

BAIL APPLICATION

State Vs Vikas Kaushik @ Sunny

FIR No. 524/2013

PS: Burari

U/S: 364/302/201/120B/34 IPC & 25, 27, 54, 59 Arms Act

01/09/2020

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

Mr. Mukesh Kumar Sharma, Learned counsel for the
applicant / accused through VC.

Vide this order, the bail application under section 439
Cr.P.C. on behalf of accused Vikash Kaushik @ Sunny dated
08/08/2020 filed through counsel is disposed off.

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,

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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 this case, it is stated that accused is falsely

implicated in the present case; that accused is arrested in the present case recently on 20/07/2020 by the IO. That his TIP was conducted on 05/08/2020, all the five main witnesses who participated in TIP proceedings refused to identify the present accused; that material witnesses are already examined and nothing incriminating has come on record against the present accused. As such, no purpose would be served by keeping the accused in JC. That he is permanent resident of address given in the application and has roots in the society. As such, it is prayed that he be granted interim bail.

On the other hand, in reply filed by Inspector Ashok Kumar, as also argued by learned Addl.PP for the State, it is submitted that other four co-accused were arrested in this case earlier but the present accused was absconding and as such was declared PO on 14/01/2015. That during investigation, it is found that present accused was arrested by UP police in FIR No.: 514/2012, PS Bagpat UP and was in JC at Bagpat Jail in that matter. Further production warrant of present accused were already issued by this court. As such, he was formally produced and arrested in the present case and further his TIP was got conducted but none of the witnesses identified him during such TIP. But it is stated that such accused is involved in other criminal cases also. As such, present bail application is strongly opposed.

Arguments heard. Trial Court record is perused in this case. Vide order dated 02/05/2017, 12/05/2017, 29/05/2017, 29/07/2017, all the four accused were granted regular bail by my

learned predecessor. The main reason given for such bail was that public witnesses had not supported the prosecution case. Further, in present reply given by IO, it is revealed that none out of five witnesses identified the present accused during the TIP conducted recently. Under these circumstances, on the ground of parity and material on record where public witnesses has not supported the prosecution so far, as noted in the bail orders of co-accused already passed and the presumption of innocence in favour of such accused, the present accused is also granted bail i.e. on his furnishing a personal bond and two surety bonds in the sum of Rs. 50,000/- (each) to the satisfaction of the Court, subject to the following conditions:

- i) The applicant will regularly appear on each and every date of hearing as may be fixed by the learned Trial Court;*
- ii) That will not leave the country without permission of the Court.*
- iii) That he will intimate the IO / SHO concerned as well as the court about any change in his address.*
- iv) That he will provide detail of his present and permanent address to the IO as well as to this court.*
- v) That he will provide detail of his mobile phone number which he usually keeps with him and keep its location 'On' all the time during the pendency of the present case.*

The present application stands dismissed accordingly. Both sides are at liberty to collect the order through electronic mode. *Further a copy of this order be sent to the IO/SHO concerned by electronic mode. Further a copy of this order be also sent to concerned Superintendent of Jail. Copy of order be uploaded on the website.*

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(Naveen Kumar Kashyap)

ASJ-04/Central/Delhi/01.09.2020

FIR No.: 02/2020
PS Subzi Mandi
State vs Gulzar & others
U/s 395, 342, 412, 34 IPC

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.

In the present case, last regular date of hearing was 02/03/2020 & 01/07/2020. Thereafter, as per directions from Hon'ble High Court, matter was adjourned was far due to lock-down. But in view of latest directions, matter is taken up today for hearing today through VC.

01.09.2020

This court is also working as First Link of Learned ASJ-03 Mr. Anuj Aggarwal, Central District, Delhi.

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

Mr. Naveen Gaur, learned counsel for accused Saleem @ Sanjay Khan, Ram Lakhan, Sabeer @ Aslam and Wakiluddin, through VC.

All accused are stated to be on bail.

None for accused Gulzar, Samruddin and Saleem @ Mama. But in view of the present situation taking lenient view, no coercive action is taken against such accused No.1,2 and 6 Gulzar, Samruddin and Saleem @ Mama.

Put up for PE in terms of previous order for 03/11/2020. Issue notice to all material witnesses for the next date of hearing through electronic mode or as the situation permits.

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(Naveen Kumar Kashyap)

ASJ-04/Central/01.09.2020

State Vs.:Salim
FIR No.:655/2016
PS:Sarai Rohilla
U/s: 394, 397, 34 IPC

01.09.2020

This court is also working as First Link of Learned ASJ-03 Mr. Anuj Aggarwal, Central District, Delhi.

Present: Mr. Pawan Kumar, learned Addl.PP for the State through VC.
Mr. Akhil Tarun, proxy for Mr. Zia Afroz, learned counsel for applicant, through VC.

He wants to withdraw the present application as another application is already pending in the present case.

Heard. Allowed.

In view of the submissions, present application is disposed off as withdrawn.

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ASJ-04/Central/01.09.2020

State Vs.Sonu

FIR No.:415/2015

PS:Kotwali

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

01.09.2020

This court is also working as First Link of Learned ASJ-03 Mr. Anuj Aggarwal, Central District, Delhi.

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

Mr. Uma Shankar, learned counsel for the applicant / accused.

Further reply relating to verification of medical documents of mother of applicant / accused filed by the IO today. Copy of the same supplied to the learned counsel for the applicant / accused through e-mail.

At request, put up for arguments and appropriate orders for 05/09/2020.

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ASJ-04/Central/01.09.2020

State Vs.Sanjeev s/o Rajbir

FIR No.:415/2015

PS:Kotwali

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

01.09.2020

This court is also working as First Link of Learned ASJ-03 Mr. Anuj Aggarwal, Central District, Delhi.

Present: Mr. Pawan Kumar, learned Addl.PP for the State through VC.
Mr. Ravinder Aggarwal, learned counsel for the applicant / accused through VC.

Further arguments heard on the present application of applicant / accused Sanjeev s/o Rajbir for release of Jamatalashi articles.

It is further argued by the learned counsel for the applicant that despite lapse of about five years no efforts was made by the prosecution to send the mobile phone of the accused / present applicant to the FSL. As such, it is argued that same be also released alongwith other Jamatalashi articles.

On the other hand, it is argued by learned Addl.PP for the State that there is no need to send the same to FSL for the purpose of trial of present case. It is further stated that such mobile phone is case property. As such, such mobile phone be not released.

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

As such, such mobile phone in question cannot be released as the trial is still pending. Rest of case property i.e. purse, Rs.180/-, and RC as mentioned in reply by the IO be released to the applicant against proper identification and acknowledgment as per rules. IO / SHO concerned is directed to do the needful accordingly.

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(Naveen Kumar Kashyap)

ASJ-04/Central/01.09.2020

State Vs.Chander Pal

FIR No.:415/2015

PS:Kotwali

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

01.09.2020

This court is also working as First Link of Learned ASJ-03 Mr. Anuj Aggarwal, Central District, Delhi.

Present: Mr. Pawan Kumar, learned Addl.PP for the State through VC.
Mr. Ravinder Aggarwal, learned counsel for the applicant / accused through VC.

Further arguments heard on the present application of applicant / accused Chander Pal @ Mistri for release of Jamatalashi articles.

It is further argued by the learned counsel for the applicant that despite lapse of about five years no efforts was made by the prosecution to send the mobile phone of the accused / present applicant to the FSL. As such, it is argued that same be also released alongwith other Jamatalashi articles.

On the other hand, it is argued by learned Addl.PP for the State that there is no need to send the same to FSL for the purpose of trial of present case. It is further stated that such mobile phone is case property. As such, such mobile phone be not released.

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

As such, such mobile phone in question cannot be released as the trial is still pending. Rest of case property i.e. Rs.6,020/-, RC, DL, Voter Card, Aadhaar card and PAN card as mentioned in reply by the IO be released to the applicant against proper identification and acknowledgment as per rules. IO / SHO concerned is directed to do the needful accordingly.

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(Naveen Kumar Kashyap)

ASJ-04/Central/01.09.2020

State Vs.Murgan @ Anna

FIR No.:359/2014

PS:Pahar Ganj

U/s: 307, 387, 120B IPC & 25, 27, 54, 59 Arms Act

01.09.2020

This court is also working as First Link of Learned ASJ-03 Mr. Anuj Aggarwal, Central District, Delhi.

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

Mr.R.D. Dubey, learned counsel for the applicant / accused through VC.

Reply already filed.

Arguments in detail heard. Trial Court record is required for the purpose of nature of offence which has come on record in this case amongst other aspects relating to present regular bail application.

As such, put up for orders / clarification for 04/09/2020.

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(Naveen Kumar Kashyap)

ASJ-04/Central/01.09.2020

FIR No. 43/2015
PS Pahar Ganj
State Vs Sanjay Saxena

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.

In the present case, last regular date of hearing was 28/02/2020, 01/07/2020. Thereafter, as per directions from Hon'ble High Court, matter was adjourned was far due to lock-down.

But in view of latest directions, matter is taken up today for hearing today through VC.

01.09.2020

This court is also working as First Link of Learned ASJ-03 Mr. Anuj Aggarwal, Central District, Delhi.

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

No adverse order is passed in the present case in the interest of justice.

Issue production warrant for the presence of accused through VC or otherwise the situation permits for the next date of hearing.

Put up for **03/11/2020** for the purpose already fixed.

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(Naveen Kumar Kashyap)

ASJ-04/Central/01.09.2020

CR No.: 207/2020

Kiran Singh Sainger Vs Sadar & Others

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.

In the present case, last regular date of hearing was 29/08/2020. Thereafter, as per directions from Hon'ble High Court, matter was adjourned was far due to lock-down.

But in view of latest directions, matter is taken up today for hearing today through VC.

01.09.2020

This court is also working as First Link of Learned ASJ-03 Mr. Anuj Aggarwal, Central District, Delhi.

Present: None.

In the interest of justice, no adverse order is passed today in the present case.

Put up for purpose already fixed for **03/11/2020**.

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(Naveen Kumar Kashyap)

ASJ-04/Central/01.09.2020

State Vs Shoib & others
FIR No. 173/2017
PS Sadar Bazar
U/s 392, 397, 411, 34 IPC

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.

In the present case, last regular date of hearing was 12/02/2020. Thereafter, as per directions from Hon'ble High Court, matter was adjourned was far due to lock-down.

But in view of latest directions, matter is taken up today for hearing today through VC.

01.09.2020

This court is also working as First Link of Learned ASJ-03 Mr. Anuj Aggarwal, Central District, Delhi.

Present: Mr. Pawan Kumar, learned Addl.PP for the State through VC.
Mr. Mahkar Singh, learned counsel for accused through VC.

It is stated by the learned counsel for the accused that all the three accused are present alongwith him through VC. The same is noted.

At request, put up for the purpose already fixed / appropriate proceedings for **03/11/2020**.

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ASJ-04/Central/01.09.2020