

: 1 :

Bail Application

State Vs. Ashish @ Sahil s/o Lt. Harish Kumar

FIR No. : 55/2020

PS: Pahar Ganj

U/S: 323, 377, 34 IPC

21.09.2020

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

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

Vide this order, the regular bail application dated
05/09/2020 under section 439 Cr.P.C. on behalf of accused filed
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 therefore. The fundamental principle of our system of justice is that a person should not be deprived of his liberty except for

State Vs. Ashish @ Sahil s/o Lt. Harish Kumar

FIR No. : 55/2020

PS: Pahar Ganj

U/S: 323, 377, 34 IPC

: 2 :

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

: 3 :

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

: 4 :

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

: 5 :

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 applicant is not previously convicted in any case; that applicant is the only bread earner of his family; that the condition of the mother of the applicant is very serious. It is further stated that earlier he was granted interim but due to some confusion he could not surrender himself timely. But surrendered himself after one week only after the expiry of such interim bail. As such, it is prayed that he be granted regular bail.

On the other hand, it is stated in the reply filed by SI Harpal Singh, as also argued by the learned Addl.PP for the state, that there are serious and specific allegations against the present accused; that as per the opinion of the doctor the mother of applicant was

: 6 :

having complaint of bodyache and running nose which are the symptoms of common cold and the treatment was given by the doctor. As such, present 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. That admittedly the first regular bail application of applicant / accused is recently dismissed vide order of the learned Bail Duty Roster Judge dated 24/08/2020 and thereafter there is no material change in circumstances. As such, this court is not inclined to grant regular bail to such accused at this stage under these circumstances.

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

NAVEEN
KUMAR
KASHYAP

 Digitally signed by NAVEEN
KUMAR KASHYAP
Date: 2020.09.21 14:51:53
+05'30'

**(Naveen Kumar Kashyap)
ASJ-04(Central)/Delhi/21/09/2020**

: 1 :

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

State Vs Nadeem Akram s/o Aslam Khan
FIR No.961/2020
P. S. Jama Masjid
U/s: 379, 411, 34 IPC

21/09/2020

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

Vide this order, bail application u/s 439 Cr.PC dated 18/09/2020 filed by applicant through counsel is disposed of.

It is stated in the application that he has been falsely implicated in the present case; that his bail application u/s 437 Cr.PC is dismissed by learned MM vide order dated 17/09/2020. That chargesheet is already filed and the next date of hearing is 17/01/2021. That he is arrested based on disclosure statement only. That he is falsely implicated in other case also and out of 7-8 cases, he is already discharged / released in five cases. That there is no previous conviction record of the present accused. That investigation is already over and no purpose would be served by keeping the accused in JC. As such, it is prayed that he be granted regular bail.

On the other hand, in reply filed by the IO, as also argued by learned Addl.PP for the State it is stated that such accused is involved in many similar matters dates of which is given alongwith the reply. That he made disclosure statement regarding involvement in present case. It is further stated that using the stolen vehicle of the present case, such accused alongwith co-accused committed other robbery. As such, present

State Vs Nadeem Akram s/o Aslam Khan
FIR No.961/2020
P. S. Jama Masjid
U/s: 379, 411, 34 IPC

: 2 :

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

State Vs Nadeem Akram s/o Aslam Khan
FIR No.961/2020
P. S. Jama Masjid
U/s: 379, 411, 34 IPC

: 3 :

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

State Vs Nadeem Akram s/o Aslam Khan
FIR No.961/2020
P. S. Jama Masjid

U/s: 379, 411, 34 IPC

: 4 :

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

State Vs Nadeem Akram s/o Aslam Khan
FIR No.961/2020
P. S. Jama Masjid

U/s: 379, 411, 34 IPC

: 5 :

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

State Vs Nadeem Akram s/o Aslam Khan
FIR No.961/2020
P. S. Jama Masjid
U/s: 379, 411, 34 IPC

: 6 :

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 02/07/2020. 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. Infact chargesheet is already filed. As such, no purpose would be served by keeping such accused in JC. Trial is likely to take time. Further, it may be noted that there is fundamental presumption of innocence in any criminal case of present nature. 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) 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*

: 7 :

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:

- a) *The date on which conditions imposed by this court are satisfied;*

: 8 :

- 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 bail application is accordingly disposed off. Learned counsel for applicant is at liberty to obtain through electronic mode. Copy of order be uploaded on website.

NAVEEN KUMAR KASHYAP
Digitally signed by
NAVEEN KUMAR KASHYAP
Date: 2020.09.21 14:52:41
+05'30'

(NAVEEN KUMAR KASHYAP)
ASJ-04(Central/Delhi)
21.09.2020

Bail Application No:1292/2020
State Vs. Sourabh @ Hemant
FIR No. : 0170/2020
PS: Nabi Karim
U/S: 392,397,34 IPC &

21.09.2020

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

Vide this order, the regular bail application under section 439 Cr.P.C. on behalf of accused dated 17.08.2020 filed through counsel is disposed of.

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

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

Further it has been laid down from the earliest time that the object of Bail is to secure the appearance of the accused person at his trial by reasonable amount of Bail. The object of Bail is neither punitive nor preventive. Deprivation of liberty must be

considered a punishment unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after convictions, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earlier times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial, but in such case 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the constitution that any persons should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty under Article 21 of the Constitution upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson. While considering an application for bail either under Section 437 or 439 CrPC, the court should keep in view the principle that grant of bail is the rule and committal to jail an exception. Refusal of bail is a restriction on personal liberty of the individual guaranteed by Article 21 of the Constitution. Seriousness of the offence not to be treated as the only consideration in refusing bail : Seriousness of the offence should not to be treated as the only ground for refusal of bail. (Judgment of **Sanjay Chandra Vs. Central Bureau of Investigation, AIR 2012 SC 830** relied).

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

Further discretionary jurisdiction of courts u/s 437 and 439 CrPC should be exercised carefully and cautiously by balancing the rights of the accused and interests of the society. Court must indicate brief reasons for granting or refusing bail. Bail

order passed by the court must be reasoned one but detailed reasons touching merits of the case, detailed examination of evidence and elaborate documentation of merits of case should not be done.

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

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

refusing bail. It was further held that such question depends upon a variety of circumstances, cumulative effect of which must enter into the judicial verdict. Such judgment itself mentioned the nature and seriousness of nature, and circumstances in which offences are committed apart from character of evidence as some of the relevant factors in deciding whether to grant bail or not.

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

In the present case, it is argued that accused himself has surrendered before the police and is in JC since 27.07.2020. That complainant owe money to the accused and in order not to pay the same, complainant has filed false complaint against the accused. That he is permanent resident of Delhi and does not have any previous criminal record. That no purpose would be served by keeping him in JC. That co-accused Rahul is already on interim bail. That present accused is suffering from some psychiatric problem also. As such, he be granted regular bail.

On the other hand, it is argued by the learned Addl.PP for the state that present accused alongwith 4-5 other boys surrounded the victim/complainant and by showing knife by the co-accused, the present accused took out Rs. 10,000/- from the pocket of the complainant and another accused Guddu took out his mi-phone forcefully. It is further stated that present accused is involved in two other criminal cases. One under the Arms Act and another for theft only.

I find force in the arguments of learned Addl.PP for the state. The offence is serious in nature. Investigation is at initial stage. Complainant has specifically deposed against the accused and named him as one of the co-accused who took out Rs.10,000/- from his pocket while the co-accused was showing knife to the present accused. As such, at this stage, this court is not inclined to grant the relief as sought in the present application. **Hence,**

the same is dismissed.

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

Digitally signed by
NAVEEN KUMAR
KASHYAP
Date: 2020.09.21 14:53:27
+05'30'

(Naveen Kumar Kashyap)
Additional Sessions Judge-04
Central/THC/Delhi
21.09.2020

Bail Application No:1187

State Vs. Shoaib Khan S/o Mohd. Asif Khan

FIR No. : 157/2020

PS: DBG Road

**U/S: 392,395,397,34 IPC &
25,27,54,59 Arms Act**

21.09.2020

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

Arguments already heard in detail.

Vide this order, the regular bail application under section 439 Cr.P.C. on behalf of accused dated 14.09.2020 filed through counsel is disposed of.

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

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

Further it has been laid down from the earliest time that the object of Bail is to secure the appearance of the accused person at his trial by reasonable amount of Bail. The object of Bail is neither punitive nor preventive. Deprivation of liberty must be considered a punishment unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after convictions, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earlier times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial ,but in such case 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the constitution that any persons should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty under Article 21 of the Constitution upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson. While considering an application for bail either under Section 437 or 439 CrPC, the court should keep in view the principle that grant of bail is the rule and committal to jail an exception. Refusal of bail is a restriction on personal liberty of the individual guaranteed by Article 21 of the Constitution. Seriousness of the offence not to be treated as the only consideration in refusing bail : Seriousness of the offence should not to be treated as the only ground for refusal of bail. (Judgment of **Sanjay Chandra Vs. Central Bureau of Investigation, AIR 2012 SC 830** relied).

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

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

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

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

governing the exercise of such discretion by the courts. It was further held that there cannot be any inexorable formula in the matter of granting bail. It was further held that facts and circumstances of each case will govern the exercise of judicial discretion in granting or refusing bail. It was further held that such question depends upon a variety of circumstances, cumulative effect of which must enter into the judicial verdict. Such judgment itself mentioned the nature and seriousness of nature, and circumstances in which offences are committed apart from character of evidence as some of the relevant factors in deciding whether to grant bail or not.

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

In the present case, it is argued that chargesheet is already filed. In this case, it is stated that accused is falsely implicated and he is a young person aged about 26 years old, doing private job at Call Center, Vikaspuri. That he was without any basis was lifted from his rented accommodation on 26.06.2020 alongwith other person who were living there in the same accommodation and taken to police chowki and shown to different persons. Thereafter, on the next date, he was falsely implicated in the present case. That he is no longer required for the purpose of investigation and no purpose would be served by keeping him in JC. That he is a permanent resident of Meerut, U.P. and has roots in society. That co-accused Nitesh is already released on bail by learned CMM. But, bail application of present accused was dismissed as withdrawn before learned CMM. That there is a spread of corona virus including inside the jail also. As such, on that ground also, he be granted regular bail.

On the other hand, it is argued by the learned Addl.PP for the state that on 13.06.2020, complaint was received from multiple persons that they were robbed in planned manner by 6-7 robbers at Ajmal Khan Park, Karol Bagh, New Delhi. Further, during investigation, it was found that one of the victim was admitted in hospital and received gun

shot injury also and he was robbed of his gold chain. During investigation, co-accused was arrested and some robbed articles was recovered. From the possession of the present accused, one robbed i-phone was recovered. That offence is committed with public at large that too in a pre-planned manner. That co-accused are yet to be arrested and remaining case property is yet to be recovered.

I find force in the arguments of learned Addl.PP for the state. The offence is serious in nature and is nuisance to public at large. In the same transaction, it appears a number of different public persons were looted and even serious injury caused to some of them at a public place/park. Further, the part of the case property is recovered from the accused. Investigation is still going on and co-accused are yet to be arrested and case property is yet to be recovered. As such, at this stage, this court is not inclined to grant the relief as sought in the present application. **Hence, the same is dismissed.**

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
Digitally signed by NAVEEN KUMAR KASHYAP
Date: 2020.09.21 14:53:55 +05'30'

(Naveen Kumar Kashyap)
Additional Sessions Judge-04
Central/THC/Delhi
21.09.2020

BAIL APPLICATION No.: 1220/2020

**State v. Bhairu Lal Verma
FIR No. : 160/2012
PS: EOW, New Delhi
U/S: 420,406,120-B IPC &
3,4,5,6 of Prize Chit & Money Circulation Scheme (Banning) Act,1978**

21.09.2020

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

No one was present on behalf of applicant on the last date of hearing i.e. on 17.09.2020. Even nobody is present today again.

As such, anticipatory bail application is dismissed in default.

NAVEEN KUMAR KASHYAP
Digitally signed by
NAVEEN KUMAR KASHYAP
Date: 2020.09.21 14:54:12
+05'30'

(Naveen Kumar Kashyap)

ASJ-04/Central/21.09.2020

BAIL APPLICATION No.: 1281/2020
State v. Tajjabmul @ Salman

AND

BAIL APPLICATION No.:1282/2020
State v. Guddu

FIR No. : 231/2020

PS: Pahar Ganj

U/S: 308,34 IPC

21.09.2020

Present: Mr. Pawan Kumar ,Ld. Addl. PP for the State through VC
Sh. M.A. Qureshi, Ld. Counsel for both the applicants through VC.
IO Rajesh Kumar is also present through VC.

Reply filed. Copy supplied.

Part arguments in detail heard. It is stated that it is a case of cross FIR. Even the complainant namely Arun Kumar is in JC in connected FIR no. 232/2020 PS Paharganj, Central district, Delhi.

As such, issue notice to such complainant through Jail Superintendent concerned to be produced through VC at the time of hearing on the present application on the next date of hearing as it is claimed that inter alia some settlement is going on between both the sides.

Put up on 26.09.2020.

IO to furnish criminal involvement record of both such applicants on next date of hearing.

NAVEEN
KUMAR
KASHYAP

Digitally signed by
NAVEEN KUMAR
KASHYAP
Date: 2020.09.21 14:54:28
+05'30'

(Naveen Kumar Kashyap)

ASJ-04/Central/21.09.2020

BAIL APPLICATION No.:1284/2020
State v. Gunjan

FIR No. :142/2020
PS: DBG Road
U/S: 392,34 IPC

21.09.2020

Present: Mr. Pawan Kumar ,Ld. Addl. PP for the State through VC
Sh. M.C. Sharma, Ld. Counsel for applicant through VC.

Fresh regular bail application filed.

Issue notice to IO.

Put up for reply, arguments and orders on 26.09.2020.

IO to also specifically reply whether chargesheet qua the present accused is already filed or not so far.

NAVEEN KUMAR KASHYAP
Digitally signed by
NAVEEN KUMAR KASHYAP
Date: 2020.09.21 14:54:44
+05'30'

(Naveen Kumar Kashyap)

ASJ-04/Central/21.09.2020

BAIL APPLICATION No.:1285/2020
State v. Karan Singh

FIR No. : 196/2020
PS: Kashmere Gate
U/S: 392,411,34 IPC

21.09.2020

Present: Mr. Pawan Kumar ,Ld. Addl. PP for the State through VC
Sh. Anil Kumar, Ld. Counsel for applicant/accused.

Ld. Counsel for applicant submits that he wishes to withdraw the present application with liberty to file afresh.

At request, present application is disposed of as withdrawn with liberty to file afresh.

NAVEEN KUMAR KASHYAP
Digitally signed by
NAVEEN KUMAR KASHYAP
Date: 2020.09.21 14:55:00
+05'30'

(Naveen Kumar Kashyap)

ASJ-04/Central/21.09.2020

Bail Matter No.: 1285/2020
FIR No:196/2020
PS:Kashmere Gate
State v Karan Singh s/o Kishore Singh
U/s : 392, 411, 34 IPC

21.09.2020

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

Mr. Anil Kumar, learned counsel for the applicant / accused through VC.

This is an application seeking grant of interim bail filed by the applicant through counsel.

At this stage, learned counsel for the applicant wants to withdraw the same with liberty to file afresh before the learned Ilaka Magistrate.

Heard. Allowed.

In view of the submissions, the same is dismissed as withdrawn.

NAVEEN KUMAR KASHYAP
Digitally signed by
NAVEEN KUMAR KASHYAP
Date: 2020.09.21 14:57:01
+05'30'

(Naveen Kumar Kashyap)
ASJ-04/Central/21.09.2020

APPLICATION FOR PRODUCTION OF ACCUSED

**State v. Ali Akbar @ Bullet
FIR No. : 287/2014
PS: Pahar Ganj**

21.09.2020

This is an application dated 19.09.2020 for issuance of P/W of accused/applicant.

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

Put up for consideration/appropriate order on 24.09.2020.

NAVEEN
KUMAR
KASHYAP

Digitally signed by
NAVEEN KUMAR KASHYAP
Date: 2020.09.21 14:57:42
+05'30'

**(Naveen Kumar Kashyap)
ASJ-04/Central/21.09.2020**

Interim Bail Application

State Vs. Taufiq Kala & others
(Application of Saddam s/o Subedar)
FIR No.:20/2016
PS: Crime Branch
U/s: 364A, 395, 342, 420, 468, 471, 120B IPC

21.09.2020

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

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

This is an application seeking grant of interim bail filed by the applicant / accused Saddam through counsel. It be checked and registered separately.

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

Put up for reply by the IO, arguments and appropriate orders for **25/09/2020**.

NAVEEN KUMAR
KASHYAP
(Naveen Kumar Kashyap)
ASJ-04/Central/21.09.2020

Digitally signed by
NAVEEN KUMAR KASHYAP
Date: 2020.09.21 14:58:19
+05'30'

SC No.: 27280/2016
FIR No.:58/2014
PS: Kotwali
State Vs Parmod Tomar

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.

21.09.2020

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

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

In the interest of justice, no adverse order is passed in the present case. Issue production warrant for the accused, if in JC, for the next date of hearing.

Also issue notice atleast to two of the material witnesses for the next date of hearing.

Put up for PE for **19/01/2021**.

NAVEEN KUMAR
KASHYAP
(Naveen Kumar Kashyap)
ASJ-04/Central/21.09.2020

Digitally signed by NAVEEN
KUMAR KASHYAP
Date: 2020.09.21 14:58:52
+05'30'

SC No.: 299/2017
FIR No.: 1227/2016
PS New Delhi Railway Station
State Vs Rakesh @ Sonu & others

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

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

In the present case, last regular date of hearing was 21/07/2020. Thereafter, as per directions from Hon'ble High Court, matter was adjourned as far due to lock-down. But in view of latest directions, matter is taken up today for hearing through VC.

21.09.2020

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

Present: Mr. Pawan Kumar, learned Addl.PP for the State through VC.
Accused No.4 Hamidul Islam @ Sunny @ Chhora @ Pahadi produced from Rohini Jail through VC.

In the interest of justice, no adverse order is passed in the present case. Issue production warrant for the accused who are in JC for the next date of hearing.

Also issue notice atleast to two of the material witnesses for the next date of hearing.

Put up for PE for **19/01/2021**.

NAVEEN
KUMAR
KASHYAP

Digitally signed by
NAVEEN KUMAR
KASHYAP
Date: 2020.09.21
14:59:14 +05'30'

(Naveen Kumar Kashyap)
ASJ-04/Central/21.09.2020

CR No.: 205/2019
Mohan Lal Kalra & Others Vs Bharat Lal & others

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

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

In the present case, last regular date of hearing was 24/03/2020 & 21/07/2020. Thereafter, as per directions from Hon'ble High Court, matter was adjourned was far due to lock-down. But in view of latest directions, matter is taken up today for hearing through VC.

21.09.2020

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

Present: None for the revisionist.

Mr. Vivek Srivastava, learned counsel for respondents nos.2 to 4 through VC.

Be awaited for revisionist.

NAVEEN
KUMAR
KASHYAP
(Naveen Kumar Kashyap)
ASJ-04/Central/21.09.2020

Digitally signed by NAVEEN
KUMAR KASHYAP
Date: 2020.09.21 14:59:26
+05'30'

At 11:20 AM

Present: Mr. Deepak Garg, proxy counsel on behalf of main counsel for revisionist through VC.

Put up for 12:00 Noon for further appropriate order.

NAVEEN KUMAR
KASHYAP
(Naveen Kumar Kashyap)
ASJ-04/Central/21.09.2020

Digitally signed by
NAVEEN KUMAR KASHYAP
Date: 2020.09.21 14:59:37
+05'30'

At 12:00 Noon

Present: Mr. C Mohan, learned counsel for revisionist through VC.

At request, of learned counsel for revisionist, put up for physical hearing for

29/09/2020. Learned counsel for respondents no.2 to 4 are at liberty to address arguments through VC or in person. Further, in the alternative both sides are at liberty to submit written arguments in place of oral arguments, if so desired, by the next date of hearing.

NAVEEN
KUMAR
KASHYAP
(Naveen Kumar Kashyap)
ASJ-04/Central/21.09.2020

Digitally signed by
NAVEEN KUMAR
KASHYAP
Date: 2020.09.21 14:59:52
+05'30'

BAIL APPLICATION

**State v. LADDAN
(APPLICATION OF NIRMAL)
FIR No. : 83/2020
PS: Kashmere Gate**

21.09.2020

Present: Mr. Pawan Kumar ,Ld. Addl. PP for the State through VC
Sh. Chetanya Puri, Ld. LAC for applicant.

This is an application for regular bail of applicant Nirmal S/o Ashok.

It is clarified by Ld. LAC that such regular bail application is moved through Jail Superintendent through legal aid dated 07.09.2020. It is further clarified that same be treated u/s 439 Cr.P.C.

Issue notice to the IO concerned for next date.

Put up for reply, arguments and appropriate orders on 26.09.2020 through VC.

NAVEEN KUMAR KASHYAP
Digitally signed by
NAVEEN KUMAR KASHYAP
Date: 2020.09.21 16:47:51
+05'30'

**(Naveen Kumar Kashyap)
ASJ-04/Central/21.09.20**

Crl. Revision.: 207/2020
Kiran Singh Sainger v. Ms. Sadaf.

21.09.2020

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

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

Undersigned is also discharging work of Bail Roster duty.

This is an application for early hearing.

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

Put up for consideration/appropriate order on 24.09.2020.

NAVEEN
KUMAR
KASHYAP

Digitally signed by
NAVEEN KUMAR KASHYAP
Date: 2020.09.21 15:00:33
+05'30'

(Naveen Kumar Kashyap)
ASJ-04/Central/21.09.2020

Anticipatory Bail

Bail Application No.:
State vs Rohit Yadav s/o Late Nathu
FIR No. 195/2020
P. S. Kashmere Gate
U/s: 147, 148, 149, 307, 427, 506, 440, 452, IPC & 25, 27, 54, 59 Arms Act.

21.09.2020

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

Arguments already heard. Today the case was fixed for orders

1. This is an application dated 07/09/2020 seeking grant of anticipatory bail filed by the applicant through counsel.
2. In the present case, it is argued by the learned counsel that present applicant apprehends his false implication and arrest in the present case. That he has no connection with the case in question. That he was not even present at the place of alleged incident and instead he was in his house at Khajuri. It is further claimed that there is no presence of accused in cctv footage. That he belongs to a respectful family and if he is arrested by the police, then his reputation would be spoiled. It is further stated that he is ready to join investigation as and when required by IO. As such, it is prayed that IO / SHO be directed to release the applicant on bail in the event of his arrest.
3. On the other hand, in reply filed by the SI Satender Singh, as also argued by learned Addl.PP for the State, it is stated that there are other

criminal involvement of the present accused. That he was actively involved in the present case. That he used a car to bring the co-accused on the spot. His custodial interrogation is required as such regarding identifying co -accused and the weapons of offense are yet to be recovered. It is further stated that on the night of 16th / 17th August, 2019, complainant heard loud voices, one unknown person entered with force in the house with knife and he looked everywhere inside and pushed LCDs installed in his room. He noticed about 8-10 people in the street. One of them was having gun and two of them were having knives and rest were having hockey sticks in their hand and they were shouting and asking someone to come out and face them. One person fired in the air and his associates were pulling down motorcycle in the street. One of the persons from the mob pointed knife on the neck of one of the neighbour's son. At this stage, when people gathered there, the mob ran away from the spot giving life threat to all. Later on during investigation, it is revealed that such mob was looking for two persons and such mob was led by one main accused Lalit Yadav @ Pongi. Such Pongi called his friends and relative to spread terror in the area. Such main accused Pongi was having illegal fire arm and he fired in air. Further, cctv footage of the area is also gathered during investigation. It is stated that case is at initial stage. The number of persons are absconding. Offence is very serious in nature. As such, bail application is opposed.

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

5. At this stage it may be noted that in the case of **Bhadresh Bipinbhai Sheth Vs. State Of Gujarat & Another**(Criminal Appeal

Nos. 1134-1135 Of 2015, Arising Out Of Special Leave Petition (Crl.) Nos. 6028-6029 Of 2014), Hon'ble SC discussed and reviews the law relating to section 438 Cr.P.C.

6. A judgment which needs to be pointed out is a Constitution Bench Judgment of this Court in the case Gurbaksh Singh Sibbia and Other vs. State of Punjab(1980 AIR 1632 ; 1980 SCR(3) 383), The Constitution Bench in this case emphasized that provision of anticipatory bail enshrined in [Section 438](#) of the Code is conceptualised under [Article 21](#) of the Constitution which relates to personal liberty. Therefore, such a provision calls for liberal interpretation of [Section 438](#) of the Code in light of [Article 21](#) of the Constitution. The Code explains that an anticipatory bail is a pre- arrest legal process which directs that if the person in whose favour it is issued is thereafter arrested on the accusation in respect of which the direction is issued, he shall be released on bail. The distinction between an ordinary order of bail and an order of anticipatory bail is that whereas the former is granted after arrest and therefore means release from the custody of the police, the latter is granted in anticipation of arrest and is therefore, effective at the very moment of arrest. A direction under [Section 438](#) is therefore intended to confer conditional immunity from the 'touch' or confinement contemplated by [Section 46](#) of the Code. The essence of this provision is brought out in the following manner:

“26. We find a great deal of substance in Mr Tarkunde's submission that since denial of bail amounts to deprivation of personal liberty, the court should lean against the imposition of unnecessary restrictions on the scope of [Section 438](#), especially when no such restrictions have been imposed by the legislature in the terms of that section. [Section 438](#) is a procedural provision which is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his

application for anticipatory bail, convicted of the offence in respect of which he seeks bail. An over-generous infusion of constraints and conditions which are not to be found in [Section 438](#) can make its provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on compliance with unreasonable restrictions. The beneficent provision contained in [Section 438](#) must be saved, not jettisoned. No doubt can linger after the decision in [Maneka Gandhi v. Union of India](#), (1978) 1 SCC 248, that in order to meet the challenge of [Article 21](#) of the Constitution, the procedure established by law for depriving a person of his liberty 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 undertrial 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

State vs Rohit Yadav s/o Late Nathu
FIR No. 195/2020

P. S. Kashmere Gate

U/s: 147, 148, 149, 307, 427, 506, 440, 452, IPC & 25, 27, 54, 59 Arms Act.

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 plentitude of [Section 438](#) must be given its full play. There is no requirement that the accused must make out a “special case” for the exercise of the power to grant anticipatory bail. This virtually, reduces the salutary power conferred by [Section 438](#) CrPC to a dead letter. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints and conditions on his freedom, by the acceptance of conditions which the court may deem fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

(v) The proper course of action on an application for anticipatory bail ought to be that after evaluating the averments and accusations available on the record if the court is inclined to grant anticipatory bail then an interim bail be granted and notice be issued to the Public Prosecutor. After hearing the Public Prosecutor the court may either reject the anticipatory bail application or confirm the initial order of granting bail. The court would certainly be entitled to impose conditions for the grant of anticipatory bail. The Public Prosecutor or the complainant would be at liberty to move the same court for cancellation or modifying the conditions of anticipatory bail at any time if liberty granted by the court is misused. The anticipatory bail granted by the court should ordinarily be continued till the trial of the case.

(vi) It is a settled legal position that the court which grants the bail also has the power to cancel it. The discretion of grant or cancellation of bail can be exercised either at the instance of the accused, the Public Prosecutor or the complainant, on finding new material or circumstances at any point of time.

(vii) In pursuance of the order of the Court of Session or the High Court, once the accused is released on anticipatory bail by the trial court, then it would be unreasonable to compel the accused to surrender before the trial court and again apply for regular bail.

(viii) Discretion vested in the court in all matters should be exercised with care and circumspection depending upon the facts and circumstances justifying its exercise. Similarly, the discretion vested with the court under [Section 438 CrPC](#) should also be exercised with caution and prudence. It is

unnecessary to travel beyond it and subject the wide power and discretion conferred by the legislature to a rigorous code of self-imposed limitations.

(ix) No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail because all circumstances and situations of future cannot be clearly visualised for the grant or refusal of anticipatory bail. In consonance with legislative intention, the grant or refusal of anticipatory bail should necessarily depend on the facts and circumstances of each case.

(x) The following factors and parameters that need to be taken into consideration while dealing with anticipatory bail:

(a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(b) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(c) The possibility of the applicant to flee from justice;

(d) The possibility of the accused's likelihood to repeat similar or other offences;

(e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(g) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution, because overimplication in the cases is a matter of common knowledge and concern;

(h) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(i) The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(j) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

11. Now in this background of law we come back to present case. It is the case of the prosecution that investigation is still going on. Further, the

claim of the accused that he was not present on the spot is to be investigated. It is further stated that his car was seen at the place of incidence in the cctv camera. His custodial interrogation is required regarding information of his associates and weapon of offence used by him are to be recovered. Under these circumstances, no ground is made out to grant the relief sought in the present application. Under these circumstances having regard to the nature of allegations and material on record, this court is not inclined to grant anticipatory bail to the applicant as prayed for. **With these observations present application is dismissed. Both the sides are at liberty to obtain copy of order through electronic mode. Further, a copy of this order be sent to IO / SHO concerned. Further, a copy of this order be uploaded on website.**

NAVEEN KUMAR KASHYAP
Digitally signed by
NAVEEN KUMAR KASHYAP
Date: 2020.09.21 15:06:32
+05'30'

(NAVEEN KUMAR KASHYAP)
ASJ-04(Central Distt)/Delhi/21/09/2020