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Bail Application

**Application No.: 1768/2020
State Vs. Mohd. Mohsin
FIR No. :143/2020
PS: Kamla Market
U/S: 324 IPC**

18.11.2020

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC
Mr. Parvinder Singh, learned Counsel for Accused through VC.

Arguments already heard in detail in this case and today the case is fixed for order / clarification, if any on the present first bail application dated 29/10/2020 filed by the accused Mohd. Mohshin through his counsel.

In nutshell, it is stated in the present application that accused is in JC since 21/07/2020; that he is falsely implicated in this case; that investigation is already complete and chargesheet is already filed; that no purpose would be served to keep him in JC. As such, it is prayed that he may be granted regular bail.

On the other hand, it is argued by learned Addl.PP for the State based on the reply filed by IO that present accused attacked complainant who is known to him with knife on his hands as the complainant was trying to save himself; that such knife is already recovered from his house; that chargesheet is already filed; that he may threaten the witness if release on bail; that his family members have no

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control on him; that he is already convicted in a matter under Arms Act earlier and there are 3-4 criminal cases against him;

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

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

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course of justice. When bail is refused, it is a restriction on personal liberty of the individual guaranteed by Article 21 of the Constitution.

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

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it would be improper for any court to refuse bail as mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson. While considering an application for bail either under Section 437 or 439 CrPC, the court should keep in view the principle that grant of bail is the rule and committal to jail an exception. Refusal of bail is a restriction on personal liberty of the individual guaranteed by Article 21 of the Constitution. Seriousness of the offence not to be treated as the only consideration in refusing bail : Seriousness of the offence should not to be treated as the only ground for refusal of bail. (Judgment of **Sanjay Chandra Vs. Central Bureau of Investigation, AIR 2012 SC 830** relied).

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

Further discretionary jurisdiction of courts u/s 437 and 439 CrPC should be exercised carefully and cautiously by balancing the rights

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

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

Further at this stage it can be noted that interpreting the provisions of bail contained u/s 437 & 439 Cr.P.C., the Hon'ble Supreme Court in its various judgments has laid down various considerations for grant or refusal of bail to an accused in a non-bailable offence like, (i) Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) Nature of accusation and evidence therefor, (iii) Gravity of the offence and punishment which the conviction

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

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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, the IO has placed on record previous criminal record of present accused in which there is conviction in FIR No. 187/2013 under the Arms Act section 25. Even in the present case, the chargesheet is filed u/s 324 IPC r/w 25 / 27 Arms Act. Further, he was allegedly attacking the complainant but complainant tried to save himself and as such got hurt on his hand with the knife used by the present accused. Complainant already knew the accused person. As such, there is possibility of accused threatening / influencing the victim also. As such,

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having regard to the criminal cases pending against him including the conviction, stage of the case and the manner in which offence is committed, this court is not inclined to grant bail to the present accused. With these observation, present application is dismissed.

With these observations present bail application is disposed of as dismissed. Further, both the sides are at liberty to collect the order through electronic mode. Copy of order be uploaded on the website. Further a copy of this order be sent to SHO / IO concerned. Further, copy of this order be also sent to concerned Jail Superintendent.

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

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(Naveen Kumar Kashyap)
Additional Sessions Judge-04
Central/THC/Delhi/18/11/2020

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Bail Application

**Bail Application No.: 1896/2020
State Vs. Santosh
FIR No. :210/2019
PS: Kamla Market
U/S: 328, 379, 34 IPC**

18.11.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for the State through VC
Learned counsel for accused through VC.
IO also present through VC.

Vide this order, the regular bail application under section 439 Cr.P.C. on behalf of accused dated 12/11/2020 filed through counsel is disposed of.

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

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

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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 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.

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

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

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

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

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

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

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

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

In the present case, it is argued that he is in JC since 05/10/2020; that he is no previous criminal record of present accused; that he belongs to a poor family having three daughters and is sole bread earner of his family; that his no more required for the purpose of investigation; that present case is falsely planted upon him; that there is outbreak of corona virus; that he is falsely implicated in the present case; that as per allegation only some money was credited to his account. As such, it is prayed that he be granted regular bail.

2 2 On the other hand, it is argued by the learned Addl.PP for State that present accused is part and parcel of a gang who is tagetting innocent people after intoxicating them and thereafter using their ATM cards etc to commit the offence. That a sum of Rs. 5.25 lacs was illegally taken from the account of the complainant. That sum of such money was credited to the account of such accused. That one of the co-accused who committed the offence at Delhi is of the same village as that of the present accused. That the present accused even operated his bank account and withdrew part of such stolen money as such he is actively involved and aware of the offence in question. As such, present bail application is strongly opposed.

I find force in the arguments of learned Addl.PP for the state. The offence is serious in nature and is nuisance to public at large. There are specific and serious allegations against the accused. The investigation is still

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going on. Further there is incriminating evidence against the present accused. As such, this court is not inclined to grant the relief as sought in the present application. Hence, the same is dismissed. Trial Court record be sent back.

With these observations present bail application is disposed of as dismissed. Further, both the sides are at liberty to collect the order through electronic mode. Copy of order be uploaded on the website. Further a copy of this order be sent to SHO / IO concerned. Further, copy of this order be also sent to concerned Jail Superintendent.

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

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**(Naveen Kumar Kashyap)
Additional Sessions Judge-04
Central/THC/Delhi
18/11/2020**

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State Vs. Santosh
FIR No. :210/2019
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U/S: 328, 379, 34 IPC**

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

Application No.: 1862/2020
State Vs Jaiprakash Meena
FIR No. 137/2020
P. S. Rajinder Nagar
U/s: 392, 411 IPC

18/11/2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Mr. Vaibhav Kumar, learned counsel for accused through VC.

Vide this order, bail application u/s 439 Cr.PC dated 09/11/2020 filed by applicant through counsel is disposed off.

It is stated in the application that he has been falsely implicated in this case; that he is in JC till date; that his parents and sister are dependant upon him; that he is innocent and he has earlier not been convicted in any case; that offence as alleged are false and baseless as he has done nothing as alleged; that he is young and only earning member in his family; that he is permanent resident of Delhi; that no purpose would be served by keeping him in JC; As such, it is prayed that he be granted regular bail.

On the other hand, in reply dated 11/11/2020 filed by the IO, as also argued by learned substitute Addl.PP for the State it is stated that there are other criminal cases involvement of present accused. It is further stated that he purchased the stolen articles in question. It is further argued that stolen bangles are already handed over to the lawful claimant. It is further argued that accused likely to commit such offence if released on bail. As such, present bail application is strongly opposed.

I have heard both the sides.

The personal liberty is a priceless treasure for a human being. It is founded on the bed rock of constitutional right and accentuated further on human rights principle. The sanctity of liberty is the fulcrum of any civilized

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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

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

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

Further discretionary jurisdiction of courts u/s 437 and 439 CrPC should be exercised carefully and cautiously by balancing the rights of the accused and interests of the society. Court must indicate brief reasons for granting or refusing bail. Bail order passed by the court must be reasoned one but detailed reasons touching merits of the case, detailed examination of

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evidence and elaborate documentation of merits of case should not be done.

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Further at this stage it can be noted that interpreting the provisions of bail contained u/s 437 & 439 Cr.P.C., the Hon'ble Supreme Court in its various judgments has laid down various considerations for grant or refusal of bail to an accused in a non-bailable offence like, (i) Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) Nature of accusation and evidence therefor, (iii) Gravity of the offence and punishment which the conviction will entail, (iv) Reasonable possibility of securing presence of the accused at trial and danger of his absconding or fleeing if released on bail, (v) Character and behavior of the accused, (vi) Means, position and standing of the accused in the Society, (vii) Likelihood of the offence being repeated, (viii) Reasonable apprehension of the witnesses being tampered with, (ix) Danger, of course, of justice being thwarted by grant of bail, (x) Balance between the rights of the accused and the larger interest of the Society/State, (xi) Any other factor relevant and peculiar to the accused. (xii) While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, but if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. Furthermore, in the landmark judgment of **Gurucharan Singh and**

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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, the maximum punishment of the offences alleged against the present accused is 3 years. It is a matter of record that accused is in JC and period to seek PC remand is already over. The allegations against the accused are u/s 411 IPC only. 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. Trial is likely to take time. Further, it may be noted that there is fundamental presumption of innocence

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in any criminal case of present nature.

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

- i) That he will appear before IO / Trial Court as and when called as per law.*
- ii) He will not indulge in any kind of activities which are alleged against him in the present case.*
- iii) That he will not leave Delhi without prior permission of the Trial Court concerned.*
- iv) He will not threaten the witness or tampering with evidence.*
- v) He shall convey any change of address immediately to the IO and the court;*
- vi) He shall also provide his mobile number to the IO and further share his location through mobile phone once in everyweek till filing of chargesheet and thereafter as may be directed by the learned Trial Court.*

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

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

Application No.: 1862/2020
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FIR No. 137/2020
P. S. Rajinder Nagar
U/s: 392, 411 IPC

: 7 :

been granted, along with the date of the order of bail.

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

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

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

The copy of this order be sent to **Ld. MM** and also to the **Superintendent Jail** who shall also inform this court about all the three aspects as contained in the para herein above. The Superintendent Jail is also directed to inform this court if the prisoner is willingly not furnishing the personal bond or in case if he is unable to furnish the surety or any other reason given by the prisoner for not filing the bonds. One copy of this order be also sent to the **SHO Concerned** to ensure compliance.

The bail application is accordingly disposed off. Learned counsel for applicant is at liberty to obtain through electronic mode. Copy of this order be sent to concerned Jail Superintendent. Copy of this order be sent to IO / SHO concerned. Copy of order be uploaded on website.

Application No.: 1862/2020
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The observations made in the present bail application order are for the purpose of deciding of present application and do not affect the factual matrix of the investigation of the present case which is separate issue as per law.

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(NAVEEN KUMAR KASHYAP)
ASJ-04(Central/Delhi)
18.11.2020

Application No.: 1862/2020
State Vs Jaiprakash Meena
FIR No. 137/2020
P. S. Rajinder Nagar
U/s: 392, 411 IPC

: 1 :

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

BAIL APPLICAITON No: 1672/2020

State v. Rinku Verma
FIR No. : 273/2020
P. S: Sarai Rohilla
U/s: 457,380 , 411 r/w 34 IPC

18.11.2020.

This court is also discharging bail roster duty.

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Ms.Seema Gupta, Ld. for accused/applicant through VC.

Arguments already heard.

Today, case was fixed for orders.

Vide this order, regular bail application u/s 439 Cr.PC dated 29.10.2020 filed through counsel is disposed of.

It is stated in such application that he has been falsely implicated in the present case; that he is in JC since 19.09.2020. That he was arrested based on the disclosure statement of co-accused. That nothing recovered from his possession. That he is no more required for investigation. There is no previous conviction record of present 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 that present accused was arrested later on and he came again in the area and part of case property was recovered at his instance. That he is a bad character of PS Darya Ganj. Further, there are many criminal cases against such accused. It is further submitted in the additional reply that motorcycle recovered is in the name of present accused. As such, present 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 be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty under Article 21 of the Constitution upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson. While considering an application for bail either under Section 437 or 439 CrPC, the court should keep in view the principle that grant of bail is the rule and committal to jail an exception. Refusal of bail is a restriction on personal liberty of the individual guaranteed by Article 21 of the Constitution. Seriousness of the offence not to be treated as the only consideration in refusing bail : Seriousness of the offence should not to be treated as the only ground for refusal of bail. (Judgment of **Sanjay Chandra Vs. Central Bureau of Investigation, AIR 2012 SC 830** relied).

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

Further discretionary jurisdiction of courts u/s 437 and 439 CrPC should be exercised carefully and cautiously by balancing the rights of the accused and interests of the society. Court must indicate brief reasons for granting or refusing bail. Bail order passed by the court must be reasoned one but detailed reasons touching merits of the case, detailed

examination of evidence and elaborate documentation of merits of case should not be done.

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

Further at this stage it can be noted that interpreting the provisions of bail contained u/s 437 & 439 Cr.P.C., the Hon'ble Supreme Court in its various judgments has laid down various considerations for grant or refusal of bail to an accused in a non-bailable offence like, (i) Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) Nature of accusation and evidence therefor, (iii) Gravity of the offence and punishment which the conviction will entail, (iv) Reasonable possibility of securing presence of the accused at trial and danger of his absconding or fleeing if released on bail, (v) Character and behavior of the accused, (vi) Means, position and standing of the accused in the Society, (vii) Likelihood of the offence being repeated, (viii) Reasonable apprehension of the witnesses being tampered with, (ix) Danger, of course, of justice being thwarted by grant of bail, (x) Balance between the rights of the accused and the larger interest of the Society/State, (xi) Any other factor relevant and peculiar to the accused. (xii) While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, but if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be

refused. Furthermore, in the landmark judgment of **Gurucharan Singh and others v. State** (AIR 1978 SC 179), it was held that there is no hard and fast rule and no inflexible principle governing the exercise of such discretion by the courts. It was further held that there cannot be any inexorable formula in the matter of granting bail. It was further held that facts and circumstances of each case will govern the exercise of judicial discretion in granting or refusing bail. It was further held that such question depends upon a variety of circumstances, cumulative effect of which must enter into the judicial verdict. Such judgment itself mentioned the nature and seriousness of nature, and circumstances in which offences are committed apart from character of evidence as some of the relevant factors in deciding whether to grant bail or not.

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

In the present case, it is a matter of record that accused is in JC since 19.09.2020. In fact, the period for seeking police remand is already over. Case property is already stated to be recovered. Further, he is not arrested on the spot but later on. As such, no purpose would be served by keeping such accused in JC. Investigation and thereafter trial is likely to take time. Further, it may be noted that there is fundamental presumption of innocence in any criminal case in India i.e. an accused is presumed innocent unless proved guilty. In present case, no previous conviction

record is placed on record by the IO and at best there are cases alleging involvement of present accused in other similar cases.

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 sureties 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 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.....”*

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*

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is in jail in some other case.

The copy of this order be sent to **Ld. MM** and also to the **Superintendent Jail** who shall also inform this court about all the three aspects as contained in the para herein above. The Superintendent Jail is also directed to inform this court if the prisoner is willingly not furnishing the personal bond or in case if he is unable to furnish the surety or any other reason given by the prisoner for not filing the bonds. One copy of this order be also sent to the **SHO Concerned** to ensure compliance.

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

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(NAVEEN KUMAR KASHYAP)
ASJ-04(Central/Delhi)
18.11.2020

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

Bail Application No.: 1603/2020

State v. Himanshu Ajmani

FIR no. : 420/2020

PS: Karol Bagh

U/S: 420,406, 120 B IPC

18.11.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through
VC.
Sh. Gurjit Singh , Learned counsel for applicant /
accused through VC.
Complainant Sh. Sahil Mongia, who is advocate by
profession in person through VC.

Further, clarifications given orally. Arguments in detail already heard in this case. This order be considered as part and parcel of the order already passed on 02.11.2020 in which the contentions of both the sides already recorded.

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

At this stage it may be noted that in the case of **Bhadresh Bipinbhai Sheth Vs. State Of Gujarat & Another**(Criminal Appeal Nos. 1134-1135 Of 2015, Arising Out Of Special Leave Petition (Crl.) Nos. 6028-6029 Of 2014), Hon'ble SC discussed and reviews the law relating to section 438 Cr.P.C.

A judgment which needs to be pointed out is a Constitution Bench Judgment of this Court in the case Gurbaksh Singh Sibbia and Other vs. State of Punjab(1980 AIR 1632 ; 1980 SCR(3) 383), The Constitution Bench in this case emphasized that provision of anticipatory bail enshrined in [Section 438](#) of the Code is conceptualised under [Article 21](#) of the Constitution which relates to personal liberty. Therefore, such a

provision calls for liberal interpretation of [Section 438](#) of the Code in light of [Article 21](#) of the Constitution. The Code explains that an anticipatory bail is a pre- arrest legal process which directs that if the person in whose favour it is issued is thereafter arrested on the accusation in respect of which the direction is issued, he shall be released on bail. The distinction between an ordinary order of bail and an order of anticipatory bail is that whereas the former is granted after arrest and therefore means release from the custody of the police, the latter is granted in anticipation of arrest and is therefore, effective at the very moment of arrest. A direction under [Section 438](#) is therefore intended to confer conditional immunity from the 'touch' or confinement contemplated by [Section 46](#) of the Code. The essence of this provision is brought out in the following manner:

“26. We find a great deal of substance in Mr Tarkunde’s submission that since denial of bail amounts to deprivation of personal liberty, the court should lean against the imposition of unnecessary restrictions on the scope of [Section 438](#), especially when no such restrictions have been imposed by the legislature in the terms of that section. [Section 438](#) is a procedural provision which is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offence in respect of which he seeks bail. An over-generous infusion of constraints and conditions which are not to be found in [Section 438](#) can make its provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on compliance with unreasonable restrictions. The beneficent provision contained in [Section 438](#) must be saved, not jettisoned. No doubt can linger after the decision in [Maneka Gandhi v. Union of India](#), (1978) 1 SCC 248, that in order to meet the challenge of [Article 21](#) of the Constitution, the procedure established by law for depriving a person of his liberty must be fair, just and reasonable. [Section](#)

438, in the form in which it is conceived by the legislature, is open to no exception on the ground that it prescribes a procedure which is unjust or unfair. We ought, at all costs, to avoid throwing it open to a Constitutional challenge by reading words in it which are not to be found therein.”

Though the Court observed that the principles which govern the grant of ordinary bail may not furnish an exact parallel to the right to anticipatory bail, still such principles have to be kept in mind, namely, the object of bail which is to secure the attendance of the accused at the trial, and the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial. Otherwise, bail is not to be withheld as a punishment. The Court has also to consider whether there is any possibility of the accused tampering with evidence or influencing witnesses etc. Once these tests are satisfied, bail should be granted to an under trial which is also important as viewed from another angle, namely, an accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. Thus, grant or non-grant of bail depends upon a variety of circumstances and the cumulative effect thereof enters into judicial verdict. The Court stresses that any single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail. After clarifying this position, the Court discussed the inferences of anticipatory bail in the following manner:

“31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will

flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the State" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in [The State v. Captain Jagjit Singh](#), AIR 1962 SC 253 : (1962) 3 SCR 622 : (1962) 1 Cri LJ 216, which, though, was a case under the old [Section 498](#) which corresponds to the present [Section 439](#) of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail."

It is pertinent to note that while interpreting the expression "may, if it thinks fit" occurring in [Section 438\(1\)](#) of the Code, the Court pointed out that it gives discretion to the Court to exercise the power in a

particular case or not, and once such a discretion is there merely because the accused is charged with a serious offence may not by itself be the reason to refuse the grant of anticipatory bail if the circumstances are otherwise justified. At the same time, it is also the obligation of the applicant to make out a case for grant of anticipatory bail. But that would not mean that he has to make out a “special case”. The Court also remarked that a wise exercise of judicial power inevitably takes care of the evil consequences which are likely to flow out of its intemperate use.

Another case to which can be referred to is the judgment of a Division Bench of this Court in the case of [Siddharam Satlingappa Mhetre v. State of Maharashtra and Others](#)(SLP(CRL.) 7615/2009 DATED 02-12-2021).This case lays down an exhaustive commentary of [Section 438](#) of the Code covering, in an erudite fashion, almost all the aspects and in the process relies upon the aforesaid Constitution Bench judgment in Gurbaksh Singh's case. In the very first para, the Court highlighted the conflicting interests which are to be balanced while taking a decision as to whether bail is to be granted or not, as is clear from the following observations:

“1.This appeal involves issues of great public importance pertaining to the importance of individual's personal liberty and the society's interest. Society has a vital interest in grant or refusal of bail because every criminal offence is the offence against the State. The order granting or refusing bail must reflect perfect balance between the conflicting interests, namely, sanctity of individual liberty and the interest of the society. The law of bails dovetails two conflicting interests, namely, on the one hand, the requirements of shielding society from the hazards of those committing crimes and potentiality of repeating the same crime while on bail and on the other hand, absolute adherence to the fundamental principle of criminal jurisprudence regarding presumption of innocence of an accused until he is

found guilty and the sanctity of individual liberty.....”

The principles which can be culled out can be stated as under:

(i) The complaint filed against the accused needs to be thoroughly examined, including the aspect whether the complainant has filed a false or frivolous complaint on earlier occasion. If the connivance between the complainant and the investigating officer is established then action be taken against the investigating officer in accordance with law.

(ii) The gravity of charge and the exact role of the accused must be properly comprehended. Before arrest, the arresting officer must record the valid reasons which have led to the arrest of the accused in the case diary. In exceptional cases, the reasons could be recorded immediately after the arrest, so that while dealing with the bail application, the remarks and observations of the arresting officer can also be properly evaluated by the court.

(iii) It is imperative for the courts to carefully and with meticulous precision evaluate the facts of the case. The discretion to grant bail must be exercised on the basis of the available material and the facts of the particular case. In cases where the court is of the considered view that the accused has joined the investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided. A great ignominy, humiliation and disgrace is attached to arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-conviction stage or post-conviction stage.

(iv) There is no justification for reading into [Section 438 CrPC](#) the limitations mentioned in [Section 437 CrPC](#). The plentitude of [Section 438](#) must be given its full play. There is no requirement that the accused must make out a “special case” for the exercise of the power to grant

anticipatory bail. This virtually, reduces the salutary power conferred by [Section 438 CrPC](#) to a dead letter. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints and conditions on his freedom, by the acceptance of conditions which the court may deem fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

(v) The proper course of action on an application for anticipatory bail ought to be that after evaluating the averments and accusations available on the record if the court is inclined to grant anticipatory bail then an interim bail be granted and notice be issued to the Public Prosecutor. After hearing the Public Prosecutor the court may either reject the anticipatory bail application or confirm the initial order of granting bail. The court would certainly be entitled to impose conditions for the grant of anticipatory bail. The Public Prosecutor or the complainant would be at liberty to move the same court for cancellation or modifying the conditions of anticipatory bail at any time if liberty granted by the court is misused. The anticipatory bail granted by the court should ordinarily be continued till the trial of the case.

(vi) It is a settled legal position that the court which grants the bail also has the power to cancel it. The discretion of grant or cancellation of bail can be exercised either at the instance of the accused, the Public Prosecutor or the complainant, on finding new material or circumstances at any point of time.

(vii) In pursuance of the order of the Court of Session or the High Court, once the accused is released on anticipatory bail by the trial court, then it would be unreasonable to compel the accused to surrender before the trial court and again apply for regular bail.

(viii) Discretion vested in the court in all matters should be exercised with care and circumspection depending upon the facts and circumstances justifying its exercise. Similarly, the discretion vested with the court

under [Section 438 CrPC](#) should also be exercised with caution and prudence. It is unnecessary to travel beyond it and subject the wide power and discretion conferred by the legislature to a rigorous code of self-imposed limitations.

(ix) No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail because all circumstances and situations of future cannot be clearly visualised for the grant or refusal of anticipatory bail. In consonance with legislative intention, the grant or refusal of anticipatory bail should necessarily depend on the facts and circumstances of each case.

(x) The following factors and parameters that need to be taken into consideration while dealing with anticipatory bail:

(a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(b) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(c) The possibility of the applicant to flee from justice;

(d) The possibility of the accused's likelihood to repeat similar or other offences;

(e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(g) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend

the exact role of the accused in the case. The cases in which the accused is implicated with the help of [Sections 34](#) and [149](#) of the Penal Code, 1860 the court should consider with even greater care and caution, because over implication in the cases is a matter of common knowledge and concern;

(h) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(i) The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(j) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

Now in this background of law we come back to present case. In the present case, it is a matter of record that action under Negotiable Instrument Act already taken by the complainant, but there is no bar to take independent action under the IPC separately. Further, conduct of the accused persons is not satisfactory. Further, it is stated by the IO that there is material on record that accused person had dishonest intention since beginning. Further, the complainant has placed on record specific material regarding the malafide intention of the accused, thus even if some amount is repaid by the accused person, the same does not absolve him of his criminal action. It further appears that even at present accused persons are not found at their usual address. Under these circumstances, this court is not inclined to grant them the relief sought in the present application. **With these observations present application is**

dismissed.

Copy of this order be given to applicant as well as a copy be sent to IO/SHO concerned through electronic mode. Copy of this order be sent to Jail Superintendent concerned through electronic mode.

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(NAVEEN KUMAR KASHYAP)
Additional Sessions Judge-04/Central
Central Distt/Delhi
18.11.2020

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

Bail Application No.: 1602/2020

State v. Prateek Ajmani

FIR no. : 420/2020

PS: Karol Bagh

U/S: 420,406, 120 B IPC

18.11.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through
VC.
Sh. Gurjit Singh , Learned counsel for applicant /
accused through VC.
Complainant Sh. Sahil Mongia, who is advocate by
profession in person through VC.

Further, clarifications given orally. Arguments in detail already heard in this case. This order be considered as part and parcel of the order already passed on 02.11.2020 in which the contentions of both the sides already recorded.

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

At this stage it may be noted that in the case of **Bhadresh Bipinbhai Sheth Vs. State Of Gujarat & Another**(Criminal Appeal Nos. 1134-1135 Of 2015, Arising Out Of Special Leave Petition (Crl.) Nos. 6028-6029 Of 2014), Hon'ble SC discussed and reviews the law relating to section 438 Cr.P.C.

A judgment which needs to be pointed out is a Constitution Bench Judgment of this Court in the case Gurbaksh Singh Sibbia and Other vs. State of Punjab(1980 AIR 1632 ; 1980 SCR(3) 383), The Constitution Bench in this case emphasized that provision of anticipatory bail enshrined in [Section 438](#) of the Code is conceptualised under [Article 21](#) of the Constitution which relates to personal liberty. Therefore, such a

provision calls for liberal interpretation of [Section 438](#) of the Code in light of [Article 21](#) of the Constitution. The Code explains that an anticipatory bail is a pre-arrest legal process which directs that if the person in whose favour it is issued is thereafter arrested on the accusation in respect of which the direction is issued, he shall be released on bail. The distinction between an ordinary order of bail and an order of anticipatory bail is that whereas the former is granted after arrest and therefore means release from the custody of the police, the latter is granted in anticipation of arrest and is therefore, effective at the very moment of arrest. A direction under [Section 438](#) is therefore intended to confer conditional immunity from the 'touch' or confinement contemplated by [Section 46](#) of the Code. The essence of this provision is brought out in the following manner:

“26. We find a great deal of substance in Mr Tarkunde’s submission that since denial of bail amounts to deprivation of personal liberty, the court should lean against the imposition of unnecessary restrictions on the scope of [Section 438](#), especially when no such restrictions have been imposed by the legislature in the terms of that section. [Section 438](#) is a procedural provision which is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offence in respect of which he seeks bail. An over-generous infusion of constraints and conditions which are not to be found in [Section 438](#) can make its provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on compliance with unreasonable restrictions. The beneficent provision contained in [Section 438](#) must be saved, not jettisoned. No doubt can linger after the decision in [Maneka Gandhi v. Union of India](#), (1978) 1 SCC 248, that in order to meet the challenge of [Article 21](#) of the Constitution, the procedure established by law for depriving a person of his liberty must be fair, just and reasonable. [Section](#)

438, in the form in which it is conceived by the legislature, is open to no exception on the ground that it prescribes a procedure which is unjust or unfair. We ought, at all costs, to avoid throwing it open to a Constitutional challenge by reading words in it which are not to be found therein.”

Though the Court observed that the principles which govern the grant of ordinary bail may not furnish an exact parallel to the right to anticipatory bail, still such principles have to be kept in mind, namely, the object of bail which is to secure the attendance of the accused at the trial, and the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial. Otherwise, bail is not to be withheld as a punishment. The Court has also to consider whether there is any possibility of the accused tampering with evidence or influencing witnesses etc. Once these tests are satisfied, bail should be granted to an under trial which is also important as viewed from another angle, namely, an accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. Thus, grant or non-grant of bail depends upon a variety of circumstances and the cumulative effect thereof enters into judicial verdict. The Court stresses that any single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail. After clarifying this position, the Court discussed the inferences of anticipatory bail in the following manner:

“31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will

flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the State" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in [The State v. Captain Jagjit Singh](#), AIR 1962 SC 253 : (1962) 3 SCR 622 : (1962) 1 Cri LJ 216, which, though, was a case under the old [Section 498](#) which corresponds to the present [Section 439](#) of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail."

It is pertinent to note that while interpreting the expression "may, if it thinks fit" occurring in [Section 438\(1\)](#) of the Code, the Court pointed out that it gives discretion to the Court to exercise the power in a

particular case or not, and once such a discretion is there merely because the accused is charged with a serious offence may not by itself be the reason to refuse the grant of anticipatory bail if the circumstances are otherwise justified. At the same time, it is also the obligation of the applicant to make out a case for grant of anticipatory bail. But that would not mean that he has to make out a “special case”. The Court also remarked that a wise exercise of judicial power inevitably takes care of the evil consequences which are likely to flow out of its intemperate use.

Another case to which can be referred to is the judgment of a Division Bench of this Court in the case of [Siddharam Satlingappa Mhetre v. State of Maharashtra and Others](#)(SLP(CRL.) 7615/2009 DATED 02-12-2021). This case lays down an exhaustive commentary of [Section 438](#) of the Code covering, in an erudite fashion, almost all the aspects and in the process relies upon the aforesaid Constitution Bench judgment in Gurbaksh Singh's case. In the very first para, the Court highlighted the conflicting interests which are to be balanced while taking a decision as to whether bail is to be granted or not, as is clear from the following observations:

“1.This appeal involves issues of great public importance pertaining to the importance of individual's personal liberty and the society's interest. Society has a vital interest in grant or refusal of bail because every criminal offence is the offence against the State. The order granting or refusing bail must reflect perfect balance between the conflicting interests, namely, sanctity of individual liberty and the interest of the society. The law of bails dovetails two conflicting interests, namely, on the one hand, the requirements of shielding society from the hazards of those committing crimes and potentiality of repeating the same crime while on bail and on the other hand, absolute adherence to the fundamental principle of criminal jurisprudence regarding presumption of innocence of an accused until he is

found guilty and the sanctity of individual liberty.....”

The principles which can be culled out can be stated as under:

(i) The complaint filed against the accused needs to be thoroughly examined, including the aspect whether the complainant has filed a false or frivolous complaint on earlier occasion. If the connivance between the complainant and the investigating officer is established then action be taken against the investigating officer in accordance with law.

(ii) The gravity of charge and the exact role of the accused must be properly comprehended. Before arrest, the arresting officer must record the valid reasons which have led to the arrest of the accused in the case diary. In exceptional cases, the reasons could be recorded immediately after the arrest, so that while dealing with the bail application, the remarks and observations of the arresting officer can also be properly evaluated by the court.

(iii) It is imperative for the courts to carefully and with meticulous precision evaluate the facts of the case. The discretion to grant bail must be exercised on the basis of the available material and the facts of the particular case. In cases where the court is of the considered view that the accused has joined the investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided. A great ignominy, humiliation and disgrace is attached to arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-conviction stage or post-conviction stage.

(iv) There is no justification for reading into [Section 438 CrPC](#) the limitations mentioned in [Section 437 CrPC](#). The plentitude of [Section 438](#) must be given its full play. There is no requirement that the accused must make out a “special case” for the exercise of the power to grant

anticipatory bail. This virtually, reduces the salutary power conferred by [Section 438 CrPC](#) to a dead letter. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints and conditions on his freedom, by the acceptance of conditions which the court may deem fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

(v) The proper course of action on an application for anticipatory bail ought to be that after evaluating the averments and accusations available on the record if the court is inclined to grant anticipatory bail then an interim bail be granted and notice be issued to the Public Prosecutor. After hearing the Public Prosecutor the court may either reject the anticipatory bail application or confirm the initial order of granting bail. The court would certainly be entitled to impose conditions for the grant of anticipatory bail. The Public Prosecutor or the complainant would be at liberty to move the same court for cancellation or modifying the conditions of anticipatory bail at any time if liberty granted by the court is misused. The anticipatory bail granted by the court should ordinarily be continued till the trial of the case.

(vi) It is a settled legal position that the court which grants the bail also has the power to cancel it. The discretion of grant or cancellation of bail can be exercised either at the instance of the accused, the Public Prosecutor or the complainant, on finding new material or circumstances at any point of time.

(vii) In pursuance of the order of the Court of Session or the High Court, once the accused is released on anticipatory bail by the trial court, then it would be unreasonable to compel the accused to surrender before the trial court and again apply for regular bail.

(viii) Discretion vested in the court in all matters should be exercised with care and circumspection depending upon the facts and circumstances justifying its exercise. Similarly, the discretion vested with the court

under [Section 438 CrPC](#) should also be exercised with caution and prudence. It is unnecessary to travel beyond it and subject the wide power and discretion conferred by the legislature to a rigorous code of self-imposed limitations.

(ix) No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail because all circumstances and situations of future cannot be clearly visualised for the grant or refusal of anticipatory bail. In consonance with legislative intention, the grant or refusal of anticipatory bail should necessarily depend on the facts and circumstances of each case.

(x) The following factors and parameters that need to be taken into consideration while dealing with anticipatory bail:

(a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(b) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(c) The possibility of the applicant to flee from justice;

(d) The possibility of the accused's likelihood to repeat similar or other offences;

(e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(g) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend

the exact role of the accused in the case. The cases in which the accused is implicated with the help of [Sections 34](#) and [149](#) of the Penal Code, 1860 the court should consider with even greater care and caution, because over implication in the cases is a matter of common knowledge and concern;

(h) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(i) The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(j) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

Now in this background of law we come back to present case. In the present case, it is a matter of record that action under Negotiable Instrument Act already taken by the complainant, but there is no bar to take independent action under the IPC separately. Further, conduct of the accused persons is not satisfactory. Further, it is stated by the IO that there is material on record that accused person had dishonest intention since beginning. Further, the complainant has placed on record specific material regarding the malafide intention of the accused, thus even if some amount is repaid by the accused person, the same does not absolve him of his criminal action. It further appears that even at present accused persons are not found at their usual address. Under these circumstances, this court is not inclined to grant them the relief sought in the present application. **With these observations present application is**

dismissed.

Copy of this order be given to applicant as well as a copy be sent to IO/SHO concerned through electronic mode. Copy of this order be sent to Jail Superintendent concerned through electronic mode.

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(NAVEEN KUMAR KASHYAP)
Additional Sessions Judge-04/Central
Central Distt/Delhi
18.11.2020

Bail Application No.: 1451/2020

**State v. Ashok
FIR no.: 165/2020
PS: Rajinder Nagar**

18.11.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Ld. Counsel for applicant through VC.
Ld. Counsel for complainant with complainant through VC.

Further, arguments heard.

Put up for orders tomorrow i.e. on 19.11.2020 at 4 pm.

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**(NAVEEN KUMAR KASHYAP)
Additional Sessions Judge-04/Central
18.11.2020**

Bail Application No.: 1527/2020

**State v. Mohd. Hassan
FIR no.: 176/2020
PS: Sarai Rohilla**

18.11.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Sh. Nagender Singh, Ld. Counsel for applicant through VC.

IO of the case is not present despite issuance of show cause notice.

As such, issue fresh show cause notice to IO through DCP concerned.

Same be issued within two days.

Put up for further arguments and order on 24.11.2020.

IO to appear with case file on next date.

**(NAVEEN KUMAR KASHYAP)
Additional Sessions Judge-04/Central
18.11.2020**

Bail Application No.: 1534/2020

**State v. Gurdev Singh @ Vickky
FIR no.: 244/2020
PS: Kamla Market**

18.11.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Sh. Ashwani Jha, Ld. Counsel for applicant through VC.
IO Insp. Lekh Raj Singh is present through VC.

Further, a reply dated 18.11.2020 is filed by Insp. Lekhraj Singh.
Further part arguments heard.

It is stated in such reply that CCTV footage activities are yet to be verified. Under these circumstances, accused is directed to join investigation. Further, as such, without commenting on present bail application, IO is directed not to take any coercive action against the accused till next date of hearing.

Put up for further appropriate orders on 03.12.2020.

**(NAVEEN KUMAR KASHYAP)
Additional Sessions Judge-04/Central
18.11.2020**

Bail Application No.: 1670/2020

State v. Mehtab @ Telli

FIR no.: 265/2020

PS: Sarai Rohilla

18.11.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Sh. M. Yusuf, Ld. Counsel for applicant through VC.

Reply already filed. Copy supplied.

Arguments in detail heard.

Put up for orders on 19.11.2020 at 4 pm.

(NAVEEN KUMAR KASHYAP)
Additional Sessions Judge-04/Central
18.11.2020

Bail Application No.: 1685/2020

State v. Sanjeev Pahwa

FIR no.: 354/2017

PS: Prasad Nagar

18.11.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Sh. Vikas Manchanda, Ld. Counsel for applicant through VC.
Sh. Vipin Sanduja, Ld. Counsel for complainant through VC.

It is stated that IO of the case is tested corona positive and as such could not join the proceedings today. As otherwise, directed on last date of hearing. Under these circumstances, put up for further arguments on previous order for next date.

Ld. Counsel for complainant submits that based on certain case laws, he has right to address arguments on such bail matter. Let copy of such judgment be supplied to learned counsel for accused before next date of hearing as well as to the court.

Put up for further arguments and appropriate orders on 05.12.2020.

Interim order to continue in terms of previous order only.

(NAVEEN KUMAR KASHYAP)
Additional Sessions Judge-04/Central
18.11.2020

Bail Application No.: 1894/2020

**State v. Rajbir Singh Chauhan
FIR no.: 45/2020**

18.11.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Sh. Mohd. Jamal Khan, proxy counsel for accused through VC.

This is a fresh regular bail application. Reply filed by IO.

Copy of the same can be supplied to counsel for accused.

Put up for arguments and orders for 03.12.2020.

**(NAVEEN KUMAR KASHYAP)
Additional Sessions Judge-04/Central
18.11.2020**

Bail Application No.: 1897/2020

**State v. Rohit
FIR no.: 492/2020**

18.11.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Sh. Manoj Kumar Ld. counsel for accused through VC.
IO SI Mohit Srivastava is present through VC.

Reply filed. Arguments in detail heard.

Put up for orders/clarifications, if any for 19.11.2020.

**(NAVEEN KUMAR KASHYAP)
Additional Sessions Judge-04/Central
18.11.2020**

Bail Application No.: 1651/2020

**State v. Mukesh Jha
FIR no.: 255/2020**

18.11.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Sh. Piyush Chhabra, Ld. counsel for accused/applicant through VC.

Further, arguments heard.

Further, report filed by IO dated 17.11.2020.

Put up for orders/clarifications, if any for 19.11.2020 at 4 pm.

In the meanwhile, interim protection is extended till tomorrow in terms of previous order.

**(NAVEEN KUMAR KASHYAP)
Additional Sessions Judge-04/Central
18.11.2020**

Bail Application No.: 1652/2020

**State v. Deepak Jha
FIR no.: 255/2020**

18.11.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Sh. Piyush Chhabra, Ld. counsel for accused/applicant through VC.

Further, arguments heard.

Further, report filed by IO dated 17.11.2020.

Put up for orders/clarifications, if any for 19.11.2020 at 4 pm.

In the meanwhile, interim protection is extended till tomorrow in terms of previous order.

**(NAVEEN KUMAR KASHYAP)
Additional Sessions Judge-04/Central
18.11.2020**

**Bail Matters No.: 1537/2020
State Vs Sonu @ Amrit Kundra
FIR No.: 251/2019
PS: Prashad Nagar**

18/11/2020

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC.
Mr. Prabhat Ranjan, learned counsel for applicant through VC.
Mr. Prabhat Kumar for non applicant through VC.

This is an application for cancellation of interim bail.

Arguments in detail heard including on the maintainability.

Put up for orders / clarification for **04/12/2020**. Further copy of the reply filed by the IO be supplied to both sides during the course of the day.

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(Naveen Kumar Kashyap)
ASJ-04/Central/18.11.2020

Bail Matters No.: 1557/2020
State Vs Monish Alam
FIR No.: 266/2020
PS: Prashad Nagar

18/11/2020

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC.
IO Sanjay Kumar in person through VC.
Ms. Ifat Sultana counsel for applicant through VC.

Further reply stated to be filed by the IO. Copy of the same be supplied to the counsel for the accused during the course of the day.

Part arguments heard.

Put up for further argument / appropriate orders for **28/11/2020**. In the meanwhile, accused is directed to further join and cooperate with the investigation. Interim order to continue till next date of hearing only.

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(Naveen Kumar Kashyap)
ASJ-04/Central/18.11.2020

Bail Matters No.: 1589/2020
State Vs Saif Ali
FIR No.: 364/2020
PS: Sarai Rohilla

18/11/2020

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

Put up for appearance of counsel for accused and for arguments and appropriate orders for **03/12/2020**.

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(Naveen Kumar Kashyap)
ASJ-04/Central/18.11.2020

Bail Matters No.: 1624/2020
State Vs Vishal @ Rhual
FIR No.: 22/2020
PS: Kamla Market

18/11/2020

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

Copy of earlier bail application placed on record.

Put up for placing of record the copy of such bail order by the accused as well as by the IO on the next date of hearing.

Put up for arguments and appropriate orders for **04/12/2020**.

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(Naveen Kumar Kashyap)
ASJ-04/Central/18.11.2020

Bail Matters No.:1863/2020
State Vs Shakira Begum
FIR No.:NA /2020
PS: Darya Ganj

18/11/2020

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC.
Mr. Nasir Aziz, learned counsel for applicant / accused Shakira Begum through VC.

In this case FIR is registered at Amroha UP. Till such anticipatory bail application / transit bail is filed u/s 438 Cr.PC at Central District, Delhi it is claimed that such application is maintainable before this court as the accused is residing within the jurisdiction of this District.

Part arguments heard.

Put up for arguments regarding territorial jurisdiction of this court. Learned counsel for the accused wants to file certain case law. He can file the same during the course of the day through e-mail.

Put up for further arguments on this aspect with other connected matters for

19/11/2020.

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(Naveen Kumar Kashyap)
ASJ-04/Central/18.11.2020

Bail Matters No.: 1886/2020
State Vs Santosh Kumar
FIR No.: 246/2020
PS: Kamla Market

18/11/2020

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC.
Mr. K.Z. Khan, learned counsel for the applicant through VC.

He states that at present he is pressing for extension of interim bail which was granted on the criteria based on medical condition of family members of accused.

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

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

In view of such development, as para 7 (ii) is also stayed by hon'ble Supreme Court, put up for further proceedings / appropriate orders on the present application for **01/12/2020**.

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(Naveen Kumar Kashyap)
ASJ-04/Central/18.11.2020

Bail Matters No.: 1895/2020
State Vs Sonu Sharma
FIR No.:61/2019
PS: Sarai Rohilla Distt. Railway Station

18/11/2020

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC.
Mr. Dinesh Kumar, learned counsel for the applicant Sonu Sharma through VC.

Issue notice to IO of **PS Sarai Rohilla Railway Station** to file reply on the next date of hearing. Further IO is directed to appear in person with case file.

Part arguments heard.

Put up for further arguments / reply and appropriate orders for **25/11/2020**. In the meanwhile, IO is directed not to take any coercive action against the present applicant provided that they will cooperate with the investigation till next date of hearing.

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(Naveen Kumar Kashyap)
ASJ-04/Central/18.11.2020

Bail Matters No.: 1769/2020
State Vs Tarif
FIR No.: 246/2020
PS: Karol Bagh

18/11/2020

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

Reply filed by the IO.

Arguments heard in detail.

Put up for appropriate orders for **19/11/2020**.

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(Naveen Kumar Kashyap)
ASJ-04/Central/18.11.2020

Bail Matters No.: 1790/2020
State Vs Salman
FIR No.: 195/2019
PS: Kamla Market

18/11/2020

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC.
None for the applicant / accused Salman.
IO SI Giriraj in person through VC.

Put up for appearance of counsel for applicant through VC and arguments,
appropriate orders for **05/12/2020**.

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(Naveen Kumar Kashyap)
ASJ-04/Central/18.11.2020

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

18/11/2020

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

Further arguments heard.

Put up for clarification from the IO regarding bail application moved by such accused or by any of co-accused and result thereof and orders on the present application for bail for **21/11/2020**.

Issue notice to the IO accordingly to appear through VC or file such reply / copy of order of bail application, if any, by the next date of hearing.

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(Naveen Kumar Kashyap)
ASJ-04/Central/18.11.2020

Bail Matters No.: 1900/2020
State Vs Satpal Yadav
FIR No.: 468/2015
PS: Rajinder Nagar

18/11/2020

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC.
Mr. Praveen Mahajan, counsel for applicant / accused through VC.
Further complainant is also present alongwith him through VC.

It is argued that there is a settlement arrived in between the parties which is now confirmed by such complainant also.

Further arguments in detail addressed.

Put up for orders / clarification, if any, for **21/11/2020**. Further IO is also directed to appear in person through VC with case file including with the order of anticipatory bail application. Issue notice to IO accordingly.

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Date: 2020.11.18
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(Naveen Kumar Kashyap)
ASJ-04/Central/18.11.2020

BAIL APPLICATION

**_ State v. Vinod @ Dada
(Applicant Ashish)**

**FIR No. : 39/2019
PS: Lahori Gate
U/S: 394/397 IPC**

18.11.2020

Undersigned is also discharging bail roster duty.

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

Issue notice to IO to file reply if not already filed.

Put up for arguments and orders on 03.12.2020.

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Date: 2020.11.18
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(Naveen Kumar Kashyap)

ASJ-04/Central/18.11.2020

BAIL APPLICATION

**_ State v. Vipin Sharma
(Applicant Shail)**

**FIR No. : 213/2018
PS: Lahori Gate**

18.11.2020

Undersigned is also discharging bail roster duty.

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

Reply already filed.

Put up for arguments and orders on 04.12.2020.

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(Naveen Kumar Kashyap)

ASJ-04/Central/18.11.2020

BAIL APPLICATION

**_ State v. Ashish Kumar Bahuguna
(Applicant Manoj kumar)**

FIR No. : 106/2012

PS: Kamla Market

U/S: 302/307/186/353/333/109/34 IPC

18.11.2020

Undersigned is also discharging bail roster duty.

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

In view of the order dated 05.11.2020 in W.P. 3080/2020, particularly para-6 thereof, put up for further appropriate order/proceedings for **05.12.2020**.

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(Naveen Kumar Kashyap)

ASJ-04/Central/18.11.2020

BAIL APPLICATION

- State v. Bunty
FIR No. : 190/2013
PS: Rajinder Nagar
U/S: 302/394/411/34 IPC

18.11.2020

Undersigned is also discharging bail roster duty.

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

In view of the order dated 05.11.2020 in W.P. 3080/2020, particularly para-6 thereof, put up for further appropriate order/proceedings for **05.12.2020**.

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(Naveen Kumar Kashyap)

ASJ-04/Central/18.11.2020

BAIL APPLICATION

**_ State v. Devender Kumar @ Sanjay
(Applicant Vinay @ Monty)**

**FIR No. : 799/2014
PS: Daryaganj**

18.11.2020

Undersigned is also discharging bail roster duty.

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

Put up for further appropriate orders/proceedings on 03.12.2020.

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(Naveen Kumar Kashyap)

ASJ-04/Central/18.11.2020

BAIL APPLICATION

_ State v. Deepak Kumar

FIR No. : 34/2014

PS: Prasad Nagar

18.11.2020

Undersigned is also discharging bail roster duty.

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

None for applicant.

ASI MirPal on behalf of main IO through VC.

Put up for further appropriate orders/consideration for 03.12.2020.

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(Naveen Kumar Kashyap)

ASJ-04/Central/18.11.2020

BAIL APPLICATION

_ State v. Ajay

**FIR No. : 264/2015
PS: Subzi Mandi
U/S: 302,393,397 IPC**

18.11.2020

Undersigned is also discharging bail roster duty.

Present: Mr. Pawan Kumar ,Ld. Addl. PP for the State through VC.
Sh. Iqbal Hussain, proxy counsel for applicant through VC.

In view of the order dated 05.11.2020 in W.P. 3080/2020, particularly para-6 thereof, put up for further appropriate order/proceedings for **05.12.2020**.

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(Naveen Kumar Kashyap)

ASJ-04/Central/18.11.2020

BAIL APPLICATION

_ State v. Taufiq Kala & Ors.

FIR No. : 20/2016

PS: Crime Branch

18.11.2020

Undersigned is also discharging bail roster duty.

Present: Mr. Pawan Kumar ,Ld. Addl. PP for the State through VC.
Ms. Shaukat Jahan, proxy counsel for applicant through VC.

This is an application for extension of interim bail dated 17.11.2020.

In view of the order dated 05.11.2020 in W.P. 3080/2020, particularly para-6 thereof, put up for further appropriate order/proceedings for **05.12.2020**.

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Date: 2020.11.18
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(Naveen Kumar Kashyap)

ASJ-04/Central/18.11.2020

SC No.: 342/2020
FIR :144/2019
State Vs Rajiv

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

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

18.11.2020

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

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

Put up for appearance of accused and for purpose fixed for **25/03/2021**.

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Date: 2020.11.18
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(Naveen Kumar Kashyap)
ASJ-04/Central/18.11.2020

SC No.: 28922/2016
FIR : Irfan
PS: 276/2016
State Vs I.P. Estate

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

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

18.11.2020

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

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

None for accused.

PW / SI / IO Manoj Kumar is present through VC.

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

Put up for PE in terms of previous order for **25/03/2021**. Issue notice to two of the material witnesses for the next date of hearing.

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Date: 2020.11.18
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(Naveen Kumar Kashyap)
ASJ-04/Central/18.11.2020

SC No.: 29053/2016
FIR :305/2016
PS: Sadar Bazar
State Vs Vinay

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

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

18.11.20220

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

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

None for the accused.

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

Put up for PE in terms of previous order for **25/03/2021**. Issue notice to two of the material witnesses for the next date of hearing.

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Date: 2020.11.18
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(Naveen Kumar Kashyap)
ASJ-04/Central/18.11.2020

SC No.: 461/2017
FIR : 644/2015
PS: Timar Pur
State Vs Amit Sharma

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

2 In view of the above-mentioned orders/directions, file is taken up through Webex. 2

18.11.2020

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

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

Accused Amit Sharma is present on regular bail through VC with counsel.

Put up for PE in terms of previous order for **26/03/2021**. Issue notice to two of the material witnesses for the next date of hearing.

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Date: 2020.11.18
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(Naveen Kumar Kashyap)
ASJ-04/Central/18.11.2020

SC No.: 489/2018
FIR : 168/2017
PS: Roop Nagar
2State Vs Subhash Kumar

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

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

18.11.2020

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

Present: Mr. Pawan Kumar, learned Addl.PP for the State through VC.
Mr. Ashutosh Abhishek, counsel for all three accused persons alongwith all the three accused are stated to be on regular bail.

Put up for PE in terms of previous order for **26/03/2021**. Issue notice to two of the material witnesses for the next date of hearing.

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Date: 2020.11.18
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(Naveen Kumar Kashyap)
ASJ-04/Central/18.11.2020

SC No.:586/2019
FIR : Akash @ Akki and others
PS: 135/2019
State Vs Nabi Karim

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

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

18.11.2020

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

Present: Mr. Pawan Kumar, learned Addl.PP for the State through VC.
Mr. Dhruv Bhagat, amicus for accused Vinay through VC.
Accused Vinay is stated to be on bail and present through VC.
Mr. Kamaldeep counsel for witness Manish Gupta alongwith witness through VC.
None for other accused.

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

Put up for PE in terms of previous order for **26/03/2021**. Issue notice to two of the material witnesses for the next date of hearing.

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(Naveen Kumar Kashyap)
ASJ-04/Central/18.11.2020

CR No.: 588/2019
Munni Devi Vs State of NCT of Delhi & others

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

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

18.11.2020

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

Present: Revisionist Munni Devi in person through VC.

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

Put up for further arguments in terms of previous orders for **25/11/2020**.

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(Naveen Kumar Kashyap)
ASJ-04/Central/18.11.2020

CA No. 378/2019 & 379/2019
Sabihuddin Siddiquee Vs Nasi Khan

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

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

18.11.2020

This court is also discharging bail Roster duty till further orders.
Present: Mr. Dharmendra Kumar, counsel for through VC.
Learned counsel for respondent through VC.

Put up for arguments in terms of previous order for **08/12/2020**.

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(Naveen Kumar Kashyap)
ASJ-04/Central/18.11.2020

CR No.: 244/2020
Treemark Solutions Private Ltd. Vs State & Anr

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

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

18.11.2020

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

Present: Learned counsel for revisionist Krishna Parikha through VC.

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

SDM Mr. Balram Meena is also present through VC.

Arguments in detail heard on this revision petition.

Put up for orders / clarification for **20/11/2020**.

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(Naveen Kumar Kashyap)
ASJ-04/Central/18.11.2020

Crl Rev.: 119/2020
Piyush Kumar Sharma v. State

18.11.2020

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

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

Undersigned is also discharging work of Bail Roster duty.

Present: Ms. Arti Sharma, Ld. Counsel for revisionist through VC.
Sh. Pawan Kumar, Ld. Counsel for respondent/state through VC.

Put up for arguments and appropriate orders on this revision petition for

10.12.2020.

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Date: 2020.11.18
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(Naveen Kumar Kashyap)
ASJ-04/Central/18.11.2020

SC NO: 264/20
FIR NO.: 227/20
State v. Imran @ Akhtar Khan

18.11.2020

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

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

Undersigned is also discharging work of Bail Roster duty.

Present: Sh. Pawan Kumar, Ld. Counsel for state through VC.
Accused Imran and Honey @ Vishal present through VC from Mandoli
Jail.

Accused Honey Rawat from Tihar Jail through VC.
Sh. Rajpal Kasana, Ld. Counsel for accused Honey @ Vishal.
Accused Hari Kishan from Rohini Jail through VC.
Ld counsel for accused Yogesh Singh.
Accused Yogesh Singh is stated to be on interim bail at present.

Issue P/W against the accused who is in JC for next date of hearing.

Put up for purpose fixed for 25.03.2021.

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(Naveen Kumar Kashyap)
ASJ-04/Central/18.11.2020

Crl Rev.: 244/2020
Treemark Solution Pvt. Ltd. v. State

18.11.2020

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

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

Undersigned is also discharging work of Bail Roster duty.

Present: Ms. Krishna Parkhari, Ld. Counsel for revisionist through VC.
Sh. Pawan Kumar, Ld. Counsel for respondent/state through VC.
SDM Balram Meena is present through VC.

Arguments in detail heard on this revision petition.

Put up for orders/clarifications on this revision petition for 20.11.2020.

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(Naveen Kumar Kashyap)
ASJ-04/Central/18.11.2020

Crl Appeal.: 190/2020
M/s. Omega Laboratories Ltd & Ors. v.Registrar of Companies

18.11.2020

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

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

Undersigned is also discharging work of Bail Roster duty.

Fresh Criminal Appeal received by way of assignment. It be checked and registered.

Present: Sh. Davinder N. Grover, Ld. Counsel for appellant.

Heard.

Put up for consideration /appropriate orders on physical hearing day on 20.11.2020. In the meanwhile, in the interest of justice, the sentence is suspended till 20.11.2020 only.

Further, a copy of this order be given dasti through electronic mode to counsel for appellant.

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ASJ-04/Central/18.11.2020