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State v. Rahul Sharma
FIR No. : 339/2016
PS: Darya Ganj
U/S: 395,397,120B,412,34 IPC &
25,27 Arms Act

29.07.2020

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

Today, case was fixed for order/clarification on the application for alteration of charge u/s 216 Cr.,P.C. filed by one of the accused Kishan Kumar through counsel through electronic mode.

Arguments already heard in this case and today case was fixed for further dictation, clarifications, if any and order.

In nutshell, it is stated in such application as also argued by learned counsel for accused/applicant Kishan Kumar that such applicant was charged u/s 392/397/411/34 IPC and u/s 25 of Arms Act vide order dated 20.01.2017 by learned Predecessor of this court. That such charge was altered to section 395/397/412 r/w 120 IPC and Section 25 of Arms Act vide order dated 27.07.2017 by my learned Predecessor. Now, it is argued on behalf of such accused/applicant that by the very nature of the offence u/s 397 IPC and having regard to the best case allegation from the prosecution side, no role/act prosecuting such offence is alleged against the present accused. As such, he cannot be charged with such offence. Further, he relied upon certain case laws in this regard.

Likewise, it is argued that even charge under section 412 IPC is not made out as there are material discrepancies in the story of the prosecution. It is further stated that non-compliance of

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sub section 4 of section 100 of Cr.P.C. regarding alleged recovery of the present accused. As such, *prima facie* no case is made out against the present accused under section 412 IPC. It is further stated that there is no *prima facie* case under section 120-B IPC or u/s 25 Arms Act including due to procedural non-compliance of section 100 Cr.P.C. As such, it is prayed that such accused be discharged. It is further prayed that prosecution be directed to show cause why there is non-compliance regarding recovery and seizure memo including relating section 100 Cr.P.C.

On the other hand, it is argued by Ld. Addl. PP for the state that such accused can always be charged for section 397 IPC with the assistance of Section 120-B IPC and he so charged in present case. It is further stated that judgment relied by such accused is not for the present case but at the final judgment stage. It is further stated that such accused can always be tried for section 397 IPC. It is further argued that in the garb of alteration of charge, on a bare reading of the prayer, it is clear that what accused is seeking discharge. It is further argued in this regard that order on charge and even alternation of charge was even passed in the year 2017 and such order was never challenged by such accused before any higher court. Therefore, at this prosecution evidence stage, such issue cannot be re-agitated. It is stated in the garb of modification of charge, such accused is seeking discharge.

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

As far as section 397 IPC is concerned, it is settled law that only the person who has actually uses any deadly weapon in order to commit robbery etc., can be charged with such section and not other person/co-accused who otherwise participated in a robbery and charged with section 392/395 IPC in a particular case.

In the present case, at present the offences with which

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the present accused is charged are:

Under Section 120B IPC

Under Section 395/397 IPC r/w 120-B IPC

Under Section 412 IPC.

Under Section 25 Arms Act.

On reading of the chargesheet and statement /document annexed herewith that it is clear that as per prosecution case, it is the accused Rahul Sharma and one another accused is still absconding i.e. Saleem who looted money from the complainant by both using pistol. It is further clear from the chargesheet that as per prosecution story, other co-accused did not participate for committed any act constituting section 397 IPC.

As such, in view of the submissions made, I find force in the arguments of learned counsel for present accused that present accused cannot be charged with section 397 IPC. In fact, none of the co-accused except Rahul and Saleem(PO) can be charged with section 397 IPC in view of the material on record.

But, as far as grievance relating to other section with which present accused is charged with, this court do not find any force in the same and same are matter of trial including regarding the lapses, if any regarding the procedure adopted by investigation agency. In fact, learned Addl. PP rightly argued that in the garb of modification of charge, the accused in fact is seeking discharge at this belated stage of prosecution evidence. It is further a matter of record that such accused never challenged the earlier order of charge and even modification of charge against such accused, despite lapse of two years so far. In any case, this court do not find any ground to modify the other charges or discharge the present accused.

In view of the above observation and finding, there is need to further clarify/modify the charges against all the accused persons including the present applicant to some extent.

Accordingly, such order on charge is modified as follows, as far as present four accused are concerned:

- (i) All the present four accused be charged with section 120 B IPC for committing offence u/s 395 and 397 IPC.
- (ii) All the four accused be charged with section 395 r/w Section 120B IPC.
- (iii) Accused Rahul be charged with Section 397 IPC.
- (iv) Rest of the charges already framed against such four accused remain the same.

With these observations, present application is disposed of.

Put up for formal framing of such charges against such four accused, on the next date of hearing.

In view of directions by Hon'ble High Court, this matter be put up at the earliest immediately after the date of 31st July i.e. on 05.08.2020 for further appropriate proceedings.

(Naveen Kumar Kashyap)
Additional Sessions Judge-04
Central/THC/Delhi/29.07.2020

BAIL APPLICATION
FIR No.: 303/2014
PS: Subzi Mandi
State v. Sunil @ Kalu
(Application of Sunil @ Maya)
U/S; 302,307,34 IPC_

29.07.2020

Fresh application for interim bail filed on behalf of applicant for marriage of sister.

Present: Sh. Pawan Kumar, Ld. Addl. PP for the state through VC.
Sh. Naveen Gaur, Ld. Counsel for applicant/accused Sunil @ Kalu through VC.

Put up for reply, arguments and orders on 31.07.2020.

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

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

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

(Naveen Kumar Kashyap)
ASJ-04/Central/29.07.2020



BAIL APPLICATION

FIR No.: 303/2014

PS: Subzi Mandi

State v. Sunil @ Kalu

U/S; 302,307,34 IPC_

29.07.2020

Present: Sh. Pawan Kumar, Ld. Addl. PP for the state through VC.
Sh. Naveen Gaur, Ld. Counsel for applicant/accused Sunil @ Kalu through VC.

Time sought by IO to file reply including regarding medical condition of the mother of the accused.

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

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

Put up for reply, arguments and appropriate orders on 31.07.2020.

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

(Naveen/Kumar Kashyap)
ASJ-04/Central/29.07.2020

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Misc. Application

**CR No. 580/2019
Vijay Manchanda Vs State**

29.07.2020

Present: Mr. Suhail Malik, learned counsel for the revisionist through VC.
Sh. Pawan Kumar, Ld. Addl. PP for the state through VC.

An application for hearing of this case filed.

The present matter is at the stage of final arguments and the next date of hearing is **14/08/2020**.

As such, put up this application for the date already fixed through webex.

Further issue notice to IO, on the mobile/email to be provided by Appellant within one week ,if already not on record , through electronic mode for the next date of hearing. Further, also issue notice to counsel for ~~ED~~^{ED} respondent on the mobile/email to be provided by Appellant ,if already not on record for the date already fixed through electronic mode.

Ahlmad is directed to do the needful accordingly.


**(Naveen Kumar Kashyap)
ASJ-04/Central/29.07.2020**

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Bail Application

State V. Varun Bhardwaj S/o Late Sh. Joginder Bhardwaj
FIR No. : 303/2014
PS: Subzi Mandi
U/S: 302,307,120B, 34 IPC &
25,27 Arms Act

29.07.2020

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

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

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

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

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

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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 submitted on behalf of the accused that he is in JC since 15.07.2014; that he is falsely implicated in the present case by the complainant side. It is further stated that he was not named in the FIR that he is falsely implicated in the present case by wrongly identifying by witness Rajkumar in TIP. That such Rajkumar as well as the complainant are the BC of the area. That there is discrepancy in the story of the prosecution. That initially in the

FIR, name of the five accused were mentioned and later on malafidely name of two more accused mentioned by PW-1 during his examination-in-chief. Further, there is a contradiction regarding presence of witness Rajkumar at the scene of crime which is clear from bare reading of statement of PW-1 and such Rajkumar that such applicant has already lost his father and mother. That even as per the allegations of prosecution, there is not much role of accused in the alleged incident in question. It is further stated that trial is likely to take time and no purpose would be served by keeping the accused in jail. As such, it is prayed that he be granted regular bail.

On the other hand, it is stated in the reply filed by Insp. Rajesh Kumar, as also argued by the learned Addl.PP for the state, that there are serious and specific allegations against the present accused; that present case inter alia relates to section 302 IPC which has a minimum punishment for life, that evidence cannot be discussed in detail for the purpose of deciding the bail application. It is further stated that rest is the matter of trial. It is further stated that in any case, the learned Predecessor found prima facie sufficient evidence against the present accused, that is why even the charge was framed against him and matter is at the stage of PE. That not only this, one of the public witness was threatened and even legal action was taken in this regard. It is further stated that evidence of such witness is not yet over. As such, present application is opposed.

I have heard both the sides and gone through the record. I find force in the submission made by learned Addl. PP for the State. PE is yet not complete including regarding examination of public witnesses. Further, that offence is serious in nature involving minimum punishment of imprisonment for life. Further, there is incidence of threat to witness. Further, his bail application was rejected earlier in which similar grounds were raised. As such, this court is not inclined to grant regular bail to accused at this stage. **With**

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these observations present bail application is disposed of as dismissed.

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

(Naveen Kumar Kashyap)
Additional Sessions Judge-04
Central/THC/Delhi/29.07.2020

BAIL APPLICATION
FIR No.: 02/2014
PS: Jama Masjid
State v. Abdul Salam
(APPLICATION OF ADNAN HUSAIN)
U/S; 302,394,411,34 IPC

29.07.2020

Present: Sh. Pawan Kumar, Ld. Addl. PP for the state through VC.
Sh. Asgar Khan, Ld. Counsel for applicant/accused Adnan Husain through VC.

Fresh application for interim bail filed.

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

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

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

Put up for reply and arguments on 04.08.2020.

(Naveen Kumar Kashyap)
ASJ-04/Central/29.07.2020

BAIL BOND OF AMAR NATH

FIR No.: 478/2018

PS: BURARI

State v. SANJAY TIWARI

29.07.2020.

Present: Sh. Pawan Kumar, Ld. Addl. PP for the state
through VC.
Sh. B.S. Tiwari, Ld. Counsel for applicant through
electronic mode.

In view of the report filed by IO/SHO, Bail Bond
accepted. Original RC be retained on record. Release warrant
be prepared accordingly.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
29.07.2020

BAIL BOND

FIR No.: 39/2019
PS: Lahori Gate
State v. Vinod @ Dada

29.07.2020.

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

In view of the report filed by IO/SHO, Bail Bond
accepted. Original RC be retained on record. Release warrant
be prepared accordingly.

(Naveen/Kumar Kashyap)
ASJ-04/Central/THC
29.07.2020

SC NO.:28386/2016
FIR No.: 130/2014
PS: Kamla Market
State v. Raj Bahadur & Ors.
U/S: 419,420,365,392,412,207,120B,34

29.07.2020

Present: Sh. Pawan Kumar, Ld. Addl. PP for the state
through VC.

A letter received from Jail Superintendent concerned dated 27.07.2020 regarding non-surrender of accused Vasudev S/o Gaya Prasad .

Record perused.

Vide order dated 23.07.2020, NBW of such accused Vasudev Prasad was already issued through IO/SHO concerned. Further, notice was also issued to his surety for next date of hearing.

(As such, copy of this order be sent to Jail Superintendent concerned for his ready reference.

Copy of this order be also sent to IO/SHO concerned.)

(Naveen Kumar Kashyap)
ASJ-04/Central/29.07.2020

SC NO.: 372/2019
FIR No.: 213/2018
PS: Lahori Gate
State v. Vipin Sharma & Ors.
U/S: 395,412,120B,34 IPC_

29.07.2020

Present: Sh. Pawan Kumar, Ld. Addl. PP for the state
through VC.

A letter received from Jail Superintendent concerned dated 27.07.2020 stating that accused Vipin Kumar Sharma has not surrendered back to jail after availing interim bail granted by learned Bail Duty Judge Sh. Deepak Dabas, NDPS, ASJ, Central, Tis Hazari dated 02.06.2020.

Record perused.

It is revealed that such accused was granted interim bail by such court which was extended vide order dated 19.06.2020 till 24.06.2020 and thereafter again an order dated 24.06.2020 is passed extending such interim bail till 13.07.2020. But vide order dated 15.07.2020, his application for further extension of interim bail was dismissed and he was directed to surrender back to Jail Superintendent concerned.

It appears as such he has not complied with such directions. As such, issue NBW against such accused Vipin Sharma S/o late Rajinder through SHO/IO concerned as well as notice to his surety, returnable for next date of hearing. Such NBW be issued within two working days.

As such, copy of this order be sent to Jail Superintendent concerned for his ready reference.

Copy of this order be also sent to IO/SHO concerned.

(Naveen Kumar Kashyap)
ASJ-04/Central/29.07.2020

**Criminal Appeal: 281/2019
Md. Nawab v. State**

29.07.2020

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

Present: Sh. Khusdeep Gaur, Ld. Counsel for all the Appellants through VC.
Sh. Pawan Kumar, Ld. Addl. PP for the state/ respondent through VC.

It is stated by learned counsel for Appellant that their arguments are complete and they do not want to argue further. But on perusal of previous ordersheet, it is revealed that in this case, original complainant/victim was given opportunity to assist the learned Addl. PP for the state through filing written synopsis/arguments not exceeding two pages and matter was fixed for 28.03.2020. But thereafter, due to lock-down regular hearing were restricted. As such, issue notice to complainant through electronic mode through e-mail/mobile to be provided by Appellant side within one week.

**Put up for further appropriate orders/proceedings
on 17.08.2020.**

(Naveen Kumar Kashyap)
ASJ-04/Central/29.07.2020

Criminal Appeal: 351/2019
Syed Feroze v. Wild Life Crime Control

29.07.2020

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

It is stated by Reader of this court that when he contacted Ms. Stuti Gupta, learned counsel for Appellant on landline no. 011-46543435 for the purpose of hearing through VC, submitted that she wants to argue physically not through VC and requested for next date of hearing.

As per report of Ahlmad, details of Ms. Seem Kanojia, counsel for respondent is not available on record.

As such, matter could not be proceeded further on merit through VC .

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

Put up for purpose fixed/arguments in terms of previous orders for 29.09.2020.

(Naveen Kumar Kashyap)
ASJ-04/Central/29.07.2020

Criminal Appeal: 350/2019
Tassaduque Hussain Joo v. Wild Life Crime Control

29.07.2020

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

It is stated by Reader of this court that when he contacted Ms. Stuti Gupta, learned counsel for Appellant on landline no. 011-46543435 for the purpose of hearing through VC, submitted that she wants to argue physically not through VC and requested for next date of hearing.

As per report of Ahlmad, details of Ms. Seem Kanojia, counsel for respondent is not available on record.

As such, matter could not be proceeded further on merit through VC .

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

Put up for purpose fixed/arguments in terms of previous orders for 29.09.2020.


(Naveen Kumar Kashyap)
ASJ-04/Central/29.07.2020