

Sanjeev Nagar Vs. State of Sikkim

Sanjeev Nagar Vs. State of Sikkim

SooperKanoon Citation : sooperkanoon.com/1115992

Court : Sikkim

Decided On : Dec-24-2012

Judge : S.P. Wangdi

Appeal No. : Bail Application No. 10 of 2012

Appellant : Sanjeev Nagar

Respondent : State of Sikkim

Judgement :

1. This Application has been preferred under Section 438 Cr. P. C. for bail in anticipation of arrest, as a case under Section 420/409/471/120B IPC, 1860 has been registered against the petitioner and a non-bailable warrant of arrest issued against him.

2. For the purpose of this Application, it will be sufficient to note that the Namchi Police Station, South Sikkim, on a complaint lodged by one Sunil Jaiswal for having been cheated of a sum of Rs.2.5 crores by the petitioner, a case was registered under the provisions as set out and investigation launched against him.

3. Mr. V. K. Gupta, learned Senior Advocate, appearing on behalf of the petitioner, submits that the petitioner being out of the country during the time when the complaint was lodged was not aware of it and had just recently learnt of the fact on his return. He, therefore, apprehends arrest for the offences by the Namchi Police Station and seeks for a bail in anticipation thereof. It is submitted that two other co-

accused persons in the case have earlier been set at large on bail. First of such order was passed by the learned Judicial Magistrate, South Sikkim at Namchi, by its order dated 16-10-2012 after arrest in Cri. Misc. Case No.121/2012. Mr. Gupta by referring to the order submits that necessity of the petitioner being placed under custody of the police did not exist in view of the clear finding of facts arrived at by the learned Judicial Magistrate and emphasised on the following portion of the order :-

"The facts and the materials placed before me reveals that essentially this case is of cheating and fraud through of money transfer by Banks. It appears that the I.O. has already interrogated the persons concerned i.e. Bank Officials of the respective Banks and also collected the documents to that effect.

It appears that the I.O. has collected the necessary documentary evidence and has also seized certain computers through which the accused/petitioner had reportedly sent e-mails in furtherance of the fraud.

It is evident that the accused/petitioner has been thoroughly and sufficiently interrogated due to which at present, he is in J. C.

Since this case is mainly based on the documentary evidence and since the I. O. has collected, more or less, all the documents (except for certain queries from the concerned banks such as DBS Bank Ltd., Russel Street, Kolkata), I find that further detention of the accused/petitioner would only amount to pretrial punishment."

As per Mr. Gupta, the above findings have remained unchallenged and, therefore, presumed to have been admitted.

4. The second co-accused was let out on bail in anticipation of arrest by the order of this Court in Bail Application No.7 of 2012 and a parity to that is being sought for on behalf of the petitioner also.

5. Mr. Karma Thinlay Namgyal, the learned Additional Public Prosecutor seriously objects to the Bail Application on the ground that the petitioner has been evading arrest. It is submitted that proceedings under Sections 82 and 83, Cr. P.C. have

also been initiated against him and is at an advanced stage. As per him the institution of such proceedings had been necessitated as the petitioner could not be traced out in the given address and, searches made at the other possible 'hideouts' of the petitioner at Kolkata also did not bear any fruit. The reasons and the necessity of the petitioner's custodial interrogation of the petitioner has been set out in the case diary which we may reproduce below :-

"For issue of warrant of arrest against Aayush Kapoor and the main accused Sanjeev Nagar.

Custodial interrogation and arrest of the main accused Sanjeev Nagar and Aayush Kapoor is necessary due to the points underlined below.

(i) Both Sanjeev Nagar and Aayush Kapoor are named in the FIR by the complainant

Sunil Jaiswal.

(ii) It is the duty of the investigating agency to bring unvarnished truth before the Court of law and for that the custodial interrogation of the accused Sanjeev Nagar, and Aayush Kapoor is very much necessary. To make recovery in this instant case USD

350,000 (approx Rs. two crores Indian rupees) has been routed to Hong Kong and the legal arm of the Investigating Agency does not extend beyond the stones of India.

(iii) Custodial Interrogation is necessary to ascertain the trail of money from India to

Hong Kong and also make recovery.

(iv) As per the details provided by the family of Sanjeev Nagar mainly his wife Mrs. Chanda Nagar through mobile (9800265657) he has been frequently travelling to Hong Kong but the purpose of his trips are not mentioned to the family.

(v) Since the registration of FIR the location of main accused Sanjeev Nagar is not known. Neither is he joining the investigation.

(vi) Custodial interrogation of main accused Sanjeev Nagar and Aayush Kapoor is very much required to unearth the whole conspiracy and also to ascertain the actual role played by each accused in the commission of the crime.

Arrest warrant for Sanjeev Nagar and Aayush Kapoor obtained. Also search warrant for search of the house of Sanjeev Nagar located at Gata Park, Bhowanipore also obtained.

Case Diary Closed Pending Investigation.

Sd/- Illegible."

6. Heard and considered the submissions made on behalf of the parties and also perused the case diary and other records available before this Court. It is evident from the above that the grounds set out in the case diary for custodial interrogation of the petitioner, in my view, in the first instance, cannot be accepted as good reasons therefor. Secondly, those grounds had been set out in September, 2012 for the purpose of obtaining warrant of arrest against the petitioner and other co-accused persons. After that date, there is a change in the factual position in view of the admitted and undisputed facts noticed by the learned Judicial Magistrate in his Order dated 16-10-2012 reproduced earlier while dealing with the submissions of the learned Senior Counsel for the petitioner. The process under Sections 82 and 83 Cr. P. C. appear to have been instituted on the conclusion of the Investigating Agency that the petitioner had been willfully evading his arrest. This by itself would not be an impediment in the petitioner approaching this Court with the present Application.

7. Mr. Karma Thinlay Namgyal, learned Additional Public Prosecutor, submitted that in view of the decision of the Honourable Supreme Court dated 31-8-2012 in Cri. Appeal No. 1331 of 2012 : Lavesh versus State (NCT of Delhi) the petitioner is not entitled to the relief of anticipatory bail in view of the proceedings under Sections 82 and 83 Cr. P.C. instituted against him. Specific reference has been

made by him on the following passage:-

"10. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and declared as "absconder". Normally, when the accused is "absconding" and declared as a "proclaimed offender", there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code is not entitled the relief of anticipatory relief."

8. The decision in Lavesch versus State (NCT of Delhi) cited at the bar would not be applicable in the facts and circumstances of the case. In that case which was under Section 302 IPC, the circumstances clearly indicate that the accused was not available for interrogation and, therefore, had been declared as an absconder. In the case at hand which obviously is not under Section 302 IPC, firstly, the petitioner has not been declared a proclaimed offender. Secondly, Sections 82 and 83 Cr. P. C. proceedings had been instituted by the Investigating Agency against the petitioner on its own conclusion that the applicant/petitioner was evading arrest. However, we have noted the submission of the learned senior counsel on behalf of the Petitioner that during the material time he was out of the country and I see no reason to disbelieve this statement at this stage. It is submitted on behalf of the petitioner that he shall render all possible assistance in ensuring progress in the investigation of the case and do everything possible on his part to co-operate with the Investigating Agency. In view of this submission and the fact that the necessity of the petitioner being interrogated in custody does not appear to exist, I am of the view that the petitioner cannot be denied with the relief being sought for by him in the present proceedings. There is no doubt the necessity of interrogating the petitioner for taking the investigation of the case forward, but for that purpose custody of the petitioner is not imperative in view of the changed circumstances.

9. For these reasons, the Application is allowed on the following terms and conditions:-

(i) The Applicant/Petitioner shall surrender before the Investigating Officer on 10-1-2013.

(ii) The Applicant/Petitioner shall be released on bail on his arrest by the Namchi Police Station on his furnishing a personal bond of Rs.1 lakh (Rupees one lakh) and a security bond of the like sum to the satisfaction of the learned Judicial Magistrate, (South) at Namchi.

(iii) He shall report to the I. O. as and when requisitioned by him for such period as, may be required.

(iv) He shall not leave station without permission of the I. O.

(v) He shall deposit his passport with the I. O. and shall not be released without the leave of this Court.

(vi) The Applicant/Petitioner shall be interrogated at day time during working hours.

(vii) He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case.

10. Considering the fairness of the Investigating Agency, this Court has the confidence that the petitioner shall not be subjected to undue harassment.

11. In the event of any of the terms and conditions as set out above being violated by the Applicant/Petitioner, it shall be open for the Investigating Officer to approach this Court for cancellation of the bail.

Petition allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com