

State v. : Rajnish Mishra
FIR No. : 74/15
PS : Vivek Vihar
U/S. : 365/302/201
/120B/34 IPC

09.05.2016

Present : Sh. Ajit Kumar Srivastava, Id. Addl. PP for the State.

Vide this order, I shall decide third bail application moved on behalf of accused Rajnish Mishra.

Briefly stated, prosecution has set up the case that on 27.01.2015 complainant Kavita Sahni gave a written complaint to SHO, Vivek Vihar alleging that her husband Sh. Naresh Sahni was working in Delhi, Sadar Bazar with Sh. Gulshan Khosla. He had left his house on 26.01.2015 at 10 AM, informing the complainant that he would be going to Sh. Vijay Sahni to take back Rs. 1 lakh. He had further informed complainant that Sh. Vijay Sahni had called him at Panipat at the place of his brother in law, vide a telephonic call. It was further informed to complainant by Sh. Naresh Sahni that Sh. Vijay Sahni had stated that he would give half of the money. On 26.01.2015, at about 6 PM, complainant received telephonic call from her husband who told her that he would come back at night. Thereafter, complainant made a call on mobile phone of her husband at 7 PM, however, his mobile phone was found switched off. Her husband did not come back and next morning complainant along with her landlord went to Sadar Bazar, in search of employer of her husband. In that process they obtained mobile number of Sh. Lalit Sahni (brother of Sh. Vijay Sahni). Sh. Lalit Sahni was contacted on his mobile phone and he assured to come, however, he did not come and after sometime his phone was found switched off. Thereafter, complainant alongwith some local shopkeeper went to Moti Nagar in search of Sh. Vijay

Sahni. However, they were told that Sh. Vijay Sahni had left for his native place. Complainant expressed her suspicion against Sh. Vijay Sahni for committing some offences against her husband and accordingly FIR was registered under Section 365 IPC. During investigation, Sh. Vijay Sahni and Sh. Lalit Sahni were found absconding from their houses. Police obtained CDR of phone used by Sh. Naresh Sahni and on the basis of calls made and received by him on mobile phone (police reached to the applicant i.e. Rajnish Mishra. Police was informed that one number was being used by accused / applicant.

On 24.02.2015, applicant Sh. Rajnish Mishra was arrested from District Pilibhit, U.P. and he was interrogated, wherein he confessed for kidnapping and murder of Sh. Naresh Sahni along with accused Vijay Sahni and Lalit Sahni and Ranjeet Rai. He further confessed having possession of nokia mobile phone of the deceased and that dead body of Sh. Naresh Sahni was thrown in a ditch near Railway line at Raj Nagar, Panipat. Police recovered one jacket and white shirt allegedly belonging to Sh. Naresh Sahni (which were identified by complainant later on), from drainage near Railway line at Panipat and on the left side of electric pole number 85/17 and 85/19. Police was taken to this place by applicant. Thereafter, police further recovered pant and torn vest, one underwear, and shoe of left foot, which were allegedly belonging to deceased. During further search of dead body, police found human bones from other side of the drainage. Thereafter, one local witness told police that around 20 – 25 days back, some dogs were eating human skull and thereafter police could recover remnants of human skull near electric pole number 85/14 and 85/16. Thereafter, they further found different parts of human scalp with teeth from different surrounding places.

All these articles (remnants of dead body) were sent for postmortem examination and thereafter, they were sent to FSL, Rohini. Till date no concrete opinion could be obtained regarding nature of dead

body and identity of the dead body, for want of final report from FSL.

Ld. counsel for the applicant / accused Rajnish Mishra submitted that first application was dismissed on 24.08.2015 and thereafter, second bail application was dismissed as withdrawn on 31.03.2016, as at that time chargesheet was filed. Ld. counsel for the applicant / accused further submitted that there is no evidence to connect the applicant with kidnapping or murder of deceased Sh. Naresh Sahni. He further submitted that police has shown recovery of mobile phone of deceased from the applicant, however, the same is not an evidence to allege that applicant was involved in his kidnapping and murder.

On the other hand, Id. APP for the State contested the application submitting that applicant had disclosed the place, where remnants of dead body were found. The applicant was also found in possession of mobile phone of the deceased. He was also in contact with co accused persons, which shows that he was a part of conspiracy to kidnap and murder the deceased.

I have given due consideration to the rival contentions and materials placed on record.

The case of the prosecution is based on circumstantial evidence. Though, the offences in question are serious in nature, however, the court has to see the quality of evidence against the applicant. At present the prosecution has relied upon CDR of a phone allegedly being used by applicant, recovery of mobile phone of deceased from the possession of applicant and knowledge of the applicant regarding the place, from where remnants of a dead body were found. At the same time, I also find that such knowledge was also with a local witness, who had allegedly seen the dog eating the human skull. The police could not apprehend co accused persons, who are alleged to be behind this conspiracy and against whom a motive has been imputed by the prosecution.

I also find that for want of FSL Report trial of this case is not likely to be started or concluded in near future.

Keeping in view the aforesaid facts and circumstances and the period of custody, I do not find it appropriate to keep the applicant behind the bars, on the basis of uncertainty. Hence, applicant is admitted to bail on his furnishing P/B and S/B in the sum of Rs.25,000/- with two sureties in the like amount up to satisfaction. One of sureties must be immediate family member of the accused. Bail order shall be subject to the following conditions :-

- (a) Applicant/accused shall not leave the area of NCR without express permission of this Court, except in emergent situation. In emergent situation, he shall intimate and seek further permission from the Court through his authorized representative/ counsel to leave the area of NCR.
- (b) Applicant and sureties shall intimate this Court immediately after any change in their addresses.
- (c) Applicant shall not try to influence any witness of this case.
- (d) Applicant and sureties shall mention their mobile numbers to be used by them during the period of bail.

Copy of order be sent to Jail Superintendent for intimation of accused.

Copy of order be given dasti.

(Pulastya Pramachala)
ASJ, Shahdara District
KKD Courts/Delhi/09.05.2016