

Bail Application No.512/2021  
State Vs. Varun Hiremath  
FIR NO. 11 /2021  
PS Chankaya Puri  
U/sec. 342/376/509 IPC

12.03.2021

*Best Copy*  
Vide order No.1809-1879 Bail &  
Filing/Judl/Prin.D&SJ/NDD/2021 dated 25.02.2021 of the Ld. Distt. &  
Sessions Judge, Patiala House Court, New Delhi, the undersigned  
has been deputed for bail duty.

Matter is taken up in terms of directions of Hon'ble High Court  
vide order no. 35/RG/DHC/2021ted 14.01.2021 and order of LD.  
Principal District & Sessions Judge, PHC, New Delhi bearing no. 381-  
440/Judl/ Prin. D&SJ/NDD/2021 dated 15.01.2021.

Matter is taken up on in physical hearing.

At 4:00 pm.

Present: Sh. R K Bhati, Ld Addl. PP for the State.  
Sh. Sandeep Kapur, Ld. counsel for accused/applicant.  
Sh. Sidharth, Ld. proxy counsel on behalf of Sh. Jai Anant  
Dehadrai, Ld. counsel for complainant.

### INDIAN LEGAL NEWS

Arguments on bail application have already been heard.

Anticipatory bail is prayed on the ground that accused has  
been falsely implicated in this case and whatever had happened on the  
day of offence was consensual and even prosecutrix who is coming from  
Pune to Delhi to meet the accused and thereafter joining him in the hotel  
in a double occupancy room where she herself had given her identity  
documents are sufficient to show that she herself was interested in going  
into the hotel room for the purpose of sexual relationship with the accused.  
It is further contended that there is delay in lodging the FIR. The alleged  
incident was taken place on 20.02.2021 whereas the complaint was  
lodged on 23.02.2021. Ld. counsel has further highlighted the  
contradictions in the statement under Section 164 Cr.P.C. and complaint of  
the prosecutrix by stating that the complaint was not about the true facts of  
this case, in fact, it has been drafted with the legal advise with a cool mind.

to insert the ingredients of commission of offence. It is further contended that there has been history of previous sexual relationship between the accused and the prosecutrix which is also important in order to counter the allegations of the prosecutrix who has been consensual in her relationship with the accused. Ld. Defence Counsel has further submitted that on previous occasion when accused was in Mumbai and prosecutrix was in Pune, the accused used to bear all her expenses to and fro from Pune to Mumbai. In support of his arguments, some whatsapp and instagram chats between them are also highlighted in order to show the love and passion between them for each other.

In support of his arguments, Ld. Defence Counsel has relied upon the following judgements:

- *Bisheshwar Mishra v. State 1998 (1) JCC 46(2) (Delhi)*
- *Subhash v. State 1993 JCC 94*
- *Vikas v. State of Delhi 2007 (3) JCC 2336*
- *Naushad v. State of NCT of Delhi & Ors. Dated 24.08.2020*
- *Joginder Kumar v. State of U.P. 1994 (4) SCC 260*
- *Siddharam Satlingappa Mhetre v. State of Maharashtra & Ors. AIR 2011 SC 312*
- *Anil Mahajan v. Commissioner of Customs 2000 (2) JCC Delhi 302*
- *Gurbaksh Singh Sibbia v. State of Punjab 1980 2 SCC 565*

Ld. Addl. PP who is assisted by the Ld. counsel for complainant Sh. Jai Anant Dehadrai was also heard alongwith the prosecutrix who was present in person. It is submitted by Ld. counsel for complainant that from the beginning, the prosecutrix was not willing for any sexual indulgence with the accused, when they were passing through

अतिरिक्त सत्र न्यायाधीश  
Additional Sessions Judge  
(सौ-फास्ट ट्रेक कोर्ट), जिला नई दिल्ली  
(Spl. F.T.C.), New Delhi District  
पटियाला हाउस कोर्ट, नई दिल्ली  
Patiala House Courts, New Delhi

the lobby of the hotel room even at that time also prosecutrix has denied the offer of the accused. Merely going into the room of the hotel with the accused does not shows her intention to indulge in sexual activities with the accused. It is further contended that it is the accused who himself had his own plans, therefore, he without the information of the prosecutrix, booked a double occupancy room and prosecutrix gave her identity document by mistaking it being on account of Covid guidelines. Booking room in a different wing separately from his family who was staying in the same hotel shows his intention. It is further submitted that in her complaint itself, prosecutrix has explained everything and there is no material contradiction in her statement and complaint.

In the present complaint, it is alleged by the complainant/prosecutrix that she and the accused were friends since 2017 - 2020 and she is the resident of Pune, Maharashtra whereas accused was residing in Mumbai. On 30.01.2021 accused messaged her about his plaining to come Delhi to attend a marriage ceremony. Therefore, he also asked her to come over there for a meeting and prosecutrix accordingly came to Delhi. They both met in Khan Market and from there, in the morning time at around 11:00 am on 20.02.2021, they decided to go to ITC Maurya Hotel, Chanakya Puri where accused was staying with his family. Accused booked a separate room from his parents in the same hotel. Accused had booked a room with his own planning to have physical relationship with the prosecutrix and it was a double occupancy room. When they went inside the room accused started demanding her to disrob herself which she resisted and he also told her to have sexual intercourse with him. Despite prosecutrix's denial of indulging in any kind of such activities and against her wishes he inserted his finger inside her vagina multiple times. She resisted him and said no and even thereafter he forcibly inserted his penis into her mouth and asked her to give him a

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blowjob but she also denied and accused forcibly did the same to her without her will and consent. Thereafter she vomited and went into the bathroom to clean up where accused also followed her and even there also he forced her to have sexual relationship but prosecutrix did not agreed to the same. In the meanwhile he received a call on his mobile phone from his father, therefore, he had to go out of the room but told her to remain there to have physical relationship with him and after leaving the room, prosecutrix felt very disturbed and left the room. On these allegations of forcible commission of rape against her will and consent and despite the fact that she kept on saying no to the acts of the accused, he forcibly compelled her to disrob herself and committed the offence.

So far as contention of Ld. Defence Counsel about bearing the expenses of cabs and food bills is concerned, the prosecutrix has already admitted in her complaint about the same. So far as the reason for booking the double occupancy room, the same has been explained by the prosecutrix in her complaint itself. In her complaint as well as in her statement, she has stated that she was feared of injury if she attempted to escape from the room. Therefore she bow down to the forcible demands of the accused. She has also stated that she always resisted the act of accused of putting his finger inside her vagina and also doing oral sex with her and specifically in both her versions, she has stated that she was not willing to do the same. So far as the question of having consent or saying no to the advances of the accused is a material question here. Ld. Defence Counsel has stated that she disrob herself and indulged in sexual activities with the accused and there has been no mark of resistance on her body which also shows that she never said no and always consented for the act. On this point also I am of the view that prosecutrix in her complaint as well as in her statement under Section 164 Cr.P.C. specifically denied that the act was the consented one and she has

repeatedly mentioned that despite her resistance and unwillingness, accused kept on doing the same to her and she not able to resist the same as she was fearing of some injuries due to the aggression in the behaviour of the accused. In order to support the version of the prosecutrix IO has shown from her file some whatsapp chats of accused and prosecutrix of the day of offence after commission of offence which are of evening time from 8:30 pm onwards same are indicating towards the feeling of sorry by the accused of his acts. So far as this question of treating this 'no' as 'yes' coupled with the conduct of prosecutrix and accused is a matter of trial only when prosecutrix will get a chance to get record her testimony. But at this stage of anticipatory bail application this court cannot loose the focus of the facts of this case and ingredients of commission of offence under Section 375/376 IPC in which this FIR has been registered. Although, opinion at this stage does not tantamount to expression on the merit of this case. At the stage of hearing bail application this is a prima facie observation in view of the complaint and the facts and circumstances of this case, since investigation in this case is still pending.

Although whatsapp and instagram chats has not been specifically denied from the side of the prosecution but despite the fact that accused and prosecutrix were having loving relationship and they were being indulged in sexual explicit talks that also not going to make difference at this stage in view of Section 53A of Indian Evidence Act which provides that evidence of character or previous sexual experiences not relevant in certain cases including the offence under Section 376 and this provision specifically shows that previous sexual experiences with any person shall not be relevant on the issue of such consent or the quality of consent. Therefore, from her previous experiences with the accused the consent cannot be implied. This observation is also found support from


Section 114A Indian Evidence Act which deals with the presumption as to absence of consent in certain cases for the rape and if sexual intercourse by the accused is proved. So far as the question about the consent or no consent, if the woman states in her evidence before the court that she did not consent, the court shall presume that she did not consent. In such circumstances, the presumption under Section 114A Indian Evidence Act at this stage cannot be ignored although this has to be at the time of the trial but the evidence collected by the IO till today in the form of complaint, statement under Section 164Cr.P.C., statement under Section 161 Cr.P.C. and whatsapp and instagram chats and written transcripts are sufficient to say that this is not a case where such presumption appears to be absent. So far as contradictions highlighted by the Ld. Defence Counsel during the course of arguments are not material one and are not sufficient to disbelieve the version of the prosecutrix. IO has stated about the requirement of custodial interrogation of the accused for the purpose of further investigation in this matter.

Therefore, considering the nature of accusation made against the accused, evidences collected by the IO against him and the facts and circumstances, gravity of offence and discussion made hereinabove, I am not inclined to grant anticipatory bail to the accused. Hence, the same is dismissed.

Application stands disposed of.

Copy of this order be given dasti.



  
अतिरिक्त सत्र न्यायाधीश  
(Sanjay Khanagwal)  
Roster Judge/ASJ/Spl. J/FC/PHC/ND  
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