BAIL APPLICATION

FIR No. :185/2019
PS:Jama Masjid
STATE v.Tanveer Ahmed
U/S: 308, 324, 506, 34 IPC

15.07.2020.

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

Reply for cancellation of bail filed by ASI Narender.

Today again learned counsel for the accused could not be contacted for hearing through webex.

As such, put up for further proceedings / appropriate orders for **05/08/2020**.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
15.07.2020

BAIL APPLICATION

State V. Raghav Jha
FIR No. : 339/2016
PS.: Darya Ganj
U.S: 392,397,34 IPC

15.07.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Sh. Pankaj Srivastava, Ld. counsel for accused/ applicant through VC.

Part arguments heard.

At request, **Put up for further arguments and appropriate orders with file on 16.07.2020.**

In the meanwhile, learned counsel is at liberty to file on record any judgment/document through electronic mode at the e-mail ID *asj04.central@gmail.com*.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
15.07.2020

BAIL APPLICATION

State V. Rahul Gupta
FIR No. : 210/2018
PS.: Prashad Nagar
U.S: 302,34 IPC

15.07.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Sh. Pankaj Srivastava, Ld. counsel for accused/ applicant through VC.

Part arguments heard.

At request, **Put up for further arguments and appropriate orders with file on 16.07.2020.**

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
15.07.2020

BAIL APPLICATION

State V. Rahul
FIR No. : 170/20
PS.: Nabi Karim
U.S: 392,397,34 IPC

15.07.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Sh. P.K. Garg, Ld. counsel for accused/ applicant through VC.

Heard.

Put up for reply, arguments and appropriate orders on 18.07.2020.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
15.07.2020

EXTENSION OF INTERIM BAIL APPLICATION

State Vs Vishal @ Mukul s/o Mr. Kamal
FIR No. 361/2019
PS.: Kotwali
U.S: 392, 411, 120B, 34 IPC

15.07.2020
Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Mr. Rajesh Kumar , learned counsel for accused through VC / electronic mode.

1. Arguments heard in detail from both sides regarding extension of interim bail for the present accused for another 45 days.

2. In nutshell, it is submitted on behalf of the accused that she was granted interim bail vide order dated 22/04/2020 for 45 days by Learned ASJ-02 Mr. Satish Kumar Central District; it is further submitted that vide order dated. Further vide order dated 02/06/2020 such interim bail was extended for another period of 45 days by learned ASJ. Today it is argued that such interim be further extended in view of the judgments by Hon'ble High Court and Hon'ble Supreme Court and further having regard to relaxed interim bail criteria prescribed by Hon'ble High Court. As such, it is prayed that his interim bail be further extended in the present case for another 45 days.

3. On the other hand present application for extension is strongly opposed by the prosecution. It is further stated by the learned Addl.PP for the State that on one ground or the other he is seeking extension of interim bail. Whereas originally he has filed application for regular bail which is still pending. It is further stated that earlier he was granted interim bail on merit and not based on criteria of Hon'ble High Court and he has already availed the same.

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

including earlier interim bail order.

5. On a bare reading of such order, it is clear that such interim bail was ***not granted in terms of*** criteria of High Power Committee of Hon'ble High Court of Delhi regarding relaxed condition read with judgment of Shobha Gupta Vs Union of India, but on merit on the facts of the present case.

6. In fact, having regard to the offences involved in the present case against the accused i.e. 392 IPC etc., same are discussed in minutes of meeting dated 07/04/2020. One of the condition laid down for relaxed interim bail was that accused should be in JC for one year or more. In present case when he was released on interim bail, he was in JC since 29/11/2019 only i.e. less than one year. As such, he does not even fall in the relaxed interim bail criteria dated 07/04/2020. As such, it is clear that the concession of interim bail granted by the court to him so far was on merit / facts of the case only.

7. It may further be specifically noted that the case of the present accused is not covered by the order of Hon'ble High Court of Delhi in its Division Bench order dated 22.06.2020 in W.P.(C) 3080/2020 titled as "Court on its own motion v. Govt. of NCT of Delhi & Anr., as it is clear from a bare reading of such order that *the same is applicable only to the interim bail granted under the relaxed criteria for interim bail given by Hon'ble High Court.* In fact admittedly accused is involved in another criminal case.

8. Likewise, it may further be specifically noted that the case of the present accused is not covered even by the order of Hon'ble High Court of Delhi in its full bench order dated 15.06.2020 in W.P.(C) 3037/2020 titled as "Court on its own motion v. state & Ors. in re. *Extension of Interim Orders, as such order is applicable only to the extension of interim bail / stay granted before lockdown during regular hearing by court concerned. Same is not the case of the present accused. Thus, so far even extension of such accused was not just*

based on criteria of Hon'ble High Court but on merit only.

9. Further, for reasons stated in interim bail application, the accused is already granted and enjoyed liberty of interim bail and even extension of the same. No further leniency is required in the considered view of this court. As such, having regard to the nature of the case and he has already given opportunity to avail interim bail and same was even extended, this court is not inclined to extend the same. **With these observations, his prayer for interim bail is rejected. He is directed to surrender to Jail Superintendent concerned after the expiry of interim bail granted earlier.**

10. Further, it appears that his regular bail application dated 27/02/2020 is still pending. Put up for reply, arguments and order on the same for **24/07/2020**. **As such, issue notice to IO accordingly.**

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

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
15.07.2020

SC No.: 28098/2016
State v. Shiv Prasad @Amit etc.
FIR no. 298/2012
PS: Sarai Rohilla

15.07.2020

File taken up today in terms of order No. Endst. No. 1734-66/DHC/2020 dated 27.06.2020 r/w other earlier order passed in this regard as mentioned in this order itself.

Present: **Sh. Pawan Kumar, Ld. Addl. PP for the State/ revisionist through VC.**
Sh. Heman Chaudhary, Ld. Counsel for all four accused.
(All the four accused are stated to be on bail).

This court is also discharging emergency Roster bail duty since 20.05.2020 and on an average hearing 15-20 matters through VC.

This case is pending at the stage of final arguments. As such, same is proposed to be taken up today for hearing.

As per the report of Reader of this court, counsel for accused persons submitted that there is one another matter which is a cross case of the present case and same is listed for today titled as "State v. Mohan Kumar @ Nirmal Kumar etc.FIR no. 299/2012 PS Sarai Rohilla" for prosecution evidence. He further submitted that he will argue in the present matter once the evidence is concluded in that matter.

As such, matter could not be proceeded further on merits.

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

Put up for purpose fixed/arguments on 15.09.2020.

(Naveen Kumar Kashyap)
ASJ-04/Central/15.07.2020

Crl. Revision : 286/2019
Love Kumar @ Rahul v. State

15.07.2020

File taken up today in terms of order No. Endst. No. 1734-66/DHC/2020 dated 27.06.2020 r/w other earlier order passed in this regard as mentioned in this order itself.

Present: **Sh. Satinder Singh Jaura, learned counsel for Revisionist through electronic mode(mobile no. 9999632987)**
Sh. Pawan Kumar, Ld. Addl. PP for the State/ revisionist through VC.

This court is alsc discharging emergency Roster bail duty since 20.05.2020 and on an average hearing 15-20 matters through VC.

This case is pending at the stage of final arguments. As such, same is proposed to be taken up today for hearing.

As per the report of Reader of this court, when contacted Sh. Satinder Singh Jaura on his mobile phone, he submitted that case file is not with him and same is lying in his chamber and requested for next date.

As such, matter could not be proceeded further on merits.

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

Put up for purpose fixed/arguments on 15.09.2020.

(Naveen Kumar Kashyap)
ASJ-04/Central/15.07.2020

Crl. Revision : 199/2019
Naresh Kumar @ Tau v. state

15.07.2020

File taken up today in terms of order No. Endst. No. 1734-66/DHC/2020 dated 27.06.2020 r/w other earlier order passed in this regard as mentioned in this order itself.

Present: **Sh. Shitez Sharma, learned counsel for Revisionist through electronic mode(mobile no. 9811912364)**
Sh. Pawan Kumar, Ld. Addl. PP for the State/ revisionist through VC.

This court is also discharging emergency Roster bail duty since 20.05.2020 and on an average hearing 15-20 matters through VC.

This case is pending at the stage of final arguments. As such, same is proposed to be taken up today for hearing.

As per the report of Reader of this court, when contacted counsel for revisionist, on his mobile phone, he submitted that case file is not with him and he is out of station and requested for next date.

As such, matter could not be proceeded further on merits.

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

Put up for purpose fixed/arguments on 15.09.2020.

(Naveen Kumar Kashyap)
ASJ-04/Central/15.07.2020

Crl. Appeal: 35/2020
Neeraj v. State

15.07.2020

File taken up today in terms of order No. Endst. No. 1734-66/DHC/2020 dated 27.06.2020 r/w other earlier order passed in this regard as mentioned in this order itself.

Present: **Sh. Moinuddin Mondal, learned counsel for Appellant through electronic mode(mobile no. 9582627858)**
Sh. Pawan Kumar, Ld. Addl. PP for the State/ revisionist through VC.

This court is also discharging emergency Roster bail duty since 20.05.2020 and on an average hearing 15-20 matters through VC.

This case is pending at the stage of final arguments. As such, same is proposed to be taken up today for hearing.

As per the report of Reader of this court, when contacted counsel for Appellant on his mobile phone, same was switched off.

As such, matter could not be proceeded further on merits.

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

Put up for purpose fixed/arguments on 15.09.2020.

(Naveen Kumar Kashyap)
ASJ-04/Central/15.07.2020

SC No.:27799/2016
State v. Kailash Kumar etc.
FIR no. 69/2012
PS: Sarai Rohilla

15.07.2020

File taken up today in terms of order No. Endst. No. 1734-66/DHC/2020 dated 27.06.2020 r/w other earlier order passed in this regard as mentioned in this order itself.

Present: **Sh. Pawan Kumar, Ld. Addl. PP for the State/ revisionist through VC.**
Sh. Hemant Chaudhary, Ld. Counsel for both accused.
(Both accused are stated to be on bail).

This court is also discharging emergency Roster bail duty since 20.05.2020 and on an average hearing 15-20 matters through VC.

This case is pending at the stage of final arguments. As such, same is proposed to be taken up today for hearing.

As per the report of Reader of this court, counsel for accused persons submitted that there is one another matter which is related with the present case and same is listed for today titled as "State v. Mohan Kumar @ Nirmal Kumar etc.FIR no. 299/2012 PS Sarai Rohilla" for prosecution evidence. He further submitted that he will argue in the present matter once the evidence is concluded in that matter.

As such, matter could not be proceeded further on merits.

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

Put up for purpose fixed/arguments on 15.09.2020.

(Naveen Kumar Kashyap)
ASJ-04/Central/15.07.2020

Bail Application

State Vs. Shadab @ Dabdi s/o Shehzad Ahmed
FIR No. : 51/2018
PS: Kotwali
U/S: 392, 394, 411, 34 IPC

15.07.2020

Present: Mr. Manoj Garg,Ld. Addl. PP for the State through VC
Mr. N.K.Dhama, learned Counsel from for Accused through VC.

Vide this order, the regular bail application under section 439 Cr.P.C. on behalf of accused dated 08/07/2020 filed through counsel is disposed of.

I have heard both the sides and have gone through the Trial Court 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 form 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 he is in JC since 14/03/2018; that he is no more required for the purpose of investigation; that present case is falsely planted upon him; charge is already framed; that there is outbreak of corona virus; that he is not a previous convict or habitual offender; that he was arrested in the present case as formal arrest only; that there is no TIP by the IO conducted; that one of the co-accused is on bail; that trial is likely to take time. As such, it is prayed that he be granted regular bail.

On the other hand, it is argued by the learned Addl.PP for the state that there are serious and specific allegations against the present accused; he has been identified in the court by the victim / PW1; that regular bail of co-accused Zishan is rejected twice including on 07/03/2020.

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 are specific and serious allegations against the accused.

Present accused is identified by the victim in his evidence in court also. The offence alleged against accused is punishable upto imprisonment for life. As such, this court is not inclined to grant the relief as sought in the present application. Hence, the same is dismissed. Trial Court record be sent back.

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

(Naveen Kumar Kashyap)
Additional Sessions Judge-04
Central/THC/Delhi
15/07/2020

EXTENSION OF INTERIM BAIL APPLICATION

State Vs Vipin Sharma @ Vipin Kumar Sharma
s/o Late Mr. Rajender
FIR No. 213/2018
PS.: Lahori Gate
U.S: 395, 412, 120B, 34 IPC

15.07.2020
Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Mr. Ravi Kaushal, learned counsel for accused through VC.

1. Vide this order, application dated 13.07.2020 filed by accused through counsel for extension of interim bail for 45 days is disposed of.

2. Arguments heard in detail from both sides. Further trial court record perused.

3. In nutshell, it is submitted on behalf of the accused that he was in judicial custody for about 1 & ½ year before he was released on interim bail in the present case; that there is no specific role of the applicant mentioned by the complainant at the time of registration of FIR; that his father has suddenly expired on 24/05/2020; that he was granted interim bail for 15 days and was released on 06/06/2020; that due to sudden death of father, his mother suffered mental trauma and facing complicated typhoid fever and advised bed rest till 02/07/2020. As such he applied for extension of interim bail and vide order dated 19/06/2020, he was granted interim bail for further 45 days and thereafter, his interim bail was extended till 15/07/2020; that his mother is old and requires his presence. As such, it is prayed that he be granted another extension of 45 days. He has roots in society and ready to abide any condition that is imposed by this court.

4. On the other hand present application for extension is strongly opposed by the prosecution. It is further stated by the learned

Addl.PP for the State that on one ground or the other they are seeking extension of interim bail. It is further stated that earlier he was granted interim bail on merit and not based on criteria of Hon'ble High Court and he has already availed the same.

5. I have heard both the sides and gone through the record, including earlier interim bail order.

6. On a bare reading of such interim bail orders, it is clear that such interim bail was ***not granted in terms of*** criteria of High Power Committee of Hon'ble High Court of Delhi regarding relaxed condition read with judgment of Shobha Gupta Vs Union of India, but on merit on the facts of the present case.

7. In fact, having regard to the offences involved in the present case against the accused i.e. 395, 412, 392 IPC etc., same are discussed in minutes of meeting dated 18/04/2020. One of the condition laid down for relaxed interim bail was that accused should himself be suffering from certain illness as mentioned in such minutes of meeting dated 18/04/2020. Admittedly, this is not the case of the present accused that he himself is suffering from any illness at all. As such, he does not even fall in the relaxed interim bail criteria dated 18/04/2020. As such, it is clear that the concession of interim bail granted by the court to him so far was on merit / facts of the case only.

8. It may further be specifically noted that the case of the present accused is not covered by the order of Hon'ble High Court of Delhi in its Division Bench order dated 22.06.2020 in W.P.(C) 3080/2020 titled as "Court on its own motion v. Govt. of NCT of Delhi & Anr., as it is clear from a bare reading of such order that *the same is applicable only to the interim bail granted under the relaxed criteria for interim bail given by Hon'ble High Court*. In fact admittedly accused is involved in another criminal case.

9. Likewise, it may further be specifically noted that the case of the present accused is not covered even by the order of Hon'ble High

Court of Delhi in its full bench order dated 15.06.2020 in W.P.(C) 3037/2020 titled as "Court on its own motion v. state & Ors. in re. *Extension of Interim Orders, as such order is applicable only to the extension of interim bail / stay granted before lockdown during regular hearing by court concerned. Same is not the case of the present accused. Thus, so far even extension of such accused was not just based on criteria of Hon'ble High Court but on merit only.*

10. Further, for reasons stated in interim bail application, the accused is already granted and enjoyed liberty of interim bail and even extension of the same. No further leniency is required in the considered view of this court. As such, having regard to the nature of the case and he has already given opportunity to avail interim bail and same was even extended, this court is not inclined to extend the same. **With these observations, his prayer for interim bail is rejected. He is directed to surrender to Jail Superintendent concerned after the expiry of interim bail granted so far.**

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

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
15.07.2020

EXTENSION OF INTERIM BAIL APPLICATION

SC No.: 17/17
State Vs Noori w/o Nural
FIR No. 339/2016
PS.: Darya Ganj
U.S: 395, 397, 412, 120B, 34 IPC

15.07.2020
Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Mr. Sudarshan Singh, learned counsel for accused through VC.

1. Vide this order, application dated 13.07.2020 filed by accused through counsel for extension of interim bail for 45 days is disposed of.

2. Arguments heard in detail from both sides. Further trial court record perused.

3. In nutshell, it is submitted on behalf of the accused that she is an innocent and victim of false implication; that she was granted interim bail on 23/05/2020 for a period of 30 days by Ms. Neelofer Abida Praveen, learned ASJ, Delhi; that same was extended on 23/06/2020; that she has not misused the liberty in any way and supposed to surrender in Jail on 15/07/2020; it is stated that the case is at the stage of prosecution evidence; that she is having two minor children of 9 & 14 years old; there is nobody to look after them; her husband is also in judicial custody in another matter at Dasna Jail; that her son is suffering from liver infection; As such, it is prayed that he be granted another extension of 45 days.

4. On the other hand present application for extension is strongly opposed by the prosecution. It is further stated by the learned Addl.PP for the State that on one ground or the other she is seeking extension of interim bail. It is further stated that earlier she was granted interim bail on merit and not based on criteria of Hon'ble High Court and

he has already availed the same.

5. I have heard both the sides and gone through the record, including earlier interim bail order.

6. On a bare reading of such interim bail orders, it is clear that such interim bail was ***not granted in terms of*** criteria of High Power Committee of Hon'ble High Court of Delhi regarding relaxed condition read with judgment of Shobha Gupta Vs Union of India, but on merit on the facts of the present case.

7. In fact, having regard to the offences involved in the present case against the accused i.e. 395, 412, IPC etc., same are discussed in minutes of meeting dated 18/04/2020. One of the condition laid down for relaxed interim bail was that accused should himself be suffering from certain illness as mentioned in such minutes of meeting dated 18/04/2020. Admittedly this is not the case of the present accused that she herself is suffering from any illness at all. As such, she does not even fall in the relaxed interim bail criteria dated 18/04/2020. As such, it is clear that the concession of interim bail granted by the court to her so far was on merit / facts of the case only.

8. It may further be specifically noted that the case of the present accused is not covered by the order of Hon'ble High Court of Delhi in its Division Bench order dated 22.06.2020 in W.P.(C) 3080/2020 titled as "Court on its own motion v. Govt. of NCT of Delhi & Anr., as it is clear from a bare reading of such order that *the same is applicable only to the interim bail granted under the relaxed criteria for interim bail given by Hon'ble High Court.* In fact admittedly accused is involved in another criminal case.

9. Likewise, it may further be specifically noted that the case of the present accused is not covered even by the order of Hon'ble High Court of Delhi in its full bench order dated 15.06.2020 in W.P.(C) 3037/2020 titled as "Court on its own motion v. state & Ors. in re. *Extension of Interim Orders, as such order is applicable only to the*

extension of interim bail / stay granted before lockdown during regular hearing by court concerned. Same is not the case of the present accused. Thus, so far even extension of such accused was not just based on criteria of Hon'ble High Court but on merit only.

10. Further, for reasons stated in interim bail application, the accused is already granted and enjoyed liberty of interim bail and even extension of the same. No further leniency is required in the considered view of this court. As such, having regard to the nature of the case and she has already given opportunity to avail interim bail and same was even extended, this court is not inclined to extend the same. **With these observations, her prayer for interim bail is rejected. She is directed to surrender to Jail Superintendent concerned accordingly.**

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

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
15.07.2020

ANTICIPATORY BAIL APPLICATION

State v. Sachin Tyagi S/o Late Chaman Lal Tyagi
FIR No.: Not known
PS: Paharganj
U/s: Not disclosed

15.07.2020.

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Sh. Manoj Sharma, Learned counsel for applicant / accused through VC.
Accused Sachin Tyagi through VC.

1. Vide this order, present bail application u/s 438 Cr.PC filed on 07.07.2020 for anticipatory bail by accused / applicant Sachin Tyagi is disposed of.

2. In nutshell, it is stated by the accused side that present applicant is having family relationship with one Laxmi Chahar, that such Laxmi Chahar was deserted by her husband and such husband is living separately alongwith her children Khushboo Chahar and Nikhil Chahar. On the intervening night of 17-18/04/2020 Ms. Khushboo Chahar, daughter and Nikhil Chahar left the residence of the applicant at the instigation of their father Ravi Chahar. The daughter has threaten applicant and Laxmi Chahar regarding false implication in criminal case. It is further stated that such daughter Khushboo Chahar has made some false complaint against the present applicant and Laxmi Chahar . It is further stated that police officials had come to the residence of Laxmi Chahar in her absence and neighbour told that there is some non bailable offence alleged against the

applicant and there is imminent danger of his and Laxmi Chahar arrest. It is further stated that Laxmi Chahar already moved an application for anticipatory bail and certain order was passed by this court in such anticipatory bail application of Laxmi Chahar on 30.06.2020. It is further stated that he is ready to cooperate with investigation as well as with IO/SHO concerned. As such, he has filed present application seeking prayer that IO/SHO be directed to release the applicant on bail in the event of arrest.

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

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

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

6. A judgment which needs to be pointed out is a Constitution Bench Judgment of this Court in the case Gurbaksh Singh Sibbia and Other vs. State of Punjab(1980 AIR 1632 ;

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

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

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

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

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

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

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

8. It is pertinent to note that while interpreting the expression

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

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

> "1. .....This appeal involves issues of great public importance pertaining to the importance of individual's personal liberty and the society's interest. Society has a vital interest in grant or refusal of bail because every criminal offence is the offence against

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

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

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

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

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

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

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

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

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

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

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

limitations.

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

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

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

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

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

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

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

(f) Impact of grant of anticipatory bail particularly in cases

of large magnitude affecting a very large number of people;

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

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

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

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

11. Now in this background of law we come back to present

case . It is already been highlighted above that it appears that some cross-complaints made by the present applicant's friend Mrs. Laxmi Chahar and her children against each other . And it is stated by ASI Vijay Shankar in reply filed in present application ,which is forward by concerned SHO that ***inquiry of above complaints are pending.*** Thus so far no FIR is registered against the present accused. It may be noted although regostration of FIR is not a pre condition to apply for bail under section 438 CR.P.C. ,but it is also the law that usually registration of FIR u/s 154 Cr.P.C. is pre-condition for **investigation** as per the Cr.PC. **In any case, it appears that concerned police officials have developed their own procedures , *which is in disregard to the provision of Cr.P.C. including 154 Cr.P.C. and the judgment of Hon'ble S.C. Lalita Kumar vs. State of UP (AIR 2014 SC 187).*** Further having regard to facts and circumstances of present case in any case there does not , under these circumstances appoears to be reasonable apprehension of arrest . As such, no ground is made out to grant the relief sought in the present application Under these circumstances having regard to the nature of allegations and material on record, this court is not inclined to grant anticipatory bail to the applicant as prayed for. **With these observations present application is dismissed.**

12. But in view of the stand taken by the concerned police officers that they are still inquiring into the complaint made by parties, before parting at this stage, it would also be fruitful to mention the case of **Prakash Singh Badal and Anr. v State of Punjab** and Ors., (2007) 1 SCC 1,. Hon'ble SC made the

following observation of the Hob'ble S.C :

".....70. The next key question that arises for consideration is whether the registration of a criminal case under Section 154(1) of the Code ipso facto warrants the setting in motion of an investigation under Chapter XII of the Code.

71. Section 157(1) requires an Officer Incharge of a Police Station who 'from information received or otherwise' has reason to suspect the commission of an offence that is a cognizable offence which he is empowered to investigate under Section 156, to forthwith send a report to a Magistrate empowered to take cognizance of such offence upon a police report and to either proceed in person or depute any one of his subordinate Officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed to the spot, to investigate the facts and circumstances of the case and if necessary, to take measures for the discovery and arrest of the offender. This provision is qualified by a proviso which is in two parts (a) and (b). As per Clause (a) the Officer Incharge of a Police Station need not proceed in person or depute a subordinate officer to make an investigation on the spot if the information as to the commission of any such offence is given against any person by name and the case is not of a serious nature. According to Clause (b), if it appears to the Officer Incharge of a Police Station that there is no sufficient ground for entering on an investigation, he shall

not investigate the case. Subsection (2) of Section 157 demands that in each of the cases mentioned in Clauses (a) and (b) of the proviso to Subsection (1) of Section 157, the Officer Incharge of the Police Station must state in his report, required to be forwarded to the Magistrate his reasons for not fully complying with the requirements of Subsection (1) and when the police officer decides not to investigate the case for the reasons mentioned in Clause (b) of the proviso, he in addition to his report to the Magistrate, must forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause the case to be investigated. Section 156(1) which is to be read in conjunction with Section 157(1) states that any Officer Incharge of a Police Station may without an order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of the concerned police station would have power to enquire into or try under provisions of Chapter XIII. Section 156(3) vests a discretionary power on a Magistrate empowered under Section 190 to order an investigation by a police officer as contemplated in Section 156(1). ....."

13. Further ,in case the police officer concerned is so certain that the complainant has made a false complaint against an innocent-accused, even then the better way would be to register the FIR (which is legally sustainable too) on the basis of so called false-complaint and then :

i) police officer concerned can excised his power u/s 157(1)Cr.P.C. of not to proceed with investigate and intimate the same to original complainant and rest.

ii) better still , police officer concerned can carry out investigation on priority basis within a short span of time. Then he can give a final cancellation report in the matter *coupled with* action proposed against the original complaint u/s 182/211 IPC etc.

13.1. This way he can set a good and legally sustainable example and at the same time deter false complainants effectively.

13.2. But most of the time none of such option is excised by the concerned police officers. This only indicates that the real reason for non-registration of FIR is not to save the so called innocent-accused from the misery of facing false criminal accusations, but something else.

14. Another aspect is that even if, for the sake of argument, it is assumed that concerned police officer did a great service to law by not registering a FIR on the basis of so called false and motivated complaint, still what is the guarantee that it would be the end of the matter. What is the guarantee that such unscrupulous complainant will not approach the higher police officers u/s 154(3) Cr.P.C. and/or the court u/s 156(3) of Cr.P.C. Thus adding burden on higher police officers and/or on courts in terms of times and resources.

14.1. On the contrary, what about a genuine-complainant whose true complaint is not even registered by the police officer ,just because in the opinion of such police officer the same is false/baseless or because of some ulterior motive on the part of police officer.

Why such genuine-complainant should suffer and take recourse to the higher officers u/s 154(3) of Cr.P.C. or the court u/s 156(3) of Cr.P.C. Furthermore such forced extended legal process, may be at the cost of every citizen's right to recourse to lawful authority and timely redressal of his grievances.

15. What if such genuine-complainant suffers because of such inaction on the part of police officers. Who would be responsible in such a case. To take a simple and usual example : a complaint is made by "Mr.A" that "Mr.B" and others entered into his house and attacked him ."Mr.A" further complain that such accused persons have threaten him that if a complaint is made to police then they will again attack "Mr. A". But police did not register the FIR. Thereafter "Mr.B" and others again carry out a deadly attack on "Mr. A" and "Mr. A" dies or receive grievous injuries.

Such complaints are not uncommon. Some may be false ,others may be true. But the question remains the same i.e. what if the complaint was true, but police refuse to register and complainant suffered as a result thereof?

16. There can be another fundamental issue. What if, being denied a legal remedy i.e. timely registration and consequent police action, the people start taking law in their own hands or

employ illegal means, for getting redressal of their claims. Such instances are real and not uncommon and same are on the rise. Further instances are a great cause of concern and threat to the very existence & relevance of law of the land.

16.1. Further, looking at the present issue from the point of view of "social contract theory" between the state and its subjects, it appear that there is breach, or at least reluctance, on the part of the state (through its instrumentality of police agency) in performing its part of the contract i.e. to give timely and effective redressal to the criminal complaints of its subjects.

As a consequence subjects may breach their part of the contract. They may taking law in their own hand, approaching extra-legal agency (e.g. land mafia, naxalites etc.) or legal agency by illegal means (e.g. bribe, "approach" etc.). All this is because they are not very hopeful that their complaint would be redressed timely or even be heard by state agency.

17. Further can a police officer claim that he has divine/magical powers, so that just by having a glance on various complaints made to him, he can differentiate between true and false complaints.

18. Further at this stage it would be relevant to mention that it is a misconception that the registration of an FIR must necessarily lead to an arrest of the suspect of the crime as it entirely depends on each case. There may be cases where the arrest of the accused maybe essential and others where the police may require more incriminating evidence for apprehending the accused. It is thus a settled law that mere registration of an

FIR in every case may not result into arrest of a person accused of the offence. It would be useful to refer here to the pronouncement of the Apex Court in **Siddharam Satlingappa Mhetre Vs. State of Maharashtra** [(2011) 1 SCC 694] where while laying down parameters for anticipatory bail the court regarding arrest held that:

> "129. In case the arrest is imperative, according to the facts of the case, in that event, the arresting officer must clearly record the reasons for the arrest of the accused before the arrest in the case diary, but in exceptional cases where it becomes imperative to arrest the accused immediately, the reasons be recorded in the case diary immediately after the arrest is made without loss of any time so that the court has an opportunity to properly consider the case for grant or refusal of bail in the light of reasons recorded by the arresting officer."

18.1. Hence, in the given facts of the case, the police can always postpone the arrest of the person accused unless it is prima facie satisfied that the accused named in the complaint or the accused/suspect of a crime under the given circumstances cannot at all be involved in the commission of the crime or in a case where prompt action to arrest if not taken will result in jeopardizing or sabotaging the course of investigation. But certainly the police cannot postpone the registration of an FIR where the information laid by the complainant before it clearly discloses commission of a cognizable offence.

18.2. Further the recent amended sections 41(1)(b) and 41A of Cr.P.C. give sufficient power and guidelines to the police for the arrest/non arrest of accused.

18.3 Further, Hon'ble Supreme Court in the case of "**Arnesh Kumar v. State of Bihar and Others**, in *Criminal Appeal No. 1277 of 2014@Special Leave Petition(CRL) No. 9127* of 2013), passed certain direcitons relating to arrest/not arrest in offences punishable upto seven years.

19. Coming back to main issue, there can be many reasons for non-registration of FIR in a given case like:

(i) no offence of the nature as referred in section 154 (1) Cr.P.C is made out ,

(ii) to keep the crime graph on lower side,

(iii) by the accused persons have unduly influenced the police, or

(iv) police is unaware about the provision of law.

(v) police does not want workload .

In case of the first possibility i.e.no cognizable offence is made out on the basis of complaint made, then it is correct to refuse registration of FIR .

But as far as the other grounds are concerned the same cannot be allowed to be taken by the police at all.

20. Further, everyone relating to legal field including the police officials know (or atleast suppose to know) that in relation to

same transaction there can be civil dispute as well as a criminal offence. Just because a civil dispute is pending does not mean that there can not be a criminal offence also. It depends on the facts of each case.

21. Another argument for non-registration of FIR is that just by cooking up some story of cognizable offence nature, criminal proceedings can be launched by unscrupulous complainants with the help of their legal advisors.

At first glance such contention appear pragmatic, convincing and appears to be based on ground reality.

It can not be denied that in a given case, the allegation in the complaint can be totally/partially baseless and false. In a given case the complainant may also rope in innocent persons as accused.

But isn't it already observed above that credibility of information is not a ground for refusal to register a FIR?

Further, isn't it already observed above that registration of FIR and arresting the accused person are two different issues?

Furthermore doesn't there exist power of the SHO under proviso to sub-section (1) to section 157 Cr.P.C. to take appropriate decision in such situation?

Furthermore doesn't there exist provisions like section 182, 211 and other provisions in Indian Penal Code way back since 1860 for such unscrupulous complainants (which ,for

example ,also find mention in the "Chargesheet format", of Delhi police).

22. Experiance shows that Police *officially and expressly* seldom resort to the provision of stopping proceeding under proviso (a) and/or (b) of section 157(1), Cr.P.C. This court , hardly come cross such instances. The reason is that the police have developed a parallel convenient but untenable practice of "preliminary inquiry".

And why So? Because in case police does not want to register FIR (for whatever malafide or apparently-bonafide reasons), then police simply refuse to register FIR ,stop responding to complainant/victim or worst still simple shows him the door .Consequently the stage to use the power u/s 157(1) (a) & (b) Cr.P.C by the SHO seldom comes.

23. As police officer are resorting to the practice of making preliminary inquiry , the subsequent section of 157(1) (a) & (b) Cr.P.C. and consequently of 159 Cr.P.C. have become redundant. This court ,based on its experience can state that the occasion to use power u/s 159 Cr.P.C. did not arise even in a single case.

24. At this stage it would also be appropriate to mention that there is not statutory requirement that police must contact or hear the accused before deciding to register the FIR against him. Reliance can be placed on **"V. C.Shukla Vs. state"**[1980) 2 SCC 665] and **"K.Veeraswami Vs. Union of India"** [(1991) 3 SCC 655] in this regard.

25. Further it must be remembered by all that certainty of law and procedures prescribed under it are the basic requirement of any effective and responsive criminal system. Certainty of law is at the core of any modern legal system including that of India. Certainty of law is the reason we have a written law ,including section 154 of CR.P.C. And in my view, larger the nation, like India, more important is the concept of certainty of law. Otherwise, we can not hope that our criminal legal system would be effective and long lasting. And personal view of a police man has to take a back seat, when there is written provision of law i.e. Section 154(1) Cr.P.C. and its detailed and in depth interpretation by higher courts. We must remember that police officers and trial court are just the implementing agencies of law of the land.

26. Further in case of any doubt about a case law, all of us know about the cardinal principles of interpretation, the *doctrine of stair decisis* and law of precedents.

27. Further at this stage one must remember that there can not be two interpretation, one by judiciary and another by the police officials, of same binding provision of law and the case law decided by the higher courts in India .

28. Further there is not mandate of law or even any presumption of law that a person making a complaint u/s 154(1) Cr.P.C. is a liar, so that veracity of allegation made in the complaint must be checked before registration of FIR. This issue is also highlighted in **Bhajan Lal Case (Supra).**

29. Further there are many merits in advantage of timely registration of FIR by police.It gives head start to the police in securing evidence and apprehending accused, if necessary. Further, it lessens the police workload as well as that of the court, in long run. And above all, it enhance peace and order in society, in the long run.

30. But one may argue that there are many demerits for the public in timely registration of FIR, like:.

30.1. it may lead to instant roping of the innocent family members or well-wishes/friends of the Accused.

30.2. there might be tendency to 'inflate' the complaint .For example ,complaining of offence 325 instead of 323 IPC (or worse still 307/308 IPC).

30.3. there is a perception in some people that registration of FIR against the other side is a victory in itself or in any case a decisive lead over the other party. This, inter alia, is because of the fact that once FIR is registration, then 'innocent-accused', has to come out of it through a long legal battle. Such legal battle costs such Accused economically, emotionally and socially.

31. But at the same time, it can be argued on the other hand, as far as the possibility of unnecessary economical, emotional and/or social cost to "prospective-undeserving-accused" is concerned , that if the police genuinely feels so ,then police officers has enough legal provisions, including under provision to 157(1) CR.P.C. to prevent it. If the police feels so sorry for the

"prospective-undeserving-accused", then police officer can complete the investigation on priority basis and can file cancellation report in court at the earliest. Furthermore police can also recommend penal action against original complainant, including u/s 182 or 211 IPC.

32. But experience shows that police neither register the FIR nor when the court later on u/s 156(3) Cr.P.C. directed registration of FIR, come with proposed action against the complainant , even when such complainant, *according to the claim of the police itself* , filed a false or an 'inflated' criminal complaint.

33. Further the argument of saving the "innocent-accused" by denying to register FIR instantly can be counter-argued by the argument of putting into trouble and inconvenience the 'innocent-genuine-complainant' by denying the registration of such FIR.

34. There can be many possibilities like :

(i)'innocent –accused' and 'motivated and false complainant'

(ii)' innocent –accused' and 'genuine complainant' (e.g. when a complaint is bonafidely made by name against a particular person ,say, for theft but real culprit may be somebody else).

(iii). a 'genuine complainant' rightly made complaint against an accused person.

34.1. Thus, wouldn't it be better if it is left to proper investigation and not to short cut of "preliminary enquiry" to find out the truth. Further, one may argue that legally tenable benefits of registration of FIR at once are much more than that of non-registration FIR.

35. Further isn't the process of registration of FIR is nothing but a sort of 'preliminary inquiry' itself ,in the sense that ultimately chargesheet or cancellation report is filed u/s 173 of Cr.P.C. and police is free to arrive its own conclusions. Isn't it true FIR means 'first information report' and not 'final information report' , then why so much hesitation in registering it by the police?

36. Further, every person in India has a right to take recourse to law of the land. By refusing to register a legitimate FIR, the complainant is forced to follow a time consuming and many times relatively expensive method u/s 156(3) of Cr.P.C in court. Further what about the opportunity cost of the time which complainant has to spend in court/approaching higher officer?

Further, it is not complainant's fault that an offence is committed against him/her by someone, know or unknown. Therefore, he can not be punished for the same by making him to run from one desk to another, from one authority to another, one court to another just to get the FIR registered in the first place?

37. Under section 156(1) Cr.P.C., SHO has plenary power to investigate any cognizable case which a Court having jurisdiction

over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII of Cr.P.C.

Further as per section 154(1) Cr.P.C., the substance of every information relating to the commission of a cognizable offence shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf

37.1. In view of this court, these are two independent and different but sometime overlapping aspects.

Under section 156(1) Cr.P.C., SHO ***can*** investigate any cognizable offence .

But whenever a complaint relating to cognizable offence is made to police, police is ***duty bound*** to register as per section 154(1) CR.P.C.

37.2. But it appears that police officer are not keeping in their mind the distinction in these two provisions of Cr.P.C. Consequently, the police is stating wrongly (presumably on the basis of its power u/s 156(1) Cr.P.C.) that it has right to make a "preliminary inquiry" ,even in cases where a complaint u/s 154(1) Cr.P.C. is made. Very often by confusing its power u/s 156(1) Cr.P.C. with the right of a complaint (and corresponding duty of police) u/s 154(1) Cr.P.C., the police is holding preliminary inquiry instead of registering FIR firstly.

And by doing so the police is denying to the complainant/victim its statutory right u/s 154(1) Cr.P.C. as well

likely to deny to the complainant/victim's his fundamental right of equality before law and equal protection of law. And in a given case even right to life and liberty guaranteed under article 21 of the constitution.

37.3. This can not be the right position. The right position can be:

(i) The local Police ,has a right to investigate any offence that too even without an order of court or any complaint at all from anybody.

(ii) But once a complaint is made u/s 154(1) Cr.P.C., then there is a rider. In such case police must first register FIR and then proceed further to investigate u/s 156(1), or not to proceed under proviso (a) or (b) of 157(1) Cr.P.C and so on.

38. This way, although workload of the police may increase

39. In the background of such discussion , I turn to the facts of the present case .It is clear that specific allegations of offences of cognizable nature under IPC are made by the complainant.

40. Thus, in the background of plethora of judgments as discussed above, as clear and explicit allegations are leveled by the complainant what more was required to register an FIR by the concerned police officials? Further in the present case there is no uncertainty/lack of clarity in the allegations made .Further as discussed above the credibility of information is not a ground for refusal to register the FIR .Further isn't it the responsibility of police to collect evidence and that too after registration of FIR.

41. Still in the present case, it is reported that police is carrying out "inquiry",but without registration of FIR .

42. Further, in **Lalita Kumar vs. State of UP** (AIR 2014 SC 187) the constitutional bench of the Hon'ble Supreme Court held in para 73 :

> ".....73. In terms of the language used in Section 154 of the Code, the police is duty bound to proceed to conduct investigation into a cognizable offence even without receiving information (i.e. FIR) about commission of such an offence, if the officer in charge of the police station otherwise suspects the commission of such an offence. The legislative intent is therefore quite clear, i.e., to ensure that every cognizable offence is promptly investigated in accordance with law. **This being the legal position, there is no reason that there should be any discretion or option left with the police to register or not to register an FIR when information is given about the commission of a cognizable offence.** Every cognizable offence must be investigated promptly in accordance with law and all information provided under Section 154 of the Code about the commission of a cognizable offence must be registered as an FIR so as to initiate an offence. The requirement of Section 154 of the Code is only that the report must disclose the commission of a cognizable offence and that is sufficient to set the investigating machinery into action....."

(Emphasis added)

43. Further, it was held by Hon'ble Supreme Court in **Lalita Kumar (supra)** in para 110 as follows :

> ".....110) Therefore, in view of various counter claims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, **if no cognizable offence is made out in the information given, then the FIR need not be registered immediately** and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. **But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible etc. These are the issues that have to be verified during the investigation of the FIR.** At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses

the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR....."

(Emphasis added)

44. But in present case information given by complainant is clear and further it discloses the commission of cognizable offence and as held by Hon'ble Supreme Court in this case of **Lalita Kumar (supra)** the SHO had no option but to order for registration of FIR and other consideration were not relevant at this stage like whether information is falsely given.

45. Further, it was held by Hon'ble Supreme Court in **Lalita Kumar (supra)** in para 111 as follows :

".....Conclusion/Directions:

111) In view of the aforesaid discussion, we hold:

i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and **no preliminary inquiry is permissible in such a situation.**

ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, **a preliminary inquiry may be conducted *only to ascertain whether cognizable offence is disclosed or not.***

iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, *a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week.* It must disclose reasons in brief for closing the complaint and not proceeding further.

iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. ***Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.***

v) *The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received* ***but only to ascertain*** *whether the information reveals any cognizable offence.*

vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

a) Matrimonial disputes/ family disputes

b) Commercial offences

c) Medical negligence cases

d) Corruption cases

e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for *example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.*

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry s***hould be made time bound and in any case it should not exceed 7 days***. The fact of such delay and the causes of it must be reflected in the General Diary entry.

viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above....."

46. As stated in para 111(iv) of the judgmet of Lalita Kumari (Supra) , action must be taken against erring officers who do not register FIR if information received by him discloses a cognizable offence.

47. **As such concerned ASI and SHO are warned to be careful in future .** Further, in view of the observation made above , a **copy of this order be sent to DCP concerned for**

his information , which request to sensitize the concerned police officers , and if need so arise take action . Further, a copy of this order be sent to concerned Magistrate for his record.

Acknowledgment of receiving of copy by the DCP be placed on record through Naib Court of this court within one week.

48. Ahlmad is directed to do the needful accordingly.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
15.07.2020

BAIL APPLICATION

SC No.: 27399/2016
FIR No. : 678/2015
PS: Subzi Mandi
STATE v. Ajay Pal s/o Gopal Pal
U/S: 302, 306, 120B, 34 IPC

15.07.2020.

Present: Sh. Pawan Kumar, Addl. PP for the State through VC.
Mr. Hans Raj, learned counsel for accused through VC.

An application for extension of interim bail for another period of 45 days is filed. The same is taken up with case file today.

As per report dated 31/05/2020, it is stated that there is no other criminal case found against applicant / accused as per record.

There is no report regarding good conduct of accused from the Jail Superintendent concerned.

As such, in terms of minutes of meeting of High Power committee relating to good conduct of applicant / accused be called from the Jail Superintendent concerned.

Issue notice to Jail Superintendent concerned accordingly for the next date of hearing. In the meanwhile, interim bail of the accused is extended in any case till the next date of hearing only.

Put up for reply, arguments and appropriate order for **22/07/2020**.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
15.07.2020