

**CR No. 254/2020**  
**Nirmal Garg Vs M/s SMC Global Securiteis Ltd.**

**23.12.2020**

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

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

**This court is also discharging Bail Roster duty. Today this court is holding physically hearing as per directions.**

Present: Mr. Ram Kawar Garg on behalf of revisionist Nirmal Garg.

Mr. Ram Kawar Garg is the husband of revisionist Nirmal Garg. A query is raised by this Court as to how the revisionist Mrs. Nirmal Garg, who is a woman, is not entitled for Legal Aid Counsel. It is stated by Mr. Ram Kawar Garg that she is a pensioner and is not entitled for Legal Aid Counsel.

But it is the guidelines that being a woman she is entitled for LAC counsel, even if, she is in a position to engage her a private counsel.

As such, she is advised to approach Delhi Legal Service Authority Central District for appointment of Legal Aid Counsel. Further, a copy of this order be sent to Secretary DLSA Central District for appointment of Legal Aid counsel as per rules.

Put up for submissions, on this application for earlier hearing and engagement of such counsel for **12/01/2021**.

  
**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/23.12.2020**

**CR No. 253/2020**  
**Ram Kwar Garg Vs M/s SMC Global Securities Ltd.**

**23.12.2020**

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

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

**This court is also discharging Bail Roster duty. Today this court is holding physically hearing as per directions.**

Present: Mr. Ram Kwar Garg revisionist / applicant in person.

Put up for consideration / appropriate orders on this application for preponement application for **16/01/2021**.

  
**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/23.12.2020**

**M.Crl. No.: 232/2020**  
**State Vs Jai Prakash Meena**  
**FIR No.: 011742/2020**  
**PS Rajinder Nagar**

23.12.2020

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

Arguments heard.

By way of this application it has been prayed that accused was granted bail vide order dated 24/11/2020 on furnishing of personal bond in the sum of Rs. 15,000/- with two sound sureties of the like amount. Now it is prayed that he is unable to arrange surety as due to poverty and financial constraints during nation wide lockdown due to Covid-19. As such, it is prayed that applicant may be released on furnishing of personal bond only.

In support of his submission, he has relied upon the following decisions :-

1. *Court of its Motion Vs. State, W. P. (Crl.) No.779/2020 decided on 09.04.2020 by Hon'ble Delhi High Court.*
2. *Ajay Verma Vs. Govt. of NCT of Delhi W. P. (C) No.10689/2017 passed on 15.12.2017 and 08.03.2018 by Hon'ble Delhi High Court.*
3. *Moti Ram & Ors. Vs. State of M.P., (1978) 4 SCC 47.*

On the other hand, the application is opposed by ld. Addl. PP on behalf of State on the ground that applicant should not be released on personal bond as the allegations against him are quite serious and he may abscond and his presence may not be secured during trial in that eventuality. I have bestowed my thoughtful consideration to the respectful submissions made on behalf of both sides and have also gone through the authorities cited on behalf of applicant.

It is an undisputed fact that bail order of applicant / accused in this case passed by Sessions Court on 24/11/2020 but he could not avail benefit of the bail order as he could not produce surety in this case. It is a matter of common knowledge that in view of pandemic situation, the applicant may be finding it difficult to arrange for surety. Moreover, he is stated to be belonging to financial poor family. But, under these peculiar facts and circumstances and while taking guidance from the directions issued by Hon'ble Delhi High Court in the

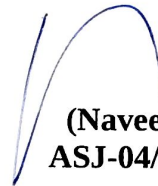
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*PS Rajinder Nagar*

above referred decisions, and the fact remains that period of two months has not already passed since passing of such bail order, this Court is not inclined to allow the application under consideration **at present**. But having noted so the amount of personal bond and two surety bond is reduced to Rs.7,500/-(each). Other conditions shall remain the same including two surety having regard to the nature of offence and conduct of the accused and overall facts and circumstances of the case.

With these observations present application is disposed off. Copy of this order be given dasti to both the sides electronically, as per rules. Attested copy of this order be sent to concerned Jail Superintendent on his official e-mail ID for being delivered to the applicant / accused and for necessary compliance.



**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/23/12/2020.**

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

**Applications Nos.: 2255/2020**  
**State Vs Ajay @ Jeetu s/o Rajan**  
**FIR No.189/2020**  
**P. S. Rajender Nagar**  
**U/s: 356, 379, 411 IPC**

**23/12/2020**

Present: Mr. Pawan Kumar, Learned Addl. PP for State.  
Mr. Hari Dutt Sharma, learned LAC counsel for accused.

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

It is stated in the application that he is in JC since 20/08/2020; that his earlier application was dismissed by learned MM; that he has been falsely implicated in this case and applicant has nothing to do with the present offence as alleged; that he has been granted bail in other cases; that he is from financially weak background and is facing acute poverty; that co-accused Ravi has already been granted bail; that he is no more required for the purpose of investigation; that he belongs to a respectable family and has deep roots in society; that nothing incriminating has been recovered from his possession or at his instance; that there is iota of evidence regarding the above mentioned offences; that present prevailing pandemic circumstances as also in the jail; that trial is likely to take time. As such, it is prayed that he be granted regular bail.

On the other hand, in reply dated 23/12/2020 filed by the IO ASI Daryao Singh, as also argued by learned Addl.PP for the State it is stated that the complaint of the complainant is that on 16/08/2020 at about 5:30 PM when he was passing through the footpath near Rajender Nagar Metro Station, two boys came on motorcycle and snatched his mobile phone make Samsung black in colour and thereafter on checking applicant / accused was apprehended and from his possession mobile phone was recovered which was snatched by him from the complainant; that applicant is involved in other criminal matters; that he has no permanent residence; that he is habitual criminal type person; that he may jump

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the bail if so granted. As such, present bail application is strongly opposed.

I have heard both the sides.

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

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

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

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

Further discretionary jurisdiction of courts u/s 437 and 439 CrPC should be exercised carefully and cautiously by balancing the rights of the accused and interests of the society. Court must indicate brief reasons for granting or refusing bail. Bail order passed by the court must 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

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the Magistrate to grant bail in context of the commission of non-bailable offences punishable with death or imprisonment for life, the two higher Courts have only the procedural requirement of giving notice of the Bail application to the Public Prosecutor, which requirement is also ignorable if circumstances so demand. The regimes regulating the powers of the Magistrate on the one hand and the two superior Courts are decidedly and intentionally not identical, but vitally and drastically dissimilar. (**Sundeep Kumar Bafna Vs. State of Maharashtra, AIR 2014 SC 1745** ).

Further at this stage it can be noted that interpreting the provisions of bail contained u/s 437 & 439 Cr.P.C., the Hon'ble Supreme Court in its various judgments has laid down various considerations for grant or refusal of bail to an accused in a non-bailable offence like, (i) Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) Nature of accusation and evidence therefor, (iii) Gravity of the offence and punishment which the conviction will entail, (iv) Reasonable possibility of securing presence of the accused at trial and danger of his absconding or fleeing if released on bail, (v) Character and behavior of the accused, (vi) Means, position and standing of the accused in the Society, (vii) Likelihood of the offence being repeated, (viii) Reasonable apprehension of the witnesses being tampered with, (ix) Danger, of course, of justice being thwarted by grant of bail, (x) Balance between the rights of the accused and the larger interest of the Society/State, (xi) Any other factor relevant and peculiar to the accused. (xii) While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, but if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. Furthermore, in the landmark judgment of **Gurucharan Singh and others v. State** (AIR 1978 SC 179), it was held that there is no hard and fast rule and no inflexible principle governing the exercise of such discretion by the courts. It was further held that there cannot be any inexorable formula in the matter of granting bail. It was further held that facts and circumstances of each case will govern the exercise of judicial discretion in granting or refusing bail. It was further held that such question depends upon a variety of circumstances, cumulative effect of which must enter

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to the judicial verdict. Such judgment itself mentioned the nature and seriousness of nature, and circumstances in which offences are committed apart from character of evidence as some of the relevant factors in deciding whether to grant bail or not.

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

In the present case, the maximum punishment of the offences alleged against the present accused is 3 years. It is a matter of record that accused is in JC and period to seek PC remand is already over. The allegations against the accused are u/s 411 IPC only. Further, as far as present accused is concerned, nothing remains to be recovered at his instance. As such, no purpose would be served by keeping such accused in JC. Trial is likely to take time. Further, it may be noted that there is fundamental presumption of innocence in any criminal case of present nature. In present case, no previous conviction or even involvement in criminal cases is placed on record by the IO.

In above facts and circumstances, such accused is granted bail subject to furnishing of **personal bond in the sum of Rs. 7,500/- (each) with two sound sureties of like amount**, subject to the satisfaction of the learned Trial court and the following additional conditions:

- i) That he will appear before IO / Trial Court as and when called as per law.*
- ii) He will not indulge in any kind of activities which are alleged against him in the present case.*
- iii) That he will not leave Delhi without prior permission*

*of the Trial Court concerned.*

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

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

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

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

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

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

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

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

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

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

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

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

(NAVEEN KUMAR KASHYAP)  
ASJ-04(Central/Delhi)  
23.12.2020

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

**BAIL APPLICATION No.: 2254/2020**

**FIR No. :274/2020**

**PS: Kamla Market**

**STATE V Yogesh Kumar s/o Kishore Kumar**

**U/S: 25, 54, 59 Arms Act**

**23.12.2020**

Present: Mr. Pawan Kumar, Learned Addl. PP for the State.  
Ms. Aashi Agarwal, learned counsel for applicant /  
accused.

Vide this order, bail application of accused Yogesh u/s 439 Cr.PC dated 21/12/2020 filed through counsel is disposed off.

It is argued on behalf of applicant that applicant is young aged and sole bread earner of his family; that he is worker of road side shop i.e. Rehri; that he is permanent and law abiding citizen of Delhi having roots in society; that he has been falsely implicated in this case; that nothing has been recovered from his possession and the alleged recovery is planted upon him; that accused was called for BC by the police at PS Kamla Nagar and was arrested without any alleged offence; that he is JC since 19/11/2020; that his earlier bail was dismissed by learned MM; that no useful purpose would be served by keeping him in JC. As such, it is prayed that they be granted regular bail.

On the other hand, in reply dated 22/12/2020 filed by ASI Ajab Singh, as also argued by the learned Addl.PP for the

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State, it is stated that the offence committed by the accused is serious in nature; that family members of accused have not control over him; that there are chances of his absconding during trial and also that he may threaten the witnesses if granted bail; that he is habitual criminal and previously involved in 14 criminal cases; that buttondar knife was recovered from his possession. As such, his bail application is strongly opposed by the State.

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

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

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

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

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

But, the liberty of an individual is not absolute. The

Society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the societal order. A society expects responsibility and accountability from the member, and it desires that the citizens should obey the law, respecting it as a cherished social norm. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly thing which the society disapproves, the legal consequences are bound to follow.

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

At this stage , it can also be fruitful to note that requirements for bail u/s 437 & 439 are different. Section 437 Cr.P.C. severally curtails the power of the Magistrate to grant bail in context of the commission of non-bailable offences punishable with death or imprisonment for life, the two higher Courts have only the procedural requirement of giving notice of the Bail application to the Public Prosecutor, which requirement is also ignorable if circumstances so demand. The regimes regulating the powers of the Magistrate on the one hand and the



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two superior Courts are decidedly and intentionally not identical, but vitally and drastically dissimilar. (**Sundeep Kumar Bafna Vs. State of Maharashtra, AIR 2014 SC 1745** ).

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

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

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

a detailed and in-depth analysis of the materials and record findings on their acceptability or otherwise which is essentially a matter of trial. Court is not required to undertake meticulous examination of evidence while granting or refusing bail u/s 439 of the CrPC.

In the present case, the maximum punishment of the offences alleged against the present accused is 3 years. It is a matter of record that accused was arrested on 19/11/2020. As such, it can be noted that even the period to seek police custody remand is now over. Further, the accused is in JC. Further, now nothing remains to be recovered at his instance. Further, all the witnesses are police witnesses also, therefore, there is no possibility of threatening th witness also.

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

- i) Applicant shall not flee from the justice;*
- ii) Applicant shall not tamper with the evidence;*
- iii) Applicant shall not threaten or contact in any manner to the prosecution witnesses ,*
- iv) Applicant shall not leave country without permission;*
- v) Applicant shall convey any change of address immediately to the IO and the court;*
- vi) Applicants 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 till the chargesheet is filed;*

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

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

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

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

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

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

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

*of bail.*

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

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

1. *The date on which conditions imposed by this court are satisfied;*
2. *The date of release of prisoner from jail;*
3. *Date of ultimate release of prisoner in case the prisoner is in jail in some other case.*

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

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

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

  
**(NAVEEN KUMAR KASHYAP)**  
**ASJ-04(Central/Delhi/23/12/2020)**

**State v Liyakat Ali & others**  
**(Application for regular bail of Govind Kumar)**  
**FIR No: 215/214**  
**PS: NDRS**

**23.12.2020**

**This court is also discharging Bail Roster duty. Today this court is holding physically hearing as per directions.**

Present: Mr. Pawan Kumar, learned Addl.PP for State.  
Mr. S.N.Shukla, learned LAC for applicant through VC.

This is an application dated 19/10/2020 filed by LAC counsel Mr. S.N. Shukla for accused Govind Kumar.

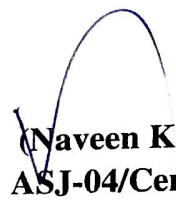
Arguments heard.

Put up for orders at 4:00 PM.

  
**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/23.12.2020**

At this stage, it is pointed out by learned Addl.PP for the State that another application dated 22/02/2020 i.e. before the nationwide Lockdown for regular bail was filed for the same accused through LAC counsel Mr. Yatinder Kumar only and the same is still pending.

As such, put up for clarification / orders in terms of previous order regarding these two bail application for **12/01/2021**.

  
**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/23.12.2020**

**ANTICIPATORY Bail Application No.: 2150/2020**

**State v. Rasheed Ahmad**

FIR no. : 242/2020

PS: Darya Ganj

U/S: 380,560 IPC

23.12.2020

At 4 pm.

Present: Mr. Pawan Kumar, Learned Addl. PP for State.  
None for the applicant.

1. Vide this order, present bail application dated 12.12.2020 u/s 438 Cr.PC filed for anticipatory bail by accused / applicant Rasheed Ahmad is disposed of.

2. In nut shell, it is argued by learned counsel for accused/ applicant that the accused is about 60 years old. That he has roots in the society. That he is the regular namazi of masjid Ahl-e-Hadees situated in main bazar, Ajmeri Gate, Delhi. That he is a whistle blower raising various issues relating to mis-administration, mis-appropriation of funds by the present complainant of this FIR. That as such, in order to put such pressure on such applicant/accused, present baseless FIR is got registered at the behest one Fahimuddin, who is holding the post of General Secretary of such Masjid. That in fact the complainant and his associate themselves destroyed the record/account book etc and now falsely claiming that present accused/applicant has stolen the same. That there is no other criminal record of the present accused. That he is ready to cooperate with the investigation. Further, Ld. Counsel for accused also relied upon a number of documents in support of his arguments. As such, it is prayed that he be admitted to anticipatory bail in the event of his arrest.

3. On the other hand, it is argued by learned APP for the state that complainant Fahimuddin lodged a FIR that he came at the Delhi Wakf Board, Daryaganj office for the purpose of auditing of accounts paper and



Abdul Basit was auditing officer and he was auditing such accounts book. In the meanwhile, present accused came and started irrelevant talking and misbehaving with the complainant. Then all of a sudden such accused fled away taking away the bag of the complainant containing electricity file of Masjid, one file of purchasing, one cash book ledger containing more than 15 years record and a bunch of auditing record. It is further submitted that a CCTV at Delhi Wakf Board was also found in which present accused can be seen committing such offence. It is further stated that custodial interrogation of the applicant is required to recover such documents/record. That he is also found involved in a old matter of the year 1995 u/s 365,506 IPC.

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

5. That this court has gone through the record particularly CCTV footage which is provided in a pen drive to this court by the IO. Further, the IO has stated that the person in white shirt and khaki pant is the accused and he can be seen at the end of footage running away with the documents which were kept beside the complainant who is in white kurta pyjama. As such, having regard to the nature material against him and conduct of the present accused as seen in such footage, it cannot be said that allegations against him are baseless. Further, such documents are yet not recovered. It further appears that such applicant/accused did not cooperate with the investigation even when he was granted interim protection vide order dated 16.12.2020 during the hearing of this bail application. As such, his custodial interrogation is required. **With these observations, present application is dismissed.**

6. **Copy of this order be given to both sides through electronic mode. Further, copy of this order be provided to IO/SHO concerned through electronic mode.**

(NAVEEN KUMAR KASHYAP)  
Additional Sessions Judge-04/Central  
Central Distt/Delhi  
23.12.2020

**MISC. APPLICATION**

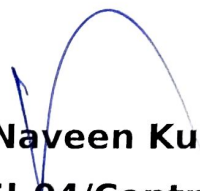
**State v. Punit Chadha  
CR: 253/2019**

**23.12.2020**

**This court is holding physically today as per directions.**

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

**Put up on date already fixed i.e. on 22.01.2021.**

  
**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/23.12.2020**

**23.12.2020**

**This court is holding physically today as per directions.**

**This court is also discharging Bail Roster duty.**

Present: Proxy counsel for Revisionist.  
Mr.Pawan Kumar, learned Addl.PP for State/Respondent no.1.  
None for remaining respondents.

**Put up for arguments in terms of previous order for  
30.04.2021.**

  
**(Naveen Kumar Kashyap)  
ASJ-04/Central/23.12.2020**

**MISC. APPLICATION**

**State v. Yasin**  
**FIR No.: 815/2014**  
**PS: Kotwali**  
**U/s: 308,323,34 IPC**

**23.12.2020**


**This court is holding physically today as per directions.**

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

This is an application for withdrawal of security by surety  
Mohd. Anis. It is stated that case is already decided.

Let case file be summoned from Record room.

**Put up for further appropriate orders/directions for**  
**22.01.2021.**

  
**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/23.12.2020**

**Bail Matter No.: 2753/2020**

**FIR No: 215/2020**

**PS: Darya Ganj**

**State v Atif**

**23.12.2020**

**Today this court is holding physically hearing as per directions.**

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

Mr. Deepak Kohli, learned counsel for the applicant / accused.

SI Sunil in person.

Reply filed by the IO. Copy be supplied to the accused side.

Issue notice to complainant / victim through IO to appear through VC or otherwise as the situation may be. IO to provide all necessary assistance for appearance of such complainant / victim.

Put up for **26/12/2020**.

  
**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/23.12.2020**

**BAIL APPLICATION NO.: 2252/2020**

**State v. Radhey Shyam**  
**FIR No.: e-016024/2020**  
**PS: Darya Ganj**  
**U/s:379 IPC**

**23.12.2020**

**This court is holding physically today as per directions.**

Present: Mr. Pawan Kumar, learned Addl.PP for State.  
Sh. Vishal Vimal, Ld. Counsel for the applicant.

This is fresh regular bail application.

Arguments in detail heard.

It is stated that there is material change in the circumstances as trial is no proceeding further, it is further stated that he has family to take care.

Heard.

In view of the order already passed on 19.11.2020 and the fact that there are two convictions recorded against present accused under the similar offence. As such, no ground is made out for grant of bail. **With these observations, present application is dismissed.**

**Copy of the same be supplied to the parties through electronic mode.**

  
**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/23.12.2020**

**BAIL APPLICATION NO.: 2251/2020**

**State v. Pragati Pandey  
FIR No.: 464/2020  
PS: Sarai Rohilla  
U/s:354,354A,354B,509,323, 34 IPC**

**23.12.2020**

**This court is holding physically today as per directions.**

Present: Mr. Pawan Kumar, learned Addl.PP for State.  
Sh. Monish Ahmed, Ld. Counsel for the applicant.  
Complainant with IO SI Sonu Siwach in person.

Reply filed by IO. Copy be supplied.

Arguments in detail heard.

It is pointed out that in the cross FIR, vide order dated 02.12.2020 certain observations also made by this court regarding grant of anticipatory bail to the other side as well as regarding the present applicants. Further, in view of the reasons already given in such bail order dated 02.12.2020, present accused/applicant is also admitted to anticipatory bail subject to same terms and conditions as already mentioned in bail order dated 02.12.2020 on the bail application of opposite side.

  
**(Naveen Kumar Kashyap)  
ASJ-04/Central/23.12.2020**

**BAIL APPLICATION NO.: 2249/2020**

**State v. Avinash Giri**

**FIR No.: 464/2020**

**PS: Sarai Rohilla**

**U/s:354,354A,354B,509,323, 34 IPC**

**23.12.2020**

**This court is holding physically today as per directions.**

Present: Mr. Pawan Kumar, learned Addl.PP for State.  
Sh. Monish Ahmed, Ld. Counsel for the applicant.  
Complainant with IO SI Sonu Siwach in person.

Reply filed by IO. Copy be supplied.

Arguments in detail heard.

It is pointed out that in the cross FIR, vide order dated 02.12.2020 certain observations also made by this court regarding grant of anticipatory bail to the other side as well as regarding the present applicants. Further, in view of the reasons already given in such bail order dated 02.12.2020, present accused/applicant is also admitted to anticipatory bail subject to same terms and conditions as already mentioned in bail order dated 02.12.2020 on the bail application of opposite side.

**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/23.12.2020**





**BAIL APPLICATION NO.: 2248/2020**

**State v. Satyawati  
FIR No.: 481/2020  
PS: Karol Bagh  
U/s:406,498A,34 IPC**

**23.12.2020**

**This court is holding physically today as per directions.**

Present: Mr. Pawan Kumar, learned Addl.PP for State.  
Sh. Satyajit Kumar , Ld. Counsel for the applicant.

Reply filed by IO. Copy be supplied to counsel for accused.  
Part arguments heard.

**Put up with connected matter on 14.01.2021.**

In the meanwhile, IO is directed not to take any coercive action against the applicant provided applicant fully co-operate with the investigation.

  
**(Naveen Kumar Kashyap)  
ASJ-04/Central/23.12.2020**

**BAIL APPLICATION NO.: 2103/2020**

**State v. Sameer  
FIR No.: 11109/2020  
PS: Rajinder Nagar  
U/s:379,411,34 IPC**

**23.12.2020**

**This court is holding physically today as per directions.**

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

This is an application for reduction of surety amount.

In the interest of justice, such surety amount is reduced from Rs. 20,000/- to Rs. 10,000/-. Remaining order dated 04.11.2020 remains the same.

**With these observations, present application is allowed.**

  
**(Naveen Kumar Kashyap)  
ASJ-04/Central/23.12.2020**

**BAIL APPLICATION NO.: 2205/2020**  
**BAIL APPLICATION NO.: 2212/2020**

**State v. Chandra Shekhar**  
**FIR No.: 349/2020**  
**FIR NO: 357/2020**  
**PS: Lahori Gate**  
**U/s: 406,420,34 IPC**

**23.12.2020**

**This court is holding physically today as per directions.**

Present: Mr. Pawan Kumar, learned Addl.PP for State.  
None for applicant/accused.  
Sh. Rajesh Baweja, Ld. Counsel for complainant.

Today, case is fixed for orders/clarifications.

It is pointed out by Ld. Addl. PP for the state that in view of judgment of *Hon'ble Supreme Court in CA of 870/2019 titled as M/s. Gati Ltd. v. T. Nagarajan Piramiajee & Anr. dated 06.05.2019 and Crl. Appeal 2335/2014 dated 18.12.2014 titled as Jagmohan Bahl v. State*, as the first anticipatory bail application was heard by Sh. Vidya Prakash, Learned ASJ, the present bail application should be heard by same court as per the ratio of such judgment.

Learned counsel for complainant has placed on record certain documents/statement of account.

I have gone through the judgment.

***Let such file be placed before learned Principal District & Sessions Judge (HQs) tomorrow i.e. 24.12.2020 at 12.30 pm for further appropriate orders/directions.***

**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/23.12.2020**

BAIL APPLICATION NO.: 2152/2020  
BAIL APPLICATION NO.: 2234/2020

State v. Varun Walia  
FIR No.: 349/2020  
FIR NO: 357/2020  
PS: Lahori Gate  
U/s: 406,420,34 IPC

23.12.2020

**This court is holding physically today as per directions.**

Present: Mr. Pawan Kumar, learned Addl.PP for State.  
Sh. Chander M. Maini, Ld. Counsel for applicant/accused.  
Sh. Rajesh Baweja, Ld. Counsel for complainant.

The bail application of applicant Vimal Bhasin is in the same FIR 357/2020 and 349/2020 regarding which the bail applications of co-accused Chandra Shekhar are put up before Ld. Principal District & Sessions Judge (HQs) by this court. As these are connected matters in the same FIR, therefore to avoid conflict of order, let these be also placed ***learned Principal District & Sessions Judge (HQs) for tomorrow i.e. 24.12.2020 at 12.30 pm for further appropriate orders/directions.***

(Naveen Kumar Kashyap)  
ASJ-04/Central/23.12.2020

**BAIL APPLICATION NO.: 2221/2020**  
**BAIL APPLICATION NO.: 2223/2020**

**State v. Vimal Bhasin**  
**FIR No.: 357/2020**  
**FIR NO: 349/2020**  
**PS: Lahori Gate**  
**U/s: 406,420,34 IPC**

**23.12.2020**

**This court is holding physically today as per directions.**

Present: Mr. Pawan Kumar, learned Addl.PP for State.  
None for applicant/accused.  
Sh. Rajesh Baweja, Ld. Counsel for complainant.

The bail application of applicant Vimal Bhasin is in the same FIR 357/2020 and 349/2020 regarding which the bail applications of co-accused Chandra Shekhar are put up before Ld. Principal District & Sessions Judge (HQs) by this court. As these are connected matters in the same FIR, therefore to avoid conflict of order, let these be also placed ***learned Principal District & Sessions Judge (HQs) for tomorrow i.e. 24.12.2020 at 12.30 pm for further appropriate orders/directions.***

**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/23.12.2020**

**ANTICIPATORY Bail Application No.: 1924/2020**

**State v. Mahesh Kumar Gupta**

FIR no. : 186/2019

PS: Kamla Market

U/S: 364A,342,506,34 IPC

23.12.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State.  
Sh. Chander M. Maini, Ld. Counsel for applicant.  
IO SI Giriraj in person.

1. Vide this order, present second bail application dated 18.11.2020 u/s 438 Cr.PC filed for anticipatory bail by accused / applicant Mahesh Kumar Gupta is disposed of.

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

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

4. A judgment which needs to be pointed out is a Constitution Bench Judgment of this Court in the case Gurbaksh Singh Sibbia and Other vs. State of Punjab( 1980 AIR 1632 ; 1980 SCR(3) 383), The Constitution Bench in this case emphasized that provision of anticipatory bail enshrined in Section 438 of the Code is conceptualised under Article 21 of the Constitution which relates to personal liberty. Therefore, such a provision calls for liberal interpretation of Section 438 of the Code in light of Article 21 of the Constitution. The Code explains that an anticipatory bail is a pre- arrest legal process which directs that if the person in whose favour it is issued is thereafter arrested on the accusation in respect of which the direction is issued, he shall be released on bail. The distinction between an ordinary order of bail and an order of anticipatory bail is that whereas the former is granted after arrest and therefore means release

from the custody of the police, the latter is granted in anticipation of arrest and is therefore, effective at the very moment of arrest. A direction under Section 438 is therefore intended to confer conditional immunity from the 'touch' or confinement contemplated by Section 46 of the Code. The essence of this provision is brought out in the following manner:

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

5. Though the Court observed that the principles which govern the grant of ordinary bail may not furnish an exact parallel to the right to

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

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



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

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

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

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

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

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

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

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

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

(v) The proper course of action on an application for anticipatory bail ought to be that after evaluating the averments and accusations available on the record if the court is inclined to grant anticipatory bail then an

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

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

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

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

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

circumstances of each case.

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

- (a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- (b) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;
- (c) The possibility of the applicant to flee from justice;
- (d) The possibility of the accused's likelihood to repeat similar or other offences;
- (e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;
- (f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;
- (g) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution, because over implication in the cases is a matter of common knowledge and concern;
- (h) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;

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

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

9. In the present case, in nut shell, it is stated that originally the investigation was made and chargesheet was filed for offence 365 and ors <sup>and n</sup> not under 364 A IPC. But later on, such section 365 IPC is converted into 364A IPC. It is further stated that ingredients of section 364 A IPC are not satisfied at all including that there is no ransom as at best the present accused was demanding back his lawful dues from the complainant. Admittedly, even as per the FIR, complainant owe money due to business transactions to the applicant . That two of the co-accused are already granted regular bail by this court. Learned counsel further referred to earlier bail application on the first bail application dated 03.09.2019. Further, learned counsel relied upon a number of case laws which are mentioned in the application itself and it is argued that no case is made out under section 364A IPC as there is no demand of illegal consideration at all. Further, applicant is a old and ailing person of 75 years of age. Further, learned counsel for applicant relied upon case laws relating to anticipatory bail. That there is no need of custodial investigation. As such, it is prayed that directions be issued to concerned IO/SHO to release the accused/applicant on bail in case of his arrest.

10. On the other hand, it is submitted on behalf of the state that present applicant is the main accused and whose instance his employee Shiv Shanker Mishra and Sharad Srivastava acted and kept the complainant captive in the office of the present accused. It is further argued by learned Addl. PP for the state that even the illegal means adopted for alleged legal demand is covered under the ransom. It is further stated that vide order

dated 03.09.2019 passed by learned ASJ Asish Aggarwal during bail order on the first anticipatory bail application, it is observed that section 364A IPC was also found attracted. As such, after scrutiny by prosecution branch, Section 364A IPC was added on 27.10.2020. As such, it is argued that since dismissal of last anticipatory bail application, there is a graver charges levelled against the present accused. That present accused is absconding at present and as such not cooperating with the investigation. As such, present application is strongly opposed.

11. It may be noted that bail granted to the co-accused Sharad Chandra Srivastava and Shiv Shanker Mishra by this court vide order dated 10.11.2020 was under section 439 Cr.P.C. i.e. regular bail after arrest. Whereas, present application is under section 438 Cr.P.C. Further, in fact certain observation is made by this court in page-6 of such bail order dated 10.11.2020 that such two co-accused were only employee of present accused and were acting on the instructions of Mahesh Kumar Gupta and Ajay Thakur. Further, a copy of that order dated 10.11.2020 was sent to DCP concerned in view of the situation that instead of acting against main accused Mahesh Kumar Gupta and Ajay Thakur for ensuring their arrest, no effective steps were taken. It may be further noted now that this is despite the fact that earlier vide order dated 03.09.2019, my learned Predecessor had already made certain observations regarding the nature of offence against such Mahesh Kumar Gupta. Thus, despite a lapse of more than one year since 03.09.2019, the IO SI Giriraj and the SHO concerned still failed to take appropriate action against the accused Mahesh Kumar Gupta. As such, **a copy of this order be also sent to Learned DCP concerned for his information and necessary action through naib court of this court. Naib court of this court to file acknowledgement of the copy received by DCP concerned within two weeks. Further, a copy of this be also sent to Ilaka Magistrate of PS Kamla Market for his information.**

12. Further, the arguments that ingredients of offence under section 364A IPC is not made out, do not have much force and in fact

: 11 :

certain observation already made by my learned Predecessor vide order dated 03.09.2019. As such, having regard to the nature of offence, punishment prescribed for the same and role of the present accused, and the fact that his anticipatory bail was earlier rejected on 03.09.2019, this court is not inclined to grant relief prayed in the present application.

**With these observations present application is dismissed.**

**13. Copy of this order be given to applicant as well as a copy be sent to IO/SHO concerned through electronic mode.**

  
**(NAVEEN KUMAR KASHYAP)**  
**Additional Sessions Judge-04/Central**  
**Central Distt/Delhi**  
**23.12.2020**



**State v Raj Bahadur & others**  
**(Bail bond of applicant Sanjay @ Dharambir)**  
**FIR No: 130/2014**  
**PS: Kamla Market**

23.12.2020

**This court is also discharging Bail Roster duty. Today this court is holding physically hearing as per directions.**

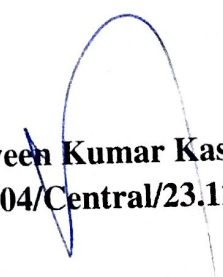
Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.  
Both the sureties Vikrant Kaushik and Lokesh Kumar in person with counsel Mr. Girraj Singh.  
Applicant / accused Sanjay @ Dharambir in person.

Verification report dated 23/12/2020 filed by IO SI Mahesh Kumar. As per such verification report security given by surety Vikrant Kaushik RC of vehicle bearing No. DL 3C BX 2036 is verified as well as address of such surety. But as far as the second surety Lokesh Kumar is concerned, only his address is verified and not the place of his job. He is stated to be working in Army.

Original RC of surety Vikrant Kaushik is retained on record. Robkar be prepared accordingly.

Further, both such bail bonds are accepted today itself subject to verification of office address of surety Lokesh Kumar. As such, IO / SHO concerned to verify the office address / Job of surety Lokesh Kumar and file the report by the next date of hearing.

**Put up for 08/01/2021.**

  
**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/23.12.2020**

**BAIL APPLICATION NO.: 1979/2020**

**State v. Tarjit Singh Gambhir**  
**FIR No.: 206/2020**  
**PS: Rajinder Nagar**

**23.12.2020**

**This court is holding physically today as per directions.**

Present: Mr. Pawan Kumar, learned Addl.PP for State.  
Senior counsel Ms. Geeta Luthra with Sh. Ujjawal Jain,  
Ld. Counsel for applicant through VC.  
Sh. Damanpreet Singh, Ld. Counsel for complainant through  
VC.  
IO Soni Lal is present in person before court with case file.

Further arguments in detail heard.

It is stated by IO that section 109 IPC is added on 18.09.2020.

**Put up for orders at 4 pm tomorrow i.e. on 24.12.2020.**

**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/23.12.2020**

: 1 :

**ANTICIPATORY Bail Application No.: 1926/2020**

**State v. Ajay Kumar Thakur**  
FIR no. : 186/2019  
PS: Kamla Market  
U/S: 364A,342,506,34 IPC

23.12.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State.  
Sh. Chander M. Maini, Ld. Counsel for applicant.  
IO SI Giriraj in person.

1. Vide this order, present second bail application dated 18.11.2020 u/s 438 Cr.PC filed for anticipatory bail by accused / applicant Ajay Kumar Thakur is disposed of.

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

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

4. A judgment which needs to be pointed out is a Constitution Bench Judgment of this Court in the case Gurbaksh Singh Sibbia and Other vs. State of Punjab( 1980 AIR 1632 ; 1980 SCR(3) 383), The Constitution Bench in this case emphasized that provision of anticipatory bail enshrined in Section 438 of the Code is conceptualised under Article 21 of the Constitution which relates to personal liberty. Therefore, such a provision calls for liberal interpretation of Section 438 of the Code in light of Article 21 of the Constitution. The Code explains that an anticipatory bail is a pre- arrest legal process which directs that if the person in whose favour it is issued is thereafter arrested on the accusation in respect of which the direction is issued, he shall be released on bail. The distinction between an ordinary order of bail and an order of anticipatory bail is that whereas the former is granted after arrest and therefore means release

from the custody of the police, the latter is granted in anticipation of arrest and is therefore, effective at the very moment of arrest. A direction under Section 438 is therefore intended to confer conditional immunity from the 'touch' or confinement contemplated by Section 46 of the Code. The essence of this provision is brought out in the following manner:

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

5. Though the Court observed that the principles which govern the grant of ordinary bail may not furnish an exact parallel to the right to

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

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

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

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

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

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

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

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

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

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

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

(v) The proper course of action on an application for anticipatory bail ought to be that after evaluating the averments and accusations available on the record if the court is inclined to grant anticipatory bail then an



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

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

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

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

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

circumstances of each case.

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

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

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

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

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

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

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

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

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

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

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

9. In the present case, in nut shell, it is stated that originally the investigation was made and chargesheet was filed for offence 365 and ors. and not under 364 A IPC. But later on, such section 365 IPC is converted into 364A IPC. It is further stated that ingredients of section 364 A IPC are not satisfied at all including that there is no ransom as at best the present accused was demanding back his lawful dues from the complainant. Admittedly, even as per the FIR, complainant owe money due to business transactions to co-accused Mahesh Kumar. That two of the co-accused are already granted regular bail by this court. Learned counsel further referred to earlier bail application on the first bail application dated 03.09.2019. Further, learned counsel relied upon a number of case laws which are mentioned in the application itself and it is argued that no case is made out under section 364A IPC as there is no demand of illegal consideration at all. Further, applicant is a old and ailing person of 75 years of age. Further, learned counsel for applicant relied upon case laws relating to anticipatory bail. That there is no need of custodial investigation. As such, it is prayed that directions be issued to concerned IO/SHO to release the accused/applicant on bail in case of his arrest.

10. On the other hand, it is submitted on behalf of the state that present applicant is the Sales Manager of the main accused Mahesh Kumar Gupta. That the victim requested present applicant and such Mahesh Kumar Gupta to allow him to go to home to make arrangement for outstanding payment but both of them did not allow him to go and kept him captive



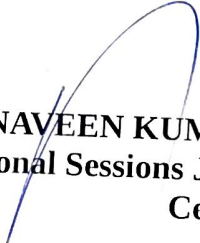
and also threatened him. That both of them made him captive in the office. As such, present applicant is one of the accused whose instance, employees Shiv Shanker Mishra and Sharad Srivastava acted and kept the complainant captive in the office. It is further argued by learned Addl. PP for the state that even the illegal means adopted for alleged legal demand is covered under the ransom. It is further stated that vide order dated 03.09.2019 passed by learned ASJ Ashish Aggarwal during bail order on the first anticipatory bail application, it is observed that section 364A IPC was also found attracted. As such, after scrutiny by prosecution branch, Section 364A IPC was added on 27.10.2020. As such, it is argued that since dismissal of last anticipatory bail application, there is a graver charges levelled against the present accused. That present accused is absconding at present and as such not cooperating with the investigation. As such, present application is strongly opposed.

11. It may be noted that bail granted to the co-accused Sharad Chandra Srivastava and Shiv Shanker Mishra by this court vide order dated 10.11.2020 was under section 439 Cr.P.C. i.e. regular bail after arrest. Whereas, present application is under section 438 Cr.P.C. Further, in fact certain observation is made by this court in page-6 of such bail order dated 10.11.2020 that such two co-accused were only employee of present accused and were acting on the instructions of Mahesh Kumar Gupta and Ajay Thakur. Further, a copy of that order dated 10.11.2020 was sent to DCP concerned in view of the situation that instead of acting against main accused Mahesh Kumar Gupta and Ajay Thakur for ensuring their arrest, no effective steps were taken. It may be further noted now that this is despite the fact that earlier vide order dated 03.09.2019, my learned Predecessor had already made certain observations regarding the nature of offence against the present applicant. Thus, despite a lapse of more than one year since 03.09.2019, the IO SI Giriraj and the SHO concerned still failed to take appropriate action against the accused Ajay Kumar Thakur. As such, **a copy of this order be also sent to Learned DCP concerned for his information and necessary action through naib court of this court. Naib court of this court to file acknowledgement of the copy**

received by DCP concerned within two weeks. Further, a copy of this be also sent to Ilaka Magistrate of PS Kamla Market for his information.

Further, the arguments that ingredients of offence under section 364A IPC is not made out, do not have much force and in fact certain observation already made by my learned Predecessor vide order dated 03.09.2019. As such, having regard to the nature of offence, punishment prescribed for the same and role of the present accused, and the fact that his anticipatory bail was earlier rejected on 03.09.2019, this court is not inclined to grant relief prayed in the present application. **With these observations present application is dismissed.**

12. Copy of this order be given to applicant as well as a copy be sent to IO/SHO concerned through electronic mode.

  
(NAVEEN KUMAR KASHYAP)  
Additional Sessions Judge-04/Central  
Central Distt/Delhi  
23.12.2020

**BAIL APPLICATION NO.: 1979/2020**

**State v. Tarjit Singh Gambhir  
FIR No.: 206/2020  
PS: Rajinder Nagar**

**23.12.2020**

**This court is holding physically today as per directions.**

Present: Mr. Pawan Kumar, learned Addl.PP for State.  
Senior counsel Ms. Geeta Luthra with Sh. Ujjawal Jain,  
Ld. Counsel for applicant through VC.  
Sh. Damanpreet Singh, Ld. Counsel for complainant through  
VC.  
IO Soni Lal is present in person before court with case file.

Further arguments in detail heard.

It is stated by IO that section 109 IPC is added on 18.09.2020.

**Put up for orders at 4 pm tomorrow i.e. on 24.12.2020.**

**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/23.12.2020**

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**IN THE COURT OF SH. NAVEEN KUMAR KASHYAP,  
ADDITIONAL SESSIONS JUDGE 04, CENTRAL DISTRICT,  
TIS HAZARI, DELHI.**

**BAIL APPLICATION**

State v. Sunil Rathore  
FIR No. : 415/2015  
PS: Kotwali  
U/S: 395, 397, 365, 201, 412, 120B, 34 IPC &  
25, 54, 59 Arms Act

**23.12.2020**

Present Mr. Pawan Kumar, Ld. Addl. PP for the State.  
Sh. Ravinder Aggarwal, Ld. Counsel for accused through  
VC.

Further arguments already heard.

Vide this order, the regular bail application under section 439 Cr.P.C. on behalf of accused dated 09.10.2020 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 imprisoned during the period of his trial. The basic rule is to release him on bail unless there are circumstances suggesting the possibility of his fleeing from justice or thwarting the course of justice. When bail is refused, it is a restriction on personal liberty of the individual guaranteed by Article 21 of the Constitution.

Further it has been laid down from the earliest time that the object of Bail is to secure the appearance of the accused person at his trial by reasonable amount of Bail. The object of Bail is neither punitive nor preventive. Deprivation of liberty must be considered a punishment unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after convictions, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earlier times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial ,but in such case 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the constitution that any persons should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty under Article 21 of the Constitution upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste



of imprisonment as a lesson. While considering an application for bail either under Section 437 or 439 CrPC, the court should keep in view the principle that grant of bail is the rule and committal to jail an exception. Refusal of bail is a restriction on personal liberty of the individual guaranteed by Article 21 of the Constitution. Seriousness of the offence not to be treated as the only consideration in refusing bail : Seriousness of the offence should not to be treated as the only ground for refusal of bail. (Judgment of **Sanjay Chandra Vs. Central Bureau of Investigation, AIR 2012 SC 830** relied).

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

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

At this stage , it can also be fruitful to note that requirements for bail u/s 437 & 439 are different. Section 437 Cr.P.C. severally curtails the power of the Magistrate to grant bail in context of the commission of non-bailable offences punishable with death or imprisonment for life, the two higher Courts have only the procedural requirement of giving notice of the Bail application to the Public Prosecutor, which requirement is also ignorable if circumstances so demand. The regimes regulating the powers of the Magistrate on the one

hand and the two superior Courts are decidedly and intentionally not identical, but vitally and drastically dissimilar. (**Sundeep Kumar Bafna Vs. State of Maharashtra, AIR 2014 SC 1745** ).

Further at this stage it can be noted that interpreting the provisions of bail contained u/s 437 & 439 Cr.P.C., the Hon'ble Supreme Court in its various judgments has laid down various considerations for grant or refusal of bail to an accused in a non-bailable offence like, (i) Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) Nature of accusation and evidence therefor, (iii) Gravity of the offence and punishment which the conviction will entail, (iv) Reasonable possibility of securing presence of the accused at trial and danger of his absconding or fleeing if released on bail, (v) Character and behavior of the accused, (vi) Means, position and standing of the accused in the Society, (vii) Likelihood of the offence being repeated, (viii) Reasonable apprehension of the witnesses being tampered with, (ix) Danger, of course, of justice being thwarted by grant of bail, (x) Balance between the rights of the accused and the larger interest of the Society/State, (xi) Any other factor relevant and peculiar to the accused. (xii) While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, but if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. Furthermore, in the landmark judgment of **Gurucharan Singh and others v. State** (AIR 1978 SC 179), it was held that there is no hard and fast rule and no inflexible principle governing the exercise of such discretion by the courts. It was further held that there cannot be any inexorable formula in the matter of granting bail. It was further held that facts and circumstances of each case will govern the exercise of judicial discretion in granting or refusing bail. It was further held that such question depends upon a variety of circumstances, cumulative effect of which must enter into the judicial verdict. Such judgment itself mentioned the nature and seriousness of nature, and circumstances in which offences

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

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

In the present case, it is argued that accused is falsely implicated in the present case and he is in JC since 03.06.2015. That he was arrested based on disclosure statement made by one Chanderpal. Further, prosecution claimed that vehicle bearing no. DL1YC-8050 as well as 30.5 Kg of silver jewellery was recovered from his maternal uncle house at MP. That no document filed on record that IO ever visited at MP to recover such case property. That no documents relating to articles arrived through goods train like booking challan, delivery challan etc of railway filed on record. It is further argued that in fact the story of prosecution is concocted. As such, no documents are filed on record. That present accused was not even put for TIP. That present trial is going on since 2016. That there is a delay in trial due to this pandemic condition. That earlier he was granted interim bail and he duly surrendered after availing the same. As such, it is further argued that present applicant was not even present at the place of incident. Present accused was arrested after thirty days of alleged incident. That alleged vehicle was never owned by the present accused. In fact, later on such vehicle was released to one Chhote Lal. That he has roots in the society.

Further, learned counsel relied upon certain case laws in support of bail application including regarding speedy trial. Further, learned counsel filed brief written synopsis in support of his arguments, including regarding goods booking and bills related thereto.

On the other hand, it is argued by the learned Addl.PP for the state that his regular bail applications are already rejected 4-5 times including 24.07.2018. That even during lock-down his interim bail application was dismissed time and again. Further, the vehicle used in crime belonged to present accused. It is further argued that since dismissal of last bail application, there is no material change in the circumstances. That material public witnesses are yet to be examined. As such, it is prayed that present bail application be dismissed.

I find force in the arguments of learned Addl.PP for the state. The offence is serious in nature and is nuisance to public at large. There is hardly any change in circumstance except lapse of more time since dismissal of his last regular bail application. Further, more importantly public witnesses evidence is not yet over. Therefore, having regard to the nature of offence, role assigned to the present accused and the stage of trial, this court do not find sufficient reasons to enlarge present accused on bail in the present case. **With these observations, present application is dismissed.**

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

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

(Naveen Kumar Kashyap)  
Additional Sessions Judge-04  
Central/THC/Delhi  
23.12.2020

: 1 :  
**IN THE COURT OF SH. NAVEEN KUMAR KASHYAP**  
**ADDITIONAL SESSIONS JUDGE-04: CENTRAL:**  
**TIS HAZARI COURTS: DELHI**

**State Vs Imran @ Akhtar Khan & others**  
**(Regular Bail of accused Vishal @ Honey s/o Raj Kumar)**  
**FIR No.227/2020**  
**P. S. Wazirabad**  
**U/s: 302, 120B, 34 IPC & 27, 54, 59 Arms Act**

**23/12/2020**

Present: Mr. Pawan Kumar, Learned Addl. PP for State.  
Mr. Rajesh Rathore, learned LAC counsel for accused.  
IO Inspector P.C. Yadav in person with case file.

Vide this order, bail applications u/s 439 Cr.PC filed by applicant Vishal @ Honey s/o Raj Kumar through counsel is disposed off.

It is stated in the application that he is in JC since 05/06/2020; that he is young boy of 21 years old; that his father is suffering from HIV and his mother is suffering from kidney failure; that his brother is unemployed and alcoholic and there is no one in family to take care of the ailing parents. That there is no legally sustainable incriminating material against the present accused. That apart from the statement of PW5 Ashish Kumar, that present accused alongwith Rahul borrowed his motorcycle and that such motorcycle is claimed to be seen in CCTV cameras being used by some other co-accused. That disclosure statement of this accused / co-accused cannot be read against the present accused. That he is not the accused even as per the prosecution case who fired at the deceased nor he accompanied such four assailants at the spot of incident. That nothing incriminating is recovered from such applicant or at his instance. That as per the case of prosecution, he did not use the bike in question at the time of incident but it is some other co-accused who used the same. That he has roots in the society and there is no question of tempering the evidence and threaten the witness. As such, it is prayed that he be granted regular bail.

On the other hand, in reply dated filed by the IO, as also argued by learned Addl.PP for the State it is stated that present accused actively participated in the conspiracy in question which resulted in the murder of the victim. That

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During the course of investigation present accused was arrested on 05/06/2020 and he disclosed that he hatched the conspiracy at the instance of his friend / co-accused Hari Kishan. That he provided the motorcycle used in the crime to co-accused Rahul @ Badi Ankh. That he even went alongwith four assailants. But at the end moment he was not taken at the spot of incident by the co-accused. That he was well aware about the offence in question. It is further argued that there is other criminal case u/s 325/341 IPC FIR No. 249/2018 PS Ambedkar Nagar. That such motorcycle is shown in cctv footage near the place of incident. That offence is very serious in nature. That he may threaten or pressurize the witness. As such, present bail application is strongly opposed.

I have heard both the sides.

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

Further it has been laid down from the earliest time that the object of Bail is to secure the appearance of the accused person at his trial by reasonable amount of Bail. The object of Bail is neither punitive nor preventive. Deprivation

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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

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sequences are bound to follow.

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

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

Further at this stage it can be noted that interpreting the provisions of bail contained u/s 437 & 439 Cr.P.C., the Hon'ble Supreme Court in its various judgments has laid down various considerations for grant or refusal of bail to an accused in a non-bailable offence like, (i) Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) Nature of accusation and evidence therefor, (iii) Gravity of the offence and punishment which the conviction will entail, (iv) Reasonable possibility of securing presence of the accused at trial and danger of his absconding or fleeing if released on bail, (v) Character and behavior of the accused, (vi) Means, position and standing of the accused in the Society, (vii) Likelihood of the offence being repeated, (viii) Reasonable apprehension of the witnesses being tampered with, (ix) Danger, of course, of justice being thwarted by grant of bail, (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



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

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

In the present case, bare reading of chargesheet, it is clear that there are disclosure statement of present accused and co-accused after registration of FIR and in such disclosure statement / which of course is not legally admissibly because of bar of section 24 to 26 of Indian Evidence Act. Thus, as far as present accused is concerned, there is statement of PW5 that present accused alongwith co-accused Rahul borrowed his motorcycle and as per the prosecution such motorcycle is ultimately used in the offence in question. But the disclosure statement by present accused / applicant that he himself wanted to go alongwith co-accused for committing the offence in question but co-accused Hari Kishan

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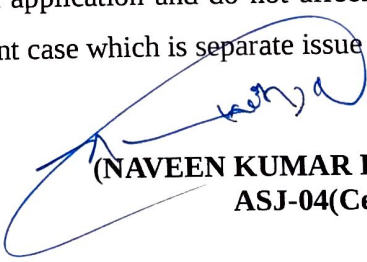
not take him for committing such crime is not legally admissible at all. Further, he is not one of the assailants who actually committed the offence, even as per the prosecution story. Thus, having regard to the nature of legally sustainable evidence against the present accused, role assigned to present accused, such accused is granted bail subject to furnishing of **personal bond in the sum of Rs. 15,000/- (each) with two sound sureties of like amount**, subject to the satisfaction of the learned Trial court and the following additional conditions:

- i) That he will appear before IO / Trial Court as and when called as per law.*
- ii) He will not indulge in any kind of activities which are alleged against him in the present case.*
- iii) That he will not leave India without prior permission of the Trial Court concerned.*
- iv) He will not threaten the witness or tampering with evidence.*
- v) He shall convey any change of address immediately to the IO and the court;*

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

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

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

  
(NAVEEN KUMAR KASHYAP)  
ASJ-04(Central/Delhi)  
23.12.2020