

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

Bail Application No.: 1183/2020
State Vs Divesh Gupta s/o Lt. Lalit Mohan Gupta
FIR No. 195/2020
P. S. Kashmere Gate
U/s: 147, 148, 149, 307, 427, 506, 440, 452, IPC & 25,
27, 54, 59 Arms Act.

19/09/2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State.
Mr. Jaiveer Singh Chauhan, learned counsel for
the accused in person.

Vide this order, regular bail application dated
14/09/2020 u/s 439 Cr.PC filed by applicant Divesh Gupta
through counsel is disposed of.

It is stated in such application that he is not named
in the FIR; that earlier bail application was dismissed as
withdrawn. none of the offence including 307 IPC can be
attributed to the accused nor any offence under Arms act
can be attributed at all; that nothing incriminating has been
recovered from him or at his instance; that he is no more
required for the purpose of investigation; that he is in JC
since 19/08/2020; that in fact period to seek PC remand is
already over. As such no purpose would be served by



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keeping the accused in JC particularly in pandemic situation. That he does not have any criminal record at all. It is further argued that there is delay in registration of FIR; that he is not arrested from the spot. As such, it is prayed that he be granted regular bail.

On the other hand, in reply filed by the SI Satender Singh, as also argued by learned Addl.PP for the State, it is stated that on the night of 16th / 17th August, 2019, complainant heard loud voices, one unknown person entered with force in the house with knife and he looked everywhere inside and pushed LCDs installed in his room. He noticed about 8-10 people in the street. One of them was having gun and two of them were having knives and rest were having hockey sticks in their hand and they were shouting and asking someone to come out and face them. One person fired in the air and his associates were pulling down motorcycle in the street. One of the persons from the mob pointed knife on the neck of one of the neighbour's son. At this stage, when people gathered there, the mob ran away from the spot giving life threat to all. Later on during investigation, it is revealed that such mob was looking for two persons and such mob was led by one main accused Lalit Yadav @ Pongi. Such Pongi called his friends and relative to spread terror in the area. Such main accused Pongi was

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having illegal fire arm and he fired in air. Further, cctv footage of the area is also gathered during investigation. It is stated that case is at initial stage. The number of persons are absconding. Offence is very serious in nature. It is further submitted that there is cctv footage of the car which the present accused was driving and such cctv footage was of a place which is very nearby the actual place of incident. It is further stated that during investigation, it was found that there are more than 8-10 accused persons. As such, bail application is 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

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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

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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

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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.

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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

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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

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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, on the basis of material on record so far and the arguments heard, prima facie it appears that ingredients of offence u/s 307 IPC are lacking at present. Rest of the offences with which accused is charged

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is having maximum punishment upto 07 years. That accused is in JC for about one month. Further, as far as present accused is concerned, nothing remains to be recovered at his instance. In fact, the period for seeking police remand is already over. As such, no purpose would be served by keeping such accused in JC. Investigation and thereafter trial is likely to take time.

In above facts and circumstances, such accused is granted bail subject to furnishing of **personal bond in the sum of Rs. 15,000/- with two sound surety of like amount**, subject to the satisfaction of the learned Trial court and the following additional conditions:

- 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 mobile number to the IO;*
- vii) Applicant shall mark his 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*

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the SHO concerned till the chargesheet is filed;
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. till the chargesheet is filed.

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

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

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

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

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

"..... The trial courts should not only be sensitive but extremely vigilant in cases where they are recording orders of bail to

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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

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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 present application stands disposed off accordingly. Both side are at liberty to collect the order through electronic mode. **Further a copy of this order be sent to the Jail Superintendent concerned through electronic mode. Further a copy be sent to the IO / SHO concerned. Further, copy of this order be uploaded on website.**


(NAVEEN KUMAR KASHYAP)
ASJ-04(Central/Delhi)
19.09.2020

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19/09/2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State.
Mr. Pradeep Kumar Anand, learned counsel for
the accused.

Vide this order, regular bail application dated
14/09/2020 u/s 439 Cr.PC filed by applicant Ms. Chinki Yadav
through counsel is disposed of.

It is stated in such application that she is not named
in the FIR; that she is falsely implicated in this case; none of
the offence including 307 IPC can be attributed to the
accused nor any offence under Arms act can be attributed at
all; that nothing incriminating has been recovered from her
or at her instance; that she is no more required for the
purpose of investigation; that she is in JC since 26/08/2020;
that in fact period to seek PC remand is already over. As such
no purpose would be served by keeping the accused in JC
particularly in pandemic situation. That she was arrested later
on. That she does not have any criminal record at all. That
she is permanent resident of Delhi. That she is a female as

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such, her age be considered more sympathetically in provision of law. As such, it is prayed that she be granted regular bail.

On the other hand, in reply filed by the SI Satender Singh, as also argued by learned Addl.PP for the State, it is stated that she placed active role in conspiracy in gathering the mob / crowd. That there is CDR detail in this regard. It is further argued that on the night of 16th / 17th August, 2019, complainant heard loud voices, one unknown person entered with force in the house with knife and he looked everywhere inside and pushed LCDs installed in his room. He noticed about 8-10 people in the street. One of them was having gun and two of them were having knives and rest were having hockey sticks in their hand and they were shouting and asking someone to come out and face them. One person fired in the air and his associates were pulling down motorcycle in the street. One of the persons from the mob pointed knife on the neck of one of the neighbour's son. At this stage, when people gathered there, the mob ran away from the spot giving life threat to all. Later on during investigation, it is revealed that such mob was looking for two persons and such mob was led by one main accused Lalit Yadav @ Pongi. Such Pongi called his friends and relative to spread terror in the area. Such main accused Pongi was having illegal fire arm

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and he fired in air. Further, cctv footage of the area is also gathered during investigation. It is stated that case is at initial stage. The number of persons are absconding. Offence is very serious in nature. As such, bail application is 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

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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

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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

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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

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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, on the basis of material on record so far and the arguments heard, prima facie it appears that ingredients of offence u/s 307 IPC are lacking at present. Rest of the offences with which accused is charged is having maximum punishment upto 07 years. That accused is in JC for about one month. Further, as far as present accused is concerned, nothing remains to be recovered at her instance. She is a female. In fact, the period for seeking police remand is already over. As such, no purpose would be served by keeping such accused in JC. Investigation and thereafter trial is likely to take time.

In above facts and circumstances, such accused is

granted bail subject to furnishing of **personal bond in the sum of Rs. 15,000/- with two sound surety of like amount**, subject to the satisfaction of the learned Trial court and the following additional conditions:

- 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 her mobile number to the IO;*
- vii) Applicant shall mark 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 till the chargesheet is filed;*
- 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. till the chargesheet is filed.*
- ix) Applicant shall keep her such mobile number 'Switched On' at all the time, particularly between 8 am to 8 pm everyday till the chargesheet is filed*
- x) That applicant will cooperate with the*

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investigation / IO / SHO concerned and will appear before IO / Trial Court as and when called as per law.

xi) *Applicant will not indulge in any kind of activities which are alleged against her in the present case.*

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

11. 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....."*

**State Vs Chinki Yadav w/o Lalit Yadav
FIR No. 195/2020
P. S. Kashmere Gate**

U/s: 147, 148, 149, 307, 427, 506, 440, 452, IPC & 25, 27, 54, 59 Arms Act.

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 present application stands disposed off accordingly. Both side are at liberty to collect the order through electronic mode. **Further a copy of this order be sent to the Jail Superintendent concerned through electronic mode. Further a copy be sent to the IO / SHO concerned. Further, copy of this order be uploaded on website.**

(NAVEEN KUMAR KASHYAP)
ASJ-04(Central/Delhi)
19.09.2020

State Vs Chinki Yadav w/o Lalit Yadav
FIR No. 195/2020
P. S. Kashmere Gate

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

Bail application No.: 1273/2020
State Vs Sunny s/o Naresh
FIR No.: 145/2020
PS Kotwali
U/s: 392, 411, 34 IPC

19/09/2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State.
Mr. Sohrab Khan, learned counsel for accused in person.

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

It is stated in the application that he is in JC since 22/03/2020; that chargesheet is already filed; that alleged recovery is not from the applicant but from the co-accused; that there is no previous criminal record of such accused. As such, it is prayed that he be granted regular bail.

On the other hand, in reply filed by the IO, as also argued by learned Addl.PP for the State it is stated that he alongwith the co-accused was caught on the spot immediately after committing the offence in question. That robbed purse of the victim was recovered from the possession of co-accused. That he was arrested by the PCR police official when the victim screamed after he was robbed and overpowered by these two

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accused persons. That a buttondar cutter was recovered from the possession of present accused from his pocket. That they may threaten the witness. That his presence may not be secure for trial and he is not residing in Delhi. That his two bail applications are already dismissed by learned MM.

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

**Bail application No.: 1273/2020
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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

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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

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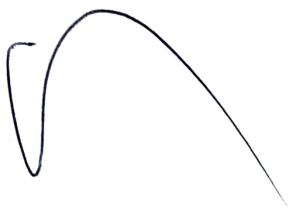
a cherished social norm. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly thing which the society disapproves, the legal consequences are bound to follow.

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**).

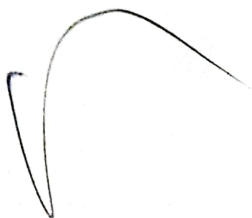
Further at this stage it can be noted that interpreting the provisions

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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

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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.

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In the present case, there are specific allegations against the present accused that he was arrested by the police official immediately after committing the crime from the spot itself. Further such offences are a nuisance to the society at large. Further, the complainant is not yet examined in this case. Under these circumstances, having regard to the nature of the offence and the stage of the trial, this court is not inclined to grant the bail at this stage. Hence, the same is dismissed.

The present application stands disposed of accordingly. Both sides are at liberty to collect the order through electronic mode. **Further a copy of this order be sent to the Jail Superintendent concerned through electronic mode. Further a copy be sent to the IO / SHO concerned. Further, copy of this order be uploaded on website.**


(NAVEEN KUMAR KASHYAP)
ASJ-04(Central/Delhi)
19.09.2020

Bail application No.: 1273/2020
State Vs Sunny s/o Naresh
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U/s: 392, 411, 34 IPC

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

Bail Application No.: 1173/2020
State Vs Sunny @ Ajay s/o Pooran Chand
FIR No. 263/2020
P. S. Kotwali
U/s: 379, 411, 34 IPC


19/09/2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State.
Mr. C.B. Garg, learned counsel for accused in person.

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

It is stated in the application that he is in JC since 01/07/2020; that investigation is already complete; that chargesheet is already filed; that he is no more required for the purpose of further investigation. He is the only bread earner of his family. No purpose would be served by keeping the accused in JC. As such, it is prayed that he be granted regular bail.

On the other hand, in reply filed by the IO, as also argued by learned Addl.PP for the State it is stated that there is a number of criminal cases pending against such accused for similar offences; that he is hard core criminal and he is likely to commit similar crime if granted bail. That his presence is caught in CCTV camera committing the crime; further complainant has identified the accused.


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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

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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

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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

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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

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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

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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, there are specific allegation against the present accused including the cctv footage. Further complainant has identified him. Further such offence are nuisance to the society at large. A number of similar matter are pending against such accused. Further,

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complainant is not yet examined in this case. Under these circumstances, having regard to the nature of offence and the stage of the trial. This court is not inclined to grant the bail at this stage. Hence, the same is dismissed.

The present application stands disposed off accordingly. Both sides are at liberty to collect the order through electronic mode. ***Further a copy of this order be sent to the Jail Superintendent concerned through electronic mode. Further a copy be sent to the IO / SHO concerned. Further, copy of this order be uploaded on website.***

(NAVEEN KUMAR KASHYAP)
ASJ-04(Central/Delhi)
19.09.2020

Bail Application No.: 1173/2020
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Bail Application

**Bail Applicatin No.: 1122/2020
State Vs. Shiv Kumar s/o Jagdish
FIR No. : 200/2020
PS: Pahar ganj
U/S: 308, 34 IPC**

19.09.2020

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

Arguments already heard in the present case. Today the case was fixed for order / clarification.

Vide this order, the regular bail application dated 04/09/2020 under section 439 Cr.P.C. on behalf of accused 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

**Bail Applicatin No.: 1122/2020
State Vs. Shiv Kumar s/o Jagdish
FIR No. : 200/2020
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U/S: 308, 34 IPC**



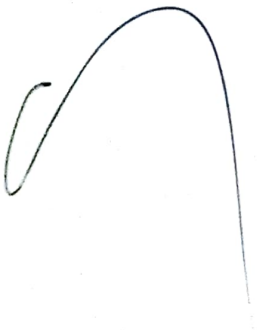
Covenant On Civil And Political Rights, 1966 and, therefore, Article 21 of the Constitution has to be understood in the light of the International Covenant On Civil And Political Rights, 1966. *Further* Presumption of innocence is a human right. Article 21 in view of its expansive meaning not only protects 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

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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

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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

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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

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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

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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 submitted on behalf of the accused that he is in JC since 25/08/2020; that on 23/08/2020 at about 11:00 PM four boys were roaming around the residence of the applicant in a drunken condition. In the meanwhile, sister of the applicant namely Vandana came out from her house. Then the above four persons who were the complainant in the present case started using unparliamentary language and stalking her. In the meanwhile, applicant who is brother of said Vandana also arrived. That on seeing the applicant both the persons started beating him. As such, some public persons also gathered and after seeing public persons both the accused fled away giving threat. On next day i.e. 24/08/2020 at about 8:45 AM all the four persons again came at the house of applicant alongwith deadly weapon and dragged out the applicant. Sister of the applicant tried to

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save the applicant. But complainant namely Maan Singh and Lokesh caught hold of sister from her private parts as well as from neck and torn her clothes. As such, sister of the applicant made a call on 100 number. Then complainant fled from the place and to the surprise of the applicant in the evening, police came to arrest the applicant and one more accused in the present case. That even the present applicant / accused received grievous injury on his hand but no FIR is registered against the complainant. That accused is a young person of 30 years and having a family life and old parents. That he is a patient of fits and his treatment is going in government hospital. That investigation is already complete on the part of applicant. As such, no purpose would be served by keeping in JC. During the course of arguments, learned counsel for accused has placed on record the cctv footage as well as certain photographs. As such, it is prayed that he be granted regular bail.


On the other hand, it is stated in the reply filed by ASI Abhey Raj, as also argued by the learned Addl.PP for the state, that there are serious and specific allegations against the present accused; that his presence was captured in the cctv footage and he hit the complainant on the head alongwith other co-accused and the same is captured in such cctv footage. That injury is simple in nature. Investigation is in progress. As such, present application is opposed.

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Further, learned counsel for the complainant also argued in detail and further he also placed on record cctv footage and other relevant documents.

I have heard both the sides and gone through the record. It is rightly pointed out by the learned Addl. PP for the State that offence is serious in nature. Further, investigation still on and at initial stage. Further, presence of the accused is captured in cctv footage committing the crime in question. As such, this court is not inclined to grant regular bail to accused at this stage.

The present application stands disposed off accordingly. Both side are at liberty to collect the order through electronic mode. ***Further a copy of this order be sent to the Jail Superintendent concerned through electronic mode. Further a copy be sent to the IO / SHO concerned. Further, copy of this order be uploaded on website.***


(NAVEEN KUMAR KASHYAP)
ASJ-04(Central/Delhi)
19.09.2020

Bail Applicatin No.: 1122/2020
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FIR No. : 200/2020
PS: Pahar ganj
U/S: 308, 34 IPC

BAIL APPLICATION NO.: 1131/2020

State v. Rohit Yadav
FIR No.: 195/2020
PS: Kashmere Gate
U/s:147,148,149,307,427,406,440,452 IPC &
25,27,54,59 Arms Act

19.09.2020

This court is holding physically today as per directions.

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

Further arguments heard today.

Put up for orders/clarifications at 4 pm.

(Naveen Kumar Kashyap)
ASJ-04/Central/19.09.2020

At 4 pm.

During course of arguments, certain case laws filed by Ld. Addl. PP for the state. Some time is needed to go through the same. As such, put up for clarifications, if any/orders on 21.09.2020 through GVC. In the meanwhile, without commenting on merit of the present bail application, IO is directed not to take coercive steps til next date of hearing.

(Naveen Kumar Kashyap)
ASJ-04/Central/19.09.2020

BAIL APPLICATION NO.: 1174/2020

**State v. Tale Singh
FIR No.: Not known
PS: Not Known
U/s; not known**

19.09.2020

This court is holding physically today as per directions.

Present: Mr. Pawan Kumar, learned Addl.PP for State.
Sh. Ajay Kumar Chadha, Ld. Counsel for both the applicants.

It is a joint application u/s 438 Cr.P.C. for anticipatory bail.

Part submissions heard.

Issue notice to IO for next date.

Put up for reply, arguments and appropriate order for

24.09.2020.

**(Naveen Kumar Kashyap)
ASJ-04/Central/19.09.2020**

BAIL APPLICATION NO.: 1186/2020

**State v. Akash
FIR No.: 195/2020
PS: Kashmere Gate
U/s: 147,148,149,307,427,506,440,452 IPC &
25,27,54,59 Arms Act**

19.09.2020

This court is holding physically today as per directions.

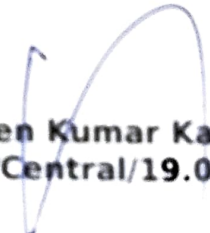
Present: Mr. Pawan Kumar, learned Addl.PP for State alongwith
IO SI Satender Singh from PS Kashmere Gate.
Sh. Aman Goel, Ld. Counsel for the applicant/Akash.

It is replied by the IO that applicant Akash @ Arav @ Kana is declared as "not juvenile" and is directed to be produced on 25.09.2020 before concerned Ld. MM. It is stated that he was arrested formerly on that day. It is stated that applicant is declared as major by the concerned Ld. JJB with directions to produce him before Ilaka Magistrate on 25.09.2020. It is further stated hat they intend to formerly arrest him on that day as per law.

Under these circumstances, Ld. Counsel for applicant submits that he be allowed to withdraw the present application with liberty to file afresh one as per law at appropriate stage.

Heard. Allowed.

In view of the submissions of learned counsel for applicant, present application is disposed of as withdrawn.


**(Naveen Kumar Kashyap)
ASJ-04/Central/19.09.2020**

BAIL APPLICATION NO.: 1274/2020

**State v. Sonu @ Vishal
FIR No.: 171/2020
PS: Sadar Bazar
U/s; 379,411,34 IPC**

19.09.2020

This court is holding physically today as per directions.

Present: Mr. Pawan Kumar, learned Addl.PP for State.
Sh. S. Haq, Ld. Counsel for the applicant.

Fresh application for bail u/s 439 Cr.P.C. is filed.

Issue notice to IO for next date.

**Put up for reply, arguments and appropriate order for
25.09.2020 through VC.**

**(Naveen Kumar Kashyap)
ASJ-04/Central/19.09.2020**

MISC. APPLICATION

State v. Pradeep @ Podi
FIR No.: 005605/2020
PS: Paharganj
U/S: 379,411 IPC

19.09.2020

This court is holding physically today as per directions.

Present: Mr. Pawan Kumar, learned Addl.PP for State.

An application filed by applicant Pradeep @ Podi for modification of bail bond condition and releasing him on personal bond only.

Put up for orders/clarification for 24.09.2020.

(Naveen Kumar Kashyap)
ASJ-04/Central/19.09.2020



Bail Application

Bail Application No.: 1223/2020
State Vs. Shalu Chauhan s/o Rambir Chauhan
FIR No. : 200/2020
PS: Pahar ganj
U/S: 308, 34 IPC

19.09.2020

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

Arguments already heard in the present case. Today the case was fixed for order / clarification.

Vide this order, the regular bail application dated 16/09/2020 under section 439 Cr.P.C. on behalf of accused 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

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PS: Pahar ganj
U/S: 308, 34 IPC



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

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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,

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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,

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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

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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

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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 submitted on behalf of the accused that such accused is not named in the FIR and he is arrested only on the basis of the disclosure statement of co-accused; that he is falsely implicated in the present case; that he immediately surrendered himself to the police on 11/09/2020; he claimed that infact the complainant side

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attacked the co-accused and misbehaved with the sister of co-accused a day before the incident in question and even on the day of incident, it is the complainant side who was the aggressor that applicant was only trying to intervene and separate them and to pacify the matter; that he is young boy of 23-24 years old. Further copy of the cctv footage is also relied. As such, it is prayed that he be granted regular bail.

On the other hand, it is stated in the reply filed by ASI Abhey Raj, as also argued by the learned Addl.PP for the state, that there are serious and specific allegations against the present accused; that his presence was captured in the cctv footage and he was also hitting the complainant with fist and slap with the main accused and the same is captured in such cctv footage. That injury is simple in nature. Investigation is in progress. As such, present application is opposed.

Further, learned counsel for the complainant also argued in detail and further he also placed on record cctv footage and other relevant documents.

I have heard both the sides and gone through the record. It is rightly pointed out by the learned Addl. PP for the State that offence is serious in nature. Further, investigation still on and at initial stage. Further, presence of the accused is captured in cctv footage committing the crime in question. As such, this court is not inclined to grant regular

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bail to accused at this stage.

The present application stands disposed off accordingly. Both side are at liberty to collect the order through electronic mode. **Further a copy of this order be sent to the Jail Superintendent concerned through electronic mode. Further a copy be sent to the IO / SHO concerned. Further, copy of this order be uploaded on website.**

(NAVEEN KUMAR KASHYAP)
ASJ-04(Central/Delhi)
19.09.2020

: 1 :

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

BAIL APPLICATION NO: 1185/2020

State v. Rocky Goswami
FIR No. : 324/2017
PS: Pahar Ganj
U/S: 409,420,468,471 IPC

19.09.2020

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State.
Sh. Bhuvneshwar Tyagi, Ld. Counsel for accused/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, 18.05.2020 and 20.06.2020 from Hon'ble High Court as a result of various meetings of Delhi State Legal Services Authority, present application is taken up.*
2. *Vide this order the interim bail application dated 12.09.2020 filed by accused Rocky Goswami through counsel is disposed of.*
3. *Reply already filed by IO.*
4. *Arguments already heard in detail. Today, further clarification/arguments addressed by applicant side.*
5. *In nutshell, it is stated that he is in JC since 15.07.2020. That he is falsely implicated in the present case. That he is arrested merely on the statement of co-accused/his brother. It is further stated that wife of the accused is at the advance stage of pregnancy. Accused father has refused to pay attention as there is love marriage between accused and*

his wife. That mother of the accused is also seriously ill and bed ridden. Today, it is argued that delivery date of wife of the accused is within two days as stated by the doctor. That wife of the accused is living separately. As such, wife of the accused is required care. That there is spread of corona virus also and no social distancing is possible inside the jail. As such, it is prayed that he be granted interim bail.

6. On the other hand, in reply filed by SI Ajay Singh as also argued by learned Addl. PP for the state that the offence involved in the present case are 409,420,468,471 IPC r/w 34 IPC. It is stated that offence u/s 409 IPC is punishable imprisonment upto life. That present accused is actively involved in the conspiracy in the present case. But it is further stated that accused alongwith his brother/main accused are also wanted in FIR no. 146/2020 , District Baghpat, U.P. which also involves inter alia offence u/s 406 IPC. Eight co-accused are yet to be arrested. Further, proceeds of crime are yet to be recovered. But the factum of pregnancy of wife is not denied.

7. The type of cases/offences with which accused is charged are discussed by **Hon'ble High Court in its meeting dated 18.04.2020**. For the present type of offences, a relaxed criteria for interim bail is recommended by Hon'ble High Court on such date but it was further subject to such accused is suffering from HIV,cancer, chronic kidney dysfunction (requiring dialysis) , Hepatitis B or C, Ashtma and T.B.

It is not the case of accused that he himself is suffering from any of the disease. As such, the case of the present accused does not fall under the relaxed criteria given by the Hon'ble High Court.

8. Even otherwise on merit, although the factum of pregnancy of wife and her advance stage is not in dispute, but having regard to the nature of offence, role of present accused and his involvement in similar offence in U.P. in another matter, this court is not inclined to grant interim bail as he is likely to hamper the investigation including the recovery of proceeds of crime. **With these observations, present interim bail application is dismissed.**

: 3 :

9. **Counsel for accused/applicant is at liberty to collect the order through electronic mode. Copy of this order be also sent to IO/SHO concerned as well as Jail Superintendent concerned.**

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
19.09.2020

Bail Application

Bail Application No.: 1160/2020
State Vs. Shamim @ Dabba s/o Mohd. Sharif
FIR No. : 266/2020
PS: Nabi Karim
U/S: 308, 506, 34 IPC

19.09.2020

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

Arguments already heard in the present case. Today the case was fixed for order / clarification.

Vide this order, the regular bail application dated 09/09/2020 under section 439 Cr.P.C. on behalf of accused 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

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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

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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,


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State Vs. Shamim @ Dabba s/o Mohd. Sharif
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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,

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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

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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

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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 submitted on behalf of the accused that there is a cross FIR between the accused and the complainant side. That complainant of present case is involved in multiple criminal cases in Delhi and NCR. Whereas there is no previous criminal involvement of the present accused. That present accused has roots in the society and

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running his own restaurant in Nabi Karim Delhi. It is further stated that both the parties are infact inter-relatives and they are in the process of filing appropriate proceedings for quashing of both the counter FIR before the Hon'ble High Court. That there is a over crowding in jail in this pandemic time. That wife of the accused is asthmatic. Further, learned counsel for accused have placed on record certain photographs and CD to show that the complainant is of criminal back ground having revolver in this hand and he celebrating and oftenly firing in the area after he was released in another matter earlier. As such, it is prayed that he be granted regular bail.

On the other hand, it is stated in the reply filed by ASI Beant Kumar, as also argued by the learned Addl.PP for the state, that there are serious and specific allegations against the present accused; that present accused alongwith co-accused threatened the complainant; that present accused caught hold him and that co-accused hit him with some sharp iron item on his head. Investigation is in progress. As such, present application is opposed.


I have heard both the sides and gone through the record. It is rightly pointed out by the learned Addl. PP for the State that offence is serious in nature. Further, investigation still on and at initial stage. Further there is specific incriminating evidence including material against

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the present accused. As such, this court is not inclined to grant regular bail to accused at this stage.

The present application stands disposed off accordingly. Both side are at liberty to collect the order through electronic mode. ***Further a copy of this order be sent to the Jail Superintendent concerned through electronic mode. Further a copy be sent to the IO / SHO concerned. Further, copy of this order be uploaded on website.***


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: 1 :

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

Bail Application No.: 1276/2020
State Vs Chetan Yadav s/o Parmod Yadav
FIR No. 195/2020
P. S. Kashmere Gate
U/s: 147, 148, 149, 307, 427, 506, 440, 452, IPC & 25,
27, 54, 59 Arms Act.

19/09/2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State.
Mr. Rohit Sadana, learned counsel for the
accused.

Vide this order, regular bail application dated
17/09/2020 u/s 439 Cr.PC filed by applicant Chetan Yadav
through counsel is disposed of.

It is stated in such application that he is not named
in the FIR; that earlier bail application was dismissed as
withdrawn. That he is falsely implicated in this case; none of
the offence including 307 IPC can be attributed to the
accused nor any offence under Arms act can be attributed at
all; that nothing incriminating has been recovered from him
or at his instance; that he is no more required for the purpose
of investigation; that he is in JC since 18/08/2020; that in fact
period to seek PC remand is already over. As such no purpose
would be served by keeping the accused in JC particularly in
pandemic situation. That he was arrested later on from his

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: 2 :

residence. That he is working as a diamond checker for the last several years and does not have any criminal record at all. That he is permanent resident of Delhi. As such, it is prayed that he be granted regular bail.

On the other hand, in reply filed by the SI Satender Singh, as also argued by learned Addl.PP for the State, it is stated that on the night of 16th / 17th August, 2019, complainant heard loud voices, one unknown person entered with force in the house with knife and he looked everywhere inside and pushed LCDs installed in his room. He noticed about 8-10 people in the street. One of them was having gun and two of them were having knives and rest were having hockey sticks in their hand and they were shouting and asking someone to come out and face them. One person fired in the air and his associates were pulling down motorcycle in the street. One of the persons from the mob pointed knife on the neck of one of the neighbour's son. At this stage, when people gathered there, the mob ran away from the spot giving life threat to all. Later on during investigation, it is revealed that such mob was looking for two persons and such mob was led by one main accused Lalit Yadav @ Pongji. Such Pongji called his friends and relative to spread terror in the area. Such main accused Pongji was having illegal fire arm and he fired in air. Further, cctv footage of the area is also

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gathered during investigation. It is stated that case is at initial stage. The number of persons are absconding. Offence is very serious in nature. As such, bail application is 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,

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: 4 :

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

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: 5 :

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

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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.

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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

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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

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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, on the basis of material on record so far and the arguments heard, prima facie it appears that ingredients of offence u/s 307 IPC are lacking at present. Rest of the offences with which accused is charged is having maximum punishment upto 07 years. That accused is in JC for about one month. Further, as far as present accused is concerned, nothing remains to be recovered at his instance. In fact, the period for seeking police remand is already over. As such, no purpose would be served by keeping such accused in JC. Investigation and thereafter trial is likely to take time.

In above facts and circumstances, such accused is granted bail subject to furnishing of **personal bond in the**

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sum of Rs. 15,000/- with two sound surety of like amount, subject to the satisfaction of the learned Trial court and the following additional conditions:

- 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 mobile number to the IO;*
- vii) Applicant shall mark his 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 till the chargesheet is filed;*
- 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. till the chargesheet is filed.*
- ix) Applicant shall keep their such mobile number 'Switched On' at all the time, particularly between 8 am to 8 pm everyday till the chargesheet is filed*
- x) That applicant will cooperate with the investigation / IO / SHO concerned and will*

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appear before IO / Trial Court as and when called as per law.

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

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

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

"..... 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....."*

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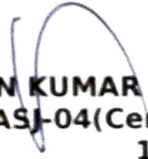
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I note that in the present case the bail bonds have been directed to be furnished before the Ld. Trial Court/ Ld. MM and hence in terms of the above observations, the Ld. MM is impressed upon to inform this court about the following:

- 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 present application stands disposed off accordingly. Both side are at liberty to collect the order through electronic mode. **Further a copy of this order be sent to the Jail Superintendent concerned through electronic mode. Further a copy be sent to the IO / SHO concerned. Further, copy of this order be uploaded on website.**


(NAVEEN KUMAR KASHYAP)
ASJ-04(Central/Delhi)
19.09.2020

: 1 :

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


Bail Application No.: 1275/2020
State Vs Gaurav Yadav s/o Vishnu
FIR No. 195/2020
P. S. Kashmere Gate
U/s: 147, 148, 149, 307, 427, 506, 440, 452, IPC & 25,
27, 54, 59 Arms Act.

19/09/2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State.
Mr. Rohit Sadana, learned counsel for the
accused.

Vide this order, regular bail application dated 17/09/2020 u/s 439 Cr.PC filed by applicant Gaurav Yadav through counsel is disposed of.

It is stated in such application that he is not named in the FIR; that earlier bail application was dismissed as withdrawn. That he is falsely implicated in this case; none of the offence including 307 IPC can be attributed to the accused nor any offence under Arms act can be attributed at all; that nothing incriminating has been recovered from him or at his instance; that he is no more required for the purpose of investigation; that he is in JC since 18/08/2020; that in fact period to seek PC remand is already over. As such no purpose would be served by keeping the accused in JC particularly in pandemic situation. That he was arrested later on from his



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residence. That he is working as a diamond checker for the last several years and does not have any criminal record at all. That he is permanent resident of Delhi. As such, it is prayed that he be granted regular bail.

On the other hand, in reply filed by the SI Satender Singh, as also argued by learned Addl.PP for the State, it is stated that on the night of 16th / 17th August, 2019, complainant heard loud voices, one unknown person entered with force in the house with knife and he looked everywhere inside and pushed LCDs installed in his room. He noticed about 8-10 people in the street. One of them was having gun and two of them were having knives and rest were having hockey sticks in their hand and they were shouting and asking someone to come out and face them. One person fired in the air and his associates were pulling down motorcycle in the street. One of the persons from the mob pointed knife on the neck of one of the neighbour's son. At this stage, when people gathered there, the mob ran away from the spot giving life threat to all. Later on during investigation, it is revealed that such mob was looking for two persons and such mob was led by one main accused Lalit Yadav @ Pongi. Such Pongi called his friends and relative to spread terror in the area. Such main accused Pongi was having illegal fire arm and he fired in air. Further, cctv footage of the area is also

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gathered during investigation. It is stated that case is at initial stage. The number of persons are absconding. Offence is very serious in nature. As such, bail application is 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,

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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

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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

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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.

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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

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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

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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, on the basis of material on record so far and the arguments heard, prima facie it appears that ingredients of offence u/s 307 IPC are lacking at present. Rest of the offences with which accused is charged is having maximum punishment upto 07 years. That accused is in JC for about one month. Further, as far as present accused is concerned, nothing remains to be recovered at his instance. In fact, the period for seeking police remand is already over. As such, no purpose would be served by keeping such accused in JC. Investigation and thereafter trial is likely to take time.

In above facts and circumstances, such accused is granted bail subject to furnishing of **personal bond in the**

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sum of Rs. 15,000/- with two sound surety of like amount, subject to the satisfaction of the learned Trial court and the following additional conditions:

- 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 mobile number to the IO;*
- vii) Applicant shall mark his 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 till the chargesheet is filed;*
- 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. till the chargesheet is filed.*
- ix) Applicant shall keep their such mobile number 'Switched On' at all the time, particularly between 8 am to 8 pm everyday till the chargesheet is filed*
- x) That applicant will cooperate with the investigation / IO / SHO concerned and will*

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appear before IO / Trial Court as and when called as per law.

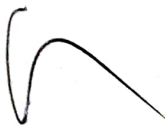
xi) Applicant will not indulge in any kind of activities which are alleged against him in the present case.

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

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

"..... 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....."*




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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 present application stands disposed off accordingly. Both side are at liberty to collect the order through electronic mode. **Further a copy of this order be sent to the Jail Superintendent concerned through electronic mode. Further a copy be sent to the IO / SHO concerned. Further, copy of this order be uploaded on website.**


(NAVEEN KUMAR KASHYAP)
ASJ-04(Central/Delhi)
19.09.2020

BAIL APPLICATION NO.: 1274/2020

**State v. Sonu @ Vishal
FIR No.: 171/2020
PS: Sadar Bazar
U/s; 379,411,34 IPC**

19.09.2020

This court is holding physically today as per directions.

Present: Mr. Pawan Kumar, learned Addl.PP for State.
Sh. S. Haq, Ld. Counsel for the applicant.

Fresh application for bail u/s 439 Cr.P.C. is filed.

Issue notice to IO for next date.

**Put up for reply, arguments and appropriate order for
25.09.2020 through VC.**

**(Naveen Kumar Kashyap)
ASJ-04/Central/19.09.2020**

At 3.50 pm.

At this stage, it is pointed out by Naib Court that reply already filed through e-mail. As such, same is taken on record.

Put up for arguments and orders accordingly on 25.09.2020.

**(Naveen Kumar Kashyap)
ASJ-04/Central/19.09.2020**