Gauransh Gudiyal, neither cited him as witness nor he has brought on record CDRs of accused Sandeep @ Gauransh Gudiyal and the said family member of family of complainant which could have corroborated complainant's version in this regard. It is an important missing link in story of prosecution.

33 IO further failed to cite father of complainant as prosecution witness nor recorded his statement under section 161 Cr. P.C. who as per Ex. PW-3/A is informant of DD No. 5B dated 12.05.2014 and thus has left a vacuum in version of prosecution as DD No. 5B is first information regarding taking away of complainant by his acquaintance and regarding demand of Rs. 1.5 lacs. IO/PW-3 in this regard in his cross-examination conducted on behalf of accused Sandeep Tehlan has stated that informant of the incident was father of complainant. He stated that he did not record statement of father of complainant in this case. He volunteered that he tried to locate him but he could not be found. He stated that he had gone to house of complainant 2- 3 times to record statement of his father. He stated that he did not serve any notice to father of accused(it appears that inadvertently on account of typographical mistake instead of word 'complainant', word 'accused' has been recorded in deposition of PW-3) in respect of the same. I am of the view that IO has not carried out investigation properly and it is merely lip service by IO in his cross-examination to state that he went to house of complainant 2-3 times to record statement of his father in absence of any written record in this regard.



34 Complainant is witness on seizure memo of car bearing No. HR26-BH-4141 Ex. PW-3/E (purportedly the vehicle wherein complainant was abducted) and arrest and personal search memos of accused Ex. PW-3/C, Ex. PW-3/D, Ex. PW-3/C1 and Ex. PW-3/D1. Complainant in his examination-in-chief has deposed that accused were called in the PS but they didn't come in the PS. He deposed that after two days, accused went to PS. Complainant in his examination-in-chief has not said anything with regard to registration number of the car wherein he was abducted. Case of prosecution is that complainant accompanied police on 12.05.2014 and accused while sitting in car bearing number HR26-BH-4141 were arrested from Dabri Dwarka Ganda Nala Road, near Power House towards Dwarka, Delhi on 12.05.2014 in presence of complainant. Complainant in his cross-examination by state denied that on 12.05.2014, he accompanied police to Vijay Enclave, near power house in search of accused. He further stated that he does not know that on 12.05.2014, Accent car bearing No. HR26-BH-4141 white colour was stationary near power house at Vijay Enclave. He denied that in his presence, the said car was seized by police. He denied that both accused were apprehended on 12.05.2014 in his presence or were arrested. He denied that the aforesaid Accent car was seized by police on 12.05.2014 in his presence.

He volunteered that when accused were apprehended, he was called in PS. Complainant in his cross-examination on behalf of accused Sandeep Tehlan stated that he told IO in his statement that behind the Accent car, photo of Bhagat Singh was pasted on the black glass but he had not told number of Accent car. He stated that in his statement Ex. PW-1/A, there is no mention of photo of Bhagat Singh pasted on the back glass of the car. Complainant was not shown car bearing No. HR26-BH-4141 wherein he was allegedly abducted during his examination-in-chief. Complainant has not stated registration number of car wherein he was abducted nor anything like photo of Bhagat Singh being pasted on back glass of the said car being reported in Ex. PW-3/E, it was all the more necessary to show the alleged car to complainant in his examination-in-chief particularly when complainant has denied its recovery in his presence. So, in these circumstances, it can be said with certainty that prosecution has failed to prove identity of car wherein complainant was allegedly abducted. Complainant has also denied that accused were arrested in his presence on 12.05.2014 from abovementioned car. Place of arrest of accused persons become doubtful in these circumstances. Manipulation of evidence in these circumstances on part of IO is quite obvious and accused cannot be convicted in these circumstances



35. Complainant/PW-1 in his cross-examination on behalf of accused Sandeep Tehlan stated that police prepared site plan at his instance but that he does not remember the date when it was prepared. He further stated that it was prepared within 10 days of the incident. IO/PW-3 on the other hand negated preparing of site plan of the spot and place of beatings in his cross-examination on behalf of accused Sandeep Tehlan. Further, there is no site plan filed by IO with charge-sheet. Either complainant is lying or IO. In these circumstances, reliability of prosecution story vanishes further.

36 IO/PW-3 allegedly recovered danda used to beat complainant in present case vide memo Ex. PW3/F (inadvertently pointing out memo and seizure memo of danda and pieces of paper have been exhibited separately in deposition of PW-3 whereas it is only one document and pieces of paper have in actual been exhibited vide Ex. PW-3/G). IO/PW-3 in his examination-in-chief has correctly identified this danda vide Ex. P1. This danda when produced before court bore seal of IO 'SS' and FIR No. 343/14, PS Dabri was also written on sealed parcel when produced before court. During cross-examination of IO/PW-3 on behalf of accused Sandeep Tehlan, IO was shown this danda Ex. P1 and FIR No. 375/14 u/s 323/341/506 IPC dated 12.05.2014 was found mentioned on the said danda. This court asked IO as to how FIR No. on danda has been mentioned differently to which IO stated that it is same danda which was seized by him but that he is not aware as to who wrote FIR number and sections which are different than present FIR. It is beyond comprehension when case property in sealed condition was produced before court, how come IO is not aware that who mentioned FIR No. differently upon the same. Tempering of case property on part of IO is writ large in this case and accused thus can't be convicted in this case.

37 Complainant/PW-1 in his examination-in-chief deposed that accused Sandeep @ Gauransh Gudiyal made him write on a paper that he has gone with his friends with his will for visit and if any action is taken on this by police then it will be wrong. He further deposed that on asking of accused Sandeep Tehlan, accused Sandeep @ Gauransh Gudiyal made him write on other paper that he has taken Rs. 2.5 lacs from accused Sandeep @ Gauransh Gudiyal. He further deposed that after pasting postal stamps on the paper, he was made to sign on the paper by accused persons. As per prosecution version, these writings were got recovered by accused persons vide memo Ex. PW3/F. These torn written papers have been placed on record by IO which are exhibited on record vide Ex. PW-3/G. Perusal of these torn papers prima facie does not show that they have been written under any duress by complainant as



writing on these papers is smooth and appears to be in natural flow and it does not appear that the same have been written by complainant after receiving beatings from accused. Similarly signatures of complainant on these torn papers are also very smooth. Further, these papers constituted evidence against complainant and it is beyond logic that accused will try to destroy evidence in their favour. It appears that these torn papers have been planted in order to support complainant's version but on account of my observations in this para, they are taken to be averse to complainant.

38 *Complainant/PW-1 in his cross-examination on behalf of accused Sandeep Tehlan has admitted that dispute was regarding money transaction. He in his cross-examination on behalf of accused Gauransh Gudiyal admitted that accused Sandeep @ Gauransh Gudiyal is a good person. He admitted that their relations soured because of money transaction. Complainant in his MLC Ex. PW-5/A did not take name of accused persons. PW-5 Dr. Vineet Kumar Soni in his crossexamination on behalf of accused Sandeep Tehlan has stated that possibility cannot be ruled out if a person falls on a hard surface and receives such type of injuries. Money dispute in background coupled with what has been stated by PW-1 and PW-5 in their cross-examinations as mentioned above, it is clear that motive is available with complainant to implicate accused in present matter in order to avert his financial liability.*

39 *In view of my abovemade discussion, I am of the opinion that there is no requirement of testing ingredients of offences under section 364-A/323/341/506(II)/34 IPC on factual matrix of present case as evidence produced by prosecution on record does not inspire sufficient confidence so as to convict accused persons. Further, there are various important missing links in prosecution story and case property appears to have been tempered/manipulation appears to have been done with case property. It can be said that prosecution has failed to prove its case against accused persons beyond reasonable doubt. Hence, accused persons are acquitted for commission of offences under section 364-A/323/341/506(II)/34 IPC.*

40 *Let copy of this judgment be sent to DCP concerned with direction to him to take action against IO for his negligence, lapses and tempering of case property as pointed out in this judgment."*

Mr. Ashish Dutta, learned Additional Public Prosecutor appearing on behalf of the State has taken us to the testimony of the witnesses of the prosecution. We have also examined the testimony of the



complainant minutely, and are in agreement with the conclusion arrived at by the learned trial court to the effect that, the evidence produced by the prosecution does not inspire confidence so as to enable this Court to convict the respondents No.1 and 2, namely, Gauransh Godiyal alias Sandeep and Sandeep Tehlan respectively, for commission of offence under Sections 323/341/364(A)/506(ii)/34 IPC. In this behalf we observe that, the complainant himself in his cross-examination admitted that the genesis of the dispute between him and the respondents No.1 and 2 was in relation to the commercial transaction entered into and pursued by the parties over a long period of time. In his further cross-examination, the complainant was candid enough to admit that respondent no.1- Gauransh Godiyal *alias* Sandeep is a “good person”; that their relations are because of money transaction. It is further relevant to note that the complainant did not name the respondents No.1 and 2 at the time of his medical examination Ex.PW5/A, and further that PW-5 Dr. Vineet Kumar Soni who conducted the said medical examination opined in his cross-examination that the injuries found on the person of the complainant could be the consequence of a fall on a hard surface.

It is in this background that we find ourselves in agreement with the learned trial court in its opinion that in the backdrop of the money dispute and the depositions of PW-1 and PW-5 in their cross-examinations it can safely be inferred that the motive to implicate the respondents in the present matter could have been with the complainant’s motive to avert the financial liability.

In view of the forgoing, the evidence produced on behalf of the prosecution before the learned trial court does not inspire confidence so



as to warrant a conviction of the respondents for the afore-mentioned charges. The evidently missing links in the prosecution's story assumes significance on account of the circumstance that the prosecution appears to have tampered/manipulated the case property so as to secure a conviction, thereby raising serious doubts about the veracity of the complainant's allegations. Needless to state that the prosecution has failed miserably to prove its case against the respondents beyond reasonable doubt.

There is yet another aspect of the present leave to appeal petition that warrants consideration and that is the direction contained in the impugned judgment in paragraph 40 thereof to the following event.

On a specific query from the Court; Mr. Ashish Dutta, learned Additional Public Prosecutor, appearing on behalf of the State has not been able to shed any light on the action taken by the State against the Investigation Officer for his axiomatic negligence, lapses and tampering of the case property as opined by the learned trial court.

In view of the foregoing, and whilst directing the DCP concerned, to comply with the directions contained in the said paragraph 40 forthwith; we dismiss the present leave petition as being devoid of merit.

**SIDDHARTH MRIDUL
(JUDGE)**

**RAJNISH BHATNAGAR
(JUDGE)**

APRIL 19, 2022/ib

[*Click here to check corrigendum, if any*](#)