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Bail Application

State Vs. Raman Kumar s/o Pawan Kumar
FIR No. : 147/2020
PS: Pahar Ganj
U/S: 326 IPC

16.09.2020

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

Arguments already heard in detail in this case and today the case is fixed for order / clarification, if any on the present second bail application dated 01/09/2020 filed by the accused Raman Kumar through his counsel.

In nutshell, it is stated in the present application that accused is in JC since 20/06/2020; that he is a young person of 24 years old and is the only son of his parents. That he does not have any previous criminal record at all. This his father is not keeping good health and his condition is further deteriorating due to dog bite. That as such he is the only earning member of his family. That now the chargesheet is already filed and trial is likely to take time in such pandemic condition. That no useful purpose would be served by keeping the accused in custody. That there are serious lapses on the part of IO which were pointed out by this court only while disposing of earlier bail application vide order dated 08/07/2020. That IO has not fairly investigated the present case and completely ignored the defence raised by the accused intentionally to

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benefit the complainant side. That in order to further extract the money from the accused side, the complainant side is making false allegations including of threat. As such, it is prayed that he may be granted regular bail.

On the other hand, it is argued by learned Addl.PP for the State based on the reply dated 11/09/2020 filed by SI Ajay Singh that complainant Piyush alongwith his sister were feeding the street dog outside their street. The accused / applicant Raman was also roaming there. Suddenly, a dog pounced on the accused and the accused stated that complainant intentionally got the accused bitten by the dog and he ran inside the house and came with a knife and intentionally stabbed the complainant in the stomach and he was taken to the hospital. Injury was stated to be grievous in nature by the doctor. That his first bail application is dismissed vide order dated 08/07/2020 by this court only. *It is further claimed by IO that Pawan Kumar, father of the accused claimed that he was got bitten by the dog on the same day. It is further claimed by IO that during investigation such Pawan Kumar did not disclose about this fact to him and instead produced the medical paper of dog bite before this court during previous bail proceedings only. It is further admitted that he was examined by the IO and such Pawan Kumar stated to the IO that he was bitten by the dog on 19/06/2020. It is further admitted that his medical documents were verified by the doctor RML which were found to be genuine. It is further stated that such dog bite was not by pat dog but by street dog. It is further stated that his bail application is recently*

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dismissed by Ilaka Magistrate also on 24/08/2020. It is further argued by the learned Addl.PP for the State that infact present offence amounts to offence u/s 307 IPC instead of 326 IPC.

I have heard both the sides and gone through the record, including the observation made by this court while disposing off previous bail application filed by this accused.

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

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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

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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

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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

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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.

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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, the maximum punishment of the offences alleged against the present accused is imprisonment for life. But, it is the defence of the accused side that at best their case is covered u/s 335 IPC without admitting the same. It is the consistent defence of the accused supported by medical documents from the hospital that there is element of grave and sudden provocation and as such a lenient view be taken accordingly. Further, there is no previous criminal record of the accused and the chargesheet is already filed. Further, trial is likely to take sometime particularly in such pandemic condition. Further, this accused has roots in the society and he is permanent resident of Delhi.

In above facts and circumstances, present accused is

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granted bail subject to furnishing of personal bond in the sum of **Rs. 25,000/- 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 / 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

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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

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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.

Before parting, this court is pained to note that prima facie conduct of the IO and the manner in which present investigation is carried out by him is not satisfactory. Despite observation made by this court in earlier bail order dated 08/07/2020 that purpose of criminal investigation is impartial investigation and IO is supposed to collect all material evidence whether it goes in favour or against the accused, still prima facie, it appears that such IO has taken two different stands ,one in the chargesheet and another in the present bail application. In the present application, IO has admitted that there are certain medical documents relating to dog bite to Pawan Kumar, father of the accused. Such dog bite is of same date of incidence. Further, it is the stand of accused side also that it is a stray dog which has bitten the accused's father. Despite that, it appears such defence of the accused is not properly reflected in the chargesheet, despite observation by this court in earlier order dated 08/07/2020 with copy to DCP. Further, it appears no genuine efforts made to join independent witnesses or collect scientific evidence relating to such dog bite claimed by the accused side. As such, there appears to be serious lapses in the one side investigation by the present IO for the reasons best known to him. In any case, his conduct appears to be unprofessional and it appears that he has not properly followed the provision of investigation and recording of

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statements of all relevant witnesses including eye witnesses , including that of Pawan Kumar ,properly. *As such, a copy of this order be sent to the Joint Commissioner concerned. It is expected that worthy Joint Commissioner concerned shall take appropriate action as per rules under these circumstances. As such, Ahlmad of this court is directed to send a copy of this order to the Joint Commissioner concerned through Niab Court. Further, a copy of this order be also sent to learned Trial Court for its information.*

The bail application is accordingly disposed off. Both the sides are at liberty to obtain copy of this order through electronic mode. Copy of this order be sent to IO / SHO concerned. Copy of order be uploaded on website.

NAVEEN KUMAR
KASHYAP

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(Naveen Kumar Kashyap)
Additional Sessions Judge-04
Central/THC/Delhi/16/09/2020

ANTICIPATORY BAIL APPLICATION

BAIL APPLICATION No: 1175/2020

State V. Mohd. Shamim

FIR No. : Not Known

P. S. : CAW Cell, Kamla Market

U/s: Not Known

16.09.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Sh. M. Sohail Alam Khan, Learned counsel for applicant/accused through VC.
Sh. Kulbhushan, Learned counsel for complainant alongwith complainant through VC.

1. Vide this order, present bail application u/s 438 Cr.PC dated 11.09.2020 for anticipatory bail by applicant Mohd. Shamim is disposed of.

2. In nut shell, it is stated by the learned counsel for applicant that applicant is old and infirm person of about 66 years age and suffering from various old age problem and he is a widower and living separately with his elder son. That he is father in law of the complainant and nothing to do with the offence in question. That immediately after marriage in February, 2017 as per Muslim rites, attitude of the complainant was hostile towards her husband and in-laws. That she did not mend her ways despite efforts made by applicant side. That applicant never interfered in the marital life of the complainant. That complainant threatened the applicant side for implicating in false criminal cases including dowry matters. That as per the information given by IO of the case that matter is being sent for registration of FIR through concerned DCP and as such no next date is given in the women Cell. As such, the present accused apprehend his arrest in the false and frivolous present case. Accordingly, he has moved the present application seeking directions to the IO/SHO concerned to given at least seven days notice to the applicant before his arrest.

3. On the other hand, it is submitted by learned counsel for complainant that the present application is pre-mature. That no FIR is registered so far. But there are serious allegations against the applicant side in the complaint filed by the present complainant including u/s 377 IPC against the husband. It is further stated that there is no justification to grant of the prayer sought.

4. Further, in reply dated 12.09.2020 filed by the IO ASI Anuradha, it is stated that complainant made a written complaint against her husband and in-laws in CAW Cell. That at present, counselling is going on. That no FIR is registered at present. That complainant's file is being prepared for legal action. As such, it is argued by Ld. Addl. PP for the state that present application is pre-mautre and as such, present bail application is opposed.

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

6. 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.

7. 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 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 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.”

8. 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 under trial 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 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."

9. 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.

10. 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 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 individual liberty.....”

11. 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 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 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 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.

12. Now in this background of law we come back to present case. In the present case, no FIR is registered so far. Further, it appears that as far as present applicant is concerned, allegations against the present applicant are punishable for imprisonment less than seven years in any case. Therefore, the guidelines of Hon'ble Supreme Court in the case of Arnesh Kumar also comes into picture and the IO/SHO concerned are duty bound to take appropriate decision as per law including the judgment of Arnesh Kumar, including u/s 41A Cr.P.C. In any case, present application is pre-mature under these circumstances. **With these observations present application is dismissed.**

13. **Copy of this order be provided to learned counsel for applicant through electronic mode. Copy of this order be also sent to IO/SHO concerned through electronic mode.**

NAVEEN KUMAR KASHYAP
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(NAVEEN KUMAR KASHYAP)
Additional Sessions Judge-04/Central
16.09.2020

ANTICIPATORY BAIL APPLICATION

BAIL APPLICATION No: 1037/2020
State V. Aamir Shakeel
FIR No. 36/2020
P. S. : Sadar Bazar
U/s: 498A,406,354,342,323 IPC r/w 34 IPC.

16.09.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Sh. Javed Khan, Learned counsel for applicant/accused through VC.
Sh. Jatan Singh, Learned counsel for complainant through VC.

1. Arguments in detail already heard on last date of hearing and today case is fixed for orders/clarifications, if any, and settlement, if any. It is stated by both the sides that no settlement could be arrived at so far despite the matter being referred even to Mediation. As such, vide this order, present bail application u/s 438 Cr.PC dated 26.08.2020 for anticipatory bail by accused / applicant Aamir Shakeel is disposed of.

2. In nut shell, it is stated by counsel for applicant that the complainant got married with the brother of the petitioner on 27.12.2017 according to muslim rites in Delhi. That present false allegation are levelled in order to humiliate the applicant who is already ultimately got married with one Farida on 16.09.2019 who is from Pakistan and thereafter applicant alongwith his wife was living at Pratap Ganj, Delhi. As such, it is claimed that he had no intimacy with the complainant and he is living separately. That during settlement in mediation, the applicant side submitted the admitted list of dowry articles and requested the complainant, her parents and IO to collect the same but they failed to collect the same. It is further stated that complainant herself left the matrimonial home on 19.12.2018 and took two bags containing her belongings, jewellery and other articles which is clear from the Web Camera installed in the premises. It is further stated that without prejudice their right and contention, the applicant side is ready to submit a FD in the sum of Rs. 5 lacs in the name of trial court to show their bonafide towards the alleged false claim of jewellery items. Further, they are always ready to return other dowry articles.

3. On the other hand, it is submitted by learned counsel for complainant that conduct of the applicant and his family is far from satisfactory. That complainant honestly and correctly

made allegations including Section 354/509 IPC and it is not the case where any aggravated or more serious allegations are falsely levelled. It is further claimed that jewellery items are still with the applicant side. It is further stated that further a sum of Rs. 35 lacs was spent related to the marriage in question. It is further stated that in order to put pressure upon the complainant, the applicant family members and relatives are calling complainant and threatening over phone from Pakistan and other country. It is further stated that applicant falsely claiming that he is living separately. It is further stated that the husband of the complainant is already illegally going ahead and advertising for his new marriage proposal. As such, present bail application is strongly opposed.

4. It is further stated by learned Addl. PP for the state as also stated by the IO that there are specific allegations against the present applicant. That the allegations are serious are in nature and complainant has supported the same during her statement u/s 164 Cr.P.C. It is further stated that apart from offences u/s 406, 498A IPC, as far as present accused is concerned, there are specific allegations u/s 354, 342 IPC also.

As such, present bail application is opposed.

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

6. 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.

7. 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 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 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.”

8. 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 under trial 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 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.”

9. 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.

10. 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 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 individual liberty.....”

11. 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 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 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 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.

12. Now in this background of law we come back to present case. It is rightly pointed out by learned Addl. PP for the state that apart from allegations under section 406, 498A IPC there are allegations u/s 354,342 IPC against the present applicant. Thus, it cannot be said that allegations against the accused are made in routine relating to matrimonial dispute. But section 354 IPC is punishable for punishment upto five years i.e. less than seven years in any case. Therefore, the guidelines of Hon'ble Supreme Court in the case of Arnesh Kumar also

comes into picture and the IO/SHO concerned are duty bound to take appropriate decision as per law including the judgment of Arnesh Kumar. Further, for such purpose custodial investigation of the applicant may also be required. Under these circumstances having regard to the nature of allegations and material on record, **this court is not inclined to grant anticipatory bail to the applicant** as prayed for.

13. But if the applicant side is ready to deposit an FD in the sum of Rs. 5 lacs in the name of Ld. Trial Court concerned within one week from today, as undertaken by applicant side itself then, ***IO is directed to give three working days notice to the applicant*** on the addresses mentioned on the bail applications and also on the official address of the counsel as mentioned in the bail applications. In the meanwhile, the applicants shall join the investigations as and when called upon to do so. The present anticipatory bail application is accordingly disposed of. **With these observations present application is disposed of.**

14. **Copy of this order be provided to learned counsel for applicant through electronic mode. Copy of this order be also sent to IO/SHO concerned through electronic mode.**

NAVEEN KUMAR
KASHYAP

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KUMAR KASHYAP
Date: 2020.09.16 17:22:44
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(NAVEEN KUMAR KASHYAP)
Additional Sessions Judge-04/Central
16.09.2020

ANTICIPATORY BAIL APPLICATION

BAIL APPLICATION No: 1130/2020

State V. Mohd. Salman Qureshi S/o Salim
e-FIR No.: 759/2020
P. S. : Kotwali
U/S: Unknown

16.09.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Sh. Hemant Chaudhary, Learned counsel for applicant/ accused through VC.

1. Vide this order, present bail application u/s 438 Cr.PC dated 08.09.2020 filed by the accused / applicant Mohd. Salman Qureshi is disposed of.

2. In nut shell, it is stated by the counsel for the applicant that on 07.08.2020, some police officials visited twice the applicant's house and left the place without providing any information that applicant is innocent. That he apprehend his arrest in the above mentioned case without any legal basis. That in any case, he is ready to join investigation as and when directed by the IO. As such, it is prayed that he be granted anticipatory bail and directions be issued to IO/SHO concerned accordingly.

3. On the other hand, it is stated by learned Addl. PP for the state as also stated by the IO that one complainant Renu Jain stated that while she was standing at the bus stop, Red Fort, Delhi. All of a sudden two boys came on a motorcycle and snatched her mobile phone from her hand. That later, presence of Usman was found near the place of occurrence and during investigation, he disclosed that he alongwith the present applicant carried out the offence in question. That such accused is avoiding his arrest and is running away from the house so that police investigation is not proceeded against him. That he is required for investigation including for TIP and for custodial investigation. As such, present anticipatory bail application is opposed.

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

5. 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.

6. 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 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

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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.”

7. 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 under trial 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

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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 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."

8. 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.

9. 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 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 individual liberty.....”

10. 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 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 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 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

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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

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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 over implication 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.

11. Now in this background of law we come back to present case. It is rightly pointed out by learned Addl. PP for the state that offence is serious in nature and nuisance to public at large. In fact, such offences put a question mark fundamental right to life and liberty and freedom of movement fearlessly. Such offences are on increase and should be strictly dealt as per law. Although, it is the claim of the applicant side in any case mobile is recovered from the co-accused and nothing is recovered from the present accused. But investigation is at the initial stage and in fact same is installed because of non-cooperation by the present applicant. Further, his custodial investigation and TIP is required for proper investigation of the case. As such, under these circumstances, this court is inclined to grant the prayer sought for. **With these observations present application is dismissed.**

12. **Copy of this order be given to learned counsel for applicant through electronic mode. Copy of this order be also sent to IO/SHO concerned through electronic mode.**

NAVEEN KUMAR KASHYAP Digitally signed by NAVEEN KUMAR KASHYAP
Date: 2020.09.16 17:23:08 +05'30'

(NAVEEN KUMAR KASHYAP)
Additional Sessions Judge-04/Central
16.09.2020

BAIL APPLICATIONS

- (1) 1205/2020: Bhupinder Kumar
- (2) 1206/2020: Shekhar Kumar
- (3) 1207//2020: Bharm Prakash
- (4) 1208/2020 : Deepak Kumar
- (5)1209/2020 : Shakuntala Devi
- (6) 1210/2020 : Kalawati Devi

FIR No. 221/2020
PS: Paharganj
U/S: 498A/406/354/34 IPC

16.09.2020

Present: Mr. Pawan Kumar ,Ld. Addl. PP for the State through VC
Mr. Bhaskar Upadhyayay, Ld. Counsel for applicants.

Six connected applications dated 11.09.2020 for anticipatory bail filed.

A short reply received from ASI Brij Mohan PS Pahar Ganj.

It appears that no notice of the present application is issued to complainant so far. As such, issue notice to complainant of the present bail applications before proceeding further on merit.

Complainant to appear in person through VC on next date. IO to make necessary arrangements if requested by the complainant for appearing through VC. Further, ASI Brij Mohan to appear in person through VC on next date of hearing inter alia to explain mode of notice to the applicants and adopted by him in the present case as reflected in his reply filed in court. In the meanwhile, without commenting on merit on present applications, in the interest of justice, no coercive action be taken against the present six applicants till next date of hearing only.

**Put up for further reply, arguments and appropriate orders for
23.09.2020.**

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NAVEEN KUMAR KASHYAP
Date: 2020.09.16 17:23:25
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**(Naveen Kumar Kashyap)
ASJ-04/Central/16.09.2020**

**BAIL APPLICATIONS:
1198/2020 : State v. Sameer Malik
1199/2020 : State v. Mahmood Ali**

**FIR No. : NA
PS: Chandni Mahal**

16.09.2020

Present: Mr. Pawan Kumar ,Ld. Addl. PP for the State through VC
Sh. A.A. Qureshi, Ld. Counsel for applicants through VC.
Sh. Shahid Azad, Ld. Counsel for complainant Yashmin through VC.

Reply filed by IO.

It is submitted that a short reply is filed by IO in this case. Copy of the same is supplied to counsel for applicants.

Put up for arguments and appropriate orders on 23.09.2020.

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NAVEEN KUMAR KASHYAP
Date: 2020.09.16 17:23:40
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(Naveen Kumar Kashyap)
ASJ-04/Central/16.09.2020

BAIL APPLICATIONS:
1200/2020 : State v. Sameer Malik
1201/2020 : State v. Mahmood Ali
1202/2020: State v. Rida
1203/2020: State v. Sania Malik

FIR No. : NA
PS: CAW Cell, Central

16.09.2020

Present: Mr. Pawan Kumar ,Ld. Addl. PP for the State through VC
Sh. A.A. Qureshi, Ld. Counsel for applicants through VC.
Sh. Shahid Azad, Ld. Counsel for complainant Yashmin through VC.

A joint reply received. Copy of the same be supplied to counsel for applicants.
Put up for arguments and appropriate orders on 23.09.2020.

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NAVEEN KUMAR KASHYAP
Date: 2020.09.16 17:23:56
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(Naveen Kumar Kashyap)
ASJ-04/Central/16.09.2020

BAIL APPLICATION: 1204/2020

**State v. Naseem
FIR No. : NA
PS: CAW Cell**

16.09.2020

Present: Mr. Pawan Kumar ,Ld. Addl. PP for the State through VC
Sh. A.A. Qureshi, Ld. Counsel for applicants through VC.
Sh. Shahid Azad, Ld. Counsel for complainant Yashmin through VC.

Reply not filed by IO.

Reply be filed by next date of hearing.

Put up with connected matter with reply and appropriate orders on

23.09.2020.

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Date: 2020.09.16 17:24:17
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(Naveen Kumar Kashyap)
ASJ-04/Central/16.09.2020

BAIL APPLICATION: 1139/2020

**State v. Adnan
FIR No. : 202/2020
PS: Pahar Ganj**

16.09.2020

Present: Mr. Pawan Kumar ,Ld. Addl. PP for the State through VC
Sh. Amit Dhalla, Ld. Counsel for applicant/accused through VC.
Victim in person with IO Jagat Singh through VC.

Arguments in detail heard on the present regular bail application of the accused

Adnan.

Put up for orders/clarifications, if any/filing of case law, if any on

18.09.2020.

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Date: 2020.09.16 17:24:36
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**(Naveen Kumar Kashyap)
ASJ-04/Central/16.09.2020**

BAIL APPLICATION: 1163/2020

**State v. Nitish @ Nonu
FIR No. : 21/2020
PS: Sadar Bazar**

16.09.2020

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

This case is fixed for orders/clarifications.

Some clarifications are required.

Put up for orders/clarifications including on the aspect whether at present accused is present on regular bail or on interim bail.

Put up for orders/clarifications, if any on 17.09.2020.

NAVEEN KUMAR
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(Naveen Kumar Kashyap)
ASJ-04/Central/16.09.2020

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Date: 2020.09.16 17:24:58
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BAIL APPLICATION

State v. Ram Nawal @ Parsuram
FIR No. : 327/2016
PS: Roop Nagar
U/S: 302 IPC

16.09.2020

Present: Mr. Pawan Kumar ,Ld. Addl. PP for the State through VC
Ms. Tehsin, proxy counsel for applicant through VC.

She seeks some time to clarify whether accused is on interim bail at present or not.

Put up for clarifications/appropriate orders on 17.09.2020.

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Date: 2020.09.16 17:26:38
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(Naveen Kumar Kashyap)
ASJ-04/Central/16.09.2020

Interim Bail Application

State Vs. Rahul Sharma & others
(Application of Rahul Sharma)
FIR No.:339/2016
PS:Darya Ganj
U/s: 395, 397, 412, 120B IPC

16.09.2020

This court is also discharging Bail Roster duty till further orders.

Present: Mr. Pawan Kumar, learned Addl.PP for the State through VC.
Mr. S.N. Shukla, learned LAC for applicant / accused through VC.

Fresh application seeking interim bail on behalf of accused Rahul Sharma has been filed through counsel.

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

Also issue notice to concerned Jail Superintendent to file reply regarding medical condition of the accused by the next date of hearing.

Put up for reply, arguments and appropriate orders for **22/09/2020**.

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Date: 2020.09.16 17:27:12
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(Naveen Kumar Kashyap)
ASJ-04/Central/16.09.2020

SC No.: 28245/2016
FIR No.: 23/2014
PS Gulabi Bagh
State Vs Pankaj Sharma & Others

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.

16.09.2020

This court is also discharging bail Roster duty till further orders.

Present: Mr. S.S. Sobti, learned counsel for appellant through VC.
Mr. Yatinder Kumar, learned LAC for accused No.1 & 3 Pankaj Sharma and Deepak @ Kaali.
Both accused are stated to be present physically in court.
Mr. Abhishek Vikram, learned counsel for accused No. 4 S.K. Goyal who is stated to be on bail.
None for other accused either through VC or through physically.

In the interest of justice no adverse order is passed in the present case. In terms of previous order put up for PE for **07/01/2021**. In the meanwhile, issue notice to two material witnesses for the next date of hearing.

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Date: 2020.09.16 17:27:47
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(Naveen Kumar Kashyap)
ASJ-04/Central/16.09.2020

Bail Application No.:1197/2020
State Vs.Jaspreet Singh Sethi s/o Mohinderjeet Singh Sethi
FIR No.:110/2020
PS: Pahara Ganj
U/s: 498A, 406 IPC

16.09.2020

Present: Mr. Pawan Kumar, learned Addl.PP for the State through VC.
Mr. H.R. Jha, learned counsel for the applicant through VC.

Reply filed by the IO. Copy supplied. Complainant is not present. Issue notice to complainant through IO for the next date of hearing. IO shall make all necessary arrangement for the complainant to join through VC for the next date of hearing.

Put up for arguments, appropriate order for **22/09/2020**.

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Date: 2020.09.16
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(Naveen Kumar Kashyap)
ASJ-04/Central/16.09.2020

Bail Application No.:1196/2020
State Vs. Ajrudin
FIR No.:15739/2020
PS: Jama Masjid
U/s: 379, 411 IPC

16.09.2020

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

After some arguments, learned counsel for the applicant / accused seeks to withdraw the present application.

Heard. Allowed.

In view of the submissions, the present application is dismissed as withdrawn.

Application stands disposed off accordingly.

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Date: 2020.09.16 19:00:13
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(Naveen Kumar Kashyap)
ASJ-04/Central/16.09.2020

Bail Application No.:1185/2020
State Vs. Rocky Goswami
FIR No.:324/2017
PS: Pahar Ganj

16.09.2020

Present: Mr. Pawan Kumar, learned Addl.PP for the State through VC.
Mr. Bhuvneshwar Tyagi, learned counsel for the applicant through VC.
Mr. Gaurav Gupta, learned counsel for complainant through VC.

Arguments in detail heard on the present interim bail application.

Learned Addl.PP for the State has submitted that the sections involved in the present case are MM trial.

As such, put up for appropriate order in this regard also for tomorrow i.e.

17/09/2020.

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Date: 2020.09.16 19:00:46
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(Naveen Kumar Kashyap)
ASJ-04/Central/16.09.2020

Bail Application No.:1140/2020
State Vs.Rohit Aneja
FIR No.:Not Known
PS:CAW Cell Sarai Rohilla
U/s 498A, 406, 34 IPC

16.09.2020

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

Notice not issued by the concerned officials of filing counter. They are warned to be careful in future.

In the meanwhile, issue fresh notice to the IO as well as to the complainant through IO to appear through VC on the next date of hearing.

Put up for **23/09/2020**.

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Date: 2020.09.16 19:01:07
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(Naveen Kumar Kashyap)
ASJ-04/Central/16.09.2020

SC: 878/2018
FIR No: 126/2017
PS: Hauz Qazi
State v. Rajkumar @ Ramu

16.09.2020

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 16.07.2020.

On 16.07.2020, matter was adjourned for 16.09.2020.

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.
None for accused.

No adverse order is being passed.

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 appearance/ PE in terms of previous order for 07.01.2021.

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Date: 2020.09.16 17:28:21
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(Naveen Kumar Kashyap)
ASJ-04/Central/16.09.2020

SC: 901/2018
FIR No: 146/2018
PS: Timarpur
State v. Raja Babu @ Gandhi

16.09.2020

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 19.05.2020 and 16.07.2020.

On 16.07.2020, matter was adjourned for 16.09.2020.

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.
None for accused.

No adverse order is being passed.

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 appearance/ PE in terms of previous order for 07.01.2021.

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Date: 2020.09.16 17:28:48
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(Naveen Kumar Kashyap)
ASJ-04/Central/16.09.2020

SC:1013/2018
FIR No: 243/2018
PS: I.P. Estate
State v. Mohd. Asif

16.09.2020

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 19.05.2020 and 16.07.2020.

On 16.07.2020, matter was adjourned for 16.09.2020.

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.
None for accused.

No adverse order is being passed.

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 appearance/ PE in terms of previous order for 08.01.2021.

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NAVEEN KUMAR KASHYAP
Date: 2020.09.16 17:29:13
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(Naveen Kumar Kashyap)
ASJ-04/Central/16.09.2020

Crl. Revision: 96/2020, 97/2020,98/2020,99/2020,100/2020 and 101/2020
Deepak Talwar v. Income Tax Office

16.09.2020

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. Tanveer Ahmad Mir, Ld. Counsel for revisionist.
Sh. Anish Dhingra, Ld. Counsel for ITO/respondent.

Copy of the reply to the condonation of delay in filing reply is already on record. Copy of the same already stand supplied.

At request, put up for arguments through VC on such application only for

06.10.2020.

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Date: 2020.09.16 17:29:38
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(Naveen Kumar Kashyap)
ASJ-04/Central/16.09.2020

**Crl. Revision:580/2019
Vijay Manchanda v. State**

16.09.2020

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. Suhail Malik, Ld. Counsel for revisionist.
Sh. Pawan Kumar, Ld. Addl. PP for the State/respondent alongwith
Sh. Gaurav Gupta, Ld. Counsel for complainant.

Case law relied and filed today. Further arguments in detail heard including on locus of complainant counsel, maintainability of present revision petition as well as on merit of the present petition.

Put up for orders/clarifications, if any on 28.09.2020.

TCR be also summoned one day before next date of hearing.

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Date: 2020.09.16 17:29:57
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**(Naveen Kumar Kashyap)
ASJ-04/Central/16.09.2020**

SC: 687/2017
FIR No.:25/2017
PS: Maurice Nagar
State v. Shahnawaj @ Shanu

16.09.2020

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. Pawan Kumar, learned Addl.PP for State through VC.
Sh. A.A. Qureshi, Ld. Counsel for accused.

Today, case was fixed for pronouncement of judgment. But it is stated by learned counsel for accused that accused is not available today due to some personal difficulty.

As such, on his request, put up for pronouncement of judgment through physical mode on 19.09.2020 at 2.30 pm.

NAVEEN
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Date: 2020.09.16 17:30:16
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(Naveen Kumar Kashyap)
ASJ-04/Central/16.09.2020