

IN THE COURT OF ANKUR JAIN
ADDITIONAL SESSIONS JUDGE: SFTC (WEST)-01: DELHI

State Vs. Ajay @ Aju
FIR No. 279/17
PS. : Kirti Nagar
U/s : 328/342/363/376D IPC

Hearing took place through CISCO Web Ex.

31.07.2020

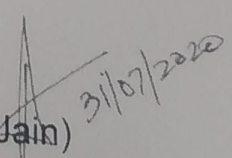
Present: Sh. Subhash Chauhan, Ld. Addl. PP for the State.
Mr. Satish Chandra., Ld. Counsel for the accused/applicant.
Ms. Arti Pandey Ld. Counsel from DCW.

IA No. 17/20 (Application for bail on behalf of accused Pawan Saini)

Perusal of the file shows that notice to complainant has not been issued.

Let notice of the application be issued to complainant in terms of the practice direction of the Hon'ble HC.

Put up on 04.08.2020. Naib Court who has joined the proceedings shall ensure compliance of the order.


(Ankur Jain) 31/07/2020
Addl. Sessions Judge (SFTC-01) West
Delhi: 31.07.2020

IN THE COURT OF ANKUR JAIN
ADDITIONAL SESSIONS JUDGE: SFTC (WEST)-01: DELHI

State Vs. Diwakar Sharma @ Manni
FIR No. 155/2018
PS. : Hari Nagar
U/s : 376/506 IPC

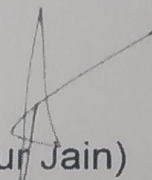
31.07.2020

1. The arguments of the present bail application took place through CISCO Web Ex.
2. By this order I shall decide the bail application filed on behalf of accused Diwakar Sharma @ Manni. The brief facts of the case are that on the complaint of prosecutrix 'HK' the present FIR was registered in which she had alleged that her mother, sister and brother had gone to gurudwara, she was alone at home, at around 2 PM, the boy who was residing opposite her house, came to her house, caught hold of her from behind pushed her on the bed and raped her. When she shouted for help, accused gagged her mouth. The accused ran away after hearing the noise of somebody coming upstairs. Her sister MK and mother came, all the facts were told by the prosecutrix to her sister and mother who called the police, police recorded her statement. On these facts FIR was registered. After completion of investigation charge sheet was filed.

3. Ld Counsel for accused has argued that all the material witnesses have been examined. It is only the IO, who is to be examined and prior to lockdown number of times summons were issued but IO did not appear. It is submitted that accused is in custody since the year 2018. Ld. Counsel for accused has relied upon a judgement titled as Nitin Vs. State. It is argued that the case was under POCSO and the present case is only U/s 376 IPC. Therefore, accused is entitled to be released on bail.
4. Ld. Addl. PP for State submits that this is 5th bail application of the accused. Each and every witness examined, has supported the case of the prosecution. Therefore, no case for grant of bail is made out.
5. I have heard Ld. Addl. PP for State and Ld. Counsel for applicant / accused and perused the record.
6. The last bail application of the accused was dismissed on 27.01.2020, prior to that the accused had filed the bail application in Hon'ble Delhi High Court, but the same was dismissed as withdrawn. There is no change in circumstances except the period of custody. The accused is the immediate neighbour. The offence is serious in nature. Prima facie all the prosecution witnesses have supported the case of the prosecution neither the Ld. Defence Counsel has pointed out any contradictions during the course of arguments on the bail application. Judgment relied upon by Ld. Defence Counsel cited as 'Nitin Vs. State' cannot be appreciated as neither the citation nor copy of the judgment has been provided. In these circumstances, I do not find any ground to enlarge the

applicant / accused on bail. The present bail application stands dismissed.

7. Put up for PE on date fixed.



(Ankur Jain)

Addl. Sessions Judge (SFTC-01) West

Delhi: 31.07.2020

IN THE COURT OF ANKUR JAIN

ADDITIONAL SESSIONS JUDGE: SFTC (WEST)-01: DELHI

State Vs. Amit
FIR No. 264/19
PS. : Khyala
U/s :376/506 IPC

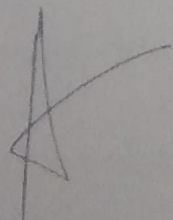
Hearing took place through CISCO Web Ex.

31.07.2020

Fresh application filed. Same is taken up for hearing in terms of circular no. 24-DHC/2020 dated 13.07.2020 of Hon'ble High Court of Delhi and No. 487/11165-11192/ Misc. / Gaz. /DJ West/ 2020 dated 15.07.2020.

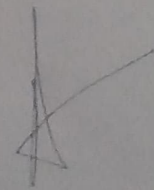
Present: Sh. Subhash Chauhan, Ld. Addl. PP for the State.
Mr. Vikas Bharadwaj, Ld. Counsel for the accused/applicant.
Ms. Arti Pandey Ld. Counsel from DCW.
IA No. 03/20

1. This is a fresh application seeking extension of interim bail granted to the accused vide order dated 18.06.2020. The interim bail was granted to the accused so as to enable the surgery of his father.



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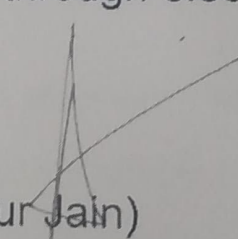
2. Present application has been filed seeking extension of interim bail on the ground that father is having high blood sugar and therefore surgery cannot be performed.
3. Ld. Counsel for accused has argued that the interim bail may be extended as father of the accused is suffering from high blood sugar and unless and until the same is controlled surgery cannot be performed.
4. I have heard Ld. Counsel for accused and Ld Addl P.P. for the state and perused the record.
5. The document at page 5 is an OPD Slip issued by Rural Health Training Centre, Najafgarh. Page 6 of the present application is the reference slip, the patient namely Gopal Dass who is the father of the accused was referred to MMG Hospital, Ghaziabad on 05.06.2020. But there is no document on record which could suggest that patient was taken to MMG Hospital. Ld. Counsel for accused submits that due to prevalent condition they could not go to the said hospital. The said statement may be correct to certain extent, however, the medical document which is filed on record does not show that



any surgery is required. In any case there is no definite period when the blood sugar would come under control.

6. I thus do not find any merit in extending the interim bail of the accused. The same stands dismissed. Accused is directed to surrender before the concerned Jail Superintendent by 5 PM on 04.08.2020.

7. Copy of the order be sent to the concerned Jail Superintendent who shall file compliance report. Copy of order be sent to Ld. Counsel for accused through electronic mode.



(Ankur Jain)

Addl. Sessions Judge (SFTC-01) West
Delhi: 31.07.2020

IN THE COURT OF ANKUR JAIN
ADDITIONAL SESSIONS JUDGE: SFTC (WEST)-01: DELHI

Shyam Krishan Pal & Ors.

Versus

State

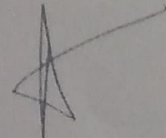
FIR No.: 102/19
P.S. No. : Mayapuri
U/s : 376/354/354d/341/323/34 IPC

THROUGH CISCO WEB EX.

I.A. No.: 05/20 and 06/20

ORDER:-

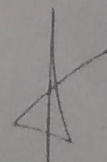
1. By this order I shall decide an application for regular bail filed on behalf of the accused Munna Lal and interim bail application filed on behalf of accused Shyam Kishan Pal. The hearing of the case took place through Cisco Web Ex.
2. The brief facts of the case are that on the complaint of 'M' the present FIR was registered in which it is alleged by the complainant that on 06.04.2019 at about 9 pm. her son had gone outside to play and while the prosecutrix was looking for her son, she went towards godown, Munna, Kishan Pal and one other person came there. Munna gagged her mouth and caught hold her from back. Munna



and Kishan Pal started pressing her chest, both of them forcefully dragged her. Accused persons removed her salwar. Hearing her cries the family members of Munna came there and started beating her, she rescued herself with the help of one person and came back to her house and made a call at 100 number. On these facts the present FIR was registered.

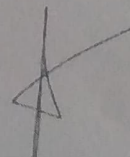
3. Ld. Counsel for the accused Munna Lal has argued that that there are several discrepancy in the Asal Tehrir and in the Statement u/s 164 Cr.P.C. He further submits that Munna Lal had made previous complaint in which he had clearly expressed his doubt that complainant may level allegations of rape against him. It is argued that the FSL Report does not support the case of the prosecutrix and thus accused is entitled to be enlarged on regular bail. On the other hand Ld. Counsel for the accused Shyam Kishal Pal has argued that the wife of accused Shyam is suffering a lot. The trial is likely to take some time, therefore, accused should be admitted to interim bail.

4. Ld. Addl. PP for the State submits that this is a 4th bail application filed on behalf of the accused Munna. Three applications were dismissed on 05.05.2019, 10.06.2019 and last on 15.07.2019. He submits that cross examination is yet to be recorded and there is every likelihood that the accused persons might influence the



complainant. He submits that in so far as accused Shyam Kishan Pal is concerned, the condition of his wife is not serious which would warrant ground of bail. The complainant who was present in the court has also submitted that the family members of the accused were also residing in the same locality, they continuously abuses her and if these persons granted bail it might led to exclamations of the dispute.

5. I have heard Ld. Counsels of the parties and have perused the record.
6. It is an undisputed that allegations of digital rape were leveled against the accused persons only in the statement u/s 164 Cr.P.C.. Ld. Counsel for the accused has also argued that due to old enmity the accused persons are being falsely implicated in the present case. This essential would be a question of trial as the prosecutrix is yet to the cross examined. The last bail application was dismissed on 15.07.2019. Subsequent to the said date, charge-sheet has been filed with which FSL Report was also filed.
7. The perusal of the FSL report shows that DNA profile generated from Ex.11 and 12 did not match with the DNA from the source of Ex. 3,4,9 (a) to 9 (d) and 10. The source of Ex. 11 and 12 are the blood in gauze piece of cloth of the accused persons. The DNA Analysis report further shows that male DNA profile was generated



from the source of Ex. 3,4,9 (a) to 9 (d). Ex. 9 (a) to 9 (d) are the cloths of prosecutrix i.e. her shirt, pyzama, spaghetti and underwear. Ex. 3 and 4 are the swab and smear of prosecutrix taken from vagina and vulvae. The MLC of the prosecutrix was done on the intervening night of 06.04.2019, the question of tampering with the evidence cannot be an issue.

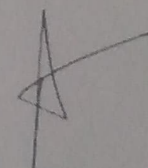
8. In ***Moti Ram Vs. State of M.P. 1978 4 SCC 47*** it is held that:-

“The consequences of pre-trial detention are grave. Defendants presumed innocent are subjected to the psychological and physical deprivation of jail life, usually under more onerous condition than are imposed on convicted defendants”.

9. In ***Dr. Shivinder Singh Vs. State, bail application No. 1353/2020***

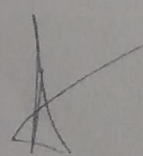
dated 23.07.2020 the Hon'ble Delhi High Court has held that:-

Nowhere is it the law that an accused, yet to be tried, is to be kept in custody only on a hunch or a presumption that he will prejudice or impede trial; or to send any message to the society. If anything, the only message that goes out to the society by keeping an accused in prison before finding him guilty, is that our system works only on impressions and conjectures and can keep an accused in custody even on presumption of guilt. While in certain cases such message may even quench the thirst for revenge of the lay society against a person they



believe to be guilty, such action would certainly not leave our criminal justice system awash in glory. An investigating agency must come to court with the confidence that they have arrested as accused, based on credible material, and have filed a complaint or a charge-sheet with the certainty that they will be able to bring home guilty, by satisfying a court beyond reasonable doubt. But when an investigating agency suggests that an accused be detained in custody as an under trial for a prolonged period, even after the complaint or charge-sheet has been filed, it appears that the investigating agency is not convinced of its case and so it fears that the accused may "get 'off" by discharge or acquittal; and that therefore, the only way to "punish the accused" is to let him remain in custody as an undertrial.

10. In the light of the above said judgments, it can be seen that merely on the basis of hunch that accused persons are the perpetrator of the crime, they cannot remain in custody. Accused persons are in judicial custody since 10.04.2019. Trial is likely to take some time. At this stage without further commenting on the merits of the case, bail application of accused Munna Lal and Shyam Kishan Pal are allowed.
11. Accordingly accused Munna Lal is entitled to regular bail and accused Shyam Kishan Pal is admitted to interim bail for a period of



45 days from the date of his release, on their furnishing a personal bond in the sum of Rs. 30,000/- each with one surety each in the like amount to the satisfaction of this court, on the following terms and conditions:-

- a. That accused persons shall not contact the complainant/victim or any other witnesses through any mode.
- b. They shall not leave the city without permission of this court.
- c. They shall inform this court of any change in their address.
- d. The accused persons shall provide their latest mobile number to the SHO/IO concerned and shall mark their presence once in the month on first Saturday of the month. The mode and manner of marking their presence is at the discretion of the SHO/IO concerned.

Applications are disposed off accordingly.

Accused Shyam Kishan Pal shall surrender within the period of 45 days
Copy of the order be sent to the Ld. Counsel for the accused persons
and complainant through electronic mode. Put up on the date already
fixed.

(Ankur Jain)
ASJ (SFTC-01) West
Delhi: 31.07.2020

IN THE COURT OF ANKUR JAIN
ADDITIONAL SESSIONS JUDGE: SFTC (WEST)-01: DELHI

State Vs. Ish Kumar
FIR No. 1492/14
PS. : Tilak Nagar
U/s 376/506 IPC

Hearing took place through CISCO Web Ex.

31.07.2020

Present: Sh. Subhash Chauhan, Ld. Addl. PP for the State.
Mr. Rakesh Kumar, Ld. Counsel for the accused along with
accused.
Ms. Arti Pandey Ld. Counsel from DCW.
Mr. Manish Sharma, Ld. Counsel for complainant along with
husband of complainant.

Judgment is not ready as order on two bail applications were
to be passed today.

Put up on 04.08.2020 for judgment / order.

(Ankur Jain) 31/07/2020

Addl. Sessions Judge (SFTC-01) West
Delhi: 31.07.2020