

SC No.39/2021
FIR No.20/2015
PS Kamla Market
U/s 302/396/412/34 IPC
State Vs. Tehsin @ Kevda & Ors.

03/07/2021

File taken up today on application u/s. 439 Cr.P.C. of accused Anish @ Dupatewala for grant of interim bail for the period of 90 days as per the H.P.C. guidelines

(Proceedings Convened through Video Conferencing)

Present: Sh. Gyan Prakash Ray, Id. Addl. P.P. for the State (through V.C.).
None has joined the proceedings through V.C. on behalf of the accused Anish @ Dupatewala.

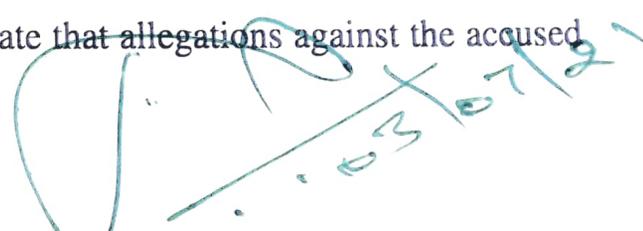
Ahlmad is absent.

By way of present order, this Court shall disposed of interim bail application of the accused Anish @ Dupatewala.

Arguments have already been heard on the aforesaid interim bail application of accused Anish @ Dupatewala. Perused the material available on record.

During the course of arguments on the aforesaid interim bail application, it was submitted by counsel for the accused that in terms of directions dated 07/05/2021 given by the Hon'ble Supreme Court of India in Suo Moto Writ Petition No. (C)1/2020 and minutes of H.P.C guidelines dated 04/05/2021 and 11/05/2021, the accused be released on interim bail for the period of 90 days. It was further submitted that case of the accused falls in the criteria no. (xii) of minutes of HPC guidelines dated 11/05/2021. It was further submitted that the accused is in J/C in the present case for the period of more than six years and jail conduct of the accused during last one year is satisfactory. It was further submitted that the accused shall be abide by all terms and conditions, if the interim bail is granted to the accused and accused shall surrender after the interim bail period.

During the course of arguments on the aforesaid interim bail application, it was submitted by Addl. P.P. for the State that allegations against the accused

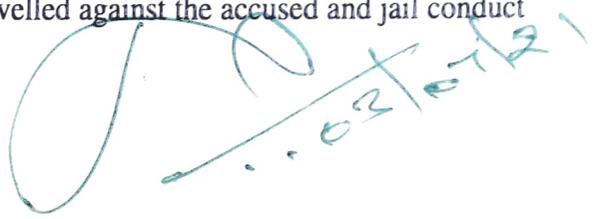
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are serious in nature and present interim bail application of the accused be dismissed. It was further submitted that as per report of the IO, the accused has already been convicted in three cases i.e. FIR No. 59/2009 U/s 21/61/85 N.D.P.S. Act PS Jama Masjid, FIR No.134/2012 U/s 21/61/85 N.D.P.S. Act PS Chandani Mahal and FIR No.39/2014 U/s 27 N.D.P.S. Act PS Chandani Mahal. It was further submitted that in criteria no. (xii) of the minutes of H.P.C. guidelines dated 11/05/2021, it is specifically mentioned that there shall be no involvement in any other case and in view of the same, the aforesaid interim bail application of the accused is not maintainable and same be dismissed.

It is mentioned in the minutes of H.P.C. guidelines dated 11/05/2021 that:-

“(xii) Under trial prisoners (UTPs) facing trial for a case under Section 302 IPC and are in jail for more than two years with no involvement in any other case.”

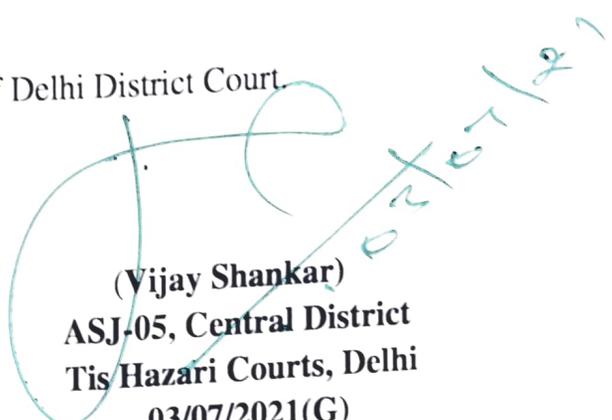
In the present case, charge for the offence u/s 302/396/412/34 IPC has already been framed against the accused. As per criteria no. (xii), there shall be no involvement in any other case. As per report of IO, the accused stated to be convicted in three cases i.e. FIR No. 59/2009 U/s 21/61/85 N.D.P.S. Act PS Jama Masjid, FIR No.134/2012 U/s 21/61/85 N.D.P.S. Act PS Chandani Mahal and FIR No.39/2014 U/s 27 N.D.P.S. Act PS Chandani Mahal. It is specifically mentioned in criteria no. (xii) that there shall be no involvement in any other case. In view of the same, the case of the accused does not fall in aforesaid criteria no. (xii) of minutes of H.P.C. guidelines dated 11/05/2021. It is also mentioned in the report of Jail Superintendent that overall jail conduct of the accused is “unsatisfactory”. In view of the criteria/recommendations of minutes of H.P.C. guidelines dated 04/05/2021 and 11/05/2021, the present interim bail application of the accused is not maintainable. Keeping in view the directions dated 07/05/2021 passed by the Hon’ble Supreme Court of India and H.P.C. guidelines dated 04/05/2021 and 11/05/2021, facts and circumstances of the case, gravity of offence, nature of serious allegations levelled against the accused and jail conduct

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of the accused, this Court is of the considered opinion that no ground for interim bail of accused is made out. Accordingly, the present interim bail application of accused Anish @ Dupatewala is dismissed.

A copy of this order be sent to the concerned Jail Superintendent through e-mail for information and necessary action. Counsel for the accused is at liberty to collect the copy of present order through electronic mode.

Order be uploaded on the website of Delhi District Court.


(Vijay Shankar)
ASJ-05, Central District
Tis Hazari Courts, Delhi
03/07/2021(G)

CNR NO. DLCT01-001878-2021
SC No. 32/2021
FIR No. 244/2020
PS Kamla Market
U/s 302/147/149/34 IPC
State Vs. Asif @ Sammi & Ors.

03/07/2021

File taken up today on the application u/s 439 Cr.P.C of the accused Afjal @ Tammi for grant of interim bail for the period of two months.

(Proceedings Convened through Video Conferencing)

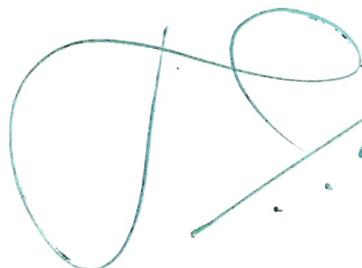
Present: Sh. Gyan Prakash Ray, Ld. Addl. PP for the State (through V.C.).
None has joined the proceedings via video conferencing on behalf of the accused.

Ahlmad is absent.

By way of present order, this Court shall disposed of interim bail application of the accused Afjal @ Tammi.

Arguments have already been heard on the aforesaid interim bail application of accused Afjal @ Tammi. Perused the material available on record.

During the course of arguments on the aforesaid interim bail application, it was submitted by counsel for the accused that the accused has filed the present interim bail application on the medical grounds of his wife. It was further submitted that the wife of the accused is at the advance stage of 'Hernia' and immediate operation of wife of the accused is required for saving her life. It was further submitted that there is no male member in the family of the accused to look after wife of the accused. It was further submitted that the interim bail for the period of two months be granted to the accused for looking after his wife and accused shall be abide by all terms and conditions, if the interim bail is granted to the accused and accused shall surrender after the interim bail period.


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During the course of arguments on the aforesaid interim bail application, it was submitted by Addl. P.P. for the State that the allegations against the accused are serious in nature and he can abscond, if the interim bail is granted to him. It was further submitted that it is mentioned in the report of the IO that there is no need of emergency surgery of wife of the accused and it is also mentioned in the report of the concerned doctor that the wife of the accused was admitted in the hospital on 27/06/2021 but she left the hospital on 28/06/2021 without informing the hospital. It was further submitted that in the present case, charge is yet to be framed. It was further submitted that regular bail application of the accused is already pending before the Hon'ble High Court of Delhi for 13/07/2021. It was further submitted that accused is habitual offender and he is also involved in an another case. It was further submitted that interim bail has to be granted in exceptional circumstances and in the present interim bail application, the accused has not mentioned any exceptional circumstances and the same be dismissed.

By way of the present interim bail application, the accused Afjal @ Tammi has prayed for interim bail for the period of two months to look after his wife. It is well settled law that interim bail has to be granted in a very exceptional and extraordinary circumstances warranting the immediate release of the accused to deal with any unforeseen contingency and interim bail cannot be granted in a mechanical manner. In the present case, report/reply of the present interim bail application was called and reply of IO/Inspector Lekhraj Singh were filed.

It is mentioned in the report dated 24/06/2021 of IO that “ *A letter regarding provide complete illness record of patient Joya Begum was given to Incharge/CMO MMG Hospital, Ghaziabad, UP Dr. Milin Gupta replied in written that “patient, Annu Joya Beguma W/o Afjal came in OPD on 04.06.2021 as a case of incisioned Hernia. Patient was operated 2 years back for LSCS of developed Hernia, There was no sign of obstruction at that time, so no need for emergency surgery. It was not a case of emergency surgery. I gave only tentative date of elective surgery.”*

It is also mentioned in the report dated 01/07/2021 of IO that Dr. Milin Gupta has replied that on 27/06/2021, Annu Joya Begum came in the hospital with the problem of

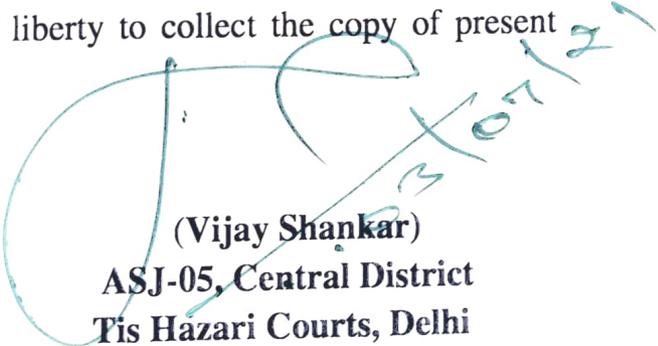
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stomach pain and gastric problem and she was admitted in the hospital and there was no need of emergency operation and on 28/06/2021 patient left the hospital without any intimation.

From the aforesaid reports of the IO and concerned doctor, it is clear that there is no need of emergency surgery of wife of the accused. As per report, the wife of the accused was admitted in the hospital but she left the hospital on 28/06/2021 without any intimation. During the course of arguments, counsel for the accused has not provided further date of surgery of wife of the accused. No explanation has been furnished by counsel for the accused as to why the wife of the accused has left the hospital without information despite the fact that she was admitted in the hospital for treatment.

In the present case, charge-sheet for the offence u/s 302/147/149/34 IPC has already been filed. The regular bail application of the accused is stated to be pending before the Hon'ble High Court of Delhi for 13/07/2021. Accused is habitual offender and he is also involved in an another case. Keeping in view the facts and circumstances of the case, gravity of offence, nature of serious allegations levelled against the accused and reports of IO/doctor, this Court is of the considered opinion that no ground for interim bail of accused Afjal @ Tammi is made out at this stage. Accordingly, the present interim bail application of accused Afjal @ Tammi is dismissed.

A copy of this order be sent to the concerned Jail Superintendent through e-mail for information. Counsel for the accused is at liberty to collect the copy of present order through electronic mode.


(Vijay Shankar)
ASJ-05, Central District
Tis Hazari Courts, Delhi
03/07/2021(A)

CNR No. DLCT01-002142-2021

SC No. 48/2021

FIR No. 304/2020

PS Karol Bagh

U/s 386/392/397/506/34 IPC & 25/54/59 Arms Act
State Vs. Gyaneshwar @ Jojo @ Ravi & Anr.

03/07/2021

File taken up today on the bail application u/s. 439 Cr.P.C. of accused Keshav Kakkar @ Vishal for grant of regular bail.

(Proceedings Convened through Video Conferencing)

Present: Sh. Gyan Prakash Ray, Ld. Addl. P.P. for the State (through V.C.).
None has joined the proceedings via video conferencing on behalf of the accused.

Ahlmad is absent.

By way of present order, this Court shall disposed of bail application u/s. 439 Cr.P.C. of the accused Keshav Kakkar @ Vishal.

Arguments have already been heard on the aforesaid bail application of accused Keshav Kakkar @ Vishal. Perused the material available on record.

During the course of arguments on the aforesaid bail application, it was submitted by counsel for the accused Keshav Kakkar @ Vishal that the accused has been falsely implicated in the present case and there is no incriminating evidence against the accused and investigation in the present case has already been completed and the accused is no more required for the purpose of further investigation as charge-sheet has already been filed in the present case. It was further submitted that accused was arrested from Panchkula, Haryana and provisions of Sections 165 & 166 Cr.P.C. have not been complied with and


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therefore, arrest of the accused and consequent recovery, if any, from the accused became illegal. It was further submitted that accused has already been acquitted in most of the cases pending against him. It was further submitted that in view of the present Covid – 19 pandemic situation, the trial will take considerable time. It was further submitted that the accused is having old mother to look after and he is the sole bread earner of his family. It was further submitted that accused is in J/C since 10/07/2020. It was further submitted that bail be granted to accused and accused shall be abide by all terms and conditions imposed by the court.

During the course of arguments, it was submitted by Addl. P.P. for the State that the allegations against the accused are serious in nature and accused can abscond, if the bail is granted to the accused. It was further submitted that after filing of the charge-sheet, the bail applications of the accused were dismissed by the Ld. Sessions Court vide orders dated 07/11/2020 and 29/12/2020 and in the present bail application, no fresh ground has been mentioned by the accused. It was further submitted that in the present case, charge is yet to be framed and complainant/public witnesses is/are yet to be examined and if the bail is granted to the accused, he can influence, threaten or pressurize the witnesses. It was further submitted that accused is a habitual offender and he has been previously involved in 7 other criminal cases of different nature. It was further submitted that there is sufficient incriminating material against the accused and bail application of accused Keshav Kakkar @ Vishal be dismissed.

It was held by the Hon'ble Supreme Court of India in case titled as **“Virupakshappa Gouda and Anr. Vs. State of Karnataka and Anr.”** {(2017) 5 SCC 406} that :

“15. The court has to keep in mind what has been stated in Chaman Lal v. State of U.P. The requisite factors are: (i) the nature of accusation and the severity of punishment in case of

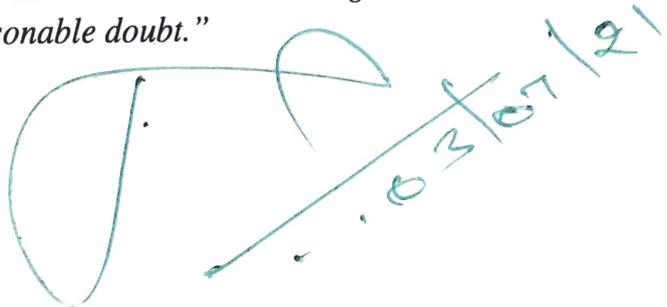
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conviction and the nature of supporting evidence; (ii) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant; and (iii) prima facie satisfaction of the court in support of the charge. In **Prasanta Kumar Sarkar v. Ashis Chatterjee**, it has been opined that while exercising the power for grant of bail, the court has to keep in mind certain circumstances and factors. We may usefully reproduce the said passage:

"9....among other circumstances, the factors which are to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to be believe that the accused had committed the offence.
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail."

16. In **CBI v. V. Vijay Sai Reddy**, the Court had reiterated the principle by observing thus:- " 34. While granting bail, the court has to keep in mind the nature of accusation, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy itself as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt."

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17. From the aforesaid principles, it is quite clear that an order of bail cannot be granted in an arbitrary or fanciful manner. In this context, we may, with profit, reproduce a passage from **Neeru Yadav v. State of U.P.**, wherein the Court setting aside an order granting bail observed:

"16. The issue that is presented before us is whether this Court can annul the order passed by the High Court and curtail the liberty of the second respondent? We are not oblivious of the fact that the liberty is a priceless treasure for a human being. It is founded on the bedrock of constitutional right and accentuated further on human rights principle. It is basically a natural right. In fact, some regard it as the grammar of life. No one would like to lose his liberty or barter it for all the wealth of the world. People from centuries have fought for liberty, for absence of liberty causes sense of emptiness. The sanctity of liberty is the fulcrum of any civilized society. It is a cardinal value on which the civilisation rests. It cannot be allowed to be paralysed and immobilized. Deprivation of liberty of a person has enormous impact on his mind as well as body. A democratic body polity which is wedded to rule of law, anxiously guards liberty. But, a pregnant and significant one, 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 collective and to the societal order. Accent on individual liberty cannot be pyramided to that extent which would bring chaos and anarchy to a society. A society expects responsibility and accountability from its members, and it desires that the citizens should obey the law, respecting it as a cherished social norm. No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At that stage, the Court has a duty. It cannot abandon its sacrosanct obligation and pass an order at its own whim or caprice. It has to be guided by the established parameters of law."



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It was held by the Hon'ble Supreme Court of India in case titled as "**Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and Anr.**" {2004 Cri. L.J. 1796 (1)} that :

"11. The law in regard to grant or refusal of bail is very well settled. The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the Court granting bail to consider among other circumstances, the following factors also before granting bail; they are,

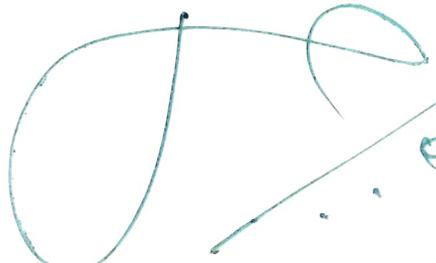
(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;

(b) Reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(c) Prima facie satisfaction of the Court in support of the charge.

12. In regard to cases where earlier bail applications have been rejected there is a further onus on the Court to consider the subsequent application for grant of bail by noticing the grounds on which earlier bail applications have been rejected and after such consideration if the Court is of the opinion that bail has to be granted then the said Court will have to give specific reasons why in spite of such earlier rejection the subsequent application for bail should be granted.

14. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to being enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail.


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20. *Before concluding, we must note though an accused has a right to make successive applications for grant of bail the Court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In such cases, the Court also has a duty to record what are the fresh grounds which persuade it to take a view different from the one taken in the earlier applications.....*"

It was held by the Hon'ble Supreme Court of India in case titled as "**Satish Jaggi Vs. State of Chhatisgarh and Ors.**" {AIR 2007 SC (Supp) 256} that :

"5. It is well settled law that in granting or non-granting of bail in non-bailable offence, the primary consideration is the nature and gravity of the offence.....

12.At the stage of granting of bail, the court can only go into the question of the prima-facie case established for granting bail. It cannot go into the question of credibility and reliability of the witnesses put up by the prosecution. The question of credibility and reliability of prosecution witnesses can only be tested during the trial."

It was held by the Hon'ble Supreme Court of India in case titled as "**Gurucharan Singh & Others Vs. State**" {AIR 1978 SC 179 (1)} that :

"29. We may repeat the two paramount considerations, viz likelihood of the accused fleeing from justice and his tampering with prosecution evidence relate to ensuring a fair trial of the case in a court of justice. It is essential that due and proper weight should be bestowed on these two factors apart from others. There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail."

In the present case, charge-sheet has been filed for the offences u/s.

386/392/397/506/34 IPC & 25/54/59 Arms Act.

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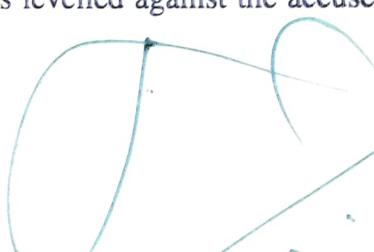
It is pertinent to mention here that after filing of the charge-sheet, the regular bail applications of the accused Keshav Kakkar @ Vishal were dismissed by the Ld. Sessions Court vide orders dated 07/11/2020 and 29/12/2020. In the present bail application, no fresh ground has been mentioned by the accused Keshav Kakkar @ Vishal.

Grounds as mentioned in the present bail application of the accused Keshav Kakkar @ Vishal were already available with the accused at the time of deciding the previous regular bail applications of the accused. It is well settled law that successive bail applications can be filed on change of facts or circumstances of the case. Where the grounds taken in successive bail applications already agitated and rejected by the Court, the same cannot be ordinarily allowed to be re-agitated. If the subsequent bail application is filed on the same grounds as taken in the previous bail application, the subsequent bail application would be deemed to be seeking review of earlier order, which is not permissible under the criminal law.

In the present case, charge is yet to be framed and complainant/public witnesses is/are yet to be examined. If the accused is released on bail, there is possibility that accused may tamper with the evidence and influence the witnesses. Accused is stated to be habitual offender and stated to be involved in other criminal cases.

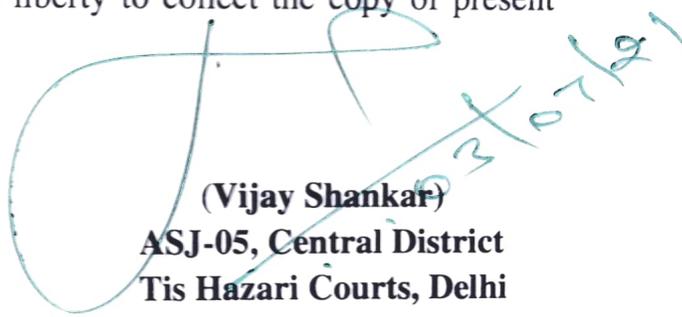
The contentions of accused for the accused Keshav Kakkar @ Vishal that the accused has been falsely implicated in the present case and there is no incriminating evidence against him is not tenable at this stage as it is well settled law that at the stage of considering bail, it would not be proper for the Court to express any opinion on the merits or demerits of the prosecution case as well as defence.

Keeping in view the facts and circumstances of the case, gravity of offence and nature of serious allegations levelled against the accused, this Court is


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of the considered opinion that no ground for regular bail of the accused Keshav Kakkar @ Vishal is made out. Accordingly, the present application for regular bail of the accused Keshav Kakkar @ Vishal is dismissed.

A copy of this order be sent to the concerned Jail Superintendent through E-mail for information. Order be uploaded on the website of the Delhi District Court. Counsel for the accused is at liberty to collect the copy of present order through electronic mode.


(Vijay Shankar)
ASJ-05, Central District
Tis Hazari Courts, Delhi
03/07/2021(A)

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FIR No. 698/2020
PS Kotwali
U/s 363/370/120-B IPC
State Vs. Nisha Khan

03/07/2021

File taken up today on the application u/s 439 Cr.P.C of accused Nisha Khan for grant of interim bail for the period of 90 days as per HPC guidelines.

(Proceedings Convened through Video Conferencing)

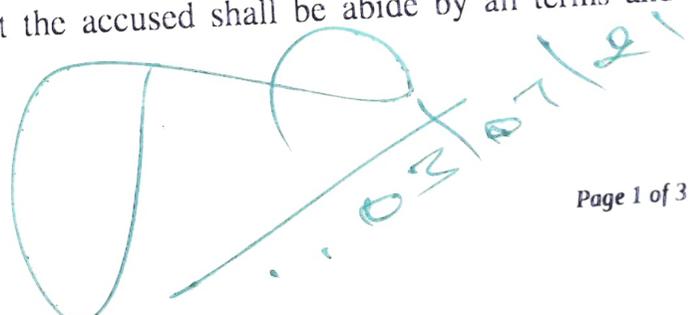
Present: Sh Gyan Prakash Ray, I.d. Addl. P.P. for the State (through V.C.).
None has joined the proceedings via video conferencing on behalf of the accused.

Ahlmad is absent.

By way of present order, this Court shall disposed of interim bail application of the accused Nisha Khan.

Arguments have already been heard on the aforesaid interim bail application of accused Nisha Khan. Perused the material available on record.

During the course of arguments on the aforesaid interim bail application, it was submitted by counsel for the accused that accused has been falsely implicated in the present case and no offence is made out against the accused. It was further submitted that in terms of directions dated 07/05/2021 given by the Hon'ble Supreme Court of India in Suo Moto Writ Petition No.(C)1/2020 and minutes of H.P.C guidelines dated 04/05/2021 and 11/05/2021, the accused be released on interim bail for the period of 90 days. It was further submitted that case of the accused falls in the criteria no. (v) of minutes of HPC guidelines dated 04/05/2021. It was further submitted that the accused has no previous involvement in any other case and jail conduct of the accused is good. It was further submitted that the accused is in J/C in the present case for the period of more than seven months. It was further submitted that the accused shall be abide by all terms and


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ions, if the interim bail is granted to the accused and accused shall surrender after the interim bail period.

During the course of arguments on the aforesaid interim bail application, it was submitted by Addl. P.P. for the State that allegations against the accused are serious in nature and present interim bail application of the accused be dismissed. It was further submitted that in the present case, the offence involves the trafficking of minor and offence u/s 370(4) is attracted and same prescribed the punishment of life imprisonment. It was further submitted that in view of the minutes of H.P.C. guidelines dated 04/05/2021 and 11/05/2021, the aforesaid interim bail application of the accused is not maintainable and same be dismissed.

It is mentioned in the minutes of H.P.C guidelines dated 04/05/2021 that:-

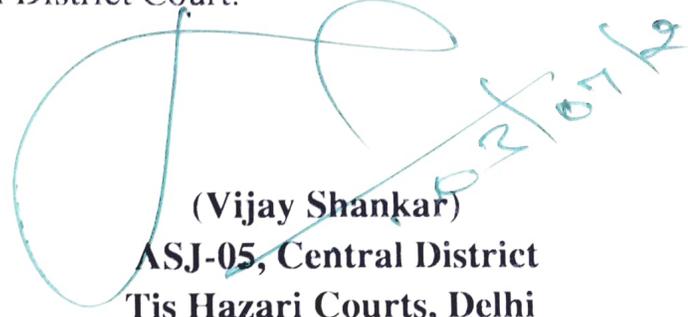
“(v) Under trial prisoners (UTPs), who are less than 60 years of age and are in custody for six months or more, facing trial in a case which prescribes a maximum sentence of 10 years or less, subject to the condition that he should not be involved in any other case which prescribes punishment of more than 7 years.”

In the present case, charge-sheet has been filed for the offences u/s 363/370/411/34 IPC. In the present case, the offence involves the trafficking of minor. Section 370(4) IPC prescribed maximum punishment for life imprisonment. In view of the same, the case of the accused does not fall in aforesaid criteria no. (v) of minutes of HPC guidelines dated 04/05/2021. In view of the criteria/recommendations of minutes of H.P.C. guidelines dated 04/05/2021 and 11/05/2021, the present interim bail application of the accused is not maintainable. Keeping in view the directions dated 07/05/2021 passed by the Hon'ble Supreme Court of India and H.P.C. guidelines dated 04/05/2021 and 11/05/2021, facts and circumstances of the case, gravity of offence and nature of serious allegations levelled against the accused, this Court is of the considered opinion that no ground for interim bail of accused is made out. Accordingly, the present interim bail application of accused Nisha Khan is dismissed.

 03/07/21

A copy of this order be sent to the concerned Jail Superintendent through e-mail for information and necessary action. Copy of order be also sent to DLSA, Central District, Delhi. Id. Counsel for the accused is at liberty to collect the copy of present order through electronic mode.

Order be uploaded on the website of Delhi District Court.


(Vijay Shankar)
ASJ-05, Central District
Tis Hazari Courts, Delhi
03/07/2021(A)

DLCT01-002958-2021

SC No. 93/2021

FIR No. 168/2020

PS Gulabi Bagh

U/s 307/186/353/332/225/147/148/149/427 IPC & 25/27 Arms Act.

State Vs. Rajeev @ Raj Kumar & Anr.

03/07/2021

File taken up today on 3rd bail application u/s. 439 Cr.P.C. of accused Rajeev @ Raj Kumar for grant of regular bail.

(Proceedings Convened through Video Conferencing)

Present: Sh. Gyan Prakash Ray, Ld. Addl. P.P. for the State.

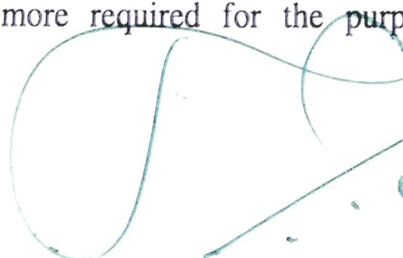
None has joined the proceedings via video conferencing on behalf of the accused.

Ahlmad is absent.

By way of present order, this Court shall disposed of bail application u/s. 439 Cr.P.C. of the accused Rajeev @ Raj Kumar.

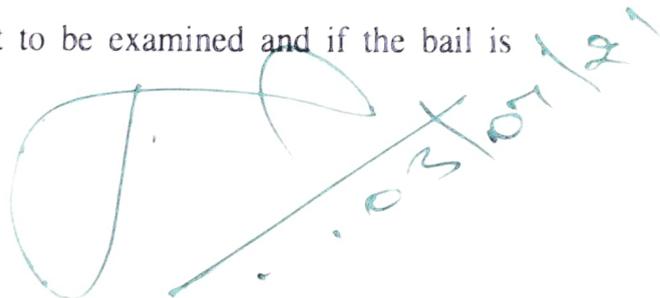
Arguments have already been heard on the aforesaid bail application of accused Rajeev @ Raj Kumar. Perused the material available on record.

During the course of arguments on the aforesaid bail application, it was submitted by counsel for the accused Rajeev @ Raj Kumar that the first and second bail applications of the accused were withdrawn by counsel for the accused on 25/02/2021 and 26/03/2021 and present bail application is the third bail application of the accused. It was further submitted that there is no bail application is pending/decided by the Hon'ble Superior Courts. It was further submitted that the accused has been falsely implicated in the present case and there is no incriminating evidence against the accused and investigation in the present case has already been completed and the accused is no more required for the purpose of further


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investigation as charge-sheet has already been filed in the present case. It was further submitted that false and fabricated story has been made by the police to falsely implicate the accused in the present case and no injury was caused by the accused to any police official. It was further submitted that nothing has been recovered from the possession of the accused and the recovery has been falsely planted upon the accused. It was further submitted that anticipatory bail has already been granted to co-accused Phoolwati @ Guddi by the Hon'ble High Court of Delhi vide order dated 29/01/2021. It was further submitted that anticipatory bail has already been granted to co-accused Baby, Laxmi and Sanjeev by Ld. Sessions Courts vide order dated 03/03/2021 and bail be granted to the accused Rajeev @ Raj Kumar on the ground of parity. It was further submitted that in view of the present Covid - 19 pandemic situation, the trial will take considerable time. It was further submitted that the accused is the sole bread earner of his family. It was further submitted that accused is in J/C since 09/10/2020. It was further submitted that bail be granted to accused and accused shall be abide by all terms and conditions imposed by the court.

During the course of arguments, it was submitted by Addl. P.P. for the State that the allegations against the accused are serious in nature and accused can abscond, if the bail is granted to the accused. It was further submitted that accused Rajeev @ Raj Kumar is the main accused and the allegations against the accused are that he opened fired upon the police officials and desi pistol and cartridge were recovered from the possession of the accused. It was further submitted that the role of the present accused is different from the other co-accused who were granted anticipatory bail and in view of the same, the accused is not entitled for bail on the ground of parity. It was further submitted that FSL result is pending. It was further submitted that in the present case, charge is yet to be framed and complainant/material witnesses is/are yet to be examined and if the bail is


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granted to the accused, he may tamper with evidence. It was further submitted that accused is a habitual offender and he has been previously involved in more than 30 criminal cases of different nature. It was further submitted that there is sufficient incriminating material against the accused and bail application of accused Rajeev @ Raj Kumar be dismissed.

It was held by the Hon'ble Supreme Court of India in case titled as "**Virupakshappa Gouda and Anr. Vs. State of Karnataka and Anr.**" {(2017) 5 SCC 406} that :

*"15. The court has to keep in mind what has been stated in **Chaman Lal v. State of U.P.** The requisite factors are: (i) the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence; (ii) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant; and (iii) prima facie satisfaction of the court in support of the charge. In **Prasanta Kumar Sarkar v. Ashis Chatterjee**, it has been opined that while exercising the power for grant of bail, the court has to keep in mind certain circumstances and factors. We may usefully reproduce the said passage:*

"9....among other circumstances, the factors which are to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to be believe that the accused had committed the offence.

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced;

and

(viii) danger, of course, of justice being thwarted by grant of bail."

16. In **CBI v. V. Vijay Sai Reddy**, the Court had reiterated the principle by observing thus:- " 34. While granting bail, the court has to keep in mind the nature of accusation, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy itself as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt."

17. From the aforesaid principles, it is quite clear that an order of bail cannot be granted in an arbitrary or fanciful manner. In this context, we may, with profit, reproduce a passage from **Neeru Yadav v. State of U.P.**, wherein the Court setting aside an order granting bail observed:

"16. The issue that is presented before us is whether this Court can annul the order passed by the High Court and curtail the liberty of the second respondent? We are not oblivious of the fact that the liberty is a priceless treasure for a human being. It is founded on the bedrock of constitutional right and accentuated further on human rights principle. It is basically a natural right. In fact, some regard it as the grammar of life. No one would like to lose his liberty or barter it for all the wealth of the world. People from centuries have fought for liberty, for absence of liberty causes sense of emptiness. The sanctity of liberty is the fulcrum of any civilized society. It is a cardinal value on which the civilisation rests. It cannot be allowed to be paralysed and immobilized. Deprivation of liberty of a person has enormous impact on his mind as well as body. A democratic body polity which is wedded to rule of law, anxiously guards liberty. But, a pregnant and significant one, the liberty of an individual is not absolute. The society by its collective wisdom through process of law can withdraw the

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liberty that it has sanctioned to an individual when an individual becomes a danger to the collective and to the societal order. Accent on individual liberty cannot be pyramided to that extent which would bring chaos and anarchy to a society. A society expects responsibility and accountability from its members, and it desires that the citizens should obey the law, respecting it as a cherished social norm. No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At that stage, the Court has a duty. It cannot abandon its sacrosanct obligation and pass an order at its own whim or caprice. It has to be guided by the established parameters of law."

It was held by the Hon'ble Supreme Court of India in case titled as **"Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and Anr."** {2004 Cri. L.J. 1796 (1)} that :

"11. The law in regard to grant or refusal of bail is very well settled. The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the Court granting bail to consider among other circumstances, the following factors also before granting bail; they are,

- (a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;*
- (b) Reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;*
- (c) Prima facie satisfaction of the Court in support of the charge.*

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12. In regard to cases where earlier bail applications have been rejected there is a further onus on the Court to consider the subsequent application for grant of bail by noticing the grounds on which earlier bail applications have been rejected and after such consideration if the Court is of the opinion that bail has to be granted then the said Court will have to give specific reasons why in spite of such earlier rejection the subsequent application for bail should be granted.

14. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to being enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail.

20. Before concluding, we must note though an accused has a right to make successive applications for grant of bail the Court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In such cases, the Court also has a duty to record what are the fresh grounds which persuade it to take a view different from the one taken in the earlier applications.....”

It was held by the Hon'ble Supreme Court of India in case titled as **“Satish Jaggi Vs. State of Chhatisgarh and Ors.”** {AIR 2007 SC (Supp) 256}

that :

“5. It is well settled law that in granting or non-granting of bail in non-bailable offence, the primary consideration is the nature and gravity of the offence.....

12.At the stage of granting of bail, the court can only go into the question of the prima-facie case established for granting bail. It cannot go into the question of credibility and reliability of the witnesses put up by the prosecution. The question of credibility and reliability of prosecution witnesses can only be tested during the trial.”

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It was held by the Hon'ble Supreme Court of India in case titled as "**Gurucharan Singh & Others Vs. State**" {AIR 1978 SC 179 (1)} that :

"29. We may repeat the two paramount considerations, viz. likelihood of the accused fleeing from justice and his tampering with prosecution evidence relate to ensuring a fair trial of the case in a court of justice. It is essential that due and proper weight should be bestowed on these two factors apart from others. There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail."

In the present case, the charge-sheet has been filed for the offences u/s 307/186/353/332/225/147/148/149/427 IPC & 25/27 Arms Act.

The allegations against the accused Rajeev @ Raj Kumar are of offences u/s 307/186/353/332/225/147/148/149/427 IPC & 25/27 Arms Act. The accused Rajeev @ Raj Kumar is the main accused and the allegations against him are that he opened fired upon the police officials and desi pistol and cartridge were recovered from the possession of the accused. Role of the present accused is different from the other co-accused who were granted anticipatory bail and in view of the same, the accused is not entitled for bail on the ground of parity.

FSL result is stated to be pending. In the present case, charge is yet to be framed and complainant/material witnesses is/are yet to be examined. Accused is stated to be habitual offender and stated to be involved in more than 30 criminal cases.

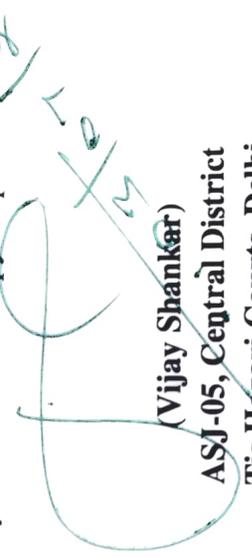
The contentions of accused for the accused Rajeev @ Raj Kumar that the accused has been falsely implicated in the present case and there is no incriminating evidence against him is not tenable at this stage as it is well settled law that at the stage of considering bail, it would not be proper for the Court to

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express any opinion on the merits or demerits of the prosecution case as well as defence.

Keeping in view the facts and circumstances of the case, gravity of offence and nature of serious allegations levelled against the accused, this Court is of the considered opinion that no ground for regular bail of the accused Rajeev @ Raj Kumar is made out. Accordingly, the present application for regular bail of the accused Rajeev @ Raj Kumar is dismissed.

A copy of this order be sent to the concerned Jail Superintendent through E-mail for information. Order be uploaded on the website of the Delhi District Court. Counsel for the accused is at liberty to collect the copy of present order through electronic mode.


(Vijay Shankar)
ASJ-05, Central District
Tis Hazari Courts, Delhi
03/07/2021(A)