

Dheeraj Singh Vs. State

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SooperKanoon Citation : sooperkanoon.com/701101

Court : Delhi

Decided On : Jul-05-2005

Reported in : 121(2005)DLT342; 2005(83)DRJ255

Judge : Badar Durrez Ahmed, J.

Acts : Indian Penal Code (IPC) - Sections 34, 120B, 307, 364A and 365; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 437(1) and 439

Appeal No. : Bail Application 2042/2004

Appellant : Dheeraj Singh

Respondent : State

Advocate for Def. : M.N. Dudeja, Adv.

Advocate for Pet/Ap. : R.N. Mittal and; Siddhartha Luthra, Adv

Judgement :

Badar Durrez Ahmed, J.

1. The Counsel for the parties were heard at length. The case of the prosecution is that Karan Radia (the abductee) received an SMS message on his mobile phone on 25.4.2003 from the petitioner asking him to come to Vasant Vihar on the next day. On 26.4.2003 the said Karan Radia reached Modern Bazar, Vasant Vihar

along with his driver Ram Kesh and friend Jyotin Bakshi at about 12 noon. The petitioner was at that time allegedly buying cinema tickets for himself and his wife. Karan Radia along with the petitioner thereafter went to Gurgaon in the petitioner's car as the petitioner wanted to show his office to Karan Radia. At Gurgaon the petitioner is alleged to have called one Shailender who came there but left the office at about 2 p.m. Thereafter the petitioner called co-accused Vijay who arrived at the office. The petitioner and Vijay allegedly tied up the hands, legs and taped the mouth of Karan Radia in the petitioner's office at Gurgaon and wrapped him in a plastic sheet and put him in the boot of the petitioner's car. They drove to Rewari to the petitioner's haveli there. After reaching the haveli, the car was parked inside the compound and the petitioner and Vijay went inside leaving Karan Radia in the boot of the car. Apparently, Karan found an opportunity and escaped through a window at about 6 p.m. It is alleged that Karan Radia removed the tape etc. and from the boot of the car (Opel Astra) he went inside the passenger compartment by pushing the back seat down and from there he escaped. It is alleged that he tried to contact his aunt but the call did not go through. He is alleged to have taken a lift from one Hari Kishan on a motor cycle to the Taxi Stand at Rewari. He hired a taxi from Rewari to Delhi, which unfortunately broke down at Gurgaon. From an STD booth in Gurgaon, it is alleged that, Karan Radia made a call to his Mausi (aunt) and informed her about his being abducted at about 8.20 p.m. Thereafter, Karan hired another taxi from Gurgaon and reached his residence it about 9 p.m. It is further alleged by the prosecution that the mobile phone of Karan Radia and one pistol with five live cartridges were recovered from the petitioner whereas a wrist watch of Karan Radia and one revolver with five live cartridges were recovered from the possession of the co-accused Vijay. It is also alleged that palm prints of Karan Radia were found from the boot of the car belonging to the petitioner. Co-accused Vijay refused T.I.P. Whereas the present petitioner was well known to the victim's family. It is further alleged that a ransom call was received by Smt. Neera Radia (mother of Karan Radia) at her office landline phone. The voice was that of an unknown male and it is further stated that the call could not be traced as no caller I.D. instrument was installed at the office.

2. The learned counsel for the State opposed the grant of bail on the ground that the petitioner has been charged of offences under Section 364A/365/307/120B/34

IPC and that some of these offences entail life imprisonment. The learned counsel for the State further submitted that Section 437(1) of the Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C.) mandates that a person shall not be released if there appear reasonable grounds for believing that he is related to an offence which is punishable with death or imprisonment for life. In support of this contention the following judgments of the Supreme Court were referred:

1. Gurcharan Singh and Others v. State (Delhi Administration): 1978 SCC (Cri.) 41.
2. The State of Maharashtra v. Ritesh S/O Vasudeo Wanjari: 2001 (2) Crimes 30 (SC).

According to the learned counsel for the State, 14 out of 27 witnesses have been examined and almost all the public witnesses except Shri Mast Ram Lohia, the petitioner's landlord and Jyotin Bakshi, Karan Radia's friend have been examined. He further submitted that the bail application moved by the co-accused Vijay Kumar has been dismissed twice by this Court and the Special Leave Petition which was preferred by the said co-accused Vijay Kumar has also been rejected by the Supreme Court. He further submitted that the witnesses so far produced have supported the case of the prosecution which reasonably links the involvement of the petitioner with the crime. therefore, according to the learned counsel for the State, it would be in the fitness of things, at this stage, to instead of granting the bail, give a direction to the trial Court to expedite and conclude the trial within a specified time frame and that the prosecution would fully comply with the orders.

3. The learned counsel for the State further submitted that since the crime is heinous and some of the public witnesses are yet to be examined the prosecution has strong apprehensions that in the event of the release of the accused on bail, there is every likelihood of his influencing the witnesses which would seriously prejudice the case of the prosecution. To substantiate this claim, it is stated that two vital prosecution witnesses turned hostile while co-accused Vijay Kumar was on interim bail from the Trial Court (i.e., the STD Operator Rishi and Taxi Driver Om Prakash of Gurgaon.).

4. Mr Mittal, the learned counsel for the petitioner submitted that this is a fit case in which the petitioner ought to be released on bail. He submitted that the petitioner has been in custody since 24th April, 2003. 14 witnesses out of the 27 witnesses have been examined and the only public witness, who remains to be examined is the landlord of the petitioner's office whose evidence is not disputed by the petitioner inasmuch as it is admitted that the petitioner's office premises has been let out by the said landlord to the petitioner. therefore, according to Mr Mittal, there is no chance of tampering with any evidence. Furthermore, he submits that the petitioner has roots in society and has no chance for fleeing from justice. As regards the alleged offence and the petitioner's connection therewith, the learned counsel made detailed submissions to try and point out the contradictions and holes in the prosecution's case. Some of his arguments are as follows:

4.1 Mr Mittal submitted that the basis and foundation of the alleged crime was the receipt of an SMS message on 25.4.2003 by Karan Radia on his mobile phone from the petitioner. He referred to the records of the mobile phone of the petitioner and of Karan Radia to show that while there is an SMS in the petitioner's mobile, there is no corresponding SMS in Karan Radia's mobile and the timings also do not match. He further submitted that call allegedly made by Karan Radia on the landline (MTNL) from his friend's telephone is not established. The said 'friend' has not been made a witness and there is no evidence to show the number from where the call was made.

4.2 He further submitted that PW4 Neera Radia claims to have received a phone call at about 6 p.m. on her MTNL No. 24640364 which, according to her, had no Caller I.D., from a person whose voice she could not recognise but, she suspected it to be that of the said Shailender. However, Shailender has not been made an accused in this case. The learned counsel also pointed out that the MTNL had certified that on the date in question, i.e. 26.4.2003, there was, in fact, a Caller ID facility available of the said phone No. 24640364. This, according to the learned counsel for the petitioner falsifies the statement of PW 4 Neera Radia. He further submitted that there is no specific demand of money and there is no evidence in this case as to who made the alleged call for ransom even if it is considered to be a ransom call. There is no allegation that the petitioner or his co-accused Vijay

Kumar made such a call and, the learned counsel pointed out that Karan Radia had stated in Court that he did not see the word 'ransom' on any occasion prior to his statement in examination-in-chief and that he had informed his aunt (Karuna), PW6 that he had been kidnapped by Dhiraj and that Dhiraj tried to kill him and had escaped. According to the learned counsel for the petitioner, in this statement also, the element of ransom is missing. However, the question of ransom has been introduced in the statement of Karuna PW6 and Neera Radia PW4 but, such statements attributing a demand for ransom would not be admissible inasmuch as Karan himself did not make any such statement. It is further submitted that Karan Radia had already escaped by 6 p.m. and, therefore, there was no occasion to demand ransom by anyone. There is no allegation that from 12 noon to 6 pm, when Karan was allegedly under captivity any demand for ransom was made. He further raised the question that Karan Radia having gone to Vasant Kunj on receipt of the SMS message and having accompanied the petitioner to Gurgaon freely, where was the need to tie his hands and legs and tape his mouth? The learned counsel also raised doubts with regard to the palm prints allegedly recovered from the boot of the petitioner's car by stating that if the fingers were bandaged, there was no possibility of such prints being available. He further stated that no medical examination was done at the house. However, some abrasion on the hands which are suggestive of some struggle were said to be found by Dr. Dua. The learned counsel for the petitioner at so laid stress on the fact that Karan's mother Neera Radia (PW4) is said to have stated that the petitioner was only an employee and a paid Director in her company and nothing more but, the facts and particularly the video cassette and photographs disclose a different story. The video cassette was produced in Court and I also had occasion to see the same. The learned counsel had produced the said video cassette to establish his claim that there was intimacy between Neera Radia and the petitioner and they had even lived together in one room. He submitted that the insurance application which she has signed as a nominee mentioned her as 'wife of the petitioner'. This factum was relied upon by the counsel for the petitioner to attempt at showing that the testimony of Neera Radia (PW4) cannot be believed and that the petitioner has been falsely implicated. He further submitted that the circumstances also raise doubts as to whether such an incident ever happened. According to him, there was not hone

call made to the PCR or to the local police and that the Rukka shows that ACP Crime Branch and Inspector Rajendra Bakshi had reached the house of Neera Radia and undertook the investigations themselves without any orders of the SHO of the police station concerned. This, according to the learned counsel for the petitioner, is illegal and unusual and shows strong influence of some other person, who according to him, was a Minister in the Union Cabinet with whom the said Neera Radia had also developed some relationship.

4.3 On law, the learned counsel for the petitioner submitted that the offence under Section 364A was not made out even if the entire prosecution evidence is accepted. He submits that there was no 'ransom demand' in the present case. He relied upon the decision of the Division Bench of this Court in the case of Netra Pal v. State (NCT OF DELHI): : 91(2001)DLT40 . In that case the facts were that Master Tanu Johri was kidnapped by the accused who had wrongfully confined him. It was established on record that the accused therein took master Tanu to his village at Bilgari. It was also proved that the letter purported to be for the ransom claim for Rs 50,000/- (Ext. P1) was recovered from the possession of the accused that he was apprehended. The only point for consideration in that case was whether this letter (Ext. P-1) recovered from accused would constitute a demand 'to pay a ransom'. The Division Bench observed as under:-

'6. The bare reading of Section 364-A, IPC, which is reproduced as under, indicates that kidnapping for ransom would be attracted when the kidnapper makes a demand to pay a ransom.

'364-A. Kidnapping for ransom, etc. -- Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and 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 causes, hurt or death to such person in order to compel the Government or [any foreign State or international, inter-governmental organisation or any other person] to do or abstain from doing any act to lay a ransom, shall be punishable with death or imprisonment for life and shall also be liable to fine'. 7. therefore, the question for consideration is what does the words 'to pay a ransom' stand for? Does it mean

that kidnapping or abduction with the intention to demand ransom is sufficient to cover the prosecution case under Section 364-A or such a demand has to be translated into action by communicating the demand either by post or by contact.

8. As already pointed out above to attract the provisions of Section 364-A, IPC, prosecution has to prove that the accused kidnapped or abducted the child, kept him under detention after such kidnapping and that the kidnapping was for ransom. So far as kidnapping and detention is concerned those have been established in the facts of this case. But by mere recovery of letter Ex.P-1 purported to have been written by the accused indicating a demand of Rs.50,000/- by itself, to our mind, would not be covered under the expression 'to pay a ransom'. For the purpose of getting paid a ransom a demand has to be made and communicated. Unless the price of retrieval or rescue is made the question to pay a ransom would not arise. therefore, the essential ingredient to attract the provisions of Section 364-A is that there has to be a demand by the kidnapper on the complainant or any of his relations asking for the payment of ransom. 'To pay' means to set in motion the demand for payment. Demand cannot be by keeping the letter in one's pocket. It has to be communicated to the person from whom the demand to pay is made. Unless that is done prosecution cannot succeed in covering its case under Section 364-A. In the case in hand neither the demand was raised on the family of the kidnapped boy nor communicated. therefore, mere writing a letter and keeping it in his pocket would not tantamount to be a demand to pay ransom.'

Mr Mittal, the learned counsel for the petitioner submitted that in the present case also, there is no demand for ransom. therefore, according to him, a case under Section 364A cannot be made out against the present petitioner. He further submitted that the considerations which are to be weighed by a Court considering an application for grant of bail in non-bailable offences has been set out in the case of Jayendra Saraswathi Swamigal v. State of Tamil Nadu: (2005) 2 SCC 13. Reference was also made to paragraph 16 of the said judgment. It appears that the learned counsel for the Respondent (State of Tamil Nadu) in that case, while opposing the grant of bail, had submitted that the prohibition contained in Section 437(1)(i) Cr.P.C. to the effect that an accused shall not be released on bail, if there

appear to be a reasonable ground for believing that such person is guilty of an offence punishable with death or imprisonment of life, was also applicable to the Courts entertaining bail petitions under Section 439 Cr.P.C. In support of this submission, he had placed strong reliance on the recent decision of the Supreme Court in the case of Kalyan Chandra Sarkar v. Rajesh Ranjan: : 2004 CriLJ1796 . In this context, the Supreme Court in Jayendra Saraswathi (Supra) case observed as under:

'The considerations which normally weigh with the court in granting bail in non-bailable offences have been explained by this Court in State v. Capt. Jagjit Singh and Gurcharan Singh v. State (Delhi Admn.) and basically they are 'the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case. The case of Kalyan Chandra Sarkar was decided on its own peculiar facts where the accused had made seven applications for bail before the High Court, all of which were rejected except the fifth one which order was also set aside in appeal before this Court. The eighth bail application of the accused was granted by the High Court which order was the subject-matter of challenge before this Court. The observations made therein cannot have general application so as to apply in every case including the present one wherein the Court is hearing the matter for the first time.'

5. The learned counsel for the Complainant was also heard and he reiterated the stand taken by the counsel for the State. He submitted that a clear case under Section 364A IPC had been made out as the said Karan Radia was abducted and detained in the boot of the petitioner's car after he had been tied. His palm-prints and finger prints were found in the boot of the petitioner's car and demand of ransom was clearly conveyed to Karan's mother regarding which she had deposed clearly. According to the learned counsel, there was a phone call to Neera Radia asking her to get ready to arrange cash for the safe release of Karan and non-cooperation would have resulted in Karan being killed. Apparently, Karan escaped.

So the specific demand for ransom could not be repeated. He submitted that the decision in Netrapal's case (Supra) does not support the petitioner as in the present case the demand had clearly been conveyed to Karan Radia's mother on telephone around 6 p.m. on 26.4.2003 whereas in that case the ransom letter remained with the accused, not having been conveyed to the person from whom the demand was to be made. He further submitted that the offence under Section 307 IPC was also clearly made out. He opposed the grant of bail also on the ground that important public witnesses were yet to be examined who are from the area of the petitioner and they are likely to be influenced because when co-accused Vijay was granted interim bail, during that period, two prosecution witnesses turned hostile. So, according to him, there is every likelihood that if the petitioner is released on bail, there would be possibility of tampering with the prosecution evidence. It was further submitted that the trial is nearing its end and any observation on merits of the case, either way, is likely to prejudice the case of either side. thereforee, he submitted that the prayer for bail ought to be rejected.

6. In *Mallesh v. State Of Karnataka*: : 2004 CriLJ4645 the Supreme Court observed:-

'The offence of abduction is a continuing offence. This section was amended in 1992 by Act 42 of 1993 with effect from 22-5-1993 and it was subsequently amended in 1995 by Act 24 of 1995 with effect from 26-5-1995. The section provides punishment for kidnapping, abduction or detaining for ransom.

To attract the provisions of Section 364-A what is required to be proved is : (1) that the accused kidnapped or abducted the person; (2) kept him under detention after such kidnapping and abduction; and (5) that the kidnapping or abduction was for ransom Strong reliance was placed on a decision of the Delhi High Court in *Netra Pal v. State (NCT of Delhi)* : 91(2001)DLT40) to contend that since the ransom demand was not conveyed to the father of PW 2, the intention to demand was not fulfilled.

To pay a ransom as per Black's Law Dictionary means 'to pay price or demand for ransom'. The word 'demand' means 'to claim as one's due'; 'to require'; 'to ask relief'; 'to summon'; 'to call in court'; 'an imperative request preferred by one

person to another, under a claim of right, requiring the latter to do or yield something or to abstain from some act'; 'an asking with authority, claiming or challenging as due'. The definition as pointed out above would show that the demand has to be communicated. It is an imperative request or a claim made.'

7. From the decisions in the cases of Netrapal (supra) and Malleshi (supra), it becomes abundantly clear that before an offence can be said to be covered under Section 364A IPC, there must be the factum of kidnapping or abduction and that such kidnapping or abduction must be for a ransom. The demand for ransom is also required to have been conveyed. In Netrapal's case (supra), the ransom note or letter was kept with the kidnapper and had not been communicated to the person from whom the demand was proposed to be made. In the facts of the present case, it was argued by the learned counsel for the petitioner that, first of all, no demand for ransom was made to the abductee (Karan Radia). Furthermore, the alleged phone call received by PW4 (Neera Radi) did not contain any demand for any specific sum of money, even if it were to be believed that such a call was, in fact, made. thereforee, it would clearly be a case which does not fall under Section 364A IPC. Whether the offence falls under Section

4A or not is a matter which has to be decided in the trial of the case. For the purposes of bail, as pointed out in Jayendra Saraswathi's case (supra), one has to look at the nature and seriousness of the offence, the character of the offence, circumstances which are peculiar to the accused etc. Examining the character of the offence as well as the circumstances which are peculiar to the accused, at this prima facie stage, one cannot with any degree of certainty say that an offence under Section 364A IPC has definitely been committed. thereforee, when reasonable doubts, prima facie appear in the matter, the bail application has to be considered from the stand point of normal circumstances such as a reasonable possibility of the presence of the accused not being secured at the trial, reasonable apprehension of witnesses being tampered with and larger interest of the public or the State. In this context, it appears that the petitioner has roots in society and, thereforee, there does seem to be any possibility of the accused fleeing from justice. He also does not have any antecedent criminal history. Insofar as the apprehension of tampering with the witnesses is concerned, as mentioned

hereinabove, only two public witnesses remain to be examined. They are the petitioner's landlord Shri Mast Ram Lohia and Karan Radia's friend Jyotin Bakshi. Insofar as Shri Mast Ram Lohia is concerned, there is no question of the petitioner influencing him inasmuch as the learned counsel for the petitioner stated that it was admitted that the petitioner's office premises had been let out by the said Mr Lohia to the petitioner. As regards the other witness i.e. Jyotin Bakshi, he is a friend of Karan Radia and, therefore, this apprehension is also unfounded.

8. Under these circumstances, the petitioner, already having been in custody since 27.4.2003, is entitled to be released on bail. Accordingly, I direct that the petitioner be released on bail on his furnishing a personal bond in the sum of Rs 1,00,000/- with one surety of the like amount to the satisfaction of the concerned Court. The petitioner shall not attempt at influencing any of the witnesses nor shall he attempt at establishing any contact with the complainant and/or the family members of the complainant. The petitioner shall not leave India without the prior permission of the trial Court. It is also made clear that observations made in this order are only prima facie in nature and solely for the purposes of this bail application. They are not to be considered at the trial of the case. dusty