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Bail Application No:1410/2020

**State v. Pankesh Kumar & Ors.
(APPLICANT SUNIL)
FIR No. : 436/2018
PS: Karol Bagh
U/S: 395,397,120B,34 IPC**

05.11.2020

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

Arguments already heard. Today, case was fixed for orders.

Vide this order, the regular bail application under section 439 Cr.P.C. on behalf of **accused Sunil** dated 03.10.2020 filed through counsel is disposed of.

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

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

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

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

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

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

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

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

identical, but vitally and drastically dissimilar. (**Sundeep Kumar Bafna Vs. State of Maharashtra, AIR 2014 SC 1745**).

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

character of evidence as some of the relevant factors in deciding whether to grant bail or not.

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

In the present case, it is argued on behalf of accused that on the basis of disclosure in another FIR, accused is arrested in present case on 16.11.2018. That he already granted bail by Hon'ble High Court in that other matter of PS Vasant Kunj. That initially in the FIR, name of four accused persons is mentioned whereas in the chargesheet filed, there is name of five accused persons. That his first bail application is dismissed vide order dated 05.03.2020. Further, his interim bail is already dismissed vide order 06.05.2020. Later on, he was granted interim bail by Hon'ble High Court. That he is the sole bread earner of the family. That trial is likely to take time. That there is no incriminating evidence against the present accused, except the disclosure statement in other criminal case. As such, it is prayed that he is granted regular bail.

On the other hand, it is argued by the learned Addl.PP for the state that at gun point, complainant was robbed of about 5.3 lacs Indian currency and about 2.67 lacs foreign currency in a planned manner from the shop of such complainant. It is further argued by learned Addl. PP for the state that he is duly identified by the complainant. Further, the pistol used in the offence is recovered from the present accused only.

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Further, there is no material change in the circumstance since dismissal of the first bail application on 05.03.2020 and public witnesses are yet to be examined.

I find force in the arguments of learned Addl.PP for the state. The offence is serious in nature. Further, there are specific allegations against the accused. Further, lapse of time since dismissal of earlier regular bail applications, there is no other material change in the circumstances. For all the grounds which are taken in the present application are already taken by the accused in the dismissal order dated 03.05.2020. Therefore, having regard to the nature of case, stage of the case and role of present accused, this court is not inclined to grant regular bail to this accused at present. **With these observations, present application is dismissed.**

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

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

NAVEEN KUMAR
KASHYAP

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**(Naveen Kumar Kashyap)
Additional Sessions Judge-04
Central/THC/Delhi
05.11.2020**

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

Bail Application No.: 1583/2020
State Vs Zakir Ahmed s/o Ali Hassan
FIR No. 424/2020
P. S. Karol Bagh
U/s: 419,420, 34 IPC

05/11/2020

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

Arguments already heard. Today the case was fixed only for orders.

Vide this order, bail application dated 21/10/2020 u/s 439 Cr.PC filed by applicant through counsel is disposed off.

It is stated in the application that he was arrested in the present case on 15/10/2020 on the basis of disclosure statement of co-accused. Such co-accused Lalit is already granted bail. That nothing is recovered from him except the planted case property. That there is no previous criminal involvement of the present accused. That there is spread of corona virus including inside the Jail. That investigation is already complete. As such, it is prayed that he be granted regular bail.

On the other hand, in reply filed by the IO as also argued by the learned Addl.PP, it is stated that he may influence the witness and affect the investigation; that he may jump the bail; that part of case property i.e. Aadhar card and ATM card of complainant is recovered from him, but complainant failed to identify him in TIP. As such, present bail application is opposed.

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I have heard both the sides.

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In the present case, the maximum punishment of the offences alleged against the present accused is 7 years. It is a matter of record that accused is in JC since 15/10/2020. The accused is not arrested on the spot but later on based on disclosure statement of co-accused. Further, complainant could not identify him in TIP. In fact, the period for seeking police remand is already over way back. In above facts and circumstances, present accused is granted bail subject to furnishing of personal bond in the sum of **Rs. 15,000/- with two sound sureties of like amount**, subject to the satisfaction of the learned Trial court and the following additional conditions:

- i) That he will appear before IO / Trial Court as and when called as per law.*
- ii) He will not indulge in any kind of activities which are alleged against him in the present case.*
- iii) That he will not leave India without permission of the Court.*

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

v) He shall convey any change of address immediately to the IO and the court;

vi) He shall also provide his mobile number to the IO;

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

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

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

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

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

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

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

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

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

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(NAVEEN KUMAR KASHYAP)
ASJ-04(Central/Delhi/05/11/2020)

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Further at this stage it can be noted that interpreting the provisions of bail contained u/s 437 & 439 Cr.P.C., the Hon'ble Supreme Court in its various judgments has laid down various considerations for grant or refusal of bail to an accused in a non-bailable

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

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

In the present case, the maximum punishment of the offences alleged against the present accused is 7 years. It is a matter of record that accused is in JC since 15/10/2020. The accused is not arrested on the spot but later on based on disclosure statement of co-accused. Further, complainant could not identify him in TIP. In fact, the period for seeking police remand is already over way back. In above facts and circumstances, present accused is granted bail subject to furnishing of personal bond in the sum of **Rs. 15,000/- with two sound sureties of like amount**, subject to the satisfaction of the learned Trial court and the following additional conditions:

- i) That he will appear before IO / Trial Court as and when called as per law.*
- ii) He will not indulge in any kind of activities which are alleged against him in the present case.*
- iii) That he will not leave India without permission of the Court.*

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

v) He shall convey any change of address immediately to the IO and the court;

vi) He shall also provide his mobile number to the IO;

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

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

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

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

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

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

Bail Application No.: 1583/2020
State Vs Zakir Ahmed s/o Ali Hassan
FIR No. 424/2020
P. S. Karol Bagh
U/s: 419,420, 34 IPC

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

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

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

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(NAVEEN KUMAR KASHYAP)
ASJ-04(Central/Delhi/05/11/2020)

Bail Application No.: 1583/2020
State Vs Zakir Ahmed s/o Ali Hassan
FIR No. 424/2020
P. S. Karol Bagh
U/s: 419,420, 34 IPC

Anticipatory Bail**Bail Application No.: 1360/2020****State vs Mohd. Umar****FIR No. 210/2020****P. S. Sarai Rohilla****U/s: 186, 353, 307, 147, 148, 149, 379, 34 IPC & 27 Arms Act****05.11.2020**

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

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

1. Vide this order, present anticipatory bail application dated 24/09/2020 seeking grant of anticipatory bail filed by the applicant through counsel is disposed off.

2. In nutshell, it is argued by the learned counsel that there is change in circumstances since dismissal of first anticipatory bail application. Now the chargesheet is already filed. As such, there is fresh ground for anticipatory bail. Even otherwise, it is argued that applicant is a young person of 25 years of age. Further submissions in details are mentioned on facts in para 5 of the application. It is further mentioned that even the name of the accused is not mentioned in the FIR. That three of the co-accused are already granted bail. That he is ready to join investigation as and when directed. As such, it is prayed that he be granted anticipatory bail in the present case.

3. On the other hand, in reply filed by the IO as also argued

Bail Application No.: 1360/2020**State vs Mohd. Umar****FIR No. 210/2020****P. S. Sarai Rohilla****U/s: 186, 353, 307, 147, 148, 149, 379, 34 IPC & 27 Arms Act**

by learned Addl.PP for the State, it is stated that role of the present accused is different from other and he actively participated in offences in question. That he intentionally concealing his presence and not joining the investigation. That even the process u/s 82 Cr.PC is issued against the present accused. Further, investigation is still going on qua the present accused. As such, present anticipatory bail application is strongly opposed.

4. I have heard all 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 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 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 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 in entitled to an order of bail.

11. Now in this background of law we come back to present case. In the present case offence is committed against the police officials on duty. Although his name is not mentioned in the FIR but during investigation his presence on the spot was confirmed. Further, although, on filing of chargesheet there is a change in circumstances but not qua the present accused as he is declared PO and as such investigation qua him is still pending. Even otherwise, his presence is required for the purpose of investigation. The offence committed is most serious and allegations against the present accused are specific. The requirement for his custodial interrogation cannot be ruled out. Further, he is declared PO during proceedings so far. Under these over all facts and circumstances, this court do not find sufficient ground to grant the relief sought in the present application by the applicant. The same is dismissed with these observations.

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

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

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(NAVEEN KUMAR KASHYAP)
ASJ-04(Central Distt)/Delhi/05/11/2020

Bail Application No.: 1452/2020

**State v. Karan
FIR no.: 301/2020
PS: Karol Bagh**

05.11.2020

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

Court was on first half day leave. After lunch, the matters listed for orders are pending, as such, no time left. As such, case is supposed to be kept for hearing through VC tomorrow. But counsel for accused states that he wants to argue on physical hearing day. The earliest possible date of physical hearing day is 12.11.2020. **Hence, same is fixed at 12 noon on 12.11.2020 accordingly.**

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**(NAVEEN KUMAR KASHYAP)
Additional Sessions Judge-04/Central
05.11.2020**

BAIL APPLICATION

**_ State v. Gaurav Chauhan
FIR No. : 199/2009
PS: Kashmere Gate**

05.11.2020

Undersigned is also discharging bail roster duty.

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

Surety Jaswant Singh S/o Suresh Kumar is present in person with counsel in court and they are heard through VC.

It is stated that FD which is given as security is already on record. Further, address of such surety was already verified earlier at the time of interim bail on 07.02.2019.

As such, **Bail Bond is accepted.**

Release warrant be prepared accordingly.

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(Naveen Kumar Kashyap)

ASJ-04/Central/05.11.2020

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

05.11.2020

This court is also discharging bail roster duty.

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

This is an application for extension of interim bail under the criteria of Hon'ble High Court which is pending for order before the Hon'ble High Court in Writ Petition No. 3080/2020 and stated to be reserved for today.

Reply filed by the IO. Be taken on record.

Put up for further appropriate orders for **07/11/2020**.

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(Naveen Kumar Kashyap)
ASJ-04/Central/05.11.2020

State Vs Parmod
(Application of Parmod)
FIR No 485/2014
P. S. Timar Pur

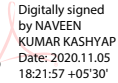
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This court is also discharging bail roster duty.

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

Put up for appearance of counsel for the applicant / accused and for appropriate orders for **06/11/2020**.

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(Naveen Kumar Kashyap)
ASJ-04/Central/05.11.2020

CR No. 244/2020
M/s Treemark Solutions Private Ltd. Vs State of NCT & Anr

05.11.2020

This court is also discharging bail roster duty.

Fresh petition u/s 399 Cr.PC received by way of assignment. It be checked and registered separately.

Present: Ms. Krishna Parkham, learned counsel for the petitioner through VC.
Mr. Pawan Kumar, learned Addl.PP for the State through VC.

Arguments heard.

Put up for further appropriate proceedings / appropriate order for **17/11/2020**.

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(Naveen Kumar Kashyap)
ASJ-04/Central/05.11.2020

State Vs Sunil & Ors.
(Application for extension of interim bail of Sonu & Ravi Dhika)
FIR No 303/2014
P. S. Subzi Mandi

05.11.2020

This court is also discharging bail roster duty.

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.
Mr. Sanjay kumar Tiwari, learned counsel for accused through VC.

These are two applications filed on behalf of applicant for extension of interim bail.

Learned counsel for applicant is appearing through VC. However, his voice is not audible due to some technical reason at his end.

As such, put up for appropriate proceedings for tomorrow i.e. **06/11/2020**.

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(Naveen Kumar Kashyap)
ASJ-04/Central/05.11.2020

**Bail Application Nos.: 1651 & 1652 /2020,
State Vs Mukesh Jha & Deepak Jha
FIR No 255/2020
P. S.Prasad Nagar
U/s 308, 34 IPC**

05.11.2020

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.
Mr. Piyush Chhabra, learned counsel for the applicants through VC.

These are two separate applications u/s 438 Cr.PC for grant of anticipatory bail.
Reply already filed by IO. Copy already supplied to accused side.

Arguments in detail heard including regarding the timing and place of alleged offence and the possibility of present applicants prejudging or not the location of present alleged victim to commit the alleged offence in question.

In reply it is mentioned by the IO that there is no previous record of the accused persons. Both sides are already known to each other. It is further stated that custodial interrogation of accused persons is required.

But having regard to the contentions raised in the present applications, both the applicants are directed to join investigation as and when directed by the IO including on 07/11/2020 at 1:00 PM, as per law. Subject to such two applicants join investigation, IO / SHO concerned is directed not to take any coercive action against them till next date of hearing. Further, IO / SHO concerned to file further status report whether after such joining the investigation by the accused persons, whether still there is requirement for custodial interrogation any more or not.

Put up for further arguments, filing of such status report and appropriate order on present anticipatory bail applications for **18/11/2020**.

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**(Naveen Kumar Kashyap)
ASJ-04/Central/05.11.2020**

Crl Rev.: 224/2019
Inder Pal v. State

04.11.2020

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

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

Undersigned is also discharging work of Bail Roster duty.

Present: None.

Put up for consideration/appropriate orders for 12.11.2020.

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(Naveen Kumar Kashyap)
ASJ-04/Central/04.11.2020

Crl Appeal.: 295/2019
Rama Nand Chaudhary v. Mohd. Israil

04.11.2020

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

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

Undersigned is also discharging work of Bail Roster duty.

Present: None.

Put up for Purpose fixed on 20.11.2020.

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(Naveen Kumar Kashyap)
ASJ-04/Central/04.11.2020

Crl Appeal.: 462/2019
Neeraj Kumar Goel v. State

04.11.2020

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

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

Undersigned is also discharging work of Bail Roster duty.

Present: None.

Put up for Purpose fixed on 20.11.2020.

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(Naveen Kumar Kashyap)
ASJ-04/Central/04.11.2020

**Crl Revision .: 85/2020
Devinder & Ors. v. State**

04.11.2020

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

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

Undersigned is also discharging work of Bail Roster duty.

Present: None.

Put up for Purpose fixed on 20.11.2020.

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**(Naveen Kumar Kashyap)
ASJ-04/Central/04.11.2020**

Crl Revision .: 369/2019
Buffalo Networks Pvt. Ltd. v. State

04.11.2020

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

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

Undersigned is also discharging work of Bail Roster duty.

Present: None.

Put up for Purpose fixed on 20.11.2020.

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(Naveen Kumar Kashyap)
ASJ-04/Central/04.11.2020

Bail Application No: 1555 /2020

State v. Abhay Arora
FIR No. : 30/2020
PS: Rajinder Nagar
U/S: 307, 387,452,120B, 34 IPC &
25 Arms Act

05.11.2020

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through
VC.
Sh. Jaiveer Singh Chauhan, Ld. Counsel for accused.

Arguments already heard. Today, case was fixed for orders.

Vide this order, the regular bail application under section 439 Cr.P.C. on behalf of **accused Abhay Arora** dated 15.10.2020 filed through counsel is disposed of.

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

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

The basic rule is to release him on bail unless there are circumstances suggesting the possibility of his fleeing from justice or thwarting the course of justice. When bail is refused, it is a restriction on personal liberty of the individual guaranteed by Article 21 of the Constitution.

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

Chandra Vs. Central Bureau of Investigation, AIR 2012 SC 830 relied).

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

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

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

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

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

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

evidence while granting or refusing bail u/s 439 of the CrPC.

In the present case, it is argued on behalf of accused that he was arrested on 25.02.2020. That his bail application was dismissed by the court of Sh. Lovleen, Ld. ASJ, Central District vide order dated 24.08.2020 on the ground that investigation is pending and chargesheet will be filed soon. Now, the chargesheet is already filed. As such, inter alia it is stated that there is fresh ground for bail. It is further argued that offence under section 307 IPC is not made out. It is further argued that even offence under section 387 IPC is not made out and at best the allegations amounts to offence under section 384 IPC. It is further argued that there are no legally tenable evidence against the accused. It is further argued that complainant and accused are known to each other and had business dealing. It is further stated that complainant has reasons to implicate the accused to implicate in the present case. It is further argued that no purpose would be served by keeping the accused in JC. That co-accused Lakhan is granted interim bail. That there is no previous criminal record of the present accused. That he has roots in the society. As such, it is prayed that he is granted regular bail.

On the other hand, a detailed reply is filed by IO. It is further argued by Ld. Addl. PP for the state based on such reply that there are legally tenable incriminating evidence against the accused and he is the main conspirator. It is further stated that on bare reading of FIR, it is clear that offence under section 307 IPC is made out as third bullet was shot at the complainant and because it closed the door, he could save himself. It is further argued that there is documentary evidence against the accused. It is further argued that more importantly a bail application is already rejected vide a reasoned order on 24.08.2020 and there is no material change in the circumstances except filing of chargesheet. It is further pointed out that all such grounds which are raised in the present application were raised in that earlier application also. As such, present application is strongly opposed.

I find force in the arguments of learned Addl.PP for the state. The offence is serious in nature. Further, there are specific allegations of conspiracy against the present accused. Further, on bare reading of FIR, it is clear that there are prima facie ingredient of section 307 IPC also. More importantly, since dismissal of earlier regular bail applications, there is no

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other material change in the circumstances except that chargesheet is already filed. All the grounds which are taken in the present application are already taken by the accused in the dismissal order dated 24.08.2020. Therefore, having regard to the nature of case, stage of the case and role of present accused, this court is not inclined to grant regular bail to this accused at present. **With these observations, present application is dismissed.**

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

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

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**(Naveen Kumar Kashyap)
Additional Sessions Judge-04
Central/THC/Delhi
05.11.2020**

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

BAIL APPLICATION NO.: 1675/2020

State v. Dushyant @ Chunmun
FIR No. : 193/2020
P. S. : Prasad Nagar
U/s: 302,323,506,34 IPC &
25,27 Arms Act

05.11.2020.

This court is also discharging Bail Roster Duty.

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

Arguments already heard yesterday and today case was fixed for orders. Vide this order, regular bail application u/s 439 Cr.PC dated 03.11.2020 filed by applicant through counsel is disposed of.

It is stated in the present application as also argued by learned counsel for accused that present accused is implicated falsely in the present case at the instance of certain persons having adverse interest against the present accused. That he was arrested on 04.09.2019. That investigation qua him is already complete and chargesheet is already filed. It is further stated that complainant Himanshu is friend of co-accused Amit (who is brother of present accused). That in the intervening night of August, 2019, such Amit was at home and such complainant came to discuss about some issue relating to money lending between them. In the meanwhile, present accused came with his wife from Ganga Ram hospital after blessed with a newly born child in the family. In the meanwhile, a black i-10 car came there in which Himanshu alongwith 3-4 persons were sitting. At this stage, all the family members including the present accused were bare handed. The complainant side started shouting that their father is in Delhi Police and complainant was full of anger and they

started threatening the accused side. That there was scuffle between another brother of present accused, namely Deepak and complainant. That present accused tried to pacify them. But complainant was under influence of liquor. Suddenly, brother of complainant namely Vinay(deceased) also came having gun in his hand and pointed the gun towards the present accused and fired a shot with intention to kill present accused. Such, bullet hit the head of the present accused causing injury and blood started oozing out of his head. Immediately thereafter deceased Vinay targeted co-accused Deepak and fired at him and the bullet hit side tearing his left ear. That after sustaining injury Deepak tried to catch hold of deceased Vinay in order to save himself and both of them fell down and there was a gun shot heard by the people standing there and both of them were in pool of blood and all injured were removed in a battery rickshaw in B.L. Kapoor hospital.

As such, it is argued by learned counsel for accused that it is not the present accused side but the complainant side who are the aggressor and they came to the house of accused side and vice-versa. It is further pointed out that such accused as well as deceased Vinay had criminal case record and are addicted to intoxication. Even their family has criminal case history. It is further argued that PCR call at 100 number is made by the accused side only on 27.08.2019 at about 11.13 pm. That police officer under the influence of family of complainant side got discharged co-accused Deepak and present accused from hospital and hastily arrested them. It is further argued that there are 5-6 CCTV footage seized by the IO, from which it is very clear that complainant side was the aggressor of the crime. But instead of recording FIR against the complainant side, present FIR is registered against the accused side. It is further pointed out that later on the concerned Ld.Ilaka MM directed for registration of FIR under section 156(3) Cr.P.C. against the complainant side also. It is further argued that it is a case of cross FIR but police officials failed to register the FIR at the instance of present accused side which is now corrected by the order of concerned learned Ilaka MM. A copy of which is placed on record. It is further mentioned that

anticipatory bail application of present complainant ,Himanshu, in that cross FIR 193/2020 is already dismissed. It is further claimed that there are independent witness to support the version of the present accused. It is further stated that as now a cross FIR is already registered against each side, the law will take its own course and there is no question of threatening the prosecution witness. In any case, it is argued that present accused is ready to abide by any condition that may be imposed upon him in this regard. It is further argued that most importantly even as per the case of prosecution, present accused is not the person who fired on the deceased but it is the co-accused. Further, even as per the prosecution case , the role assigned to present accused is that he supported /instigated to accused to fire on the deceased. It is further stated that there is lacuna relating to fire arm in question and same is wrongly claimed to be of co-accused. Further, it is argued that as per the settled principle of bail, nature of offence is not the only factum but role of accused and nature of material are also to be looked into. Further, in a case of cross FIR parameters are different. It is further stated that accused has deep roots in the society. It is further argued that he is a family man. It is further argued that the other criminal cases against the present accused are of road accident etc. and not at all offences relating to body. As such, it is prayed that he be granted regular bail.

On the other hand, reply filed by IO and as also argued by LD. Addl. PP for the state that offence is of serious nature and there are sufficient incriminating evidence against the accused. The allegations and contentions raised by complainant side are denied. But it is admitted that it is a matter of record that a FIR no. 193/2020 is directed to be registered against the present complainant side u/s 307 IPC and same is already registered and pending investigation. It is further argued that in a pre-planned manner, present accused side called the complainant and his brother to their house and killed the brother of the complainant by gun shot. It is further stated by IO that in total four CCTV footage were collected, out of that one was found relevant and one was irrelevant and other two did not show any thing. It is further stated that there is a SMS

by the co-accused Aakash relating to present offence. It is further stated that co-accused Deepak stated about the offence that “very good fire”. It is further argued that present accused instigated the co-accused to kill the deceased. It is further argued that even statement of under section 164 Cr.P.C. was recorded and a CCTV footage corroborating that complainant was beaten by the accused side. It is stated that one pistol has been recovered from the co-accused Amit and two empty cartridges were recovered and one pallet was recovered from the dead body of deceased during postmortem. Further, it is stated that wound found on the present accused was simple and it is stated by expert that it is not possible to comment whether wound was caused by gun shot injury or otherwise. It is further claimed that there is mobile/SMS evidence collected from the mobile of the complainant against the accused. As such, present bail application is strongly opposed.

I have heard both the sides.

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

reason why he should be imprisoned during the period of his trial. The basic rule is to release him on bail unless there are circumstances suggesting the possibility of his fleeing from justice or thwarting the course of justice. When bail is refused, it is a restriction on personal liberty of the individual guaranteed by Article 21 of the Constitution.

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

guaranteed by Article 21 of the Constitution. Seriousness of the offence not to be treated as the only consideration in refusing bail : Seriousness of the offence should not to be treated as the only ground for refusal of bail. (Judgment of **Sanjay Chandra Vs. Central Bureau of Investigation, AIR 2012 SC 830** relied).

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

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

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

Further at this stage it can be noted that interpreting the provisions of bail contained u/s 437 & 439 Cr.P.C., the Hon'ble Supreme

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

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

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

In the present case, at present it is a matter of record that there are two cross FIR, one by each side, bearing no. 193/2019 and 193/2020. It may be further noted that SHO concerned failed to register FIR at the instance of present accused side u/s 307 IPC. As such, the learned Ilaka MM had to intervene and order to register the FIR against the present complainant side u/s 307 IPC. Further, it is not the present accused side but complainant and his deceased brother who came to the house of present accused side. Not only that they were accompanied by other persons also. Further, there is no CCTV footage of actual shooting on record. The CCTV footage which is part of record, only capture the scene before the actual shooting. In such CCTV footage, it does not appear at this stage that present accused side is the clear aggressor. In fact in such CCTV footage some quarrel is going on between many persons who are stated to be accused side and complainant side persons. As far as the present incident is concerned, in which brother of the present complainant has expired and as per claim of accused side they are lucky to survive. Thus there are two different versions, one that of present complainant side and another that of accused side. Neither side version can be taken as gospel truth and it is a matter of trial in due course. Further in criminal jurisprudence there is always presumption of innocence. Further, bail application only relates to aspect of bail. That apart from nature of accusation and evidence therefor, Gravity of the offence and punishment which the conviction will entail, the reasonable

possibility of securing presence of the accused at trial and danger of his absconding or fleeing if released on bail, character and behavior of the accused, means, position and standing of the accused in the Society, likelihood of the offence being repeated, reasonable apprehension of the witnesses being tampered with, balance between the rights of the accused and the larger interest of the Society/State are to be taken into account. It may further be noted that 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. Same does not appear to be case at present. In fact, both sides are pursuing their own case as already noted above. Further, appropriate conditions can be imposed to secure the presence of the accused, and that he does not tamper with the evidence or threaten the witness. Further, more importantly the present accused is not the actual attacker even as per the case of the prosecution. Further, his presence at his house is natural. Further, it cannot be lost sight of that it is not the present accused side but the complainant side which came to the house of other side. Under above facts and circumstances, present accused is granted bail subject to furnishing of personal bond in the sum of **Rs. 30,000/- with two sound sureties of like amount**, subject to the satisfaction of the learned Trial court and the following additional conditions:

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

It is clarified that in case if the applicant/ accused is found

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

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

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

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

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

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

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

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

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

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

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**(NAVEEN KUMAR KASHYAP)
ASJ-04(Central/Delhi
05.11.2020**

: 1 :

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

Bail Application No.: 1605/2020
State Vs Rizwan s/o Shamsad
FIR No.20381/2020
P. S. Prasad Nagar
U/s: 379, 411 IPC

05/11/2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State is
available through VC.
None for the accused.

Arguments already heard. Today the case was fixed for orders.

Vide this order, bail application dated 22/10/2020 u/s 439 Cr.PC
filed by applicant through counsel is disposed off.

It is stated in the application that applicant is not named in the
FIR and that he has been falsely implicated in the present case; he is in JC
since 02/10/2020; that nothing incriminating has been recovered from the
possession of the present accused or at his instance; that he has no role or
concern with the alleged offences; that he is not previously convicted in any
case; that he is not required for the purpose of investigation; that no fruitful
purpose would be served by keeping him in JC; that he has responsibility to
look after his old aged parents and he is the sole bread earner of his family;
that his earlier bail was dismissed by learned MM on 17/10/2020. As such, it
is prayed that he be granted regular bail.

On the other hand, in reply dated 26/10/2020 filed by the IO, as

Bail Application No.: 1605/2020
State Vs Rizwan s/o Shamsad
FIR No.20381/2020
P. S. Prasad Nagar
U/s: 379, 411 IPC

: 2 :

also argued by learned Addl.PP for the State it is stated that present accused is involved in a number of criminal cases, list of which is enclosed with the present reply; that stolen vehicle was recovered from the present accused; that he may jump the bail if released on bail. As such present bail application is strongly opposed.

I have heard both the sides.

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

Bail Application No.: 1605/2020
State Vs Rizwan s/o Shamsad
FIR No.20381/2020
P. S. Prasad Nagar
U/s: 379, 411 IPC

: 3 :

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

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

Bail Application No.: 1605/2020
State Vs Rizwan s/o Shamsad
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: 4 :

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

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

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

Bail Application No.: 1605/2020
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: 5 :

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

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

Bail Application No.: 1605/2020
State Vs Rizwan s/o Shamsad
FIR No.20381/2020
P. S. Prasad Nagar
U/s: 379, 411 IPC

: 6 :

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

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

Bail Application No.: 1605/2020
State Vs Rizwan s/o Shamsad
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: 7 :

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 3 years. It is a matter of record that accused is in JC since 02/10/2020. Further, as far as present accused is concerned, nothing remains to be recovered at his instance. In fact, the period for seeking police remand is already over. As such, no purpose would be served by keeping such accused in JC. Investigation and thereafter trial is likely to take time. Further, it may be noted that there is fundamental presumption of innocence in any criminal case in India i.e. an accused is presumed innocent unless proved guilty. In present case, no previous conviction record is placed on record by the IO and at best there are cases alleging involvement of present accused in other similar cases.

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

- i) Applicant shall not flee from the justice;*
- ii) Applicant shall not tamper with the evidence;*
- iii) Applicant shall not threaten or contact in any manner to the prosecution witnesses ,*
- iv) Applicant shall not leave country without permission;*

Bail Application No.: 1605/2020
State Vs Rizwan s/o Shamsad
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: 8 :

v) Applicant shall convey any change of address immediately to the IO and the court;

vi) Applicant shall also provide his mobile number to the IO;

vii) Applicant shall mark his attendance before concerned IO (and if IO is not available then to concerned SHO) every alternative /second day through mobile by sharing his/her location with the SHO concerned till the chargesheet is filed;

viii) Applicant shall further make a call, preferably by audio plus video mode to concerned IO, (and if IO is not available then to concerned SHO) once a week, preferably on Monday between 10 a.m. to 5 p.m. till the chargesheet is filed.

ix) Applicant shall keep their such mobile number 'Switched On' at all the time, particularly between 8 am to 8 pm everyday till the chargesheet is filed

x) That applicant will cooperate with the investigation / IO / SHO concerned and will appear before IO / Trial Court as and when called as per law.

xi) Applicant will not indulge in any kind of activities which are alleged against him in the present case.

It is clarified that in case if the applicants/ 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:

Bail Application No.: 1605/2020
State Vs Rizwan s/o Shamsad
FIR No.20381/2020
P. S. Prasad Nagar
U/s: 379, 411 IPC

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

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

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

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

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

With these observations present bail application is disposed

: 10 :

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

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

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(NAVEEN KUMAR KASHYAP)
ASJ-04(Central/Delhi)
05.11.2020

Bail Application No.: 1605/2020
State Vs Rizwan s/o Shamsad
FIR No.20381/2020
P. S. Prasad Nagar
U/s: 379, 411 IPC

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

Bail Application No.: 1584/2020

State v. Saned @ Sanod
FIR No. : 258/2020
PS: Prasad Nagar
U/S: 307 IPC

05.11.2020.

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

Arguments already heard. Today case was fixed for orders.

Vide this order the bail application dated 20.10.2020 filed by accused through counsel is disposed of.

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

substantial risk of the accused fleeing the course of justice, there is no reason why he should be imprisoned during the period of his trial. The basic rule is to release him on bail unless there are circumstances suggesting the possibility of his fleeing from justice or thwarting the course of justice. When bail is refused, it is a restriction on personal liberty of the individual guaranteed by Article 21 of the Constitution.

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

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

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

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

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

identical, but vitally and drastically dissimilar. (**Sundeep Kumar Bafna Vs. State of Maharashtra, AIR 2014 SC 1745**).

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

are committed apart from character of evidence as some of the relevant factors in deciding whether to grant bail or not.

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

In the present case, it is submitted on behalf of the accused that he is falsely implicated in the present case. That injured was discharged from the hospital after medical treatment. That at best the allegations relates to offence u/s 324/325 IPC and not under section 307 IPC. That investigation is already complete. That he has roots in the society. That he is in JC since 29.09.2020. That complainant and accused are room mates and on some petty matter relating to key of the room, some quarrel took place and there is no pre-planning on the part of the accused.

On the other hand, it is argued by the complainant that they are not room-mates. That accused side is still threatening the complainant and a application is made to MM in this regard.

On the other hand, reply filed by the IO and as also argued by the learned Addl.PP for the state, that accused attacked the complainant with a screw-driver in his chest and thereafter he hit against on left hand and on left side of shoulder . As such, he made multiple attacks. Weapon of offence is already recovered at his instance. The case is still pending

investigation. As such, present bail application is opposed.

I have heard both the sides and gone through the record. It is rightly pointed out by the learned Addl. PP for the State that offence is serious in nature. There are specific allegations the accused. Further, investigation is still pending. As such, having regard to the stage of the case and nature of offence, this court is not inclined to grant regular bail to the present accused at present. **With these observations present bail application is disposed of as dismissed.**

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

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

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**(Naveen Kumar Kashyap)
Additional Sessions Judge-04
Central/THC/Delhi
05.11.2020**

: 1 :

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

Bail Application No.: 1604/2020

State v. Wasim

FIR No. : 07/2020

PS: Railway Main Station

U/S: 324,326,394,397,34 IPC

05.11.2020

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

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

Vide this order the present bail application dated 22.10.2020 filed through DLSA on behalf of accused is disposed of.

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

reason why he should be imprisoned during the period of his trial. The basic rule is to release him on bail unless there are circumstances suggesting the possibility of his fleeing from justice or thwarting the course of justice. When bail is refused, it is a restriction on personal liberty of the individual guaranteed by Article 21 of the Constitution.

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

Refusal of bail is a restriction on personal liberty of the individual guaranteed by Article 21 of the Constitution. Seriousness of the offence not to be treated as the only consideration in refusing bail : Seriousness of the offence should not to be treated as the only ground for refusal of bail. (Judgment of **Sanjay Chandra Vs. Central Bureau of Investigation, AIR 2012 SC 830** relied).

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

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

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

Vs. State of Maharashtra, AIR 2014 SC 1745).

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

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factors in deciding whether to grant bail or not.

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

In the present case, it is submitted on behalf of the accused that he is in JC since 05.02.2020. That he is falsely implicated in the present case. That he is a young boy of 22 years old. No purpose would be served by keeping him in JC. That there is no other criminal case pending against him. As such, it is prayed that he be granted regular bail.

On the other hand, in the reply filed IO as also argued by learned Addl. PP for the state, it is stated that as per prosecution case, that near Minto Bridge, present accused alongwith co-accused tried to snatch mobile and bag of the complainant. That present accused used a paper cutter like knife and injured the complainant on face and hand brutally and they run away after looting the mobile phone. Later on, they were arrested. That at his instance the paper cutter is recovered. That he was identified by the complainant in TIP. As such, present bail application is strongly opposed.

I have heard both the sides and gone through the record. It is rightly pointed out by the learned Addl. PP for the State that offence is serious in nature. Further, the accused is identified by the

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complainant/victim. The offence alleged is punishable for imprisonment upto life. Therefore, having regard to the nature of the present case and the role assigned to the present accused, this court is not inclined to grant regular bail at present. **With these observations present bail application is disposed of as dismissed.**

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

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

NAVEEN
KUMAR
KASHYAP

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**(Naveen Kumar Kashyap)
Additional Sessions Judge-04
Central/THC/Delhi
05.11.2020**

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

Interim Bail Application No.: 1606/2020

State v. Varun
FIR No. : 14/2019
PS: Subzi Mandi Railway Station
U/S: 394,397,34 IPC

05.11.2020

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

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

Vide this order the present interim bail application dated 23.10.2020 filed through counsel on behalf of accused is disposed of.

In nutshell, it is submitted in this second interim bail application that same is filed after filing chargesheet on the ground of taking care of family due to corona pandemic. It is stated that he is in JC for the last one year. That he is only male member in the family. No useful purpose would be served by keeping him in JC. That he has deep roots in the society. As such, it is prayed that he be granted interim bail on appropriate terms.

On the other hand, a detailed reply is filed by IO. It is further argued by learned Addl.PP for the State that no sufficient grounds are raised in the present application and such grounds are general in nature.

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

The reasons stated by the accused are not sufficient in the considered opinion of this court, as also pointed out by learned Addl. PP for the state and having regard to the nature of allegations against him

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and the stage of trial, this court is not inclined to grant interim bail as prayed. **With these observations present bail application is disposed of as dismissed.**

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

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

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Date: 2020.11.05
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(Naveen Kumar Kashyap)
Additional Sessions Judge-04
Central/THC/Delhi
05.11.2020