

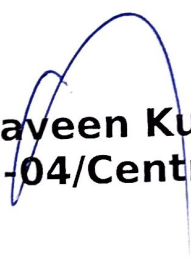
**BAIL APPLICATION**

**State v. Taufiq @ Kala  
(applicant Sunny)  
FIR No.: 20/2016  
PS: Crime Branch**

**09.11.2020**

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.  
Sh. Harshvardhan, Ld. Counsel for applicant through VC.

**Put up for arguments and appropriate orders on  
24.11.2020.**

  
**(Naveen Kumar Kashyap)  
ASJ-04/Central/09.11.2020**

**BAIL APPLICATION**

**State v. Fareed Ahmed**  
**FIR No.: 266/2014**  
**PS: Chandni Mahal**

**09.11.2020**

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.  
Sh. Harsh Hardy, Ld. Counsel for applicant through VC.

This is 5<sup>th</sup> regular bail application.

Reply filed by IO. Copy of the same be supplied to counsel for applicant through electronic mode.

**Put up for arguments and appropriate orders on  
19.11.2020.**

  
**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/09.11.2020**



**BAIL APPLICATION**

**State v. Bhola**  
**FIR No.: 79/2018**  
**PS: Kotwali**

**09.11.2020**

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.  
Sh. Vinay Kumar, Ld. Counsel for applicant alongwith applicant  
Bhola on interim bail through VC.

Reply filed by IO. Copy of the same be supplied to counsel for  
applicant through electronic mode.

**Put up for arguments and appropriate orders on  
19.11.2020.**

  
**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/09.11.2020**

**BAIL APPLICATION NO.: 1612/2020**

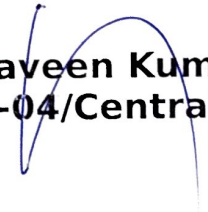
**State v. Surender Ahirwal**  
**FIR No.: 147/2020**  
**PS: Prasad Nagar**

**09.11.2020**

**This case is taken up for clarifications as already noted in order dated 28.10.2020.**

It is clarified that it is submitted by IO that child in question did not die in the present case as therefore, the offence is under section 307 IPC. Accordingly, the order dated 27.10.2020 is clarified regarding submission of the IO that child has not died.

Remaining order remains the same.

  
**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/09.11.2020**

**BAIL APPLICATION NO.:1817 /2020**

**State v. Radhey Shyam  
FIR No.: 54/2017  
PS: Kamla Market**

**09.11.2020**

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.  
Sh. Harish Sehrawat, Ld. Counsel for applicant through VC.  
IO Shyoram Yadav is also present through VC.

Reply filed.

Heard.

Earlier present accused was granted protection but thereafter due to lock-down, he could not appear and it is claimed that his second anticipatory bail application was dismissed in default despite deposit of Rs. 15 lacs as directed by Bail Roster court.

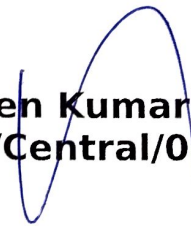
Heard in part.

**Put up for further arguments on 25.11.2020.**

in the meanwhile, no coercive action is taken against present applicant/accused provided he fully cooperate with investigation.

Further, put up for maintainability of subsequent anticipatory bail application.

**(Naveen Kumar Kashyap)  
ASJ-04/Central/09.11.2020**



**BAIL APPLICATION NO.:1525 /2020**

**State v. Rahul**  
**FIR No.: 205/2020**  
**PS: I.P. Estate**

**09.11.2020**

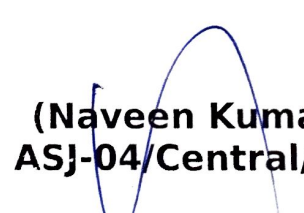
Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.  
Mr. Dinesh proxy counsel for accused through VC.  
Sh. Tarun Sharma, Ld. Counsel for complainant alongwith  
complainant through VC.

It is stated by proxy counsel for accused that main counsel is tested Corona positive and is home quarantine and suffering from throat infection. Hence, he is not able to appear through VC also. As such, adjournment is sought alongwith continuous interim protection order.

On the other hand, counsel for complainant states that because of such protection, matter is not proceeding further and in the meanwhile, Rajan who is brother of one of the applicant Gulshan Kumar is harassing the complainant side and not letting them use the amenities at the ground floor of the building in question in which the complainant at present had possession. Same is also noted. Complainant side is at liberty to take action as per law in this regard.

Further, under these circumstances, last and final opportunity is granted to the applicant to engage new counsel if existing main counsel is not able to argue, on next date of hearing.

**Put up on 23.11.2020 for further arguments.** Further, a reply dated 09.11.2020 filed by IO. Copy of the same be supplied to both the sides. Interim protection to continue till next date of hearing.

  
**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/09.11.2020**



**BAIL APPLICATION NO.:1524 /2020**

**State v. Gulshan Kumar**  
**FIR No.: 205/2020**  
**PS: I.P. Estate**

**09.11.2020**

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.  
Mr. Dinesh proxy counsel for accused through VC.  
Sh. Tarun Sharma, Ld. Counsel for complainant alongwith  
complainant through VC.

It is stated by proxy counsel for accused that main counsel is tested Corona positive and is home quarantine and suffering from throat infection. Hence, he is not able to appear through VC also. As such, adjournment is sought alongwith continuous interim protection order.

On the other hand, counsel for complainant states that because of such protection, matter is not proceeding further and in the meanwhile, Rajan who is brother of one of the applicant Gulshan Kumar is harassing the complainant side and not letting them use the amenities at the ground floor of the building in question in which the complainant at present had possession. Same is also noted. Complainant side is at liberty to take action as per law in this regard.

Further, under these circumstances, last and final opportunity is granted to the applicant to engage new counsel if existing main counsel is not able to argue, on next date of hearing.

**Put up on 23.11.2020 for further arguments.** Further, a reply dated 09.11.2020 filed by IO. Copy of the same be supplied to both the sides. Interim protection to continue till next date of hearing.

**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/09.11.2020**

**BAIL APPLICATION NO.:1523 /2020**

**State v. Parveen @ Kavita**  
**FIR No.: 205/2020**  
**PS: I.P. Estate**

**09.11.2020**

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.  
Mr. Dinesh proxy counsel for accused through VC.  
Sh. Tarun Sharma, Ld. Counsel for complainant alongwith  
complainant through VC.

It is stated by proxy counsel for accused that main counsel is tested Corona positive and is home quarantine and suffering from throat infection. Hence, he is not able to appear through VC also. As such, adjournment is sought alongwith continuous interim protection order.

On the other hand, counsel for complainant states that because of such protection, matter is not proceeding further and in the meanwhile, Rajan who is brother of one of the applicant Gulshan Kumar is harassing the complainant side and not letting them use the amenities at the ground floor of the building in question in which the complainant at present had possession. Same is also noted. Complainant side is at liberty to take action as per law in this regard.

Further, under these circumstances, last and final opportunity is granted to the applicant to engage new counsel if existing main counsel is not able to argue, on next date of hearing.

**Put up on 23.11.2020 for further arguments.** Further, a reply dated 09.11.2020 filed by IO. Copy of the same be supplied to both the sides. Interim protection to continue till next date of hearing.

  
**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/09.11.2020**

**BAIL APPLICATION NO.: 1085 /2020**

**State v. Hemant Kumar**  
**FIR No.: 287/2020**  
**PS: Sarai Rohilla**

**09.11.2020**

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.  
Mr. Vijay Yadav, Ld counsel for complainant through VC.  
None for applicant/accused.

Still in the interest of justice, one more opportunity is given to the accused to address arguments.

**Put up for arguments and appropriate order on 23.11.2020.**

Further, issue notice to IO to submit further status report regarding the dowry articles recovered, if any. Further, IO to appear through VC on next date of hearing with case file.

**Interim protection, if any to continue.**

  
**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/09.11.2020**

**BAIL APPLICATION NO.: 1084 /2020**

**State v. Namita Dilawari**

**FIR No.: 287/2020**

**PS: Sarai Rohilla**

**09.11.2020**

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.  
Mr. Vijay Yadav, Ld counsel for complainant through VC.  
None for applicant/accused.

Still in the interest of justice, one more opportunity is given to the accused to address arguments.

**Put up for arguments and appropriate order on 23.11.2020.**

Further, issue notice to IO to submit further status report regarding the dowry articles recovered, if any. Further, IO to appear through VC on next date of hearing with case file.

**Interim protection, if any to continue.**

  
**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/09.11.2020**



**BAIL APPLICATION NO.: 1087 /2020**

**State v. Hitesh  
FIR No.: 287/2020  
PS: Sarai Rohilla**

**09.11.2020**

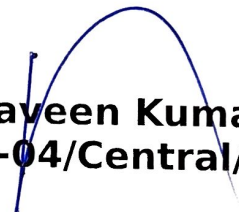
Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.  
Mr. Vijay Yadav, Ld counsel for complainant through VC.  
None for applicant/accused.

Still in the interest of justice, one more opportunity is given to the accused to address arguments.

**Put up for arguments and appropriate order on  
23.11.2020.**

Further, issue notice to IO to submit further status report regarding the dowry articles recovered, if any. Further, IO to appear through VC on next date of hearing with case file.

**Interim protection, if any to continue.**

  
**(Naveen Kumar Kashyap)  
ASJ-04/Central/09.11.2020**

**BAIL APPLICATION NO.: 1086 /2020**

**State v. Ashok Kumar  
FIR No.: 287/2020  
PS: Sarai Rohilla**

**09.11.2020**

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.  
Mr. Vijay Yadav, Ld counsel for complainant through VC.  
None for applicant/accused.

Still in the interest of justice, one more opportunity is given to the accused to address arguments.

**Put up for arguments and appropriate order on  
23.11.2020.**

Further, issue notice to IO to submit further status report regarding the dowry articles recovered, if any. Further, IO to appear through VC on next date of hearing with case file.

**Interim protection, if any to continue.**

  
**(Naveen Kumar Kashyap)  
ASJ-04/Central/09.11.2020**

**State v. Nirmal Arora**  
**FIR No.: 287/2020**  
**PS: Sarai Rohilla**

**09.11.2020**

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.  
Mr. Vijay Yadav, Ld counsel for complainant through VC.  
None for applicant/accused.

Still in the interest of justice, one more opportunity is given to the accused to address arguments.

**Put up for arguments and appropriate order on 23.11.2020.**

Further, issue notice to IO to submit further status report regarding the dowry articles recovered, if any. Further, IO to appear through VC on next date of hearing with case file.

**Interim protection, if any to continue.**

  
**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/09.11.2020**

**BAIL APPLICATION NO.: 1083 /2020**

**State v. Kamal Bhandari**  
**FIR No.: 287/2020**  
**PS: Sarai Rohilla**

**09.11.2020**

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.  
Mr. Vijay Yadav, Ld counsel for complainant through VC.  
None for applicant/accused.

Still in the interest of justice, one more opportunity is given to the accused to address arguments.

**Put up for arguments and appropriate order on 23.11.2020.**

Further, issue notice to IO to submit further status report regarding the dowry articles recovered, if any. Further, IO to appear through VC on next date of hearing with case file.

**Interim protection, if any to continue.**

  
**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/09.11.2020**

**BAIL APPLICATION NO.: 914 /2020**

**State v. Shakir**  
**FIR No.: 84/2019**  
**PS: I.P. Estate**

**09.11.2020**

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.  
Mr. Narender Prabhakar, Ld counsel for applicant through VC.  
IO ASI Ashok Kumar is also present through VC.

It is stated that supplementary chargesheet is now filed. It is further stated by IO that earlier NBW were issued against such accused. Later on, he does not know as of now what happened to such proceedings of NBW issued against such accused.

**Put up for report of IO on 12.11.2020.**

**IO to appear with case file. Further, TCR be also summoned for next date.**

  
**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/09.11.2020**



**BAIL APPLICATION NO.: 1593/2020**

**State v. Naveen Giri**  
**FIR No.: 271/2020**  
**PS: Prashad Nagar**

**09.11.2020**

**Application is taken up today as 08.11.2020 was holiday being Sunday.**

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.  
Sh. Vijay Goswami, Ld. Counsel for applicant through VC.  
IO WSI Asmita Puria alongwith complainant through VC.

There is some connectivity issue in the Internet of the complainant and IO.

It is stated that admitted list is already deposited in PS by the accused side.

Put up for further arguments regarding fresh list allegedly given recently by the complainant side and other connected issues for **23.11.2020.**

**In the meanwhile, interim protection to continue.**

  
**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/09.11.2020**

**BAIL APPLICATION NO.: 1589/2020**

**State v. Saif Ali**  
**FIR No.: 364/2020**  
**PS: Sarai Rohilla**

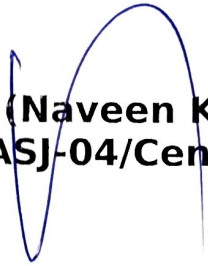
**09.11.2020**

**Application is taken up today as 08.11.2020 was holiday being Sunday.**

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.  
Sh. K.K. Chauhan, Ld. Counsel for applicant through VC.  
IO also present through VC.

It is stated by IO that TIP is already conducted and victim/complainant has identified the accused in TIP.

As such, put up for further arguments, if any/orders on  
**11.11.2020.**

  
**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/09.11.2020**

**BAIL APPLICATION NO.: 1574/2020**

**State v. Gautam  
FIR No.: 32/2020  
PS: Kamla Market**

**09.11.2020**

**Application is taken up today as 08.11.2020 was holiday  
being Sunday.**

**Present:** Mr. Pawan Kumar, learned Addl.PP for State through VC.  
None for applicant.

**Put up on 23.11.2020.**

  
**(Naveen Kumar Kashyap)  
ASJ-04/Central/09.11.2020**

**BAIL APPLICATION NO.: 1449/2020**

**State v. Rajesh @ Burfi**

**FIR No.: 340/2012**

**PS: Sarai Rohilla**

**09.11.2020**

**Application is taken up today as 08.11.2020 was holiday being Sunday.**

**Present:** Mr. Pawan Kumar, learned Addl.PP for State through VC.  
None for applicant.

**Put up on 23.11.2020.**

  
**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/09.11.2020**

**09.11.2020**

*File taken up today in terms of directions received vide letter No.:417/DHC/2020 of the Registrar General, Delhi High Court and Circular No.: 23456-23616/DJ(HQ)/Covid lockdown/Physical Courts Roster/2020 dated 30/08/2020 of Learned District & Sessions Judge(HQs), Delhi.*

In view of the above-mentioned orders/directions, file is taken up through Webex.

**This court is also discharging Bail Roster duty.**

Present: Sh. Prince Sharma, Ld. Counsel for Appellant through VC.

It is submitted that he has filed this appeal which is registered as CA-147/2020 but now it is stated that same be treated as revision petition.

Heard. Allowed, as it is the substance and not the form which should matter.

**Put up for arguments on maintainability of present revision petition as well as on merit for 19.01.2021.**

  
**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/09.11.2020**



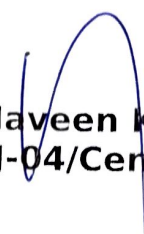
**CA: 183/2020**  
**Jai Bhagwan v. State**

**09.11.2020**

***Fresh appeal received by way of assignment. It be checked and registered.***

Present: None.

Put up for consideration and appropriate orders on 12.11.2020

  
**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/09.11.2020**

: 1 :  
**IN THE COURT OF SH. NAVEEN KUMAR KASHYAP**  
**ADDITIONAL SESSIONS JUDGE-04: CENTRAL:**  
**TIS HAZARI COURTS: DELHI**

**BAIL APPLICATION No.: 1668/2020**

**State v. Saif Ali**  
**FIR No. : 364/2020**  
**P. S. : Sarai Rohilla**  
**U/s: 392,394 IPC**

**09.11.2020.**

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.  
Sh. Mohd. Ather, L.d. Counsel for applicant through VC.

Arguments heard.

Vide this order, regular bail application u/s 439 Cr.PC filed by applicant 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.

It is stated in the present case that he is falsely implicated in the present case. That he was arrested on 10.10.2020. That nothing incriminating except the planted recovery, recovered from him. That he was not arrested from the spot but later on. That no purpose would be served by keeping him in JC. That he is a young person of 18 years only. That he does not have any previous criminal record at all. As such, it is prayed that he be granted regular bail.

On the other hand, in reply dated 07.11.2020 and as also argued by Ld. Addl. PP for the state, it is stated that during investigation, present accused was arrested and stolen mobile and SIM was recovered from them. That both the accused are drug addict and as such committing such offence. That he is identified by the complainant. That he may threaten the complainant or his attendance may not be secured. As such, present bail application is strongly opposed.

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

In the present case, it is a matter of record that accused is in JC since 12.10.2020. In fact, the period for seeking police remand is already over. Rest is the matter of trial. As such, no purpose would be served by keeping such accused in JC. Further, it may be noted that there



is fundamental presumption of innocence in any criminal case in India i.e. an accused is presumed innocent unless proved guilty. In present case, there is no previous involvement of the present accused as per record. Further, the accused is not arrested on the spot but later on, as per the claim of prosecution the looted mobile was recovered from him.

In above facts and circumstances, present accused is granted bail subject to furnishing of personal bond in the sum of **Rs. 15,000/- with one sound surety 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;*

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.

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:

*"..... 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:

- a) The date on which conditions imposed by this court are satisfied;*
- b) The date of release of prisoner from jail;*
- c) 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 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 order through electronic mode. Copy of this order be also sent to Jail Superintendent concerned through electronic mode.**

**With these observations, present bail application is allowed.**

**Learned counsel for applicant may obtain the copy of this order through electronic mode. Copy of this order be sent to Jail Superintendent concerned through electronic mode.**

  
**(NAVEEN KUMAR KASHYAP)**  
**ASJ-04(Central/Delhi)**  
**09.11.2020**

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

**Bail Application No. 1822/2020**

**State v. Tohid**  
**FIR No.: 251/2020**  
**PS: Kamla Market**  
**U/s: 356,379,34 IPC**

**09.11.2020**

**Present:** **Mr. Pawan Kumar, Learned Addl. PP for State through VC.**  
**Mr. Anil Kumar Mishra, learned counsel for the applicant / accused through VC.**

Vide this order, the bail application under section 439 Cr.P.C. on behalf of accused dated 06.11.2020 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. (**Sundeeep Kumar Bafna Vs. State of Maharashtra, AIR 2014 SC 1745** ).

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

question depends upon a variety of circumstances, cumulative effect of which must enter into the judicial verdict. Such judgment itself mentioned the nature and seriousness of nature, and circumstances in which offences are committed apart from character of evidence as some of the relevant factors in deciding whether to grant bail or not.

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

In the present case, it is argued that he is in JC since 12.10.2020. That he is implicated in the present false case. That there is no previous conviction of present accused. That he is no more required for purpose of investigation. That he has roots in society and no purpose would be served by keeping him in JC. As such, it is prayed that he be granted regular bail.

On the other hand, in reply filed by IO as also argued by learned Addl. PP for the state, it is argued that accused was arrested on the spot while stealing mobile of the complainant and he was handed over to the police by complainant only. That co-accused Rizwan fled from the spot. That there are as many as 16 other criminal cases of similar nature pending against the present accused. That his family member do not have any control over him. As such, present bail application is strongly opposed.



I find force in the arguments of learned Addl.PP for the state. Investigation is at the initial stage. The accused was arrested by the complainant/public. Further, from the material placed on record by the accused also, it appears that he is involved in other cases. Therefore, having regard to the nature of offence and stage of investigation, this court is not inclined to grant bail at this stage. **With these observations present bail application is disposed of as dismissed.**

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

(Naveen Kumar Kashyap)  
Additional Sessions Judge-04  
Central/THC/Delhi  
09.11.2020

**Bail Matters No.:1818/2020**  
**State Vs Amit Yadav**  
**FIR No.: 151/2020**  
**PS: Lahori Gate**

**09/11/2020**

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

This is an application for anticipatory bail.

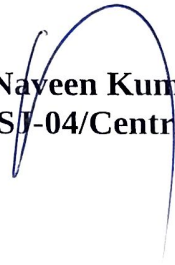
Reply filed by the IO.

Part arguments heard.

It is submitted in reply that apart from other matters, proceedings u/s 82 Cr.PC have already been initiated against the present accused.

On the other hand, it is submitted by the counsel for the accused that matter is already compromised with the complainant.

Put up for further arguments and orders for **23/11/2020**.

  
**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/09.11.2020**



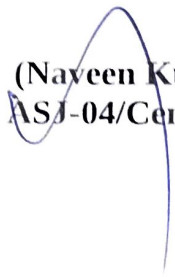
**Bail Matters No.: 1816/2020**  
**State Vs Rahul @ Jitu**  
**FIR No.: 259/2020**  
**PS: Lahori Gate**

**09/11/2020**

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

Reply filed by the IO.

Put up for arguments and appropriate orders for **23/11/2020**.

  
**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/09.11.2020**

**Bail Matters No.:1672/2020**  
**State Vs Rinku Verma**  
**FIR No.: 273/2020**  
**PS: Sarai Rohilla**

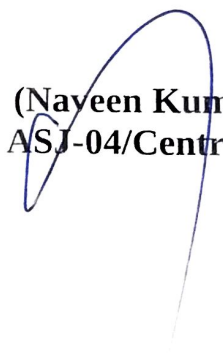
**09/11/2020**

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC.  
Ms. Seema Gupta, learned counsel for applicant through VC.

Further reply filed by the IO. It is stated that the motorcycle in question was in the name of present accused Rinku.

On the other hand, it is stated by the counsel for the accused that it is in the name of wife of the accused.

As such, put up for orders / clarification for **11/11/2020**.

  
**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/09.11.2020**

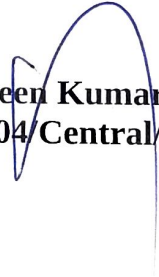
**Bail Matters No.:1527/2020**  
**State Vs Mohd. Hassan**  
**FIR No.:176/2020**  
**PS:Sarai Rohilla**

**09/11/2020**

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC.  
Mr. Nagendra Singh, learned counsel for the applicant / accused through VC.  
IO is not present through VC or otherwise.

Despite notice on the last date of hearing IO is not present. As such, issue show cause notice to IO as to why he failed to appear through VC with case file. Such show cause notice be issued through SHO concerned.

Put up for **18/11/2020**.

  
(Naveen Kumar Kashyap)  
ASJ-04/Central/09.11.2020

**Bail Matters No.:1824/2020**  
**State Vs Arif Khan**  
**FIR No.: 17/2019**  
**PS: Lahori Gate**

**09/11/2020**

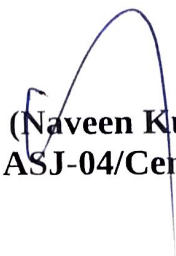
Present:

Mr. Pawan Kumar, Ld. Addl. PP for the State through VC.  
Mr. R.N. Sharma, learned counsel for the applicant through VC.  
IO is also present through VC.

Reply already filed. Copy be supplied to the counsel for the accused through e-mail during the course of the day.

Arguments in detail heard.

Put up for orders / clarification, if any, for 11/11/2020.

  
**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/09.11.2020**

**State Vs Vipin Sharma @ Vipin K. Sharma**  
**(Application of Vipin Sharma)**  
**CR No. 213/2018**  
**P. S. Lahori Gate**

**09.11.2020**

**This court is also discharging bail roster duty.**

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

This is an application for extension of interim bail filed by applicant through counsel.

Arguments heard.

It is stated by the counsel for the applicant that in this case accused was granted interim bail on merit.

Vide order dated 20/10/2020 Hon'ble High Court of Delhi was pleased not to extend such interim bail vide para No.7 (i) of such order. Further, certain liberty was given to the accused person to approach the court concerned under para 7 (ii) for extension of interim bail.

But thereafter, Hon'ble Supreme Court in SLP (C) Diary No. 23367 / 2020 titled as "*National Forum on prison reforms vs Government of NCT of Delhi & others*" vide order dated 29/10/2020 was pleased to stay the operation of such para 7(i) & 7(ii) and put up the matter for further hearing for 26/11/2020.

In view of such development, as para 7 (ii) is also stayed by hon'ble Supreme Court, put up for further proceedings / appropriate orders on the present application for 28/11/2020.

(Naveen Kumar Kashyap)  
ANJ-04/Central/09.11.2020



**State Vs Deepak @ Bunty**  
**(Application of Ajay Sharma)**  
**FIR No 506/2015**  
**P. S. Nabi Karim**

**09.11.2020**

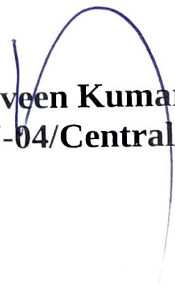
**This court is also discharging bail roster duty.**

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

This is an application for grant of regular bail filed by applicant through  
counsel.

Issue notice to IO to file reply by the next date of hearing.

Put up for reply, arguments and appropriate orders for **24/11/2020**.

  
**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/09.11.2020**

**State Vs Ritesh**  
**(Application of Ritesh)**  
**FIR No 113/2018**  
**P. S. Pahar Ganj**

**09.11.2020**

**This court is also discharging bail roster duty.**

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.  
Mr. P.K. Garg, learned counsel for the applicant through VC.

This is an application seeking regular bail filed by applicant through Counsel dated 07/11/2020.

Issue notice to IO to file reply by the next date of hearing.

Put up for reply, arguments and appropriate orders for **24/11/2020**.

(Naveen Kumar Kashyap)  
ASJ-04/Central/09.11.2020

**State Vs Sanjay & others  
(Application of Akshay)  
FIR No 231/2016  
P. S. Sadar Bazar**

**09.11.2020**

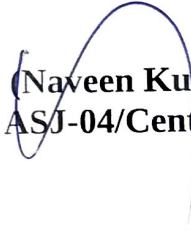
**This court is also discharging bail roster duty.**

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.  
Mr. P.K. Garg, learned counsel for the applicant through VC.

This is an application seeking regular bail filed by applicant through Counsel dated 06/11/2020.

Issue notice to IO to file reply by the next date of hearing.

Put up for reply, arguments and appropriate orders for **24/11/2020**.

  
**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/09.11.2020**

**State Vs Bunty  
(Application of Bunty)  
FIR No 190/2013  
P. S. Rajender Nagar**

**09.11.2020**

**This court is also discharging bail roster duty.**

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.  
S.K. Sharma, learned counsel for the applicant through VC.

This is an application seeking extension of interim bail of accused.

Heard.

Put up for further appropriate orders for **11/11/2020**.

(Naveen Kumar Kashyap)  
ASJ-04/Central/09.11.2020

**State Vs Ashish Kumar Bahuguna  
(Application of Manoj Kumar)  
FIR No 106/2012  
P. S. Kamla Market**

**09.11.2020**

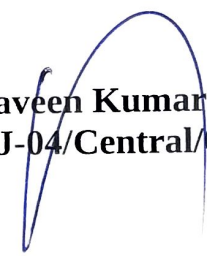
**This court is also discharging bail roster duty.**

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.  
Mr. B.S. Chaudhary, learned counsel for the applicant / accused through VC.

This is an application seeking extension of interim bail of accused.

Heard.

Put up for further appropriate orders for **11/11/2020**.

  
**(Naveen Kumar Kashyap)  
ASJ-04/Central/09.11.2020**



**State Vs Sunder & others**  
**(Application of Sunder)**  
**FIR No. 252/2016**  
**P. S.Kotwali**

**09.11.2020**

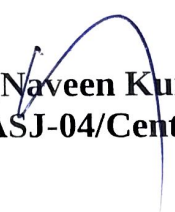
**This court is also discharging bail roster duty.**

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.  
Proxy counsel on behalf of main counsel for applicant through VC.

Reply dated 08/11/2020 filed by IO SI Jagdish. Copy be supplied to the counsel for the accused side through electronic mode.

It is stated that the main counsel is not available.

Put up for arguments and appropriate orders for 24/11/2020.

  
**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/09.11.2020**

**State Vs Sunder & others**  
**(Application of Ranjeet @ Nandu)**  
**FIR No. 252/2016**  
**P. S.Kotwali**

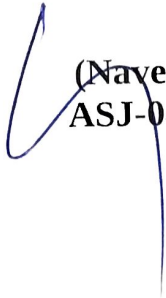
**09.11.2020**

**This court is also discharging bail roster duty.**

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.  
Proxy counsel for applicant through VC.

This is an application for extension of interim bail filed by applicant through counsel.

Put up for filing of orders by the Hon'ble High Court, if any, in Writ Petition No.: 3080/2020 and appropriate orders / further proceedings for **11/11/2020**.

  
**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/09.11.2020**

**State Vs Devender Kumar @ Sanjay**  
**(Application of Vinay @ Monty)**  
**FIR No 799/2014**  
**P. S.Darya Ganj**

**09.11.2020**

**This court is also discharging bail roster duty.**

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

Copy of original interim bail order dated 08/05/2020 read with order dated 09/06/2020 placed on record by the accused side.

As per bail order dated 09/06/2020 he was granted interim bail based on criteria of Hon'ble High Court of Delhi.

As such, put up for appropriate orders and for further proceedings for **11/11/2020.**

(Naveen Kumar Kashyap)  
ASJ-04/Central/09.11.2020

**State Vs Deepak Kumar  
(Application of Deepak Kumar)  
FIR No 34/2014  
P. S. Prasad Nagar**

**09.11.2020**

**This court is also discharging bail roster duty.**

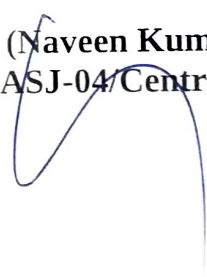
Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.  
Mr. Yogesh Swaroop, learned counsel for the applicant through VC.

This is an application seeking extension of interim bail of accused.

Heard.

Put up for further appropriate orders for **11/11/2020**.

(Naveen Kumar Kashyap)  
ASJ-04/Central/09.11.2020



**State Vs Raj Bahadur & others**  
**(Application of Yadvender @ Guddu Yadav)**  
**FIR No 130/2014**  
**P. S.Kamla Market**

**09.11.2020**

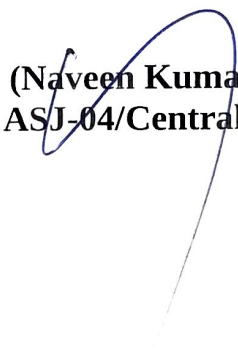
**This court is also discharging bail roster duty.**

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.  
Mr. B.K. Singh, learned counsel for the applicant through VC.

This is an application for grant of regular bail filed on behalf of applicant through counsel.

Arguments in detail heard.

Put up for orders / clarification, with case file for **12/11/2020**.

  
**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/09.11.2020**



*File taken up today in terms of directions received vide letter No.:417/DHC/2020 of the Registrar General, Delhi High Court and Circular No.: 23456-23616/DJ(HQ)/Covid lockdown/Physical Courts Roster/2020 dated 30/08/2020 of Learned District & Sessions Judge(HQs), Delhi.*

In view of the above-mentioned orders/directions, file is taken up through Webex.

09.11.2020

**This court is also discharging bail Roster duty till further orders.**

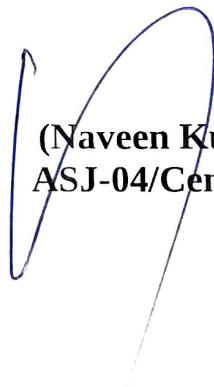
Present:

None for the appellant Mohd. Irshad through VC.

Mr. Pawan Kumar, learned Addl.PP for the State through VC / respondent.

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

Put up for appearance of accused / applicant / appellant and for arguments in terms of previous order for **18/12/2020**.

  
(Naveen Kumar Kashyap)  
ASJ-04/Central/09.11.2020

SC No.: 28031/2016  
FIR :428/2014  
PS: Civil Lines  
State Vs Angad Singh Dua

*File taken up today in terms of directions received vide letter No.:417/DHC/2020 of the Registrar General, Delhi High Court and Circular No.: 23456-23616/DJ(HQ)/Covid lockdown/Physical Courts Roster/2020 dated 30/08/2020 of Learned District & Sessions Judge(HQs), Delhi.*

In view of the above-mentioned orders/directions, file is taken up through

Webex.

**09.11.2020**

**This court is also discharging bail Roster duty till further orders.**

Present:

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

Learned counsel for accused alongwith accused through VC.

Put up for further arguments, if any, and appropriate orders for **16/12/2020**.

  
(Naveen Kumar Kashyap)  
ASJ-04/Central/09.11.2020

SC No.: 28612/2016  
FIR :199/2019  
PS: Kashmere Gate  
State Vs Gaurav Chauhan

*File taken up today in terms of directions received vide letter No.:417/DHC/2020 of the Registrar General, Delhi High Court and Circular No.: 23456-23616/DJ(HQ)/Covid lockdown/Physical Courts Roster/2020 dated 30/08/2020 of Learned District & Sessions Judge(HQs), Delhi.*

In view of the above-mentioned orders/directions, file is taken up through Webex.

**09.11.2020**

**This court is also discharging bail Roster duty till further orders.**

Present:

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

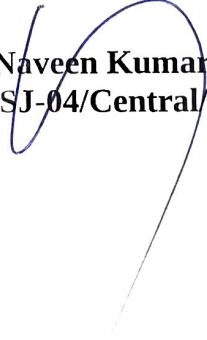
Mr. Lokesh Chandra, learned counsel for accused Sahi Ram through VC.

None for other accused.

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

Put up for final arguments in terms of previous order for **15/12/2020**.

(Naveen Kumar Kashyap)  
ASJ-04/Central/09.11.2020



**SC No.: 511/2017**  
**FIR :580/2015**  
**PS: Subzi Mandi**  
**State Vs Amit @ Billa**

*File taken up today in terms of directions received vide letter No.:417/DHC/2020 of the Registrar General, Delhi High Court and Circular No.: 23456-23616/DJ(HQ)/Covid lockdown/Physical Courts Roster/2020 dated 30/08/2020 of Learned District & Sessions Judge(HQs), Delhi.*

In view of the above-mentioned orders/directions, file is taken up through Webex.

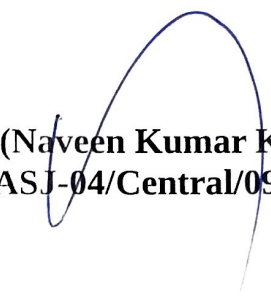
**09.11.2020**

**This court is also discharging bail Roster duty till further orders.**

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

In the interest of justice, no adverse order is passed in the present case. Issue production warrant for the accused who are in JC for the next date of hearing.

Put up for PE in terms of previous order for **20/03/2021**. Issue notice to two of the material witnesses for the next date of hearing.

  
**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/09.11.2020**

SC No.: 84/2020  
FIR :420/2013  
PS: Karol Bagh  
State Vs Kishan @ Krishan Santosh Bera

*File taken up today in terms of directions received vide letter No.:417/DHC/2020 of the Registrar General, Delhi High Court and Circular No.: 23456-23616/DJ(HQ)/Covid lockdown/Physical Courts Roster/2020 dated 30/08/2020 of Learned District & Sessions Judge(HQs), Delhi.*

In view of the above-mentioned orders/directions, file is taken up through Webex.

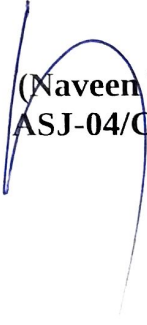
09.11.2020

**This court is also discharging bail Roster duty till further orders.**  
Present: Mr. Pawan Kumar, learned Addl.PP for the State through VC.  
Mr. Rishab Gulati, learned counsel on behalf of accused Kishan.

It is stated that the accused is on regular bail in this case.

Put up for arguments on the point of charge as well as application for discharge

for 20/03/2021.

  
(Naveen Kumar Kashyap)  
ASJ-04/Central/09.11.2020



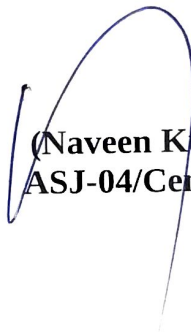
**Bail Matters No.:1527/2020**  
**State Vs Mohd. Hassan**  
**FIR No.:176/2020**  
**PS:Sarai Rohilla**

**09/11/2020**

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC.  
Mr. Nagendra Singh, learned counsel for the applicant / accused through VC.  
IO is not present through VC or otherwise.

Despite notice on the last date of hearing IO is not present. As such, issue show cause notice to IO as to why he failed to appear through VC with case file. Such show cause notice be issued through SHO concerned.

Put up for **18/11/2020**.

  
(Naveen Kumar Kashyap)  
ASJ-04/Central/09.11.2020

**Bail Matters No.:1824/2020**  
**State Vs Arif Khan**  
**FIR No.: 17/2019**  
**PS: Lahori Gate**

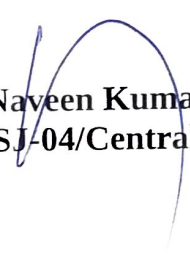
**09/11/2020**

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC.  
Mr. R.N. Sharma, learned counsel for the applicant through VC.  
IO is also present through VC.

Reply already filed. Copy be supplied to the counsel for the accused through e-mail during the course of the day.

Arguments in detail heard.

Put up for orders / clarification, if any, for 11/11/2020.

  
**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/09.11.2020**

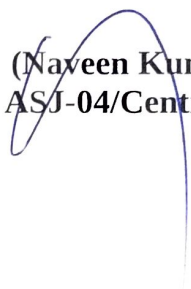
**Bail Matters No.:1816/2020**  
**State Vs Rahul @ Jitu**  
**FIR No.: 259/2020**  
**PS: Lahori Gate**

**09/11/2020**

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

Reply filed by the IO.

Put up for arguments and appropriate orders for **23/11/2020**.

  
**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/09.11.2020**

**Bail Matters No.:1672/2020**  
**State Vs Rinku Verma**  
**FIR No.: 273/2020**  
**PS: Sarai Rohilla**

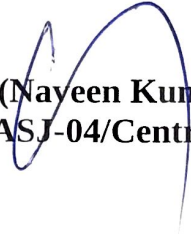
**09/11/2020**

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC.  
Ms. Seema Gupta, learned counsel for applicant through VC.

Further reply filed by the IO. It is stated that the motorcycle in question was in the name of present accused Rinku.

On the other hand, it is stated by the counsel for the accused that it is in the name of wife of the accused.

As such, put up for orders / clarification for **11/11/2020**.

  
**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/09.11.2020**

**Bail Application**

**Application No.: 1614/2020**  
**State Vs. Mohd. Mehraj@ Mohd. Naushad**  
**FIR No. :11/2020**  
**PS: ODRS**  
**U/S: 370 IPC**

**09.11.2020**

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC  
Learned Counsel from for applicant / accused.  
IO also present through VC.

Vide this order, the second regular bail application under section 439 Cr.P.C. on behalf of accused dated 26/10/2020 filed through counsel is disposed off.

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

The personal liberty is a priceless treasure for a human being. It is founded on the bed rock of constitutional right and accentuated further on human rights principle. The sanctity of liberty is the fulcrum of any civilized society. Deprivation of liberty of a person has enormous impact on his mind as well as body. Further article 21 Of the Constitution mandates that no person shall be deprived of his life or personal liberty except according to procedure established by law. Further India is a signatory to the International Covenant On Civil And Political Rights, 1966 and, 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 therefore. 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,

**Application No.: 1614/2020**  
**State Vs. Mohd. Mehraj@ Mohd. Naushad**  
**FIR No. :11/2020**  
**PS: ODRS**  
**U/S: 370 IPC**

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

Application No.: 1614/2020  
State Vs. Mohd. Mehraj@ Mohd. Naushad  
FIR No. :11/2020  
PS: ODRS  
U/S: 370 IPC

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 on behalf of accused that he has been falsely implicated in the present case; that as per allegations he was taking alongwith him one minor children for the purpose of present offence in question. It is stated that out of these one person Mohd. Sadiq s/o Mohd. Mustaq is villager and nephew (bhajna). Infact police had taken alongwith them aforesaid Mohd. Sadiq villager and kept them in a child home at Lajpat Nagar; that applicant is a native of Distt. Bugusarai, Bihar and Mohd. Sadiq is villager and nephew of accused; that applicant was planning to go to Delhi and Mohd. Sadiq requested him to take them alongwith him as they wanted to visit and tour in Delhi and applicant being villager and relative accepted their request and Mohd. Sadiq paid for their railway fare from their own money and there was no inducement from applicant to accompany him to Delhi; that applicant is poor person having five minor daughters, two sons and old aged father about 80 years and wife to lookafter. That there is spread of corona pandemic inside the jail also; no fruitful purpose would be served by keeping the present applicant in JC; That statement of child as well as the mother of the child are already recorded u/s 164 Cr.PC and nothing incriminating has surfaced in the same; 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 the learned Addl.PP for the state that there are serious and specific allegations against the present accused; that he is involved in the trafficking of minor

Application No.: 1614/2020  
State Vs. Mohd. Mehraj@ Mohd. Naushad  
FIR No. :11/2020  
PS: ODRS  
U/S: 370 IPC



which offence is punishable with rigorous imprisonment for a terms not less than 10 years, but which may extend upto life imprisonment. It is further stated that admittedly that child in question is only about 14 years; that such child was rescued by a joint team of Bachpan Bachao Andolan, NGO and concerned department of Delhi government in a joint raid. As such, present bail application is strongly opposed.

In the present case, no doubt offence alleged is very serious in nature. Further court should be on extra guard and sensitive while deciding such applications relating to allegation of trafficking of minors. In fact, even the legislature has provided minimum punishment for not less than 10 years for such offence.

But having observed so, it is one of the pre-condition in any criminal case to see whether there is prima facie material in support of such allegation on record which is also legally sustainable. One of the pre-condition of offence u/s 370 IPC is that it should be for the purpose of exploitation. Further, such exploitation includes slavery or practices similar to slavery. But in the present case, as per the material on record, it appears that children were relatives / known of the present accused. Statement of the mother of the child in question as well as minor child in question are already recorded and nothing incriminating has come on record against the present accused. Further, the custody of the child is already given to his mother as stated by the IO. Further, during his statement u/s 164 Cr.PC produced by the IO during proceedings, it can be observed that there is no allegation of offence u/s 370 IPC. Further, such minor child alongwith present accused is arrested at Railway Station itself and there is no proof / material regarding such slavery or other exploitation. Further time to seek PC remand is already over. As such, no purpose would be served by keeping the accused in JC particularly during such pandemic situation. Further, it may be noted that there is fundamental presumption of innocence in any criminal case.

In above facts and circumstances, such accused is granted bail subject to furnishing of **personal bond in the sum of Rs. 10,000/- with one**

**sound surety 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;*

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.

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:

*"..... 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:

- a) *The date on which conditions imposed by this court are satisfied;*
- b) *The date of release of prisoner from jail;*
- c) *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 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 through electronic mode. Further copy of this order be sent to Concerned Jail Superintendent, IO / SHO. Copy of order be uploaded on website.**

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.

(Naveen Kumar Kashyap)

Application No.: 1614/2020  
State Vs. Mohd. Mehraj@ Mohd. Naushad  
FIR No. :11/2020  
PS: ODRS  
U/S: 370 IPC



**BAIL APPLICATION NO.: 1696/2020**

**State v. Pushkar Mittal & Ors.**

**FIR No.: 330/2018**

**PS: Prashad Nagar**

**U/S: 406,420,468,471,120B IPC**

**09.11.2020**

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.  
Sh.Archit Kaushik, Ld. Counsel for applicant.

This is an application for modification/clarifications of bail order dated 04.11.2020.

It is stated that FIR number is wrongly mentioned as 363/2018 instead of 330/2018 in bail order dated 12.06.2020 passed by Ld. ADJ-03 Sh. Anuj Aggarwal. Copy of FIR no. 330/2018 dated 19.11.2018 is also placed on record today. As from the copy of such FIR, it appears that this is a clerical mistake and FIR is wrongly mentioned as 363/2018 instead of 330/2018. Same is now corrected.

**In nutshell, in bail order dated 12.06.2020, FIR number be read as 330/2018.**

With these observations, modification application is allowed.

Copy of this order be given dasti.

Further, a copy of this order be sent to Jail Superintendent concerned through electronic mode.

  
**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/09.11.2020**

**BAIL APPLICATION NO.: 985/2020**

**State v. Kripal Singh**  
**FIR No.: 188/2020**  
**PS: Rajinder Nagar**

**09.11.2020**

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.  
None for applicant.  
Ms. Tarunnam, Ld. Counsel for complainant through VC.

Due to some official assignment after lunch, no time is left.

**Put up for orders/clarifications,if any on 10.11.2020.**

  
**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/09.11.2020**

**BAIL APPLICATION NO.: 986/2020**

**State v. Angad Singh**  
**FIR No.: 188/2020**  
**PS: Rajinder Nagar**

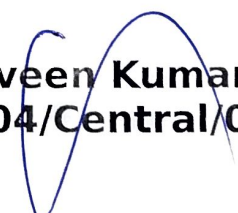
**09.11.2020**

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.  
None for applicant.  
Ms. Tarunnam, Ld. Counsel for complainant through VC.

Due to some official assignment after lunch, no time is left.

**Put up for orders/clarifications,if any on 10.11.2020.**

**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/09.11.2020**



**BAIL APPLICATION NO.: 987/2020**

**State v. Manjyot Singh**  
**FIR No.: 188/2020**  
**PS: Rajinder Nagar**

**09.11.2020**

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.  
None for applicant.  
Ms. Tarunnam, Ld. Counsel for complainant through VC.

Due to some official assignment after lunch, no time is left.

**Put up for orders/clarifications, if any on 10.11.2020.**

**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/09.11.2020**



**BAIL APPLICATION NO.: 988/2020**

**State v. Sukhsharan Kaur**  
**FIR No.: 188/2020**  
**PS: Rajinder Nagar**

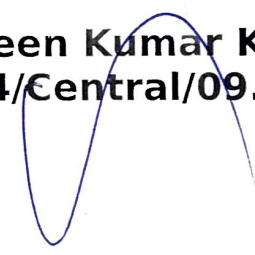
**09.11.2020**

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.  
None for applicant.  
Ms. Tarunnam, Ld. Counsel for complainant through VC.

Due to some official assignment after lunch, no time is left.

**Put up for orders/clarifications,if any on 10.11.2020.**

**(Naveen Kumar Kashyap)**  
**ASJ-04/Central/09.11.2020**





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

**BAIL APPLICATION NO.: 1674/2020**

State v. Arif @ Asif  
FIR No. 210/2020  
P. S. Sarai Rohilla  
U/s: 186,353,307,147,148,149,379,174A,34 IPC &  
25, 27 Arms Act

**06.11.2020**

Present: Sh. Pawan Kumar Ld. Addl. PP for the State through VC.  
Sh. Suraj Prakash Sharma, Ld. Counsel for applicant  
through VC.

Vide this order, bail application u/s 439 Cr.PC dated 02.11.2020 filed by applicant through counsel is disposed of.

It is stated in the application that he is in JC since 11.06.2020; that he has been falsely implicated in the present case; that co accused Shahrukh and another accused Ashqueen are already granted bail by the Ld Sessions court vide order dated 16.09.2020 and 23.09.2020; that co-accused Sadiqueen has already been granted bail on 21.10.2020; that role assigned to the present accused is similar to such other accused persons, as such on parity also he be granted bail. It is further argued that there is no previous conviction record of the present accused and he is the only bread earner of the family; that charge sheet is already filed; that he is permanent resident of Delhi and the trial is likely to take time.

On the other hand, in reply filed by the IO and as argued by ld. Addl. PP for the State it is stated that present FIR was registered on the complaint of SI Pankaj Thakran; that on 10.06.2020 at about 8:30 p.m. at Police Post Inder Lok a person namely Kale came inside the police post regarding a complaint of beating by Mohsin and his brother and also looting of cash from his shop; that such Mohsin and others were called but

they started quarreling inside the police post but they were aggressive still and using filthy language. In the meanwhile relative, friends of Mohsin including the present accused arrived and gathered outside the police post and attacked the police officials with lathi, stones, fists and legs while such police officials were on official duty. Further, mobile phone of SI Pankaj was also stolen by them and many police officials sustained bodily injury. It is further stated that one of the most aggressive person was Mohsin, who was instigating other persons and he was aggressive till end. Further, another co-accused Naved @ Pilla was carrying fire arm but most of them run away and could not be caught but such Naved @ Pilla was caught at the entry gate of police post and such Naved @Pilla fired gun shot at the police party and some how police officials saved themselves. As such, present bail application is strongly opposed.

I have heard both the sides.

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



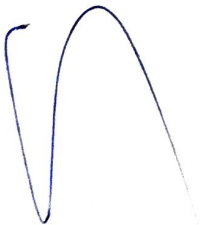


guaranteed by Article 21 of the Constitution. Seriousness of the offence not to be treated as the only consideration in refusing bail : Seriousness of the offence should not to be treated as the only ground for refusal of bail. (Judgment of **Sanjay Chandra Vs. Central Bureau of Investigation, AIR 2012 SC 830** relied).

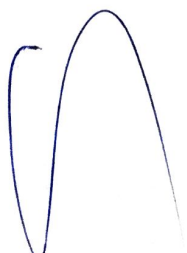
But, the liberty of an individual is not absolute. The Society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the societal order. A society expects responsibility and accountability from the member, 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 a matter of record that co-accused Shahrukh, Ashquin and Sadiqueen are already granted bail and role of the present accused is similar to that of those accused persons. Further , investigation is already complete and trial is likely to take time.

In above facts and circumstances, present accused is 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) 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;*

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.

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:

*“..... 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 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 order through electronic mode. Copy of this order be sent to Jail Superintendent concerned through electronic mode.**

(NAVEEN KUMAR KASHYAP)  
ASJ-04(Central/Delhi/09.11.2020)