

State vs. Akash @ Hunny

CNR No.: DLCT01-018221-2021

SC No. 748/2021

FIR No. 30/2021

Under Section 364A/377/419/347/120B IPC & 25/27 Arms Act

PS Darya Ganj

13.01.2023

Present : Mr. Amit Dabas, Ld. Addl. PP for the State.
Mr. Bharat Dubey, Advocate for the accused,
namely, Akash @ Hunny.

ORDER

1. This is an application under Section 439 of 'The Code of Criminal Procedure, 1973' (Hereinafter referred to as '**Cr.P.C.**') for seeking regular bail in respect of the accused, namely, Akash @ Hunny (Hereinafter referred to as '**the applicant**').

2. Ld. Counsel for the applicant contended that the applicant is in judicial custody since 01.02.2021. He contended that the applicant was falsely implicated in this case. He contended that the applicant was not apprehended at the place of recovery of the victim. He contended that no recovery was effected from the applicant. He contended that the applicant was implicated in this case on the basis of disclosure statements of the co-accused persons. He contended that there is no conversation between the applicant and the co-accused persons. He contended that only evidence against the applicant is that the kidnappers made a call to some person that they had abducted the victim and the victim recognized incoming voice on mobile phone as that of the applicant.

3. Ld. Counsel for the applicant contended that no voice sample of the applicant was taken. He contended that the applicant deserves to be released on bail.

4. Ld. Addl. PP for the State contended that 1st application under Section 439 Cr.P.C. for regular bail filed by the applicant was dismissed on merits *vide* order dated 21.05.2022. He contended that there is no material change in circumstance. He contended that this is a serious case of kidnapping for ransom and the applicant was mastermind of the said incident. He contended that the applicant is involved in several criminal cases. He contended that the applicant does not deserve to be released on bail.

5. As regards law on consideration of successive bail application, it can be noted that in ***Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav and Another***, (2004) 7 SCC 528, Hon'ble Supreme Court of India held, as under:

“12. In regard to cases where earlier bail applications have been rejected there is a further onus on the court to consider the subsequent application for grant of bail by noticing the grounds on which earlier bail applications have been rejected and after such consideration if the court is of the opinion that bail has to be granted then the said court will have to give specific reasons why in spite of such earlier rejection the subsequent application for bail should be granted.”

6. 1st application under Section 439 Cr.P.C. for grant of regular bail was dismissed *vide* order dated 21.05.2022. Relevant part of the said order is as under:

“In the present case, charge-sheet has been filed for the offences u/s. 364-A/377/419/347/120-B IPC & 25/27 Arms Act against the accused persons.

As per case of the prosecution, the victim was kidnapped for ransom at the instance of the accused Akash @ Hunny by other co-accused persons.

Allegations against the accused are serious in nature. In the present case, FSL result and sanction under Section 39 Arms Act are stated to be pending. In the present case, charge is yet to be framed and complainant/victim/public witnesses are yet to be examined. If the accused is released on bail, there is possibility that accused may influence the witnesses or tamper with the evidence. Accused is stated to be a habitual offender and he is stated to be involved in other criminal cases also.

The contentions of counsel for the accused Akash @ Hunny that the accused has been falsely implicated in the present case and there is no incriminating evidence against him is not tenable at this stage as it is well settled law that at the stage of considering bail, it would not be proper for the Court to express any opinion on the merits or demerits of the prosecution case as well as defence.

Keeping in view the facts and circumstances of the case, gravity of offence and nature of serious allegations levelled against the accused, this Court is of the considered opinion that no ground for regular bail of the accused Akash @ Hunny is made out. Accordingly, the present application for regular bail of the accused Akash @ Hunny is dismissed.”

7. This Court, *vide* order dated 20.12.2022, directed the Investigating Officer to submit incriminating material against the applicant.

8. Insp. Raj Kumar, Investigating Officer submitted point-wise reply, as under:

“(1) Call detail record analysed but there is no conversation between the accused persons and accused Akash @ Hunny.

(2) Victim alleged in his statement that his video was made by the accused persons regarding unnatural act but no such video could be recovered. However, there is one video of victim Sadique found in the data retrieved where he was kept in a car by accused persons but no video of unnatural act is recovered.

(3) No video could be recovered in the mobile phone of accused persons regarding alleged unnatural act.

(4) CDR was obtained regarding the mobile phone of accused Akash @ Hunny and other accused persons but no conversation could be found before or after the incident.

(5) Accused Akash @ Hunny has been charge sheeted in the case on the basis of statement of victim Sadique who alleged that he was kidnapped on the direction of Akash @ Hunny.”

9. Therefore, it is evident that there is no material pertaining to conversation between the accused persons and the applicant. The video allegedly made by the accused persons pertaining to unnatural act to which the complainant was subjected to is not recovered. The applicant is charge-sheeted only on the basis of the statement of the victim that he recognized voice of the applicant in mobile conversation between the accused persons and the applicant.

10. There is material change in circumstance pertaining to the applicant as no incriminating material in the form of conversation between him and the accused persons before or after the incident in question or transfer of any video to mobile phone of the applicant could be located.

11. Precisely stating, there is no incriminating material against the applicant except statement under Section 161 Cr.P.C. of the victim recorded on 01.02.2021 that he recognized voice of the applicant in mobile conversation between the accused persons and the applicant.

12. In view of the nature of material, as discussed above, against the applicant, this Court is of the considered opinion that it would not be appropriate to deny him bail solely on the ground that he is charge-sheeted for committing serious *offences* and his past antecedents.

13. Gravity of the offence cannot be considered in isolation. It must be considered alongwith nature of material on record against the applicant.

14. Accordingly, the application under Section 439 Cr.P.C. for seeking regular bail in respect of the applicant, namely, Akash @ Hunny is allowed.

15. The applicant is admitted to bail on furnishing personal bond in the sum of Rs. 10,000/- with one surety in the like amount.

16. A copy of order be given to Ld. Counsel for the applicant.

17. A copy of order be provided to IO, through physical or electronic mode.

18. A copy of order be sent to the concerned Jail Superintendent with the direction to handover copy of order to the applicant.

Sanjay Sharma-II
ASJ-03, Central District
Tis Hazari Courts, Delhi
13.01.2023

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