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

**Application No.: 2029/2020**  
**State Vs Al-Fahad**  
**FIR No.216/2020**  
**P. S. Darya Ganj**  
**U/s: 411 IPC**

**02/12/2020**

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

Mr. Hemant Chaudhary, learned counsel for accused  
through VC.

Vide this order, bail application u/s 439 Cr.PC dated 27/11/2020  
filed by applicant through counsel is disposed off.

It is stated in the application that he is in JC since 11/11/2020;  
that the applicant is quite innocent and has no nexus qua the commission of  
the present offence as he has been falsely implicated in the present case; that  
he was arrested on the disclosure statement of co-accused Umair and that he  
has nothing to do with the present case; that his earlier bail application was  
dismissed by learned MM vide order dated 26/11/2020; that antecedents of  
present accused are very clean and clear and he has never involved in any  
criminal activities nor he has been convicted earlier. As such, it is prayed that  
he be granted regular bail.

On the other hand, in reply dated 01/12/2020 filed by the IO, as  
also argued by learned substitute Addl.PP for the State it is stated that stolen  
side mirror of the car of the case in question is recovered from the present  
accused and he is found involved in seven other criminal cases; that he is  
budding criminal; he may commit similar offences if he is released on bail;  
As such, present bail application is strongly opposed.

I have heard both the sides.

The personal liberty is a priceless treasure for a human being. It

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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

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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

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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. (**Sundeeep 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

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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 since 11/11/2020. The allegations against the accused are u/s 411 IPC only that too recovery one side mirror of the car. 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. Trial is likely to take time. Further, it may be noted that there is fundamental presumption of innocence in any criminal case of present nature. In present case, no previous conviction in criminal cases is placed on record by the IO.

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In above facts and circumstances, such accused is granted bail subject to furnishing of **personal bond in the sum of Rs. 20,000/- with one sound surety of like amount**, subject to the satisfaction of the learned Trial court and the following additional conditions:

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

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

*iii) That he will not leave Delhi without prior permission of the Trial Court concerned.*

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

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

*vi) He shall also provide his mobile number to the IO and further share his location through mobile phone once in everyweek till filing of chargesheet and thereafter as may be directed by the learned Trial Court.*

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

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*

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*release despite an order of bail, it is the judicial duty of the trial courts to undertake a review for the reasons thereof.*

- b) *Every bail order shall be marked on the file.*
- c) *It shall be the responsibility of every judge issuing an order of bail to monitor its execution and enforcement.*
- d) *In case a judge stands transferred before the execution, it shall be the responsibility of the successor judge to ensure execution.....”*

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

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

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

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

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

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**NAVEEN KUMAR  
KASHYAP**

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**(NAVEEN KUMAR KASHYAP)  
ASJ-04(Central/Delhi  
02.12.2020**

Application No.: 2029/2020  
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**IN THE COURT OF SH. NAVEEN KUMAR KASHYAP**  
**ADDITIONAL SESSIONS JUDGE-04: CENTRAL:**  
**TIS HAZARI COURTS: DELHI**

**Bail Application No.: 1911/2020**

**State v. Karan**  
**FIR No. : 668/2020**  
**P. S: Sarai Rohilla**  
**U/s:379,411 IPC**

**02.12.2020.**

**This court is also discharging bail roster duty.**

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

Vide this order, regular bail application u/s 439 Cr.PC dated 17.11.2020 filed through counsel is disposed of.

It is stated in such application that he has been falsely implicated in the present case; that he is in JC since long. That he is no more required for further investigation. That nothing is recovered from him except the planted recovery. That there is a spread of corona virus including inside the jail. That bail is a rule and jail is exception. There is no previous conviction of the accused. That now co-accused is granted regular bail by Ld. Ilaka MM on 27.11.2020. As such, it is prayed that he be granted regular bail.

On the other hand, in reply filed by the IO, as also argued by learned Addl.PP for the State that on a secret information present accused alongwith co-accused was arrested and the scooty used in the offence was recovered from them alongwith 12,80,000/- amount and one cheque book is recovered at their instance. That he is involved in two other similar cases. As such, present bail application is strongly opposed.

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

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be reasoned one but detailed reasons touching merits of the case, detailed examination of evidence and elaborate documentation of merits of case should not be done.

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

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

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

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

In the present case, it is a matter of record that now co-accused Pawan @ Shera is granted bail by learned Ilaka MM itself. Further, in fact, the period for seeking police remand is already over. Further, such accused is not named in the FIR. Further, he is not arrested on the spot but later on. Further, 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

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innocence in any criminal case in India i.e. an accused is presumed innocent unless proved guilty.

In above facts and circumstances, such accused is granted bail subject to furnishing of **personal bond in the sum of Rs. 15,000/- with two sound sureties of like amount**, subject to the satisfaction of the learned Trial court and the following additional conditions:

- i) Applicant shall not flee from the justice;*
- ii) Applicant shall not tamper with the evidence;*
- iii) Applicant shall not threaten or contact in any manner to the prosecution witnesses ,*
- iv) Applicant shall not leave country without permission;*
- v) Applicant shall convey any change of address immediately to the IO and the court;*
- vi) Applicant shall also provide his mobile number to the IO;*
- vii) Applicant shall mark his attendance before concerned IO (and if IO is not available then to concerned SHO) every alternative /second day through mobile by sharing his/her location with the SHO concerned till the chargesheet is filed;*
- viii) Applicant shall further make a call, preferably by audio plus video mode to concerned IO, (and if IO is not available then to concerned SHO) once a week, preferably on Monday between 10 a.m. to 5 p.m. till the chargesheet is filed.*
- ix) Applicant shall keep their such mobile number 'Switched On' at all the time, particularly between 8 am to 8 pm everyday till the chargesheet is filed*
- x) That applicant will cooperate with the investigation / IO / SHO concerned and will appear before IO / Trial Court as and when called as per law.*
- xi) Applicant will not indulge in any kind of activities which are alleged against him in the present case.*

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

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

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

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

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

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

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*is in jail in some other case.*

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

**The bail application is accordingly disposed off. Learned counsel for applicant is at liberty to obtain order through electronic mode. Copy of this order be also sent to Jail Superintendent concerned through electronic mode.**

NAVEEN KUMAR  
KASHYAP

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**(NAVEEN KUMAR KASHYAP)**  
**ASJ-04(Central/Delhi)**  
**02.12.2020**

: 1 :

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

**Bail Application No.: 1527/2020.**  
**State V. Mohd. Hassan.**  
**FIR No.: 176/2020.**  
**P. S. Sarai Rohilla.**  
**U/s: 392, 394, 397, 411, 34 IPC.**

**02.12.2020**

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.  
Sh. Nagendra Singh, learned counsel for the applicant through VC.

Arguments already heard. Today case was fixed for orders.

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

In nutshell, it is argued on behalf of accused that he is in JC since 18.05.2020. That he is a young person of 18 years and three months. It is further argued that he is a labourer by profession. That he does not have any previous criminal record. That no purpose would be served by keeping him in JC. That chargesheet is already filed.

On the other hand, it is argued by learned Addl.PP for the State that present accused alongwith co-accused committed robbery of mobile phone, bag and purse and at the point of knife and robbed mobile phone is recovered from the present accused. Further, although not submitted in the reply by the IO, but it is orally submitted during arguments on the last date of hearing by the IO that complainant identified the present accused. That accused caused injury to the complainant Krishan Kumar and Gaurav/ main victim by knife in committing such robbery. It is further argued that his earlier bail application with similar grounds is already dismissed vide order dated 15.09.2020. As such, present application is strongly opposed.

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

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

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

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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

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

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

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

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

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

In the present case, it is matter of record that earlier bail application of the accused is already dismissed on 15.09.2020. Therefore, except that chargesheet is now claimed to be filed, there is no material change in the circumstances. Further, as per the IO, the complainant has identified the accused. Further, the offence alleged is punishable upto

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imprisonment for life. Therefore, having regard to the nature of the offence, allegations against the present accused and the fact that stage of examination of witness/victim has not yet even arrived, this court is not inclined to grant regular bail to the accused at the present stage. **With these observations the present application is dismissed.**

**Ld. Counsel for accused/applicant is at liberty to collect the order through electronic mode. Further a copy of this order be sent to concerned Jail Superintendent.**

**Before parting it may be noted that observations made in the present bail application are only for the purpose of deciding the present bail application and are not a comment on the merit of the case which is a matter of trial.**

NAVEEN KUMAR KASHYAP

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ASJ-04(Central/Delhi  
02.12.2020**

**Anticipatory Bail**

**Bail Matters No.:2028/2020**  
**State Vs Durga Prasad & Ors (Uma Dutt Sharma)**  
**FIR No. :22/2012**  
**PS: I.P. Estate**  
**U/S: 420, 468, 471 IPC**

**02/12/2020**

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC.  
Mr. Pradeep Nagar, learned counsel for Accused through VC.  
IO SI Amit Tyagi, DIU Central District also present through VC.

Vide this order, anticipatory bail application dated 28/11/2020 under section 438 Cr.P.C. on behalf of accused filed through counsel is disposed off.

In the present case, it is argued on behalf of applicant / accused that he is a senior citizen of aged about 65 years old; that he has no nexus or connection with the alleged offence; that he used to work in CPWD as private contractor; that main accused Durga Prasad used to work as his Munshi; that it is the main accused Durga Prasad who applied for TDS in Income Tax Office. It is further claimed that such main accused Durga Prasad used applicant's signed documents relating to applicant's firm and applied for TDS without present applicant's knowledge / consent. It is further claimed that in the year 2011-2012 he was facing critical disease of heart and he is still under supervision of heart doctors at AIIMS hospital for his open surgery. That he received a letter from PS I.P. Estate in 2019 relating to present FIR which was registered way back in 2012 and he joined the investigation till date. He further

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undertakes to join the investigation as and when so directed. It is further stated that he is still suffering from medical complications. As such, it is prayed that he be granted anticipatory bail with direction to the IO / SHO to release him on bail in the event of his arrest in the present case.

On the other hand, reply is filed by the IO as also argued by learned Addl.PP for the State that present FIR was got registered on the complaint of Ms Shobhna Rajan / ITO in her official capacity; that Durga Prasad claimed TDS refund of Rs. 1,56,090/- . That address given was of 115 of Jhilmil Colony. Such Durga Prasad was examined during investigation and he told that he is employee of present accused and present accused secured his PAN and Ration card on false pretext of getting him an insurance policy. Such Durga Prasad died thereafter, and efforts were made to trace the present applicant but present applicant was frequently changing his residences and he could be traced in 2019 only and notice u/s 41A Cr.PC was issued to him. The reply given by him to the query was found false and thereafter he evaded questions on the pretext of his health problem and instead of appearing before IO moved the present anticipatory bail application. It is further submitted that another FIR of similar nature bearing No. 23/2012 is also registered against the same applicant; that he is not cooperating with the investigation despite opportunity given. Further, it is stated that in the ITR form there is forged signature and mobile number of present applicant is also mentioned. As such, it is stated that his custodial investigation is required and present application for bail is strongly opposed.

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

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

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

“26. We find a great deal of substance in Mr Tarkunde's submission that since denial of bail amounts to deprivation of personal liberty, the court should lean against the imposition of unnecessary restrictions on the scope of [Section 438](#), especially when no such restrictions have been imposed by the legislature in the terms of that section. [Section 438](#) is a procedural provision which is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for

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

7. Though the Court observed that the principles which govern the grant of ordinary bail may not furnish an exact parallel to the right to anticipatory bail, still such principles have to be kept in mind, namely, the object of bail which is to secure the attendance of the accused at the trial, and the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial. Otherwise, bail is not to be withheld as a punishment. The Court has also to consider whether there is any possibility of the accused tampering with evidence or influencing witnesses etc. Once these tests are satisfied, bail should be granted to an 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

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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

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impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.”

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

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

“1. ....This appeal involves issues of great public importance pertaining to the importance of individual's personal liberty and the society's interest. Society has a vital interest in grant or refusal of bail because every criminal offence is the offence against the State. The order granting or refusing bail must reflect perfect balance between the conflicting interests, namely, sanctity of individual liberty and the interest of the society. The law of bails dovetails two conflicting interests, namely, on the one hand, the requirements of shielding

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society from the hazards of those committing crimes and potentiality of repeating the same crime while on bail and on the other hand, absolute adherence to the fundamental principle of criminal jurisprudence regarding presumption of innocence of an accused until he is found guilty and the sanctity of individual liberty.....”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. Now in this background of law we come back to present case. In the present case, although the FIR is of the year 2012, but sufficient explanation given by the IO for delay in the investigation having regard to the nature of offence and the conduct of the accused side including frequent change in residential addresses. Further, such offence is very serious in nature and reported by the ITO. Such, offence in a way, affects the financial / revenue security of the country as it relates to forgery in getting back the amount paid in tax. Same appears to be done in a planned manner which a deep rooted conspiracy. Further, mobile number of the accused appeared during investigation. Further, co-accused Durga Prasad relation with the accused as employee / Munshi is also not in dispute. Thus, prima facie, it is not a case where the allegations against the accused are baseless. Therefore, having regard to the nature of offence, material against accused, that his custodial interrogation may be required including for the purpose of investigation relating to forgery aspects, this Court is not inclined at this stage to grant the relief sought in the present application. With these observation, present application is dismissed.

Both the sides are at liberty to collect order through electronic mode. Further, a copy of this order be sent to concerned IO / SHO. Further, copy of this order be uploaded on website.

Before parting it would be fruitful to note that offences alleged at present are punishable upto 07 years. As such, IO / SHO concerned are duty bound to comply with the directions of Hon'ble Supreme Court in case of Arnesh Kumar.

The observations made in the present anticipatory bail application order are for the purpose of deciding of present application and do not affect the factual matrix of the investigation of

the present case which is separate issue as per law.

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**ASJ-04(Central/Delhi/02/12/2020)**

**Bail Matters No.:2028/2020**  
**State Vs Durga Prasad & Ors(Uma Dutt Sharma)**  
**FIR No. :22/2012**  
**PS: I.P. Estate**  
**U/S: 420, 468, 471 IPC**

**Anticipatory Bail**

**Bail Application No.:1985/2020  
State Vs Saurabh & others  
FIR No. 459/2020  
P. S. Sarai Rohilla  
U/s: 354, 354A, 509, 323, 34 IPC**

02.12.2020

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

1. This is a joint second application for anticipatory bail u/s 438 Cr.PC filed by five accused / applicants Saurabh, Smt. Sapna Rani, Smt. Deepali, Vicky and Smt. Bela Rani through counsel is disposed off.

2. In the present case, it is argued by the learned counsel that applicants belong to respectable family and present FIR got registered based on misconceived facts. That complainant and accused side are neighbors; that cross FIR is registered against each other under single offences; that now the matter is amicably settled between the parties and they want to even move the Hon'ble High Court for quashing the both such FIRs bearing No. 459/2020 and FIR No. 464/2020. That they are not required for the purpose of investigation; that the present accused / applicant side undertakes that they would not take further action on their FIR bearing No. 464/2020 against the present complainant side including that they will not oppose bail application, if any, moved in that FIR. That

**Bail Application No.:1985/2020  
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FIR No. 459/2020  
P. S. Sarai Rohilla  
U/s: 354, 354A, 509, 323, 34 IPC**

accused has roots in society and permanent residents of Delhi. They are ready to join investigation as and when so directed. As such, IO / SHO be directed to release all the five applicants on bail in the event of their arrest.

3. On the other hand, in reply submitted by IO PSI Avanti Rani that complainant had a quarrel with one of the applicant with accused Sapna over cleaning of stairs, in the meanwhile accused Saurabh came and slapped her and pushed her by putting his hands on her breast. Further other co-accused also joined them and scuffled with the complainant and her husband. It is further stated that both the sides reside in same building on different floors and cross case is also registered by the accused side against the present complainant side. As such, present application is strongly opposed.

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

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

“1. ....This appeal involves issues of great public importance pertaining to the importance of individual's personal liberty and the society's interest. Society has a vital interest in grant or refusal of bail because every criminal offence is the offence against the State. The order granting or refusing bail must reflect perfect balance between the conflicting interests, namely, sanctity of individual liberty and

the interest of the society. The law of bails dovetails two conflicting interests, namely, on the one hand, the requirements of shielding society from the hazards of those committing crimes and potentiality of repeating the same crime while on bail and on the other hand, absolute adherence to the fundamental principle of criminal jurisprudence regarding presumption of innocence of an accused until he is found guilty and the sanctity of individual liberty.....”

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

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

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

(iii) It is imperative for the courts to carefully and with meticulous precision evaluate the facts of the case. The discretion to grant bail must be exercised on the basis of the available material and the facts of the particular case. In cases where the court is of the considered view that the accused has

joined the investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided. A great ignominy, humiliation and disgrace is attached to arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-conviction stage or post-conviction stage.

(iv) There is no justification for reading into [Section 438](#) CrPC the limitations mentioned in [Section 437](#) CrPC. The 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. In the present case, it is a matter of record that complainant and accused side are neighbors; that some quarrel took place between Sapna and Pragati Pandey and a cross FIR is registered against each other side. Now matter is stated to be amicably settled and parties want to move the Hon'ble High Court for quashing of both such FIRs. Further it appears that such accused are no more required for investigation as nothing is to be recovered from them. Thus, in the background of such circumstances, the case law discussed above and the parameters of section 438 Cr.PC, it is directed

that accused persons / applicants be released on bail in the event of their / his / her arrest on furnishing of personal bond and surety bond in the sum of Rs. 25,000/- each, subject further following conditions.

- i) That he / she will appear before Trial Court as and when called as per law.*
- ii) He will not indulge in any kind of activities which are alleged against him / her in the present case.*
- iii) That he / she will not leave India without permission of the Court.*
- iv) He / she will not contact or threaten the witness or tampering with evidence.*

It is clarified that in case if the applicants / accused are 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.

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

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

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**Bail Application No.: 1985/2020  
State Vs Saurabh & others  
FIR No. 459/2020  
P. S. Sarai Rohilla  
U/s: 354, 354A, 509, 323, 34 IPC**

**ASJ-04(Central Distt.)/Delhi/02/12/2020**

**BAIL APPLICATION : 1571/2020**

**State v. Dharmender  
FIR no.:256/2020  
PS: Prasad Nagar**

**02.12.2020**

Present: Sh. Pawan Kumar, Ld. Addl. PP for the state through VC.  
Sh. Bijender Sharma, Ld. Counsel for accused.

Arguments already heard.

Put up for orders/clarifications, if any at 4 pm.

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02.12.2020**

**Certain clarifications required** including regarding statement u/s  
164 Cr.P.C. given by the complainant.

As such, issue notice to IO to appear in person with case file on next  
date of hearing on **09.12.2020**.

In the meanwhile, interim protection, if any to continue till next date.

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Additional Sessions Judge-04/Central  
02.12.2020**

**M CrI. No: 170/2020**

**State v. Farukh Sheikh  
FIR no.:170/2020  
PS: Rajinder Nagar**

**02.12.2020**

Present: None.

Even on the last date of hearing, none was present. As such, present application is dismissed in default with liberty to file afresh.

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Additional Sessions Judge-04/Central  
02.12.2020**

**Bail Matters No.:2030/2020**  
**State Vs Gaurav Yadav**  
**FIR No.:167/2020**  
**PS: Rajinder Nagar**

**02/12/2020**

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

Mr. Atul Chaturvedi, learned counsel for the applicant through VC.

ASI Sanjay Kumar, IO in person physically in Court.

Reply filed.

Part arguments heard.

Put up with the connected matters for further arguments and orders for 07/12/2020.

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**ASJ-04/Central/02.12.2020**

**Application for preponement  
State Vs Pradeep @ Sooraj  
FIR No.:668/2020  
PS: Sarai Rohilla**

**02/12/2020**

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

Mr. Arun Sharma, learned counsel for the applicant / accused Pardeep @ Sooraj through VC.

This is an application for early hearing / preponement.

After some arguments, it is submitted by the counsel for the accused that he be permitted to withdraw the main bail application itself as well as this application. Such, main bail application is listed for 10/12/2020.

Heard. Allowed.

The present application is dismissed as withdrawn with liberty to file / move before concerned

MM.

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**(Naveen Kumar Kashyap)  
ASJ-04/Central/02.12.2020**

**Bail Matters No.: 692/2020**  
**State Vs Sonu Kundra @ Amrit Kundra**  
**FIR No.: 251/2019**  
**PS: Prashad Nagar**

**02/12/2020**

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

Mr. Prabhat Kumar, learned counsel for the applicant / accused through VC.

Mr. Amit Sharma, learned counsel for complainant through VC.

Put up for arguments on this application for regular bail, on the aspect of extension of interim bail and other connected matter / issues for **04/12/2020**.

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**MISC APPLICATION**

**\_ State v. Sakir  
(application for withdrawal of surety of Tajim)  
FIR No. :267/2015  
PS: Darya Ganj**

**02.12.2020.**

**Undersigned is also discharging bail roster duty.**

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

Put up for status of appeal, if any filed before Hon'ble High Court and appropriate orders on this application for withdrawal of surety on 08.12.2020.

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**ASJ-04/Central/02.12.2020**

**BAIL APPLICATION**

**\_ State v. Padam Singh  
FIR No. : 55/2018  
PS: Kotwali**

**02.12.2020.**

**Undersigned is also discharging bail roster duty.**

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

**Put up for appearance and appropriate orders for 09.12.2020.**

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**ASJ-04/Central/02.12.2020**

**BAIL APPLICATION**

**\_ State v. Taufiq @ kala  
(Applicant Sunny)  
FIR No. : 20/2016  
PS: Crime Branch**

**02.12.2020.**

**Undersigned is also discharging bail roster duty.**

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

**At request, put up for arguments and appropriate orders for 14.12.2020.**

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**ASJ-04/Central/02.12.2020**

**BAIL APPLICATION**

**\_ State v. Pooja  
(applicant Munni @ moni)  
FIR No. : 292/2014  
PS: Rajinder Nagar**

**02.12.2020.**

**Undersigned is also discharging bail roster duty.**

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

**Put up for appearance and appropriate orders/directions for 08.12.2020,  
when the main matter is pending.**

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**ASJ-04/Central/02.12.2020**

**BAIL APPLICATION**

**\_ State v. Taufiq @ kala  
(Applicant Saddam)  
FIR No. : 20/2016  
PS: Crime Branch**

**02.12.2020.**

**Undersigned is also discharging bail roster duty.**

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

**At request, put up for appearance and appropriate orders for 09.12.2020.**

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**ASJ-04/Central/02.12.2020**

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**02.12.2020**

**At this stage, Sh. Rashid Khan appears through VC. He is apprised of the order  
passed in the morning.**

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**ASJ-04/Central/02.12.2020**

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**State Vs Bablu Mathur & others**  
**(Application for extension of bail of Ankit Aggarwal)**  
**FIR No. 221/2015**  
**P. S. Karol Bagh**

**02.12.2020**

**This Court is also discharging bail roster duty.**

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

Mr. Deepanshu Chug, learned counsel for the applicant through VC.

Put up for further appropriate orders / directions for 07/12/2020.

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**ASJ-04/Central/02.12.2020**

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**State Vs Naeem @ Chuha**  
**(Application for Extension of IB of Naeem @ Chuha)**  
**FIR No. 215/2016**  
**P. S. Chandni Mahal**

**02.12.2020**

**This Court is also discharging bail roster duty.**

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

None for the applicant.

Put up for further appropriate orders / directions for 07/12/2020.

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**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/02.12.2020**

**State Vs Arsalan Ali & others  
(Application for bail of Juber)  
FIR No. 182/2017  
P. S. Kamla Market**

**02.12.2020**

**This Court is also discharging bail roster duty.**

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

Mr. M.Z. Masih, learned counsel for accused Juber through VC.

This is an application for regular bail.

It is stated by the counsel for the accused that Trial Court record need to be checked at the time of arguments on this bail application.

As such, put up for arguments and appropriate orders for the physical hearing day of this Court i.e. tomorrow 03/12/2020. Also issue notice to IO to appear in person or through VC on the next date. Such notice be issued forthwith.

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**(Naveen Kumar Kashyap)  
ASJ-04/Central/02.12.2020**

**State Vs Pramod & others**  
**(Application for replacement of surety of Deepak)**  
**FIR No. 485/2014**  
**P. S. Timar Pur**

**02.12.2020**

**This Court is also discharging bail roster duty.**

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

Mr. Diwakar Chaudhary, learned counsel for applicant through VC.

At request, put up for tomorrow i.e. 03/12/2020 for further appropriate orders.

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**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/02.12.2020**

**SC No.: 287/2019**  
**Application to recalling of witness**  
**State Vs Sanjay Tiwari & others**  
**FIR No. 478/2018**  
**PS Burari**

**02.12.2020**

**This Court is also discharging bail roster duty.**

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

None for the applicant.

This is an application for summoning of witness on behalf of accused.

Heard. Allowed.

Steps be taken within two working days. Put up for evidence for 08/12/2020 alongwith the main file.

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**ASJ-04/Central/02.12.2020**

At this stage, learned counsel Mr. B.S.Tiwari appeared through VC.

He submitted that he is out of station till 14/12/2020. As such, at this request, date is shifted to 08/12/2020 to 18/12/2020 i.e. the earliest possible next available physical date of hearing of this Court. Further, regular date of hearing for 08/12/2020 is cancelled accordingly.

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**ASJ-04/Central/02.12.2020**

**State Vs Gaurav Chauhan & others**  
**(Regular Bail Application of Shahi Ram)**  
**FIR No. 199/09**  
**P. S. Kashmere Gate**  
**U/s 364A, 120B, 34 IPC**

**02.12.2020**

**This Court is also discharging bail roster duty.**

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

Mr. Lokesh Chandra, learned counsel for the applicant through VC.

This is a fresh application dated 28/11/2020 U/s 439 Cr.PC for grant of regular bail or in the alternative extension of interim bail for a period of 30 more days.

The learned counsel at first stated that his **regular bail application** be heard. As such, issue notice to IO / State to file reply, if any, for 08/12/2020 i.e. the physical hearing day so as to go through the record , as one of the ground taken is parity . **Accordingly ,Put up for reply, arguments and appropriate order on such physical hearing day of 08/12/2020.**

At this stage, it is submitted by the counsel for the accused that **his interim bail application for extension** be also heard today itself, as vide order dated 04/11/2020 the present accused was granted interim bail for four weeks and accordingly he is supposed to surrender today before Jail Superintendent concerned. It is further argued that he has not misused his liberty. It is further argued that Hon'ble Supreme Court in SLP No. 23367/2020 vide order dated 25/11/2020 has stayed the order of Hon'ble High Court of Delhi till 01/12/2020. It is further argued that co-accused were also granted interim bail. It is further argued that present accused is still suffering from problem of kidney stones and taking Ayurvedic treatment. It is further stated that as such, his interim bail be extended for 30 more days.

On the other hand, such extension of interim bail is strongly opposed by the learned Addl.PP for the State, stating he is not even covered in the stay order passed by hon'ble SC.

I have heard both the sides.

Regarding the aspects of extension of interim bail, as far as present accused is concerned, because of the reasons already stated in the interim bail order dated 04/11/2020 by this Court, he was granted interim bail for four weeks, including because of his medical condition, so that he can consult and take treatment from private doctor also. Same is already taken by him. Further, in any case, it is the duty of Jail superintendent concerned to provide the proper treatment including Ayurvedic treatments as per rules. As such, such further medical treatment / medicines can be provided to such accused in the JC itself. More importantly, it may be noted that the stay given by Hon'ble Supreme Court on the order for surrender given by Hon'ble High Court dated 20/10/2020 is not applicable to the interim bail order given to the present accused, as interim bail on merit was given to present accused thereafter only on 04/11/2020. With these observations, the prayer for extension of interim bail is rejected. **Accused Sahi Ram is directed to surrender forthwith before concerned Jail Superintendent in terms of order dated 04/11/2020.**

Copy of this order be supplied to both the sides. Copy of this order be also sent to IO / SHO *and jail Superintendent concerned.*

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**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/02.12.2020**

**Crl. Rev.: 260/2020**  
**Karan Arora v. Nitin Chawla**

**02.12.2020**

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

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

**Undersigned is also discharging work of Bail Roster duty.**

Present: Sh. Abhay Kumar, Ld. Counsel for revisionist Karan Arora through VC.  
Sh. Sonal Anand, Ld. Counsel for respondent Nitin Chawla through VC.

Put up for filing of reply, if any with advance copy to revisionist through electronic mode, otherwise, arguments and appropriate orders for 08.12.2020.

NAVEEN KUMAR KASHYAP  
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Date: 2020.12.02 16:04:29 +05'30'

**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/02.12.2020**

**CA: 54840/16, CA: 54841/16, CA:54842/16  
Bhupinder Singh Sawhney v. State**

**02.12.2020**

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

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

**Undersigned is also discharging work of Bail Roster duty.**

Present: Sh. Dushyant Kumar, Ld. proxy Counsel for Appellant no.1 through VC.  
Sh. L.M. Grover, Ld. Counsel for Appellant no.2 through VC.  
Sh. Sanjeev Goyal, Ld. Counsel for Respondent no. 16 to 18.

**Put up for arguments on physical hearing day on 08.12.2020.**

Ld. Counsel for parties are at liberty to address arguments physically or through VC.

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**(Naveen Kumar Kashyap)  
ASJ-04/Central/02.12.2020**

**Crl. Rev.:272/2020**  
**Mohd. Ayaz v. State**

**02.12.2020**

*Fresh revision petition received. It be checked and registered.*

Present: None.

Put up for consideration on 08.12.2020.

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**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/02.12.2020**

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Date: 2020.12.02 16:05:09  
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**SC No: 27348/2016**  
**FIR No: 531/2015**  
**PS: Sarai Rohilla**  
**State Vs Mohd. Javed @ Ganju**

**02.12.2020**

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

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

**Undersigned is also discharging work of Bail Roster duty.**

Present: Mr. Pawan Kumar, Learned Addl.PP for the State through VC.  
Mr. Rohish Arora, learned counsel for accused Javed and Ravi through VC.

Put up for PE in terms of previous order for 07/04/2021. Issue production warrant for the accused, if any, in JC for the next date of hearing. Also issue notice to two of the material witnesses for the next date of hearing.

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**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/02.12.2020**

**CR No. 80/2019**  
**Anil Kumar Gupta Vs Man Singh Tanwar**

**02.12.2020**

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

***In view of the above-mentioned orders/directions, file is taken up through Webex.***  
**Undersigned is also discharging work of Bail Roster duty.**

Present: Mr. R.K. Sharma, learned counsel for the revisionist through VC.

Put up for the purpose already fixed / appropriate orders in terms of previous order for 07/04/2021.

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**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/02.12.2020**

**CR No.: 166/2019**  
**Suman Sen Gupta Vs State and Ors.**

**02.12.2020**

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

***In view of the above-mentioned orders/directions, file is taken up through Webex.***  
**Undersigned is also discharging work of Bail Roster duty.**

Present: Mr. B. Ghosh, learned counsel for revisionist through VC.  
Mr. Kumar Sushobhan, learned counsel for respondents except State through VC.  
Mr. Pawan Kumar, Learned Addl.PP for the State through VC.

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

07/04/2021.

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**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/02.12.2020**

**SC No: 28148/2016**  
**FIR No: 97/2012**  
**PS Prashad Nagar**  
**State Vs: Ram Gopal Rai & others**

**02.12.2020**

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

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

**Undersigned is also discharging work of Bail Roster duty.**

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

Mr. Prashant Kumar, learned counsel for accused Sanjay Yadav through VC.

Mr. Joginder Tuli, learned counsel for accused Seema through VC.

At request, put up for arguments on physical hearing day. It is submitted by the counsel for accused Seema that he has already addressed oral arguments as well as written arguments are given. As such, his arguments are already over. The same is noted.

**Put up for arguments, if any, for 18/12/2020.**

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**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/02.12.2020**

**SC No:28296/2016**  
**FIR No: 292/2014**  
**PS: Rajinder Nagar**  
**State Vs: Pooja & others**

**02.12.2020**

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

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

**Undersigned is also discharging work of Bail Roster duty.**

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

Ms. Preeti Srivastav, learned counsel for accused Moni @ Munni through VC.

Accused No.4 Mohit Sharma in person.

Mr. Khushdeep Guar, learned counsel for complainant through VC.

At request, put up for further arguments on behalf of accused No.3 & 4 for physical hearing day of this Court i.e. 08/12/2020.

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**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/02.12.2020**