



2024:DHC:8482



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 29th OCTOBER, 2024

IN THE MATTER OF:

+ **CRL.M.C. 4877/2024 & CRL.M.A. 18599/2024**

MISS T

.....Petitioner

Through: Mr. Vineet Chadha, Mr. Vikram Aggarwal, Mr. S. Pradhan, Mr. Anmol Sethi, Mr. Pavit Singh, Mr. Rahul Gaur and Mr. Vivek Chaurasia, Advocates.

versus

STATE (GNCTD) & ANR.

.....Respondents

Through: Mr. Shoaib Haider, APP for the State.
SI Manisha, PS Punjabi Bagh.
Mr. Pradeep Rana, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner/Prosecutrix has approached this Court challenging the Order dated 21.06.2024 passed by the Ld. ASJ, Tis Hazari Court, New Delhi granting bail to Respondent No.2/accused in FIR No.114/2024, registered at Police Station Punjabi Bagh for an offence punishable under Section 376(2)(n) IPC.
2. The facts, in brief, as stated in the in the chargesheet dated 23.04.2024, reveals that on 25.02.2024 under the orders of SI, Senior Officer, the Prosecutrix came to police station and handed over a complainant stating that she was working as a makeup artist and had taken a flat with her friend. On 03.09.2021, the friend of the Prosecutrix had taken the key of the flat with her. It is stated that when the Prosecutrix gave a call



to her friend, the Prosecutrix was informed by her friend that she was at the house of her friend, namely, Ashwani Utwani, who is the Respondent No.2 herein. It is stated that location of the house of the Respondent No.2 herein was sent to the Prosecutrix by her friend and, thereafter, the Prosecutrix went to the house of Respondent No.2/accused and from there the friendship between the Prosecutrix and Respondent No.2 began. It is stated that, thereafter, the Prosecutrix used to visit Respondent No.2 on regular basis and they became good friends. It is stated that on 12.09.2021, the Prosecutrix had gone to visit Ganpati Pandal. It is stated that around 08:00 PM, the Respondent No.2 called the Prosecutrix informing her that he was not feeling well. It is stated that after that the Prosecutrix went to the house of Respondent No.2 where the Respondent No.2 served the Prosecutrix a cold drink laced with some sedative and intoxicated substance and on drinking that, the Prosecutrix became unconscious. It is stated that taking the advantage of the situation, the Respondent No.2 established physical relations with the Prosecutrix. It is stated when the Prosecutrix became conscious, she told Respondent No.2 that he has done a very wrong act with her. It is stated that when the Prosecutrix wanted to go to the police, the Respondent No.2 told the Prosecutrix that he would marry her and asked the Prosecutrix to accompany him to Goa. It is stated that, thereafter, the Prosecutrix and the Respondent No.2 went to Goa and stayed there for 3 to 4 days where they also made physical relations. It is stated that the Respondent No.2 kept making promises to marry the Prosecutrix. It is stated that somewhere in April, 2022, the Prosecutrix vacated her flat and during that time the Prosecutrix had introduced Respondent No.2 with her family members and there also the Respondent No.2 made promise to marry the



Prosecutrix in front of the family members of the Prosecutrix. It is stated that the Prosecutrix and the Respondent No.2 both went to Istanbul and Baku, Azerbaijan, Cappudocia, Turkey, Antalya and there also the Respondent No.2 established physical relations with the Prosecutrix on the pretext of marriage. It is stated that the Respondent No.2 used to give money to the Prosecutrix. It is stated that in December, 2023, the Respondent No.2 asked the Prosecutrix for a sum of Rs.10 lakh which was stated to be transferred by the Prosecutrix to the Respondent No.2 through cheque in the account of Respondent No.2 thinking that the Respondent No.2 is going to be her future husband. It is stated the Prosecutrix gave Rs.5 lakh in cash. It is stated that on 14th February, the Prosecutrix told the Respondent No.2 that her parents are telling her to get married and when she asked the Respondent No.2 to fix the date of marriage, the Respondent No.2 refused to marry the Prosecutrix. It is stated that the Respondent No.2, thereafter, stopped taking the Prosecutrix's phone calls and refused to marry her. On the said complaint of the Petitioner/Prosecutrix, the present FIR was registered against the Respondent No.2.

3. Investigation commenced. Material on record indicates that the Respondent No.2 was arrested on 26.02.2024. The Respondent No.2 filed a bail application before the Trial Court which was dismissed on 18.03.2024. Respondent No.2 also filed a bail application being BAIL APPLN. 1289/2024 before this Court on 15.04.2024 which was directed to be listed for hearing on 10.05.2024. Material on indicates that on 22.04.2024, the Respondent No.2 filed a custody parole bail application before the Trial Court for solemnization of marriage with the Petitioner herein which was later on withdrawn by the Respondent No.2. Material on record indicates



that on 24.04.2024, the chargesheet was filed and the same was supplied to the Respondent No.2. Material on record indicates that on 29.04.2024, the Respondent No.2 withdrew his bail application being BAIL APPLN. 1289/2024 filed before this Court on ground of substantial change in circumstance after filing of the chargesheet.

4. Material on record indicates that on 02.05.2024, the Respondent No.2 had filed his second bail application before the Trial Court which was dismissed on 09.05.2024. Material on record indicates that on 13.05.2024, the Respondent No.2 had also filed his second bail application before this Court vide Diary No.E-1490875 which was pending under office objections. It is stated that the case was committed before the Ld. Sessions Court on 05.06.2024 and the matter was fixed for arguments on charge on 07.06.2024 but due to a strike the same could not be taken up and, thereafter, the matter was listed for 01.07.2024. It is stated that during the vacation, the Respondent No.2 filed a regular bail application before the Trial Court and the Ld. Vacation Judge granted bail to the Respondent No.2 *vide* Order dated 21.06.2024.

5. It is this Order dated 21.06.2024 which is under challenge in the present petition.

6. Learned Counsel appearing for the Petitioner states that the Respondent No.2 has indulged in forum shopping. He states that the Respondent No.2 had filed his Second bail application before this Court which was pending under office objections and this fact was not informed to the Vacation Judge. He states that the learned Counsel for Respondent No.2 stated before the Trial Court that no bail application was pending before this Court. He states that once a bail application is filed before this Court, the



learned Vacation Judge ought not to have proceeded further with the bail application of the Respondent No.2. He states that the Respondent No.2 has committed a very serious offence of rape and, therefore, bail ought not to have been granted to Respondent No.2 by the Vacation Judge.

7. Learned APP appearing for the State, who supports the case of the Petitioner, contends that the Respondent No.2 has been granted bail on 21.06.2024 and the matter was coming up before the Roster Bench on 01.07.2024, and therefore, the Ld. Vacation Bench ought not to have granted bail to Respondent No.2 on that date and ought to have waited for the matter to be listed on 01.07.2024 before the Roster Bench. He states that the Ld. Vacation Judge has erred in considering the bail application of Respondent No.2.

8. Learned Counsel appearing for Respondent No.2 contends that there was no suppression of facts by Respondent No.2. He states that the second bail application was filed before this Court on basis of compromise, however, after filing of the said bail application, disputes occurred between the families and the compromise was breached. He states that in any event by the time the case could come up for hearing before this Court, the filing had become *Non-Est* for the reason that the Counsel for the Respondent No.2 had not withdrawn the said bail application and since the bail application was not withdrawn, it should have been treated as dismissed. He places reliance on Clause 18.1 of the Notification bearing No.11/Rules/DHC dated 22.02.2022 issued by the High Court of Delhi which reads as under:

"18.1. The e-filing made by an Advocate/litigant in person will be rejected if they do not follow the protocol mandated by these Rules or practice directions."



9. Learned Counsel for Respondent No.2 states that since the second bail application before this Court was filed on 13.05.2024 and the said bail application could not be listed due to defects, the said bail application should have been treated as dismissed and, therefore, the statement made by the learned Counsel for Respondent No.2 before the Trial Court that no bail application was pending before this Court cannot be found fault with. He states that the Bail Order dated 21.06.2024 has been passed by the Ld. Vacation Judge after taking into consideration all the relevant circumstances. He contends that once bail is granted, the Court should not interfere with such bail Orders unless there is a material to show that the bail has been granted on irrelevant considerations and relevant considerations have not been taken into account.

10. In rejoinder, the learned Counsel appearing for the Petitioner draws attention of this Court to Chapter - 1 Part A(a) of Rule 5 of the Delhi High Court Rules to states that if the defects are not cured, the matter would have to be listed before the Court for dismissal for non-prosecution and there is no automatic dismissal without reference to Court which reads as under:

"[5. Amendment - The Deputy Registrar Assistant Registrar, Incharge of the Filing counter, may specify the objections (a copy of which will be kept for the Court Record) and return for amendment and re-filing within a time not exceeding 7 days at a time and 30 days in the aggregate to be fixed by him, any memorandum of appeal, for the reason specified in Order XLI, Rule 3, Civil Procedure Code.

(2) If the memorandum of appeal is not taken back for amendment within the time allowed by the Deputy Registrar, Asstt. Registrar, in charge of the



filing Counter under sub-rule (1), it shall be registered and listed before the Court for its dismissal for non-prosecution.

(3) If the memorandum of appeal is filed beyond the time allowed by the Deputy Registrar, Asstt. Registrar in charge of the Filing Counter, under sub-rule (1) it shall be considered as fresh institution.

Note -The provisions contained in Rule 5(1), 5(2) and 5(3) shall mutatis mutandis apply to all matters, whether civil or criminal.]"

11. Heard learned Counsel appearing for the Parties and perused the material on record.
12. Material on record indicates that the Respondent No.2 filed his first bail application before the Trial Court which was dismissed on 18.03.2024. Respondent No.2, thereafter, filed a bail application being BAIL APPLN. 1289/2024 before this Court on 15.04.2024 which was later on withdrawn by Respondent No.2 on 29.04.2024 on the ground of change in circumstances after filing of the chargesheet. The Respondent No.2 again filed his second bail application before the Trial Court which was dismissed on 09.05.2024. The said bail application was dismissed on merits. The said Order dated 09.05.2024 does state that the chargesheet was not filed. However, the Respondent No.2 again filed his second bail application before this Court on 13.05.2024 i.e., after 04 days from the dismissal of the bail application by the Trial Court on 09.05.2024. Material on record indicates that the second bail application filed by the Respondent No.2 on 13.05.2024 before this Court could not be listed due to defects and the defects were not cured by Respondent No.2. The practice of this Court is that the bail



applications are not taken as *Non-Est* or dismissed without reference to the Court automatically. The case of the Respondent No.2 was committed by the Ld. Sessions Court on 30.05.2024 and when the case was listed for 07.06.2024 for argument on charge, the matter was listed for 01.07.2024 since there was a strike going on.

13. During the pendency of the bail application before this Court, the accused has approached the Trial Court by filing a bail application which has been allowed by the Trial Court vide the impugned Order. In the opinion of this Court the Ld. Vacation Judge when apprised of the fact that a bail application was filed before this Court by Respondent No.2, the Ld. Vacation Bench ought to have called for material to ascertain as to whether a bail application is actually pending before this Court or not. The Ld. Vacation Judge was also aware of the fact that the case was coming on 01.07.2024 before the Roster Bench. The Respondent No.2 had approached this Court for grant of bail by filing a Second bail application on 13.05.2024, the said bail application could not be listed due to defects and the defects were not cured by the Respondent No.2, he then approached the Ld. Vacation Bench by asserting that no bail application was pending before this Court which cannot be said to be a correct statement of fact by the Counsel for Respondent No.2.

14. The Petitioner has filed successive bail application before the Trial Court. His last bail application was dismissed by the Trial Court on 09.05.2024. The Apex Court in State of Maharashtra v. Buddhikota Subha Rao, 1989 Supp (2) SCC 605 has deprecated such practice of filing successive bail applications without change of circumstances. The relevant portion of the said Judgment reads as under:



"7.In the present case the successive bail applications preferred by the respondent were rejected on merits having regard to the gravity of the offence alleged to have been committed. One such Application No. 36 of 1989 was rejected by Suresh, J. himself. Undeterred the respondent went on preferring successive applications for bail. All such pending bail applications were rejected by Puranik, J. by a common order on 6-6-1989. Unfortunately, Puranik, J. was not aware of the pendency of yet another bail application No. 995 of 1989 otherwise he would have disposed it of by the very same common order. Before the ink was dry on Puranik, J.'s order, it was upturned by the impugned order. It is not as if the court passing the impugned order was not aware of the decision of Puranik, J.; in fact there is a reference to the same in the impugned order. Could this be done in the absence of new facts and changed circumstances? What is important to realise is that in Criminal Application No. 375 of 1989, the respondent had made an identical request as is obvious from one of the prayers (extracted earlier) made therein. Once that application was rejected there was no question of granting a similar prayer. That is virtually overruling the earlier decision without there being a change in the fact-situation. And, when we speak of change, we mean a substantial one which has a direct impact on the earlier decision and not merely cosmetic changes which are of little or no consequence. Between the two orders there was a gap of only two days and it is nobody's case that during these two days drastic changes had taken place necessitating the release of the respondent on bail. Judicial discipline, propriety and comity demanded that the impugned order should not have been passed reversing all earlier orders including the one rendered by Puranik, J., only a couple of days before, in the absence of any substantial change in the fact-situation. In such cases it is



necessary to act with restraint and circumspection so that the process of the court is not abused by a litigant and an impression does not gain ground that the litigant has either successfully avoided one judge or selected another to secure an order which had hitherto eluded him. In such a situation the proper course, we think, is to direct that the matter be placed before the same learned Judge who disposed of the earlier applications. Such a practice or convention would prevent abuse of the process of court inasmuch as it will prevent an impression being created that a litigant is avoiding or selecting a court to secure an order to his liking. Such a practice would also discourage the filing of successive bail applications without change of circumstances. Such a practice if adopted would be conducive to judicial discipline and would also save the court's time as a judge familiar with the facts would be able to dispose of the subsequent application with despatch. It will also result in consistency....."

15. Similarly, the Apex Court in Jagmohan Bahl v. State (NCT of Delhi), (2014) 16 SCC 501 has 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. v. Om Prakash [Chetak



Construction Ltd. v. Om Prakash, (1998) 4 SCC 577] , 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. (2) v. S.C. Sekar [Tamilnad Mercantile Bank Shareholders Welfare Assn. (2) v. S.C. Sekar, (2009) 2 SCC 784]* , it has been observed that the superior courts of this country must discourage forum-shopping.

14. Though the said decisions were rendered in different context, the principle stated therein is applicable to the case of present nature. Unscrupulous litigants are not to be allowed even to remotely entertain the idea that they can engage in forum-shopping, depreciable conduct in the field of law.

15. In the instant case, when the Sixth Additional Sessions Judge had declined to grant the bail application, the next Fourth Additional Sessions Judge should have been well advised to place the matter before the same Judge. However, it is the duty of the prosecution to bring it to the notice of the Judge concerned that such an application was rejected earlier by a different Judge and he was available. In the entire adjudicatory process, the whole system has to be involved. The matter would be different if a Judge has demitted the office or has been transferred. Similarly, in the trial court, the matter would stand on a different footing, if the presiding officer has been superannuated or transferred. The fundamental concept is, if the Judge is available, the matter should be heard by him. That will sustain the faith of the people in the system and nobody would pave the path of forum-shopping, which is decryable in law."



16. Applying the aforesaid dictum in the present case, the Ld. Vacation Judge ought to have waited for the matter to be listed before the Roster Bench. The matter was anyway coming up for 01.07.2024 for arguments on framing of charges and, therefore, it could have been more appropriate on the part of the Ld. Vacation Judge to put up the matter for hearing after 09 days before the Roster Bench i.e., on 01.07.2024.

17. Though it was argued by the learned Counsel for the Respondent No.2 before the Ld. Sessions Court that there is a change of circumstance from 09.05.2024 after filing of the chargesheet, however, the Ld. Sessions Court did not grant bail to Respondent No.2 on the basis of change in circumstance which was after filing of the chargesheet on 09.05.2024. On the very same facts, the Ld. Vacation Judge has come to a conclusion different to the one arrived at by the Roster Bench on 09.05.2024. This Court is of the opinion that bail ought not to have been granted to Respondent No.2 by the Ld. Vacation Judge as there is no finding of change of circumstances and more so when a bail application was pending in this Court and in any case the matter was coming up before the Roster Bench after 09 days from the date of grant of bail to Respondent No.2 by the Ld. Vacation Judge.

18. In view of the above, without going into the merits of the case, this Court is inclined to set aside the Impugned Order dated 21.06.2024 passed by the Ld. Vacation Bench granting bail to Respondent No.2.

19. The Respondent No.2 is directed to be taken into custody forthwith.

20. As and when, a fresh bail application is filed by the Respondent No.2, the Roster Bench is directed to consider and decide the bail application as expeditiously as possible not later than four (04) days.

21. This Court is also not commenting anything on the aspect as to



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whether filing of the chargesheet in the facts of the present case does amount to change in circumstances or not and the same is for the Trial Court to consider and decide taking into account the facts and circumstances of the present case.

22. With these observations, the petition is allowed. Pending application(s), if any stands disposed of.

SUBRAMONIUM PRASAD, J

OCTOBER 29, 2024

S. Zakir