

BAIL APPLICATION

FIR No. : 655/2016

PS: Sarai Rohilla

State v Saleem s/o Mukim

U/S: 394, 397, 302, 34 IPC

04.07.2020.

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

Mr. Zia Afroz, learned counsel for applicant / accused
through VC.

1. *Directions are given by Hon'ble High Court of Delhi in W.P.(C) No. 2945/2020 dated 23.03.2020 in case titled as "Shobha Gupta and Ors. v. Union of India & Ors.", Hon'ble Supreme Court of India in Suo Moto W.P.(C) No. 1/2020 dated 23.03.2020, Revised Advisory Protocol dated 30.03.2020 by Ld. District & Sessions Judge (HQ) read with other directions from time to time including on 28.03.2020, 07.04.2020, 18.04.2020, 05.05.2020, 18.05.2020 and 20.06.2020 from Hon'ble High Court as a result of various meetings of Delhi State Legal Services Authority. Accordingly, present application is taken up.*

2. **As per minutes of meeting dated 18.05.2020 of Hon'ble High Court, IO / SHO concerned to file reply, including on the following aspect apart from any other point which IO wants to raise:-**

(i) Report about Previous **conviction**, if any, of present accused/Applicant

(ii) Further, (in view of direction by Hon'ble HC), a report that present accused is **not involved**, in any other case;

(iii) Date, since when accused is in JC in present case

(iv) What are **all** the Offences under IPC or other law, which are alleged against present accused in present case .

3. Further (in view of direction by Hon'ble HC), **Jail Superintendent concerned** to file:

(i) Copy of **custody warrant** of present accused;

(ii) A **certificate regarding good conduct**, if any, of the accused during his custody period so far.

4. As such, issue notice of present application to the IO/ SHO as well as to Jail Superintendent concerned.

5. The concerned IO/ SHO to file its reply preferably in electronic form/email.

6. **Counsel for accused is advised to collect the order online through electronic mode or otherwise dasti as requested.**

7. **Put up for report, arguments and further appropriate orders on 08/07/2020, preferably through V.C.**

(Naveen/Kumar Kashyap)
ASJ-04/Central/THC
Central District
04.07.2020

INTERIM BAIL APPLICATION

State Vs. Bunty s/o Mitra Singh
FIR No. : 190/2013
PS: Rajender Nagar
U/S: 302, 396, 411, 34 IPC

04.07.2020.

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State
through VC
Mr.S.K.Sharma, Ld. Counsel for Accused
through VC.

1. *Observations given by Hon'ble High Court of Delhi in W.P.(C) No. 2945/2020 dated 23.03.2020 in case titled as "Shobha Gupta and Ors. v. Union of India & Ors.", Hon'ble Supreme Court of India in Suo Moto W.P.(C) No. 1/2020 dated 23.03.2020 and Revised Advisory Protocol dated 30.03.2020 have been issued by Ld. District & Sessions Judge (HQ) read with other directions received from time to time including on 28.03.2020, 07.04.2020, 18.04.2020, 05.05.2020, 18.05.2020 and 20.06.2020 from Hon'ble High Court as a result of various meetings of Delhi State Legal Services Authority, present application is taken up.*
2. Reply filed by the IO as well as Jail Superintendent concerned.
3. Arguments heard.
4. Present application dated 27.06.2020 is filed through counsel. It is stated that accused is in JC since for more than **two years** (which fact is now even verified by IO in his report).
5. **Further, a report regarding satisfactory / good conduct of the accused is also filed by Jail**

Superintendent Concerned.

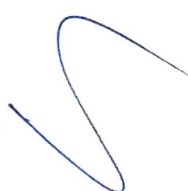
6. Further, a report is filed by IO/SHO concerned. It is further stated that there is no previous conviction / involvement record of such accused. **Further, it is stated that offences alleged against accused is, inter-alia, under section 302, 396, 411, 34 IPC.**

7. In view of report by jail supdt concerned , reply given by IO and direction by Hon'ble High Court of Delhi, case of the accused is covered under directions as passed by Hon'ble High Court, as mentioned above. Further, accused is in JC since more than **two years** at present.

As such, in the above position, facts and circumstances of present case and the directions by Hon'ble High Court, applicant/accused is admitted to interim bail for a period of 45 days from the date of release on furnishing personal bond **in the sum of Rs. 10,000/- to the satisfaction of the Jail Superintendent concerned.** After completion of the interim bail period applicant shall surrender before concerned Jail Superintendent. Necessary intimation be sent to concerned Jail Superintendent accordingly.

7.1. In the facts and circumstances of present case and the reply filed by the IO/SHO following conditions are also imposed on present accused for such interim bail :

- 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*



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permission;

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

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

vii) Applicant shall mark his /her 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;

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.

ix) Applicant shall keep his / her such mobile number 'Switched On' at all the time , particularly between 8 am to 8 pm everyday.

8. The present application stands disposed off accordingly. Both side are at liberty to collect the order dasti or through electronic mode.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
Central District/04.07.2020

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MISC. APPLICATION

State V. Hardeep Singh @ Ranjeet S/o Sh. Patel Singh
FIR No. 133/2017
PS.: Sarai Rohilla Railway Station
U.S: 392,397,34 IPC r/w 137, 146 IR Act

04.07.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Mr. Nitin Kumar, learned counsel for applicant Hardeep Singh through VC.

This is an application for calling of copy of medical record of applicant from Jail Superintendent concerned. Same is now received from Jail Superintendent. Copy of the same be supplied to accused side against acknowledgment.

With these observations, present application is disposed off.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
04.07.2020

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INTERIM BAIL APPLICATION

**State V. Ram Gopal
FIR No. 97/2012
PS.: Prasad Nagar
U.S: 302,201,120B,419,420,471 IPC**

04.07.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State
through VC.
Mr. Kunal Manav, learned counsel for accused
through VC.

Report filed by Jail Superintendent concerned but further report is required from IO regarding involvement of this case at the PS concerned where this case is registered as well as at any other place including the native place of the accused.

**As such, put up for further reply and arguments
on 08.07.2020.**

**(Naveen Kumar Kashyap)
ASJ-04/Central/THC
04.07.2020**

EXTENSION OF INTERIM BAIL APPLICATION

**State V. Ashish
FIR No. 55/2020
PS.: Pahar Ganj
U.S: 323,377,34 IPC**

04.07.2020

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

1. **Vide this** order, application dated 15.06.2020 filed by accused Ashish through counsel for extension of interim bail is disposed off.
2. Arguments heard.
3. It is stated that he was earlier in JC till 06.05.2020 and thereafter he was granted interim bail for 45 days vide order dated 06.05.2020. That same was extended vide order dated 19.06.2020 for 15 days. Now, further extension of such interim bail is prayed. It is submitted that allegations against the accused are baseless. That he was falsely implicated in the present case. That he belongs to a respectable family. That there is no chance of fleeing from justice. That there is no previous conviction record. That he has an old aged mother to take care of. That he is the sole bread earner of the family. Further, his conduct is good while he was on interim bail.
4. A reply is filed to the present application. Arguments in detail addressed by learned Addl. PP for the state.
5. I have heard both the sides and gone through the record, including interim bail order dated 06.05.2020 and

19.06.2020. It appears that earlier such accused was granted interim bail not entirely based on relaxed criteria for interim bail prescribed by Hon'ble High Court, but on the facts and merit of the case as also noted in order dated 19.06.2020. In fact, Section 377 IPC is punishable with imprisonment for life or with imprisonment upto ten years. As such, it is rightly pointed that case of the accused is not covered in the relaxed criteria dated 18.04.2020 or 18.05.2020.

6. Further, it may be specifically noted that the case of the present accused is not covered by the order of Hon'ble High Court of Delhi in its Division Bench order dated 22.06.2020 in W.P.(C) 3080/2020 titled as "Court on its own motion v. Govt. of NCT of Delhi & Anr., as the same is applicable only to the interim bail granted under the relaxed criteria for interim bail given by Hon'ble High Court.

Likewise, it may further be specifically noted that the case of the present accused is not covered even by the order of Hon'ble High Court of Delhi in its full bench order dated 15.06.2020 in W.P.(C) 3037/2020 titled as "Court on its own motion v. state & Ors. in re. *Extension of Interim Orders, as such order is applicable only to the extension of interim bail / stay granted before lockdown during regular hearing by court concerned. Same is not the case of the present accused.*

7. Having regard to the nature of the case and the same is punishable for imprisonment upto life and that he has already given opportunity to avail interim bail for 45 days and thereafter fifteen more days due to pandemic condition, this court is not inclined to extend the same, no further leniency is required in the considered view of this court. **With these**

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observations, present application is dismissed.

8. Accordingly, accused is directed to surrender before the Jail Superintendent concerned.

9. The present application stands disposed off accordingly. Both side are at liberty to collect the order dasti or through electronic mode. ***Further a copy of this order be sent to the IO/SHO concerned through electronic mode.***

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
04.07.2020

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Bail Application

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

04.07.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State
through VC.
Mr. Ashwani Gaur, Learned counsel for
applicant / accused through VC.

Vide this order, present bail application u/s 439 Cr.PC filed on 30.06.2020 for regular bail by accused / applicant Raman Kumar filed through his 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

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

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.

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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

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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

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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 nut shell, it is stated by the accused that accused is a middle class family person and working in a private company; that he is just 24 years old and youngest member of the family; that on 19/06/2020 at about 11:00 PM, he heard noise of shouting outside his house. As such, he alongwith his mother saw that his father had a fight with the neighbour and he alongwith his mother ran towards his father and he saw that his father was bitten by one of the dog whom the neighbours were feeding. The applicant got furious after seeing that leg of the father was bleeding as such he ran towards the dog to hit him to save his father but suddenly Piyush Aggarwal i.e. neighbour came in between and accidentally he got injured by the knife. The applicant did not run from there and neither gone with his father for his treatment but waited for the police to come and narrated the actual facts as he knew that the incident happened accidentally. But later they shocked to know that present false FIR is registered against the applicant / accused, falsely claiming that he in pre-determined manner attacked the complainant. It is further stated that there is a spread of corona virus which is highly infectious in nature. That no purpose would be served by keeping the applicant in custody. There is no previous criminal record of the present applicant. That he is permanent resident of Delhi. That he will join the

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investigation as and when required by the police. That he is in JC since 20/06/2020. That no recovery is to be affected from the accused. That at best the offence, if any, made out at all is under section 335 IPC. It is further stated that even the father of the accused was got treated at RML Hospital which supports the version of the accused and same is not recorded / pointed out by the IO in this report.

On the other hand, it is argued by learned Addl.PP for the State that having regard to the nature of injury, it is not 326 IPC but even offence under section 307 IPC is made out. That offence in any case serious in nature. As such, present bail application is strongly opposed.

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

Certain clarifications required from the IO including regarding status of the investigation so far. Further, IO to verify the medical documents relating to dog bite injury to the father, copy of which is annexed at page 9 of the present application (as such same be supplied by the prosecution to the IO for his ready reference).

As such, put up for further reply from the IO. Further, IO to appear in person or through VC with case file on the next date of hearing. Put up for **08/07/2020**.

(Naveen Kumar Kashyap)
Additional Sessions Judge-04
Central/THC/Delhi
02/07/2020

: 1 :

EXTENSION OF INTERIM BAIL APPLICATION

State Vs Shabir Dandoo s/o Ali Dandoo

FIR No. 316/2019

PS.: Pahar Ganj

U.S: 420, 376, 354, 506, 34, 147A IPC

04.07.2020

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

1. Vide this order, application dated 30.06.2020 filed by accused through counsel for extension of interim bail is disposed of.
2. Arguments heard.
3. It is stated that he is falsely implicated in this case; that he was admitted to interim bail vide order dated 23/05/2020 by the learned court of Mr. Satish Kumar, Learned ASJ-02, Central, Delhi; that it was purely business dispute but in order to extort money from the accused, the complainant filed the present false case implicating the accused / applicant and his family members. That on 08/10/2019 the complainant even visited applicant / accused office and even quarreled with him. As such, he even made a call at 100 number and thereafter a settlement was arrived at Police Station in which complainant admitted that there is business dispute between her and the applicant. Copy of such settlement is enclosed with this application. Further, there is acknowledgement of receiving money by the complainant as per such settlement. Further detail of their business dispute is also mentioned in the present application. It is further claimed that accused had paid a sum of Rs. 7 lakh so far as per their business dispute settlement. It is further argued that case of the accused is covered by the order dated 15/06/2020 passed by

State Vs Shabir Dandoo s/o Ali Dandoo

FIR No. 316/2019

PS.: Pahar Ganj

U.S: 420, 376, 354, 506, 34, 147A IPC

Hon'ble High Court in WP (C) 3037/2020 and as such, it is claimed that his interim bail be extended till 15/07/2020. During the course of the argument, it is further claimed that in any case, case of the accused is covered by order dated 22/06/2020. It is further stated that due spread of corona virus also inside the jail. It is further stated that he is no more required in the investigation of the present case.

4. On the other hand present application for extension is strongly opposed by the prosecution as well as the learned counsel for the complainant. It is stated that the accused and his relative are running a racket / gang; that they have a criminal background; that earlier they manipulated and financially looted one lady from Australia also. It is further stated by the learned Addl.PP for the State that case of the accused do not fall in the order dated 15/06/2020 or 22/06/2020 of Hon'ble High Court of Delhi for extension of interim bail.

5. I have heard both the sides and gone through the record, including interim bail order dated 23.05.2020.

On a bare reading of such order, it is clear that such interim bail was not granted in terms of criteria of Hon'ble High Court of Delhi regarding relaxed condition, but on merit on the facts of the present case. Infact as per the criteria laid down by Hon'ble High Courts, the offences u/s 376 IPC are expressly excluded from the relaxed interim bail criteria of Hon'ble High Court.

It may be specifically noted that the case of the present accused is not covered by the order of Hon'ble High Court of Delhi in its Division Bench order dated 22.06.2020 in W.P.(C) 3080/2020 titled as "Court on its own motion v. Govt. of NCT of Delhi & Anr., as the same is applicable only to the interim bail granted under the relaxed criteria for interim bail given by Hon'ble High Court.

Likewise, it may further be specifically noted that the



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case of the present accused is not covered even by the order of Hon'ble High Court of Delhi in its full bench order dated 15.06.2020 in W.P.(C) 3037/2020 titled as "Court on its own motion v. state & Ors. in re. *Extension of Interim Orders, as such order is applicable only to the extension of interim bail / stay granted before lockdown during regular hearing by court concerned. Same is not the case of the present accused.*

Further, for reasons stated in interim bail application, the accused is already granted interim bail for 45 days. No further leniency is required in the considered view of this court. As such, having regard to the nature of the case and he has already given opportunity to avail interim bail for 45 days, this court is not inclined to extend the same. **With these observations, present application is dismissed.**

6. Accordingly, accused is directed to surrender before the Jail Superintendent concerned in terms of original interim bail order dated **23.05.2020**.

7. The present application stands disposed off accordingly. Both side are at liberty to collect the order dasti or through electronic mode. **Further a copy of this order be sent to the IO/SHO concerned through electronic mode.**

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
04.07.2020

INTERIM BAIL APPLICATION

State Vs. Laxman @ Bable
FIR No. : 415/2015
PS: Kotwali
U/S: 395,397,365,120B,412 IPC

04.07.2020

Present: Mr. Manoj Garg, Ld. Addl. PP for the State through VC
Sh. J.S. Mishra, Ld. Counsel from for Accused through VC.

1. *Observations given by Hon'ble High Court of Delhi in W.P.(C) No. 2945/2020 dated 23.03.2020 in case titled as "Shobha Gupta and Ors. v. Union of India & Ors.", Hon'ble Supreme Court of India in Suo Moto W.P.(C) No. 1/2020 dated 23.03.2020 and Revised Advisory Protocol dated 30.03.2020 have been issued by Ld. District & Sessions Judge (HQ) read with other directions received from time to time including on 28.03.2020, 07.04.2020, 18.04.2020, 05.05.2020, 18.05.2020 and 20.06.2020 from Hon'ble High Court as a result of various meetings of Delhi State Legal Services Authority, present application is taken up.*

2. Further reply filed by IO today. Same is taken on record.

3. Arguments heard.

4. In nutshell, it is stated and argued on behalf of accused that accused is in JC for last more than four years. That all material witnesses are examined. That wife of the accused is facing problem due to illness and require assistance and care as there is no one to take care of his wife. That apart

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from the accused, there are only two daughters in his family who are not able to assist their mother financially or physically. Further, it is stated that due to corona virus, the family is at the verge of starvation. That he was earlier granted interim bail and he never misused the same. That nothing was recovered at his instance.

5. On the other hand, a reply dated 26.06.2020 filed by the IO. Further, an additional reply regarding the verification of the medical record of the wife. It is further argued by learned Addl. PP for the state that present offence is very serious in nature and offences charged against the accused are punishable upto imprisonment for life. As such, present interim bail application is strongly opposed.

6. It is not the case of the accused that he himself is suffering from any of the illness as mentioned in Minutes of Meeting dated 18.04.2020 of Hon'ble High Court. As such, the case of the present accused does not fall under the relaxed criteria given by the Hon'ble High Court.

7. But it is also directed by Hon'ble High Court that even if the case of the accused do not fall under the criteria, then his application be heard and decided on merit.

8. On merit, apart from general apprehension i.e. there is spread of corona virus and he is in JC for long and that he is the only bread earner of the family, no sufficient ground is raised. Even, as per report from the Swami Dayanand hospital, it is reported that his wife is a OPD patient and no urgency of any medical condition of wife is reported.


As such grounds are found not sufficient by this court having regard to the nature of offence and allegations made against this

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accused. With these observations, present interim bail application is dismissed.

9. Counsel for accused/applicant is at liberty to collect the order dasti or through electronic mode.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
04.07.2020.



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INTERIM BAIL APPLICATION

State V. Krishan
FIR No. 48/2015
PS.: Nabi Karim
U.S: 186,332,353,307,34 IPC & 25,27 Arms Act

04.07.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Mr. Sunil Kumar Jain, learned Jail Visiting Advocate from DLSA.

Fresh application for bail received on behalf of accused Krishan through Jail Superintendent concerned.

Put up for reply from IO through Jail Visiting Advocate, arguments and appropriate orders on the same with file on 08.07.2020.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
04.07.2020

BAIL APPLICATION

FIR No. :130/2014
PS: Kamla Market
STATE v. Vasudev Prasad s/o Mr. Gaya Prasad
U/S: 419,420,365,392,395,412,120B,34 IPC

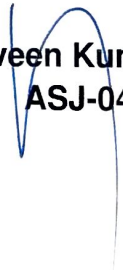
04.07.2020.

Present: Sh. Pawan Kumar, Addl. PP for the State through VC.
Mr. Rajan Bhatia, learned counsel for the applicant / accused.

It is stated by the IO that medical documents are not clear and the time was given was also short.

It is stated by the counsel for the accused that he would supply the legible copy of the such medical documents today itself in the court. As such, the same be supplied to the IO.

Put up for reply / verification of medical documents and appropriate order for **08/07/2020**.


(Naveen Kumar Kashyap)
ASJ-04/Central/THC
04.07.2020

BAIL APPLICATION

FIR No. : 31/2017

PS: DCRS

STATE v. Karan @ Twinkle @ Hukum Singh

U/S: 302/201/34 IPC

04.07.2020.

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

Mr. J.S Mishra, learned counsel for the applicant / accused through VC.

It is stated by the IO that medical documents are not clear and the time was given was also short.

It is stated by the counsel for the accused that he would supply the legible copy of the such medical documents today itself in the court. As such, the same be supplied to the IO.

Put up for reply / verification of medical documents and appropriate order for **08/07/2020**.

(Naveen Kumar Kashyap)

ASJ-04/Central/THC

04.07.2020

Anticipatory Bail

State vs Farooq Dandoo & Ali Dandoo
FIR No. 316/2019
P. S. Pahar Ganj
U/s: 420, 376, 356, 354, 506, 34 IPC

04.07.2020

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

Arguments in detail were heard from learned counsel Mr. Rajeev Sirohi for both the applicants as well as from Mr. Rajesh Raina, learned counsel for complainant yesterday.

Today, the case is fixed for order.

Vide this order, present joint anticipatory bail applications u/s 438 Cr.PC filed on 04.06.2020 by accused / applicant 1 Farooq Dandoo (2) Ali Dandoo is disposed of.

In nut shell, it is stated by both the accused side that their name have been falsely implicated in the present case and they have nothing to do with the present offence. It is claimed that present FIR is an outcome of complainant's cooked up story in order to mount undue pressure upon the applicants / accused brother / son Shabir Dandoo in order to extort money from him. It is further stated that there is some business dispute between Shabir Dandoo and the complainant and in order to arm twist, present FIR is filed. It is further claimed that complainant has been made a tool by the brother / son of applicants earlier business partners namely Yakub Kaba and Harpreet Singh. Further details of witness dealing of the complainant

State vs Farooq Dandoo & Ali Dandoo
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with such Shabir Dandoo is also mentioned and argued in detail. It is further stated that on 08/10/2019, even such Shabir Dandoo made a call on 100 number when the complainant was quarreling with him in his office. That infact as a settlement between them a sum of Rs. 7 lakh is already paid. It is further stated that complainant is already threatened the accused side that they will be implicated in false cases. It is further claimed that allegations made by the complainant are in vague in nature. It is further stated that complainant is a highly educated and intellectual American national and still she did not resisted such alleged sexual molestation incident over a long continuous period. That investigation is already completed and chargesheet is already filed; that Ali Dandoo / applicant is 70 years old and suffering from various old aged problems. It is further stated that both the accused are ready to join the investigation as and when directed. As such, she has filed present application seeking prayer that IO / SHO be directed to release the applicant on bail in the event of arrest.

On the other hand, it is argued on behalf of the complainant that accused side is threatening the witness / complainant time and again. That oral complaints are made in this regard to the IO. But IO has not taken any action. That chargesheet is filed only about accused Shabir Dandoo and investigation qua the present both applicants is still pending. That IO is intentionally not arresting both the applicants / accused. It is further

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claimed that complainant never gave any letter to the IO as otherwise mentioned in interim bail order of Shabir Dandoo dated 23/05/2020. That infact proceedings u/s 82 Cr.PC are already initiated against co-accused Farukh Dandoo. It is further stated that for reasons best known to the IO, she is not taking further action the accused Ali Dandoo.

Further, it is submitted by the IO that due to lockdown, further investigation against present both the applicants could not be proceeded further. It is further stated that she has already issued notice to both the accused u/s 41 Cr.PC. It is further stated that proceedings u/s 82 Cr.PC are already initiated against applicant Farooq Dandoo. But she failed to give any plausible explanation why similar action is not taken against accused Ali Dandoo so far. In fact, it appears that manner in which investigation is conducted by the IO is not upto mark.

It is further argued on behalf of the State by learned Addl.PP that main accused Shabir Dandoo on a false promise of marriage established physical relationship with the complainant without her consent and physically and financially abused her that when the complainant was on tour to Sri Nagar then the present applicant Farooq Dando (brother of main accused Shabir Dandoo) tried to rape her and even molested her physically. When she complained about the same to Shabir Dandoo, he asked her to keep quite. It is further stated by the complainant that not only that even Mr. Ali Dandoo, father of Shabri Dandoo although physically



molested her by touching her thigh and chest inappropriately. That prime accused Shabir Dandoor tried to escape but was arrested from Delhi Airport. It is further stated that now even the statement u/s 164 Cr.PC is recorded. That there is every possibility that such applicants will threaten the complainant. It is further stated that investigation at Jammu & Kashmir is yet to be completed. As such, present application is strongly opposed.

I have heard both the sides and 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

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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.

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.

It appears that there is some business transaction between the main accused Shabir Dandoo and the complainant. It further appears prima facie that there is some dispute regarding the same. It further appears, prima facie, that some physical relationship were established between the complainant and the accused and same were without the consent of the complainant as per her claim. Further there are specific allegations regarding attempt to rape against the applicant Farooq



Dandoo. Further, process u/s 82 Cr.PC is already issued against him. Further, he has not cooperated in the investigation so far and even did not respond to notice u/s 41 Cr.PC, as claimed by the IO. Therefore, having regard to the nature of allegations against such applicant Farooq Dandoo, material on record, his conduct so far and the stage of investigation qua him, at present, **this court is not inclined to grant the relief sought in the present application, as far as applicant Farooq Dandoo is concerned.**

But as far as accused Ali Dandoo is concerned, the conduct of the IO regarding investigation qua accused Ali Dandoo is not satisfactory and upto mark and it appears that laxity is shown by the IO qua investigation against such co-accused. But, so far the, allegations against such accused appears to be of molestation as per the FIR and the statement of the complainant etc., **as such prima facie at present as per the investigation so far,** the offence alleged against such Ali Dandoo appears to be offences punishable upto 7 years, subject to final outcome of the investigation. Still so far, IO has not taken any decision in terms of section 41A Cr.PC to record in writing her decision to arrest or not to arrest such co-accused. This is despite the fact that detail guidelines are already issued including in the case of Arnesh Kumar by hon'ble Supreme Court.

In this back ground, it can be noted that FIR in this case was

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registered about 8 months ago, still **prima facie at present as per the investigation so far** allegations / offences alleged against Ali Dandoo appears to be punishable upto 7 years. Further, he is a senior citizen of about 70 years old. Further there is spread of corona virus pandemic and people of such age are more vulnerable regarding infection from the same. Thus, in background of such facts and circumstances, this court is not inclined to grant to **such applicant Ali Dandoo also the relief as prayed for, but IO is directed to give three working days notice to the applicant** on the addresses mentioned on the bail applications and also on the official address of the counsel as mentioned in the bail applications. In the meanwhile, the such applicant Ali Dandoo shall join the investigations as and when called upon to do so.

Further, before parting, it may be noted that in **“Arnesh Kumar vs State Of Bihar & Anr** (2 July, 2014, Criminal Appeal No. 1277 of 2014, Special Leave Petition (CRL.) No. 9127 Of 2013) Hon'ble S.C., inter alia, observed and held that it is evident that a person accused of offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on its satisfaction that such person had committed the offence punishable as aforesaid. Police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the

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evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured.

These are the conclusions, which one may reach based on facts. *Law mandates the police officer to state the facts and record **the reasons in writing** which led him to come to a conclusion covered by any of the provisions aforesaid, **while making such arrest**. Law further requires the police officers to record the reasons in writing **for not making the arrest**.*

In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised.

Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 of Cr.PC.

It was further held that during the course of investigation of a case, an accused can be kept in detention beyond a period of 24 hours only when it is authorized by the Magistrate in exercise of power under



Section 167 Cr.PC. The power to authorize detention is a very solemn function. It affects the liberty and freedom of citizens and needs to be exercised with great care and caution.

If the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty bound not to authorise his further detention and release the accused. In other words, when an accused is produced before the Magistrate, ***the police officer effecting the arrest is required to furnish to the Magistrate, the facts, reasons and its conclusions for arrest and the Magistrate in turn is to be satisfied that condition precedent for arrest under Section 41 Cr.PC has been satisfied*** and it is only thereafter that he will authorise the detention of an accused.

The Magistrate before authorising detention will record its own satisfaction, may be in brief but the said satisfaction must reflect from its order. It shall never be based upon the ipse dixit of the police officer, for example, in case the police officer considers the arrest necessary to prevent such person from committing any further offence or for proper investigation of the case or for preventing an accused from tampering with evidence or making inducement etc., the police officer shall furnish to the Magistrate the facts, the reasons and materials on the basis of which the police officer had reached its conclusion. Those shall be perused by the

Magistrate while authorising the detention and only after recording its satisfaction in writing that the Magistrate will authorise the detention of the accused.

When a suspect is arrested and produced before a Magistrate for authorising detention, the Magistrate has to address the question whether:

- i) specific reasons have been recorded for arrest and if so,
- ii) prima facie those reasons are relevant and
- iii) secondly a reasonable conclusion could at all be reached by the police officer that one or the other conditions stated above are attracted.

To this limited extent the Magistrate will make judicial scrutiny.

It was further held that in all cases where the arrest of a person is not required under Section 41(1), Cr.PC., the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police officer is of the opinion that the arrest is necessary.

With these observations present application of both the accused is disposed of. **Learned counsel for the applicants / accused, is at liberty to collect the order dasti or through electronic mode. Copy of this order be given dasti or through electronic mode to complainant as well as IO of this case. Copy of order be uploaded on the website.**

(NAVEEN KUMAR KASHYAP)
ASJ-04(Central/Delhi/04/07/2020)