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**IN THE COURT OF SH. NAVEEN KUMAR KASHYAP:**  
**ADDITIONAL SESSIONS JUDGE-04:CENTRAL:**  
**TIS HAZARI:DELHI**

**BAIL APPLICATION NO: 2148/2020**

**State v. Sonu**  
**FIR No. : 479/2020**  
**PS: Sarai Rohilla**  
**U/S: 308, 323,341,506, 34IPC**

**16.12.2020.**

Present: Sh. Pawan Kumar, Ld. Addl. PP for the State through VC.  
Sh. Zia Afroz, Ld. Counsel for applicant/accused  
through VC.

Arguments already heard.

Today, case was fixed for orders.

Vide this order, the regular bail application dated 11.12.2020 filed by accused Sonu @ Yogesh @ Buddha through counsel is disposed of.

The personal liberty is a priceless treasure for a human being. It is founded on the bed rock of constitutional right and accentuated further on human rights principle. The sanctity of liberty is the fulcrum of any civilized society. Deprivation of liberty of a person has enormous impact on his mind as well as body. Further article 21 Of the Constitution mandates that no person shall be deprived of his life or personal liberty except according to procedure established by law. Further India is a signatory to the International Covenant On Civil And Political Rights, 1966 and, therefore, Article 21 of the Constitution has to be understood in the light of the International Covenant On Civil And Political Rights, 1966. *Further* Presumption of innocence is a human right. Article 21 in view of its expansive meaning not only protects life and liberty, but also envisages a fair procedure. Liberty of a person should not ordinarily be interfered with unless there exist cogent grounds therefor. The

fundamental principle of our system of justice is that a person should not be deprived of his liberty except for a distinct breach of law. If there is no substantial risk of the accused fleeing the course of justice, there is no reason why he should be imprisoned during the period of his trial. The basic rule is to release him on bail unless there are circumstances suggesting the possibility of his fleeing from justice or thwarting the course of justice. When bail is refused, it is a restriction on personal liberty of the individual guaranteed by Article 21 of the Constitution.

Further it has been laid down from the earliest time that the object of Bail is to secure the appearance of the accused person at his trial by reasonable amount of Bail. The object of Bail is neither punitive nor preventive. Deprivation of liberty must be considered a punishment unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after convictions, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earlier times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial ,but in such case 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the constitution that any persons should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty under Article 21 of the Constitution upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson. While considering an application for bail

either under Section 437 or 439 CrPC, the court should keep in view the principle that grant of bail is the rule and committal to jail an exception. Refusal of bail is a restriction on personal liberty of the individual guaranteed by Article 21 of the Constitution. Seriousness of the offence not to be treated as the only consideration in refusing bail : Seriousness of the offence should not to be treated as the only ground for refusal of bail. (Judgment of **Sanjay Chandra Vs. Central Bureau of Investigation, AIR 2012 SC 830** relied).

But, the liberty of an individual is not absolute. The Society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the societal order. A society expects responsibility and accountability from the member, and it desires that the citizens should obey the law, respecting it as a cherished social norm. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly thing which the society disapproves, the legal consequences are bound to follow.

Further discretionary jurisdiction of courts u/s 437 and 439 CrPC should be exercised carefully and cautiously by balancing the rights of the accused and interests of the society. Court must indicate brief reasons for granting or refusing bail. Bail order passed by the court must be reasoned one but detailed reasons touching merits of the case, detailed examination of evidence and elaborate documentation of merits of case should not be done.

At this stage , it can also be fruitful to note that requirements for bail u/s 437 & 439 are different. Section 437 Cr.P.C. severally curtails the power of the Magistrate to grant bail in context of the commission of non-bailable offences punishable with death or imprisonment for life, the two higher Courts have only the procedural requirement of giving notice of the Bail application to the Public Prosecutor, which requirement is also ignorable if circumstances so demand. The regimes regulating the powers of the Magistrate on the one hand and the two superior Courts are decidedly and intentionally not identical, but vitally and drastically dissimilar. (**Sundeep Kumar Bafna Vs. State of Maharashtra, AIR**

**2014 SC 1745 ).**

Further at this stage it can be noted that interpreting the provisions of bail contained u/s 437 & 439 Cr.P.C., the Hon'ble Supreme Court in its various judgments has laid down various considerations for grant or refusal of bail to an accused in a non-bailable offence like, (i) Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) Nature of accusation and evidence therefor, (iii) Gravity of the offence and punishment which the conviction will entail, (iv) Reasonable possibility of securing presence of the accused at trial and danger of his absconding or fleeing if released on bail, (v) Character and behavior of the accused, (vi) Means, position and standing of the accused in the Society, (vii) Likelihood of the offence being repeated, (viii) Reasonable apprehension of the witnesses being tampered with, (ix) Danger, of course, of justice being thwarted by grant of bail, (x) Balance between the rights of the accused and the larger interest of the Society/State, (xi) Any other factor relevant and peculiar to the accused. (xii) While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, but if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. Furthermore, in the landmark judgment of **Gurucharan Singh and others v. State** (AIR 1978 SC 179), it was held that there is no hard and fast rule and no inflexible principle governing the exercise of such discretion by the courts. It was further held that there cannot be any inexorable formula in the matter of granting bail. It was further held that facts and circumstances of each case will govern the exercise of judicial discretion in granting or refusing bail. It was further held that such question depends upon a variety of circumstances, cumulative effect of which must enter into the judicial verdict. Such judgment itself mentioned the nature and seriousness of nature, and circumstances in which offences are committed apart from character of evidence as some of the relevant factors in deciding whether to grant bail or not.

Further it may also be noted that it is also settled law that while disposing of bail applications u/s 437/439 Cr.P.C., courts should assign reasons while allowing or refusing an application for bail. But detailed reasons touching the merit of the matter should not be given which may prejudice the accused. What is necessary is that the order should not suffer from non-application of mind. At this stage a detailed examination of evidence and elaborate documentation of the merit of the case is not required to be undertaken. Though the court can make some reference to materials but it cannot make a detailed and in-depth analysis of the materials and record findings on their acceptability or otherwise which is essentially a matter of trial. Court is not required to undertake meticulous examination of evidence while granting or refusing bail u/s 439 of the CrPC.

I have heard both the sides and gone through the record.

It is argued that accused is in JC since 29.11.2020. That the weapon of offence alleged is danda only. That there is a delay of two days in registration of FIR. That investigation is already over. That accused is no more required for purpose of investigation. That accused is falsely implicated in present case as there is previous animosity between the complainant and accused side. That no weapon of offence is recovered in present case. That victim was discharged on the same day. No purpose would be served by keeping the accused in JC. As such, it is prayed that she be granted regular bail.

On the other hand, it is argued on behalf of the State that present accused alongwith two other co-accused started beating the complainant with iron rod and danda after blocking the way of such complainant and his friend. That only when public gathered, accused left the complainant after threatening the complainant from the spot. That there is medical evidence in support of the offence in question. It is further stated that investigation is at initial stage and final opinion on the type of injury is yet to be obtained. As such, present bail application is strongly opposed.

I have heard both the sides and have gone through the

record.

At present the offences alleged against the accused is upto 7 years only. Further, period to seek PC remand is already over. No purpose would be served by keeping accused in JC. That investigation and thereafter trial is likely to take time. Further, there is a presumption of innocence in favour of such accused. Further, appropriate terms can be imposed upon the accused in order to safeguard the interest of witness. Further, needless to say that if later on, there is change in the nature of offence after obtaining further opinion regarding type of injury, then same would be dealt as per law if graver offence are also added. But just because final opinion is pending, in the meanwhile, right of accused to bail cannot be curtailed on such account only. Under above facts and circumstances, present accused is granted bail subject to furnishing of personal bond in the sum of **Rs. 20,000/- with one sound surety of like amount**, subject to the satisfaction of the learned Trial court and the following additional conditions:

- (i) That he will appear before IO / Trial Court as and when called as per law.*
- (ii) He will not indulge in any kind of activities which are alleged against him in the present case.*
- (iii) That he will not leave India without permission of the Court.*
- (iv) He will not threaten the witness or tampering with evidence.*
- (v) He shall convey any change of address immediately to the IO and the court;*
- (vi) He shall also provide his mobile number to the IO/trial court;*

It is clarified that in case if the applicant/ accused is found to be violating any of the above conditions, the same shall be a ground for cancellation of bail and the State shall be at liberty to move an application for cancellation of bail.

I may observe that certain guidelines had been laid down by the Hon'ble Delhi High Court in the case of "*Ajay Verma Vs. Government of NCT of Delhi*" WP (C) 10689/2017 dated 08.03.2018 wherein it was observed and I quote as under:

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*“..... The trial courts should not only be sensitive but extremely vigilant in cases where they are recording orders of bail to ascertain the compliance thereof.....When bail is granted, an endorsement shall be made on the custody warrant of the prisoner, indicating that bail has been granted, along with the date of the order of bail.*

- a) In case of inability of a prisoner to seek release despite an order of bail, it is the judicial duty of the trial courts to undertake a review for the reasons thereof.*
- b) Every bail order shall be marked on the file.*
- c) It shall be the responsibility of every judge issuing an order of bail to monitor its execution and enforcement.*
- d) In case a judge stands transferred before the execution, it shall be the responsibility of the successor judge to ensure execution.....”*

I note that in the present case the bail bonds have been directed to be furnished before the Ld. Trial Court/ Ld. MM and hence in terms of the above observations, the Ld. MM is impressed upon to inform this court about the following:

- a) The date on which conditions imposed by this court are satisfied;*
- b) The date of release of prisoner from jail;*
- c) Date of ultimate release of prisoner in case the prisoner is in jail in some other case.*

The copy of this order be sent to **Ld. MM** and also to the **Superintendent Jail** who shall also inform this court about all the three aspects as contained in the para herein above. The Superintendent Jail is also directed to inform this court if the prisoner is willingly not furnishing the personal bond or in case if he is unable to furnish the surety or any other reason given by the prisoner for not filing the bonds. One copy of this order be also sent to the **SHO Concerned** to ensure compliance.

**The observations made in the present bail application**

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order are for the purpose of deciding of present application and do not affect the factual matrix of the investigation of the present case which is separate issue as per law.

The bail application is accordingly disposed off. Learned counsel for applicant is at liberty to obtain order through electronic mode. Copy of this order be also sent to Jail Superintendent concerned through electronic mode.

NAVEEN  
KUMAR  
KASHYAP

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**(NAVEEN KUMAR KASHYAP)**  
**ASJ-04(Central/Delhi)**  
**16.12.2020**

**IN THE COURT OF SH. NAVEEN KUMAR KASHYAP**  
**ADDITIONAL SESSIONS JUDGE-04: CENTRAL:**  
**TIS HAZARI COURTS: DELHI**

**Application No.:- 2151/2020**  
**State Vs Vikram @ Vicky**  
**FIR No.379/2020**  
**P. S. Karol Bagh**  
**U/s: 356, 379, 411, 34 IPC**

**16/12/2020**

Present: Mr . Pawan Kumar, Learned Addl. PP for State is available through VC.  
Mr. Abhishek Kumar Singh, learned counsel for accused through VC.

Vide this order, bail application u/s 439 Cr.PC dated 11/12/2020 filed by applicant through counsel is disposed off.

I have heard both the sides.

The personal liberty is a priceless treasure for a human being. It is founded on the bed rock of constitutional right and accentuated further on human rights principle. The sanctity of liberty is the fulcrum of any civilized society. Deprivation of liberty of a person has enormous impact on his mind as well as body. Further article 21 Of the Constitution mandates that no person shall be deprived of his life or personal liberty except according to procedure established by law. Further India is a signatory to the International Covenant On Civil And Political Rights, 1966 and, therefore, Article 21 of the Constitution has to be understood in the light of the International Covenant On Civil And Political Rights, 1966. *Further* Presumption of innocence is a human right. Article 21 in view of its expansive meaning not only protects life and liberty, but also envisages a fair procedure. Liberty of a person should not ordinarily be interfered with unless there exist cogent grounds therefor. The fundamental principle of our system of justice is that a person should not be deprived of his liberty except for a distinct breach of law. If there is no substantial risk of the accused fleeing the course of justice, there is no reason why he should be imprisoned during the period of his trial. The basic rule is to release him on bail unless there are

circumstances suggesting the possibility of his fleeing from justice or thwarting the course of justice. When bail is refused, it is a restriction on personal liberty of the individual guaranteed by Article 21 of the Constitution.

Further it has been laid down from the earliest time that the object of Bail is to secure the appearance of the accused person at his trial by reasonable amount of Bail. The object of Bail is neither punitive nor preventive. Deprivation of liberty must be considered a punishment unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after convictions, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earlier times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial ,but in such case 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the constitution that any persons should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty under Article 21 of the Constitution upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson. While considering an application for bail either under Section 437 or 439 CrPC, the court should keep in view the principle that grant of bail is the rule and committal to jail an exception. Refusal of bail is a restriction on personal liberty of the individual guaranteed by Article 21 of the Constitution. Seriousness of the offence not to be treated as the only consideration in refusing bail : Seriousness of the offence should not to be treated as the only ground for refusal of bail. (Judgment of **Sanjay Chandra Vs. Central Bureau of Investigation, AIR 2012 SC 830** relied).

But, the liberty of an individual is not absolute. The Society by its

collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the societal order. A society expects responsibility and accountability from the member, and it desires that the citizens should obey the law, respecting it as a cherished social norm. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly thing which the society disapproves, the legal consequences are bound to follow.

Further discretionary jurisdiction of courts u/s 437 and 439 CrPC should be exercised carefully and cautiously by balancing the rights of the accused and interests of the society. Court must indicate brief reasons for granting or refusing bail. Bail order passed by the court must be reasoned one but detailed reasons touching merits of the case, detailed examination of evidence and elaborate documentation of merits of case should not be done.

At this stage , it can also be fruitful to note that requirements for bail u/s 437 & 439 are different. Section 437 Cr.P.C. severally curtails the power of the Magistrate to grant bail in context of the commission of non-bailable offences punishable with death or imprisonment for life, the two higher Courts have only the procedural requirement of giving notice of the Bail application to the Public Prosecutor, which requirement is also ignorable if circumstances so demand. The regimes regulating the powers of the Magistrate on the one hand and the two superior Courts are decidedly and intentionally not identical, but vitally and drastically dissimilar. (**Sundeep Kumar Bafna Vs. State of Maharashtra, AIR 2014 SC 1745** ).

Further at this stage it can be noted that interpreting the provisions of bail contained u/s 437 & 439 Cr.P.C., the Hon'ble Supreme Court in its various judgments has laid down various considerations for grant or refusal of bail to an accused in a non-bailable offence like, (i) Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) Nature of accusation and evidence therefor, (iii) Gravity of the offence and punishment which the conviction will entail, (iv) Reasonable possibility of securing presence of the accused at trial and danger of his absconding or fleeing if released on bail, (v) Character and behavior of the accused, (vi) Means, position and standing of the accused in the Society, (vii) Likelihood of the offence being repeated, (viii) Reasonable apprehension of the witnesses being

tampered with, (ix) Danger, of course, of justice being thwarted by grant of bail, (x) Balance between the rights of the accused and the larger interest of the Society/State, (xi) Any other factor relevant and peculiar to the accused. (xii) While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, but if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. Furthermore, in the landmark judgment of **Gurucharan Singh and others v. State** (AIR 1978 SC 179), it was held that there is no hard and fast rule and no inflexible principle governing the exercise of such discretion by the courts. It was further held that there cannot be any inexorable formula in the matter of granting bail. It was further held that facts and circumstances of each case will govern the exercise of judicial discretion in granting or refusing bail. It was further held that such question depends upon a variety of circumstances, cumulative effect of which must enter into the judicial verdict. Such judgment itself mentioned the nature and seriousness of nature, and circumstances in which offences are committed apart from character of evidence as some of the relevant factors in deciding whether to grant bail or not.

Further it may also be noted that it is also settled law that while disposing of bail applications u/s 437/439 Cr.P.C., courts should assign reasons while allowing or refusing an application for bail. But detailed reasons touching the merit of the matter should not be given which may prejudice the accused. What is necessary is that the order should not suffer from non-application of mind. At this stage a detailed examination of evidence and elaborate documentation of the merit of the case is not required to be undertaken. Though the court can make some reference to materials but it cannot make a detailed and in-depth analysis of the materials and record findings on their acceptability or otherwise which is essentially a matter of trial. Court is not required to undertake meticulous examination of evidence while granting or refusing bail u/s 439 of the CrPC.

It is stated in the application that he is in JC since long; nothing has been recovered from the possession of the accused or at his instance; that investigation is complete and he is no more required for investigation; that

allegations against the accused are only under section 411 IPC; that he is the only bread earner of his family and due to pandemic situation his family is entirely dependent upon him and there is no one to look after his family; that he is neither a convict nor habitual offender; As such, it is prayed that he be granted regular bail.

On the other hand, in reply dated 15/12/2020 filed by ASI Shiv Kumar, as also argued by learned substitute Addl.PP for the State it is stated that a case of mobile phone snatching was got registered by the complainant. Applicant was arrested in this case alongwith such mobile phone. As such, present bail application is strongly opposed.

In the present case, the maximum punishment of the offences alleged against the present accused is 3 years. The allegations against the accused are u/s 411 IPC only. Further, as far as present accused is concerned, nothing remains to be recovered at his instance. In fact, the period for seeking police remand is already over. As such, no purpose would be served by keeping such accused in JC. Trial is likely to take time. Further, it may be noted that there is fundamental presumption of innocence in any criminal case of present nature. In present case, no previous conviction or even involvement in criminal cases is placed on record by the IO.

In above facts and circumstances, such accused is granted bail subject to furnishing of **personal bond in the sum of Rs. 10,000/- with two sound sureties of like amount**, subject to the satisfaction of the learned Trial court and the following additional conditions:

- i) That he will appear before IO / Trial Court as and when called as per law.*
- ii) He will not indulge in any kind of activities which are alleged against him in the present case.*
- iii) That he will not leave Delhi without prior permission of the Trial Court concerned.*
- iv) He will not threaten the witness or tampering with evidence.*
- v) He shall convey any change of address immediately to the IO and the court;*
- vi) He shall also provide his mobile number to the IO*

***and further share his location through mobile phone once in everyweek till filing of chargesheet and thereafter as may be directed by the learned Trial Court.***

It is clarified that in case if the applicant/ accused is found to be violating any of the above conditions, the same shall be a ground for cancellation of bail and the State shall be at liberty to move an application for cancellation of bail.

I may observe that certain guidelines had been laid down by the Hon'ble Delhi High Court in the case of “***Ajay Verma Vs. Government of NCT of Delhi***” WP (C) 10689/2017 dated 08.03.2018 wherein it was observed and I quote as under:

*“..... The trial courts should not only be sensitive but extremely vigilant in cases where they are recording orders of bail to ascertain the compliance thereof.....When bail is granted, an endorsement shall be made on the custody warrant of the prisoner, indicating that bail has been granted, along with the date of the order of bail.*

- a) *In case of inability of a prisoner to seek release despite an order of bail, it is the judicial duty of the trial courts to undertake a review for the reasons thereof.*
- b) *Every bail order shall be marked on the file.*
- c) *It shall be the responsibility of every judge issuing an order of bail to monitor its execution and enforcement.*
- d) *In case a judge stands transferred before the execution, it shall be the responsibility of the successor judge to ensure execution.....”*

I note that in the present case the bail bonds have been directed to be furnished before the Ld. Trial Court/ Ld. MM and hence in terms of the above observations, the Ld. MM is impressed upon to inform this court about the following:

- a) *The date on which conditions imposed by this court are satisfied;*
- b) *The date of release of prisoner from jail;*
- c) *Date of ultimate release of prisoner in case the prisoner is in jail in some other case.*

The copy of this order be sent to **Ld. MM** and also to the

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**Superintendent Jail** who shall also inform this court about all the three aspects as contained in the para herein above. The Superintendent Jail is also directed to inform this court if the prisoner is willingly not furnishing the personal bond or in case if he is unable to furnish the surety or any other reason given by the prisoner for not filing the bonds. One copy of this order be also sent to the **SHO Concerned** to ensure compliance.

**The bail application is accordingly disposed off. Learned counsel for applicant is at liberty to obtain through electronic mode. Copy of this order be sent to concerned Jail Superintendent. Copy of this order be sent to IO / SHO concerned. Copy of order be uploaded on website.**

The observations made in the present bail application order are for the purpose of deciding of present application and do not affect the factual matrix of the investigation of the present case which is separate issue as per law.

NAVEEN  
KUMAR  
KASHYAP  
(NAVEEN KUMAR KASHYAP)  
ASJ-04(Central/Delhi)  
16.12.2020

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**Bail Application**

**Bail Application No.: 1909/2020**  
**State Vs. Keshav @ Ashu**  
**FIR No. :273/2020**  
**PS: Prashad Nagar**  
**U/S: 379, 411, 34 IPC**

**16.12.2020**

Present: Mr. Pawan Kumar, Learned Addl. PP for the State through VC  
Mr. Lokesh Kumar Khanna, Learned counsel for the applicant through VC.

Vide this order, the regular bail application under section 439 Cr.P.C. on behalf of accused dated 17/11/2020 filed through counsel is disposed of.

I have heard both the sides and have gone through the record.

The personal liberty is a priceless treasure for a human being. It is founded on the bed rock of constitutional right and accentuated further on human rights principle. The sanctity of liberty is the fulcrum of any civilized society. Deprivation of liberty of a person has enormous impact on his mind as well as body. Further article 21 Of the Constitution mandates that no person shall be deprived of his life or personal liberty except according to procedure established by law. Further India is a signatory to the International Covenant On Civil And Political Rights, 1966 and, therefore, Article 21 of the Constitution has to be understood in the light of the International Covenant On Civil And Political Rights, 1966. *Further* Presumption of innocence is a human right. Article 21 in view of its expansive meaning not only protects life and liberty ,but also envisages a fair procedure. Liberty of a person should not ordinarily be interfered with unless there exist cogent grounds therefor. The fundamental principle of our system of justice is that a person should not be deprived of his liberty except for a distinct breach of law. If there is no substantial risk of the accused fleeing the course of justice, there is no reason why he should be imprisoned during the period of his trial. The basic rule is to release him on bail unless there are circumstances

*State Vs. Keshav @ Ashu*  
*FIR No. :273/2020*  
*PS: Prashad Nagar*  
*U/S: 379, 411, 34 IPC*

suggesting the possibility of his fleeing from justice or thwarting the course of justice. When bail is refused, it is a restriction on personal liberty of the individual guaranteed by Article 21 of the Constitution.

Further it has been laid down from the earliest time that the object of Bail is to secure the appearance of the accused person at his trial by reasonable amount of Bail. The object of Bail is neither punitive nor preventive. Deprivation of liberty must be considered a punishment unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after convictions, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earlier times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial ,but in such case 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the constitution that any persons should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty under Article 21 of the Constitution upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson. While considering an application for bail either under Section 437 or 439 CrPC, the court should keep in view the principle that grant of bail is the rule and committal to jail an exception. Refusal of bail is a restriction on personal liberty of the individual guaranteed by Article 21 of the Constitution. Seriousness of the offence not to be treated as the only consideration in refusing bail : Seriousness of the offence should

not to be treated as the only ground for refusal of bail. (Judgment of **Sanjay Chandra Vs. Central Bureau of Investigation, AIR 2012 SC 830** relied).

But, the liberty of an individual is not absolute. The Society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the societal order. A society expects responsibility and accountability from the member, and it desires that the citizens should obey the law, respecting it as a cherished social norm. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly thing which the society disapproves, the legal consequences are bound to follow.

Further discretionary jurisdiction of courts u/s 437 and 439 CrPC should be exercised carefully and cautiously by balancing the rights of the accused and interests of the society. Court must indicate brief reasons for granting or refusing bail. Bail order passed by the court must be reasoned one but detailed reasons touching merits of the case, detailed examination of evidence and elaborate documentation of merits of case should not be done.

At this stage , it can also be fruitful to note that requirements for bail u/s 437 & 439 are different. Section 437 Cr.P.C. severally curtails the power of the Magistrate to grant bail in context of the commission of non-bailable offences punishable with death or imprisonment for life, the two higher Courts have only the procedural requirement of giving notice of the Bail application to the Public Prosecutor, which requirement is also ignorable if circumstances so demand. The regimes regulating the powers of the Magistrate on the one hand and the two superior Courts are decidedly and intentionally not identical, but vitally and drastically dissimilar. (**Sundeep Kumar Bafna Vs. State of Maharashtra, AIR 2014 SC 1745** ).

Further at this stage it can be noted that interpreting the provisions of bail contained u/s 437 & 439 Cr.P.C., the Hon'ble Supreme Court in its various judgments has laid down various considerations for grant or refusal of bail to an accused in a non-bailable offence like, (i) Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) Nature of accusation and evidence therefor, (iii)

Gravity of the offence and punishment which the conviction will entail, (iv) Reasonable possibility of securing presence of the accused at trial and danger of his absconding or fleeing if released on bail, (v) Character and behavior of the accused, (vi) Means, position and standing of the accused in the Society, (vii) Likelihood of the offence being repeated, (viii) Reasonable apprehension of the witnesses being tampered with, (ix) Danger, of course, of justice being thwarted by grant of bail, (x) Balance between the rights of the accused and the larger interest of the Society/State, (xi) Any other factor relevant and peculiar to the accused. (xii) While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, but if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. Furthermore, in the landmark judgment of **Gurucharan Singh and others v. State** (AIR 1978 SC 179), it was held that there is no hard and fast rule and no inflexible principle governing the exercise of such discretion by the courts. It was further held that there cannot be any inexorable formula in the matter of granting bail. It was further held that facts and circumstances of each case will govern the exercise of judicial discretion in granting or refusing bail. It was further held that such question depends upon a variety of circumstances, cumulative effect of which must enter into the judicial verdict. Such judgment itself mentioned the nature and seriousness of nature, and circumstances in which offences are committed apart from character of evidence as some of the relevant factors in deciding whether to grant bail or not.

Further it may also be noted that it is also settled law that while disposing of bail applications u/s 437/439 Cr.P.C., courts should assign reasons while allowing or refusing an application for bail. But detailed reasons touching the merit of the matter should not be given which may prejudice the accused. What is necessary is that the order should not suffer from non-application of mind. At this stage a detailed examination of evidence and elaborate documentation of the merit of the case is not required

to be undertaken. Though the court can make some reference to materials but it cannot make a detailed and in-depth analysis of the materials and record findings on their acceptability or otherwise which is essentially a matter of trial. Court is not required to undertake meticulous examination of evidence while granting or refusing bail u/s 439 of the CrPC.

In the present case, it is argued that applicant is an innocent; he has nothing to do with the alleged offence; he has been falsely implicated in the present case; that he is in JC since 22/10/2020. It is further argued that police staff of PS Prasad Nagar was compelling the present accused to work as mukhbir (secret informer) to the police but when he refused he was implicated in the present case; that accused was at his home; at around 9:30PM on that day of incident; that recovery of mobile phone is planted upon the accused; in any case nothing is to be recovered from him; that ASI concerned who arrested him was not even on duty on that day; that such accused is already acquitted in all such false similar cases alleged against him except two in which trial is going on; that no purpose would be served by keeping him in JC. As such, it is prayed that he be granted regular bail.

On the other hand, reply dated 1911/2020 filed by IO as also argued by the learned Addl.PP for State that complainant Manjyot Singh apprehended the present accused on the spot on 21/10/2020 immediately after he committed the offence in question and was fleeing away from the spot and the mobile phone was recovered from the present accused and complainant informed the ASI Amresh and Ct. Jaivir about the same when they reached at the spot. it is further stated that family of accused do not have control over him. That his presence may not be secured if released on bail. Further he is a habitual criminal and a drug addict. It is further submitted that as many as 17 criminal cases in which present accused is involved. As such, present bail application is strongly opposed.

Although, the offence alleged is punishable upto three years, but this Court finds force in the arguments of learned Addl.PP for the state. The offence is nuisance to public at large. There are specific and serious allegations against the accused. The present accused was apprehended by the

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complainant himself as per record immediately after committing the offence and no explanation is given why complainant who is unknown to the present accused would falsely implicate the present accused. Further there is incriminating evidence against the present accused. As such, this Court is not inclined to grant the relief as sought in the present application. Hence, the same is dismissed.

**With these observations present bail application is disposed of as dismissed. Further, both the sides are at liberty to collect the order through electronic mode. Further a copy of this order be sent to SHO / IO concerned. Further, copy of this order be also sent to concerned Jail Superintendent.**

The observations made in the present bail application order are for the purpose of deciding of present application and do not affect the factual matrix of the investigation of the present case which is separate issue as per law.

NAVEEN  
KUMAR  
KASHYAP

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**(Naveen Kumar Kashyap)**  
**Additional Sessions Judge-04**  
**Central/THC/Delhi**  
**16/12/2020**

: 1 :

**IN THE COURT OF SH. NAVEEN KUMAR KASHYAP:  
ADDITIONAL SESSIONS JUDGE-04: CENTRAL DISTRICT:  
TIS HAZARI: DELHI.**

**BAIL APPLICATION NO.: 1856/2020**

**State v. Shivam Kumar  
FIR No. :291/2020  
PS: Sarai Rohilla  
U/S: 394,397,411,34 IPC**

**16.12.2020**

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC.  
None for accused.  
Arguments already heard.

Today, case was fixed for orders.

Vide this order, the regular bail application under section 439 Cr.P.C. on behalf of accused dated 08.11.2020 filed through counsel is disposed of.

I have heard both the sides and have gone through the record.

The personal liberty is a priceless treasure for a human being. It is founded on the bed rock of constitutional right and accentuated further on human rights principle. The sanctity of liberty is the fulcrum of any civilized society. Deprivation of liberty of a person has enormous impact on his mind as well as body. Further article 21 Of the Constitution mandates that no person shall be deprived of his life or personal liberty except according to procedure established by law. Further India is a signatory to the International Covenant On Civil And Political Rights, 1966 and, therefore, Article 21 of the Constitution has to be understood in the light of the International Covenant On Civil And Political Rights, 1966. *Further* Presumption of innocence is a human right. Article 21 in view of its expansive meaning not only protects life and liberty ,but also

envisages a fair procedure. Liberty of a person should not ordinarily be interfered with unless there exist cogent grounds therefor. The fundamental principle of our system of justice is that a person should not be deprived of his liberty except for a distinct breach of law. If there is no substantial risk of the accused fleeing the course of justice, there is no reason why he should be imprisoned during the period of his trial. The basic rule is to release him on bail unless there are circumstances suggesting the possibility of his fleeing from justice or thwarting the course of justice. When bail is refused, it is a restriction on personal liberty of the individual guaranteed by Article 21 of the Constitution.

Further it has been laid down from the earliest time that the object of Bail is to secure the appearance of the accused person at his trial by reasonable amount of Bail. The object of Bail is neither punitive nor preventive. Deprivation of liberty must be considered a punishment unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after convictions, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earlier times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial ,but in such case 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the constitution that any persons should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty under Article 21 of the Constitution upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as mark of disapproval of former conduct whether the accused has been convicted for it or not or to

refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson. While considering an application for bail either under Section 437 or 439 CrPC, the court should keep in view the principle that grant of bail is the rule and committal to jail an exception. Refusal of bail is a restriction on personal liberty of the individual guaranteed by Article 21 of the Constitution. Seriousness of the offence not to be treated as the only consideration in refusing bail : Seriousness of the offence should not to be treated as the only ground for refusal of bail. (Judgment of **Sanjay Chandra Vs. Central Bureau of Investigation, AIR 2012 SC 830** relied).

But, the liberty of an individual is not absolute. The Society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the societal order. A society expects responsibility and accountability from the member, and it desires that the citizens should obey the law, respecting it as a cherished social norm. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly thing which the society disapproves, the legal consequences are bound to follow.

Further discretionary jurisdiction of courts u/s 437 and 439 CrPC should be exercised carefully and cautiously by balancing the rights of the accused and interests of the society. Court must indicate brief reasons for granting or refusing bail. Bail order passed by the court must be reasoned one but detailed reasons touching merits of the case, detailed examination of evidence and elaborate documentation of merits of case should not be done.

At this stage , it can also be fruitful to note that requirements for bail u/s 437 & 439 are different. Section 437 Cr.P.C. severally curtails the power of the Magistrate to grant bail in context of the commission of non-bailable offences punishable with death or imprisonment for life, the two higher Courts have only the procedural requirement of giving notice of the Bail application to the Public Prosecutor, which requirement is also ignorable if circumstances so

demand. The regimes regulating the powers of the Magistrate on the one hand and the two superior Courts are decidedly and intentionally not identical, but vitally and drastically dissimilar. (**Sundeeep Kumar Bafna Vs. State of Maharashtra, AIR 2014 SC 1745** ).

Further at this stage it can be noted that interpreting the provisions of bail contained u/s 437 & 439 Cr.P.C., the Hon'ble Supreme Court in its various judgments has laid down various considerations for grant or refusal of bail to an accused in a non-bailable offence like, (i) Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) Nature of accusation and evidence therefor, (iii) Gravity of the offence and punishment which the conviction will entail, (iv) Reasonable possibility of securing presence of the accused at trial and danger of his absconding or fleeing if released on bail, (v) Character and behavior of the accused, (vi) Means, position and standing of the accused in the Society, (vii) Likelihood of the offence being repeated, (viii) Reasonable apprehension of the witnesses being tampered with, (ix) Danger, of course, of justice being thwarted by grant of bail, (x) Balance between the rights of the accused and the larger interest of the Society/State, (xi) Any other factor relevant and peculiar to the accused. (xii) While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, but if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. Furthermore, in the landmark judgment of **Gurucharan Singh and others v. State** (AIR 1978 SC 179), it was held that there is no hard and fast rule and no inflexible principle governing the exercise of such discretion by the courts. It was further held that there cannot be any inexorable formula in the matter of granting bail. It was further held that facts and circumstances of each case will govern the exercise of judicial discretion in granting or refusing bail. It was further held that such question depends upon a variety of circumstances, cumulative effect of which must enter into the judicial verdict. Such judgment itself mentioned

the nature and seriousness of nature, and circumstances in which offences are committed apart from character of evidence as some of the relevant factors in deciding whether to grant bail or not.

Further it may also be noted that it is also settled law that while disposing of bail applications u/s 437/439 Cr.P.C., courts should assign reasons while allowing or refusing an application for bail. But detailed reasons touching the merit of the matter should not be given which may prejudice the accused. What is necessary is that the order should not suffer from non-application of mind. At this stage a detailed examination of evidence and elaborate documentation of the merit of the case is not required to be undertaken. Though the court can make some reference to materials but it cannot make a detailed and in-depth analysis of the materials and record findings on their acceptability or otherwise which is essentially a matter of trial. Court is not required to undertake meticulous examination of evidence while granting or refusing bail u/s 439 of the CrPC.

In the present case, it is argued that accused is falsely implicated in the present case and he is in JC since 18.11.2020. That name of the accused is not mentioned in the FIR. Chargesheet is already filed. As such, investigation is already complete. That there is no previous conviction record of the present accused. That nothing is recovered from his possession except the planted recovery. As such, it is prayed that he be granted regular bail.

On the other hand, in reply filed by SI Manoj Kumar and as also argued by the learned Addl.PP for the state, it is argued that there are specific and serious allegations against the present accused. That present accused alongwith two co-accused attacked the complainant one strangled him from back and other took out mobile and purse from the complainant pocket and third accused stabbed the complainant. That present accused is correctly identified by complainant in TIP. That mobile of complainant is recovered from him. As such, present application is strongly opposed.

I find force in the arguments of learned Addl.PP for the

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state. The offence is serious in nature and is nuisance to public at large. The accused is correctly identified by the complainant in TIP. Further, offence u/s 394 is punishable upto imprisonment for life. As such, this court do not find sufficient reasons to enlarge present accused on bail in the present case. **With these observations, present application is dismissed.**

**The observations made in the present bail application order are for the purpose of deciding of present application and do not affect the factual matrix of the investigation of the present case which is separate issue as per law.**

**Learned counsel for the applicant / accused is at liberty to collect the order through electronic mode. Copy of this order be sent to IO/SHO concerned and Jail Superintendent concerned through electronic mode.**

NAVEEN  
KUMAR  
KASHYAP

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**(Naveen Kumar Kashyap)  
Additional Sessions Judge-04  
Central/THC/Delhi  
16.12.2020**

**Anticipatory Bail**

**Bail Matters No.:798/2020**

**State Vs Ritesh Kumar**

**FIR No. : 103/2019**

**PS: H.Nizamuddin Railway Station**

**U/S: 306, 34 IPC**

**16/12/2020**

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC.  
Mr. Vikas Walia, learned counsel for the applicant / accused through VC.  
IO also present through VC.

1. Vide this order, present anticipatory bail application filed by accused Ritesh Kumar dated 04/08/2020 under section 438 Cr.P.C. is disposed off.
2. Arguments already heard and today the case was fixed for orders.
3. At this stage it may be noted that in the case of **Bhadresh Bipinbhai Sheth Vs. State Of Gujarat & Another**( Criminal Appeal Nos. 1134-1135 Of 2015, Arising Out Of Special Leave Petition (Crl.) Nos. 6028-6029 Of 2014), Hon'ble SC discussed and reviews the law relating to section 438 Cr.P.C.

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4. A judgment which needs to be pointed out is a Constitution Bench Judgment of this Court in the case Gurbaksh Singh Sibbia and Other vs. State of Punjab( 1980 AIR 1632 ; 1980 SCR(3) 383), The Constitution Bench in this case emphasized that provision of anticipatory bail enshrined in [Section 438](#) of the Code is conceptualised under [Article 21](#) of the Constitution which relates to personal liberty. Therefore, such a provision calls for liberal interpretation of [Section 438](#) of the Code in light of [Article 21](#) of the Constitution. The Code explains that an anticipatory bail is a pre- arrest legal process which directs that if the person in whose favour it is issued is thereafter arrested on the accusation in respect of which the direction is issued, he shall be released on bail. The distinction between an ordinary order of bail and an order of anticipatory bail is that whereas the former is granted after arrest and therefore means release from the custody of the police, the latter is granted in anticipation of arrest and is therefore, effective at the very moment of arrest. A direction under [Section 438](#) is therefore intended to confer conditional immunity from the 'touch' or confinement contemplated by [Section 46](#) of the Code. The essence of this provision is brought out in the following manner:

“26. We find a great deal of substance in Mr Tarkunde’s submission that

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since denial of bail amounts to deprivation of personal liberty, the court should lean against the imposition of unnecessary restrictions on the scope of [Section 438](#), especially when no such restrictions have been imposed by the legislature in the terms of that section. [Section 438](#) is a procedural provision which is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offence in respect of which he seeks bail. An over-generous infusion of constraints and conditions which are not to be found in [Section 438](#) can make its provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on compliance with unreasonable restrictions. The beneficent provision contained in [Section 438](#) must be saved, not jettisoned. No doubt can linger after the decision in [Maneka Gandhi v. Union of India](#), (1978) 1 SCC 248, that in order to meet the challenge of [Article 21](#) of the Constitution, the procedure established by law for depriving a person of his liberty must be fair, just and reasonable. [Section 438](#), in the form in which it is conceived

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by the legislature, is open to no exception on the ground that it prescribes a procedure which is unjust or unfair. We ought, at all costs, to avoid throwing it open to a Constitutional challenge by reading words in it which are not to be found therein.”

5. Though the Court observed that the principles which govern the grant of ordinary bail may not furnish an exact parallel to the right to anticipatory bail, still such principles have to be kept in mind, namely, the object of bail which is to secure the attendance of the accused at the trial, and the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial. Otherwise, bail is not to be withheld as a punishment. The Court has also to consider whether there is any possibility of the accused tampering with evidence or influencing witnesses etc. Once these tests are satisfied, bail should be granted to an undertrial which is also important as viewed from another angle, namely, an accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. Thus, grant or non-grant of bail depends upon a

variety of circumstances and the cumulative effect thereof enters into judicial verdict. The Court stresses that any single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail. After clarifying this position, the Court discussed the inferences of anticipatory bail in the following manner:

“31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant

will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the State" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in [The State v. Captain Jagjit Singh](#), AIR 1962 SC 253 : (1962) 3 SCR 622 : (1962) 1 Cri LJ 216, which, though, was a case under the old [Section 498](#) which corresponds to the present [Section 439](#) of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his

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freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.”

6. It is pertinent to note that while interpreting the expression “may, if it thinks fit” occurring in [Section 438\(1\)](#) of the Code, the Court pointed out that it gives discretion to the Court to exercise the power in a particular case or not, and once such a discretion is there merely because the accused is charged with a serious offence may not by itself be the reason to refuse the grant of anticipatory bail if the circumstances are otherwise justified. At the same time, it is also the obligation of the applicant to make out a case for grant of anticipatory bail. But that would not mean that he has to make out a “special case”. The Court also remarked that a wise exercise of judicial power inevitably takes care of the evil consequences which are likely to flow out of its intemperate use.

7. Another case to which can be referred to is the judgment of a Division Bench of this Court in the case of [Siddharam Satlingappa Mhetre v. State of Maharashtra and Others](#) ( SLP(CRL.) 7615/2009 DATED 02-12-2021). This case lays down an exhaustive commentary of [Section 438](#) of the Code covering, in an erudite

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fashion, almost all the aspects and in the process relies upon the aforesaid Constitution Bench judgment in Gurbaksh Singh's case. In the very first para, the Court highlighted the conflicting interests which are to be balanced while taking a decision as to whether bail is to be granted or not, as is clear from the following observations:

“1. ....This appeal involves issues of great public importance pertaining to the importance of individual's personal liberty and the society's interest. Society has a vital interest in grant or refusal of bail because every criminal offence is the offence against the State. The order granting or refusing bail must reflect perfect balance between the conflicting interests, namely, sanctity of individual liberty and the interest of the society. The law of bails dovetails two conflicting interests, namely, on the one hand, the requirements of shielding society from the hazards of those committing crimes and potentiality of repeating the same crime while on bail and on the other hand, absolute adherence to the fundamental principle of criminal jurisprudence regarding presumption of innocence of an accused until he is found guilty and the sanctity of

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individual liberty.....”

8. The principles which can be culled out can be stated as under:
- (i) The complaint filed against the accused needs to be thoroughly examined, including the aspect whether the complainant has filed a false or frivolous complaint on earlier occasion. If the connivance between the complainant and the investigating officer is established then action be taken against the investigating officer in accordance with law.
  - (ii) The gravity of charge and the exact role of the accused must be properly comprehended. Before arrest, the arresting officer must record the valid reasons which have led to the arrest of the accused in the case diary. In exceptional cases, the reasons could be recorded immediately after the arrest, so that while dealing with the bail application, the remarks and observations of the arresting officer can also be properly evaluated by the court.
  - (iii) It is imperative for the courts to carefully and with meticulous precision evaluate the facts of the case. The discretion to grant bail must

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be exercised on the basis of the available material and the facts of the particular case. In cases where the court is of the considered view that the accused has joined the investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided. A great ignominy, humiliation and disgrace is attached to arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-conviction stage or post-conviction stage.

(iv) There is no justification for reading into [Section 438](#) CrPC the limitations mentioned in [Section 437](#) CrPC. The plenitude of [Section 438](#) must be given its full play. There is no requirement that the accused must make out a “special case” for the exercise of the power to grant anticipatory bail. This virtually, reduces the salutary power conferred by [Section 438](#) CrPC to a dead letter. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints and conditions on his freedom, by the acceptance of

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conditions which the court may deem fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

(v) The proper course of action on an application for anticipatory bail ought to be that after evaluating the averments and accusations available on the record if the court is inclined to grant anticipatory bail then an interim bail be granted and notice be issued to the Public Prosecutor. After hearing the Public Prosecutor the court may either reject the anticipatory bail application or confirm the initial order of granting bail. The court would certainly be entitled to impose conditions for the grant of anticipatory bail. The Public Prosecutor or the complainant would be at liberty to move the same court for cancellation or modifying the conditions of anticipatory bail at any time if liberty granted by the court is misused. The anticipatory bail granted by the court should ordinarily be continued till the trial of the case.

(vi) It is a settled legal position that the court which grants the bail also has the power to cancel it. The discretion of grant or cancellation of bail can be exercised either at the instance of the accused, the Public

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Prosecutor or the complainant, on finding new material or circumstances at any point of time.

(vii) In pursuance of the order of the Court of Session or the High Court, once the accused is released on anticipatory bail by the trial court, then it would be unreasonable to compel the accused to surrender before the trial court and again apply for regular bail.

(viii) Discretion vested in the court in all matters should be exercised with care and circumspection depending upon the facts and circumstances justifying its exercise. Similarly, the discretion vested with the court under [Section 438](#) CrPC should also be exercised with caution and prudence. It is unnecessary to travel beyond it and subject the wide power and discretion conferred by the legislature to a rigorous code of self-imposed limitations.

(ix) No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail because all circumstances and situations of future cannot be clearly visualised for the grant or refusal of

anticipatory bail. In consonance with legislative intention, the grant or refusal of anticipatory bail should necessarily depend on the facts and circumstances of each case.

(x) The following factors and parameters that need to be taken into consideration while dealing with anticipatory bail:

(a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(b) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(c) The possibility of the applicant to flee from justice;

(d) The possibility of the accused's likelihood to repeat similar or other offences;

(e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

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(f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(g) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of [Sections 34](#) and [149](#) of the Penal Code, 1860 the court should consider with even greater care and caution, because overimplication in the cases is a matter of common knowledge and concern;

(h) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(i) The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(j) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

9. In the present case, in nutshell, it is argued on behalf of applicant that accused has roots in society; that he is falsely implicated in the present case; he is ready to join the investigation as and when so required; that in 2015 complainant gifted a plot to deceased Arti and her elder sister of 50 sq.yard each. Present applicant invested about 20 lac for the construction of the same. That marriage was solemnized on 09/12/2017. Unfortunately, on 22/10/2018 deceased Arti got slipped and fell from the train and lost her life while she was going for admission in college by train. Friend of Arti Smt. Rani gave her statement to police and executive magistrate about such fact; that Arti was taken to Appollo hospital and then Safdarjung Hospital but she ultimately expired. Even statement of complainant was recorded before Executive Magistrate and no doubt was raised by the complainant at that time. That now because of property dispute complainant has got registered

State Vs Ritesh Kumar  
FIR No. : 103/2019  
PS: H.Nizamuddin Railway Station  
U/S: 306, 34 IPC

the present false and baseless FIR; that applicant has fully cooperated with the investigation. It is further argued although the death of Arti took place within 7 years of marriage but by no stretch of imagination, it is covered u/s 306 IPC as it is a case of unfortunate pure accident. As such, it is prayed that to release the petitioners on bail in the event of their arrest or grant them seven days notice.

10. On the other hand, it is argued on behalf of complainant side that present applicant / accused was torturing Arti that applicant was having extra marital affairs also. That suicide of Arti is very much abated by the present accused. As such, present case is rightly registered against him.

11. Further, in reply filed by the IO Inspector Shiv Charan Meena dated 16/12/2020 as also argued by learned Addl.PP for the State it is stated that marriage between accused and Arti was a love marriage; that statement of complainant and her husband was recorded by the Executive Magistrate as death was within 7 years of marriage. But no allegation of present nature made by the complainant side at that time. But there is property dispute relating to plot. Further, there is allegation of dowry demand of Rs. 2 lac made by the complainant side against the accused apart from other allegations of mental harassment by the

present accused. It is further stated that mobile of deceased Arti was seized in February 2020 and sent to FSL Rohini Delhi and result is still pending. It is further stated by IO that regarding mobile phone of present accused, inquiry is made from his landlord but such mobile phone of accused is not recovered so far. As such, present anticipatory bail is strongly opposed.

12. In the present case the present accused was not even present at the place of incident. Further such place of incident is a public place / railway. Further there is independent public witness who is the friend of deceased only, who narrated how the deceased fell from rail and met with the accident in question and ultimately expired. Further, no foul play was alleged by the present complainant and her husband when their statement was recorded by learned Magistrate. Thus, prima facie for the purpose of present bail application, it appears there is no cause and effect relationship between the alleged harassment by the accused and the death of the deceased. In fact, there are some doubt whether it is a suicide at all. Such observation need to be made as ultimately one of the fundamental aspect is that whether offence alleged is made out or not. Rest is matter of trial. As such, under these oral facts and circumstances, applicant / accused be released on bail in the

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**U/S: 306, 34 IPC**

event of his arrest on furnishing of personal bond and surety bond in the sum of Rs. 30,000/-, subject further following conditions.

*i) That he will appear before Trial Court as and when called as per law.*

*ii) He will not indulge in any kind of activities which are alleged against him in the present case.*

*iii) That he will not leave India without permission of the Court.*

*iv) He will not contact or threaten the witness or tampering with evidence.*

13. It is clarified that in case if the applicant/ accused is found to be violating any of the above conditions, the same shall be a ground for cancellation of bail and the State shall be at liberty to move an application for cancellation of bail.

14. With these observations present bail application is disposed of. Learned counsel for the applicant / accused is at liberty to collect the order through electronic mode. Further copy of this order be sent to Jail Superintendent concerned, IO and SHO. Copy of order be uploaded on the website.

State Vs Ritesh Kumar  
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U/S: 306, 34 IPC

The observations made in the present anticipatory bail application order are for the purpose of deciding of present application and do not affect the factual matrix of the investigation of the present case which is separate issue as per law.

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**ASJ-04(Central/Delhi/16/12/2020)**

**State Vs Ritesh Kumar**  
**FIR No. : 103/2019**  
**PS: H.Nizamuddin Railway Station**  
**U/S: 306, 34 IPC**

**Anticipatory Bail**

**Bail Matters No.:1895/2020**

**State Vs Sonu Sharma**

**FIR No. : 61/2019**

**PS: Sarai Rohilla Distt.Railway**

**U/S: 306 IPC**

**16/12/2020**

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC.  
Mr. Dinesh Kumar, learned counsel for the applicant / accused through VC.  
Further, IO also present through VC.  
Complainant present through VC with counsel.

1. Vide this order, present anticipatory bail application filed by accused Sonu Sharma dated 12/11/2020 under section 438 Cr.P.C. is disposed off.
2. Arguments already heard and today the case was fixed for orders.
3. At this stage it may be noted that in the case of **Bhadresh Bipinbhai**

**State Vs Sonu Sharma**

**FIR No. : 61/2019**

**PS: Sarai Rohilla Distt.Railway**

**U/S: 306 IPC**

**Sheth Vs. State Of Gujarat & Another**( Criminal Appeal Nos. 1134-1135 Of 2015,Arising Out Of Special Leave Petition (Crl.) Nos. 6028-6029 Of 2014), Hon'ble SC discussed and reviews the law relating to section 438 Cr.P.C.

4. A judgment which needs to be pointed out is a Constitution Bench Judgment of this Court in the case Gurbaksh Singh Sibbia and Other vs. State of Punjab( 1980 AIR 1632 ; 1980 SCR(3) 383), The Constitution Bench in this case emphasized that provision of anticipatory bail enshrined in [Section 438](#) of the Code is conceptualised under [Article 21](#) of the Constitution which relates to personal liberty. Therefore, such a provision calls for liberal interpretation of [Section 438](#) of the Code in light of [Article 21](#) of the Constitution. The Code explains that an anticipatory bail is a pre- arrest legal process which directs that if the person in whose favour it is issued is thereafter arrested on the accusation in respect of which the direction is issued, he shall be released on bail. The distinction between an ordinary order of bail and an order of anticipatory bail is that whereas the former is granted after arrest and therefore means release from the custody of the police, the latter is granted in anticipation of arrest and is therefore, effective at the very moment of arrest. A direction under [Section 438](#) is therefore intended to confer

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conditional immunity from the 'touch' or confinement contemplated by [Section 46](#) of the Code. The essence of this provision is brought out in the following manner:

“26. We find a great deal of substance in Mr Tarkunde’s submission that since denial of bail amounts to deprivation of personal liberty, the court should lean against the imposition of unnecessary restrictions on the scope of [Section 438](#), especially when no such restrictions have been imposed by the legislature in the terms of that section. [Section 438](#) is a procedural provision which is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offence in respect of which he seeks bail. An over-generous infusion of constraints and conditions which are not to be found in [Section 438](#) can make its provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on compliance with unreasonable restrictions. The beneficent provision contained in [Section 438](#) must be saved, not jettisoned. No doubt can linger after the decision in [Maneka Gandhi v. Union of India](#), (1978) 1 SCC 248, that

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in order to meet the challenge of [Article 21](#) of the Constitution, the procedure established by law for depriving a person of his liberty must be fair, just and reasonable. [Section 438](#), in the form in which it is conceived by the legislature, is open to no exception on the ground that it prescribes a procedure which is unjust or unfair. We ought, at all costs, to avoid throwing it open to a Constitutional challenge by reading words in it which are not to be found therein.”

5. Though the Court observed that the principles which govern the grant of ordinary bail may not furnish an exact parallel to the right to anticipatory bail, still such principles have to be kept in mind, namely, the object of bail which is to secure the attendance of the accused at the trial, and the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial. Otherwise, bail is not to be withheld as a punishment. The Court has also to consider whether there is any possibility of the accused tampering with evidence or influencing witnesses etc. Once these tests are satisfied, bail should be granted to an undertrial which is also

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important as viewed from another angle, namely, an accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. Thus, grant or non-grant of bail depends upon a variety of circumstances and the cumulative effect thereof enters into judicial verdict. The Court stresses that any single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail. After clarifying this position, the Court discussed the inferences of anticipatory bail in the following manner:

“31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an

inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the State" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in [The State v. Captain Jagjit Singh](#), AIR 1962 SC 253 : (1962) 3 SCR 622 : (1962) 1 Cri LJ 216, which, though, was a case under the old [Section 498](#) which corresponds to the present [Section 439](#) of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the

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survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.”

6. It is pertinent to note that while interpreting the expression “may, if it thinks fit” occurring in [Section 438\(1\)](#) of the Code, the Court pointed out that it gives discretion to the Court to exercise the power in a particular case or not, and once such a discretion is there merely because the accused is charged with a serious offence may not by itself be the reason to refuse the grant of anticipatory bail if the circumstances are otherwise justified. At the same time, it is also the obligation of the applicant to make out a case for grant of anticipatory bail. But that would not mean that he has to make out a “special case”. The Court also remarked that a wise exercise of judicial power inevitably takes care of the evil consequences which are likely to flow out of its intemperate use.

7. Another case to which can be referred to is the judgment of a Division

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Bench of this Court in the case of [Siddharam Satlingappa Mhetre v. State of Maharashtra and Others](#) ( SLP(CRL.) 7615/2009 DATED 02-12-2021). This case lays down an exhaustive commentary of [Section 438](#) of the Code covering, in an erudite fashion, almost all the aspects and in the process relies upon the aforesaid Constitution Bench judgment in Gurbaksh Singh's case. In the very first para, the Court highlighted the conflicting interests which are to be balanced while taking a decision as to whether bail is to be granted or not, as is clear from the following observations:

“1. ....This appeal involves issues of great public importance pertaining to the importance of individual's personal liberty and the society's interest. Society has a vital interest in grant or refusal of bail because every criminal offence is the offence against the State. The order granting or refusing bail must reflect perfect balance between the conflicting interests, namely, sanctity of individual liberty and the interest of the society. The law of bails dovetails two conflicting interests, namely, on the one hand, the requirements of shielding society from the hazards of those committing crimes and potentiality of repeating the same crime

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while on bail and on the other hand, absolute adherence to the fundamental principle of criminal jurisprudence regarding presumption of innocence of an accused until he is found guilty and the sanctity of individual liberty.....”

8. The principles which can be culled out can be stated as under:

(i) The complaint filed against the accused needs to be thoroughly examined, including the aspect whether the complainant has filed a false or frivolous complaint on earlier occasion. If the connivance between the complainant and the investigating officer is established then action be taken against the investigating officer in accordance with law.

(ii) The gravity of charge and the exact role of the accused must be properly comprehended. Before arrest, the arresting officer must record the valid reasons which have led to the arrest of the accused in the case diary. In exceptional cases, the reasons could be recorded immediately after the arrest, so that while dealing with the bail application, the remarks and observations of the arresting officer can also be properly evaluated

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by the court.

(iii) It is imperative for the courts to carefully and with meticulous precision evaluate the facts of the case. The discretion to grant bail must be exercised on the basis of the available material and the facts of the particular case. In cases where the court is of the considered view that the accused has joined the investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided. A great ignominy, humiliation and disgrace is attached to arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-conviction stage or post-conviction stage.

(iv) There is no justification for reading into [Section 438](#) CrPC the limitations mentioned in [Section 437](#) CrPC. The plenitude of [Section 438](#) must be given its full play. There is no requirement that the accused must make out a “special case” for the exercise of the power to grant anticipatory bail. This virtually, reduces the salutary power conferred

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by [Section 438](#) CrPC to a dead letter. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints and conditions on his freedom, by the acceptance of conditions which the court may deem fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

(v) The proper course of action on an application for anticipatory bail ought to be that after evaluating the averments and accusations available on the record if the court is inclined to grant anticipatory bail then an interim bail be granted and notice be issued to the Public Prosecutor. After hearing the Public Prosecutor the court may either reject the anticipatory bail application or confirm the initial order of granting bail. The court would certainly be entitled to impose conditions for the grant of anticipatory bail. The Public Prosecutor or the complainant would be at liberty to move the same court for cancellation or modifying the conditions of anticipatory bail at any time if liberty granted by the court is misused. The anticipatory bail granted by the court should ordinarily be continued till the trial of the case.

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(vi) It is a settled legal position that the court which grants the bail also has the power to cancel it. The discretion of grant or cancellation of bail can be exercised either at the instance of the accused, the Public Prosecutor or the complainant, on finding new material or circumstances at any point of time.

(vii) In pursuance of the order of the Court of Session or the High Court, once the accused is released on anticipatory bail by the trial court, then it would be unreasonable to compel the accused to surrender before the trial court and again apply for regular bail.

(viii) Discretion vested in the court in all matters should be exercised with care and circumspection depending upon the facts and circumstances justifying its exercise. Similarly, the discretion vested with the court under [Section 438](#) CrPC should also be exercised with caution and prudence. It is unnecessary to travel beyond it and subject the wide power and discretion conferred by the legislature to a rigorous code of self-imposed limitations.

(ix) No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail because all circumstances and situations of future cannot be clearly visualised for the grant or refusal of anticipatory bail. In consonance with legislative intention, the grant or refusal of anticipatory bail should necessarily depend on the facts and circumstances of each case.

(x) The following factors and parameters that need to be taken into consideration while dealing with anticipatory bail:

(a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(b) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(c) The possibility of the applicant to flee from justice;

(d) The possibility of the accused's likelihood to repeat similar or

other offences;

(e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(g) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of [Sections 34](#) and [149](#) of the Penal Code, 1860 the court should consider with even greater care and caution, because overimplication in the cases is a matter of common knowledge and concern;

(h) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the

accused;

(i) The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(j) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

9. In the present case, in nutshell, it is argued on behalf of applicant that applicant was discharging his official duty and he is Depot Manager, Cluster Bus Depot Kanjhawala Delhi; that complaint was received from senior officer against the deceased and action was taken in the office as per rules; dereliction of duty was found on the part of deceased regarding plying of bus; that there is a suicide note made by the deceased naming the present applicant; that in any case no case of abatement of society is made out at all. Under these facts and circumstances, that accused has cooperated with the investigation; that FIR was registered after six

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months of the incident; that accused has fully cooperated with the investigation; that there is no requirement of custodial interrogation. As such, it is prayed that to release the applicant on bail in the event of his arrest or grant him seven days notice.

10. On the other hand, it is argued on behalf of complainant side that deceased has committed suicide; that there is a clear cut abatement of suicide on the part of accused; that conduct of the present accused is not satisfactory; that there is complaint of harassment by other staff also against the present accused. As such, present anticipatory bail application is strongly opposed.

11. Further, in reply filed by the IO SI Ramvir Singh as also argued by learned Addl.PP for the State, it is stated that dead body of deceased was found on railway track; that from the pocket of the pant of deceased a suicide note was recovered in which deceased stated that because of harassment by present accused, he is committing suicide. It is further stated in such suicide note that there are some mistake committed by the deceased but he has already accepted the same and felt sorry but still he was not given proper hearing. As such, he committed suicide. It is further stated that interrogation of Sonu Sharma is already done but

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**PS: Sarai Rohilla Distt.Railway**  
**U/S: 306 IPC**

investigation is still pending.

12. In the present case, it is a matter of record that present accused was discharging his official duty and during the same, he passed certain order against the deceased. It can further be noted from the suicide note that even the deceased accepted that he committed some mistake. But having noted so, it is also to be noted from such suicide note that apart from such official duty, the conduct of the present accused was such that same had driven the deceased to commit suicide and he specifically named the present accused. Further, having regard to the definition of section 107 IPC, it cannot be said that allegations against the accused are baseless. Further, it is stated by the complaint side that there are complaints of harassment by such accused previously also. As such, this Court is not inclined to grant relief sought by the present accused in the present application. With these observations, present application is dismissed.

13. **Learned counsel for the applicant / accused is at liberty to collect the order through electronic mode. Further copy of this order be sent to Jail Superintendent concerned, IO and SHO. Copy of order be uploaded on the website.**

**State Vs Sonu Sharma  
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PS: Sarai Rohilla Distt.Railway  
U/S: 306 IPC**

The observations made in the present anticipatory bail application order are for the purpose of deciding of present application and do not affect the factual matrix of the investigation of the present case which is separate issue as per law.

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**ASJ-04(Central/Delhi/16/12/2020)**

**State Vs Sonu Sharma**  
**FIR No. : 61/2019**  
**PS: Sarai Rohilla Distt.Railway**  
**U/S: 306 IPC**

**BAIL APPLICATION.: 1613/2020**  
**BAIL APPLICATION.: 1616/2020**  
**BAIL APPLICATION.: 1618/2020**

**State v. Mohd. Shamshad Qureshi**  
**State v. Nishad Begum**  
**State v. Sajid**

**FIR no.:161/2020**  
**PS: I.P. Estate**

**16.12.2020**

Present: Sh. Pawan Kumar, Ld. Addl. PP for the state through VC.  
Sh. M.M. Khan, Ld. counsel for applicant/accused through VC.  
Sh. Mohd. Tariq, Ld. Counsel for complainant with complainant through VC.  
IO of the case is also present through VC.

Further arguments heard.

**Put up for orders/clarifications on 19.12.2020,**

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**Additional Sessions Judge-04/Central**  
**16.12.2020**

**BAIL APPLICATION.:1829/2020**  
**BAIL APPLICATION.: 1830/2020**  
**BAIL APPLICATION.: 1857/2020**  
**BAIL APPLICATION.: 1858/2020**

**State v. Seema Chawla**  
**State v. Sanjiv Kumar Chawla**  
**State v. Mrigna Chawla**  
**State v. Anshul Chawla**

**FIR no.:231/2020**  
**PS: Rajinder Nagar**

**16.12.2020**

Present: Sh. Pawan Kumar, Ld. Addl. PP for the state through VC.  
Sh. Sanjeev Nasiar and Sh. Varun Chawla, Ld. counsels for applicant/accused through VC.  
Sh. Maninder Singh, Ld. Counsel for complainant through VC.  
IO SI Soni Lal is also present through VC.

It is submitted by IO that ultimately reply filed by complainant to notice u/s 91 Cr.P.C. on 11.12.2020 only.

On the other hand, it is submitted by counsel for complainant that as many as ten times they attempted to contact the IO since service of notice on 30.10.2020 but IO was not available. As such, reply could not be given earlier. Same is also noted.

IO to file further status report in terms of last order.

**Put up for 12.01.2021.**

**In the meanwhile, interim order to continue in terms of previous order.**

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**Additional Sessions Judge-04/Central**  
**16.12.2020**

**BAIL APPLICATION.: 1835/2020**

**State v. Pankaj Nagar  
FIR no.:289/2020  
PS: Prasad Nagar**

**16.12.2020**

Present: Sh. Pawan Kumar, Ld. Addl. PP for the state through VC.  
Sh. Virender Singh, Ld. counsel for applicant/accused through VC.

Reply filed by IO.

Arguments in detail heard.

Issue notice to IO to appear in person with file through VC on next date for clarifications including regarding date on which victim identified the accused and the date on which NBW were obtained against the accused.

**Put up on 21.12.2020.**

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Additional Sessions Judge-04/Central  
16.12.2020**

**BAIL APPLICATION.: 1877/2020**

**State v. Nago Bind  
PS: Lahori Gate**

**16.12.2020**

Present: Sh. Pawan Kumar, Ld. Addl. PP for the state through VC.  
Sh. Naresh Kumar, Ld. counsel for applicant/accused through VC.  
IO not present.

Issue fresh notice to IO in terms of previous order for filing of further status report on **13.01.2021**.

In the meanwhile, interim protection to continue till next date of hearing.

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Additional Sessions Judge-04/Central  
16.12.2020**

**BAIL APPLICATION.:1979/2020**

**State v. Tarjit Singh Gambhir  
FIR no.:206/2020  
PS: Rajinder Nagar**

**16.12.2020**

Present: Sh. Pawan Kumar, Ld. Addl. PP for the state through VC.  
Ms. Geeta Luthra, Senior counsel with briefing counsel Sh. Ujjawal Jain  
for applicant/accused through VC.  
Sh. Ramanpreet Singh, Ld. Counsel for complainant alongwith  
complainant in person through VC.

Arguments for over one hour heard from applicant side as well as part  
arguments from complainant side.

Possibility explored whether there can be settlement between parties.

Put up for further arguments on merit as well as appearance of the  
accused side as well as complainant side through VC for **21.12.2020,including the  
husband of the complainant.**

Interim protection to continue in terms of previous order in the  
meanwhile.

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Additional Sessions Judge-04/Central  
16.12.2020**

**BAIL APPLICATION.: 692/2020**  
**BAIL APPLICATION.: 1537/2020**

**State v. Sonu Kundra @ Amrit Kundra**  
**FIR no.:251/2019**  
**PS: Prasad Nagar**

**16.12.2020**

Present: Sh. Pawan Kumar, Ld. Addl. PP for the state through VC.  
Sh. Prabhat Kumar, Ld. counsel for applicant/accused through VC.  
Sh. Ranjan, Ld. Counsel for complainant through VC.

Further arguments in detail heard including FSL result.

**Put up for orders on this regular bail application as well as for  
cancellation application for 22.12.2020.**

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**(NAVEEN KUMAR KASHYAP)**  
**Additional Sessions Judge-04/Central**  
**16.12.2020**

**BAIL APPLICATION.: 700/2020**

**BAIL APPLICATION.: 703/2020**

**BAIL APPLICATION.: 704/2020**

**BAIL APPLICATION.: 705/2020**

**State v. Vijeta Saraswat**

**State v. Smt. Shakti Sharma**

**State v. Sunil Saraswat**

**State v. Surya Kant Sharma**

**FIR no.:123/2020**

**PS: Hauz Qazi**

**16.12.2020**

Present: Sh. Pawan Kumar, Ld. Addl. PP for the state through VC.  
Sh. Vivek Aggarwal, Ld. counsel for all the applicant through VC.  
Sh. Manoj Sharma, Ld. Counsel for complainant with complainant  
through VC.

**Issue notice to IO to appear with SHO concerned in terms of  
previous order on physical hearing day on 18.12.2020.**

**Put up for further clarifications on this bail application on  
18.12.2020.**

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**(NAVEEN KUMAR KASHYAP)  
Additional Sessions Judge-04/Central  
16.12.2020**

**BAIL APPLICATION.: 2160/2020**

**State v. Sunil  
FIR NO: 44/2020  
PS: NDRS**

**16.12.2020**

Present: Sh. Pawan Kumar, Ld. Addl. PP for the state through VC.  
Ld. Counsel for applicant through VC.

This matter was passed in the morning as voice of learned counsel was not clear. It is 2.40 PM. Matter is taken up again but still voice of learned counsel is not clear due to some technical reason.

**Put up on 17.12.2020 for arguments and appropriate orders.**

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**(NAVEEN KUMAR KASHYAP)  
Additional Sessions Judge-04/Central  
16.12.2020**

**Bail Matters No.: 2115/2020**  
**State Vs Gautam Kumar**  
**FIR No.:13/2020**  
**PS: Railway Main Delhi**

**16/12/2020**

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC.  
Mr. Naresh Kumar, learned counsel for the applicant through VC.

Reply filed by IO SI Rajender Kumar.

Issue notice to IO to appear with case file to explain reply filed before the Learned MM and before this Court and further whether the accused in question was apprehended red handed on the spot or was arrested later on.

Put up for further arguments, if any, clarification and orders for **22/12/2020**.

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**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/16.12.2020**

**Bail Matters No.: 2159/2020**  
**State Vs Dharmesh Dhika**  
**FIR No.: 540/2020**  
**PS: Karol Bagh**

**16/12/2020**

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC.  
Mr. Sachin Dhaka, learned counsel for applicant through VC.  
IO SI Mukesh Tomar also present through VC.

Reply filed. As per such reply sections involved at present are u/s 354A and 506 IPC. Both are bailable in nature.

It is further stated by the IO that he only served notice u/s 41A Cr.PC and sections were mentioned in such notice also which are bailable in nature.

In view of such position, no ground is made out to grant relief sought u/s 438 Cr.PC as there cannot be any reasonable apprehension for arrest at present.

With these observations, present application is dismissed. Copy of this order be supplied to both the parties through electronic mode. Copy of this also be also sent to IO / SHO concerned.

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**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/16.12.2020**

**Bail Matters No.: 2161/2020**  
**State Vs Ravi**  
**FIR No.: 310/2020**  
**PS: Prashad Nagar**

**16/12/2020**

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC.  
Mr. Anil Kumar Gupta, learned counsel for the accused through VC.

Reply filed by the IO. Copy of the same be supplied to the counsel for the accused. IO has filed previous conviction record of the present accused.

Issue fresh notice to IO to file further record regarding conviction of the present accused in any of such matter or other matters by the next date of hearing.

**Put up for reply, arguments and orders for 12/01/2021.**

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**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/16.12.2020**

**Bail Matters No.: 2150/2020  
State Vs Rasheed Ahmad  
FIR No.:242/2020  
PS: Darya Ganj**

**16/12/2020**

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC.  
Learned counsel for the accused through VC.

Arguments already heard and the case was fixed for orders / supplying of cctv footage by the IO. However, it is reported by the staff that IO appeared in the Court physically but ultimately did not supply the cctv footage through Pen drive or other electronic mode.

As such, issue notice to IO for the next date of hearing for placing on record such cctv footage through electronic mode.

Put up for orders / clarification for **19/12/2020**. In the meanwhile, under these circumstances, without commenting on the merit of the present case, IO is directed not to take any coercive action against the present applicant provided that he will fully cooperate with the investigation.

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**(Naveen Kumar Kashyap)  
ASJ-04/Central/16.12.2020**

**BAIL APPLICATION**

**\_ State v. Arsalan Ali  
(applicant Govind)  
FIR No. : 182/2017  
PS: Kamla Market  
U/s: 395,397,412,34 IPC**

**16.12.2020.**

**Undersigned is also discharging bail roster duty.**

Present: Mr. Pawan Kumar ,Ld. Addl. PP for the State through VC.  
None for applicant.

Reply filed by IO.

**Put up for appearance and appropriate orders for 12.01.2021.**

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**(Naveen Kumar Kashyap)**

**ASJ-04/Central/16.12.2020**

**BAIL APPLICATION**

**\_ State v. Sunil @ Ajay**  
**FIR No. : 107/2020**  
**PS: Nabi Karim**  
**U/s: 394,397,307,411,34 IPC**

**16.12.2020.**

**Undersigned is also discharging bail roster duty.**

Present: Mr. Pawan Kumar ,Ld. Addl. PP for the State through VC.  
Sh. P.K. Garg, Ld. Counsel for applicant through VC.

Reply filed by IO. Copy of the same be supplied to accused.

**Put up for arguments and appropriate orders for 13.01.2021.**

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**(Naveen Kumar Kashyap)**

**ASJ-04/Central/16.12.2020**

**BAIL APPLICATION**

**\_ State v. Babloo & Ors.  
(applicant Dinesh @ Dhanna)  
FIR No. : 251/2019  
PS: Sarai Rohilla  
U/s: 307,341 IPC**

**16.12.2020.**

**Undersigned is also discharging bail roster duty.**

Present: Mr. Pawan Kumar ,Ld. Addl. PP for the State through VC.  
None for applicant.

**Put up for appearance and further consideration/appropriate orders for  
25.01.2021.**

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**(Naveen Kumar Kashyap)**

**ASJ-04/Central/16.12.2020**

**BAIL APPLICATION**

**\_ State v. Sunil & Ors.  
(applicant Karan @ Rajkaran)  
FIR No. : 303/2014  
PS: Subzi Mandi  
U/s:302, 307 IPC**

**16.12.2020.**

**Undersigned is also discharging bail roster duty.**

Present: Mr. Pawan Kumar ,Ld. Addl. PP for the State through VC.  
None for applicant.

**25.01.2021. Put up for appearance and further consideration/appropriate orders for**

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**(Naveen Kumar Kashyap)**

**ASJ-04/Central/16.12.2020**

**BAIL APPLICATION**

**\_ State v. Ajay @ Nathu**  
**FIR No. : 48/2015**  
**PS: Nabi Karim**  
**U/s: 186,353,33,307,201 IPC**

**16.12.2020.**

**Undersigned is also discharging bail roster duty.**

Present: Mr. Pawan Kumar ,Ld. Addl. PP for the State through VC.  
Sh. Deepak Sharma, Ld. Counsel for applicant.  
SI Vijay Panwar in person through VC.

**Put up for appropriate orders for 25.01.2021.**

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**(Naveen Kumar Kashyap)**

**ASJ-04/Central/16.12.2020**

**BAIL APPLICATION**

**\_ State v. Inderjeet @ Rahul  
(applicant Mohit)  
FIR No. : 19/2019  
PS: Timarpur**

**16.12.2020.**

**Undersigned is also discharging bail roster duty.**

Present: Mr. Pawan Kumar ,Ld. Addl. PP for the State through VC.  
Sh. Alamine, Ld. Counsel for applicant through VC.

Reply filed by IO. Copy of the same be supplied to accused.  
Arguments heard.

**Put up for orders/ clarifications, if any for 17.12.2021.**

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**(Naveen Kumar Kashyap)**

**ASJ-04/Central/16.12.2020**

**MISC APPLICATION**

**Enforcement Director v. Vineet Gupta**  
**(applicant Lokesh Makin)**

**CC: 24/2017**

**16.12.2020.**

**Undersigned is also discharging bail roster duty.**

Present: Mr. Pawan Kumar ,Ld. Addl. PP for the State through VC.  
None for applicant.

This is an application for release of passport of Lokesh Makin.

**Put up for appearance, arguments and appropriate orders for 08.01.2021.**

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**(Naveen Kumar Kashyap)**

**ASJ-04/Central/16.12.2020**

**BAIL APPLICATION**

**\_ State v. Mohd. Shameem  
(applicant Tasleem)  
FIR No. : 27/2014  
PS: Jama Masjid**

**16.12.2020.**

**Undersigned is also discharging bail roster duty.**

**Fresh application filed for regular bail.**

Present: Mr. Pawan Kumar ,Ld. Addl. PP for the State through VC.  
None for applicant.

**Issue notice to IO to file reply.**

**Put up for reply, arguments and appropriate orders for 08.01.2021.**

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**(Naveen Kumar Kashyap)**

**ASJ-04/Central/16.12.2020**

**BAIL APPLICATION**

**\_ State v. Rahul Sharma  
FIR No. : 339/2016  
PS: Darya Ganj**

**16.12.2020.**

**Undersigned is also discharging bail roster duty.**

**Fresh application filed for regular bail.**

Present: Mr. Pawan Kumar ,Ld. Addl. PP for the State through VC.  
Sh. Vivek Aggarwal, Ld. Counsel for applicant through VC.

**Issue notice to IO to file reply.**

**Put up for reply, arguments and appropriate orders for 13.01.2021.**

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**(Naveen Kumar Kashyap)**

**ASJ-04/Central/16.12.2020**

**MISC APPLICATION**

**State v. Imran @ Akhtar  
(Bail Bond of Yogesh Singh)  
FIR No. : 227/2020  
PS: Wazirabad**

**16.12.2020.**

**Undersigned is also discharging bail roster duty.**

Present: Mr. Pawan Kumar ,Ld. Addl. PP for the State through VC.  
Sh. Monty Singh, Ld. Counsel for applicant through VC.  
Surety Vishal Kaushik present in court in this hearing through VC.

It is submitted by learned counsel for accused that such surety Vishal Kaushik already stood surety for such accused for interim bail. His original RC of the vehicle bearing no. DL-7S CH-5933 is already available on record. As such, such surety bond is accepted as address of other surety as well as security stands already verified. Further, second surety bond of Chaudhary Harsh Singh as well as his security/Kisan Vikas Patra of Rs. 20,000/- dated 15.12.2020 is placed on record.

Issue notice to IO to verify the address if such surety Chaudhary Harsh Singh as well as security furnished by him.

**Put up for report at 2 pm on 18.12.2020.**

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**(Naveen Kumar Kashyap)**

**ASJ-04/Central/16.12.2020**

**CC No.: 24/2017**  
**Asstt. Director (PMLA) Vs Vineet Gupta & others**

**16.12.2020**

*File taken up today in terms of directions received vide letter No.:417/DHC/2020 of the Registrar General, Delhi High Court and Circular No.: 23456-23616/DJ(HQ)/Covid lockdown/Physical Courts Roster/2020 dated 30/08/2020 of Learned District & Sessions Judge(HQs), Delhi.*

***In view of the above-mentioned orders/directions, file is taken up through Webex.***  
**Undersigned is also discharging work of Bail Roster duty.**

Present: Mr. Atul Tripathi, learned Special PP for ED through VC.  
IO Sanjeet Sahu is also present through VC.  
Mr. Abhimanyu and Mr. Kampani, learned counsel for accused No.2 & 3 through VC.  
Mr. Mukesh Kumar, learned counsel for accused No.9.

It is submitted by the learned Special PP for ED that still they are unable to take the copy of CD in question and the concerned agency is trying to get the same supplied and atleast one more time is required for the same.

Heard. Noted.

In view of this, in the meanwhile, supplementary complaint is already filed by ED. Put up for appropriate orders on the same for **08/01/2021**. Further, put up for orders on the application u/s 91 Cr.PC on the next available physical hearing day of this Court.

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**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/16.12.2020**

**SC:27341/2016**  
**State v.Gabbar Singh @ Gurcharan & others**  
**FIR no.:70/2008**  
**PS: Kashmere Gate**

**16.12.2020**

*File taken up today in terms of directions received vide letter No.:417/DHC/2020 of the Registrar General, Delhi High Court and Circular No.: 23456-23616/DJ(HQ)/Covid lockdown/Physical Courts Roster/2020 dated 30/08/2020 of Learned District & Sessions Judge(HQs), Delhi.*

***In view of the above-mentioned orders/directions, file is taken up through Webex.***

**Undersigned is also discharging work of Bail Roster duty.**

Present: Sh. Pawan Kumar, Ld. Addl. PP for the state through VC.  
Mr.Bharat Dubey, learned counsel for accused No.3 through VC,  
accused no.3 is present in Court physically.  
Accused No.1 Gabbar Singh produced from Jail NO.3 through VC.  
Accused No.4 Dheeraj is also present physically in Court.

Bailable warrant issued against No.1 and 4 are cancelled. They are warned to be careful in future.

This is one of the 20 oldest matters pending before this Court. As such, put up for final arguments for **18/12/2020** i.e. the next physical hearing day of this Court.

It is submitted by the counsel for accused No.3 that at present he is quarantined. As such, he is at liberty to argue the matter through VC or address arguments after the arguments of other accused persons are over.

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**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/16.12.2020**

**SC: 28031/2016**  
**State v. Angad Singh Dua**  
**FIR no.:428/2014**  
**PS: Civil Lines**

**16.12.2020**

*File taken up today in terms of directions received vide letter No.:417/DHC/2020 of the Registrar General, Delhi High Court and Circular No.: 23456-23616/DJ(HQ)/Covid lockdown/Physical Courts Roster/2020 dated 30/08/2020 of Learned District & Sessions Judge(HQs), Delhi.*

***In view of the above-mentioned orders/directions, file is taken up through Webex.***

**Undersigned is also discharging work of Bail Roster duty.**

Present: Sh. Pawan Kumar, Ld. Addl. PP for the state through VC.  
None for the accused.

**Put up for appearance of counsel for the accused and for further  
final arguments for 02/03/2021.**

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**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/16.12.2020**

**CR No.: 885/2018**  
**Inderjeet Singh Vs State**

**16.12.2020**

*File taken up today in terms of directions received vide letter No.:417/DHC/2020 of the Registrar General, Delhi High Court and Circular No.: 23456-23616/DJ(HQ)/Covid lockdown/Physical Courts Roster/2020 dated 30/08/2020 of Learned District & Sessions Judge(HQs), Delhi.*

***In view of the above-mentioned orders/directions, file is taken up through Webex.***

**Undersigned is also discharging work of Bail Roster duty.**

Present: Mr. Suraj Rathi, learned counsel for the revisionist through VC.  
Sh. Pawan Kumar, Ld. Addl. PP for the state through VC.

**Put up for arguments in terms of previous order for 18/01/2021. In the meanwhile, interim protection, if any be granted till the next date of hearing only.**

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**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/16.12.2020**

CA No. 58/2019

**Rajender Kumar Vs State**

**16.12.2020**

*File taken up today in terms of directions received vide letter No.:417/DHC/2020 of the Registrar General, Delhi High Court and Circular No.: 23456-23616/DJ(HQ)/Covid lockdown/Physical Courts Roster/2020 dated 30/08/2020 of Learned District & Sessions Judge(HQs), Delhi.*

***In view of the above-mentioned orders/directions, file is taken up through Webex.***

**Undersigned is also discharging work of Bail Roster duty.**

Present: None for the appellent.  
Sh. Pawan Kumar, Ld. Addl. PP for the state through VC.

**Put up for further arguments in terms of previous orders for**

**26/04/2021.**

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**(Naveen Kumar Kashyap)  
ASJ-04/Central/16.12.2020**

**CA No. 365/2019**  
**Brijesh Goswami Vs Amit Gupta**

**16.12.2020**

*File taken up today in terms of directions received vide letter No.:417/DHC/2020 of the Registrar General, Delhi High Court and Circular No.: 23456-23616/DJ(HQ)/Covid lockdown/Physical Courts Roster/2020 dated 30/08/2020 of Learned District & Sessions Judge(HQs), Delhi.*

***In view of the above-mentioned orders/directions, file is taken up through Webex.***

**Undersigned is also discharging work of Bail Roster duty.**

Present: Appellant in person through VC with counsel Mr. Kapil Gautam.  
Mr. Rajeev Kanwar, learned counsel for respondent through VC.

It is stated that arguments are already over. Further written arguments filed by the appellant side.

Put up for final judgment / clarification, if any, for **18/12/2020**. Also to further bail bond u/s 437(A) Cr.PC on the next date of hearing.

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**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/16.12.2020**

CR No.647/2020

Amin Ur Rehman Vs State & others

**16.12.2020**

*File taken up today in terms of directions received vide letter No.:417/DHC/2020 of the Registrar General, Delhi High Court and Circular No.: 23456-23616/DJ(HQ)/Covid lockdown/Physical Courts Roster/2020 dated 30/08/2020 of Learned District & Sessions Judge(HQs), Delhi.*

***In view of the above-mentioned orders/directions, file is taken up through Webex.***

**Undersigned is also discharging work of Bail Roster duty.**

Present: Mr. Dhananjay Sehrawat, learned counsel for revisionist through VC.  
Revisionist is also present through VC.  
Sh. Pawan Kumar, Ld. Addl. PP for the state through VC.

Put up for further appropriate proceedings regarding service of notice to the respondents.

**Put up for 18/12/2020.**

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**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/16.12.2020**

**CR: 212/2020**

**Suraj Cables Vs MMJ Constructions & Anr**

**16.12.2020**

*File taken up today in terms of directions received vide letter No.:417/DHC/2020 of the Registrar General, Delhi High Court and Circular No.: 23456-23616/DJ(HQ)/Covid lockdown/Physical Courts Roster/2020 dated 30/08/2020 of Learned District & Sessions Judge(HQs), Delhi.*

***In view of the above-mentioned orders/directions, file is taken up through Webex.***

**Undersigned is also discharging work of Bail Roster duty.**

Present: Mr. Sahil Garg, learned counsel for revisionist through VC.

**Put up for consideration / appropriate orders for 18/12/2020.**

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**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/16.12.2020**

CA No.: 59/2020

Rohit @ Machhi Vs State of Delhi

**16.12.2020**

*File taken up today in terms of directions received vide letter No.:417/DHC/2020 of the Registrar General, Delhi High Court and Circular No.: 23456-23616/DJ(HQ)/Covid lockdown/Physical Courts Roster/2020 dated 30/08/2020 of Learned District & Sessions Judge(HQs), Delhi.*

***In view of the above-mentioned orders/directions, file is taken up through Webex.***

**Undersigned is also discharging work of Bail Roster duty.**

Present: Mr. S.N. Shukla, learned LAC for appellant through VC.  
Mr. Pawan Kumar Singh, learned Addl.PP for the State through VC.  
Appellant is stated to be in JC.

Part judgment dictated.

Put up for further dictation, clarification if any, and for pronouncement  
of judgment for 17/12/2020.

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**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/16.12.2020**

CR No.: 240/2020

Raja Ram Vs Geeteshwar Saini and Ors Vs State

16.12.2020

*File taken up today in terms of directions received vide letter No.:417/DHC/2020 of the Registrar General, Delhi High Court and Circular No.: 23456-23616/DJ(HQ)/Covid lockdown/Physical Courts Roster/2020 dated 30/08/2020 of Learned District & Sessions Judge(HQs), Delhi.*

***In view of the above-mentioned orders/directions, file is taken up through Webex.***

**Undersigned is also discharging work of Bail Roster duty.**

Present: Mr. Vipin Kumar, learned counsel for revisionist through VC.

**Put up for consideration / appropriate orders for 18/12/2020.**

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**(Naveen Kumar Kashyap)  
ASJ-04/Central/16.12.2020**

CR No.: 253/2019  
Punit Chadha Vs State

**16.12.2020**

*File taken up today in terms of directions received vide letter No.:417/DHC/2020 of the Registrar General, Delhi High Court and Circular No.: 23456-23616/DJ(HQ)/Covid lockdown/Physical Courts Roster/2020 dated 30/08/2020 of Learned District & Sessions Judge(HQs), Delhi.*

***In view of the above-mentioned orders/directions, file is taken up through Webex.***

**Undersigned is also discharging work of Bail Roster duty.**

Present: None.

**Put up for appearance of counsel and for appropriate orders for**

**23/12/2020.**

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**(Naveen Kumar Kashyap)  
ASJ-04/Central/16.12.2020**

**State Vs Imran @ Akhtar Khan & Ors**  
**(Application for bail of Vishal @ huney)**  
**FIR No. 227/2020**  
**P. S. Wazirabad**

**16.12.2020**

**This Court is also discharging bail roster duty.**

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.  
Mr. Rajesh Rathore, learned counsel for applicant through VC.

Reply filed by the IO.

Arguments in detail heard.

**Put up for orders / clarification, if any, for 19/12/2020.**

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**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/16.12.2020**

**CR No. 11, 12, 13,14,15 & 16/2020  
Deepak Talwar Vs Income Tax Office**

**16.12.2020**

*File taken up today in terms of directions received vide letter No.:417/DHC/2020 of the Registrar General, Delhi High Court and Circular No.: 23456-23616/DJ(HQ)/Covid lockdown/Physical Courts Roster/2020 dated 30/08/2020 of Learned District & Sessions Judge(HQs), Delhi.*

***In view of the above-mentioned orders/directions, file is taken up through Webex.  
Undersigned is also discharging work of Bail Roster duty.***

Present: Mr. Tanvir Ahmed Mir, learned counsel for revisionist.  
Mr. Manmeet Singh, learned counsel for respondent.

Part arguments heard in detail in prelaunch sessions. The matter was passed over in post lunch sessions. But no time is left.

As such, put up for further arguments and appropriate orders for

**19/12/2020 at 12:30 PM.**

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**(Naveen Kumar Kashyap)  
ASJ-04/Central/16.12.2020**

**CR No. 4099/2020**  
**Deputy Commissioner of Income Tax Vs Ashok Jaipuria**

**16.12.2020**

*File taken up today in terms of directions received vide letter No.:417/DHC/2020 of the Registrar General, Delhi High Court and Circular No.: 23456-23616/DJ(HQ)/Covid lockdown/Physical Courts Roster/2020 dated 30/08/2020 of Learned District & Sessions Judge(HQs), Delhi.*

***In view of the above-mentioned orders/directions, file is taken up through Webex.***  
**Undersigned is also discharging work of Bail Roster duty.**  
**Fresh revision received by way of assignment. It be checked and registered.**

Present: Mr. Kanhaiya Singhal, learned counsel for revisionist through VC.

Put up for consideration / appropriate orders for **18/12/2020**.

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**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/16.12.2020**

**IN THE COURT OF SH. NAVEEN KUMAR KASHYAP**  
**ADDITIONAL SESSIONS JUDGE-04: CENTRAL:**  
**TIS HAZARI COURTS: DELHI**

**BAIL APPLICATION**

**State v. Gaurav Chauhan**  
**(Applicant Sahi Ram S/o Kishan)**  
**FIR NO.: 199/2009**  
**PS: Kashmere Gate**  
**U/S: 364A,506,120B IPC &**  
**25 Arms Act**

**16.12.2020**

Present: Sh. Pawan Kumar, Ld. Addl. PP for the state through VC.  
Sh. Lokesh Chandra, Ld. Counsel for applicant through VC.

Vide this order, bail application dated 28.11.2020 u/s 439 Cr.PC filed by applicant Sahi Ram through counsel is disposed of.

It is stated in the application that on 04.11.2020 accused was granted interim bail for four weeks and thereafter availing the same, he duly surrendered on 02.12.2020 before Jail Superintendent concerned. That earlier also he was granted interim bail for one week and he duly surrendered thereafter. As such, it is argued that he never misused the liberty of interim bail. It is further argued that co-accused Gaurav Chauhan and Ankur who have graver role as per the prosecution are already granted regular bail. As such, on parity also, ground for regular bail is made out. It is further stated that accused is suffering from stone in kidney and taking ayurvedic medicine for the same. That evidence of the witnesses is already over and matter is pending for final arguments since last one year and due to lock-down further arguments could not be addressed effectively. As such, it is further argued that at present there is no more the situation to threaten the witness or influence the witnesses. It is further stated that due to present pandemic condition disposal of the case is likely to take some more time. That accused is in JC for the last about eleven years. Further, it is stated that there are directions by Hon'ble High Court to conclude the trial expeditiously and in a time bound manner. Further, learned counsel for accused also relied upon certain case laws in support of his arguments. As such, it is submitted that he be granted regular bail.

On the other hand, in reply filed by the IO and as also argued by learned Addl.

PP for the state that offence is serious in nature. That specific incriminating evidence against the present accused. Further, it is stated that there is documentary evidence against the accused including mobile phone. It is further claimed that he received the part of the money in question and is actively involved in the present case. That earlier his bail applications are also dismissed and there is no fresh grounds for bail. As such, bail application is opposed.

I have heard both the sides.

The personal liberty is a priceless treasure for a human being. It is founded on the bed rock of constitutional right and accentuated further on human rights principle. The sanctity of liberty is the fulcrum of any civilized society. Deprivation of liberty of a person has enormous impact on his mind as well as body. Further article 21 Of the Constitution mandates that no person shall be deprived of his life or personal liberty except according to procedure established by law. Further India is a signatory to the International Covenant On Civil And Political Rights, 1966 and, therefore, Article 21 of the Constitution has to be understood in the light of the International Covenant On Civil And Political Rights, 1966. *Further* Presumption of innocence is a human right. Article 21 in view of its expansive meaning not only protects life and liberty, but also envisages a fair procedure. Liberty of a person should not ordinarily be interfered with unless there exist cogent grounds therefor. The fundamental principle of our system of justice is that a person should not be deprived of his liberty except for a distinct breach of law. If there is no substantial risk of the accused fleeing the course of justice, there is no reason why he should be imprisoned during the period of his trial. The basic rule is to release him on bail unless there are circumstances suggesting the possibility of his fleeing from justice or thwarting the course of justice. When bail is refused, it is a restriction on personal liberty of the individual guaranteed by Article 21 of the Constitution.

Further it has been laid down from the earliest time that the object of Bail is to secure the appearance of the accused person at his trial by reasonable amount of Bail. The object of Bail is neither punitive nor preventive. Deprivation of liberty must be considered a punishment unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after convictions, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earlier times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their

attendance at the trial ,but in such case 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the constitution that any persons should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty under Article 21 of the Constitution upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson. While considering an application for bail either under Section 437 or 439 CrPC, the court should keep in view the principle that grant of bail is the rule and committal to jail an exception. Refusal of bail is a restriction on personal liberty of the individual guaranteed by Article 21 of the Constitution. Seriousness of the offence not to be treated as the only consideration in refusing bail : Seriousness of the offence should not to be treated as the only ground for refusal of bail. (Judgment of **Sanjay Chandra Vs. Central Bureau of Investigation, AIR 2012 SC 830** relied).

But, the liberty of an individual is not absolute. The Society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the societal order. A society expects responsibility and accountability from the member, and it desires that the citizens should obey the law, respecting it as a cherished social norm. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly thing which the society disapproves, the legal consequences are bound to follow.

Further discretionary jurisdiction of courts u/s 437 and 439 CrPC should be exercised carefully and cautiously by balancing the rights of the accused and interests of the society. Court must indicate brief reasons for granting or refusing bail. Bail order passed by the court must be reasoned one but detailed reasons touching merits of the case, detailed examination of evidence and elaborate documentation of merits of case should not be done.

At this stage , it can also be fruitful to note that requirements for bail u/s 437 & 439 are different. Section 437 Cr.P.C. severally curtails the power of the Magistrate to grant bail in context of the commission of non-bailable offences punishable with death or imprisonment for life, the two higher Courts have only the procedural requirement of giving

notice of the Bail application to the Public Prosecutor, which requirement is also ignorable if circumstances so demand. The regimes regulating the powers of the Magistrate on the one hand and the two superior Courts are decidedly and intentionally not identical, but vitally and drastically dissimilar. (**Sundeeep Kumar Bafna Vs. State of Maharashtra, AIR 2014 SC 1745**).

Further at this stage it can be noted that interpreting the provisions of bail contained u/s 437 & 439 Cr.P.C., the Hon'ble Supreme Court in its various judgments has laid down various considerations for grant or refusal of bail to an accused in a non-bailable offence like, (i) Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) Nature of accusation and evidence therefor, (iii) Gravity of the offence and punishment which the conviction will entail, (iv) Reasonable possibility of securing presence of the accused at trial and danger of his absconding or fleeing if released on bail, (v) Character and behavior of the accused, (vi) Means, position and standing of the accused in the Society, (vii) Likelihood of the offence being repeated, (viii) Reasonable apprehension of the witnesses being tampered with, (ix) Danger, of course, of justice being thwarted by grant of bail, (x) Balance between the rights of the accused and the larger interest of the Society/State, (xi) Any other factor relevant and peculiar to the accused. (xii) While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, but if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. Furthermore, in the landmark judgment of **Gurucharan Singh and others v. State** (AIR 1978 SC 179), it was held that there is no hard and fast rule and no inflexible principle governing the exercise of such discretion by the courts. It was further held that there cannot be any inexorable formula in the matter of granting bail. It was further held that facts and circumstances of each case will govern the exercise of judicial discretion in granting or refusing bail. It was further held that such question depends upon a variety of circumstances, cumulative effect of which must enter into the judicial verdict. Such judgment itself mentioned the nature and seriousness of nature, and circumstances in which offences are committed apart from character of evidence as some of the relevant factors in deciding whether to grant bail or not.

Further it may also be noted that it is also settled law that while disposing of bail applications u/s 437/439 Cr.P.C., courts should assign reasons while allowing or refusing

an application for bail. But detailed reasons touching the merit of the matter should not be given which may prejudice the accused. What is necessary is that the order should not suffer from non-application of mind. At this stage a detailed examination of evidence and elaborate documentation of the merit of the case is not required to be undertaken. Though the court can make some reference to materials but it cannot make a detailed and in-depth analysis of the materials and record findings on their acceptability or otherwise which is essentially a matter of trial. Court is not required to undertake meticulous examination of evidence while granting or refusing bail u/s 439 of the CrPC.

In the present case, it is a matter of record that earlier regular bail application of the present accused was dismissed but it is also matter of record that he was granted interim bail time and again and there is no adverse report against such accused. Further, more importantly, co-accused who is the main accused Gaurav Chauhan and Ankur Singh are already granted regular bail and this is one of the material change in circumstances. Further, in this case evidence of material witnesses are already recorded but due to present pandemic condition, further final arguments could not be heard. The trial is likely to take some more time under the present situation. Further, no previous conviction record of the accused is placed on record. Further, there is presumption of innocence in the criminal justice system.

In above facts and circumstances, present accused is granted bail subject to furnishing of personal bond in the sum of **Rs. 20,000/- with two sound sureties of like amount**, subject to the satisfaction of the learned Trial court and the following additional conditions:

- i) That he will appear before Trial Court as and when called as per law.*
- ii) He will not indulge in any kind of activities which are alleged against him in the present case.*
- iii) That he will not leave India without permission of the Court.*
- iv) He shall convey any change of address immediately to the IO and the court;*
- v) He shall also provide his mobile number to the IO as well as to the court.*

It is clarified that in case if the applicant/ accused is found to be violating any

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of the above conditions, the same shall be a ground for cancellation of bail and the State shall be at liberty to move an application for cancellation of bail.

**The observations made in the present bail application order are for the purpose of deciding of present application and do not affect the factual matrix of the investigation of the present cs which is separate issue as per law.**

**The bail application is accordingly disposed off. Learned counsel for applicant is at liberty to obtain copy of this order through electronic mode. Copy of this order be sent to Jail Superintendent concerned through electronic mode.**

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**(NAVEEN KUMAR KASHYAP)**  
**ASJ-04(Central/Delhi)**  
**16.12.2020**