

Anticipatory Bail

**Bail Application No.: 1591/2020
State vs Aftab Ahmed @ Munna s/o Jalis Ahmed
FIR No. 244/2020
P. S. Kamla Market
U/s: 302, 34 IPC**

23.10.2020

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

1. Vide this order, present anticipatory bail application dated 17/10/2020 seeking grant of anticipatory bail filed by the applicant through counsel is disposed off.

2. In the present case, it is argued by the learned counsel that initially FIR was registered u/s 307 IPC r/w section 34 IPC; that deceased earlier himself caused injury upon the present applicant alongwith his associates by attacking the present applicant. It is stated that the present accused was not even present in Delhi at the time and day of the offence in question; that there is delay in registration and making of statement by the victim; that he is falsely implicated in the present case; further there are material contradictions in the story of prosecution. It is further argued that despite opportunity so far the IO is not investigating the aspect whether the present accused / applicant was present at all or not at the time of incident in question. It is further stated that his custodial investigation is

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not required and nothing is recovered from the accused / applicant or at his instance. Further, learned counsel argued relied upon certain case law in support of his contention that he is ready to join investigation as and when so directed. Further, he also placed on record certain photographs regarding injury to the present applicant caused by the victim in question. As such, it is prayed that he be granted anticipatory bail in the present case.

3. On the other hand, in detail reply dated 22/11/2020 filed by IO, as also argued by learned Addl.PP for the State, it is submitted that present offence is more serious in nature and ultimately the victim Vakeel Mehto expired due to such injury caused by the accused side. But, it is stated that before his death he gave statement to police namely the present accused / applicant as one of the perpetrator of the offence in question. That such Vakeel Mehto was a leader of the auto rickshaw and taxi driver at New Delhi Railway Station and accused persons of the present case having their travel agency at New Delhi Railway Station. There was frequent fight between the two sides relating to their business. That earlier two cross cases already registered against each other side relating to section 323, 341 IPC etc. causing hurt etc. It is further argued that present accused is the main conspirator of the murder of the deceased Vakeel Mehto as such present anticipatory bail application is strongly opposed including on the ground that investigation is at initial stage and custodial interrogation of the accused is required for the purpose of further

investigation in the present case. It is further submitted that such accused has other criminal involvement in nine cases. It is further stated by learned Addl.PP for the State that statement given by deceased Vakeel Mehto now can even be considered u/s 32 of the Evidence Act. As such, present anticipatory bail application is opposed.

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

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

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

from the 'touch' or confinement contemplated by [Section 46](#) of the Code. The essence of this provision is brought out in the following manner:

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

7. Though the Court observed that the principles which

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

“31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed

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

8. It is pertinent to note that while interpreting the expression "may, if it thinks fit" occurring in [Section 438\(1\)](#) of the Code, the Court pointed out that it gives discretion to the Court to exercise the power in a particular case or not, and once such a discretion is there merely because the accused is charged with a serious offence may not by itself be the

reason to refuse the grant of anticipatory bail if the circumstances are otherwise justified. At the same time, it is also the obligation of the applicant to make out a case for grant of anticipatory bail. But that would not mean that he has to make out a “special case”. The Court also remarked that a wise exercise of judicial power inevitably takes care of the evil consequences which are likely to flow out of its intemperate use.

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

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

regarding presumption of innocence of an accused until he is found guilty and the sanctity of individual liberty.....”

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

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

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

(iii) It is imperative for the courts to carefully and with meticulous precision evaluate the facts of the case. The discretion to grant bail must be exercised on the basis of the available material and the facts of the particular case. In cases where the court is of the considered view that the accused has joined the investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided. A great ignominy, humiliation and disgrace is attached to arrest. Arrest leads to many serious consequences not only for the accused but for

the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-conviction stage or post-conviction stage.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) While considering the prayer for grant of

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

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

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

11. Now in this background of law we come back to present case. From the material placed on record, it is clear that prosecution is keeping silent and not investigating as to where was the present applicant at the time and day of the incident in question. Whether he was even present on the spot or not. It is expected that having regard to the serious offence leading to death of Vakeel Mehto all aspect including this aspect. But having noted so for the purpose of this bail application, it is rightly pointed out by the learned Addl.PP for the State that there is motive in the form of alleged previous attack by the deceased and his associates upon the present applicant. Further, there is specific statement by the deceased, inter-alia naming present applicant / accused. Further, investigation is at initial stage and custodial interrogation of present accused is necessary as per the IO for further investigation of the present case. Having regard to the nature of accusation against the accused / applicant which are very

serious, the possibility that he has a motive to be involved in the present offence and the other facts and circumstances discussed above, under these over all facts and circumstances, this court do not find sufficient ground to grant the relief sought in the present application by the applicant. The same is dismissed with these observations.

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

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

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(NAVEEN KUMAR KASHYAP)
ASJ-04(Central Distt)/Delhi/23/10/2020

Bail Matters No.:1589/2020
State Vs Saif Ali
FIR No.: 364/2020
PS: Sarai Rohilla

23/10/2020

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC.
Mr. A.K. Chauhan, learned counsel for the applicant through VC.

Arguments in detail heard.

It is stated by the learned Addl.PP for the State that period to seek PC and conducting TIP is not yet over. Further accused is a drug addict and there is motive to commit the present offence.

As such, put up for further arguments and appropriate orders for **04/11/2020**.

IO to appear with case file including regarding TIP if any conducted.

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(Naveen Kumar Kashyap)
ASJ-04/Central/23.10.2020

**Bail Matters No.:1585/2020
State Vs Salman Khan
FIR No.:210/2020
PS: Sarai Rohilla**

23/10/2020

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

Arguments in detail heard.

Certain clarification is required regarding the aspect as to whether who is declared PO vide order dated 02/09/2020.

At request, put up for further arguments regarding this aspect and order / clarification, if any, for **29/10/2020**.

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**(Naveen Kumar Kashyap)
ASJ-04/Central/23.10.2020**

Bail Matters No.:1590/2020
State Vs Pankaj Goyal
FIR No.:263/2020
PS:Prashad Nagar

23/10/2020

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC.
Mr. D.K. Sharma learned counsel for the applicant through VC.
IO SI Sanjay Kumar in person through VC.

Arguments heard in detail.

Put up for orders / clarification, if any, for **26/10/2020**.

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(Naveen Kumar Kashyap)
ASJ-04/Central/23.10.2020

**Bail Matters No.:1594/2020
State Vs Vinay Verma
FIR No.:196/2019
PS: Rajinder Nagar**

23/10/2020

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC.
Learned counsel for the applicant through VC.
SI Soni Lal on behalf of IO through VC.

Part arguments heard in detail on this application of accused Vinay Verma.

Put up for further arguments including the nature of allegations in the present case upon the role of the complainant himself in committing the associated crime.

In view of the same, put up for **03/11/2020**. IO to appear in person with case file on the next date of hearing.

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**(Naveen Kumar Kashyap)
ASJ-04/Central/23.10.2020**

**Bail Matters No.: 1586/2020
State Vs Hari Chander @ Hariya
FIR No.:42/2020
PS: Prashad Nagar**

23/10/2020

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

Part arguments heard.

Voice of the counsel for the accused is not clear.

As such, put up for further arguments and appropriate orders for **28/10/2020**.

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(Naveen Kumar Kashyap)
ASJ-04/Central/23.10.2020

**Bail Matters No.:1592/2020
State Vs Gurpreet Singh
FIR No.:57/2020
PS: Sarai Rohilla**

23/10/2020

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC.
Mr. Dhananjay Singh Sehrawat, learned counsel for the applicant through VC.
Ms. Rekha Aggarwal, learned counsel for complainant / victim through VC
alongwith complainant through VC.

Arguments in detail heard from all the sides.

Learned counsel for the accused wants to place on record the bail order in some other FIR registered against the accused only as well as certain case law.

Heard. Allowed. In fact all the parties are at liberty to file case law, if any, by the next date of hearing.

Put up for orders / clarification for **26/10/2020 at 4:00 PM.**

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**(Naveen Kumar Kashyap)
ASJ-04/Central/23.10.2020**

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

Bail Application No.:1588/2020
State v. Hitender @ Deepak @ chhotu
FIR No. : 424/2020
P. S: Karol Bagh
U/s: 419, 420 r/w 34 IPC

23.10.2020.

This court is also discharging bail roster duty.

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Mr. Gaurav Adlakha, Ld. Cousnel for accused/applicant through VC.
IO is also present through VC.

Vide this order, regular bail application u/s 439 Cr.PC dated 21.10.2020 filed through counsel is disposed of.

It is stated in the application that he was arrested on 03.10.2020. That he was not identified in TIP by the complainant. That he was granted interim bail by Hon'ble High Court under the guidelines of Hon'ble High Court, High Power Committee and he never misused the same. That he is no more required for the purpose of investigation and as such no purpose would be served by keeping him in JC. That co-accused in this case are already granted regular bail. That he is suffering from type-II, diabetes. It is further claimed that IO is suppressing the vital fact that he was not identified in TIP in the reply filed in the present application. As such, it is stated 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 originally a case under section 379 IPC was registered. Later on same was converted to section 419,420 r/w 34 IPC. That present accused alongwith three others exchanged through cheating representing themselves as crime branch police officials, the bag of the victim containing Rs. 4 lac and other I-cards. That i-10 car was also recovered from the possession of the accused Lalit Sharma at the instance of present accused. It is stated that he may influence the witnesses, if granted bail. It is further stated that present accused is involved in many other criminal cases, details of which is given with the reply. Further, it is stated that he was convicted in two of such cases, one u/s 392,394,397 r/w 34 IPC. As such, present application is opposed.

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.

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

In the present case, the maximum punishment of the offences alleged against the present accused is 7 years. It is a matter of record that accused is in JC since 07.09.2020. Further, it appears that it is not fair on the part of IO not to disclose that TIP of the present accused was conducted, but the complainant/victim failed to identify him in TIP. Further, as per the case of the prosecution, recovery is not made from him, but on his disclosure from a co-accused. In fact, the period for seeking police remand is already over. As such, no purpose would be served by keeping such accused in JC. Trial is likely to take time. Further, it may be noted that there is fundamental presumption of innocence in any criminal case in India i.e. an accused is presumed innocent unless proved guilty.

In above facts and circumstances, such 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) 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, 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.*
- 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 order through electronic mode. Copy of this order be also sent to Jail Superintendent concerned through electronic mode.

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(NAVEEN KUMAR KASHYAP)
ASJ-04(Central/Delhi)
23.10.2020

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

Bail Application No.:1553/2020

State v. Amir Singh

FIR No. : 191/2020

P. S: Rajinder Nagar

U/s: 380,411 IPC

23.10.2020.

This court is also discharging bail roster duty.

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

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

It is stated in the application that he has been falsely implicated in the present case; that in fact he is bonafide purchaser for value of the case property/stabilizer in question for Rs.2500/-. That case property is already recovered and he is not more required for investigation. It is further stated that chargesheet is already filed. As such, it is stated 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 both such accused were found carrying the stolen case property in CCTV footage. That at the instance of the present accused, stabilizer was recovered from his house. But no other criminal record of such accused was found. It is further argued that he may threaten complainant and his family members.

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.

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

In the present case, the maximum punishment of the offences alleged against the present accused is 7 years. It is a matter of record that accused is in JC since 03.10.2020. In fact, the period for seeking police remand is already over. As such, no purpose would be served by keeping such accused in JC. Trial is likely to take time. Further, it may be noted that there is fundamental presumption of innocence in any criminal case in India i.e. an accused is presumed innocent unless proved guilty. In present case, there is no other criminal involvement found of the present accused. Chargesheet is already filed.

In above facts and circumstances, such accused is granted bail subject to furnishing of **personal bond in the sum of Rs. 10,000/- with two sound 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, 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.

- e) 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.*
- f) Every bail order shall be marked on the file.*
- g) It shall be the responsibility of every judge issuing an order of bail to monitor its execution and enforcement.*
- h) 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:

- d) The date on which conditions imposed by this court are satisfied;*
- e) The date of release of prisoner from jail;*
- f) 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 order through electronic mode. Copy of this order be also sent to Jail Superintendent concerned through electronic mode.

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(NAVEEN KUMAR KASHYAP)
ASJ-04(Central/Delhi)
23.10.2020

Bail Application No.: 1287/2020

State v. Rajeev Sharma
FIR no.: 180/2019
PS: Rajinder Nagar

23.10.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Sh. Ashu Bhatia, Ld. Counsel for applicant /accused through VC.
Jai Kush Hoon, Ld. Counsel for complainant alongwith complainant Ms.
Apoorva Kapoor through VC.

It is submitted by the IO that investigation is recently transferred to him and is still going on. But it appears that so far IO has not taken all steps to ensure that the disputed articles in question which fall under the category of Section 406 IPC in the present case, are recovered.

Put up for further arguments/appropriate orders and disposal of the present bail application for 06.11.2020. In the meanwhile, IO is expected to complete his investigation qua such articles including the jewelry articles.

Interim order to continue in terms of previous order only.

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(NAVEEN KUMAR KASHYAP)
Additional Sessions Judge-04/Central
23.10.2020

Bail Application No.: 1289/2020

State v. Ashok Kumar Sharma
FIR no.: 180/2019
PS: Rajinder Nagar

23.10.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Sh. Ashu Bhatia, Ld. Counsel for applicant /accused through VC.
Jai Kush Hoon, Ld. Counsel for complainant alongwith complainant Ms.
Apoorva Kapoor through VC.

It is submitted by the IO that investigation is recently transferred to him and is still going on. But it appears that so far IO has not taken all steps to ensure that the disputed articles in question which fall under the category of Section 406 IPC in the present case, are recovered.

Put up for further arguments/appropriate orders and disposal of the present bail application for 06.11.2020. In the meanwhile, IO is expected to complete his investigation qua such articles including the jewelry articles.

Interim order to continue in terms of previous order only.

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Additional Sessions Judge-04/Central
23.10.2020

Bail Application No.: 1290/2020

State v. Krishna Sharma & Krishna Devi
FIR no.: 180/2019
PS: Rajinder Nagar

23.10.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Sh. Ashu Bhatia, Ld. Counsel for applicant /accused through VC.
Jai Kush Hoon, Ld. Counsel for complainant alongwith complainant Ms.
Apoorva Kapoor through VC.

It is submitted by the IO that investigation is recently transferred to him and is still going on. But it appears that so far IO has not taken all steps to ensure that the disputed articles in question which fall under the category of Section 406 IPC in the present case, are recovered.

Put up for further arguments/appropriate orders and disposal of the present bail application for 06.11.2020. In the meanwhile, IO is expected to complete his investigation qua such articles including the jewelry articles.

Interim order to continue in terms of previous order only.

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Additional Sessions Judge-04/Central
23.10.2020

Bail Application No.: 1451/2020

State v. Ashok
FIR no.: 165/2020
PS: Rajinder Nagar

23.10.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Sh. Vijay Kr. Sharma, Ld. Counsel for applicant /accused through VC.
Victim/complainant in person through VC with counsel Sh. Surinder Pal.

Copy of the document/pen drive filed by complainant side not supplied to applicant/accused side so far. Same be supplied by the morning of next date of hearing.

Put up for physical hearing having regard to the nature of the case on 27.10.2020.

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Additional Sessions Judge-04/Central
23.10.2020

Bail Application No.: 1593/2020

State v. Naveen Giri
FIR no.: 271/2020
PS: Prasad Nagar
U/S: 498-A,406,34 IPC

23.10.2020

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

Reply filed by the IO.

Issue notice to the complainant through IO on the anticipatory bail application for 26.10.2020. It is made clear that there is no interim protection given to the accused in the meanwhile.

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Additional Sessions Judge-04/Central
23.10.2020

Bail Application No.: 1595/2020

State v. Radhey Shyam

FIR no.: 16024/2020

PS: Darya Ganj

23.10.2020

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

Arguments in detail heard.

It is stated that there is other involvement of present accused.

IO to file further reply whether there is any conviction record also regarding such accused person.

Put up for 06.11.2020.

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Additional Sessions Judge-04/Central
23.10.2020

Bail Application No.: 1557/2020

State v. Monish Alam
FIR no.: 266/2020
PS: Prashad Nagar

23.10.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Sh. Sayeda Farah, Ld. Counsel for applicant /accused through VC.
IO is also present through VC.
Arguments in detail heard.

It is inter alia argued that two of the co-accused are already granted regular bail. This is an application for anticipatory bail. It is further argued that actually it is a dispute relating copyright/logo.

Arguments also heard from Ld. Addl. PP and IO.

Put up for orders at 4 pm.

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Additional Sessions Judge-04/Central
23.10.2020

At 4 pm.

Certain clarifications required from IO including relating to ground invoking section 436 IPC in this case. As such, IO to appear with case file on next date of hearing for 06.11.2020. **Issue notice to IO accordingly**

In the meanwhile, under these circumstances, IO is directed not to take any coercive steps against such applicant/accused Monish Alam ,provided that he fully co-operate with the investigation and appear before IO as and when so directed till next date of hearing as per law.

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(NAVEEN KUMAR KASHYAP)
Additional Sessions Judge-04/Central
23.10.2020

Bail Application No.: 990/2020

State v. Manoj Kumar Sharma
FIR no.: 191/2019
PS: Lahori Gate

23.10.2020

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

Today, case was fixed for clarifications regarding the aspect of moving this 2nd anticipatory bail application by Manoj Kumar Sharma.

Further arguments heard.

On perusal of previous ordersheet/previous orders on Ist anticipatory bail application dated 19.12.2019, it is clear that such anticipatory bail application was rejected ,without commenting on the merit of the case, and the court was of the view that dowry articles are not yet returned and none of the accused has joined investigation nor they are ready to join mediation proceedings to get settled the issue between the parties.

Further, vide order dated 26.08.2020 by the same Bail Roster learned Judge, it is already observed that such second anticipatory bail application is maintainable as there are change in circumstances.

As such, now to put up for further **arguments on the merit** of the present anticipatory bail application including the aspect/observation made by learned Predecessor Judge while dismissing such anticipatory bail application dated 19.12.2019, on **06.11.2020**.

In the meanwhile, IO is directed not to take any coercive steps against present applicant provided that present applicant fully cooperate with the investigation in terms of previous order/protection.

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Additional Sessions Judge-04/Central
23.10.2020

**State Vs Imran Akhtar Khan & Ors
(Application of Yogesh Sethi)
FIR No. 227/2020
P. S. Wazirabad**

23.10.2020

This court is also discharging bail roster duty.

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

An application for interim bail filed on behalf of applicant / accused Yogesh Singh through counsel.

Issue notice to IO to file reply by the next date of hearing including regarding medical papers / medical condition of the wife of the present accused / applicant.

Put up for arguments and appropriate orders with case file for **27/10/2020**.

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**(Naveen Kumar Kashyap)
ASJ-04/Central/23.10.2020**

State Vs Babu Bangali
FIR No. 38/2020
P. S. Kashmiri Gate
U/s 147, 148, 149, 186, 353, 269, 270, 436, 34 IPC

23.10.2020

This court is also discharging bail roster duty.

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

File is put up by Ahlmad as the date of order is wrongly mentioned on the first page as 14/10/2020 instead of 26/09/2020.

Heard.

As such, the date on the first page of the order be read as 26/09/2020 instead of 14/10/2020. The same is correctly accordingly.

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Date: 2020.10.23
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(Naveen Kumar Kashyap)
ASJ-04/Central/23.10.2020

Application for release of Vehicle

(APPLICANT ASHISH KUMAR)

State v. Imran Akhtar etc.

FIR No. : 227/2020

PS: Wazirabad

23.10.2020

Undersigned is also discharging bail roster duty.

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

This is an application for release of vehicle no. DL-10-S4-9314 of superdari moved by applicant Ashish Kumar S/o Late Sh. Naresh Kumar dated 13.10.2020. It is stated that reply is already filed before Ld. MM before committal. Copy of the same be placed on record by learned counsel for applicant.

Put up for further argument and orders on 03.11.2020. In the meanwhile, IO to file fresh reply also.

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(Naveen Kumar Kashyap)

ASJ-04/Central/23.10.2020

Bail application of applicant
MOHIT SHARMA @ SUNNY

State v. Pooja etc.
FIR No. : 292/2014
PS: Rajender Nagar
U/s: 302/393/397/411/120B/34 IPC

23.10.2020

Undersigned is also discharging bail roster duty.

Present: Mr. Pawan Kumar ,Ld. Addl. PP for the State through VC.
Sh. Anang Pal Singh, Ld. Counsel for applicant through VC.

This is second regular bail application for accused Mohit Sharma @ Sunny

Put up for reply and arguments on date already fixed i.e. 27.10.2020.

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(Naveen Kumar Kashyap)

ASJ-04/Central/23.10.2020

BAIL APPLICATION OF
YADVENDER @ GUDDU YADAV

State v. Raj Bahadur etc.
FIR No. : 130/2014
PS: Kamla Market
U/S: 419,420,365,392,395,412,120B ,34 IPC

23.10.2020

Undersigned is also discharging bail roster duty.

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

Fresh regular bail application dated 21.10.2020 filed.

Put up for reply, arguments and appropriate orders on 02.11.2020.

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(Naveen Kumar Kashyap)

ASJ-04/Central/23.10.2020

SC No.: 27346/2016
FIR :135/2013
PS: Crime Branch, Central Distt.
State Vs Ahmad Hussain @ Junaid

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

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

In the present case, last regular date of hearing were 26/03/2020 & 26/08/2020. Thereafter, as per directions from Hon'ble High Court, matter was adjourned was far due to lock-down. But in view of latest directions, matter is taken up today for hearing through VC.

23.10.2020

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

Present: Mr. Pawan Kumar, learned Addl.PP for the State through VC.
Mr. Sayyed Firoz, learned counsel for the accused through VC.

It is stated that the accused is on interim bail in this case.

Put up for PE in terms of previous order for **10/03/2021**. Issue issue notice to two of the material witnesses for the next date of hearing.

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Date: 2020.10.23
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(Naveen Kumar Kashyap)
ASJ-04/Central/23.10.2020

SC No.: 28420/2016
FIR :154/2009
PS: Timar Pur
State Vs Sunil Kumar Sehrawat

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

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

In the present case, last regular date of hearing were 02/05/2020, 25/06/2020 & 26/08/2020. Thereafter, as per directions from Hon'ble High Court, matter was adjourned was far due to lock-down. But in view of latest directions, matter is taken up today for hearing through VC.

23.10.2020

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

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

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

Put up for appearance of accused for **10/03/2021**.

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(Naveen Kumar Kashyap)
ASJ-04/Central/23.10.2020

SC No.: 626/2017
FIR : 97/2017
PS: Prashad Nagar
State Vs Chetan

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

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

In the present case, last regular date of hearing were 16/03/2020. Thereafter, as per directions from Hon'ble High Court, matter was adjourned was far due to lock-down. But in view of latest directions, matter is taken up today for hearing through VC.

23.10.2020

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

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

Mr. Praveen Pachori, learned counsel for the accused through VC.

Accused is on bail and in person on VC.

Put up for PE in terms of previous order for **10/03/2021**. Issue issue notice to two of the material witnesses for the next date of hearing.

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(Naveen Kumar Kashyap)
ASJ-04/Central/23.10.2020

CA: 450/2019
Safawat Amin v. Shaishta & Anr.

23.10.2020

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.

Thereafter, as per directions from Hon'ble High Court, matter was adjourned was far due to lock-down. But in view of latest directions, matter is taken up today for hearing today through VC.

Undersigned is also discharging work of Bail Roster duty.

Present: None.

Put up for appearance of parties and purpose fixed in terms of previous order for 10.03.2021.

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(Naveen Kumar Kashyap)
ASJ-04/Central/17.10.2020

Crl. Rev. 29/2020
Asha Aggarwal v. Anand Singh Nagar

23.10.2020

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.

Thereafter, as per directions from Hon'ble High Court, matter was adjourned was far due to lock-down. But in view of latest directions, matter is taken up today for hearing today through VC.

Undersigned is also discharging work of Bail Roster duty.

Pr: Learned counsel for revisionist.

It is stated that report regarding service of respondent filed.

Put up for consideration/appropriate orders for 28.11.2020.

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(Naveen Kumar Kashyap)
ASJ-04/Central/17.10.2020

: 1 :

Bail Application

Bail Application No.: 1587/2020
State Vs Satyam Shivam @ Shivam Kumar s/o Dilip Kumar
FIR No.:291/2020
PS: Sarai Rohilla
U/S: 394, 397, 34 IPC

23.07.2020

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

Vide this order, the regular bail application under section 439 Cr.P.C. on behalf of accused dated 19/10/2020 filed through counsel is disposed off.

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

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

Bail Application No.: 1587/2020
State Vs Satyam Shivam @ Shivam Kumar s/o Dilip Kumar
FIR No.:291/2020
PS: Sarai Rohilla
U/S:394, 397, 34 IPC

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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

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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

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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

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evidence and elaborate documentation of the merit of the case is not required to be undertaken. Though the court can make some reference to materials but it cannot make a detailed and in-depth analysis of the materials and record findings on their acceptability or otherwise which is essentially a matter of trial. Court is not required to undertake meticulous examination of evidence while granting or refusing bail u/s 439 of the CrPC.

In the present case, it is argued that present accused is a young man of 19 years only; that there is no other criminal involvement of the present accused; that he is falsely involved in this case; that he is in JC for more than two months; that his father is not well; accused is the only male member of the family and he was plying battery rickshaw; even the mother of the accused is doing duty in government hospital for corona patient and she is not keeping well; that brother of the accused is already married and living separately; As such, it is prayed that he be granted regular bail.

On the other hand, it is argued by the learned Addl.PP for the state that there are serious and specific allegations against the present accused; that present accused alongwith two other co-accused on 22/08/2020 at 9:00 PM attacked the complainant and robbed him of his mobile and purse and one of the co-accused even stabbed such victim; that robbed mobile was recovered from the possession of the present accused. That he correctly identified by the victim in TIP. As such, present bail application is opposed.

I find force in the arguments of learned Addl.PP for the state. The offence is serious in nature and is nuisance to public at large. There are specific and serious allegations against the accused. The accused is identified in TIP by the victim. As such, this court is not inclined to grant the relief as sought in the present application. Hence, the same is dismissed.

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

The observations made in the present interim bail application order are for the purpose of deciding of present application

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and do not affect the factual matrix of the investigation of the present case which is separate issue as per law.

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(Naveen Kumar Kashyap)
Additional Sessions Judge-04
Central/THC/Delhi
23/10/2020