

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

BAIL APPLICATION NO:1938/2020

State v. Deepak Kumar
FIR No. :261/2020
PS: Burari
U/S: 307,323,509,34 IPC

13.01.2021.

Present: Sh. Pawan Kumar, Ld. Addl. PP for the State through VC.
Sh. Parveen Dabas, Ld. Counsel for applicant through VC.

Vide this order, the regular bail application dated 20.11.2020 filed by accused through counsel is disposed of.

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

suggesting the possibility of his fleeing from justice or thwarting the course of justice. When bail is refused, it is a restriction on personal liberty of the individual guaranteed by Article 21 of the Constitution.

Further it has been laid down from the earliest time that the object of Bail is to secure the appearance of the accused person at his trial by reasonable amount of Bail. The object of Bail is neither punitive nor preventive. Deprivation of liberty must be considered a punishment unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after convictions, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earlier times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial ,but in such case 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the constitution that any persons should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty under Article 21 of the Constitution upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson. While considering an application for bail either under Section 437 or 439 CrPC, the court should keep in view the principle that grant of bail is the rule and committal to jail an exception. Refusal of bail is a restriction on personal liberty of the individual guaranteed by Article 21 of the Constitution. Seriousness of the offence

not to be treated as the only consideration in refusing bail : Seriousness of the offence should not to be treated as the only ground for refusal of bail. (Judgment of **Sanjay Chandra Vs. Central Bureau of Investigation, AIR 2012 SC 830** relied).

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

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

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

Further at this stage it can be noted that interpreting the provisions of bail contained u/s 437 & 439 Cr.P.C., the Hon'ble Supreme

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

Further it may also be noted that it is also settled law that while disposing of bail applications u/s 437/439 Cr.P.C., courts should

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

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

It is argued that accused is in JC since 29.06.2020. That there is no other criminal involvement of the present accused in any other case. That there are contradiction in the statement of prosecution witnesses. That present accused is not the person who stabbed the victim as per the allegations of prosecution. Nor he provoked the person who stabbed the victim as per the prosecution. That co-accused/mother of the present accused is already granted anticipatory bail by learned Sessions court vide order dated 17.10.2020. That accused has roots in society. That no purpose would be served by keeping him in JC. Hence, it is prayed that he be granted regular bail.

On the other hand, in reply dated 21.11.2020 filed by ASI Arvind Dubey as also argued by learned Addl. PP for the state that accused side had scuffle and heated arguments with the complainant side. Out of sudden co-accused Roshan brought a knife from his home and stabbed Mamta/victim 3-4 times in the abdomen. The present accused caught hold of injured lady and on seeing the blood oozing out they all run away from the spot. That chargesheet is already filed and now case is already committed to this court.

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

One of the co -accused is already granted anticipatory bail by Ld. Sessions court. Further, the present accused is not the person who stabbed the victim. Further, as per material on record, it appears that co-accused Roshan all of a sudden brought the knife from inside the house and stabbed the victim. As such, there is no pre-planning as far as present accused is concerned. Further, some quarrel is going on regarding water tank between the neighbours/victim and accused side. There is no other criminal record of the present accused. Trial is likely to take some more time. Under above facts and circumstances, present accused is granted bail subject to furnishing of personal bond in the sum of **Rs. 10,000/- with two sound sureties of like amount**, subject to the satisfaction of the learned Trial court and the following additional conditions:

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

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

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

The bail application is accordingly disposed off. Learned counsel for applicant is at liberty to obtain order through electronic mode. Copy of this order be also sent to Jail

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Superintendent concerned through electronic mode.

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(NAVEEN KUMAR KASHYAP)
ASJ-04(Central/Delhi/13.01.2021)

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

**State v. Rajkumar @ Bihari
FIR No. : 192/2016
PS: Subzi Mandi
U/S: 392,394,397,307,411,34 IPC**

13.01.2021

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through
VC.
Sh. S.N. Shukla, LAC for accused/applicant through
VC.

Vide this order, the regular bail application under section 439 Cr.P.C. on behalf of accused dated 23.12.2020 filed through DLSA, is disposed of.

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

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

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

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

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

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

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

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

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

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

nature, and circumstances in which offences are committed apart from character of evidence as some of the relevant factors in deciding whether to grant bail or not.

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

In the present case, it is argued that accused is falsely implicated in the present case and he is in JC since 28.05.2016. That case is at the stage of prosecution evidence. That nothing is recovered from accused or at his instance. That there is no previous criminal record of the accused. That no purpose would be served by keeping him in JC. That he is the sole bread earner of the family. That he has a very old aged mother who is suffering from various ailments. That due to present pandemic condition, trial is likely to take time. As such, it is prayed that he be granted regular bail.

On the other hand, in reply filed by SI Panakj Thakran dated 13.01.2021 and as also argued by the learned Addl.PP for the state, it is argued that there are specific and serious allegations against the present accused. That present accused alongwith two co-accused offered TCR service to the complainant who wanted to go to Nihal Vihar from ISBT Kashmere Gate. But, all three of them by their common intention looted such complainant of his cash, document and mobile phone by attacking him on his head and face with stone/brick. That the TCR is used

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in the commission of the offence and documents like PAN Card of the complainant were recovered at the instance of present accused. As such, the present application is strongly opposed.

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. Further, offence u/s 394, 307 are punishable upto imprisonment for life. Having regard to the nature of present offence, manner in which it was committed and the role of present accused, this court do not find sufficient reasons to enlarge present accused on bail in the present case.

With these observations, present application is dismissed.

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

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

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**(Naveen Kumar Kashyap)
Additional Sessions Judge-04
Central/THC/Delhi
13.01.2021**

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

State V. Rahul Sharma
FIR No.: 339/2016
P. S: Darya Ganj
U/s: 392, 395, 397, 411, 34 IPC &
25, 27 Arms Act

13.01.2021.

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Sh. Vivek Aggarwal, learned counsel for the applicant
through VC.

Vide this order, bail application u/s 439 Cr.PC dated 14.12.2020 filed by applicant through counsel is disposed off.

It is stated in the application that he is in JC since 07.09.2016. The case is pending trial. That all the three co-accused are already granted regular bail. Two of them are granted by regular bail by Hon'ble High Court vide order dated 07.08.2020 and 16.09.2020 whereas the third accused Noori granted regular bail thereafter by this court. That trial is likely to take some more time because of present pandemic condition. Even otherwise, on the grounds of parity also, the applicant is also entitled to regular bail. Further, learned counsel also relied upon certain case law also. As such, it is prayed that he be granted regular bail.

On the other hand, in reply filed by the IO, as also argued by learned Addl.PP for the State it is stated that present accused alongwith other co-accused looted Rs. 40 lacs at gun point from the complainant company. That later present accused arrested on secret information on 17.09.2016 and on their search, illegal arms and ammunition were recovered. That at the instance of present accused, Rs. 1,07,000/- was recovered. That one co-accused Saleem is yet to be arrested and remaining Rs. 30 lacs are yet to be recovered. As such, present regular

bail application is strongly opposed.

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

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

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

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

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

Further discretionary jurisdiction of courts u/s 437 and 439

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

At this stage , it can also be fruitful to note that requirements for bail u/s 437 & 439 are different. Section 437 Cr.P.C. severally curtails the power of the Magistrate to grant bail in context of the commission of non-bailable offences punishable with death or imprisonment for life, the two higher Courts have only the procedural requirement of giving notice of the Bail application to the Public Prosecutor, which requirement is also ignorable if circumstances so demand. The regimes regulating the powers of the Magistrate on the one hand and the 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 matter of record that co-accused Krishan Kumar, Raghav Jha are already granted regular bail. The role of one of the accused is similar to the role of present accused. Therefore, in view of the reasoning given by Hon'ble High Court and on the ground of

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parity, present accused is also granted regular bail on same terms and conditions on which co-accused Krishan Kumar was granted regular bail by Hon'ble High Court vide order dated 07.08.2020 in bail application no. 1092/2020 titled *Krishan Kumar v. State*.

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

With these observations the present application stands disposed off. Counsel for accused/applicant is at liberty to collect the order through electronic mode. Further a copy of this order be sent to concerned Jail Superintendent through electronic mode.

Before parting it may be noted that observations made in the present bail application are only for the purpose of deciding the present bail application and are not a comment on the merit of the case which is a matter of trial.

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**(NAVEEN KUMAR KASHYAP)
ASJ-04(Central/Delhi
13.01.2021**

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

**State v. Sunil @ Ajay
FIR No. : 107/2020
PS: Nabi Karim
U/S: 394,397,324,411,34 IPC**

13.01.2021

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

Vide this order, the regular bail application under section 439 Cr.P.C. on behalf of accused dated 04.12.2020 filed through counsel is disposed of.

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

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

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

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

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

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

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

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

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

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

nature, and circumstances in which offences are committed apart from character of evidence as some of the relevant factors in deciding whether to grant bail or not.

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

In the present case, it is argued that accused is falsely implicated in the present case and he is in JC since 10.04.2020. That nothing is recovered from accused or at his instance. That there is no previous criminal record of the accused. That no purpose would be served by keeping him in JC. That he is the sole bread earner of the family. That due to present pandemic condition, trial is likely to take time. As such, it is prayed that he be granted regular bail.

On the other hand, in reply filed by SI Manmeet Singh dated 16.12.2020 and as also argued by the learned Addl.PP for the state, it is argued that there are specific and serious allegations against the present accused. That present accused alongwith one co-accused/CCL, stabbed the complainant Vinod Kumar and snatched Rs. 3000/- alongwith certain documents from the complainant. That at the instance of present accused, some documents of the complainant as well as Rs. 1500/- was recovered. That present accused is identified by the complainant in his supplementary statement. That he is involved in four-five other criminal cases of similar nature. That his regular bail application is already

rejected thrice. As such, present application is strongly opposed.

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. The accused is correctly identified by the complainant. Further, offence u/s 394 is punishable upto imprisonment for life. As such, this court do not find sufficient reasons to enlarge present accused on bail in the present case. **With these observations, present application is dismissed.**

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

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

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(Naveen Kumar Kashyap)
Additional Sessions Judge-04
Central/THC/Delhi
13.01.2021

BAIL APPLICATION

State v. Pooja Gupta
FIR No. : 141/2015
PS: Darya Ganj

13.01.2021.

Present: Mr. Pawan Kumar ,Ld. Addl. PP for the State through VC.
Sh. S.N. Shukla, LAC for accused/applicant through VC.

At request, case is adjourned for arguments and appropriate orders for
23.01.2021.

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(Naveen Kumar Kashyap)

ASJ-04/Central/13.01.2021

BAIL APPLICATION

_ State v. Raja Babu @ Gandhi
FIR No. : 146/2018
PS: Timarpur

13.01.2021.

Present: Mr. Pawan Kumar ,Ld. Addl. PP for the State through VC.
Sh. Dhan Mohan, Ld. Counsel for accused/applicant through VC.

Reply filed by IO. Copy supplied.

Arguments in detail heard.

Case file is required. As such, put up for orders on physical hearing day on
16.01.2021 with case file.

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(Naveen Kumar Kashyap)

ASJ-04/Central/13.01.2021

**State v. Raj Bahadur
Bail bond of Sanjay Dharambir
FIR No. : 130/2014
PS: Kamla Market**

13.01.2021.

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

Report not received.

Put up for report from the IO for **16/01/2021.**

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(Naveen Kumar Kashyap)

ASJ-04/Central/13.01.2021

CA: 462/2019

Neeraj Kumar Goel v. State

13.01.2021.

Present: Sh. Vishwajeet Mangla, Ld. Counsel for appellant alongwith Appellant through VC.

At request, put up for further proceedings on physical hearing day i.e. on

16.01.2021.

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(Naveen Kumar Kashyap)

ASJ-04/Central/13.01.2021

CA: 182/2020

M/s. Jain Hosiery Industries v. State

13.01.2021.

Present: Sh. H.S. Sethi, Ld. Counsel for Appellant through VC.
Ld. Counsel for respondent through VC.

Respondent submits that he has filed an application for deposit of money in court by the Appellant.

Put up for further appropriate proceedings/orders regarding the same for

16.01.2021.

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(Naveen Kumar Kashyap)

ASJ-04/Central/13.01.2021

CR No.: 272/2020
Mohd. Ayaz Vs State

13.01.2021

Present: Mr. S.M. Jamal, learned counsel for revisionist through VC.
Mr. Pawan Kumar, learned Addl.PP for the State through VC.

Part submissions heard.

Put up for further arguments / further proceedings on physical hearing day of
this Court i.e. **16/01/2021**.

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(Naveen Kumar Kashyap)
ASJ-04/Central/13.01.2021

SC No.: 28445/2016
FIR No.: 50/2010
PS: Nabi Karim
State Vs Mukesh Jardari Wakude & Anr

13.01.2021

Present: Mr. Pawan Kumar, learned Addl.PP for the State through VC.
Mr. Akshit Dua, learned counsel for accused through VC.
HC Sube Singh from PS Nabi Karim is present through VC.
Accused are absent.

An application dated for exemption from personal appearance has been filed on behalf of accused Mukesh Jardari.

Heard. For the reasons stated therein, the same is allowed till the next date of hearing only.

Put up for appearance of accused and for PE in terms of previous order for **04/05/2021**.

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(Naveen Kumar Kashyap)
ASJ-04/Central/13.01.2021

SC No.: 178/2017
FIR No.: 293/2014
PS: Sadar Bazar
State Vs Mohd. Haroon & others

13.01.2021

Present: Mr. Pawan Kumar, learned Addl.PP for the State through VC.
Accused Afaque, Ashfaque and Akhlaque are on bail and present through VC.
None for other accused.

Put up for PE in terms of previous order for **04/05/2021**. Issue production warrant for the accused who are in JC, if any, for the next date of hearing.

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(Naveen Kumar Kashyap)
ASJ-04/Central/13.01.2021

SC No.: 59/2018
FIR No.:284/2017
PS:Subzi Mandi
State Vs Satpal

13.01.2021

Present: Mr. Pawan Kumar, learned Addl.PP for the State through VC.
None for accused.
Complainant is present through VC.

Put up for PE in terms of previous order for **05/05/2021**. Issue notice to two of the material witnesses for the next date of hearing.

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(Naveen Kumar Kashyap)
ASJ-04/Central/13.01.2021

SC No.: 847/2018
FIR No.:115/2018
PS: Lahori Gate
State Vs Anand Kumar

13.01.2021

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

Put up for appearance of accused and for PE for **05/05/2021**. Issue production warrant for the accused who are in JC, if any, for the next date of hearing.

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(Naveen Kumar Kashyap)
ASJ-04/Central/13.01.2021

SC No.: 238/2019
FIR No.:345/2017
PS: Subzi Mandi
State Vs Vinod & others

13.01.2021

Present: Mr. Pawan Kumar, learned Addl.PP for the State through VC.
All the four accused are stated to be on regular bail and present with counsel Mr. Narender Kumar through VC.

Put up for PE with connected matter for **05/05/2021**. Also issue notice to two of the material witnesses for the next date of hearing.

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(Naveen Kumar Kashyap)
ASJ-04/Central/13.01.2021

Bail Application Nos. 1613, 1616 & 1618/2020
FIR No.:161/2020
PS: I.P. Estate
State Vs Mohd. Shamshad Qureshi, Nishad Begum & Sajid Vs State

13.01.2021

Present: Mr. Pawan Kumar, learned Addl.PP for the State through VC.
None from the accused side or the complainant side.

Be awaited for the counsel for the accused as well as complainant side.

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(Naveen Kumar Kashyap)
ASJ-04/Central/13.01.2021

At 1:00 AM

Present: Mr. Pawan Kumar, learned Addl.PP for the State through VC.
None is present from the accused side as well as complainant side.

None has appeared on behalf of accused or the complainant despite repeated calls. Still in the interest of justice, put up for appearance of counsel for accused and complainant/ further arguments / clarification, if any / order for tomorrow i.e. **14/01/2021**.

It is made clear if nobody is present on behalf of accused / applicants tomorrow, present applications would be decided based on material available on record and arguments already heard.

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(Naveen Kumar Kashyap)
ASJ-04/Central/13.01.2021