BAIL APPLICATION

FIR No. :Not Known
PS: Nabi Karim
STATE v. Mohd. Istekhar & Ors.
U/S: Not known

29.06.2020.

Present: Sh. Pawan Kumar,Ld. Addl. PP for the State through VC.
Complainant in person with counsel Mr. Kalu Singh.
Mr. Muntazir Mehandi, learned counsel for accused person.

Time is sought by IO for filing of reply to the bail application.

Put up for filing of reply by the IO, arguments and for appropriate order for **02/07/2020**.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
29.06.2020

BAIL APPLICATION

FIR No. : 23/2019
PS: Kotwali
STATE v. Sonu@Shankar @ Vivek
U/S: 392,394,411,34 IPC

29.06.2020.

Present: Sh. Pawan Kumar,Ld. Addl. PP for the State through VC.
Sh. Nitish Kumar, Ld. Counsel for applicant through Electronic mode.

No reply filed by IO.

Put up for reply, arguments and appropriate orders on 02.07.2020.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
29.06.2020

BAIL APPLICATION

FIR No. : 22/2020
PS: Nabi Karim
STATE v. Rakesh @ Tinda
U/S: 324307, 34 IPC

29.06.2020.

Present: Sh. Pawan Kumar, Ld. Addl. PP for the State through VC.
Sh. Zia Afroz, Ld. Counsel for applicant through Electronic mode.

Reply not filed by IO.

Put up for reply, arguments and appropriate orders on 02.07.2020.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
29.06.2020

BAIL APPLICATION

FIR No. : 181/2020
PS: Nabi Karim
STATE v. Amit Gupta
U/S: 420,511,34 IPC

29.06.2020.

Present: Sh. Pawan Kumar,Ld. Addl. PP for the State through VC.
Sh. Digvijay Singh,Ld. Counsel for applicant through VC.

Part arguments in detail heard.

Certain clarifications required.

Put up for clarifications/further arguments on 01.07.2020.

Let notice be issued to IO for such clarifications/reply on the next date of hearing including regarding the profession of the accused.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
29.06.2020

BAIL APPLICATION

FIR No. : 29/2020
PS: DBG Road
STATE v. Jaan Mohd.
U/S: 392,392,397 IPC

29.06.2020.

Present: Sh. Pawan Kumar,Ld. Addl. PP for the State through VC.
Sh. B.A. Khan, Ld. Counsel for applicant/accused through V.C.

Reply filed by IO.

It is submitted that a regular bail application of the same accused moved by another counsel is dismissed recently. As such, he seeks permission to withdraw the present application.

Heard. Allowed.

In view of submission of learned counsel counsel for applicant, present application is dismissed as withdrawn.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
29.06.2020

BAIL APPLICATION

FIR No. : 213/2018
PS: Lahori Gate
STATE v. Raju Ram Nehra
U/S: 395,397,412,120B,34 IPC

29.06.2020.

Present: Sh. Pawan Kumar,Ld. Addl. PP for the State through VC.
Sh. Alamine, Ld. Counsel for applicant/accused through V.C.

Reply not filed by IO.

Issue fresh notice to IO through DCP concerned.

Put up for reply, arguments and appropriate orders with filed on 01.07.2020.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
29.06.2020

BAIL APPLICATION

FIR No. : 213/2018
PS: Lahori Gate
STATE v. Sahil
U/S: 395,412,120B,34 IPC

29.06.2020.

Present: Sh. Pawan Kumar,Ld. Addl. PP for the State through VC.
Sh. Virender Tyagi, Ld. Counsel for applicant/accused through V.C.

Reply not filed by IO.

As such, issue show cause notice to IO as to why such report is not filed.

Further, a copy of this order be sent to DCP concerned for his information and necessary action against the IO.

Issue fresh notice to IO through DCP concerned.

Put up for reply, arguments and appropriate orders with connected matter on 01.07.2020.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
29.06.2020

BAIL APPLICATION

FIR No. : 58/2016
PS: Burari
STATE v. Anil
U/S: 302,34 IPC

29.06.2020.

Present: Sh. Pawan Kumar,Ld. Addl. PP for the State through VC.
Sh. Ashwani Saxena, Ld. Counsel for applicant/accused through V.C.

Reply not filed by IO.

As such, issue show cause notice to IO as to why such report is not filed.

Further, a copy of this order be sent to DCP concerned for his information and necessary action against the IO.

Issue fresh notice to IO through DCP concerned.

Put up for reply, arguments and appropriate orders with connected matter on 02.07.2020.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
29.06.2020

BAIL APPLICATION

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

29.06.2020.

Present: Sh. Pawan Kumar,Ld. Addl. PP for the State through VC.
Sh. Amit Kumar Sharma, Ld. Counsel for accused/non-applicant through V.C.

This is an application for cancellation of bail.

Part arguments in detail heard.

Issue notice to IO to be present through VC at the time of further arguments in this case. Further, at request, put up for filing of case law by the accused/non-applicant side.

Put up with file on 03.07.2020.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
29.06.2020

BAIL APPLICATION

FIR No. : 236/2019
PS: Subzi Mandi
STATE v. Rakesh
U/S: 308,34 IPC

29.06.2020.

Present: Sh. Pawan Kumar,Ld. Addl. PP for the State through VC.
Sh. Shivender Singh, Ld. Counsel for applicant/accused through V.C.

Report not received from IO as well as from Jail Superintendent in terms of previous order dated 24.06.2020.

Issue fresh notice to IO as well as Jail Superintendent in terms of order dated 24.06.2020.

Further, a copy of order dated 24.06.2020 be also sent for their ready reference.

Put up on 03.07.2020.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
29.06.2020

BAIL APPLICATION

FIR No. : 316/2019
PS: Pahar Ganj
STATE v. Farooq Dandoo
U/S: 420,376,354,506,174A,34 IPC

29.06.2020.

Present: Sh. Pawan Kumar,Ld. Addl. PP for the State through VC.
Sh. Rajiv Sirohi, Ld. Counsel for applicant/accused through V.C.
Sh. Rakesh Raina, counsel for complainant.

Due to some technical problem/Internet signal issue, V.C. could not be held.

Be pass over.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
29.06.2020

AT 1 pm.

Present: Sh. Pawan Kumar,Ld. Addl. PP for the State through VC.
Sh. Rakesh Raina, ccunsel for complainant.

Counsel for accused is not able to join despite concerned staff tried to contact him.,

Under these circumstances, **put up for arguments through VC for tomorrow i.e. 30.06.2020**, as counsel for accused is not available through VC due to some technical issue.

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
29.06.2020

BAIL APPLICATION

Criminal Appeal No.15/2019
Rajinder Kumar v. M/s. Ajay Industrial Corporation

29.06.2020.

Present: Sh. Shivam Cahudhary counsel for appellant/ convict through VC.
Convict is in JC.
None for respondent despite service through electronic mode (it is reported by the Ahlmad that now respondent company is even issued notice on 27.06.2020 through SMS on its mobile no. 9313402323 as provided in record by the respondent. But despite that none is present through VC or otherwise today).

1. As such, present application is heard on merit as the same is urgent in nature.

2. It is stated in present application u/s 439 Cr.P.C. that order dated 19.02.2019 passed by learned Predecessor court be modified. It is further stated that convict be released on bail pending the present appeal.

3. It is stated that accused was sentenced for simple imprisonment for one year as well as payment of compensation of Rs.9,94,680/- to the respondent in default of payment also he was directed to undergo simple imprisonment that vide order dated 19.02.2019 in appeal he was directed to make some deposit subject to which his sentence was suspended but ultimately he could not comply with the same and as such, he was taken into custody and sent to jail. It is furtner stated that due to present pandemic condition and lock-down, Hon'ble High Court has passed certain order regarding release of accused persons from jail to de-

conjust the jail. As such, it is stated that accused do not want to go in detail on merit, but on humanitarian ground, he seeks suspension of sentence in view of current situation. It is further stated that he is in JC since January, 2020. It is further disclosed that he earlier filed an application under section 389 of Cr.P.C. which was withdrawn on technical ground vide order dated 21.05.2020 passed by learned ASJ-03, Tis Hazari Court.

4. I have heard learned counsel for convict and gone through the record.

5. The order dated 19.02.2019 and thereafter 28.01.2020 vide which he was taken into custody was rightly passed in the facts and circumstances of the present case as he was unable to comply with the condition for suspension of sentence despite repeated opportunity given. As such, there is no occasion to interfere with the same.

6. But having said so, after passing such order, there are certain directions passed by Hon'ble Supreme Court and High Court from time to time due to present pandemic condition.

Observations given by Hon'ble High Court of Delhi in W.P.(C) No. 2945/2020 dated 23.03.2020 in case titled as "Shobha Gupta and Ors. v. Union of India & Ors.", Hon'ble Supreme Court of India in Suo Moto W.P.(C) No. 1/2020 dated 23.03.2020 and Revised Advisory Protocol dated 30.03.2020 have been issued by Ld. District & Sessions Judge (HQ) read with other directions received from time to time including on 28.03.2020, 07.04.2020, 18.04.2020, 05.05.2020, 18.05.2020 and 20.06.2020 from Hon'ble High Court as a result of various meetings of Delhi State Legal Services Authority.

7. In the present case the maximum punishment is of

two years and in fact the accused is convicted for one year. In true spirit of such directions by Hon'ble Supreme Court and High Court, having regard to the present pandemic condition regarding with such instances reported from jail also and the fact such offence was originally a bailable one, his sentence is suspended temporarily for 45 days, so that he can make arrangement to comply with the earlier order made by this court regarding payment to respondent, on furnishing of personal bond and surety bond in the sum of Rs. 20,000/- each to the satisfaction of the court.

8. **Copy of this order be sent to concerned Jail Superintendent for his information.**

9. **Copy of this order be given dasti or through electronic mode to the parties.**

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
29.06.2020

INTERIM BAIL APPLICATION

State vs Subroto Bera @ Bachchu B s/o Osto Bera
FIR No.: 63/2015
PS: Karol Bagh
U/S: 395, 397, 411, 120B IPC

29.06.2020.

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

1. *Observations given by Hon'ble High Court of Delhi in W.P.(C) No. 2945/2020 dated 23.03.2020 in case titled as "Shobha Gupta and Ors. v. Union of India & Ors.", Hon'ble Supreme Court of India in Suo Moto W.P.(C) No. 1/2020 dated 23.03.2020 and Revised Advisory Protocol dated 30.03.2020 have been issued by Ld. District & Sessions Judge (HQ)* read with other directions received from time to time including on 28.03.2020, 07.04.2020, 18.04.2020, 05.05.2020, 18.05.2020, and 20.06.2020 from Hon'ble High Court as a result of various meetings of Delhi State Legal Services Authority, present application is taken up.

2. Even Further reply filed today by the IO.

3. Further arguments heard today.

4. In nutshell, it is argued that he is in JC since 17/03/2015; that now there are certain directions by the Hon'ble High Court regarding relax interim bail criteria including dated 18/05/2020; that accused has deep roots in society and has good conduct in JC since his arrest; that his house at Bengal is

destroyed in recent storm; further there is spread of corona pandemic; As such, it is prayed that he be released on 45 days interim bail.

5. Reply filed by IO. As per report of IO there is involvement of accused in another matter i.e. case FIR No. 221/2015 PS Karol Bagh which is pending trial and regarding which also interim bail application is filed by the present accused.

Further, it is not the case of the accused but he himself suffering from any disease as mentioned in order dated 18/04/2020 of Hon'ble High Court. As such, it is argued that he does not fall under the relaxed criteria dated 18/04/2020 of the Hon'ble High Court. As such, he cannot be given banefit of the same.

Further on merit, it is argued that offence is serious in nature under section 395, 397 IPC etc. and there are scientific evidence against accused; that he is involved in a robbery matters also. Further, it is stated that on verification through the concerned Police Station at West Bengal, it is reported that house of the accused is not destroyed in West Bengal. As such present interim bail application is opposed.

6. Accused is charged with offence inter-alia u/s 395 IPC which is punishable for punishment upto life. Further, he has involvement in another criminal matter also. Further it is not his case that he himself suffering from any disease as mentioned in

order of the Hon'ble High Court dated 18/04/2020 or any illness at all. His claim is that his house is destroyed in recent storm in West Bengal and is found incorrect. Therefore, at this stage, this court is not inclined to grant the interim bail to the present accused.

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

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
Central District/29.06.2020

INTERIM BAIL APPLICATION

State vs Subroto Bera @ Bachchu B s/o Osto Bera
FIR No.: 221/2015
PS: Karol Bagh
U/S: 302, 392, 394, 397, 342, 411, 120B, 34 IPC

29.06.2020.

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

1. *Observations given by Hon'ble High Court of Delhi in W.P.(C) No. 2945/2020 dated 23.03.2020 in case titled as "Shobha Gupta and Ors. v. Union of India & Ors.", Hon'ble Supreme Court of India in Suo Moto W.P.(C) No. 1/2020 dated 23.03.2020 and Revised Advisory Protocol dated 30.03.2020 have been issued by Ld. District & Sessions Judge (HQ)* read with other directions received from time to time including on 28.03.2020, 07.04.2020, 18.04.2020, 05.05.2020, 18.05.2020, and 20.06.2020 from Hon'ble High Court as a result of various meetings of Delhi State Legal Services Authority, present application is taken up.

2. Even Further reply filed today by the IO.

3. Further arguments heard today.

4. In nutshell, it is argued that he is in JC since

17/03/2015; co-accused Babu is already granted regular bail by the Hon'ble High Court; that now there are certain directions by the Hon'ble High Court regarding relax interim bail criteria including dated 18/05/2020; that accused has deep roots in society and has good conduct in JC since his arrest; that his house at Bengal is destroyed in recent storm; further there is spread of corona pandemic; As such, it is prayed that he be released on 45 days interim bail.

5. Reply filed by IO. As per report of IO there is involvement of accused in another matter i.e. case FIR No. 63/2015 which is pending trial and regarding which also interim bail application is filed by the present accused.

Thus, he does not fall under the relaxed criteria dated 18/05/2020 of the Hon'ble High Court. As such, he cannot be given banefit of the same.

Further on merit, it is argued that offence is serious in nature under section 302 IPC and there are scientific evidence against accused; that he is involved in a robbery matters also. Further, it is stated that on verification through the concerned Police Station at West Bengal, it is reported that house of the accused is not destroyed in West Bengal. As such present interim bail

application is opposed.

6. Accused is charged with offence u/s 302 IPC which has a minimum punishment for life imprisonment. Further, he has involvement in another criminal matter also. Further his claim is that his house is destroyed in recent storm in West Bengal and is found incorrect. Therefore, at this stage, this court is not inclined to grant the interim bail to the present accused.

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

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
Central District/29.06.2020

Bail Application

State Vs Manoj Kumar
FIR No. 201/2018
PS.: EOW, Mandir Marg
U/s: 419, 420, 467, 468, 471, 120B IPC

29.06.2020
Present: **Mr. Pawan Kumar Learned Addl. PP for State.**
Mr. Rakesh Kumar Sharma, learned counsel for the applicant / accused through VC.

Vide this order, the fifth bail application under section 439 Cr.P.C. on behalf of accused dated 23/12/2019 filed through counsel is disposed of.

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

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

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

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

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

But, the liberty of an individual is not absolute. The Society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the societal order. A society expects responsibility and accountability form 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 argued that even in any case even as per the allegations in the material collected by the prosecution ingredients of section 467 IPC are not made out; that last bail application was dismissed on 16/12/2019 by learned CMM and before that regular bail application was dismissed lastly by learned Sessions Court on 16/08/2019. Many important aspects were never argued and put before the court; that except son and daughter of late Harbhajan Singh Vedi, none of the 21 witnesses have made any allegations against the present accused; even regarding other offences mentioned in the chargesheet there is no sufficient incriminating material / evidence against the accused; that he is in JC since his arrest on 28/02/2019; that he has roots in society and permanent resident of Patiala, Punjab. Now chargesheet is already filed. There is no possibility of tampering with the evidence. Further, it is argued that best the allegations are regarding 471/468 IPC which are punishable upto 7 years only and as per settled law courts are more inclined to grant bail for such offenses. Further certain case law including regarding the case of Suresh Kalmadi decided by Hon'ble High Court is also relied in support of the arguments. Further, it is stated that nothing incriminating which connects the present accused with the offences alleged against him including section 467 IPC is recovered. As such, it is prayed that he be granted regular bail.

On the other hand, it is stated by the learned Addl.PP for the State, it is stated that offence is serious in nature, it inter-alia involved section 467 IPC. It is further stated that charge is already framed against the accused / application including section 467 IPC. It is further stated that there are sufficient material against the accused and the charge is rightly framed. It is further stated that even beneficially of the such forgery

is liable for such punishment. It is further stated that there is no material change in circumstance since dismissal of last bail application.

I have heard both the sides and have gone through the record. Further, I have perused the trial court record.

It may be noted that present application is for regular bail. That as per trial court record, order on charge is already passed, such order inter-alia include section 467 IPC. As such, in such bail application proceedings, accused cannot be heard same that section 467 IPC is not made out and this court is supported to proceed with the presumption that section 467 IPC is involved in the present case. Further, the nature of offence and the manner in which it is executed is very serious in nature. It was executed in a planned manner. More importantly this court do not find any material change in circumstance since dismissal of the last bail application u/s 439 Cr.PC. As such, this court is not inclined to grant the relief as sought in the present application. Hence, the same is dismissed.

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

(Naveen Kumar Kashyap)
Additional Sessions Judge-04
Central/THC/Delhi
29/06/2020.

BAIL APPLICATION

FIR No. : 48/2015
PS: Nabi Karim
STATE v. Ajay @ Nathu
U/S: 186,353,333,307,201,75,34 IPC

29.06.2020.

Present: Sh. Pawan Kumar,Ld. Addl. PP for the State through VC.
Sh. Deepak Sharma, Ld. Counsel for applicant/accused through V.C.

1. *Observations given by Hon'ble High Court of Delhi in W.P.(C) No. 2945/2020 dated 23.03.2020 in case titled as "Shobha Gupta and Ors. v. Union of India & Ors.", Hon'ble Supreme Court of India in Suo Motu W.P.(C) No. 1/2020 dated 23.03.2020 and Revised Advisory Protocol dated 30.03.2020 have been issued by Ld. District & Sessions Judge (HQ)* read with other directions received from time to time including on 28.03.2020, 07.04.2020, 18.04.2020, 05.05.2020,18.05.2020 and 20.06.2020 from Hon'ble High Court as a result of various meetings of Delhi State Legal Services Authority, present application is taken up.

2. Reply already filed by IO. Today, even reply filed by Jail Superintendent concerned dated 27.06.2020.

3. Arguments heard .

4. It is stated in the application that present case is at the stage of prosecution evidence. That accused is in JC since last more than five years. That he is suffering from disease of piles and others ailments and his medical condition is deteriorating day by day. That no proper medical treatment is

provided to him in Jail due to COVID-19 pandemic condition. That doctors of jail authority are not in a condition to refer the applicant for proper treatment in hospital. As such, it is prayed that on medical condition he be granted interim bail for thirty days. Even otherwise, it is stated that he is the sole bread earner of the family.

5. On the other hand, interim bail application is opposed. It is stated that offence is heinous in nature and not covered in the guidelines issued by Hon'ble High Court of Delhi as mentioned above. There are as many as 16 criminal involvements of present accused. That such accused in present case was actively involved in the crime in which a police official was also injured. It is further stated that earlier he was granted interim bail in the year 2018 and during that period he was found involved in case FIR no. 219/2018 u/s 379 IPC PS Sadar Bazar. It is further stated that regarding the medical treatment, report may be obtained from Jail Authority concerned. It is further submitted by learned Addl. PP for the state that even if interim bail is considered by this court, his family be directed to make advance arrangement for surgery to save time.

6. As per report of the Deputy Jail Superintendent, Jail no.3, present accused is getting treatment for skin disease in jail. That such accused complained regarding pain and bleeding during defecation, constipation and mass coming out from anus during defecation. During medical check up he was diagnosed Grade-III internal hemorrhoid and he was given suitable treatment and high fiber diet, but still such problem is persisting. As such, he was provided treatment from jail dispensary but no

improvement is reported. He was advised surgery for his condition by jail visiting Senior Resident surgeon from DDU hospital. But same could not be carried out due to prevailing COVID-19 pandemic, restriction on elective surgeries in DDU hospital and restrictions on inmates movement to outside hospital to prevent spread of corona virus inside the jail.

7. As there are as many 16 criminal involvements of the present accused, he is not covered in guidelines dated 18.05.2020 passed by Hon'ble High Court.

8. But it is also the directions by Hon'ble High court that in any case bail application, including interim bail application, are to be decided on merit in any case.

9. In the present case, although the charge against the accused are serious in nature. Further, he is involved many other cases as per reported by IO. But this is a interim bail application and not a regular bail application. Thus, without going much in the facts of the present case, it may be noted that there are specific report by the jail superintendent concerned regarding medical condition of the accused as mentioned above and further that he requires surgery for the same and further that due to certain restrictions such surgery could not be carried out from the hospital at the instance of the jail authority. The welfare and health of the under trial prisoner is of paramount consideration. Therefore, having regard to the medical condition of the accused, he requires immediate surgery, in the background of such facts and circumstances and in the interest of justice, present interim bail of applicant/accused is allowed.

10. It may be noted, that when different aspects are

interconnected, then a holistic approach need to be taken. Since interim bail is granted in this case, thus after the expiry of the period of such bail the accused had to surrender back in concerned jail. It may also be note that earlier court was ordering, in appropriate cases, physical attendence of such accused before SHO physical, e.g. once a week. Further, in today's corona times ,court should not and thus do not direct the physical attendence in police station, including having regard to nature of corona infection, social distancing norms as well as due to the inconvineince which may be faced by accused due to lockdown .

Further problems being faced on account of lock-down due to the same is also urged by the accused/applicant side. Therefore, apart from other well settled grounds, such above mentioned conditions are deemed to be fit in overall facts and circumstances of the present case, as it is not desired otherwise to direct accused to mark physical attendance in the police station or no attendance at all. Thus as a viable alternetive to such condition to physical attendence need to be ordered. Further, when the accused need to surrender back to jail, it will assist in screening against corona infection.

It may further be noted that consent of the accused is taken through his learned counsel. It is stated that accused is ready to abide by any condition put by the court .

11. In this background, to get sufficient information, in order to to reduce and detect spread of Corona infection, when the accused surrender back to jail, as also for better ensure that he do not flee from justice, and further that social distancing is

maintained during present pandemic period, accused is admitted to interim bail subject to following conditions:

I) furnishing personal bond and surety bond in the sum of Rs. 15000/- to the satisfaction of Court.

(a) Interim bail is allowed for **45** days . After completion of the interim bail period applicant shall surrender before concerned Jail Superintendent. Necessary intimation be sent to concerned Jail Superintendent accordingly;

(b) Applicant shall not flee from the justice;

(c) Applicant shall not tamper with the evidence;

(d) Applicant shall not threaten or contact in any manner to the prosecution witnesses;

(e) Applicant shall not leave country without permission;

(f) Applicant shall convey any change of address immediately to the IO and the court;

(g) Applicant shall also provide her mobile number to the IO;

(h) Applicant shall mark his attendance before concerned IO ,and if he is not available then to concerned SHO, every alternative /second day through mobile by sharing his location with the SHO concerned;

(i) Applicant shall further make a call, preferably by audio plus video mode to concerned IO, and if he is not available then to concerned SHO, once a week, preferably on Monday between 10 a.m. To 5

p.m.

(j) Applicant shall keep his such mobile number 'Switched On' at all the time and particularly between 8 am to 8 pm everyday.

(k) Applicant shall install '**Aarogya Setu**' App on his mobile phone and will keep IGPS as well as Bluetooth ON all the time during the period of such interim bail.

(l) Further, in case accused is found involved in any criminal offence, particularly of like nature, when same would be a ground for cancellation of his interim bail.

12. Application stands disposed off accordingly.

13. Copy of this order be sent to Jail Superintendent concerned.

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

(Naveen Kumar Kashyap)
ASJ-04/Central/THC
29.06.2020

Bail Application

State Vs Gaurav Chauhan @ Sachin s/ Mr. Ghanshyam
FIR No. 199/2009
PS.: Kashmere Gate
U/s: 364A/506/120B IPC

29.06.2020
Present: **Mr. Pawan Kumar Learned Addl. PP for State.**
Mr.Ajay Verma, learned counsel for the applicant / accused through VC.

This is an application under section 439 Cr.P.C. for grant of regular bail to the accused Gaurav Chauhan dated 25/06/2020 filed through counsel.

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

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

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

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

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

But, the liberty of an individual is not absolute. The Society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the societal order. A society expects responsibility and accountability form 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 argued that he is in JC since 2014; that he was granted interim bail on a number of occasions and he duly surrendered after availing the same, as such, his conduct is very satisfactory. It is further stated that the case is now pending at the stage of final arguments. It is further stated that mother of the accused is 65 years old and is bed ridden. That there are pandemic condition due to corona virus and as a result of the same, there is spread of corona virus inside the jail also. It is further stated that there are certain directions from the Hon'be High Court, Trial Court regarding relaxed criteria for granting interim bail including dated 20/06/2020. That present accused is suffering from various medical conditions as is reported in medical report dated 19/04/2020. That he is suffering from spinal problem and back ache. It is further stated that there is nobody else to take care of his old mother. That he was granted interim bail recently also on 08/05/2020 for 45 days and same is expiring on 29/05/2020. It is further stated that as case is at the stage of final arguments, there is no possibility of threatening the witness or tampering with the evidence. It is further stated that in similar

circumstance in another case, bail was granted to one accused by hon'ble High Court in bail application No.: 790/2020. As such, it is prayed that he be granted regular bail. In the alternative, during arguments, it is prayed that in the alternative he be granted at least interim bail i.e. his interim bail be extended for another 45 days.

On the other hand, present bail application is vehemently opposed by the prosecution alleging that there are serious and specif allegations against the present accused. Present offence is punishable upto life imprisonment. It is further stated that due to corona virus and medical condition of the accused, relaxation is already given to the accused and he was granted interim bail by learned ASJ-03 Mr. Anuj Aggarwa, vide order dated 08/05/2020. It is further pointed out that it is specifically mentioned in order dated 08/05/2020 that he will surrender before Jail Authority on expiry of such interim bail.

I have heard both the sides and have gone through the record including the case file.

Learned counsel for applicant is unable to point out whether earlier he moved any bail application. If so, outcome thereof. Further on bare perusal of the record, this court agrees with the contention raised by the prosecution, there serious and specific allegations against the present accused and offence is punishable upto imprisonment for life. Further, matter pending at final stage, are now being taken up for arguments through V.C. subject to consent by the counsel for the accused. Therefore, there is no impediment in further proceedings on merit as far as present case is concerned. Further having regard to the nature of offence and manner in which it is committed, this court is not inclined to grant regular bail to the present accused.

Further, as far as prayer for extension of interim bail is concerned, it may be noted that having regard to the nature of charge against the accused, cases of this nature are dealt by the hon'ble High Court vide order dated 18/04/2020. In the background, it may be noted

that a detail medical status dated 18/04/2020 was filed by Jail superintendent concerned. In nutshell, it is stated in such medical status that he is a patient of very high blood pressure and at present suffering from severe headache, Dizziness, vomiting, anxiety and bleeding per rectum. That his blood pressure in June, 2019 was as high as 216/144 mmHg. That even at present his blood pressure is from 180-190 to 100-130 on the lower side. That he is having uncontrolled hyper tension and due to that bleeding in urine, nose and headache and shortness of breathing are gradually persisting and there is no improvement. Apart from this, there is some ailment relating to spin also.

Under these circumstance, his prayer for extension of interim bail is accepted on merit, including having regard to the spirit of direction of the Hon'ble High Court from time to time including the order dated 22/06/2020 in its Division Bench order dated 22/06/2020 in W.P.(C) 3080/2020 titled as 'Court on its own motion V. Govt. of NCT of Delhi & Anr., but such interim bail is extended on the same personal bond subject to following conditions. ***After completion of the interim bail period applicant shall surrender before concerned Jail Superintendent. Necessary intimation be sent to concerned Jail Superintendent accordingly.***

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

i) *Applicant shall not flee from the justice;*

ii) *Applicant shall not tamper with the evidence;*

iii)*Applicant shall not threaten or contact in any manner to the prosecution witnesses ,*

iv) *Applicant shall not leave country without permission;*

v) *Applicant shall convey any change of address immediately to the IO and the court;*

vi) *Applicant shall also provide his/her mobile number to*

the IO;

vii) *Applicant shall mark his /her attendance before concerned IO (and if IO is not available then to concerned SHO) every alternative /second day through mobile by sharing his/her location with the SHO concerned;*

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

ix) *Applicant shall keep his / her such mobile number 'Switched On' at all the time , particularly between 8 am to 8 pm everyday.*

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

(Naveen Kumar Kashyap)
Additional Sessions Judge-04
Central/THC/Delhi
29/06/2020.