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Bail Application

State v. Gurmeet @ Narender

FIR No. : 268/2019

PS: Wazirabad

U/S: 392, 34 IPC

31.07.2020

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

Mr. Satish Kumar, learned Counsel for the
Accused through VC.

Vide this order, the regular bail application under
section 439 Cr.P.C. on behalf of accused dated 23.07.2020 filed
through counsel is disposed of.

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

The personal liberty is a priceless treasure for a
human being. It is founded on the bed rock of constitutional
right and accentuated further on human rights principle. The
sanctity of liberty is the fulcrum of any civilized society.
Deprivation of liberty of a person has enormous impact on his
mind as well as body. Further article 21 Of the Constitution
mandates that no person shall be deprived of his life or personal
liberty except according to procedure established by law.
Further India is a signatory to the International Covenant On
Civil And Political Rights, 1966 and, therefore, Article 21 of the
Constitution has to be understood in the light of the
International Covenant On Civil And Political Rights, 1966.
Further Presumption of innocence is a human right. Article 21
in view of its expansive meaning not only protects life and

liberty ,but also envisages a fair procedure. Liberty of a person should not ordinarily be interfered with unless there exist cogent grounds therefor. The fundamental principle of our system of justice is that a person should not be deprived of his liberty except for a distinct breach of law. If there is no substantial risk of the accused fleeing the course of justice, there is no reason why he should be imprisoned during the period of his trial. The basic rule is to release him on bail unless there are circumstances suggesting the possibility of his fleeing from justice or thwarting the course of justice. When bail is refused, it is a restriction on personal liberty of the individual guaranteed by Article 21 of the Constitution.

Further it has been laid down from the earliest time that the object of Bail is to secure the appearance of the accused person at his trial by reasonable amount of Bail. The object of Bail is neither punitive nor preventive. Deprivation of liberty must be considered a punishment unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after convictions, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earlier times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial ,but in such case 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the constitution that any persons should be punished in respect of any matter, upon which, he has not been convicted or that in

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

But, the liberty of an individual is not absolute. The Society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the societal order. A society expects responsibility and accountability 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 that chargesheet is already filed and case is already committed to this court and thereafter *lock-down* was imposed. That co-accused is already granted bail by the learned MM. That accused in JC for last 8 months. That there is no legally sustainable evidence against him except the disclosure statement. That no purpose would be served by keeping him in JC. That he is permanent resident of Delhi. As such, it is prayed that he be granted regular bail.

On the other hand, it is argued by the learned Addl.PP for the state that there are serious and specific allegations against the present accused; that he alongwith the co-accused on the point of knife looted his purse, mobile phone and the bike of the victim/complainant Arun Kumar. That later on such bike was recovered from another police station and the present accused alongwith the co-accused arrested in another matter and they made their disclosure statement regarding

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involvement of the present case. Not only this, complainant identified both the accused including the present accused. That in total there are six criminal cases registered against present accused in different police stations. AS such present bail application is opposed.

It is a matter of record that accused is in JC for about eight months. Trial is likely to take some more time, including due to present pandemic situation. Further, as far as present accused is concerned, nothing remains to be recovered at his instance. In fact, the period for seeking police remand is already over way back. Further, it is alleged that he is involved in such other matters, but no conviction is placed on record in reply filed by the IO. In fact, accused was not arrested on spot but later on the basis of disclosure statement of accused. Further, as per the case of prosecution, present accused alongwith other accused robbed the victim ,and such co-accused is already granted regular bail vide order dated 12.03.2020.

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

- i) That he will appear before 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;*

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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.

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

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(NAVEEN KUMAR KASHYAP)

ASJ-04(Central)/Delhi

31.07.2020

BAIL APPLICATION

State v. Mohd. Nazim

FIR No.: 134/2015

PS: Lahori Gate

U/S: 394,395,397,120B, 34 IPC & 25,27 Arms Act

31.07.2020

Present: Sh. Pawan Kumar, Ld. Addl. PP for the state through VC.
Sh. S.N. Shukla, (Mobile no. 8588853448), LAC for accused Mohd. Nazim.

Additional replies filed through e-mail by IO regarding medical condition of wife.

Part arguments heard.

Learned counsel submit that he wants to file certain additional documents relating to illness of wife of accused.

Heard. Allowed.

Same be filed before next date of hearing.

Put up for further arguments and orders on

04.08.2020.

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(Naveen Kumar Kashyap)
ASJ-04/Central/31.07.2020

INTERIM BAIL APPLICATION

State Vs. Sunil @ Kalu
FIR No.: 303/14
PS: Subzi Mandi
U/S: 302, 307, 34 IPC

31.07.2020.

Present: Mr. Pawan Kumar, learned Addl. PP for the State through VC.
Mr. Naveen Gaur, 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. Vide this order application dated 23/07/2020 for interim bail for applicant / accused Sunil @ Kalu moved through counsel is disposed of.
3. Reply filed by the IO through electronic mode and the copy supplied.
4. Arguments heard from both sides through VC.
5. It is argued on behalf of the accused that his mother is not well; that she is to be taken up for medical care from government hospital;

that medical documents relating to her illness are enclosed with the present application; that he is in JC since 15/07/2014; that there is spread of corona pandemic; As such, it is prayed that he be released on interim bail for two days.

6. As per report of IO there is criminal involvement of this accused in 22 other matters. It is further stated that there is another brother of the accused to take care of his mother; that there is possibility of threat to witness if he is released on interim bail.

7. On the other hand, it is clarified by the learned counsel for the accused / applicant that at present there are only three criminal cases are pending against him.

8. Thus, in any case he does not fall under the relaxed criteria dated 18/05/2020 of the Hon'ble High Court, as there is other criminal involvement of present accused. As such, he cannot be given benefit of the same.

9. Accused is charged with offence u/s 302 IPC which has a minimum punishment for life imprisonment. He is involved in other criminal matters also, some of which are still pending. Further although it is matter of record that some of the co-accused are granted interim bail during this lockdown. But, they were granted interim bail on specific ground on merit / facts. It is also matter of record that some other co-accused's interim bail were dismissed like accused Varun on 08/05/2020, of accused Sunil @ Maya on 26/05/2020, 01/06/2020, 11/06/2020, of Vikrant @ Sagar on 29/05/2020. Thus, having regard to the nature of

offence and the ground for interim bail raised, this court do not find sufficient ground to grant interim bail at this stage.

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

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ASJ-04/Central/THC
Central District/31.07.2020

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Interim bail application

FIR No. 303/2014

PS: Subzi Mandi

U/s: 302/307/34 IPC

State v. Sunil @ Kalu

(APPLICATION OF SUNIL @ MAYA)

31.07.2020

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

Sh. Mohit Chaudhary (Mobile no. 9811409556),
learned counsel for the applicant/accused Sunil @
Maya.

1. Vide this order the interim bail application filed on
28.07.2020 of applicant / accused Sunil @ Maya is disposed of.

2. In nutshell it is submitted that marriage of cousin
sister of accused/applicant is scheduled for 02.08.2020 and
applicant has to perform his duty on such occasion being her
brother as brother of bride are very small. As such, it is prayed
that he be granted interim bail for 25 days.

3. Reply filed by IO. Copy supplied.

4. In reply filed by IO, as also argued by Ld. Addl. PP
for the state that there are serious allegations against the
applicant/accused u/s 302,307 IPC. That accused is not real
brother but only Cousin brother. That there are other family
members of the bride to perform and work and rituals.

6. I have heard both the sides.

7. Having regard to nature of allegations against the
present accused, stage of the trial and the reason for moving
present interim bail application, this court is not inclined to

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grant the interim bail as prayed in the present application.

But such accused Sunil @ Maya is hereby granted custody parole for four hours for 02.08.2020 excluding traveling time to visit to attend such last rites / ceremonies, at his expenses, as per rules.

8. A copy of this order be sent to concerned Jail Superintendent with directions to make necessary arrangements for visit of the applicant/accused Sunil @ Maya on 02.08.2020 at Radha Krishna Mandir, JJ Colony, Wazirpur, Delhi-110052 for four hours.

9. Learned counsel for the applicant / accused is at liberty to collect copy of the order through electronic mode.

10. With these observations the present application is disposed of.

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(Naveen Kumar Kashyap)

ASJ-04/Central/THC

31.07.2020

BAIL APPLICATION

**State v. Taufiq @ Kala
(APPLICATION OF SUNNY)**

FIR No.: 20/2016

PS: Crime Branch

U/S:364-A,395,342,420,468,471,120B IPC

31.07.2020

Present: Sh. Pawan Kumar, Ld. Addl. PP for the state through VC.
Sh. ACP Gautam (Mobile no.9911329290), learned counsel for accused Sunny.

Present application is for regular bail and in the alternative of interim bail.

It is stated by counsel for accused that at present he is pressing his application for interim bail only including on medical condition of accused.

Reply filed by IO. Copy supplied to counsel through electronic mode.

Reply not filed by Jail Superintendent regarding medical condition of this accused including regarding his throat problem.

As such, let medical status of the accused be summoned from the Jail Superintendent concerned for next date of hearing.

Issue notice to Jail Superintendent accordingly.

Put up on 06.08.2020.

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(Naveen Kumar Kashyap)
ASJ-04/Central/31.07.2020

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**FRESH BAIL
APPLICATION**

**FIR No. : 200/2010
PS: Pahar Ganj
State v Vicky
U/S: 307 IPC**

31.07.2020.

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

Ms. Neetu Singh (Mobile no.9716632081) learned LAC for applicant / accused.

Fresh application for interim bail based on guidelines of High Power Committee filed for present accused Vicky alongwith a certificate relating to good/satisfactory conduct.

Heard.

1. *Directions are given by Hon'ble High Court of Delhi in W.P.(C) No. 2945/2020 dated 23.03.2020 in case titled as "Shobha Gupta and Ors. v. Union of India & Ors.", Hon'ble Supreme Court of India in Suo Motu W.P.(C) No. 1/2020 dated 23.03.2020, Revised Advisory Protocol dated 30.03.2020 by Ld. District & Sessions Judge (HQ) read with other directions 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. Accordingly, present application is taken up.*

2. As per minutes of meeting dated 18.05.2020 of Hon'ble High Court, interim bail application as per the criteria given by Hon'ble HC in above mentioned minutes, such application is to be moved by Ld. Legal Aid Counsel *alongwith* copy of custody warrant. Perusal of the record reflects that such application is duly accompanied by copy of custody warrant as well as character certificate issued by the concerned Jail Superintendent.

3. **As per minutes of meeting dated 18.05.2020 of Hon'ble High Court**, IO / SHO concerned to file reply, including on the following aspect apart from any other point which IO wants to raise:-

(i) Report about Previous **conviction**, if any, of present accused/Applicant

(ii) Further, (in view of direction by Hon'ble HC) ,a report that present accused is **not involved**, in any other case;

(iii) Date, since when accused is in JC in present case

(iv) What are **all** the Offences under IPC or other law, which are alleged against present accused in present case .

4. **As such, issue notice of present application to the IO/ SHO concerned.**

5. Copy of this order be given to counsel for accused through electronic mode.

6. Put up for report, arguments and further appropriate orders on 05.08.2020 through V.C.

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(Naveen Kumar Kashyap)
ASJ-04/Central/THC
31.07.2020

BAIL APPLICATION

FIR No. :799/2014
PS:Darya Ganj
STATE v. Vinay @ Monty
U/S: 302, 404, 201 IPC

31.07.2020.

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

1. Vide this order, application dated 22.07.2020 filed by accused through counsel for extension of interim bail is disposed off.

2. It is stated that earlier he was granted interim bail vide order dated 08/05/2020 which was extended vide order dated 09.06.2020 by this court. Now, it is prayed that there is another order dated 13.07.2020 passed by Hon'ble High Court and in view of the same, interim bail of the accused be extended further.

3. Reply filed by the IO. Copy supplied to accused side. It is stated in reply that there is violation of interim bail conditions by the accused as he failed to mark his attendance before the IO / SHO or share his mobile number. On the other hand, it is clarified by the learned counsel for the accused that it was a bonafide mistake on the part of such counsel that he could not bring such additional conditions to the notice of the accused. It is further stated that as he was granted interim bail based on the criteria of Hon'ble High Court dated 18/05/2020, he was under the impression that there was no additional condition on the accused.

4. Arguments heard from both the sides and I have gone through the record including extension of interim bail order dated 09.06.2020.

5. At this stage it may be noted that Full bench of Hon'ble High Court of Delhi in its order dated 13/07/2020 in W.P.(C) 3037/2020 titled as "Court on its own motion v. Govt. of NCT of Delhi & Anr. Held

as under :

“.....5. In view of the above, we hereby further extend the implementation of the directions contained in our order dated 25th March, 2020 and 15th May, 2020 and 15th June, 2020, till 31st August, 2020 with the same terms and conditions.

6. The Hon'ble Single Bench of this Court in CrI.A.193/2020 titled as Harpreet Singh vs. State vide order dated 1st July, 2020 sought clarification to the following effect:

“7. The queries that the Hon'ble Full Bench may consider and decide for the guidance of all concerned are as follows:

a. Whether the orders made by the Hon'ble Full Bench in W.P. (C) No.3037/2020, **including last order dated 15.06.2020**, apply to all interim orders, whether made in civil or criminal matters, and regardless of whether such orders were made on or before 16.03.2020 or thereafter?

b. Where interim bail or interim suspension of sentence has been granted by a Bench of this court exercising discretion and based upon specific facts and circumstances of a given case, would such orders also stand automatically extended by operation of orders made by the Full Bench in W.P.(C) No.3037/2020?

8. While deciding the issue, the Hon'ble Full Bench may consider the aspect of parity, namely that, on a plain reading of the orders in W.P.(C) No.3037/2020, interim orders granted on or before 16.03.2020 appear to be getting extended by general directions; but those made after 16.03.2020 appear not to be covered thereby.”

7. In this regard, we make it clear that all the directions issued from time to time in this case are based on the ongoing pandemic situation in Delhi. So far as the criminal matters are concerned, these directions have been issued keeping in view the fact that the jail authorities have limited space to keep the inmates and in case of spread of Covid-19 pandemic in the jail, it would not be in a position to maintain physical distancing amongst jail inmates. Looking to this aspect and the possible threat of spreading of viral infection by those persons who are on interim bail/bail/parole granted by this Court **or the Courts subordinate to this Court**, to other inmates of the jail on their return to the jail, the decision of extension of interim bail/bail/parole has been taken from time to time. ***It is clarified that this order of extension of bail/interim bail/parole shall be applicable to all undertrials/ convicts, who are on bail/interim bail or parole as on date irrespective of the fact that they were released on bail/interim bail or parole before or after 16th March, 2020.***

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9. List this matter on 24th August, 2020 for further directions.”.

6. It appears that there are certain violation of additional bail conditions imposed by the Court. But it is not the case of the prosecution that he has committed any crime during such interim bail. Further, at present there is directions / orders dated 13/07/2020 mentioned above passed by the Hon’ble High Court apart from order dated 22/06/2020 earlier passed by the Hon’ble High Court in another writ petition. Both such orders are passed by the Hon’ble High Court after order dated 09/06/2020 of this court. As such, same supersedes the order of this court.

7. In view of such order and clarification dated 13.07.2020 by Hon'ble High Court r/w order dated 22/06/2020 passed by the Hon’ble High Court, interim bail of the accused is extended till 31/08/2020. Present application is disposed off accordingly.

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

NAVEEN KUMAR
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(Naveen Kumar Kashyap)
ASJ-04/Central/THC
31.07.2020

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