

e-FIR No. 11742/20
State Vs. Gopesh @ Gopi
PS Rajender Nagar

21.09.2020

(Through Video Conferencing over Cisco Webex Meeting)

Case taken up in view of circular no. 23456-23616 DJ(HQ)/ Covid-19 Lockdown/Physical Courts Roster/2020 dt. 30.08.2020 directions issued by Ld. District & Sessions Judge (HQ).

Present: Ld. APP for the State.

Pursuant to directions issued on 19.09.2020, report under the signatures of Dy. Superintendent Central Jail No.3, Tihar is received and perused.

It is stated in the report that since another case FIR No. 137/20, u/s 452/392/411/34 IPC is pending against accused, hence, he could not be released from jail despite receipt of release order in connection with present case FIR.

In such circumstances and in view of the above report, these papers be tagged with the concerned case file for record.

Copy of the report received from concerned Jail Superintendent be sent to counsel/LAC for applicant through email for information.

Copy of this order be sent to Computer Branch for uploading on Delhi District Courts Website.



(RISHABH KAPOOR)
MM-03(Central),THC,Delhi
21.09.2020

State Vs. Rafiq Ali
FIR No.180/2020
PS: I.P. Estate

21.09.2020

(Through Video Conferencing over Cisco Webex Meeting)
Case taken up in view of circular no. 23456-23616 DJ(HQ)/ Covid-19
Lockdown/Physical Courts Roster/2020 dt. 30.08.2020 directions issued by Ld.
District & Sessions Judge (HQ).

Present: Sh. Vakil Ahmed Ld. APP for State
Sh. Pratap Singh, Ld. counsel for applicant/accused
IO/SI Narender Kumar in person.

Certain clarifications sought from IO.

Remaining arguments heard.

This order shall dispose off the application for grant of bail u/s 437
Cr.PC, moved on behalf of applicant/accused Rafiq Ali.

It is stated that the applicant is innocent and has been falsely implicated in the present case. It is further averred that the custodial interrogation of the applicant/accused is no more required, nor any recovery is left to be effected from him. It is further averred that the applicant is the permanent residence of Delhi and was present in Bangalore at the time of commission of alleged offence. It is further averred that applicant is the sole bread earner of his family and is having responsibility to maintain his family. With these averments prayer is made for enlarging applicant on bail.

Ld. APP for State has opposed the present application citing seriousness of allegations and made a prayer for dismissal of the present application.

In the present case, the applicant was arrested for the offences u/s 380/457/511/34 IPC. As per reply filed by IO/SI Narender Kumar, the accused caught red handed from the spot with the alleged case property. Upon specific query made by the Court, IO also concealed that the involvement of accused in connection with case FIR No. 157/20, FIR No.172/20, FIR No. 140/20 and FIR No. 97/20 all at PS I.P. Estate, was discovered pursuant to his disclosure made in the


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investigation of present case FIR. It is also stated by IO that the complainant has failed to identify applicant/accused during TIP conducted in case FIR NO. 140/20 PS I.P. Estate, hence, IO would be moving application for release of accused u/s 169 Cr.P.C. for the want of incriminating evidence against accused in such case FIR. Further, the perusal of the previous conviction/involvement report appended with reply would reveal that accused has no other previous criminal antecedents except the afore stated case FIRs. Admittedly, the complicity of the accused in said case FIRs has been shown on the basis of the disclosure of the accused. As the recovery of the case property has already been effected from in the present case, coupled with the fact that the accused has never been previously involved in any of the offences, and as such is having clean previous antecedents, therefore, there does not exist any apprehension that if enlarged on bail, he will commit offences of like nature or will dissuade the prosecution witnesses. Further, the trial of the case would take a long time and till then the liberty of the accused cannot be curtailed, when his custody is as such not required for the investigation purposes. Even otherwise also, the presence of the accused during the course of remaining investigation, if any, as well as during trial can be ensured by taking sufficient sureties undertaking to ensure his presence. If so, in the circumstances, I am of the view that there exists no ground in further curtailing the liberty of the applicant/accused.

At this juncture, it is also pertinent to cite the observations made by the Hon'ble apex court *In Sanjay Chandra versus CBI (2012) 1SCC 40*, wherein it was observed that the courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earliest 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 un-convicted persons should be held in custody pending trial to secure their attendance at trial but in such cases, necessity is the operative test. The Hon'ble Apex court further observed that in this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person 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 upon only the belief that he will tamper with the


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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 that it would be improper for any court to refuse bail as a mark of this approval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for purpose of giving him a taste of imprisonment as a lesson.

In the light of the discussion made above, I am of the view that the contentions of the prosecution appears to be untenable and as such, there exists no reasonable justification, in not enlarging the applicant/accused, on bail. Accordingly, the accused/applicant Rafiq Ali is hereby ordered to be enlarged on bail, subject to following conditions;

1. That the applicant shall furnish personal and surety bonds in the sum of *sum of Rs.20,000/- each*, to the satisfaction of *Ld. Duty MM (on court duty)*.
2. That the applicant shall make himself available as and when required to do so by the investigating agency or the police;
3. That the applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing any facts to the court or the police;
4. That the applicant shall not tamper with the prosecution evidence nor he will try to win over the prosecution witnesses or terrorize them in any manner; and
5. That the applicant shall not deliberately and intentionally act in a manner which may tend to delay the investigation and trial of the case.
6. That the applicant shall not leave the territories of India during the pendency of present case proceedings except with the permission of the court.

The application is accordingly disposed off.

Scanned copy of this order be sent to the Ld. Counsel for applicant through email. One copy be also sent to concerned Jail Superintendent through all

A handwritten signature in blue ink is written over the date 21/09/2020. The signature appears to be 'Rafiq Ali'.

permissible modes including email at daksection.tihar@gov.in, for necessary information and compliance.

Scanned copy of the order be also sent to Computer Branch for uploading on Delhi District Court Website.



(RISHABH KAPOOR)
MM-03 (Central), THC, Delhi
21.08.2020

FIR No.143/20
PS I.P. Estate
State Vs. Ankit @ Ashu

21.09.2020

(Through Video Conferencing over Cisco Webex Meeting)
Case taken up in view of circular no. 23456-23616 DJ(HQ)/ Covid-19
Lockdown/Physical Courts Roster/2020 dt. 30.08.2020 directions issued by Ld.
District & Sessions Judge (HQ).

Present: Ld. APP for the State.

Sh.S.K. Pandey, Ld. Counsel for applicant/accused.

The present urgent application was filed on behalf of the applicant
on email id of this court.

Scanned copy of reply of under the signatures of IO/HC Amit Kumar, is received
through email id of the court. Copy of same is already supplied to Counsel for
applicant/accused, through email.

This order shall dispose off the application for grant of bail u/s 437
Cr.PC, moved on behalf of applicant/accused Ankit @ Ashu.

It is averred on behalf of accused/applicant that he has been
falsely implicated in the present case. It is further averred that the recovery
effected from the accused is planted one. It is further averred that the
accused is already bailed out in connected case FIR No. 351/20, PS Shastri
Park, FIR No. 452/20 PS Bharat Nagar and FIR No. 12491/20 PS Gandhi
Nagar. It is further averred that the co-accused has already been bailed out in
the present case. With these averments, prayer is made for grant of bail to
accused.

Ld. APP for State has been contended that the present application is
not maintainable as it is the second bail application moved on behalf of the
applicant/accused, without establishing any changed circumstance after the
dismissal of the earlier application. It is also contended that the applicant is a
habitual offender and if he is admitted on bail, there exists a strong likelihood that
he will indulge himself in the offences of similar nature. It is with these averments,
the prosecution has sought dismissal of the present application.

At the very outset, it is pertinent to mention here that the present


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application is the *second bail application* moved on behalf of the applicant, seeking his enlargement on bail. It may be added here that vide orders dated 03.09.2020, the earlier bail application of the accused/applicant, was dismissed by this court. It has been averred on behalf of applicant that since the charge-sheet has been filed and also that the co-accused has been bailed out, therefore, it tantamount to a changed circumstance, entitling the applicant for grant of bail. However, in this regard it is pertinent to mention here that even though there is no bar in entertaining successive bail applications, by consideration before the same court. There also lies not time-limit, set for moving the court for bail, after the first or previous bail application, is rejected. But, it should be only when some new facts and circumstances have been developed, after rejection of previous bail application, then only the successive bail application should be considered on merits. *In Parvinder Singh vs. State of Punjab 2003 12 SCC 528*, the Hon'ble apex court held that though an accused has right to move successive bail applications for grant of bail, but the court entertaining such subsequent application, has a duty to consider the reasons and grounds on which earlier bail applications were rejected. In such cases, the court has a duty to record what are the fresh grounds which persuade it to take a view, different from one taken in earlier application. Similarly, in *State of Madhya Pradesh versus Kajad AIR 2001 SC 3517*, it was held that it is true that successive bail application are permissible under the changed circumstances, but without the change in circumstances, the second bail application would be deemed, seeking review of earlier judgment, which is not permissible under the criminal law.

Now, coming to the contentions advanced on behalf of the accused/applicant, qua changed circumstances justifying maintainability of present application. As per the version of the Ld. Counsel for applicant, since the charge-sheet has been filed in the present case and also that the co-accused has been bailed out, hence in view of these changed circumstances, the present bail application can well be entertained by this court. In this regard, it is pertinent to add that the authorities cited above clearly suggests that the successive bail applications are maintainable before the same court only when, circumstance which led to the dismissal of earlier application, is shown to have been changed. Mere, branding a circumstance or glossing it with a term '*changed circumstance*', does not, fall


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under the purview of circumstance, which leads to maintainability of successive bail application unless the same has direct bearing on the grounds upon which the decision on earlier application was made. If, without establishing the said changed circumstance, the court ventures itself into entertaining the successive bail applications, it virtually tantamount to review of its own order, which certainly is not contemplated under the scheme of Cr.P.C. As far as the assertions of Ld. Counsel for applicant are concerned, pertinently, the perusal of order dated 03.09.2020 is suggestive of the fact that the first bail application as moved on behalf of the applicant/accused Ankit @ Ashu was dismissed by this court primarily on two counts which are, first, the previous bad antecedents of the applicant, justifying the apprehensions of the prosecution regarding the possibility of commission of offences of like nature by the accused/applicant and secondly, on the count that there existed a likelihood that if admitted on bail, the applicant will dissuade the prosecution witnesses. Pertinently, on establishing the fact by prosecution that the applicant has dented antecedents, the earlier bail application of accused/applicant was dismissed. The fact that, the applicant has previous dented criminal antecedents, remains undisputed and as such nothing Cogent has been placed on record on behalf of the accused/applicant vanishing the apprehension of the prosecution that if admitted on bail, the accused will not indulge himself in offences of similar nature or will not dissuade the material prosecution witnesses, I am of the view that the present application as moved on behalf of applicant lacks any maintainability.

In the light of my discussion made above, and also placing on reliance on the authorities cited above, since the earlier bail application of the applicant was dismissed on the ground of existence of likelihood of commission of offences of similar nature by the applicant, in case of his release and also upon appreciating possibility of his dissuading the prosecution witnesses, therefore merely on account of filing of chargesheet and enlargement of co-accused on bail, the prayer of the applicant cannot be accepted. In these circumstances, the application in hand deserves dismissal and as such the present application is hereby dismissed.

The application is accordingly disposed off.

Scanned copy of this order be sent to the Ld. Counsel for applicant through email.

A handwritten signature in blue ink, followed by the date '21/09/2020' written in blue ink.

One copy be also sent to IO/SHO concerned, for necessary information and compliance.

Scanned copy of the order be also sent to Computer Branch for uploading on Delhi District Court Website.


(RISHABH KAPOOR)
MM-03(Central),THC,Delhi
21.09.2020

FIR No.202/19
State Vs. Siraj Ali
PS I.P. Estate

21.09.2020

(Through Video Conferencing over Cisco Webex Meeting)
Case taken up in view of circular no. 23456-23616 DJ(HQ)/ Covid-19
Lockdown/Physical Courts Roster/2020 dt. 30.08.2020 directions issued by Ld.
District & Sessions Judge (HQ).

Present: Ld. APP for the State.
Sh.Ayub Ahmed Qureshi, Ld. Counsel for applicant/accused.
IO/SI Narender in person.

The present urgent application was filed on behalf of the applicant on email id of this court.

Scanned copy of reply of under the signatures of IO/SI Narender, is received through email id of the court. Copy of same is already supplied to counsel for applicant/accused, through email.

This order shall dispose off the application for grant of bail u/s 437 Cr.PC, moved on behalf of applicant/accused Siraj Ali.

It is stated that the applicant is innocent and has been falsely implicated in the present case. It is further averred that the custodial interrogation of the applicant/accused is no more required, nor any recovery is left to be effected from him. It is further averred that applicant has old parents to look after and is having responsibility to maintain his family. With these averments prayer is made for enlarging applicant on bail.

Ld. APP for State has opposed the present application citing seriousness of allegations. The present application is also opposed on the ground that it is a successive bail application moved on behalf of applicant and no change in circumstance has been established by Counsel for applicant. With these submissions, Ld. APP for the State has made a prayer for dismissal of the present application.

The perusal of the main case file would reveal that the charge-sheet

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has already been filed in the present case. The perusal of case record would further reveal that the charges u/s 394/34 IPC have already been framed against accused/applicant and after framing of the charges two PWs, namely, Dinesh Kumar and Vinay Kumar (cited as the complainant and eye witness to the occurrence), have also been examined on 11.03.2020. It is pertinent to mention here that the earlier bail application of accused was dismissed on 07.02.2020 keeping in view the fact that there existed a likelihood that accused with dissuade the material prosecution witnesses, in case he is admitted on bail. However, as per the record, now both the material prosecution witnesses have been examined in the Court. The remaining witnesses are either the formal witnesses or the police officials which are left to be examined in the present case. Thus, there does not persist any threat qua dissuading of such witnesses by the accused in case of his enlargement on bail. Besides, admittedly, applicant/accused is undergoing custody since, 30.08.2019. The prolonged custody of the accused in the present case cannot be ignored altogether. Further, due to the limited physical functioning of Courts on account of on going Covid-19 Pandemic, the trial of the case would take a long time and till then the liberty of the accused cannot be curtailed, when his custody is as such not required for the any purposes. Even otherwise also, the presence of the accused during the course of remaining trial can be ensured by taking sufficient sureties undertaking to ensure his presence. If so, in the circumstances, I am of the view that there exists no ground in further curtailing the liberty of the applicant/accused.

At this juncture, it is also pertinent to cite the observations made by the Hon'ble apex court *In Sanjay Chandra versus CBI (2012) 1SCC 40*, wherein it was observed that the courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earliest 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 un-convicted persons should be held in custody pending trial to secure their attendance at trial but in such cases, necessity is the operative test. The Hon'ble Apex court further observed that in this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he


21/09/2020.

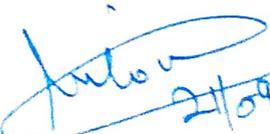
should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and that it would be improper for any court to refuse bail as a mark of this approval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for purpose of giving him a taste of imprisonment as a lesson.

In the light of the discussion made above, I am of the view that the contentions of the prosecution appears to be untenable and as such, there exists no reasonable justification, in not enlarging the applicant/accused, on bail. Accordingly, the accused/applicant Siraj Ali is hereby ordered to be enlarged on bail, subject to following conditions:

- 1 That the applicant shall furnish personal and surety bonds in the sum of **sum of Rs.20,000/- each**, to the satisfaction of **Ld. Duty MM (on court duty)**.
- 2 That the applicant shall make himself available as and when required to do so by the investigating agency or the police;
- 3 That the applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing any facts to the court or the police;
- 4 That the applicant shall not tamper with the prosecution evidence nor he will try to win over the prosecution witnesses or terrorize them in any manner; and
- 5 That the applicant shall not deliberately and intentionally act in a manner which may tend to delay the investigation and trial of the case.
- 6 That the applicant shall not leave the territories of India during the pendency of present case proceedings except with the permission of the court.

The application is accordingly disposed off.

Scanned copy of this order be sent to the Ld. Counsel for applicant through email. One copy be also sent to concerned Jail Superintendent through all


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permissible modes including email at daksection.tihar@gov.in, for necessary information and compliance.

Scanned copy of the order be also sent to Computer Branch for uploading on Delhi District Court Website.



(RISHABH KAPOOR)
MM-03(Central),THC,Delhi
21.09.2020

FIR No. 107/20
State Vs. Unknown (through applicant Amit)
PS LP, Estate

21.09.2020

(Through Video Conferencing over Cisco Webex Meeting)
Case taken up in view of circular no. 23456-23616 DJ(HQ)/ Covid-19
Lockdown/Physical Courts Roster/2020 dt. 30.08.2020 directions issued by Ld.
District & Sessions Judge (HQ).

Present: Ld. APP for the State.
Applicant with Sh.Rahul Pal, Ld. Counsel.
IO/SI Satyender Kumar

The present application was filed through email. Scanned copy of
reply under the signature of IO/SI Satyender Kumar is received through email.
Copy stands supplied to counsel for applicant, electronically.

Heard. Record perused.

This order shall dispose off application for release of vehicle DL
5SCE 7434, moved on behalf of applicant Amit.

In reply received under the signatures of IO/SI Satyender Kumar, it
has been stated that the vehicle in question is the victim vehicle which met with
accident with an unknown vehicle. It is further stated that the vehicle in question is
registered in name of applicant Amit. IO has also reported that the insurance policy
of vehicle was also verified and the vehicle is having valid insurance till
19.05.2020. IO has raised no objection, if same is released on superdari.

The applicant has sent the scanned copy of RC of vehicle and copy
of his Adhar Card for the purposes of identity.

On perusal of the report of IO and documents appended with the
application, the applicant Amit prima facie appears to be the person entitled for
custody of vehicle in question. Further, the insurance of vehicle already stands
verified and as per report of IO same is no more required for the purposes of
investigation.

In these circumstances and as per directions of *Hon'ble High Court of
Delhi* in matter of "*Manjit Singh Vs. State*" in CrI. M.C. No.4485/2013 dated
10.09.2014, the aforesaid vehicle be released to the applicant / registered owner


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subject to the following conditions:-

1. Vehicle in question be released to applicant/registered owner only subject to furnishing of indemnity bonds as per the valuation of the vehicle, to the satisfaction of the concerned SHO/ IO subject to verification of documents.
 2. IO shall prepare detailed panchnama mentioning the colour, Engine number, Chasis number, ownership and other necessary details of the vehicle.
 3. IO shall take the colour photographs of the vehicle from different angles and also of the engine number and the chasis number of the vehicle.
 4. The photographs should be attested and counter signed by the complainant/applicant and accused.
 5. IO is directed to verify the RC and insurance of the vehicle in question and release the vehicle after getting it insured by the applicant if the same is not already insured.
- Scanned copy of this order be sent to Counsel for applicant and to IO/SHO concerned through email.
- One copy be sent to Computer Branch, THC for uploading on Delhi District Court Website.


(RISHABH KAPOOR)
MM-03(Central),THC,Delhi
21.09.2020