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

+ **BAIL APPLN. 1410/2017**
ABHAY SINGH

..... Petitioner

Represented by: Mr. Kartikray Mathur, Mr.
Sudhir Mathur and Mr. Utkarsh
Mathur, Advocates.

versus

THE STATE

..... Respondent

Represented by: Ms. Rajni Gupta, APP with SI
Radha, PS Palam Village.
Mr. Arvind Dua, Advocate for
Complainant.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

06.04.2018

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Crl.M.B. No. 1342/2017

1. By this application, the petitioner seeks anticipatory bail in case FIR No. 137/2017 under Section 376 IPC registered at PS Palam Village.
2. The petitioner had earlier filed an application seeking anticipatory bail being Bail Application No. 957/2017 which was withdrawn by the petitioner on 21st July, 2017. When the present petition came up for hearing, on a query put by this court as to how the second petition for anticipatory bail would be maintainable with no change circumstances, learned counsel for the petitioner stated to this court that the earlier bail application was withdrawn as certain documents were required to be filed. Since the reason for withdrawal of the earlier anticipatory bail application was not evident from the order, this Court directed listing of the present application before

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the bench where Bail Application No. 957/2017 was withdrawn.

3. The clarification of the Hon'ble Judge who had permitted withdrawal of the application as has been noted in the order dated 16th March, 2018 is as under :-

1. The instant bail application has been placed before this Court on the basis of the submissions of learned counsel for the petitioner as recorded in the order dated 24.01.2018 to the following effect:-

“1. This is the second anticipatory bail application filed by the petitioner. When this Court posed a question to learned counsel for the petitioner as to the first application, learned counsel for the petitioner states that the same was withdrawn as certain documents were required to be filed. However, this fact is not apparent from the order dated 21st July, 2017 passed by this Court in Bail Application No.9567/2017 because if it was withdrawn for the said reason the Court would have granted liberty to the petitioner to file a fresh anticipatory bail application.

2. In the facts and circumstances of the case, it would be appropriate to list this application before the same Bench. xxx xxx”

2. A bare perusal of the order dated 21.07.2017 passed in Bail Appln.No.957/2017 (first anticipatory bail application filed by the petitioner) reveals that no such request was made by the petitioner for filing certain documents, which if made, would have been granted time to file the documents.

3. In para 28 of the second application seeking anticipatory bail i.e. the instant Bail Appln No.1410.2017, there is no averment about the circumstances in which the first application seeking anticipatory bail was withdrawn on 21.07.2017. For purpose of placing on record certain documents, the petitioner was not required to withdraw the first application but to seek permission to place on record the documents.

4. Subject to the orders of Hon'ble the Acting Chief Justice, list before the Roster Bench on 06.04.2018.

4. It is thus apparent that the earlier bail application was withdrawn when the Court was not inclined to grant anticipatory bail. With no change in circumstance merely because some more documents have been placed on record which were earlier also in possession of the petitioner would not be a ground for this Court to entertain the bail application.

5. Learned counsel for the petitioner relies upon the decision of this Court in Mahender Rani Johar Vs. State of NCT of Delhi 117 2005 DLT 619 where in this Court holds that in case earlier bail application is not rejected on merits, the second bail application would be maintainable. As noted above when the earlier bail application came up before this Court it was withdrawn so as to avoid an adverse order. Thus the decision in Mahender Rani Johar (Supra) would not be applicable to the facts of the present petition.

6. Petition is dismissed.

MUKTA GUPTA, J.

APRIL 06, 2018

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