

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

Bail Application No.:1981/2020

State Vs Parvinder Singh
FIR No.286/2020
PS. : Prashad Nagar
U/s: 419,420, 120 B r/w 34 IPC &
66C and 66 D IT Act

28.11.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State is available through VC.
Sh. Neeraj Aarora, Ld. Counsel for applicant through VC.

Vide this order, regular bail application u/s 439 Cr.PC dated 25.11.2020 filed by applicant Parvinder Singh through counsel is disposed of.

In nutshell, it is argued in such application that accused is in custody since 08.11.2020. That there is no complainant, no victim, no wrongful gain as per record so far. As such, it is claimed that no such offence as otherwise claimed by prosecution is made out at all. It is further claimed that section 66 C and 66 D IT Act are analogous to section 419/420 IPC and IT Act being Special Act has overriding effects. Further, certain case law also relied in this regard. It is further stated that as there is no victim, therefore, no wrongful loss to anybody and as such, no offence u/s 420 IPC is made out. It is further stated that offence u/s 66C and 66 D IT Act are bailable in nature. It is further argued that in any case all the offences alleged are punishable upto seven years only. Further, wife of the accused is suffering from heart problem and mother is also ill. Further, there is corona virus including inside the jail. That PC remand was given and now even time to seek custodial interrogation is already over. Further, certain other case laws is also relied to state that bail is a rule and jail is exception. Further, it is stated that accused has roots in the society. As such, it is stated he be granted regular bail.

On the other hand, it is argued by Ld. Addl. PP for the state that there are case laws also to state that offences under Special Act as well as IPC can be invoked together and there is no illegality in the same, particularly at the stage of investigation. It is further stated that offence is very serious in nature and carried out in a planned manner public against a large of a foreign country/UK by running a false/fake call center. That there is deep rooted conspiracy to carry out such offence against innocent victims. It is further stated that a

number of laptops were found in a raid made by the police alongwith 19 employees and illegal telecom network for VOIP call was found installed for making international calls. Further, a sum of about Rs.19 lacs also recovered. It is further stated that investigation is at initial stage. As such, present bail application is strongly opposed.

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

The personal liberty is a priceless treasure for a human being. It is founded on the bed rock of constitutional right and accentuated further on human rights principle. The sanctity of liberty is the fulcrum of any civilized society. Deprivation of liberty of a person has enormous impact on his mind as well as body. Further article 21 Of the Constitution mandates that no person shall be deprived of his life or personal liberty except according to procedure established by law. Further India is a signatory to the International Covenant On Civil And Political Rights, 1966 and, therefore, Article 21 of the Constitution has to be understood in the light of the International Covenant On Civil And Political Rights, 1966. *Further* Presumption of innocence is a human right. Article 21 in view of its expansive meaning not only protects life and liberty, but also envisages a fair procedure. Liberty of a person should not ordinarily be interfered with unless there exist cogent grounds therefor. The fundamental principle of our system of justice is that a person should not be deprived of his liberty 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, even if it is taken that provision of IPC are also applicable even when maximum punishment of the offences alleged against the present accused is 7 years. Further, the accused is resident of Delhi. Further, so far the case of the prosecution is not that any of the victim made any complaint against the accused regarding cheating. Further the offences under IT Act are bailable in nature. But having noted so, it is also a matter of record that investigation of a offence of present nature need to be thorough and involves information from other countries also. Further, the raid was conducted by the police in a surprise manner and about 31 laptops, 16 wifi routers and 5 mobile phones were seized alongwith other devices for making international call. Investigation is at initial stage only. Further, the nature of offence and the manner in which it is committed is serious in nature and threat to ever increasing electronic world smooth functioning and reliability. It also touches upon relationship with other countries and image of the India to the outside world. Therefore, having regard to the nature of offence allegations against present accused that he is the main accused and the stage of investigation, this court is not inclined to grant regular bail to the accused at this stage. **With these observations, present bail application is dismissed.**

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

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

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ASJ-04(Central/Delhi/28.11.2020.**

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

BAIL APPLICAITON No: 1887/2020

State v. Bhupinder @ Lav s/o Ashok
FIR No. :181/2020
P. S: Hauz Qazi
U/s: 457, 380 , 411 r/w 34 IPC

28.11.2020.

This Court is also discharging bail roster duty.

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Ms. Rakesh Srivastava,Ld. for accused/applicant through VC.
ASI Amarjeet is also present through VC.

Vide this order, regular bail application u/s 439 Cr.PC dated 10.10.2020 filed through counsel is disposed off.

It is stated in such application that he has been falsely implicated in the present case; that he is in JC since 07/10/2020; That he was arrested based on the disclosure statement of co-accused; that nothing recovered from his possession except the planted recovery; that he is no more required for investigation. There is no previous conviction record of present accused. 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 that present accused was arrested later on based on disclosure of main accused Akash and stolen bracelet was recovered from his possession; that his family members do not have control over him; that there are other criminal cases against him; As such, present bail application is strongly opposed.

I have heard both the sides.

The personal liberty is a priceless treasure for a human being. It is founded on the bed rock of constitutional right and accentuated

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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

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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 form 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

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U/s: 457,380 , 411 r/w 34 IPC

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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

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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.

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In the present case, it is a matter of record that accused is in JC since 07/10/2020. In fact, the period for seeking police remand is already over. Case property is already stated to be recovered. Further, he is not arrested on the spot but later on. As such, no purpose would be served by keeping such accused in JC. Investigation and thereafter trial is likely to take time. Further, it may be noted that there is fundamental presumption of innocence in any criminal case in India i.e. an accused is presumed innocent unless proved guilty. In present case, no previous conviction record is placed on record by the IO and at best there are cases alleging involvement of present accused in other similar cases.

In above facts and circumstances, such accused is granted bail subject to furnishing of **personal bond in the sum of Rs. 15,000/- with two sound sureties of like amount**, subject to the satisfaction of the learned Trial court and the following additional conditions:

- i) Applicant shall not flee from the justice;*
- ii) Applicant shall not tamper with the evidence;*
- iii) Applicant shall not threaten or contact in any manner to the prosecution witnesses ,*
- iv) Applicant shall not leave country without permission;*
- v) Applicant shall convey any change of address immediately to the IO and the court;*
- vi) Applicant shall also provide his mobile number to the IO;*
- vii) Applicant shall mark his attendance before concerned IO (and if IO is not available then to concerned SHO) every alternative /second day through mobile by sharing his/her location with the SHO concerned till the chargesheet is filed;*
- viii) Applicant shall further make a call, preferably by audio plus video mode to concerned IO, (and if IO is not available then to concerned SHO) once a week,*

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preferably on Monday between 10 a.m. to 5 p.m. till the chargesheet is filed.

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

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

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

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

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

“..... 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.*

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d) *In case a judge stands transferred before the execution, it shall be the responsibility of the successor judge to ensure execution.....”*

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

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

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

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

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

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P. S: Hauz Qazi
U/s: 457,380 , 411 r/w 34 IPC**

Anticipatory Bail

**Bail Application No.:1942/2020
State Vs Mehtabuddin @ Babli
FIR No. 189/2020
P. S. Hauz Qazi
U/s: 308, 452, 323, 34 IPC**

28.11.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Ms. Kirti Gupta, learned counsel for the applicant through VC.
IO also present through VC.

Further arguments heard.

1. This is an application for anticipatory bail u/s 438 Cr.PC filed by the applicant Mehtabuddin through counsel is disposed off.

2. In the present case, it is argued by the learned counsel that in any case offence in question is punishable for offence less than seven years only. As such, judgment of 'Arnesh Kumar vs State of Bihar' is also applicable that accused is 52 years old and having three children and has no previous criminal record; that he is General Secretary of RWA Lal Kuan resident welfare which even filed a writ petition before Hon'ble High Court No. WP(C) 9939 /2019 relating to property in question bearing No.1814 and restrain order was passed by the Hon'ble High Court regarding unauthorized construction on the same. Despite that owner and builder of such property was carrying out unauthorized constructions in disobedience of order of Hon'ble High Court. The accused side even

**Bail Application No.:1942/2020
State Vs Mehtabuddin @ Babli
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called police control room on mobile phone. That even public gathered on that day .Then only construction was stopped ,but present accused alongwith other accused were initially restrained inside and not allowed to go by the labourer who even misbehaved with them and confined them. It is further argued that owner and builder of such building through the Munshi / labourer has got registered present baseless FIR to put pressure on the accused side / RWA ,so that such builder and owner can carry out their illegal construction. That accused side was always ready to join investigation as even directed by this Court only during pendency of present application. That accused has roots in society and there is no apprehension of fleeing him justice. That he is ready to join investigation in future also. As such, IO / SHO be directed to release the applicant on bail in the event of his arrest.

3. On the other hand, in reply submitted by IO ASI Anuj Kumar and oral submissions made in Court, it is claimed that accused Mehtabuddin @ Babli attacked the complainant with unknown sharp thing. It is further submitted that accused side even assaulted two of the labourers. That blood samples are sent to FSL Rohini. Final opinion on the MLC is awaited. But it is stated that CCTV footage of the crime and *independent witnesses are not found*. That such accused is not found and notices were issued to him. It is further claimed that he may threaten the witness or tamper with evidence. It is further argued that weapon of offence is yet to be recovered from Mehtabuddin @ Babli. It is further stated by the IO that

there was some order by Hon'ble High Court and property was sealed by such order , but same was de-sealed without authority by the complainant side. It is further claimed that intimation was sent to MCD and the property is re-sealed now. As such, present application is strongly 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 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. In the present case, prima facie, the investigation appears to be not upto marks. In the FIR itself, it is admitted by the complainant side that he was cleaning the property inside the main gate. Admittedly such property was sealed by the order of the Court, then why such activity was carried out without permission from MCD or competent authority is not explained or bother to be found out by the IO. It further appears that accused side are member of the local RWA on whose instance such property was ordered to be sealed. It further appears that the accused side went to the property to raise objection why work is being carried out on the same despite sealing order. Further, it is mentioned in the FIR itself that both the accused Shakeel and Mehtabuddin *alongwith other persons* came to the spot. Still IO is claiming that there are not independent public persons, despite the fact that such other persons are not co-accused as per report of IO. Further

such area of Lal Kuan is a congested area, despite that also IO is not able to find out any public witness or CCTV footage. Further under these circumstances, when stakes of the builder and owner of such unauthorized building / structures are high, the false implication of the local RWA members cannot be ruled out, so that they can put pressure on them and carry out their nefarious activities. Further, the role of local police / concerned police official is also questionable as they were not able to detect and report themselves the activities being carried out in such building, despite there being a sealing order and now only when the matter has reached the Court in such proceedings, it is stated that intimation is also sent to MCD. Further, offence alleged are punishable less than 7 years. Further, the accused persons are already joined the investigation and they have roots in the society. Thus, in the background of such circumstances, the case law discussed above and the parameters of section 438 Cr.PC, it is directed that applicant be released on bail in the event of his arrest on furnishing of personal bond and surety bond in the sum of Rs. 25,000/- each, subject further following conditions.

i) He will fully cooperate with investigation, including on the aspect of alleged injury caused to the complainant ,

ii) That he will appear before Trial Court as and when called as per law.

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

iv) That he will not leave India without permission of the Court.

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

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

Bail Application No.:1942/2020
State Vs Mehtabuddin @ Babli
FIR No. 189/2020
P. S. Hauz Qazi
U/s: 308, 452, 323, 34 IPC

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.

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

The observations made in the present anticipatory 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
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KASHYAP**

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**(NAVEEN KUMAR KASHYAP)
ASJ-04(Central Distt.)/Delhi/28/11/2020**

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

ANTICIPATORY Bail Application No.: 1989/2020

State v. Mohd. Faizan @ Amaan @ aman

FIR No. : 170/2020
PS: Kamla Market
U/S: 356,379 IPC

28.11.2020

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

1. **Vide this order**, present **anticipatory bail application** dated 27.11.2020 u/s 438 Cr.PC **filed by accused/applicant Md Faizan @Amaan @ Aman is disposed of.**
2. In nut shell, it is argued on behalf of such applicant that he is young boy of 22 years old. He has roots in the society. That he received a notice u/s 82 Cr.P.C. issued by the court of Ld. MM-08, Tis Hazari courts, Central district. As such, he came to know about the criminal case pending against him. It is further argued that he is ready to join the investigation of the present case as and when so directed. As such, it is prayed that he be granted anticipatory bail.
3. On the other hand, in reply filed by IO and as also argued by Ld. Addl. PP for the state, it is argued that present accused alongwith co-accused snatched the mobile phone of the complainant and run away on a scooty. That during investigation, it came to the knowledge that such stolen MI phone was in the custody of present applicant. That he could not be searched despite efforts made so far. As such earlier NBW was issued against the present accused and thereafter process u/s 82 Cr.P.C.

was initiated. That he is also involved in the other criminal case in the past. That his custodial interrogation is required. Further, his TIP is to be conducted. As such, present anticipatory bail application is opposed.

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

5. There are specific allegations against the accused person. Further, offence alleged is a nuisance to society at large. His custodial interrogation is required for recovering the stolen property as well as for TIP. Further, process u/s 82 Cr.P.C. is already initiated against the accused. As such, under these circumstances, this court do not find merit to grant the relief sought in the present application. **With these observations present applications are dismissed.**

6. **But before parting, it is pertinent to note that maximum punishment for the offence alleged is less than seven years. Therefore, IO/SHO concerned is duty bound to consider and take into account the directions issued by Hon'ble Supreme Court in the case of "Arnesh Kumar".**

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

8. **Copy of this order be given to applicants as well as a copy be sent to IO/SHO concerned through electronic mode.**

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**(NAVEEN KUMAR KASHYAP)
Additional Sessions Judge-04/Central
Central Distt/Delhi
28.11.2020**

Anticipatory Bail

Bail Application No.:1944/2020
State Vs Shakeel Ahmed
FIR No. 189/2020
P. S. Hauz Qazi
U/s: 308, 452, 323, 34 IPC

28.11.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Ms. Kirti Gupta, learned counsel for the applicant through VC.
IO also present through VC.

Further arguments heard.

1. This is an application for anticipatory bail u/s 438 Cr.PC filed by the applicant **Shakeel Ahmed** through counsel is disposed off.
2. In the present case, it is argued by the learned counsel that in any case offence in question is punishable for offence less than seven years only. As such, judgment of 'Arnesh Kumar vs State of Bihar' is also applicable that accused is 52 years old and having three children and has no previous criminal record; that he is Vice president of RWA Lal Kuan resident welfare which even filed a writ petition before Hon'ble High Court No. WP(C) 9939 /2019 relating to property in question bearing No.1814 and restrain order was passed by the Hon'ble High Court regarding unauthorized construction on the same. Despite that owner and builder of such property was carrying out unauthorized constructions in disobedience of order of Hon'ble High Court. The accused side even called police control room on mobile phone. That even public gathered on that day .Then only construction was stopped ,but present accused alongwith other accused were initially restrained inside and not allowed to go by the labourer who even misbehaved with them and confined them. It

Bail Application No.:1944/2020
State Vs Shakeel Ahmed
FIR No. 189/2020
P. S. Hauz Qazi
U/s: 308, 452, 323, 34 IPC

is further argued that owner and builder of such building through the Munshi / labourer has got registered present baseless FIR to put pressure on the accused side / RWA ,so that such builder and owner can carry out their illegal construction. That accused side was always ready to join investigation as even directed by this Court only during pendency of present application. That accused has roots in society and there is no apprehension of fleeing him justice. That he is ready to join investigation in future also. As such, IO / SHO be directed to release the applicant on bail in the event of his arrest.

3. On the other hand, in reply submitted by IO ASI Anuj Kumar and oral submissions made in Court, it is claimed that accused Mehtabuddin @ Babli attacked the complainant with unknown sharp thing. It is further submitted that accused side even assaulted two of the labourers. That blood samples are sent to FSL Rohini. Final opinion on the MLC is awaited. But it is stated that CCTV footage of the crime and *independent witnesses are not found*. That such accused is not found and notices were issued to him. It is further claimed that he may threaten the witness or tamper with evidence. It is further argued that weapon of offence is yet to be recovered from Mehtabuddin @ Babli. It is further stated by the IO that there was some order by Hon'ble High Court and property was sealed by such order , but same was de-sealed without authority by the complainant side. It is further claimed that intimation was sent to MCD and the property is re-sealed now. As such, present application is strongly 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.

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

“1.This appeal involves issues of great public importance pertaining to the importance of individual's personal liberty and the society's interest. Society has a vital interest in grant or refusal of bail because every criminal offence is the offence against the State. The order granting or refusing bail must reflect perfect balance between the conflicting interests, namely, sanctity of individual liberty and the interest of the society. The law of bails dovetails two conflicting interests, namely, on the one hand, the requirements of shielding society from the hazards of those committing crimes and potentiality of repeating the same crime while on bail and on the other hand, absolute adherence to the fundamental principle of criminal jurisprudence regarding presumption of innocence of an accused until he is found guilty and the sanctity of individual liberty.....”

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

(i) The complaint filed against the accused needs to be thoroughly examined, including the aspect whether the complainant has filed a false or frivolous complaint on earlier

occasion. If the connivance between the complainant and the investigating officer is established then action be taken against the investigating officer in accordance with law.

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

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

(iv) There is no justification for reading into [Section 438](#) CrPC the limitations mentioned in [Section 437](#) CrPC. The plenitude of [Section 438](#) must be given its full play. There is no requirement that the accused must make out a “special case”

for the exercise of the power to grant anticipatory bail. This virtually, reduces the salutary power conferred by [Section 438 CrPC](#) to a dead letter. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints and conditions on his freedom, by the acceptance of conditions which the court may deem fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

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

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

(vii) In pursuance of the order of the Court of Session or the

High Court, once the accused is released on anticipatory bail by the trial court, then it would be unreasonable to compel the accused to surrender before the trial court and again apply for regular bail.

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

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

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

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

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

cognizable offence;

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

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

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

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

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

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

(i) The Court should consider reasonable

apprehension of tampering of the witness or apprehension of threat to the complainant;

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

11. Now in this background of law we come back to present case. In the present case, prima facie, the investigation appears to be not upto marks. In the FIR itself, it is admitted by the complainant side that he was cleaning the property inside the main gate. Admittedly such property was sealed by the order of the Court, then why such activity was carried out without permission from MCD or competent authority is not explained or bother to be found out by the IO. It further appears that accused side are member of the local RWA on whose instance such property was ordered to be sealed. It further appears that the accused side went to the property to raise objection why work is being carried out on the same despite sealing order. Further, it is mentioned in the FIR itself that both the accused Shakeel and Mehtabuddin *alongwith other persons* came to the spot. Still IO is claiming that there are not independent public persons, despite the fact that such other persons are not co-accused as per report of IO. Further such area of Lal Kuan is a congested area, despite that also IO is not able to find out any public witness or CCTV footage. Further under these circumstances, when stakes of the builder and owner of such unauthorized building / structures are high, the false implication of the local RWA members cannot be ruled out, so that they can put pressure on them and carry out their nefarious activities. Further, the role of local police / concerned police official is also questionable as they were not able to

detect and report themselves the activities being carried out in such building, despite there being a sealing order and now only when the matter has reached the Court in such proceedings, it is stated that intimation is also sent to MCD. Further, offence alleged are punishable less than 7 years. Further, the accused persons are already joined the investigation and they have roots in the society. Thus, in the background of such circumstances, the case law discussed above and the parameters of section 438 Cr.PC, it is directed that applicant be released on bail in the event of his arrest on furnishing of personal bond and surety bond in the sum of Rs. 25,000/- each, subject further following conditions.

i) He will fully cooperate with investigation, including on the aspect of alleged injury caused to the complainant ,

ii) That he will appear before Trial Court as and when called as per law.

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

iv) That he will not leave India without permission of the Court.

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

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.

With these observations present bail application is disposed of. Learned counsel for the applicant / accused is at liberty to collect the order through

electronic mode. Further copy of this order be sent to Jail Superintendent concerned, IO and SHO. Copy of order be uploaded on the website.

The observations made in the present anticipatory 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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Date: 2020.11.28
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**(NAVEEN KUMAR KASHYAP)
ASJ-04(Central Distt.)/Delhi/28/11/2020**

Bail Application: 1878/2020

**State v. Chander
FIR no.:330/2020
PS:Sarai Rohilla**

28.11.2020

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

Further reply filed by IO dated 28.11.2020.

Heard.

Issue notice to IO to appear with case file regarding the investigation qua present accused. In the meanwhile, previous order/protection to continue in terms of previous order till next date of hearing.

Put up on 18.12.2020.

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Date: 2020.11.28 18:57:19
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**(NAVEEN KUMAR KASHYAP)
Additional Sessions Judge-04/Central
28.11.2020**

Bail Application: 1881/2020

**State v. Zahid
FIR no.: 265/2020
PS:Sarai Rohilla**

28.11.2020

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

It is submitted by Ld. Counsel for applicant that he wants to withdraw his present Bail application.

Heard. Allowed.

In view of submissions made by learned counsel for applicant, present application is disposed of as withdrawn.

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Date: 2020.11.28 18:57:42
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**(NAVEEN KUMAR KASHYAP)
Additional Sessions Judge-04/Central
28.11.2020**

M. Cr.: 187/2020
and
M.Cr.: 188/2020

State v. Mohd. Sonu
and
State v. Md. Danish

FIR no.:444/2020
U/S: 392/34 IPC

28.11.2020

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

This is an application for reduction of surety amount. Such order was passed by Ld. MM-04 on 23.11.2020 and not by this court. As such, such application in present form in bail roster matter is not maintainable.

At this stage, Ld. Counsel wants to withdraw the present application.

Heard. Same is allowed with liberty to file appropriate proceedings before appropriate court.

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Date: 2020.11.28
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(NAVEEN KUMAR KASHYAP)
Additional Sessions Judge-04/Central
28.11.2020

Bail Application: 1571/2020

**State v. Dharmender
FIR no.:256/2020
PS: Prasad Nagar**

28.11.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Sh. Bijender Sharma, Ld. Counsel for applicant through VC.
IO Pooja Chaudhary is present through VC.
Ms. Lakshmi Raini, Ld. Counsel for complainant from Delhi
Commission for Women.

Further arguments heard.

Put up for orders/clarifications, if any on 02.12.2020.

In the meanwhile, interim protection to continue in terms of previous
order.

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Date: 2020.11.28
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**(NAVEEN KUMAR KASHYAP)
Additional Sessions Judge-04/Central
28.11.2020**

Bail Application: 1990/2020

**State v. Ravi @ Kangri
FIR no.:448/2020
PS: Karol Bagh**

28.11.2020

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

This is an application for regular bail dated 26.11.2020. But during the course of arguments, it is submitted by learned counsel for accused that same be treated as interim bail.

Arguments heard in detail.

It may be noted that vide order dated 25.11.2020 only regular bail of such accused was dismissed by this court. It is submitted that grandmother of the applicant has expired. That his father is suffering from some disability as such is not able to perform last rites of grandmother. As such, presence of accused is required to carry out such ceremonies.

But in reply filed by IO dated 27.11.2020, it is stated that father of the accused are four brothers. As such, there are other chacha/tau/uncle to carry out such rituals/last rites. Further, there is other family members of the present accused also to help with the same.

Having regard to the nature of offence and the acquisition of the present accused and the reply filed by IO, this court do not find any sufficient reason to grant the accused interim bail. **With these observations, present application is dismissed.**

Copy of this order be sent to the Jail Superintendent concerned through electronic mode. Further, a copy of this order be supplied to counsel for applicant through electronic mode.

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(NAVEEN KUMAR KASHYAP)
Additional Sessions Judge-04/Central
28.11.2020**

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Bail Application: 718/2020

**State v. Himanshu Chahal
FIR no.:193/2020
PS: Prasad Nagar
U/S: 307/34 IPC**

28.11.2020

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

This is an application titled modification/clarification in the bail order dated 21.10.2020 filed by the State through Ld. Addl. PP. It is claimed in such application that at the time of disposal of such application, the court has made certain observations which are contrary to the facts of the case. As such, it is prayed that necessary order for modification/clarification in such order dated 21.10.2020 be passed in the interest of justice. Learned counsel for accused submitted that he does not have any objection in the same.

Heard. Record perused including the bail order dated 21.10.2020.

On perusal of such record, this court do not find that any observation made by this court in such bail application is contrary to the facts of the case including about the CCTV footage shown by the IO in court. In fact, it is already noted in such bail application that concerned police officials were even themselves filing contrary report. But having noted so , it is clarified that it is needless to say that the observations made in the such bail application order are for the purpose of deciding such application, and do not affect the factual matrix of the investigation of the present case which is separate issue as per law.

Accordingly, with these observations, present application is disposed of.

Copy of this order be given to both sides through electronic mode. Further a copy be sent to IO concerned through electronic mode.

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Date: 2020.11.28 18:59:00
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**(NAVEEN KUMAR KASHYAP)
Additional Sessions Judge-04/Central
28.11.2020**

Bail Matters No.: 1693/2020
State Vs Harshad @ Happy
FIR No.:226/2020
PS:Pahar Ganj

28/11/2020

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC.
Mr. Gaurav Arora, learned counsel for the applicant / accused through VC.
Mr. Bappa Ghosh, learned counsel for the complainant through VC.

Arguments in detail heard from both the sides.

It is argued by the counsel for the accused that there is no foul play and accidentally she fell from stairs.

On the other hand, it is submitted by the counsel for the complainant that bare reading of postmortem report, it is clear that injuries described therein did not match with the version of the accused side.

Put up for appropriate orders for **17/12/2020**. Further, IO to appear with the case file on the next date of hearing.

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Date: 2020.11.28
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(Naveen Kumar Kashyap)
ASJ-04/Central/28.11.2020

Bail Matters No.: 1985/2020
State Vs Saurabh & Ors.
FIR No.:459/2020
PS: Sarai Rohilla

28/11/2020

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

Mr. Vijay Kumar Ravi, learned counsel for all the five applicants through VC.

All the five applicants are present physically in the Court during such VC hearing.

Further complainant Pragati is also present with her husband through VC.

IO of the case PSI Awanti is present through VC.

It is stated by both the parties that because of some misunderstanding against each other , complainant and accused sides present FIR No. 459/2020 registered by the complainant side as well as FIR No. 464/2020 registered by the accused side, in which accused Sapna is the complainant.

But now it is stated by both the parties that they have no objection if the bail is granted to each side ,as and when so filed. It is further stated that they want to amicably settle the matter and will file appropriate proceedings including before the Hon'ble High Court for quashing of such FIRs.

Put up for further appropriate orders / proceedings for **02/12/2020**. In the meanwhile, interim protection to continue till the next date of hearing in terms of previous order.

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(Naveen Kumar Kashyap)
ASJ-04/Central/28.11.2020

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Date: 2020.11.28 19:00:03
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Bail Matters No.: 1527/2020
State Vs Mohd. Hassan
FIR No.:176/2020
PS: Sarai Rohilla

28/11/2020

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

Mr. Nagender, learned counsel for the accused through VC.

IO ASI Suman Prasad is present through VC.

Further reply received from DCP concerned in which it is stated that such IO ASI Suman Prasad neither appeared in the Court on the last date of hearing nor intimated DCP office.

Arguments in detail heard from both the sides.

Put up for orders / clarification for **02/12/2020**.

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(Naveen Kumar Kashyap)
ASJ-04/Central/28.11.2020

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Bail Matters No.: 1557/2020
State Vs Monish Alam
FIR No.:266/2020
PS: Prasad Nagar

28/11/2020

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

Arguments heard in detail.

Put up for orders at 4:00 PM.

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Date: 2020.11.28 19:00:39
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(Naveen Kumar Kashyap)
ASJ-04/Central/28.11.2020

At 4:00PM

Due to dictation in other matters, no time is left. Put up for orders / clarification for

01/12/2020.

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Date: 2020.11.28 19:00:54
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(Naveen Kumar Kashyap)
ASJ-04/Central/28.11.2020

Bail Matters No.: 1796/2020
State Vs Subhash Chand @ Mukesh
FIR No.:151/2020
PS: I.P. Estate

28/11/2020

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

Learned counsel for the applicant through VC.

Arguments heard in detail.

Put up for orders / clarification for 01/12/2020.

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Date: 2020.11.28 19:01:11
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(Naveen Kumar Kashyap)
ASJ-04/Central/28.11.2020

Bail Matters No.: 1879/2020
State Vs Shailender Prasad
FIR No.:235/2020
PS: Kamla Market

28/11/2020

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

Learned counsel for the applicant through VC.

Arguments heard in detail.

Put up for orders / clarification for 01/12/2020.

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Date: 2020.11.28 19:01:29
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(Naveen Kumar Kashyap)
ASJ-04/Central/28.11.2020

BAIL APPLICATION

_ State v. Mohd. Umair @ Umer
FIR No. :50/2020
PS: Chandni Mahal
u/s: 307 IPC

28.11.2020

Undersigned is also discharging bail roster duty.

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

Clarifications required.

Put up for further arguments and orders on 03.12.2020.

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Date: 2020.11.28 19:02:12
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(Naveen Kumar Kashyap)

ASJ-04/Central/28.11.2020

State Vs Imran Akhtar Khan & others
(Application for bail of Vishal @ Honey)
FIR No. 227/2020
P. S. Wazirabad

28.11.2020

This Court is also discharging bail roster duty.

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

Mr. Rajesh Rathore on behalf of main counsel Mr. Rajpal Kasana through VC.

Reply filed by the IO seeking time to file appropriate reply as medical papers of the mother could not be verified by concerned hospital so far.

Put up for filing of reply regarding medical condition of his mother as well as father for

03/12/2020. Issue notice to the IO accordingly.

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Date: 2020.11.28 19:02:56
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(Naveen Kumar Kashyap)
ASJ-04/Central/28.11.2020

State Vs Sunil & others
(Application for providing currency notes by Chander Pal)
FIR No. 415/2015
P. S. Kotwali

28.11.2020

This Court is also discharging bail roster duty.

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

Mr. Ravinder Aggarwal, learned counsel for the applicant Chander Pal through VC.

SI Dayanad and SHO PS Kotwali in person through VC.

It is stated that at the relevant time in the year 2015 to 2018, SHO was somebody else. The fact remains that, prima facie, it appears that the old currency notes in question were lying in the Maalkhana and no efforts has been made by the then SHO to deposit the same before the competent authority / RBI and exchange the same with new currency notes, despite their being directions / circulars including by the Higher Police Officers.

Put up for orders / clarification, if any, for 08/12/2020 on this application.

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Date: 2020.11.28 19:03:23
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(Naveen Kumar Kashyap)
ASJ-04/Central/28.11.2020

**State Vs Tehsin @Kevda & others
(Application for bail of Arshad)
FIR No.20/2015
P. S.Kamla Market**

28.11.2020

This Court is also discharging bail roster duty.

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

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

Put up on the physical hearing day of this Court as the case file is required in this case.

Put up for further arguments, if any, / appropriate orders for 03/12/2020.

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**(Naveen Kumar Kashyap)
ASJ-04/Central/28.11.2020**

State Vs Vipin Sharma @ Vipin Kumar Sharma
(Application for interim bail of Vipin Sharma)
FIR No.213/2018
P. S. Lahori Gate

28.11.2020

This Court is also discharging bail roster duty.

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

None for the applicant despite repeated calls since morning.

Put up for appearance of counsel for the applicant and for appropriate orders for

17/12/2020.

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(Naveen Kumar Kashyap)
ASJ-04/Central/28.11.2020

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Date: 2020.11.28
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State Vs Deepak @ Bunty & others
(Application for bail of Ajay Sharma @ Lucky)
FIR No.506/2015
P. S. Nabi Karim

28.11.2020

This Court is also discharging bail roster duty.

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

Ms. Archana Sharma, learned counsel for the applicant through VC.

Part arguments heard.

Put up for further arguments on the physical hearing day of this Court i.e. 03/12/2020.

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Date: 2020.11.28 19:04:16
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(Naveen Kumar Kashyap)
ASJ-04/Central/28.11.2020

delhiCrl. Rev.: 29/2020
Asha Aggarwal v. Anand Singh Nagar

28.11.2020

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

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

Undersigned is also discharging work of Bail Roster duty.

Present: Sh. Paritosh Jain, Ld. Counsel for revisionist Asha Aggarwal.

It is claimed that respondents are served.

Put up for further appropriate orders/proceedings on 30.01.2021.

NAVEEN KUMAR
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(Naveen Kumar Kashyap)
ASJ-04/Central/28.11.2020

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Date: 2020.11.28 19:05:00 +05'30'

Crl. Rev.: 573/2019
Iqbal Ansari v. State & Ors.

28.11.2020

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

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

Undersigned is also discharging work of Bail Roster duty.

Present: None.

Put up for appearance and appropriate orders for 08.12.2020.

NAVEEN KUMAR
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(Naveen Kumar Kashyap)
ASJ-04/Central/28.11.2020

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Date: 2020.11.28 19:05:21
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Crl. Rev.: 256/2020
Shakeel Malik & Anr. v. NCT of Delhi

28.11.2020

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

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

Undersigned is also discharging work of Bail Roster duty.

Present: Sh. Kuldeep Mansukhani, Ld. Counsel for revisionist.

Today is the VC hearing day. Physical file is not before the court.

Put up for further appropriate/proceedings in terms of previous order for

09.01.2021.

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Date: 2020.11.28
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(Naveen Kumar Kashyap)
ASJ-04/Central/28.11.2020

**Crl. Rev.:140/2020,141/2020,142/2020,143/2020,144/2020
Deepak Talwar v. ITO**

28.11.2020

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

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

Undersigned is also discharging work of Bail Roster duty.

Present: Sh. Tanvir Ahmad Mir, Ld. Counsel for revisionist.
Sh. Anish Dhingra, Ld. Counsel for respondent/ITO.

Arguments in detail heard from both sides on condonation of delay.

Put up for orders/clarifications, with connected matter on 14.12.2020.

NAVEEN
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(Naveen Kumar Kashyap)
ASJ-04/Central/28.11.2020

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Date: 2020.11.28 19:05:57
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CA No.:77/2019

Rajender Kumar Vs M/s Ajay Industrial Corporation Pvt. Ltd.

28.11.2020

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

In view of the above-mentioned orders/directions, file is taken up through Webex.
Undersigned is also discharging work of Bail Roster duty.

Present: Mr. Hans Raj, learned counsel for appellant through VC.
Appellant is not present.
None for the respondent.

Put up for appearance of appellant , judgment / clarification on the physical hearing day of this Court i.e. for **03/12/2020**.

Appellant / accused / convict is directed to appear in person on the next date of hearing.

Learned counsel for both sides are also directed to appear in person through VC or as per their choice on the next date of hearing.

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Date: 2020.11.28
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(Naveen Kumar Kashyap)
ASJ-04/Central/28.11.2020

(1)

Riya Guha

Ms. ~~RIYA GUHA~~
Metropolitan Magistrate-02
Central, Room No. 25,
Tis Hazari Court, Delhi

**IN THE COURT OF MS RIYA GUHA:
METROPOLITAN MAGISTRATE-02 (CENTRAL):
TIS HAZARI COURTS: DELHI.**

FIR No. 263/2020
U/s 364A/34 IPC
P.S. Prasad Nagar

Dated: 13.10.2020

**Statement of Mukesh Kumar, S/o. Sh. Mala Ram, aged
about 50 years, U/s 164 Cr. P.C.**

An application has been moved by the IO before
the undersigned being Duty MM for recording statement of
Sh. Mukesh Kumar, U/s 164 Cr. P.C.

The witness has been produced by IO SI Bhawani,
PS. Prasad Nagar, he has also identified him. Let the
statement of IO be recorded as under:-

Statement of SI Bhawani, PS. Prasad Nagar

ON SA

I identify the witness who has been produced by
me.

RO & AC


17/10/2020
SI Bhawani Singh
D-5462
PS- Prasad Nagar


(Riya Guha)
MM-02(C) Tis Hazari Courts:
13.10.2020
Metropolitan Magistrate-02
Central, Delhi



13/10/2020.

-(2)-

Statement u/s 164 CrPc of Mr. Mukesh Kumar,
S/o Sh. Malaram, age 50 yrs, R/O 16/284H,
Hardyan Singh Road, Karol Bagh.

On SA

I am a 50 year old man and I live in
above-written address with my family. I am
12th class pass and my family consists of
my wife Laxmi, daughter Shwani and my son
Gaurav and his wife. I have been working
in a Private Co. called Amory Cosmetics Ltd
since the last 3-4 years as a commission
agent although my formal post is ~~V.P.~~
Vice President (Sales & Marketing). Through
my job, which is mainly of marketing, I
know one Nitin Kansal, who has distributorship
(CSA) with the company. Nitin Kansal

A/Gaurav

Metric Registrars
MCA 21
Registrar-C.
Chennai

—(3)—

is associated with the Company since Dec 2019 and in process of my work I have visited him many times ~~was~~ in his office in Meerut address is godown no. 58, Transport Nagar, Meerut, UP. Nitin Kansal was in continuous business relationship with the company and had no problems or any monetary issues with myself or my company owner Dinesh Singla. Then in September 2020, Nitin Kansal called me in Meerut to assess the market to expand the business, and the relationship was cordial and there was no cause of any alarm then. I even took some wall-clocks for marketing purposes when I went to meet him in Meerut on 10/09/2020. I stayed in a hotel in Meerut and there

A. Agnihotri

fg
Metropolis
Cantt, Meerut
Date-02

I was joined by Nitin Kansal and Karanvir. Karanvir was working for Nitin Kansal but earlier he was working in Amory Cosmetics but he had resigned in August 2020. On next day, i.e. 11/09/2020, I, Nitin Kansal and Karanvir went to Zirakpur, Mohali in Karanvir's car (maybe 120 or 110). We reached Zirakpur late at around 5:00pm and checked in Atharv Hotel, Zirakpur in separate rooms. There Nitin Kansal and myself and Karanvir went to meet Mr. Dinesh Singla in his office at SCO-1, Hillview Enclave, Zirakpur. Thereafter, Nitin Kansal went to have dinner with Dinesh Singla and I returned to hotel. Then when Nitin Kansal returned to the hotel, he started to say that some

M. G. Singh

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Metropol Date-03
Gurgaon, Delhi

Call girl may be called, and he and Karanvir started to call agencies and asking for photos of girls. At one point he even asked for my phone to call ~~me~~ for escort, but I refused to give him my phone. I then went to sleep in my room in 203 and the girl may have probably spent the night with Nitin Kausal. But Nitin Kausal started ~~insisted~~ insisting on me to send an account transfer to the girl as her payment. I was sent on whatsapp the account details of the girl and Nitin Kausal told me to transfer Rs 6000/- to that account as they did not have money for her payment. I did not pay by account transfer, but I arranged in cash from Mr. Dinesh Singla who gave the amount to me to give to Nitin Kausal.

M. Gourent

Metropolitan Police
10-02
C-1017-11

- (6) -

Then, we checked out from the hotel and went to office and went to some meetings and packed the clocks which I had brought.

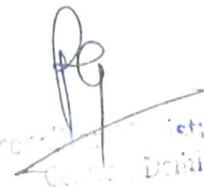
Even till then, there was no issue from Nalin Kausal's side that he wanted to end distributorship and settle the dues. I got

a call from Nalin Kausal & Karanvir that the car had broken down and was with the mechanic.

Mr. Singla sent his own boy to get the car repaired and on a very less amount of Rs 90/- the car was got repaired and got back from mechanic. As our work there had finished,

I wanted to get back to Delhi, but Kausal started complaining about headache and wanted to again stay in hotel. I agreed as by that time I had nothing to suspect against them and we booked another hotel

M. Gupta


Nalin Kausal
Delhi

—(7)—

Vasdeva Hotel in Zirakpur at evening of
12/09/2020. I later realized that all this
planning was to try to trap me again
with a call girl which they were not able to
do the previous night. We again took separate
rooms in the Hotel and I put up in
room no. 201. Nitin Kansal and Karanvir
again called a call-girl who spent the night
with them. Nitin Kansal also insisted on
me to take the services of the call girl
but I refused and avoided. When I
woke up in my room next morning, the
girl was sitting in my bed beside me
and I called Karanvir about this.
He told me that Kansal had told him
that the girl will come with us on
the way and will be dropped on way
to Delhi. But I insisted that the girl
be dropped and she not accompany us.

Affidavit

Metro
Delhi
Date-02

—(8)—

While the girl was with us, Nitin Kansal had taken photographs of me with the girl and that girl had also taken my photographs from her own mobile. After all this, we checked from the Hotel at around 11:00 am, and at that time Karanvir discreetly ~~gave~~ ~~me a warning and~~ told me that I should not go to Meerut unless he says so. His exact words were " पेटल न से दर न, उससे पेटल आप Meerut न आना " ।

Even till now, I had nothing to suspect against Nitin Kansal and it was only much later that I came to know that Nitin Kansal had made video of me with the girl and wanted to blackmail me and force me.

On entire way back from Raikpur, Nitin Kansal forced me to go to Meerut

M. G. K.

fg
Metro-02
C-02

, but I somehow managed to avoid it and took a cab straight back to Delhi from Ambala and did not go with them to Meerut. I got back to Delhi and later when I talked to Karanvir on phone he told me that Nitin Kansal had made some videos ~~of~~ of me with that call-girl which he wanted to use against me and there was some planning and conspiracy going on.

Nitin Kansal was calling me to come to Meerut again and again but I avoided somehow giving one reason or another and even went on ^{Company} tour to Lucknow, Banaras, Azamgarh and Gorakhpur. I returned to Delhi from my tour on 27/09/2020.

Then ~~a few~~ after some time, one other party namely Ranjan Gulati sent me the contact of one Vivek saying he wanted work.

Then I called ~~at~~ this person Vivek and he said he wanted to meet to ask for work.

He told me he ~~to~~ was in Bareilly and if I could meet him there, I agreed.

Then, Vivek called me said that he anyways was coming to Delhi and that we can have a meeting on 05/10/2020. Vivek had called me for this on 04/10/2020. I agreed to meet him and asked him to meet on 06/10/2020 (Tuesday).

~~On~~ Vivek himself fixed the meeting and told me to meet him at INA Metro Station from where he will take me to meet his father at his office in Kotta Mubarakpur.

I took metro from Rajender Palace Metro Station ~~from~~ ^{at} around 8:15 - 8:30 am on 06/10/2020 and reached INA Metro Station gate no. 2 at around 9:30 am.

Agreed

fg
Metropl
Administrative-02
Centre, Delhi

Then, after I reached Virek called me to the road going toward Kotta Mubarakpur where he said he was waiting. I reached there where Virek was with two other men and he had a grey-colour fourwheeler. I sat in the backseat with the other person and Virek was in the driver seat. They told me that they had to pick someone from nearby. They picked this person from the cut in front of office of Ayush Mantralaya and he was wearing a cap and this person sat beside me in the car when I realised it was Nitin Kansal. Nitin Kansal was wearing a cap to hide his face. They warned me to keep quite and not raise any alarm. The person sitting beside me (later came to know was Nansen) took away both my mobile phones and gave

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Metro
11.10.22

— (12) —

to the person sitting in front (name Robin).
Then Naveen started continuously hitting
me on the head and they said Naveen was
a Baroga and both of them sitting in
front ie Robin and Vivek are from the
Crime branch. They said that if I had
not come that day, then the Crime Branch
would have reached my home, and they
have my video. The whole way they kept
hitting me and took me ~~to~~ straight to
Kansal's office at Transport Nagar. Kansal
told me that they have talked to SHO
and wanted to discuss something with
me. I felt that it is some police
matter and did not realise I was
being forcibly abducted. At around
12:00pm, we reached Transport Nagar

M. G. ...

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Metro ... rate-08

and took me to Kansal's office and again hit me there also. These 4 people then went outside to discuss something and after coming back Kansal said that he was due around Rs 10 lakhs from the company. I told him that whatever dues he has, he must talk with the company. Then Kansal made me call Singla Sir and told me to say that I was sitting in Police Station. ~~He~~ Kansal told me to ask Singla Sir for clearing the dues. Singla Sir said that it cannot be done like this and he will get my bail done. I told Singla Sir that I had been forcibly detained in 210TT and will not be released until dues cleared. Kansal had strictly told me to say that I was in 210TT and to also tell Singla Sir not to contact my family.

M. K. Singh

10/10/07
10/10/07

But Kansal told me that I will have to make the payment and I can later on recover from Singla. He also told me he goes time till 1:30pm from the Daroga (Naseem) and if no arrangement by then then I will be shifted to 211011.

They even threatened me to implicate me in POCSO Act by that video and said that I will be ruined if I am involved in such offences. Incidentally, the call girl had called me in ~~September~~ one day after 27th Sept demanding money. I had refused saying that I had nothing to do with her.

Then they took me to godown where they had cricket stumps and they beat me black and blue even that the stump broke down. They forced me to

Applicant

arrange for money from my home and to get ~~me~~ the jewellery of my wife and daughter-in-law. They even made a video of me being beaten-up. They already had my phone and were constantly threatening me to reveal the video ~~to~~ all my contacts.

Then they made me call my daughter Shivani ~~on~~ through my phone and had warned me to say only that I was in Bulandshar and to deliver the jewellery.

When I talked to Shivani I told her to get the jewellery and when she started asking me I told her not to worry and that I was in Bulandshar. I told her

to come to Shahadra Metro Station with the jewellery and also to bring my chequebook as well as my wife's chequebook. The entire time Kaural made me talk

A. G. Gaur

(16) —

on speaker phone and had specifically forced me to what to say and what not to say. Kansal had also directed me to tell Shivani to get her own chequebk as well as of my wife but my wife did not have any account. Then my daughter Shivani reached Shahdara Metro Station with ~~my~~ jewellery and my blank cheque book at around 5:00 - 6:00pm that day. Then Kansal gave me one mobile number to pass on to Shivani and to tell her that she contact this person who will take the delivery from her and not to discuss and ask anything from this person (later whose name I came to know was Panraj).

Then Kansal must have talked to Panraj and told him to value the jewellery.

~~Panraj told Kansal~~ Kansal then came

Signature

Signature
Mumbai

— (17) —

to me and said that the jewellery is worth only 38000/- - 40,000/- and it does not cover the amount and that I should arrange for more money. Then a lady came and ~~she~~ Kamsal told me was an advocate and then they took away my Debit Card Bank of Baroda and withdrew 12,000/- from ATM. They kept the money and debit card with them. Even that lady advocate threatened me and said that I will have to give money at any cost. They made me call to my daughter and I told her to manage some funds and ask from my family and brothers. Then they told me to copy a ~~written~~ written statement which they had already prepared. They gave me blank paper and made me write, that me and my company

Handwritten signature

Metrof *fg* 18/04/2022-02

had committed fraud on Nitin Kansal and that I was willingly sitting in office of Kansal for 1-2 days and within 2 days the dues of Kansal will be cleared and only then I will leave Meerut.

Then, Kansal, Robin and Vinck took me to Kansal's home in Meerut in the same car they had brought me from Delhi. There in his residence, Kansal put me in a small room in 1st floor and told me that 1.5-2 lakhs is not sufficient and I should arrange for more money. Then he made me call to Shivani through video call so that they don't get suspicious and made me say that I was being treated well and was even provided with my medicines. Also Kansal talked to Shivani telephonically to assure her that all was well.

~~They~~ Kausal even provided me with food and at night that day Robin and Nishk had already left. The other family members of Kausal ie his father, mother, his sister, and brother were here. The night passed and next day ie 07/10/2020 after around 9:00 am, Kausal gave me my phone to again contact my family members. Kausal demanded that I arrange for minimum 7 lakhs. I called my family ie Shwani, my son Gaurav and my brother Naresh and told them to arrange funds urgently. It was difficult to arrange funds at such short notice and my daughter was not able to do so. Kausal suggested that I tell them that I mortgage my house and hence, I told Shwani to ~~let~~ somehow arrange 5 lakhs

1/1/2021

Metro

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- (20) -

against my house documents. Then Kansal also told me to call Singla Sir and ask for 5 lakhs. I asked Singla Sir for money and he said that he will arrange from some financier as it was a big amount to arrange in such short notice. I was constantly talking with my family members asking them to arrange money and especially to my brother Naresh Kumar. I called Singla Sir again who said that his man will reach with money next day morning and he can send around 2-2.5 lakhs. But Kansal kept forcing and indicating me that atleast 4 lakhs must be arranged from Singla Sir. By evening, Robin and Vinod had also come at Kansal's home and had brought danda. I pleaded with them that I was trying my best to arrange money.

M. J. Jeyaram

Metro
Central
L. 1011

—(21)—

They said that now I can take from company and later they will help me to adjust my own dues with the company and for this they will even plan to abduct Singla. All this time I thought that it was a police matter and I just wanted to escape from that situation. Kansal had transferred all my contacts to his laptop. Then after sometime I called Shwain who said that 4 lakhs had been arranged and for the remaining there was a gold chain and ring (of Mausaji) and asked me to deliver it where. Kansal told me to tell her that she arrange for entire 5 lakhs in cash and to bring it to Shahadara. ~~to~~ When I said this to my daughter, she said that she will come in Cab with the

M. G. ...

fg
Metro ... State-02

money and I can also then return with her. I refused her to do it as it was late and told her to come next money. Kausal

had told me that call Shivani alone with the money. My daughter said that what was the guarantee I will be released after giving the money. Kausal then himself talked to Shivani and assured her that as soon as he receives the money I will be released and he means no harm to me.

All this took entire day, then at around 8:00-8:15 pm that day, police arrived at Kausal's home and released me.

Delhi police SHO Prasad Nagar Mr. Manish Sharma

along with many police officials came and they promptly arrested Nitin Kausal.

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Cont. 11
11-02

Affidavit

—(23)—

Then on information, they arrested Pankaj from Delhi and Delhi Police also seized all the evidence. Throughout the way back, Nitin Kansal kept telling me to say that I was with him willingly and and was treated well.

Later I came to know that my family had filed a police complaint as they grew suspicious of my safety and that continuously the police was tracking and tapping all the phone calls and they traced my location from there.

Police rescued me from Meerut and brought me back to Delhi and got my medical done.

Nitin Kansal, alongwith his associates made a full plan to blackmail me, to abduct me and to force money out of me. He has conspired for a long time

1/1/2019

Metropol
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2019

(24)

since September 2020. He beat me up in his office and tried to extort money from me. Strict action be taken against him as per law.

Ro and AC

M. D. ...

Pg
B/10/2020
DMM/Leat/THC

← (25) —

It is certified that above said statement is true and correct account of statement of **Mukesh Kumar, S/o. Sh. Mala Ram, aged about 50 years**, Nothing has been deleted or added thereupon.



(Riya Guha)

MM-02(C):Tis Hazari Courts:

13.10.2020

Metropolitan Magistrate -02
Cantt. Delhi

A copy of the statement of witness be given to the IO on moving an application. Ahlmad is directed to send the statement to the court concerned in a sealed envelope.



(Riya Guha)

MM-02(C):Tis Hazari Courts:

13.10.2020

Metropolitan Magistrate -02
Cantt. Delhi



: 1 :

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

BAIL APPLICATION

State v. Gaurav Chauhan
(Applicant Ankur Singh)
FIR NO.: 199/2009
PS: Kashmere Gate
U/S: 364A,506,120B IPC &
25 Arms Act

28.11.2020

Present: Sh. Pawan Kumar, Ld. Addl. PP for the state through VC.
Sh. Jitender Sethi, Ld. Counsel for applicant through VC.

Vide this order, bail application u/s 439 Cr.PC filed by applicant Ankur Singh through counsel is disposed of.

It is stated in the application that nothing material has come on record during evidence. That evidence of the witnesses is already over and matter is pending for final arguments since last one year and due to lock-down further arguments could not be addressed effectively. As such, it is further argued that at present there is no more the situation to threaten the witness or influence the witnesses. It is further stated that due to present pandemic condition disposal of the case is likely to take some more time. That accused is in JC for the last about eleven years. Further, it is stated that more importantly as far as present accused is concerned, that father of the accused is about 72 years old and suffering from various old age illness. Further, it is matter of record that such accused was granted interim bail on number of occasions and he never misused the same and surrendered on time. Further, it is stated that there are directions by Hon'ble High Court to conclude the trial expeditiously and in a time bound manner. It is further stated that evidence of PWs is contradictory. Further, it is stated that the constitution has failed to prove on record during evidence the allegations which were made in the chargesheet. Further, learned counsel relied upon a number of case laws in support of present bail application including that bail is rule and jail is exception. As such, it is submitted that he be granted regular bail.

On the other hand, in reply filed by the IO and as also argued by learned Addl.

PP for the state that offence is serious in nature. That specific incriminating evidence against the present accused. Further, it is stated that there is documentary evidence against the accused including mobile phone number used. It is further claimed that he received the part of the money in question and was actively involved in the present case. That earlier his bail applications are also dismissed and there is no fresh grounds for bail. That co accused was granted bail on medical grounds. As such, bail application is opposed.

I have heard both the sides.

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

Further it has been laid down from the earliest time that the object of Bail is to secure the appearance of the accused person at his trial by reasonable amount of Bail. The object of Bail is neither punitive nor preventive. Deprivation of liberty must be considered a punishment unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after convictions, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earlier times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their

attendance at the trial ,but in such case 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the constitution that any persons should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty under Article 21 of the Constitution upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson. While considering an application for bail either under Section 437 or 439 CrPC, the court should keep in view the principle that grant of bail is the rule and committal to jail an exception. Refusal of bail is a restriction on personal liberty of the individual guaranteed by Article 21 of the Constitution. Seriousness of the offence not to be treated as the only consideration in refusing bail : Seriousness of the offence should not to be treated as the only ground for refusal of bail. (Judgment of **Sanjay Chandra Vs. Central Bureau of Investigation, AIR 2012 SC 830** relied).

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

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

At this stage , it can also be fruitful to note that requirements for bail u/s 437 & 439 are different. Section 437 Cr.P.C. severally curtails the power of the Magistrate to grant bail in context of the commission of non-bailable offences punishable with death or imprisonment for life, the two higher Courts have only the procedural requirement of giving notice of the

Bail application to the Public Prosecutor, which requirement is also ignorable if circumstances so demand. The regimes regulating the powers of the Magistrate on the one hand and the two superior Courts are decidedly and intentionally not identical, but vitally and drastically dissimilar. (**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 a matter of record that earlier regular bail application of the present accused was dismissed. But it is also matter of record that he was granted interim bail time and again and there is no adverse report against such accused. Further, more importantly, co-accused who is the main accused Gaurav Chauhan is already granted regular bail and this is one of the material change in circumstances although such bail to the main accused was granted on various factors including his medical conditions. Further, in this case evidence of material witnesses are already recorded but due to present pandemic condition, further final arguments could not be heard. The trial is likely to take some more time under the present situation. Further, no previous conviction record of the accused is placed on record. Further, there is presumption of innocence in the criminal justice system.

In above facts and circumstances, present accused is granted bail subject to furnishing of personal bond in the sum of **Rs. 20,000/- with two sound sureties of like amount**, subject to the satisfaction of the learned Trial court and the following additional conditions:

- i) That he will appear before 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 shall convey any change of address immediately to the IO and the court;*
- v) He shall also provide his mobile number to the IO as well as to the court.*

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

: 6 :

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

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

NAVEEN
KUMAR
KASHYAP

Digitally signed by
NAVEEN KUMAR
KASHYAP
Date: 2020.11.28
19:07:42 +05'30'

(NAVEEN KUMAR KASHYAP)
ASJ-04(Central/Delhi)
28.11.2020