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BAIL APPLICATION

**State Vs Sanjay Prakash
FIR No. 21/2020
PS: Sadar Bazar
U/S: 323/451/304/34 IPC**

23/06/2020

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

Vide this order, the bail application under section 439 Cr.P.C. on behalf of accused Sanjay Prakash dated 15/06/2020 filed through counsel is disposed of.

Reply filed by IO dated 15/06/2020.

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

State Vs Sanjay Prakash
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imprisoned during the period of his trial. The basic rule is to release him on bail unless there are circumstances suggesting the possibility of his fleeing from justice or thwarting the course of justice. When bail is refused, it is a restriction on personal liberty of the individual guaranteed by Article 21 of the Constitution.

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



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

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

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

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

Further at this stage it can be noted that interpreting the provisions of bail contained u/s 437 & 439 Cr.P.C., the Hon'ble Supreme Court in its various judgments has laid down various considerations for grant or refusal of bail to an accused in a non-bailable offence like, (i) Whether there is any prima facie or

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

Further it may also be noted that it is also settled law that while disposing of bail applications u/s 437/439 Cr.P.C., courts should assign reasons while allowing or refusing an application for bail. But detailed reasons touching the merit of the matter should not be given which may prejudice the accused. What is necessary is that the order should not suffer from non-application of mind. At this stage a detailed examination of evidence and elaborate documentation of the merit of



the case is not required to be undertaken. Though the court can make some reference to materials but it cannot make a detailed and in-depth analysis of the materials and record findings on their acceptability or otherwise which is essentially a matter of trial. Court is not required to undertake meticulous examination of evidence while granting or refusing bail u/s 439 of the CrPC.

In this case, it is argued by the learned counsel for the accused that present applicant is suffering from adjustment disorder and high BP; that his wife is also suffering from fracture in leg; it is further claimed that no sufficient treatment is provided by the Jail Authority. That his condition is becoming critical. It is further stated that present case is a counter blast and accused is falsely implicated in the same; that earlier complainant side attacked the son of the present applicant and FIR No. 168/19 u/s 134 IPC was registered against the accused. It is further stated that as per the present FIR no role is assigned to the present accused. Further, medical documents of the accused is also enclosed in the present application issued by the government hospital. It is further stated that the accused is a government servant and there is no likelihood of fleeing from justice; that he is in JC since 21/02/2020. It is further stated that as per PM report of deceased cause of death is not specific. It is further stated that he is not main accused even as per the story of prosecution in the present case. It is further stated that he is working as fourth class as Safai Karmchari; that his interim bail was earlier dismissed as withdrawn on 11/06/2020. As such, it is prayed that he be granted interim bail for 30 days.

Reply filed by the IO. But before proceedings further, it can be noted that some clarification is required as in the application title it is for regular bail whereas prayer clause is for interim bail.

As such put up for clarification / further argument / appropriate order for **24/06/2020**.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
23.06.2020

: 1 :

Bail Application

State Vs Montu @ Hoshiyar Singh
FIR No. 109/2020
PS.: Nabi Karim
U/s: 457/380/411/120B/34 IPC

23.06.2020

Present: Mr. Pawan Kumar Learned Addl. PP for State is available through VC.
Mr. Rishab Jain, learned counsel for the applicant / accused through V.C.

1. Vide this order present interim bail application dated 18/06/2020 is disposed off.

2. It is stated in such application that accused has deep roots in society and his is falsely implicated in the present case; that he is in JC since 03/05/2020; that there is an outbreak of corona inside the jail also which is overcrowded; that he is covered by the guidelines by the High Power Committee dated 18/05/2020. That co-accused Sunita was granted interim bail vide order dated 16/05/2020 and another co-accused was granted interim bail vide order dated 20/05/2020; that he has four children and he is only bread earner of his family. As such, it is prayed that he be granted interim bail for 45 days.

3. On the other hand, it is stated by the learned Addl.PP for the state, based on reply filed by the IO / SHO, that crime is serious in nature under section 457 IPC apart from 380, 411 IPC. It is further stated that he has criminal involvement in as many as six other cases. But, outcome of such cases is not provided by the IO despite directions issued. Present application is opposed.

4. Two of the co-accused have already been granted interim bail. Further, there is involvement of the present accused in other criminal matter, but their outcome / present status is not placed on record.

State Vs Montu @ Hoshiyar Singh
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But apart from a general apprehension that there is spread of corona virus including in the jail, no other ground is raised in the present interim bail application. Further, it is not the case of the present accused that the barrack in which he is lodged is also infected with such corona virus. Further, it is argued that home of the accused was quarantined earlier and on this ground interim bail is sought. Infact, such ground runs against the accused as if he is released on interim bail to live in such corona suspected home during his interim bail, then he may spread such infection in the jail on his return after surrender. Under these circumstances, having regard to the nature of allegations made and the stage of the present case, this court is not inclined to grant the relief as sought in the present application. Hence, the same is dismissed.

5. **With these observations present bail application is disposed of as dismissed. Learned counsel for the applicant / accused is at liberty to collect the order dasti or through electronic mode. Copy of order be uploaded on the website.**

(Naveen Kumar Kashyap)
Additional Sessions Judge-04
Central/THC/Delhi
23.06.2020

INTERIM BAIL APPLICATION

State Vs. Kamal @ Babu
FIR No.: 24/2018
PS: Nabi Karim
U/S: 304 / 34 IPC

23.06.2020.

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

1. *Observations given by Hon'ble High Court of Delhi in W.P. (C) No. 2945/2020 dated 23.03.2020 in case titled as "Shobha Gupta and Ors. v. Union of India & Ors.", Hon'ble Supreme Court of India in Suo Moto W.P.(C) No. 1/2020 dated 23.03.2020 and Revised Advisory Protocol dated 30.03.2020 have been issued by Ld. District & Sessions Judge (HQ) read with other directions received from time to time including on 28.03.2020, 07.04.2020, 18.04.2020, 05.05.2020 and 18.05.2020 from Hon'ble High Court as a result of various meetings of Delhi State Legal Services Authority, present application is taken up.*
2. Reply filed by the IO.
3. Arguments heard.
4. Present application through electronic mode is filed by DLSA through Jail Superintendent concerned. It is stated that accused is in JC since for more than **one year** (which fact is now even verified by IO in his report).

Further, a copy of certificate of conduct as well as copy of **custody warrant** is enclosed with such interim bail application.

5. Further, a report is filed by IO/SHO concerned. As per such report, **there is six previous conviction or involvement record of such accused. Further, it is stated that offenses alleged against accused is under Section 304/34 IPC.**

6. *In view of report by jail supdt concerned, reply given by IO and direction by Hon'ble High Court of Delhi, case of the accused is not covered under directions as passed by Hon'ble High Court, as mentioned above, as **there is other criminal involvements of the present accused.***

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As such, in the above position, facts and circumstances of present case and the directions by Hon'ble High Court, applicant/accused can not be given benefit of interim bail for a period of 45 days *under directions as passed by Hon'ble High Court, as mentioned above. Accordingly the present application is dismissed .*

7. The present application stands disposed off accordingly. Both side are at liberty to collect the order dasti or through electronic mode. *Further a copy of this order be sent to the IO/SHO concerned by electronic mode.*

(Nayeen Kumar Kashyap)
ASJ-04/Central/THC
Central District/23.06.2020

BAIL APPLICATION

FIR No. :356/15
PS: Rajender Nagar
STATE v. Pawan @ Paragi Lal
U/S: 302, 34 IPC & 25 /27 Arms Act

23.06.2020.

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

1. An application dated 16/06/2020 filed by private counsel Mr. Michael Peter for rectification of order dated 10/06/2020.

In nutshell, it is submitted in such application that a joint interim bail application was moved by the present accused Pawan @ Paragi Lal alongwith co-accused Lalu Ram and on 04/06/2020 and a joint order was passed on 10/06/2020 regarding the same. But in such order dated 10/06/2020 name of the present applicant Pawan @ Paragi Lal is not mentioned.

Heard.

Ahlmad is directed to place on record the ordersheet and original application of the accused dated 10/06/2020 after obtaining the same from filing counter who was maintaining such record earlier.

Put up for appropriate order at 4:00 PM

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

At 4:00 PM

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

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*FIR No. :356/15
PS: Rajender Nagar*

Ahlmad of this court has placed on record two orders on interim bail both dated 05/06/2020 passed by the undersigned only in the present FIR only, one relating to Lalu Ram and another relating to Paragi Lal. It may further be noted that vide such order dated 05/06/2020, on application moved through Jail Superintendent concerned, both such accused were granted interim bail in terms of criteria prescribed by Hon'ble High Court dated 18/05/2020.

Meaning thereby that interim bail to both the accused Lalu Ram and Pawan were already granted on 05/06/2020. But still thereafter, it appears that in the meanwhile, present private counsel also moved the present original interim bail application of such Lalu Ram as well as Pawan @ Paragi Lal on 04/06/2020 which was listed for arguments and order on 10/06/2020. Further, it appears that vide order dated 10/06/2020, the fact that both such accused are already granted interim bail is not pointed out by the prosecution side or by the accused side and as such similar order of interim bail was passed regarding both the accused on 10/06/2020.

But in any case in these background now it is clarified that both such accused are granted interim bail already on 05/06/2020 on the application moved through legal aid. As such, the order dated 10/06/2020, whose rectification is sought at present, has become infructious. Thus, there is no need for further clarification qua the order dated 10/06/2020.

present application is disposed off accordingly.

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*FIR No. :356/15
PS: Rajender Nagar*

Copy be given to both sides. Further a copy of this order be sent to concerned Jail Superintendent. Further a copy of this order be sent to DLSA for their information also.

Learned counsel for applicant is at liberty to obtain the copy of this order dasti or through electronic mode.

(Naveen Kumar Kashyap)

ASJ-04/Central/THC

23.06.2020



BAIL APPLICATION

**FIR No. 427/2017
PS Kashmere Gate
State Vs Sidharth**

U/s: 392, 394, 397, 411, 201, 34 IPC

23.06.2020.

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

Arguments heard.

Put up for orders at 4:00 PM.

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

At 4:00 PM

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

On perusal of the case file, certain clarifications are required about offences under which the present chargesheet is filed viz-a-viz offence for which charge is framed against the present applicant in the present case.

As such, put up for clarification / further arguments, appropriate order on the present bail application of Sidharth for **24/06/2020**.

**(Naveen Kumar Kashyap)
ASJ-04/Central/THC
23.06.2020**

BAIL APPLICATION

**FIR No. 426/2017
PS Kashmere Gate
State Vs Sidharth**

U/s: 392, 394, 397, 411, 201, 34 IPC

23.06.2020.

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

Arguments heard.

Put up for orders at 4:00 PM.

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

At 4:00 PM

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

On perusal of the case file, certain clarifications are required about offences under which the present chargesheet is filed viz-a-viz offence for which charge is framed against the present applicant in the present case.

As such, put up for clarification / further arguments, appropriate order on the present bail application of Sidharth for **24/06/2020**.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
23.06.2020

**FIR No. 427/2017
PS Kashmere Gate
State Vs Salman**

U/s: 392, 394, 397, 411, 201, 34 IPC

23.06.2020.

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

Arguments heard.

Put up for orders at 4:00 PM.

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

At 4:00 PM

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

On perusal of the case file, certain clarifications
are required about offences under which the present
chargesheet is filed viz-a-viz offence for which charge is
framed against the present applicant in the present case.

As such, put up for clarification / further
arguments, appropriate order on the present bail application
of Salman for **24/06/2020**.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
23.06.2020

BAIL APPLICATION

**FIR No. 426/2017
PS Kashmere Gate
State Vs Salman**

U/s: 392, 394, 397, 411, 201, 34 IPC

23.06.2020.

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

Arguments heard.

Put up for orders at 4:00 PM.

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

At 4:00 PM

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

On perusal of the case file, certain clarifications are required about offences under which the present chargesheet is filed viz-a-viz offence for which charge is framed against the present applicant in the present case.

As such, put up for clarification / further arguments, appropriate order on the present bail application of Salman for **24/06/2020**.

**(Naveen Kumar Kashyap)
ASJ-04/Central/THC
23.06.2020**

: 1 :

Bail Application

State Vs Satpal
FIR No. 110/15
PS.: Lahori Gate
U/s: 395, 397, 412 IPC & 25, 54, 59 Arms Act

23.06.2020

Present: Mr. Pawan Kumar Learned Addl. PP for State is available through VC.
Mr. Subhash Chauhan, learned counsel for the applicant / accused through V.C.

1. Vide this order present interim bail application dated 10/06/2020 is disposed off.
2. It is stated in such application that accused has deep roots in society and his is falsely implicated in the present case; that he is in JC since 10/05/2015; that there is an outbreak of corona inside the jail also which is overcrowded; that he is covered by the guidelines by the High Power Committee dated 18/05/2020. That earlier on 09/6/2020, his interim application was dismissed for non availability of record. It is further stated that such accused is suffering from cold, urine problem and cough etc. That public witnesses have already been examined. That co-accused Ankit and Kanchi Lal have already been granted regular bail by Hon'ble High Court vide order dated 16/12/2016. Further co-accused Deepak was also granted bail by the Hon'ble High Court. Two other co-accused were also granted bail by the learned Sessions Judge. As such, it is prayed that he be granted interim bail for 45 days.
3. As per report of Jail Superintendent concerned conduct of the accused is not satisfactory and there is punishment against him in the Jail dated 16/09/2020. It is further stated that he had some medical complaints regarding tooth ache and associated ortho complaints, scrotal swelling and he was attended accordingly. At present there is no such complaint regarding scrotal pain. Further he

State Vs Satpal
FIR No. 110/15
PS.: Lahori Gate
U/s: 395, 397, 412 IPC & 25, 54, 59 Arms Act

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is scheduled for review by the Jail Visiting Ortho Senior and Dentist. It is pertinent to mention that as per such report by medical officer, there is no history of cough or cold reported by the concerned medical officer which is otherwise mentioned in the present application.

4. Further, it is stated by the learned Addl.PP for the state, based on reply filed by the IO / SHO that crime is serious in nature under section 395, 397, 412 IPC apart from other offences. It is further stated that his similar application was rejected recently on 09/06/2020 only. That there is no material change in the circumstances or grounds raised in the present application. As such, present bail application is opposed.

5. It is rightly pointed out by the learned Addl.PP for the State that his application was recently rejected on 09/06/2020. Further, it can be seen that having regard to the report filed by the Jail Superintendent concerned, he is not suffering from any ailment as it is mentioned in hon'ble High Court criteria dated 18/04/2020. Further, there is no material new grounds raised by the accused in the present interim bail application. Under these circumstances, having regard to the nature of allegations made and the stage of the present case, this court is not inclined to grant the relief as sought in the present application. Hence, the same is dismissed.

6. **With these observations present bail application is disposed of as dismissed. Learned counsel for the applicant / accused is at liberty to collect the order dasti or through electronic mode. Copy of order be uploaded on the website.**

(Naveen Kumar Kashyap)
Additional Sessions Judge-04
Central/THC/Delhi
23.06.2020


Bail Application

State Vs Raja Babu @ Gandhi
FIR No. 146/2018
PS.: Timar Pur
U/s: 304 IPC

23.06.2020

**Present: Mr. Pawan Kumar Learned Addl. PP for State is available through VC.
Mr. A.A. Qureshi, learned counsel for the applicant / accused through V.C.**

1. Vide this order present interim bail application dated 15/06/2020 is disposed off.
2. It is stated in such application that his first interim bail application was dismissed on 12/06/2020 by the learned Bail Duty Court; that he is in JC since 21/07/2018; that he belongs to a respectable family; that he is only bread earner of the family; that there is corona pandemic which is spreading even inside the jail. It is further stated that he is on bail in other criminal case pending in UP vide order dated 21/01/2020. As such, it is prayed that he be granted interim bail for 45 days.
3. On the other hand, it is stated by the learned Addl.PP for the state, based on reply filed by the IO / SHO that crime is serious in nature under section 304 IPC. It is further stated that his regular bail was rejected in 2018 twice and then again in 2019 and then again by the undersigned on 01/02/2020. It is further stated that his interim bail based on criteria of Hon'ble High Court was also rejected vide order dated 12/06/2020. On merit, it is stated that he may influence the witnesses. It is further stated that he does not have permanent address in Delhi and residing in UP. As such, present bail application is opposed.
4. There are specific and serious allegations against the present accused. Further the ground stated by the accused for interim



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bail are not found sufficient to grant the interim bail. Further needless to say it is a duty of Jail Superintendent concerned to take all possible steps to ensure good health of the accused as per rules and directions issued from time to time. Under these circumstances, having regard to the nature of allegations made and the stage of the present case, this court is not inclined to grant the relief as sought in the present application. Hence, the same is dismissed.

5. **With these observations present bail application is disposed of as dismissed. Learned counsel for the applicant / accused is at liberty to collect the order dasti or through electronic mode. Copy of order be uploaded on the website.**

(Naveen Kumar Kashyap)
Additional Sessions Judge-04
Central/THC/Delhi
23.06.2020

BAIL APPLICATION

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

23.06.2020.

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

Fresh application u/s 439 Cr.PC seeking interim bail
on behalf of accused Laxman @ Bable filed through advocate.

Same be checked and registered.

Put up for reply, arguments and appropriate order
with case file for **26/06/2020**.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
23.06.2020

: 1 :

Bail Application

State Vs Akash @ Sanju
FIR No. 191/2019
PS.: Karol Bagh
U/s: 302, 307, 120B, 34, 201 IPC & 25/27 Arms

23.06.2020

Present: Mr. Pawan Kumar Learned Addl. PP for State is available through VC.
Mr. Komal Sharma, learned counsel for the applicant / accused through V.C.

1. Vide this order present interim bail application dated 09/06/2020 is disposed off.
2. It is stated in such application that present application is moved on mercy ground and not on merit; that parents of the applicant are old; that application is having one newly born daughter of one year old; there is no other earning member in the family; that he wants to meet his family; that entire world is afraid from corona disease; that he belongs to a poor but a respectable family; that there is an outbreak of corona inside the jail also. As such, it is prayed that he be granted interim bail for three months.
3. On the other hand, it is stated by the learned Addl. PP for the state, based on reply filed by the IO / SHO that crime is serious in nature under section 302 IPC apart from other offences; bail application of co-accused Dev Arjun is recently rejected by this court on 20/06/2020; that he does not fall under the criteria of Hon'ble High Court dated 18/05/2020 as his custody is less than two years; that he actively participated in the crime in question through mobile phone also. It is further stated that both the parents of the accused are working. Further real uncle of the accused is also working and there are other persons to look after his wife and other family members. It is further stated that co-accused Mahesh has recently opened fire for extortion of money and an FIR was registered against such accused.

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As such, present bail application is opposed.

4. The minimum punishment for the present offence is life imprisonment. Further specific allegations against the present accused including electronic evidence / mobile calls. Further witnesses are not yet examined. Further the ground stated by the accused for interim bail are not found sufficient, particularly when his parents are working and there are other family member to lookafter his wife and small child.

Under these circumstances, having regard to the nature of allegations made and the stage of the present case, this court is not inclined to grant the relief as sought in the present application. Hence, the same is dismissed.

5. **With these observations present bail application is disposed of as dismissed. Learned counsel for the applicant / accused is at liberty to collect the order dasti or through electronic mode. Copy of order be uploaded on the website.**

(Naveen Kumar Kashyap)
Additional Sessions Judge-04
Central/THC/Delhi
23.06.2020

BAIL APPLICATION

FIR No. : 339/2016

PS: Darya Ganj

STATE v. Noori

U/S: 395, 397, 120B, 412, 201 IPC & 25/27 Arms Act

23.06.2020.

Present: Sh. Pawan Kumar, Ld. Addl. PP for the State through VC.
Mr. Harshit Chopra & Mr. Sharad Malhotra, Ld. Counsel for applicant through VC.

An application for extension of interim bail is filed by accused through counsel dated 22.06.2020.

Arguments heard.

At this stage, it is noted that after filing of such application, Hon'ble High Court of Delhi in its full bench order dated 15.06.2020 in W.P.(C) 3037/2020 titled as "Court on its own motion v. state & Ors. in re. *Extension of Interim Orders*, stated that " In view of the above, we hereby further extend the implementation of the directions contained in our order dated 25th March, 2020 and 15th May, 2020 till 15th July, 2020 with the same terms and conditions."

In view of the same, as Hon'ble High Court has extended such interim bail till 15.07.2020, vide such order. As such, there is no need to pass any further order. With these observations, present application is disposed of.

Copy of this order be given dasti to counsel for applicant or through electronic mode.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
23.06.2020

**CrI. Appeal No. : 15/2019
U/s. 138 NI Act.**

Rajinder Kumar Vs. M/s. Ajay Industrial Corporation

File Received by of assignment.

23.06.2020.

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

Same application of the counsel is pending in this
court on 24.06.2020.

Be put up with the other application on the
24.06.2020.

**(Naveen Kumar Kashyap)
ASJ-04/Central/THC
23.06.2020**

BAIL APPLICATION

**FIR No. :63/2015
PS: Karol Bagh
STATE v. Gopal
U/S: 395/397/412/120B IPC**

23.06.2020.

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

Report not filed by the IO regarding verification of factum as stated in para '7' relating to destruction of the house of accused in storm in West Bengal. The same was directed by the court on the last date of hearing i.e. 05/06/2020.

Issue show cause notice to IO as to why such reply not filed so far. In any case, put up for compliance of the order afresh for **29/06/2020**.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
23.06.2020

INTERIM BAIL APPLICATION

State Vs. Deepak Kumar
FIR No. : 34/2014
PS: Prasad Nagar
U/S: 302, 394, 411 IPC

Dated:23.06.2020.

Present: Mr. Pawan Kumar, Id. Addl. PP for the State through
VC
Mr. Yogesh Swaroop, Ld. Counsel for Accused through
VC.

1. *Observations given by Hon'ble High Court of Delhi in W.P. (C) No. 2945/2020 dated 23.03.2020 in case titled as "Shobha Gupta and Ors. v. Union of India & Ors.", Hon'ble Supreme Court of India in Suo Moto W.P.(C) No. 1/2020 dated 23.03.2020 and Revised Advisory Protocol dated 30.03.2020 have been issued by Ld. District & Sessions Judge (HQ) read with other directions received from time to time including on 28.03.2020, 07.04.2020, 18.04.2020, 05.05.2020 and 18.05.2020 from Hon'ble High Court as a result of various meetings of Delhi State Legal Services Authority, present application is taken up.*

2. Reply filed by the IO.

3. Arguments heard.

4. Present application through electronic mode is filed by DLSA through Jail Superintendent concerned. It is stated that accused is in JC since for more than **two years** (which fact is now even verified by IO in his report). **Further, a copy of certificate of good conduct** as well as **copy of custody warrant** is enclosed with such interim bail application.

5. Further, a report is filed by IO/SHO concerned. As per such report, there is no previous conviction or involvement record of such accused. **Further, it is stated that offences alleged against accused is inter-alia Section 302, 394, 411 IPC.**

6. In view of report by jail supdt concerned , reply given by IO and direction by Hon'ble High Court of Delhi, case of the accused is

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covered under directions as passed by Hon'ble High Court, as mentioned above. Further, accused is in JC since more than **two years** at present.

As such, in the above position, facts and circumstances of present case and the directions by Hon'ble High Court, applicant/accused is admitted to interim bail for a period of 45 days from the date of release on furnishing personal bond **in the sum of Rs. 10,000/- to the satisfaction of the Jail Superintendent concerned**. After completion of the interim bail period applicant shall surrender before concerned Jail Superintendent. Necessary intimation be sent to concerned Jail Superintendent accordingly.

6.1. In the facts and circumstances of present case and the reply filed by the IO/SHO following conditions are also imposed on present accused for such interim bail :

- i) applicant shall not flee from the justice;
- ii) applicant shall not tamper with the evidence;
- iii) applicant shall not threaten or contact in any manner to the prosecution witnesses ,
- iv) applicant shall not leave country without permission;
- v) applicant shall convey any change of address immediately to the IO and the court;
- vi) applicant shall also provide his/her mobile number to the IO;
- vii) applicant shall mark his /her attendance before concerned IO (and if IO is not available then to concerned SHO) every alternative /second day through mobile by sharing his/her location with the SHO concerned;
- viii) applicant shall further make a call, preferably by audio plus video mode to concerned IO, (and if IO is not available then to concerned SHO) once a week, preferably on Monday between 10 a.m. to 5 p.m.

ix) Applicant shall keep his / her such mobile number

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'Switched On' at all the time , particularly between 8 am to 8 pm everyday.

7. The present application stands disposed off accordingly. Both side are at liberty to collect the order dasti or through electronic mode. ***Further a copy of this order be sent to the IO/SHO concerned by electronic mode.***

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
Central District/23.06.2020

BAIL APPLICATION

**FIR No. :221/2015
PS: Karol Bagh
STATE v. Bablu Mathur
U/S: 302, 396, 397, 411, 34 IPC**

23.06.2020.

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

Report filed by the IO SI Gautam. Sometime is
sought to get verified the submissions made in para 7 as
directed on the last date of hearing i.e. 05/06/2020.

Put up for compliance of the order afresh for
29/06/2020.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
23.06.2020

BAIL APPLICATION

FIR No. :415/2015

PS: Kotwali

STATE v. Sonu

**U/S: 395, 397, 365, 201,412,120B IPC
& 25/54/59 Arms Act**

23.06.2020.

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

After some arguments, it is pointed out by the learned Addl. PP for the State that interim bail application of the same accused was recently rejected vide order dated 17/06/2020.

At this stage, learned counsel for accused wants to withdraw the present bail application as it is stated that, inadvertently, the present application was moved again.

Heard. Allowed.

In view of this, the present application is dismissed as withdrawn. Copy of this order can be obtained through electronic mode.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
23.06.2020

BAIL APPLICATION

**Bail Application of Ajay Kumar Jha
FIR No. :221/2015
PS: Karol Bagh
STATE v. Bablu Mathur & Ors
U/S: 302, 392, 394, 397, 342, 411, 120B, 34 IPC**

23.06.2020.

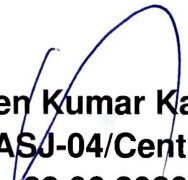
Present: Sh. Pawan Kumar, Ld. Addl. PP for the State
through VC.

File taken up today in view of the clarification sought by Deputy Superintendent Jail No.4 regarding the sections involved in the present case.

Heard.

Accordingly, it is clarified that present bail is granted to the accused vide order dated 20/06/2020 U/S: 302, 392, 394, 397, 342, 411, 120B, 34 IPC as well as **under the section 25/27 Arms Act.**

Order dated 20/06/2020 regarding interim bail is clarified and modified accordingly. A copy of this order be sent to Jail Superintendent concerned.


**(Naveen Kumar Kashyap)
ASJ-04/Central/THC
23.06.2020**

BAIL APPLICATION

FIR No. :48/2015

PS: Nabi Karim

STATE v. Ajay @ Nathu

U/S: 186/353/333/307/201/75/34 IPC

23.06.2020.

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

Report not received from the Jail Superintendent
regarding medical condition of the accused.

As such, issue fresh notice to Jail Superintendent
concerned to file such report positively by the next date of
hearing. In the meanwhile, it is needless to say that Jail
Superintendent concerned shall take necessary steps to ensure
medical treatment of accused including for piles and other
ailment if any.

Put up for **25/06/2020**.

(Naveen Kumar Kashyap)

ASJ-04/Central/THC

23.06.2020

Misc Application
FIR No.: 303/2014
State Vs Sunil @ Kalu
P. S. 302, 307, 120B, 34 IPC

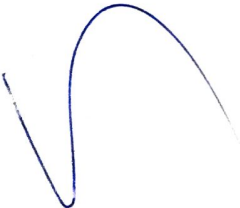
23/06/2020

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

1. An application dated 16/06/2020 on behalf of eye witness PW,Raj Kumar @Raju filed through counsel for urgent hearing . Same is taken up accordingly.
2. Reply filed by IO.
3. Heard in detail.
4. Witnesses are important players in the judicial system, who help the judges in arriving at correct factual findings. The instrument of evidence is the medium through which facts, either disputed or required to be proved, are effectively conveyed to the courts. This evidence in the form of documentary and oral is given by the witnesses.

A witness may be a partisan or interested witness, i.e., a witness who is in a near relation with the victim of crime or is concerned with conviction of the accused person. Even his testimony is relevant, though, stricter scrutiny is required while adjudging the credence of such a victim.

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However, apart from these witnesses or the witnesses who may themselves be the victims, other witnesses may not have any personal interest in the outcome of a case. They still help the judicial system.

5. It hardly needs to be emphasised that one of the main reasons for witnesses to turn hostile is that they are not accorded appropriate protection by the State. It is a harsh reality, particularly, in those cases where the accused persons/criminals are tried for heinous offences, or where the accused persons are influential persons or in a dominating position that they make attempts to terrorize or intimidate the witnesses because of which these witnesses either avoid coming to courts or refrain from depositing truthfully.

6. Earlier it is observed by Hon'ble Supreme Court from time to time that unfortunate situation prevails because of the reason that the State has not undertaken any protective measure to ensure the safety of these witnesses, commonly known as 'witness protection'. It was further observed from time to time that on the analysis of various cases, the following reasons can be discerned which make witnesses retracting their statements before the court and turning hostile:

(i) Threat/Intimidation.

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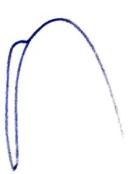
FIR No.: 303/2014
State Vs Sunil @ Kalu

- (ii) Inducement by various means.
- (iii) Use of muscle and money power by the accused.
- (iv) Use of stock witnesses.
- (v) Protracted trials.
- (vi) Hassles faced by the witnesses during investigation and trial.
- (vii) Non-existence of any clear-cut legislation to check hostility of witness.

7. Justifying the measures to be taken for witness protection to enable the witnesses to depose truthfully and without fear, Justice Malimath Committee Report on Reforms of Criminal Justice System, 2003 has remarked as under:

“11.3. Another major problem is about safety of witnesses and their family members who face danger at different stages. They are often threatened and the seriousness of the threat depends upon the type of the case and the background of the accused and his family. Many times crucial witnesses are threatened or injured prior to their testifying in the court. If the witness is still not amenable he may even be murdered. In such situations the witness will not come forward to give evidence unless he is assured of protection or is guaranteed anonymity of some form of physical disguise.... Time has come for a comprehensive law being enacted for protection of the witness and members of his family.”

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8. Almost to similar effect are the observations of the Law Commission of India in its 198th Report [Report on "witness identity protection and witness protection programmes"], as can be seen from the following discussion therein:

"The reason is not far to seek. In the case of victims of terrorism and sexual offences against women and juveniles, we are dealing with a section of society consisting of very vulnerable people, be they victims or witnesses. The victims and witnesses are under fear of or danger to their lives or lives of their relations or to their property. It is obvious that in the case of serious offences under the Indian Penal Code, 1860 and other special enactments, some of which we have referred to above, there are bound to be absolutely similar situations for victims and witnesses. While in the case of certain offences under special statutes such fear or danger to victims and witnesses may be more common and pronounced, in the case of victims and witnesses involved or concerned with some serious offences, fear may be no less important. Obviously, if the trial in the case of special offences is to be fair both to the accused as well as to the victims/witnesses, then there is no reason as to why it should not be equally fair in the case of other general offences of serious nature falling under the Indian Penal Code, 1860. It is the fear or danger or rather the likelihood thereof that is common to both cases. That is why several general statutes in other countries provide for victim and witness protection."

9. It may further be noted that criminal justice is closely associated with human rights. Whereas, on the one hand, it is to be ensured that

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no innocent person is convicted and thereby deprived of his liberty, it is of equal importance to ensure, on the other hand, that victims of crime get justice by punishing the offender. In this whole process, protection of witnesses assumes significance to enable them to depose fearlessly and truthfully. That would also ensure fair trial as well, which is another concomitant of the rule of law.

10. In this background Hon'ble Supreme court In the matter of **Mahender Chawla vs Union Of India Ministry Of Home decided on 5 December, 2018 in W.P. (CRI.) NO. 156 OF 2016**, held that there is a paramount need to have witness protection regime, in a statutory form, which all the stakeholders and all the players in the criminal justice system concede. At the same time no such legislation has been brought about. These are the considerations which had influenced this Court to have a holistic regime of witness protection which should be considered as law under Article 141 of the Constitution till a suitable law is framed. Accordingly Hon'ble S.C. ,inter alia, directed:

(i) This Court has given its imprimatur to the Scheme prepared by respondent No.1 which is approved hereby. It

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comes into effect forthwith.

(ii) The Union of India as well as States and Union Territories shall enforce the Witness Protection Scheme, 2018 in letter and spirit.

(iii) It shall be the 'law' under Article 141/142 of the Constitution, till the enactment of suitable Parliamentary and/or State Legislations on the subject.

11. At this stage we may note the some provision of such "Witness Protection Scheme, 2018", which is approved by Hon'ble S.C.

In such scheme, "Competent Authority" means a Standing Committee in each District chaired by District and Sessions Judge with Head of the Police in the District as Member and Head of the Prosecution in the District as its Member Secretary.

Further "Witness Protection Application", means an application moved by the witness in the prescribed form before a Competent Authority for seeking Witness Protection Order. It can be moved by the witness, his family member, his duly engaged counsel or IO/SHO/SDPO/Prison SP concerned and the same shall preferably be got forwarded through the Prose

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cutor concerned.


Further, the application for seeking protection order under this scheme can be filed in the prescribed form before the Competent Authority of the concerned District where the offence is committed along with supporting documents, if any.

Further such scheme inter-alia states that depending upon the urgency in the matter owing to imminent threat, the Competent Authority can pass orders **for interim protection** of the witness or his family members during the pendency of the application.

Further the Witness Protection Order passed by the Competent Authority shall be implemented by the Witness Protection Cell of the State/UT or the Trial Court, as the case may be. *Overall responsibility of implementation of all witness protection orders passed by the Competent Authority shall lie on the Head of the Police in the State/UT.*

12. In this regard it may be noted that now there is a Witness Protection Scheme operational, which is specifically dealing with situation / application of the present nature. Further as per such Scheme there is a competent authority and the application for seeking protection under such

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State Vs Sunil @ Kalu**

witness Protection Scheme can be filed in the prescribed form before such Learned Competent Authority, with supporting documents, if any.

Further it is learnt that competent authority is already in place headed by Learned District & Sessions Judge of the district concern. Thus, such authority is headed by an authority who is higher to this court. Further in any case, such authority is specifically constituted to deal with such matters.

Therefore, under such situation if the present application for Witness Protection is entertained by this trial court, then the same may amount to transgressing upon the powers of such learned competent authority. As such, this court is informing and advising the applicant to file the application before the competent authority, as it is one of the direction in such Witness Protection Scheme that IO and the court shall inform the existence of Witness Protection Scheme to the witnesses.

Further, (in view order dated 29/05/2015 passed by the trial court earlier ,when such witness protection scheme and Ld. authority did not came in force),in the meanwhile, the SHO of the concerned Police Station i.e. PS Subzi Mandi is also directed to to comply such original order dated 29/09/2020 for two weeks from today ,, so that in the meanwhile

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witness may approach such Ld. competent authority. In the meanwhile, such witness is advised to approach the competent authority .

13. A copy of this order be given free of cost to the accused as well as to such witness / complainant . Further a copy be sent to concerned SHO for compliance. Further copy of this order be sent to DCP Central District for his information as witness protection scheme, 2018 states that such scheme will be given wide publicity and IO and the court shall inform witness about the existence of such scheme and its salient features.

14. With these observations, and directions, present application is disposed of.

(NAVEEN KUMAR KASHYAP)
ASJ-04(Central/Delhi) 23/06/2020

BAIL APPLICATION

FIR No. :201/2018

PS: EOW

STATE v. Manoj Kumar

U/S: 419, 420, 467, 468, 471, 120B IPC

23.06.2020.

Present: Sh. Pawan Kumar, Ld. Addl. PP for the State through VC.
Mr. Rakesh Kumar Sharma, learned counsel for the applicant / accused through V.C.

Arguments already heard.

Today the case was fixed for summoning of TCR. TCR is not yet received. Ahlmad is directed to summon the same today itself. Put up for appropriate order at 4:00 PM.

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

At 4:00 PM

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

I have gone through present bail application and Trial Court record. Certain clarification is required including regarding section 467 IPC.

As such, put up for further arguments, appropriate orders for **29/06/2020**. TCR be sent back and be summoned against on that day itself.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
23.06.2020

SC No.: 17/2017
FIR No.: 339/2016
PS: Darya Ganj
U/s: 395, 397, 412, 201, 120B IPC & 25/27 Arms Act.

23.06.2020.

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


File is taken up today.

In view of the order dated 06/05/2020 passed by the Hon'ble High Court in bail application No.; 804/2020 on the petition of Kishan Kumar, certain directions were given by the Hon'ble High Court for disposal of certain bail applications.

As such, issue notice to the accused as well as to his counsel through electronic mode as per the details available on record. The same be issued within three days.

Further during the bail application No. 1096/2020 dated 12/06/2020, it is directed that recording of evidence of complainant may be expedited. The same is noted and would be complied with. But it may be noted that there are directions by the Hon'ble High Court vide general order not to record evidence at present.

As such, put up for appropriate orders for
02/07/2020.


(Naveen Kumar Kashyap)
ASJ-04/Central/THC
23.06.2020