

**State Vs Adil @ Shahzada
(Application of Adil @ Shahzada)
FIR No.20/2015
P. S.Kamla Market**

28.10.2020

This court is also discharging bail roster duty.

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

This is an application for regular bail.

Issue notice of the same to the IO for filing of reply by the next date of hearing.

Put up for reply, arguments for **11/11/2020**.

**(Naveen Kumar Kashyap)
ASJ-04/Central/28.10.2020**

Crl. Revision: 48/2020
Raja Ram @ Geeteshwar Saini v. State

28.10.2020

Undersigned is also discharging work of Bail Roster duty.

Fresh revision petition received by way of assignment. It be checked and registered.

Present: Sh. Vipin Kumar, Ld. Counsel for both the revisionist through VC.

Put up for consideration and appropriate order on physical hearing day on 03.11.2020.

(Naveen Kumar Kashyap)
ASJ-04/Central/28.10.2020

CA: 108/2020
Mohd. Asif v. state

28.10.2020

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.

Undersigned is also discharging work of Bail Roster duty.

Present: Ld. counsel for Appellant.
Mr. Pawan Kumar, learned Addl.PP for State/respondent through VC.

Put up for orders/clarifications, if any on 07.11.2020.

(Naveen Kumar Kashyap)
ASJ-04/Central/28.10.2020

BAIL APPLICATION FOR EXTENSION OF ASHISH

State v. Vinod @ Dada
FIR No. : 39/2019
PS: Lahori Gate
U/S: 394,397,307,411 IPC

28.10.2020

Undersigned is also discharging bail roster duty.

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

This is a fresh application dated 26.10.2020 seeking extension of interim bail for thirty days.

Put up for filing of reply, arguments and appropriate orders for
03.11.2020.

(Naveen Kumar Kashyap)
ASJ-04/Central/28.10.2020

BAIL APPLICATION

State v. Mohd. Umair @ Umer
FIR No. : 50/2020
PS: Chandni Mahal
U/S: 307 IPC

28.10.2020

Undersigned is also discharging bail roster duty.

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

This is a fresh application dated 26.10.2020 seeking extension of interim bail for thirty days.

Put up for filing of reply, arguments and appropriate orders for
03.11.2020.

(Naveen Kumar Kashyap)

ASJ-04/Central/28.10.2020

AT 12.34 PM

At this stage,

It is submitted by learned counsel for applicant that father of the accused is discharged from hospital as per information just received. As such, he wants to withdraw the present application with liberty to file afresh.

Heard. Allowed.

As such, present bail application is disposed of as withdrawn.

(Naveen Kumar Kashyap)

ASJ-04/Central/28.10.2020

BAIL APPLICATION of SANJAY @ DHARAMVIR

**State v. Raj Bahadur
FIR No. : 130/2014
PS: Kamla Market
U/S: 419,420,365,392,395,412,120B IPC**

28.10.2020

Undersigned is also discharging bail roster duty.

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

It appears that there is some technical problem with counsel for accused to join through VC.

As such, put up for tomorrow for 29.10.2020 for purpose fixed in terms of previous order.

**(Naveen Kumar Kashyap)
ASJ-04/Central/28.10.2020**

BAIL APPLICATION FOR EXTENSION OF MANOJ KUMAR

**State v. Ashish Kumar Bahuguna
FIR No. : 106/2012
PS: Kamla Market
U/S: 302,307,186,353,333,109,34 IPC**

28.10.2020

Undersigned is also discharging bail roster duty.

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

This is a fresh application dated 26.10.2020 seeking extension of interim bail for thirty days.

Put up for filing of reply, arguments and appropriate orders for

03.11.2020.

(Naveen Kumar Kashyap)

ASJ-04/Central/28.10.2020

Bail Application No.: 1612/2020

State v. Surender Ahirwal
FIR no.: 147/2020
PS: Prasad Nagar

28.10.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.

At request of learned Addl. PP for the state, matter is taken up today again.

It is stated that certain clarifications required in such order dated 27.10.2020, as matter was u/s 307 IPC only. As such, issue notice to the IO as well as to the learned counsel for accused/applicant for tomorrow at 2 pm.

The court staff is directed to do needful with filing counter for issuing such notice through electronic mode. Further, record of such file be summoned from filing counter for tomorrow i.e. **29.10.2020 at 2 pm.**

(NAVEEN KUMAR KASHYAP)
Additional Sessions Judge-04/Central
28.10.2020

Bail Application No.: 1624/2020

State v. Vishal @ Rahul
FIR no.: 22/2020
PS: Kamla Market

28.10.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.

IO is present through VC.

None for applicant since morning despite repeated calls through VC.

Reply filed by the IO.

As such, put up for arguments/ appropriate orders for 11.11.2020.

(NAVEEN KUMAR KASHYAP)
Additional Sessions Judge-04/Central
28.10.2020

Bail Application No.: 1623/2020

State v. Nikita Singhal & Ors.
FIR no.: 26/2020
PS: Rajinder Nagar

28.10.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Sh. Amish Aggarwal, Ld. Counsel for applicant /accused through VC.

This is a joint anticipatory bail application u/s 438 Cr.P.C. dated 26.10.2020.

A short reply filed by IO SI Krishan Pal dated 28.10.2020.

Part arguments in detail heard.

Issue notice to IO to appear through VC with file on next date of hearing including regarding the aspect what is allegations against applicant no.2, 3 and 4 i.e. Ajay Kumar Singhal, Mala Singhal and Nimisha Singhal as well as nature of the transactions between the parties and the ingredients constituting the offence u/s 406 IPC. Further, issue notice to the complainant also through IO for the next date of hearing to appear through VC or in person or through counsel.

Put up on 11.11.2020.

In the meanwhile, IO is directed not to take any coercive steps against these five applicants provided they join the investigation as and when directed by IO as per law.

(NAVEEN KUMAR KASHYAP)
Additional Sessions Judge-04/Central
28.10.2020

Bail Application No.: 1625/2020

State v. Pappu Paswan

FIR no.: 298/2020

PS: Lahori Gate

28.10.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.

Sh. Upendra Singh, Ld. Counsel for applicant /accused through VC.

Reply filed by the IO.

Copy of the same be supplied to counsel for accused during course of the day.

Arguments in detail heard.

Put up for further arguments, if any/clarifications , if any and orders for 06.11.2020.

(NAVEEN KUMAR KASHYAP)
Additional Sessions Judge-04/Central
28.10.2020

Bail Application No.: 1537/2020

State v. Sonu @ Amrit Kundra

FIR no.: 251/2019

PS: Prasad Nagar

28.10.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.

Sh. Prabhat Kumar, Ld. Counsel for applicant /accused through VC.

Sh. Ranjan Kumar, Ld. Counsel for complainant through VC.

An application for cancellation of interim bail filed.

Such application is directly filed by the complainant. Among other things same is opposed by learned counsel for accused/applicant on the ground that complainant do not have locus to file such cancellation application directly.

Put up for reply, if any by the non-applicant/accused side, arguments and appropriate orders on this aspect on merit on 11.11.2020.

(NAVEEN KUMAR KASHYAP)
Additional Sessions Judge-04/Central
28.10.2020

SC:27303/2016
FIR No:505/2015
PS: Burari
State v. Bishwajeet Karmokar

28.10.2020

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.

In the present case, last regular date of hearing was 24.03.2020.

On 24.03.2020, matter was adjourned for 28.10.2020.

Thereafter, as per directions from Hon'ble High Court, matter was adjourned was far due to lock-down. But in view of latest directions, matter is taken up today for hearing today through VC.

Undersigned is also discharging work of Bail Roster duty.

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.
Accused on bail with counsel Sh. Naresh Kumar through VC.

Put up for PE in terms of previous order for 11.01.2021.

(Naveen Kumar Kashyap)
ASJ-04/Central/28.10.2020

SC:27341/2016
FIR No: 70/2008
PS: Kashmere Gate
State v. Gabbar Singh @ Gurcharan

28.10.2020

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.

In the present case, last regular date of hearing was 25.03.2020,11.05.2020,07.07.2020,07.09.2020 and 12.10.2020.

On 12.10.2020, matter was adjourned for 28.10.2020.

Thereafter, as per directions from Hon'ble High Court, matter was adjourned was far due to lock-down. But in view of latest directions, matter is taken up today for hearing today through VC.

Undersigned is also discharging work of Bail Roster duty.

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.
Accused Gabbar Singh produced from Jail through VC.

Issue P/w of the accused, if any in JC for next date through VC or otherwise as the situation may prevail on next date of hearing.

Put up for consideration/further arguments and orders on 07.11.2020.

(Naveen Kumar Kashyap)
ASJ-04/Central/28.10.2020

SC:28519/2016
FIR No: 171/2010
PS: Paharganj
State v. Joginder @ Joga

28.10.2020

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.

In the present case, last regular date of hearing was 16.04.2020,08.06.2020,06.08.2020,06.10.2020.

On 06.10.2020, matter was adjourned for 28.10.2020.

Thereafter, as per directions from Hon'ble High Court, matter was adjourned was far due to lock-down. But in view of latest directions, matter is taken up today for hearing today through VC.

Undersigned is also discharging work of Bail Roster duty.

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.
Ms. Akshita Khetrapal, Ld. Counsel for all the accused through VC.
Accused Jogender @ Joga produced from JC through VC.

It is stated that accused no. 1 Jogender @ Joga in JC. It is further stated that accused Sikander has already expired. It is further stated that rest of the accused are on bail.

Put up for purpose fixed/arguments in terms of previous order for 07.11.2020.

(Naveen Kumar Kashyap)
ASJ-04/Central/28.10.2020

SC:287/2019
FIR No:478/2018
PS: Burari
State v. Sanjay Tiwari

28.10.2020

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.

Undersigned is also discharging work of Bail Roster duty.

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.
Sh. Awdhesh Kumar, Ld. Counsel for all the accused through VC.

Put up for DE in terms of previous order /summoning of the record for
12.11.2020.

Steps be taken within two days.

(Naveen Kumar Kashyap)
ASJ-04/Central/17.10.2020

Bail Application

State Vs Bharat @ Mirchi
FIR No. 139/2014
PS.: Hauz Qazi
U/s: 392, 34, 174A IPC

28.10.2020

**Present: Mr. Pawan Kumar, learned Addl. PP for State through VC.
Learned counsel for the applicant / accused through VC.**

Vide this order, the second bail application under section 439 Cr.P.C. on behalf of accused for grant of bail filed through counsel is disposed off.

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 therefore. 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.

In the present case, it is argued that he is in JC since 07/08/2020; that he was arrested based on disclosure statement of co-accused; that first time he was declared PO because no summons were served upon him and he had no knowledge of the present case. It is further stated that he was declared PO on the second time as due to death of his daughter he went into depression and failed to appear before learned Trial Court. It is stated that investigation is complete and public witnesses are already examined. That he has fracture in both the legs and admitted in the hospital. He is the only bread earner of his family. As such, it is prayed that he be granted regular bail.

On the other hand, it is argued by the learned Addl.PP for the state that presence of the present accused may not be secured for trial if he is released on bail. There are about 17-18 criminal cases pending against such accused and twice he was declared PO in the present case itself. As such, present application is strongly opposed.

I find force in the arguments of learned Addl.PP for the state. The reason for his non appearance and therefore being declared PO is not satisfactory and is vague. Further, there is criminal record of such accused involvement in other cases. Therefore, having regard to the conduct of this accused during trial, his presence may not be secured for trial, if he is granted bail. 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. 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.

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)
Additional Sessions Judge-04
Central/THC/Delhi
28/10/2020.**

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

INTERIM BAIL APPLICATION OF YOGESH SINGH

FIR No. 227/2020
PS.: Wazirabad
State v. Imran @ Akhtar Khan & Ors.
U/s:302,120B , 34 IPC

28.10.2020.

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

Arguments already heard yesterday. Today case is fixed for orders.

1. Vide this order, interim bail application dated 21.10.2020 of the accused Yogesh Singh filed through learned counsel is disposed of.

2. In nutshell, It is stated in the application that even as per the case of the prosecution, accused was not present at the spot of alleged offence, but it were some of co-accused persons who were present. That present accused is arrested based on disclosure statement of co-accused. That wife of accused Smt. Lalita is diagnosed to be suffering from disc prolapsed in L-1-L-2 and L-4 -L5 region and the MRI report suggest that wife of the applicant suffered annular tear and other related issues. Further, she is also suffering from further medical issue and advised for complete bed rest for two months. She is further advised for admission in the Max hospital, Delhi. That there are two children and adult member to take care of wife of accused and present accused is already disowned by the father and is living separately with his family. As such, it is prayed that he be granted interim bail for two months.

3. On the other hand, in reply filed by IO, the medical documents filed by the accused are verified and found correct. Further, it is stated that offence is very serious in nature and there are sufficient evidence /circumstantial evidence against the present accused. It is further stated that there are other adult members to take care of the ailing wife who need medical attention.

4. I have heard both the sides and gone through the record. Present accused, as per the prosecution case ,is not one of the accused who actually fired the bullet in question. In

fact, he is not even one of the four co-accused who were allegedly present on the spot for committing the offence in question. Role of present accused is that of conspirator. Further, on verification, the medical condition of the wife as well as her admission in Max hospital is found correct. Under these facts and circumstances, without commenting on the merit of the allegations in detail, present accused is granted interim bail for four weeks from the date furnishing and acceptance of the bail bond in the sum of Rs. 30,000/- with a surety of like amount to the satisfaction of the court, subject to further following conditions:

- (a) After completion of the interim bail period applicant shall surrender before concerned Jail Superintendent. Necessary intimation be sent to concerned Jail Superintendent accordingly;
- (b) Applicant shall not flee from the justice;
- (c) Applicant shall not tamper with the evidence;
- (d) Applicant shall not threaten or contact in any manner to the prosecution witnesses;
- (e) Applicant shall not leave country without permission;
- (f) Applicant shall convey any change of address immediately to the IO and the court;
- (g) Applicant shall also provide her mobile number to the IO;
- (h) Applicant shall further make a call, preferably by audio plus video mode to concerned IO, and if he is not available then to concerned SHO, once a week, preferably on Monday between 10 a.m. To 5 p.m.

5. Present application is allowed accordingly.

6. **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.**

7. **Copy of this order be sent to Jail Superintendent concerned through electronic mode. Further, learned counsel for accused/applicant may obtain copy of this order through electronic mode.**

(Naveen Kumar Kashyap)
ASJ-04(Central)Delhi
27.10.2020

SC: 352/2020
State v. Upender Yadav
FIR No.: 341/2020
PS: Kamla Market

28.10.2020

Undersigned is also discharging work of Bail Roster duty.

Fresh case received after committal. It be checked and registered.

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

**Put up for consideration and appropriate order on physical hearing day
on 03.11.2020.**

(Naveen Kumar Kashyap)
ASJ-04/Central/28.10.2020

State Vs Adil @ Shahzada & others
(Application of Adil @ Shahzada)
FIR No.20/2015
P. S. Kamla Market

28.10.2020

This court is also discharging bail roster duty.

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

This is an application dated 27/10/2020 for grant of regular bail of accused Adil @ Shahzada.

Part arguments heard in detail.

It is noted that in this case bail to the accused was granted under criteria of Hon'ble High Power Committee on 04/06/2020 which was further extended later on till 31/10/2020.

Now in view of order dated 20/10/2020 in WP (C) 3037 /2020 as well as latest minutes of meeting of Hon'ble High Power Committee meeting dated 24/10/2020, certain further recommendation are made for extension of interim bail of such category of UTPs and matter before Hon'ble High Court is listed for 03/11/2020.

As such, under these circumstances having regard to the objectives for which interim bail was granted on the criteria Hon'ble High Power Committee and including the fact of spread of corona virus inside the jail and segregating the prisoners were already inside the jail and who are to surrender back, interim bail of present accused is extended till 05/11/2020. Put up for further arguments / disposal for **05/11/2020**. In the meanwhile, IO / SHO concerned to file limited reply relating to the conduct of this accused while on interim bail. Issue notice to IO accordingly.

(Naveen Kumar Kashyap)
ASJ-04/Central/28.10.2020

**State Vs Arshlan Ali & others
(Application of Juber)
FIR No 182/2017
P. S.Kamla Market**

28.10.2020

This court is also discharging bail roster duty.

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.

Mr. M.Z. Masih, learned counsel for the applicant / accused through VC.

This is an application for regular bail filed by the applicant through counsel.

Issue notice of this application to IO to file reply by the next date of hearing.

Put up for reply, arguments and appropriate orders for **02/11/2020**.

**(Naveen Kumar Kashyap)
ASJ-04/Central/28.10.2020**

State Vs Bablu Mathur & others
(Application of Ankit Aggarwal)
FIR No.221/2015
P. S. Karol Bagh

28.10.2020

This court is also discharging bail roster duty.

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

This is an application for extension of interim bail of accused Ankit Aggarwal.
Part arguments heard in detail.

It is noted that in this case bail to the accused was granted under criteria of Hon'ble High Power Committee on 04/06/2020 which was further extended later on till 31/10/2020.

Now in view of order dated 20/10/2020 in WP (C) 3037 /2020 as well as latest minutes of meeting of Hon'ble High Power Committee meeting dated 24/10/2020, certain further recommendation are made for extension of interim bail of such category of UTPs and matter before Hon'ble High Court is listed for 03/11/2020.

As such, under these circumstances having regard to the objectives for which interim bail was granted on the criteria Hon'ble High Power Committee and including the fact of spread of corona virus inside the jail and segregating the prisoners were already inside the jail and who are to surrender back, interim bail of present accused is extended till 05/11/2020. Put up for further arguments / disposal for **05/11/2020**. In the meanwhile, IO / SHO concerned to file limited reply relating to the conduct of this accused while on interim bail. Issue notice to IO accordingly.

(Naveen Kumar Kashyap)
ASJ-04/Central/28.10.2020

State Vs Gaurav Chauhan & others
(Applications of Gaurav Chauhan & Ankur Singh)
FIR No 199/2009
P. S.Kashmere Gate
U/s 364A, 506, 120B IPC & 25 Arms Act

28.10.2020

This court is also discharging bail roster duty.

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.

Mr. Jitender Sethi, learned counsel for the applicant / accused through VC.

These are two applications for regular bail for accused Gaurav Chauhan and Ankur Singh.

It is stated that both such accused are already on interim bail at present.

Put up for reply, arguments and appropriate orders for **02/11/2020**.

(Naveen Kumar Kashyap)
ASJ-04/Central/28.10.2020

Bail Application

Bail Application No.:1362/2020
State vs Gopesh
FIR No.137/2020
P. S. Rajinder Nagar
U/s:452, 392, 411, 34 IPC

28.10.2020

Present: Mr. Pawan Kumar, learned Addl. PP for State through VC.
Mr. Rishi Kant Mishra, learned counsel for the applicant / accused through VC.

Arguments already heard and today the case was fixed for orders.

Vide this order, the bail application under section 439 Cr.P.C. on behalf of accused dated 15/09/2020 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. (**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 on behalf of accused that this is the second regular bail application; that first bail application was dismissed on 10/08/2020. Chargesheet is already filed. It is further argued that there is only one more case against such accused and he is granted bail in the other case. It is further stated that co-accused Ankush is already granted bail by this court vide order dated

01/10/2020. No purpose would be served by keeping the accused in JC. As such, it is prayed that he be granted regular bail.

On the other hand, reply filed by the IO, as also argued by the learned Addl.PP for the state that present bail application is strongly opposed. It is argued that present accused alongwith co-accused made a disclosure statement in another FIR that earlier they looted gold bangles of an old lady; that one of such gold bangles is recovered from the house of present accused. It is further stated that there are 5-6 criminal cases against such accused.

In the present case, It is a matter of record that accused is in JC since 07/06/2020. The chargesheet is now already filed. Co-accused is already granted bail. Further, it is not the case of the prosecution that accused was arrested on the spot. infact, he was arrested later on that too based on the disclosure statement. Further, as per the case of prosecution part of case property was recovered from him but that amount to material prima facie u/s 411 IPC. Further, as case property is already recovered no purpose would be served by keeping the accused in JC. Although, there is previous involvement record of the present accused but there is no previous conviction record of the present accused. Trial is likely to take time.

In 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;*

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:

- 1. The date on which conditions imposed by this court are satisfied;*
- 2. The date of release of prisoner from jail;*
- 3. 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.

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.

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)
Additional Sessions Judge-04
Central/THC/Delhi/28/10/2020.

State Vs Lokesh & others
(Application for change of surety)
FIR No 348/2015
P. S. Nabi Karim
U/s 392, 397, 411, 34 IPC

28.10.2020

This court is also discharging bail roster duty.

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

Verification report dated 27/10/2020 filed through electronic mode by HC Surjeet. As per such report, address as well as vehicle of surety Munna are verified.

In view of the same, such surety bail bond u/s 437(A) Cr.PC is accepted.

Original RC of the scooter be returned on record against acknowledgment.

(Naveen Kumar Kashyap)
ASJ-04/Central/28.10.2020

State Vs Mohd. Umair @ Umer
(Application of Mohd. Umair @ Umer)
FIR No 50/2020
P. S. Chandni Mahal

28.10.2020

This court is also discharging bail roster duty.

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.

Mr. Faiz Khan, learned counsel for the applicant / accused through VC.

This is an application for extension of interim bail.

Originally interim bail was granted by the learned bail roster Sessions Court vide order dated 24/04/2020.

On perusal of such order, it appears that same was granted on merits / facts and not on the criteria of Hon'ble High Court which was given later on dated 18/05/2020. As such, issue notice to IO to file reply.

Put up for arguments on merit of extension of such interim bail or otherwise appropriate orders for **02/11/2020**.

(Naveen Kumar Kashyap)
ASJ-04/Central/28.10.2020

Bail Matters No.:1523, 1524, & 1525/2020
State Vs Parveen @ Kavita, Gulshan Kumar & Rahul
FIR No.: 206/2020
PS: I.P. Estate

28/10/2020

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC.
Mr. Naresh Talwar, learned counsel for the applicants through VC.
Proxy counsel for the complainant also present through VC.
IO also present through VC.

Further part arguments heard particularly regarding section 420 IPC. IO to file further reply regarding to whether property was salable / transferable or not as per concerned agency L & DO or not.

Put up for further arguments and appropriate orders for **09/11/2020**. Interim order to continue in the meanwhile.

(Naveen Kumar Kashyap)
ASJ-04/Central/28.10.2020

State Vs Ram Nawal @ Parsuram
FIR No 327/2016
P. S.Roop Nagar
U/s 302 IPC

28.10.2020

This court is also discharging bail roster duty.

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.

None for the applicant / accused.

Put up for appearance of learned counsel for the applicant / accused and for arguments and appropriate orders for **11/11/2020**.

(Naveen Kumar Kashyap)
ASJ-04/Central/28.10.2020

State Vs Sanju @ Chawmin
(Application of Sanju @ Chawmin)
FIR No. 135/2017
P. S.ODRS

28.10.2020

This court is also discharging bail roster duty.

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.
Mr. J.S. Mishra, learned LAC for accused through VC.

This is an application for regular bail filed by applicant through counsel.

Issue notice of this application to IO to file reply by the next date of hearing.

Put up for reply, arguments and appropriate orders for **11/11/2020**.

(Naveen Kumar Kashyap)
ASJ-04/Central/28.10.2020

State Vs Shakil & others

(Application of Yunus)

FIR No.142/2017

P. S.Lahori Gate

28.10.2020

This court is also discharging bail roster duty.

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.

None for the applicant / accused.

This is an application for regular bail.

Issue notice of the same to the IO for filing of reply by the next date of hearing.

Put up for reply, arguments for **11/11/2020**.

(Naveen Kumar Kashyap)

ASJ-04/Central/28.10.2020

**State Vs Sunder
(Application of Sunder)
FIR No. 252/2016
P. S. Kotwali**

28.10.2020

This court is also discharging bail roster duty.

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.

Mr. Arvind Kumar, learned counsel for the applicant through VC.

This is an application for regular bail dated 26/10/2020.

Issue notice of this application to IO to file reply by the next date of hearing.

Put up for reply, arguments and appropriate orders for **02/11/2020**.

**(Naveen Kumar Kashyap)
ASJ-04/Central/28.10.2020**

**State Vs Zuhaid @ Makku @ Danish
(Application of Zuhaid)
FIR No. 170/2019
P. S.Lahori Gate**

28.10.2020

This court is also discharging bail roster duty.

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.

Mr. Sandeep Yadav, learned counsel for the applicant through VC.

This is an application for regular bail or in alternate interim bail. But it is stated by the counsel for the accused that at present he is pressing for extension of interim bail only for the ground stated in such bail application.

As such, IO / SHO is directed to file reply by the next date of hearing.

Put up for reply, arguments and appropriate orders for **02/11/2020 at 11 AM.**

**(Naveen Kumar Kashyap)
ASJ-04/Central/28.10.2020**

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

BAIL APPLICATION NO.: 1586/2020

**State Vs. Hari Chander @ Hariya @ Hari
FIR No. : 42/2020
PS: Prasad Nagar
U/S: 392,394,397,34 IPC &
25,27,54,59 Arms Act**

28.10.2020

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC.
Mr. Deepak Kumar Malik, learned Counsel for Accused through VC.

Vide this order, the regular bail application under section 439 Cr.P.C. on behalf of accused dated 16.10.2020 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. (**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 accused is falsely implicated in the present case and he is in JC since 24.02.2020 as alleged recovery is already effected. That on 24.02.2020, such accused appeared before learned MM, Central district, Delhi, FIR no. 594/2019 u/s 379,411 IPC, PS Karol Bagh and after attending the such hearing, police officials lifted him from outside the court room and implicated in the present case. That co-accused is now arrested in another case. That he is suffering from Gall Bladder stone and not getting proper treatment in jail. That he is auto driver by profession and has a family to support. As such, on that ground also, he be granted regular bail.

On the other hand, it is argued by the learned Addl.PP for the state that there are specific and serious allegations against the present accused. He was apprehended on the spot just after committing offence in question by complainant and other public persons and he was handed over to police by the public person only. That he is a BC of PS Gulabi Bagh. That his application for interim bail is already rejected on 08.10.2020. That there is no change in the circumstances. As such, present application is strongly opposed.

I find force in the arguments of learned Addl.PP for the state. The offence is

serious in nature and is nuisance to public at large. Present accused was arrested at the spot by the public persons as per the prosecution case. The defence taken by the accused is a matter of trial. Present accused is involved in number of cases and even convicted in FIR no. 171/2018, PS Roop Nagar. 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)
Additional Sessions Judge-04
Central/THC/Delhi
28.10.2020**