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IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 496 of 2001@@  
EEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEE  
(Arising out of S.L.P. (Crl.) 572 of 2001)

Kamal Kapoor ..Appellant

Vs.

Sachin Kartarsingh & Ors. ..Respondents

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.....L.....I.....T.....T.....T.....T.....T.....T.....T.....J  
.SP2

Heard.  
Leave granted.

The appellant is the father of the girls alleged to have been raped by the respondents. At the first instance the case was only for the offence under Section 363 of the I.P.C. and the respondents applied for bail and were released on bail. Subsequently, the investigating officers came to know that the offence under Section 376 I.P.C. was also involved. Then an application was made for cancellation of the bail. On the said application the court passed the following order on 18.8.2000:

..2/-

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.....L.....I.....T.....T.....T.....T.....T.....T.....J

"The accused are released on bail while offence under Section 363 was registered. Offence under Section 376 IPC was disclosed lateron. Hence it is necessary to arrest the accused. Permission is granted to arrest the accused."

.....L.....I.....T.....T.....T.....T.....T.....T.....J

It was doubtful whether a court can order re-arrest of a person when that person was already on bail without cancelling the first bail order. But we are not inclined to enter into that aspect in the appeal, particularly since we can read that order as tantamounting to cancellation of the bail already granted to the respondents. Whether it is right or wrong the respondents also had taken it like that and that is why they applied for anticipatory bail before the High

Court under Section 438 of the Code of Criminal Procedure. By the impugned order the High Court has granted them the pre-arrest bail order which is being challenged now.

Learned counsel for the respondents submitted that the Section of offence had been escalated to Section 376 of the IPC on the strength of the statements allegedly made by the minor girls. He read out the earlier statements of the girls to show that there are clear contradictions between the two versions, one recorded at the 1st instance and the other recorded later after the interval of one day. We do not think ..3/-

:3:

that it is proper for us to consider at this stage when pre-arrest bail order is sought for, by making a comparison between those two statements. Of course that aspect can also be considered by the court when the accused apply for regular bail after surrendering.

We, therefore, set aside the impugned order without prejudice to the right of the respondents to move for regular bail.

This appeal is disposed of accordingly.

.SP1

.....J.@@  
BB  
(K.T. THOMAS)@@  
BB

.....J.@@  
BB  
(R.P. SETHI)@@  
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NEW DELHI@@  
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APRIL 16, 2001 @@  
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(N.K. Goel)  
Court Master

(D.D. Jindal)  
Court Master

(Signed order is placed on the file)