

**FIR NO: 275/2009**  
**PS: Burari**  
**State v. Mohd. Nazim**

**07.07.2020**

**File taken up today in terms of order No. Endst. No. 1734-66/DHC/2020 dated 27.06.2020.**

**Present:** Sh. Pawan Kumar, Ld. Addl. PP for the State.  
Sh. R.N. Pandey, Ld. counsel for accused  
no.1,2,4,5,6 and 7 (Mobile no. 9211316494).  
Sh. Pooran Chand Sharma, Ld. Counsel for  
accused no.3 (mobile no. 9810473481).

*This court is also discharging emergency Roster bail duty since 20.05.2020 and on an average hearing 15-20 matters through VC.*

This case is pending at the stage of final arguments. As such, same is proposed to be taken up today for hearing.

It is submitted on behalf of both counsels through electronic mode/mobile phones when contacted by concerned staff only, that they are not ready for arguments at this stage as their files are available at their chambers only.

As such, matter could not be proceeded further on merits.

Parties are directed to download Webex and get familiar with the same by NDOH so that hearing can be held through Webex/electronic mode.

**Put up for purpose already fixed/arguments on**

**07.09.2020.**

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

**FIR NO: 70/2008**  
**PS: Kashmere Gate**  
**State v. Gabbar Singh @ Gurcharan**  
**U/S: 392,365,411,364A IPC**

**07.07.2020**

**File taken up today in terms of order No. Endst. No. 1734-66/DHC/2020 dated 27.06.2020.**

**Present:** Sh. Pawan Kumar, Ld. Addl. PP for the State.  
None for all four accused.

*This court is also discharging emergency Roster bail duty since 20.05.2020 and on an average hearing 15-20 matters through VC.*

This case is pending at the stage of final arguments. As such, same is proposed to be taken up today for hearing.

As per Ahlmad, mobile number of counsel for accused no. 1, 2 and 4 Sh. Kshitiz Sharma is not available on record and mobile number (9868187862) of counsel for accused no. 3 Sh. Bharat Dubey is not reachable.

As such, matter could not be proceeded further on merits.

**Put up for purpose already fixed/arguments on 07.09.2020.**

**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/THC**  
**07.07.2020**



**CA: 323/2019  
Rajni v. State**

**07.07.2020**

**File taken up today in terms of order No. Endst. No. 1734-66/DHC/2020 dated 27.06.2020.**

**Present:** None for Appellant.  
Sh. Pawan Kumar, Ld. Addl. PP for State/  
respondent through VC.

*This court is also discharging emergency Roster bail duty since 20.05.2020 and on an average hearing 15-20 matters through VC.*

This case is pending at the stage of final arguments. As such, same is proposed to be taken up today for hearing.

As per information given by Ahlmad of this court, **mobile number 9953365083 of counsel for appellant Sh. M.S. Tyagi** is not reachable. As such, matter could not be proceeded further on merits.

**Put up for purpose already fixed/arguments on 07.09.2020.**

**(Naveen Kumar Kashyap)  
ASJ-04/Central/THC  
07.07.2020**

**CA: 321/2018**  
**Ravi Kant v. CBI**

**07.07.2020**

**File taken up today in terms of order No. Endst. No. 1734-66/DHC/2020 dated 27.06.2020.**

**Present:** Sh. R. S. Malik, Ld. counsel for Appellant(Mobile no. 9810013542 ).  
None for CBI/Respondent( number not available)


*This court is also discharging emergency Roster bail duty since 20.05.2020 and on an average hearing 15-20 matters through VC.*

This case is pending at the stage of final arguments. As such, same is proposed to be taken up today for hearing.

Sh. R.S. Malik, Ld. Counsel for Appellant submits through electronic mode that he is not ready with arguments.

Mobile number of learned Special PP for CBI is not available on record. As such, matter could not be proceeded further on merits.

**Put up for purpose already fixed/arguments on 07.09.2020.**

  
**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/THC**  
**07.07.2020**

CA: 54824/16  
Rakesh Soni v. state

07.07.2020

File taken up today in terms of order No. Endst. No. 1734-66/DHC/2020 dated 27.06.2020.

**Present:** Sh. Rajat Manchanda, Ld. counsel for Appellant(Mobile no. 9811010461).  
Mr. Pawan Kumar, Learned Addl. PP for State/respondent through VC.

*This court is also discharging emergency Roster bail duty since 20.05.2020 and on an average hearing 15-20 matters through VC.*

This case is pending at the stage of final arguments. As such, same is proposed to be taken up today for hearing.

As per information given by Sh. Rajat Manchanda, Ld. Counsel for respondent no.2 to 6 over mobile phone that the present case has been settled between the parties before Hon'ble High Court.

As such, matter could not be proceeded further on merits.

**Put up for purpose already fixed/arguments on**  
07.09.2020.

(Naveen Kumar Kashyap)  
ASJ-04/Central/THC  
07.07.2020

CA: 54780/16  
Neena Soni v. state

07.07.2020

File taken up today in terms of order No. Endst. No. 1734-66/DHC/2020 dated 27.06.2020.

**Present:** Sh. Arun Mahajan, Ld. Counsel for Appellant(Mobile no.9810348346).  
Mr. Pawan Kumar, Learned Addl. PP for State/respondent no.1 through VC.  
Sh. Rajat Manchanda, Ld. counsel for respondent no. 2 to 6 (Mobile no. 9811010461).

*This court is also discharging emergency Roster bail duty since 20.05.2020 and on an average hearing 15-20 matters through VC.*

This case is pending at the stage of final arguments. As such, same is proposed to be taken up today for hearing.

Sh. Arun Mahajan, Ld. Counsel for Appellant submits through electronic mode that he is not ready with final arguments as of now.

As per information given by Sh. Rajat Manchanda, Ld. Counsel for respondent no.2 to 6 over mobile phone that the present case has been settled between the parties before Hon'ble High Court.

As such, matter could not be proceeded further on merits.

**Put up for purpose already fixed/arguments on**  
07.09.2020.

(Naveen Kumar Kashyap)  
ASJ-04/Central/THC  
07.07.2020

**CA: 54841/2016**  
**Bhupinder Singh Sawhney v. State & anr.**

**07.07.2020**

**File taken up today in terms of order No. Endst. No. 1734-66/DHC/2020 dated 27.06.2020.**

**Present:** Sh. L.M. Grover, counsel for Appellant no.1 & 2.  
(Mobile no.9810113968)  
Mr. Pawan Kumar, Learned Addl. PP for  
State/Respondent no.1 through VC.  
Sh. Sanjeev Goel, counsel for Respondent  
no.2(Mobile no. 9810498889)

*This court is also discharging emergency Roster bail duty since 20.05.2020 and on an average hearing 15-20 matters through VC.*

This case is pending at the stage of final arguments. As such, same is proposed to be taken up today for hearing.

As per Ahlmad of this court, mobile phone of counsel for Appellant no.1 and 2 is not reachable and counsel for respondent no.2 is not picking up the phone.

**As such, matter could not be proceeded further on merits.**

**Put up for purpose fixed/arguments on 07.09.2020.**

**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/THC**  
**07.07.2020**



**CA: 54842/2016**  
**Bhupinder Singh Sawhney v. State & arr.**

**07.07.2020**

**File taken up today in terms of order No. Endst. No. 1734-66/DHC/2020 dated 27.06.2020.**

**Present:** Sh. L.M. Grover, counsel for Appellant no.1 & 2.  
(Mobile no.9810113968)  
Mr. Pawan Kumar, Learned Addl. PP for  
State/Respondent no.1 through VC.  
Sh. Sanjeev Goel, counsel for Respondent  
no.2(Mobile no. 9810498889)

*This court is also discharging emergency Roster bail duty since 20.05.2020 and on an average hearing 15-20 matters through VC.*

This case is pending at the stage of final arguments. As such, same is proposed to be taken up today for hearing.

As per Ahlmad of this court, mobile phone of counsel for Appellant no.1 and 2 is not reachable and counsel for respondent no.2 is not picking up the phone.

**As such, matter could not be proceeded further on merits.**

**Put up for purpose fixed/arguments on 07.09.2020.**

**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/THC**  
**07.07.2020**

**CA: 54840/2016**  
**Bhupinder Singh Sawhney v. State & arr.**

**07.07.2020**

**File taken up today in terms of order No. Endst. No. 1734-66/DHC/2020 dated 27.06.2020.**

**Present:** Sh. L.M. Grover, counsel for Appellant no.1 & 2.  
(Mobile no.9810113968)  
Mr. Pawan Kumar, Learned Addl. PP for  
State/Respondent no.1 through VC.  
Sh. Sanjeev Goel, counsel for Respondent  
no.2(Mobile no. 9810498889)

*This court is also discharging emergency Roster bail duty since 20.05.2020 and on an average hearing 15-20 matters through VC.*

This case is pending at the stage of final arguments. As such, same is proposed to be taken up today for hearing.

As per Ahlmad of this court, mobile phone of counsel for Appellant no.1 and 2 is not reachable and counsel for respondent no.2 is not picking up the phone.

**As such, matter could not be proceeded further on merits.**

**Put up for purpose fixed/arguments on 07.09.2020.**

(Naveen Kumar Kashyap)  
ASJ-04/Central/THC  
07.07.2020

**BAIL BOND**

**FIR NO.: 48/2015**

**PS: Nabi Karim**

**STATE V. AJAY @ Nathu @ Sunny & Ors.**

**07.07.2020.**

**File taken up today as verification of bail bond is filed.**

**Present: Sh. Pawan Kumar, Ld. Addl. Ppf for the State through VC.**

Today, case is fixed for verification report of Bail Bond. Same is filed by HC Brijesh Kumar dated 01.07.2020.

As per such report, Bail Bond is verified. Same is taken on record and accepted.

**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/THC**  
**07.07.2020**

: 1 :

**BAIL APPLICATION**

State V. Manoj  
FIR No. 198/2020  
PS.: Nabi Karim  
U.S: 308,34 IPC

07.07.2020

**This is Fresh Bail Application.**

**Present:** Mr. Pawan Kumar, Learned Addl. PP for State  
through VC.  
Mr. Anil Sharma, learned counsel for accused  
through VC.

Reply not received.

**Put up for reply, arguments and appropriate  
orders for 10.07.2020.**

(Naveen Kumar Kashyap)  
ASJ-04/Central/THC  
07.07.2020

: 1 :

**INTERIM BAIL APPLICATION**

**State V. Sikander  
FIR No. 144/2019  
PS.: Jama Masjid  
U.S: 364A,392,34 IPC**

**07.07.2020**

**This is Fresh Interim Bail Application.**

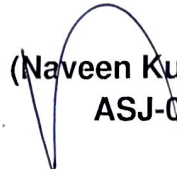
**Present:** Mr. Pawan Kumar, Learned Addl. PP for State through VC.  
Mr. Anand Parashar, learned counsel for accused through VC.

Reply filed by SI Vidyakar Pathak. Same is taken on record.

After some arguments, learned counsel for accused wants to withdraw the present application with liberty to file before learned MM seeking interim bail.

Heard. Allowed.

In view of the submissions of learned counsel for applicant/accused, present interim bail application is disposed of as withdrawn.

  
**(Naveen Kumar Kashyap)  
ASJ-04/Central/THC  
07.07.2020**



: 1 :

**INTERIM BAIL APPLICATION**

**State V. Abdul Salam & Ors.  
FIR No. 02/2014  
PS.: Jama Masjid  
U.S: 302,394,411, 34 IPC**

**07.07.2020**

**Present:** Mr. Pawan Kumar, Learned Addl. PP for State through VC.  
Mr. Asgar Khan, learned counsel for accused through VC.

Part arguments in detail heard.

It is stated that earlier he was granted interim bail based on criteria. Same is expired yesterday. As such, he has surrendered to Jail Superintendent concerned. Now, in the meanwhile, this application for interim bail with 45 days is moved.

Part arguments heard. Inter alia, it is stated in reply by IO that there is previous involvement of accused in FIR no. 131/2013 PS Kashmere Gate Metro Station.

Let copy of such reply be sent to learned counsel for accused through electronic mode.

**Put up for further arguments and appropriate orders for 08.07.2020.**

**(Naveen Kumar Kashyap)  
ASJ-04/Central/THC  
07.07.2020**

: 1 :

**BAIL APPLICATION**

State V. Sohanveer  
FIR No. 445/14  
PS.: Burari  
U.S: 302, 34 IPC

07.07.2020

**Present:** Mr. Pawan Kumar, Learned Addl. PP for State  
through VC.  
Mr. Sachin Kumar Jjain,, learned LAC for accused  
through VC.

There is some confusion regarding whether reply is  
filed by IO or not.

**Put up for placing of reply on record and  
appropriate orders on 10.07.2020.**

(Naveen Kumar Kashyap)  
ASJ-04/Central/THC  
07.07.2020

: 1 :

**MISC. APPLICATION**

State V. Rahul Sharma  
FIR No. 339/2016  
PS.: Darya Ganj

07.07.2020

**Present:** Mr. Pawan Kumar, Learned Addl. PP for State through VC.  
Mr. Akhilesh Kamle,, learned LAC for accused Kishan Kumar through VC.

An application for alternation of charge is filed.

Heard.

**Put up for consideration of submissions and appropriate orders on 16.07.2020 with file.**

(Naveen Kumar Kashyap)  
ASJ-04/Central/THC  
07.07.2020

: 1 :

**INTEIRM BAIL APPLICATION**

**State V. Raghav Jha  
FIR No. 339/2016  
PS.: Darya Ganj  
U.S: 392,397, 34 IPC**

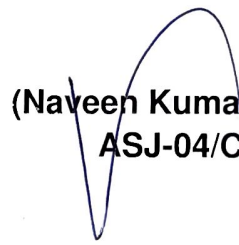
**07.07.2020**

**Present:** Mr. Pawan Kumar, Learned Addl. PP for State through VC.  
Mr. Pankaj Srivastava, learned LAC for accused through VC.

Part arguments heard.

Counsel for applicant needs some time to file medical documents.

**Put up for clarifications, arguments and appropriate orders on 13.07.2020.**

  
**(Naveen Kumar Kashyap)  
ASJ-04/Central/THC  
07.07.2020**

**BAIL APPLICATION**


**State V. Mohd. Naved @ Peela  
FIR No. 964/2015  
PS.: Sarai Rohilla  
U.S: 302, 34 IPC**

**07.07.2020**

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

Despite repeated efforts made by concerned staff,  
counsel for accused is not responding for Webex Meeting.

**As such, put up for 09.07.2020.**

  
**(Naveen Kumar Kashyap)  
ASJ-04/Central/THC  
07.07.2020**

**At 2.30 pm**

At this stage, Sh. Anil Dutt Sharma, Ld. Counsel for  
accused/applicant appears and submits that he has sent some  
photographs and one video through e-mail  
(asj04.central@gmail.com).

Heard.

Put up for clarifications/ appropriate orders on date  
already fixed **09.07.2020**.

  
**(Naveen Kumar Kashyap)  
ASJ-04/Central/THC  
07.07.2020**



: 1 :

**BAIL APPLICATION**

State V. Rahul Gupta  
FIR No. 210/2018  
PS.: Prasad Nagar  
U.S: 302, 34 IPC

07.07.2020

**Present:** Mr. Pawan Kumar, Learned Addl. PP for State  
through VC.  
Mr. Pankaj Srivastava, learned LAC for accused  
through VC.

Part arguments heard.

It is stated that accused is not well.

Let reply be filed by Jail Superintendent regarding  
the medical treatment/status of present accused.

Issue notice to Jail Superintendent accordingly.

**Put up on 13.07.2020.**

(Naveen Kumar Kashyap)  
ASJ-04/Central/THC  
07.07.2020

**BAIL BOND**

**FIR NO.: 130/2014  
PS: KAMLA MARKET  
STATE V. YADNENDER @ GUDDU YADAV**

**07.07.2020.**

Present: Sh. Pawan Kumar, Ld. Addl. Ppf for the State  
through VC.

Today, case is fixed for verification report of Bail  
Bond. Same is filed by SI Mahesh Bhargava dated 07.07.2020.

As per such report, Bail Bond is verified. Same is  
taken on record and accepted.

(Naveen Kumar Kashyap)  
ASJ-04/Central/THC  
07.07.2020

**BAIL APPLICATION**

FIR No. : 359/2014

PS: Pahar Ganj

State v Murgan @ Anna s/o Mr. Ganesh

U/S: 307, 387, 120B IPC, &amp; 25, 27, 54, 59 Arms Act

07.07.2020.

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

Mr. Ramesh Punia, learned counsel for applicant /  
accused through VC.

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

2. **As per minutes of meeting dated 18.05.2020 of Hon'ble High Court**, IO / SHO concerned to file reply, including on the following aspect apart from any other point which IO wants to raise:-

(i) Report about Previous **conviction**, if any, of present accused/Applicant

(ii) Further, (in view of direction by Hon'ble HC), a report that present accused is **not involved**, in any other case;

FIR No. : 359/2014

PS: Pahar Ganj

State v Murgan @ Anna s/o Mr. Ganesh

U/S: 307, 387, 120B IPC, &amp; 25, 27, 54, 59 Arms Act

(iii) Date, since when accused is in JC in present case

(iv) What are **all** the Offences under IPC or other law, which are alleged against present accused in present case .

3. Further (in view of direction by Hon'ble HC), **Jail Superintendent concerned** to file:

(i) Copy of **custody warrant** of present accused;

(ii) A **certificate regarding good conduct**, if any, of the accused during his custody period so far.

4. As such, issue notice of present application to the IO/ SHO as well as to Jail Superintendent concerned.

5. The concerned IO/ SHO to file its reply preferably in electronic form/email.

6. **Counsel for accused is advised to collect the order online through electronic mode or otherwise dasti as requested.**

7. **Put up for report, arguments and further appropriate orders on 13/07/2020, preferably through V.C.**

(Naveen Kumar Kashyap)  
ASJ-04/Central/THC  
Central District  
07.07.2020

**BAIL APPLICATION**

**FIR No. :70/2020**

**PS: Nabi Karim**

**STATE v. Sunil Chikara s/o Mr. Gian Chand**

**U/S: 376, 342, 323, 506 IPC**

**07.07.2020.**

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

An application u/s 439 Cr.PC seeking interim bail on behalf of applicant / accused through counsel is filed. It be checked and registered.

Put up for reply by the IO as well as concerned Jail Superintendent for **10/07/2020**.

**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/THC**  
**07.07.2020**



## BAIL APPLICATION

FIR No. :89/2020

PS: Nabi Karim

STATE v. Sandeep Kumar s/o Mr. Rajendra Shahi

U/S: 376D, 354, 509 IPC

07.07.2020.

Present: Sh. Pawan Kumar, Addl. PP for the State through VC.  
Mr. Vikas Arora, learned counsel for accused through VC.  
IO through VC.  
Learned counsel for complainant through VC.

Further part arguments heard.

During the course of the arguments, it is stated today by the IO that chargesheet filed in this case against the co-accused is already committed to Learned Session Court. As such, it is submitted by learned Addl.PP for the State that this court do not have jurisdiction any more to hear the present application.

On the other hand, it is submitted by the learned counsel for the accused that as far as present applicant Sandeep Kumar is concerned, investigation qua him is still continuing and that chargesheet was filed only against the accused. As such, this bail duty court can hear the application of present applicant / accused.

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

As chargesheet is already filed and even case is

Contd...../-

:2:

committed to learned concerned Sessions Court, as stated by the IO today, this court finds that present application cannot be heard anymore before this bail roster court.

As such, let this file be placed **before the concerned court through the Learned District & Sessions Judge (HQs) for 09/07/2020.**

In the meanwhile, in the interest of justice, interim protection granted to the accused vide order 02/07/2020 is extended till next date of hearing.

Parties including the complainant are advised to appear before the concerned court accordingly.

(Naveen Kumar Kashyap)  
ASJ-04/Central/THC  
07.07.2020

## **Bail Application**

**State Vs. Mohd. Khalid s/o Mohd. Khalil**

**FIR No. : 29/2020**

**PS: Jama Masjid**

**U/S: 336, 387, 506, 34 IPC & 25, 27, 54, 59 Arms Act**

**07.07.2020**

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC  
Mr. Hemant Chaudhary, learned Counsel for Accused in person.  
Complainant in person.

Vide this order, the regular bail application under section 439 Cr.P.C. on behalf of accused dated 06/07/2020 filed through counsel is disposed of.

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

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

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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

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U/S: 336, 387, 506, 34 IPC & 25, 27, 54, 59 Arms Act





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

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U/S: 336, 387, 506, 34 IPC & 25, 27, 54, 59 Arms Act

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



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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 a compromise is already arrived between the complainant and accused side with the interventions of other persons of locality; that he is in JC for the last 18days; that he is falsely implicated in the present case; that nothing incriminating has been recovered from the custody of the accused; that alleged weapon has been planted upon the accused; that he has never threatened the victim / complainant; that complainant and accused are neighbour; that local police is against the accused that is why he is falsely implicated in this case; that he is only bread earner of his family; that there is pandemic situation due to coronal and there are pandemic situation and there are cases of corona positive inside the jail also; that his bail application moved before learned MM was dismissed. As such, it is prayed that he be granted regular bail.

Further complainant is present in person states that he has compromised the present case with the accused and as such do

State Vs. Mohd. Khalid s/o Mohd. Khalil

FIR No. : 29/2020

PS: Jama Masjid

U/S: 336, 387, 506, 34 IPC & 25, 27, 54, 59 Arms Act



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not want any further action against him.

On the other hand, as stated in reply filed by SI Vidyakar Pathak, as also argued by the learned Addl.PP for the state, that there are serious and specific allegations against the present accused; that he is known BC of the area; he alongwith his brother committed the present offence in question; that there are number of cases against such accused including conviction in some cases; further details of such cases is annexed alongwith present reply. It is further stated that there is CCTV footage also; that he is demanding Rs.5 lakh from the complainant side. Further accused side even opened fire in this regard. Further investigation still on in the present case. As such, present application is strongly opposed.

I find force in the arguments of learned Addl.PP for the state. The offence is serious in nature and is nuisance to public at large. There are specific and serious allegations against the accused. Further prima facie it appears that complainant is under pressure from the accused side. Thus, having regard to the nature of offence and the manner in which it was committed and the stage of investigation, this court is not inclined to grant the relief as sought in the present application. Hence, the same is dismissed.

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

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

## **Anticipatory Bail**

**FIR No. 210/2020  
State vs Saifuddin s/o Mohd. Qasim  
P. S. Chandni Mahal  
U/s: 313, 323, 341, 354, 34 IPC**

07.07.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.  
Mr. Mohit Sharma, learned counsel for the applicant through VC.  
Complainant in person.  
IO SI Sadhna PS Chandni Mahal in person.

Vide this order, bail applications u/s 438 Cr.PC dated 19/06/2020 filed by accused / applicant Saifuddin is disposed of.

In nut shell, it is stated that present FIR is registered on the complainant of Ms. Tabassum against the applicant and his brother. That complainant is Bhabhi of applicant and his brother. That there is some family dispute regarding the property between the applicant and the complainant's husband. That due to some misunderstanding, when they were discussing about such family dispute, complainant shouted on them and then all of a sudden collided with the cooler placed inside the room and fell off. Due to such collusion, complainant met with miscarriage and blamed the applicant and his brother for the same and on instigation of some unsocial element filed present complaint. That they have heard that complainant has not supported the police version in her statement u/s 164

FIR No. 210/2020  
State vs Saifuddin s/o Mohd. Qasim  
P. S. Chandni Mahal  
U/s: 313, 323, 341, 354, 34 IPC

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Cr.PC. That applicant / accused has roots in the society. As such, it is prayed that IO / SHO be directed to release the applicant on bail in the event of arrest.

The complainant has submitted in court today that due to some misunderstanding she got registered the present complaint and she does not want any action against the accused / applicant.

In reply dated 03/07/2020, it is stated by SI Sadhna, as also argued by learned Addl.PP for the State, it is submitted that on the date of incident when police reached the place of incident they found that the complainant was shifted to Kasturba Hospital Delhi already. They he was taken to LHMC hospital. But despite request, she did not give her statement but later on she came to Police Station on 12/06/2020 and gave her statement. As such, present FIR was registered and investigation is still on. It is further stated that her statement u/s 164 Cr.PC is recorded. But the complainant has not supported her original version in such statement. As such, present 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





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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.

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.

Although, the offence in question is against women, but it appears that present complainant is herself blowing hot and cold. Further prima facie it appears that she has not even supported her complaint / contention in FIR in her statement u/s 164 Cr.PC. Further, accused has roots in society. Further, offences alleged are punishable upto 3 years only. In court today she has stated that accused are her Dever and like her children only.

Thus, in background of such facts and circumstances, this court is not inclined to grant to ***such applicant the relief as prayed for, but IO is directed to give three working days notice to the applicant*** on the addresses mentioned on the bail application and also on the official address of the counsel as mentioned in the bail applications. In the meanwhile, the such applicant shall join the investigations as and when called upon to do so.

Further, it is directed that:

- i) Applicant shall not threaten or contact in any manner the complainant or other prosecution witnesses ,*
- ii) Applicant shall not leave country without permission;*
- iii) Applicant shall convey any change of address immediately to the IO and the court;*

*iv) Applicant shall also provide his mobile number to the IO;*

Further, before parting, it may be noted that in "**Arnesh Kumar vs State Of Bihar & Anr** ( 2 July, 2014, Criminal Appeal No. 1277 of 2014, Special Leave Petition (CRL.) No. 9127 Of 2013) Hon'ble S.C., inter alia, observed and held that it is evident that a person accused of offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on its satisfaction that such person had committed the offence punishable as aforesaid. Police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured.

These are the conclusions, which one may reach based on facts. *Law mandates the police officer to state the facts and record **the reasons in writing** which led him to come to a conclusion covered by any of the provisions aforesaid, **while making such arrest**. Law further requires the police officers to record the reasons in writing **for not making the***



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**arrest.**

In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised.

Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 of Cr.PC.

It was further held that during the course of investigation of a case, an accused can be kept in detention beyond a period of 24 hours only when it is authorized by the Magistrate in exercise of power under Section 167 Cr.PC. The power to authorize detention is a very solemn function. It affects the liberty and freedom of citizens and needs to be exercised with great care and caution.

If the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty bound not to authorise his further detention and release the accused. In other words, when an accused is produced before the Magistrate, ***the police officer effecting the arrest is required to furnish to the Magistrate, the facts, reasons and its conclusions for arrest and the Magistrate in turn is to be satisfied that condition precedent for arrest under***



**Section 41 Cr.PC has been satisfied** and it is only thereafter that he will authorise the detention of an accused.

The Magistrate before authorising detention will record its own satisfaction, may be in brief but the said satisfaction must reflect from its order. It shall never be based upon the ipse dixit of the police officer, for example, in case the police officer considers the arrest necessary to prevent such person from committing any further offence or for proper investigation of the case or for preventing an accused from tampering with evidence or making inducement etc., the police officer shall furnish to the Magistrate the facts, the reasons and materials on the basis of which the police officer had reached its conclusion. Those shall be perused by the Magistrate while authorising the detention and only after recording its satisfaction in writing that the Magistrate will authorise the detention of the accused.

When a suspect is arrested and produced before a Magistrate for authorising detention, the Magistrate has to address the question whether:

- i) specific reasons have been recorded for arrest and if so,
- ii) prima facie those reasons are relevant and
- iii) secondly a reasonable conclusion could at all be reached by the police officer that one or the other conditions stated above are attracted.

To this limited extent the Magistrate will make judicial scrutiny.

It was further held that in all cases where the arrest of a person



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is not required under Section 41(1), Cr.PC, the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police office is of the opinion that the arrest is necessary.

With these observations present application of both the accused is disposed of. **Learned counsel for the applicants / accused, is at liberty to collect the order dasti or through electronic mode. Copy of this order be given dasti or through electronic mode to complainant as well as IO of this case. Copy of order be uploaded on the website.**

**(NAVEEN KUMAR KASHYAP)**  
**ASJ-04(Central/Delhi/07/07/2020)**

**Anticipatory Bail**

**FIR No. 210/2020  
State vs Hashim s/o Mohd. Qasim  
P. S. Chandni Mahal  
U/s: 313, 323, 341, 354, 34 IPC**

07.07.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.  
Mr. Mohit Sharma, learned counsel for the applicant through VC.  
Complainant in person.  
IO SI Sadhna PS Chandni Mahal in person.

Vide this order, bail applications u/s 438 Cr.PC dated 19/06/2020 filed by accused / applicant Saifuddin is disposed of.

In nut shell, it is stated that present FIR is registered on the complainant of Ms. Tabassum against the applicant and his brother. That complainant is Bhabhi of applicant and his brother. That there is some family dispute regarding the property between the applicant and the complainant's husband. That due to some misunderstanding, when they were discussing about such family dispute, complainant shouted on them and then all of a sudden collided with the cooler placed inside the room and fell off. Due to such collusion, complainant met with miscarriage and blamed the applicant and his brother for the same and on instigation of some unsocial element filed present complaint. That they have heard that complainant has not supported the police version in her statement u/s 164

FIR No. 210/2020  
State vs Hashim s/o Mohd. Qasim  
P. S. Chandni Mahal  
U/s: 313, 323, 341, 354, 34 IPC

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Cr.PC. That applicant / accused has roots in the society. As such, it is prayed that IO / SHO be directed to release the applicant on bail in the event of arrest.

The complainant has submitted in court today that due to some misunderstanding she got registered the present complaint and she does not want any action against the accused / applicant.

In reply dated 03/07/2020, it is stated by SI Sadhna, as also argued by learned Addl.PP for the State, it is submitted that on the date of incident when police reached the place of incident they found that the complainant was shifted to Kasturba Hospital Delhi already. They he was taken to LHMC hospital. But despite request, she did not give her statement but later on she came to Police Station on 12/06/2020 and gave her statement. As such, present FIR was registered and investigation is still on. It is further stated that her statement u/s 164 Cr.PC is recorded. But the complainant has not supported her original version in such statement. As such, present 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





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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.

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,

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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.

Although, the offence in question is against women, but it appears that present complainant is herself blowing hot and cold. Further prima facie it appears that she has not even supported her complaint / contention in FIR in her statement u/s 164 Cr.PC. Further, accused has roots in society. Further, offences alleged are punishable upto 3 years only. In court today she has stated that accused are her Dever and like her children only.

Thus, in background of such facts and circumstances, this court is not inclined to grant to **such applicant the relief as prayed for, but IO is directed to give three working days notice to the applicant** on the addresses mentioned on the bail application and also on the official address of the counsel as mentioned in the bail applications. In the meanwhile, the such applicant shall join the investigations as and when called upon to do so.

Further, it is directed that:

- i) Applicant shall not threaten or contact in any manner the complainant or other prosecution witnesses ,
- ii) Applicant shall not leave country without permission;
- iii) Applicant shall convey any change of address immediately to the IO and the court;



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*iv) Applicant shall also provide his mobile number to the IO;*

Further, before parting, it may be noted that in **“Arnesh Kumar vs State Of Bihar & Anr** ( 2 July, 2014, Criminal Appeal No. 1277 of 2014, Special Leave Petition (CRL.) No. 9127 Of 2013) Hon'ble S.C., inter alia, observed and held that it is evident that a person accused of offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on its satisfaction that such person had committed the offence punishable as aforesaid. Police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured.

These are the conclusions, which one may reach based on facts. *Law mandates the police officer to state the facts and record **the reasons in writing** which led him to come to a conclusion covered by any of the provisions aforesaid, **while making such arrest**. Law further requires the police officers to record the reasons in writing **for not making the***





**Section**  
**will**

**arrest.**

In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised.

Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 of Cr.PC.

It was further held that during the course of investigation of a case, an accused can be kept in detention beyond a period of 24 hours only when it is authorized by the Magistrate in exercise of power under Section 167 Cr.PC. The power to authorize detention is a very solemn function. It affects the liberty and freedom of citizens and needs to be exercised with great care and caution.

If the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty bound not to authorise his further detention and release the accused. In other words, when an accused is produced before the Magistrate, ***the police officer effecting the arrest is required to furnish to the Magistrate, the facts, reasons and its conclusions for arrest and the Magistrate in turn is to be satisfied that condition precedent for arrest under***



**Section 41 Cr.PC has been satisfied** and it is only thereafter that he will authorise the detention of an accused.

The Magistrate before authorising detention will record its own satisfaction, may be in brief but the said satisfaction must reflect from its order. It shall never be based upon the ipse dixit of the police officer, for example, in case the police officer considers the arrest necessary to prevent such person from committing any further offence or for proper investigation of the case or for preventing an accused from tampering with evidence or making inducement etc., the police officer shall furnish to the Magistrate the facts, the reasons and materials on the basis of which the police officer had reached its conclusion. Those shall be perused by the Magistrate while authorising the detention and only after recording its satisfaction in writing that the Magistrate will authorise the detention of the accused.

When a suspect is arrested and produced before a Magistrate for authorising detention, the Magistrate has to address the question whether:

- i) specific reasons have been recorded for arrest and if so,
- ii) prima facie those reasons are relevant and
- iii) secondly a reasonable conclusion could at all be reached by the police officer that one or the other conditions stated above are attracted.

To this limited extent the Magistrate will make judicial scrutiny.

It was further held that in all cases where the arrest of a person



is not required under Section 41(1), Cr.PC, the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police officer is of the opinion that the arrest is necessary.

With these observations present application of both the accused is disposed of. **Learned counsel for the applicants / accused, is at liberty to collect the order dasti or through electronic mode. Copy of this order be given dasti or through electronic mode to complainant as well as IO of this case. Copy of order be uploaded on the website.**

**(NAVEEN KUMAR KASHYAP)**  
**ASJ-04(Central/Delhi/07/07/2020)**

: 1 :

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

**State Vs Joginder Pal Singh s/o Ram Gopal**  
**FIR No. 134/2020**  
**P. S. Kashmere Gate**  
**U/s: 379, 411 IPC**

**07/07/2020**

Present: Mr. Pawan Kumar, Learned Addl. PP for State is available through VC.  
Mr. Nishant Kumar, learned counsel for accused through VC.

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

It is stated in the application that he has been falsely implicated in the present case; that he has no previous conviction record; that he is the only bread earner of his family; that his regular bail application is dismissed by learned MM on 26/06/2020; that he will not tamper with the evidence or threaten the witness; that he is ready to join investigation as and when directed; that he is in JC since 18/06/2020; as such, even the time to seek PC remand is over; that no purpose would be served to keep him in JC. That he is no more required for the purpose of investigation. As such, it is prayed that he be granted regular bail.

On the other hand, in reply filed by the IO, as also

State Vs Joginder Pal Singh s/o Ram Gopal  
FIR No. 134/2020  
P. S. Kashmere Gate  
U/s: 379, 411 IPC



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argued by learned Addl.PP for the State it is stated that he was caught red handed on the spot committing theft of the mobile phone in question; that he is involved in many other such criminal cases in Shakurpur area; that if released he is likely to commit similar offences; he may further threaten to witnesses.

I have heard both the sides.

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

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

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

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



**relied).**

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

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

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

higher Courts have only the procedural requirement of giving notice of the Bail application to the Public Prosecutor, which requirement is also ignorable if circumstances so demand. The regimes regulating the powers of the Magistrate on the one hand and the two superior Courts are decidedly and intentionally not identical, but vitally and drastically dissimilar. **(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,

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(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 maximum punishment of the offences alleged against the present accused is 3 years. It is a matter of record that accused is in JC for about three weeks. Further, as far as present accused is concerned, nothing remains to be recovered at his instance. In fact, the period for seeking police remand is already over. As such, no purpose would be served by keeping such accused in JC. Investigation and thereafter trial is likely to take time. Further, it may be noted that there is fundamental presumption of innocence in any criminal case in India i.e. an



accused is presumed innocent unless proved guilty. In present case, no previous conviction record is placed on record by the IO and at best there are cases alleging involvement of present accused in other similar cases.

In above facts and circumstances, such accused is granted bail subject to furnishing of **personal bond in the sum of Rs. 10,000/- with two sound surety of like amount**, subject to the satisfaction of the learned Trial court and the following additional conditions:

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

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*by audio plus video mode to concerned IO, (and if IO is not available then to concerned SHO) once a week, preferably on Monday between 10 a.m. to 5 p.m. till the chargesheet is filed.*

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

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

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

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

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

*"..... The trial courts should not only be sensitive but extremely vigilant in cases where they are recording orders of bail to ascertain the compliance thereof.....When bail is granted, an endorsement shall be made on the custody warrant of the prisoner, indicating that bail has*

*been granted, along with the date of the order of bail.*

- a) *In case of inability of a prisoner to seek release despite an order of bail, it is the judicial duty of the trial courts to undertake a review for the reasons thereof.*
- b) *Every bail order shall be marked on the file.*
- c) *It shall be the responsibility of every judge issuing an order of bail to monitor its execution and enforcement.*
- d) *In case a judge stands transferred before the execution, it shall be the responsibility of the successor judge to ensure execution.....”*

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

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

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

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the prisoner for not filing the bonds. One copy of this order be also sent to the **SHO Concerned** to ensure compliance.

**The bail application is accordingly disposed off. Learned counsel for applicant is at liberty to obtain dasti order or through electronic mode. Copy of order be uploaded on website.**

(NAVEEN KUMAR KASHYAP)  
ASJ-04(Central/Delhi)  
07.07.2020



: 1 :

**BAIL APPLICATION**

**State V. Mohd. Istekhar & Ors.  
FIR No. not known  
PS.: Nabi Karim  
U.S: Not known**

**07.07.2020**

**This is Fresh Bail Application.**

**Present:** Mr. Pawan Kumar, Learned Addl. PP for State through VC.  
Mr. Muntazir Mehndi, learned counsel for all the accused in person.  
SHO Nabi Karim Sh. Ram Niwas in person.

1. Further submissions heard.
2. It is stated by SHO concerned that originally a complaint through post was received and not physically. Further, the complainant was not identifiable. As such, at that stage FIR was not registered. It is further stated that later on DD no.7A dated 04.02.2020 PS Nabi Karim was recorded by which present complainant Gulshan Khatoon stated that earlier she gave a complaint to the police at PS Nabi Karim. It is further stated by her that such complaint was read over to her and she reaffirmed the same. She further re-affirmed that it bears her signatures. She further stated that she had some money dispute with the applicant/accused Mohd. Ishtekhar, because of which she has filed such complaint dated 04.02.2020. Now, she does not want any action in her money transaction matter. Further, it appears that SI Ravi Kumar even asked a question to her in writing that whether such Ishtekhar made physically relationship

with her forcefully. To which, she replied in negative and stated that it was a dispute relating money only. As such, it is submitted by SHO concerned that no FIR was registered ultimately as it was found to be a money dispute only.

3. But the fact remains that on 04.02.2020, such alleged victim Gulshan Khatcon filed a criminal complaint against the present applicant Mohd. Istekhar alleging inter alia offences under section 354 and even more serious offences.

4. In fact, in the present application filed by applicant Ishtekhar, it is alleged that such alleged victim Gulshan Khatoon is blackmailing and intend to extort Rs. 5 lacs from the present applicant Ishtekhar. It is further stated that such Smt. Gulshan Khatoon even filed an application before concerned Ld.MM u/s 156(3) Cr.P.C.

5. In this background, without proceeding further on merit, learned counsel wants to withdraw the present application on instructions received from the from the applicant Mohd. Ishtekhar and ors. Same is heard and allowed.

6. But before parting, it can be seen that the manner and the procedure adopted by the police is not warranted under law even when on 07.02.2020 when present complainant reaffirmed that she is the person who filed the original complaint dated 04.02.2020, the learned police officials did not get registered FIR u/s 154 Cr.P.C.

7. Not only that if the police official was of the opinion that originally false allegations against the present applicant were made by the present complainant, no action is taken against the present complainant. Nor any assistance is provided to so called innocent accused/applicant. As such, it appears that

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the concerned police official did a dis-service to the criminal justice system and the alleged false complainant are let scott free. Thus, such approach by the police is encouraging such false litigants/complainants.

8. Further ,in case the police officer concerned is so certain that the complainant has made a false complaint against an innocent-accused, even then the better way would be to register the FIR (which is legally sustainable too) on the basis of so called false-complaint and then :

i) police officer concerned can excised his power u/s 157(1)Cr.P.C. of not to proceed with investigate and intimate the same to original complainant and rest.

ii) better still , police officer concerned can carry out investigation on priority basis within a short span of time. Then he can give a final cancellation report in the matter *coupled with* action proposed against the original complaint u/s 182/211 IPC etc.

8.1. This way he can set a good and legally sustainable example and at the same time deter false complainants effectively.

8.2. But most of the time none of such option is excised by the concerned police officers. This only indicates that the real reason for non-registration of FIR is not to save the so called innocent-accused from the misery of facing false criminal accusations, but something else.

9. Another aspect is that even if, for the sake of argument, it is assumed that concerned police officer did a great service to law by not registering a FIR on the basis of so called false and motivated complaint, still what is the guarantee that it would be the end of the matter. What is the guarantee that such unscrupulous complainant will not approach the higher police officers u/s 154(3) Cr.P.C. and/or the court u/s 156(3) of Cr.P.C. Thus adding burden on higher police officers and/or on courts in terms of times and resources.

9.1. On the contrary, what about a genuine-complainant whose true complaint is not even registered by the police officer, just because in the opinion of such police officer the same is false/baseless or because of some ulterior motive on the part of police officer.

Why such genuine-complainant should suffer and take recourse to the higher officers u/s 154(3) of Cr.P.C. or the court u/s 156(3) of Cr.P.C. Furthermore such forced extended legal process, may be at the cost of every citizen's right to recourse to lawful authority and timely redressal of his grievances.

10. What if such genuine-complainant suffers because of such inaction on the part of police officers. Who would be responsible in such a case. To take a simple and usual example : a complaint is made by "Mr.A" that "Mr.B" and others entered into his house and attacked him ."Mr.A" further complain that such accused persons have threaten him that if a complaint is made to police then they will again attack "Mr. A". But police did not register the FIR. Thereafter "Mr.B" and others



again carry out a deadly attack on "Mr. A" and "Mr. A" dies or receive grievous injuries.

11. Such complaints are not uncommon. Some may be false, others may be true. But the question remains the same i.e. what if the complaint was true, but police refuse to register and complainant suffered as a result thereof?

12. There can be another fundamental issue. What if, being denied a legal remedy i.e. timely registration and consequent police action, the people start taking law in their own hands or employ illegal means, for getting redressal of their claims. Such instances are real and not uncommon and same are on the rise. Further instances are a great cause of concern and threat to the very existence & relevance of law of the land.

12.1. Further, looking at the present issue from the point of view of "social contract theory" between the state and its subjects, it appears that there is breach, or at least reluctance, on the part of the state (through its instrumentality of police agency) in performing its part of the contract i.e. to give timely and effective redressal to the criminal complaints of its subjects.

As a consequence subjects may breach their part of the contract. They may take law in their own hand, approaching extra-legal agency (e.g. land mafia, naxalites etc.) or legal agency by illegal means (e.g. bribe, "approach" etc.). All this is because they are not very hopeful that their complaint would be redressed timely or even be heard by state agency.

13. Further can a police officer claim that he has divine/magical powers, so that just by having a glance on various complaints made to him, he can differentiate between true and false complaints.

14. Further at this stage it would be relevant to mention that it is a misconception that the registration of an FIR must necessarily lead to an arrest of the suspect of the crime as it entirely depends on each case. There may be cases where the arrest of the accused maybe essential and others where the police may require more incriminating evidence for apprehending the accused. It is thus a settled law that mere registration of an FIR in every case may not result into arrest of a person accused of the offence. It would be useful to refer here to the pronouncement of the Apex Court in **Siddharam Satlingappa Mhetre Vs. State of Maharashtra** [(2011) 1 SCC 694] where while laying down parameters for anticipatory bail the court regarding arrest held that:

"129. In case the arrest is imperative, according to the facts of the case, in that event, the arresting officer must clearly record the reasons for the arrest of the accused before the arrest in the case diary, but in exceptional cases where it becomes imperative to arrest the accused immediately, the reasons be recorded in the case diary immediately after the arrest is made without loss of any time so that the court has an opportunity to properly consider the case for grant or refusal of bail in the light of reasons recorded by the arresting officer."

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14.1. Hence, in the given facts of the case, the police can always postpone the arrest of the person accused unless it is prima facie satisfied that the accused named in the complaint or the accused/suspect of a crime under the given circumstances cannot at all be involved in the commission of the crime or in a case where prompt action to arrest if not taken will result in jeopardizing or sabotaging the course of investigation. But certainly the police cannot postpone the registration of an FIR where the information laid by the complainant before it clearly discloses commission of a cognizable offence.

14.2. Further the recent amended sections 41(1)(b) and 41A of Cr.P.C. give sufficient power and guidelines to the police for the arrest/non arrest of accused.

14.3 Further, Hon'ble Supreme Court in the case of "**Arnesh Kumar v. State of Bihar and Others**, in *Criminal Appeal No. 1277 of 2014@Special Leave Petition(CRL) No. 9127 of 2013*), passed certain directions relating to arrest/not arrest in offences punishable upto seven years.

15. Coming back to main issue, there can be many reasons for non-registration of FIR in a given case like:

(i) no offence of the nature as referred in section 154 (1) Cr.P.C is made out ,

(ii) to keep the crime graph on lower side,

(iii) by the accused persons have unduly influenced the police, or

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(iv) police is unaware about the provision of law.

(v) police does not want workload .

In case of the first possibility i.e.no cognizable offence is made out on the basis of complaint made, then it is correct to refuse registration of FIR .

But as far as the other grounds are concerned the same cannot be allowed to be taken by the police at all.

16. Further, everyone relating to legal field including the police officials know (or atleast suppose to know) that in relation to same transaction there can be civil dispute as well as a criminal offence. Just because a civil dispute is pending does not mean that there can not be a criminal offence also. It depends on the facts of each case.

17. Another argument for non-registration of FIR is that just by cooking up some story of cognizable offence nature, criminal proceedings can be launched by unscrupulous complainants with the help of their legal advisors.

At first glance such contention appear pragmatic, convincing and appears to be based on ground reality.

It can not be denied that in a given case, the allegation in the complaint can be totally/partially baseless and false. In a given case the complainant may also rope in innocent persons as accused.



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But isn't it already observed above that credibility of information is not a ground for refusal to register a FIR?

Further, isn't it already observed above that registration of FIR and arresting the accused person are two different issues?

Furthermore doesn't there exist power of the SHO under proviso to sub-section (1) to section 157 Cr.P.C. to take appropriate decision in such situation?

Furthermore doesn't there exist provisions like section 182, 211 and other provisions in Indian Penal Code way back since 1860 for such unscrupulous complainants ( which ,for example ,also find mention in the "Chargesheet format", of Delhi police).

18. Experience shows that Police *officially and expressly* seldom resort to the provision of stopping proceeding under proviso (a) and/or (b) of section 157(1), Cr.P.C. This court , hardly come cross such instances. The reason is that the police have developed a parallel convenient but untenable practice of "preliminary inquiry".

And why So? Because in case police does not want to register FIR (for whatever malafide or apparently-bonafide reasons), then police simply refuse to register FIR ,stop responding to complainant/victim or worst still simple shows him the door .Consequently the stage to use the power u/s 157(1) (a) & (b) Cr.P.C by the SHO seldom comes.

19. As police officer are resorting to the practice of making preliminary inquiry , the subsequent section of 157(1) (a) & (b) Cr.P.C. and consequently of 159 Cr.P.C. have become redundant. This court ,based on its experience can state that the occasion to use power u/s 159 Cr.P.C. did not arise even in a single case.

20. At this stage it would also be appropriate to mention that there is not statutory requirement that police must contact or hear the accused before deciding to register the FIR against him. Reliance can be placed on “**V. C.Shukla Vs. state**”[1980) 2 SCC 665 ] and “**K.Veerawami Vs. Union of India**” [(1991) 3 SCC 655 ] in this regard.

21. Further it must be remembered by all that certainty of law and procedures prescribed under it are the basic requirement of any effective and responsive criminal system. Certainty of law is at the core of any modern legal system including that of India. Certainty of law is the reason we have a written law ,including section 154 of CR.P.C. And in my view, larger the nation, like India, more important is the concept of certainty of law. Otherwise, we can not hope that our criminal legal system would be effective and long lasting. And personal view of a police man has to take a back seat, when there is written provision of law i.e. Section 154(1) Cr.P.C. and its detailed and in depth interpretation by higher courts. We must remember that police officers and trial court are just the implementing agencies of law of the land.

22. Further in case of any doubt about a case law, all of us know about the cardinal principles of interpretation, the *doctrine of stair decisis* and law of precedents.

23. Further at this stage one must remember that there can not be two interpretation, one by judiciary and another by the police officials, of same binding provision of law and the case law decided by the higher courts in India .

24. Further there is not mandate of law or even any presumption of law that a person making a complaint u/s 154(1) Cr.P.C. is a liar, so that veracity of allegation made in the complaint must be checked before registration of FIR. This issue is also highlighted in **Bhajan Lal Case (Supra)**.

25. Further there are many merits in advantage of timely registration of FIR by police. It gives head start to the police in securing evidence and apprehending accused, if necessary. Further, it lessens the police workload as well as that of the court, in long run. And above all, it enhance peace and order in society, in the long run.

26. But one may argue that there are many demerits for the public in timely registration of FIR, like:.

26.1. it may lead to instant roping of the innocent family members or well-wishes/friends of the Accused.

26.2. there might be tendency to 'inflate' the complaint .For example ,complaining of offence 325 instead of 323 IPC (or worse still 307/308 IPC).

26.3. there is a perception in some people that registration of FIR against the other side is a victory in itself or in any case a decisive lead over the other party. This, inter alia, is because of the fact that once FIR is registration, then 'innocent-accused', has to come out of it through a long legal battle. Such legal battle costs such Accused economically, emotionally and socially.

27. But at the same time, it can be argued on the other hand, as far as the possibility of unnecessary economical, emotional and/or social cost to "prospective-undeserving-accused" is concerned , that if the police genuinely feels so ,then police officers has enough legal provisions, including under provision to 157(1) CR.P.C. to prevent it. If the police feels so sorry for the "prospective-undeserving-accused", then police officer can complete the investigation on priority basis and can file cancellation report in court at the earliest. Furthermore police can also recommend penal action against original complainant, including u/s 182 or 211 IPC.

28. But experience shows that police neither register the FIR nor when the court later on u/s 156(3) Cr.P.C. directed registration of FIR, come with proposed action against the complainant , even when such complainant, *according to the claim of the police itself* , filed a false or an 'inflated' criminal complaint.



29. Further the argument of saving the "innocent-accused" by denying to register FIR instantly can be counter-argued by the argument of putting into trouble and inconvenience the 'innocent-genuine-complainant' by denying the registration of such FIR.

30. There can be many possibilities like :

(i) 'innocent -accused' and 'motivated and false complainant'

(ii) 'innocent -accused' and 'genuine complainant' (e.g. when a complaint is bonafidely made by name against a particular person ,say, for theft but real culprit may be somebody else).

(iii). a 'genuine complainant' rightly made complaint against an accused person.

30.1. Thus, wouldn't it be better if it is left to proper investigation and not to short cut of "preliminary enquiry" to find out the truth. Further, one may argue that legally tenable benefits of registration of FIR at once are much more than that of non-registration FIR.

31. Further isn't the process of registration of FIR is nothing but a sort of 'preliminary inquiry' itself ,in the sense that ultimately chargesheet or cancellation report is filed u/s 173 of Cr.P.C. and police is free to arrive its own conclusions. Isn't it true FIR means 'first information report' and not 'final information

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report' , then why so much hesitation in registering it by the police?

32. Further, every person in India has a right to take recourse to law of the land. By refusing to register a legitimate FIR, the complainant is forced to follow a time consuming and many times relatively expensive method u/s 156(3) of Cr.P.C in court. Further what about the opportunity cost of the time which complainant has to spend in court/approaching higher officer?

Further, it is not complainant's fault that an offence is committed against him/her by someone, know or unknown. Therefore, he can not be punished for the same by making him to run from one desk to another, from one authority to another, one court to another just to get the FIR registered in the first place?

33. Under section 156(1) Cr.P.C., SHO has plenary power to investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII of Cr.P.C.

Further as per section 154(1) Cr.P.C., the substance of every information relating to the commission of a cognizable offence shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf

33.1. In view of this court, these are two independent and different but sometime overlapping aspects.

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Under section 156(1) Cr.P.C., SHO **can** investigate any cognizable offence .

But whenever a complaint relating to cognizable offence is made to police, police is **duty bound** to register as per section 154(1) CR.P.C.

33.2. But it appears that police officer are not keeping in their mind the distinction in these two provisions of Cr.P.C. Consequently, the police is stating wrongly (presumably on the basis of its power u/s 156(1) Cr.P.C.) that it has right to make a "preliminary inquiry" ,even in cases where a complaint u/s 154(1) Cr.P.C. is made. Very often by confusing its power u/s 156(1) Cr.P.C. with the right of a complaint (and corresponding duty of police) u/s 154(1) Cr.P.C., the police is holding preliminary inquiry instead of registering FIR firstly.

And by doing so the police is denying to the complainant/victim its statutory right u/s 154(1) Cr.P.C. as well likely to deny to the complainant/victim's his fundamental right of equality before law and equal protection of law. And in a given case even right to life and liberty guaranteed under article 21 of the constitution.

33.3. This can not be the right position. The right position can be:

(i) The local Police ,has a right to investigate any offence that too even without an order of court or any complaint at all from anybody.

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(ii) But once a complaint is made u/s 154(1) Cr.P.C., then there is a rider. In such case police must first register FIR and then proceed further to investigate u/s 156(1), or not to proceed under proviso (a) or (b) of 157(1) Cr.P.C and so on.

34. This way, although workload of the police may increase initially, but such practice in the long-term would reduce the workload of the police. At the same time, complete effect can be given to both the sections viz 154(1) and 156(1) of Cr.P.C. More importantly, grievance of a complainant would be heard instantly in the light of law. Further by adopting such legally sustainable approach, ultimately the deserving claims can prosper and undeserving claims can perish in the light of law.

35. In the background of such discussion, I turn to the facts of the present case. It is clear that specific allegations of offences of cognizable nature under IPC are made by the complainant.

36. Thus, in the background of plethora of judgments as discussed above, as clear and explicit allegations are leveled by the complainant what more was required to register an FIR by the concerned police officials? Further in the present case there is no uncertainty/lack of clarity in the allegations made. Further as discussed above the credibility of information is not a ground for refusal to register the FIR. Further isn't it the responsibility of police to collect evidence and that too after registration of FIR.

37. Still in the present case, it is reported that police is carrying out "inquiry", but without registration of FIR.



38. Further, in **Lalita Kumar vs. State of UP** (AIR 2014 SC 187) the constitutional bench of the Hon'ble Supreme Court held in para 73 :

“.....73. In terms of the language used in Section 154 of the Code, the police is duty bound to proceed to conduct investigation into a cognizable offence even without receiving information (i.e. FIR) about commission of such an offence, if the officer in charge of the police station otherwise suspects the commission of such an offence. The legislative intent is therefore quite clear, i.e., to ensure that every cognizable offence is promptly investigated in accordance with law. **This being the legal position, there is no reason that there should be any discretion or option left with the police to register or not to register an FIR when information is given about the commission of a cognizable offence.** Every cognizable offence must be investigated promptly in accordance with law and all information provided under Section 154 of the Code about the commission of a cognizable offence must be registered as an FIR so as to initiate an offence. The requirement of Section 154 of the Code is only that the report must disclose the commission of a cognizable offence and that is sufficient to set the investigating machinery into action.....”

**(Emphasis added)**

39. Further, it was held by Hon'ble Supreme Court in **Lalita Kumar (supra)** in para 110 as follows :

“.....110) Therefore, in view of various counter claims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, **if no cognizable offence is made out in the information given, then the FIR need not be registered immediately** and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. **But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible etc. These are the issues that have to be verified during the investigation of the FIR.** At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses



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the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR.....”

**(Emphasis added)**

39.1 But in present case information given by complainant is clear and further it discloses the commission of cognizable offence and as held by Hon'ble Supreme Court in this case of **Lalita Kumar (supra)** the SHO had no option but to order for registration of FIR and other consideration were not relevant at this stage like whether information is falsely given.

40. Further, it was held by Hon'ble Supreme Court in **Lalita Kumar (supra)** in para 111 as follows :

“.....Conclusion/Directions:

111) In view of the aforesaid discussion, we hold:

i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

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iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

- a) Matrimonial disputes/ family disputes
- b) Commercial offences
- c) Medical negligence cases
- d) Corruption cases



e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.....”

41. As stated in para 111(iv) action must be taken against erring officers who do not register FIR if information received by him discloses a cognizable offence.

42. In this background, a **copy of this order be sent to DCP concerned for his information. Further, a copy of this order be sent to concerned Magistrate for his information and**

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record. Acknowledgment of receiving of copy by the DCP be placed on record through Naib Court of this court within one week.

43. Ahlmad is directed to do the needful accordingly.

(Naveen Kumar Kashyap)

ASJ-04/Central/THC

07.07.2020