

BAIL APPLICATION

FIR No. :31/2017

PS: DCRS

STATE v. Karan @ Twinkle @ Hukum Singh

U/S: 302/201/34 IPC

30.06.2020.

Present: Sh. Manoj Garg, Addl. PP for the State through VC.
Mr. J.S. Mishra, learned LAC for applicant /
accused.

Fresh application for bail u/s 439 Cr.PC seeking
interim bail on behalf of applicant / accused through counsel is
filed. Be checked and registered.

It is not mentioned in such application that earlier
his interim bail application was already dismissed as far as
relaxed criteria dated 18/05/2020 given by the Hon'ble High
Court is concerned.

As such, it is stated that now application is moved
on merit. The same is noted. Issue notice to IO for filing of reply.

Put up for reply, arguments and orders with file for

04/07/2020.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
30.06.2020

: : :

BAIL APPLICATION

FIR No. : 97/2012
PS: Prasad Nagar
STATE v. Ram Gopal
U/S: 302,201,120B,419,420,471 IPC

30.06.2020.

Present: Sh. Manoj Garg, Ld. Addl. PP for the State
through VC.
Sh. Kunal Manav, Ld. Counsel for accused/
applicant through VC.

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

2. Reply filed by IO.

3. As per such reply inter alia there is no other criminal case as per record against the present accused.

4. Reply not received from Jail Superintendent.

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

(i) Copy of custody warrant of present accused;

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

6. As such, issue notice to the Jail Superintendent accordingly.

7. Counsel for accused is advised to collect the order online through electronic mode.

8. Put up for report, arguments and further appropriate orders on 04.07.2020 through VC.

(Naveen Kumar Kashyap)

ASJ-04/Central/THC

30.06.2020

: 1 :

BAIL APPLICATION

FIR No. : 518/2016
PS: Sarai Rohilla
STATE v. Aryan Dass @Bhagidar Dass
U/S: 302 IPC

30.06.2020.

Present: Sh. Manoj Garg, Ld. Addl. PP for the State through VC.
Sh. Dalip Mishra, Ld. Counsel for applicant/accused through VC.

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

2. Report filed by IO. But it is not filed in terms of directions of Hon'ble High Court dated 18.05.2020.

3. Submissions heard through electronic mode.

4. In view of direction by Hon'ble High Court, **IO/SHO** to file :

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

(ii) Further, (in view of direction by Hon'ble HC), a

FIR No. : 518/2015.PS. Sarai Rohilla, STATE v. Aryan Dass @Bhagidar Dass,U/S: 302 IPC

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report that present accused is **not involved**, in any other case;

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

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

v) Details i.e. date of order, outcome(whether interim bail allowed or dismissed) and name of such learned court, of the last interim bail application, if any, moved by the present accused.

5. As such, issue notice of present application to the IO/ SHO .

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

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

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

7. As such, issue notice to the IO/SHO as well as Jail Superintendent accordingly.

8. **Counsel for accused is advised to collect the order online through electronic mode.**

10. Put up for report, arguments and further appropriate orders on 03.07.2020 through VC.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
30.06.2020

: 1 :

BAIL APPLICATION

**FIR No. : 89/2020
PS: Nabi Karim
STATE v. Sandeep Kumar
U/S: 376(D),354,509 IPC**

30.06.2020.

Present: Sh. Manoj Garg, Ld. Addl. PP for the State
through VC.
Sh. Vikas Arora, Ld. Counsel for accused/applicant
through VC.

1. Fresh Bail application filed. Heard.
2. Hon'ble HC of Delhi in order dated 5th June, 2020 in CRL.M.C. 1474/2020 & CRL.M.As. 6330/2020, 6705/2020 titled "MISS G (MINOR) versus STATE OF NCT OF DELHI & ANR., directed as follows:
".....23. Accordingly, in order to ensure effective implementation of the 2018 amendment to the Cr. PC., and further to the practice directions, as also the orders passed by the Id. Division Bench of this Court in Reena Jha Vs. UOI (supra) the following directions are issued:
a) Whenever an accused who is charged under Sections 376(3), 376- AB, 376 - DA or 376 DB of the IPC or the provisions of the POCSO Act, moves an application for regular bail or interim bail, notice shall be issued to the IO as also any counsel on record for the victim/complainant/informant;
b) The IO upon receipt of the bail application and/or the notice of such application, shall immediately issue notice to the victim/complainant/informant in prescribed format as per 'Annexure A' of the Practice Directions. The Practice Directions dated 24th September, 2019 along with 'Annexure A' are appended to this order for ready reference.
c) The service of notice shall be certified by the SHO of the local police station by signing Annexure A at the prescribed place.

FIR No. : 89/2020, PS: Nabi Karim, STATE v. Sandeep Kumar, U/S: 376(D), 354, 509 IPC

- d) The duly completed Annexure A shall be filed along with the reply/ status report filed by the IO in respect of the bail application and shall be presented to the Court.
- e) If the IO cannot trace the complainant/victim/informant, the reasons for the same shall be mentioned in the status report. Further, if there is any specific reason for non-appearance of the complainant/victim/informant, the same shall be recorded and placed before the Court.
- f) In case the complainant/victim/informant has not been traced, the IO shall try to ascertain the whereabouts of the complainant/victim/informant and place the same before the Court.
- g) The Court, before proceeding to hear the bail application would ascertain the service of notice, and if no notice has been served, either through the IO or the counsel on record, as a secondary safeguard, issue summons to the complainant/victim/informant.
- h) Once the victim/complainant/informant appears before the Court, and if needed, adequate representation shall be ensured for the victim/complainant/informant either through own counsel or through a legal service authority counsel.
- i) All the relevant documents required for the victim/complainant/informant to effectively represent the case for opposing the bail shall be provided.
- j) In every bail order, service of notice or reasons for non-service or non-hearing of the complainant/victim/informant shall be specifically recorded before proceeding to pass orders.
- k) If the complainant/victim/informant does not appear despite service of notice, bail can be considered by the Court, in accordance with law.
- l) In case interim bail is sought for an emergency such as death in family or a medical emergency, and awaiting notice to the complainant/victim/informant appears non-feasible, in a rare case, reasons for the same shall first be recorded in the order.....”

3. Reply filed by IO to the present anticipatory bail application. It is further stated that complainant was contacted

over phone but her phone was found switched off. Further, she is informed on Whatsapp but she did not respond.

4. This is not the mode of notice given to the complainant/victim as per direction by Hon'ble High Court as mentioned above. As such, issue show cause notice to IO as to why notice was not given to the complainant in proper format.

5. Further, a copy of this order be sent to DCP concerned.

6. In any case, issue fresh notice to complainant/victim as per directions of Hon'ble High Court as offence alleged is under section 376(D) IPC.

7. Complainant is at liberty to join proceedings in person or through VC. IO is directed to provide all the necessary assistance and guidance to victim to address arguments through electronic mode.

8. Further, IO is also to join through electronic mode only on next date of hearing.

9. Further, TCR be also summoned in the meanwhile from the court of Sh. Kapil Kumar, Ld. MM of PS Nabi Karim, Tis Hazari for next date of hearing.

10. **Put up for reply, arguments and appropriate orders on 02.07.2020.**

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
30.06.2020

BAIL APPLICATION

**FIR No. : 316/2019
PS: Pahar Ganj
STATE v. Farooq Dandoo
U/S: 420,376,354,506,174A,34 IPC**

30.06.2020.

Present: Sh. Manoj Garg, Ld. Addl. PP for the State
through VC.
Sh. Rajiv Sirohi, Ld. Counsel for applicant/accused
through VC.
Sh. Rakesh Raina, Ld. Counsel for complainant
through VC.

Part arguments in detail heard on the anticipatory
bail application of accused Farooq Dandoo and Ali Dandoo.

**Let chargesheet be summoned from concerned
Magistrate at the time of further arguments for 03.07.2020.**

Let IO be filed further report regarding the medical
condition of accused no.2. Further, IO to appear in person or
through VC at the time of further arguments.

**(Naveen Kumar Kashyap)
ASJ-04/Central/THC
30.06.2020**

BAIL APPLICATION

FIR No. : 415/2015

PS: Kotwali

STATE v. Laxman @ Bable

U/S: 395, 397, 365, 120B, 412, IPC

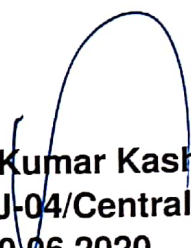
30.06.2020.

Present: Sh. Manoj Garg, Addl. PP for the State through VC.
Mr. J.S. Mishra, learned counsel for accused 1
through VC.

It is further reported by SI Daya Nand that medical papers could not be verified despite contacting concerned Swami Daya Nand hospital and that such hospital sought sometime to verify the same.

As such, put up for further report regarding verification of medical documents and appropriate order for

04/07/2020.


(Naveen Kumar Kashyap)
ASJ-04/Central/THC
30.06.2020

INTERIM BAIL APPLICATION

State Vs. Chandan S/o Ravinder Podar
FIR No. : 63/2015
PS: Karol Bagh
U/S: 395,397,412,120B IPC

30.06.2020

Present: Mr. Manoj Garg, Ld. Addl. PP for the State through VC
Sh. Zia Afroz, Ld. Counsel from for applicant/
Accused through VC.

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

2. Reply filed by IO .

3. Arguments heard.

4. In nutshell, it is stated and argued on behalf of accused that accused is in JC March, 2015. That no incriminating article recovered from his possession. That he is only male bread earner in the family. That there is no chances of accused fleeing from justice or tampering with prosecution

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witnesses. As such, he be granted interim bail for 45 days.

5. On the other hand, a detailed reply dated 30.06.2020 filed by the IO. It is further argued by learned Addl. PP for the state that present offence is very serious in nature and offences charged against the accused are punishable upto imprisonment for life. It is further stated that accused is wrongly claiming that he is not involved in other cases. As such, present bail application is strongly opposed.

6. The type of cases/offences with which accused is charged are discussed by **Hon'ble High Court in its meeting dated 18.04.2020**. For the present type of offences, a relaxed criteria for interim bail is recommended by Hon'ble High Court on such date but it was further subject to such accused is suffering from HIV, cancer, chronic kidney dysfunction (requiring dialysis), Hepatitis B or C, Ashtma and T.B.

7. On bare perusal of the present application, it can be seen that it is not the case of the present accused that he is suffering from any such of the disease. As such, the case of the present accused does not fall under the relaxed criteria given by the Hon'ble High Court.

8. Even otherwise on merit, apart from general apprehension i.e. there is spread of corona virus and he is in JC for long, no other ground is raised.

9. This court do not find the ground on merit stated by the accused sufficient to admit him to interim bail. Further, it is not the case that he is or anybody in his barrack is suffering from corona virus. Further, offence is very serious in nature. Further, such accused is involved in multiple cases including of the present nature earlier also. As such, this court is not inclined to

State Vs. Chandan S/o Ravinder Podar, FIR No. : 63/2015, PS: Karol Bagh, U/S: 305, 307, 412, 120B IPC

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grant interim bail to the present accused. **With these observations, present interim bail application is dismissed.**

10. Counsel for accused/applicant is at liberty to collect the order dasti or through electronic mode.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
30.06.2020.

Anticipatory Bail

**State vs Laxmi Chahar w/o Mr. Ravi Kumar Chahar
FIR No. Not Known
P. S. Pahar Ganj
U/s: Not Known**

30.06.2020

Present: Mr. Manoj Garg, Learned Addl. PP for State through VC.
Mr. Manoj Sharma, Learned counsel for applicant / accused
through VC.

Vide this order, present bail application u/s 438 Cr.PC filed on 24.06.2020 for anticipatory bail by accused / applicant Laxmi Chahar is disposed of.

In nut shell, it is stated by the accused site that she got married to one Ravi Kumar in 1996; that they were having two children out of such marriage; that husband of the applicant deserted her and the children after giving merciless beatings; that her husband always maltreated her; on the intervening night of 17-18/04/2020 Ms. Khushboo Chahar, daughter and Nikhil Chahar left the residence of the applicant at the instigation of their father Ravi Chahar. It is further mentioned that a close friend Sachin Tyagi is helping the applicant in such tough time. But the daughter has threaten such person also regarding false implication in such case. It is further stated that such daughter Khushboo Chahar has made some false complaint against the present applicant and Sachin Tyagi. It is further

State vs Laxmi Chahar w/o Mr. Ravi Kumar Chahar
FIR No. Not Known
P. S. Pahar Ganj
U/s: Not Known

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stated that the applicant has also file certain police complaint against Khushboo Chahar regarding change of password etc. It is further stated that police officials had come to the residence of applicant in her absence and neighbour told that there is some non bailable offence alleged against the applicant and there is imminent danger of her arrest. As such, she has filed present application seeking prayer that IO / SHO be directed to release the applicant on bail in the event of arrest.

On the other hand, it is argued on behalf of the state that present applicant filed two complaint against Ms. Khushboo Chahar for misusing / hacking of e-mail ID of the present applicant and also for criminal intimidation against the present applicant and her friend Sachin Tyagi. It is further stated that on the other hand such Khushboo Chahar and Nikhil Chahar has also filed two complaints that they are being tortured, abused and harassed physically, mentally, sexually in every possible way by the present applicant, Smt. Laxmi Devi. It is stated that inquiry of above complaints are pending. It is further stated that as per record of PS Pahar Ganj, no FIR has been registered against the present FIR till date and present applicant is not wanted in any criminal case at present.

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

The personal liberty is a priceless treasure for a human being. It is founded on the bed rock of constitutional right and accentuated further



State vs Laxmi Chahar w/o Mr. Ravi Kumar Chahar
FIR No. Not Known
P. S. Pahar Ganj
U/s: Not Known

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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.

But, the liberty of an individual is not absolute. The Society by its collective wisdom through process of law can withdraw the liberty that

State vs Laxmi Chahar w/o Mr. Ravi Kumar Chahar
FIR No. Not Known
P. S. Pahar Ganj
U/s: Not Known

:4:

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.

It appears that some cross complaints made by the present applicant and her children against each other but so far no FIR is registered against the present accused. As registration of FIR is pre-condition for investigation as per the Cr.PC. There cannot be any reasonable apprehension of arrest without FIR. As such, no ground is made out to grant the relief sought in the present application.

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

(NAVEEN KUMAR KASHYAP)
ASJ-04(Central/Delhi/30/06/2020)

State vs Laxmi Chahar w/o Mr. Ravi Kumar Chahar
FIR No. Not Known
P. S. Pahar Ganj
U/s: Not Known

BAIL APPLICATION

**FIR No. :105/2020
PS: Pahar Ganj
STATE v. Jitesh @ Lovely s/o Jagdish
U/S: 380/411/34 IPC**

30.06.2020.

Present: Sh. Manoj Garg, Addl. PP for the State through VC.
Mr. Sunil Gautam, learned counsel for the accused.

Reply filed by the IO.

Arguments in detail heard.

During the course of the arguments, it is argued that regular or anticipatory bail has been granted to co-accused. But copy is not with the counsel for the accused. As such, IO is directed to file further reply alongwith copy of the order of bail if any in this case. Issue notice to IO accordingly.

Put up for reply, further arguments and appropriate orders for **03/07/2020**.

(Naveen/Kumar Kashyap)
ASJ-04/Central/THC
30.06.2020

INTERIM BAIL APPLICATION

State Vs. Sunny
FIR No. : 20/2016
PS: Crime Branch
U/S: 364A,395,342,420,468,471,120B IPC

30.06.2020

Present: Mr. Manoj Garg, Ld. Addl. PP for the State through VC
Pandit A.C.P. Gautam, Ld. Counsel from for Accused through VC.

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

2. Reply already filed by IO :

3. Further, now reply is also filed by Jail Superintendent concerned regarding medical status of the accused.

4. Arguments heard.

5. In nutshell, it is stated and argued on behalf of accused that accused is in JC for the last about four years. That

there is no sufficient evidence against the accused on record. That there is no previous criminal record of the accused. That there is spread of corona virus including inside the jail. That he is covered under the guidelines of Hon'ble High Court dated 18.05.2020 relating to relaxed criteria for granting interim bail. As such, it is prayed that he be granted interim bail for 60 days.

6. On the other hand, a detailed reply dated 20.06.2020 filed by the IO. It is further argued by learned Addl. PP for the state that present offence is very serious in nature and offences charged against the accused are punishable upto imprisonment for life. It is further stated that accused is wrongly claiming that he is not involved in other cases and detail of five other cases spread over Rajasthan, Haryana, U.P. in which accused is/was involved given in the reply. As such, present bail application is strongly opposed.

7. Further, as per the report dated 27.06.2020 by Medical Office of Jail no.1, it is stated that such accused at present has complaint of sore throat/throat pain and advised appropriate medication. Further, he is scheduled for review of Jail Visiting ENT Senior doctor for further management. His general condition is stable on medication and all necessary medicines are being provided.

8. The type of cases/offences with which accused is charged are discussed by **Hon'ble High Court in its meeting dated 18.04.2020**. For the present type of offences, a relaxed criteria for interim bail is recommended by Hon'ble High Court on such date but it was further subject to such accused is suffering from HIV, cancer, chronic kidney dysfunction (requiring dialysis), Hepatitis B or C, Ashtma and T.B.

: 3 :

On perusal of medical record of present accused, it can be seen that at present none of such disease or illness is reported by concerned medical officer regarding the present accused. As such, the case of the present accused does not fall under the relaxed criteria given by the Hon'ble High Court.

9. Even otherwise on merit, apart from general apprehension i.e. there is spread of corona virus and he is in JC for long, no other ground is raised.

This court do not find the ground on merit stated by the accused sufficient to admit him to interim bail. Further, it is not the case that he is or anybody in his barrack is suffering from corona virus. Further, offence is very serious in nature. Further, such accused is involved in multiple cases including of the present nature earlier also in various states. As such, this court is not inclined to grant interim bail to the present accused. With these observations, present interim bail application is dismissed.

10. Counsel for accused/applicant is at liberty to collect the order dasti or through electronic mode.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
30.06.2020.

Bail Application

**State Vs Boby Soda S/o Bharat
FIR No. 143/2020
PS.: Kotwali
U/s: 394,397,411,120B,34 IPC**

30.06.2020

**Present: Mr. Manoj Garg, Learned Addl. PP for State.
Mr. Lalit Kumar, learned counsel for the
applicant / accused through VC.**

1. Vide this order, the bail application under section 439 Cr.P.C. on behalf of accused dated 12.06.2020 filed through counsel is disposed of.
2. I have heard both the sides and have gone through the record.
3. 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

State Vs Boby Soda S/o Bharat ,FIR No. 143/2020,PS.: Kotwali,U/s: 394,397,411,120B,34 IPC

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.

4. 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).

5. 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.

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

7. 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**).

8. 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.

9. 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.

10. In the present case, it is argued on behalf of accused that present case is falsely imposed upon the accused. That there is no recovery from the accused. That no TIP of the accused is carried out. That it is not even named in the FIR. It is further stated that accused got married one and a half year ago and he is happily settled in matrimonial life. That he is working as daily wager and belongs to a poor family. That due to present pandemic situation, he and his family are already facing financial hardship. That his wife recently had miscarriage. That he is the sole bread earner of the family. That he has roots in the society. That present application is filed through counsel. It is prayed that accused be granted regular bail.

11. On the other hand, it is stated by the IO, as also

State Vs Bobby Soda S/o Bharat ,FIR No. 143/2020,PS.: Kotwali,U/s: 394,397,411,120B,34 IPC

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argued by the learned Addl.PP for the state that present accused alongwith other co-accused in a planned manner executed the robbery in question. That they looted scooty of the complainant/victim which was even having Rs. 50,000/- in its dickey. That they even fired in air and made the victim fell down from the scooty. That by threatening the victim, they robbed the scooty from them. It is further stated that such conspiracy was held in a hotel. That later on part of looted money is recovered from the present accused. A chargesheet is now filed. It is further argued that present accused alongwith co-accused Chandan are already identified by the complainant and in fact they were arrested at the instance of the complainant only. As such, there is no need for TIP. That offence is serious in nature. As such, present application is strongly opposed.

12. I find force in the arguments of learned Addl.PP for the state. As per material on record, complainant has identified the present accused. Further, there are serious and specific allegations against the accused. Further, case is at the initial stage. As such, this court is not inclined to grant the relief as sought in the present application. Hence, **the same is dismissed.**

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

(Naveen Kumar Kashyap)
Additional Sessions Judge-04
Central/THC/Delhi
30.06.2020.

BAIL APPLICATION

**FIR No. :167/2020
PS: Nabi Karim
STATE v. Adil
U/S: 392, 397, 34 IPC**

30.06.2020.

Present: Sh. Manoj Garg, Addl. PP for the State through VC.
Mr. Shailender Yadav, learned counsel for accused
in person.

Further reply filed by the IO including regarding TIP
proceedings.

It is stated that once the accused was quarantined
and later due to death in the family complainant was not in Delhi
as such now the TIP is fixed for 10/07/2020.

As such, put up for further arguments / filing of
status report regarding TIP and appropriate order for
14/07/2020.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
30.06.2020

BAIL APPLICATION

**FIR No. :655/2016
PS: Sarai Rohilla
STATE v. Saleem s/o Mukim
U/S: 394/397/302/34 IPC**

30.06.2020.

Present: Sh. Manoj Garg, Addl. PP for the State through VC.
Mr. Ziaafroz, learned counsel for accused through VC.

Fresh application seeking grant of interim bail on behalf of applicant / accused filed through counsel. Be checked and registered.

Put up for reply, arguments and appropriate order for **04/07/2020**.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
30.06.2020

BAIL APPLICATION

FIR No. :361/2019

PS: Kotwali

STATE v. Ankush s/o Laxman Prasad

U/S: 392/411/120

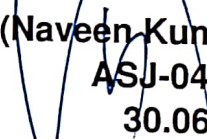
30.06.2020.

Present: Sh. Manoj Garg, Addl. PP for the State through VC.
Mr. Diwanshu Sehgal, learned counsel for accused
through VC.

Learned counsel for the accused sought sometime
to place on record the various bail applications before learned
MM / Learned Sessions court, which find mention in para-1.

Put up for further arguments / appropriate order for

02/07/2020.


(Naveen Kumar Kashyap)
ASJ-04/Central/THC
30.06.2020

BAIL APPLICATION

**FIR No. : 142/2017
PS: Lahori Gate
STATE v. Shakeel
U/S: 395,397,412,34 IPC & 25 Arms Act**

30.06.2020.

Present: Sh. Manoj Garg, Ld. Addl. PP for the State
through VC.
Sh. A.A. Qureshi, Ld. Counsel for accused/
applicant through VC.

Further arguments through VC heard.

Put up for orders at 4 pm.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
30.06.2020

At 4pm.

Present: Sh. Manoj Garg, Ld. Addl. PP for the State
through VC.

The order dated 02.06.2020 is found on record. But another order dated 15.06.2020 relating to interim bail to co-accused, as claimed by counsel for accused is not on record. In fact, this court was not even on duty on such date of 15.06.2020.

As such, put up for further clarifications/placing on record such other interim bail order by the accused side on 02.07.2020.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
30.06.2020

INTERIM BAIL APPLICATION

State Vs Naeem @ Chuha s/o Mohd. Jaffer
FIR No. 215/2016
PS.: Chandni Mahal
U/s: 392, 397, 411 IPC

30.06.2020

Present: Mr. Manoj Garg, Learned Addl. PP for State
through VC.
Mr. Sunil Tiwari, learned counsel for accused
through VC.

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

2. Arguments heard.

3. It is stated by counsel that offence in question are, U/s 392/397 IPC and he may be released on interim bail.

4. On the other hand, interim bail application is opposed. Further reply has been filed by the IO. It is stated that offence is heinous in nature.

5. Section 397 IPC is punishable upto 10 years or 14 years depending upon whether the offence is committed between highway or not. Whether the offence is committed on the highway or not is yet to be decided and is the matter of trial. As such, in the letter and spirit of the directions passed by the Hon'ble High Court

State Vs Naeem @ Chuha s/o Mohd. Jaffer
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dated 07/04/2020, for the present purpose of interim bail, the same is taken to be 10 years.

6. In view of the directions by Hon'ble High Court, dated 07/04/2020, case of the accused is covered under such directions as maximum punishment is 10 years. Further, accused is in JC for more than one year at present.

As such, in the above position, facts and circumstances of present case and the directions by Hon'ble High Court, applicant/accused is admitted to interim bail for a period of 45 days from the date of release on furnishing personal bond **in the sum of Rs. 10,000/- to the satisfaction of the Jail Superintendent concerned**. After completion of the interim bail period applicant shall surrender before concerned Jail Superintendent. Necessary intimation be sent to concerned Jail Superintendent accordingly.

6.1. In the facts and circumstances of present case and the reply filed by the IO/SHO following conditions are also imposed on present accused for such interim bail :

- 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/her mobile number to the IO;*

State Vs Naeem @ Chuha s/o Mohd. Jaffer
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U/s: 392, 397, 411 IPC

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vii) applicant shall mark his /her 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;

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.

ix) Applicant shall keep his / her such mobile number 'Switched On' at all the time , particularly between 8 am to 8 pm everyday.

7. The present application stands disposed off accordingly. Both side are at liberty to collect the order dasti or through electronic mode. **Further a copy of this order be sent to the IO/SHO concerned by electronic mode.**

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
Central District
30.06.2020

State Vs Naeem @ Chuha s/o Mohd. Jaffer
FIR No. 215/2016
PS.: Chandni Mahal
U/s: 392, 397, 411 IPC

BAIL APPLICATION

FIR No. : 425/2019
PS: Kotwali
STATE v. Akhlaaq @ Guddu
U/S: 392,411,34 IPC

30.06.2020.

Present: Sh. Manoj Garg, Ld. Addl. PP for the State
through VC.
Sh. Anil Kumar Sharma, Ld. Counsel for applicant
through VC.

Ahmad has not placed on record the copy of interim
order dated 21.05.2020. As such, matter is passed over.

Put up for appropriate orders at 2 pm.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
30.06.2020

At 3 pm.

Present: Sh. Manoj Garg, Ld. Addl. PP for the State
through VC.

1. Copy of the order dated 21.05.2020 is placed on
record.
2. In such order interim bail was granted to the accused
for 45 days. Now, it is sought that same be extended for another
period of 45 days. On a bare reading of order dated 07.04.2020
passed by Hon'ble High Court vide which cases punishable upto
ten years were dealt regarding relaxed criteria for granting interim
bail, it is clear that accused must be in custody for one year or
more. In the present case, admittedly, the accused is in custody

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U/S: 392,411,34 IPC

since 21.12.2019 i.e. less than one year. As such, this court do not find any contention in the arguments of learned counsel for accused that his case is covered by the guidelines of Hon'ble High Court.

3. On merit, it is argued that interim bail was given earlier by Sh. Anuj Aggarwal, learned ASJ-03. It is further stated that accused condition was not well and same turned critical and he remained hospitalized in Gopal hospital, Ghaziabad, U.P. That he is a patient of acute depression and under continuous treatment from IHBAS since his wife left him. That he is falsely implicated in the present case. As such, it is prayed that his interim bail be extended.

4. In reply filed by the IO dated 25.06.2020, it is stated that his interim bail are rejected three times earlier by court of Sessions but he was granted interim bail by duty Session court on 21.05.2020. it is further argued that offence is serious in in nature.

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

6. May be having regard to the medical condition, the learned court was pleased to grant him interim bail vide order dated 21.05.2020 but thereafter this court do not find any sufficient reason for extension of interim bail. Further, his interim/regular bail was already rejected time and again by the court of Sessions. With these observations, present application is dismissed.

7. copy of this order be given dasti or through electronic mode to the counsel for applicant/accused.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
30.06.2020

Bail Application

**State v. Deepak
FIR No. 190/2013
PS.: Rajinder Nagar
U/s: 302,394,411, 34 IPC**

30.06.2020

**Present: Mr. Manoj Garg Learned Addl. PP for State
through VC.
Mr.S.K. Sharma, learned counsel for the
applicant / accused through V.C.**

1. Vide this order present interim bail application dated 22.06.2020 is disposed off.
2. It is stated in such application that Accused is in JC for last about 7 years. That parents of the accused are very old and in depression due to sudden death of their younger son on 14.05.2020. That father of the accused is under treatment from government hospital . That there is nobody to take care of old parents due to spread of corona virus. That except IO, all the prosecution witnesses are examined. That accused has deep roots in society. That he has a good conduct while in JC. That he is not involved in any other criminal case. That he is entitled to benefit of relaxed interim criteria of Hon'ble High Court dated 18.05.2020.
3. On the other hand, it is stated by the learned Addl.PP for the state, based on reply filed by the IO / SHO that crime is serious in nature under section 302 IPC apart from other offences; that he does not fall under the criteria of Hon'ble High

**State v. Deepak
FIR No. 190/2013
PS.: Rajinder Nagar
U/s: 302,394,411, 34 IPC**

Court dated 18/05/2020 as his conduct during judicial custody is not satisfactory as per the report of Jail Superintendent concerned and a mobile phone was recovered from his bag during his custody in jail; that he actively participated in the crime in question. It is further stated that his brother Gaurav expired recently but there is another brother Suraj who is in fact looking after the parents and such fact is suppressed by the accused in the present application. It is further stated that such accused do not have any other criminal record as per the record of police department. It is further stated that his interim bail application was already dismissed on 23.05.2020. As such, present bail application is opposed.

4. As the conduct of the accused is not found satisfactory during his judicial custody as reported by jail superintendent, therefore, he cannot be given benefit of relaxed criteria of interim bail and he does not fall in such criteria dated 18.05.2020.

5. But it is further stated by Hon'ble High Court that even otherwise the accused is to be heard on merit, even if his case is not falling under the relaxed interim bail criteria. As such, he is heard on merit also.

The minimum punishment for the present offence is life imprisonment. Further specific allegations against the present accused. Further the ground stated by the accused for interim bail are not found sufficient. In fact, there is another brother to look after his parents and such fact is suppressed in the present interim bail application. Further, the fact that his bail application recently dismissed on 13.05.2020 is also suppressed

: 3 :

by the present accused.

Under these circumstances, having regard to the nature of allegations made and the stage of the present case, this court is not inclined to grant the relief as sought in the present application. Hence, the same is dismissed.

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

(Naveen Kumar Kashyap)
Additional Sessions Judge-04
Central/THC/Delhi
30.06.2020

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U/s: 302,394,411, 34 IPC

: 1 :

INTERIM BAIL APPLICATION

State Vs. Manoj Kumar s/o Bhagwan Singh
FIR No. : 106/2012
PS: Kamla Market
U/S: 302, 307, 186, 353, 333, 109, 34 IPC

Dated:30.06.2020.

Present: Mr. Manoj Garg, Ld. Addl. PP for the State
through VC
Mr. B.S. Chaudhary, Ld. Counsel for Accused
through VC.

1. *Observations given by Hon'ble High Court of Delhi in W.P.(C) No. 2945/2020 dated 23.03.2020 in case titled as "Shobha Gupta and Ors. v. Union of India & Ors.", Hon'ble Supreme Court of India in Suo Moto W.P.(C) No. 1/2020 dated 23.03.2020 and Revised Advisory Protocol dated 30.03.2020 have been issued by Ld. District & Sessions Judge (HQ) read with other directions received from time to time including on 28.03.2020, 07.04.2020, 18.04.2020, 05.05.2020, 18.05.2020 and 20.06.2020 from Hon'ble High Court as a result of various meetings of Delhi State Legal Services Authority, present application is taken up.*
2. Reply filed by the IO.
3. Arguments heard.
4. Present application dated 25.06.2020 is filed through counsel. It is stated that accused is in JC since for more than **two years** (which fact is now even verified by IO in his report).
5. **Further, a copy of certificate of good**

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conduct as well as copy of **custody warrant** is now filed by Jail Authority.

6. Further, a report is filed by IO/SHO concerned. As per such report, there is no previous conviction or involvement record of such accused. **Further, it is stated that offences alleged against accused is inter-alia Section 302 IPC.**

7. In view of report by jail supdt concerned , reply given by IO and direction by Hon'ble High Court of Delhi, case of the accused is covered under directions as passed by Hon'ble High Court, as mentioned above. Further, accused is in JC since more than **two years** at present.

As such, in the above position, facts and circumstances of present case and the directions by Hon'ble High Court, applicant/accused is admitted to interim bail for a period of 45 days from the date of release on furnishing personal bond **in the sum of Rs. 10,000/- to the satisfaction of the Jail Superintendent concerned.** After completion of the interim bail period applicant shall surrender before concerned Jail Superintendent. Necessary intimation be sent to concerned Jail Superintendent accordingly.

7.1. In the facts and circumstances of present case and the reply filed by the IO/SHO following conditions are also imposed on present accused for such interim bail :

- 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 ,**

State Vs. Manoj Kumar s/o Bhagwan Singh
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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/her mobile number to the IO;

vii) Applicant shall mark his /her 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;

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.

ix) Applicant shall keep his / her such mobile number 'Switched On' at all the time , particularly between 8 am to 8 pm everyday.

8. The present application stands disposed off accordingly. Both side are at liberty to collect the order dasti or through electronic mode. **Further a copy of this order be sent to the IO/SHO concerned by electronic mode through Prosecution Branch /Concerned nodal officer of Delhi Police.**

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
Central District/30.06.2020

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PS: Kamla Market
U/S: 302, 307, 186, 353, 333, 109, 34 IPC

Bail Application

State Vs Asraf s/o Mohd. Aslam
FIR No. 135/2020
PS.: Pahar Ganj
U/s: 457, 380, 411, 34 IPC

30.06.2020

Present: Mr. Manoj Garg, Learned Addl. PP for State.
Mr. Zia Afroz, learned counsel for the
applicant / accused through VC.

Vide this order, the bail application under section 439 Cr.P.C. on behalf of accused dated 26/06/2020 filed through counsel is disposed of.

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

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

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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

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the rule and committal to jail an exception. Refusal of bail is a restriction on personal liberty of the individual guaranteed by Article 21 of the Constitution. Seriousness of the offence not to be treated as the only consideration in refusing bail : Seriousness of the offence should not to be treated as the only ground for refusal of bail. (Judgment of **Sanjay Chandra Vs. Central Bureau of Investigation, AIR 2012 SC 830** relied).

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

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

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

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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

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committed apart from character of evidence as some of the relevant factors in deciding whether to grant bail or not.

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

In the present case, it is argued that at best there are allegations for section 411 IPC as only LED TV was recovered from the possession of accused which is punishable for a maximum period of 03 years. It is further stated that he has been falsely implicated in the present case; no purpose would be served by keeping him in JC; that he will be fully cooperated with the investigation; that his bail application already rejected by duty MM vide order dated 25/06/2020. Hence, present application is moved.

On the other hand, it is stated by the IO, as also argued by the learned Addl.PP for the state that there are allegations not only regarding 411 IPC but he actively participated in the offence of 457, 380 r/w section 34 IPC and he provided the Rehti to smuggle the stolen goods and also took part in selling the same later on. It is further stated that he does not have permanent address and residing in Jhuggi cluster. It is further stated that his bail application on similar ground is already rejected by learned Duty MM on 25/06/2020 and there is no material change in circumstances since then.

I find force in the arguments of learned Addl.PP for the

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state. Investigation is at the initial stage. Co-accused are yet to be traced out. Further prima facie there are allegations other than section 411 IPC against the present accused. Further his presence may not be secured for trial if he is released on bail. As such, this court is not inclined to grant the relief as sought in the present application. Hence, the same is dismissed.

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

(Naveen Kumar Kashyap)
Additional Sessions Judge-04
Central/THC/Delhi
30/06/2020.

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