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

+ BAIL APPLN. 726/2017

SHASHANK JAIN

..... Petitioner

Through Mr.R.K. Tarun, Adv.

versus

STATE

..... Respondent

Through Mr.M.S. Oberoi, APP with SI Dalbir Singh, PS Mahendra Park.
Ms.Vandana Anand, Adv. for the complainant with complainant.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

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24.04.2017

Crl.M.A. 6653/2017 (Exemption)

Application is allowed subject to just exceptions.

Bail Appln. 726/2017

The present application has been filed under Section 438 Cr.P.C. for the grant of anticipatory bail in FIR No.288/2016, under Sections 498A/406/34 IPC, Police Station Mahendra Park.

The fact remains that the present bail application has been filed after the dismissal of the bail application by the Court below vide order dated 19.04.2017.

Learned APP has submitted that the accused is not available on the given address and that was the reason for seeking permission to arrest the accused and to have his custody.

As per the judgment passed by this Court in the case of ***Udit Raj Poonia v. State (Govt. of NCT of Delhi) 2017 (238) DKT 212***, guidelines have been issued. It reads :

****Provision of Section 41 Cr.P.C. and the guidelines issued vide Standing Order Nos.330/2008 and 444/2016 are mandatory in nature and must be complied with.***

****The DCP/ACP shall ensure that the alleged articles are in existence and the recovery/seizure could take place without the arrest. In other words, that arrest is the only mode in the facts and circumstances to effect the recovery before granting the sanction to arrest.***

****Similarly, the Courts while considering the bail under Section 437, 438, 439 Cr.P.C. shall refuse the bail in exceptional circumstances.***

****The exceptional circumstances may be assessed by the Court concerned and the bail application must be decided expeditiously.***

****In matrimonial cases bail is a rule and refusal is an exception.***

Undisputedly, the provision of Section 41 of the Cr.P.C. has not been complied with despite the judgment dated 16.02.2017 passed by this Court. This Court is of the considered opinion that once the procedure of Section 41 Cr.P.C. is adopted then in the case of any hardship with the Investigating Officer, he is required to seek the warrant from the Court before arresting an accused. The act of the Investigating Officer is indefensible in the light of above judgment.

The provision of Section 41 Cr.P.C. and the guidelines issued by the Delhi Police vide Standing Order Nos.330/2008 and 444/2016

is mandatory and its non-compliance in matrimonial cases is indefensible as the sentence provided is less than seven years. The judgment passed by this Court in the case of **Udit Raj Poonia** (supra) must be complied in its letter and spirit by the investigating agency and ACP/DCP concerned while granting permission.

It is made clear that the DCP or the ACP concerned, as the case may be, shall pass a detailed speaking order while granting the permission to arrest the person as envisaged in its Standing Order No.330/2008 with regard to arrest of the accused in matrimonial cases as the provisions of Section 41 Cr.P.C, Standing Order No.330/2008 and Standing Order No.444/2016 are mandatory in nature.

In view of above mentioned facts and circumstances, it is apparent that the provision of Section 41 Cr.P.C. has not been complied with. So, the Investigating Officer is required to first comply with the provision of Section 41 Cr.P.C. and proceed accordingly.

The application is accordingly disposed of.

Copy of the order be sent to the Commissioner of Delhi Police for implementation of the judgment in the case of **Udit Raj Poonia** (supra).

P.S.TEJI, J

APRIL 24, 2017
dd