

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

+ **BAIL APPLN.2659/2021**

Date of decision: 16th AUGUST, 2021

IN THE MATTER OF:

AMIT KANSAL

..... Petitioner

Through

Mr. Pradeep Singh Rana, Advocate
with Mr. Inderpreet Singh, Mr. Nitin
Bansal, Advocates

versus

THE STATE (GOVT. OF 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 petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in FIR No.263/2020 dated 07.10.2020 registered at Police Station Prasad Nagar for offences punishable under Sections 364A/120B/34 IPC.

2. The brief facts leading to this 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 (MZUHI Gold having its Head Office at SCF-1, Hill View Enclave, Peer Muchalla, Zikarpur) by stating that some people have called him at INA for some work.

b) It is stated that she received a phone call from him asking her to arrange about Rs.1 to 2 lakhs at once and if cash is not available then she was asked to arrange some jewellery etc. It is stated that Mukesh Kumar 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 person will meet her at Shahdara Metro Station and she will hand over jewellery and cheque book to him. The complainant stated that Mukesh Kumar told her that the name of the person is Pankaj and he also gave his phone number to her. It is stated that the daughter of the complainant handed over the jewellery of about Rs.3 lakhs along with the cheque book of Mukesh Kumar to the said Pankaj at Shahdara Metro Station.

d) 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 Rs.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.

e) During investigation 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.

f) Mukesh Kumar gave his statement under Section 161 CrPC on 08.10.2020. In his statement under Section 161 CrPC he revealed that accused Nitin Kansal was interested in taking distributorship in the

company in which he was working and Nitin Kansal was given the dealership. Goods were supplied to Nitin Kansal. 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. It is stated that Nitin Kansal 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.

g) It is stated that on 10.09.2020, Mukesh Kumar and Nitin Kansal left for the office of the company where Mukesh Kumar was working. They 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.

h) 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.

i) 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.

j) 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. Mukesh Kumar 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.

k) Mukesh Kumar stated in his Section 161 Cr.P.C statement that Nitin Kansal and two other unknown persons were present in the car in which he was taken to a warehouse in Transport Nagar, Meerut and was threatened, assaulted, beaten and extorted for the money. It is stated that he made calls to his wife to arrange for money and jewelry. It is stated that his daughter handed over the jewelry, cash and chequebook to co-accused Pankaj at Shahdara Metro Station. It was further stated that he was taken to the house of Nitin Kansal where his father, mother, brother (the petitioner herein) and sister were present.

l) Nitin Kansal was arrested on 07.10.2020 after Mukesh Kumar was rescued from his residence i.e. H No. 13 Nandan Nagar, Transport Nagar, Gali No.1, Meerut. The Arrest memo of Nitin Kansal shows the name of the Petitioner in the column of persons to be contacted to convey arrest information.

m) Disclosure statement given by Nitin Kansal on 07.10.2020 revealed his association with Vivek, Naveen Singh, Robin. It stated that he along with Vivek, Robin and Naveen had abducted Mukesh Kumar in a silver car from Kotla Mubarakpur and brought to Meerut. It also states that he asked his friend Pankaj, a resident of East Delhi to collect the chequebook, jewelry etc. from Shahdara Metro Station.

n) A supplementary disclosure statement give by Nitin Kansal on

08.10.2020 revealed that he was introduced to Vivek, Robin and Naveen by the Petitioner. It is stated that the Petitioner herein introduced the co-accused with the intention that they would assist Nitin Kansal in abducting Mukesh Kumar and retrieving money from him.

o) The Statement of Nitin Kansal under Section 164 Cr.P.C was recorded on 13.10.2020 before the Magistrate, Tis Hazari.

3. Heard Mr. Pradeep Singh Rana, Learned Counsel for the Petitioner and Ms. Kusum Dhalla, learned APP for the State.

4. The learned counsel for the petitioner submitted that the disclosure statements made by the co-accused Nitin Kansal to the Police are inadmissible as evidence before a Court of law and that there is no proof of the Petitioner being a part of the conspiracy. The learned counsel for the petitioner submits that the Petitioner was unaware of what Nitin Kansal was doing. He further states that the statement of Mukesh Kumar under Section 164 Cr.P.C does not implicate the Petitioner. The learned counsel for the petitioner states that the petitioner is in judicial custody for no justified reason since 01.03.2021. He further states that had the petitioner been there at the godown where the victim was assaulted then the victim would have certainly disclosed his name. He further states that when the arrest memo was being prepared, the name of the petitioner was mentioned in column three as he stays in the place with his parents and brother.

5. *Per contra*, Ms. Kusum Dhalla, learned APP submits that the Petitioner was fully aware of the abduction of Mukesh Kumar. She states that the petitioner herein was the person who introduced Nitin Kansal to co-accused Vivek, Robin and Naveen and assured him that the said co-accused

would help him to execute the plan of abduction. She further submitted that the Call Detail Records ('CDR') disclosed that the Petitioner was in continuous touch with Nitin Kansal, Naveen and Robin one day prior to the incident and on the date of the incident. She contended that although the Petitioner did not actively assaulted or threatened Mukesh Kumar, he coordinated the entire execution of the plan by being in communication with the co-accused and receiving updates on their whereabouts. The learned APP further submits that the petitioner refused to participate in the Test Identification Parade.

6. The Petitioner is the real brother of Nitin Kansal and they reside in the same house. A perusal of the statements made under Section 161 and Section 164 Cr.P.C by Mukesh Kumar mentions about the Petitioner being present at their house where he was kept in Meerut.

7. The supplementary disclosure statement of Nitin Kansal, dated 08.10.2020, reveals that the Petitioner introduced Nitin Kansal to other co-accused telling him that they would be willing to abduct Mukesh Kumar and gave the numbers of co-accused Vivek, Naveen and Robin to Nitin Kansal. The CDR of the Petitioner discloses that the petitioner was in continuous touch with Nitin Kansal, Naveen and Robin one day prior to the incident and on the date of the incident and also the fact that that the Petitioner introduced Nitin Kansal to other co-accused Vivek, Naveen and Robin makes out a *prima facie* case that the petitioner was involved in the conspiracy of abducting Mukesh Kumar.

8. 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.

9. 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.

10. As stated earlier, the petitioner 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 is the brother of the main accused. The call detail records shows that the petitioner and the main accused were in regular touch. 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.

11. For the aforesaid reasons, the bail application of the petitioner is rejected.

12. Accordingly, the bail application is dismissed.

SUBRAMONIUM PRASAD, J.

AUGUST 16, 2021/Rahul