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State Vs. Ankush

FIR No.137/2020

PS: Rajender Nagar

11.09.2020

Matter heard through VCC over Cisco Webex.

Case is taken up in view of Circular No. 23456-23616 DJ(HQ)/Covid lockdown/Physical Courts Roster/2020 dated 30.08.2020 issued by Ld. District & Sessions Judge (HQ).

Present: Sh. Vakil Ahmed Ld. APP for State

Sh. Anjum Kumar Ld. Counsel for applicant

IO/ASI Daryao Singh in person

The present application was filed on behalf of the applicant on email id of this court.

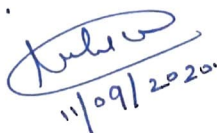
Counsel for applicant submits that accused Ankush is detained in judicial custody in present case and on 28.08.2020, the directions were issued for supplying copy of charge sheet to accused through concerned Jail Superintendent. It is averred that due to ongoing Covid-19 pandemic situation, the mother of accused was not permitted to meet the accused and hence she could not take copy of charge sheet from him. It is submitted that counsel for accused requires the copy of charge sheet for drafting bail application. With these submissions, prayer is made for issuing directions to IO for supplying copy of charge sheet to counsel for applicant/accused, through email.

Heard. Record perused.

In view of averments made in the application and also keeping in view the fact that counsel for accused requires the copy of charge sheet for purpose of drafting bail application for accused, the prayer made by applicant is accepted and present application is allowed.

IO/SHO concerned is directed to supply the copy of charge sheet (in pdf form) to the counsel for applicant through email on anjumadvocate@hotmail.com (as stated in the application), within 1 day.

Application is accordingly disposed off.


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Scanned copy of this order be sent to counsel for applicant through email. One copy be also sent to IO/SHO concerned, for necessary information and compliance. Scanned copy of the order be also sent to Computer Branch for uploading on Delhi District Court Website.



(RISHABH KAPOOR)

MM-03 (Central), THC, Delhi

11.09.2020

Gaurav Vs. NCT of Delhi

FIR No.200/2020

PS: Rajinder Nagar

11.09.2020

Matter heard through VCC over Cisco Webex.

Case is taken up in view of Circular No. 23456-23616 DJ(HQ)/Covid lockdown/Physical Courts Roster/2020 dated 30.08.2020 issued by Ld. District & Sessions Judge (HQ).

Present: Sh. Vakil Ahmed Ld. APP for State

Sh. G.L Soni Ld. Counsel for applicant

IO/SI Ali Akram in person

The present urgent application was filed on behalf of the applicant on email id of this court.

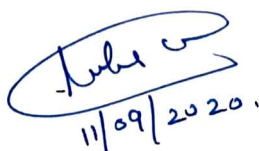
Scanned copy of reply of under the signatures of IO/SI Ali Akram, is received through email id of the court. Copy of same is already supplied to counsel of applicant/accused, through email.

Counsel for applicant submits that in head note of the present application, the name of accused is inadvertently mentioned as Keshav Kumar, instead of Gaurav and such inadvertent error may be condoned. Counsel for applicant has also sent a statement to such effect, through email.

Heard. Record perused.

This order shall dispose off the application for grant of bail u/s 437 Cr.PC, moved on behalf of ***applicant/accused Gaurav.***

It is stated that the applicant is innocent and has been falsely implicated in the present case. It is further averred that the custodial interrogation of the applicant/accused is no more required, nor any recovery is left to be effected from him. It is further averred that applicant is a young person ageing 18 years and is


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having clean previous antecedents. With these averments prayer is made for enlarging applicant on bail.

Ld. APP for State has opposed the present application citing seriousness of allegations and made a prayer for dismissal of the present application.

In the present case, the applicant was arrested for the offences u/s 356/379/411 IPC. As per reply filed by IO/SI Ali Akram, the recovery of alleged mobile phone has already been effected in the present case. It is also conceded that complicity of accused in another case FIR No.194/2020 PS Rajender Nagar, was found pursuant to disclosure made in present case FIR and applicant/accused is having no other previous criminal antecedents. As the recovery of the case property has already been effected from the accused, coupled with the fact that the accused has no previous criminal antecedents, therefore, there does not exist any apprehension that if enlarged on bail, he will commit offences of like nature or will dissuade the prosecution witnesses. Further, the trial of the case would take a long time and till then the liberty of the accused cannot be curtailed, when his custody is as such not required for the investigation purposes. Even otherwise also, the presence of the accused during the course of remaining investigation, if any, as well as during trial can be ensured by taking sufficient sureties undertaking to ensure his presence. If so, in the circumstances, I am of the view that there exists no ground in further curtailing the liberty of the applicant/accused.

At this juncture, it is also pertinent to cite the observations made by the Hon'ble apex court **In Sanjay Chandra versus CBI (2012) 1SCC 40**, wherein it was observed that the courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at trial but in such cases, necessity is the operative test. The Hon'ble Apex court further observed that in this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and that it would be improper for any court to refuse bail as a mark of this approval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for purpose of giving him a taste of imprisonment as a lesson.


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In the light of the discussion made above, I am of the view that the contentions of the prosecution appears to be untenable and as such, there exists no reasonable justification, in not enlarging the applicant/accused, on bail. Accordingly, the accused/applicant Gaurav is hereby ordered to be enlarged on bail, subject to following conditions;

1. That the applicant shall furnish personal and surety bonds in the sum of **sum of Rs.15,000/- each**, to the satisfaction of **Ld. Duty MM (on court duty)**.
2. That the applicant shall make himself available as and when required to do so by the investigating agency or the police;
3. That the applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing any facts to the court or the police;
4. That the applicant shall not tamper with the prosecution evidence nor he will try to win over the prosecution witnesses or terrorize them in any manner; and
5. That the applicant shall not deliberately and intentionally act in a manner which may tend to delay the investigation and trial of the case.
6. That the applicant shall not leave the territories of India during the pendency of present case proceedings except with the permission of the court.

The application is accordingly disposed of.

Scanned copy of this order be sent to the Ld. Counsel for applicant through email. One copy be also sent to concerned Jail Superintendent through all permissible modes including email at daksection.tihar@gov.in , for necessary information and compliance.

Scanned copy of the order be also sent to Computer Branch for uploading on Delhi District Court Website.


(RISHABH KAPOOR)
MM-03 (Central), THC, Delhi
11.09.2020

J.K Tyre & Industries Vs. SHO P.S I.P Estate

CC No.4551/2017

PS: I.P Estate

11.09.2020

Matter heard through VCC over Cisco Webex.

Case is taken up in view of Circular No. 23456-23616 DJ(HQ)/Covid lockdown/Physical Courts Roster/2020 dated 30.08.2020 issued by Ld. District & Sessions Judge (HQ).

Present: Sh. Hemant Gupta Ld. Counsel for complainant

Matter was listed for clarifications/ orders on application u/s 156(3) Cr.PC., today. No clarifications are required.

This order shall dispose off an application U/S 156 (3) Cr.PC moved on behalf of complainant. The allegations levelled by complainant are that in October, 2014, complainant company engaged accused Devesh Dabas for the work relating to Off the road tyres. In March, 2015, accused Devesh Dabas introduced a firm namely M/S Tirupati Balaji Consultants with the complainant company, projecting that the said firm was having specialized knowledge and expertise of handling the on ground service for Off the road tyres. On the basis of feedback and recommendations given by the accused Devesh Dabas, complainant company entered into an agreement with M/S Tirupati Balaji Consultants. It is alleged that the complainant came to know that the said firm was a fictitious entity introduced by the accused Devesh Dabas so as to pocket the huge amounts paid by the complainant company. It is also alleged that the accused Devesh Dabas projected one Paramjeet Singh to be the Senior General Manager of the said firm so as to derive the bounty of fraud. Allegedly, accused Devesh Dabas used to get the invoices and bills of the aforesaid firm raised against the complainant company and such bills were forwarded by accused himself after making the noting in capacity of the head of the department, thereby, causing realization of around Rs. 1.93 crores from the complainant company. It is alleged that accused Devesh Dabas made the authorized signatory of complainant to sign the agreement dated 01.04.2015 with said firm M/S Tirupati Balaji Consultants, by making false representations qua its existence. It is also alleged that the wife of accused namely Jasleen Kaur, sister of

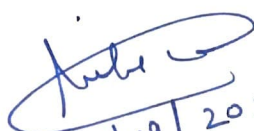

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accused namely Divya Dabas and mother of accused namely Krishna Dabas, have also received proceeds from the money credited in the bank account of M/S Tirupati Balaji Consultants. It is also stated that the complainant company acquired knowledge that the address of M/S Tirupati Balaji firm at Tilak Nagar, was also fake as there is an office of one Chartered Accountant namely, Jatinder Kumar Bharara, running from that address. It is alleged that said Jatinder Kumar Bharara has also acted in connivance with accused persons by collecting the communications made by complainant company to M/S Tirupati Balaji Consultants. It is further alleged that despite complaint dated 22.12.2016 made to SHO P.S. I.P. Estate and complaint dated 01.02.2017 made to Commissioner of Police, no action has been taken by the police. With these allegations, complainant has sought registration of case FIR for registration of case FIR u/s 409/420/427/120B IPC against accused persons.

In the present case, ATRs dated 16.05.2017, 16.09.2017, 25.11.2017, 03.02.2018, 17.03.2018 and 21.03.2020 were filed by the Enquiry Officer.

As per the ATRs filed by the enquiry officer, commission of no cognizable offence was found in the present case. In ATR dated 16.05.2017, it has been stated that upon inquiry, it was transpired that prior to M/S Tirupati Balaji Consultants, complainant company was working with one Surya Kiran Corporation which joined a competitor company namely Apollo Tyres and on the recommendation of said Surya Kiran Corporation, complainant company entered into agreement with M/S Tirupati Balaji Consultants. Thus, the allegations that M/S Tirupati Balaji Consultants was introduced to complainant company by accused Devesh Dabas, are wrong. In this regard, it is pertinent to mention that as per this ATR, since it transpires that Surya Kiran Corporation had joined the complainant's competitor firm i.e Apollo Tyres, after severing its ties with the complainant, therefore, it becomes questionable as to why a firm making alliance with a competitor company would recommend another firm as its replacement. Conversely, it is also highly improbable for an established entity like complainant company to act on advise of a firm which lately severed its ties with complainant and joined hands with a rival company. In this ATR, it is also stated that the allegation of complainant company that it was unaware about obtaining services from Surya Kiran Corporation despite the agreement with M/S Tirupati Balaji Consultants, are also wrong as the service reports sent to complainant were having logos of both Surya Kiran Corporation as well as M/S Tirupati Balaji Consultants. In this regard, on bare perusal of agreement dated 01.04.2015, it clearly emerges that such agreement was a bi-partite agreement covenanted between complainant and M/S Tirupati Balaji Consultants and outsourcing of services to any third firm was never covenanted between the parties. These facts requires a thorough probe to be made by the police.

Further, in ATR dated 17.03.2018, the Inquiry Officer has conceded that upon analysis of bank accounts of M/S Tirupati Balaji Consultants, it was transpired that


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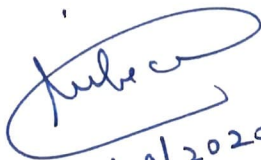
many times, huge amounts have been withdrawn from bank by Divya Dabas and Jasleen Kaur. It is further stated that Divya Dabas is the sister of accused Devesh Dabas and she along with Jasleen Kaur were partners in M/S Tirupati Balaji Consultants and such partnership was formed vide agreement dated 24.03.2015. In this regard, it becomes important to advert to date of execution of the service provider agreement between complainant company and M/S Tirupati Balaji Consultants. Such agreement was executed on 01.04.2015 i.e. a week after the alleged partnership between Divya Dabas and Jasleen Kaur creating Tirupati Balaji Consultants firm, was formed. This prima facie points that said partnership was formed on the basis of insider knowledge of the accused Devesh Dabas relating to the affairs of complainant company just prior to the contemplated agreement with regard to Off the road tyres. Further, during the course of inquiry, the address of the M/S Tirupati Balaji Consultants firm was not verified by the Enquiry Officer nor any attempt was made to inquire into allegations regarding complicity of CA Jatinder Kumar Bharara in the alleged offences. These facts also requires a thorough probe to be conducted by the investigating agency.

Further, in ATR dated 21.03.2020, it has been stated that disputes between the parties were of civil nature and were arbitrable as per clause no. 12 of the agreement. However, the basis of this conclusion arrived by Inquiry Officer, also appears to be misplaced. The careful perusal of case record would reveal that the complainant company has made payment of around Rs. 1.93 crores to M/S Tirupati Balaji Consultants between 03.06.2015 to 08.05.2016. The complainant has placed on record its bank account statements establishing such payments made by the company.

The above discussion clearly suggests that the material available on record is prima facie pointing at commission of cognizable offences by accused persons and in this regard the mandate of law requires the investigating agency to proceed with investigation.

More specifically, in **Lallan Chaudhary v. State of Bihar AIR 2006 SC 3376** it was held that the mandate of S. 154 is manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station, such police officer has no other option but to register the case on the basis of such information.

This question was also discussed in detail by the Hon'ble Supreme Court in the case of **Lalita Kumari v. Govt. of U.P AIR 2014 SC 187** wherein it was held that registration of FIR is mandatory under S. 154 of Cr.PC, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.


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S. 154 uses the word 'shall' which in its ordinary significance is mandatory and the court shall ordinarily give that interpretation to that term unless such an interpretation leads to some absurd or inconvenient consequence or be at variance with the intent of the legislature. Although S. 154(3) makes a provision to approach the higher police officer for the purpose of getting his complaint registered as an FIR in case a complaint is not registered by the officer in charge, it does not force the court to give a purposive interpretation of the impugned section considering that the wording of the section is clear and unambiguous.

The aforesaid discussion would suggest that complainant has substantiated his allegations with the material available on record, prima facie disclosing that accused Devesh Dabas in connivance with other accused persons defrauded the complainant company and caused wrongful loss of huge sum of money.

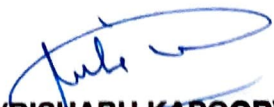
Accordingly, the present application stands allowed. SHO concerned is directed to register the case FIR against accused persons under appropriate provisions of law and conduct the investigation in accordance with law.

Put up for filing of compliance report on 8.12.2020.

Let notice of contempt application dated 01.06.2019 be also issued to Enquiry Office SI Pradeep Sharma for next date.

Scanned copy of this order be uploaded on CIS. One copy be also sent to the Ld. Counsel for complainant, through email.

Scanned copy of the order be also sent to Computer Branch for uploading on Delhi District Court Website.



(RISHABH KAPOOR)

MM-03 (Central), THC, Delhi
11.09.2020

Vikas Meena Vs. Chanchal Rani & Ors.

CC No.5008/2020

PS: I.P Estate

11.09.2020

Matter heard through VCC over Cisco Webex.

Case is taken up in view of Circular No. 23456-23616 DJ(HQ)/Covid lockdown/Physical Courts Roster/2020 dated 30.08.2020 issued by Ld. District & Sessions Judge (HQ).

Present: Sh. Rajesh Gehlawat Ld. Counsel for complainant

Heard. Record perused.

The perusal of case record would reveal that allegations levelled by the complainant would revolve around the offences u/s 500/501 IPC.

In case titled as **Rahul Gandhi Vs. Rajesh Mahadev Kunte SLP (Crl.) No. 3749/2015**, Hon'ble Apex Court has observed that Police has no role in criminal defamation. It cannot lodge an FIR and a Magistrate cannot seek an inquiry report from police under sections 156(3) Cr.PC and 202 of Code of Criminal Procedure. The Magistrate has himself to make inquiry into the allegations. It was also observed that magistrate cannot ask the police to investigate private criminal defamation complaint as it is the complainant who needs to prove his case.

In the light of discussion made above, the application u/s 156(3) Cr.PC. moved by complainant, stands dismissed as not maintainable.

Application is accordingly disposed off.

Put up for PSE on complaint u/s 200 Cr.PC on 05.10.2020.

Scanned copy of this order be uploaded on CIS. One copy be also sent to the Ld. Counsel for complainant, through email.

Scanned copy of the order be also sent to Computer Branch for uploading on Delhi District Court Website.


(RISHABH-KAPOOR)

MM-03 (Central), THC, Delhi

11.09.2020

State Vs. Rajesh Singh

FIR No.196/2020

PS: I.P Estate

11.09.2020

Matter heard through VCC over Cisco Webex.

Case is taken up in view of Circular No. 23456-23616 DJ(HQ)/Covid lockdown/Physical Courts Roster/2020 dated 30.08.2020 issued by Ld. District & Sessions Judge (HQ).

Present: Sh. Vakil Ahmed Ld. APP for State

Sh. Narender Singh Ld. Counsel for applicant

IO/HC Sushil Kumar in person

The present urgent application was filed on behalf of the applicant on email id of this court.

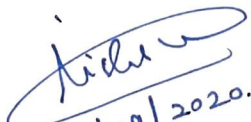
Scanned copy of reply of under the signatures of IO/HC Sushil Kumar, is received through email id of the court. Copy of same is already supplied to counsel of applicant/accused, through email.

Heard. Record perused.

This order shall dispose off the application for grant of bail u/s 437 Cr.PC, moved on behalf of ***applicant/accused Rajesh Singh.***

It is stated that the applicant is innocent and has been falsely implicated in the present case. It is further averred that the custodial interrogation of the applicant/accused is no more required, nor any recovery is left to be effected from him. With these averments prayer is made for enlarging applicant on bail.

Ld. APP for State has opposed the present application citing seriousness of allegations and made a prayer for dismissal of the present application.

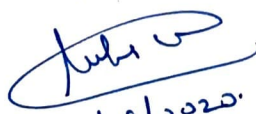

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IO submits that recovery of the alleged mobile phone has already been effected in the present case by officials of special staff. However, IO is yet to effect seizure of the case property in present case.

Upon query made by the Court, IO could not render any plausible explanation as to why he has not effected seizure of case property till date, despite its recovery by the Special Staff on 22.08.2020.

In the present case, the applicant was arrested for the offences u/s 379/411 IPC. As per reply filed by IO/HC Sushil Kumar, the recovery of alleged mobile phone has already been effected in the present case. The perusal of previous conviction/involvement report appended with reply, would reveal that applicant/accused is having no other previous criminal antecedents. As the recovery of the case property has already been effected from the accused, coupled with the fact that the accused has no previous criminal antecedents, therefore, there does not exist any apprehension that if enlarged on bail, he will commit offences of like nature or will dissuade the prosecution witnesses. Further, the trial of the case would take a long time and till then the liberty of the accused cannot be curtailed, when his custody is as such not required for the investigation purposes. Even otherwise also, the presence of the accused during the course of remaining investigation, if any, as well as during trial can be ensured by taking sufficient sureties undertaking to ensure his presence. If so, in the circumstances, I am of the view that there exists no ground in further curtailing the liberty of the applicant/accused.

At this juncture, it is also pertinent to cite the observations made by the Hon'ble apex court **In Sanjay Chandra versus CBI (2012) 1SCC 40**, wherein it was observed that the courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at trial but in such cases, necessity is the operative test. The Hon'ble Apex court further observed that in this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and that


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it would be improper for any court to refuse bail as a mark of this approval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for purpose of giving him a taste of imprisonment as a lesson.

In the light of the discussion made above, I am of the view that the contentions of the prosecution appears to be untenable and as such, there exists no reasonable justification, in not enlarging the applicant/accused, on bail. Accordingly, the accused/applicant Rajesh Singh is hereby ordered to be enlarged on bail, subject to following conditions;

1. That the applicant shall furnish personal and surety bonds in the sum of **sum of Rs.15,000/- each**, to the satisfaction of **Ld. Duty MM (on court duty)**.
2. That the applicant shall make himself available as and when required to do so by the investigating agency or the police;
3. That the applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing any facts to the court or the police;
4. That the applicant shall not tamper with the prosecution evidence nor he will try to win over the prosecution witnesses or terrorize them in any manner; and
5. That the applicant shall not deliberately and intentionally act in a manner which may tend to delay the investigation and trial of the case.
6. That the applicant shall not leave the territories of India during the pendency of present case proceedings except with the permission of the court.

The application is accordingly disposed of.

Scanned copy of this order be sent to the Ld. Counsel for applicant through email. One copy be also sent to concerned Jail Superintendent through all permissible modes including email at daksection.tihar@gov.in , for necessary information and compliance.

Scanned copy of the order be also sent to Computer Branch for uploading on Delhi District Court Website.



(RISHABH KAPOOR)

MM-03 (Central), THC, Delhi

11.09.2020