



2024:DHC:7227



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

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Reserved on: 28th August 2024

Pronounced on: 18th September, 2024

+ **BAIL APPLN. 293/2024**

RAHUL @ SUMIT

.....Petitioner

Through: Mr. Ravi Mehta, Ms. Priyanka Singh
and Ms. Urvashi Sharma, Advocates.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Amit Ahlawat, APP for the State.
Inspector Virender Kumar,
IO/AHTU/Crime Branch.

+ **BAIL APPLN. 1401/2024**

OMPRAKASH @ OMI

.....Petitioner

Through: Mr. Dalip Kumar Santoshi and Mr.
Rakesh Kumar, Advocates.

versus

THE STATE NCT OF DELHI

.....Respondent

Through: Mr. Amit Ahlawat, APP for the State.
Inspector Virender Kumar,
IO/AHTU/Crime Branch.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. These applications have been filed seeking regular bail in FIR no. 02/2018 for the two accused. Accused Rahul@ Sumit has been in custody for about 4 years and has no previous involvements (*as per the Nominal Roll dated 01st February 2024*) and interim bail was granted to him in 2018, 2020 and 2021 for periods ranging from 3 days to 7 months. Accused Omprakash



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@ Omi was in custody for about 6 ½ years (*as per the Nominal Roll dated 29th April 2024*), no previous involvements are indicated and no interim bail has been granted as yet.

2. As per the case of the prosecution, complainant Ashok Mittal resident of Panchsheel Park, New Delhi handed a complaint on 02nd January 2018 in the Crime Branch regarding kidnapping of his nephew Apoorv Mittal son of Shyam Lal Mittal, aged 29 years. He alleged that he was kidnapped by some unknown persons in the evening of 01st January 2018 from his office at 16 National Park, Lajpat Nagar– IV, near Moolchand Metro station. The complainant's brother and the victim's father, Shyam Lal Mittal, received a telephone call from the kidnapper who was using a mobile phone of the victim 98180355872.

3. At about 9:17 pm on 1st January 2018, ransom of Rs. 5 crore was demanded for the victim to be released on Shyam Lal Mittal's mobile phone (9310927616). An FIR no.02 /2018 was registered at P.S. Crime Branch under Section 364A of the Indian Penal Code, 1860 (**‘IPC’**).

4. Efforts were immediately made to trace the victim and the kidnappers. Several mobile numbers were taken on interception. The kidnappers were making calls to the father of the victim by using the mobile of the victim.

5. On the intervening night of 5th and 6th January 2018, the kidnappers took delivery of Rs. 4 crores of ransom from the father of the victim and later released the victim near Radisson Hotel, Mahipalpur Delhi. However, they could not be tracked.



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6. On 06th January 2018, information was received through interception of mobile phones and accused Rahul @ Sumit was arrested from Crown Plaza Mall, Faridabad, Haryana and Maruti Swift Dzire car number DL-1YD-7651 used in the crime was recovered from the spot at his instance.
7. The prosecution alleges that as per the disclosure of Rahul, the Maruti Swift Dzire car, driven by co-accused Omprakash @ Omi, was used for the kidnapping and transportation of the victim to a flat in East Vinod Nagar on 01st January 2018 and also used for receiving the ransom amount on 05th- 6th January 2018. The ownership of the said car was found in the name of accused Omprakash @ Omi.
8. Subsequently, at the behest of Rahul @ Sumit, two co-accused Ghanshyam and Sunil were also arrested from Sarai Kale Khan, Delhi and one more car, Tata Indica DL-1YE-6086 used in the crime was seized.
9. The prosecution claims that the amount of ransom Rs. 3.96 crores was recovered in the area of Modi Nagar, District Ghaziabad, UP and from the house of accused Rahul @ Sumit in Trilok Puri, Delhi. A handwritten note was recovered from the Maruti Swift Dzire car which noted the script which was to be read out by Omprakash @ Omi for demanding a ransom money. It was found as per the FSL report that the handwritten note was in the writing of Rahul. The calls made to Shyam Lal Mittal using the phone of the victim, had the same words as that which were written on the note.
10. Voice sample of Rahul @ Sumit matched with the voice recorded during the course of interception of the mobile phones.



11. As per the disclosure, Omprakash @ Omi was wearing a Police type uniform (uniform of Delhi Civil Defence) and used a toy type Pistol at the time of kidnapping in order to threaten the victim.

Submission on behalf of the Petitioners

12. Counsel for petitioners contended that out of the four accused, two had been granted bail, i.e. Sunil by the Trial Court and Ghanshyam by this Court.

13. Though the APP points out that the order of this Court dated 12th October 2023 granting bail to Ghanshyam, notes that there was no recovery made from Ghanshyam, and that the main accused was Rahul @ Sumit. The only allegation against Ghanshyam was that he arranged the flat where the victim was kept, which fact was yet to be established during trial. Ghanshyam was not involved in making any ransom calls or the recovery of the ransom money, and therefore this Court had granted him bail.

14. It was submitted that petitioner Rahul was an employee of the father of the victim, and the ransom taken as alleged had been released. Further, they had been implicated merely on the basis of disclosure and on interception of calls.

15. It was pointed out that as per the charge-sheet, the interception permissions were subsequent to the arrest on 4th January 2018, 5th January 2018, 09th January 2018 and 11th January 2018.

16. Further, only 18 witnesses out of 31 witnesses have been examined as yet and the petitioners Rahul @ Sumit and Omprakash @ Omi have been custody for about 4 years and 6 ½ years respectively.



17. The testimony of PW-5 was pointed out where he stated that during the period of five days, he did not see the faces of any of the accused. On the night of the 05th January 2018, when he was finally released at Mahipalpur, his father removed his monkey cap and then he saw a sign board of “*Shokeen*” and realised he was at NH-8.

18. The testimony of PW-3 Shyamlal Mittal, the father of the victim, corroborated the fact that a person wearing a monkey cap came out of the car, who seemed to be a young boy, and while collecting the ransom checked the bags and then made his son alight from the back of the car, who was also wearing the monkey cap. On this basis, the petitioner contended that there was no identification at all of the petitioners.

19. As regards the recovery of the ransom money from Modi Nagar at Rahul's *Mami's* place, the testimony of PW-13, Lakshmi (*Mami*) was adverted to. She stated that she was a widow, making *bindis* and did not know anything about the case she only came to know that her nephew had been arrested by the police. She denied the suggestion that on Saturday, 06th January 2018 Rahul had come to their house and asked the keys for the room at the ground floor and returned the key and told her not to open the room or give the key to anyone and that he himself had come and opened the room himself. As per the APP, she had become hostile.

Submission on behalf of the State

20. APP for State pointed out that even though the petitioners were not identified since they were wearing masks, there were incriminating pieces of



evidence which pointed to their guilt. *Firstly*, there was a handwritten note which was recovered from the car in which the victim had been taken and as per the FSL report was shown to be matching with Rahul's handwriting. *Secondly*, that the voice sample given by Rahul matched the voice which was there on the ransom calls. *Thirdly*, the recovery of cash was from the house of Rahul @ Sumit in Trilok Puri, Delhi and from the house of his aunt (PW-13) in Modi Nagar, District Ghaziabad, UP. *Fourthly*, the car Maruti Dzire belonged to co-accused Omprakash. *Fifthly*, Omprakash had refused to give the voice sample.

21. As regards the interception, it was from 02nd January 2018 onwards. The formal letters of interception were documented late and there was no infirmity in the said process. Besides, he stated that the entire evidence would conclude in 2 to 4 months.

Analysis

22. Having heard the contention of the parties and perused the documents on record, this Court is of the view that the petitioner has been able to draw out certain important facts and circumstances in favour of their bail petitions. There is absolutely no identification of either of the co-accused by either the victim or the father of the victim who gave the ransom and the only other evidence which the prosecution relied upon is a FSL match of the voice of the accused Rahul and the handwriting match of the writing on the note with the writing of accused Rahul.

23. The car number was also not identified and as per the charge sheet it is also not clear as to on what basis were the particular accused identified and



tracked. The charge sheet states “*despite all efforts, it could not be tracked*” and then goes on to say that information was received through interception of mobile phones of the accused persons that accused Rahul was only coming to Crown Plaza Mall to meet his girlfriend.

24. As regards the complainant, the ransom money allegedly recovered had been handed over to the complainants, which was duly recorded.

25. The written note upon which the prosecution has relied upon has not been found to be directly matching any of the transcripts that have been shown to the Court, as also the narrative in the handwritten note seems to point towards the family of the accused being held by some persons and that the money received in ransom will be used to avail freedom for the family.

26. As per the testimony of the victim, no tracing of CDR locations of the accused has also been placed by the prosecution during arguments.

27. Petitioners have been in custody for 6 years in the case of Omprakash and 4 years in the case of Rahul, neither of them have any previous involvements. Rahul has been out on interim bail for collective period for about two years between 2020-2023, has not misused its liberty. And Omprakash has not sought any interim bail during the total period of custody. The trial will take some to conclude as only 18 witnesses have been examined out of 31 witnesses. The Court therefore deems it fit to release the accused on bail.

28. Considering the duration of time spent by the accused under custody, it is pertinent to advert to the dictum of The Supreme Court in *Javed Gulam*



Nabi Shaikh v. State of Maharashtra 2024 SCC OnLine SC 1693 wherein it was observed as follows:

“18. Criminals are not born out but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.

19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.”

29. In light of the above, and that the trial in the matter is likely to take some time, and it would not be prudent to keep the petitioners behind bars for an indefinite period, this Court finds it to be a fit case for grant of bail to the petitioners. Consequently, the petitioners are directed to be released on bail on furnishing each, a personal bond in the sum of Rs. 25,000/- with one surety of the like amount subject to the satisfaction of the Trial Court, further subject to the following conditions:



- i. Petitioners will not leave the country without prior permission of the Court.
- ii. Petitioners shall provide permanent address to the Trial Court. The petitioner shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.
- iii. Petitioners shall appear before the Court as and when the matter is taken up for hearing.
- iv. Petitioners shall join investigation as and when called by the IO concerned.
- v. Petitioners shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned.
- vi. Petitioners will mark presence physically/virtually before the concerned I.O. every first and third Monday at 4 P.M., and will be not kept waiting for more than an hour.
- vii. Petitioners shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the complainant/victim or any member of the complainant/victim's family or tamper with the evidence of the case.

30. Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.

31. Copy of the order be sent to the Jail Superintendent for information and



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necessary compliance.

32. Accordingly, the petitions are disposed of. Pending applications (if any) are disposed of as infructuous.

33. Judgement be uploaded on the website of this Court.

ANISH DAYAL, J

SEPTEMBER, 18, 2024/RK/kp