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Bail Application

**Bail Matters No.: 1367/2020
State Vs Ashwani s/o Jai Prakash
FIR No. : 73/2020
PS: Nabi Karim
U/S: 307, 323, 34 IPC**

26/09/2020

This court is also working as link court of the court of Ms. Neelofer Abida Parveen, learned Special Judge (NDPS).

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC.
Mr. Arvind Kumar, learned counsel for Accused through VC.

Vide this order, the second regular bail application dated 24/09/2020 under section 439 Cr.P.C. on behalf of accused 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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U/S: 307, 323, 34 IPC

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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

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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

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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

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

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

In the present case, it is submitted on behalf of the accused that he joined the investigation as per the direction of the SHO on 22/08/2020 and he was arrested thereafter on 24/08/2020; that no PC remand was sought and he was sent to JC. As such, no custodial investigation is required in present case; that complainant and his associates are anti-social ailments of the area and they have implicated the present accused in the present case; that injured was discharged from the hospital on the next date, therefore, section 307 IPC is not made out. No recovery is to be affected from the accused or at his instance. There is no criminal record of the present accused.

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That he is permanent resident of Delhi. That co-accused was already released on bail, therefore, on parity also he be granted bail. It is further argued that in the original FIR there is no elements of 307 IPC but in order to implicate the accused at the instance of complainant side, IO got recorded a supplementary statement and without any basis added such 307 IPC. It is stated that there is no intention to kill at all. Investigation has not made any further progress and six months are already passed. As such, it is claimed that there is a fresh ground for bail also including because 20 days have already lapsed since rejection of earlier bail application.

On the other hand, it is stated in the reply filed by SI Bijender Singh, as also argued by the learned Addl.PP for the state, that there are serious and specific allegations against the present accused; that he stabbed in the stomach, waist and right hip of Naim Khan / complainant with knife and then ran away from the spot. That such complainant and his associates were admitted in government hospital. That later on such Naim Khan gave supplementary statement u/s 161 Cr.PC stating that accused side shouted that they would kill him and attacked with intension to kill him. As such, section 307 IPC was added. That nature of injury as per doctor is simple. That such accused is a habitual offender and one more FIR is registered against him. That knife used in the commission of offence is yet to be recovered. That he may threaten the witness / complainant if granted the bail and even may jump the bail. It is further stated that there is any change in facts and circumstances since rejection of the last bail application by this court.

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

It is rightly argued by the learned Addl. PP for the State that bail application of present accused was rejected by a reasoned order by this court and there is no material change in circumstances since then. Investigation is still pending in this case. Although, it is

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expected that IO carry out the investigation and complete the same at the earliest which is also mandate of section 173 (1) Cr.PC. But the facts remain that vide a reasoned order dated 09/09/2020, regular bail application of accused is already dismissed. As such, this court do not find any fresh ground to grant bail to the present accused at this stage.

With these observations present bail application is disposed of as dismissed. Further, both the sides are 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 SHO / IO concerned. Further, copy of this order be also sent to concerned Jail Superintendent. Further, a copy of this order be also uploaded on the website.

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**(Naveen Kumar Kashyap)
Additional Sessions Judge-04
Central/THC/Delhi
26/09/2020**

Bail Application No: 1366/2020

State v. Sameer
FIR No. : 152/2020
PS:Jama Masjid
U/S: 379,356,411, 34 IPC

26.09.2020

Present: Mr. Pawan Kumar,Ld. Addl. PP for the State through VC.
Mr. Ravi Tikania , 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 24.09.2020 filed through counsel is disposed of.

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

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

Further it has been laid down from the earliest time that the object of Bail is to

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

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

Further discretionary jurisdiction of courts u/s 437 and 439 CrPC

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

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

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

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

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

In the present case, it is argued that accused is in JC since 23.08.2020. That his regular bail application is dismissed by Ld. MM vide order dated 24.09.2020. That recovery is already effected and he is no more required for the purpose of investigation. That there is no chance of absconding of present accused. As such, it is prayed that he be granted regular bail.

On the other hand, in reply filed by IO as also argued by the learned Addl.PP for the state that present accused alongwith co-accused /his wife snatched mobile phone from the victim while the present accused was driving in the scooty and they run away from the spot. Present accused alongwith co-accused was arrested at the identification of the complainant. Further, he got recovered stolen item also. That during investigation, the addresses told by such accused are found unverified. As such, it is prayed that his presence may not be secured for the purpose of trial. Further, it is argued that there are other criminal case of the same nature against the accused. As such, present bail application is strongly opposed.

I find force in the arguments of learned Addl.PP for the state. The offence is a nuisance to public at large. Although the case property is recovered. But, having regard to

the involvement of present accused in other criminal cases and that his addresses are found unverified, his presence may not be secured for trial, if he is released on bail. **As such, this court is not inclined to grant bail to such accused. Hence, the same is dismissed.**

Learned counsel for the applicant / accused is at liberty to collect the order through electronic mode. Copy of this order be sent to IO/SHO concerned and Jail Superintendent concerned through electronic mode.

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**(Naveen Kumar Kashyap)
Additional Sessions Judge-04
26.09.2020**

Bail Application No:1308/2020

State v. Bobby Soda
FIR No. : 143/2020
PS: Kotwali
U/S: 394,397,34 IPC

26.09.2020

Undersigned is also discharging work of Link court of Ms. Neelofer Abida Parveen Ld. Special Judge (NDPS).

Present: Mr. Pawan Kumar,Ld. Addl. PP for the State through VC.
Mr. M.K. Chaudhary, learned Counsel for Accused through VC.

Vide this order, present regular bail application dated 21.09.2020 filed on behalf of accused filed through counsel is disposed of.

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

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

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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.

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

Further at this stage it can be noted that interpreting the provisions of bail contained u/s 437 & 439 Cr.P.C., the Hon'ble Supreme Court in its various judgments has laid down various considerations for grant or refusal of bail to an accused in a non-bailable offence like, (i) Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) Nature of accusation and evidence therefor, (iii) Gravity of the offence and punishment which the conviction will entail, (iv) Reasonable possibility of securing presence of the accused at trial and danger of his absconding or fleeing if released on bail, (v) Character and behavior of the accused, (vi) Means, position and standing of the accused in the Society, (vii) Likelihood of the offence being repeated, (viii) Reasonable apprehension of the witnesses being tampered with, (ix) Danger, of course, of justice being thwarted by grant of bail, (x) Balance between the rights of the accused and the larger interest of the Society/State, (xi) Any other factor relevant and peculiar to the accused. (xii) While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, but if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused.

Furthermore, in the landmark judgment of **Gurucharan Singh and others v. State** (AIR 1978 SC 179), it was held that there is no hard and fast rule and no inflexible principle governing the exercise of such discretion by the courts. It was further held that there cannot be any inexorable formula in the matter of granting bail. It was further held that facts and circumstances of each case will govern the exercise of judicial discretion in granting or refusing bail. It was further held that such question depends upon a variety of circumstances, cumulative effect of which must enter into the judicial verdict. Such judgment itself mentioned the nature and seriousness of nature, and circumstances in which offences are committed apart from character of evidence as some of the relevant factors in deciding whether to grant bail or not.

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

In the present case, it is argued that accused is falsely implicated in the present case. That he is in JC since 20.03.2020. That he is a young boy of 22 years old and just got married. That he is the only bread earner of the family. That nothing is recovered from the accused or his instance. Chargesheet is already filed. That no purpose would be served by keeping the accused in JC.

On the other hand a reply filed by the state and as also argued by Ld. Addl. PP for the state that offence alleged the against the accused is very serious in nature. The robbed scooty was recovered from the accused Chandan.

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. The stage to examine public witness is yet to come, therefore, at this stage, this court is not inclined to grant the relief as sought in the present application. Hence, the same is dismissed.

Learned counsel for the applicant / accused is at liberty to collect the

order through electronic mode. Copy of this order be sent to IO/SHO concerned and Jail Superintendent concerned through electronic mode.

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**(Naveen Kumar Kashyap)
Additional Sessions Judge-04
Central/THC/Delhi
26.09.2020**

Bail Application No:1221/2020

State Vs. Chandan Singh

FIR No. : 143/2020

PS:Kotwali

U/S: 394, 397,34 IPC

26.09.2020

Undersigned is also discharging work of Link court of Ms. Neelofer Abida Parveen Ld. Special Judge (NDPS).

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

Vide this order, present 3rd bail application dated 09.09.2020 filed on behalf of accused filed through counsel is disposed of.

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

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

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

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

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

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

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

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

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

In the present case, it is argued that accused is falsely implicated in the present case. That he is in JC since 23.03.2020. That co-accused Baljeet Singh is already granted bail on 01.07.2020. Copy of such bail order is enclosed with the present bail application. That nothing is recovered from the accused or his instance. Chargesheet is already filed. That earlier his bail application was dismissed vide order dated 16.06.2020 and second bail application was dismissed as withdrawn vide order dated 13.08.2020. That no purpose would be served by keeping the accused in JC.

On the other hand a reply filed by the state and as also argued by Ld. Addl. PP for the state that offence alleged the against the accused is very serious in nature. The robbed scooty was recovered from the accused Chandan.

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. The bail application of the present accused was earlier dismissed by this court vide order dated 16.06.2020 and there is no material change in the circumstances except that now the chargesheet is filed. The stage to examine public witness is yet to come, therefore, at this stage, this court is not inclined to grant the

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

Learned counsel for the applicant / accused is at liberty to collect the order through electronic mode. Copy of this order be sent to IO/SHO concerned and Jail Superintendent concerned through electronic mode.

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Date: 2020.09.26 17:34:06
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(Naveen Kumar Kashyap)
Additional Sessions Judge-04
Central/THC/Delhi
26.09.2020

Bail Application No.: NIL

State v. Baljeet Singh

FIR no.: 143/2020

PS:Kotwali

U/S: 394,397,411,120B,34 IPC

26.09.2020

Undersigned is also discharging work of Link court of Ms. Neelofer Abida Parveen Ld. Special Judge (NDPS).

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

Put up for arguments and appropriate orders on 28.09.2020.

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**(NAVEEN KUMAR KASHYAP)
Additional Sessions Judge-04/Central
26.09.2020**

Bail Application No.:1224/2020

State v. Manoj Chaudhary

FIR no.:58/2018

PS:EOW Cell

U/S: 406,409,420,120B IPC

26.09.2020

Undersigned is also discharging work of Link court of Ms. Neelofer Abida Parveen Ld. Special Judge (NDPS).

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

Sh. Tanveer Ahmad Mir, Ld. counsel for applicant.

Today, case was fixed for appropriate order as mentioned in previous ordersheet dated 25.09.2020 at 4 pm.

At this stage, it is submitted by learned counsel for accused that he has e-mailed certain submission alongwith case law, copy of which two case laws was submitted yesterday also through e-mail. Same is noted.

Put up for order at 4 pm alongwith other matters listed for today.

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(NAVEEN KUMAR KASHYAP)
Additional Sessions Judge-04/Central
26.09.2020

AT 4.20 PM

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

Sh. Raunak Satpati, Ld. counsel for applicant.

Today, case was fixed for appropriate order that in the facts and circumstances of the present case and the nature of the offence alleged, the complainant/victim side be given opportunity of being heard before deciding the present bail application.

Two case laws are relied by learned counsel for accused. One of the case

law of Hon'ble High Court of Delhi and another of Hon'ble High Court of Kerala. On the bases of these two case laws, it is submitted by learned counsel for accused that original complainant /victim cannot be heard in the present bail proceedings.

I have heard both the sides in this regard and also carefully gone through the case laws filed by the present accused side.

It is stated in the case law relied by Ld., Counsel for accused itself that it has been laid down by the Hon'ble Apex Court that while applying the principles of law laid down in a given case, the Court must also correlate the facts of the reported case with that of the case in hand and then apply the law. It was further held that the factual matrix is totally different and this Court has already held that the third party intervention in an anticipatory bail application, either on behalf of the complainant or on behalf of any aggrieved person, cannot be permitted and the reason for the same is that it will result in sidetracking the focus of the Court from the main issue. It was further held that there is, no doubt, that in cognizable offences, the State is the main prosecuting party and the private counsel are given a limited right of assisting the prosecutor, but this role has been modified or relaxed in certain given contingencies.

Thus, it can be seen that a complainant or third party cannot as a matter of right insist that he be heard in a bail application. But, at the same time, there is no bar imposed by such judgments upon the court or the state/public prosecutor to hear the complainant/victim for effective submission in a bail application. Further, in the present case, it is a matter of record that complainant and his counsel was actively participating in the miscellaneous court proceedings/assisting public prosecutor, including in the bail application of the co-accused decided earlier. Further, there is a difference between a complainant /victim choosing not to appear in court proceeding vis-a-vis such complainant /victim was not aware about court proceedings, like the present bail application. It is not the case of accused that complainant was made aware about the present bail application and still he choose not to appear so far. In fact, it may further be noted that during the course of hearing today, the day 2-3 people joined the court proceedings through open link of the video conference of this court and they claimed that they are the investor/buyer of the project

in question. Thus, it appears that the complainant/victim are eager to join present court proceeding, but they were not aware about the same so far. They were told by this court that the issue whether they can be allowed to be heard or at least to assist the public prosecutor is yet to be decided today. Further, it may also be noted that permitting such complainant/victim side to so assist the public prosecutor will not result in side tracking the focus of the court from main issue, which was core issue/ratio of the judgment of Hon'ble High Court of Delhi relied by learned counsel for accused. On the contrary it will facilitate the court to arrive at a just decision in the present bail application.

Therefore, in the view of this court, having regard to the nature of allegations and the fact that public prosecutor himself inclined to seek assistance of the complainant/victim also apart from the IO and further that this court in all fairness want assistance of the complainant/victim and further that such victim /complainant side was heard in the previous bail application of the co-accused, **let notice be issued to the complainant *victim through IO for the next date of hearing.* Complainant/victim is at liberty to join through VC on next date of hearing. But, it is made clear that such victim/complainant side can only assist the public prosecutor.**

As such, put up for further arguments on main bail application and appropriate orders on 03.10.2020.

An earlier date of hearing requested by Ld. Counsel for accused , but having regard the limited functioning of court at present that too mostly through VC , the regular cases of this court , the bail matters of this court and old and fresh bail roaster matters , it is not possible to accommodate the same.

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**(NAVEEN KUMAR KASHYAP)
Additional Sessions Judge-04/Central
26.09.2020**

Bail Application No.: 1307/2020
State vs Tajimul Haque @ Salman s/o Jehrul
FIR No.231/2010
P. S. Pahar Ganj
U/s:308, 34 IPC

26.09.2020

This court is also working as link court of the court of Ms. Neelofer Abida Parveen, learned Special Judge (NDPS).

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.
Mr. Mohd. Aslam Qureshi, learned counsel for the accused through VC.
Mr. Dhan Bahadur Yadav, learned counsel for the accused through VC.

There are two applications for the same accused, one is filed through the counsel Mr. Dhan Bahadur Yadav and another is filed through counsel Mr. Mohd. Aslam Qureshi.

At this stage, counsel Mr. Dhan Bahadur Yadav states that he may be allowed to withdraw the present application filed through him.

Heard. Allowed.

As such, the application moved through counsel Mr. Dhan Bahadur Yadav is allowed to be withdrawn. Hence, the same is dismissed as withdrawn. The another application filed through counsel Mr. Mohd. Aslam Qureshi be proceeded further.

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(Naveen Kumar Kashyap)
ASJ-04/Central/26.09.2020

Bail Application No.: 1284/2020
State vs Gunjan
FIR No.142/2020
P. S. DBG Road
U/s:392, 34 IPC

26.09.2020

This court is also working as link court of the court of Ms. Neelofer Abida Parveen, learned Special Judge (NDPS).

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

Mr. M.C. Sharma, learned counsel for applicant through VC.

Reply filed by the IO. Copy of the same be supplied to the counsel for the accused through e-mail by the concerned staff during the course of the day.

Arguments in detail heard.

Certain clarification is required from the IO including regarding whether TIP of present accused was conducted, role of the present accused and nature of material collected against the present accused. **As such, issue notice to IO to appear through VC on the next date of hearing.**

Put up for appropriate order for **05/10/2020**.

An request for earlier date of hearing is made ,but having regard to the bail duty roster matter and regular bail matters, and regular matters of this court, it is not possible to accommodate the same .

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(Naveen Kumar Kashyap)
ASJ-04/Central/26.09.2020

Bail Application No.:
State vs Pradeep @ Podi s/o Jagdish
FIR No.5605/2020
P. S. Pahar Ganj
U/s: 379, 411 IPC

26.09.2020

This court is also working as link court of the court of Ms. Neelofer Abida Parveen, learned Special Judge (NDPS).

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

Learned counsel for applicant / accused alongwith accused on bail.

It is stated by the advocate that he seeks permission to withdraw the present application as the applicant / accused in this case is already on bail now.

Heard. Allowed.

As such, present application is allowed to be withdrawn. The same is dismissed as withdrawn.

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(Naveen Kumar Kashyap)
ASJ-04/Central/26.09.2020

State vs Chandan
FIR No. 29/2020
P. S. DBG Road
U/s:392, 397, 307, 120B, 34, & 25, 27 Arms Act

26.09.2020

This court is also working as link court of the court of Ms. Neelofer Abida Parveen, learned Special Judge (NDPS).

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

Mr. Rahul Tyagi, learned counsel for the applicant / accused through VC.

Arguments in detail heard on the second bail application dated 16/09/2020.

Put up for appropriate orders / clarification, if any, for **28/09/2020**.

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(Naveen Kumar Kashyap)
ASJ-04/Central/26.09.2020

Bail Application No.:
State vs Anand Singh
FIR No.366/2020
P. S.Kotwali
U/s:380, 457 IPC

26.09.2020

This court is also working as link court of the court of Ms. Neelofer Abida Parveen, learned Special Judge (NDPS).

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

Mr. Subhash Chauhan, learned counsel for the applicant / accused through VC.

Arguments in detail heard on this regular bail application dated 14/09/2020.

Put up for appropriate orders / clarification, if any, for **28/09/2020**.

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(Naveen Kumar Kashyap)
ASJ-04/Central/26.09.2020

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

State V. Laddan
(Application of Nirmal S/o Ashok)
FIR No.83/2020
P. S. : Kashmere Gate
U/s: 147,148,149,188,186,353,369,370, 436 IPC &
Section 3 of the Pandemic Disease Act &
Section 3 of PDP Act.

26.09.2020

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

Vide this order, regular bail application dated 07.09.2020 u/s 439 Cr.PC filed by applicant Nirmal through DLSA is disposed of.

It is stated in the application that he falsely implicated in the present case; that accused is in JC since 11.04.2020. That there is nobody to look after the family of the accused. That he belongs to a very poor social strata of the society. That co-accused are already granted bail by learned Bail Duty roster judge on 14.08.2020.

On the other hand, present bail application is opposed by the IO. It is stated that present accused alongwith other carried out the abovementioned offence at a shelter home during pandemic period and even pelted stones and sets on fire three shelter homes. As such, bail application is opposed.

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

The personal liberty is a priceless treasure for a human being. It is founded on the bed rock of constitutional right and accentuated further on human rights principle. The sanctity of liberty is the fulcrum of any civilized society.

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

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

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

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

norm. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly thing which the society disapproves, the legal consequences are bound to follow.

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

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

Further at this stage it can be noted that interpreting the provisions of bail contained u/s 437 & 439 Cr.P.C., the Hon'ble Supreme Court in its various judgments has laid down various considerations for grant or refusal of bail to an accused in a non-bailable offence like, (i) Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) Nature of accusation and evidence therefor, (iii) Gravity of the offence and punishment

which the conviction will entail, (iv) Reasonable possibility of securing presence of the accused at trial and danger of his absconding or fleeing if released on bail, (v) Character and behavior of the accused, (vi) Means, position and standing of the accused in the Society, (vii) Likelihood of the offence being repeated, (viii) Reasonable apprehension of the witnesses being tampered with, (ix) Danger, of course, of justice being thwarted by grant of bail, (x) Balance between the rights of the accused and the larger interest of the Society/State, (xi) Any other factor relevant and peculiar to the accused. (xii) While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, but if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. Furthermore, in the landmark judgment of **Gurucharan Singh and others v. State** (AIR 1978 SC 179), it was held that there is no hard and fast rule and no inflexible principle governing the exercise of such discretion by the courts. It was further held that there cannot be any inexorable formula in the matter of granting bail. It was further held that facts and circumstances of each case will govern the exercise of judicial discretion in granting or refusing bail. It was further held that such question depends upon a variety of circumstances, cumulative effect of which must enter into the judicial verdict. Such judgment itself mentioned the nature and seriousness of nature, and circumstances in which offences are committed apart from character of evidence as some of the relevant factors in deciding whether to grant bail or not.

Further it may also be noted that it is also settled law that while disposing of bail applications u/s 437/439 Cr.P.C., courts should assign reasons while allowing or refusing an application for bail. But detailed reasons touching the merit

of the matter should not be given which may prejudice the accused. What is necessary is that the order should not suffer from non-application of mind. At this stage a detailed examination of evidence and elaborate documentation of the merit of the case is not required to be undertaken. Though the court can make some reference to materials but it cannot make a detailed and in-depth analysis of the materials and record findings on their acceptability or otherwise which is essentially a matter of trial. Court is not required to undertake meticulous examination of evidence while granting or refusing bail u/s 439 of the CrPC.

In the present case, the 4-5 co-accused are already granted bail by the learned Bail Duty Sessions Court. Nothing remains to be recovered from the accused. No purpose would be served by keeping him in the custody, particularly trial is likely to take time during such pandemic condition. Therefore, on the ground of parity and the facts and circumstances, present accused is granted bail subject to furnishing personal bond and surety bond in the sum of Rs. 10,000/- to the satisfaction of the trial court and the following additional conditions:

i) That he will appear before IO / Trial Court as and when called as per law.

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

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

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

:8:

v) He shall convey any change of address immediately to the IO and the court;

vi) He shall also provide his mobile number to the

IO;

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

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)
Sessions Judge-
04(Central/Delhi/
26.09.2020**

MISC. APPLICATION

**State v. Vipin Sharma
FIR No. :213/2018
PS:Lahori Gate
U/S:395,412,120B IPC**

26.09.2020

Undersigned is also discharging work of Link court of Ms. Neelofer Abida Parveen Ld. Special Judge (NDPS).

Undersigned is also discharging bail roster duty.

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

This is an application for cancellation of NBW.

Part submissions heard.

Such NBW are stayed till next date of hearing i.e. 28.09.2020.

Copy of this order be given to learned counsel for accused through electronic mode. Further, a copy of this order be sent to SHO/IO concerned through electronic mode.

Put up for further appropriate proceedings/order on date already fixed on 28.09.2020.

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**(Naveen Kumar Kashyap)
ASJ-04/Central/26.09.2020**

NON-SURRENDER REPORT RECEIVED FROM JAIL OF LALIT @ BABLOO

**State v. Sunil
FIR No. :415/2015
PS: Kotwali
U/S: 365,397,412,120B IPC &
25,54,59 Arms Act**

26.09.2020

Undersigned is also discharging work of Link court of Ms. Neelofer Abida Parveen Ld. Special Judge (NDPS).

Undersigned is also discharging bail roster duty.

Present: Mr. Pawan Kumar ,Ld. Addl. PP for the State through VC.
Sh. Gaurav Singhal, Ld. Counsel for accused through VC.

Accused has failed to surrender despite specific order. Further, no plausible explanation is given by counsel for the accused Sh. Gaurav Singhal. As such, issue fresh NBW against the accused today itself.

IO/SHO concerned is directed to verify arrest of such accused and produce before the court accordingly.

Put up on 30.09.2020.

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(Naveen Kumar Kashyap)

ASJ-04/Central/26.09.2020

CA: 147/2020
Mohd. Sharif v. State

26.09.2020

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

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

Undersigned is also discharging work of Bail Roster duty.

Undersigned is also discharging work of Link court of Ms. Neelofer Abida Parveen Ld. Special Judge (NDPS).

Present: Sh. Prince Sharma, Ld. Counsel for Appellant Mohd. Sharif through VC.

Part arguments heard on the maintainability of the present appeal against impugned order.

Issue notice to state also for the next date of hearing.

Copy of this appeal be supplied through electronic mode to the State by the appellant within two days from today through court.

Put up for further arguments and orders on maintainability for 21.10.2020.

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(Naveen Kumar Kashyap)
ASJ-04/Central/26.09.2020

CA: 337/2019
Jasbir Singh v. State

26.09.2020

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

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

In the present case, last regular date of hearing was 30.05.2020 and 27.07.2020.

On 27.07.2020, matter was adjourned for 26.09.2020.

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 today through VC.

Undersigned is also discharging work of Bail Roster duty.

Undersigned is also discharging work of Link court of Ms. Neelofer Abida Parveen Ld. Special Judge (NDPS).

Present: None .

Put up for arguments in terms of previous order/purpose fixed for 29.01.2021.

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(Naveen Kumar Kashyap)
ASJ-04/Central/26.09.2020

Crl. Revision : 134/2020
PVALUE Analytics P. Ltd. & Anr. v. ITO

26.09.2020

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

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

In the present case, last regular date of hearing was 26.03.2020 and 27.07.2020.

On 27.07.2020, matter was adjourned for 26.09.2020.

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 today through VC.

Undersigned is also discharging work of Bail Roster duty.

Undersigned is also discharging work of Link court of Ms. Neelofer Abida Parveen Ld. Special Judge (NDPS).

Present: Sh. Gagan Kumar, Ld. Counsel for revisionist company.

Let previous order be complied afresh, if not already complied.

Put up for purpose fixed/further appropriate proceedings on 29.01.2021.

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(Naveen Kumar Kashyap)
ASJ-04/Central/26.09.2020

SC: 219/2018
FIR No:170/2016
PS: Subzi Mandi
State v. Dinesh Kumar

26.09.2020

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

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

In the present case, last regular date of hearing was 30.05.2020 and 27.07.2020.

On 27.07.2020, matter was adjourned for 26.09.2020.

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 today through VC.

Undersigned is also discharging work of Bail Roster duty.

Undersigned is also discharging work of Link court of Ms. Neelofer Abida Parveen Ld. Special Judge (NDPS).

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

No adverse order is being passed in the interest of justice in the present situation.

Issue P/w of the accused, if any in JC for next date through VC or otherwise as the situation may prevail on next date of hearing.

Put up for purpose fixed in terms of previous order for 29.01.2021.

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(Naveen Kumar Kashyap)
ASJ-04/Central/26.09.2020

SC: 27494/2016
FIR No: 471/2015
PS: Subzi Mandi
State v. Rahul

26.09.2020

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

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

In the present case, last regular date of hearing was 27.07.2020.

On 27.07.2020, matter was adjourned for 26.09.2020.

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 today through VC.

Undersigned is also discharging work of Bail Roster duty.

Undersigned is also discharging work of Link court of Ms. Neelofer Abida Parveen Ld. Special Judge (NDPS).

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.
Sh. Mukesh Kumar, Ld. Counsel for accused Rahul.

Accused is stated to be in JC.

Issue P/w of the accused, if any in JC for next date through VC or otherwise as the situation may prevail on next date of hearing.

Put up for purpose fixed i.e. PE in terms of previous order for 29.01.2021.
Notice be issued to witnesses accordingly.

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(Naveen Kumar Kashyap)
ASJ-04/Central/26.09.2020

SC: 485/2018
FIR No:291/2014
PS: Sadar Bazar
State v. Manoj

26.09.2020

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

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

In the present case, last regular date of hearing was 28.03.2020 and 27.07.2020.

On 27.07.2020, matter was adjourned for 26.09.2020.

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 today through VC.

Undersigned is also discharging work of Bail Roster duty.

Undersigned is also discharging work of Link court of Ms. Neelofer Abida Parveen Ld. Special Judge (NDPS).

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.
Sh. P.K. Garg, Ld. Counsel for accused Manoj alongwith Manoj on bail through VC.

**Put up for purpose fixed i.e. PE in terms of previous order for 29.01.2021.
Notice be issued to witnesses particularly complainant for next date of hearing.**

**NAVEEN
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(Naveen Kumar Kashyap)
ASJ-04/Central/26.09.2020

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: 1 :

Bail Application

**Bail Application No.: 1295/2020
State Vs Arun Kumar s/o Kishan Lal
FIR No. : 232/2020
PS:Pahar Ganj
U/S:308, 34 IPC**

26.09.2020

This court is also working as link court of the court of Ms. Neelofer Abida Parveen, learned Special Judge (NDPS).

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC
Mr. Sauraj, learned Counsel for accused through VC.
Accused Arun Kumar from Jail through VC.

Vide this order, the regular bail application dated 19/09/2020 under section 439 Cr.P.C. on behalf of accused 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,

**Bail Application No.: 1295/2020
State Vs Arun Kumar s/o Kishan Lal
FIR No. : 232/2020
PS:Pahar Ganj
U/S:308, 34 IPC**

: 2 :

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

Bail Application No.: 1295/2020
State Vs Arun Kumar s/o Kishan Lal
FIR No. : 232/2020
PS:Pahar Ganj
U/S:308, 34 IPC

: 3 :

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

Bail Application No.: 1295/2020
State Vs Arun Kumar s/o Kishan Lal
FIR No. : 232/2020
PS:Pahar Ganj
U/S:308, 34 IPC

: 4 :

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

Bail Application No.: 1295/2020
State Vs Arun Kumar s/o Kishan Lal
FIR No. : 232/2020
PS:Pahar Ganj
U/S:308, 34 IPC

: 5 :

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

Bail Application No.: 1295/2020
State Vs Arun Kumar s/o Kishan Lal
FIR No. : 232/2020
PS:Pahar Ganj
U/S:308, 34 IPC

: 6 :

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

In the present case, it is submitted that accused is falsely implicated in the present case; that on 15/09/2020 a group of anti-social element came in the gali and gave beatings to both complainant and accused persons. That complainant requested the IO not to register but still IO got registered present baseless FIR against the accused side. That he is the only bread earner of the family; that a compromise has been arrived between the accused side and the complainant side; that there is no previous criminal record of the present accused; that he has roots in the society; no purpose would be served by keeping the accused in the JC. As such, it is prayed that he be granted regular bail.

On the other hand, it is stated in the reply filed by IO, as also argued by the learned Addl.PP for the state, that there are serious and specific allegations against the present accused; that there is cctv footage also of the incident in question copy of which is placed on record by the IO. Further, the victim side has received injury also. As such, present application is opposed.

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

It is rightly pointed out by the learned Addl. PP for the State that offence is serious in nature. Further, investigation still on and at initial stage. Further, the complainant side has also received injury. Further there is cctv footage of the incident in question.

Bail Application No.: 1295/2020
State Vs Arun Kumar s/o Kishan Lal
FIR No. : 232/2020
PS:Pahar Ganj
U/S:308, 34 IPC

: 7 :

Further present offence is non compoundable and non bailable in nature. Therefore, at this initial stage, the alleged compromise between the parties is not of much importance. As such, this court is not inclined to grant regular bail to accused at this stage.

With these observations present interim bail application is disposed of as dismissed. Both the parties are at liberty to collect the order through electronic mode. Copy of this order be sent to IO / SHO concerned. Copy of this order be also sent to Jail Superintendent concerned. Copy of order be uploaded on the website.

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**(Naveen Kumar Kashyap)
ASJ-04, Central/THC/Delhi
26/09/2020**

Bail Application No.: 1295/2020
State Vs Arun Kumar s/o Kishan Lal
FIR No. : 232/2020
PS:Pahar Ganj
U/S:308, 34 IPC

: 1 :

Bail Application

**Bail Application No.: 1340/2020
State Vs Aashu s/o Arun Kumar Mishra
FIR No. : 231/2020
PS: Pahar Ganj
U/S: 308, 34 IPC**

26.09.2020

This court is also working as link court of the court of Ms. Neelofer Abida Parveen, learned Special Judge (NDPS).

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC
Mr. Dan Bahadur Yadav, learned Counsel for Accused through VC.

Vide this order, the regular bail application dated 23/09/2020 under section 439 Cr.P.C. on behalf of accused 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,

**Bail Application No.: 1340/2020
State Vs Aashu s/o Arun Kumar Mishra
FIR No. : 231/2020
PS: Pahar Ganj
U/S: 308, 34 IPC**

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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

Bail Application No.: 1340/2020
State Vs Aashu s/o Arun Kumar Mishra
FIR No. : 231/2020
PS: Pahar Ganj
U/S: 308, 34 IPC

: 3 :

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

Bail Application No.: 1340/2020
State Vs Aashu s/o Arun Kumar Mishra
FIR No. : 231/2020
PS: Pahar Ganj
U/S: 308, 34 IPC

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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

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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

Bail Application No.: 1340/2020
State Vs Aashu s/o Arun Kumar Mishra
FIR No. : 231/2020
PS: Pahar Ganj
U/S: 308, 34 IPC

: 6 :

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

In the present case, it is submitted that accused is falsely implicated in the present case; that on 15/09/2020 a group of anti-social element came in the gali and gave beatings to both complainant and accused persons. That complainant requested the IO not to register but still IO got registered present baseless FIR against the accused side. That he is the only bread earner of the family; that a compromise has been arrived between the accused side and the complainant side; that there is no previous criminal record of the present accused; that he has roots in the society; no purpose would be served by keeping the accused in the JC. As such, it is prayed that he be granted regular bail.

On the other hand, it is stated in the reply filed by IO, as also argued by the learned Addl.PP for the state, that there are serious and specific allegations against the present accused; that there is cctv footage also of the incident in question copy of which is placed on record by the IO. Further, the victim side has received injury also. As such, present application is opposed.

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

It is rightly pointed out by the learned Addl. PP for the State that offence is serious in nature. Further, investigation still on and at initial stage. Further, the complainant side has also received injury. Further there is cctv footage of the incident in question.

**Bail Application No.: 1340/2020
State Vs Aashu s/o Arun Kumar Mishra
FIR No. : 231/2020
PS: Pahar Ganj
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: 7 :

Further present offence is non compoundable and non bailable in nature. Therefore, at this initial stage, the alleged compromise between the parties is not of much importance. As such, this court is not inclined to grant regular bail to accused at this stage.

With these observations present interim bail application is disposed of as dismissed. Both the parties are at liberty to collect the order through electronic mode. Copy of this order be sent to IO / SHO concerned. Copy of this order be also sent to Jail Superintendent concerned. Copy of order be uploaded on the website.

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**(Naveen Kumar Kashyap)
ASJ-04,Central/THC/Delhi
26/09/2020**

Bail Application No.: 1340/2020
State Vs Aashu s/o Arun Kumar Mishra
FIR No. : 231/2020
PS: Pahar Ganj
U/S: 308, 34 IPC

: 1 :

Bail Application

**Bail Application No.: 1282/2020
State Vs. Guddu s/o Subhash
FIR No. : 231/2020
PS: Pahar Ganj
U/S:308, 34 IPC**

26.09.2020

This court is also working as link court of the court of Ms. Neelofer Abida Parveen, learned Special Judge (NDPS).

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC
Mr. Mohd. Aslam Qureshi, learned Counsel for Accused through VC.

Vide this order, the regular bail application dated 18/09/2020 under section 439 Cr.P.C. on behalf of accused 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

**Bail Application No.: 1282/2020
State Vs. Guddu s/o Subhash
FIR No. : 231/2020
PS: Pahar Ganj
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: 2 :

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

Bail Application No.: 1282/2020
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: 3 :

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

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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

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

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

In the present case, In the present it is submitted that accused is falsely implicated in the present case; he is the only bread earner of the family; that a compromise has been arrived between the accused side and the complainant side; that there is no previous criminal record of the present accused; that he has roots in the society; no purpose would be served by keeping the accused in the JC. As such, it is prayed that he be granted regular bail.

On the other hand, it is stated in the reply filed by IO, as also argued by the learned Addl.PP for the state, that there are serious

Bail Application No.: 1282/2020
State Vs. Guddu s/o Subhash
FIR No. : 231/2020
PS: Pahar Ganj
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: 6 :

and specific allegations against the present accused; that there is cctv footage also of the incident in question copy of which is placed on record by the IO. Further, the victim side has received injury also. As such, present application is opposed.

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

It is rightly pointed out by the learned Addl. PP for the State that offence is serious in nature. Further, investigation still on and at initial stage. Further, the complainant side has also received injury. Further there is cctv footage of the incident in question. Further present offence is non compoundable and non bailable in nature. Therefore, at this initial stage, the alleged compromise between the parties is not of much importance. As such, this court is not inclined to grant regular bail to accused at this stage.

With these observations present interim bail application is disposed of as dismissed. Both the parties are at liberty to collect the order through electronic mode. Copy of this order be sent to IO / SHO concerned. Copy of this order be also sent to Jail Superintendent concerned. Copy of order be uploaded on the website.

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(Naveen Kumar Kashyap)
ASJ-04,Central/THC/Delhi
26/09/2020

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Bail Application No.: 1282/2020
State Vs. Guddu s/o Subhash
FIR No. : 231/2020
PS: Pahar Ganj
U/S:308, 34 IPC

: 1 :

Bail Application

**Bail Application No.: 1296/2020
State Vs Harish Kumar s/o Nanak Chand
FIR No. : 232/2020
PS:Pahar Ganj
U/S:308, 34 IPC**

26.09.2020

This court is also working as link court of the court of Ms. Neelofer Abida Parveen, learned Special Judge (NDPS).

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC
Mr. Sauraj, learned Counsel for accused through VC.
Accused Arun Kumar from Jail through VC.

Vide this order, the regular bail application dated 19/09/2020 under section 439 Cr.P.C. on behalf of accused 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,

**Bail Application No.: 1296/2020
State Vs Harish Kumar s/o Nanak Chand
FIR No. : 232/2020
PS:Pahar Ganj
U/S:308, 34 IPC**

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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

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State Vs Harish Kumar s/o Nanak Chand
FIR No. : 232/2020
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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.

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State Vs Harish Kumar s/o Nanak Chand
FIR No. : 232/2020
PS:Pahar Ganj
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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

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State Vs Harish Kumar s/o Nanak Chand
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PS:Pahar Ganj
U/S:308, 34 IPC

: 5 :

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 Application No.: 1296/2020
State Vs Harish Kumar s/o Nanak Chand
FIR No. : 232/2020
PS:Pahar Ganj
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bail. But detailed reasons touching the merit of the matter should not be given which may prejudice the accused. What is necessary is that the order should not suffer from non-application of mind. At this stage a detailed examination of evidence and elaborate documentation of the merit of the case is not required to be undertaken. Though the court can make some reference to materials but it cannot make a detailed and in-depth analysis of the materials and record findings on their acceptability or otherwise which is essentially a matter of trial. Court is not required to undertake meticulous examination of evidence while granting or refusing bail u/s 439 of the CrPC.

In the present case, it is submitted that accused is falsely implicated in the present case; that on 15/09/2020 a group of anti-social element came in the gali and gave beatings to both complainant and accused persons. That complainant requested the IO not to register but still IO got registered present baseless FIR against the accused side. That he is the only bread earner of the family; that a compromise has been arrived between the accused side and the complainant side; that there is no previous criminal record of the present accused; that he has roots in the society; no purpose would be served by keeping the accused in the JC. As such, it is prayed that he be granted regular bail.

On the other hand, it is stated in the reply filed by IO, as also argued by the learned Addl.PP for the state, that there are serious and specific allegations against the present accused; that there is cctv footage also of the incident in question copy of which is placed on record by the IO. Further, the victim side has received injury also. As such, present application is opposed.

I have heard both the sides and gone through the

Bail Application No.: 1296/2020
State Vs Harish Kumar s/o Nanak Chand
FIR No. : 232/2020
PS:Pahar Ganj
U/S:308, 34 IPC

: 7 :

record.

It is rightly pointed out by the learned Addl. PP for the State that offence is serious in nature. Further, investigation still on and at initial stage. Further, the complainant side has also received injury. Further there is cctv footage of the incident in question. Further present offence is non compoundable and non bailable in nature. Therefore, at this initial stage, the alleged compromise between the parties is not of much importance. As such, this court is not inclined to grant regular bail to accused at this stage.

With these observations present interim bail application is disposed of as dismissed. Both the parties are at liberty to collect the order through electronic mode. Copy of this order be sent to IO / SHO concerned. Copy of this order be also sent to Jail Superintendent concerned. Copy of order be uploaded on the website.

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**(Naveen Kumar Kashyap)
ASJ-04,Central/THC/Delhi
26/09/2020**

Bail Application No.: 1296/2020
State Vs Harish Kumar s/o Nanak Chand
FIR No. : 232/2020
PS:Pahar Ganj
U/S:308, 34 IPC

ANTICIPATORY BAIL

**Application No.1363/2020
State Vs Rakhi w/o Vikas
FIR : 130/20
PS :Nabi Karim
U/s: 33, 58 Delhi Excise Act**

26.09.2020

This court is also working as link court of the court of Ms. Neelofer Abida Parveen, learned Special Judge (NDPS).

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Sh. Sunil Tiwari, Learned counsel for applicant / accused through VC.

Vide this order, present bail application u/s 438 Cr.PC filed on 23.09.2020 for anticipatory bail by applicant Udaibhan is disposed of.

In nutshell, it is stated by the applicant side that applicant is a female and mother of two children. That she is wife of accused Vikas who is already arrested in the present case by police on 28/04/2020 under Delhi Excise Act under present FIR. That now concerned police official has given a notice u/s 160 Cr.PC to appear in the present case. That illicit liquor is already recovered. That she is ready to join investigation as and when directed. That there is spread of corona virus. That IO is trying to falsely implicate him in present case. As such, she has moved the present application. It is prayed that in the event of her arrest direction may be given to the IO / SHO to grant applicant anticipatory bail.

**Application No.1363/2020
State Vs Rakhi w/o Vikas
FIR : 130/20
PS :Nabi Karim
U/s: 33, 58 Delhi Excise Act**

On the other hand, in reply dated 26/09/2020 as also argued by the learned Addl.PP for the State that she is an active co-accused. That main accused Vikas used her mobile phone in committing the offence in question. As such, notice was issued to her to join investigation. But she has failed to join investigation.

The offence alleged is punishable upto 03 years. The present applicant is directed to join investigation and appear before the IO / SHO concerned. Further, IO / SHO concerned is directed not to take any coercive action against the accused till next date of hearing only.

Put up for further arguments and appropriate orders for
07/10/2020.

NAVEEN KUMAR
KASHYAP
(NAVEEN KUMAR KASHYAP)
ASJ-04(Central Distt)/Delhi/26/09/2020

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Bail Application

Bail Application No.: 1281/2020
State Vs. Tejamool @ Salman s/o Jiaual Haq
FIR No. : 231/2020
PS: Pahar Ganj
U/S:308, 34 IPC

26.09.2020

This court is also working as link court of the court of Ms. Neelofer Abida Parveen, learned Special Judge (NDPS).

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC
Mr. Mohd. Aslam Qureshi, learned Counsel from for Accused through VC.

Vide this order, the regular bail application dated 18/09/2020 under section 439 Cr.P.C. on behalf of accused 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

Bail Application No.: 1281/2020
State Vs. Tejamool @ Salman s/o Jiaual Haq
FIR No. : 231/2020
PS: Pahar Ganj
U/S:308, 34 IPC

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

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

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content and it would be improper for any court to refuse bail as mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson. While considering an application for bail either under Section 437 or 439 CrPC, the court should keep in view the principle that grant of bail is the rule and committal to jail an exception. Refusal of bail is a restriction on personal liberty of the individual guaranteed by Article 21 of the Constitution. Seriousness of the offence not to be treated as the only consideration in refusing bail : Seriousness of the offence should not to be treated as the only ground for refusal of bail. (Judgment of **Sanjay Chandra Vs. Central Bureau of Investigation, AIR 2012 SC 830** relied).

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

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

At this stage , it can also be fruitful to note that requirements for bail u/s 437 & 439 are different. Section 437 Cr.P.C.

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severally curtails the power of the Magistrate to grant bail in context of the commission of non-bailable offences punishable with death or imprisonment for life, the two higher Courts have only the procedural requirement of giving notice of the Bail application to the Public Prosecutor, which requirement is also ignorable if circumstances so demand. The regimes regulating the powers of the Magistrate on the one hand and the two superior Courts are decidedly and intentionally not identical, but vitally and drastically dissimilar. (**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

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Gurucharan Singh and others v. State (AIR 1978 SC 179), it was held that there is no hard and fast rule and no inflexible principle governing the exercise of such discretion by the courts. It was further held that there cannot be any inexorable formula in the matter of granting bail. It was further held that facts and circumstances of each case will govern the exercise of judicial discretion in granting or refusing bail. It was further held that such question depends upon a variety of circumstances, cumulative effect of which must enter into the judicial verdict. Such judgment itself mentioned the nature and seriousness of nature, and circumstances in which offences are committed apart from character of evidence as some of the relevant factors in deciding whether to grant bail or not.

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

In the present case, In the present it is submitted that accused is falsely implicated in the present case; he is the only bread earner of the family; that a compromise has been arrived between the accused side and the complainant side; that there is no previous criminal record of the present accused; that he has roots in the society; no purpose would be served by keeping the accused in the

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JC. As such, it is prayed that he be granted regular bail.

On the other hand, it is stated in the reply filed by IO, as also argued by the learned Addl.PP for the state, that there are serious and specific allegations against the present accused; that there is cctv footage also of the incident in question copy of which is placed on record by the IO. Further, the victim side has received injury also. As such, present application is opposed.

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

It is rightly pointed out by the learned Addl. PP for the State that offence is serious in nature. Further, investigation still on and at initial stage. Further, the complainant side has also received injury. Further there is cctv footage of the incident in question. Further present offence is non compoundable and non bailable in nature. Therefore, at this initial stage, the alleged compromise between the parties is not of much importance. As such, this court is not inclined to grant regular bail to accused at this stage.

With these observations present interim bail application is disposed of as dismissed. Both the parties are at liberty to collect the order through electronic mode. Copy of this order be sent to IO / SHO concerned. Copy of this order be also sent to Jail Superintendent concerned. Copy of order be uploaded on the website.

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**(Naveen Kumar Kashyap)
ASJ-04,Central/THC/Delhi
26/09/2020**

**Bail Application No.: 1281/2020
State Vs. Tejamool @ Salman s/o Jiaual Haq
FIR No. : 231/2020
PS: Pahar Ganj
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Bail Application

**Bail Application No.: 1298/2020
State Vs Tarun s/o Kishan Lal
FIR No. : 232/2020
PS: Pahar Ganj
U/S:308, 34 IPC**

26.09.2020

This court is also working as link court of the court of Ms. Neelofer Abida Parveen, learned Special Judge (NDPS).

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC
Mr. Sauraj, learned Counsel for accused through VC.
Accused Arun Kumar from Jail through VC.

Vide this order, the regular bail application dated 19/09/2020 under section 439 Cr.P.C. on behalf of accused 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

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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

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content and it would be improper for any court to refuse bail as mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson. While considering an application for bail either under Section 437 or 439 CrPC, the court should keep in view the principle that grant of bail is the rule and committal to jail an exception. Refusal of bail is a restriction on personal liberty of the individual guaranteed by Article 21 of the Constitution. Seriousness of the offence not to be treated as the only consideration in refusing bail : Seriousness of the offence should not to be treated as the only ground for refusal of bail. (Judgment of **Sanjay Chandra Vs. Central Bureau of Investigation, AIR 2012 SC 830** relied).

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

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

At this stage , it can also be fruitful to note that requirements for bail u/s 437 & 439 are different. Section 437 Cr.P.C. severally curtails the power of the Magistrate to grant bail in context of

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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

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

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

In the present case, it is submitted that accused is falsely implicated in the present case; that on 15/09/2020 a group of anti-social element came in the gali and gave beatings to both complainant and accused persons. That complainant requested the IO not to register but still IO got registered present baseless FIR against the accused side. That he is the only bread earner of the family; that a compromise has been arrived between the accused side and the complainant side; that there is no previous criminal record of the present accused; that he has roots in the society; no purpose would

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be served by keeping the accused in the JC. As such, it is prayed that he be granted regular bail.

On the other hand, it is stated in the reply filed by IO, as also argued by the learned Addl.PP for the state, that there are serious and specific allegations against the present accused; that there is cctv footage also of the incident in question copy of which is placed on record by the IO. Further, the victim side has received injury also. As such, present application is opposed.

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

It is rightly pointed out by the learned Addl. PP for the State that offence is serious in nature. Further, investigation still on and at initial stage. Further, the complainant side has also received injury. Further there is cctv footage of the incident in question. Further present offence is non compoundable and nonailable in nature. Therefore, at this initial stage, the alleged compromise between the parties is not of much importance. As such, this court is not inclined to grant regular bail to accused at this stage.

With these observations present interim bail application is disposed of as dismissed. Both the parties are at liberty to collect the order through electronic mode. Copy of this order be sent to IO / SHO concerned. Copy of this order be also sent to Jail Superintendent concerned. Copy of order be uploaded on the website.

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**(Naveen Kumar Kashyap)
ASJ-04,Central/THC/Delhi
26/09/2020**

**Bail Application No.: 1298/2020
State Vs Tarun s/o Kishan Lal
FIR No. : 232/2020
PS: Pahar Ganj
U/S:308, 34 IPC**

ANTICIPATORY BAIL**Application No.1364/2020****State Vs Udaibhan s/o Bahadur Singh****FIR : 130/20****PS :Nabi Karim****U/s: 33, 58 Delhi Excise Act****26.09.2020**

This court is also working as link court of the court of Ms. Neelofer Abida Parveen, learned Special Judge (NDPS).

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Sh. Sunil Tiwari, Learned counsel for applicant / accused through VC.

Vide this order, present bail application u/s 438 Cr.PC filed on 24.09.2020 for anticipatory bail by applicant Udaibhan is disposed of.

In nutshell, it is stated by the applicant side that he is an old person and he is father in law of accused Vikas. That he is auto driver by profession. That such son in law Vikas is arrested by police on 28/04/2020 under Delhi Excise Act under present FIR. That now concerned police official has given a notice u/s 160 Cr.PC to appear in the present case. That illicit liquor is already recovered. That he is ready to join investigation as and when directed. That there is spread of corona virus. That IO is trying to falsely implicate him in present case. As such, he has moved the present application. It is prayed that in the event of his arrest direction may be given to the IO / SHO to grant applicant anticipatory

Application No.1364/2020**State Vs Udaibhan s/o Bahadur Singh****FIR : 130/20****PS :Nabi Karim****U/s: 33, 58 Delhi Excise Act**

bail.

On the other hand, in reply dated 26/09/2020 as also argued by the learned Addl.PP for the State that the scooty used to bring illicit liquor in question, belongs to the present applicant. As such, notice was issued to him to join investigation. But he has failed to join investigation.

The offence alleged is punishable upto 03 years. The present applicant is directed to join investigation and appear before the IO / SHO concerned. Further, IO / SHO concerned is directed not to take any coercive action against the accused till next date of hearing only.

Put up for further arguments and appropriate orders for 07/10/2020.

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