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INTERIM BAIL APPLICATION

**State Vs. Deepesh @ Deepu
FIR No. : 303/2014
PS: Subzi Mandi
U/S: 302, 307,34 IPC &
25,27,59 Arms Act**

27.07.2020.

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State
through VC
Mr. Vikrant Chowdhary, Ld. Counsel for Accused
through VC.

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

2. Vide this order, the application dated 06.07.2020 seeking interim bail on the ground of illness/ medical condition of wife is disposed off.

3. Additional document filed by accused side. Further, additional reply filed by IO.

4. Arguments heard.

5. It is submitted that wife of the accused is seriously ill and her operation is fixed for 30.07.2020 and she is to be admitted in hospital on 29.07.2020. It is further stated that

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there is no adult competent member to look after her. It is further stated that her medical papers are already placed on record. It is further submitted that he was involved in another matter but he is already granted interim bail in that other criminal case FIR no. 1191/2014 ,PS Bharat Nagar, North-West District, Rohini Court by learned Sessions Judge concerned. As such, it is prayed that he be granted interim bail for at least 5-6 days.

6. On the other hand, such interim bail is strongly opposed by learned Addl. PP for the state on the basis of reply filed by IO. Although, the factum of medical condition of the wife is not denied, but it is stated that such accused could not be arrested earlier and he was declared PO in the present case. That he was arrested later on in July, 2018 only. That there is strong possibility that his presence may not be secured for trial if he is released on interim bail. It is further stated that offence is serious in nature involving ,inter alia, section 302 IPC. It is further stated that earlier his interim bail application was rejected recently only as he was involved in other cases also. As such, present bail application is strongly opposed.

7. The minimum punishment for the present offence is life imprisonment. Further there are specific allegations against the present accused. Further, it is a matter of record that his presence was not secured earlier and he was declared PO. That he was arrested later on and supplementary charge sheet was filed against such accused later on. As such, this court find force in the arguments of learned Addl./ PP for the state that his presence may not be secured for trial if he is released on interim bail. Under these circumstances, having regard to the nature of allegations made and the stage of the present case and his conduct earlier, this court is not inclined to

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grant the relief as sought in the present application. Hence, the same is dismissed.

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

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(Naveen Kumar Kashyap)
ASJ-04/Central/THC
Central District/27.07.2020

27.07.2020

Present: Sh. Pawan Kumar, Ld. Addl. PP for the state through VC.
Sh. Harsh Hardy, Ld. Counsel for applicant/surety through VC.

1. Interim bail granted to accused Vimal @ Dada by Hon'ble High Court subject to certain conditions. In view of the same bail bond filed.

2. Put up for verification of the address of surety and the security furnished by such surety, **as well as relationship of the surety with the accused**, in view of bail conditions imposed by the Hon'ble High Court.

3. Further, in view of the directions received from time to time from Hon'ble High Court of Delhi regarding hearing and conducting proceeding in urgent matter through electronic mode, and to streamline and ensure consistency, let in future copy of all applications received through electronic mode in this court from the concerned accused/counsel for accused be supplied by this court staff ,by electronic mode, to a dedicated e-mail of the public prosecutor.

3.1 As such, learned Chief Public Prosecutor is requested to create a specific e-mail for the public prosecutor appointed in this court so that there is a consistency smoothness in supplying electronic copy of the bail application, and other urgent applications to the prosecution and further that overlapping with other can be avoided.

4. ***Further, it is expected that the concerned SHO/IO file their reply only by electronic mode to the public prosecutor only, through such dedicated e-mail of the public prosecutor i.e. for onwards filing in this court e-mail made for this purpose.***

4.1. It is made clear that no reply be sent by the IO/SHO directly to this court. It is stated at the cost of repetition that same be filed through learned public prosecutor through electronic mode only till further order by Hon'ble High Court.

4.2. Further, concerned IO/SHO to file such reply through

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electronic mode through learned PP well in advance as per the order passed in particular case, and in any case a day before of the day of hearing.

5. Further, as and when such reply of IO/public prosecutor through e-mail is received from their e-mail ID chiefprosecutorcentral@gmail.com to the e-mail created for this court for this purpose, the concerned court staff on duty to supply a copy thereof to the learned counsel for accused/accused online through electronic mode.

6. **Accordingly, put up for compliance on 29.07.2020.**

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(Naveen Kumar Kashyap)
ASJ-04/Central/27.07.2020

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Extension of Interim Bail Application

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

27.07.2020

Present: Sh. Pawan Kumar, Ld. Addl. PP for the state through VC.
Sh. Deepak Ghai, Ld. Counsel for applicant/accused through VC.

1. An application for extension of interim bail filed.
2. Let notice of the same be issued to IO particularly to reply whether there is violation, if any, of any condition of interim bail granted to such accused during he was out on bail and any other matter.
3. Further, in view of the directions received from time to time from Hon'ble High Court of Delhi regarding hearing and conducting proceeding in urgent matter through electronic mode, and to streamline and ensure consistency, let in future copy of all bail applications received through electronic mode in this court from the concerned accused/counsel for accused be supplied by electronic mode by this court staff to a dedicated e-mail of the public prosecutor.
 - 3.1 As such, learned Chief Public Prosecutor is requested to create a specific e-mail for the public prosecutor appointed in this court so that there is a consistency smoothness in supplying electronic copy of the bail application, and other urgent applications to the prosecution and further that overlapping with other can be avoided.
4. Further, it is expected that the concerned SHO/IO file their reply only by electronic mode to the public prosecutor only, through such dedicated e-mail of the public prosecutor i.e. for onwards filing in this court e-mail made for this purpose.
 - 4.1. It is made clear that no reply be sent by the IO/SHO directly to this court. It is stated at the cost of repetition that same

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be filed through learned public prosecutor through electronic mode only till further order by Hon'ble High Court.

4.2. Further, concerned IO/SHO to file such reply through electronic mode through learned PP well in advance as per the order passed in particular case, and in any case a day before of the day of hearing.

5. Further, as and when such reply of IO/public prosecutor through e-mail is received from their e-mail ID chiefprosecutorcentral@gmail.com to the e-mail created for this court for this purpose, the concerned court staff on duty to supply a copy thereof to the learned counsel for accused/accused online through electronic mode.

6. **Accordingly, put up for compliance on 30.07.2020.**

7. **In view of such order passed in this case, which is to be adopted till further order by Hon'ble High Court, a copy of this order be sent to (i) learned DCP(Central), (ii)DCP (North), (iii) Incharge (EOW), (iv)DCP (Crime Branch-Central), DCP(Railway), for their information and compliance and for onwards intimation to the concerned SHOs/IOs under them as well as to concerned Jail Superintendent.**

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(Naveen Kumar Kashyap)
ASJ-04/Central/27.07.2020

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Bail Application

FIR No.:268/2019

PS:Wazirabad

State v Gurmeet @ Narender

U/S: 392, 34 IPC

27.07.2020

Present: Sh. Pawan Kumar, Ld. Addl. PP for the state through VC.
Sh. Satish Kumar, Ld. Counsel for applicant/accused through VC.

Fresh application seeking grant of regular bail filed on behalf of applicant / accused Gurmeet @ Narender through counsel. The same be checked and registered separately.

Put up for reply from the IO, arguments and appropriate order alongwith the case file for **30/07/2020**.

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(Naveen Kumar Kashyap)
ASJ-04/Central/27.07.2020

State v. Shahnawaj @ Shanu etc.
FIR No.: 25/2017
PS: Maurice Nagar

27.07.2020

File taken up today in terms of order No. Endst. No. 1734-66/DHC/2020 dated 27.06.2020 r/w other order passed from time to time as this case is pending at the stage of final arguments.

Present: Sh. Pawan Kumar, Ld. Addl. PP for the state through VC.
Sh. S.N. Shukla, Amicus Curaie (Mobile no.8588853448), for accused.

It is stated by learned Amicus Curiae for accused that he despite effort made is unable to contact the accused who is on bail.

Heard.

As such, issue notice to accused through IO/SHO concerned to appear through VC or otherwise

As, such Ahlmad is directed to issue notices accordingly.

Put up for appearance of accused, further arguments/clarifications, if any and final judgment on 05.08.2020.

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(Naveen Kumar Kashyap)
ASJ-04/Central/27.07.2020

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Bail Application

State Vs. Vipin Sharma
(application of Suresh kumar Nayak S/o Durga Ram)
FIR No. : 213/2018
PS: Lahori Gate
U/S: 395, 412, 34,120B IPC

27.07.2020

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

Vide this order, the regular bail application under section 439 Cr.P.C. on behalf of accused dated 17.07.2020 filed through counsel is disposed of.

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

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

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cogent grounds therefor. The fundamental principle of our system of justice is that a person should not be deprived of his liberty except for a distinct breach of law. If there is no substantial risk of the accused fleeing the course of justice, there is no reason why he should be imprisoned during the period of his trial. The basic rule is to release him on bail unless there are circumstances suggesting the possibility of his fleeing from justice or thwarting the course of justice. When bail is refused, it is a restriction on personal liberty of the individual guaranteed by Article 21 of the Constitution.

Further it has been laid down from the earliest time that the object of Bail is to secure the appearance of the accused person at his trial by reasonable amount of Bail. The object of Bail is neither punitive nor preventive. Deprivation of liberty must be considered a punishment unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after convictions, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earlier times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial ,but in such case 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the constitution that any persons should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty under Article 21 of the Constitution upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as mark of disapproval of former conduct whether the accused has been

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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

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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

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

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

In the present case, it is argued that he is in JC since 09.02.2019 and is young person of 26 years old. That before arrest, he was working as cab driver at Jaipur Airport and is the only bread winner in the family. . That matter is pending at PE stage and not proceeding further due to lock-down. That star witness Kailash could not identify him in TIP. That he has three small children and a dependent wife. That bail is a rule and jail is exception. That he has a fundamental right of speedy trial. It is further claimed that co-accused Hari Ram is granted bail. That nothing incriminating is recovered from such accused. It is further stated that story of prosecution is doubtful. That he has roots in society. 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

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present accused; that he conspired with others to commit dacoity of Rs. 35 Lakh; that his presence is captured in cctv footage near the place of occurrence; that his mobile location is also near the place of occurrence; that he refused to participate in the TIP but later identified by the complainant; that case is at the stage of PE and public witnesses are yet to be examined. It is further stated that no regular bail is given to co-accused Vipin and Hari Ram and they were only given interim bail. Further interim bail of co-accused Sahil rejected twice including on 01/07/2020. Further, in fact regular bail of co-accused Raja Ram was dismissed on 02.07.2020. It is further stated that regular bail of Hari Ram was earlier dismissed on 03.05.2019.

I find force in the arguments of learned Addl.PP for the state. The offence is serious in nature and is a nuisance to public at large. There are specific and serious allegations against the accused. Public witnesses including the complainant is not yet examined. Further, the statement of counsel for accused is somewhat misleading that co-accused Hari Ram is granted regular bail. On the contrary regular bail of such co accused Hari Ram was rejected earlier. Regular bail of co accused Raja Ram is rejected recently on 02/07/2020. As such, this court is not inclined to grant the relief as sought in the present application. Hence, the same is dismissed.

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

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**(Naveen Kumar Kashyap)
Additional Sessions Judge-04
Central/THC/Delhi
27/07/2020**