

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

Bail Application No.: 1556/2020

State v. Shailender Prasad
FIR No. : 235/2020
PS: Kamla Market
U/S: 452,324 IPC

26.10.2020

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC.
Ms. Archana Sharma, Ld. Counsel for accused
through VC.

IO also present through VC.

Vide this order the bail application dated 15.10.2020 filed by accused through counsel is disposed of.

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

Constitution.

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

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

consequences are bound to follow.

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

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

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

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

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

In the present case, it is submitted on behalf of the accused that matter is settled between the parties. Complainant/victim as even given a affidavit in this regard. It is further stated that accused is a government servant. It is further stated that he is no more required for the purpose of investigation. That he is not a habitual offender. That complainant is a real culprit in this case who dragged the accused in his house and gave merciless beatings as a result of which he suffered wound on his hand which is also evident in the FIR. But being a government servant he did not report this matter to the police. That there is no possibility of accused not available for trial. Further, he undertakes to cooperate with the investigation. That bail is a rule and jail is exception. As such, it is prayed that he be granted regular bail.

On the other hand, in the reply, it is submitted by the IO that present accused under the influence of alcohol attacked the complainant in the stomach after entering into complainant house. That later on such accused was found near LNJP hospital threatening police staff also and blood was oozing out from his hand also and he was also given medical treatment. That he was under the influence of alcohol which fact is mentioned in the MLC

also. That he is in the habit of consuming alcohol and threatening nearby people. The result of MLC is yet to be received.

It is argued by Ld. Addl. PP for the state that having regard to the manner and the part of body attacked by the accused, the same is likely to amount to offence u/s307 IPC. In this regard, it is further argued that the actual injury suffered by victim is not the sole criteria to invoke section 307 IPC or not.

I have heard both the sides and gone through the record. It is rightly pointed out by the learned Addl. PP for the State that offence is serious in nature. Further, the background of the present accused that under the influence of alcohol he is threatening nearby people other than victim also. Further, under these circumstances, there is possibility that he may repeat the same offence if he is released on bail. Further, there is strong possibility that he may threaten or influence the witness which is also indicated in the affidavit of no objection to this bail as claimed by learned counsel for accused. Further, the actual injury suffered is not of much consequences under such offences. Further, the conduct of the accused even after committing the present offence is questionable. Under these overall facts and circumstances, **this court is not inclined to grant bail the present accused at this stage. 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. Further a copy of this order be sent to SHO/IO concerned through electronic mode. Copy of this order be sent to Jail Superintendent concerned through electronic mode.

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(Naveen Kumar Kashyap)
Additional Sessions Judge-04
Central/THC/Delhi
26.10.2020

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

Bail Application No.: 1213/2020

State v. Neeraj @ nonu
FIR No. : 297/2018
PS: Prasad Nagar
U/S: 304, 34 IPC

26.10.2020

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC.
Sh. Mahesh Yadav. Ld. Counsel for applicant through VC.
Counsel for complainant is also present through VC.

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

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

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

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

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

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

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

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

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

In the present case, it is submitted on behalf of the accused that there is no other criminal case/history of the present accused. That the complainant side is the aggressor and they attacked the house of accused. That there is no motive/intention on the part of the present accused. That incident is not pre-planned and accused side was not carrying any weapon. As such, it is stated that in fact offence u/s 304 IPC is not made out. That he is no more required for the purpose of investigation. That due to lock-down matter is even not committed so far. That even the IO is not diligent in filing the supplementary chargesheet. As such, trial is likely to take some time. That he himself surrendered before the court of Learned MM. That there is outbreak of Corona virus and accused is on interim bail at present. That regular bail is granted to others. As such, on parity also, he be granted regular bail.

On the other hand, it is stated in the reply filed by IO, as also argued by the learned Addl.PP for the state that there is no material change in the circumstances since the dismissal of his last regular bail application. That case is at initial stage and is not even yet committed. As such, witnesses are yet to be examined. That role of the present accused is quite different from other co-accused who are granted bail. As such, there is no question of

parity. It is further stated that offence is very serious in nature and there are specific incriminating material against the accused. As such, present bail application is strongly opposed.

Further, Id counsel for complainant also argued that their bail application is already dismissed as withdrawn from Hon'ble High Court. That even they are suppressing the fact that interim bail extension application was also dismissed by learned Sessions Court. Even otherwise, on merit, present bail application is opposed.

I have heard both the sides and gone through the record. It is rightly pointed out by the learned Addl. PP for the State that offence is serious in nature. The role assigned to present accused is different from that of co-accused which is clear from a bare reading of FIR itself. Further, although some time has lapsed, including due to lock-down since dismissal of last regular bail application. As such, the applicant has a right to move present bail application including on the ground of speedy trial. Having observed so, it is a matter of record that such right of speedy trial is not absolute. Due to lock-down, there is some delay in regular trial and investigation. Further, there are specific allegations against the accused. Therefore, having regard to the nature of incriminating material against the present accused, the nature of offence and the stage of present case, this court is not inclined to grant regular bail to accused at this stage. **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. Further a copy of this order be sent to SHO/IO concerned through electronic mode. Copy of this order be sent to Jail Superintendent concerned through electronic mode.

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**(Naveen Kumar Kashyap)
Additional Sessions Judge-04
Central/THC/Delhi
26.10.2020**

Bail Application No.: 1593/2020

State v. Naveen Giri
FIR no.: 271/2020
PS: Prasad Nagar

26.10.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Sh. Vijay Goswami, Ld. Counsel for applicant /accused through VC.
WSI Asmita Poriya with complainant through VC.
Sh. Roshan Lal, ld. Counsel for complainant through VC.

Part arguments in detail heard from the all the sides.

Put up for further arguments/appropriate orders on present anticipatory bail application. In the meanwhile, IO is directed to take all appropriate steps and investigate the matter including regarding the list of article as per the complainant, list of article admitted if any, by the accused side as also disputed list of articles which is claimed by the complainant and denied by the accused side. IO is further expected to secure undisputed articles by the next date of hearing.

Put up for further arguments/orders for 08.11.2020.

In the meanwhile, IO is directed not to take any coercive steps against present applicant provided that present applicant fully cooperate with the investigation. Further, IO is also expected to take note of judgment of Hon'ble Supreme Court in Arnesh Kumar. Copy be given to all the parties through electronic mode.

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(NAVEEN KUMAR KASHYAP)
Additional Sessions Judge-04/Central
26.10.2020

Bail Application No.: 1599/2020

State v. Ajay Birju Garange
FIR no.: 246/2020
PS: Sarai Rohilla

26.10.2020

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

Reply filed by IO.

Part arguments in detail heard .

Put up for further arguments/clarifications from IO/SHO concerned regarding the ingredient invoking Section 395 and 420 IPC in this case on next date. Further, let notice be issued to Ahlmad of the court of Ld. MM to place on record the chargesheet if it is already filed.

Issue notice Ahlmad of the Ld. Ilaka MM for tomorrow. Further IO is also directed to appear through VC or in person with case file.

Put up on 27.10.2020.

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(NAVEEN KUMAR KASHYAP)
Additional Sessions Judge-04/Central
26.10.2020

Bail Application No.: 1600/2020

State v. Sanjay Mahesh Bajrange @ Gattu

FIR no.: 246/2020

PS: Sarai Rohilla

26.10.2020

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

Sh. Siddharth, Ld. Counsel for applicant /accused through VC.

Reply filed by IO.

Part arguments in detail heard .

Put up for further arguments/clarifications from IO/SHO concerned regarding the ingredient invoking Section 395 and 420 IPC in this case on next date. Further, let notice be issued to Ahlmad of the court of Ld. MM to place on record the chargesheet if it is already filed.

Issue notice Ahlmad of the Ld. Ilaka MM for tomorrow. Further IO is also directed to appear through VC or in person with case file.

Put up on 27.10.2020.

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**(NAVEEN KUMAR KASHYAP)
Additional Sessions Judge-04/Central
26.10.2020**

Bail Application No.: 1606/2020

State v. Varun

FIR no.: 14/2019

PS: Subzi Mandi Railway station

26.10.2020

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

Sh. Shailender Malik, Ld. Counsel for applicant /accused through VC.

This is an application for interim bail by accused Varun dated 23.10.2020.

Reply filed by IO.

Put up for orders/clarifications, if any on the physical hearing day of this court with file on 03.11.2020.

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**(NAVEEN KUMAR KASHYAP)
Additional Sessions Judge-04/Central
26.10.2020**

Bail Application No.:1607/2020

State v. Parvez @ Pachhu
FIR no.: 234/2020
PS: Prasad Nagar

26.10.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
None for applicant.
IO HC Rohtash Singh also present through VC.

**Put up for appearance of learned counsel for accused, arguments
and appropriate orders for 07.11.2020.**

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(NAVEEN KUMAR KASHYAP)
Additional Sessions Judge-04/Central
26.10.2020

Bail Application No.:1410/2020

State v. Pankesh Kumar & Ors.

FIR no.: 436/2018

PS: Karol Bagh

26.10.2020

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

Ld. Counsel for applicant through VC.

Arguments in detail heard.

Put up for orders/clarifications at 4 pm.

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(NAVEEN KUMAR KASHYAP)

Additional Sessions Judge-04/Central

26.10.2020

At 4 pm

Certain clarifications required including about co-relating weapon allegedly recovered from the accused which is used in the crime in question. As such, IO to appear with case file through VC at the time of further arguments.

Put up for further arguments and appropriate orders on 29.10.2020.

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(NAVEEN KUMAR KASHYAP)

Additional Sessions Judge-04/Central

26.10.2020

Bail Application No.:1590/2020

State v. Pankaj Goyal
FIR no.: 263/2020
PS: Prasad Nagar

26.10.2020

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

Arguments in detail heard.

Put up for orders/clarifications at 4 pm.

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(NAVEEN KUMAR KASHYAP)
Additional Sessions Judge-04/Central
26.10.2020

At 4 pm

Due to dictation in other matters, no time left.

Put up for order/clarifications, if any on 27.10.2020.

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(NAVEEN KUMAR KASHYAP)
Additional Sessions Judge-04/Central
26.10.2020

Bail Matters No.:1602/2020
State Vs Prateek Ajmani & Anr
FIR No.:420/2020
PS: Karol Bagh

26/10/2020

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC.
Mr. Gurjeet Singh, learned counsel for the applicant / accused through VC.
Complainant who is advocate by profession is also present through VC.

This is an application for anticipatory bail.

Reply already filed by the IO. IO is also present through VC.

Arguments in detail heard.

Put up for orders / clarification, if any, for **29/10/2020**.

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(Naveen Kumar Kashyap)
ASJ-04/Central/26.10.2020

Bail Matters No.:1603/2020
State Vs Himanshu Ajmani & Anr
FIR No.:452/2020
PS: Karol Bagh

26/10/2020

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC.
Mr. Gurjeet Singh, learned counsel for the applicant / accused through VC.
Complainant who is advocate by profession is also present through VC.

This is an application for anticipatory bail.

Reply already filed by the IO. IO is also present through VC.

Arguments in detail heard.

Put up for orders / clarification, if any, for **29/10/2020**.

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(Naveen Kumar Kashyap)
ASJ-04/Central/26.10.2020

Bail Matters No.:1602/2020
State Vs Wasim
FIR No.:07/2020
PS: Railway Main Delhi

26/10/2020

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

Reply filed. Sometime is sought by the counsel for the accused to go through
the same.

At request, put up for arguments for **02/11/2020**.

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(Naveen Kumar Kashyap)
ASJ-04/Central/26.10.2020

Bail Matters No.:1605/2020
State Vs Rizwan
FIR No.:20381/2020
PS: Prashad Nagar

26/10/2020

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC.
Mr. Praduman Sharma, learned counsel for the applicant through VC.

Reply filed.

Part arguments heard in detail.

Put up for further arguments / orders / clarification, if any, for **04/11/2020**.

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(Naveen Kumar Kashyap)
ASJ-04/Central/26.10.2020

Bail Matters No.:1449/2020
State Vs Rajesh @ Barfi
FIR No.: 340/2012
PS: Sarai Rohilla

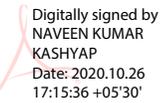
26/10/2020

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

None for the applicant.

Put up for appearance of counsel for the applicant and for arguments /
appropriate orders for **08/11/2020**.

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(Naveen Kumar Kashyap)
ASJ-04/Central/26.10.2020

Bail Matters No.:1538/2020
State Vs Keshav Kakkar
FIR No.: 304/2020
PS: Karol Bagh

26/10/2020

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC.
Mr. Vineet Jain, learned counsel for the applicant through VC.

Arguments in detail heard.

Put up for further arguments, if any, orders for **05/11/2020**. Issue notice to Ahlmad of Learned MM to summon chargesheet at the time of orders. Further IO is also directed to appear through VC on the next date of hearing with case file.

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(Naveen Kumar Kashyap)
ASJ-04/Central/26.10.2020

BAIL APPLICATION

(APPLICANT VISHAL @ HONEY)

State v. Imran @ Akhtar Khan & Ors.

FIR No. : 227/2020

PS: Wazirabad

**U/S: 302,120B,34 IPC &
25, 27 Arms Act**

26.10.2020

Undersigned is also discharging bail roster duty.

Present: Mr. Pawan Kumar ,Ld. Addl. PP for the State through VC.
Sh. Rajesh Rathod, Ld. Counsel for applicant through VC.

Issue notice of IO to file reply.

Put up for reply, arguments and appropriate orders for 07.11.2020

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(Naveen Kumar Kashyap)

ASJ-04/Central/26. 10. 2020

State Vs Sanjay Tiwari & others
(Misc. Application)
FIR No. 478/2018
P. S. Burari

26.10.2020

This court is also discharging bail roster duty.

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.
Mr. B.S. Tiwari, learned counsel for the applicants through VC.

This is an application for summoning of witness / record filed by the accused through counsel.

Heard. Allowed.

Steps be taken within 2 working days by the accused to summon this witness / record. Issue notice of this application through electronic mode to summon this witness / record for the next date of hearing.\

Put up on the date already fixed i.e. 27/10/2020.

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(Naveen Kumar Kashyap)
ASJ-04/Central/26.10.2020

State Vs Taufiq Kala & others
(Application of Sunny)
FIR No. 20/2016
P. S. Crime Branch

26.10.2020

This court is also discharging bail roster duty.

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

Reply filed by the IO.

At request, put up for arguments and appropriate orders for **09/11/2020**.

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(Naveen Kumar Kashyap)
ASJ-04/Central/26.10.2020

State Vs Vinod @ Dada
(Misc Application for release of money)
FIR No. 39/2019
P. S. Lahori Gate

26.10.2020

This court is also discharging bail roster duty.

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

This is an application for release of case property / Rs. 20,000/- filed by the applicant through counsel.

Issue notice of this application to all the accused persons also. Steps be taken within 3 working days. Put up for **12/11/2020**. Further other similar applications are also listed for 12/11/2020 for arguments / disposal.

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(Naveen Kumar Kashyap)
ASJ-04/Central/26.10.2020

State Vs Pooja & others
(Application of Munni @ Moni)
FIR No. 292/2014
P. S. Rajinder Nagar

26.10.2020

This court is also discharging bail roster duty.

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

This is an application for regular bail filed by applicant through counsel.

It is stated that this case is already listed for tomorrow.

As such, at request, put up for appropriate orders / proceedings for **27/10/2020**.

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(Naveen Kumar Kashyap)
ASJ-04/Central/26.10.2020

State Vs Anup Kumar @ Chipra
(Application of Anup Kumar)
FIR No.512/2016
P. S. Burari

26.10.2020

This court is also discharging bail roster duty.

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.
Mr. Neeraj, learned counsel for the applicant through VC.
Accused is stated to be on interim bail in this case.

This is an application for regular bail.

Reply already filed.

Arguments in detail heard.

Put up for orders / clarification, if any, for **27/10/2020**.

At this stage, it is further pointed out by the counsel for the applicant / accused that in the present case there are certain directions by the Hon'ble High Court dated 18/07/2019 to conclude the present case within 3 months.

As such, next date of hearing is preponed and is fixed for **12/11/2020** for regular hearing.

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(Naveen Kumar Kashyap)
ASJ-04/Central/26.10.2020

State Vs Ashu Atta
(Application of Rahul @ Tyagi)
FIR No. 210/2018
P. S. Prashad Nagar

26.10.2020

This court is also discharging bail roster duty.

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

Mr. Pankaj Srivastav, learned counsel for the applicant through VC.

This is an application for interim bail filed by applicant through counsel.

Reply filed. Copy supplied.

At request, put up for arguments, appropriate orders for **29/10/2020**.

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(Naveen Kumar Kashyap)
ASJ-04/Central/26.10.2020

SC No.: 27938/2016
FIR :202/2015
PS: Subzi Mandi
State Vs Dhanna Ram Choudhary

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 were 23/03/2020. 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.

26.10.2020

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

Present: Mr. Pawan Kumar, learned Addl.PP for the State through VC.
Mr. Himanshu Sehgal, learned counsel for accused through VC.
Accused is stated to be on regular bail.

Put up for PE in terms of previous order for **12/03/2021**. Issue notice to two of the material witnesses for the next date of hearing.

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(Naveen Kumar Kashyap)
ASJ-04/Central/26.10.2020

SC No.: 28890/2016
FIR :219/2016
PS: Subzi Mandi
State Vs Sonu Kumar

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 were 27/08/2020. 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.

26.10.2020

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

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

None.

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

Put up for PE in terms of previous order for **12/3/2021**. Issue notice to two of the material witnesses for the next date of hearing.

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(Naveen Kumar Kashyap)
ASJ-04/Central/26.10.2020

CR No. 322/2019
G.K. Sarkar Vs Shameem Ahmed

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.

26.10.2020

This court is also discharging bail Roster duty till further orders.
Present: Mr. Satish Aggarwal, learned counsel for the revisionist through VC.

These two matters are taken up today as the same were inadvertently listed for holiday i.e. 24/10/2020.

It is stated that arguments have already been addressed in this case.

Put up for clarification / orders / further appropriate proceedings for **07/11/2020**. In the meanwhile, interim order to continue till the next date of hearing only.

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(Naveen Kumar Kashyap)
ASJ-04/Central/26.10.2020

CR No. 323/2019
G.K. Sarkar Vs Shameem Ahmed

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.

26.10.2020

This court is also discharging bail Roster duty till further orders.
Present: Mr. Satish Aggarwal, learned counsel for the revisionist through VC.

These two matters are taken up today as the same were inadvertently listed for holiday i.e. 24/10/2020.

It is stated that arguments have already been addressed in this case.

Put up for clarification / orders / further appropriate proceedings for **07/11/2020**. In the meanwhile, interim order to continue till the next date of hearing only.

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(Naveen Kumar Kashyap)
ASJ-04/Central/26.10.2020

Anticipatory Bail

**Bail Application No.: 1510/2020
State vs Mohd. Asif
FIR No. 294/2020
P. S. Sarai Rohilla
U/s: 302, 34 IPC & 25, 27 Arms Act**

26.10.2020

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

1. Vide this order, present anticipatory bail application dated 11/10/2020 seeking grant of anticipatory bail filed by the applicant through counsel is disposed off.

2. In the present case, it is argued by the learned counsel that present accused do not have any role in the murder of the deceased. Further, the complainant of the FIR story is unbelievable including having regard to the timing of the incident. Even as per the allegation of prosecution role of the present applicant which is falsely alleged, is firing in air that after the alleged murder by some other person. It is further argued that no custodial interrogation of the present accused is required. Main accused is already arrested and weapon of offence is already recovered. That further case laws are also relied by the learned counsel for the accused. As such, it is prayed that he be granted anticipatory bail in the present case.

**Bail Application No.: 1510/2020
State vs Mohd. Asif
FIR No. 294/2020
P. S. Sarai Rohilla
U/s: 302, 34 IPC & 25, 27 Arms Act**

3. On the other hand, in reply filed by SI Pushpender, as also argued by learned Addl.PP for the State, it is stated that two empty cartridges one of .32 caliber and another of .315 caliber were found from the place of incident. The accused was brought dead to the hospital. The complainant specifically mentioned the name of the applicant as part of the group who committed the murder in question as present accused took active participation in the same. That custodial interrogation of the present applicant is required to trace out other accused and corroborate the evidence collected so far. It is further stated that investigation is at initial stage. As such, present anticipatory bail application is opposed.

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

5. At this stage it may be noted that in the case of **Bhadresh Bipinbhai Sheth Vs. State Of Gujarat & Another**(Criminal Appeal Nos. 1134-1135 Of 2015, Arising Out Of Special Leave Petition (Crl.) Nos. 6028-6029 Of 2014), Hon'ble SC discussed and reviews the law relating to section 438 Cr.P.C.

6. A judgment which needs to be pointed out is a Constitution Bench Judgment of this Court in the case Gurbaksh Singh Sibbia and Other vs. State of Punjab(1980 AIR 1632 ; 1980 SCR(3) 383), The Constitution Bench in this case emphasized that provision of anticipatory bail enshrined in [Section 438](#) of the Code is conceptualised under [Article 21](#) of the Constitution which relates to personal liberty. Therefore, such a provision calls for liberal interpretation of [Section 438](#) of the Code in light of [Article 21](#) of the Constitution. The Code explains that an anticipatory bail is a pre- arrest legal process which directs that if the person in whose

favour it is issued is thereafter arrested on the accusation in respect of which the direction is issued, he shall be released on bail. The distinction between an ordinary order of bail and an order of anticipatory bail is that whereas the former is granted after arrest and therefore means release from the custody of the police, the latter is granted in anticipation of arrest and is therefore, effective at the very moment of arrest. A direction under [Section 438](#) is therefore intended to confer conditional immunity from the 'touch' or confinement contemplated by [Section 46](#) of the Code. The essence of this provision is brought out in the following manner:

“26. We find a great deal of substance in Mr Tarkunde’s submission that since denial of bail amounts to deprivation of personal liberty, the court should lean against the imposition of unnecessary restrictions on the scope of [Section 438](#), especially when no such restrictions have been imposed by the legislature in the terms of that section. [Section 438](#) is a procedural provision which is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offence in respect of which he seeks bail. An over-generous infusion of constraints and conditions which are not to be found in [Section 438](#) can make its provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on compliance with unreasonable restrictions. The beneficent provision contained in [Section 438](#) must be saved, not jettisoned. No doubt can linger after the decision in [Maneka Gandhi v. Union of India](#), (1978) 1 SCC 248, that in order to meet the challenge of [Article 21](#) of the Constitution, the procedure established by law for depriving a person of his liberty must be fair, just and reasonable. [Section](#)

438, in the form in which it is conceived by the legislature, is open to no exception on the ground that it prescribes a procedure which is unjust or unfair. We ought, at all costs, to avoid throwing it open to a Constitutional challenge by reading words in it which are not to be found therein.”

7. Though the Court observed that the principles which govern the grant of ordinary bail may not furnish an exact parallel to the right to anticipatory bail, still such principles have to be kept in mind, namely, the object of bail which is to secure the attendance of the accused at the trial, and the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial. Otherwise, bail is not to be withheld as a punishment. The Court has also to consider whether there is any possibility of the accused tampering with evidence or influencing witnesses etc. Once these tests are satisfied, bail should be granted to an under trial which is also important as viewed from another angle, namely, an accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. Thus, grant or non-grant of bail depends upon a variety of circumstances and the cumulative effect thereof enters into judicial verdict. The Court stresses that any single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail. After clarifying this position, the Court discussed the inferences of anticipatory bail in the following manner:

“31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of

his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the State" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in [The State v. Captain Jagjit Singh](#), AIR 1962 SC 253 : (1962) 3 SCR 622 : (1962) 1 Cri LJ 216, which, though, was a case under the old [Section 498](#) which corresponds to the present [Section 439](#) of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the

court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.”

8. It is pertinent to note that while interpreting the expression “may, if it thinks fit” occurring in [Section 438\(1\)](#) of the Code, the Court pointed out that it gives discretion to the Court to exercise the power in a particular case or not, and once such a discretion is there merely because the accused is charged with a serious offence may not by itself be the reason to refuse the grant of anticipatory bail if the circumstances are otherwise justified. At the same time, it is also the obligation of the applicant to make out a case for grant of anticipatory bail. But that would not mean that he has to make out a “special case”. The Court also remarked that a wise exercise of judicial power inevitably takes care of the evil consequences which are likely to flow out of its intemperate use.

9. Another case to which can be referred to is the judgment of a Division Bench of this Court in the case of [Siddharam Satlingappa Mhetre v. State of Maharashtra and Others](#)(SLP(CRL.) 7615/2009 DATED 02-12-2021).This case lays down an exhaustive commentary of [Section 438](#) of the Code covering, in an erudite fashion, almost all the aspects and in the process relies upon the aforesaid Constitution Bench judgment in Gurbaksh Singh's case. In the very first para, the Court highlighted the conflicting interests which are to be balanced while taking a decision as to whether bail is to be granted or not, as is clear from the following observations:

“1.This appeal involves issues of great public importance pertaining to the importance of individual's personal liberty and the society's interest. Society has a vital interest in grant or refusal of bail because every criminal offence is the offence against the State. The order granting or

refusing bail must reflect perfect balance between the conflicting interests, namely, sanctity of individual liberty and the interest of the society. The law of bails dovetails two conflicting interests, namely, on the one hand, the requirements of shielding society from the hazards of those committing crimes and potentiality of repeating the same crime while on bail and on the other hand, absolute adherence to the fundamental principle of criminal jurisprudence regarding presumption of innocence of an accused until he is found guilty and the sanctity of individual liberty.....”

10. The principles which can be culled out can be stated as under:

(i) The complaint filed against the accused needs to be thoroughly examined, including the aspect whether the complainant has filed a false or frivolous complaint on earlier occasion. If the connivance between the complainant and the investigating officer is established then action be taken against the investigating officer in accordance with law.

(ii) The gravity of charge and the exact role of the accused must be properly comprehended. Before arrest, the arresting officer must record the valid reasons which have led to the arrest of the accused in the case diary. In exceptional cases, the reasons could be recorded immediately after the arrest, so that while dealing with the bail application, the remarks and observations of the arresting officer can also be properly evaluated by the court.

(iii) It is imperative for the courts to carefully and with

meticulous precision evaluate the facts of the case. The discretion to grant bail must be exercised on the basis of the available material and the facts of the particular case. In cases where the court is of the considered view that the accused has joined the investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided. A great ignominy, humiliation and disgrace is attached to arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-conviction stage or post-conviction stage.

(iv) There is no justification for reading into [Section 438](#) CrPC the limitations mentioned in [Section 437](#) CrPC. The plenitude of [Section 438](#) must be given its full play. There is no requirement that the accused must make out a “special case” for the exercise of the power to grant anticipatory bail. This virtually, reduces the salutary power conferred by [Section 438](#) CrPC to a dead letter. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints and conditions on his freedom, by the acceptance of conditions which the court may deem fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

(v) The proper course of action on an application for anticipatory bail ought to be that after evaluating the averments and accusations available on the record if the court is inclined to grant anticipatory bail then an interim bail be granted and notice be issued to the Public Prosecutor. After

hearing the Public Prosecutor the court may either reject the anticipatory bail application or confirm the initial order of granting bail. The court would certainly be entitled to impose conditions for the grant of anticipatory bail. The Public Prosecutor or the complainant would be at liberty to move the same court for cancellation or modifying the conditions of anticipatory bail at any time if liberty granted by the court is misused. The anticipatory bail granted by the court should ordinarily be continued till the trial of the case.

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

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

(viii) Discretion vested in the court in all matters should be exercised with care and circumspection depending upon the facts and circumstances justifying its exercise. Similarly, the discretion vested with the court under [Section 438 CrPC](#) should also be exercised with caution and prudence. It is unnecessary to travel beyond it and subject the wide power and discretion conferred by the legislature to a rigorous code of self-imposed limitations.

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

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

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

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

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

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

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

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

people;

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

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

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

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

11. Now in this background of law we come back to present case. The accused / applicant is named in the FIR itself. The offence in question is committed in which the deceased was shot by gun by the co-

accused at point blank distance. Further his presence on the spot was confirmed in the complaint itself. The offence committed is most serious and allegations against the present accused are specific. The requirement for his custodial interrogation cannot be ruled out. Further, co-accused are yet to be arrested. Having regard to the nature of accusation against the accused / applicant which are very serious, specific allegation read with section 34 IPC and the other facts and circumstances discussed above, under these over all facts and circumstances, this court do not find sufficient ground to grant the relief sought in the present application by the applicant. The same is dismissed with these observations.

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

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

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(NAVEEN KUMAR KASHYAP)
ASJ-04(Central Distt)/Delhi/26/10/2020

: 1 :

Bail Application

**Bail Application No.: 1601/2020
State Vs Mohd. Sadiqeen
FIR No. : 211/2020
PS: Sarai Rohilla
U/S: 395, 394, 427, 506 IPC**

26.10.2020

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC
Mr. Suraj Prakash Sharma, learned Counsel from for Accused through VC.

Vide this order, the regular bail application under section 439 Cr.P.C. on behalf of accused dated 25/10/2020 filed through counsel is disposed of.

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

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

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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

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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.

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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. (**Sundeeep 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 matter is still pending before learned MM although chargesheet is already filed; that four of the co-accused are already granted bail; as such on parity also bail may be granted to the present accused; that investigation is already complete as such no purpose would be served by keeping him in JC; that further even now the complainant, who is the tenant of

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accused side do not have any grievance against the accused side. As such, it is prayed that he be granted regular bail.

On the other hand, it is argued by the learned Addl.PP for the state that there are serious and specific allegations against the present accused; that present accused is main accused in the present case; as such it is stated that role of the other accused assigned is different from that of present accused for granting bail. The present accused forcefully entered the shop of the complainant and started breaking the counter and the goods and also starting kicking the complaining. Further, at this stage, five relatives / friends of accused also started physically assaulting and breaking items in the shop. It is further claimed that the money that was kept in the locker was also looted. Their previous conduct is also far from satisfactory and present accused is involved in other two criminal cases also. As such, present application is strongly opposed.

I find force in the arguments of learned Addl.PP for the state. The offence is serious in nature. Further on bare reading of the FIR, that the role of the present accused is different from the co-accused who are granted bail. Present accused is the main accused. Further, there are specific allegations against him in the FIR itself. Further there is likelihood that he will threaten / influence the witness / complainant or may commit similar crime if released on bail having regard to over all facts and circumstances placed on record. As such, this court is not inclined to grant the relief as sought in the present application. Hence, the same is dismissed.

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

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

NAVEEN
KUMAR
KASHYAP

Digitally signed by
NAVEEN KUMAR
KASHYAP
Date: 2020.10.26
17:25:30 +05'30'

(Naveen Kumar Kashyap)
Additional Sessions Judge-04
Central/THC/Delhi
26/10/2020

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