

**IN THE COURT OF THE DISTRICT AND SESSIONS JUDGE  
CENTRAL DISTRICT, TIS HAZARI COURTS**

BAIL APPLICATION NO. /2020

**FIR NO. 250/2019**  
**U/S 147/148/149/186/353/332/  
323/436/427/120B/34 IPC 1860**  
**3/4 PDPP ACT 1984**

**P.S. DARYA GANJ**

**IN CUSTODY SINCE 21.12.2019**

**IN THE MATTER OF:**

**CHANDER SHEKHAR AZAD (PRESENTLY IN JC)**  
S/O: Late Sh. Gordhan Das

**...APPLICANT/ACCUSED**

**V E R S U S**

**STATE**

**... RESPONDENT**

**BAIL APPLICATION UNDER SECTION 439 OF THE CODE  
OF CRIMINAL PROCEDURE, 1973 ON BEHALF OF THE  
APPLICANT/ACCUSED CHANDER SHEKHAR SEEKING  
REGULAR BAIL**

**MOST RESPECTFULLY SHOWETH:**

1. That the Applicant/Accused was arrested on 21.12.2019 and was wrongly and maliciously implicated in FIR No. 250/2019 registered at P.S. Darya Ganj, Delhi, under Sections 147/148/149/186/ 353/332/ 323/436/427/120B/34 IPC 1860, and Sections 3/4 PDPP ACT 1984. Fir No. 250/2019 is annexed herewith as **ANNEXURE A**.
2. That the Applicant/Accused is a law abiding and peace loving citizen of India. The Applicant/Accused has clean antecedents and has no previous criminal record.

3. That vide Order dated 21.12.2019, the Ld. Duty MM, Central District, Tis Hazari Courts, Delhi, was pleased to dismiss the bail application filed on behalf of the accused under section 437 Cr.P.C. in the above mentioned FIR. Copy of the order dated 21.12.2019 passed by the Ld. Duty MM, Central District, Tis Hazari Courts, Delhi, dismissing the bail application of the Applicant/Accused under section 437 Cr.P.C. is annexed herewith and marked as **ANNEXURE - B**.
4. That no motive has been attributed to the Accused in the present F.I.R., and all charges have been added mechanically.
5. That fifteen persons who had been accused in the present F.I.R. have already been granted bail by the Ld. Sessions Judge vide order dated 09.01.2020. It is pertinent to mention that the Applicant/Accused has not been attributed with any specific or aggravated role in the F.I.R., and in fact was at all times demonstrably making efforts to maintain peace. Therefore, this Hon'ble Court may be pleased to consider granting bail to the Applicant/Accused. Order dated 09.01.2020 whereby the Ld. ASJ was pleased to grant bail to fifteen accused persons is annexed herewith and marked as **ANNEXURE C**.
6. That charging the accused with being a part of an unlawful assembly is erroneous, as at no point of time during the alleged incident did the police authorities declare, announce, or proclaim the peaceful protestors to be an unlawful assembly, and nor were any warnings issued or announced in this regard.

7. That no specific incriminating role has been attributed to the accused, and no charges as to the commission of any acts have been specifically alleged against the accused in all of the material on record.
8. That no allegation or reason has been provided in the entire narrative of the F.I.R. so as to invoke section 436 of the Indian Penal Code. It is submitted that in order to invoke this provision, it was incumbent upon the police and the complainant to show that a “building” used as a place of human dwelling, as a place of worship, or for custody of property, was damaged by use of fire or explosive substance. No such indication is present in any of the details of the above mentioned F.I.R.
9. That in order to implicate any individual for being part of an unlawful assembly, and to invoke serious and grave provisions against all members of an unlawful assembly, it has to be proven that the whole set of people were acting with a common object, and were aware of and complicit in the acts committed by other persons part of such assembly. It is submitted that in the present case no motive or common object is indicated in all of the material on record, and it has not been shown that the peaceful protestors were acting in unison. Thus, the evidence on record and the police version of the incident have failed to meet the necessary requirements for the invocation of common charges against all accused persons. It is further contended by the Police itself that different people assembled at the different places of

the alleged incidents, and therefore at no point was it an unlawful assembly of persons acting in pursuance of a common object.

10. That on 21.12.2019, the Applicant/Accused was not presented before the Ld. Duty MM along with other accused persons, and was presented after a delay on the grounds that the Applicant/accused was undergoing medical examination.
11. That while the Applicant/Accused has been named in the F.I.R., no specific allegation or charge has been invoked against the Applicant/Accused.
12. That the provisions of Section 120B and Section 34 of the IPC have been invoked in a completely mechanical fashion without any backing of evidence or even factual allegation.
13. That by way of the present Application, the Accused therefore, seeks regular bail in FIR No. 250/2019 registered P.S. Darya Ganj, Delhi, on the following amongst other grounds which are being taken without prejudice to each other:

**GROUND S**

- A. BECAUSE the order passed the Ld. Duty MM is based on the wrong appreciation of the settled law and the facts of the present case.
- B. BECAUSE the Ld. Duty MM has failed to appreciate that the police have invoked boilerplate charges against the Accused without the same being founded on any allegation

of fact, in order to avoid compliance with the mandatory provisions of Sections 41 and 41A of the Cr.P.C., and have arrested the Accused mechanically without following the due process of law which renders the initial and continued detention of the Accused completely illegal.

- C. BECAUSE the Ld. Duty MM failed to appreciate that the State has failed to comply with the binding guidelines and safeguards as laid down by the Hon'ble Supreme Court of India in the landmark judgment of **Arnesh Kumar v. State of Bihar & Anr.** (2014) 8 SCC 273, which requires the Police to show proper and effective compliance of Sections 41 and 41A of the Cr.P.C. which renders the initial and continued detention of the Accused completely illegal.
- D. BECAUSE the Ld. Duty MM has erroneously held that the guidelines issued by the Hon'ble Supreme Court in **Arnesh Kumar** (*supra*) are not applicable to the present case, and therefore the determination of the Ld. Duty MM in rejecting bail to the present Applicant is based on an erroneous appreciation of the law.
- E. BECAUSE in **Arnesh Kumar** (*supra*) the Hon'ble Supreme Court of India has held, "*During the course of investigation of a case, an accused can be kept in detention beyond a period of 24 hours only when it is authorised by the Magistrate in exercise of power under Section 167 Cr.PC. The power to authorize detention is a very solemn function. It*

*affects the liberty and freedom of citizens and needs to be exercised with great care and caution. Our experience tells us that it is not exercised with the seriousness it deserves. In many of the cases, detention is authorised in a routine, casual and cavalier manner. Before a Magistrate authorises detention under Section 167, Cr.PC, he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested is satisfied. If the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty bound not to authorize his further detention and release the accused. In other words, when an accused is produced before the Magistrate, the police officer effecting the arrest is required to furnish to the Magistrate, the facts, reasons and its conclusions for arrest and the Magistrate in turn is to be satisfied that condition precedent for arrest under Section 41 Cr.PC has been satisfied and it is only thereafter that he will authorise the detention of an accused. The Magistrate before authorising detention will record its own satisfaction, may be in brief but the said satisfaction must reflect from its order. It shall never be based upon the ipse dixit of the police officer, for example, in case the police officer considers the arrest necessary to prevent such person from committing any further offence or for proper investigation of the case or for preventing an accused from tampering with evidence or making*

*inducement etc., the police officer shall furnish to the Magistrate the facts, the reasons and materials on the basis of which the police officer had reached its conclusion. Those shall be perused by the Magistrate while authorising the detention and only after recording its satisfaction in writing that the Magistrate will authorise the detention of the accused.”* In light of the aforesaid position, the initial and continued detention of the Accused is completely illegal as the State has failed to comply with the mandatory provisions of Sections 41 and 41-A of the Cr.P.C.

- F. BECAUSE the Ld. Duty MM did not address the contentions as raised by the Accused in his bail application under Section 437 of the Cr.P.C. and the submissions made by the counsel for the Accused.
- G. BECAUSE the Accused has been falsely implicated in the present case as the allegations levelled against the Accused in the FIR are not only ill founded but also improbable and cannot bring home the charges mentioned in the FIR.
- H. BECAUSE from a bare perusal of the contents of the FIR, no offence u/s 147/148/149/186/353/332/ 323/436/427/ 120B/34 IPC 1860, and Sections 3/4 PDPP ACT 1984 is made out against the Accused. Further, the contents of the FIR are vague and based on conjectures and surmises.
- I. BECAUSE the Accused has been mechanically arrested and charged 147/148/149/186/353/332/323/436/427/

120B/34 IPC 1860, and Sections 3/4 PDPP ACT 1984, and as such no credible evidence has been placed on record which can even remotely suggest that the Accused is involved in any illegal activity as alleged.

J. BECAUSE as such no recovery has as of yet been made from the accused, and therefore his continued incarceration in custody is unwarranted.

K. BECAUSE no further recovery is required to be made from the Accused and as such no fruitful purpose would be served by keeping the Accused behind the bars.

L. BECAUSE from a bare perusal of the contents of the FIR, it is apparent that the judicial custody is least warranted in the facts and circumstances of the present case.

M. BECAUSE fifteen accused persons have been granted bail in the present F.I.R. by the Ld. Sessions Judge, Central District.

14. That the Accused stays with his family at permanent address of Harijan Colony, Gali No. 2, Chhutmalpur, P.S. Fatehpur, Distt. Saharanpur, U.P. and as such there is no apprehension of his absconding or evading the trial.

15. That the Accused undertakes not to tamper with the evidence, if any, or intimidate any witnesses related to the present case. It is submitted that the Accused suffers from severe physical disability, and it cannot be comprehended that he could at all influence any witnesses whatsoever. It may also be considered



that all the material witnesses of the incident are police officials, and therefore it is further unlikely that any witness tampering will be attempted by any individual, especially the accused in the present application.

16. That in *Arnesh Kumar (supra)*, the Hon'ble Supreme Court has held that-

*"5. Arrest brings humiliation, curtails freedom and cast scars forever. Law makers know it so also the police. There is a battle between the law makers and the police and it seems that police has not learnt its lesson; the lesson implicit and embodied in the [Cr.PC](#). It has not come out of its colonial image despite six decades of independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive."*

17. That in **Arnesh Kumar** (*supra*), the Hon'ble Supreme Court has observed that-

*"6. Law Commissions, Police Commissions and this Court in a large number of judgments emphasized the need to maintain a balance between individual liberty and societal order while exercising the power of arrest. Police officers make arrest as they believe that they possess the power to do so. As the arrest curtails freedom, brings humiliation and casts scars forever, we feel differently. We believe that no arrest should be made only because the offence is non-bailable and cognizable and therefore, lawful for the police officers to do so. The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. Apart from power to arrest, the police officers must be able to justify the reasons thereof. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent and wise for a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation. Despite this legal position, the Legislature did not find any improvement. Numbers of arrest have not decreased. Ultimately, the Parliament had to intervene and on the recommendation of the*

*177th Report of the Law Commission submitted in the year 2001, Section 41 of the Code of Criminal Procedure (for short Cr.PC), in the present form came to be enacted. It is interesting to note that such a recommendation was made by the Law Commission in its 152nd and 154th Report submitted as back in the year 1994. The value of the proportionality permeates the amendment relating to arrest.”*

18. That in **Arnesh Kumar** (*supra*), the Hon’ble Supreme Court, while setting out guidelines in relation to Section 41A of the Cr.P.C., opined that-

*“11. Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically.”*

And that

*“12. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A of the I.P.C. or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.”*

19. That the Hon'ble Supreme Court of India, in order to ensure compliance of Section 41A and the Guidelines given in **Arnesh Kumar** (*supra*), further held that-

*"13. We direct that a copy of this judgment be forwarded to the Chief Secretaries as also the Director Generals of Police of all the State Governments and the Union Territories and the Registrar General of all the High Courts for onward transmission and ensuring its compliance."*

20. That the Accused undertakes to cooperate with the Police in the course of investigation and undertakes to appear before the Investigation Officer and this Hon'ble Court as and when required.
21. That the Accused further undertakes to comply with any condition imposed by this Hon'ble Court necessary for grant of bail.
22. That since the alleged offences mentioned in the FIR have been committed within the territorial jurisdiction of this Hon'ble Court, as such this Hon'ble Court has the jurisdiction to entertain and hear the present application.
23. That the Accused craves leave of this Hon'ble Court to argue further legal and factual aspects at the time of hearing and craves leave to add, amend or delete any part of the present application.
24. That no other similar application has been filed or is pending before any court in India.

25. That the present application is being moved *bonafide* and in the interest of justice.

**PRAYER**

In light of the facts and circumstances of the present case, it is therefore, respectfully prayed that this Hon'ble Court may kindly be pleased to:-

- A.** Allow the present application and grant regular bail to the Applicant/Accused in FIR No. 250/2019 registered at P.S. Darya Ganj, Delhi;
- B.** Pending disposal of the present application, grant interim bail to the Applicant/Accused;
- C.** Pass any other or further orders as this Hon'ble Court may deem fit and proper in the circumstances of the present case.

THROUGH

**MEHMOOD PRACHA  
O.P. BHARTI  
JATIN BHATT**

PLACE: NEW DELHI  
DATED: 10.01.2020

**IN THE COURT OF THE DISTRICT AND SESSIONS JUDGE  
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**FILED BY**

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O.P. BHARTI  
JATIN BHATT**