

Ct. Cases 523790/2016
ANIL LUMBA Vs. ARUN KUMAR LUMBA

19.10.2020

(Through Video Conferencing over Cisco Webex Meeting)

Case taken up in view of circular no. 992/30066-30235 DJ(HQ)/ Covid-19 Lockdown/Physical Courts Roster/2020 dt. 25.09.2020 issued by Ld. District & Sessions Judge (HQ).

Present: Sh. Kuldeep Kumar, Ld. counsel for complainant.

Matter was listed for clarification/orders on application u/s 204(1) Cr.P.C. No clarifications are required.

This order shall dispose off application u/s 204(1) of Cr.P.C. moved on behalf of complainant seeking issuance of process against the attesting witnesses of the allegedly forged and fabricated Will dated 20.10.1985. It is submitted on behalf of the complainant that this Court, after considering the arguments and material evidence on record, had issued summons against accused Arun Kumar Lumba who is the beneficiary of the alleged Will dated 20.10.1985. It is further submitted that the Court has however not summoned persons, namely, Sh. Inderjit Pahwa (brother in-law of the accused) and Sh. Yashpal Kapoor, who were the attesting witnesses of the said Will. It is further submitted that said attesting witnesses of the alleged Will were well aware that same was prepared by accused Arun Kumar Lumba by taking the tricky signatures of the father of complainant on a blank stamp paper and in spite of having the knowledge about said fact, the witnesses signed on the same and committed offence of criminal conspiracy, thereby making themselves equally liable for the alleged offences with accused Arun Kumar Lumba. It is with these submissions, the complainant has made prayer for issuance of process against above named attesting witnesses of the alleged forged and fabricated Will.

The perusal of case record would reveal that vide order dated 20.02.2020, this Court after taking into account the material available on record, found a prima facie case against accused Arun Kumar Lumba and accordingly, such accused was summoned for offences u/s 420/467/468/471 IPC. The perusal of the case record would further reveal that in the complaint u/s 200 Cr.P.C. filed by the complainant, no allegations qua the connivance and conspiracy on the part of attesting witnesses,

namely, Inderjit Pahwa and Yashpal Kapoor, have been leveled by the complainant. Further, in his Pre-summoning evidence recorded on 17.10.2013, the complainant has not deposed any thing with regard to the alleged criminal conspiracy between the accused and the said attesting witnesses of the alleged Will. The perusal of record would further reveal that after taking into account the abovesaid facts, this Court has passed the order dated 20.02.2020 qua summoning of accused Arun Kumar Lumba. The complainant however, is seeking the issuance of process against the attesting witnesses of the alleged Will on the ground that said witnesses were well aware of the fact that the Will was prepared by accused Arun Kumar Lumba by taking tricky signatures of the father of complainant and were part of criminal conspiracy of alleged offences with the accused. However, such allegations of the complainant are not supported with any cogent material on the record and have thus remained unsubstantiated. Further, the present application seeking issuance of process against the attesting witnesses also appears to be not maintainable as the summoning order dated 20.02.2020 qua the accused Arun Kumar Lumba has already been passed after taking into consideration the material available on record and if at this stage, the prayer of complainant is entertained, same would tantamount to the review of the summoning order passed by this Court, which certainly is not permissible in the scheme of Criminal Procedure Code (reference drawn from case titled as Adalat Prasad Vs. Roop Lal Jindal & Ors. AIR 2004 SC 4674).

In view of the discussion made above, the present application appears to be not maintainable and same stands dismissed.

Application is disposed off. It be tagged with main case file for record.

Let fresh summons be issued to accused Arun Kumar Lumba, returnable on 21.01.2021.

PF be filed in 7 days.

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(RISHABH KAPOOR)
MM-03(Central),THC,Delhi
19.10.2020

STATE Vs. DL 3SDX 2977
e-FIR No. 025980/20
PS:I.P. Estate

19.10.2020

(Through Video Conferencing over Cisco Webex Meeting)

Case taken up in view of circular no. 992/30066-30235 DJ(HQ)/ Covid-19 Lockdown/Physical Courts Roster/2020 dt. 25.09.2020 issued by Ld. District & Sessions Judge (HQ).

Present: Ld. APP for the State.
Sh.Rajesh Vashishth, Ld. Counsel for applicant.
IO/HC Amit Kumar in person.

The present application was filed through email. Scanned copy of reply under the signatures of IO/HC Amit Kumar is received through email. Copy stands supplied to counsel for applicant, electronically.

Heard. Record perused.

This order shall dispose off application for release of vehicle DL 3SDX 2977, moved on behalf of applicant Daulat Ram.

In reply received under the signatures of IO/HC Amit Kumar, it has been stated that the vehicle bearing no. DL 3SDX 2977 has been recovered in connection with the present case FIR and same is registered in the name of applicant Daulat Ram. IO has stated that the investigation qua the vehicle is complete and he has no objection, if same is released on superdari.

The applicant has sent the scanned copy of RC of vehicle, insurance policy of the vehicle and copy of his Adhar Card for the purposes of identity.

On perusal of the report of IO and documents appended with the application, the applicant Daulat Ram prima facie appears to be the person entitled for custody of vehicle in question.

In these circumstances and as per directions of *Hon'ble High Court of Delhi* in matter of "*Manjit Singh Vs. State*" in CrI. M.C. No.4485/2013 dated 10.09.2014, the aforesaid vehicle be released to the applicant / registered owner subject to the following conditions:-

1. Vehicle in question be released to applicant/registered owner only

subject to furnishing of indemnity bonds as per the valuation of the vehicle, to the satisfaction of the concerned SHO/ IO subject to verification of documents.

2. IO shall prepare detailed panchnama mentioning the colour, Engine number, Chasis number, ownership and other necessary details of the vehicle.

3. IO shall take the colour photographs of the vehicle from different angles and also of the engine number and the chasis number of the vehicle.

4. The photographs should be attested and counter signed by the complainant/applicant and accused.

5. IO is directed to verify the RC and insurance of the vehicle in question and release the vehicle after getting it insured by the applicant if the same is not already insured.

Scanned copy of this order be sent to Counsel for applicant and to IO/SHO concerned through email.

One copy be sent to Computer Branch, THC for uploading on Delhi District Court Website.

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(RISHABH KAPOOR)
MM-03(Central),THC,Delhi
19.10.2020

FIR No. 203/16
State Vs. Chandan Pandey
PS I.P. Estate

19.10.2020

(Through Video Conferencing over Cisco Webex Meeting)

Case taken up in view of circular no. 992/30066-30235 DJ(HQ)/ Covid-19 Lockdown/Physical Courts Roster/2020 dt. 25.09.2020 issued by Ld. District & Sessions Judge (HQ).

Present: Ld. APP for the State.

Sh. Sanjeev Pandey, Ld. Counsel for applicant/accused.

The present application for surrender cum-bail u/s 436 Cr.P.C. is moved on behalf of applicant/accused Chandan Pandey, through email.

Counsel for applicant/accused submits that accused Chandan Pandey was declared as a proclaimed person in connection with the present case FIR vide order dt. 24.02.2020.

Since, the surrender of accused requires his physical presence in the Court, therefore, the present application be listed for physical hearing on 22.10.2020.

Accused shall remain in person on date fixed. Issue notice to IO/SHO for date fixed with a direction to file the status report regarding the compliance of section 174A IPC in terms of order dated 24.02.2020 for next date.

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(RISHABH KAPOOR)
MM-03(Central),THC,Delhi
19.10.2020

e-FIR No. 05623/15
PS I.P. Estate
State Vs. Mohd. Afsar

19.10.2020

(Through Video Conferencing over Cisco Webex Meeting)
Case taken up in view of circular no. 992/30066-30235 DJ(HQ)/ Covid-19 Lockdown/Physical Courts Roster/2020 dt. 25.09.2020 issued by Ld. District & Sessions Judge (HQ).

Present: Ld. APP for the State.
Sh.Ravinder Kumar, Ld. counsel for applicant/accused.
IO absent.

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 Mohd. Afsar.

It is stated that the applicant is innocent and has been falsely implicated in the present case. It is further averred that the trial of the case is taking time due to Covid-19 Pandemic and the main accused Danish has already been granted bail by the Court of Ld. ASJ. It further averred that the charge-sheet of the case has already been filed in the Court and the alleged recovery shown to be effected from the accused is planted by the police. With these averments prayer is made for enlarging applicant on bail.

Ld. counsel for accused submits that the applicant/accused is undergoing judicial custody since 23.11.2019 and the charge-sheet has also been filed in the present case, therefore, the accused be released on bail. It is further submitted that main accused Danish has also been granted bail by the Court of Ld. ASJ vide order dt. 20.08.2020, therefore, the applicant/accused also deserves to be admitted on bail on the ground of parity.

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

The perusal of the record would reveal that applicant/accused was arrested in present case on 23.11.2019. Admittedly, the charge-sheet has already been filed in the Court and the matter is pending trial. The custodial interrogation of accused is not required in the present case nor any recovery is left to be effected

from him. The applicant/accused has been undergoing detention in judicial custody since 23.11.2019. The perusal of the record would reveal that the charges have already been framed against accused persons and matter is pending trial. The trial of the case would take a long time due to on going Covid-19 Pandemic situation and till then the liberty of the accused cannot be curtailed when his custody is as such not required for the investigation purposes. Further, as per the record, main accused Danish has already been admitted on bail vide order dt. 20.08.2020 passed by the Ld. Sessions Court, therefore, the applicant/accused is also entitled for bail on the ground parity. The presence of the accused during the course of trial can be ensured by taking sufficient sureties undertaking to ensure his presence. In these peculiar circumstances and more particularly taking into account the period of custody undergone by the accused, I am of the view that there exist 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) ISCC 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.

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 Mohd. Afsar 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 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;
- 3 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
- 4 That the applicant shall not deliberately and intentionally act in a manner which may tend to delay the investigation and trial of the case.
- 5 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 off.

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.

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(RISHABH KAPOOR)
MM-03(Central),THC,Delhi
19.10.2020