

State : Netar Pal  
FIR No. : 680/20  
PS : Nihal Vihar  
U/s : 376/323IPC

05.09.2020

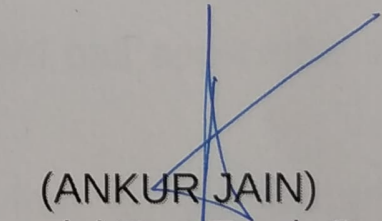
Present: Mr. Subhash Chauhan, Ld. Addl. PP for State.  
Mr. Vikas Rohtagi, Ld. Counsel for accused.  
Mr. Deepak Sharma, Ld. Counsel for complainant.  
Ms. Arti Pandey, Ld. DCW Counsel

**IA no.01/20**

Vide separate order the bail application of accused Netar Pal is dismissed. Nothing said herein shall tantamount to expression of opinion on the merit of the case and they have been made only for the purpose of disposal of the present application.

IA No. 01/20 stands disposed off.

Put up on date already fixed i.e. 18.09.2020.

  
(ANKUR JAIN)  
ASJ(Special Fast Track Court)-01  
West, THC, Delhi/05.09.2020

IN THE COURT OF SH. ANKUR JAIN  
ASJ-01, SPECIAL FAST TRACK COURT (WEST):TIS HAZARI  
COURTS:DELHI

State

Vs.

Netar Pal  
S/o Rameshwar  
R/o H no. 5, Gali Near Shiv Vihar  
Near Nilothi More  
Nangloi, Delhi

FIR No. : 680/20  
PS : Nihal Vihar  
U/s : 376/323IPC

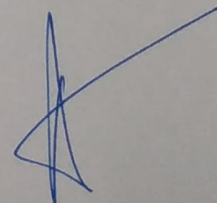
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**ORDER**

1. Vide this order I shall decide the 3rd bail application filed by accused Netra Pal.
2. The brief facts of the case are that on the complaint of prosecutrix the present complaint was registered in which she alleged that she had married one 'S' who left her four years prior and for survival she used to perform the role of 'Radha' & 'Parvati'. She knew the accused / applicant for the last 3 years as he used to reside in the same gali, they became friends and subsequently had fallen in love. Both of them wanted to get married. On 01.01.2020 the applicant / accused took the

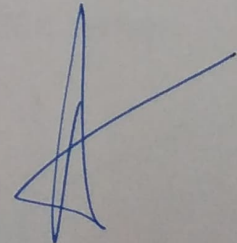
prosecutrix to OYO rooms Hotel in Khyala and established physical relation without the consent of the prosecutrix. When she tried to raise the voice the applicant assured that they would get married and he would also look after the child. Subsequently, many a times physical relations were established between them. During the period of lockdown she was residing with the applicant / accused and the parents of the applicant and accused were residing in the village. She had left her child with her mother. The applicant / accused refused to marry her and told her that he would marry wherever his parents would like him to get married.

3. Ld. Counsel for accused has argued that accused is in custody for the last about 2 ½ months. There are discrepancy in the statement of the victim made by her under Sec. 161 Cr.PC and 164 Cr.PC. It is submitted that the register of the hotel book shows that complainant had signed the same which shows that the entry in the hotel was with the consent of the victim. In support of his argument he has relied upon the judgment of **Laxman Irappa Hatti Vs. State of Maharashtra, 2004 Cr. LJ3802**, **Mohd. Nalpad Haris Vs. State of Karnataka ; Criminal petition no. 4072 of 2018 decided on 14.06.2018** by the Hon'ble Karnataka High Court, **Dr. Shivender Mohan Singh Vs. Directorate of Enforcement Bail application no. 1353/2020 decided on 23.07.2020** by Hon'ble Delhi High Court, **State of Kerala Vs. Raneef Cr. Appeal no. 3 of 2011 decided on 03.01.2011** by Hon'ble



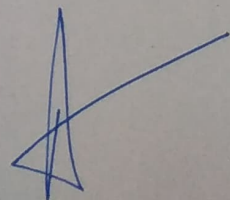
Supreme Court; Akshay Manoj Jaisinghani Vs. State of Maharashtra Anticipatory Bail appl. No. 2221/2016 decided on 09.01.2017 by Hon'ble Bombay High Court; Prem Prakash Chaudhary Vs. State Bail appl no. 157/2018 decided on 24.01.2018 by Hon'ble Delhi High Court, G Achyut Kumar Vs. State of Orissa CRLA no. 940/2019 decided on 21.05.2020 by Hon'ble Orissa High Court; Pramod Surya Bhan Panwar Vs. State of Maharashtra Crl. Appeal no. 1165/2019 decided on 21.08.2019 by Hon'ble Supreme Court.

4. On the other hand, Ld. Addl. PP for State has submitted that this is the 3rd bail application filed by the accused and there is no change in circumstances. Therefore the application deserves to be dismissed. Even otherwise, the allegations against the accused are serious in nature.
5. Ld. Counsel for the complainant submits that there is no change in circumstances since the dismissal of last bail application and in support of his arguments has relied upon **Virupakshappa Gauda & Anr. Vs. State of Karnataka & Anr. Crl. Appeal no. 601 of 2017** decided on 28.03.2017 by Hon'ble Supreme Court, **Pawan Mishra Vs. State Bail appln No. 2086/2014** decided on 18.11.2014 by Hon'ble Delhi High Court; **Anand D. V. Vs. State of Delhi Bail appln no. 1815/2013** decided on 26.11.2013 by Hon'ble Delhi High Court.



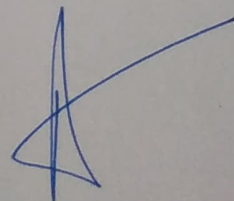
6. I have heard Ld. Addl. P. P. for State and Ld. Counsel for accused and perused the record.
7. This Court while sitting as Duty ASJ on 26.08.2020 had specifically asked the counsel for the accused as to what is the change in circumstances after the dismissal of the two earlier bail applications. The case was thereafter adjourned for 01.09.2020. On 01.09.2020 the bail application came up for hearing before the Ld. Duty ASJ who categorically noted that since charge sheet has been filed and committed it would be appropriate that the case is listed before the Court concerned. This Court being the Court concerned the bail application along with the charge sheet came up for hearing on 01.09.2020. It is admitted position that the first bail application was dismissed on 09.07.2020 via speaking order while dismissing the bail application. The Ld. Duty ASJ categorically noted that:-

*“ Ld. Counsel for the applicant has cited various judgments where it has been held that when a matured woman enters into a physical relation on the pretext of marriage, then she is very well aware of the consequences of her act. However, the facts of the present case are different. In the present case, at the first instance i.e. in January, 2020, physical relations were established by the applicant forcibly with the victim. Thereafter, when*



*the victim protested to the same, then in order to save himself, applicant made a promise of marriage with the victim. Hence, in the present case, it is not that the victim has willingly established physical relations with the applicant only on the basis of promise to marry. It is only because she was subjected to physical relations that is why she agreed to marry with the applicant. Subsequent to that on the pretext of marriage on various occasion, applicant has established physical relations with the victim. All the submissions made by the counsel for the applicant regarding the false implications are the defence of the accused which cannot be adjudicated at this stage. Hence, in view of above discussions, present application is dismissed."*

8. Thus while dismissing the first bail application the Ld. Duty ASJ had clearly noted the submission and came to the conclusion that in the present case physical relations were established and thereafter promise was made.
9. Ld. Counsel for applicant / accused submits that since charge sheet has been filed it amounts to change in circumstances and has relied up on the judgment of **Laxman Irappa Hatti and Mohd. Nalpad**. In Nalpad Haris (Supra), the Hon'ble Karnataka High Court while discussing the judgment of

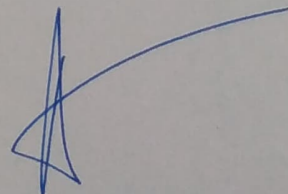


Virupakshappa Gauda said that right of the accused in filing the successive bail application is well recognized.

10. The Hon'ble Supreme Court in Kalyan Chandra Sarkar Vs. Rajesh Ranjan & Anr. (2005) 2 SCC 42. The relevant para is reproduced as under :-

***“19. The principles of res judicata and such analogous principles although are not applicable in a criminal proceeding, still the courts are bound by the doctrine of judicial discipline having regard to the hierarchical system prevailing in our country. The findings of a higher court or a coordinate Bench must receive serious consideration at the hands of the court entertaining a bail application at a later stage when the same had been rejected earlier. In such an event, the courts must give due weight to the grounds which weighed with the former or higher court in rejecting the bail application. Ordinarily, the issues which had been canvassed earlier would not be permitted to be reagitated on the same grounds, as the same would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting“.***

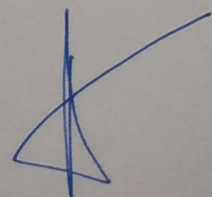
11. In Jagmohan Bahl and another Vs. State (NCT of Delhi) & Anr. 2014 16 SCC 501 : The Hon'ble Supreme Court



observed as under :-

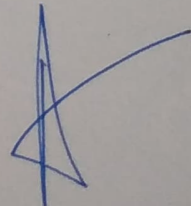
*“13. On a perusal of the aforesaid authorities, it is clear to us that the learned judge, who has declined to entertain the prayer for grant of bail, if available, should hear the second bail application or the successive bail applications. It is in consonance with the principle of judicial decorum, discipline and propriety. Needless to say, unless such principle is adhered to, there is enormous possibility of forum shopping which has no sanction in law and definitely, has no sanctity. If the same is allowed to prevail, it is likely to usher in anarchy, whim and caprice and in the ultimate eventuate shake the faith in the adjudicating system. This cannot be allowed to be encouraged. In this regard we may refer to the pronouncement in Chetak Construction Ltd. Vs. Om Prakash, wherein this Court has observed that a litigant cannot be permitted “choice” of the forum and every attempt at “Forum Shopping” must be crushed with a heavy hand. In Tamilnad Mercantile Bank Shareholders Welfare Assn. Vs. S. C. Sekar, it has been observed that the superior Courts of the Country must discourage forum shopping.”*

12. In light of these authorities it is clear that although

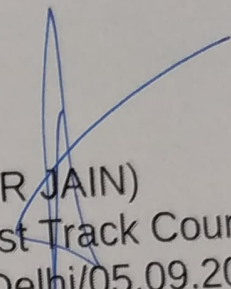




successive bail application can be filed but in case the bail application has been rejected earlier, the same should be given due weightage unless there are compelling reasons to ignore it and in the opinion of the Court, reasons are required to be given as to why the said finding was erroneous. Secondly, forum shopping must be discouraged. In the present facts of the case it is categorically stated in the complaint that only after establishing physical relations promise of marriage was made. This fact was specifically noted by the Ld. Duty ASJ while dismissing the first bail application and I see no reason to differ from same. The argument of the Ld. Counsel for the accused that there are discrepancies in the statement of the victim, cannot be gone into at this stage, since it would be a question of trial. The statement of victim would be tested by cross examination. Similarly the fact that the hotel register bear the signature of the victim is also not a relevant ground for grant of bail since it would be a question of trial whether the signature are of victim and whether they were obtained voluntarily. It is also to be noted that forum shopping should be avoided. The first bail application was dismissed on 09.07.2020. The second bail application was dismissed as withdrawn on 27.07.2020. And third bail application is dated 17.08.2020, even before the copy of charge sheet was actually supplied to the accused or his counsel. Thus, I find that no ground to enlarge the applicant on bail. The bail application is dismissed. IA no.01/20 stands



disposed off. Nothing said herein shall tantamount to expression of opinion on the merit of the case and they have been made only for the purpose of disposal of the present application.

  
(ANKUR JAIN)  
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