

BAIL APPLICATION

**State vs Babloo & others
(Application of Dinesh Dhanna)**

FIR No.251/2019

P. S. Sarai Rohilla

U/s: 341, 307, 34 IPC & 25, 54, 59 Arms Act

03/10/2020

One of the steno is quarantined.

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

Arguments already heard. Today the case is fixed for
orders.

1. Vide this order the interim bail application dated
19/08/2020 filed by applicant Dinesh @ Dhanna through counsel is
disposed off.

2. Reply dated 03/09/2020 already filed by the IO. Further
thereafter medical status report of accused dated 14/09/2020 also filed
by the Jail Superintendent concerned.

3. In such report dated 14/09/2020, filed by Medical Officer
Incharge Jail No.3, as also argued by learned counsel for the accused,
it is stated that such accused, inter-alia, was sent to DDU hospital for
review and further management about anti-tubercular treatment in TB
and Chest clinic and is diagnosed with TB and he is given prescribed
medicine from jail Dispensary.

4. In the present case, it is stated that present case is at
the stage of framing of charge; that he is in JC since 07/08/2019 i.e.
more than one year; that blood is coming from his mouth and he is not
getting proper treatment from the jail; that he is permanent resident of
Delhi. As such, it is prayed that he be granted interim bail for taking
treatment from private doctor / hospital.

5. On the other hand, present bail application is opposed. It
is stated that offence is serious in nature. It is further stated that there

(Application of Dinesh Dhanna)

FIR No.251/2019

P. S. Sarai Rohilla

U/s: 341, 307, 34 IPC & 25, 54, 59 Arms Act

is another case under arms Act registered against the present accused. As such, it is stated that he does not fall under relaxed interim bail criteria.

6. As per Medical status report, such accused is suffering from TB and is on treatment for the same from jail visiting doctors and specialist from DDU, apart from other medical complaints.

7. As present accused is involved in another criminal case, therefore, he does not fall in the relaxed interim bail criteria of Hon'ble High Court. But having noted that on merit, having regard to the medical condition of the accused, period of JC and the guidelines passed by the Hon'ble High Court including dated 18/04/2020 and 18/05/2020, and other attending facts and circumstances, present accused is admitted to interim bail subject to furnishing personal bond and surety bond in the sum of Rs. 20,000/- to the satisfaction of the court, till 31/10/2020.

8. To get sufficient information, in order to reduce and detect spread of Corona infection, when the accused surrender back to jail, as also for better ensure that he do not flee from justice, and further that social distancing is maintained during present pandemic period, accused is admitted to interim bail subject to following conditions:

- (a)** After completion of the interim bail period applicant shall surrender before concerned Jail Superintendent. Necessary intimation be sent to concerned Jail Superintendent accordingly;
- (b)** Applicant shall not flee from the justice;
- (c)** Applicant shall not tamper with the evidence;
- (d)** Applicant shall not threaten or contact in any manner to the prosecution witnesses;
- (e)** Applicant shall not leave country without permission of the court;
- (f)** Applicant shall convey any change of address immediately to the IO and the court;

- (g) Applicant shall also provide her mobile number to the IO;
- (h) Applicant shall mark his attendance before concerned IO ,and if he is not available then to concerned SHO, every alternative /second day through mobile by sharing his location with the SHO concerned;
- (i) Applicant shall further make a call, preferably by audio plus video mode to concerned IO, and if he is not available then to concerned SHO, once a week, preferably on Monday between 10 a.m. To 5 p.m.
- (j) Applicant shall keep his such mobile number 'Switched On' at all the time and particularly between 8 am to 8 pm everyday.
- (k) Applicant shall install '**Aarogya Setu**' App on his mobile phone and will keep GPS as well as Bluetooth ON all the time during the period of such interim bail.

9. The present application is disposed of accordingly. Both sides are at liberty to collect the order through electronic mode. ***Further a copy of this order be sent to the IO/SHO concerned by electronic mode. Further a copy of this order be also sent to concerned Superintendent of Jail. Copy of order be uploaded on the website.***

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(Naveen Kumar Kashyap)
ASJ-04(Central)/Delhi/03.10.2020

Not to be uploaded on the website**Anticipatory Bail**

**Bail Application No.:1057/2020
State vs Vishal Gaur s/o Lt. Ravi Gaur
FIR No. 192/2020
P. S. Pahar Ganj
U/s: 323, 341, 354, 34 IPC**

03.10.2020

One of the steno is quarantined.

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

1. In view of the order passed in the morning by learned Bail Duty Roster Judge, Mr. Vidyaprakash Learned ASJ Central District Delhi, this application is received back for passing order. Same is taken up accordingly.
2. Arguments already heard in detail from learned counsel for accused, complainant as well as the State.
3. This is an anticipatory bail application dated 31/08/2020 seeking grant of anticipatory bail filed by the applicant through counsel.
4. In the present case, it is argued by the learned counsel that the applicant has been falsely implicated in the present case; present applicant apprehends his false implication and arrest in the present case; that one lady namely Pinki has leveled false allegations of non bailable offences nature against him and a FIR is already registered against the present accused u/s 323, 341, 506, 509, 34 IPC. It is further argued that applicant alongwith his mother Smt. Kala Gaur, his brother are residing on the property on rent for the last about 24 years, further sister of the applicant is also residing in one

**Bail Application No.:1057/2020
State vs Vishal Gaur s/o Lt. Ravi Gaur
FIR No. 192/2020
P. S. Pahar Ganj
U/s: 323, 341, 354, 34 IPC**

room on rent alongwith her husband and three small children. That other tenants are also residing in the building for many years. But there is no dispute between the present applicant's family and such tenant. It is further argued that land lady Smt. G.D. Gupta is pressurizing the applicant's family to vacate the tenanted premises by all means. It is further stated as such landlord gave a room on rent to the complainant and her family. That such Pinki, her mother and sister used to quarrel with the family member of the applicant on one pretext or the other and even used filthy language against them. Not only that it is further claimed that such Pinki threatened that she will falsely implicate the applicant, his brother and Jeeja in some case relating to molestation and rape case. A complaint dated 27/07/2020 is already made by the mother of the applicant against such complainant Pinki, Anita and their mother and further on 02/03/2020 but no action was taken by police. It is further stated that on 28/07/2020 such Pinki and her mother came to the house of applicant and started using filthy language against them. Such Pinki and her mother were shouting on the applicant's mother and also speaking against applicant's sister. Not only that complainant, her sister and her mother even gave beatings to the applicant's mother and sister and caused injury to them; that on the next day also started abusing applicant's mother and sister and threatened; that applicant's sister made a call on 100 number and even police came and did not take action. That applicant's mother told all such fact to the landlord also. That landlord started abusing the applicant's mother and stated that till they vacate the tenanted premises, such quarrel will continue. It is further claimed by applicant's side that at the instance of such

landlord G.D. Gupta, present complainant and her mother are making such allegations against applicant and his family. It is further stated that a FIR dated 20/08/2020 is already got registered ultimately bearing No. 194/20 on the complaint of applicant's mother. It is further stated that in the meanwhile present false FIR is also registered at the instance of such complainant Pinki regarding such incident of quarrel dated 28/07/2020 that is after a gap of 22 days. It is further claimed that as such under these circumstances, accused be released on bail in the event of his arrest in the present FIR.

5. It is stated by the complainant who appeared through VC before this court that apart from the offences mentioned in the present FIR initially, the present applicant even committed offence amounting to 376 IPC as he put his finger in her private parts during such incident. It is further claimed that in the original complaint she mentioned such fact also that IO SI Jagat Singh did not accept the same and infact torn apart such complaint and instead made the complainant to write another complaint which resulted into the present FIR in question.

6. On the other hand, a reply dated 08/09/2020 filed by the IO. Further, such IO SI Jagat Singh appeared through VC before this court. But he denied the allegations of complainant. He further stated that her statement u/s 164 Cr.PC already recorded apart from supplementary statement of such original complainant. He further denied the allegations of complainant that her torn clothes were purposefully got changed by such IO to suppress the real facts.

Further, in any case, it is argued by learned Addl.PP for the

State that in any case offence is very serious in nature after recording of additional statement of complainant. It is further stated that investigation is still pending and custodial investigation of the accused is required to unearth the truth. As such, present anticipatory bail application is opposed.

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

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

9. A judgment which needs to be pointed out is a Constitution Bench Judgment of this Court in the case Gurbaksh Singh Sibbia and Other vs. State of Punjab(1980 AIR 1632 ; 1980 SCR(3) 383), The Constitution Bench in this case emphasized that provision of anticipatory bail enshrined in [Section 438](#) of the Code is conceptualised under [Article 21](#) of the Constitution which relates to personal liberty. Therefore, such a provision calls for liberal interpretation of [Section 438](#) of the Code in light of [Article 21](#) of the Constitution. The Code explains that an anticipatory bail is a pre-arrest legal process which directs that if the person in whose favour it is issued is thereafter arrested on the accusation in respect of which the direction is issued, he shall be released on bail. The distinction between an ordinary order of bail and an order of anticipatory bail is that whereas the former is granted after arrest and therefore means release from the custody of the police, the latter is granted in anticipation of arrest and is therefore, effective at the very moment of arrest. A direction under [Section 438](#) is therefore intended to confer conditional immunity from the 'touch' or confinement contemplated by [Section 46](#) of the Code. The essence of this provision is brought out in the following manner:

“26. We find a great deal of substance in Mr Tarkunde's

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

10. Though the Court observed that the principles which govern the grant of ordinary bail may not furnish an exact parallel to the right to anticipatory bail, still such principles have to be kept in mind, namely, the object of bail which is to secure the attendance of the accused at the trial, and the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial. Otherwise, bail is not to be withheld as a punishment.

The Court has also to consider whether there is any possibility of the accused tampering with evidence or influencing witnesses etc. Once these tests are satisfied, bail should be granted to an under trial which is also important as viewed from another angle, namely, an accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. Thus, grant or non-grant of bail depends upon a variety of circumstances and the cumulative effect thereof enters into judicial verdict. The Court stresses that any single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail. After clarifying this position, the Court discussed the inferences of anticipatory bail in the following manner:

“31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and “the

larger interests of the public or the State” are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in [The State v. Captain Jagjit Singh](#), AIR 1962 SC 253 : (1962) 3 SCR 622 : (1962) 1 Cri LJ 216, which, though, was a case under the old [Section 498](#) which corresponds to the present [Section 439](#) of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.”

11. It is pertinent to note that while interpreting the expression “may, if it thinks fit” occurring in [Section 438\(1\)](#) of the Code, the Court pointed out that it gives discretion to the Court to exercise the power in a particular case or not, and once such a discretion is there merely because the accused is charged with a serious offence may not by itself be the reason to refuse the grant of anticipatory bail if the circumstances are otherwise justified. At the same time, it is also the obligation of the applicant to make out a case for grant of anticipatory bail. But that would not mean that he has to make out a “special case”. The Court also remarked that a wise exercise of judicial power inevitably takes care of the evil consequences which are likely to flow out of its intemperate use.

12. Another case to which can be referred to is the judgment of a Division Bench of this Court in the case of [Siddharam Satlingappa Mhetre v. State of Maharashtra and Others](#)(SLP(CRL.) 7615/2009 DATED 02-12-2021).This case lays down an exhaustive commentary of [Section 438](#) of the Code covering, in an erudite fashion, almost all the aspects and in the process

relies upon the aforesaid Constitution Bench judgment in Gurbaksh Singh's case. In the very first para, the Court highlighted the conflicting interests which are to be balanced while taking a decision as to whether bail is to be granted or not, as is clear from the following observations:

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

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

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

(ii) The gravity of charge and the exact role of the accused must be properly comprehended. Before arrest, the arresting officer must record the valid reasons which have led to the arrest of the

accused in the case diary. In exceptional cases, the reasons could be recorded immediately after the arrest, so that while dealing with the bail application, the remarks and observations of the arresting officer can also be properly evaluated by the court.

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

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

(v) The proper course of action on an application for anticipatory

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

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

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

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

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

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

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

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

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

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

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

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

(g) The courts must evaluate the entire available material against the accused very carefully. The court must also

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

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

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

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

14. Now in this background of law we come back to present case. From the material placed on record by the applicant side, it is clear that there is a dispute is continuously going on between the complainant and the applicant side for last about one year. As such, the possibility of false implication in a criminal case cannot be ruled out. Further, the fact remains that allegation relating to offence amounting to section 376 IPC is surprisingly missing in the original FIR. But explanation is offered by the present complainant during arguments on the present application as mentioned above, raising doubts regarding fair registration of FIR and investigation in the present case. In any case, there are very serious disputed

facts raised by the complainant side and applicant side. Further there are serious allegations by the complainant against the IO SI Jagat Singh also including regarding non registration of proper FIR and suppression of evidence / her torn clothes. Same may require thorough investigation including by custodial interrogation of the present accused. Under these overall facts and circumstances, this court do not find sufficient ground to grant the relief sought in the present application . The same is dismissed with these observations.

15. *Further in view of such serious allegations made by the complainant against the IO and having regard to the fact that free and fair investigation is the fundamental principle, it is expected from the DCP concerned to look into all these aspects and if deemed fit by him, transfer the investigation to some other unit / Police Station as per rules.*

16 *Further it is pertinent to mention here that if the allegations leveled by the present complainant Pinki are found false after thorough investigation, then it is expected that appropriate action against her under the IPC and other relevant law would be taken.*

16 **With these observations present application is dismissed. Both the sides are at liberty to obtain copy of order through electronic mode. Further, a copy of this order be sent to IO / SHO concerned. Further a copy of this order be sent to DCP concerned through Niab Court of this Court.**

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(NAVEEN KUMAR KASHYAP)
ASJ-04(Central Distt)/Delhi/01/10/2020

Bail Matters No.: 1391/2020
State Vs Arun Kumar s/o Mahender Singh
FIR No. : 253/2019
PS: Prasad Nagar
U/S: 406,34 IPC

03/10/2020

One of the steno is quarantined.

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

Arguments already heard.

Today the case was fixed for order / clarification on the prayer regarding interim bail to the applicant / accused Arun Kumar based on relaxed interim bail criteria passed by hon'ble High Power Committee.

Certain clarification required including regarding subsequent guidelines given by such committee as well as on which meeting / date of such hon'ble High Power Committee, the case of present accused is covered as claimed.

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

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(Naveen Kumar Kashyap)
ASJ-04/Central/03.10.2020

Application No.: 1393/2020
State Vs Nakul Raju Tamanche s/o Raju Babu Lal Tamanche
FIR No.246/2020
P. S. Sarai Rohilla
U/s: 379, 395, 482, 411, 420, 120B, 34 IPC

03/10/2020

One of the steno is quarantined.

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

This is an application for regular bail filed through counsel.

Reply filed by the IO.

Arguments in detail heard.

Put up for appropriate orders / clarification, if any, for **05/10/2020**.

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(Naveen Kumar Kashyap)
ASJ-04/Central/03.10.2020

Bail Application No.: 1394/2020
State vs Noor Alam
FIR No.11/2020
P. S. ODRS

03.10.2020

One of the steno is quarantined.

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.
Mr. Shah Nawaz, learned counsel for the applicant / accused through VC.
Further Mohd. Jiyauddin father of minor child in question is also present through VC.
ASI Satyabir Singh, present through VC.

Part arguments in detail heard.

IO is present through VC and has stated that statement u/s 164 Cr.PC of the child is already recorded by the concerned MM but copy of the same is not received by him so far.

As such, at his request, put up for **07/10/2020** with file alongwith such copy of statement u/s 164 Cr.PC.

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(Naveen Kumar Kashyap)
ASJ-04/Central/03.10.2020

State vs Karan Bhardwaj & others
(Application of accused Vineet @ Lala @ Arjun)
FIR No. 112/2019
P. S. Wazirabad
U/s: 392, 397, 411, 34 IPC

03.10.2020

This court is also discharging bail roster duty. Further, one of the steno is quarantined.

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

Mr. Anuj Bhardwaj, learned counsel through VC.

Fresh application seeking bail filed by applicant / accused through counsel. It be checked and registered separately.

Issue notice of the application to IO to file reply by the next date of hearing.

Put up for reply, arguments and appropriate orders for **05/10/2020**.

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(Naveen Kumar Kashyap)
ASJ-04/Central/03.10.2020

**Kiran Singh Sainger vs Sadaf
(Application for early hearing)
CR No. 207/2020**

03.10.2020

This court is also discharging bail roster duty. Further, one of the steno is quarantined.

Present: None.

This is an application for early hearing dated 10/09/2020.

Put up for the date already fixed.

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**(Naveen Kumar Kashyap)
ASJ-04/Central/03.10.2020**

State vs Taufiq Kala & others
(Application of accused Saddam)
FIR No. 20/2016
P. S. Crime Branch
U/s: 364A, 395, 342, 420, 468, 471, 120B IPC

03.10.2020

This court is also discharging bail roster duty. Further, one of the steno is quarantined.

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

This is an application dated 17/09/2020 seeking interim bail filed by the applicant through counsel.

As such, put up for appearance of the counsel for the applicant / accused and for further appropriate orders for **07/10/2020**.

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(Naveen Kumar Kashyap)
ASJ-04/Central/03.10.2020

State vs Sunil @ Kalu & others
(Application of accused Sunil @ Maya)
FIR No. 303/2014
P. S. Subzi Mandi
U/s: 302, 307, 34, 120B IPC

03.10.2020

This court is also discharging bail roster duty. Further, one of the steno is quarantined.

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

Mr. Naresh Kumar, learned counsel for the applicant / accused Sunil @ Maya through VC.

This is an application dated 26/09/2020 seeking grant of interim bail filed by applicant through counsel.

Reply filed by the IO.

Arguments heard.

Put up for appropriate orders / clarification, if any, with the case file for

06/10/2020.

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(Naveen Kumar Kashyap)
ASJ-04/Central/03.10.2020

State vs Gurcharan Singh @ Gabbar Singh
FIR No.70/2008
P. S. Kashmere Gate
U/s: 392, 364A, 365, 411 IPC

03.10.2020

This court is also discharging bail roster duty. Further, one of the steno is quarantined.

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

Mr. Monty Singh, learned counsel for the applicant / accused through VC.

Issue notice of this application for regular bail to the IO to file reply by the next date of hearing.

Put up for reply, arguments and appropriate orders for **09/10/2020**.

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(Naveen Kumar Kashyap)
ASJ-04/Central/03.10.2020

SC No.: 28034/2016
FIR No.: 232/2013
PS: Nabi Karim
State Vs Shankar @ Vineet Etc.

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

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

In the present case, last regular date of hearing were 04/08/2020. Thereafter, as per directions from Hon'ble High Court, matter was adjourned as far due to lock-down. But in view of latest directions, matter is taken up today for hearing through VC.

03.10.2020

Further, this court is also discharging bail Roster duty till further orders. Further, one of the steno is quarantined.

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

Mr. M.P. Sinha, learned counsel for all accused except accused Tara Sonam through VC.

It is stated by the counsel for the accused that the matter is pending at the stage of PE. It is further stated that he will be representing all the accused except accused Tara Sonam. It is further stated that all the accused are on bail.

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

Also issue notice atleast to two of the material witnesses for the next date of hearing.

Put up for PE in terms of previous order for **10/02/2021**.

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ASJ-04/Central/03.10.2020

SC No.:28156/2016
FIR No.:83/2014
PS: Timar Pur
State Vs Rahul & others

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

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

In the present case, last regular date of hearing were 31/03/2020 and 04/08/2020. Thereafter, as per directions from Hon'ble High Court, matter was adjourned was far due to lock-down. But in view of latest directions, matter is taken up today for hearing through VC.

03.10.2020

Further, this court is also discharging bail Roster duty till further orders. Further, one of the steno is quarantined.

Present: Mr. Pawan Kumar, learned Addl.PP for the State through VC.
None for the accused.
Further accused are also not present.
Mr. Sanyam Malik, learned counsel for complainant.

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

Put up for the purpose already fixed in terms of previous order for **10/02/2021**.

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(Naveen Kumar Kashyap)
ASJ-04/Central/03.10.2020

SC No.: 28592/2016
FIR No.:275/2009
PS: Burari
State Vs Mohd. Nazim

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

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

03.10.2020

Further, this court is also discharging bail Roster duty till further orders. Further, one of the steno is quarantined.

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

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

This is one of the 20 oldest matter pending in this court.

As such, put up for further proceedings / arguments in terms of previous order for **12/10/2020**. The earliest possible next date of hearing is given having regard to the present case being one of the 20 oldest matter pending in this court. Also issue court notice to all the advocates through electronic mode for the next date of hearing. Such notice be issued within 2 days.

Learned counsel are also at liberty to address arguments either through physically or through VC.

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ASJ-04/Central/03.10.2020

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CR No. 159/2019
MC Gupta Vs Serious Fraud Investigation Office

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

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

03.10.2020

Further, this court is also discharging bail Roster duty till further orders. Further, one of the steno is quarantined.

Present: None.

In the interest of justice, no adverse order is passed in the present case.

Put up for arguments / purpose fixed in terms of previous order for **10/02/2021**.

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ASJ-04/Central/03.10.2020

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**CR No. 140/2020, 141/2020, 142/2020, 143/2020 & Cr No.144/2020
Deepak Talwar Vs Income Tax Office**

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

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

03.10.2020

Further, this court is also discharging bail Roster duty till further orders. Further, one of the steno is quarantined.

Present: Mr. Prabhav Ralli, learned counsel for revisionist through VC.
Mr. Anish Dhingra, learned counsel for ITO / respondent through VC.

It is stated that certain case law is filed through electronic mode by the revisionist today at 10:30 AM only. As such, it is stated that sometime is needed to go through the same by the other side.

Under these circumstances, it is further stated that they also want to file case law. As such, put up for arguments in terms of previous order for **03/11/2020**.

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**(Naveen Kumar Kashyap)
ASJ-04/Central/03.10.2020**

EXTENSION OF INTERIM BAIL APPLICATION

Application No.: 1392/2020
State v. Amit @ Akash s/o Hari Kishan
FIR No. 193/2019
PS.:Prasad Nagar
U.S: 302, 323, 34 IPC & 25, 27, 54, 59 Arms Act

03.10.2020

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

1. Arguments already heard from learned counsel for accused as well as learned Addl.PP for the State as well as learned counsel for complainant. Today the case was fixed for order/clarifications, if any.

2. Vide this order, application dated 30.09.2020 filed by applicant / accused Amit @ Akash s/o Late Hari Kishan through counsel for extension of interim bail is disposed off.

3. It is stated in such application that he was earlier in JC and thereafter he was granted interim bail vide order dated 05.09.2020 and the same was extended by learned ASJ Neelofer Abida Parveen, Central District vide order dated 22/09/2020. It is submitted that accused wife required operation relating to her knee and doctor advised him to replacement and now she require post operation. As such, it is prayed that such interim bail be extended for 10 days more. It is further submitted that infact in view of order dated 13.07.2020 passed by Hon'ble High Court, the present interim bail be extended accordingly.

4. On the other hand, present application is vehemently opposed by the complainant side. It is stated that such accused is misusing such liberty and even initiated criminal proceedings against the complainant side. It is further stated that there is no more requirement of the present accused to take care of the wife after her operation. It is further claimed that willfully such operation was delayed to gain extra time.

Application No.: 1392/2020
State v. Amit @ Akash s/o Hari Kishan
FIR No. 193/2019
PS.:Prasad Nagar
U.S: 302, 323, 34 IPC & 25, 27, 54, 59 Arms Act

5. Arguments heard from both the sides and I have gone through the record including interim bail order dated 05.09.2020 and 22.09.2020.

6. As far as claim of the complainant side that accused is misusing his liberty during interim bail and initiated criminal proceedings against the complainant side is concerned, certain observation already made by the learned bail roster duty judge in the order dated 22/09/2020.

7. Further, at this stage it may be noted that full bench of Hon'ble High Court of Delhi in its order dated 13/07/2020 in W.P.(C) 3037/2020 titled as "Court on its own motion v. Govt. of NCT of Delhi & Anr. Held as under :

".....5. In view of the above, we hereby further extend the implementation of the directions contained in our order dated 25th March, 2020 and 15th May, 2020 and 15th June, 2020, till 31st August, 2020 with the same terms and conditions.

6. The Hon'ble Single Bench of this Court in CrI.A.193/2020 titled as Harpreet Singh vs. State vide order dated 1st July, 2020 sought clarification to the following effect:

"7. The queries that the Hon'ble Full Bench may consider and decide for the guidance of all concerned are as follows:

a. Whether the orders made by the Hon'ble Full Bench in W.P. (C) No.3037/2020, **including last order dated 15.06.2020**, apply to all interim orders, whether made in civil or criminal matters, and regardless of whether such orders were made on or before 16.03.2020 or thereafter?

b. Where interim bail or interim suspension of sentence has been granted by a Bench of this court exercising discretion and based upon specific facts and circumstances of a given case, would such orders also stand automatically extended by operation of orders made by the Full Bench in W.P.(C) No.3037/2020?

8. While deciding the issue, the Hon'ble Full Bench may consider the aspect of parity, namely that, on a plain reading of the orders in W.P.(C) No.3037/2020, interim orders granted on or before 16.03.2020 appear to be getting extended by general directions; but those made after 16.03.2020 appear not to be covered thereby."

7. In this regard, we make it clear that all the directions issued from time to time in this case are based on the ongoing pandemic situation in Delhi. So far as the criminal matters are concerned,

these directions have been issued keeping in view the fact that the jail authorities have limited space to keep the inmates and in case of spread of Covid-19 pandemic in the jail, it would not be in a position to maintain physical distancing amongst jail inmates. Looking to this aspect and the possible threat of spreading of viral infection by those persons who are on interim bail/bail/parole granted by this Court **or the Courts subordinate to this Court**, to other inmates of the jail on their return to the jail, the decision of extension of interim bail/bail/parole has been taken from time to time. *It is clarified that this order of extension of bail/interim bail/parole shall be applicable to all undertrials/ convicts, who are on bail/interim bail or parole as on date irrespective of the fact that they were released on bail/interim bail or parole before or after 16th March, 2020.*

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9. List this matter on 24th August, 2020 for further directions.”.

8. Thus, the hon'ble High Court vide such order dated 13/07/2020 already clarified that such order of extension of interim bail shall be applicable to all undertrials who are on interim bail passed before or after 16/03/2020. Thereafter, such concession is further continued further till 31/10/2020 vide subsequent order dated 24/08/2020.

9. In view of such order and clarification dated 13.07.2020 by Hon'ble High Court, and the facts mentioned in the present application with supporting documents, the interim bail of the present accused need to be stand extended till 31/10/2020 and same is extended accordingly. With these findings present interim bail application is allowed accordingly.

10. Both sides are at liberty to collect the order through electronic mode. **A copy of this order be sent to Jail Superintendent concerned. Further copy of this order be sent to IO / SHO concerned.**

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ASJ-04/Central/03/10/2020

Anticipatory Bail

Bail Application No.:1170/2020
State vs Mahammad Anis @ Zeeshan s/o Abdul Hameed
FIR No. 208/2019
P. S. Kamla Market
U/s: 4 of Muslim Women (Protection of rights on marriage) Act 2019

03.10.2020

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

1. This is an application for anticipatory bail u/s 438 Cr.PC dated 09/09/2020 filed by the applicant Mohd. Anis @ Zeeshan through counsel.

2. In the present case, it is argued by the learned counsel that marriage of the applicant was solemnized with applicant on 24/02/2013 according to Muslim rites and there are two children out of such marriage; that there were some domestic dispute between them and it is claimed that complainant left the company of applicant / accused. It is now claimed that the matter is now settled between them before Delhi State Legal Service Authority and before mediator. But the present FIR is registered and he is apprehended his arrest. That his custodial investigation is not required and he has roots in the society. A copy of settlement between the complainant and present accused is also placed on record. As such, IO / SHO be directed to release the applicant on bail in the event of his arrest.

3. On the other hand, IO Sumit is present through VC, it is submitted by the IO that case at the stage of filing the chargesheet in the court. The investigation is complete. That notice u/s 41A was given and accused is already bound down under the same. It is further stated that there is no need to arrest the accused at present.

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

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

6. A judgment which needs to be pointed out is a Constitution Bench Judgment of this Court in the case Gurbaksh Singh Sibbia and Other vs. State of Punjab(1980 AIR 1632 ; 1980 SCR(3) 383), The Constitution Bench in this case emphasized that provision of anticipatory bail enshrined in [Section 438](#) of the Code is conceptualised under [Article 21](#) of the Constitution which relates to personal liberty. Therefore, such a provision calls for liberal interpretation of [Section 438](#) of the Code in light of [Article 21](#) of the Constitution. The Code explains that an anticipatory bail is a pre- arrest legal process which directs that if the person in whose favour it is issued is thereafter arrested on the accusation in respect of which the direction is issued, he shall be released on bail. The distinction between an ordinary order of bail and an order of anticipatory bail is that whereas the former is granted after arrest and therefore means release from the custody of the police, the latter is granted in anticipation of arrest and is therefore, effective at the very moment of arrest. A direction under [Section 438](#) is therefore intended to confer conditional immunity from the 'touch' or confinement contemplated by [Section 46](#) of the Code.

State vs Mohammad Anis @ Zeeshan s/o Abdul Hameed
FIR No. 208/2019

P. S. Kamla Market

U/s: 4 of Muslim Women (Protection of rights on marriage) Act 2019

The essence of this provision is brought out in the following manner:

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

7. Though the Court observed that the principles which govern the grant of ordinary bail may not furnish an exact parallel to the right to anticipatory bail, still such principles have to be kept in mind, namely, the

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

“31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other

considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the State" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in [The State v. Captain Jagjit Singh](#), AIR 1962 SC 253 : (1962) 3 SCR 622 : (1962) 1 Cri LJ 216, which, though, was a case under the old [Section 498](#) which corresponds to the present [Section 439](#) of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail."

8. It is pertinent to note that while interpreting the expression "may, if it thinks fit" occurring in [Section 438\(1\)](#) of the Code, the Court pointed out that it gives discretion to the Court to exercise the power in a particular case or not, and once such a discretion is there merely because the accused is charged with a serious offence may not by itself be the reason to refuse the grant of anticipatory bail if the circumstances are otherwise justified. At the same time, it is also the obligation of the applicant to make out a case for grant of anticipatory bail. But that would not mean that he has to make out a "special case". The Court also

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remarked that a wise exercise of judicial power inevitably takes care of the evil consequences which are likely to flow out of its intemperate use.

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

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

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

(i) The complaint filed against the accused needs to be

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

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

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

(iv) There is no justification for reading into [Section 438](#) CrPC the limitations mentioned in [Section 437](#) CrPC. The plentitude of [Section 438](#) must be given its full play. There is no

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. Now in this background of law we come back to present case. It is the case of the prosecution that investigation is complete and the chargesheet is about to be filed after scrutiny of the same. It is further the case of prosecution as stated by IO that accused is already bound down in the present case u/s 41A Cr.PC. Under these circumstances, there does not appear apprehension of arrest of the present accused person. Therefore, no occasion exist to grant the relief as prayed for. Present application is disposed off with these observation. **Both the sides are at liberty to obtain copy of order through electronic mode. Further, a copy of this order be sent to IO / SHO concerned. Further, a copy of this order be uploaded on website.**

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(NAVEEN KUMAR KASHYAP)
ASJ-04(Central Distt)/Delhi/03/10/2020