

Bail Application No.: 1543/2020

State v. Sunny Sethi

FIR no.: 201/2020

PS: I.P. Estate

19.10.2020

One steno is on leave today.

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

Arguments in detail heard .

Due to dictation in other bail matters, no time is left.

Put up for orders/clarifications, if any on 20.10.2020.

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(NAVEEN KUMAR KASHYAP)
Additional Sessions Judge-04/Central
19.10.2020

Bail Application No.: 1541/2020

State v. Sunny Sethi

FIR no.: 272/2020

PS: I.P. Estate

19.10.2020

One steno is on leave today.

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

Ld. Counsel for applicant /accused through VC.

Arguments in detail heard .

Due to dictation in other bail matters, no time is left.

Put up for orders/clarifications, if any on 20.10.2020.

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Additional Sessions Judge-04/Central
19.10.2020

Bail Application No.: 1536/2020

State v. Gagan Khokha

FIR no.: 210/2020

PS: Rajinder Nagar

19.10.2020

One steno is on leave today.

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Sh. Vaibhav Sharma, Ld. Counsel for applicant /accused through VC.
Sh. Pradeep Chaudhary, Ld. Counsel for complainant through VC.
IO is also present through VC.
Arguments in detail heard in pre and post lunch session.
Due to dictation in other bail matters, no time is left.

Put up for orders/clarifications on 20.10.2020.

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(NAVEEN KUMAR KASHYAP)
Additional Sessions Judge-04/Central
19.10.2020

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

Bail Application No.: 1372/2020

State v Tashuvil @ Tasibul @ Tasuvil

FIR No. :11/2020

PS: Old Delhi Railway Station

U/S: 370 IPC

19.10.2020

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC.
Sh. Lalit Kumar Sharma, Ld. Counsel for applicant through VC.
IO is also present through VC.
Vide this order, the regular bail application under section 439 Cr.P.C. on behalf of accused dated 22/09/2020 filed through counsel is disposed off.

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

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

Further it has been laid down from the earliest time that the object of Bail is to secure the appearance of the accused person at his trial by reasonable amount of Bail. The object of Bail is neither punitive nor preventive. Deprivation of liberty must be considered a

punishment unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after convictions, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earlier times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial, but in such case 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the constitution that any persons should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty under Article 21 of the Constitution upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson. While considering an application for bail either under Section 437 or 439 CrPC, the court should keep in view the principle that grant of bail is the rule and committal to jail an exception. Refusal of bail is a restriction on personal liberty of the individual guaranteed by Article 21 of the Constitution. Seriousness of the offence not to be treated as the only consideration in refusing bail : Seriousness of the offence should not to be treated as the only ground for refusal of bail. (Judgment of **Sanjay Chandra Vs. Central Bureau of Investigation, AIR 2012 SC 830** relied).

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

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

the court must be reasoned one but detailed reasons touching merits of the case, detailed examination of evidence and elaborate documentation of merits of case should not be done.

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

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

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

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

In the present case, it is argued on behalf of accused that he is a labourer and wrongly arrested on 07/09/2020 and no more required for the purpose of investigation. That the accused and the father of the child in question are room partner at Sec. 33, Faridabad, Haryana and belongs to villages in neighbourhood in Bihar. That applicant was coming to Delhi from native place and the father of the present accused child in question requested that he should bring such child who is about 17 ½ years with him to such father. As such, he was accompanying the accused that nothing remains to be recovered from the accused. That rest is matter of trial. As such, it is prayed that he be granted regular bail.

On the other hand, in reply filed by the IO as also argued by the learned Addl.PP for the state that there are serious and specific allegations against the present accused; that he is involved in the trafficking of minor which offence is punishable with rigorous imprisonment for a terms not less than 10 years, but which may extend upto life imprisonment. It is further stated that admittedly that child in question is minor in any case; that such child was rescued by a joint team of Bachpan Bachao Andolan, NGO and concerned department of Delhi government in a joint raid. As such, present bail application is strongly opposed.

In the present case, no doubt offence alleged is very serious in nature. Further court should be on extra guard and sensitive while deciding such applications relating to allegation of trafficking of minors. In fact, even the legislature has provided minimum

punishment for not less than 10 years for such offence.

But having observed so, it is one of the pre-condition in any criminal case to see whether there is prima facie material in support of such allegation on record which is also legally sustainable. One of the pre-condition of offence u/s 370 IPC is that it should be for the purpose of exploitation. Further, such exploitation includes slavery or practices similar to slavery. But in the present case, as per the material on record, lawful guardian / father of the minor child is not supporting the prosecution story and as per the investigation so far, such child was to meet his father at Faridabad, Haryana where in the same building the accused was living and was coming back from the native place. Further, during his statement u/s 164 Cr.PC produced by the IO during proceedings, it can be observed that there is no allegation of offence u/s 370 IPC. Further, such minor child alongwith present accused is arrested at Railway Station itself and there is no proof / material regarding such slavery or other exploitation. Further time to seek PC remand is already over. As such, no purpose would be served by keeping the accused in JC particularly during such pandemic situation. Further, it may be noted that there is fundamental presumption of innocence in any criminal case.

In above facts and circumstances, such accused is granted bail subject to furnishing of **personal bond in the sum of Rs. 10,000/- with one sound surety of like amount**, subject to the satisfaction of the learned Trial court and the following additional conditions:

- i) That he will appear before IO / Trial Court as and when called as per law.*
- ii) He will not indulge in any kind of activities which are alleged against him in the present case.*
- iii) That he will not leave India without permission of the Court.*
- iv) He will not threaten the witness or tampering with evidence.*
- v) He shall convey any change of address immediately to the IO and the court;*
- vi) He shall also provide his mobile number to the IO;*

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

I may observe that certain guidelines had been laid down by the Hon'ble Delhi High Court in the case of “*Ajay Verma Vs. Government of NCT of Delhi*” WP (C)

10689/2017 dated 08.03.2018 wherein it was observed and I quote as under:

“..... The trial courts should not only be sensitive but extremely vigilant in cases where they are recording orders of bail to ascertain the compliance thereof.....When bail is granted, an endorsement shall be made on the custody warrant of the prisoner, indicating that bail has been granted, along with the date of the order of bail.

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

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

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

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

The bail application is accordingly disposed off. Learned counsel for applicant is at liberty to obtain through electronic mode. Further copy of this order be sent to Concerned Jail Superintendent, IO / SHO.

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(Naveen Kumar Kashyap)
ASJ-04(Central)/Delhi/19.10.2020

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

Bail Application No.: 1474/2020
State v. Salman @ sonu
FIR No. : 11109/2020
P. S: Rajender Nagar
U/s: 379,411 r/w 34 IPC

19.10.2020.

This court is also discharging bail roster duty.
One steno is on leave today.

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Mr. Diwakar Chaudhary, Ld. LAC for accused/applicant
through VC.

Vide this order, regular bail application u/s 439 Cr.PC dated 25.09.2020 filed through DLSA through Jail Superintendent concerned is disposed of.

It is stated in the application that he has been falsely implicated in the present case; that he is in JC since 04.08.2020. That no purpose would be served by keeping him in JC. That his regular bail application was dismissed by Ld. MM vide order dated 10.09.2020. As such, it is prayed that he be granted regular bail.

On the other hand, in reply filed by the IO, as also argued by learned Addl.PP for the State it is stated that a number of criminal cases against him. That he was arrested based on disclosure statement made by him regarding the present offence in another criminal case in which he was arrested earlier. That it is stated that he may threaten the witnesses or may jump the bail.

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, 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 for last more than two months. In fact, the period for seeking police remand is already over. As such, no purpose would be served by keeping such accused in JC. Investigation and thereafter trial is likely to take time. 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. 10,000/- 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.

- e) 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.*
- f) Every bail order shall be marked on the file.*
- g) It shall be the responsibility of every judge issuing an order of bail to monitor its execution and enforcement.*
- h) 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:

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

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

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

NAVEEN KUMAR KASHYAP
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Date: 2020.10.19 18:44:59
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(NAVEEN KUMAR KASHYAP)
ASJ-04(Central/Delhi)
19.10.2020

Bail Application No.: 1489/2020

State v. Sayed Waiz Ali

FIR no.: 250/2020

PS: I.P. Estate

19.10.2020

One steno is on leave today.

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Sh. Nadeem Khan, Ld. Counsel for applicant/accused through VC.
IO HC Sushil in person through VC.

Reply filed. Copy of the same is supplied to the counsel for applicant.

This is an application for anticipatory bail application.

Arguments in detail heard.

Put up for orders at 4 pm today itself.

NAVEEN KUMAR KASHYAP
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NAVEEN KUMAR KASHYAP
Date: 2020.10.19 18:45:15
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(NAVEEN KUMAR KASHYAP)
Additional Sessions Judge-04/Central
19.10.2020

AT 5 pm

Present: None.

No time left.

Put up for orders /clarifications,if any on 20.10.2020.

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Date: 2020.10.19 18:45:32
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(NAVEEN KUMAR KASHYAP)
Additional Sessions Judge-04/Central
19.10.2020

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

Bail Application No.:1535/2020

State v. Raju
FIR No. : 100/2020
P. S: Hauz Qazi
U/s: 457,380 , 411 r/w 34 IPC

19.10.2020.

This court is also discharging bail roster duty.

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Mr.Pradeep Kr Anand, Ld. for accused/applicant through VC.

Vide this order, regular bail application u/s 439 Cr.PC dated 13.10.2020 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 17.09.2020. That his is a poor person doing labour job in the area where the alleged incident took place. That he was arrested later on and implicated in the present case, as he was doing labour job alongwith co-accused Mukesh. That there is no previous criminal record of the present accused. That he is the only bread earner of the family. That investigation is already complete. 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 alongwith co-accused Mukesh committed theft at the shop of the employer of co-accused. That his presence is caught in the CCTV camera. That present accused is the person who accused committed such theft at night, as such the offence committed is punishable upto fourteen years. That he kept Rs. 20,000/- out of such stolen amount and gave Rs. 1,26,400/- to the co-accused Mukesh. Such, Rs. 1,26,400/- are recovered from the co-accused. As such, they were arrested later one. 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 18.09.2020. In fact, the period for seeking police remand is already over. Case property is already stated to be recovered from co-accused. Further, such accused is not named in the FIR. Further, he is not arrested on the spot but later on based on circumstantial evidence including the CCTV footage. Further, the case property is cash amount. Further, as per reply given IO, nothing is recovered from the present accused but cash was recovered from the co-accused. 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.

- i) 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.*
- j) Every bail order shall be marked on the file.*
- k) It shall be the responsibility of every judge issuing an order of bail to monitor its execution and enforcement.*
- l) 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:

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

The copy of this order be sent to **Ld. MM** and also to the **Superintendent Jail** who shall also inform this court about all the three aspects as contained in the para herein

above. The Superintendent Jail is also directed to inform this court if the prisoner is willingly not furnishing the personal bond or in case if he is unable to furnish the surety or any other reason given by the prisoner for not filing the bonds. One copy of this order be also sent to the **SHO Concerned** to ensure compliance.

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

NAVEEN KUMAR
KASHYAP
(NAVEEN KUMAR KASHYAP)
ASJ-04(Central/Delhi)
19.10.2020

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

Bail Application No.: 1540/2020

State v. Sagar S/o Hari Prasad
FIR No. : 141/2020
P. S: Kamla Market
U/s:379,411 r/w 34 IPC

19.10.2020.

This court is also discharging bail roster duty.
One of the steno is on leave.

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

Vide this order, regular bail application u/s 439 Cr.PC dated 14.10.2020 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 long. That he is no more required for further investigation. That nothing is recovered from him except the planted recovery. That there is a spread of corona virus including inside the jail. That bail is a rule and jail is exception. That three of the co-accused are already granted regular bail by the court of Sessions. That there is no previous criminal record of the 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 about 17.5 lacs were stolen on 15.07.2020 from the bag of the employee of the complainant while he was going on motorcycle. That during investigation involvement of the present accused persons including the present applicant was found co-accused Tulsi was interrogated and he confessed his involvement in the present case and on his disclosure present accused alongwith others were also arrested. As such, he was arrested on 28.07.2020 and a sum of Rs. 1 lac each was recovered from such four accused persons including the present one and further a bag containing Rs. 5.15 lacs was recovered from possession of the accused. That public witness Bindra Prasad claimed that he can identify the accused persons but accused persons refused to undergo TIP. But it is admitted that there is no other criminal record of the 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 28.07.2020. In fact, the period for seeking police remand is already over. Case property is already stated to be recovered. Further, such accused is not named in the FIR. Further, he is not arrested on the spot but later on based on disclosure statement of co-accused. Further, three of the co-accused of similar role are already granted regular bail vide order dated 28.09.2020 and 12.10.2020. Further, 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, as per reply by the IO, such accused is not found to be involved in any other criminal case

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.

m) 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.

n) Every bail order shall be marked on the file.

o) It shall be the responsibility of every judge issuing an order of bail to monitor its execution and enforcement.

p) 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:

j) The date on which conditions imposed by this court are satisfied;

k) The date of release of prisoner from jail;

l) Date of ultimate release of prisoner in case the prisoner is in jail in some other case.

The copy of this order be sent to **Ld. MM** and also to the **Superintendent Jail**

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

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

NAVEEN KUMAR
KASHYAP

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(NAVEEN KUMAR KASHYAP)
ASJ-04(Central/Delhi)
19.10.2020

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

Bail Application No.: 1521/2020

State v Mohd. Nashim
FIR No. :11/2020
PS: Old Delhi Railway Station
U/S: 370 IPC

19.10.2020

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC.
Sh. N.A. Amani, Id. Counsel for applicant through VC.
IO is also present through VC.

Vide this order, the regular bail application under section 439 Cr.P.C. on behalf of accused dated 13.10.2020 filed through counsel is disposed off.

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

The personal liberty is a priceless treasure for a human being. It is founded on the bed rock of constitutional right and accentuated further on human rights principle. The sanctity of liberty is the fulcrum of any civilized society. Deprivation of liberty of a person has enormous impact on his mind as well as body. Further article 21 Of the Constitution mandates that no person shall be deprived of his life or personal liberty except according to procedure established by law. Further India is a signatory to the International Covenant On Civil And Political Rights, 1966 and, therefore, Article 21 of the Constitution has to be understood in the light of the International Covenant On Civil And Political Rights, 1966. *Further* Presumption of innocence is a human right. Article 21 in view of its expansive meaning not only protects life and liberty ,but also envisages a fair procedure. Liberty of a person should not ordinarily be interfered with unless there exist cogent grounds therefore. The fundamental principle of our system of justice is that a person should not be deprived of his liberty except for a distinct breach of law. If there is no substantial risk of the accused fleeing the course of justice, 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 argued on behalf of accused that accused is in JC since his illegal arrest on 09.09.2020 and no more required for the purpose of investigation. That one of the alleged child who was accompanying the present accused is his son and rest of the two child are his nephews in relation. It is further submitted that such children wanted to visit Delhi and go to different places, as such, they accompanied such accused. That such two other children purchased their ticket out of their own money. That present accused is doing small business in Delhi. That there is a spread of corona virus. That he is wrongfully arrested without a lawful basis. As such, he was accompanying the accused that nothing remains to be recovered from the accused. That rest is matter of trial. As such, it is prayed that he be granted regular bail.

On the other hand, in reply filed by the IO as also argued by the learned Addl.PP for the state that there are serious and specific allegations against the present accused; that he is involved in the trafficking of minor which offence is punishable with rigorous imprisonment for a terms not less than 10 years, but which may extend upto life imprisonment. It is further stated that admittedly that child in question is minor in any case;

that such child was rescued by a joint team of Bachpan Bachao Andolan, NGO and concerned department of Delhi government in a joint raid. As such, present bail application is strongly opposed. It is further pointed out by learned Addl. PP for the state that there appears to be a larger syndicate in trafficking such minor children and surprisingly the stand taken by many of such minor children during their statement u/s 164 Cr.P.C. is of tutored nature and resembling similar statement of other such children rescued. As such, it is prayed that present application be dismissed.

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

But having observed so, it is one of the pre-condition in any criminal case to see whether there is prima facie material in support of such allegation on record which is also legally sustainable. One of the pre-condition of offence u/s 370 IPC is that it should be for the purpose of exploitation. Further, such exploitation includes slavery or practices similar to slavery. During their statement u/s 164 Cr.P.C produced by the IO during proceedings, it can be observed that there is no allegation of offence u/s 370 IPC. Further, such minor children alongwith present accused is arrested at Railway Station itself and there is no proof / material regarding such slavery or other exploitation. Further time to seek PC remand is already over. As such, no purpose would be served by keeping the accused in JC particularly during such pandemic situation. Further, it may be noted that there is fundamental presumption of innocence in any criminal case.

In above facts and circumstances, such accused is granted bail subject to furnishing of **personal bond in the sum of Rs. 10,000/- with one sound surety of like amount**, subject to the satisfaction of the learned Trial court and the following additional conditions:

- i) That he will appear before IO / Trial Court as and when called as per law.*
- ii) He will not indulge in any kind of activities which are alleged against him in the present case.*
- iii) That he will not leave India without permission of the Court.*
- iv) He will not threaten the witness or tampering with evidence.*
- v) He shall convey any change of address immediately to the IO and*

the court;

vi) He shall also provide his mobile number to the IO;

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

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

“..... The trial courts should not only be sensitive but extremely vigilant in cases where they are recording orders of bail to ascertain the compliance thereof.....When bail is granted, an endorsement shall be made on the custody warrant of the prisoner, indicating that bail has been granted, along with the date of the order of bail.

- q) 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.*
- r) Every bail order shall be marked on the file.*
- s) It shall be the responsibility of every judge issuing an order of bail to monitor its execution and enforcement.*
- t) 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:

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

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

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

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(Naveen Kumar Kashyap)

ASJ-04(Central)/Delhi/19.10.2020

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

Bail Application No.: 1519/2020

State v Akbar
FIR No. :11/2020
PS: Old Delhi Railway Station
U/S: 370 IPC

19.10.2020

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC.
Sh. N.A. Amani, Id. Counsel for applicant through VC.
IO is also present through VC.

Vide this order, the regular bail application under section 439 Cr.P.C. on behalf of accused dated 13.10.2020 filed through counsel is disposed off.

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

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

Constitution.

Further it has been laid down from the earliest time that the object of Bail is to secure the appearance of the accused person at his trial by reasonable amount of Bail. The object of Bail is neither punitive nor preventive. Deprivation of liberty must be considered a punishment unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after convictions, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earlier times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial, but in such case 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the constitution that any persons should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty under Article 21 of the Constitution upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson. While considering an application for bail either under Section 437 or 439 CrPC, the court should keep in view the principle that grant of bail is the rule and committal to jail an exception. Refusal of bail is a restriction on personal liberty of the individual guaranteed by Article 21 of the Constitution. Seriousness of the offence not to be treated as the only consideration in refusing bail : Seriousness of the offence should not to be treated as the only ground for refusal of bail. (Judgment of **Sanjay Chandra Vs. Central Bureau of Investigation**, AIR 2012 SC 830 relied).

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

consequences are bound to follow.

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

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

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

governing the exercise of such discretion by the courts. It was further held that there cannot be any inexorable formula in the matter of granting bail. It was further held that facts and circumstances of each case will govern the exercise of judicial discretion in granting or refusing bail. It was further held that such question depends upon a variety of circumstances, cumulative effect of which must enter into the judicial verdict. Such judgment itself mentioned the nature and seriousness of nature, and circumstances in which offences are committed apart from character of evidence as some of the relevant factors in deciding whether to grant bail or not.

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

In the present case, it is argued on behalf of accused that accused is in JC since his illegal arrest on 09.09.2020 and no more required for the purpose of investigation. That two alleged child who were accompanying the present accused are real brothers and are nephew in relation. It is further submitted that such children wanted to visit Delhi and go to different places, as such, they accompanied such accused. That they purchased their ticket out of their own money. That present accused is doing small business in Delhi. That there is a spread of corona virus. That he is wrongfully arrested without a lawful basis. As such, he was accompanying the accused that nothing remains to be recovered from the accused. That rest is matter of trial. As such, it is prayed that he be granted regular bail.

On the other hand, in reply filed by the IO as also argued by the learned Addl.PP for the state that there are serious and specific allegations against the present accused; that he is involved in the trafficking of minor which offence is punishable with rigorous imprisonment for a terms not less than 10 years, but which may extend upto life imprisonment. It is further stated that admittedly that child in question is minor in any case;

that such child was rescued by a joint team of Bachpan Bachao Andolan, NGO and concerned department of Delhi government in a joint raid. As such, present bail application is strongly opposed. It is further pointed out by learned Addl. PP for the state that there appears to be a larger syndicate in trafficking such minor children and surprisingly the stand taken by many of such minor children during their statement u/s 164 Cr.P.C. is of tutored nature and resembling similar statement of other such children rescued. As such, it is prayed that present application be dismissed.

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

But having observed so, it is one of the pre-condition in any criminal case to see whether there is prima facie material in support of such allegation on record which is also legally sustainable. One of the pre-condition of offence u/s 370 IPC is that it should be for the purpose of exploitation. Further, such exploitation includes slavery or practices similar to slavery. During their statement u/s 164 Cr.P.C produced by the IO during proceedings, it can be observed that there is no allegation of offence u/s 370 IPC. Further, such minor child alongwith present accused is arrested at Railway Station itself and there is no proof / material regarding such slavery or other exploitation. Further time to seek PC remand is already over. As such, no purpose would be served by keeping the accused in JC particularly during such pandemic situation. Further, it may be noted that there is fundamental presumption of innocence in any criminal case.

In above facts and circumstances, such accused is granted bail subject to furnishing of **personal bond in the sum of Rs. 10,000/- with one sound surety of like amount**, subject to the satisfaction of the learned Trial court and the following additional conditions:

- i) That he will appear before IO / Trial Court as and when called as per law.*
- ii) He will not indulge in any kind of activities which are alleged against him in the present case.*
- iii) That he will not leave India without permission of the Court.*
- iv) He will not threaten the witness or tampering with evidence.*
- v) He shall convey any change of address immediately to the IO and*

the court;

vi) He shall also provide his mobile number to the IO;

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

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

“..... The trial courts should not only be sensitive but extremely vigilant in cases where they are recording orders of bail to ascertain the compliance thereof.....When bail is granted, an endorsement shall be made on the custody warrant of the prisoner, indicating that bail has been granted, along with the date of the order of bail.

- u) 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.*
- v) Every bail order shall be marked on the file.*
- w) It shall be the responsibility of every judge issuing an order of bail to monitor its execution and enforcement.*
- x) 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:

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

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

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

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**(Naveen Kumar Kashyap)
ASJ-04(Central)/Delhi/19.10.2020**

Bail Application No.: 990/2020

State v. Manoj Kumar

FIR no.: 191/2019

U/S: 498A/406/34

PS: Lahori Gate

19.10.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Sh. A.K. Hooda, Ld. Counsel for applicant/accused through VC.
Complainant in person with counsel sh. Sachin Kumar through VC.

Part submissions heard including whether present application is first or second anticipatory bail application but due to some technical issue in hearing from the learned counsel for accused, present matter could not be proceeded further.

As such, put up for further arguments and appropriate orders for

20.10.2020.

Interim order to continue till tomorrow.

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Additional Sessions Judge-04/Central
19.10.2020

Bail Application No.: 1359/2020

State v. Bharat @ mirchi

FIR no.: 139/2014

PS: Hauz Qazi

19.10.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Sh. Lokesh Garg, Ld. Counsel for applicant/accused Bharat @ mirchi
through VC.

Further arguments heard.

Let TCR be called from the court of Sh. Gajendra Singh Nagar, Ld.
ACMM for the next date of hearing at the time of order on this application.

Put up for orders/clarifications, if any on 21.10.2020.

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Additional Sessions Judge-04/Central
19.10.2020

Bail Application No.:1449/2020

State v. Rajesh @ Barfi

FIR no.: 340/2012

U/S: 380,379,411,34 IPC

PS: Sarai Rohilla

19.10.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
None for the applicant since morning despite repeated calls.

Put up for appearance/further orders for 26.10.2020.

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Additional Sessions Judge-04/Central

19.10.2020

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Bail Application No.: 1538/2020

State v. Keshav Kakkar

FIR no.: 304/2020

PS: Karol Bagh

19.10.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Sh. Vineet Jain, Ld. Counsel for applicant/accused through VC.

Part submissions in detail heard.

Issue notice to IO to file reply.

Put up for reply, arguments and appropriate orders for 26.10.2020.

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Additional Sessions Judge-04/Central
19.10.2020

Bail Application No.:

State v. 1. Vijeta Saraswat
2. Sunil Saraswat
3. Shakti Sharma
4. Surya Kant Sharma
FIR no.: 123/2020
PS: Hauz Qazi

19.10.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Complainant in person with counsel Sh. Manoj Sharma through VC.
Sh. Vivek Aggarwal, Ld. Counsel for all the accused through VC.
IO is also present through VC.

Submissions in detail heard from all the sides.

It is stated that some of the admitted articles are on the way through transporter from Bangalore. But the fact remains in the meanwhile IO has not shown the diligence but investigated regarding the other alleged articles which are part of offence u/s 406 IPC and in whose custody such articles are there as per the investigation whether accused side is ready to handover the same and whether they are in the custody of accused side at all.

As such, put up for further arguments on 02.11.2020. In the meanwhile, interim protection, if any to continue.

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Additional Sessions Judge-04/Central
19.10.2020

Bail Application No.: 1215/2020

State v. Barun Kumar Dutta

FIR no.: 181/2019

PS: Prasad Nagar

19.10.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Sh. Prashant Ghai, Ld. Counsel for applicant through VC.
IO Poonam Chaudhary is also present through VC.

Today, IO has filed further reply including the list of articles which are admitted by the accused and is ready to hand over to the complainant but as per the IO complainant is not ready to take the same.

Further, she has filed a list of articles which are as per the claim of complainant are in the possession of the accused but which are denied by the accused to be in his possession.

This court fails to understand when certain articles are admitted by the accused side and the accused side is ready to hand over the same, then even if complainant is refusing except the same, why the same are not recovered by the IO as per the investigation they appears to be the case property. Only explanation given by IO which is unacceptable, is that, is that there is no space to keep the same in police station. There are ample provision in law to seize and keep the case property and also relating to the superdari of the same. Despite that the fact remains such articles are not seized by the IO. As such, a copy of this order be sent to the DCP concerned to look into the same as the such issues are noted time and again in court. In the meanwhile, IO is expected to promptly take action to recover such case property, otherwise they may disappear.

Further, as far as list of disputed articles are concerned, which are 27 in number as per the list of IO, it appears that IO has even not made investigation so far whether there is incriminating evidence on record that they are in fact in possession of

the accused side. In any case, IO is supposed to cross-check, or search and seize the same.

Under these circumstances, put up for report of the IO for 03.11.2020. In the meanwhile, interim protection if any, is extended till next date of hearing in terms of previous order.

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(NAVEEN KUMAR KASHYAP)
Additional Sessions Judge-04/Central
19.10.2020

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

Bail Application No.: 1411/2020

State v. Mujeebuddin

FIR no.: 172/2020

PS: Kamla Market

U/s: 306, r/w 34 IPC

19.10.2020

Present: Mr. Pawan Kumar, Learned Addl. PP for State through VC.
Sh. Hakim Khan, Ld. Counsel for applicant/accused through VC.
Father of the deceased through VC with IO.

Vide this order, the present anticipatory bail application u/s 438 Cr.P.C. dated 29.09.2020 moved through counsel is disposed of.

In nutshell, it is submitted in such application that complainant was married to deceased Shagufa on 26.11.2016 as per Muslim rites. That there is no incriminating evidence relating to offence u/s 306 IPC relating to abatement of suicide against the present applicant. At best there is a false allegation relating to demand of a baby boy by the present applicant from the deceased. It is further stated that after the birth of girl child, her birth was celebrated and even a new property was purchased by the applicant in the name of such deceased wife. Further, he has relied upon whatsapp chat between applicant and deceased wife showing there is no harassment by the applicant or his family members. Further, certain case law also relied in support of present application. It is stated that as such, there is no prima facie case against the accused at all. It is further stated that he is ready to join investigation as and when directed by the IO.

On the other hand, in reply filed by IO as also argued by learned Addl. PP for the state. That on 01.08.2020, a information was received that present deceased

committed suicide because of harassment by his in-laws. During investigation, it was found that such deceased has consumed some poisonous substance/pesticide. That as the marriage was 3 ½ years old only, the matter was reported to SDM Karol Bagh also and proceedings also u/s 176 Cr.P.C. was also carried by SDM Karol Bagh. During investigation, it was revealed that deceased was subjected to mental torture by her in-laws and particularly by the present applicant/husband relating to birth of girl child. It is further alleged /claimed by the deceased family that applicant side want to get rid of and wanted to marry again. That present applicant is absconding since then and evading his arrest. That deceased was living with her parents for the last 20-25 days due to such mental torture. It is further stated that as per investigation, deceased told her brother that she has consumed poison because of harassment by the present applicant. It is further stated that NBW of the present accused are already obtained and investigation is at initial stage. It is further claimed that as such custodial interrogation is required. Hence present anticipatory bail application is opposed.

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

The investigation is at initial stage and having regard to the nature of the allegations and the dying declaration as per the investigation so far, the period of marriage and the manner in which deceased has expired, this court is not inclined to grant anticipatory bail to the present applicant/accused including on the ground that his custodial interrogation may be required.

With these observations, present application is dismissed.

NAVEEN KUMAR KASHYAP
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NAVEEN KUMAR KASHYAP
Date: 2020.10.19 18:51:11
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(NAVEEN KUMAR KASHYAP)
Additional Sessions Judge-04/Central
19.10.2020

Bail Matters No.: 1422/2020
State Vs Mohit Singh @ Tuti @ Prince
FIR No. :195/2020
PS: Rajinder Nagar
U/s 25, 54, 59 Arms Act

19/10/2020

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC.
Mr. Nitin Arora, learned counsel for the applicant / accused through VC.

Learned counsel for the accused wants to withdraw the present application as per the instructions of his client. As such, the same is dismissed as withdrawn.

NAVEEN KUMAR
KASHYAP
(Naveen Kumar Kashyap)
ASJ-04/Central/19.10.2020

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KUMAR KASHYAP
Date: 2020.10.19 17:09:31
+05'30'

Bail Matters No.:1557/2020
State Vs Monish Alam
FIR No. : 266/2020
PS: Prashad Nagar
U/s 452, 427, 336, 506, 34 IPC & 25, 27, 54, 59 Arms Act

19/10/2020

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

This is an application for grant of anticipatory bail dated 15/10/2020.

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

Put up for reply, arguments and appropriate order for **23/10/2020**.

NAVEEN KUMAR KASHYAP
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NAVEEN KUMAR KASHYAP
Date: 2020.10.19 17:09:56
+05'30'

(Naveen Kumar Kashyap)
ASJ-04/Central/19.10.2020

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

INTERIM BAIL APPLICATION

**State Vs. Sunil
(APPLICANT SURENDER)
FIR No.: 303/2014
PS: Subzi Mandi
U/S: 302, 307, 120B, 34 IPC &
25, 27 Arms Act**

19.10.2020

Present: Mr. Pawan Kumar, Ld. Addl. PP for the State through VC.
Sh. Neeraj Kumar Jha, 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 and 18.05.2020 from Hon'ble High Court as a result of various meetings of Delhi State Legal Services Authority, present application is taken up.*

2. Reply filed by the IO.

3. Arguments heard.

4. It is argued on behalf of the accused that he is in JC since 16.03.2017 and his wife Renu's health is not good. That she requires urgent surgery as earlier she was operated in G.B. Pant hospital. That she is suffering from huge pain and has two small children. That nobody is there to take care of two children. As such, she is unable to admit herself for surgery for further treatment. That applicant is the only male member in the family. It is further stated that present accused was granted interim bail earlier

also and he duly surrendered after availing the same. It is further stated that as such he be admitted to interim bail for 30 days.

5. On the other hand, it is argued by the State that present application for interim bail is filed on merit and under criteria dated 18.05.2020 given by High Power Committee. It is further stated that there are other family members to take care of ailing wife and minor children in the absence of present accused. As such, present bail application is strongly opposed.

6. Vide order dated 13.07.2020 in W.P.(C)3037/2020 titled court on its own motion v. Govt. Of NCT of Delhi, Hon'ble High Court of Delhi by full bench passed certain directions and further gave certain clarifications relating to grant of interim bail during lock-down. Such directions were further extended till 31.10.2020 by subsequent order. Therefore, in view of the fact that such accused was granted interim bail earlier, relating to the ailment of wife only during such lock-down only and in view of spirit and reason given by Hon'ble High court in such directions dated 13.07.2020 and having regard to the conduct of the accused in the past, he is granted interim bail till 31.10.2020 subject to furnishing of personal bond in the sum of Rs. 15,000/- with one surety and other such conditions as mentioned in para-5 of interim bail order dated 18.05.2020 passed by this court. **With these observations present application is allowed.**

7. **Copy of this order be sent to Jail Superintendent, IO/SHO through electronic mode. Copy of this order be also sent to counsel for applicant through electronic mode.**

NAVEEN KUMAR
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(Naveen Kumar Kashyap)
ASJ-04/Central/THC
Central District/19.10.2020

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Date: 2020.10.19 18:52:17
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Interim Bail Application

State v. Raja Babu @ Gandhi
FIR No. : 146/2018
PS: Timarpur
U/S: 304 IPC

19.10.2020

Undersigned is also discharging bail roster duty.

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

This is 4th bail application for interim bail filed by counsel for such accused Raja Babu @ Gandhi.

Arguments in detail heard.

Put up for filing of concerned guidelines which are relied by counsel for applicant.

Put up for arguments and orders on 20.10.2020.

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Date: 2020.10.19 18:52:33 +05'30'

(Naveen Kumar Kashyap)

ASJ-04/Central/19.10.2020

Bail Application of applicant
SHAHI RAM

State v. Gaurav Chauhan
FIR No. : 199/2009
PS: Kashmere Gate
U/S: 364A,120B,34 IPC

19.10.2020

Undersigned is also discharging bail roster duty.

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

Matter is pending for clarifications.

As such, put up for further arguments and clarifications on 21.10.2020

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Date: 2020.10.19 18:52:45
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(Naveen Kumar Kashyap)

ASJ-04/Central/19.10.2020

Bail Bond of Ashu @ Atta

State v. Ashu @ Atta
FIR No. : 210/2018
PS: Prasad Nagar
U/S: 302 r/w 34 IPC &
25,27,54,59 Arms Act

19.10.2020

Undersigned is also discharging bail roster duty.

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

In view of the report on verification of first surety Chetan permanent and present address, dated 12.10.2020 and 14.10.2020 as well as the security/scooty bearing no. DL-11SZ-4992, same is accepted. Likewise, in view of the report dated 19.10.2020 regarding second surety Dharam Chand address and security/car No. DL-3CAY-9459, same is accepted.

Both such original RCs be retained on record.

Release warrant be prepared accordingly in view of such report.

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NAVEEN KUMAR KASHYAP
Date: 2020.10.19 18:53:00
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(Naveen Kumar Kashyap)

ASJ-04/Central/19.10.2020

Application for Modification of order

**State v. Davar & Kancha
(APPLICANT BASHU @ BENGALI)**

FIR No. : 38/2020

PS: Kashmere Gate

U/S:307,392,393,397,411 IPC

19.10.2020

Undersigned is also discharging bail roster duty.

Present: Mr. Pawan Kumar ,Ld. Addl. PP for the State through VC.
Sh. S.N. Shukla, Ld. LAC for applicant through VC.

Further arguments in detail heard including case law filed by Ld. LAC.

Put up for orders/clarifications, if any on 20.10.2020.

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Date: 2020.10.19 18:53:12 +05'30'

(Naveen Kumar Kashyap)

ASJ-04/Central/19.10.2020

Misc. Application

**State v. Davar & Kancha
(APPLICANT BASHU @ BENGALI)**

FIR No. : 38/2020

PS: Kashmere Gate

U/S:307,392,393,397,411 IPC

19.10.2020

Undersigned is also discharging bail roster duty.

Present: Mr. Pawan Kumar ,Ld. Addl. PP for the State through VC.
Sh. S.N. Shukla, Ld. LAC for applicant through VC.

Further arguments in detail heard including case law filed by Ld. LAC.

Put up for orders/clarifications, if any on 20.10.2020.

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NAVEEN KUMAR KASHYAP
Date: 2020.10.19 18:53:26
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(Naveen Kumar Kashyap)

ASJ-04/Central/19.10.2020

Interim Bail Application

State v. Rahul Sharma
FIR No. : 339/2016
PS: Darya Ganj
U/S:395,397,412,120 B IPC

19.10.2020

Undersigned is also discharging bail roster duty.
One steno is on leave today.

Present: Mr. Pawan Kumar ,Ld. Addl. PP for the State through VC.
Sh. S.N. Shukla, Ld. LAC for applicant through VC.

Arguments in detail heard on this interim bail application.

Put up for orders/clarifications, if any on 21.10.2020.

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Date: 2020.10.19
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(Naveen Kumar Kashyap)

ASJ-04/Central/19.10.2020

Bail Bond of Deepak @ Bunty

State v. Ajay Sharma
FIR No. : 506/2015
PS: Nabi Karim
U/S:364A, 120B,506, 34 IPC

19.10.2020

Undersigned is also discharging bail roster duty.
One steno is on leave today.

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

Surety is not present.

Put up for appearance of surety on 20.10.2020.

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(Naveen Kumar Kashyap)

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Date: 2020.10.19 18:54:14
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ASJ-04/Central/19.10.2020

Bail Bond of Dinesh @ Dhanna

**State v. Babloo
FIR No. : 251/2019
PS: Sarai Rohilla**

19.10.2020

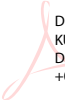
**Undersigned is also discharging bail roster duty.
One steno is on leave today.**

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

FDR verification report filed by IO.

Put up for consideration on 21.10.2020.

**NAVEEN
KUMAR
KASHYAP**

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KUMAR KASHYAP
Date: 2020.10.19 18:54:37
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(Naveen Kumar Kashyap)

ASJ-04/Central/19.10.2020

State vs Sunil & others
(Application of Sunil Rathore)
FIR No. 415/2015
P. S. Kotwali
395, 397, 365, 201, 412, 120B, 34 IPC & 25, 54, 59 Arms Act

19.10.2020

This court is also discharging bail roster duty.

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

Mr. Ravinder Aggarwal, learned counsel for applicant / accused through VC.

This is an application seeking regular bail filed by applicant Sunil Rathore through counsel.

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

Put up on **21/10/2020** alongwith the case file on the physical hearing of this court.

NAVEEN
KUMAR
KASHYAP

(Naveen Kumar Kashyap)
ASJ-04/Central/19.10.2020

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Date: 2020.10.19 17:10:28
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SC:28616/2016
FIR No:137/2008
PS: DBG Road
State v. Rambir

17.10.2020

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.

In the present case, last regular date of hearing was 27.04.2020,19.06.2020 and 20.08.2020.

On 20.08.2020, matter was adjourned for 17.10.2020.

Thereafter, as per directions from Hon'ble High Court, matter was adjourned was far due to lock-down. But in view of latest directions, matter is taken up today for hearing today through VC.

Undersigned is also discharging work of Bail Roster duty.

Present: Mr. Pawan Kumar, learned Addl.PP for State through VC.
Sh. B.K. Wadhwa, Ld. Counsel for accused Raj Singh and Vijay Kumar through VC.

Both accused are stated to be on bail.

Issue P/w of the accused, if any in JC for next date through VC or otherwise as the situation may prevail on next date of hearing.

Put up for PE in terms of previous order for 06.01.2021.

NAVEEN KUMAR
KASHYAP

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NAVEEN KUMAR KASHYAP
Date: 2020.10.19 18:55:24
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(Naveen Kumar Kashyap)
ASJ-04/Central/17.10.2020

SC: 129/2020
FIR No:328/2014
PS: Prasad Nagar
State v. Manish Kumar

19.10.2020
At 1.15 pm

At this stage, Sh. V.K. Bajaj, Ld. Counsel for both the accused appeared through VC. He is apprised of the order passed in the morning.

Put up on date already fixed i.e. 04.03.2021.

NAVEEN KUMAR
KASHYAP
(Naveen Kumar Kashyap)
ASJ-04/Central/19.10.2020

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KUMAR KASHYAP
Date: 2020.10.19 18:55:46
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