

BAIL APPLICATION

FIR No. :143/2020
PS: Kotwali
STATE v. Baljeet
U/S: 394, 397, 34 IPC

26.06.2020.

Present: Sh. Pawan Kumar, Ld. Addl. PP for the State
through VC.
Mr. Sunil Tiwari, learned counsel for the accused
through VC.

Arguments heard.

It is argued by the learned counsel for the accused
that at best the offence u/s 411 IPC is made out against the
present accused and even as per the prosecution.

Heard. Put up for appropriate order at 4:00 PM.

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

At 4:00 PM

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

Some clarification is required regarding the role of
the present applicant, the stage at which the case is pending
whether the chargesheet is filed or the case is pending
investigation and the nature of evidence collected against the
present accused. As such, IO to file further reply regarding the
same.

Put up for further reply, arguments and appropriate
order for 01/07/2020.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
26.06.2020

BAIL APPLICATION

**FIR No. :56/2020
PS: Nabi Karim
STATE v. Sukhvinder
U/S: 376,506,34 IPC**

26.06.2020.

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

Reply filed by the IO.

This is a case inter-alia u/s 376 IPC. As such, put
up for further proceedings.

Let notice be issued to victim / complainant through
IO / SHO concerned. Further such complainant / victim is at
liberty to address arguments through video conferencing. IO is
directed to provide all necessary assistance / infrastructure for
such arguments through video conferencing or otherwise. Notice
be issued today itself.

Put up for further proceedings for **30/06/2020**.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
26.06.2020

BAIL APPLICATION

**FIR No. :03/2009
PS: Crime Branch
STATE v. Khokan @ Guddu Sheikh
U/S: 399, 402, 34 IPC**

26.06.2020.

Present: Sh. Pawan Kumar, Ld. Addl. PP for the State
through VC.
Mr. Sunil Tiwari, learned counsel for the accused
through VC.

Report dated 23/06/2020 received from the
concerned Jail Superintendent.

As per such report, three years imprisonment in the
present case is not yet over. It is further stated that he is
undergoing seven years rigorous imprisonment in another case
i.e. case FIR No. 35/2007 PS Mangol Puri. The same is noted
with copy of this report.

Learned counsel for the victim is at liberty to collect
copy of this report dasti or through electronic mode. Ahlmad is
directed to do needful accordingly.

With these directions present application is
disposed of. Copy of this order can be obtained dasti or through
electronic mode.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
26.06.2020

BAIL APPLICATION

**FIR No. :215/2016
PS: Chandni Mahal
STATE v. Naeem @ Chuha
U/S: 392, 397 IPC**

26.06.2020.

Present: Sh. Pawan Kumar, Ld. Addl. PP for the State
through VC.
Mr. Sunil Tiwari, learned counsel for the accused
through VC.

Reply not filed by the IO or it is noted that they have
not received the copy of the present application.

As such, put up for reply, arguments and
appropriate order for **30/06/2020**.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
26.06.2020

BAIL APPLICATION

FIR No. : 347/2019

PS: Pahar Ganj

STATE v. Pramod Sharma

U/S: 323, 354, 506, 509, 34 IPC

26.06.2020.

Present: Sh. Pawan Kumar, Ld. Addl. PP for the State through VC.
Mr. Vivek Anand Mishra, learned counsel for accused through VC.
IO SI Jagat Singh in person.

It is stated by the learned Addl. PP for the State that IO in any case has formally arrested the present applicant Parmod Kumar on 03/04/2020. A formal arrest memo is already on the file of IO. But thereafter, IO has also got executed one bail bond from such accused with a surety bond also alongwith one 'Pabandi Nama' on the same day.

Heard.

Under these circumstances, it is rightly argued by the learned Addl. PP for the State that as far as present anticipatory bail is concerned, the same has become infructious as the accused is already formally arrested as noted above.

Present application is disposed of as infructious accordingly, IO is warned to be more careful in future. Further, complainant as well as accused side can take their further legal action as per law. Copy of the order be given dasti to the counsel for accused as well as to the IO as requested ^ufor or through electronic mode.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
26.06.2020

BAIL APPLICATION

**FIR No. :167/2020
PS: Nabi Karim
STATE v. Adil
U/S: 392, 397, 34 IPC**

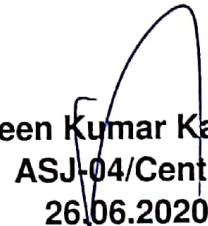
26.06.2020.

Present: Sh. Pawan Kumar, Ld. Addl. PP for the State
through VC.
Mr. Shailender Yadav, learned counsel for accused
in person.

It is stated that despite time sought, accused's
counsel has failed to place on record the TIP proceedings. In
fact, it is claimed that no TIP is conducted so far.

As such, put up for further reply from the IO
including regarding status report relating to TIP proceedings.

Put up for further reply, arguments for **30/06/2020**.
Notice be issued to IO accordingly.


(Naveen Kumar Kashyap)
ASJ-04/Central/THC
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BAIL APPLICATION

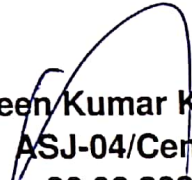
**FIR No. : 964/2015
PS: Sarai Rohilla
STATE v. Naved @ Pilla & Ors.
U/S: 302, 34 IPC**

26.06.2020.

Present: Sh. Pawan Kumar, Ld. Addl. PP for the State
through VC.
Mr. Amit Kumar Sharma, proxy counsel for accused
in person.

Copy of application for cancellation of bail moved
by the SHO through learned Addl. PP for the State filed today.

Put up for reply, arguments and appropriate order
for **29/06/2020**.


(Naveen Kumar Kashyap)
ASJ-04/Central/THC
26.06.2020

BAIL APPLICATION

FIR No. :478/2018

PS: Burari

STATE v. Sanjay Tiwari & Ors (Amar Nath)

U/S: 452, 306, 506, 324, 427, 34 IPC

26.06.2020.

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

Regular bail application filed through counsel. It be
checked and registered.

Issue notice of the same to the IO as well as to the
complainant. Complainant is at liberty to address their
arguments through electronic mode through webex only. IO is
directed to provide all necessary assistance for such arguments
through webex.

At request, put up with the case file for arguments
for **01/07/2020**.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
26.06.2020

BAIL APPLICATION

**FIR No. :415/2015
PS: Kotwali
STATE v. Laxman @ Bable
U/S: 395, 412, 34 IPC**

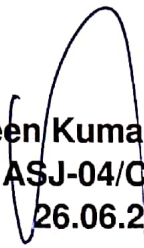
26.06.2020.

Present: Sh. Pawan Kumar, Ld. Addl. PP for the State
through VC.
Mr. J.S. Mishra, learned counsel for the accused.

Reply filed by the IO to the interim bail application.

It is stated that medical papers of the wife of the accused are not visible / clear. Learned counsel for the accused submits that they would be filing visible / clear copy of the same on or before the next date of hearing.

Put up for reply, arguments including regarding medical documents of the wife of the accused for **30/06/2020**.


**(Naveen Kumar Kashyap)
ASJ-04/Central/THC
26.06.2020**

BAIL APPLICATION

**FIR No. :02/2014
PS: Jama Masjid
STATE v. Adnan Hussain
U/S: 302, 394, 411, 34 IPC**

26.06.2020.

Present: Sh. Pawan Kumar, Ld. Addl. PP for the State through VC.
Mr. Abdul Tahir Khan, proxy counsel for main counsel Mr. Asgar Khan, through VC.

There is some connectivity issue. Even, otherwise, proxy counsel for the applicant / accused has sought adjournment on behalf of main counsel Mr. Asgar Khan. He is seeking any date after 10/08/2020.

As such, at his request, put up for **18/08/2020**.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
26.06.2020

BAIL APPLICATION

FIR No. :83/2020

PS: Nabl Karim

STATE v. Shyam Lal @ Saurav

U/S: 392, 397, 34 IPC

26.06.2020.

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

Further reply filed by SI Jayesh dated 26/06/2020.

As per such reply, TIP of the accused could not be conducted as complainant has gone to UP and has not come back despite notice. It is further stated that at present there is no incriminating evidence against the accused except his disclosure statement. Further no recovery is effected from the present accused.

Heard. Record perused.

Under these circumstances, when at present there is no legally sustainable incriminating evidence against the accused. Accordingly, **he is admitted to bail in the present case subject to furnishing personal bond and surety bond in the sum of Rs. 15,000/- (each)**. Further applicant shall not flee from the justice, shall not tamper with the evidence, shall not threaten or contact in any manner to the prosecution witnesses, shall appear on each and every date without fail and shall not leave country without permission.

With these observation the present application is

Contd...../-

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PS: Nabi Karim
STATE v. Shyam Lal @ Saurav
U/S: 392, 397, 34 IPC

disposed off. Copy of this order can be obtained dasti or through electronic mode.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
26.06.2020

SC No.: 27287/2016
FIR No. :264/2015
PS: Subzi Mandi
STATE v. Ajay
U/S: 393, 397, 302 IPC

26.06.2020.

Present: Sh. Pawan Kumar, Ld. Addl. PP for the State
through VC.
Ms. Mamta surety in person.

Bail bond furnished today.

Surety Mamta stated to be the earlier surety also
and her security / RC for vehicle No.: DL 1E RA 9214 is the
same.

As such, the same is accepted. Release warrant be
prepared accordingly. Original RC be returned on record.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
26.06.2020

: 1 :

INTERIM BAIL APPLICATION

FIR No. 134/2015
PS Lahori Gate
State Vs Mohd. Nazim
U/s: 395/397/412 IPC & 25/27/54/59 Arms Act

26.06.2020.

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State
through VC.
Mr. S.N. Shukla, learned counsel for accused
through VC.

1. This order is further to and in continuation to the order dated 22/06/2020. Now reply filed by the IO.
2. Further arguments heard.
3. As it is not the case of accused that he himself is unwell, thus case of the accused is not covered under directions as passed by Hon'ble High Court dated 18/04/2020.
4. But it is also the direction by Hon'ble HC that even otherwise such applications are to be considered on merit. Accordingly Heard on merit.
5. In reply it is stated by the IO as also argued by the learned Addl.PP that accused alongwith his associates committed dacoity of Rs. 20 lakhs from the complainant; that their presence is captured in cctv camera istalled at the place of occurrence; that he refused to participate in TIP but later on identified by the complainant and eye witness; that he is likely to commit similar type of crime and may jump the bail if so granted. As such, present bail application is opposed.
6. I find force in the arguments of learned Addl.PP for the State. Section 395 IPC is punishable upto imprisonment for life. Further no specific or sufficient ground raised for granting interim bail apart from general apprehension that there is spread of corona virus and that

FIR No. 134/2015
PS Lahori Gate
State Vs Mohd. Nazim
U/s: 395/397/412 IPC & 25/27/54/59 Arms Act

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family is facing hardship due to the same. It may further be noted that vide order dated 18/05/2020, hon'ble high court dealt with some other type of offences and not the type of offence in question. Further, present nature of offence are dealt by Hon'ble High Court vide its meeting dated 18/04/2020 under which accused is not covered as he himself is not well. Even, on merit this court is not inclined to grant interim bail as prayed for. With these observations the present application is disposed off as dismissed. Copy of order be given dasti.

7. The present application stands disposed off accordingly. Both side are at liberty to collect the order dasti or through electronic mode.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
Central District/26.06.2020

FIR No. 134/2015
PS Lahori Gate
State Vs Mohd. Nazim
U/s: 395/397/412 IPC & 25/27/54/59 Arms Act

: 1 :

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

BAIL APPLICATION

FIR No. :209/2020
PS: Chandni Mahal
STATE V Arslaan & Shakir
U/S: 25, 54, 59 Arms Act

26.06.2020

Present: Sh. Pawan Kumar, Ld. Addl. PP for the State (through VC).
Sh. J.S. Mishra, Ld. LAC for applicants/accused (through VC).

Vide this common order, separate bail applications of accused Arslaan and Shakir u/s 439 Cr.PC dated 20/06/2020 filed through their counsel are disposed of.

The common grounds in both the applications are that they are falsely implicated in the present case; they are in custody since 10/06/2020; their bail applications are already rejected by learned MM without giving any cogent reasons; they not have any criminal background; the recovery of arms is planted upon them; that in any case they are no more required for investigation; that they are young persons of 24 & 28 years only; that there is spread of corona virus including inside the jail; that investigation is already complete qua the accused persons and no purpose would be served to keep them in JC; that all the witnesses are police officials

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only, as such there is no chance of threatening the witness. As such, it is prayed that they be granted regular bail.

On the other hand, in reply filed by ASI Sheoraj Sing, as also argued by the learned Addl.PP for the State, it is stated that on a secret information raid was conducted and both such accused were arrested. It is further stated that one country made pistol and two live cartridges were recovered from the accused apart from a mobile. That 20 live cartridges of .32 bore pistol were recovered from the possession of Arslaan. Further on sustain interrogation, they disclosed that they used to purchase the same from one Javed from Seelampur, Delhi and used to sell them to unknown person. It is further stated in their disclosure statement that they have supplied the ammunition to one Sharukh also who is accused in North East riots.

It is stated that such co-accused is not yet apprehended. As such, present bail applications of both the accused persons are opposed

I have heard both the sides through webex 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.

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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

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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



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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.

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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

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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

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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

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otherwise which is essentially a matter of trial. Court is not required to undertake meticulous examination of evidence while granting or refusing bail u/s 439 of the CrPC.

In the present case, the maximum punishment of the offences alleged against the present accused is 5 years. It is a matter of record that accused were arrested on 10/06/2020. As such, it can be noted that even the period to seek police custody remand is now over. Further, both the accused are in JC. Further, it may be noted that a mechanical reply is given in both such applications stating that such respective accused disclosed that the alongwith such other accused have supplied the ammunitions to various unknown persons including one Shahrukh. But, it is a time tested basic law that such disclosure statement given to police is having no legal value except as saved u/s 27 of Indian Evidence Act, which is not the case at present that anything is covered / recovered as a result of such disclosure statements. Not only that, the moment the disclosure statement is made by one out of these two applicants / accused, there is no need / occasion or consequence for making such mechanical disclosure statement by the other accused. Still, the investigation officer is going on with the investigation in such mechanical manner which does not have any legal value because of section 24 to 26 of Indian Evidence Act. It may be

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noted that as per the story of the prosecution Arms / case property were already recovered before even making such disclosure statement. Be that as it may, as far as present both accused persons are concerned, nothing remains to be recovered at their instance. Further, as per reply filed there is no other criminal back ground / involvement of such accused persons so far. Further all the witnesses are police witnesses also, therefore, there is no possibility of threatening th witness also.

In above facts and circumstances, both such present accused persons i.e. Arslaan and Shakir are granted bail subject to furnishing of personal bond in the sum of **Rs. 20,000/- with one sound surety of like amount**, subject to the satisfaction of the learned Trial court and the following additional conditions:

- i) Applicants shall not flee from the justice;*
- ii) Applicants shall not tamper with the evidence;*
- iii) Applicants shall not threaten or contact in any manner to the prosecution witnesses ,*
- iv) Applicants shall not leave country without permission;*
- v) Applicants shall convey any change of address immediately to the IO and the court;*
- vi) Applicants shall also provide their mobile number to the IO;*
- vii) Applicants shall mark their attendance before concerned IO (and if IO is not available then to*

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concerned SHO) every alternative /second day through mobile by sharing his/her location with the SHO concerned till the chargesheet is filed;

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

ix) Applicants shall keep their such mobile number 'Switched On' at all the time , particularly between 8 am to 8 pm everyday till the chargesheet is filed

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

xi) Applicants will not indulge in any kind of activities which are alleged against them in the present case.

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.

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

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

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

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

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

The copy of this order be sent to **Ld. MM** and also to the **Superintendent Jail** who shall also inform this court about all the three aspects as contained in the para herein

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above. The Superintendent Jail is also directed to inform this court if the prisoner is willingly not furnishing the personal bond or in case if he is unable to furnish the surety or any other reason given by the prisoner for not filing the bonds. One copy of this order be also sent to the **SHO Concerned** to ensure compliance.

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


(NAVEEN KUMAR KASHYAP)
ASJ-04(Central/Delhi/26/06/2020)

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BAIL APPLICATION

**State Vs Sahidul Aziz
FIR No. 245/2018
PS: I.P. Estate
U/S: 307 / 201 IPC**

26.06.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for the State through VC.
Mr. Raj Sharma, Learned counsel for the applicant / accused through video conferencing.

Vide this order, the bail application under section 439 Cr.P.C. on behalf of accused Sahidul Aziz dated 23/03/2020 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



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,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

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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

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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

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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

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

In this case, it is argued that earlier regular bail application of the accused were dismissed six times including last time on 15/03/2019; that there is spread of corona virus including inside the jail which is likely to affect the accused also; that trial is taking its time and right of speedy trial of the accused is being affected; that he is granted interim bail and his conduct is good during the same; that public witnesses are not supporting the prosecution story; that trial is being delayed on one ground or the other; as such, it is prayed that he be granted regular bail.

On the other hand, in reply dated filed by the IO, as also argued by the learned Addl.PP for the State, it is stated that weapon of offence could not be recovered, that public witnesses are not yet examined on which ground his last bail application was rejected, as such, it is claimed there is no material change in circumstances since rejection of last bail application.

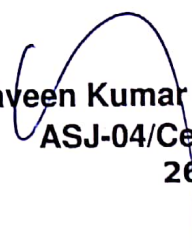
I find force in the arguments by the learned

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Addl.PP for the State. Vide order dated 15/03/2019, my learned Predecessor passed a detail reason order rejecting the bail of the present accused. One of the main ground was nature of injury to the victim and that evidence of victim and eye witness was not complete. Same is the position at present. Only part evidence of complainant / PW1 is recorded and rest of evidence is pending. Under these circumstances, there is no material change in circumstances on the facts of the present case. Further as far as present pandemic conditions are concerned, it is stated by the accused side only that he is already granted interim bail in this regard. Under these circumstances, this court is not inclined to grant regular bail to the accused at this stage.

With these observations present application is disposed off as dismissed. Copy of order can be obtained dasti or through electronic mode. Copy of this order be also given dasti to IO / SHO concerned. Copy of this order be uploaded on the website.


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