

CNR No. DLSE-020124422021

Bail matter No. 12436/2021

Navneet Kalra v. State

FIR No. 116/2021 PS Lodhi Colony(Crime Branch)

**u/s 3 of Epidemics Diseases Act, 1897, 3/7 of Essential
Commodities Act, 1955, 188/420/120B/34 IPC.**

*Bail Application of the accused Navneet Kalra S/o Sh.
Dayal Dass Kalra is taken up through VC via Cisco Webex App.*

29.05.2021

Present: Sh. Atul Srivastava, Ld Addl. PP and Sh. Sanjay Kumar
Mishra, Ld. APP for State.

Sh. Vikas Pahwa, Sr. Advocate alongwith Sh. Vineet
Malhotra, Sh Neeraj Chaudhary, Sh. Vishal Gohri, Sh. Hemant Shah,
Sh. Shubhendu Kaushik, Sh. Abhishek Pati, Sh. Sumer Singh Boparai,
Sh. Arham Masud and Ms. Raavi Sharma, Counsels for
applicant/accused.

IO SI Kamal Kumar and Ms. Monika Bhardwaj, DCP
Crime (HQ) through VC.

This is an application u/s 437 Cr.P.C. for grant of regular
bail to the accused Navneet Kalra S/o Sh. Dayal Dass Kalra. Fresh
reply to the bail application has already been received from the IO
through e-mail. Advance copy has already been supplied to Ld.
Counsel for accused. Besides, as noted in order dated 28.05.2021,
scanned copy of the case diaries upto 27.05.2021 in pdf format have
already been received on the personal e-mail id of this Court. Today an
additional reply to the bail application has been received from the IO
besides the case diary in pdf format for 28.05.2021 through e-mail.

Arguments on the bail application on behalf of the accused have already been heard on 28.05.2021. Arguments on behalf of State and rebuttal arguments on behalf of accused have been heard today, whereas, application of one Mr. Dharmendra Kumar Mishra seeking permission to advance arguments in the bail application of accused in terms of Section 302 Cr.P.C. has already been dismissed vide a detailed separate order of even date passed in the morning.

It has been submitted by Ld. Senior Counsel for accused that the accused has been falsely implicated in the present case for alleged commission of offence u/ss 3/7 of the Essential Commodities Act, 1955, Section 3 of the Epidemic Diseases Act, 1897 and Sections 420/188/120B/34 IPC. He submits that the police has not received any complaint from any of the purchasers of the oxygen concentrators and it is only after registration of present FIR against the accused and after getting hold of the details of the customers of the accused that the police is now chasing the customers of the accused so as to persuade them to give complaints against the accused. In fact, according to him, the police has even called the Counsel for accused namely Sh. Vineet Malhotra asking him to file a complaint against the accused. Not only that, according to him, getting hold of the call detail records of accused and upon coming to know about the frequency of calls made between accused and his son, police has even called upon the son of accused to give a complaint against the accused.

He submits that by no stretch of imagination, accused can be said to have indulged into the act of hoarding and black-marketing, in as much as, he had himself made a complaint to the Police (SHO PS

Fatehpur Beri) on 02.05.2021 through e-mail regarding black marketing of the concentrators by third parties after purchase of the same from the accused Navneet Kalra on the pretext that the same was required by him for personal use. Besides, according to him, he had sold the concentrators on pre-booking basis and most of the concentrators were sold by him below MRP that too at prices much below the prices on which the same were available on other e-market places such as Amazon and India Mart. Only 5-10 units out of total 500 (approx.) concentrators according to him, have been sold by accused at a price of Rs. 7,000/- - 10,000/- above MRP and even the said excess amount has been charged by him from some of the customers to provide them with the warranty upon their insistence since the company was not giving any warranty for the said concentrators.

Though in the bail application, the accused has sought to challenge the applicability of provisions of Essential Commodities Act, 1955 (as amended upto date) to the oxygen concentrators, however, during the course of arguments when attention of Ld. Senior Counsel for the accused was derived towards the observations made by this Court in its orders dated 12.05.2021/13.05.2021 on the bail applications of the co-accused regarding applicability of provisions of Essential Commodities Act, 1955 and the observations made by Hon'ble High Court of Delhi in order dated 27.05.2021 passed in WP(Crl) 975/2021 arising out of the present FIR, it was submitted by Ld. Senior Counsel for accused that main thrust of his arguments is on the principles for grant of bail and Court may refrain from dealing

with the said issue of applicability of EC Act in its order since the applicant is not seeking quashing of the charges or FIR against him but is seeking regular bail u/s 437 Cr.P.C. He further submitted that the observations of Hon'ble High Court in order dated 27.05.2021 passed in WP (CrI) should be read in the context in which the same were made that is only for the purpose of adjudication of prayer of M/s Matrix for release of concentrators and not for the purpose of deciding the bail application. Thus, according to him, assuming for the sake of arguments that a prima facie case for offences punishable with imprisonment upto seven years i.e. the offences u/s 420 IPC and u/s 3/7 of the EC Act, 1955 is made out against the accused at this stage, the accused is still entitled to bail on the fundamental principles governing the bail.

So far as the offence u/s 420 Cr.P.C. is concerned, it is submitted by Ld. Senior Counsel for Accused that the accused had not made any representation either about the country of origin of the concentrators or about their quality at any point of time which is apparent from a bare perusal of the whatsapp message posted by him in the Khan Market welfare Association Group. He submits that the accused has no concern with the X-factor app of M/s Matrix and with any representation having been made by M/s Matrix on the said app either about the quality or country of origin of the concentrators in as much as he has not sold any concentrator through the said app. So far as the lab test report of the Shriram Industrial Researcher Centre relied upon by the prosecution is concerned, according to him, the report is not worth the paper on which it has been typed in as much as it is not

an NABL accredited lab for testing of oxygen concentrators. He submits that NABL has accredited only one lab in India, which is situated in Pune, for testing of oxygen concentrators. Even otherwise, according to him, all the representations about the purity of oxygen at different flow rates have been made on the website of DEDAKJ company and as per the lab test report relied upon by the prosecution, the performance of the concentrators tested at the lab has been found to be better than what was represented on the website of the manufacturer. Thus, according to him, accused had no intention to cheat.

Moreover, according to him, if the version of the prosecution regarding quality of the concentrators being sub-standard is assumed to be correct then why the concentrators seized by the IO have been released by the DM (South) to the covid care centres and hospitals. He submits that more than 500 concentrators of the same make have recently been procured by Salman Khan for distribution to the Covid-19 patients. He submits that more than 50,000/- concentrators of the same brand have been imported into India out of which the accused has merely dealt with approx. 500 concentrators, however, he alone has been made a scapegoat to harm his reputation and no action has been taken against the others.

In fact, according to him, even the arrest of accused in a case, wherein the maximum punishment prescribed is upto seven years, is in violation of guidelines laid down by Hon'ble Supreme Court in *Arnesh Kumar v. State of Bihar (2014)8 SCC 273*, which have once again been re-iterated by Hon'ble Supreme Court very

recently in its order dated 07.05.2021 passed in Re- Contagion of Covid-19 virus in Prisons Suo Motu WP(C) no. 1 of 2020.

It is submitted by him in this regard that since the oxygen concentrators and other documents had already been seized by the IO after registration of FIR, there was no occasion for him to arrest the accused in violation of Section 41-A of Cr.P.C. and the guidelines laid down by Hon'ble Supreme Court in *Arnesh Kumar v. State of Bihar (supra)*. He further submits that while the Hon'ble Supreme Court has taken *suo motu* cognizance regarding inhuman conditions of prisoners in jail and is issuing directions for de-congestion of jails particularly in view of situation arising out of Covid-19, Police is mindlessly arresting citizens.

It is further submitted by Ld. Senior Counsel for the accused that the accused is in custody for last more than 12 days and whatever recoveries were to be effected from the accused, the same has already been effected by the IO from the accused as well as his co-accused. He submits that no more custodial interrogation of the accused is required in the present case. He submits that it has been held by Hon'ble Supreme Court in a number of cases that in India bail is a rule and jail is an exception. He submits that the accused is entitled to bail even on the ground of parity since 5 of his co-accused have already been granted bail by this Court vide separate orders dated 12.05.2021 and 13.05.2021. He submits that accused is having clean antecedents and there is no chance of the accused absconding in view of the fact that he has deep roots in the society and substantial properties and business in Delhi. He further submits that all the

transactions between the accused and his customers and with the vendors of the accused had been done through banking channels and hence there is no possibility of tempering with evidence by the accused. He submits that accused is ready to abide by all the conditions which may be imposed by the Court at the time of grant of bail including not to deal in oxygen concentrators and not to contact the witnesses who had given statements to the IO, if a list is shared with the accused and if directed, by the Court. He further submits that the accused is ready to furnish sound surety to the satisfaction of this Court.

In support of his submissions Ld. Counsel for accused has relied upon the judgments of Hon'ble Supreme Court in ***Sanjay Chandra v. CBI AIR 2012 SC 830, Gurcharan Singh v. State (Delhi Admn.), (1978) 1 SCC 118, Dataram Singh v. State of UP (2018)3 SCC 22***, judgments of Hon'ble Delhi High Court in ***H.B.Chaturvedi v. CBI 2010 SCConline Delhi 2155, Ajay Madan v. State 2015 SCC online Delhi 12764*** and few bail orders passed by various District Courts of Delhi in cases involving similar allegations.

On the other hand, the bail application of the accused has been strongly opposed by the State through Ld. Addl. PP and by the IO. It has been contended by them that investigation of the case is still at a very nascent stage and grant of bail to the accused at this stage may hamper the investigation.

So far the offence u/s 3/7 of the EC Act is concerned, it is submitted by them that as per the chats recovered from the mobile phone of the accused, the accused had not only sold so many devices

beyond the MRP but even the sale price of the concentrators was revised by him within a short span by coercing more and more customers to come forward to buy the same while posting frequent messages of the concentrators going out of stock. It is further submitted by them that from the said chats, it is apparent that accused had deceived the customers not only about the quality of concentrators but also by representing himself to be an importer. It is submitted by Ld. Addl. PP that in one of the chats he has even informed one customer that he can get the oxygen concentrator replaced from the accused, even if the same was purchased by him from M/s Matrix. This chat, according to him, indicates that the accused had conspired with M/s Matrix to cheat the public at large and he can't be permitted to take a plea at this stage that he had no concern with the misrepresentations made on X factor app of Matrix regarding the quality and country of origin of the concentrators sold by them. It is further pointed out by him that as per the information available on the X factor app of Matrix, in Aug. 2020 the concentrator was offered by the accused persons for sale at a price of Rs. 27,999/- representing the same to have oxygen flow rate of 0-6 lts and of premium quality made with German Collaboration under the caption Covid essentials, however, according to him accused have sold sub-standard and useless devices under the garb of selling premium oxygen concentrators.

The very fact that the said cheating has been done by the accused during the present grim situation arising out of Covid-19, when people are dying due to non-availability of oxygen

concentrators, according to him, makes the offence more grave and it should not be considered to be a simple case of cheating.

So far as the test report of Shriram Lab is concerned, according to him, the said lab is duly authorized by Govt. of NCT of Delhi till 31.12.2021. Regarding the distribution of the allegedly substandard concentrators by the DM South to covid care centres after seizure, it is submitted by him that the police or the DM are not superhumans and before the report of Shri Ram Lab they had no means to ascertain whether the said concentrators were of sub-standard quality or not. Immediately upon receipt of the report, according to him, on 13.03.2021 DCP Crime (HQ) has apprised the DM about the lab report through a written communication. He further submits that it has also been categorically opined by the expert committee of doctors of AIIMS, Delhi and Director General of Health Services, Ministry of Health and family Welfare that the concentrators which were being sold by the accused were not only useless for covid patients but they could also have caused harm as per the lab report.

He submits that admittedly the accused had been selling the products through whatsapp and delivery was being given by him to the customers only after receipt of 100% advance payment, customers had no occasion to go through the representation about the quality of concentrators made on the box or in the manual inside the box.

It is further submitted by him that accused had not joined investigation as per directions of the IO and had been avoiding the same. He submits that it is not a case where the accused had surrendered before the police and in fact he was apprehended by the

police after much efforts from some farm house beyond the jurisdiction of this Court.

Thus, according to him, if granted bail, the accused may abscond and considering the fact that the entire sale has been made by him within a closely knitted whatsapp group, he may try to influence the witnesses not to depose against him. He submits that investigation is still at a nascent stage and considering the fact that the accused is having links with very influential persons, the possibility of tempering by him with the evidence and hampering of investigation can't be ruled out. He has thus prayed for dismissal of bail application of the accused while relying upon the judgment of Hon'ble Supreme Court in *State(rep. By CBI) v. Anil Sharma (1997)7 SCC 187* and one order rejecting bail under similar circumstances passed by Ld. ASJ, Rohini Courts.

In rebuttal, it is submitted by Ld. Counsel for applicant/accused that the alleged representation of Aug. 2020 on the X factor App by Matrix can't bind the present accused, who had started dealing in concentrators only in April, 2021 and though a letter has purportedly been written by DCP Crime to DM South on 13.05.2021 after the issue in this regard was raised by Ld. Counsel for accused during hearing on anticipatory bail application of accused on 12.05.2021, however, to the best of his knowledge the said concentrators have not till date been withdrawn from the covid care centres, which indicates the arbitrariness and highhandedness of the State. On the report of Shriram lab, he submits that since pertinent questions about functioning and effectiveness of the concentrators

were asked by the IO, the subsequent opinion of the AIIMS doctors and of the director general of Health Services based on the said report is of no use on the principles of garbage in and garbage out. Highhandedness of the police and Govt., according to him, is further apparent from the fact that during hearing in ***Rakesh Malhotra v. State of NCT of Delhi & Ors. WP(C) 3031/2020***, Cntral Govt. has categorically refused to fix the MRP of the oxygen concentrators on the ground that the same will be counter-productive and will discourage import of concentrators and still, according to him, the State is picking up people who import and sell the concentrators. He submits that reliance by Ld. Addl. PP on ***State v. Anil Sharma(supra)*** is highly misplaced in view of the fact the Hon'ble Supreme Court in the said case was dealing with an anticipatory bail application and not post arrest bail. He submits that the apprehension of the state regarding influence of witnesses and tampering with evidence by the accused can not be a ground for denial of post arrest bail but may be a ground seeking cancellation of bail of an accused. In support of his aforesaid submissions, he has relied upon the judgment of Hon'ble Supreme Court in ***Zahur Ahmed Zaidi v. CBI dated 05.04.2019 in Crl. Appeal No. 605/2019***. It is further submitted by him that merely because the accused did not join investigation during pendency of his anticipatory bail applications, the same can't be a ground for refusal of bail to the accused at this stage in view of the judgment of Hon'ble Delhi High Court in ***Ameet Khandelwal v. State of NCT of Delhi Bail Application No. 1162/2021 decided on 23.04.2021***.

I have heard the submissions made on behalf of the parties and have carefully perused the material available on record including the documents filed by the applicant/accused and the case diaries furnished by the IO. I have also carefully gone through the judgments relied upon by the respective parties.

This Court has already dealt with the issue of applicability of provisions of DPCO, 2013 read with Section 3/7 of the EC Act, 1955 qua the oxygen concentrators in detail in its bail orders dated 12.05.2021/13.05.2021 on the applications of the co-accused, which have also been relied upon by Ld. Counsel for applicant/accused in his bail application. It is significant to note in this regard that the observations made by this Court in the said orders was based upon the material collected by the IO by the time of hearing on the bail application, however, much water has flown thereafter and the IO has collected additional material in support of the charges u/s 420 IPC and 3/7 of the EC Act, 1955. In view of the submissions made by Ld Counsel for accused that he is not seeking quashing of the said charges and has merely referred to some of the fact to show conduct of accused vis-a-vis the conduct of police and his main thrust is upon the fundamental principles of bail, the court refrains itself from delving deep into the merits for appreciation of evidence collected by the IO so as to ascertain its genuineness or otherwise, as it may cause prejudice to either of the parties.

At the time of passing of bail orders dated 12.05.2021 and 13.05.2021 on bail applications of co-accused, the Court had gone into

the material collected by the IO by that time only to ascertain whether even *prima facie* there were sufficient reasons to believe as on the said dates that the accused therein had committed any non-bailable offence at all even if the entire prosecution story was assumed to be gospel truth. As on date, on a bare perusal of case diary it is apparent that *prima facie* there are reasons to believe that the accused is involved in commission of offence u/s 420 IPC and u/s 7(1)(a)(ii) read with Section 3(2)(c) and (d) of the EC Act, 1955 read with para 26 of the DPCO, 2013, both of which are punishable with imprisonment upto seven years.

So far as the plea regarding arrest of the accused being in violation of the guidelines laid down by Hon'ble Supreme Court *In Arnesh Kumar v. State of Bihar(Supra)* is concerned, it is significant to note in this regard that need for custodial interrogation of the accused had been recognized by Ld. Sessions Court in its order dated 13.05.2021 passed on the anticipatory bail application of the accused and again by Ld. Duty MM before whom the accused was produced after arrest and police custody remand of the accused for three days was given by Ld. Duty MM vide order dated 17.05.2021.

Now coming to the relevant factors to be considered by the Court while deciding the bail application of an accused u/s 437(1) Cr.P.C., it would be apposite to reproduce the following observations made by Hon'ble Supreme Court in *Gurcharan Singh's case(Supra)*:

“24. The overriding considerations in granting bail to which we adverted to earlier and which are common both in the case of Section 437(1) and Section 439(1) CrPC of the new Code are the

nature and gravity of the circumstances in which the offence is committed; the position and the status of the accused with reference to the victim and the witnesses; the likelihood, of the accused fleeing from justice; of repeating the offence; of jeopardising his own life being faced with a grim prospect of possible conviction in the case; of tampering with witnesses; the history of the case as well as of its investigation and other relevant grounds which, in view of so many valuable factors, cannot be exhaustively set out.

25. XXXX

26. XXXX

27. XXXX

28. XXXX

29. We may repeat the two paramount considerations, viz. likelihood of the accused fleeing from justice and his tampering with prosecution evidence relate to ensuring a fair trial of the case in a Court of Justice. It is essential that due and proper weight should be bestowed on these two factors apart from others. There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail.” *(emphasis mine)*

In another judgment reported as ***Sanjay Chandra v. CBI, (2012) 1 SCC 40***, Hon’ble Supreme Court while dealing with the bail applications of accused facing trial in respect of the offences under Sections 120-B, 420, 468, 471 and 109 of the Penal Code, 1860 and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act,

1988 has extensively referred to the law of bail and has made the following observations:

“21. In bail applications, generally, it has been laid down from the earliest times 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 preventative. Deprivation of liberty must be considered a punishment, unless it is 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 conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.*” (*emphasis mine*)

Further while recognizing the great hardship which may be faced by a person detained before conviction, Hon’ble Supreme Court has deprecated the practice of refusal of bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not and also the practice of refusal of bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.

Thereafter, the Hon’ble Supreme Court made the following observations in para 24 of the judgment:

“24. In the instant case, we have already noticed that the “pointing finger of accusation” against the appellants is “the seriousness of the charge”. The offences alleged are economic offences which have resulted in loss to the State exchequer. Though, they contend that there is a possibility of the appellants tampering with the witnesses, they have not placed any material in support of the

allegation. In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor : the other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Penal Code and the Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the constitutional rights but rather “recalibrating the scales of justice”.(emphasis mine)

While re-iterating the fundamental rule of criminal jurisprudence that bail is a rule and committal to jail is an exception, Hon’ble Supreme Court has made the following observations in para 39 of the judgment:

“39. Coming back to the facts of the present case, both the courts have refused the request for grant of bail on two grounds : the primary ground is that the offence alleged against the accused persons is very serious involving deep-rooted planning in which, huge financial loss is caused to the State exchequer; the secondary ground is that of the possibility of the accused persons tampering with the witnesses. In the present case, the charge is that of cheating and dishonestly inducing delivery of property and forgery for the purpose of cheating using as genuine a forged document. The punishment for the offence is imprisonment for a term which may extend to seven years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the

charge and the severity of the punishment should be taken into consideration.” (emphasis mine)

Very pertinent observations were thereafter made by Hon’ble Supreme Court in Para 40 of the aforesaid judgment which reads as follows:

“40. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. *But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required.*”

In the next para, Hon’ble Supreme Court has re-iterated the law laid down by Hon’ble Supreme Court in Gurcharan Singh’s case (Supra) in the following words:

“41. This Court in *Gurcharan Singh v. State (Delhi Admn.)* [(1978) 1 SCC 118 : 1978 SCC (Cri) 41 : AIR 1978 SC 179] observed that *two paramount considerations, while considering a petition for grant of bail in a non-bailable offence, apart from the seriousness of the offence, are the likelihood of the accused fleeing from justice and his tampering with the prosecution witnesses.* Both of them relate to ensure the fair trial of the case. Though, this aspect is dealt by the High Court in

its impugned order, in our view, the same is not convincing.”

Now coming to the facts of the present case in the light of aforesaid guiding principles. It has already been observed hereinabove that both the non-bailable offenses alleged against the accused are punishable with imprisonment which may extend upto seven years and out of approx. 500 oxygen concentrators, by now even as per IO the accused was found selling only a few oxygen concentrators at a price above MRP. As per guidelines laid down by Hon’ble Supreme Court in *Arnesh Kumar v. State of Bihar (Supra)*, it has been impressed upon the police officers not to arrest the accused without reasonable grounds in all offenses punishable with imprisonment upto Seven Years indicating that the punishment upto seven years is not considered to be severe by Hon’ble Supreme Court so as to deny bail to the accused if no custodial interrogation of the accused is required and presence of the accused can otherwise be secured by the Court at the stage of investigation as well as trial.

So far as requirement of accused for further custodial interrogation is required, it is significant to note that accused was arrested in the present case on 17.05.2021 and was remanded to three days Police Custody by Ld. Duty MM vide order dated 17.05.2021, whereafter, two consecutive applications of the IO for 5 days PC remand of the accused have been dismissed by Ld. Duty MMs vide orders dated 20.05.2021 and 22.05.2021 and none of the said orders have been challenged by the State. In fact, it is not even the case of the State that the IO has moved any application for interrogation of the

accused in Judicial Custody at any point of time during his 12 days' custody period. Whatever recovery was required to be effected by the IO from the accused, has already been effected.

The case is primarily based upon the documentary evidence and since all relevant documents have already been seized by the IO from the possession/at the instance of accused, there is no substance in the plea of State that accused may temper with the evidence. Even otherwise, the said apprehension of the prosecution, regarding tempering of evidence by the accused, may be allayed by imposing appropriate condition upon the accused at the time of grant of bail that he shall not temper with the evidence. Similarly, there is no material supporting the bald averment of the prosecution that accused may influence the witnesses being influential. Moreover, this can not be the sole ground for refusal of bail to the accused though the same may be a ground for cancellation of bail of the accused in view of the judgment of Hon'ble Supreme Court in *Zahur Ahmed Zaidi v. CBI dated 05.04.2019 in Crl. Appeal No. 605/2019*. On the other hand, in *State Rep. Through CBI v. Anil Sharma (Supra)*, relied upon by the Ld. APP for State, Hon'ble Supreme Court was dealing with an application for pre-arrest bail u/s 438 Cr.P.C. and not with an application u/s 437 or for that matter u/s 439 Cr.P.C. for post arrest bail. The distinction in the principles applicable while dealing with an application for grant of pre-arrest bail and an application for grant of post arrest bail has been recognized by Hon'ble Supreme Court in para 7 and 8 of the said judgment in following words:

“7. The High Court has approached the issue as though it was considering a prayer for granting regular bail after arrest. The learned Single Judge of the High Court reminded himself of the principle that “it is well settled that bail and not jail is a normal rule” and then observed thus:

“Unless exceptional circumstances are brought to the notice of the Court which may defeat the proper investigation and fair trial, the Court will not decline bail to a person who is not accused of an offence punishable with death or imprisonment for life. In the present case, no such exceptional circumstances have been brought to the notice of this Court which may defeat proper investigation to decline bail to the applicant.”

8. The above observations are more germane while considering an application for post-arrest bail. The consideration which should weigh with the Court while dealing with a request for anticipatory bail need not be the same as for an application to release on bail after arrest. At any rate the learned Single Judge ought not to have side-stepped the apprehension expressed by the CBI (that the respondent would influence the witnesses) as one which can be made against all accused persons in all cases. The apprehension was quite reasonable when considering the high position which the respondent held and in the nature of accusation relating to a period during which he held such office.” (Emphasis mine)

Even the said apprehension of prosecution can be allayed by imposing appropriate condition in this regard, violation of which may entail in cancellation of bail of the accused.

By directing the accused to join investigation, the plea of the state regarding investigation being at an initial stage and chances of the accused hampering the investigation can be taken care of.

Merely because the accused did not join investigation pending adjudication of his anticipatory bail applications, in the absence of any interim protection by the superior courts, does not mean that he should be denied bail on the said ground alone since the accused had been taking recourse to the legal remedies available to him. Admittedly the first application for grant of anticipatory bail was moved by the accused before Ld. Sessions Court on 08.05.2021 and the same was disposed of on 13.05.2021, whereafter another application for grant of anticipatory bail was moved by him before Hon'ble High Court on 13.05.2021 itself and it was during pendency of the said application that he was apprehended. While taking the aforesaid view, I draw support from the following observations of Hon'ble Delhi High Court in *Ameet Khandelwal v. State of NCT of Delhi Bail Application No. 1162/2021 decided on 23.04.2021*:

“22. It has also been argued by the Ld. APP that NBWs were obtained against the petitioner as he has not been joining the investigation but thereafter as per the status report, the petitioner has joined the investigation. Merely because the NBWs were issued against the petitioner cannot be a sufficient ground for denying the grant of anticipatory bail, if it is otherwise made out. *Every reasonable person who has approached the Court for grant of anticipatory bail will keep away from the*

investigation for some time so that his bail application may not become infructuous.”

Apparently accused is having clean antecedents, in as much as, no previous involvement of the accused in any criminal case has been reported by the IO.

Thus, in view of the aforesaid discussions, in my considered opinion, no purpose will be served by keeping the accused behind bars in view of the law laid down by Hon’ble Supreme Court in *Sanjay Chandra v. CBI (Supra)* that the purpose of bail is neither preventive nor punitive but to secure the appearance of the accused person at his trial by reasonable amount of bail and the right to bail is not to be denied to the accused merely because sentiments of the community are against the accused.

Thus, the accused Navneet Kalra is hereby admitted to bail on furnishing of Personal bond and two surety bonds of Rs. 1,00,000/- each to the satisfaction of Ld. Duty MM (SE) with the condition that the accused shall not directly or indirectly try to influence the witnesses, shall not try to contact the customers to whom he had sold the oxygen concentrators during pendency of the investigation, shall not in any manner temper with the evidence and shall join the investigation as and when directed by the IO. Bail Bonds not furnished.

Bail application of accused is thus disposed off.

For removal of doubts, it is hereby clarified that nothing expressed hereinabove shall tantamount to an opinion on merits of the case.

Copy of this order be sent to Ld. Counsel for Applicant, IO as well as Ld. APP for State through e-mail forthwith. Copy of order be also sent to Superintendent Jail concerned through e-mail and jail dak. The same be also uploaded on CIS server as well as the District Court website. As requested by Ld. Counsel for accused, copy of order be also sent to Ld. Duty MM(SE) for today through e-mail.

(Arun Kumar Garg)
Chief Metropolitan Magistrate
SED/New Delhi/29.05.2021