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ALLAHABAD SERIES



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(2026) 6 ILRA 2
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 05.06.2026

BEFORE

THE HON'BLE RAJESH SINGH CHAUHAN, J.
THE HON'BLE ABDHESH KUMAR CHAUDHARY, J.

Criminal Appeal No. 475 of 2010
 & Other Connected Cases

Sanjay Rai

...Appellant

Versus

State of U.P.

...Respondent

Issue for Consideration

Matter pertains to whether the prosecution had succeeded in establishing a complete and unbroken chain of circumstantial evidence, satisfying the settled principles governing conviction on circumstantial evidence, so as to sustain the conviction notwithstanding the failure of the eyewitnesses to identify the accused, the hostility of material recovery witnesses, the alleged defects in recoveries, the evidentiary value of the disclosure statements, the forensic evidence and the charge of criminal conspiracy. **(Paras 59-60, 68-97, 128-131).**

Headnotes

Criminal Law - Murder - Circumstantial Evidence - Criminal Conspiracy - Appeal against Conviction - Code of Criminal Procedure, 1973 - Ss.161, 164, 172, 294, 313 and 374(2) - Indian Penal Code, 1860 - Ss.34, 120-B, 302 and 449 - Indian Evidence Act, 1872 - Ss.25, 26, 27, 30 and 157 - Arms Act, 1959 - S.3/25 - Scope of appellate scrutiny in appeal against conviction - Duty of appellate court to independently re-appreciate the entire evidence and determine whether the prosecution has established guilt beyond reasonable doubt - Held, appellate court is required to independently evaluate the oral, documentary and scientific evidence and cannot merely affirm the conclusions recorded by the Trial Court. (Paras 59-60).

Criminal Law - Circumstantial Evidence - Principles governing conviction - Conviction resting entirely upon circumstantial evidence - Essential requirement that every incriminating circumstance must be firmly established, must form a complete chain and must exclude every hypothesis consistent with innocence - Held, unless the cumulative circumstances satisfy the settled principles governing circumstantial evidence, conviction cannot be sustained. (Paras 68-72, 91-97).

Evidence - Ocular Evidence - Informconsequences:tness not identifying the accused - Both witnesses categorically asserting that the charge-sheeted accused were not the assailants - No Test Identification Parade conducted during investigation - Evidentiary consequence - Held, failure of the prosecution to establish identity through reliable ocular evidence constituted a significant missing link in the prosecution case. (Paras 68-71).

Evidence - Confession - Disclosure Statement - Indian Evidence Act, 1872 - Ss.25, 26, 27 and 30 - Evidentiary value of confessional statements made before police - Scope of admissibility - Held, confession of a co-accused is not substantive evidence and cannot constitute the foundation of conviction, while discovery under S.27 must satisfy the statutory requirements and receive satisfactory corroboration. (Paras 72-79, 84-87).

Evidence - Recovery - Recovery of firearms, vehicles and other articles - Independent recovery witnesses turning hostile - Material contradictions regarding preparation of recovery memos - Prior knowledge of place of concealment alleged - Held, recovery proceedings suffering from

material infirmities and lacking satisfactory independent corroboration cannot constitute an unimpeachable circumstance completing the chain of guilt. (Paras 72-81, 84-87).

Evidence - Ballistic Evidence - Forensic Science Laboratory Report - Recovery of firearm - Empty cartridges matching recovered firearm but bullets recovered from the deceased not matching the weapon - Delay in forwarding weapon for forensic examination - Effect - Held, ballistic evidence must be appreciated as a whole and deficiencies in the forensic chain cannot be ignored while determining whether the prosecution has established the guilt of the accused beyond reasonable doubt. (Paras 73-81).

Criminal Law - Criminal Conspiracy - Indian Penal Code, 1860 - S.120-B - Requirement of proof - Prior meeting of minds - Circumstantial evidence - Absence of reliable evidence establishing communication or concert between the accused - Held, criminal conspiracy cannot be inferred merely from suspicion or disclosure statements in the absence of legally admissible evidence establishing agreement to commit the offence. (Paras 82-87).

Criminal Trial - Examination under S.313 Cr.P.C. - Material incriminating circumstances - Requirement of fair opportunity to explain prosecution evidence - Held, every material circumstance relied upon by the prosecution must be properly put to the accused and conviction cannot be sustained on circumstances not duly put during examination under S.313 Cr.P.C. (Paras 87-89).

Evidence - Investigation - Defective investigation - Effect - Deficiencies in investigation not by themselves sufficient to acquit where reliable evidence exists - However, where the prosecution case itself rests upon doubtful recoveries, inadmissible confessions and incomplete circumstantial evidence, the deficiencies assume significance while evaluating proof beyond reasonable doubt. (Paras 90-97).

Criminal Law - Benefit of Doubt - Circumstantial Evidence - Chain of circumstances not complete - Prosecution failing to establish guilt beyond reasonable doubt - Held, prosecution having failed to prove an unbroken chain of circumstances consistent only with the guilt of the accused, the appellants were entitled to the benefit of doubt and the judgment of conviction and sentence was liable to be set aside. (Paras 91-97, 128-131).

Held: The prosecution case, though accepted by the Trial Court as one resting upon circumstantial evidence, failed to satisfy the settled principles governing conviction on such evidence since the circumstances relied upon did not constitute a complete and unbroken chain leading only to the hypothesis of the guilt of the accused - The testimony of the informant and the eyewitness, who were the natural witnesses to the occurrence, did not establish the identity of the assailants and both categorically asserted that the persons charge-sheeted were not involved in the occurrence, while no Test Identification Parade was conducted during investigation to establish the identity of the perpetrators - The confessional and disclosure statements of the co-accused, being inadmissible except to the limited extent permissible under S.27 of the Indian Evidence Act, could not be treated as substantive evidence and were incapable of forming the foundation of conviction in the absence of reliable independent corroboration - The alleged recoveries of the firearm, vehicles and other incriminating articles suffered from material infirmities inasmuch as the independent witnesses either did not support the prosecution or disowned the recovery proceedings, material contradictions emerged regarding the preparation of the recovery memoranda and the prosecution failed to establish that the alleged discoveries fulfilled the statutory requirements of S.27 of the Indian Evidence Act - The ballistic evidence did not conclusively connect the recovered firearm with the fatal injuries sustained by the deceased as the bullets recovered from the body of the deceased were not shown to have been fired from the recovered weapon, while the unexplained delay in forwarding the weapon to the Forensic Science Laboratory further impaired the evidentiary value of the forensic evidence and rendered the chain of custody doubtful - The alleged motive was not established through reliable evidence and the charge of criminal conspiracy under S.120-B of the Indian Penal Code remained unsupported by any legally admissible material demonstrating a prior meeting of minds or concert between the accused persons - The prosecution having failed to establish each incriminating circumstance beyond reasonable doubt and the cumulative circumstances not being consistent only with the guilt of the accused, the essential requirements governing conviction on circumstantial evidence stood unfulfilled - The Trial Court erred in placing reliance upon

inadmissible confessional material, doubtful recoveries and an incomplete chain of circumstances while recording the conviction - Suspicion, however grave, cannot take the place of legal proof and every accused is entitled to the benefit of reasonable doubt where the prosecution fails to discharge its burden in accordance with law - Consequently, the judgment of conviction and the order of sentence were liable to be set aside and the appellants were acquitted of the charges and directed to be released forthwith, if not required in any other case. **(Paras 59-97, 128-131).** (E-7)

Case Law Cited

Sharad Birdhichand Sarda v. State of Maharashtra, **(1984) 4 SCC 116**; *Maghavendra Pratap Singh v. State of Chhattisgarh*, **(2024) 12 SCC 401**; *Indra Dalal v. State of Haryana*, **(2015) 11 SCC 31**; *Singh Ram v. State of Haryana*, **1995 Supp (4) SCC 668**; *Nand Kishore v. State of Haryana*, **1998 SCC (Cri) 568**; *State of Rajasthan v. Gurmail Singh*, **(2005) 3 SCC 59**; *State of Rajasthan v. Gopal*, **(1998) 8 SCC 449**; *Hanumant v. State of M.P.*, **(1952) 2 SCC 71**; *Vijay Shankar v. State of Haryana*, **(2015) 12 SCC 644**; *Raja Naykar v. State of Chhattisgarh*, **(2024) 3 SCC 481**; *Padala Veera Reddy v. State of A.P.*, **1989 Supp (2) SCC 706**; *Rajesh v. State of M.P.*, **(2023) 15 SCC 521**; *Bodhraj v. State of J&K*, **(2002) 8 SCC 45**; *State of Goa v. Sanjay Thakran*, **(2007) 3 SCC 755**; *Sattatiya v. State of Maharashtra*, **(2008) 3 SCC 210**; *Baliya v. State of M.P.*, **(2012) 9 SCC 696**; *Parveen v. State of Haryana*, **2021 SCC OnLine SC 1184**; *Ram Prakash Chadha v. State of U.P.*, **(2024) 10 SCC 651**; *Habeeb Mohd. v. State of Hyderabad*, **(1953) 2 SCC 231**; *Mohd. Ankoos v. High Court of A.P.*, **(2010) 1 SCC 94**; *State of Maharashtra v. Sukhdev Singh*, **(1992) 3 SCC 700**; *Indrakunwar v. State of Chhattisgarh*, **2023 SCC OnLine SC 1364**; *Narain Singh v. State of Punjab*, **1962 SCC OnLine SC 203**; *Anees v. State (NCT of Delhi)*, **(2024) 15 SCC 48**; *Shyam Narayan Ram v. State of U.P.*, **2024 SCC OnLine SC 2988**; *Rameshbhai Mohanbhai Koli v. State of Gujarat*, **(2011) 11 SCC 111**; *Sathyan v. State of Kerala*, **(2023) 13 SCC 767**; *State of Karnataka v. K. Yarappa Reddy*, **(1999) 8 SCC 715**; *V.K. Mishra v. State of Uttarakhand*, **(2015) 9 SCC 588**.

List of Acts

Code of Criminal Procedure, 1973; Indian Penal Code, 1860; Indian Evidence Act, 1872; Arms Act, 1959

List of Keywords

Criminal Appeal; Murder; Homicidal Death; Circumstantial Evidence; Criminal Conspiracy; Ocular Evidence; Hostile Witness; Informant; Eyewitness; Investigation; First Information Report; Recovery; Recovery Memo; Discovery; Confessional Statement; Disclosure Statement; Test Identification Parade; Ballistic Evidence; Forensic Science Laboratory; Chain of Custody; Motive; Meeting of Minds; Call Detail Records; Scientific Evidence; Recovery Witness; Police Investigation; Benefit of Doubt; Acquittal; Circumstantial Chain; Firearm; Forensic Report.

Case Arising From

APPELLATE JURISDICTION: Against common judgment and order dated 28.02.2020 passed by the Trial Court in Sessions Trial No.445 of 2015 arising out of Case Crime No.129 of 2013 and Sessions Trial No.447 of 2015 arising out of Case Crime No.163 of 2013, Police Station Indira Nagar, District Lucknow, whereby the appellants were convicted and sentenced for offences under the Indian Penal Code, 1860 and the Arms Act, 1959.

Appearances for Parties

Advs. for the Appellant:

Sri I.B. Singh, Senior Advocate, assisted by Sri Atul Verma, Sri Adarsh Chandra Srivastava, Sri Apoorv Dev, Sri Ayush Chaudhary, Sri Eshan Kumar Gupta, Sri Prashant Kumar Singh, Sri Rakesh Kumar Chaudhary, Sri Ramakar Shukla, Sri Vaibhav Upadhyay, Sri Vinod Kumar Yadav, Sri Ishan Baghel and Sri Sanjeet Kumar Singh.

Advs. for the Respondents:

Sri S.P. Singh, Additional Government Advocate for the State of Uttar Pradesh.

(Delivered by Hon'ble Abdhesh Kumar Chaudhary, J.)

1) Heard Sri I.B.Singh, learned Senior Advocate, Sri Atul Verma, Adarsh Chandra Srivastava, Apoorv Dev, Ayush Chaudhary, Eshan Kumar Gupta, Prashant Kumar Singh, Rakesh Kumar Chaudhary, Ramakar Shukla, Vaibhav Upadhyay, Vinod Kumar Yadav, Ishan Baghel, Sanjeet Kumar Singh, learned Counsels for the appellants and Sri S.P. Singh, learned Additional Government Advocate for the State of U.P.

2) The present Criminal Appeals filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as to "Cr.P.C.") arises out of a common impugned judgment and order dated 28.02.2020, passed by the learned Trial Court in Sessions Trial No. 445 of 2015, arising out of *Case Crime no. 129 of 2013; and Sessions Trial No. 447 of 2015, arising out of Case Crime no. 163 of 2013*; Police Station - Indira Nagar, Lucknow whereby the Appellants have been convicted and sentenced for various offences, which can be depicted as per the following tabular chart:-

Criminal Appeal No. 475/2020	Sanjay Rai (Convicted in Sessions Trial No. 445 of 2015, arising out of Case Crime no. 129 of 2013)	Under Section 302 read with 120B I.P.C. and sentenced to Life Imprisonment and fine of Rs. 25,000/- and in default additional sentence of imprisonment for 6 months.
Criminal Appeal No. 671/2020	Ram Babu @ Chotu Ajeet Rai @ Shintu Sandeep Rai Rakesh Kumar Soni @ Bablu (Convicted in Sessions Trial No. 445 of 2015, arising out of Case Crime no. 129 of 2013)	All Appellants convicted under Section 302 read with 120B I.P.C. and sentenced to Life Imprisonment and fine of Rs. 25,000/- and in default additional sentence of imprisonment for 6 months.
Criminal Appeal No. 672/2020	Rahul Rai (Convicted in Sessions Trial No. 445 of 2015, arising out of Case Crime no. 129 of 2013)	Convicted under Section 449 I.P.C. for 10 years and fine of Rs. 5000/- and in default additional sentence of imprisonment for one month. Also convicted under Section 302 read with 34 I.P.C. and sentenced to Life Imprisonment and fine of Rs. 25,000/- and in default additional sentence of imprisonment for 6 months.
Criminal Appeal No. 673/2020	Sunil Kumar Saini @ Pahalwan (Convicted in Sessions Trial No. 445 of 2015, arising out of Case Crime no. 129 of 2013) And also Convicted in Sessions Trial No. 447 of 2015, arising out of Case Crime no. 163 of 2013)	Convicted under Section 449 I.P.C. for 10 years and fine of Rs. 5000/- and in default additional sentence of imprisonment for one month. Also convicted under Section 302 read with 34 I.P.C. and sentenced to Life Imprisonment and fine of Rs. 25,000/-

		and in default additional sentence of imprisonment for 6 months. Also sentenced to three years' rigorous imprisonment and a fine of Rs. 2,000/- for charges under Sessions Trial No. 447/15, Case Crime no. 163/2013, Section 3/25 of the Arms Act.
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CASE OF THE PROSECUTION

3) Shorn of unnecessary details, the factual matrix leading up to the filing of the present Criminal Appeals is delineated herein below:

3.1) In the present case, with respect to an incident which occurred on 29.05.2013, a written report/tehrir (Exhibit Ka-1) was filed with Police Station Indira Nagar, Lucknow, by the informant namely Husn Bano, (P.W.-1) stating that on 29.05.2013, at around 10:30 PM, her nephew Maaz Ahmad Siddiqui, son of Khurshid Ahmed Siddiqui, aged about 14 years, was watching television while sitting on his bed inside her house, situated at Faridi Nagar, Lucknow. During that time, three men arrived on a motorcycle and called out to open the door. As soon as her other nephew Faizan Siddiqui, aged about 11 years, opened the door, all three men entered the house and fired indiscriminately at her nephew Maaz Ahmad with their firearms, causing grievous injuries and leaving him bleeding and writhing in pain on the bed, while the accused fled from the scene.

3.2) Since her nephew Maaz Ahmad was seriously injured, her sons namely Nadeem (P.W.-2) and Adib along with the neighbours took him to the Trauma Center, where he succumbed to the firearm injury, while reaching the hospital. The informant suspected that the said incident was orchestrated by one Arif, the brother-in-law of Faheem and his family members, who all were the resident of Bhakamau. Thus, a request was made for taking necessary legal action by filing a report.

3.3) Based on the aforesaid given written complaint, a First Information Report (F.I.R.) was registered against Arif and his family members as well as three unknown assailants, under Section 302 of the Indian Penal Code, Case Crime No. 129 of 2013 (Exhibit Ka-4), at Indira Nagar Police Station and the investigation was thereafter handed over to the Investigating Officer, Ramesh Chandra Yadav (P.W.-12).

3.4) During the course of investigation, statements of the witnesses were recorded under Section 161 Cr.P.C. Also statements of the complainant (Exhibit- Ka-2) and her son (Nadeem Ahemd) as Exhibit- Ka-3 and Faizan was recorded under section 164 Cr.P.C. Further, a Site-map (Exhibit Ka-11) was prepared of the scene of the incident.

3.5) The Investigating Officer recovered four empty cartridges and three fired bullets from the crime scene, along with blood-stained bed-sheet and a plain bed-sheet for which a recovery memo was prepared (Exhibit Ka-12). Further, a Pulsar motorcycle was recovered from the house of the

accused - Sanjay Rai on the pointing out of co-accused Ram Babu @ Chotu, for which recovery memo (Exhibit Ka-13) was prepared on 08.06.2013. On the same date, a Nokia mobile phone was also recovered from the possession of the said co-accused Ram Babu @ Chotu (Exhibit Ka-14).

3.6) Interestingly, on the same day i.e. 08.06.2013, the Investigating Officer also arrested two accused persons namely Ajeet Rai @ Shintu and Rahul Rai from District- Azamgarh and recovered two mobile phones, six SIM Cards, cash amounting to Rs. 4,430/-, and a Pulsar motorcycle bearing No. UP50 AB 502, for which a recovery memo was prepared (Exhibit Ka-10). Consequently, statement of both the accused were recorded and according to their statement, the said Pulsar motorcycle was used in the present crime.

3.7) Further, a Maruti Alto car without number plate, fake driving license, the car documents, clothes of the accused - Ajit Yadav @ Bunty and ATM card were recovered from the house of one Dinesh Chand Saini (P.W.-4) at Varanasi, on 04.07.2013 for which a recovery memo was prepared by Exhibit Ka-15. Subsequently, on 06.07.2013 accused - Sunil Kumar Saini @ Pahalwan was arrested from Lucknow and a country made pistol .315 bore along with five cartridges was recovered, for which a recovery memo was drawn as Exhibit Ka-16.

3.8) The Investigating Officer thereafter arrested the accused - Ajit Yadav @ Bunty from Mau on 13.07.2013 and recovered one mobile phone, a Pulsar motorcycle and a black bag containing owner manual, service booklet of Maruti car, six passport size photographs of accused - Sanjay Rai and eight mobile phones along with fourteen SIM Cards, for which a recovery memo was prepared vide Exhibit Ka-21.

3.9) On 13.07.2013, the Investigating Officer, along with his team, raided the house of Dinesh Chandra Saini (P.W.-4), in Mohalla Parshuram Pur, Police Station Sarnath, District Varanasi, on the information furnished by accused Ajit Yadav @ Bunty, son of Chandrabali Yadav. According to the prosecution, the said accused took out a 9mm country-made pistol, one magazine, and five live 9mm cartridges wrapped in foil, from a bathroom located within the house of Dinesh Chandra Saini (P.W.-4) and handed them over to the Investigating Officer, saying that this is the same weapon used in the murder committed on 29.05.2013, at Indira Nagar. The recovered pistol, cartridges and an empty magazine were stitched in a plain cloth, for which recovery memo was prepared as Exhibit Ka-17.

3.10) Subsequently, upon finding sufficient evidence against the accused during the investigation carried out by the Investigating Officer, in Case Crime No. 129 of 2013, a charge sheet was filed against the accused - appellants Rambabu @ Chotu, Ajeet Rai @ Shintu, Rahul Rai, Sunil Kumar Saini @ Pahalwan, Ajit Yadav @ Bunty, Sanjay Rai, Sandeep Rai and Rakesh Kumar Soni @ Bablu, under Sections 302, 449, 34, 120-B, 420, 467, 468, 471, 116, 201 of I.P.C. Additionally, in Case Crime No. 167 of 2013, a charge sheet was filed against accused Ajit Yadav @ Bunty under Sections 3/25 of Arms Act. Similarly, in Case Crime No. 163 of 2013, a charge sheet against accused Sunil Kumar Saini @ Pahalwan, under Sections 3/25 of Arms Act was also sent to the Court.

3.11) Thereafter, cognizance of the offence was taken in the matter by the concerned Magistrate, following which the case was committed to the Court of Session as Sessions Trial Nos. 445 of 2015 and 447 of 2015; and charges were framed under aforementioned Sections against the appellants, on 21.07.2018. However, the appellants denied the charges and demanded for a Trial.

4) PROCEEDINGS BEFORE THE TRIAL COURT

4.1) During Trial, in order to prove the charges against the accused - appellants, the prosecution examined the following witnesses namely: -

1	Husn Bano	P.W.-1
2	Nadeem Ahmed	P.W.-2
3	Mohd. Mobeen (Neighbor)	P.W.-3
4	Dinesh Chandra Saini	P.W.-4
5	H.C. Sant Kumar	P.W.-5
6	Dr. Ram Narayan	P.W.-6
7	Nand Kishore Mishra	P.W.-7
8	Vishal Pandey	P.W.-8
9	Const. Gaya Nand Yadav	P.W.-9
10	Inspector Devendra Kumar Dubey	P.W.-10
11	Inspector Anurag Mishra	P.W.-11
12	I.O. Ramesh Chandra Yadav	P.W.-12
13	H.C. Anil Kumar Tiwari	P.W.-13
14	Satish Chandra	P.W.-14
15	Inspector Kamalapati Yadav	P.W.-15
16	Nida Arsi	P.W.-16
17	S.I. Yashwant Singh	P.W.-17
18	H.C. Jameel Ahmad	P.W.-18
19	Inspector Pankaj Kumar Singh	P.W.-19

4.2) Furthermore, the prosecution also relied on the following important documentary evidence, to substantiate its case during the Trial: -

i	Written Tehrir given by the complainant Husn Bano	Exhibit Ka-1
ii	Statement of the complainant under Section 164 Cr.P.C.	Exhibit Ka-2
iii	Statement of witness Nadeem Ahmed under Section 164 Cr.P.C.	Exhibit Ka-3
iv	Chik FIR under Section 302 IPC	Exhibit Ka-4
v	General Diary of Case Crime No.129 of 2013	Exhibit Ka-5
vi	Post-mortem report	Exhibit Ka-6
vii	Panchayatnama	Exhibit Ka-7
viii	Invoice/Challan of dead body	Exhibit Ka-8
ix	Photographs	Exhibit Ka-9
x	Fard/Recovery of two mobile phones, four SIM cards	Exhibit Ka-10

	and Rs.4,430	
xi	Naksa-Nazri / Site Plan	Exhibit Ka-11
xii	Fard/Recovery Report: Empty cartridges, bullets, piece of bedsheet, blood-stained bedsheet and plain bedsheet	Exhibit Ka-12
xiii	Fard/Seizure Report: Pulsar Motorcycle	Exhibit Ka-13
xiv	Fard/Recovery of one mobile phone	Exhibit Ka-14
xv	Fard/Recovery Memo of Maruti Alto Car	Exhibit Ka-15
xvi	Fard/Arrest Memo of the accused	Exhibit Ka-16
xvii	Fard/Recovery of Pistol	Exhibit Ka-17
xviii	Fard/Site Map of recovery of the murder weapon	Exhibit Ka-18
xix	Charge Sheets	Exhibit Ka-19 & Ka-20

5. During the Trial, due to the absence of one of the accused Ajit Yadav at the stage of recording of statement under Section 313 Cr.P.C., his file was separated from the files of other accused on 14.01.2020. After the prosecution evidence was concluded, the accused's statements were recorded under Section 313 Cr.P.C. The accused denied the charges and asserted that the witnesses had given false testimony and declared themselves innocent.

6. During the examination by the prosecution, P.W.-1/complainant Husn Bano, deposed that on 29.05.2013 at about 10:30 PM, she along with her nephew Maaz Ahmad was watching television and her elder son Nadeem Ahmad was on terrace, when three unknown assailants knocked at the door which was opened by Faizan (another nephew). Two of the assailants entered the room and fired at Maaz Ahmad, causing him to collapse on the bed with severe bleeding injuries, after which the assailants fled from the spot. Her injured nephew was immediately taken to the Trauma Centre by her sons Nadeem and Adib and one neighbour, where he succumbed to the said injuries. A suspicion was inferred upon one Arif and his family members of being involved in the incident. She proved the written complaint lodged at Police Station Indira Nagar (Exhibit Ka-1) and testified her statement recorded under Section 164 Cr.P.C. (Exhibit Ka-2).

P.W.-1, in her cross examination stated that she is not satisfied with the investigation conducted by the Police, as they have framed wrong accused persons. She has on several occasions stated about the said factum that these accused have no connection to the present incident nor they are involved in the present case. She has stated the same thing in her statement recorded under Section 161 and 164 of Cr.P.C. She also has deposed that the accused persons were brought before her after their arrest but she refused to recognize as these persons were not involved in the crime. She also deposed that she does not know as to why police has framed the accused persons, on seeing them in the Court. She also deposed that she had approached higher officers of the police and also requested for conducting investigation by some other agency and removal of I.O. Ramesh Chandra Yadav. She has also referred to various representations sent to the higher officer in that regard. She also deposed of having approached the High Court for the same and even filing of an application under Section 173(8) Cr.P.C. for further investigation in the matter.

7. P.W.-2 Nadeem Ahmed deposed that at about 10:00□10:15 PM on the fateful night, he heard 3-4 gunshots when he was on the terrace, thereafter, he rushed downstairs and saw one armed

assailant inside the room and two others standing outside, near a motorcycle. The three assailants fled immediately thereafter. He found Maaz Ahmad grievously injured and accompanied him to the Trauma Centre. He admits of writing the Complaint/tehrir in his own handwriting. He deposed that he can identify the three assailants, in case they are produced before him. However, after seeing all the accused in the Court, P.W.-2 stated that none of them were present at the place of occurrence on the date of the incident. He proved his signature on the panchnama (Exhibit Ka-7) and his statement under Section 164 Cr.P.C. (Exhibit Ka-3). P.W.-2 also deposed that he has stated to the Police that one of his neighbour - Akmal is in one-sided love affair with his sister Nida Arshi and as such he suspects him to be involved in the said incident. In his cross-examination, he states that they are not satisfied with the investigation. He also states that none of the accused charge-sheeted are involved in the present crime. He state that although Police have stated that these persons are involved, however, in fact these people are not involved in the incident. He also admits to the dissatisfaction of his mother in the present investigation and filing of various representation to the higher authority in that regard.

8. P.W.-3 Mohammad Mobeen was declared hostile. Though he admitted signing certain papers, however denied witnessing any recovery, as per Memo (Exhibit Ka-12) relating to empty cartridges and live bullets from the crime site, as claimed by the prosecution and disowned the statement attributed to him under Section 161 Cr.P.C. He denied his presence on the crime site for recovery on 30.05.2013.

9. P.W.-4 Dinesh Chandra Saini, was also declared hostile, who denied having witnessed the alleged recoveries (Exhibit Ka-15) of an Alto car, a Driving License, ATM card and the personal articles of accused Ajit Yadav @ Bunty from his house at Varanasi. He explained that his signatures were taken on blank papers during one of the visit of the I.O. to his house at Varanasi, where he was informed about the arrest of Sunil Kumar Saini @ Pahalwan and one other co-accused. He denied that Sunil Kumar Saini @ Pahalwan or other co-accused Ajeet Rai has ever come to his Varanasi house. He acknowledged his signature on the recovery memo shown to him but disowned his earlier statements given under Section 161 Cr.P.C.

10. P.W.-5 Sant Kumar, Constable Clerk, proved the registration of F.I.R. No. 129/2013 under Section 302 of I.P.C. lodged upon the basis of the written report of P.W.-1. He proved the Chik F.I.R. (Exhibit Ka-4) and the corresponding General Diary entry (Exhibit Ka-5). In his cross-examination, he admits that the Complaint was lodged suspecting Arif and his family, as well as three unknown assailants. He also admits that the Complainant/P.W.-1 and his son were called to the Police station on several occasions for identification and confirmation of the accused.

11. P.W.-6 Dr. Ram Narayan, who conducted the post-mortem examination on 30.05.2013, found multiple ante-mortem firearm injuries on the chest, arms and back of the deceased. The internal examination revealed □laceration of the lung and heavy accumulation of blood in the cavities□. He has also stated that there were entry and exit of three bullet wounds which were communicating with each other and there was one entry wound of fire arm injury. One bullet was recovered from the body which was subsequently handed over to police in a double sealed envelope along with the X-ray report. Time of death was estimated to be approximately one day prior to the post-mortem and the cause of death was recorded as shock and haemorrhage due to

ante-mortem injuries. The post-mortem report was produced and exhibited (Exhibit Ka-6). The doctor concluded that death was caused by fire arm injuries. In his cross-examination, he stated that he could not say anything about the bore of the bullets, nor he could say anything about the fire-arms used in the said incident. He also admits that he could not state the distance from which the gunshot was fired at the deceased.

12. P.W.-7 Nand Kishore Mishra, an attesting witness to the panchnama, confirmed his presence during its preparation at the Medical College on 30.05.2013. He proved the panchnama (Exhibit Ka-7) and the related documents, including the Challan Nash and Photo Nash (Exhibit Ka-8 and Exhibit Ka-9, respectively) and also testified to the visual observations made at the time when the panchnama was recorded (blood oozing, clots, bruises), supporting the need for a post-mortem. He further stated that the post-mortem was prepared in the handwriting of Constable Nizammudin on his saying.

13. P.W.-8 Vishal Pandey, Circle Officer, deposed that on 08.06.2013, acting on a tip, he apprehended two persons, namely accused Ajeet Rai @ Shintu (A-4) and Rahul Rai (A-6) while riding on a black pulsar motorcycle, near a temple in Azamgarh who, according to him, confessed involvement in the present murder and disclosed having been engaged to commit the crime for monetary consideration by co-accused Sandeep Rai (A-2) lodged in jail. The said witness has deposed that the co-accused has confessed that the incident was committed 'on the asking of' one Sanjay Rai (A-1), who was known to accused Sandeep Rai (A-2). He also deposed that the accused had also confessed that Sandeep Rai (A-2) had given this work to them, along with co-accused Ajit Yadav @ Bunty, Sunil kumar Saini @ Pahalwan and that the said incident was effected with the help of Rinku @ Vimal Shukla, Rambabu @ Chotu (A-3) and Rakesh Kumar Soni @ Bablu (A-5), a resident of Sehore, Madhya Pradesh. He detailed the recoveries made from each accused i.e. mobile phones, SIM cards, cash, an ATM card and a black Pulsar motorcycle, all sealed and documented on the spot. The witness proved the recoveries (Exhibit Ka-10) and the formal F.I.R. prepared on the spot.

However, in his cross-examination, the witness admits that the recovery effected from accused Ajeet Rai @ Shintu (A-4) were not found in the same condition as they had been when originally sealed. He admits that there was no mark made on the SIM or cash recovered nor he has got signature of the accused on the paper-envelope sealing these recovered articles. He also admits that all the raiding team members have not sealed and signed on the paper-envelope containing the seized articles. He deposes of the same discrepancy in the recovery made from accused Rahul Rai (A-6). He also admits that although the arrest had been made by them of the accused near a mandir, but he has not taken the signature of any pujari, mahant or neighbour as a witness to the arrest of these accused persons. He also admits that he had not informed the local police station either before or after arresting the accused person. He also admits that although the raid had been conducted by them by travelling to Azamgarh from Lucknow in a private vehicle, however he did not record the name of the owner nor that of the driver of the car, nor the same is mentioned in the recovery memo. He also admits that custodial interrogation of accused Sanjay Rai (A-1) was carried by him along with the Investigating Officer (P.W.-12). However, Sanjay Rai did not confess to the crime. He also admits about the rivalry of Sanjay Rai with one police officer of the department, because of his efficiency.

14. P.W.-9 Gaya Nand Yadav, a constable who accompanied P.W.-8, corroborated the arrest and recovery proceedings. He confirmed that the accused attempted to flee on a black Pulsar motorcycle, but were apprehended. He also stated that these accused namely, Ajeet Rai @ Shintu (A-4) and Rahul Rai (A-6) confessed about prior murder and of having carried it out on the instructions of Inspector Sanjay Rai (A-1) via intermediary i.e. Sandeep Rai (A-2). The sealing of recovered items, and his signature on the recovery F.I.R. were exhibited as Exhibit Ka-10. However, in his cross-examination, he admits that the accused were not searched in his premises. He also does not know, which police man arrested which accused. He also admits to the same discrepancy as that of P.W.-8.

15. P.W.-10, Inspector Devendra Kumar Dubey. deposed that on 08 June 2013, while posted as S.H.O. at P.S.-Gomtinagar and accompanying the Circle Officer, his team acted on the information received from an informer and subsequently, apprehended two men on a black Pulsar motorcycle, near a temple in Lachhirampur, Azamgarh. The apprehended men identified themselves as, Ajeet Rai @ Shintu (A-4) and Rahul Rai (A-6), respectively and further stated that they had been earlier engaged to commit the murder at the behest of Inspector Sanjay Rai through intermediaries for Rs.2.5 lakh. The witness further deposed that the accused had confessed the distribution of the advance money and identified the Pulsar motorcycle as the vehicle used in the crime. Further, P.W.-10 produced the recovery report and identified the items recovered from the arrested persons (mobile phones, SIM cards, cash and motorcycle) and proved the recovery bundle. However, in his cross-examination, he admits that he was a team member of Sanjay Rai (A-1), who had unearthed the loot of Muthoot Finance case and also states that he does not know as to whether there was any dispute between Sanjay Rai (A-1) and his higher officers relating to the recovery in the said case, resulting in his false implication in the present case.

16. P.W.-11, Inspector Anurag Mishra deposed that on 08 June 2013 and during subsequent operations, he accompanied teams of Kotwali Lachhirampur and Mau in search of accused persons. He described the seizures effected on 05 June, 2013 from accused Ajeet Rai @ Shintu (A-4) and Rahul Rai (A-6). He also deposed about the recovery made on 04 July 2013 of a Maruti Alto from the premises of Dinesh Chandra Saini at Varanasi, as well as the seizure of clothing, an ATM card, and a Driving license. He also deposed that the arrest of Ajit Yadav @ Bunty, on 13 July 2013 at Mau and the recovery from him of a mobile phone, SIM cards, pulsar motorcycle and a bag containing the owner's manual of Alto car, along with its service booklet in the name of Pradeep Rai bearing his address and phone number. He deposed that in the pocket of the recovered bag some passport-size photographs of Inspector Sanjay Rai (A-1) in uniform was found. The bag also contained eight mobile phones and three SIM Cards; the witness identified these recoveries and recorded the statements and F.I.R.s prepared on the spot. The said witness has also deposed that the accused- Ajit Yadav told him that the fire-arm used by him for the crime has been hidden by him at the house of his friend Dinesh Chandra Saini in Varanasi. In his cross-examination, he admits that a recovery memo has been prepared in his presence and the same has been written by different people. However, he does not remember as to which recovery has been made by whom.

17. P.W.-12, Inspector Ramesh Chandra Yadav, took over investigation on 30 May 2013 and prepared the Site-plan (Exhibit Ka-11). He stated that he took possession of empty cartridges, bullet fragments, blood-stained bed sheets and prepared recovery reports (Exhibit Ka-12 and

others), recorded statements, conducted searches and recorded details of C.D.R. analysis and investigative steps in CDs. He described taking possession of the Pulsar motorcycle from outside (A-1) Inspector Sanjay Rai's residence during inquiry and the recovery of mobile phones and other items from accused Ajeet Rai (A-4) and others. He proved the relevant recovery reports and CDs. He deposed that memo of recovery dated 30.5.2013 (Exhibit Ka-11) has been prepared in his own handwriting. He deposed taking statement of suspected accused and also contents of the complaint and obtained mobile number of suspected person and recorded in CD. He also met accused Sanjay Rai (A-1) and recorded his statement, which is mentioned in the CD. He also recorded statement of suspect Akmal and recorded his statement and mentioned in the CD. He also recovered a pulsar motor cycle place on 08.6.2013 from outside of Sanjay Rai's house on the pointing of accused Rambabu @ Chotu (A-3).

In his cross-examination, he stated that a total of 11 accused have been found in the present crime of which in the first place, charge sheet has been filed against eight accused, of which 7 is named in the charge sheet and one accused in the supplementary charge sheet and investigation against 3 accused namely, Hemant Shukla, Amrit Pal and Pradeep Rai is pending. He admits that according to him name of 11 accused were involved in the offence, and does not know as to why charge sheet has not been filed against the other accused. He states that the entire investigation is based on the evidence of mukhbir (informant whose name could not be disclosed), confessional statement of accused, Recovery memos and mobile phone recovered from accused person. He also admits that as per the CDR records of the mobile phone, he did not find the location of the accused at the crime spot nor was able to find the accused talking amongst themselves in the CDR. He stated that voice sample was not collected by him as the same was refused by the learned CJM on the ground that Sandeep Rai (A-2), (one of the persons) who was alleged to be talking to Sanjay Rai (A-1), was lodged in Azamgarh Jail at that point of time, although accused Sanjay Rai (A-1) had offered to provide his voice sample.

He admits that he had recovered 3 pulsar motorcycle at various stage of investigation. The first motorcycle was recovered on 08.06.2013, in front of the house of Sanjay Rai on the pointing of accused Rambabu @ Chotu (A-3). The second on 13.07.2013 from Ajit Yadav @ Bunty from Azamgarh, when he was arrested. He admits that the motorcycle being used in the crime because of the confessional statement of the accused persons. He admits that a Maruti Alto car was also recovered on 04.07.2013 during investigation, but the same was not recovered on the pointing of any accused nor from the possession of any accused. He admits that the basis of use of the said car in crime is the confession of guilt by the Accused.

He admits that besides him, there were four police man in his team on 13.07.2010 and that the Indira Nagar Police station records that these police party was leaving the station at 00.05 hours for Mau, which was about 300 km away. He denies the suggestion that a distance of more than 300 km could be travelled in 3 hours, which proved that all the investigation had been done in the Police station only. He admits that both the Alto car and country made pistol as pointed out by the accused Ajit Yadav @ Bunty were recovered from the same place, i.e. house of Dinesh Chandra Saini at Varanasi, within a gap of one week to which the said Dinesh Chandra Saini was a witness. He admits that recovered fire arm were sent for Ballistic evaluation, but does not know as to how the

docket for sending the firearm from the malkhana records as dated 12.08.2013 and the report reveals that the said firearm came to be deposited with the F.S.L. only on 20.08.2013.

18. P.W.-13, Head Constable Anil Kumar Tiwari, testified the registration of F.I.R. under the Arms Act (including F.I.R. No.167/13 under Section 3/25 Arms Act) against the accused Ajit Yadav @ Bunty and identified the G.D. and F.I.R. entries prepared at the relevant times.

19. P.W.-14, Satish Chandra testified the registration of F.I.R. no. 163/2013 under Section 3/25 Arms Act) against the accused Sunil Kumar Saini @ Pahalwan and the process by which F.I.R. and related entries were made at Indira Nagar Police Station, identified the F.I.R. and G.D. entries and authenticated the carbon copies and routine clerical records as Exhibit Ka-22 and Exhibit Ka-23.

20. P.W.-15, Inspector Kamalapati Yadav, deposed that he took over the investigation on 07.07.2013 relating to Crime No. 167/2013 under Section 3/25 Arms Act, inspected the crime scene, recorded the statement of accused Sunil Kumar Saini @ Pahalwan, prepared an on-site map (Exhibit Ka-24) on the marking of complaint and proved prosecution sanction papers and charge-sheet documents sent to the Court after completion of parts of the investigation against certain accused as Exhibits Ka-25, Ka-28, Ka-29. He described the preparation of maps and inventories relating to recovered weapons and the procedural steps culminating in prosecution sanction where applicable.

In his cross-examination, he states that he conducted investigation relating to the recovery of the fire arm from Ajit Yadav @ Bunty. He admits that the said recovery was made from the disclosure statement of Ajit Yadav @ Bunty at Dinesh Chandra Saini's house in Varanasi. He admits that ordinary law provides that a case is to be registered and trial to be conducted in the same district, where recovery is made. However, in the present case, although recovery was made from Varanasi, the trial was conducted in Lucknow, to which the I.O. (P.W.-12) can only answer.

21. P.W.-16, Nida Arsi testified herself as Cousin of the deceased and received the information about the shooting on 29 May 2013 via phone; she arrived during panchnama proceedings and identified family recollection of events. On perusal of her earlier statement recorded under Section 161 Cr.P.C., she disowned certain parts attributed to her and was declared hostile on those points.

In her cross-examination, she admits knowing the accused Sanjay Rai (A-1), for more than 5-6 months. She specifically denied that she wanted to marry Akmal, who is in love with her or that Sanjay Rai (A-1) was against the said marriage. She denied any involvement of Sanjay Rai (A-1) in this regard, in the present crime. She also denied of having any love affair with Sanjay Rai (A-1).

22. P.W.-17, the Investigating Officer, Yashwant Singh deposed about continued investigative steps, perusal of special diary entries, recording of witness statements and preparation of supplementary papers and inter-office CD records during 2015-2016, as the investigation matured. His testimony elucidated procedural continuity and later investigative acts recorded in the file.

In his cross-examination, he states that he took over the investigation on 18.06.2015 and did not find any incriminating material against the alleged accused Rinku @ Hemant Shukla. He also stated that except for taking name by a co-accused, no incriminating material was found against the Hemant Shukla, Pradeep Rai and Amrit Prasad @ Kariya and thus they were not charge-sheeted.

23. P.W.-18, Head Constable Jameel Ahmed corroborated the arrest of Ajit Yadav @ Buntty at Mau, described recoveries of nine mobile phones, 14 SIM cards and six passport photographs of Inspector Sanjay Rai in uniform from a bag found on the accused and proved the recovery report prepared on the spot. He also described the arrest of Sunil Kumar Saini @ Pahalwan and recovery of a country-made pistol (315 bore), live cartridges and a mobile from him at Polytechnic Chauraha, Lucknow. However, in his cross-examination, he admits that the entire case diary has been written in his own handwriting, on the dictation of the Investigating Officer.

24. P.W.-19 Inspector Pankaj Kumar deposed that on 30 May, 2017 he was posted as S.H.O. at Wazirganj and reviewed the investigation file on administrative orders; he recorded that the investigation was at a stage where further evidence were awaited and, at his deposition, that the investigation had been closed for want of sufficient evidence against some accused. He explained the shifting investigatory focus from initially suspected persons to those ultimately charged. In his cross-examination, he admits that although I.O. Ramesh Chandra Yadav had told him that Ajeet Rai @ Shintu (A-4) had called Ajit Yadav @ Buntty to commit the crime on phone, however, the C.D.R. reveals that the mobile was switched off during that period.

25. Thereafter, statement under Section 313 Cr.P.C. was recorded of all the accused, where each of them denied the circumstances put to them and claimed that they are innocent and had been falsely framed in the present case. Additionally, accused Sanjay Rai (A-1) claimed that the entire case has been initiated due to a personal rivalry between him as an Inspector of Police and his higher officials.

26. From a cumulative assessment of the entire evidence brought on record, both oral and documentary, the Trial Court concluded that the prosecution had succeeded in establishing a complete and unbroken chain of circumstances.

27. The learned Trial Court held that the medical and post-mortem evidence (Exhibit Ka-6) clearly proved that the deceased Maaz Ahmad died a homicidal death caused by firearm injuries on vital parts of the body, sufficient in the ordinary course of nature to cause death. The nature, location and trajectory of the entry-and-exit wounds, corroborated by the expert opinion of P.W.-6, established that the firearm was used with the intention of causing death, thereby proving the commission of culpable homicide amounting to murder of the deceased- Maaz on 29.05.2013 at approximately 10:30 PM in the house of Complainant/P.W.-1.

28. Although P.W.-1 and P.W.-2 did not identify the accused in Court and expressed dissatisfaction regarding the investigation, the Trial Court found that their hostility did not demolish the prosecution case because the material, scientific and circumstantial evidence independently corroborated the prosecution version. The recovery of empty cartridges, bullets, and blood-stained material from the crime-spot, duly proved through the documentary record, and their

forensic matching with the pistol recovered at the instance of accused Ajit Yadav @ Bunty, formed a crucial link in the chain of circumstances.

29. The learned Trial Court strongly relied on the recovery of the Maruti Alto car from the house of witness Dinesh Chandra Saini, and held that the same was used in the crime. It further went on to hold that the documentary material establishing the car's ownership in the name of Pradeep Rai, the real brother of accused Sanjay Rai, provided further corroboration that the accused Sanjay Rai (A-1) had facilitated the commission of the crime by supplying the said vehicle to the hired assailants. The explanation offered by accused Sanjay Rai (A-1) under Section 313 Cr.P.C. regarding the presence of the car was found to be false and evasive, thereby lending additional support to the prosecution case under the settled principle that false answers furnish an additional link in the chain of circumstances.

30. The learned Trial Court also relied on the recovery of a country-made 9 mm pistol, on the pointing out of accused Ajit Yadav @ Bunty from the same premises from where the Alto car was recovered, and went on to hold that the recovery was duly proved through seizure memos and corroborated by P.W.-12. The Forensic Science Laboratory report, together with the comparison of the empty cartridges recovered from the scene of the occurrence with the pistol marked 1/2013, conclusively established that the said firearm was used in committing the murder of the deceased Maaz Ahmad, who was 14 years old at the time of the incident.

31. The Trial Court also relied upon the documentary evidence relating to the applications made by accused Sanjay Rai (A-1), while posted in the Crime Branch, seeking permission to tap the mobile phones of Nida Arsi and Akmal as a crucial link to demonstrate the love affair between them. According to the Trial Court, these documents, bearing official endorsements, demonstrated an unusual and personal interest of accused Sanjay Rai (A-1), in monitoring the communications of Nida Arsi (P.W.-16). According to the Trial Court, this circumstance, when seen in the background of the admitted prior acquaintance between Sanjay Rai and Nida Arsi, led to infer that accused Sanjay Rai (A-1) was emotionally invested in Nida Arsi and was suspicious of her closeness with Akmal, which supplied the motive behind the conspiracy.

32. The learned Trial Court also relied on the confessional and disclosure statements of accused Ajit Yadav @ Bunty, though not substantive evidence in themselves, were found to be admissible to the extent of recovery and they were corroborated by objective recoveries of weapons, vehicles, SIM cards, photographs and other articles linking the accused with each other and with the crime.

33. Therefore, the learned Trial Court found that the chain of circumstances was complete. According to the learned Trial Court, the circumstances taken cumulatively, formed a coherent and compelling body of evidence pointing towards the guilt of accused Sanjay Rai (A-1) and the other co-accused. Although the learned Trial Court acquitted all the accused for the offence under Section 116, 201, 420, 467, 468, 471 I.P.C; it further held that the prosecution had proved its case beyond reasonable doubt for conviction against all the accused in the following manner: -

(i) Accused Rambabu @ Chotu, Ajeet Rai @ Shintu, Sanjay Rai, Sandeep Rai and Rakesh Kumar Soni @ Bablu to be convicted under Section 302 read with Section 120-B of the I.P.C. in Sessions Trial No. 445 of 2015 (Case Crime No. 129/2013).

(ii) Accused Sunil Kumar Saini @ Pahalwan and Rahul Rai to be convicted under Section 449, 302 read with Section 34 of I.P.C.

(iii) Accused Sunil Kumar Saini @ Pahalwan to be convicted under Section 3/25 of Arms Act in Sessions Trial No. 447/2015 (Case Crime No. No. 163/2013);

The sentence was also passed for different offence to the Appellants as elaborated in the chart appended to the opening paragraph No.2 of this Judgment.

PROCEEDINGS BEFORE THIS COURT

34. It is the aforementioned judgment and order of conviction dated 28.02.2020, which is under challenge before this Court by the present appellants in this bunch of cases, under Section 374(2) of the Code of Criminal Procedure, passed by the Ld. Trial Court in Sessions Trial No. 445 of 2015 (State Vs. Rambabu @ Chotu & 6 others) arising out of Case Crime No. 129 of 2013, P.S.-Indira Nagar, District Lucknow.

SUBMISSION ON BEHALF OF THE PARTIES

35. Challenging the impugned judgment and order of conviction and sentence dated 28.02.2020, Mr. I.B. Singh, the learned Senior Advocate assisted by Mr. Atul Verma, Advocate appearing for the appellants submitted that the Trial Court has erred in recording the findings of conviction and sentence against the present appellants. Learned Senior Counsel for the appellants has vehemently submitted that the conviction and sentence recorded by the Trial Court are perverse as the same is based on inadmissible and unreliable evidence, which goes to the root of the present impugned judgment.

36. Learned Senior Counsel has strenuously highlighted that the F.I.R. in the present case was lodged on 29.05.2013, relating to a late-night firing incident, inside the complainant's house in which one Maaz Ahmad, aged about 14 years died. The Investigating Officer recorded several recoveries and later submitted charge-sheets against multiple persons; following which the Trial Court convicted the appellants. The prosecution case rests primarily on police investigation material, recoveries effected during investigation, testimony of certain police witnesses and the Forensic Report.

37. Learned Senior Counsel for the appellants has further submitted that the investigation as shown by the evidence itself, is arbitrary and manipulated. Multiple recovery memos (Exhibits Ka-10, Ka-12, Ka-13, Ka-14, Ka-15, Ka-16, Ka-17 and Ka-21) either lack independent corroboration or contain clear contradictions as to authorship and witness presence. The recovery memos were variously asserted to be in the handwriting of the Investigating Officer (P.W.-12) and,

contradictorily, in the handwriting of Head Constable Jameel Ahmad (P.W.-18). This contradiction was not addressed by the Trial Court and fatally undermines the provenance of all such documents.

38. Several independent witnesses named in the recovery memos were either not produced or later disowned the recoveries (i.e., P.W.-3 Mohd. Mobeen and P.W.-4 Dinesh Chand Saini were declared hostile to the prosecution). When independent witnesses were produced, they denied the recoveries and stated that their signatures were taken on plain paper. These material failures show that the recoveries were not of the 'unimpeachable quality' which is inevitable to sustain a conviction. Furthermore, the Investigating Officer himself admitted that much of the incriminating material collected during the investigation arose from police informers and confessions of co-accused, not from the independent witnesses which are ultimately inadmissible as evidence, to substantiate the case of the prosecution. Later Investigating Officers also recorded that the earlier investigation suffered from anomalies and manipulation. According to the learned Senior Counsel, the Trial Court erroneously relied upon the first Investigating Officer's account without reconciling it with the contradictory evidence of subsequent investigators. In support of his argument, learned Senior Counsel has strenuously relied upon the judgment rendered by the Hon'ble Supreme Court in the case of *Maghavendra Pratap Singh v. State of Chhattisgarh*, reported in (2024) 12 SCC 401.

39. Furthermore, learned Senior Counsel for the appellants has vehemently submitted that the alleged use of the Pulsar motorcycle and the Maruti Alto car in the commission of the alleged offence is based, on the prosecution's own admissions, solely on the confessional statements of the accused. There is no independent eyewitness or documentary proof (as the C.D.R. was not proved or relied upon). Where a pointing-out or recovery is based on confession/disclosure, to which the law demands independent corroboration, which is entirely missing here. Hence, the Trial Court erred in treating these recoveries as establishing use of the said vehicles in the commission of the alleged offence. In support of the same, learned Senior Counsel has relied upon the judgment of the Hon'ble Supreme Court rendered in the case of *Indra Dalal v. State of Haryana*, reported in (2015) 11 SCC 31.

40. Learned Senior Counsel has further argued that the forensic evidence does not connect the recovered weapon to the fatal bullets, hence, the chain-of-custody is defective. The Forensic Report relied by the Trial Court shows only that the empty cartridges recovered from the spot (EC-1 to EC-4) were fired from the pistol recovered later. However, according to him, the fired bullets recovered from the spot and the one taken from the deceased's body (EB-1 to EB-4) were not found to have been fired from the weapon recovered on 13.07.2013. The Trial Court fundamentally misread/over-relied upon the ballistic report when it concluded that the recovered pistol was the weapon of assault. That omission is fatal to prosecution's ballistic link. The chain-of-custody is also vitiated. The weapon allegedly was handed over on 12.08.2013 but was deposited in the F.S.L. only on 20.08.2013; there is no explanation in the case diary where the weapon remained during the intervening period of eight days. The absence of proper sealing, timely dispatch and a trustworthy malkhana record creates grave doubt about possible tampering. According to the learned Sr. Counsel, the Trial Court was not justified in treating the forensic report as unimpeachable evidence. To buttress his aforesaid submission, the learned Senior Counsel has relied upon the judgments rendered by the Hon'ble Supreme Court in the cases of *Singh Ram v. State of Haryana*, reported in 1995 Supp (4) SCC 668; *Nand Kishore v. State of Haryana*, reported

in 1998 SCC (Cri) 568; State of Rajasthan v. Gurmail Singh, reported in (2005) 3 SCC 59; and State of Rajasthan v. Gopal, reported in (1998) 8 SCC 449.

41. Learned Senior Counsel has also argued that key eyewitnesses also did not support the prosecution, during trial. The complainant, Husn Bano (P.W.-1) and the eyewitness Nadeem (P.W.-2) had given statements under Section 164 Cr.P.C. during investigation, which were exhibited as Exhibit Ka-2 and Ka-3. Both their statements and trial testimony did not implicate the appellants; in fact, both denied that the police-named persons were the assailants. The prosecution therefore, failed to establish the identity of the assailants through eyewitness testimony and the Court could not substitute investigative surmises for positive eyewitness identification.

42. Learned Senior Counsel for the appellants has vehemently submitted that the Trial Court treated the present case as one of circumstantial evidence. Mr. Singh, learned Senior counsel appearing for the Appellants, in his usual erudite manner submitted that the facts and circumstances on record do not satisfy the five golden principles laid down by the Hon'ble Supreme Court, in the case of Sharad Birdhichand Sarda v. State of Maharashtra reported in (1984) 4 SCC 116; i.e., the circumstantial chain is not fully established, consistent only with guilt, conclusive in nature, excludes every other hypothesis and is so complete as to leave no reasonable doubt. On the contrary, multiple reasonable hypotheses (fabricated recoveries, wrong suspects, and an unconnected weapon) remain; therefore, conviction cannot stand. In support of the same, learned Senior Counsel has also relied on the following Supreme Court cases being, Hanumant v. State of M.P., reported in (1952) 2 SCC 71; Vijay Shankar v. State of Haryana, reported in (2015) 12 SCC 644; Raja Naykar v. State of Chhattisgarh, reported in (2024) 3 SCC 481; Padala Veera Reddy v. State of A.P., reported in 1989 Supp (2) SCC 706; Rajesh v. State of M.P., reported in (2023) 15 SCC 521; along with Bodhraj v. State of J&K, reported in (2002) 8 SCC 45; State of Goa v. Sanjay Thakran, reported in (2007) 3 SCC 755; and Sattatiya v. State of Maharashtra, reported in (2008) 3 SCC 210.

43. Learned Senior Counsel for the appellants has also submitted that the charge of Criminal Conspiracy requires evidence of a prior meeting of minds or overt acts demonstrably connecting the accused persons. The prosecution has not proved any meetings, common plan, or reliable inter-accused communication. The Call Detail Records (C.D.R.) which might have shown such connectivity, were neither proved nor relied upon during trial. The Trial Court therefore, erred in convicting the appellants for conspiracy under Section 120B of the I.P.C. read with the substantive offences. Furthermore, the appellants were not fairly given opportunities during their Section 313 examination, either the material circumstances were not put to them, or irrelevant and leading questions were asked, thereby denying them adequate opportunity to explain the incriminating circumstances. Further, the Trial Court also erroneously relied upon portions of the Case Diary which were not exhibited or proved in the Court. Reliance on such unproved diary material is impermissible in the eyes of law itself. In support of these arguments, learned Senior Counsel has strenuously relied upon the judgments rendered by the Hon'ble Supreme Court in the cases of Maghavendra Pratap Singh (supra); Baliya v. State of M.P., reported in (2012) 9 SCC 696; Parveen v. State of Haryana, reported in 2021 SCC OnLine SC 1184; and Ram Prakash Chadha v. State of U.P., reported in (2024) 10 SCC 651.

44. Lastly, Senior Counsel for the appellants has submitted that due to the foregoing defects, namely the tainted investigation, uncorroborated recoveries, ballistic mismatch, hostile or exculpatory statements of eyewitnesses, failure to prove conspiracy and procedural flaws, the convictions recorded against the present appellants are wholly unsustainable and ought to be quashed and set-aside. Apart from the aforementioned submissions and precedents, the learned Senior Counsel has also filed his written submission and placed reliance on the following judgments of the Hon^{ble} Supreme Court to support his arguments:-

- * Habeeb Mohd. v. State of Hyderabad, (1953) 2 SCC 231;
- * Mohd. Ankoos v. High Court of A.P., (2010) 1 SCC 94;
- * State of Maharashtra v. Sukhdev Singh, (1992) 3 SCC 700;
- * Indrakunwar v. State of Chhattisgarh, 2023 SCC OnLine SC 1364;
- * Narain Singh v. State of Punjab, 1962 SCC OnLine SC 203;
- * Anees v. State (NCT of Delhi), (2024) 15 SCC 48.

45. Per contra, at the very outset, Mr. S.P. Singh, the learned Additional Government Advocate (A.G.A.), appearing for the State vehemently opposed the contentions advanced by learned Senior Counsel for the appellants and has submitted that the findings recorded by the learned Trial Court are well-reasoned, based upon a careful appreciation of the oral and documentary evidence available on record and are fully supported by settled principles of criminal jurisprudence, as well as scientific, documentary, and recovery-based material, all of which collectively point unerringly towards the guilt of the appellants.

46. Learned A.G.A. has submitted that it is not in dispute that certain public witnesses turned hostile during trial. However, the impugned judgment is not founded upon conjectures or surmises, but rests upon duly proved documentary evidence, recovery memos, Forensic Reports, Call Detail Records, and the consistent testimony of the Investigating Officers and police personnel, whose credibility remained unshaken during cross-examination. Further, the case in hand involved unknown assailants, and therefore, non-identification in F.I.R. or absence of Test Identification Parade is not fatal to the prosecution case. The two eye-witnesses, namely P.W.-1 Husn Bano and P.W.-2 Nadeem Ahmad, including Faizan, whose statement was recorded under Section 164 Cr.P.C, have consistently stated that three persons had forcibly entered the house and opened fire, clearly establishing the manner of assault and the element of premeditation. The prosecution case never depended on direct identification of the assailants but upon chain of circumstantial evidence, establishing the conspiracy and participation of the accused persons.

47. Learned A.G.A. has also submitted that the investigation in the present case was conducted in a systematic, scientific and professional manner, and that every material piece of evidence relied upon by the prosecution was duly proved in accordance with law. The recovery memos, namely Exhibits 10, 12, 13, 14, 15, 16, 17 and 21 were proved by their respective authors and by the

members of the investigating team who participated in unraveling the crime. Furthermore, the discrepancies regarding the handwriting on recovery memos have been unwarrantably exaggerated by the learned Counsel appearing for the appellants. Minor procedural or clerical inconsistencies, such as P.W.-18 admitting to writing memos on dictation of the Investigating Officer, do not render the recoveries fabricated. These are mere non-material irregularities. The core fact remains that the accused persons led the police to specific recoveries i.e. weapons, cartridges, mobile phones, SIM Cards, motorcycles and documents which were all duly proved, during trial.

48. Learned A.G.A. appearing for the State has further submitted that the prosecution has successfully established the motive behind the crime. As borne out by the evidence on record, the deceased Maaz Ahmad was murdered as part of a Criminal Conspiracy hatched by appellant Sanjay Rai (A-1), who intended to eliminate a member of the family of Nida Arsi (P.W.-16) and falsely implicate Akmal, thereby removing all perceived obstacles in his alleged personal relationship with her. The relationship between Nida Arsi and Akmal emerged clearly during trial, including in the cross-examination of P.W.-2 Nadeem Ahmad. Although P.W.-16 partially resiled from the same, during her examination-in-chief and cross-examination, resultant being declared hostile, but clearly established her communication with appellant Sanjay Rai (A-1) prior to the incident. According to Mr. Singh, learned A.G.A., it is well-settled that mere hostility does not wipe out the prosecution case. Even hostile witnesses admitted their signatures on the recovery memos, thereby corroborating the presence of the police at the scene. P.W.-3 and P.W.-4 turning hostile is expected in crimes committed by organized groups; their hostility actually strengthens the prosecution's claim of intimidation and fear. Moreover, the actionable part of their earlier statements remains admissible under Section 157 of the Indian Evidence Act. Significantly, the appellant Sanjay Rai (A-1) was confronted with these incriminating circumstances during his examination under Section 313 Cr.P.C., particularly Question No. 25, wherein he admits to meeting Nida Arsi only once, lend further corroboration to the prosecution case. The appellant Sanjay Rai (A-1) failed to furnish any plausible explanation to the incriminating circumstances put to him during his examination under Section 313 Cr.P.C. According to him, the silence and evasive replies justified the adverse inference rightly drawn by the Trial Court, in consonance with settled law.

49. Learned A.G.A. has also submitted that P.W.-12, Inspector Ramesh Chandra Yadav, one of the principal Investigating Officers, gave a detailed, consistent and exhaustive examination-in-chief wherein he proved the Case Diary entries, Exhibits, Recovery memos, Call Details Records and other documentary evidence. His detailed testimony clearly explained the step-by-step progress of the investigation, including permissions obtained for phone tapping and the analysis of C.D.R. The cross-examination of P.W.-12, conducted at length by the defence, failed to elicit any contradiction, infirmity or material inconsistency. The credibility of this witness thus remained intact, and his testimony was rightly relied upon by the Trial Court.

50. Learned A.G.A. has vehemently opposed the challenge raised by the learned Senior Counsel appearing for the appellants pertaining to the reliance placed upon police papers and documentary evidence. In this regard, it was submitted that all relevant documents formed part of the record. The appellants never disputed the genuineness of these documents during trial, nor were they denied when the opportunity was available under Section 294 Cr.P.C. Consequently, in view of the settled legal position, these documents were rightly read in evidence without formal proof,

and no prejudice has been caused to the defence. The Trial Court has correctly applied the law laid down by the Hon^{ble} Supreme Court regarding admission of documents under Section 294 Cr.P.C., and the appellants cannot be permitted to raise such objections for the first time at the appellate stage.

51. Learned A.G.A. has also submitted that the recoveries of the weapons, cartridges, and the vehicle used in commission of the offence stands duly proved. Even though certain recovery witnesses resiled from their earlier statements, they admitted their signatures on recovery memos, and the recoveries stand corroborated by police witnesses, whose evidence inspires confidence. The Forensic and ballistic reports conclusively established that the empty cartridges recovered from the scene of occurrence were fired from the recovered country-made firearm. The non-matching of bullets recovered from the body of the deceased does not weaken the prosecution case, particularly considering the nature of country-made weapons, a fact judicially recognized. Learned A.G.A. has strongly refuted the assertion made by the learned Senior Counsel appearing for the appellants, that ballistic evidence is unreliable. The F.S.L. report clearly states that all four empty cartridges (EC-1 to EC-4) were fired from the pistol recovered from accused Ajit Yadav @ Bunty. This establishes that the recovered firearm was indeed used at the spot. Learned A.G.A. has further submitted that the learned Senior Counsel appearing for the appellants has deliberately highlighted only the mismatch of the fired bullets, ignoring the critical fact that recovery of empty cartridges from the scene, that match the recovered weapon is a clinching link placing the accused at the scene of crime.

Furthermore, the mismatch of the bullets can be explained by:

- (a) deformation of bullets on impact;
- (b) possibility of multiple shots with more than one firearm;
- (c) expert's inability to opine due to lack of clear striation marks (as noted for EB-4).

Even the F.S.L. report specifically states that EB-4 was 'too deformed to compare.' Thus, mismatch does not break the chain of prosecution evidence.

52. Learned A.G.A. has further submitted that the Investigating Officer's omission to mention where the sealed packets were stored between 12.08.2013 and 20.08.2013 is a mere procedural lapse, not a substantive defect. There is no irrefutable proof or evidence of tampering. All the sealed packets were intact when received by F.S.L.; the docket entry records the same. Courts have repeatedly held that unless the seal integrity is compromised, the chain of custody is presumed intact.

53. Learned A.G.A. has also submitted that in the present case, Conspiracy is rarely proved by direct evidence, rather it has been fully established through conduct and circumstances. The following circumstances established prior meeting of minds:

- (i) coordinated movement of multiple accused across districts;

(ii) recoveries of eight mobile phones and fourteen SIM cards from accused Ajit Yadav @Bunty;

(iii) recovery of motorcycles used for rapid escape;

(iv) consistent statements of Investigating Officers showing inter-related movements of the appellants;

(v) conduct of the appellants in absconding immediately after the incident.

Therefore, these facts have cumulatively satisfied the ingredients of Section 120B of the I.P.C.

54. Furthermore, learned A.G.A. has vehemently submitted that the incident cited by the learned Senior Counsel appearing for the appellants, pertaining to the subsequent murder of Adib (son of the complainant), by Akmal, has no relevance to the incident dated 29.05.2013. The Counsel for the appellants is simply striving to import extraneous subsequent events to divert attention from overwhelming murder of a young boy and the evidence against present appellants. Although the motive witness P.W.-16 turned hostile, motive is not indispensable, particularly where the manner of assault, weapon used, multiple assailants, and recoveries cumulatively proving the guilt of the appellants.

55. Learned A.G.A. has also submitted that minor contradictions between the testimonies of P.W.-12, P.W.-17 and P.W.-19 are natural due to the long gap, multiple levels of investigation, and hostility of locals. None of these contradictions affect the core recovery and forensic evidence, which remained intact. All incriminating circumstances i.e. recoveries, the Forensic/ballistic match of empty cartridges, presence of accused/appellants at motorcycle recovery spots, disclosure statements, all were put to the appellants, but the appellants offered bald denials without any plausible explanation. Furthermore, the Trial Court referred to Case Diary portions only to appreciate contradictions, not as substantive evidence. Such limited reference is permissible under Section 172 of the Code of Criminal Procedure, 1973.

56. Learned A.G.A. has also submitted that even though certain independent witnesses turned hostile, the recoveries from the alleged houses and possession of accused (multiple SIM cards, mobile phones, vehicle documents, motorcycle keys and manuals) were duly proved through police witnesses and undisputed seizure documents. Even the F.I.R. was promptly lodged at 23:35 hrs, i.e. within one hour of the incident. Further, P.W.-1 and P.W.-2, also corroborated the core facts that multiple gunshots, three intruders, death of Maaz from firearm injury, which was subsequently corroborated by the medical evidence as well.

57. Lastly, learned A.G.A. has submitted that the Trial Court rightly held that the chain of circumstances, comprising (i) recoveries of weapons and vehicles, (ii) recovery of multiple mobile phones and SIM cards, (iii) forensic matching of empty cartridges, (iv) conduct of the accused, and (v) disclosures; was fully established, consistent only with guilt. There is no rift or missing link as suggested by the appellants. Therefore, learned Trial Court has rightfully convicted the present appellants, relying upon the ballistic linking of cartridges, recoveries under Section 27 of the Indian

Evidence Act, forensic consistency, conduct of the accused, cumulative chain of circumstances. Each link has independently supported the reason behind rightful conviction of the present appellants. Therefore, the impugned judgment and order dated 28.02.2020 does not requires any interference and the present appeals are liable to be dismissed in limine, in the interest of justice.

58. The learned A.G.A. has also filed his written submission and has heavily placed his reliance on the following precedents laid down by the Hon'ble Supreme Court in the cases of Shyam Narayan Ram v. State of U.P., reported in 2024 SCC OnLine SC 2988; Rameshbhai Mohanbhai Koli v. State of Gujarat, reported in (2011) 11 SCC 111; Sathyan v. State of Kerala, reported in (2023) 13 SCC 767; State of Karnataka v. K. Yarappa Reddy, reported in (1999) 8 SCC 715; and V.K. Mishra v. State of Uttarakhand, reported in (2015) 9 SCC 588; in order to support his contentions.

ANALYSIS AND FINDINGS

59. We have given our thoughtful consideration to the submissions canvassed by the learned Counsels for the parties and have also perused the materials placed on record. At the very outset, it is very necessary to remind ourselves that this Court as an Appellate Court and as such while hearing an appeal against conviction is legally obligated to evaluate all the evidence on record, weigh it independently, and make an assessment and examine as to whether the prosecution has successfully proved the guilt of the accused beyond a reasonable doubt. The present Appeals have been heard by this court on several occasions/dates and has been hotly contested by the parties. We record the endeavor and assistance extended by the learned Counsels appearing for both the sides and appreciate the tempo maintained by each of the parties during hearing, without any demeanor.

60. At the very outset, this Court may also note that there are two parallel narratives put forth in the present case. The first being that of the complainant, who lodged the F.I.R. and the second being that of the prosecution. Apparently, the story put forth by the prosecution has come to be believed by the learned Trial Court resulting in the conviction of all the accused, who are appellants before this Court.

61. Records reveal that the de-facto complainant/informant-Husn Bano (P.W.-1), lodged a complaint to the effect that on 29.05.2013 at about 10:30 PM, three motor cycle borne assailants entered her house situated at Faridi Nagar, Police Station- Indira Nagar, Lucknow and on the opening of door by his Nephew Faizan, these assailants fired indiscriminately upon her another nephew Maaz Ahmad Siddiqui, a minor boy aged about 14 years, while he was sitting on his bed watching television. Immediately hearing the gunshots, Nadeem and Adib, two sons of the complainant, who were upstairs rushed and took the injured Maaz to a Hospital, where he succumbed to the gunshot injuries. The complainant suspected the handwork of one Arif, brother-in-law of Fahim and his family and as such the F.I.R. came to be lodged against these people and the three unknown assailants.

62. However, we find that during the course of investigation, the names of the Appellants came into light along with some other person on the basis of information obtained from police informers and confessional statements of some of the co-accused. Thus, charge-sheet came to be

filed against the Appellants. Although investigation against some co-accused like Hemant Shukla @ Rinku, Amrit Prasad Gond @ Karia and Pradeep Rai were kept pending during the filing of the charge-sheet, however no subsequent charge-sheet came to be filed, thus technically exonerating these accused persons. Further, we find that the named accused in the F.I.R. i.e. Arif and his family members as well as one Akmal, who had been named by P.W.-2 (Son of the complainant) to be an accused, were also exonerated during investigation.

63. Thus, we find the prosecution after the culmination of the investigation, built a different narrative, wherein according to them, the aforesaid murder was not an act of sudden violence, but the culmination of a premeditated Criminal Conspiracy hatched by accused Sanjay Rai (hereinafter to be referred as A-1) (Appellant in Criminal Appeal No. 475/2020). The story further unfolds by stating that the said Sanjay Rai (A-1), harbored animosity arising out of his failed romantic pursuit with Nida Arsi (P.W.-16), daughter of the complainant (P.W.-1), who was into an alleged relationship with one Akmal, living in her neighborhood. According to the prosecution, the said Accused- Sanjay Rai (A-1), to execute this design, hired shooters, weapons and vehicles were provided, and the murder was committed to terrorize the family of the complainant and achieve ulterior objectives.

64. This Court finds that the prosecution has even went on to assign different roles to these Accused persons, wherein the three unknown assailants, who came calling on the door of the complainant, were named to be (i) Ajit Yadav @ Bunty, (ii) Rahul Rai (hereinafter to be referred as A-6) (Appellant in Criminal Appeal No. 672/2020) and (iii) Sunil Kumar Saini @ Pahalwan (A-7) (Appellant in Criminal Appeal No. 673/2020), wherein Ajit Yadav @ Bunty was shown to be firing the gunshot. (Apparently, Ajit Yadav @ Bunty was arrested and was sent to Jail, however, during Trial he absconded and as such his Trial was separated from rest of the accused person and as such he being not convicted, is not an Appellant in this connected bunch of matters.)

Going further, as far as the Accused- Ram Babu @ Chotu (hereinafter to be referred as A-3) is concerned (Appellant No.1 in Criminal Appeal No. 671/2020), the prosecution has assigned him the supporting role of providing logistical support to these assailants. According to the prosecution, these persons were contacted by Accused - Sandeep Rai (hereinafter to be referred as A-2) (Appellant No.3 in Criminal Appeal No. 671/2020), lodged in Jail at that point of time, who had also provided the assailant with the crime weapon. The other accused- Ajeet Rai @ Shintu (hereinafter to be referred as A-4) (Appellant No.2 in Criminal Appeal No. 671/2020) was shown to be waiting on road on a pulsar bike for supporting the assailants and Accused- Rakesh Kumar Soni @ Bablu (hereinafter to be referred as A-5) (Appellant No.4 in Criminal Appeal No. 671/2020) was waiting in support of the assailants at Munshi pulia in a Maruti Alto car.

65. This Court also finds that the narrative created by the prosecution is that the Alto car belonged to one Pradeep Rai, lodged in jail and who is the brother of the master Conspirator- Sanjay Rai (A-1). The contract for the said murder was for a deal of Rs.2,50,000/- of which Rs. 20,000/- was given as advance and since the accused □ Sanjay Rai (A-1), could not pay the balance amount, the Maruti Alto car was taken by the assailants. It is this story of the prosecution woven on the basis of confessional statement of the accused during custodial interrogation, which has been

believed by the learned Trial Court while arriving at a judgment of conviction against the Accused/Appellants under Section 302, 120B, 449 and 34 I.P.C.

66. In order to prove the said story of the prosecution, we find that altogether 19 prosecution witnesses were examined and almost twenty exhibits have been filed. Amongst, these 19 prosecution witnesses, there are 6 fact witnesses of which it is revealed from records that almost all these fact witnesses namely, P.W.-1 (complainant and eyewitness) and P.W.-2 (eye witness), P.W.-3 (Neighbour and witness of recovery of bullets/clothes from crime site), P.W.-4 (Witness of Recovery of Maruti Alto car), P.W.-16 (Nida Arsi- Witness of Motive), have not supported the case of the prosecution. Although P.W.-1 and P.W.-2 have not been declared hostile, however, all the other fact witnesses have been declared hostile. The sixth fact witness namely P.W.-6 (Dr. Ram Narayan), who conducted the post-mortem has supported the case of the prosecution relating to the nature of injury. However, as far as the incident of crime being connected to the accused person is concerned, the entire case is primarily based on police and/or formal witnesses and amongst these P.W.-12 (Investigating Officer Ramesh Chandra Yadav) is the star witness.

67. Although, any prosecution case based solely on police testimony may not be inadmissible per se, as a lot would depend on the materials collected during investigation and the quality of evidence brought on record during Trial, however, when the entire case is based exclusively on police evidence, the Courts are generally skeptical in believing the story. This Court may note that although the Code of Criminal Procedure, 1973 provides for a fair investigation, wherein all the materials collected during investigation has to be brought on record and the decision of chargeability of offence has to be left to the Judicial Court, however, in most of the investigations the police act as an adversarial litigant and are highly motivated to secure a conviction in a case and in that regard choose to bring only selective evidence on record, which alerts this Court to subject the prosecution's story to intense scrutiny and demand a higher standard of proof for separating the grain from chaff.

68. Before this Court embarks on its onerous path of marshalling the evidence brought on record, it would be pertinent to mention herein that the present case ought to have been essentially based on evidence of ocular witnesses as both P.W.-1(Husn Bano) and P.W.-2 (Nadeem Ahmed) were present on the crime spot, when allegedly the crime was committed. However, we find that P.W.-1 was not able to identify any of the accused person present in Court and she had also categorically stated that the person booked in the present case were not involved in the present case and also expressed her dissatisfaction on the investigation conducted as the same was misdirected, by filing application/complaint etc. for seeking further investigation. She had also deposed that Accused - Sanjay Rai (A-1) is not involved in the present case, as according to her the assailants while entering her house were calling for her son, who was upstairs, however, we see that no investigation has been carried by the police in that regard and further the specific statement of non-involvement of Accused - Sanjay Rai (A-1) has been viewed otherwise by the learned Trial Court, as according to the said Court, no explanation for her such non-involvement had been given by the said P.W.-1. This court is rather amused as to how can one give a negative proof of explanation as to how that person is not involved in a crime, except by the manner as stated by the PW1, because to the mind of this court any explanation means that PW1 knew the name & whereabouts of the actual assailants, which is not the case herein.

Similarly, P.W.-2 is also an eye-witness in the present case as he has deposed that he saw three assailants at the crime spot, while he was coming down after hearing gunshots. This P.W. also did not recognize any of the accused in the Court and expressed his displeasure in the manner of investigation, as wrong persons have been framed. He has also deposed that one Akmal was in one-sided love affair with his sister □ Nida Arsi (P.W.-16), however, the police did not investigate in that direction. Further, we find that P.W.-2 in his examination-in-chief has deposed that he had seen the three assailants and can recognize them. This court finds that no endeavor has been made by the police to conduct a T.I.P. (Test identification parade), which might be admissible evidence under Section 9 of the Indian evidence Act and which would have furthered the investigation as per the F.I.R. Thus, the present case essentially which ought to have been based on ocular account of the incident has taken a different direction as we find that both these witnesses have not supported the prosecution case.

69. Faizan, the nephew of complainant, who opened the door to let in the assailants also was not named as witness, although his statement was recorded under Section 164 Cr.P.C. Further, we find that the recovery of four empty cartridges, three bullet and bedsheet etc. (Exhibit-Ka-12) from the crime-spot was witnessed by an independent witness namely, P.W.-3 (Mohd. Mobeen) and P.W.-12 (I.O. Ramesh Chandra Yadav), however, we see that P.W.-3 has been declared hostile, as he refused any recovery in his presence, although he has admitted having signed on blank papers. Interestingly, neither P.W.-1 nor P.W.-2 had been made a witness of the said recovery, which would have furthered the case based on ocular witness.

70. Further, it is available from records and what this court finds interesting that the Investigating officer/ police have instead of taking steps in furtherance to the testimony of the eye-witness took upon itself a task of propelling & piloting a selective investigation in the matter. For the reasons not known, in a case of this nature, the investigating agency has not conducted T.I.P. (Test Identification Parade) nor has filed and/or exhibited the C.D.R. or the call details of the Mobile to show the location or any communication between these Appellants, which according to us, would have clinched the entire issue. There are no independent witnesses for any recovery or any proof of fact or material which would lead to any connection with the culpability of the Accused persons. Furthermore, we find that except for recording of confessional statements of co-accused, there is no other evidence on record to implicate the appellants. Thus, we are constrained to record that as far as the investigation being based on ocular evidence is concerned, the investigation had been shoddy and abysmal.

71. Moreover, we find that the Investigating Officer apparently believing the confessional statements-initiated investigation and subsequently also filed charge-sheet. We find that even filing of this charge-sheet on the basis of confessional statement to be choosy on the part of the officer, as it has come on records that the I.O. has mentioned that there were altogether 11 accused persons, who have been found to have been involved in the present case. However, admittedly the charge-sheet has been filed against eight persons only, thereby technically picking and choosing the Appellants to face the Trial and picking and dropping the name of the other three co-accused namely Rinku @ Vimal Shukla, Karia Goad, whose role were similar to that of Appellant Ajeet Rai @ Shintu and third one being Pradeep Rai, who was assigned the role of a conspirator and have been accused for providing the Alto Car, which was allegedly used in the crime. Apparently, P.W.-

12, the investigation officer when asked in his cross-examination as to why the aforesaid selective charge-sheet has been filed has merely stated that the investigation was continuing and was subsequently taken over by other I.O.'s namely, S.I. Yashwant Singh (P.W.-17) and Inspector Pankaj Kumar Singh (P.W.-18) and it was for them to explain about the same. Although, these facts may not be crucial in the chain of circumstances, however the fact remains that this confessional statement was not taken seriously at all by the subsequent I.O.'s because of the legal impediment and it was only the brain child of P.W.-12 (I.O. Ramesh Chandra Yadav), who championed to file the present charge-sheet against the Appellants, which contains us to note that the investigation was carried at the whims and fancies of the Investigating officer rather than on reliable and permissible legal evidence.

72. In any case, in the absence of ocular witness, the prosecution has entirely based the present case on circumstantial evidence. The law regarding the appreciation of evidence in a case based on circumstantial evidence has been well settled by a plethora of decisions. The locus classicus on this issue being *Sharad Birdhichand Sarda v. State of Maharashtra*, reported in (1984) 4 SCC 116; wherein the Apex Court formulated the five golden principles (Panchsheel) regarding appreciation of evidence in a case based on circumstantial evidence and held as follows: -

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established; It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra* [(1973) 2 SCC 793:1973 SCC (Cri) 1033:1973 Cri LJ 1783] where the observations were made : [SCC para 19, p. 807 : SCC (Cri) p. 1047] Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between “may be” and “must be” is long and divides vague conjectures from sure conclusions.”

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(3) the circumstances should be of a conclusive nature and tendency;

(4) they should exclude every possible hypothesis except the one to be proved; and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

73. Having noted these principles governing a case based on circumstantial evidence, we now proceed to discuss the evidence led by the prosecution to bring home the charges against the

appellants. The learned Trial Court while returning a finding of conviction against the Appellants has basically bifurcated the whole hypothesis of guilt into three broad spectrums. The first being that as to whether the prosecution was successful in proving that the deceased Maaz Ahmed sustained fatal bullet injuries on 29th of May, 2013 at 10:30 PM at the residence of the complainant- Husn Bano. The learned Trial Court after considering the F.I.R. lodged by the complainant-P.W.-1 and analysing the evidence brought on record being the panchayatnama (Exhibit-Ka-7), Post-mortem report (Exhibit- Ka-6), deposition of P.W.-6, Recovery Memo (Exhibit-Ka-12), deposition of P.W.-12, Site-plan (Exhibit-Ka-12), found that there was no serious dispute and infirmity in the version of the witnesses and the recovery memo relating to the person who has been murdered and the place of murder and as such went on to hold that the said proposition in affirmative.

74. The second hypothesis set-up by the learned Trial Court was as to whether the deceased Maaz Ahmed died a homicidal death caused by firearm injuries on vital parts of the body, sufficient in the ordinary course of nature to cause death. The learned Trial Court held that the medical and post-mortem evidence (Exhibit Ka-6) clearly proved that the deceased Maaz Ahmad died a homicidal death caused by firearm injuries on vital parts of the body, sufficient in the ordinary course of nature to cause death. The nature, location and trajectory of the entry-and-exit wounds, corroborated by the Expert opinion of P.W.-6, established that the firearm was used with the intention of causing death, thereby proving the commission of culpable homicide amounting to murder of deceased- Maaz Ahmad on 29.05.2013 at 10:30 PM in the house of Complainant/P.W.-1.

75. As far as the aforesaid two hypotheses is concerned, the learned Counsel for the Appellants have fairly submitted that there is no serious dispute relating to the aforesaid two hypotheses as they relate to the place and nature of occurrence of the incidence, but has in a very conscientious manner submitted that their such concession may not be adversely construed against the Appellants as the said two hypothesis does not connect any of the Appellant to the crime in question in any manner. Thus, we immediately come to the third hypothesis setup by the learned Trial Court, which is as to whether the prosecution on the basis of evidence, were able to prove that the allegations made against the accused persons for entering into a criminal conspiracy to murder Maaz Ahmed and in that regard have fraudulently and dishonestly forged documents of the Maruti Alto car and used the same to commit the crime by using the fake documents as genuine. An ancillary hypothesis was also framed as to whether the accused hid the weapon and the vehicle used in the murder of the complainant's nephew Maaz Ahmed with the intention of destroying the evidence.

76. Admittedly, the learned Trial Court went on to acquit all the accused/Appellants for the offences under Section 420, 467, 468, 471, 116 and 201 of the Indian Penal Code and since there is no cross-Appeal by the state, this Court rests the matter at this stage only, however, we see that all these Appellants have been convicted under Section 302/120-B I.P.C. and additionally, Appellants - Sunil Kumar Saini@ Pahalwan (A-7) and Rahul Rai (A-6) for offences under Section 449/34 I.P.C. and Appellant-Sunil Kumar Saini@ Pahalwan (A-7) under Section 3/25 of the Arms Act.

77. A facial reading of the impugned judgment, brings us immediately to fore that the learned Trial Court has essentially based its conviction in terms of the third hypothesis, wherein according

to the Trial Court the following circumstantial evidences formed a chain of events linking the accused person with the crime committed:

- (a) Confessional Statement of co-accused;
- (b) Recoveries of Crime Weapon, Alto car and Motor Cycles;
- (c) Motive of murder;
- (d) Criminal conspiracy amongst the accused in furtherance to the aforesaid motive;
- (e) Inadequate explanation by the accused- Sanjay Rai (A-1) relating to Alto-car under Section 313 Cr.P.C.

78. A perusal of the records reveal that the entire investigation of the present case is hinged on (i) information of informer, (ii) confessional statement of co-accused, (iii) disclosure statement of accused, and (iv) evidence of mobile network. A fact, which has also been deposed by P.W.-12 (Investigating officer), the star witness of the prosecution.

79. Having said so and delineated the boundaries within which this court has to examine the evidence, which has come on record, we find that the prosecution has heavily relied on two confessional statements recorded in verbatim. One being at the instance of Accused- Ajeet Rai @ Shintu and Rahul Rai, who were arrested on 08.06.2013 from Lachimpur (Azamgarh) as deposed by P.W.-8 (Vishal Pandey- Circle Officer), P.W.-9 and P.W.-10, all members of the Police party in the said arrest. As regards the crime, these P.W.'s deposed that the arrested accused have confessed involvement in the present murder and disclosed having been engaged to commit the crime for monetary consideration by co-accused Sandeep Rai (A-2) lodged in jail "on the asking of" Sanjay Rai (A-1), who was known to accused Sandeep Rai (A-2). These accused in custody also allegedly confessed that Sandeep Rai (A-2) had given this work to them, along with co-accused Ajit Yadav @ Bunty, Sunil Kumar Saini @ @ Pahalwan and the crime was to be committed with the help of Rinku @ Vimal Shukla, Rambabu @ Chotu (A-3) and Rakesh Kumar Soni @ Bablu (A-5).

Apparently, both the accused persons have confessed that it was Sandeep Rai (A-2), who had asked them to commit the crime and not Sanjay Rai.(A-1). Further, it has also come in evidence that factually the confessional statement could not be correct as at that point of time, Sandeep Rai (A-2) was in Jail and no evidence has come on record whether oral or scientific (C.D.R.) establishing any connection and/or communication between Sanjay Rai and the Jailed Sandeep Rai or the said Sandeep Rai and these two co-accused. Thus, it is anybody's guess as to how there had been any communication.

80. In any case, the second confessional statement relied upon has been allegedly made by Accused- Ajit Yadav @ Bunty, who was apprehended on 13.07.2013 by P.W.-12 (I.O.- Ramesh Chandra Yadav) from Mau at about 3:15 AM in the morning, while riding a pulsar Motorcycle. The police, while apprehending the said Accused-Ajit Yadav also recovered a Mobile, SIM Cards and a sling bag, wherein service book of Maruti Alto car, which contained the name of the owner

as Pradeep Rai. The said Ajit Yadav @ Bunty, while in police custody confessed that the said Maruti Alto car has been taken by him from accused- Sanjay Rai (A-1) as a deal for murder, as he was unable to pay the balance amount. In the side pockets of the sling bag, 6 passport size photos of Accused - Sanjay Rai (A-1) were found and seeing the same, the said accused told it to be the same Sanjay Rai (A-1), who had got the murder done. He also named the other accused persons involved in the said crime and also made certain disclosure statement, which shall be dealt with later on. The said confessional statement has been sought to be proved by P.W.-12.

81. First and foremost, this confessional statement cannot be proved by P.W.-8, P.W.-9, P.W.-10 or P.W.-12 in the manner it has been sought to be proved. These witnesses have technically deposed in their examination-in-chief the confession allegedly made to them by the accused person, which is legally impermissible. The Hon'ble Apex Court in the case of Randeep Singh @ Rana V/s State of Haryana , reported in 2024 SCC Online SC 3383; on the issue of recording such kind of confessional statement went on to hold in paragraph 16 of the said judgment:

16. 'A perusal of the deposition of PW-27, which we have quoted above, shows that he attempted to prove the confessions allegedly made by the accused to a police officer when they were in Police custody. There is a complete prohibition on even proving such confessions. The learned Trial Judge has completely lost sight of Sections 25 and 26 of the Evidence Act and has allowed PW-27 to prove the confessions allegedly made by the accused while they were in police custody.'

(Emphasis supplied)

82. Thus, there is a complete ban on even proving the confessions made by a co-accused while in police custody. Further, so, far as the confessional statement of co-accused Ajeet Rai @ Shintu, co-accused Rahul Rai or Co-accused Ajit Yadav @ Bunty naming Accused- Sanjay Rai (A-1), or other co-accused is concerned, the said statement cannot be a substantial piece of evidence in view of the embargo of Section 25-28 of the Indian Evidence Act. First and foremost, it must be understood that there is no definition of "confession" provided in the Indian Evidence Act. "It does not indeed come within the definition of "evidence" contained in Section 3 of the said Act. The logic is quite clear, any confessional statement is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross-examination, thus, it is rightly not considered as evidence. Time and again the Courts have held confession to be a much weaker piece of evidence than the evidence of an approver, which is not subject to any of those infirmities. However, Section-30 of the Act, provides that the Court may take the confession into consideration and thereby, no doubt, makes it evidence on which the Court may act. Further, it would be noticed that as a result of the provisions contained in Section 30, the confession has no doubt to be regarded as amounting to evidence in a general way, because whatever is considered by the Court is evidence; circumstances which are considered by the Court as well as probabilities do amount to evidence in that generic sense. However, though confession may be regarded as evidence in that generic sense because of the provisions of Section 30, the fact remains that it is not "evidence", as defined by "Section 3 " of the Indian Evidence Act.

83. The summation of the aforesaid proposition result is that in dealing with a case against an accused person based on confessional statement of a co-accused, the Court cannot start with the confession of a co-accused person; it ought to begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. In the celebrated judgment of *Kashmira Singh v. State of M.P.*, reported in (1952) 1 SCC 275: AIR 1952 SC 159; the Supreme Court devised an approach as to how this kind of evidence has to be dealt with. In the said judgment the Apex Court authoritatively held as follows: -

“The proper way to approach a case of this kind is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then it is not necessary to call the confession in aid. But cases may arise where the judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept.”

(Emphasis supplied)

84. Thus, the confessional statement of co-accused Ajeet Rai @ Shintu, Rahul Rai or Ajit Yadav @ Buntty can be used merely as an assurance to the Court and cannot be the very basis of conviction, in case of non-availability of other substantive evidence against the accused. This confessional statement cannot be an alternate to evidence and at the most can act as a fortifying act for this Court to reassure itself that yes, the accused are additionally guilty because of the confessional statement of the co-accused. It must be understood that the aforesaid is as a matter of rule and there cannot be any concept of moral conviction or grave suspicion in the case of any accused as named by these co-accused persons. A Constitution Bench of the Hon'ble Supreme Court in the case of *Haricharan "Kurmi V/s State of Bihar"*, reported in AIR 1964 SC 1184; “which is being quoted herein below, deciphered the concept of the non-permissibility of conviction on the basis of confessional statement of the co-accused in the following manner:

“..the confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the court is inclined to' accept other evidence and feels the necessity of seeking for an assurance in support of its conclusion deducible, from the said evidence. In criminal trials, there is no scope for applying the principle of moral conviction or grave suspicion. In criminal cases where the other evidence adduced against an accused person is wholly” unsatisfactory and the prosecution seeks to rely on the confession of a co-accused person, the presumption of innocence which is the basis of criminal jurisprudence assists the accused person and compels the Court to render the verdict that the charge is not proved against him, and so, he is entitled to the benefit of doubt.”

(Emphasis supplied)

85. The “aforesaid judgment has been consistently relied upon by the Hon’ble Courts, including the Hon’ble Supreme Court in several cases, including in the case of Surinder Kumar Khanna v. Directorate of Revenue Intelligence, □reported in (2018) 8 SCC 271; wherein the Apex Court held that the conviction on the basis of confession of the co-accused is not permissible, as held in paragraph No.14 of the said judgment, which is extracted hereunder:

“14. In the absence of any substantive evidence it would be inappropriate to base the conviction of the appellant purely on the statements of co-accused. The appellant is therefore entitled to be acquitted of the charges levelled against him. ”We, therefore, accept this appeal, set aside the orders of conviction and sentence For example: State vs. Nalini, (1999) 5 SCC 253, paras 424 and 704 and acquit the appellant. The appellant shall be released forthwith unless his custody is required in connection with any other offence.”

(Emphasis supplied)

86. To the same effect is the judgment of the Hon’ble Supreme Court in the case of Dipakbhai Jagdishchandra Patel v. State of Gujarat, reported in (2019) 16 SCC 547; wherein in this regard, it has been held as under :-

“the confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusions deducible from the said evidence. In criminal cases where the other evidence adduced against an accused person is wholly unsatisfactory and the prosecution seeks to rely on the confession of a co-accused person, the presumption of innocence which is the basis of criminal jurisprudence assists the accused person and compels the court to render the verdict that the charge is not proved against him, and so, he is entitled to the benefit of doubt.”

87. On the conspectus of the aforesaid principle laid by the Hon’ble Supreme Court in the aforesaid Judgments, this Court is of the view that merely naming of any of the co-accused/appellants per se, in the confessional statement of a co-accused person does not in any manner proves the culpability of the other accused persons. Thus, we are clear in our mind that confessional statements of Ajeet Rai @ Shintu or Rahul Rai or Ajit Yadav @ Bunty being not a substantive piece of evidence it cannot be a base for conviction of any of the appellants.

88. Further, we find that although the confessional statement of Ajeet Rai @ Shintu and Rahul Rai does not lead to any discovery, however, we find that the confessional statement of the co-accused Ajit Yadav @ Bunty does not merely name the Accused Sanjay Rai (A-1) and other co-accused, but also discloses other things related to the commission of crime. Apparently, as per the prosecution story, the said accused Ajit Yadav@ Bunty also confessed that the firearm used in the said crime, had been hidden by him in the house of cousin brother of his partner in crime, namely co-accused Sunil Kumar Saini @ Pahlawan (A-7) at Varanasi, while they were on the run because of the raid of the police on the intervening night of 3/4th of July, 2013 at that place. It was on the said statement of the accused and on his pointing out a 9 MM country made pistol along with a magazine and five live bullets were found from the bathroom of Dinesh Chandra Saini (P.W.-4) inside his house, at Varanasi.

89. Apparently, the confessional statement of Ajit Yadav @ Bunty can be notionally divided into two parts, the one being wherein he named the involvement of other co-accused person, which as observed herein above cannot be a substantive piece of evidence and the second being the statement given in the nature of disclosure, to be admissible under Section 27 of the Indian Evidence Act. Thus, we see that the second part of the confessional statement of the said accused, pursuant to which recovery of pistol has been made from the house of Dinesh Chandra Saini (P.W.-4) can be made admissible, provided the same is trustworthy. However, while considering this kind of confessional statement, there is a caveat, in as much as the Hon'ble Supreme Court in the case of Alope Nath Dutta v. State of W.B., reported in (2007) 12 SCC 230 : (2008) 2 Supreme Court Cases (Cri) 264; devised a mechanism as to how these kinds of confessional statements can be made admissible under law. The Apex Court in Paragraph Nos. 53, 137 to 139, which are extracted hereunder, held as under, relevant to the context:

"53. It is, however, disturbing to note that a confession has not been brought on record in a manner contemplated by law. Law does not envisage taking on record the entire confession by marking it an exhibit incorporating both the admissible and inadmissible part thereof together. We intend to point out that only that part of confession is admissible, which would be leading to the recovery of dead body and/or recovery of articles of Biswanath; the purported confession proceeded to state even the mode and manner in which Biswanath was allegedly killed. It should not have been done. It may influence the mind of the Court.

137. Judicial confession is admissible in evidence against the maker thereof under Section 26 of the Evidence Act; but against the co-accused, Section 30 will be applicable.

138. Section 30 of the Evidence Act reads thus:

30. Consideration of proved confession affecting person making it and others jointly under trial for same offence. □ When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

139. The expression the Court may take into consideration such confession is significant. It signifies that such confession by the maker as against the co-accused himself should be treated as a piece of corroborative evidence. In absence of any substantive evidence, no judgment of conviction can be recorded only on the basis of confession of a co-accused, be it extra-judicial confession or a judicial confession and least of all on the basis of retracted confession.'

90. Though the confessional statement has not been brought on record as contemplated under law, in the sense that the recovery Memo's also contain the confession of crime also. However, this court being alerted by the judgment of the Hon'ble Supreme Court (supra) would tread the path carefully and in that manner the approach of this Court would be to consider the other part of the confessional statement as evidence against these Appellants, as in case the said evidence appears to

be satisfactory and reliable. In case this Court would be inclined to hold that the said evidence may sustain the charge framed against the said accused person, then in that case, this Court would then turn to the confession with a view to assure itself that the conclusion which it is inclined to draw from the other evidence is right and legally tenable.

91. In the view of this Court, everything now turns to the disclosure statement of the accused Ajit Yadav @ Bunty relating to his disclosure leading to recovery of fire-arms from Varanasi and of course the other evidences collected in the present case. At this stage, we would like to refer to the deposition given by P.W.-12 (Investigating Officer). The said witness has specifically admitted that acting on the information received by them relating to the movement of accused-Ajit Yadav@ Bunty, the police party left Lucknow at about 00.05 AM on 13.07.2013 as recorded in the rawangi register of PS: Indira Nagar and thereupon the accused Ajit Yadav @ Bunty was arrested on 13.07.2013 at about 3:15 AM at Mau, about more than 300 KM away from Lucknow. At this juncture, it is to be noted that there is an apparent doubt on the timing of arrest of the said Accused - Ajit yadav @ Bunty, as it appears from the evidence brought on record that the police party took merely 3 hours to travel a distance of close to 300 KM i.e. from Lucknow to Mau, which is hard to believe, if not impossible. Further, when PW-12 is cross-examined on the said aspect he does not give any satisfactory reply. Thus, the timing and place of arrest is under serious cloud of doubt. However, this cloud may not retain this court any further, as according to this court, the significant factor in the chain of event would be to test the recovery made pursuant to the disclosure statement of the accused Ajit Yadav@ Bunty and not stuck by the illegality or otherwise of the arrest.

92. The quest for search of truth by this court, brings us to the further story of the prosecution that the accused Ajit Yadav @ Bunty admitted his guilt and, therefore, his confessional statement was recorded. Thereafter, the police party took the said arrested Ajit Yadav to house of Dinesh Chandra Saini (P.W.-4) at Varanasi i.e. the house of cousin brother of his partner in crime, co-accused Sunil Kumar Saini @ Pahalwan (A-7), wherein it was confessed by the said accused as to the place where he had hidden the weapon of crime, while they were on the run because of the raid of the police on the intervening night of 3/4th of July, 2013. It was on the said confessional statement of the accused and on his pointing out a 9mm country made pistol along with a magazine and five live bullets were found from the bathroom of Dinesh Chandra Saini (P.W.-4). However, it is relevant to note that, from the Trial Court record, it is revealed that the place from where the weapon of crime had been hidden was raided earlier by the police party along with P.W.-12 (Investigating officer) on 04.07.2013 i.e exactly 8-9 days ago, wherein the said I.O. had allegedly recovered Maruti Alto Car used in the crime, forged Driving license of Accused - Ajit Yadav @ Bunty, his clothes, ATM Card etc. (Exhibit-Ka-15). Thus, the place of recovery of fire-arm was at the same place, wherein it was raided earlier by the same police personnel and keeping in view the stuff/material allegedly recovered in that earlier raid, it cannot be said that the fire-arm was not to be found that day. However, then the question arises as to why the fire-arms did not form a part of earlier recovery memo (Exhibit-Ka-15). This court finds that the earlier recovery was not on the pointing of any accused (say pursuant to disclosure statement of any accused) nor was recovered from the possession of any accused, because admittedly recovery has been made from the house of Dinesh Chandra Saini (P.W.-4), who is not an accused in the present case. Thus, possibly in order to give more legal sanctity and veracity to the recovery of fire-arms, it was but obvious for the investigating officer to show the recovery of fire-arms pursuant to a disclosure statement of

accused- Ajit Yadav @ Bunty, so as to be admissible under Section 27 of the Indian Evidence Act. The said theory gains some significance and fortification in the light of the fact that the said recovery of fire-arms was witnessed by the owner of the house Dinesh Chandra Saini (P.W.-4), who turned hostile and stated that the said recovery was not effected in his presence and merely his signatures were obtained on blank paper, when the police had come to inform him at Varanasi about the arrest of accused - Sunil Kumar Saini @ Pahalwan, This aspect has come in evidence of P.W.-12 and P.W.-14, in their deposition.

93. Now, it is pertinent to note that from the Trial Court record, it transpires that the Accused Ajit Yadav @ Bunty was arrested on 13.07.2013 and obviously his confessional statement was recorded on that date only. Thus, from the evidence led by the prosecution, it transpires that before the confessional statement of the appellant/accused Ajit Yadav @ Bunty was recorded and before he could lead to recovery of the firearms, the Police party were very well aware about the place where the Accused Ajit Yadav @ Bunty and accused Sunil Kumar Saini @ Pahalwan (A-7) were hiding and had left their belongings. Thus, it appears that to get recovered a pistol from that hide-out by the police party and that too after more than fourteen days of the incidence from the bathroom of the house of Dinesh Chandra Saini (P.W.-4), who has turned hostile and not is an accused in the present case appears to be doubtful. This Court is further fortified in its belief for the simple reason that the house was not under the control of the accused- Ajit Yadav @ Bunty but was under the control of Dinesh Chandra Saini (P.W.-4) and his brother. The place of recovery was available and open to Dinesh Chandra Saini, the owner of the house and to any person, who visited his house during the intervening more than 45 days as the incident is of 29.05.2013 and the date of recovery is 13.07.2013. There is absolutely no evidence on the aspect that when incriminating material like fire-arm or the earlier alto car etc. were recovered from the house of Dinesh Chandra Saini (P.W.-4), as to why he was not made an accused in the present case or why no investigation has been carried in that direction or at least investigate as to how the fire-arms or the alto car had made its way to his house in Varanasi located almost more than 325 KM from the place of incident at Lucknow.

94. Unfortunately, nothing of this kind has been done by the Investigating Officer. In fact, as a record, it has come in evidence the other way round that the owner of the house- Dinesh Chandra Saini (P.W.-4) has categorically stated that the accused- Ajit Yadav @ Bunty has never come his house at Varanasi. Further, P.W.-4, who was slated to be the only independent witness has turned hostile as he specifically denied the recovery having made in his presence and the signature were merely made only on blank papers. Further, we see that there is no witness to support the said recovery, except for the police, who had visited the said premises earlier. Neither the local police of Varanasi had been contacted as deposed by P.W.-12 and P.W.-11 and most importantly the owner of the house Mr. Dinesh Chandra Saini has refused any such recovery from his house, whereupon he was declared hostile. Therefore, the recovery of the pistol at the instance of the accused on the basis of confessional statement given by him before the Police appears to be shrouded with thick black cloud of doubt. At this stage, we would like to refer to the decision rendered by the Hon'ble Supreme Court in the case of Bijender @ Mandar, (2022) 1 SCC 92; wherein the Hon'ble Supreme Court has observed, in Para-16, as under:-

‘16. We have implored ourselves with abounding pronouncements of this Court on this point. It may be true that at times the court can convict an accused exclusively on the basis of his disclosure statement and the resultant recovery of inculpatory material. However, in order to sustain the guilt of such accused, the recovery should be unimpeachable and not be shrouded with elements of doubt. [Vijay Thakur v. State of H.P., (2014) 14 SCC 609 : (2015) 1 SCC (Cri) 454] We may hasten to add that circumstances such as : (i) the period of interval between the malfeasance and the disclosure; (ii) commonality of the recovered object and its availability in the market; (iii) nature of the object and its relevance to the crime; (iv) ease of transferability of the object; (v) the testimony and trustworthiness of the attesting witness before the court and/or other like factors, are weighty considerations that aid in gauging the intrinsic evidentiary value and credibility of the recovery. (See : Tulsiram Kanu v. State [Tulsiram Kanu v. State, 1951 SCC 92 : AIR 1954 SC 1] , Pancho v. State of Haryana [Pancho v. State of Haryana, (2011) 10 SCC 165 : (2012) 1 SCC (Cri) 223] , State of Rajasthan v. Talevar [State of Rajasthan v. Talevar, (2011) 11 SCC 666 : (2011) 3 SCC (Cri) 457] and Bharama Parasram Kudhachkar v. State of Karnataka [Bharama Parasram Kudhachkar v. State of Karnataka, (2014) 14 SCC 431 : (2015) 1 SCC (Cri) 395])’

(Emphasis supplied)

95. Similarly, the Hon’ble Supreme Court in the case of Ramanand @ Nandlal Bharti Vs. State of Uttar Pradesh, reported in 2022 SCC OnLine SC 1396; has devised a mechanism as to how recovery pursuant to a disclosure statement has to be made by the police. Unfortunately, we find that the recovery of the firearm on the pointing out of Accused- Ajit Yadav @ Bunty has been done in the most cavalier manner, although the same would had been vital and a significant link in the circumstantial evidence against the Appellant. Had the police followed the procedure known to law in recovery of the fire-arms, the same would have lent a conjunctional role in the chain of events of circumstantial evidence. At this juncture, we would refer to the judgment of the Apex Court in Ramandand (Supra), which laid down the procedure for making a recovery before and after the disclosure statement of the accused in the following manner: -

‘53. If, it is say of the investigating officer that the accused appellant while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence along with his blood stained clothes then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence. When the accused while in custody makes such statement before the two independent witnesses (panch witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along

with the accused and the two independent witnesses (panch witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or blood stained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter.

54. The reason why we are not ready or rather reluctant to accept the evidence of discovery is that the investigating officer in his oral evidence has not said about the exact words uttered by the accused at the police station. The second reason to discard the evidence of discovery is that the investigating officer has failed to prove the contents of the discovery panchnama. The third reason to discard the evidence is that even if the entire oral evidence of the investigating officer is accepted as it is, what is lacking is the authorship of concealment. The fourth reason to discard the evidence of the discovery is that although one of the panch witnesses PW-2, Chhatarpal Raidas was examined by the prosecution in the course of the trial, yet has not said a word that he had also acted as a panch witness for the purpose of discovery of the weapon of offence and the blood stained clothes. The second panch witness namely Pratap though available was not examined by the prosecution for some reason. Therefore, we are now left with the evidence of the investigating officer so far as the discovery of the weapon of offence and the blood stained clothes as one of the incriminating pieces of circumstances is concerned. We are conscious of the position of law that even if the independent witnesses to the discovery panchnama are not examined or if no witness was present at the time of discovery or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the discovery evidence unreliable. In such circumstances, the Court has to consider the evidence of the investigating officer who deposed to the fact of discovery based on the statement elicited from the accused on its own worth.

55. Applying the aforesaid principle of law, we find the evidence of the investigating officer not only unreliable but we can go to the extent to saying that the same does not constitute legal evidence.

56. The requirement of law that needs to be fulfilled before accepting the evidence of discovery is that by proving the contents of the panchnama. The investigating officer in his deposition is obliged in law to prove the contents of the panchnama and it is only if the investigating officer has successfully proved the contents of the discovery panchnama in accordance with law, then in that case the prosecution may be justified in relying upon such evidence and the trial court may also accept the evidence

96. From the aforesaid observation made by the Hon^{ble} Supreme Court, it can be said that when the accused- Ajit Yadav @ Bunty expressed his willingness to give his confessional statement, it was the bounden duty of the Investigating Officer to call for two independent witnesses and only in their presence, the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of the offence. Further, when the accused while in custody makes such statement before two

independent witnesses (Panch Witnesses), the exact statement or the exact words uttered by the accused should be incorporated in the first part of the Panchnama that the I.O. may draw in accordance with law. This first part of Panchnama for the purpose of Section 27 of the Indian Evidence Act is always drawn in presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the article used in commission of the offence has been hidden. Once the first part of the Panchnama is completed, thereafter the police party along with the accused and the two independent witnesses (panch witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of the offence or any incriminating material is discovered then that part of the entire process would form the second part of the panchnama as contemplated under Section 27 of the Indian Evidence Act.

97. Keeping in view the aforesaid decisions rendered by the Hon'ble Supreme Court, if the facts of the present case are examined, it is revealed that in the entire oral evidence of the Investigating Officer, he had not disclosed about the aforesaid aspects and, therefore, the theory of the prosecution with regard to the evidence of discovery made pursuant to the confessional statement of accused Ajit Yadav @ Bunt is not duly proved. On the contrary, as observed hereinabove, prior to recording the confessional statement of the said accused, the place where the crime weapon was hidden was known to the Police authority. It must be noted that Sections 25 and 26 of the Evidence Act stipulate that confession made to a police officer is not admissible. However, Section 27 is an exception to Sections 25 and 26 and serves as a proviso to both these Sections. This Court is of the view that Section 27 lifts the ban, though partially, to the admissibility of confessions, however the removal of the ban is not of such an extent so as to absolutely undo the object of Section 26. As such the statement whether confessional or not is allowed to be given in evidence but that portion only which distinctly relates to discovery of the fact is admissible. A discovery of a fact includes the object found, the place from which it is produced and the knowledge of the appellant/accused as to its existence (Udai Bhan Vs. State of Uttar Pradesh, AIR 1962 SC 1116).

98. Further, this Court finds that it is not only in the case of recovery exhibited as "Ka-17", wherein the Investigating Officer has failed to follow the due process of drawing the discovery panchnama and has not been duly proved as per law, but in almost all the recovery memo. We find that there are almost eight recoveries made pursuant to disclosure statement of the accused/appellants. This recovery can be presented chronologically in a tabular chart as follows:-

S. No.	Recovery Memo	Dated	Relating To	Witness in Memo	Proved By
1	Exhibit Ka-12 <i>(written by P.W.-18 on dictation of P.W.-12)</i>	30/05/2013	4 empty cartridges, 3 fired bullets, blood stained bed sheet and piece of plain bed sheet from crime site.	IO R.C. Yadav (P.W.-12), Mohd. Mobeen, Ikhlaq Ahmad. Interestingly, only PW-12 has been shown to be the only	(P.W.-12); Mohd. Mobeen (P.W.-3) declared hostile. Therefore, no independent witness.

				police personnel in the recovery Memo, although it has been shown that the memo was written by PW-18 on the dictation of PW-12, which creates a suspicion on the recovery made.	
2	Exhibit Ka-13 (<i>written by P.W.-18 on dictation of P.W.-12</i>)	08/06/2013	Pulsar motorcycle from the house of Sanjay Rai on pointing of Rambabu @ Chotu. <i>Used in crime, on confessional statement of accused.</i>	IO R.C. Yadav (P.W.-12), Const. Zamil Ahmad, Const. Manoj Kumar Pandey	P.W.-12 admits in his cross-examination that confessional statement only available to connect the recovery with the crime. No independent witness.
3	Exhibit Ka-14 (<i>written by P.W.-18 on dictation of P.W.-12</i>)	08/06/2013	1 mobile phone (NOKIA) from possession of Rambabu @ Chotu. <i>Used in crime – confessional statement of accused. CDR prepared but not incriminating as deposed by P.W.-12.</i>	IO R.C. Yadav (P.W.-12), Const. Zamil Ahmad, Const. Manoj Kumar Pandey	P.W.-12 admits in his cross-examination that confessional statement only available to connect the recovery with the crime. No independent witness.
4	Exhibit Ka-10	08/06/2013	2 mobile phones, 6 SIM cards, Cash of Rs.4430, Pulsar motorcycle. <i>Used in crime, confessional statement of</i>	Vishal Pandey (P.W.-8)	P.W.-12 admits in his cross-examination that only confessional statement available to connect the recovery of motorcycle with the

			<i>accused.</i>		crime. Mobile, SIM, cash not to be incriminating. No independent witness.
5	Exhibit Ka-15 (written by P.W.-18 on dictation of P.W.-12)	04/07/2013	Maruti Alto Car, fake driving license, document of car, clothes of Ajit Yadav @ Bunty, ATM card from the house of Dinesh Chandra Saini, Varanasi.	P.W.-12, Dinesh Chandra Saini, Ramesh Chand Saini	P.W.-12. PW-4 (Dinesh Chandra Saini) declared hostile as he specifically deposed that no recovery in his presence and signatures on blank papers. P.W.-18 claimed that the recovery memo was written in his own handwriting, however P.W.-12 claimed that it was in his handwriting. Interestingly, P.W.-18 at the time of recovery was stationed at Lucknow PS and did not travel to Varanasi, which creates a serious doubt about the veracity and genuineness of the recovery.
6	Exhibit Ka-16 (written by P.W.-18 on direction of P.W.-12)	06/07/2013	Country made pistol .315 Bore and four live cartridges from Sunil Kumar Saini @ Pahalwan	H.C. Zamil Ahmed, Constable Manoj Pandey, Constable Arun Kumar, Akshay Kumar, Constable Anil Singh, Sunil Saini, Anurag Mishra, Anil	P.W.-12. P.W.-12 admits that the recovery memo has been written in the handwriting of P.W.-18. A facial reading of the recovery memo shows that all the recovery memos have been written

				Singh Yadav, Ram Jee Yadav, Ramesh Chandra Yadav (I.O.)	<i>in one handwriting.</i>
7	Exhibit Ka-21	13/07/2013	1 Mobile Phone, 1 Pulsar Motorcycle, 1 Black Bag from Ajit Yadav @ Bunty, Seven bullets, 6 Passport Size Photo, 8 Mobile Phone, 14 SIM Cards, at Mau at 3:15 a.m. (Village– Bajapur)	Constable Dharmendra Kumar, HC Jamil Ahmed, Constable Vinay Kumar Singh and Constable Udit Narayan Singh	P.W.-12
8	Exhibit Ka-17	13/07/2013	9mm Pistol, 5 Live cartridges from house of Dinesh Chandra Saini, Varanasi, on the pointing of Ajit Yadav @ Bunty	Dinesh Chandra Saini, his brother Ramesh Chandra Saini, Constable Dharmendra Kumar, Constable Vinay Kumar Singh and Constable Udit Narayan Singh	P.W.-12. <i>PW-4 (Dinesh Chandra Saini) declared hostile as he specifically deposed that no recovery in his presence and signatures on blank papers. PW-18 claimed that the recovery memo was written in his own handwriting, however P.W.-12 has claimed that it was in his handwriting.</i>

99. In the present case, the prosecution has merely produced I.O. Ramesh Chandra Yadav (P.W.-12) as the panch witnesses to prove the recovery pursuant to the disclosure made by the Appellant - Ajit Yadav @ Bunty, as per Exhibit-Ka-17 and Exhibit-Ka-21, bare perusal of the document exhibited as Exhibit-Ka-21 relating to the recovery of articles from the person of Accused - Ajit Yadav @ Bunty, shows that the same has been witness by Constable Dharmendra Kumar, H.C. Jamil Ahmed, Constable Vinay Kumar Singh and Constable Udit Narayan Singh. There are no independent witnesses. Similarly, Exhibit-Ka-17 relating to the recovery of firearm

from the house of Dinesh Chandra Saini (P.W.-4) from Varanasi, shows that the same has been witness by Dinesh Chandra Saini, his brother □Ramesh Chandra Saini, Constable Dharmendra Kumar, Constable Vinay Kumar Singh and Constable Udit Narayan Singh. Admittedly, it is P.W.-12 (I.O. Ramesh Chandra Yadav), who has only entered the witness box to prove both these Recovery Memo. This Court has no doubt in its mind that the P.W.-12 as being the Investigating Officer of the case is not barred from testifying the recovery memo as he was a competent witness, who had carried the said recovery, however in the present facts and circumstances, when the arrest of the accused Ajit Yadav @ Bunty is under doubt, it has come on record that the owner of the place, wherein the recovery has been made has turned hostile, it was imperative that some independent person ought to had been also made to enter the witness box to testify these recovery.

100. We also find that except for the Recovery memo Exhibit Ka-10 relating to recovery of 2 mobile phones and SIM cards after the arrest of Accused - Rahul Rai and Accused- Ajeet Rai, all the seven Recovery Memo has been proved by the Investigating Officer (P.W.-12) himself, notwithstanding presence of the police party and other witnesses named in the Recovery Memo creates an inquisitive doubt in the mind of this court. However, we would park this doubt at this juncture and deal with it later. Having said so, we find that the issue raised by the learned Senior Counsel for the Appellants relating to the statement of P.W.-12 in his deposition that these Recovery Memo has been written by him in his own handwriting being contradictory to the deposition of P.W.-18 (Constable Zamil Ahmed), who has deposed that all the recovery memo has been written by him, gain some prominence to test the veracity of these recovery memo, as to whether they were prepared at the place of recovery or at the police station. Further, we find that most of recovery memo might not only have been recorded in the presence of police party, but there ought to have been independent witnesses also, keeping in view the place as has been mentioned in this Recovery memo, which would had corroborated these recoveries. Thus, we find this recovery to be shrouded under doubt for the simple reason that it is not clear as to who recorded this recovery memo. In case, it is PW-18, who had recorded in his own handwriting, there is no explanation as to why he has not bene shown as a witness in Exhibit-Ka-12 and Ka-15. Further, in case he has recorded all the recovery, why he did not enter the witness box and at least share the overburdened investigating officer (P.W.-12).

101. We also find from the deposition of P.W.-12 that even the recoveries made pursuant to these recovery memos had been a futile exercise as it could not be corroborated from any independent witnesses or any other evidence relating to the use of this recovery in the crime. It is apparent from the records that the I.O. Ramesh Chandra Yadav (P.W.-12) had admitted in his cross-examination that except the confessional statements of the co-accused, there is no evidence to show that, (i) the Pulsar Motor-cycle recovered as per Exhibit-Ka-13, from the house of Accused - Sanjay Rai (A-1) and on the pointing of co-accused Ram Babu @ Chotu, or (ii) the Pulsar Motor-cycle recovered from Accused Ajeet Rai @ Shintu and Rahul Rai, while arresting them on 08.06.2013 vide Exhibit Ka-10, or (iii) the Pulsar Motor-cycle recovered from Accused - Ajit Yadav @ Bunty, while arresting him on 13.07.2013 vide Exhibit- Ka-17, were used in the crime. The same analogy follows for recovery of Maruti Alto car also recovered vide Exhibit-Ka-15 from Varanasi, which has been admitted by P.W.-12 that besides the confessional statement of the co-accused, there is no independent or corroborative evidence to show the said car was used in the crime.

102. We also find that there is no evidence on record to connect the use of the recovered Maruti Alto car in the crime, which belonged to Pradeep Rai, brother of co-accused Sanjay Rai (A-1) and recovered from Varanasi. The learned Trial Court has been very sentimental towards the factum of recovery made relating to a Maruti Alto car from Varanasi and subsequently, there being no explanation of the said recovery by accused - Sanjay Rai in statement recorded under Section 313 of the Cr.P.C. Firstly, it has to be understood that the prosecution has to stand and fall on its own legs and cannot depend on the silence or no explanation of the accused for proving a case against him. There is always a right of no self-incrimination available to an accused. However, it has been submitted by the learned Counsel for the state that no explanation is an important link in the chain of circumstantial evidence against the accused persons and as such the same cannot be lightly taken. However, we fail to understand that when the basic foundation of recovery of the said Maruti Alto car from the house of Dinesh Chandra Saini (P.W.-4) is shaken as he has specifically deposed that the recovery was not made in his presence and as such was declared hostile, why it was at all expected from the accused- Sanjay Rai (A-1) to prove the alto car's presence at Varanasi at Mr. Saini's house. Further, it must be understood that the recovery of this Maruti Alto car was not pursuant to any disclosure statement of any of the accused so as to make admissible under Section 27 of the Indian Evidence Act, nor the same was recovered from the possession of any of the accused person. In any case, no independent steps of proving that the recovery of the said Maruti Alto car was actually made from Varanasi has been made by the prosecution by producing any person and/or police from the local police of Varanasi, which could had clinched the issue.

103. We find that the Learned Trial court as well as the learned AGA for the state has attributed great significance to the release of the aforesaid Alto car by Pradeep Rai, brother of Sanjay Rai from the custody of the police, to establish that the car was used in the crime. The Ld. Trial court has extensively dealt with the ownership of the said Maruti Car in the impugned judgment, which according to us was not in dispute at all. We fail to understand as to how release of the said Alto car by the real owner would Pari Materia also mean its usage in the present crime, especially when we know that Mr. Pradeep Rai is not an accused in the present case. The release of the said car cannot be connected to the Appellant- Sanjay Rai. The Alto car was admittedly not recovered on the disclosure or pointing of any of the accused person nor the same has been recovered from possession of any of the accused/Appellants. The Alto car is admittedly owned by Pradeep Rai, who is not an accused in the present case. Further, the Alto car was found at the house of one Mr. Dinesh Chandra Saini (P.W.-4) allegedly at Varanasi, who again is not an accused in the present case. Merely because Pradeep Rai is brother of Accused, does not provide a key to the involvement of the said Alto car in the present crime. As far as recovery of Service booklet from the sling bag, which was in possession of accused- Ajit Yadav @ Bunty is concerned, as aforesaid the recovery and arrest itself are doubtful. Further, one fail to understand that service booklet, which is normally kept in the car itself or at a place where the car is parked i.e. Varanasi, how did it find its place to a sling bag of accused Ajit Yadav @ Bunty to be got recovered from him at Mau. This court fails to understand as to how merely getting released the Alto car would lead to involvement of the car or Sanjay Rai in the crime, especially when the prosecution has failed to prove the recovery of the said car from Varanasi and as to how the said car has travelled from Lucknow to Varanasi, which is almost 325 KM. Admittedly, except for the confessional statement of the co-accused there is no evidence to show that the said Maruti Alto car was used in the crime. Even as per the deposition of

P.W.-12, except for the confessional statement of the co-accused, there is no evidence on record to show that the said car was used in the crime.

104. Further, we find that as per the prosecution story, various Mobile and SIM cards were recovered as per the aforesaid recovery memo and were also investigated by the police. However, we find from the deposition of P.W.-12, the Investigating Officer, who is also the star witness that he has admitted in his cross-examination that the call details records (C.D.R.) collected by him during the investigation did not show the presence of any of the accused person at the spot. The only incriminating evidence adduced by him is that he has deposed that the accused person were in contact, but again to prove the said deposition, the minimum which was expected from P.W.-12 was to file and exhibit the C.D.R. on the records of the present case. Alas, the Investigating Officer (P.W.-12) did not exhibit this C.D.R. and prove the same as per law and merely a futile attempt was made by the learned A.G.A. during the course of hearing to bring it within the domain of admissibility under Section 294 of the Code of Criminal Procedure. Needless to that the operation of Section 294 is in altogether different hemisphere, but we do not wish to enter that arena as we ourself took over the task of glancing the said C.D.R. during the hearing, which admittedly as per the learned A.G.A. also is absolutely incomprehensible and incoherent not leading to any person anywhere. We are confident that the prosecution and the Learned Trial Court having a glance of this C.D.R. has rightly chosen not to exhibit the said C.D.R. as it does not further the case of the prosecution in any manner. We also find that it was because of this incomprehensibility and specifically Sandeep Rai (A-2) being in Jail at that point of time that the competent court refused to permit the I.O. to draw voice sample of accused - Sanjay Rai during investigation, although the same was offered by the said Accused, and we find that besides the aforesaid 7 Recovery Memos, the I.O. has merely exhibited four other documents, i.e. Exhibit Ka -11 (Site-Plan of place of incident), Exhibit Ka -18 (Site Plan of recovery of Firearm from Varanasi) and the two charge-sheets, i.e. Exhibit Ka -19 and Exhibit Ka - 20. Thus, P.W.-12 failed to prove the C.D.R. of any of the mobiles seized and/or recovered during Investigation.

105. We find that the learned Trial Court while convicting the accused has heavily relied on the forensic evidence to the extent that the firearm recovered as per Exhibit Ka-17 on the pointing of accused- Ajit Yadav @ Bunty has been held to have fired the empty cartridges recovered from the crime-site as per Exhibit-Ka-12. Admittedly, as per the prosecution story, four empty cartridges and three fired bullets were recovered from the crime-site (as per Exhibit Ka-12) and one bullet was recovered from the body of the deceased as is apparent from the post-mortem report (Exhibit Ka-6) and the same was handed over to the concerned constable and sent to the S.S.P., Lucknow. However, from the forensic report, it is revealed that no doubt the empty cartridges matched with the firearm got recovered on the pointing of accused Ajit Yadav @ Bunty, but interestingly neither the three bullets recovered from the crime-site or the one found in the body of the deceased matched with the said firearm. The forensic report clearly mentions that of the three bullets recovered from the crime-site none of them have been fired from the firearm, which was got recovered by accused- Ajit Yadav @ Bunty and the fourth bullet found in the person of the deceased could not be compared, as it was deformed and due to absence of specific characteristics. We do not wish to comment on the said aspect of the evidence, which has been given amiss by the learned Trial Court, but we record that it has come in evidence that the firearm recovered on the pointing of accused- Ajit Yadav @ Bunty, which has been termed to be the weapon of crime by the

prosecution was handed over to the Constable Satyendra Kumar Singh on 12.08.2013 from the Malkhana, however, the report itself reveals that the said weapon came to be deposited with the F.S.L. only on 20.08.2013.

106. There is absolutely no explanation as to where was the said firearm during this intervening period of eight days, which again cast a serious doubt on the quality and purpose of investigation by the police. Further, we cannot be oblivious to the fact that the four empty cartridges, which has been found to be matching with the firearm recovered on the pointing of Ajit Yadav, is under serious cloud, as firstly besides the two independent witness it was P.W.-12, who had been shown to be present as a witness. The said recovery memo (Exhibit Ka-12) has been proved by P.W.-12 himself as one of the independent witness namely, P.W.-3 turned hostile as he refused to agree that these empty cartridges were recovered in his presence and the other independent witness did not enter the witness box. If that was not enough, P.W.-18 (Zamil Ahemd) has claimed that the recovery memo was written in his own handwriting, but he has not been shown as a witness in the memo, which shows that the recovery memo was apparently prepared at the police station and not at the crime site and blank papers were got signed from the independent witnesses as has been claimed by P.W.-3 (Mohd. Mobeen), which all goes to cast a serious doubt on the recovery of blank cartridges as well as the forensic report. Further, time and again the courts have held that even when a recovered weapon matches the F.S.L. report, the recovery is unreliable if effected from one accessible location without independent attestation or an unbroken chain of circumstances. (please see, Govind Vs State of Haryana, 2025 SCCOnline SC 2456)

107. It is one thing to say that the recoveries are under suspicious cloud and were not effected as provided under law and another thing to say that these recoveries might have been not recovered as provided under law but they definitely provide an important link to the crime and as such may be considered by the Court. We find that unfortunately the prosecution fails on both front as not only the recoveries are under suspicion but these recoveries do not find any linkage to the commission of crime. Except for the confessional statement of the co-accused, there is absolutely no evidence to show that these recovered articles were used in the present crime. The Hon^{ble} Apex Court in the case of Mustkeem V/s State of Rajasthan, reported in (2011) 11 SCC 724; held that sole circumstances of recover of weapon cannot form the basis of conviction unless the same was connected with the murder of the deceased by the accused person.

108. At this juncture, we find that the P.W.-12 (Investigating Officer) in his cross-examination has specifically deposed that the entire case is based on four legs of investigation, viz (i) information provided by the police informers, which is inadmissible in eyes, (ii) Confessional statement given to co-accused, which again is inadmissible as per law, (iii) Call Details Records (C.D.R.) collected during investigation, which again does not show the presence of the accused nor any incriminating material and (iv) the recoveries made pursuant to disclosure statement. Thus, according to this court, the entire case would had turned on the recovery, however unfortunately these recoveries have found to be doubtful and does not inspire of any confidence. In any case as per the deposition of P.W.-12, except for the confessional statement of the accused during custodial interrogation, there is neither any corroborative material nor any independent witnesses to connect this recovery to the crime.

109. We further find that the Investigating officer (P.W.-12) in his deposition has basically brought the entire case diary on record by elaborating the investigation carried by him on various dates vide the various parchas as mentioned in his evidence. First and foremost, it must be understood that case diary, which are recorded under Section 172 of the Cr.P.C are not a piece of evidence. In order to further complicate the issue, the learned Trial court has gone one step ahead in convicting the appellants by relying on several parts of the case diary, which were not even relied by the prosecution during the Trial. It is settled law that portion of the statement recorded under Section 161 Cr.P.C can be used in the evidence, which is required to refresh memory of the said witness and the entire case diary or the entire statement cannot be exhibited in evidence. The learned Trial court has committed a manifest error in several circumstances which were narrated in the case diary and not proved as evidence as per law. Pertinently, there is absolutely no evidence which has come on record to show that accused Rahul Rai and Sunil Kumar Saini @ Pahalwan, were present on the crime spot, however the Id. Trial court has traversed into the realms of illegality by weaving itself a story without any basis and/or evidence on record to hold that Rahul Rai and Sunil Kr. Saini were at the crime spot and has trespassed into the house of the complainant to commit the offence of murder, so as to invoke the provisions of Section 449 of the Indian Penal Code against them. Interestingly, both the eye-witness, whose house has been trespassed has categorically deposed that these persons were not involved in any crime, nor even in trespassing. The Hon^{ble} Apex Court in the case of Mohd. Ankoos v. High Court of A.P., reported in (2010) 1 SCC 94 : AIR 2010 SC 566; in somewhat similar situation, went on to observe as follows:-

“28.....A criminal court can use the case diary in the aid of any inquiry or trial but not as an evidence. This position is made clear by Section 172(2) of the Code. Section 172(3) places restrictions upon the use of case diary by providing that the accused has no right to call for the case diary but if it is used by the police officer who made the entries for refreshing his memory or if the court uses it for the purpose of contradicting such police officer, it will be so done in the manner provided in Section 161 of the Code and Section 145 of the Evidence Act. The court's power to consider the case diary is not unfettered. In light of the inhibitions contained in Section 172(2), it is not open to the court to place reliance on the case diary as a piece of evidence directly or indirectly.

110. We fail to understand that when the case diary cannot be used as evidence against the accused, as to how the same can be used in any other manner against him. The case diaries have been deposed by the Investigating Officer indiscriminately because of the simple reason that almost all the fact witness have turned hostile and the other statements are merely custodial confessional statement or are relating to factum of recoveries.. The evidence of the investigating officer (P.W.-12) was reckoned and the story as spoken of by the witness were elaborately discussed by the learned Trial Court in the impugned judgment, which in effect is based on the Section 161 Statements made by the various witnesses, before the police and can be used for the limited purpose of contradicting the said witness as per Section 162 of the Cr.P.C, which is not the present case herein. The Hon^{ble} Apex Court in the case of Renuka Prasad v/s State, reported in 2025 SCC Online SC 1074; has specifically provided a procedure, which makes for an interesting read:

“24... The next aspect dealt with by the High Court was on the conspiracy and preparation for the crime. Rightly reliance was placed on “Mohd. Khalid v. State of W.B.” wherein it was opined that conspiracies are not hatched in the open and when done in secrecy, it is very difficult for direct

evidence to be produced relating to the conspiracy and the Court would have to fall back upon circumstantial evidence, which also has to be based on inferences made from the various circumstances proved from the acts and omissions of the accused. The Division Bench while referring to the various witnesses who were produced to prove the conspiracy first looked at the evidence of PW71, a Director of one of the institutions, also the wife of A1 and PW72, who was an employee in the same institution. PW71 though denied the various documents alleged to have been produced before Court, the Division Bench presumed that her testimony was a deliberate falsehood intended to save her husband. PW72 had produced the salary certificate of A2 issued by him in the capacity of in-charge Principal of the Dental College. The aforesaid evidence was relied on to find close acquaintance of A1 with A2 to A4, the former being the employer of the latter three persons. Insofar as the conspiracy hatched, the Court relied on the voluntary statements made by A3, A5 and A6 before PW87 and relied on *Mehboob Ali v. State of Rajasthan*. The testimony of PW87 regarding the sites, where discussions were held and money changed hands, pointed out through the voluntary statements made by A1, was relied on by the Division Bench. In addition, Section 161 statements of PW61 to PW64 who had resiled from their statements in the testimony before Court regarding A3 having been seen with A5 and A6 in a hotel on 28.04.2011, was also relied upon. As far as the preparation made, since the witnesses examined for proving the same also turned hostile, the evidence of the police officers were reckoned and the story as spoken of by the IOs were elaborately discussed, which in effect is based on the Section 161 Statements made by the various witnesses, before the police.

25. Section 162 of the Criminal Procedure Code, 1898 was dealt with in *Kali Ram v. State of H.P.*⁹ to hold that the provision makes it plain that the statement made by any person to a police officer in the course of an investigation cannot be used for any purpose except for the purpose of contradicting a witness, as mentioned in the proviso to sub-section (1) or for the purposes mentioned in sub-section (2) (sic para-17). The said principle was reiterated with reference to Section 162 under the "Criminal Procedure Code, 1973 in *R. Shaji v. State of Kerala*¹⁰. It was held by this Court that statements under Section 161 Cr. P.C. can be used only for the purpose of contradiction and statements under Section-164 "Cr. P.C." can be used for both corroboration and contradiction (sic para-25). It was further held that though the object of the statement of witness recorded under Section 164 is two-fold, there is no proposition that if the statement of a witness is recorded under Section 164 before a Magistrate, the evidence of such witness in Court should be discarded. *Rajendra Singh v. State of U.P.*¹¹ was a case in which the High Court, as in the present case, relied upon the statements of six witnesses, recorded by the IO under Section 161 Cr. P.C., to enter a finding that the respondent could not have been present at the scene of crime, as he was present in the meeting of the Nagar Nigam at Allahabad. It was unequivocally held that a statement under Section 161 Cr. P.C. is not a substantive piece of evidence. In view of the proviso to subsection (1) of Section 162 Cr. P.C., the statement can be used only for the limited purpose of contradicting the maker thereof in the manner laid down in the said proviso (sic para-6). It was found that the High Court committed a manifest error of law in relying upon wholly inadmissible evidence in recording a finding on the alibi claimed by one of the accused.

111. Further, it must be well understood and moreover the law stands settled that the case diary or the police diaries can be made use by the learned Trial court only for aiding it, in a Trial. It is absolutely improper for the Learned Trial Court to use them in its judgment or seek confirmation

of its opinion on the question of appreciation of evidence from statements contained in that case diary. Any entries made by the police officer of its day- to- day activities in the case diary cannot be used as evidence against the accused.

112. Now, we come to the next limb of the circumstantial evidence as mooted by the Learned Trial court to convict the Appellant. i.e. theory of motive. It is trite that proof of motive is not sine qua non in a case of murder based on direct evidence. However, in a case based purely on circumstantial evidence, motive assumes significance and would provide an important corroborative link in the chain of incriminating circumstances. In State (Delhi Admn.) v. Shri Gulzari Lal Tandon, reported in 1979 SCC OnLine SC 202; the Apex Court shed light on the relevance of proving motive in a case based on circumstantial evidence in the following terms: -

“1. We might also mention that in cases where the case of the prosecution rests purely on circumstantial evidence, motive undoubtedly plays an important part in order to tilt the scale against the accused. It is also well-settled that the accused can be convicted on circumstantial evidence only if every other reasonable hypothesis of guilt is completely excluded and the circumstances are wholly inconsistent with the innocence of the accused.

(emphasis supplied)

113. The prosecution, in its story, has attributed a slender motive to the appellant- Sanjay Rai (A-1) by alleging that he was in affair with Ms. Nida Arsi (P.W.-16), whereas she wanted to marry some Akmal, who was her neighbour. As per the story, the murder was conspired to falsely implicate Akmal in murder case, so as to win over Ms. Nida Arsi. We have marshalled the entire evidence on record. It has been alleged that Sanjay Rai kept an eye on Nida Arsi and for that matter tapped the phone of her for considerable period of time, which according to the prosecution shows some kind of love affair between the two. But this Court finds that neither the C.D.R. nor any proof has been exhibited which would establish the said proposition, whereas it has come on record that in the deposition of P.W.-16 that she does not wishes to marry Akmal and the said statement was supported by the deposition of P.W.-2, brother of Ms. Nida Arsi, who deposed that Akmal was a neighbour and was in a one sided love with his sister and he had also expressed complicity of Akmal in the murder during the investigation to the police. Apparently, the learned Trial Court has extrapolated the deposition of Nida Arsi and has presupposed that as Nida Arsi knew Sanjay Rai (A-1) since the last six months, it was to be equated to having a love affair with him. We are completely astounded and loss for words for the said supposition, which does not have any basis nor any legs to stand. Thus, we are of the opinion that the aforesaid allegation seems to be nothing but a sheer conjecture and purely far fetched. The prosecution has led no evidence to show that the appellant Sanjay Rai (A-1) was having any relation with the said Ms. Nida Arsi. Further one fail to understand that the motive seems to be a amiss and not a plausible rendition of having an affair with any one as it would be absolutely insane for a person to not eliminate the lover (say with whom Nida Arsi planned to marry) in the first instance and rather plan and conspire to murder a distant cousin of 14 years, who does not have any role nor any interception in the alleged love story between the said Sanjay Rai and Nida Arsi. had the so-called plan of murder executed against the brother of Nida Arsi, it would have given a different complexion. This court may not sound verbose in noting that as a matter of fact & record the brother of Nida Arsi- Nadeem (P.W.-2) has

specifically deposed that Sanjay Rai is not involved in the present crime and expressed his suspicion on Akmal. The motive appears to be a bogey merely provided for the sake of giving dimensions to the present case, for obvious reasons of completing the change of circumstantial evidence. However, Alas! the prosecution have failed even in proving this significant link against the Appellants..

114. The next question, which falls for our consideration is as to whether criminal conspiracy has been proved by the prosecution. It is fairly well settled that in order to prove the charge of conspiracy, within the ambit of Section 120-B, it is necessary to establish that there was an agreement between the parties for doing an unlawful act. No doubt, it is difficult to establish conspiracy by direct evidence at all, but at the same time, in absence of any evidence to show meeting of minds between the conspirators for the intended object of committing an illegal act, it is not safe to hold a person guilty for offences under Section 120-B of I.P.C. The Apex Court in the case of *Parveen v. State of Haryana*, reported in 2021 SCC OnLine SC 1184; held that A few bits here and a few bits there on which prosecution relies, cannot be held to be adequate for connecting the accused with the commission of crime of criminal conspiracy.

115. In any case, it must also be understood that the offence of criminal conspiracy has its foundation in an agreement to commit an offence or to achieve a lawful object through unlawful means. There is no admissible evidence of record, which would have any whisper as to the meeting of mind of any of the Appellants. The entire evidence is based on custodial confessional statement, which is not admissible as per law. We are aware that conspiracy would barely be hatched in the open and it would be practically not possible to have any direct evidence of the same, however time and again the Courts have held that there ought to be some material on record to draw an inference about the complicity of the Appellants in the present crime. Unfortunately, in the present case, on a bare reading of the evidence, we are unable to draw any such inference. The Hon'ble Supreme Court has held in the case of *Baliya V/s State of M.P.*, reported in (2012) 9 SCC 696; that :-

“17. .Proof or otherwise of such conspiracy is a matter of inference and the court in drawing such an inference must consider whether the basic facts i.e. circumstances from which the inference is to be drawn have been proved beyond all reasonable doubt, and thereafter, whether from such proved and established circumstances no other conclusion except that the accused had agreed to commit an offence can be drawn. Naturally in evaluating the proved circumstances for the purposes of drawing any inference adverse to the accused, the benefit of any doubt that may creep in must go to the accused.

116. We fail to find any meeting of mind having been proved by the prosecution. Even the conspiracy has been founded on the premises of confessional statement of the co-accused. Keeping in view the legal impermissibility of the confessional statements, we are clear in our mind that the rigorous of Section 120-B cannot be invoked against the Appellants. Even the alleged confessional statements of co-accused -Ajit Yadav @ Bunt, in absence of other acceptable corroborative evidence, is not safe to convict the accused.”In the case of”, *Indra Dalal v. State Of Haryana*, reported in (2015) 11 SCC 31; this Court has considered the conviction based only on confessional statement and recovery of vehicle used in the crime. In the said case, while setting aside the conviction, the Apex Court has held in paragraphs 16 and 17 as under :-

“16. The philosophy behind the aforesaid provision is acceptance of a harsh reality that confessions are extorted by the police officers by practising oppression and torture or even inducement and, therefore, they are unworthy of any credence. The provision absolutely excludes from evidence against the accused a confession made by him to a police officer. This provision applies even to those confessions which are made to a police officer who may not otherwise be acting as such. If he is a police officer and confession was made in his presence, in whatever capacity, the same becomes inadmissible in evidence. This is the substantive rule of law enshrined under this provision and this strict rule has been reiterated countless by this Court as well as the High Courts.

17. The word “confession” has nowhere been defined. However, the courts have resorted to the dictionary meaning and explained that incriminating statements by the accused to the police suggesting the inference of the commission of the crime would amount to confession and, therefore, inadmissible under this provision. It is also defined to mean a direct acknowledgment of guilt and not the admission of any incriminating fact, however grave or conclusive.”Section 26” of the Evidence Act makes all those confessions inadmissible when they are made by any person, whilst he is in the custody of a police officer, unless such a confession is made in the immediate presence of a Magistrate. Therefore, when a person is in police custody, the confession made by him even to a third person, that is, other than a police officer, shall also become inadmissible.”

117. As far as the last link relating to inadequate explanation of the alto car by Accused- Sanjay Rai (A-1) in his statement recorded under Section 313 of the Cr.P.C is concerned, which has been construed as the last nail in the coffin to establish the guilt against the accused- Sanjay Rai (A-1), it must be clearly borne in mind that the law on the subject is almost settled that merely on the basis of suspicion, conviction would not be tenable. Merely that Sanjay Rai (A-1) could not give an adequate reply relating to Maruti Alto car cannot be the sole ground for his conviction. It is the bounden duty of the prosecution to prove beyond reasonable doubt that it is only the accused and the accused alone who has committed the crime. Inadequate reply under Section 313 cannot be the foundation for convicting the accused. The Hon^{ble} Supreme Court in the case of Raja Nayak Vs State of Chhattisgarh, reported in (2024) 3 SCC 481; clearly held that non-explanation under Section 313 Cr.P.C cannot be used as an additional link to complete the chain of circumstances in a case based on circumstantial evidence, in the following words :-

“31. Insofar as the finding of the High Court that the appellant has failed to give any explanation in his statement under Section 313 Cr. P.C. is concerned, we find that the High Court has failed to appreciate the basic principle that it is only after the prosecution discharges its duty of proving the case beyond all reasonable doubt that the false explanation or non-explanation of the accused could be taken into consideration. In any case, as held by this Court in the case of Sharad Birdhichand Sarda Vs state of Maharashtra, (1984) 4 SCC 116, in a case based on circumstantial evidence, the non- explanation or false explanation of the accused under[□]Section 313[□]Cr.P.C. cannot be used as an additional link to complete the chain of circumstances. It can only be used to fortify the conclusion of guilt already arrived at on the basis of other proven circumstances.

118. Further, in “Mohan Singh v. Prem Singh & Anr., reported in (2002) 10 SCC 236; the Apex Court held that the statement of the accused under”Section 313”Cr.P.C. is not a substantive

piece of evidence. It can be used for appreciating evidence led by the prosecution to accept or reject it. It is, however, not a substitute for the evidence of the prosecution. If the exculpatory part of his statement is found to be false and the evidence led by the prosecution is reliable, the inculpatory part of his statement can be taken aid of to lend assurance to the evidence of the prosecution. If the prosecution evidence does not inspire confidence to sustain the conviction of the accused, the inculpatory part of his statement under "Section 313" Cr.P.C. cannot be made the sole basis of his conviction.

119. In *Sujit Biswas v. State of Assam*, reported in (2013) 12 SCC 406; the Hon'ble Supreme Court held that an adverse inference can be drawn against the accused only and only if the incriminating material stands fully established, and the accused is not able to furnish any explanation for the same. However, the accused has the right to remain silent, as he cannot be forced to become a witness against himself. The Supreme Court authoritatively held in *Shivaji Chintappa Patil Vs. State of Maharashtra*, reported in (2021) 5 SCC 626; that false explanation or non-explanation offered by accused under Section 313 Cr.P.C. cannot be used to prove case of prosecution. False explanation or non-explanation of the accused to the questions posed by the court under Section 313 of the Code of Criminal Procedure cannot be used as a link to complete the chain. It can only be used as an additional circumstance, when the prosecution has proved the chain of circumstances leading to no other conclusion than the guilt of the accused.

120. Further, we see that Section 449 of the I.P.C. has been invoked against Appellants Rahul Rai (A-6) and Sunil Kumar Saini @ Pahalwan (A-7) on the ground that these two persons were the assailants along with another accused- Ajit Yadav @ Bunty, who had tress-passed the house of the complainant (P.W.-1) on the fateful night of 29.05.2013 to commit the murder of Mazz Ahmed. However, on perusal of the evidence, which has come on record, we find that none of these eye-witness have named the said two persons to be present on the spot nor there is any such statement by the formal or police witnesses. P.W.-1 and P.W.-2, who were the eye-witness of the incident specifically deposed that these persons were not involved in the crime and they refused even to identify them as the assailants. Both P.W.-1 and P.W.-2 in their statement recorded under Section 164 Cr.P.C had not named any of these persons. It must be understood that there had been altogether eight accused in the present matter, wherein seven are appellants before this court and technically there is no role as such assigned during the investigation, which has been presumed by the learned Trial Court. The only role, which came to be assigned to the A-6 and A-7 is merely on the basis of confessional statements and there is no corroborative material on record. This court has already held herein above that confessional statement during custodial interrogation, without any disclosure is hit by the provisions of Section 25-27 of the Evidence Act and is not permissible as evidence in the eyes of law. Similarly, it follows for invocation of Section 34 I.P.C. against these two persons. There is no visible evidence on records about any common intention or meeting of mind of the accused persons.

121. Testing the facts of the case at hand on the anvil of the aforesaid dictum of the Supreme Court, this Court on a conspectus of the entire material available on record and for the purpose of rendering a reasoned and equitable decision, keeping in mind the role assigned to the different Appellants on the basis of confessional statement of the co-accused recorded during custodial interrogation, which is inadmissible in evidence and cannot form a basis of either criminal

prosecution or establishing the guilt of the accused. (Please see paragraph 16 to 21 of Indra Dalal V/s State of Haryana, (2015) 11 SCC 31). The following questions are being put by this court to itself, so as to assess the individual role of each accused-appellant (A-1 to A-7) and reassure itself of the decision being taken :-

121.1) Sanjay Rai (A-1)

(a) What is the alleged role of accused-appellant Sanjay Rai (A-1) in the murder of Maaz Ahmad?

As per the prosecution's case, the accused-appellant Sanjay Rai (A-1) is the "mastermind/principal conspirator" who orchestrated the murder to overawe and fulfill his sinister objectives. His motive was to eliminate a hurdle in his romantic interest in Nida Arsi (P.W.-16) by killing a member of her family and framing her love interest, Akmal. He allegedly hired contract killers to carry out the shooting on May 29, 2013, at the complainant's house in Faridi Nagar, Lucknow.

(b) What evidence does the prosecution presented against accused-appellant Sanjay Rai (A-1)?

The prosecution heavily relied on recovery memos (Exhibits 10-17, and 21) proved by P.W.-8, Vishal Pandey and P.W.-12, Ramesh Chand Yadav, including the recovery of a Pulsar motorcycle from his house on June 8, 2013. Motive was sought to be supported by Nida Arsi's cross-examination, where she admitted prior conversations and meetings with Sanjay Rai (A-1), and his admission under Section 313 Cr.P.C. (Question 25) that he knew her. Police documents, case diary statements under Section 161 Cr.P.C., and the investigation's scientific conduct are cited. His failure to explain the recovery of Alto car from Varanasi from the hose of Dinesh Chandra Saini (P.W.-4) under Section 313 Cr.P.C. was used to draw adverse inference.

(c) What are the defense arguments challenging the guilt of the accused □ appellant Sanjay Rai (A-1)?

The Learned Senior Counsel appearing for the appellants has argued that the conviction is based on Police statements, Confessional statements (inadmissible), and flawed recoveries without independent witnesses or corroboration. No direct evidence linked the accused-appellant Sanjay Rai (A-1) to the crime spot; even C.D.R.s show no presence of A-1 at the crime scene or nearby. The investigation exonerated initial suspects (Arif's family and Akmal) prematurely, and Sanjay Rai □s (A-1) name surfaced without any tip-off. Witnesses turned hostile and the complainant denied his involvement. Motive is unproven, as Nida Arshi denied any affair or marriage opposition. Mere non-elaboration of the answer under Section 313 Cr. P.C does not entail conviction against him.

(d) Are there inconsistencies or lacks in the evidence that could suggest innocence of Sanjay Rai (A-1)?

There are key inconsistencies which include lack of Test Identification Parade of assailants for the eye witnesses, no independent corroboration for recoveries, hostile eyewitnesses (including complainant Husn Bano) and no proof of conspiracy meetings. The role assigned to Sanjay Rai is on the basis of confessional statement of a co-accused recorded during custodial interrogation, who names him to be connected to Sandeep Rai (A-2). Allegedly as per the confessional statement, Sandeep Rai, who was lodged in Jail at that point of time, had asked them to murder on the askance of Sanjay Rai. There is no material witnesses proving the linkage between the said persons. The prosecution cannot establish any link between the recovery of Pulsar Motor cycle from the premises of Sanjay Rai on the pointing of another co-accused Ram Babu @ Chotu with that of the murder executed. As explained, there is also no specific material to connect recovery of Alto car. The Forensic link of recovery of fire-arms is doubtful, which in any case does not link to the culpability of Sanjay Rai (A-1). The Trial Court relied heavily on Case Diary excerpts not formally exhibited, which is impermissible in law. The entire story is based on confessional statement, which again is not permissible under law. Additionally, to reassure ourselves that Sanjay Rai could be given benefit of doubt, we find that it has come on record (vide an application filed under Section 391 Cr.P.C) that Akmal (exonerated earlier), named as an accused by P.W.-2 had been instrumental in the murder of one of the sons of Complainant (P.W.-1), which possibly suggests towards intended misdirection in investigation. The said fact also stands fortified from the statement recorded under Section 164 Cr.P.C of P.W.-1, which is exhibited as Exhibit Ka-2, wherein she has stated that on the fateful night the assailants have come calling the name of his sons Nadeem and Adib, however Maaz Ahmed, her nephew has been murdered wrongly in their place.

(e) Based on the evidences and submissions, what factors determine the guilt or innocence of the accused-appellant Sanjay Rai's (A-1)?

The prosecution's case is circumstantial, hinging on motive and Police recoveries, but lacks an unbreakable chain of evidence as elaborated herein above. Thus, the circumstances from which the conclusion of guilt is to be drawn is not fully established as mandated in Sharad Birdhichand Sarda case (supra). The procedural flaws in recovery and inadmissible confessions, potentially creates reasonable doubt for innocence of the accused-appellant Sanjay Rai (A-1).

121.2) Sandeep Rai (A-2)

(a) What is the alleged role of the accused-appellant Sandeep Rai (A-2) in the murder of Maaz Ahmad?

Sandeep Rai (A-2) has been alleged to be a “co-conspirator” in the Criminal Conspiracy led by the principal conspirator - Sanjay Rai (A-1). The prosecution implies his involvement through association, as he was charge-sheeted along with 6 other co-accused on 01.09.2013, though specific details on his actions have not been elaborated in the evidence brought on record by the prosecution, in the present case.

(b) What evidence does the prosecution presented against accused-appellant Sandeep Rai (A-2)?

The evidence against accused-appellant Sandeep Rai (A-2) is primarily circumstantial, linked to the overall conspiracy. The only evidence which has been brought against him is the confessional statement of co-accused. The Recovery memos or the Police investigations does not connect him with the crime. The prosecution's evidence focuses on the group's recoveries (i.e., vehicles, weapons), implying shared guilt along with the other accused-appellants, under Section 120B and Section 34 I.P.C.

(c) What are the defense arguments challenging guilt of Sandeep Rai's (A-2)?

The defense asserted that the accused-appellant Sandeep Rai (A-2) was in jail at the time of the incident (May 29, 2013), making physical participation impossible. No evidence proves his connectivity or conspiracy, meetings with Sanjay Rai (A-1) or other assailants. The prosecution relied upon majorly on inadmissible confessions and Police statements, without any independent corroboration.

(d) Are there inconsistencies or lacks in the evidence that could suggest innocence of Sandeep Rai's (A-2)?

A significant lack that incarceration of the accused-appellant Sandeep Rai (A-2) on the date of incident excludes him from being at the crime-scene. No specific motive or role is detailed beyond collective charge-sheeting. General investigative flaws (i.e., No T.I.P., hostile witnesses) apply and thus, weakening the chain of circumstances in the present case.

(e) Based on the evidences and submissions, what factors determine the guilt or innocence of Sandeep Rai's (A-2)?

The prosecution's case of Criminal Conspiracy against the accused-appellant Sandeep Rai (A-2) is weak due to his alibi, inferring innocence from direct involvement. He has not been assigned any specific role, except for him naming in the conspiracy, which is under serious Doubt. Thus, the circumstances from which the conclusion of guilt is to be drawn is not fully established and the facts so established is not consistent with the hypothesis of his guilt.

121.3) Rambabu @ Chotu (A-3)

(a) What is the alleged role of the accused-appellant Rambabu @ Chotu (A-3) in the murder of Maaz Ahmad?

Rambabu @ Chotu (A-3) is alleged to have been part of the prior meeting of minds and agreement with the principal conspirator Sanjay Rai (A-1) and other accused-appellants, for committing the alleged crime. A-3 is alleged to have rendered active assistance and logistical support to the assailants by arranging essential resources like vehicle required for the commission of the offence and facilitating the movement of the assailants. The accused-appellant A-3 along with accused-appellant Rakesh Kumar Soni @ Bablu (A-5) was shown to be waiting for the assailants at Munshipulia, Lucknow in an Alto car. Such facilitation was crucial in enabling the

main assailants to reach the spot, execute the crime, and attempt escape undetected, thereby making him liable as a co-conspirator.

(b) What evidence does the prosecution presented against accused-appellant Rambabu @ Chotu (A-3)?

The prosecution in order to prove its case against the accused- appellant Rambabu @ Chotu (A-3), presented recovery of Pulsar motorcycle UP-73-C-2647 on his pointing out (i.e. Exhibit-Ka-13, dated June 8, 2013) from the house of Sanjay Rai (A-1) and a Nokia mobile phone from his possession (Exhibit-Ka-14), both proved by P.W.-12, Ramesh Chand Yadav, along with the accused-appellant Confessional statement during custody.

(c) What are the defense arguments challenging guilt of the accused-appellant Rambabu @ Chotu (A-3)?

The learned Counsel appearing for the accused-appellant Rambabu @ Chotu (A-3) asserted that the alleged recoveries had been made in the absence of any independent witnesses; only in the presence of Police personnel. Furthermore, the Complainant/P.W.-1 herself denied his involvement in the alleged crime. The evidence on record discloses only an inadmissible confession, bereft of any supporting C.D.R. analysis or proof linking the accused-appellant Rambabu @ Chotu (A-3) to the crime scene, rendering the prosecution case wholly unsubstantiated.

(d) Are there inconsistencies or lacks in the evidence that could suggest innocence of Rambabu @ Chotu (A-3)?

In the present case, the Motorcycle used to facilitate the movement of the assailants during the crime had been recovered only after the confession of the accused-appellant Rambabu @ Chotu (A-3), proved by P.W.-12, Ramesh Chand Yadav, but without any corroboration by an independent witness. Even the witnesses turned hostile in the present case and the recovery memo is flawed. There is no corroborative evidence to show that the Motor Cycle recovered on his pointing was used in the crime or that he was waiting in an Alto car at Munshipulia for safe passage of the assailants. The investigating officer (P.W.-12) has admitted that, except for the custodial confessional statements of the co-accused, there is no evidence to link the recovery with the Accused.

(e) Based on the evidences and submissions, what factors determine the guilt or innocence of accused-appellant Rambabu @ Chotu (A-3)?

In the present case, the Prosecution's recovery evidence is an important key to determine the guilt or innocence of the Rambabu @ Chotu (A-3), but the major procedural flaws exist in the said recovery, which creates a doubt, ultimately benefiting the accused-appellant Rambabu @ Chotu (A-3), favoring his innocence.

121.4) Ajeet Rai @ Shintu (A-4)

(a) What is the alleged role of the accused-appellant Ajeet Rai @ Shintu (A-4) in the murder of Maaz Ahmad?

The accused-appellant Ajeet Rai @ Shintu (A-4) is alleged to be one of the contract killers, hired by Sanjay Rai (A-1). He was waiting on road, on a Pulsar bike, when other assailants were trespassing at the complainant's house. He was arrested on June 8, 2013, in Azamgarh and he confessed his involvement in the shooting incident dated May 29, 2013 at the residence of Husn Bano situated in Faridi Nagar, Lucknow, proved by P.W.-8, Vishal Pandey.

(b) What evidence does the prosecution presented against accused-appellant Ajeet Rai @ Shintu (A-4)?

Acting upon an alleged tip-off, Police arrested and recovered two mobile phones and a Pulsar motorcycle from the accused-appellant Ajeet Rai @ Shintu (A-4) dated June 8, 2013. His confessional statement during his custodial interrogation links him to the murder of Maaz Ahmad. Part of the chain of recoveries from his possession were proved by P.W.-8, Vishal Pandey, against the accused-appellant Ajeet Rai @ Shintu (A-4).

(c) What are the defense arguments challenging guilt of accused-appellant Ajeet Rai @ Shintu (A-4)?

Learned Counsel appearing for the accused-appellant Ajeet Rai @ Shintu (A-4) asserted that the alleged recoveries have been made in the absence of any independent witnesses; only in the presence of Police personnel. His Confession recorded during custody is also inadmissible in the eyes of law. No Call Details Record evidence links him to the crime scene, although his mobile was seized during his arrest. Nothing incriminating was found from his possession. Furthermore, No Test Identification have been done by the eyewitnesses. There is clear sign of prejudice caused to the accused-appellant Ajeet Rai @ Shintu (A-4) in the alleged investigation, as initial suspects were exonerated.

(d) Are there inconsistencies or lacks in the evidence that could suggest innocence of Ajeet Rai @ Shintu (A-4)?

In the present case, the arrest of the accused-appellant Ajeet Rai @ Shintu (A-4) is solely based upon a "tip-off" without any substantial evidence. Also, the motorcycle recovery has not been corroborated by even a single independent witness. There is no evidence on record to show the involvement of the pulsar motor cycle in the crime, allegedly which he was riding on the fateful night. Even the fact eye-witnesses P.W.-1 (complainant) and P.W.-2 did not identify him or proved his presence at the crime scene.

(e) Based on the evidences and submissions, what factors determine the guilt or innocence of accused-appellant Ajeet Rai @ Shintu (A-4)?

In the present case, the prosecution has heavily relied upon the alleged recoveries and confessions recorded during the custody, but defense has vehemently argued on its inadmissibility

and lack of corroboration by the independent witnesses, leaning toward reasonable doubt towards innocence of the accused□appellant Ajeet Rai @ Shintu (A-4). The recoveries from their possession also does not lead anywhere. The facts established are not consistent with the hypothesis of the guilt of the present accused/Appellant.

121.5) Rakesh Kumar Soni @ Bablu (A-5)

(a) What is the alleged role of the accused-appellant Rakesh Kumar Soni @ Bablu (A-5) in the murder of Maaz Ahmad?

Rakesh Kumar Soni @ Bablu (A-5) is alleged to be a “co-conspirator” in the murder of a 14 year old boy, in a supporting role as he was alleged to be waiting for the assailants at Munshipulia, Lucknow in an Alto car along with aforesaid co-accused Ram Babu (A-3). The accused appellant Rakesh Kumar Soni @ Bablu (A-5) has been charge-sheeted separately on May 02, 2014.

(b) What evidence does the prosecution presented against accused-appellant Rakesh Kumar Soni @ Bablu (A-5)?

The prosecution has linked the accused “ appellant Rakesh Kumar Soni @ Bablu (A-5) through ongoing investigation and police documents, but no specific recovery has been brought on record as evidence. The prosecution has also allegedly implied the accused appellant Rakesh Kumar Soni @ Bablu (A-5) in group conspiracy for fulfilling the sinister objectives of the accused-appellant Sanjay Rai (A-1).

(c) What are the defense arguments challenging guilt of accused-appellant Rakesh Kumar Soni @ Bablu (A-5)?

Learned Counsel appearing for the accused-appellant Rakesh Kumar Soni @ Bablu (A-5) has asserted that the late charge-sheeting against the accused-appellant Rakesh Kumar Soni @ Bablu (A-5) suggests weak initial evidence. No direct link, motive, or recovery has been substantiated by the prosecution to establish the guilt of Rakesh Kumar Soni @ Bablu (A-5) as a co-conspirator. The general investigation reveals irregularities in this case.

(d) Are there inconsistencies or lacks in the evidence that could suggest innocence of Rakesh Kumar Soni @ Bablu (A-5)?

There is significant lack of specific details with respect to the guilt of the accused-appellant Rakesh Kumar Soni @ Bablu (A-5). Furthermore, there are no mention of his presence or any action at the crime scene or during alleged conspiracy.

(e) Based on the evidences and submissions, what factors determine the guilt or innocence of accused-appellant Rakesh Kumar Soni @ Bablu (A-5)?

With respect to the accused-appellant Rakesh Kumar Soni @ Bablu (A-5), the Prosecution's case appears thinnest here, with defense likely succeeding on insufficient evidence for his

culpability. Guilt would require proving conspiracy tie-in, which seems unestablished with respect to A-5 especially. The prosecution's case is circumstantial, hinging on conspiracy angle, which is basically lacking pointing towards a reasonable doubt about his involvement in the present case.

121.6) Rahul Rai (A-6)

(a) What is the alleged role of the accused-appellant Rahul Rai (A-6) in the murder of Maaz Ahmad?

The accused-appellant Rahul Rai (A-6) is alleged to be one of the main assailants, who entered the house of complainant Husn Bano and fired at the deceased boy, Maaz Ahmad along with two other assailants. A-6 was convicted under Sections 302/34 and 449 of the Indian Penal Code.

(b) What evidence does the prosecution presented against accused-appellant Rahul Rai (A-6)?

The accused-appellant Rahul Rai (A-6) was arrested along with another accused-appellant namely, Ajeet Rai @ Shintu (A-4) on June 8, 2013, at Azamgarh after receiving a tip-off. Prosecution has shown recovery of mobile phones and Pulsar motorcycle, alleged to be used in the crime, which has been proved by P.W.-12, Ramesh Chandra Yadav. Furthermore, the confessional statement links him with the crime and alleged conspiracy. Police documents and investigation chain also points towards his guilt for murdering Maaz Ahmad.

(c) What are the defense arguments challenging guilt of accused-appellant Rahul Rai (A-6)?

With respect to the guilt or innocence of the accused-appellant Rahul Rai (A-6) no eyewitness identification has been shown or proved; furthermore, even the eyewitnesses - P.W.-1 and P.W.-2 were not able to identify the said accused. Also, there is no basis for presence of the accused-appellant Rahul Rai (A-6) at the crime scene beyond his own confessions. Furthermore, even the Trial Court failed to reason, how (A-6) was linked as an assailant in the murder of Maaz Ahmad, as the Call Details Records shows no proof of his location at the crime scene in Faridi Nagar, Lucknow.

(d) Are there inconsistencies or lacks in the evidence that could suggest innocence of Rahul Rai (A-6)?

Learned Counsel appearing for the accused-appellant Rahul Rai (A-6) has vehemently contended that the lack of a Test Identification Parade and independent evidence for trespass/firing, in the present case has purged the prosecution's case. Also, the alleged Forensic links shown by the prosecution are tied up with others recoveries and not directly to the recovery made with respect to Rahul Rai (A-6).

(e) Based on the evidences and submissions, what factors determine the guilt or innocence of accused-appellant Rahul Rai (A-6)?

The prosecution's circumstantial evidence is contested by the absence of any direct proof against the accused - Rahul Rai (A-6), ultimately suggesting his innocence due to benefit of doubt. For convicting A-6 for trespassing the complainant's house requires some acceptance of his presence at the crime scene but nothing has been brought on record to prove it; to which the arguing Counsel has called it perverse. The benefit of doubt has to be given to the said accused. Except for the custodial confessional statement, there is no evidence on record to show his culpability in the present case.

121.7) Sunil Kumar Saini @ Pahalwan (A-7)

(a) What is the alleged role of the accused-appellant Sunil Kumar Saini @ Pahalwan (A-7) in the murder of Maaz Ahmad?

The accused-appellant Sunil Kumar Saini @ Pahalwan (A-7) is alleged to be one of the assailants, amongst those who trespassed into the house of complainant Husn Bano and fired bullets at the deceased, causing him grievously injured and who ultimately succumbed to an unfortunate death, in a very young age. The trial Court convicted the accused-appellant Sunil Kumar Saini @ Pahalwan (A-7) under Sections 302/34 and 449 I.P.C. Furthermore, a weapon has been recovered from the accused-appellant Sunil Kumar Saini @ Pahalwan (A-7) which includes a 315 bore country-made pistol, 4 alive cartridges; all proved by P.W.-14, Satish Chandra.

(b) What evidence does the prosecution presented against accused-appellant Sunil Kumar Saini @ Pahalwan (A-7) ?

Recovery of the assault weapon produced as Exhibit-Ka-16, connects the accused-appellant Sunil Kumar Saini @ Pahalwan (A-7) to the crime scene and a link in the chain of conspiracy is sought to be established as evidenced by Police recoveries and statements recorded under Sections 161 Cr.P.C. and 27 of the Indian Evidence Act.

(c) What are the defense arguments challenging guilt of accused-appellant Sunil Kumar Saini @ Pahalwan (A-7) ?

Learned Counsel appearing for the accused-appellant Sunil Kumar Saini @ Pahalwan (A-7) has vehemently contended that no identification or direct evidence for presence having been brought on record, coupled with the inadmissibility of the confessions and complete absence of independent corroboration. Furthermore, the Trial Court's conviction for trespass is also vitiated by sheer lack of substantial and sound reasoning against the accused-appellant (A-7). The country-made pistol recovered from his possession is admittedly not used in the crime.

(d) Are there inconsistencies or lacks in the evidence that could suggest innocence of Sunil Kumar Saini @ Pahalwan (A-7) ?

In the present case, there exists no direct Forensic link of the recovered weapon from the accused-appellant (A-7), as such link if asserted, pertains only to a co-accused coupled with the

hostility of key witnesses and the total lack of corroborative C.D.R.s, rendering the recovery wholly insufficient to sustain the conviction of the accused-appellant Sunil Kumar Saini @ Pahalwan (A-7).

(e) Based on the evidences and submissions, what factors determine the guilt or innocence of accused-appellant Sunil Kumar Saini @ Pahalwan (A-7)?

Analogous to the case of the accused-appellant Rahul Rai (A-6), here also the prosecution relied solely on contested circumstantial evidence to prosecute the accused-appellant Sunil Kumar Saini @ Pahalwan (A-7), to which the defense contended that these incriminating materials are inadequate to sustain a finding of guilt of the accused-appellant (A-7), particularly where no eyewitness support whatsoever exists on record.. The circumstantial chain of evidence does not boost any confidence of its completion, so as to hold the present accused/appellant guilty. On the contrary, this broken chain of events leaves a reasonable doubt and a permissible ground for a conclusion consistent with the innocence of the accused. The benefit of doubt has to be given to the said accused.

122. As a sequel to our discussion and appreciation of material on records, we do not find any evidence connecting the Appellants with the aforesaid crime. The eyewitness account of P.W.-1 and P.W.-2 does not name any of the Appellant, in fact P.W.-1, eye-witness in the present case, conversely deposes that Sanjay Rai, Ram Babu @ Chotu and Ajit Yadav are not involved in the present case and the case has been wrongly set-up against them. No doubt her statement does not carry any weight, however keeping in view that the only evidence brought on record against the Appellants are confessional statement of the co-accused, which are hit by Section 25-27 of the Indian Evidence Act and even the recovery pursuant to the disclosure statement does not boost any confidence and there is a conspicuous absence of causal link between these recoveries and the culpability of the Appellant, these disclosure statements does not, in any manner come to the rescue of the prosecution. Although, Motive assumes great significance in a case based substantially on circumstantial evidence, however we find that in the present matter, the prosecution has not even filed the C.D.R., which would have established the connection between Sanjay Rai, Nida Arsi and Akmal. The story of motive has merely been extrapolated by the learned Trial court by misreading the deposition of Nida Arsi (P.W.-12). Akmal never entered the witness box. Silence of Sanjay Rai in his statement under Section 313 Cr.P.C cannot be construed to be his admission. Thus, a significant link of circumstantial evidence being the motive could not be established by the prosecution. The prosecution has further failed to establish the object of the conspiracy, which according to them was to eliminate a family member of PW16 (Nida Arsi), so as to falsely implicate Akmal and thereby remove all perceived obstacles in the alleged love affair between Sanjay Rai and Nida Arsi. The existence of conspiracy is in air as it does not rely on any permissible evidence. The story woven appears to be a product of fertile mind of the prosecution. The, motive theory of the prosecution does not urge of any natural and pragmatic human behavior.

123. Thus, taking into consideration the entire gamut of evidence that has been brought on record, it can be reasonably concluded that the prosecution has failed to bring forth reliable evidence forming a complete string of events, leading to the guilt of the Appellants. The chain of events being sought to be projected is laden with deficiencies creating significant gaps, leading to other possible hypotheses leading to innocence of the Appellants. No doubt, one can argue that the whole incident raises suspicion because of the heinous nature of crime, wherein a 14 years old boy has been murdered in a gruesome manner, however we are clear in our mind that, any suspicion, however strong it may be, cannot take the place of proof beyond a reasonable doubt and the Accused cannot be convicted on the ground of mere suspicion,

no matter how strong it is. An Accused is presumed to be innocent unless proved guilty beyond reasonable doubt. This Court records with certainty that the prosecution has failed to travel the evidentiary distance with clear, cogent and unimpeachable evidence, so as to term the said distance to have travelled and transformed from the conceptual evidence of “may be true” to “must be true”. It will be apposite to refer to the judgment of Ramanand v. State of U.P., reported in (2023) 16 SCC 510; wherein it has been observed that:-

“123. Thus, none of the pieces of evidence relied on as incriminating by the courts below, can be treated as incriminating pieces of circumstantial evidence against the accused. Realities or truth apart, the fundamental and basic presumption in the administration of criminal law and justice delivery system is the innocence of the alleged accused and till the charges are proved beyond reasonable doubt on the basis of clear, cogent, credible or unimpeachable evidence, the question of indicting or punishing an accused does not arise, merely carried away by heinous nature of the crime or the gruesome manner in which it was found to have been committed. Though the offence is gruesome and revolts the human conscience but an accused can be convicted only on legal evidence and if only a chain of circumstantial evidence has been so forged as to rule out the possibility of any other reasonable hypothesis excepting the guilt of the accused. In Shankarlal Gyarasilal [Shankarlal Gyarasilal Dixit v. State of Maharashtra, (1981) 2 SCC 35 : 1981 SCC (Cri) 315] , this Court (at SCC p. 44, para 33) cautioned human nature is too willing, when faced with brutal crimes, to spin stories out of strong suspicions . (emphasis supplied) This Court has held time and again that between “may be true” and “must be true” there is a long distance to travel which must be covered by clear, cogent and unimpeachable evidence by the prosecution before an accused is condemned a convict.

124. Be that as it may, however, the question now boils to the effect that when there is cogent evidence to belief the homicidal death of Maaz Ahmed, then how can there be no person, who could be blamed for the said murder. The Hon'ble Supreme Court in somewhat exact situation has observed in the case of Mohd. Sameer Khan v. State, reported in 2025 SCC OnLine SC 2298; in the following words :-

“24..Merely because the medical evidence proves the unfortunate loss of life would not be enough to convict a person since he happened to be in the vicinity. In the absence of any forensic evidence when there is no eyewitness and the case is of circumstantial evidence, benefit would go to the accused.

The Hon'ble Supreme Court in the said case, after discussing the law on the subject, went on to also hold that in cases wherein the guilt of the Accused is sought to be established by circumstantial evidence, if two views are possible on the evidence adduced in the case, one pointing to the guilt of the Accused and the other to his innocence, the view which is favourable to the Accused should be adopted.

125. No doubt it is true that there had been a brutal murder of a young child. However, the brutality of the offence does not dispense with the legal requirement of proof beyond a reasonable doubt. In this case, there is no legal evidence to prove the involvement of the accused. The Courts can convict an accused only if his guilt is proved beyond a reasonable doubt on the basis of legally admissible evidence. There cannot be a moral conviction. We are but obviously tempted to quote what the Hon'ble Supreme Court observed in paragraph 24 of its decision in the case of Subhash Chand v. State of Rajasthan, reported in (2002) 1 SCC 702. It reads as follows:

“24. Thus, none of the pieces of evidence relied on as incriminating, by the trial court and the High Court, can be treated as incriminating pieces of circumstantial evidence against the accused. Though the offence is gruesome and revolts the human conscience but an accused can be convicted only on legal evidence and if only a chain of circumstantial evidence has been so forged as to rule out the possibility of any other reasonable hypothesis excepting the guilt of the accused. In Shankarlal Gyarasilal Dixit case [(1981) 2 SCC 35: 1981 SCC (Cri) 315: AIR 1981 SC 765] this Court cautioned human nature is too willing, when faced with brutal crimes, to spin stories out of strong suspicions (SCC p. 44, para 33). This Court has held time and again that between may be true and must be true there is a long distance to travel which must be covered by clear, cogent and unimpeachable evidence by the prosecution before an accused is condemned a convict.

126. The circumstances brought on record do not form a complete chain so as to lead to irresistible conclusion about the involvement of the Appellants in the present crime. Establishing one or two circumstances beyond reasonable doubt is not sufficient to hold that the entire chain is complete as the chain of circumstances must be so complete, so that it leads to no other conclusion than the guilt of the Accused person, which is not so in the present case. The degree of proof required to hold the Appellants guilty beyond reasonable doubt, on the strength of circumstantial evidence, is clearly not established. Due to the missing links findings of guilt cannot be recorded and the benefit of doubt must flow to the Appellants.

127. We are therefore satisfied that the prosecution has failed to bring home the guilt of the Appellants beyond reasonable doubt and the Appellant deserves to be acquitted.

CONCLUSION

128. In view of the detailed analysis aforesaid, this Court is of the considered opinion that the prosecution has failed to prove the charges against the appellants beyond all reasonable doubt. The judgment and order dated 28.02.2020 passed by the learned Trial Court suffers from perversity and infirmity. The Appellants are entitled for benefit of doubts. Accordingly, the conviction and sentence awarded to the appellants is set-aside and the Appellants are acquitted of all the charges levelled against them. All the Criminal appeals are hereby Allowed. Consequently, all the appellants being (i) Sanjay Rai, (ii) Ram Babu @ Chotu, (iii) Ajeet Rai @ Shintu, (iv) Sandeep Rai, (v) Rakesh Kumar Soni @ Bablu, (vi) Rahul Rai and (vii) Sunil Kumar Saini @ Pahalwan, are set free and shall be released from Jail, in case any of them are not required in any other cases.

129. This Court would also like to acknowledge the consummate arguments advanced by the learned Counsels appearing on behalf of both the parties, including their juniors who appeared in this matter, for their diligent spadework in preparing the notes of arguments submitted by both the parties. We would also go amiss if we did not appreciate Research Associate- Mr. Ashutosh Srivastava, for his in-depth research and invaluable assistance rendered, in the adjudication of this matter.

130. Let the Trial Court record, along with copy of this judgment and order, be transmitted to the Court concerned for compliance.

131. All pending Application(s) are disposed of accordingly.

(2026) 6 ILRA 64
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 03.06.2026

BEFORE

THE HON'BLE RAJESH SINGH CHAUHAN, J.
THE HON'BLE INDRAJEET SHUKLA, J.

Criminal Appeal No. 565 of 2019

Manish

...Appellant

Versus

State of U.P.

...Respondent

Issue for consideration

The present matter involves the prosecution of a husband for allegedly setting his pregnant wife on fire over dowry-related disputes, resulting in her death and the death of the unborn child.

Headnotes

A. Criminal law-Indian Penal Code,1860-Section 302, 498-A, 304-B & ¾ D.P. Act-Indian Evidence Act,1872-Section 32(1)-Murder-Dying declaration-Conviction based on sole dying declaration-Alteration of charge to culpable homicide-Sustainability of –Accused poured kerosene oil on his pregnant wife, set her ablaze, and bolted the door from outside to ensure her death-Victim succumbed to septicemia arising from extensive burn injuries after 23 days-Defense contended that delayed death due to septicemia constitutes a secondary effect, necessitating alteration of conviction from Section 302 to Section 304 IPC-Unilateral assault and the deliberate act of bolting the door from outside to prevent escape explicitly manifest a definite intention to kill, disentitling the accused to the benefits of Exception 1 or Exception 4 to Section 300 IPC as no sudden fight or mutual exchange of blows transpired-Dying declaration recorded by an Executive Magistrate and endorsed with a medical certificate of fitness inspires full confidence and serves as a substantive piece of evidence sufficient for conviction without corroboration-Conviction and sentence for life imprisonment under section 302 upheld-Proportionality of Sentence-Commutation of sentence of imprisonment for life to a fixed term sentence of twenty years without remission-Allowed.(Para 62 to 139)

Held

The court upheld the conviction ruling that when an injury is inherently fatal and inflicted with a clear intention to cause death, the offence constitutes murder regardless of whether death occurs after several days due to supervening complications like septicemia. Consequently, the defense's contention to alter the conviction to Section 304 IPC based on delayed death was firmly rejected. (E-6)

Case law Cited

State of Uttarakhand Vs Anil & Ors (2025) SCC Online SC 2099,Ramrati Vs State of U.P.(CRLA No. 2275 of 2019), Shushila Devi Vs State of U.P.(CRLA No. 1257 of 2020), Laxman Vs State of Maharashtra (2002) Supp. 1 SCR 697, Naeem Vs State of U.P. (2024) 17 SCC 735, Maniklal Sahu Vs State of Chhatisgarh 2025 Livelaw (SC) 905, Virsa Singh Vs State of Punjab 1958 SCC Online SC 37, State of A.P Vs Rayavarapu Punneyya & Anr 1976 SCC OnLine SC 316, Surender Kumar Vs State of Himachal Pradesh 2025 SCC OnLine SC 2750, Anil Kumar Vs State of Kerala (2024) 1 SCC 327, Doraisamy Servai Vs Emperor 1943 M.W.N. Cr. 185,State of Haryana Vs Pala & Ors (1996) 8 SCC 51,Jagtar Singh Vs State of Punjab (1999) 2 SCC 174,Veerla Satyanarayana Vs State of A.P. (2009) 16 SCC 316,State of Rajasthan Vs Arjun Singh & Ors (2011) 9 SCC 115,Jharmal & Ors Vs State of Haryana 1994 SCC (Crl.) 593, Maniben Vs State of Gujarat (2009) 8 SCC 796,

Hariprasad @ Kishan Sahu Vs State of Chhatisgarh 2024 SCC Online SC 1764, Revinder Kumar Vs State of Punjab (2001) 7 SCC 690., Banarsi Dass & Ors Vs State of Haryana (2014) 15 SCC 485, Najam Faraghi Vs State of West Bengal, (1998) 2 SCC 45, Mukesh Vs State (NCT of Delhi), 2017) 6 SCC 1 , Atbir Vs State (NCT of Delhi), 2010 9 SCC 1, Paniben Vs State of Gujrat (1992) 2 SCC 474 & Paneerselvam Vs State of T.N., 2008) 17 SCC 190, Irra Gonda Deesai Vs State of Goa, Criminal Appeal No. 7 & 8 2006, Nagabhushan Vs State of Karnataka AIR 2021 SC 1290, Surinder Kumar Vs State of Punjab (2012) 12 SCC 120, Bhavnagar University Vs Palitana Sugal Mill Pvt. Ltd. & Ors AIR 2003 SC 511, Union of India Vs V. Sriharan, (2016) 7 SCC 1, Swamy Shraddananda (2) Vs State of Karnataka, (2008) 13 SCC 767, Shiva Kumar Vs State of Karnataka (2023) 9 SCC 817, Ravinder Singh Vs State (2023 INSC 426), Munna Moyuddin Shaikh Vs State of Gujarat (CRLA No. 2686, arising out of SLP (Crl.) Diary No. 35717 of 2025), Bilkis Yakub Rosool Vs Union of India & Ors (2024) 5 SCC 481, Navas @ Mulanavas Vs State of Kerala, CRLA No. 1215 of 2011 (2024 INSC 215)-referred to.

List of Acts

Criminal Procedure Code, 1973, Indian Penal Code, 1860, Indian Evidence Act, 1872, Dowry Prohibition Act, 1961.

List of Keywords

Dying declaration, Septicemia/Delayed death, Intention to kill, Executive Magistrate, Medical fitness certificate, Exception 1 & Exception 4 (Section 300 IPC), Life imprisonment, Alteration of charge, Burn injuries/Kerosene Oil, Corroboration of evidence, Remission

Case Arising from

Criminal jurisdiction: CRIMINAL APPEAL No. -565 OF 2019

Manish Vs. State of U.P

From the judgment and order dated 03.06.2026 of the High court of judicature at Allahabad.

Appearances for Parties

Advs. for Petitioners(s):

Pankaj Kumar Tripathi, Abdul Rafey Siddiqui, Ajeet Kumar Singh, Pradeep Kumar Shukla, Rehan Ahmad Siddiqui

Adv. for Respondent(s):

G.A.

(Delivered by Hon'ble Indrajeet Shukla, J.)

For the sake of explication, the instant judgement is set out in the following parts:

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Serial No.	Heading
1	Factual Matrix
2	Prosecution case in nutshell
3	Scope of Criminal Appeal against conviction
4	Prosecution evidence
5	Dying declaration
6	Submission of parties
	(I) Contentions raised on behalf of the appellant
	(II) Submissions advanced on behalf of the State
7	Statutory perceptions and authoritative pronouncements

8	Analysis and Reasoning
9	Conclusion
10	Proportionality of Sentence

FACTUAL MATRIX

1. Convicted and sentenced for the one of the most depraved offences i.e., burning of his wife who was carrying pregnancy of eight months, consequently death of an unborn child in mother's womb, the appellant is before this Court.

2. Under challenge is conviction and sentence recorded under Section 302 IPC for life imprisonment and fine to the extent of Rs.20,000/-, further with default stipulation i.e. six months additional imprisonment, rendered vide impugned judgment and order dated 15.02.2019 passed by Additional Sessions Judge/Fast Track Court (New), Sitapur in Sessions Trial No.775/2011 arising out of crime no. 28/2011 Police Station- Ramkot, District Sitapur.

3. Custody certificate as well as conduct report of the appellant submitted by learned State Law Officer is taken on record and the same is marked as 'x'.

PROSECUTION CASE IN NUTSHELL

4. The prosecution story, as unfolded in the written Tehrir Exhibited as Ka-1 dated 28.01.2011, submitted by the informant, Smt. Maya Devi (mother of the deceased) is, she solemnized the marriage of her daughter, Ruchi (the deceased), with the accused-appellant, Manish (son of Gajodhar, resident of Village Adhaval Khurd, Police Station Kotwali, District Sitapur), approximately three years prior to the incident.

5. It is further stated that shortly after the marriage, the accused-appellant, Manish, began demanding ₹50,000/- as additional dowry. Owing to the first informant's poor financial background, the demand could not be fulfilled. Consequently, the appellant started physically assaulting and harassing her daughter. He used to say that if she did not bring Rs.50,000/-, he would kill her. The demand of dowry and ill treatment was informed to the first informant over the telephone. The first informant had been allotted a house under the Kashi Ram Urban Housing Scheme in Sitapur. On 27.11.2010, the appellant and the first informant's daughter came to her house and asked for the keys of the aforesaid house, stating that they wanted to stay there for a few days. The keys were handed over, and on 28.11.2010 at 11:00 A.M, the first informant came to know that her daughter had been burnt and admitted to the District Hospital. Upon receiving the information, the first informant and her son reached the Hospital, where she found her daughter in burnt condition. It is further stated that apart from her daughter, no one else was present there. During treatment at the District Hospital, her daughter died. It is further mentioned that first informant became extremely distressed due to the death of her daughter. She stated that a few days later, when she went to the house (place of occurrence) the neighbours informed her, that after severely assaulting her daughter, her son-in-law, Manish, poured kerosene oil on her and burnt her to death. The application further mentions that the above-mentioned chain of events led her to

believe that due to non-fulfilment of additional dowry demand, her daughter had been killed by her son-in-law.

6. After being hospitalized, first informant's daughter battled with her injuries, but ultimately succumbed on 21.12.2010 in the hospital. Thereafter, inquest proceedings (Exhibit Ka-2) were conducted on the same day in the presence of Naib Tehsildar- Yaduveer Singh Yadav. The dead body of the deceased was sealed and sent for post-mortem examination.

7. As per the opinion of the inquest witnesses mentioned in the inquest report Exhibited as Ka-2, deceased Ruchi was set to ablaze by her husband-Manish. It is further mentioned in the opinion that on the previous night, the deceased had delivered a baby girl found dead. The deceased died due to burn injuries; however, for certainty, an autopsy report was said to be expedient.

8. The prosecution primarily relied upon the testimonies of two witnesses of fact viz PW-1 Maya Devi (Mother of deceased), being first informant, PW-2 Dinesh (Brother of deceased) and also relied upon the dying declaration (Exhibit Ka-10), which was proved by PW-4, Yaduveer Singh Yadav (Naib Tehsildar- Sitapur) and the certificate of fitness was proved by PW-6 Dr. Pankaj Awasthi.

9. The investigating officer submitted charge-sheet (Exhibit Ka-13), under Sections 302, 498A, 304-B IPC and Section ' Dowry Prohibition Act, thereafter, the case, being triable by Court of Sessions, was committed to the Sessions Court. The learned trial Court framed charge under Sections 302, 498-A, 304-B IPC, and Section 4 of DP Act. The accused person pleaded 'not guilty' and demanded for trial.

10. In order to bring home the guilt of the accused-appellant, the prosecution has examined following witnesses:

PW- 1	Maya Devi (First Informant and Mother of the deceased)
PW-2	Dinesh (Brother of the deceased)
PW-3	H.C. Inamullah Khan CBCID (Police official, PS- Ramkot)
PW-4	Yaduveer Singh Yadav (Naib Tehsildar Sadar, Sitapur) recorded and proved dying declaration.
PW-5	Dr S. Bhardwaj (Senior Consultant Surgeon, District Hospital, Sitapur)
PW-6	Dr. Pankaj Awasthi (Physician, District Hospital, Sitapur)
PW-7	Vidhya Sagar Mishra (Superintendent of Police (Rural), Saharanpur (Then C.O City, Sitapur)
PW-8	Hafizurrahman (Additional Superintendent of Police (Traffic), Directorate Lucknow, (then C.O City Sitapur)

11. Apart from the aforesaid witnesses, the prosecution produced the following documentary evidence:-

Exhibit Ka-1	Written Report (Tehrir)
Exhibit Ka- 2	Inquest Report

Exhibit Ka-3	First Information Report
Exhibit Ka-4	GD Entry
Exhibit Ka- 5	Specimen Seal
Exhibit Ka-6	Photo of a Dead Body
Exhibit Ka-7	Police form -challan- dead body
Exhibit Ka-8	Letter to Reserve Inspector
Exhibit Ka- 9	Letter to CMO
Exhibit Ka-10	Dying Declaration report
Exhibit Ka-11	Postmortem report
Exhibit Ka-12	Site plan
Exhibit Ka-13	Charge-Sheet

12. After the closure of prosecution evidence, the appellant was examined under section 313 CrPC, wherein he outrightly denied all the charges and incriminating evidence against him and claimed himself to be innocent. Dying declaration Exhibited as Ka-10 was placed as incriminating material against the appellant at the stage of examination under Section 313 CrPC, and upon confrontation of the same, he once again disavowed it, stating that it had been wrongly proved. The appellant-convict had filed a written statement wherein he stated that his marriage with the deceased was the result of love affairs, which displeased his in-laws. The deceased used to reside at her parental house, where the unfortunate occurrence took place. It was the appellant who admitted the deceased to the hospital.

13. No defence evidence was adduced by the appellant despite an opportunity being granted.

SCOPE OF CRIMINAL APPEAL AGAINST CONVICTION

14. Before we thrash out the evidence adduced before the trial Court, we would like to recollect and remind ourselves of the manner in which an appeal against conviction is required to be heard by this Court, considering the scope of jurisdiction conferred by Sections 374 and 386 Cr.P.C.

15. We are privileged to have glimpse of ratio laid down in the judgement rendered by Hon'ble Supreme Court in the case of **State of Uttarakhand Versus Anil and others** reported in **2025 SCC OnLine SC 2099**, wherein the Hon'ble Supreme Court in Unequivocal terms observed that the **High Court is a first appellate Court is under mandate of law to reassess the evidence led by the parties, statement of victim including medical examination, scientific reports and the defence version with due care to arrive at a just conclusion in deciding whether the trial Court was justified in convicting the accused or not.** The relevant paragraphs of said judgement are quoted below:-

“8. We observe that while hearing appeals under Section 374(2) of the CrPC, the High Court is exercising its appellate jurisdiction. There has to be an independent application of mind in deciding the criminal appeal against conviction. It is the duty of an appellate court to independently evaluate the evidence presented and determine whether such evidence is credible.

Even if the evidence is deemed reliable, the High Court must further assess whether the prosecution has established its case beyond reasonable doubt. The High Court, though being an appellate Court, is akin to a Trial Court and must be convinced beyond all reasonable doubt that the prosecution's case is substantially true and that the guilt of the accused has been conclusively proven while considering an appeal against conviction.

9. As the first appellate court, the High Court is expected to evaluate the evidence including the medical evidence, statement of the victim, statements of the witnesses and the defence version with due care. While the judgment need not be excessively lengthy, it must reflect a proper application of mind to crucial evidence. Albeit the High Court does not have the advantage to examine the witnesses directly, the High Court should, as an appellate Court, re-assess the facts, evidence on record and findings to arrive at a just conclusion in deciding whether the Trial Court was justified in convicting the accused or not. We are also cognizant of the large pendency of cases bombarding our courts. However, the same cannot come in the way of the Court's solemn duty, particularly, when a person's liberty is at stake.

10. This Court, in State of Uttar Pradesh v. Ambarish, (2021) 16 SCC 371 held that while deciding a criminal appeal on merits, the High Court is required to apply its mind to the entirety of the case, including the evidence on the record before arriving at its conclusion. In this regard, we may also refer to the orders passed by this Court in Shakuntala Shukla v. State of Uttar Pradesh, (2021) 20 SCC 818 and State Bank of India v. Ajay Kumar Sood, (2023) 7 SCC 282."

16. The law mandates and casts a duty upon the appellate court for reassessment of the entire evidence, so as to arrive at an independent finding regarding the guilt or innocence of a convict; thus, the testimonies of witnesses of facts are being re-appreciated as under:

(emphasis added)

PROSECUTION EVIDENCE

17. PW-1 Maya Devi happens to be the first informant and the mother of the deceased, appeared in the witness box and deposed that, the deceased, Ruchi was married to the accused-Manish, approximately three years prior to the incident, and at the time of the incident, the deceased was six months pregnant. She further deposed that the deceased used to telephonically inform her that the accused demanded Rs. 50,000/- as additional dowry and subjected her to beatings due to non-fulfillment. Despite her having spoken to the accused about her financial helplessness, he continued his demand until the death of the deceased. She further deposed that prior to the incident, the accused had come to her residence on 27.11.2010 and obtained the keys of her house at Kashi Ram Colony, Sitapur, whereafter the accused and the deceased departed together. She further deposed that on the following day, she received information that the deceased had sustained burn injuries, and upon reaching the District Hospital, she found the deceased in a severely burnt condition, in the absence of the accused. She stated that the deceased, who was then conscious, disclosed to her that the accused had first beaten her, poured kerosene upon her, set her on fire, bolted the door from outside and fled. She further deposed that the deceased remained hospitalised for approximately one and a half months before succumbing to her injuries, in the meantime, the Naib Tehsildar recorded her statement as to the cause of death and obtained her thumb impression. She further stated that the child born to her daughter also subsequently died. She further stated that her complaint was not registered by the police despite repeated attempts, and it

was only upon her approaching a senior officer that her report was formally registered, and the same is exhibited as Ka-3 (F.I.R.).

18. The testimony of PW-1 was subjected to lengthy cross-examination, and in her cross-examination, she stated that she had no prior animosity with the accused or his family. She deposed that at the time of the marriage of her daughter with the accused, there was no dispute with respect to the demand of dowry, and the marriage was happily celebrated. PW-1 denied the suggestion that the marriage between her daughter and the accused was against her wishes or against the wishes of her family. However, she admitted that she was not aware of the alleged court marriage, said to have taken place at the Sub-Registrar's office, Viswan, on 15.06.2006.

19. The glaring feature of the testimony of PW-1 is, that she has certified the pregnancy of her daughter and further, her statement that Manish was not found at the hospital concerned when she reached to the hospital. Apart from the aforesaid fact, the testimony of PW-1 finds corroboration with the dying declaration in question, and even the said witness unequivocally stated that her daughter had disclosed to her that after being set ablaze, the door was bolted from outside. The said witness remained intact in relation to the timing of the dying declaration as well as her daughter's conscious and lucid condition. The statement mentioned in the dying declaration that the accused Manish poured the kerosene oil and set her ablaze is also corroborated in the testimony of PW-1, though PW-1 is not an ocular account, but her statement still corroborates the dying declaration and gelled with the same.

20. The second witness of fact adduced by prosecution is Dinesh- PW-2 who stated in his statement-in-examination that Ruchi, was his sister, who was married to the accused- Manish, approximately three years prior to the incident, though dowry was given as per the family's means, the accused remained dissatisfied and demanded an additional sum of Rs.50,000/- which the family was unable to pay owing to the death of their father, on account of which the accused used to beat and harass the deceased. PW-2 further deposed that on the day preceding the incident, the accused came to their residence at Durgapurwa along with the deceased and sought the keys of their mother's house in Kashiram Colony, which were handed over by his mother in his presence, whereafter both the accused and the deceased departed together. Accused Manish deposed that on 28.11.2010 at around 11:00 A.M, he received information that the accused had poured kerosene on the deceased, set her on fire, locked the room from outside and fled, and that upon reaching Kashiram Colony, he learnt that the colony residents had already taken the deceased to the hospital. P.W.- 2 stated that upon reaching the District Hospital, Sitapur, he found the deceased in the emergency ward in a groaning and burnt condition, whereupon the deceased disclosed to him that the accused had beaten her and set her on fire by pouring kerosene on her on account of the non-fulfilment of his monetary demand. He further deposed that the deceased was subsequently shifted to the burn ward, where she remained for approximately 22-23 days before succumbing to her injuries, and that the accused did not visit the deceased even once during her entire period of hospitalisation. PW-2 identified his signature on the Panchnama, which was exhibited as Exhibit Ka-2, and stated that the demand for additional dowry had continued from after the marriage until the death of the deceased.

21. PW-2 was cross-examined by the defence, where P.W.-2 admitted that he did not know from whom the call regarding the incident had been received, and he did not know who had admitted the deceased to the hospital. He denied the suggestion that the deceased had sustained burn injuries accidentally, the accused had admitted her to the hospital and informed the family thereof, or that a false case had been instituted against the accused on account of any grudge.

22. In order to ascertain whether the deceased died, otherwise than under normal circumstances, the consideration of the testimony of PW-5 - Dr S. Bhardwaj, who conducted the post-mortem examination of the deceased Ruchi, is expedient. He stated that the deceased was aged about 20 years, had sustained extensive ante-mortem burn injuries of first to third degree over the head, chest, neck, abdomen, and back.

23. The said witness, qua internal examination, stated that the brain, lungs, liver, spleen and kidneys were found to be congested, with crystalline effusions present in both lungs and liver, and the uterus was found to be of approximately 24 weeks' gestation, though empty. He opined that the cause of death was septicemia resulting from ante-mortem burn injuries and proved the post-mortem report as Exhibit Ka-11.

24. In cross-examination, the witness stated that no injuries other than burn injuries were found on the body and admitted that due to severe burns, a patient may go into shock or coma, and such burns may result in death. He further stated that he could not say whether the deceased had delivered a child prior to death and denied the suggestion that the post-mortem report was prepared under any external pressure.

25. The autopsy examination report, having been juxtaposed to the testimony of medical jurist - **PW5/Dr S. Bhardwaj, it comes out** that the post-mortem report exhibited as Ka-11 reflects following injuries on the person of deceased Ruchi:

"I to III degree burns with sepsis and healing process on the head, chest, neck, upper portion of abdomen and back."

26. The column of internal reproductive organs mentions 'uterus containing an aborted 24-week foetus. The column of opinion mentions that the cause of death is septicemic shock resulting from ante-mortem burn injuries.

DYING DECLARATION

27. The vital and crucial piece of evidence led before the learned trial Court is the dying declaration of Smt. Ruchi i.e. deceased who succumbed to burn injuries. The dying declaration so recorded by the Executive Magistrate/ PW4 ' Naib Tehsildar **Yaduveer Singh Yadav (Exhibit Ka-10)** reads as under:

प्रदर्श क-10

डॉइंग डिक्लेरेशन D/D

श्रीमती रुचि -

पुलिस मेमो 6337 दि० 28.11.2010 समय 11-50 PM

रपट संख्या 27 समय 12.30 P.S. कोतवाली सदर सीतापुर।

भर्ती बेड संख्या-14. Burn Ward जिला अस्पताल सीतापुर।

This is certified that Ruchi W/o Manish is admitted in isolate ward in District Hospital Sitapur. I have examine, is full in conscious level and she is given him self our statement. at 16.13 PM.

Sd/- Illegible

30/11/010

बयान प्रारम्भ 30-11-2010 समय 16-14 बजे ।-

श्रीमती रुचि पत्नी मनीष आयु 20 वर्ष निवासी अढावल खुर्द ने बयान किया कि मेरा मैका मो दुर्गा पुरवा में है। मेरी माता को काशीराम आवास कालोनी में मकान मिला है। उसी मकान में दिन शनिवार को मैं और मेरा पति गया था। आदमी (पति) ने कहा था कि कालोनी टहल आवे तब गयी थी। रात में कालोनी में रुकी। पति भी रुका था। 11-00 बजे दिन रविवार को मेरे पति ने मेरे ऊपर मिट्टी का तेल डालकर आग लगा दी। मेरा लड़का 12 वर्ष का है व पेट में 8 माह का बच्चा है। मेरे लड़के के मुहां था। उसकी दवा के लिए मैं पैसा मांग रही थी। पति ने कहा पैसा नहीं दे पाऊंगा। पति ने कहा कि तुम मेरी मेहरूवा नहीं हो। ज्यादा मुंह लगोगी तो तेजाब डाल दूंगा। सकल दिखाने वाली नहीं रहोगी। मेरे एक लात मारी। दाल का कटोरा रखा था वह उठाकर मार दिया। फेंका कर मारा था। मैं खटिया पर बैठी थी। मुझे पकड़कर अन्दर वाला कमरा में ले गया मिट्टी का तेल रखा था वह उठाकर मेरे सिर पर डाल दिया। माचिस उठा कर जलाकर दूर से मेरे ऊपर डाल दी उससे मैं जली हूँ। दरवाजा बाहर से बन्द कर दिया। जब मैं चिल्लाने लगी तब पब्लिक इकट्ठा हो गयी। खिड़की खुली थी उसी से देखा। मैं बचाने के लिए चिल्लायी थी। दस्तखत कर लेती हूँ। हाथ जले हैं इसलिए दस्तखत नहीं कर पाऊंगी। सुनकर तसदीक किया।

नि० अं० रुचि.

समाप्त - दिनांक 30.11.2010

समय 16.34 बजे ।

बयान मेरे द्वारा लिया गया।

ह० अपठनीय

30.11.2010 ना.

तहसीलदार सदर

सीतापुर

During statement she is in fully conscious and given self statement.

संलग्नक-पुलिस मेमो-

6337

2. पुलिस रपट-27

3. प्रार्थना पत्र मायादेवी

Sd/- Illegible

30/11/010

EMERGENCY MEDICAL OFFICER

DISTT. HOSPITAL SITAPUR

उपरोक्त DD डा० पंकज अवस्थी फिजीशियन जो कि वर्तमान में जिला चिक० सीतापुर में तैनात है कि द्वारा सम्पन्न किया गया है और उन्ही के हस्तलेख में है।

ह० जी० एल० रस्तोगी फार्म

28. The dying declaration, having been recorded by PW-4/Yaduveer Singh Yadav(Naib tehsildar Sadar, Sitapur), stated in his statement-in-chief that on 30.11.2010, on the directions of the Tehsildar, he recorded the dying declaration of the deceased at District Hospital, Sitapur, after the attending doctor had certified her fit to give the statement. He further stated that the declaration was recorded between 16:14 to 16:34 hours in his own handwriting, bearing the thumb impression of the deceased, thus proving Exhibit Ka-10.

29. The prosecution has heavily relied upon the dying declaration for 'bringing home the guilt of the accused', thus, it is apt to extract Section 32(1) of the Indian Evidence Act as under:

“(1) When it relates to cause of death. -- When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that persons death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.”

30. We have dealt with evidentiary value of dying declaration and culled comprehensive guidelines in judgement rendered by us in another case i.e. **Criminal Appeal No.2275 of 2019 (Ramrati v. State of U.P.)**. The relevant paragraphs of said judgement read as under:-

“We have had privilege of combing through various authorities on the subject i.e. 'Dying Declaration' since pre independence era (time of privy council whose decision guided Indian Law pre 1950) and post independence era (after enforcement of constitution and the law declared by the Hon'ble Apex Court) such as Queen Empress v. Abdullah (1885 ILR 7 All 385), Pakala Narayana Swami v. Emperor (1939 PC 47), Dalip Singh & Others v. State of Punjab (AIR 1953 SC 364), Kushal Rao v. State of Bombay (AIR 1958 SC 22), K. Ramachandra Reddy & Another v. State of Andhra Pradesh (AIR 1976 SC 1994), Munnu Raja & Another v. State of M.P. (1976) 3 SCC 104 (AIR 1976 SC 2199), Sharad Birdhichand Sarda v. State of Maharashtra (AIR 1984 SC 1622), Smt.

Paniben v. State of Gujarat (1992) 2 SCC 474 (AIR 1992 SC 1817), *Kamla v. State of Punjab* (AIR 1993 SC 374), *Paparambika Rosamma & Others v. State of Andhra Pradesh* (1999) 7 SCC 695, *Laxman v. State of Maharashtra* (2002) 6 SCC 710 (AIR 2002 SC 2973), *Atbir v. Government of NCT of Delhi* (2010) 9 SCC 1, *Bhajju alias Karan Singh v. State of M.P.* ((2012) 4 SCC 327), *Jayamma & Another v. State of Karnataka* (AIR 2021 SC 2399), *Irfan v. State of Uttar Pradesh* (2023 SCC OnLine SC 1060), *Naeem v. State of Uttar Pradesh* (2024 SCC OnLine SC 237), *Neeraj Kumar @ Neeraj Yadav Vs. State of U.P. and others*, 2025 SCC Online SC 2639, *State of Himanchal Pradesh Vs. Chaman Lal*, 2026 SCC Online SC 85.

Thus, we are taking it an opportunity to comprehensively sum up the law on dying declarations taking into account aforesaid authoritative pronouncement as under:

(i) 'Dying Declaration' having passed the muster of law are admissible by virtue of legal sanctity envisaged u/s 32 (1) Indian Evidence Act, such declarations being exception to the hearsay rule carry immense weight in criminal trials. Over the decades, the Supreme Court of India has shaped the law on dying declarations, clarifying their admissibility, the need or absence of corroboration, and the safeguards required to ensure reliability.

(ii) The root of 'Dying Declaration' lies in the latin maxim 'nemo moriturus praesumitur mentire' (no one at the point of death is presumed to lie). Sanctity of a dying declaration comes from the grave position of the declarant. Essentially, unless there is some concrete reason to suspect the dying declaration, the court can safely rely on it alone. The declaration must be scrutinized to ensure it was not the result of tutoring, prompting or imagination, and that the victim had a clear opportunity to identify the perpetrator and was in a fit condition to speak. If a dying declaration appears suspicious or suffers from any infirmity, the court should look for corroboration and not rely on it exclusively. For example, if evidence suggests the deceased was unconscious or physically incapable of making the statement, that declaration must be discarded.

(iii) There cannot be an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The requirement of corroboration is merely a rule of prudence, not a mandatory legal rule. Insisting on corroboration in every case would defeat the very purpose of the statutory exception, further, lack of detail in the dying declaration is not a reason to discard it.

(iv) If a dying declaration has been recorded in a proper manner by a competent authority and the court is satisfied of its truthfulness, it is a 'substantive piece of evidence' sufficient to sustain a conviction on its own and cannot be regarded as a weak piece of evidence.

(v) The dying declaration must pass the test of it being voluntary, coherent, and made with the declarant's faculties intact. A dying declaration should be accepted if it inspires confidence after examining all the surrounding circumstances (who recorded it, when and how it was recorded, and the condition of the victim).

(vi) The omissions of detail do not invalidate a dying declaration, a statement cannot be rejected merely because it is brief or lacks particulars. In fact, brevity by itself is not a ground to doubt a statement; sometimes 'the shortness of the statement itself guarantees truth'.

(vii) The requirement of medical fitness/certificate is pitted against eye witness testimony, the consistent law is, if an eyewitness testifies that the deceased was in a fit and conscious state to make a declaration, that can override a doctor's contrary opinion. The logic is that a person present at the scene may better observe the victim's condition in real time than a belated medical inference.

(viii) *In case of multiple dying declaration i.e. more than one dying declaration with material inconsistencies, those declarations cannot be accepted at face value without corroborative support. Specifically, if the declarations differ on essential facts or implicate different individuals, the court must examine them in light of other evidence. Further the declarations should corroborate each other; if they do not, they must at least be consistent with the overall circumstantial and medical evidence of the case. In essence, where multiple dying declarations conflict, the benefit of doubt generally goes to the accused unless one of the versions is clearly proven true by independent evidence. This principle ensures that the prosecution cannot cherry-pick one dying statement out of several contradictory ones to secure a conviction without addressing the discrepancies.*

(ix) *The absence of a doctor's certificate is not by itself a ground to discard a dying declaration if the circumstances otherwise indicate the victim was fit. The guiding principles emerges from Constitution Bench judgement rendered by Hon'ble Supreme Court in the case of Laxman (supra) which overruled the earlier dictum of Hon'ble Supreme Court rendered in the case of Paparambaka Rosamma (supra). Thus, merely not having a doctor's signature or certificate at the foot of the statement will not render it inadmissible or untrustworthy.*

(x) *The impact of judgment rendered by five judges bench of Hon'ble Supreme Court in the case of Laxman (supra) on Indian jurisprudence was to settle the law on recording procedure for dying declarations. It resolved the confusion by clarifying that a doctor's certification of mental fitness is though ideal but is not a sine qua non for the acceptance of a dying declaration. What matters is that the person who recorded the statement or others present can verify the victim's consciousness and clarity.*

(xi) *The law does not require the declarant to be under the 'shadow of death' or expect imminent death at the time of making the statement. A statement is a valid dying declaration as long as it relates to the cause of death or circumstances leading to it regardless of whether a substantial period passed between the statement and the death.*

(xii) *There is no rule barring police from recording of dying declaration, however, note of caution must be observed while relying such declarations but they are not outright inadmissible."*

31. **PW4/Yaduveer Singh Yadav**, in whose presence inquest proceedings had taken place, proved the inquest memo Ka-2 and stated that on 21.12.2010, while being posted at Sadar Tehsil, Sitapur, he prepared the Panchayatnama of the deceased Ruchi at the mortuary of District Hospital, Sitapur, on the directions of the SDM. He stated that in the presence of police officials and members of the deceased's family, the dead body was inspected, relevant injuries were noted, and necessary documents, including Panchayatnama, sample seal, challan, and related papers, were prepared and duly signed by him, and thereafter the sealed body was handed over for post-mortem.

32. However, in cross-examination, the witness admitted that in the Panchayatnama, no injury other than burn injuries was found, and no mention of dowry demand was recorded in the opinion of the Panchas. He further conceded that while recording the dying declaration, he did not mention that he had disclosed his identity as a Magistrate to the deceased, nor did he independently ascertain or record her mental fitness, and that the declaration was not recorded in a question-answer format. He also admitted that the deceased had not stated anything regarding dowry demand in the said dying declaration.

33. The prosecution in order to ensure that the dying declaration may remain an unimpeachable document, produced **PW- 6/Dr. Pankaj Awasthi**, who appended the fitness certificate on the dying declaration Exhibited as Ka-10. The said witness deposed that on 30.11.2010, while posted on emergency duty, he examined the deceased Ruchi, who was admitted to the burn ward. He stated that upon examination, he found her fully conscious and fit to give her statement, and accordingly certified her fitness prior to the recording of the dying declaration and also endorsed that she remained conscious throughout the process. He proved his certification on the dying declaration (Exhibit Ka-10), stating that the statement was recorded between 16:14 to 16:34 hours.

34. However, in cross-examination, the witness admitted that he had not recorded the pulse rate, vitals, or any specific parameters of examination in the document and neither he questioned the deceased nor her answers were recorded by him.

35. The prosecution also produced certain formal witnesses to prove the conduct of the investigation and police papers, etc., such as PW-3 **H.C. Inamullah Khan**, who stated in his statement-in-chief that on 01.02.2011, he was posted at Police Station Ramkot and was performing Office Record duty. An application was received via "Dakpad" (dispatch), which had been submitted by Maya Devi, wife of Badri Prasad, resident of Durgapurwa, P.S. Kotwali, Sitapur, addressed to the Circle Officer (CO) City, Sitapur. On the basis of said application, FIR No. 28/11 was registered under Sections 498-A, 304-B of the IPC, and 3/4 of the D.P. Act against the accused Manish through Chik No. 15/11.

36. The original Chik FIR, which is in his handwriting and signature, was identified as having been marked as Exhibit Ka-3. The General Diary (GD) entry regarding the institution of the case (GD No. 46, Time 21:30, dated 01.02.11) was made by CC359 Gokul Chandra Tiwari in his own handwriting and signature.

37. **PW- 7 Vidhya Sagar Mishra** (Superintendent of Police (Rural), Saharanpur (Then C.O City, Sitapur) in his statement-in-chief has stated that on 02.04.11, he was posted as the Circle Officer (CO) City, Sitapur. The investigation of Case Crime No. 28/11, under Sections 302, 498A, 304B of the IPC, and 3/4 of the D.P. Act (State vs. Manish, P.S. Ramkot), was conducted by the former CO, Shri Hafizur Rehman. Following his transfer, the investigation of the said case was taken over by him on 02.04.11. On 08.4.11, the Case Diary (CD) prepared by the previous Investigating Officer (IO) was perused. On the same date, the investigation was completed, and a charge sheet was submitted against the accused Manish under Sections 302, 304-B, 498-A of the IPC, and 3/4 of the D.P. Act, having found prima facie offence against the accused. The charge sheet, bearing the signature of the witness, was presented and identified; it has been marked as Exhibit Ka-12.

38. The lengthy cross-examination of the investigating officer/PW7 could not elicit anything that could dislodge the authenticity of police papers and shroud any doubt on the investigation conducted. The witness proved the police papers, including the chargesheet.

39. **PW-8 Hafizurrahman (Additional Superintendent of Police (Traffic), Directorate Lucknow, (then C.O City Sitapur)** in his statement-in-chief stated that information regarding the registration of Case Crime No. 28/11, under Sections 498-A, 304-B of the IPC, and 3/4 of the D.P. Act against Manish at P.S. Ramkot, was received by him via telephone. Upon receiving the information, an investigation was commenced after obtaining copies of the Chik FIR and the GD entry from the station office. After perusal, the details of the Chik FIR and GD were recorded in the Case Diary (CD). Subsequently, the statements of the scribe of FIR, Head Constable Inamullah Khan, and the scribe of GD, Constable Moharrir Gokul Chandra Tiwari, were recorded. Thereafter, the complainant's statement was recorded, the spot was inspected, and a site plan was prepared, which has been proved as Exhibit Ka-12. After recording the statement of witnesses perusal of the dying declaration, the charge of Section 302 IPC was added. After his transfer, the investigation was handed over to the next person in the office.

40. However, in his cross-examination, he stated that information regarding this incident was first received via telephone. Prior to this, no knowledge of the incident was possessed by him. He further stated that he could not recall whether any prior complaint regarding this incident had been received or not. The residence of the deceased Ruchi is recorded as Mohalla Durgapurwa in the Inquest report, Post-mortem report, and the dying declaration. No mention of a demand for dowry was made anywhere in the dying declaration.

41. The chronology of events in this case is crucial for eliciting the truth i.e., separating the grain from the chaff. The unfortunate occurrence of setting the deceased ablaze took place on 28.11.2010, and the injured was hospitalized on the same day. Her statement (treated as dying declaration) was recorded on 30.11.2010 by the Executive Magistrate - Naib Tehsildar/PW-4. The injured succumbed to her injuries on 21.12.2010 in the hospital, i.e. after about 23 days. The post-mortem examination was conducted on the same day. Thereafter, FIR was registered on 28.01.2011 on the basis of the written report submitted by the first informant. The Investigating Officer filed a charge sheet on 10.04.2011 under Sections 498-A, 304-B, 302 of IPC and Section 3/4 of the Dowry Prohibition Act. The case was committed to the Court of Session on 28.09.2011, and thereafter, the charges were framed on 17.11.2011. The prosecution adduced two witnesses of facts, and their testimony has only corroborative value, coupled with a dying declaration which has been proved by Executive Magistrate/ PW4. The medical fitness appended to the dying declaration has been certified and proved by PW6/ Dr. Pankaj Awasthi. Witnesses of facts are not ocular accounts, thus excluding dying declaration, instant case has nothing to bring home the guilt of the accused/ appellant.

SUBMISSIONS OF PARTIES

(I) CONTENTIONS RAISED ON BEHALF OF THE APPELLANT

42. Heard learned counsel for the Appellant, Mr. Punit Kumar Shukla and learned State Law Officer Mr. Bipul Kumar Singh on behalf of State and perused the record.

43. Learned counsel for the appellant, while impeaching the prosecution's evidence, including dying declaration submitted that the learned trial Court erred in convicting the appellant as the

prosecution miserably failed to prove its case beyond reasonable doubt. The testimony of two witnesses of fact have been referred in extenso, where it comes out that they are not ocular account; thus, it is strenuously urged that it is not safe to rely on such sketchy witnesses. The alleged dying declaration Exhibited as Ka-10 shrouded with inherent doubts and does not inspire confidence. In the absence of any corroborative evidence, the alleged dying declaration may be discarded. The alleged dying declaration is not trustworthy; thus, the conviction recorded under Section 302 IPC is purely on surmises and conjectures.

44. Learned counsel for appellant, Mr. Shukla vehemently argued that the alleged dying declaration exhibited as Ka-10 is not worthy of reliance as its author PW-4, Yaduveer Singh Yadav (Executive Magistrate), conceded that the dying declaration was not recorded in a question-and-answer format, rather it is in the shape of a continuous narrative.

45. The dying declaration, having not been recorded in question-answer format, indicates that the executive magistrate himself did not make himself sure that the correct narrative in relation to the cause of injury was disclosed by the declarant.

46. The further contention raised by Mr. Shukla is that though there is a certification by doctor before recording dying declaration but doctor-PW-6 admitted in his statement before trial Court that injured/patient was not objectively assessed in relation to her physical and mental condition and the medical certificate recorded by the doctor stands belied in view of extensive burn injuries including burns on the head, neck, and upper limbs, and in such a condition, her ability to make a coherent and reliable statement becomes highly questionable.

47. The counsel for appellant laid much emphasis with respect to delayed lodging of FIR by pointing out that unfortunate occurrence is alleged to be of 28.11.2010, whereas victim succumbed to her injuries on 21.12.2010 but even after said demise, the written complaint exhibited as Ka-1 which stands translated in the shape of FIR was submitted on 28.1.2011 thus, there is an unexplained delay casting doubt on genuineness of the prosecution story and suggests the possibility of false implication after due deliberation.

48. The prosecution has adduced only two witnesses of fact viz PW-1 and PW-2, who are interested and partisan witnesses and in such a background, the dying declaration being a shaky one ought not to be given any credence. It is further submitted that non-examination of independent witnesses of the locality where the unfortunate occurrence took place is the last nail in the coffin of the prosecution.

49. Mr. Shukla, lastly, submitted that learned trial Court utterly failed to appreciate the statement of the appellant-convict recorded under Section 313 Cr.P.C., qua admission of the victim to the hospital by him and the marriage being result of love affairs had no place for the demand of dowry. More so, the appellant, being fully aware of the poor financial condition of the informant's family had no occasion to demand any money. Thus, prosecution could not attribute any motive against appellant, in such backdrop, appellant is entitled to a clean acquittal or at least he should be extended the benefit of doubt.

50. Alternatively, Mr. Shukla has also submitted that even if this Court does not interfere with respect to conviction part, the appellant deserves some leniency qua sentence as the burn injuries are the remote cause of death, in view of septicaemia developed over the period of time and death itself occurred after 23 days. The conviction needs to be altered from Section 302 IPC to 304 IPC, that is, from murder to culpable homicide not amounting to murder. Mr. Shukla relied upon a reported judgment of the coordinate bench of this Court rendered in the case of **Shushila Devi Versus State of U.P.** (Criminal Appeal No.1257 of 2020), wherein the conviction was altered.

(II) SUBMISSIONS ADVANCED ON BEHALF OF THE STATE

51. Per contra, learned State Counsel, Mr. Bipul Kumar Singh submitted that the dying declaration exhibited as Ka-10 itself has been proved by its author/Executive Magistrate-PW-4 and after lengthy cross-examination, nothing could be elicited, which could doubt the genuineness and authenticity of the statement of the victim.

52. He further submitted that law does not prescribe any format for recording dying declaration and as such, the absence of it on question answer format does not diminish its evidentiary value, particularly the statement being consistent and trustworthy to the prosecution story.

53. Mr. Singh laid great emphasis that even on the dying declaration, the medical certificate is appended and the same has been duly proved by its author/medical jurist-Dr. Pankaj Awasthi, thus, the dying declaration passes all the muster of law as required by Section 32(1) of the Indian Evidence Act.

54. Learned State Counsel further submitted that the delay in lodging FIR is attributable to the police authorities, as per the statement of first informant, thus, the delay in lodging FIR would not prove fatal in the factual background of this case, particularly considering the socio-economic condition of the first informant, who does not appear to be vigilant for her rights. The delay in lodging FIR may be examined in the social background of the informant, particularly her being illiterate.

55. Learned trial Court has appreciated the evidence of prosecution witnesses, which corroborates the dying declaration as such the conviction recorded does not call for any interference by this Court, as the opinion formed by the learned trial Court cannot be said to be perverse in view of the unimpeached dying declaration.

56. Mr. Singh, appearing for the State, further pointed out that the deceased was carrying an eight month pregnancy, which was very well in the knowledge of appellant-convict being husband and his conduct of burning a young lady carrying pregnancy needs to be dealt with iron hands through stern punishment, and no interference/indulgence may be granted.

57. The further submission advanced by counsel for State, qua reliability of dying declaration is, there is medical certificate by the doctor concerned, and the dying declaration had been recorded by an Executive Magistrate, thus, same is worthy of reliance. In order to bolster his submission, he

has relied upon the Constitution Bench judgment rendered by the Hon'ble Supreme Court in the case of **Laxman Vs. State of Maharashtra reported in (2002) supp. 1 SCR 697**. We have been taken to relevant paragraphs of Laxman (supra), which reads as under:-

"3. The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on the deathbed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the courts insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however, has always to be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a Magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a Magistrate absolutely necessary, although to assure authenticity it is usual to call a Magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a Magistrate and when such statement is recorded by a Magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise.

4. Bearing in mind the aforesaid principle, let us now examine the two decisions of the Court which persuaded the Bench to make the reference to the Constitution Bench. In Paparambaka Rosamma v. State of A.P. [(1999) 7 SCC 695 : 1999 SCC (Cri) 1361] the dying declaration in question had been recorded by a Judicial Magistrate and the Magistrate had made a note that on the basis of answers elicited from the declarant to the questions put he was satisfied that the deceased is in a fit disposing state of mind to make a declaration. The doctor had appended a certificate to the effect that the patient was conscious while recording the statement, yet the Court

came to the conclusion that it would not be safe to accept the dying declaration as true and genuine and was made when the injured was in a fit state of mind since the certificate of the doctor was only to the effect that the patient is conscious while recording the statement. Apart from the aforesaid conclusion in law the Court had also found serious lacunae and ultimately did not accept the dying declaration recorded by the Magistrate. In the latter decision of this Court in *Koli Chunilal Savji v. State of Gujarat* [(1999) 9 SCC 562 : 2000 SCC (Cri) 432] it was held that the ultimate test is whether the dying declaration can be held to be a truthful one and voluntarily given. It was further held that before recording the declaration the officer concerned must find that the declarant was in a fit condition to make the statement in question. The Court relied upon the earlier decision in *Ravi Chander v. State of Punjab* [(1998) 9 SCC 303 : 1998 SCC (Cri) 1004] wherein it had been observed that for not examining by the doctor the dying declaration recorded by the Executive Magistrate and the dying declaration orally made need not be doubted. The Magistrate being a disinterested witness and a responsible officer and there being no circumstances or material to suspect that the Magistrate had any animus against the accused or was in any way interested for fabricating a dying declaration, question of doubt on the declaration, recorded by the Magistrate does not arise.

5. The Court also in the aforesaid case relied upon the decision of this Court in *Harjit Kaur v. State of Punjab* [(1999) 6 SCC 545 : 1999 SCC (Cri) 1130] wherein the Magistrate in his evidence had stated that he had ascertained from the doctor whether she was in a fit condition to make a statement and obtained an endorsement to that effect and merely because an endorsement was made not on the declaration but on the application would not render the dying declaration suspicious in any manner. For the reasons already indicated earlier, we have no hesitation in coming to the conclusion that the observations of this Court in *Paparambaka Rosamma v. State of A.P.* [(1999) 7 SCC 695 : 1999 SCC (Cri) 1361] (at SCC p. 701, para 8) to the effect that 'in the absence of a medical certification that the injured was in a fit state of mind at the time of making the declaration, it would be very much risky to accept the subjective satisfaction of a Magistrate who opined that the injured was in a fit state of mind at the time of making a declaration' has been too broadly stated and is not the correct enunciation of law. It is indeed a hypertechnical view that the certification of the doctor was to the effect that the patient is conscious and there was no certification that the patient was in a fit state of mind especially when the Magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answers elicited was satisfied that the patient was in a fit state of mind whereafter he recorded the dying declaration. Therefore, the judgment of this Court in *Paparambaka Rosamma v. State of A.P.* [(1999) 7 SCC 695 : 1999 SCC (Cri) 1361] must be held to be not correctly decided and we affirm the law laid down by this Court in *Koli Chunilal Savji v. State of Gujarat* [(1999) 9 SCC 562]

58. Mr. Singh in order to further fortify his submissions relied upon another judgement of Hon'ble Supreme Court in relation to dying declaration rendered in the case of **Naeem Vs. State of U.P reported in (2024) 17 SCC 735** the relevant paragraphs of the said judgement reads as under:-

“12. Undisputedly, in the present case, the conviction is based solely on the dying declaration (Ext. Ka-6). The law with regard to conviction on the sole basis of dying declaration has been considered by this Court in a catena of judgments. After considering the earlier judgments, this Court in *Atbir v. State (NCT of Delhi)* [*Atbir v. State (NCT of Delhi)*, (2010) 9 SCC

1 : (2010) 3 SCC (Cri) 1110] , has laid down certain factors to be taken into consideration while resting the conviction on the basis of dying declaration.

13. It will be apposite to refer to para 22 of the said judgment [*Atbir v. State (NCT of Delhi)*, (2010) 9 SCC 1 : (2010) 3 SCC (Cri) 1110] , which reads thus: (*Atbir case [Atbir v. State (NCT of Delhi)*, (2010) 9 SCC 1 : (2010) 3 SCC (Cri) 1110] , SCC pp. 8-9)

“22. The analysis of the above decisions clearly shows that:

(i) Dying declaration can be the sole basis of conviction if it inspires the full confidence of the court.

(ii) The court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.

(iii) Where the court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.

(iv) It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.

(v) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.

(vi) A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.

(vii) Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.

(viii) Even if it is a brief statement, it is not to be discarded.

(ix) When the eyewitness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.

(x) If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration.”

59. Though the arguments stand repeated on behalf of the State, he summarised his contentions, dying declaration can be the sole basis of the conviction if it inspires the full confidence of the court. The Court is required to satisfy itself that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination. It would be submitted that where the Court is satisfied about the dying declaration being true and voluntary, it can base its conviction without any further corroboration. Further submission is that there cannot be an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. The Court has observed that if, after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement, and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration.

60. Since a lot of emphasis has been laid by defence with respect to cause of death as septicemia, further submitting that burn injuries are not the proximate cause of death, countering the aforesaid, Mr. Singh relied upon the judgment of Hon'ble Supreme Court rendered in **Maniklal**

Sahu Vs. State of Chhattisgarh reported in 2025 Livelaw (SC) 905 the relevant paragraphs read as under:

58. *Septicemia is described by the medical experts as the condition which results where the circulation becomes flooded with bacteria, either due to the failure of local defensive reactions at the site of infection or to delayed or inadequate treatment. According to the learned author, every penetrating wound except those inflicted by the surgeon is potentially infected, though a certain period elapsed before invading organisms actually establish themselves become embedded in the tissues to multiply and form toxins. [See: The Essentials of Modern Surgery by Handfield Jones and Pokitt, V Edn]*

59. *In one of the recent pronouncements of this Court in Prasad Pradhan v. State of Chhattisgarh, (2023) 11 SCC 320, this Court stated in paragraphs 30 and 31 respectively as under:'*

31. *There can be no stereotypical assumption or formula that where death occurs after a lapse of some time, the injuries (which might have caused the death), the offence is one of culpable homicide. Every case has its unique fact situation. However, what is mportant is the nature of injury, and whether it is sufficient in the ordinary course to lead to death. The adequacy or otherwise of medical attention is not a relevant factor in this case, because the doctor who conducted the post-mortem clearly deposed that death was caused due to cardiorespiratory failures, as a result of the injuries inflicted upon the deceased. Thus, the injuries and the death were closely and directly linked."*

(Emphasis supplied)

61. *In Patel Hiralal Joitaram v. State of Gujarat, (2002) 1 SCC 22, the interval between the date of the incident when the deceased sustained burns and the date of her death was a fortnight. It was argued on behalf of the appellant therein that the death of the deceased had no direct nexus with the burn injuries as during the interregnum period some other complications cropped up as a result of which the victim succumbed. While negativizing such contention, this Court observed as under:'*

"16. Harping on an answer given by PW 12 in cross-examination that death of the deceased had occurred due to 'septic' learned Senior Counsel made out an argument that such septic condition could have developed on account of other causes. Mere possibility of other causes supervening during her hospitalisation is not a safe premise for deciding whether she would not have died due to the burns sustained on 21-10-1988. The cause of death can be determined on broad probabilities. In this context we may refer to a passage from Modi's Medical 63. 'Culpable homicide' according to section 299, I.P.C. has the following ingredients:Jurisprudence and Toxicology, dealing with death by burns:

"As already mentioned, death may occur within 24 to 48 hours, but usually the first week is the most fatal. In suppurative cases, death may occur after five or six weeks or even longer."

17. *In Om Parkash v. State of Punjab [(1992) 4 SCC 212] the victim was set ablaze on 17-03-1979 and she sustained burns with which she died only 13 days thereafter. The assailant was convicted of murder and the conviction was confirmed by this Court.*

18. *It is preposterous to say that the deceased in this case would have been healed of the burn injuries and that she would have contracted infection through some other causes and developed septicemia and died of that on 15-11-1988. Court of law need not countenance mere academic possibilities when the prosecution case regarding death of the deceased was established*

on broad probabilities as a sequel to the burns sustained by her. Hence we repel the contention of the learned counsel on that score."

(Emphasis supplied)

69. *We may highlight few broad principles that the courts must keep in mind.*

a. If it is proved that the injury was fatal and the intention was to cause death, though the death occurred after several days of septicaemia or other complications having supervened, yet it is undoubtedly a murder as it falls within the first limb of Section 300 of the IPC.

b. If it is proved that the injuries by themselves were sufficient to cause death in the ordinary course of nature, and if it is established that those injuries were the intended injuries, though the death might have occurred after septicaemia or other complications had supervened, yet the act of the accused would squarely fall under the third limb of Section 300 of the IPC and the accused is therefore liable to be punished under Section 302 of the IPC.

c. If it is proved that the injuries were imminently dangerous to life, though the death had occurred after septicaemia or other complications had supervened, yet the act of the accused would squarely fall under the fourth limb of Section 300 of the IPC, provided, the other requirements like knowledge on the part of the accused, etc. are satisfied and so the accused would be liable to be punished under Section 302 of the IPC. Here also, the primary cause of the death is the injuries and septicaemia.

d. In judging whether the injuries inflicted were sufficient in the ordinary course of nature to cause death, the possibility that skilful and efficient medical treatment might prevent the fatal result is wholly irrelevant.

e. If the supervening causes are attributable to the injuries caused, then the person inflicting the injuries is liable for causing death, even if death was not the direct result of the injuries.

f. Broadly speaking, the courts would have to undertake the exercise to distinguish between two types of cases; first, where the intervening cause of death, like peritonitis, is only a remote and a rather improbable consequence of the injury; then it can be said that the injury is one which may, in particular circumstances, result in death, but which may not in ordinary course of nature be likely to lead to it. Secondly, where the complication which is the intervening cause of death is itself a practically inevitable sequence to the injury. In that event, the probability is very high indeed, amounting to practical certainty i.e., death is a result in due course of natural events. A deep abdominal thrust with a knife followed by injury to the internal organs is practically certain to result in acute peritonitis causing death. It is clearly a case of murder under Section 302 and not merely of culpable homicide.

g. Even when the medical evidence does not say that any one of the injuries on the body of the deceased was sufficient to cause death in the ordinary course of nature, yet it is open to the Court to look into the nature of the injuries found on the body of the deceased and infer from them that the assailants intended to cause death of the deceased. If none of the injuries alone were sufficient in the ordinary course of nature to cause the death of the deceased, cumulatively, they may be sufficient in the ordinary course of nature to cause his death.

h. What the courts must see is whether the injuries were sufficient in the ordinary course of nature to cause death, or to cause such bodily injuries as the accused knew to be likely to cause death although death was ultimately due to supervention of some other cause. An intervening cause or complication is by itself not of such significance. What is significant is whether death was only a remote possibility, or is one which would have occurred in due course.

i. To sum it up, where death is delayed due to later complications or developments, the courts should consider the nature of the injury, complications or the attending circumstances. If the complications or developments are the natural, or probable, or necessary consequence of the injury, and if it is reasonably contemplated as its result, the injury could be said to have caused death. If on the other hand, the chain of consequences is broken, or if there is unexpected complication causing new mischief, the relation of cause and effect is not established, or the causal connection is too remote then the injury cannot be said to have caused death. If the original injury itself is of a fatal nature, it makes no difference that death is actually caused by a complication naturally flowing from the injury and not the injury itself, since causal connection is proximate.”

61. Further submission advanced by Sri Singh is, to the effect, the inquest witnesses also stated at the time of inquest proceeding that deceased was put to ablaze by appellant-convict, Manish but mentioning of appellant, Manish as an author of injury in the inquest proceeding (conducted as per rigours of Section 174 Cr.P.C.) by the inquest witnesses as highlighted by counsel for State is of no significance in criminal trial as inquest proceedings are only carried out for ex-facie determining whether the death caused, is natural or unnatural. Such an inquiry does not proceed for finding the author of the crime.

STATUTORY PRESCRIPTIONS AND AUTHORITATIVE PRONOUNCEMENTS

62. Since counsel for appellant has argued that in the factual matrix of the instant case, appellant's conviction and sentence may be altered from murder to culpable homicide not amounting to murder, as such, the relevant statutory provisions contained in Chapter XVI of Indian Penal Code need to be re-glanced.

Chapter XVI

OF OFFENCES AFFECTING THE HUMAN BODY

299. Culpable homicide. - *Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.*

Explanation 1 - *A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.*

Explanation 2 - *Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.*

Explanation 3 - *The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.*

63. 'Culpable homicide' according to section 299, I.P.C. has the following ingredients:

1. *Causing of death of a human being;*
2. *Such death must have been caused by doing an act;*

3. The act must have been done:

- (i) with the intention of causing death;
- (ii) with the intention of causing such bodily injury as is likely to cause death; or
- (iii) with the knowledge that the doer is likely by such act to cause death.

300. Murder - Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or'

Secondly. -If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or'

Thirdly. -If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or'

Fourthly. -If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Exception 1 - When culpable homicide is not murder. -Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident. The above exception is subject to the following provisos:'

First. -That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly. -That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly. -That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation. - Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Exception 2 - Culpable homicide is not murder if the offender in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Exception 3 - Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4 - Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

Explanation - It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5 - Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

64. The ingredients of the offence of murder as defined under Section 300 IPC may be understood in vernacular language as under:-

“(1) Section 300 begins with the words "except in the cases hereinafter excepted culpable homicide is murder." This means that culpable homicide is not murder if the case falls within any of the exceptions mentioned in section 300.

(2) Whenever there is an intention to cause death it would always be a case of murder unless the case falls within one of the exceptions to section 300.”

65. The ingredients of the offence under Section 300 IPC have been elaborately stated in judgement of **Virsa Singh Vs. State Of Punjab reported in 1958 SCC OnLine SC 37** by the Hon'ble Supreme Court. There are four such ingredients and they are said to be:

“14. To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300 'thirdly'.

15. First, it must establish, quite objectively, that a bodily injury is present.

16. Secondly, the nature of the injury must be proved; These are purely objective investigations.

17. Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

18. Once these three elements are proved to be present, the enquiry proceeds further and.

19. Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.”

66. Further in **Virsa Singh (supra)** elaborated upon the elements laid down and involved in committal of offence of murder:

“20. Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under Section 300 'thirdly'. It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced, that the injury was accidental or otherwise unintentional.”

67. This court now proceeds to examine the fine distinction between culpable homicide and murder inasmuch as the maximum thrust is the offence in question, even if dying declaration is treated to be ex-facie correct, the offence would not travel beyond culpable homicide not amounting to murder and for that, the statutory prescriptions and various authorities of this court as well as Hon'ble Supreme court are looked into.

68. There exists a thin line of distinction between the offence of murder and culpable homicide not amounting to murder because the difference is merely a question of the degree of probability of death ensuing. In light of the above statement, explain the distinction between clause (2) of section 299 and clause (3) of section 300 IPC with the help of Illustrations and decided cases.

69. For the purposes of comparison and bringing out the distinction clearly, sections 299 and section 300 IPC may be put as follows:

Section 299	Section 300
A person commits culpable homicide by which the death is caused.	Except in the cases if the act hereinafter excepted is done. Culpable homicide is murder if the act by which death is caused is done.
INTENTION	
(a) With the intention of causing death;	(1) With the intention of causing death;
(b) With the intention of causing such as is likely to cause death;	(2) With the intention of causing such bodily injury as the offender known to be likely to cause the death of the person to whom the harm is caused;
	(3) With the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death;
KNOWLEDGE	
(c) The knowledge that he is likely by such act to cause death.	(4) With the knowledge that the Act is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death.

70. Fine distinction between murder and culpable homicide not amounting to murder has been considered in detail in the judgement rendered by the Hon'ble Supreme Court in the case of **State of Andhra Pradesh Vs. Rayavarapu Punnayya and another reported in 1976 SCC OnLine SC 316**. The relevant paragraphs of said judgement are quoted as under :-

"12. In the scheme of the Penal Code, 'culpable homicide' is genus and 'murder' its specie. All 'murder' is 'culpable homicide' but not vice-versa. Speaking generally, 'culpable homicide' sans 'special characteristics of murder', is 'culpable homicide not amounting to murder'. For the purpose of fixing punishment, proportionate to the gravity of this generic offence, the Code practically recognises three degrees of culpable homicide. The first is, what may be called, 'culpable homicide of the first degree'. This is the greatest form of culpable homicide, which is defined in Section 300 as 'murder'. The second may be termed as 'culpable homicide of the second degree'. This is punishable under the first part of Section 304. Then, there is 'culpable homicide of

the third degree'. This is the lowest type of culpable homicide and the punishment provided for it is, also, the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304.

13. The academic distinction between 'murder' and 'culpable homicide not amounting to murder' has vexed the courts for more than a century. The confusion is caused, if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minutae abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the key words used in the various clauses of ss. 299 and 300. The following comparative table will be helpful in appreciating the points of distinction between the two offences.

Section 299 Section 300 A person commits culpable homicide Subject to certain if the act by which the death exceptions culpable is caused is done homicide is murder if the act by which the death caused is done--

.....
14. Clause (b) of s. 299 corresponds with cls. (2) and (3) of s. 300. The distinguishing feature of the mens rea requi- site under cl. (2) is the knowledge possessed by the offend- er regarding the particular victim being in such a peculiar condition or state of health that the intentional harm caused to him is likely to be fatal, notwithstanding the fact that' such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the 'intention to cause death' is not an essential requirement of el. (2). Only the intention of causing the bodily injury coupled with the offender's knowledge of the likelihood of such injury caus- ing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. This aspect of cl. (2) is borne out by illustration (b) appended to s. 300.

15. Clause (b) of s. 299 does not postulate any such knowl- edge on the part of the offender. Instances of cases falling under cl. (2) of s. 300 can be where the assailant causes death by a fist blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result of the rupture of the liver, or spleen or the failure of the he,art, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an inten- tion to. cause death or bodily injury sufficient 'in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given.

16. In clause (3) of s. 300, instead of the words 'likely to cause death' occurring in the corresponding el. (b) of s. 299, the words "sufficient in the ordinary course of nature" have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real, and, if over- looked, may result 'in miscarriage of justice. The differ- ence between cl. (b) of s. 299 and cl. (3) of s. 300 is one of the degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word "likely" in cl. (b) of s. 299 conveys the sense of 'probable' as distinguished from a mere possibili- ty. The words "bodily injury... sufficient in the ordinary course of nature to cause death" mean that death will be the "most probable" result of the injury having regard to the ordinary course of nature.

17. In cases to fall within cl. (3), it is not necessary that the offender intended to cause death, So long as death ensues from the intentional. bodily injury or injuries sufficient to cause

death in the ordinary course of nature. *Rajwant and anr. v. State of Kerala*(2) is an apt illustration of this point.

18. In *Virsa Singh v. The State of Punjab*, (2) *Vivian Bose j. speaking for this Court*, explained the meaning' and scope of Clause (3), thus (at p. 1500):

'The prosecution must prove the following facts before it can bring a case under s. 300, 3rdly'. First, it must establish, quite objective- ly, that a bodily injury is present;. secondly the nature of the injury must be proved. These are purely objective investigations. It must be proved that there was an intention to inflict that particular injury, that is to say,. that it was not accidental or unintentional or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further, and, fourthly it must be ,proved that the injury of the type just described made up of the three elements set out above was suffi- cient to cause death in the ordinary course of nature. This part of the enquiry is purely objec- tive and inferential and has nothing to do with the intention of the offender. "

19. Thus according to the rule laid down in *Virsa Singh's case* (*supra*) even if the intention of accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature and did not extend to the intention of causing death, the offence would be murder. Illustration (c) appended to s. 300 clearly brings out this point.

20. Clause (c) of s. 299 and cl. (4) of s. 300 both require knowledge of the probability of the causing death. It is not necessary for the purpose of this case to dilate much on the distinction between these corresponding clauses. It will be sufficient to say that cl. (4) of s. 300 would be applicable where the knowledge of the offender as to the probability of death of a person or persons in general--as distinguished from a particular person or persons---being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid.

21. From the above conspectus, it emerges that whenever a court is confronted with the question whether the offence is 'murder' or 'culpable homicide not amounting to murder,' on ,the facts of a case, it will' (1) *A.I.R. 1966 S.C. 1874*. (2) [1958] *S.C.R. 1495* be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to "culpable homicide" as defined in s. 299. If the answer to this question is *prima facie* found in the affirmative, the stage for considering the operation of s. 300, Penal Code is reached. This is the stage at which the Court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four Clauses of the definition of murder' contained in s. 300. If the answer to this question is in the negative the offence would be 'culpable homicide not amounting to murder', punishable under the first or the second part of s. 304, depending. respectively, on whether the second or the third Clause of s. 299 is applicable. If this question is found in the positive, but the case comes, within any of the Exceptions enumerated in s. 300, the offence would still be 'culpable homicide not amounting to murder' punishable under the First Part of s. 304, Penal Code.'

22. The above are only broad guidelines and not cast-iron imperatives. In most cases, their observance will facilitate the task of the court. But sometimes the facts are so inter-twined and the second and the third stages so tele- scoped into each other, that it may not be convenient, to give a separate treatment to the matters involved in the second and third stages. "

ANALYSIS AND REASONING

71. Learned counsel for the appellant has claimed the benefits of the exceptions to the offence of murder as provided in the statute book, particularly Exception 1 and Exception 4 attached to Section 300 IPC, which is examined in the light of ingredients contained under Exception 1 of Section 300 IPC and the same can be split as under:-

“(1) The deceased must have given provocation to the accused.

(2) The provocation must be such as would deprive any reasonable man of his power of self-control over himself.

(3) The act of killing of the accused must have been done when he was deprived of his power of self-control by the grave and sudden provocation. It must be done under the immediate impulse of provocation.

(4) The offender must not have reflected, deliberated or cooled, between the provocation and the mortal stroke. Thus, there must not be sufficient time for the passion caused by the provocation to cool down and reason to reassert its control; Datta Gem v. State of Maharashtra, AIR 1974 SC 387.

(5) The offender must have caused the death of the person who gave the provocation or that of any other person by mistake or accident.

The First exception is however subject to three exceptions:

(a) Where the accused courts provocation or merely uses it as an excuse for assaulting another. In other words, provocation must come to him and he must not seek to get provocation.

(b) Where the act is legal but is done in an illegal manner which offers sufficient provocation, killing in pursuant there is no murder.

(c) A person who acts in the exercise of his right of self-defence performs a legal act and may provoke another and if he retaliates on account of the provocation so received, it will not be an extenuation of this crime.”

72. In the scenario, no defence evidence has been adduced the only material for examination is prosecution evidence, including the dying declaration which does not suggest that the provocation was given at the end of deceased, thus, further inquiry for meeting other parts of Exception 1 to Section 300 IPC does not arise.

73. Now the next question that arises for consideration is whether Exception 4 to Section 300 IPC comes to the rescue of appellant or not. To attract Exception-4 following ingredients are expedient :-

*(i) There must be a **sudden fight**;*

*(ii) The act must have been committed in a **heat of passion**;*

*(iii) The act must have been committed **without pre-meditation**;*

*(iv) The accused must not have taken **undue advantage**;*

*(v) The accused should not have acted in a **cruel manner**; and*

*(vi) The fight must have been **with the person killed**.*

74. To attract Exception 4, four ingredients must be satisfied and all the four ingredients must cumulatively be present and even the absence of one of the ingredient would disentitle the

appellant-accused from claiming the benefit of Exception 4 to Section 300 IPC. The Hon'ble Supreme Court in a recent decision rendered in case of **Surender Kumar v. State of Himachal Pradesh** reported in 2025 SCC OnLine SC 2750 has held as under:-

“8. As far as Exception 4 is concerned, an act of culpable homicide does not amount to murder if following ingredients are fulfilled (i) there is no pre-meditation; (ii) there is a sudden fight; (iii) the act is committed in the heat of passion; and (iv) the assailant has not taken any undue advantage or acted in a cruel manner. Although the term 'fight' has not been defined in IPC, but the consistent view is that it implies mutual assault by use of criminal force and not mere verbal duel.

9. In Bhagwan Munjaji Pawade v. State of Maharashtra, (1978) 3 SCC 330 (para 6), followed and affirmed in Awadhesh Kumar v. State of U.P. & Anr., (2019) 10 SCC 323, this Court held that where the accused is armed and the deceased is unarmed, Exception 2 can have no application and Exception 4 to Section 300 would not apply if there is sudden quarrel but no fight between the deceased and the accused. It was held that 'fight' postulates a bilateral transaction in which blows are exchanged.

10. In the instant case, there is no evidence of exchange of blows. In our view, therefore, case would not fall under Exception 4 to Section 300. Moreover, infliction of 4 knife blows to an unarmed person, on vital parts of the body, is indicative of the accused acting in a cruel manner.

11. At last, the appellant's counsel argued that case may fall under Exception 1 to Section 300 because infliction of knife blows took place after a quarrel. In our view, there is not much evidence on record to disclose that provocation was so grave and sudden that the appellant was deprived of his self-control.”

75. In the instant case, the judgment of **Surender Kumar (supra)** squarely applies qua sudden fight as there is no allegation of a fight in the instant case also.

76. The material on record including dying declaration is examined on the touchstone of essential elements of Exception 4 to Section 300 IPC. It comes out that there is absolutely absence of fight, what to say sudden fight, as for satisfying the term fight two individuals active involvement is needed, it cannot be unilateral as in the instant case. Neither in the dying declaration nor in the statement under Section 313 Cr.P.C. it is mentioned that there was a fight more so the appellant having locked the door after putting the deceased to ablaze, clearly indicates that he acted in a cruel manner and has taken undue advantage of his position i.e. after burning his own pregnant wife, he did not allow the deceased to go outside for help. Thus, in view of aforesaid factual matrix from no stretch of imagination Exception 4 to Section 300 IPC comes to rescue of appellant. This Court cannot lose sight of the fact that deceased was unarmed and no instigation on her part has been alleged by defence.

77. For claiming the benefit of Exception 4, the accused must establish, on a balance of probabilities, that the act was committed without premeditation, arose out of a sudden fight in the heat of passion upon an abrupt quarrel, and that the offender neither took undue advantage nor acted cruelly or unusually. The rationale underlying this exception is that where premeditation is absent, and the offender acts under a complete loss of self-control driven by the heat of passion, the resulting act is one that a person of ordinary temperament would not ordinarily commit.

78. The submission that appellant has not taken undue advantage or acted in a cruel or unusual manner as comes out from evidence on record is tested in the light of the ratio laid down by the Hon'ble Supreme Court in the case of **Anil Kumar Vs. State of Kerala reported in (2024) 1 SCC 327**. The relevant paragraphs of the said judgement are quoted below:-

“It is on the strength of the above exception that from the side of the appellant it has been argued that the appellant is not guilty of murder as he had no premeditated mind and that the action of the appellant arose out of a sudden fight. In the first place, the fight was not sudden. The appellant and the Page 10 | 14Criminal Appeal No.2697 of 2023 deceased wife had a past history of quarrel and that they had been quarrelling on the fateful day also since before the actual incident. During their quarrel, a neighbour (Sahajan) i.e. PW 1 had visited their house and the deceased wife had shown some injuries received by her during the assault. However, realising the quarrel between the two, he left saying that he would come home later on. It was thereafter that the incident of pouring kerosene and burning took place. So, there was sufficient time in between the two acts and it cannot be said that there was a sudden quarrel and provocation leading to burning. The appellant saw the deceased wife drenched in kerosene and was conscious that if lighted, she would be burnt to death even then ignited her to fire. This shows premeditated mind to kill her. More particularly, the appellant cannot take advantage of the 4th Exception only on the pretext that it was not on account of premeditated mind or out of a Page 11, 14 Criminal Appeal No.2697 of 2023 sudden fight or that his intentions were not bad as he tried his best to douse the fire and to save the life of the deceased wife for the reason that the benefit of the above exception would have been available to him, had he not taken undue advantage of the situation.

21. The exception clearly in unequivocal term states that it would be applicable where culpable homicide is committed not only without premeditated mind in a sudden fight or quarrel but also without the offender taking 'undue advantage' of the situation. In the instant case, the appellant upon seeing the deceased drenched in kerosene clearly took advantage of the situation and lighted a matchstick and threw it upon her so that she can be burnt. The appellant having taken 'undue advantage' of the situation cannot be extended the benefit of Exception 4 to Section 300 IPC so as to bring the case within the ambit of Part II of 304 IPC Page 12, 14 Criminal Appeal No.2697 of 2023

22. In view of the above legal position, the ruling cited above, viz. Kalu Ram (supra) would not benefit the appellant. 23. The First Information Report and the dying declarations on record clearly contain the statement of the deceased that when she had poured kerosene upon herself to deter the appellant from fighting and assaulting, he lighted a matchstick and with the intention to kill her, threw it upon her by saying 'You Die'. 24. The aforesaid evidence clinches the issue and establishes beyond doubt that the appellant is guilty of the offence of culpable homicide amounting to murder and is not entitled to benefit of the Exception 4 to Section 300 IPC.”

79. In the present case, there is no fight alleged, as for fight requires two individuals and exchange of blows is sine qua non, which is missing in the instant case and any assault at the end of appellant is found to be unilateral and cannot be construed to be a fight even if an altercation if any, was result of spur of moment. Absence of fight disentitles appellant to claim any benefit of exception 4 attached to section 300 IPC.

80. The prosecution evidence had brought the offence in question within the purview of culpable homicide in terms of section 299 of the IPC. The only further question that crops up for consideration of this Court is whether such culpable homicide is to be put under the category of murder (as envisaged under section 300 IPC) or it remains as a part of section 299 IPC to the extent of culpable homicide not amounting to murder.

81. The first part of Section 299 of the Indian Penal Code speaks of the intention of causing death. Here, in the instant case, from the evidence on record, we are satisfied that the deceased had the intention to cause the death. The Intention is always a matter of inference. Such inference should be reasoned and well founded. Motive, words uttered at the time of occurrence, weapon used, number of injuries, location of injuries, opportunity to complete the task of killing are some of the factors which would weigh in the judicial mind of the Court while deciding whether the accused had intention to kill. In this case, having considered all the above relevant facts, we hold that the accused had definite intention to kill and therefore, the act of the accused would fall under the first limb of Section 299 I.P.C. and so under the first limb of Section 300 I.P.C. It does not fall under any of the special exceptions appended to Section 300 I.P.C.

82. During the pre-Constitution era, in the case of **Doraisamy Servai Vs. Emperor, reported in 1943 M.W.N. Cr. 185**, it was held that the real test is "whether the cause of death is directly associated with the act of the accused " That was a case where there were two accused. Out of whom the first accused cut the deceased on the back of the neck with a vettaruval and the second accused was standing by his side holding a stick. When a witness in the case intervened, the second accused cried out, "Will you go away or shall I cut you also?" Then the first accused cut the witness with aruval on his neck. The deceased was taken to the hospital. He underwent treatment as in-patient. The deceased died after 16 days. According to the Doctors who conducted postmortem, the death was due to septicaemia and pyaemia resulting from the multiple injuries; none of the injuries could each by itself have caused the death, but cumulatively the injuries should have proved necessarily fatal in the case of a normal man. The deceased appeared to have had a physique above the normal; he was well built; so in this case, the injuries need not have been necessarily fatal; but they were sufficient in the ordinary course of nature to cause death. Relying on the above medical opinion, it was argued before the Division Bench that since the death was due to septicaemia, the offence would fall either under Section 326 of I.P.C. or Section 304 of I.P.C. While deciding the said question, the Division Bench formulated that **the test is whether the cause of death is to be directly associated with the act of the accused. After having referred to various English cases as well as Indian cases, Justice Mockett (O.C.J), speaking for the Bench, held as follows:**

"It would be a strange position if a man who inflicts a wound causing almost immediate death should be guilty of murder, whilst a man who inflicts a very similar wound from which pneumonia supervenes should not. On the facts of this case it is clear to me that the deceased man, in spite of his physique which is said to have been exceptionally robust, died as a direct result of the injuries inflicted upon him by the appellant; and that the appellant intended his death is evident from the facts. The result was not as immediate as he intended and not perhaps quite in the manner that he intended. But in the processes of nature, in spite of medical attention one of the well-known perils from a wound supervened, namely, blood poisoning, and the deceased died. The chain of

causation is in my view direct." (Emphasis added) On such view, the Division Bench held the accused guilty under Section 302 I.P.C.

83. In one of the decisions, rendered by Hon'ble Supreme Court **State of Haryana Vs. Pala and others reported in (1996) 8 SCC 51**, Hon'ble Supreme Court had an occasion to draw a fine distinction in homicidal cases between the primary effect of the injuries and the secondary effect of the injuries. In the aforementioned case, the deceased was hit on his head three times and when the deceased had fallen, the other accused had beaten him thrice on his chest and abdomen. The deceased was taken to the hospital. The deceased died several days later, while in the hospital. The doctor's opinion in respect of the cause of death was as follows:

"Cause of the death was due to septicaemia, which resulted as a result of the head injury and was sufficient to cause death in ordinary course of nature."

84. The contention before the Hon'ble Supreme Court was that the offence committed by the accused would not fall under any of the limbs of Section 300 I.P.C. This question was considered in the light of further information given by the doctors which is as follows:

"Septicasmie is the direct result of the head- injury. This is not a disease. In other words, head injury is the cause of death."

85. The Trial Court convicted the accused, applying clause 3 of Section 300 I.P.C., under Section 302 I.P.C. On appeal, the High Court applied Exception 4 to Section 300 I.P.C. and converted the offence of murder into culpable homicide not amounting to murder and convicted the accused under Section 304 Part II of I.P.C. In the further appeal to the Hon'ble Supreme Court, in paragraph 3 of the judgment, the Hon'ble Supreme Court has held as follows:

"3.....On the other hand he contended that when death was due to septicasemie, it cannot be referable to the cause of the death in the ordinary course of nature due to anti mortom injuries and that, therefore, the offence of murder has not been made out. In support thereof, he sought to place reliance on Lyon's Medical Jurisprudence for India (Tenth Edition) at page 222. It is stated therein that "Danger to life depends, primarily, on the amount of hemorrhage, on the organ wounded, and on the extent of shock; secondarily, on secondary hemorrhage, on the occurrence of septicaemia, erysipelas, tetanus, or other complications. In answering the question whether a wound is dangerous to life, the danger must be assessed on the probable primary effects of the injury : Such possibilities as the occurrence of tetanus or septicaemia, later on, are not to be taken into consideration." Though the learned counsel had not read the later part of the opinion, the medical evidence on record do clearly establish that Septicaemia is not the primary cause and the death was due to injuries caused to the deceased and they are sufficient to cause death in the ordinary course of nature. Septicaemia would, therefore, not be taken into account." (Emphasis added)

86. From the above judgement, it is crystal clear that it is not as though in every case where the death is due to Septicaemia resulting on account of the injuries, the offence would fall outside the scope of Section 300 I.P.C. **On the contrary, the distinction lies as to whether the death was**

due to the primary effects of the injury or due to the secondary effects of the injury. If the injury caused to the deceased itself is either sufficient to cause death or likely to cause death, then depending upon the other circumstances, the offence would fall directly either under the third limb or the fourth limb of Section 300 I.P.C.

(Emphasis added)

87. It is profitable to note the ratio laid down by Supreme Court in the case of **Jagtar Singh Vs. State of Punjab reported in (1999) 2 SCC 174**, wherein the Hon'ble Supreme Court had to decide as to whether the offence would fall within the scope of Section 302 I.P.C. when the death was due to Septicaemia. One of the pleas taken in that case was that Septicaemia had occurred because of improper treatment given. It was further contended that had there been proper treatment, the deceased would not have died. This contention was negated by the Hon'ble Supreme Court by referring to Explanation-2 to Section 299 of I.P.C. which reads as follows:

"Explanation 2 to Section 299:- Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented."

In paragraph 7 of the Judgment, the Hon'ble Supreme Court held as follows:

"7. Having given our anxious consideration to the first contention of Mr. Gujral we do not find any substance in it. It is true that Naib Singh died 17 days after the incident due to septecemia, but Dr. M.P.Singh (P.W.1), who held the post-mortem examination, categorically stated that the septicemia was due to the head injury sustained by Naib Singh and that the injury was sufficient in the ordinary course of nature to cause death. From the impugned judgment we find that the above contention was raised on behalf of the appellants and in rejecting the same the High Court observed :-

"It is well settled that culpable homicide is not murder when the case is brought within the five exceptions to section 300 Indian Penal Code. But even though none of the said five exceptions is pleaded or prima facie established on the evidence on record, the prosecution must still be required under the law to bring the case under any of the four clauses, firstly to fourthly, of Section 300, Indian Penal Code, to sustain the charge of murder. Injury No. 1 was the fatal injury. When this injury is judged objectively from the nature of it and other evidence including the medical opinion of Dr. M.P.Singh (P.W.1), we are of the considered view that injury was intended to be caused with the intention of causing such a bodily injury by Harbans Singh appellant on the person of Naib Singh which was sufficient in the ordinary course of nature to cause death....."

On perusal of the evidence of P.W.1 in the light of explanation 2 to Section 299 I.P.C, We are in complete agreement with the above quoted observations of the High Court."

(Emphasis supplied)

88. In **Veerla Satyanarayana Vs. State of Andhra Pradesh reported in (2009) 16 SCC 316**, the Hon'ble Supreme Court was invited to decide a similar question where death was due to septicaemia on account of 60% burn injuries caused by acid. In paragraphs 4 and 5 the Hon'ble Supreme Court has held as follows:

"4. In our view, this submission is not tenable because of the burn injuries. By throwing of the acid on the deceased who was sleeping, septicemia was caused and he died. PW15 (doctor) has made it clear that even in the cases of proper treatment also there is possibility of septicemia. For this purpose, the High Court has rightly referred to and relied upon the decision of this Court in Sudershan Kumar v. State of Delhi . In the said case, the court confirmed the conviction under Section 302 IPC by considering the fact that there was 35% burn injuries by pouring of acid which according to doctor's evidence was due to toxemia and septicemia from absorption of toxins. The Court also considered the relevant explanation (2) to Section 299, which provides that where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

5. In the present case, the prosecution has established beyond reasonable doubt the motive of the accused of causing this injury. It is also established that the act of the appellant in pouring acid on the body of the deceased was pre-planned one; he selected night time when the deceased as well as PW1 were sleeping; he poured the acid which caused 60% burn injuries and as the injuries caused by the appellant were sufficient in ordinary course of nature to cause death, the appellant is rightly held to be guilty of offence punishable under Section 302 of IPC."

89. In **State of Rajasthan Vs. Arjun Singh and others reported in (2011) 9 SCC 115**, the Hon'ble Supreme Court had to deal with a similar situation where the death occurred after 35 days due to septicaemia on account of gunshot injuries. Speaking for the Bench Hon'ble Mr. Justice P.Sathasivam in paragraph 31 has held as follows:

"31. Finally, learned senior counsel for the accused pointed out that inasmuch as Himmat Raj Singh died after 35 days due to septicemia, the Courts below are not justified in convicting the accused persons for an offence under Section 302 IPC for his death. Considering the medical evidence that Himmat Raj Singh sustained 7 gun shot injuries which were sufficient to cause death in the ordinary course, we are satisfied that the death of Himmat Raj Singh undoubtedly falls within the ambit of 302 IPC. " (Emphasis supplied)

90. The judgments, thus far, we have referred to are all cases where the Hon'ble Supreme Court found the accused guilty under Section 302 I.P.C., though the death was due to septicaemia on account of the injuries.

91. Now let us examine the ratio of certain authorities /judgments of Hon'ble Supreme Court where the Hon'ble Supreme Court has convicted the accused under Section 304 I.P.C. where death was also due to septicaemia on account of the injuries.

92. In **Jharmal and others Vs. State of Haryana reported in 1994 SCC (Cri.) 593** that the deceased sustained injuries on the head due to single blow with an iron pipe. He died after 17 days due to septicaemia. The Court below convicted the accused under Section 302 I.P.C., but the Hon'ble Supreme Court reversed the same and convicted the accused under Section 304 Part II of I.P.C. In paragraph no. 6 of the judgement, the Hon'ble Supreme Court has held as follows:

"6. We find considerable force in this submission. As stated above the occurrence took place on November 18, 1988 and the deceased died 18 days later on December 5, 1988 due to septicaemia and other complications. The Doctor found only one injury on the head and that was due to single blow inflicted with an iron pipe not with any sharp-edged weapon. Having regard to the circumstances of the case, it is difficult to hold that the appellant intended to cause death nor it can be said that he intended to cause that particular injury. In any event the medical evidence shows that the injured deceased was operated but unfortunately some complications set in and ultimately he died because of cardiac failure etc. Under these circumstances, we set aside the conviction of the appellant under Section 302 IPC and the sentence of imprisonment for life awarded thereunder. Instead we convict him under Section 304 Part II IPC and sentence him to undergo six years' RI. The sentence of fine of Rs 2000 along with default clause is confirmed. Accordingly the appeal is partly allowed."

93. The counsel for the appellant cited the coordinate bench judgment of this Court rendered in the case of **Sushila (supra)** in which the Hon'ble Supreme Court rendered a judgment in the case of **Maniben Vs. State of Gujarat reported in (2009) 8 SCC 796** was cited. In the case of Maniben (supra) the deceased died after 8 days of the incident in which the deceased had sustained burn injuries. The accused had thrown a burning wick made of rags on the deceased and thereby set fire to the terylene clothes put on by the deceased. In paragraph 20 of the judgment, it was held as follows:-

"20. There is also evidence on record to prove and establish that the action of the appellant to throw the burning tonsil was preceded by a quarrel between the deceased and the appellant. From the aforesaid evidence on record it cannot be said that the appellant had the intention that such action on her part would cause the death or such bodily injury to the deceased, which was sufficient in the ordinary course of nature to cause the death of the deceased. Therefore, in our considered opinion, the case cannot be said to be covered under clause (4) of Section 300 of IPC. We are, however, of the considered opinion that the case of the appellant is covered under Section 304 Part II of IPC."

94. From these judgments, one can easily perceive the difference. In these cases, the Court held there was no intention to cause death. The medical opinion was not certain as to whether the injuries, caused with intention, would have been sufficient to cause the death in the ordinary course of nature or not. But, the medical opinion was to the effect that the injury is likely to cause death. It was because of these reasons that the Hon'ble Supreme Court held that the offence would fall only under Section 304 I.P.C.

95. From the two sets of judgments which we have considered in detail, indicates **the point of difference is easily decipherable, which is thin but fine. In all these cases referred to above, one common feature is that the death was due to septicaemia on account of the injuries.** In this context we would like to mention that there is a general tendency to contend in such cases, that if once it is found that the death is due to septicaemia, the offence would fall under Section 304 of I.P.C. and not under Section 302 of I.P.C. We have seen in our experience, in many judgments of the Trial Courts, there is a slight lack of clarity on this subject. That is the reason why, we have undertaken the exercise to refer to both sets of judgments. From the above judgments and the

discussions we have made supra, we may state that the point of difference is this: "whether the death was primarily due to the injuries or due to the secondary cause namely, the supervening cause like septicaemia, tetanus etc.,"

96. If it is proved that the injury is fatal and the intention was to cause the death, though the death occurred after several days after septicaemia had supervened, it is undoubtedly a murder as it falls within the first limb of Section 300 I.P.C.

97. If it is proved that the injuries by themselves are *sufficient to cause death in the ordinary course of nature* and if it is established that those injuries were the intended injuries, though the death occurred after septicaemia had supervened, the act of the accused would squarely fall under the third limb of Section 300 I.P.C. and the accused is therefore liable to be punished under Section 302 of I.P.C.

98. If it is proved that the injuries are imminently dangerous to life, though the death had occurred after septicemia had supervened, then the act of the accused would squarely fall under the fourth limb of Section 300 I.P.C., provided the other requirements like knowledge on the part of the accused etc., are satisfied and so the accused will be liable to be punished under Section 302 of I.P.C. Here also, the primary cause of the death is the injuries and septicemia, tetanus etc., are only the secondary cause.

99. In the case in hand, learned trial Court recorded acquittal under Section 304-B IPC, 498-A and Section 4 Dowry Prohibition Act, and there being no challenge, this Court is bestowed with the task of only evaluating the evidence qua whether conviction under Section 302 IPC sustains in given facts and circumstance of the case, thus, proceed to analyse the evidence and material on record and test the arguments raised by the parties.

100. The first and foremost submission advanced by counsel for appellant is with respect to delay in lodging FIR, is examined and from the record it is gathered that PW-1 has stated in her statement that she attempted to register the First Information Report but she was told that she should get her daughter treated first. The prompt recording of dying declaration reveals the author of the crime, as such the delay in lodging FIR is of no consequence, since roping of accused is not due to deliberation and consultation. Rather, in dying declaration appellant has been said to be author of crime.

101. Hon'ble Supreme Court in the case of **Hariprasad @ Kishan Sahu Vs. State of Chhatisgarh reported in 2024 SCC Online SC 1764** has held that delay in lodging FIR is not always fatal, if cogent explanation is furnished by prosecution and the said authority is in the same line of Hon'ble Supreme Court's another judgment rendered in the case of **Ravinder Kumar Vs. State of Punjab reported in (2001) 7 SCC 690**. Having considered the judgments of Supreme Court qua delay in lodging FIR, in the facts of present case, it comes out that there is sufficient explanation offered by none other than first informant stating that the delay was caused on first hand due to engagement in treatment.

102. The witnesses of fact viz. PW-1 and PW-2 are not ocular accounts as emerges from their testimonies recorded before the learned trial Court. The dying declaration Exhibited as Ka 10 does not mention any demand of dowry as such acquittal under Section 304 B and 4 D.P. Act appears to be fully justified. Similarly, the evidence of cruelty could also not be led by prosecution which impelled the learned trial Court to acquit the appellant under Section 498-A IPC. We being an appellate court, need not to enter into arena of acquittal in absence of any challenge in this regard.

103. Thus, the dying declaration Exhibited as Ka-10 is the only material/evidence that has been formed basis for conviction and its authenticity and genuineness is once again reassessed. We appreciate and note that the dying declaration has been proved by PW-4 and the certificate of fitness appended on dying declaration has also been proved by the doctor i.e. Dr. Pankaj Awasthi-PW-6 but before we proceed further we put ourselves to guard to examine the veracity of dying declaration exhibited as Ka-10.

104. The truthfulness, authenticity and genuineness of dying declaration in question needs to be tested in view of proposition laid by Hon'ble Supreme Court in **Banarsi Dass and others Vs. State of Haryana (2014) 15 SCC 485** wherein essential of dying declaration to be relied as an evidence, has been set out. The relevant paragraphs read as follows:

"A bare analysis of the provision, for the purpose of the case at hand, would show that a statement by a person made before his death to be relevant, the following ingredients are to be satisfied:

(i) The statement is made by a person who is conscious and believes or apprehends that death is imminent.

(ii) The statement must pertain to what the person believes to be the cause or circumstances of death.

(iii) What is recorded must be the statement made by the person concerned, since it is an exception to the rule of hearsay evidence.

(iv) The statement must be confidence bearing, truthful and credible as held by this Court in Laxman v. State of Maharashtra, (2002) 6 SCC 710 and followed in Mallella Shayam Sunder v. State of A.P., (2015) 2 SCC 486.

(v) The statement should not be one made on tutoring or prompting.

(vi) The court may also scan the statement to see whether the same is prompted by any motive of vengeance."

It was further held in **Najam Faraghi v. State of West Bengal, (1998) 2 SCC 45** that merely because a person died long after making the dying declaration, the statement does not become irrelevant.

105. In **Mukesh v. State (NCT of Delhi), (2017) 6 SCC 1** (three judges bench), Hon'ble the Apex Court after placing reliance upon **Atbir v. State (NCT of Delhi), (2010) 9 SCC 1**, **Paniben v. State of Gujrat (1992) 2 SCC 474** and **Paneerselvam v. State of T.N., (2008) 17 SCC 190** has held in paras 176 and 177 as under:-

"176. The legal position regarding the admissibility of a dying declaration is settled by this Court in several judgments. This Court in Atbir v. State (NCT Of Delhi), taking into

consideration the earlier judgment of this Court in Paniben v. State of Gujrat and another judgment of this Court in Paneerselvam v. State of T.N., has exhaustively laid down the following guidelines with respect to the admissibility of dying declaration: (Atbir case, SCC pp. 8-9, para 22).

"22. (i) Dying declaration can be the sole basis of conviction if it inspires the full confidence of the court.

(ii) The court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.

(iii) Where the court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.

(iv) It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.

(v) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.

(vi) A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.

(vii) Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.

(vii) Even if it is a brief statement, it is not to be discarded.

(ix) When the eyewitness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.

(x) If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration.

177. It is well settled that dying declaration can form the sole basis of conviction provided that it is free from infirmities and satisfies various other tests. In a case where there are more than one dying declaration, if some inconsistencies are noticed between one and the other, the court has to examine the nature of inconsistencies as to whether they are material or not. The court has to examine the contents of the dying declarations in the light of the various surrounding facts and circumstances."

106. Upon a close scrutiny of the dying declaration Exhibited as Ka-10, it comes out that when the victim asked for money for the treatment of her one and a half year old son having mouth sores, she was assaulted by the appellant, who threw a bowl of lentils at her and threatened that if she disclosed the incident to anyone, her face would be disfigured by pouring acid. The dying declaration exhibits the appellant did not stop and took the deceased to the inner portion of the house, poured kerosene oil over her head and body, lit a match stick and threw it upon her from a distance, as a result of which she caught fire. Even thereafter, the appellant did not stop even here rather to ensure her death, he bolted the door from outside. On screaming of the deceased, people from the locality gathered at the stop.

107. The tenor of the dying declaration reflects a barbaric act of burning the pregnant wife and thereafter bolting the door from outside in order to ensure her death. There is not even an iota of evidence with respect to sudden fight as such even if the incident had happened in the spur of

moment, the act of bolting the house from outside brings no other inference except that appellant's intention to cause death of his pregnant wife.

108. The fabric of the dying declaration, as proved by the Executive Magistrate having certification of mental fitness the authenticity of contents which does not appear to be result of tutoring, prompting or imagination. The dying declaration appears to be voluntary, thus, it is coherent and consistent. The defence failed to impeach the dying declaration as such, the reliability by the trial Court cannot be doubted by us in appellate jurisdiction.

109. The contention raised by counsel for State that the instant case is covered by first clause appended to Section 300 IPC, in view of an unimpeached dying declaration is examined on the touchstone of the requirements/parameters of law. It is profitable to note the judgment of the Bombay High Court rendered in **Irra Gonda Deesai Vs. State of Goa, Criminal Appeal No. 7 & 8 of 2006**, in relation to first clause appended to section 300 IPC. The relevant paragraphs are extracted as follows:

“13. On behalf of the respondent, the learned Public Prosecutor has placed reliance on the case of State of Andhra Pradesh v. Rayavarapu Punnayya and Anr. to support the case of the prosecution that the case is squarely covered by clause firstly to Section 300 I.P.C. In this case, the Apex Court has said that whenever a court is confronted with the question whether the offence is 'murder' or 'culpable homicide not amounting to murder', on the facts of a case, it would be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death leads to the second stage for considering whether that act of the accused amounts to culpable homicide as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300, Penal Code is reached. This is the stage at which the Court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of 'murder' contained in Section 300. If the answer to this question is in the negative, the offence would be 'culpable homicide not amounting to murder', punishable under the first or the second part of Section 304, depending, respectively, on whether the second or third clause of Section 299 is applicable. If this question is found in the positive, but the case comes within any of the exceptions enumerated in Section 300, the offence would still be 'culpable homicide not amounting to murder', punishable under the first part of Section 304, Penal Code. The Apex Court also noted that the above are only broad guidelines and not cast iron imperatives.

15. Clause firstly of Section 300 IPC deals with death being caused by an act with intention of causing death. Once the intention to kill is proved, the offence is murder unless one of the exceptions are applied. It is well said that intention is what intention does. In deciding the question of intention Courts generally look at factors such as the nature of weapon used, the part of the body on which the blow is given, the force of the blow and its number. In this case, from the nature of injuries, the weapon used, their location on vital parts of the body and force with which they were inflicted lead only to one inference that the accused inflicted the same with the intention of killing his wife.”

110. The first clause appended to Section 300 IPC talks about intention, the act done and the death caused. It does not talk about injuries or nature of injuries meaning thereby if there is an intention coupled with an overact and the death ensues the first clause of Section 300 IPC would stand attracted. In the totality of factual matrix, both the first clause and fourth clause of Section 300 IPC are attracted in the present case, on account of putting a helpless lady to ablaze by pouring kerosene oil after taking her to the inner portion of house and thereafter bolted the door from outside.

111. The alternative argument advanced on behalf of the appellant is that the offence would not escalate beyond culpable homicide not amounting to murder. This argument is being made on the premise that the burns caused to the victim did not result in her death during the initial fatal period and that her death happened on account of the setting in of some later complications termed as septicemia by the medical jurists.

112. Section 299 IPC defines 'culpable homicide' as "whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide."

113. **Explanation 2 to Section 299** has a material bearing on the said contention and hence that is extracted below:

"Explanation 2.- Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented."

114. Section 300 IPC carves out two segments, one is culpable homicide amounting to murder and the second segment consists of culpable homicide not amounting to murder. Four clauses enumerated in the Section are enveloped in the first segment. What is set apart for the second segment is compendiously described as "except in the cases hereinafter excepted" from the first segment. For the purpose of the present case, we deem it necessary to quote only the second clause in Section 300 IPC.

"secondly. -If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused."

115. In the present case, the appellant could not bring the case within the five exceptions enumerated in Section 300 IPC. Hence, the only question to be answered is whether he did the act with the intention of causing such bodily injury as he knew "to be likely to cause death of the deceased". It is inconceivable that appellant would not have known that setting a human being ablaze after soaking her clothes with inflammable liquid would cause her death, as the type of burn resulting therefrom would at least be "likely" to cause her death (if not sufficient in the ordinary course of nature to cause her death). The fact that the victim died after 23 days sustaining those burn injuries cannot exclude the act from the contours of the "secondly" clause of Section 300 IPC. Hence, the interval of twenty-three days between the attack and her death is not a cause for

mitigation of the offence perpetrated by the offender. We are, therefore, not impressed by the alternative argument advanced by the learned counsel for the appellant.

116. This Court also tests whether, if intention to cause death is not established in the facts of the present case, the offence in question would meet the fourth clause appended to Section 300 IPC to bring the offence of murder to the credit of appellant or not. The dying declaration unequivocally states that deceased was taken to inner portion of the house and was drenched with kerosene oil and thereafter was set ablaze and in order to ensure death the door was bolted the door from the outside, particularly when deceased was carrying eight months advance pregnancy. It is beyond understanding that appellant being husband could not have had knowledge and cognizance of the factum of pregnancy. Thus, setting the deceased ablaze and thereafter bolting the door brings the test of intention to cause death against appellant but even if alternatively it is assumed then it is a case where the act of the accused falls under clause 'Fourthly' of section 300 IPC, i.e. the act of causing injury so imminently dangerous where it will in all probability cause death. It is profitable to note paragraph no.13 of the judgment rendered by Hon'ble Supreme Court in the case of **Nagabhushan Vs. State of Karnataka reported in AIR 2021 SC 1290**. The relevant paragraphs of the judgment are extracted as follows:

“13. Even assuming that the accused had no intention to cause the death of the deceased, the act of the accused falls under clause Fourthly of Section 300 IPC that is the act of causing injury so imminently dangerous where it will in all probability cause death. Any person of average intelligence would have the knowledge that pouring of kerosene and setting her on fire by throwing a lighted matchstick is so imminently dangerous that in all probability such an act would cause injuries causing death.

18. Upon analysis of the evidence adduced by the prosecution, the courts below recorded concurrent findings that the accused caused the death of deceased Saraswatibai and convicted the appellant. It is well settled that concurrent findings of fact cannot be interfered with unless the findings are perverse and unsupportable from the evidence on record. This view has been reiterated in Dhananjay Shanker Shetty v. State of Maharashtra [(2002) 6 SCC 596 : 2002 SCC (Cri) 1444] . In the totality of the facts and circumstances, in our view, the concurrent findings of facts recorded by the courts below are based on evidence and we see no infirmity in the impugned judgment warranting interference'. Therefore, after pouring kerosene on the deceased and thereafter setting her ablaze, thereafter merely because the accused might have tried to extinguish the fire will not take the case out of the clutches of clause fourthly of Section 300 of the IPC. The act of the accused pouring kerosene on the deceased and thereafter setting her ablaze by matchstick is imminently dangerous which, in all probability, will cause death. Therefore, the High Court has rightly convicted the accused for the offence under Section 302 IPC.”

117. The learned trial Court's inference that 'the act of bolting the door from outside completely negates the defence of sudden and grave provocation. As regards the defence plea that the accused was not present at the spot and had only arrived later upon receiving information and thereafter admitted the victim to the hospital, the Court is of the opinion that according to the dying declaration, accused Manish was present at the spot and it was he who committed the murder, and that thereafter people gathered, he might have admitted the victim to the hospital merely due to public pressure.' Such inference appears to be plausible.

118. Further, the cause of death of the deceased may be found due to septicaemia but there is no material to demonstrate that any medical negligence and supervening circumstance if any, etc. The proximate cause of septicaemia would be burn injuries resulting in the unfortunate death of deceased.

119. The contention raised by counsel for appellant that the dying declaration in present case may not be relied upon having lacked corroboration from other prosecution evidence is not worthy of acceptance as if a dying declaration has been recorded in a proper manner by a competent authority and the court is satisfied of its truthfulness, it is a 'substantive piece of evidence' sufficient to sustain a conviction on its own and cannot be regarded as a weak piece of evidence.

120. The argument put forth by counsel for appellant that a dying declaration is not on the question answer format does not inspire confidence as Hon'ble Supreme Court unequivocally observed that there is no such requirement in law of recording dying declaration on question answer format as held in the case of **Surinder Kumar vs State Of Punjab reported in (2012)12 SCC 120**, the relevant paragraph is quoted under :

“Insofar as the case before us is concerned, we may only note that there is no format prescribed for recording a dying declaration. Indeed, no such format can be prescribed. Therefore, it is not obligatory that a dying declaration should be recorded in a question-answer form.”

121. The presence of medical certification upon dying declaration and having it formally been proved by PW-6 fortifies the authenticity of dying declaration. It is worthy to mention that the dying declaration in question has been recorded by a competent Executive Magistrate, who has no reason to depose against appellant.

122. The argument of death due to septicemia having been developed over the period of time suggesting that burn injuries may be remote cause is tested on the touchstone of the ratio of judgement rendered in **Sushila Devi (supra)** but the said dictum as relied by appellant is not attracted in factual backdrop of this case though in both the cases the death occurred due to septicemia but in the case in hand the appellant is imputed to have taken the deceased to another room after initial altercation and poured kerosene oil from the head by putting her to ablaze and thereafter, bolted the house from outside, so the helpless victim may not save herself. Such conduct as described in the dying declaration is not only cruel but appellant had taken undue advantage of situation where deceased was carrying eight months pregnancy. The facts of the instant case are not similar to the facts of Sushila Devi (supra) as such the authority as relied by appellant in the case of Sushila Devi (supra) stands distinguished on the facts. For awarding sentence and coming to the conclusion of conviction nature of injury is not only the sole determinative factor, rather its cause and intention and knowledge of perpetrator is also to be looked into before coming to a definite conclusion, thus, the authority of Sushila Devi (supra) does not come to the rescue of appellant in relation to conviction of the appellant. We cannot lose sight of the fact that an authority and similarly little difference of facts as well as an addition of a single new fact, can completely alter precedential value of a past decision as held in the case of **Bhavnagar University Vs. Palitana Sugal Mill Pvt. Ltd. and others reported in AIR 2003 SC 511**.

123. In the instant case, after throwing the bowl of lentils, appellant took his wife to another room poured kerosene oil from head set her to ablaze and, thereafter, locked her inside the house as comes out from none other than the dying declaration. In view of overt acts of pouring kerosene oil and setting it ablaze, thereafter, bolting the door from outside would definitely come under the injury aimed and caused. Thus, requisite intention is inferred against appellant.

124. Now turning to the instant facts of the case, the bodily injuries inflicted upon the deceased were clearly intentional, as kerosene oil was poured and match stick was lit putting the victim to ablaze, thus, the injury was aimed/intended and caused which resulted into death and in order to doubly sure the death of victim the door was bolted outside of the house, thus, the only intention could be gathered is causing death and as such, the act of appellant herein is covered by first limb of Section 300 IPC and none of the exceptions attached to Section 300 IPC are attracted. The death in the instant case was postponed for 23 days because of treatment in the district hospital as such the primary cause which is directly associated with the death of the victim is extensive burn injuries ranging from first to third degree. In view of elaborated discussions herein-above, we are left with no doubt that the offence in question would be covered by first, second and fourth limb of Section 300 IPC.

Conclusion

125. Thus, as a sequel of above, an irresistible conclusion, which, this Court reaches is, the intended burn injuries proved to be fatal. The bolting of the door from outside after putting the deceased to ablaze, though the death occurred after several days of septicemia, yet it is undoubtedly a murder punishable under Section 302 I.P.C.

126. Having reassessed the evidence led by the parties before the learned trial Court and having taken an overall view of the matter, including statutory prescriptions enshrined in the penal law and the legal requirements necessary to establish the offence to be conclusively proved, against the appellant, we are not persuaded to disturb the finding of conviction as recorded by the learned trial Court, thus, same is maintained and is hereby affirmed.

Proportionality of Sentence

127. This Court now proceeds to consider and examine the proportionality of sentence, awarded to the appellant commensurate to the offence, in view of evidence led by parties and the prayer of leniency qua sentence is again examined.

128. The question whether the sentence of imprisonment for life can be converted into a fixed term sentence, in this regard we would like to go through the ratio of law laid down by Constitution Bench of the Hon'ble Supreme Court, rendered in the case of **Union of India v. V. Sriharan, reported in (2016) 7 SCC 1**, where Hon'ble Supreme Court dealt with issue as to whether imprisonment for life in terms of Section 53 read with Section 45

of the I.P.C. means imprisonment for the rest of the life of the convict or the same can be reduced.

The relevant paragraph of V. Sridharan (supra) is extracted below:-

'Questions (i) and (ii)

(i) As to whether the imprisonment for life means till the end of convict's life with or without any scope for remission?

(ii) xxx xxx

xxx xxx

*61. Having noted the abovereferred to two Constitution Bench decisions in Godse [Gopal Vinayak Godse v. State of Maharashtra, AIR 1961 SC 600 and Maru Ram [Maru Ram v. Union of India, (1981) 1 SCC 107 which were consistently followed in the subsequent decisions in Sambha Ji Krishna Ji [Sambha Ji Krishna v. State of Maharashtra, (1974) 1 SCC 196, Ratan Singh [State of (2016) 7 SCC 1M.P. v. Ratan Singh, (1976) 3 SCC 470, Ranjit Singh [Ranjit Singh v. UT of Chandigarh, (1984) 1 SCC 31, Ashok Kumar [Ashok Kumar v. Union of India, (1991) 3 SCC 498 and Subash Chander [Subash Chander v. Krishan Lal, (2001) 4 SCC 458. **The first part of the first question can be conveniently answered to the effect that imprisonment for life in terms of Section 53 read with Section 45 of the Penal Code only means imprisonment for rest of the life of the prisoner subject, however, to the right to claim remission, etc. as provided under Articles 72 and 161 of the Constitution to be exercisable by the President and the Governor of the State and also as provided under Section 432 of the Criminal Procedure Code.**”*

[Emphasis added]

129. The aforementioned Constitution Bench after referring to the various precedents, including **Swamy Shraddananda (2) v. State of Karnataka, reported in (2008) 13 SCC 767**; has clarified the law in paragraph nos. 104 and 105, which reads as under:

"104. That apart, in most of such cases where death penalty or life imprisonment is the punishment imposed by the trial court and confirmed by the Division Bench of the High Court, the convict concerned will get an opportunity to get such verdict tested by filing further appeal by way of special leave to this Court. By way of abundant caution and as per the prescribed law of the Code and the criminal jurisprudence, we can assert that after the initial finding of guilt of such specified grave offences and the imposition of penalty either death or life imprisonment, when comes under the scrutiny of the Division Bench of the High Court, it is only the High Court which derives the power under the Penal Code, which prescribes the capital and alternate punishment, to alter the said punishment with one either for the entirety of the convict's life or for any specific period of more than 14 years, say 20, 30 or so on depending upon the gravity of the crime committed and the exercise of judicial conscience befitting such offence found proved to have been committed."

"105. We, therefore, reiterate that the power derived from the Penal Code for any modified punishment within the punishment provided for in the Penal Code for such specified offences can only be exercised by the High Court and in the event of further appeal only by the Supreme Court and not by any other court in this country. To put it differently, the power to impose a modified punishment providing for any specific term of incarceration or till the end of the

convict's life as an alternate to death penalty, can be exercised only by the High Court and the Supreme Court and not by any other inferior court."

130. The Hon'ble Supreme Court reiterated the said principle time and again in the case of **Shiva Kumar v. State of Karnataka, reported in (2023) 9 SCC 817**; after considering both of the aforementioned judgments of V. Sriharan (Supra) and Swamy Shraddananda (Supra); wherein it has been held that Constitutional Courts may, even where capital punishments is not in issue, can impose a fixed term sentence of more than fourteen years in place of an ordinary life sentence, subject to the mandate of Section 433-A Cr.P.C.

The relevant excerpt of **Shiva Kumar (supra)** is reproduced as under:-

"11. What is held by the Constitution Bench in V. Sriharan, cannot be construed in a narrow perspective. The Constitution Bench has held that there is a power which can be derived from IPC to impose a fixed-term sentence or modified punishment which can only be exercised by the High Court or in the event of any further appeal, by the Supreme Court and not by any other court in this country. In addition, the Constitution Bench held that power to impose a modified punishment of providing any specific term of incarceration or till the end of convict's life as an alternative to death penalty, can be exercised only by the High Court and the Supreme Court and not by any other inferior court.

XXX XXX

14. Hence, we have no manner of doubt that even in a case where capital punishment is not imposed or is not proposed, the constitutional courts can always exercise the power of imposing a modified or fixed-term sentence by directing that a life sentence, as contemplated by "secondly" in Section 53 IPC, shall be of a fixed period of more than fourteen years, for example, of twenty years, thirty years and so on. The fixed punishment cannot be for a period less than 14 years in view of the mandate of Section 433-A Cr.P.C."

[Emphasis added]

131. The Hon'ble Supreme Court's judgment in **Ravinder Singh v. State (2023 INSC 426)** is a testament to the judiciary's unwavering commitment to justice, especially in cases involving heinous crimes against the most vulnerable. By asserting the authority to impose fixed-term life sentences exceeding standard remission periods, the Court ensures that the punishment serves its intended purpose deterring future offences, delivering justice to victims, and upholding societal moral standards. This precedent not only fortifies the legal framework against severe crimes but also champions the principle that justice must be both served and seen to be served, thereby reinforcing public confidence in the judicial system. Moving forward, this precedent will guide us in crafting sentences that are commensurate with the gravity of offenses, particularly those that fracture the fundamental trust within familial relationships. It underscores the necessity for a robust legal deterrent while balancing the rights of the accused, aligning with constitutional safeguards and the overarching objectives of criminal jurisprudence.

132. We are enlightened, on the issue by the recent pronouncement of Hon'ble Supreme Court rendered in the case of **Munna Moyuddin Shaikh v. State of Gujarat (Criminal Appeal No.2686 of 2026, arising out of SLP (Crl.) Diary No.35717 of 2025)** decided on 26.05.2026 in which entire law qua awarding fixed sentence replacing life imprisonment by Constitutional Courts has been summarised. The relevant paragraph of Munna Moyuddin (supra) reads as under:-

"16. The underlying ratio of the above quoted judgments is that when a sentence of life imprisonment is imposed, Section 53 with Section 45 the IPC would convey the meaning that it is till the natural life subject to the right of claiming remission. Hence, modifying a sentence of life imprisonment and imposing a fixed sentence is permissible under the interpretation placed in Sriharan (supra) and followed in Shiva Kumar (supra), as long as the period imposed is more than fourteen years of imprisonment."

133. The Hon'ble Supreme Court while examining issue of remission has taken note of Philosophy of Greek Philosopher 'Plato' in the judgement rendered in the case of **Bilkis Yakub Rasool v. Union of India and others reported in (2024) 5 SCC 481** which reads as under:-

"1. 'punishment is to be inflicted, not for the sake of vengeance, for what is done cannot be undone, but for the sake of prevention and reformation (Thomas L. Pangle, The Laws of Plato, Basic Book Publishers, 1980). In his treatise, Plato reasons that the lawgiver, as far as he can, ought to imitate the doctor who does not apply his drug with a view to pain only, but to do the patient good. This curative theory of punishment likens penalty to medicine, administered for the good of the one who is being chastised (Trevor J. Saunders, Plato's Penal Code : Tradition, Controversy, and Reform in Greek Penology, Oxford University Press, 1991).' In Plato's rejection of punishment as retroactive vengeance lies the deep insight that the past cannot be changed. Instead, punishment is justified only insofar as it serves a future-oriented purpose, namely, prevention, reform, and the restoration of order. The comparison between the judge and the doctor is also 26 significant. A doctor may incidentally cause pain through surgery or medicine, but the pain is not the objective, healing is. Likewise, punishment may involve suffering, but suffering itself is not normatively valuable. Its legitimacy comes only from its capacity to heal the individual and protect the polis (a political/civic community)."

134. We have had the privilege of considering the ratio laid down by the Hon'ble Supreme Court in the case of **Navas @ Mulanavas v. State of Kerala, Criminal Appeal No. 1215 of 2011 (2024 INSC 215)**, wherein the mitigating circumstances relevant for commutation of life imprisonment for the remainder of natural life into a fixed-term sentence were considered. The relevant observations made by the Hon'ble Supreme Court are reproduced below:

"57. A journey through the cases set out hereinabove shows that the fundamental underpinning is the principle of proportionality. The aggravating and mitigating circumstances which the Court considers while deciding commutation of

penalty from death to life imprisonment, have a large bearing in deciding the number of years of compulsory imprisonment without remission, too. As a judicially trained mind pores and ponders over the aggravating and mitigating circumstances and in cases where they decide to commute the death penalty they would by then have a reasonable idea as to what would be the appropriate period of sentence to be imposed under the Swamy Shraddananda (supra) principle too. Matters are not cut and dried and nicely weighed here to formulate a uniform principle. That is where the experience of the judicially trained mind comes in as pointed out in V. Sriharan (supra). Illustratively in the process of arriving at the number of years as the most appropriate for the case at hand, which the convict will have to undergo before which the remission powers could be invoked, some of the relevant factors that the courts bear in mind are:- (a) the number of deceased who are victims of that crime and their age and gender; (b) the nature of injuries including sexual assault if any; (c) the motive for which the offence was committed; (d) whether the offence was committed when the convict was on bail in another case; (e) the premeditated nature of the offence; (f) the relationship between the offender and the victim; (g) the abuse of trust if any; (h) the criminal antecedents; and whether the convict, if released, would be a menace to the society. Some of the positive factors have been, (1) age of the convict; (2) the probability of reformation of convict; (3) he convict not being a professional killer; (4) the socioeconomic condition of the accused; (5) the composition of the family of the accused and (6) conduct expressing remorse.

These were some of the relevant factors that were kept in mind in the cases noticed above while weighing the pros and cons of the matter. The Court would be additionally justified in considering the conduct of the convict in jail; and the period already undergone to arrive at the number of years which the Court feels the convict should, serve as part of the Sentence of life imprisonment and before which he cannot apply for remission.”

135. The appellant is not reported to have any criminal past record prior to unfortunate occurrence in question. The custody certificate itself exhibits long incarceration. The jail report qua conduct of inmate/appellant has certified as good and his lodging in modern jail is said to be with a view of reformation.

136. In the instant case, the age of the convict at the time of commission of the offence was merely 21 years and, as of now, he is approximately 37 years of age. Though age by itself is not a determinative factor, it remains a relevant consideration while assessing the possibility of reformation and reintegration of the convict into society. The probability of the accused being reformed and rehabilitated, and the likelihood of his not indulging in criminal conduct again, are equally important considerations while evaluating whether continued incarceration for the remainder of natural life would serve the ends of justice.

137. The report submitted by the Jail Authorities further substantiates that the convict has undergone a substantial positive transformation during his incarceration spanning approximately 15 years. His conduct in jail indicates a mark change in behaviour, demonstrating remorse and reflecting a genuine possibility of reformation.

138. The socio-economic condition of the accused also deserves consideration. The material on record reflects that the family of the accused belonged to a financially weak background. Even the parental family of the victim was residing in a small dwelling provided under a State welfare scheme meant for economically weaker sections, indicating the socio-economic conditions prevailing in the background from which the parties emerged.

139. Considering the totality of circumstances, namely: (i) the young age of the convict at the time of commission of the offence; (ii) the substantial period of incarceration already undergone; (iii) the positive conduct exhibited in prison; (iv) the probability of reformation, rehabilitation; and reintegration to Society (v) the reduced likelihood of reoffending; and (vi) the socio-economic background of the accused, this Court is of the considered view that the ends of justice would be adequately met by commuting the sentence of imprisonment for life to a fixed term sentence of twenty years without remission.

140. Such commutation, in the facts and circumstances of the present case, would strike an appropriate balance between the principles of proportionality, deterrence and societal interest.

141. No theory of punishment appreciates and is founded on vengeance and revenge. Prison always does not reform people. Someone has rightly said that 'in jail nights are darker and days are longer', which means nights becomes endless days becomes unbearable and lastly hope disappears. Thus, a pragmatic view is taken to give a chance of reformation to the appellant-convict with a view of re-integration with society. Hence, in totality of circumstances, we impose fixed term sentence of 20 years rigorous imprisonment and commute the sentence of life imprisonment to aforesaid terms.

142. Hence, the instant appeal is partly allowed to the above extent.

143. The appellant shall comply with provisions enshrined under Section 437A Cr.P.C.

144. Let a copy of this judgment, along with record of trial court be certified to the trial Court for compliance.

145. Before parting with the case, we record our appreciation for the able and fair assistance rendered by Mr. Punit Kumar Shukla, learned counsel for the appellant and Mr. Bipul Kumar Singh, learned State Law Officer representing the State.

146. The Court records its appreciation for the diligent efforts and valuable assistance rendered by Ms. Shreya Shukla and Ms. Simar Preet Kaur, Research Associates. The precision and clarity reflected in the legal research and analysis submitted by them demonstrates commendable attention to details. The Court acknowledges their contribution in aiding the adjudication of this matter.

(2026) 6 ILRA 112
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 04.06.2026

BEFORE

THE HON'BLE JAI KRISHNA UPADHYAY, J.

Application U/S 528 BNSS. No. 20636 of 2026

Dilawar Singh

...Applicant

Versus

State of U.P. & Ors.

...Opposite Parties

Issue for consideration

Matter pertains to whether Allowing the Complainant to introduce new witnesses at the Section 246 stage when they were never subjected to examination-in-chief under Section 244 would heavily prejudice the statutory rights of the accused?

Headnotes

Code of Criminal Procedure-sec. 244, 311-Applicant is complainant-Applicant's application filed under Section 311 Cr.P.C- to summon and examine witnesses under Section 244 Cr.P.C.- long after the pre-charge stage had been closed and formal charges had already been framed-rejected-impugned- finding a prima facie case- opposite parties were summoned- record shows that Applicant's previous counsel- consciously made a written endorsement closing the pre-charge evidence under Section 244 Cr.P.C-this allowed the Trial Court to evaluate whether the accused-persons should be discharged or charged-Complainant did not raise any objection-it was only in late 2025-nearly four years after charges were framed -the Complainant sought to reopen the Section 244 stage through a new counsel- this would heavily prejudice the statutory rights of the accused and fundamentally disrupt the trial process- no patent illegality in impugned orders.

Application dismissed. (E-9)

Case Law Cited

1. Rajaram Prasad Yadav vs. State of Bihar, (2013) 14 SCC 461
2. State (NCT of Delhi) v. Shiv Kumar Yadav, (2016) 2 SCC 402
3. Swapan Kumar Chatterjee v. CBI, (2019) 14 SCC 328
4. Natasha Singh v. CBI, (2013) 5 SCC 741
5. Rajaram Prasad Yadav vs. State of Bihar, (2013) 14 SCC 461
6. Mayankkumar Natwarlal Kankana Patel v. State of Gujarat, 2025 INSC 1475

List of Acts

1. Code of Criminal Procedure Code
2. Indian Penal Code

List of Keywords

Summoning a witness; best available evidence; discretionary power.

Appearances of parties

Counsel for Applicant(s) : Sumit Shukla, Suresh Chandra Shukla Counsel for Opposite Party(s) : G.A.

(Delivered by Hon'ble Jai Krishna Upadhyay, J.)

1. This Application under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 has been preferred by the Applicant/Complainant- **Dilawar**, being aggrieved by the order dated **07.04.2026** passed by the learned Sessions Judge, Baghpat in Criminal Revision No. 17 of 2026. By the said Revisional Order, the Revisional Court below dismissed the applicant's criminal revision, thereby affirming the order dated **20.12.2025** passed by the Court of Judicial Magistrate First Class, Baghpat in Complaint Case No. 11414 of 2021(Dilawar Singh v. Waheed and Others).

2. The Trial Court, vide its order dated **20.12.2025**, had rejected the Applicant's application dated **01.12.2025**, filed under Section 311 Cr.P.C., which was filed with prayer to summon and examine witnesses under Section 244 Cr.P.C. long after the pre-charge stage had been closed and formal charges had already been framed.

3. To properly appreciate the legal matrix in this application, it is pertinent to take a look at the facts of the case, which is as follows:

3.1 The Applicant filed a complaint against Opposite Parties Nos. 2 to 4 under Sections 406, 504, and 506 of the Indian Penal Code , alleging criminal breach of trust, intentional insult, and criminal intimidation.

3.2 On 21.10.2013, the statement of the Complainant Dilawar Singh was recorded under Section 200 Cr.P.C. Subsequently the statements of witness Shivkumar (S/o Ram Singh) and witness Ghanshyam (S/o Jayaprakash) were duly recorded under Section 202 Cr.P.C.. Finding a prima facie case, the learned Trial Magistrate summoned opposite parties to face trial under Sections 406, 504, and 506 IPC vide order dated 20.01.2014. Following this the matter was listed for the recording of evidence under Section 244 Cr.P.C. on 10.10.2018. On 10.01.2020, the Complainant's primary statement under Section 244 Cr.P.C. was recorded. Due to the global COVID-19 pandemic and the resultant lockdowns, the examination of further witnesses could not take place.

3.3 On 04.01.2021, the learned counsel representing the Complainant made a voluntary, specific written endorsement, stating explicitly that "the Complainant does not wish to adduce any further evidence under Section 244 Cr.P.C.". The case proceeded further and the discharge application moved by the accused persons was rejected by the Court on 21.12.2021. A formal statutory charges were framed and trial begun.

3.4 The Complainant then moved an application under Section 311 Cr.P.C. dated 01.12.2025, claiming that witnesses examined in 2013 under Section 202 Cr.P.C. (Shivkumar and Ghanshyam) had never been presented or examined under Section 244 and this omission was entirely due to the negligence of his former counsel.

3.5 This application of the complainant was rejected by the learned Trial Court vide its order dated **20.12.2025** and then this order of rejection of application of the complainant was affirmed by the learned Revisional Court vide order dated **07.04.2026**. Being aggrieved by these orders complainant has filed instant application.

4. Heard Sri S.C. Shukla, learned counsel for the applicant and Sri Vishwa Deepak Mishra, Learned AGA-I for the State.

5. The learned counsel for the applicant contended that the applicant has no personal knowledge of strict legal procedures and relied entirely upon his counsel in good faith and he acted with gross negligence. The counsel highlighted that the two witnesses, Shivkumar and Ghanshyam, are not strangers or new additions to the case, as they had already given reliable statements under Section 202 Cr.P.C. in 2013, which formed the very basis on which the Trial Court originally found a case and summoned the accused persons. Finally, the counsel argued that the provisions of Section 311 Cr.P.C. are specifically designed to meet the ends of justice, and failing to allow these key witnesses to depose would not serve justice in the instant matter.

6. Per Contra, the Learned AGA strongly opposed the application, arguing that the request under Section 311 Cr.P.C. is an entirely afterthought and a tactic aimed solely at causing a blockade in the trial, which directly violates the explicit mandate of this Hon'ble High Court's order dated 30.05.2022 directing the expedited disposal of the case within six months. It was submitted that the applicant's counsel had been regularly attending court and had made a conscious, deliberate written endorsement on the margin of the order sheet on 04.01.2021 stating that no further evidence under Section 244 Cr.P.C. was to be given, based upon which the court legally and properly framed charges on 04.03.2022. The learned AGA stressed that the criminal trial has advanced into the post-charge framing stage under Section 246 Cr.P.C., and the statutory framework does not permit a complainant to move backward to record pre-charge evidence once formal charges exist on record, as only those witnesses who were examined under Section 244 Cr.P.C. can legally be subjected to cross-examination at this juncture.

7. I have heard the rival submissions advanced by the parties and perused the material available on the record.

8. It is necessary to first evaluate the statutory mechanism outlined in **Chapter XIX (Part B) of the Cr.P.C.**, which regulates trials of warrant cases instituted otherwise than on a police report. The process moves along a mandatory step-by-step procedure:

“ Section 244 Cr.P.C. (Evidence for Prosecution): [1] When, in any warrant-case instituted otherwise than on a police report the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution.

[2] The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.

Section 245 Cr.P.C. (Discharge): [1] If, upon taking all the evidence referred to in section 244 the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

[2] Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

Section 246 Cr.P.C. (Procedure where accused is not discharged): [1] If, when such evidence has been taken, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

[2] The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty or has any defence to make.

[3] If the accused pleads guilty, the Magistrate shall record the plea, and may, in his discretion, convict him thereon.

[4] If the accused refuses to plead, or does not plead or claims to be tried or if the accused is not convicted under Sub-Section (3) he shall be required to state, at the commencement of the next hearing of the case or, if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith whether he wishes to cross-examine any, and if so, which, of the witnesses for the prosecution whose evidence has been taken.

[5] If he says he does so wish, the witnesses named by him shall be recalled and, after cross-examination and re-examination (if any), they shall be discharged.

[6] The evidence of any remaining witnesses for the prosecution shall next be taken and after cross-examination and re-examination (if any), they shall also be discharged."

9. The procedure provided in these provision act as a strict legal condition. Only those witnesses who were duly subjected to examination-in-chief under Section 244 Cr.P.C. before the framing of charges can be recalled for cross-examination under Section 246 Cr.P.C. A witness whose statement was only recorded at the pre-summoning stage under Section 202 Cr.P.C. does not automatically become substantive trial evidence. If the complainant fails to examine them under Section 244, they cannot directly cross-examine them under Section 246.

10. In order to prevent the miscarriage of justice due to mistakes or other errors, Section 311 of C.r.P.C. plays a important role with the object that the best available evidence must be brought before the court . Section 311 of the Cr.P.C. confers broad discretionary power upon any Court at any stage of an inquiry, trial, or other proceeding to summon any person as a witness, or examine any person in attendance, or recall and re-examine any person already examined. In order to appreciate the stand of the applicant it will be worthwhile to refer to Section 311 CrPC. The same is extracted hereunder:

"Section 311, Code of Criminal Procedure

“311. Power to summon material witness, or examine person present.?Any court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

11. A conspicuous reading of Section 311 CrPC would show that widest of the powers have been invested with the courts when it comes to the question of summoning a witness or to recall or re-examine any witness already examined. A reading of the provision shows that the expression ‘any’ has been used as a prefix to ‘court’, ‘inquiry’, ‘trial’, ‘other proceeding’, ‘person as a witness’, ‘person in attendance though not summoned as a witness’, and ‘person already examined’

12. However, this expansive power is bounded by settled judicial constraints. The provision cannot be deployed by a party to systematically undo an explicit waiver, fill gaps in their case, or alter the statutory structure of the trial to the grave prejudice of the opposite party.

13. In the case of *State (NCT of Delhi) v. Shiv Kumar Yadav, (2016) 2 SCC 402* paragraph no. 11, Apex Court reiterated that;

“11. It is further well settled that fairness of trial has to be seen not only from the point of view of the accused, but also from the point of view of the victim and the society. In the name of fair trial, the system cannot be held to ransom. The accused is entitled to be represented by a counsel of his choice, to be provided all relevant documents, to cross-examine the prosecution witnesses and to lead evidence in his defence. The object of provision for recall is to reserve the power with the court to prevent any injustice in the conduct of the trial at any stage. The power available with the court to prevent injustice has to be exercised only if the court, for valid reasons, feels that injustice is caused to a party. Such a finding, with reasons, must be specifically recorded by the court before the power is exercised. It is not possible to lay down precise situations when such power can be exercised. The legislature in its wisdom has left the power undefined. Thus, the scope of the power has to be considered from case to case. The guidance for the purpose is available in several decisions relied upon by the parties. It will be sufficient to refer to only some of the decisions for the principles laid down which are relevant for this case.”

14. In the case of *Swapan Kumar Chatterjee v. CBI, (2019) 14 SCC 328* in paragraph nos. 10 and 12, Hon’ble Supreme Court stated that:

“10. The first part of this section which is permissive gives purely discretionary authority to the criminal court and enables it at any stage of inquiry, trial or other proceedings under the Code to act in one of the three ways, namely, (i) to summon any person as a witness; or (ii) to examine any person in attendance, though not summoned as a witness; or (iii) to recall and re-examine any person already examined. The second part, which is mandatory, imposes an obligation on the court (i) to summon and examine or (ii) to recall and re-examine any such person if his evidence appears to be essential to the just decision of the case.

12. Where the prosecution evidence has been closed long back and the reasons for non-examination of the witness earlier are not satisfactory, the summoning of the witness at belated stage would cause great prejudice to the accused and should not be allowed. Similarly, the court should not encourage the filing of successive applications for recall of a witness under this provision.”

15. In the case of **Natasha Singh v. CBI, (2013) 5 SCC 741** in paragraph nos.8 and 10 , Hon’ble Supreme Court stated that:

“8. Section 311 CrPC empowers the court to summon a material witness, or to examine a person present at any stage of any enquiry, or trial, or any other proceedings under CrPC, or to summon any person as a witness, or to recall and re-examine any person who has already been examined if his evidence appears to it, to be essential to the arrival of a just decision of the case. Undoubtedly, CrPC has conferred a very wide discretionary power upon the court in this respect, but such a discretion is to be exercised judiciously and not arbitrarily. The power of the court in this context is very wide, and in exercise of the same, it may summon any person as a witness at any stage of the trial, or other proceedings. The court is competent to exercise such power even suo motu if no such application has been filed by either of the parties. However, the court must satisfy itself, that it was in fact essential to examine such a witness, or to recall him for further examination in order to arrive at a just decision of the case.

10. In **Mohanlal Shamji Soni v. Union of India** [Mohanlal Shamji Soni v. Union of India, 1991 Supp (1) SCC 271 : 1991 SCC (Cri) 595 : AIR 1991 SC 1346] this Court examined the scope of Section 311 CrPC, and held that it is a cardinal rule of the law of evidence, that the best available evidence must be brought before the court to prove a fact, or a point in issue. However, the court is under an obligation to discharge its statutory functions, whether discretionary or obligatory, according to law and hence ensure that justice is done.”

16. In the case of **Rajaram Prasad Yadav vs. State of Bihar, (2013) 14 SCC 461** Hon’ble Apex Court held that:

15.5. In **Iddar v. Aabida** [(2007) 11 SCC 211 : (2008) 1 SCC (Cri) 22 : AIR 2007 SC 3029] , the object underlying under Section 311 CrPC, has been stated as under in para 9: (SCC pp. 213-14)

“9. ... 27. The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the court to summon a witness under the section merely because the evidence supports the case for the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquiries and trials under the Code and empowers the Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 the significant expression that occurs is ‘at any stage of any inquiry or trial or other proceeding under this Code’. It is, however, to be

borne in mind that whereas the section confers a very wide power on the court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind.

17. Recently in the case of **Mayankkumar Natwarlal Kankana Patel v. State of Gujarat, 2025 INSC 1475** Hon'ble Supreme Court observed that the application under Section 311 CrPC was filed after examination of 21 prosecution witnesses and at an advanced stage of trial. Hon'ble Court held that though the power under Section 311 is wide, it is to be exercised sparingly and only when the evidence sought is indispensable for arriving at the truth.

18. So far as the contention of learned counsel for the applicant as to the fact that this omission on the part of applicant was result of negligence of his earlier counsel and he himself has no knowledge of the strict legal procedure, is concerned, this court refers to paragraph no. 22 and 36 in case of **State (NCT of Delhi) (supra)**, which is as under:

"22. We may now refer to the orders passed by the trial court dated 18-2-2015 and the High Court dated 4-3-2015 [Shiv Kumar Yadav v. State, 2015 SCC OnLine Del 7734 : (2015) 219 DLT 76] . Referring to the ground of the earlier counsel not being competent, the trial court observed that the counsel was of the choice of the accused. The accused was not facing a criminal trial for the first time. The cross-examination of the witnesses was deferred time and again to enable the counsel to seek instructions from the accused. The cross-examination of the prosecutrix was deferred on 15-1-2015 to enable the counsel to have legal interview with the accused. After part of cross-examination on 16-1-2015, further cross-examination was concluded on 17-1-2015. The cross-examination of PW 13 was deferred on the request of the accused. Similarly, cross-examination of PWs 22, 26 and 27 was deferred on the request of the defence counsel. After referring to the record, the trial court observed as under:

"22. The aforesaid proceedings clearly bely the claim of the accused/applicant that the case has been proceeding at a hurried pace? or that he was not duly represented by a defence counsel of his choice. The claim of the applicant that he was unwilling to continue with his earlier counsel is also nothing but a bundle of lie inasmuch as the accused never submitted before the court that he wants to change his counsel. Rather, it is revealed from the record that the earlier counsel, Shri Alok Kumar was acting as per his instructions and having legal interview with him. The accused cannot be permitted to take advantage of his submissions made on the first date i.e. 13-1-2015 that he wants to engage a new counsel as his subsequent conduct does not support this submission. I may also add that before proceeding with the case further, I had personally asked the accused in the open court whether he wants to continue with his counsel and only on getting a reply in the affirmative, were the proceedings continued further. It thus appears that the endeavour of the accused by filing this application is only to delay the proceedings despite the fact that all along the trial his request for adjournment have been duly considered and allowed and he has been duly represented by a private counsel of his choice.

23. I am also unable to accept the plea of the accused that the counsel representing him earlier was incompetent, being a novice and that he is entitled to recall all the prosecution witnesses now that he has engaged a new counsel. Although, Shri Alok Kumar Dubey and Shri

Ankit Bhatia, both have enrolment number of 2014 as per the power of attorney executed by the accused in their favour, however, to my mind the competence of a lawyer is subjective and the date of his enrolment with the Bar Council can certainly not be said to be a yardstick to measure his competence.

24. Moreover, the competence of the new counsel may again be questioned by another counsel, who the accused may choose to engage in future.

36. The application under consideration is thus nothing but an attempt to protract the trial and in fact seek an entire retrial. There is no change in circumstances except change of counsel, which, to my mind, is no ground to allow the application. Interestingly, in Para 17 of the application, it has been contended that the present counsel is not aware of the scheme and design of defence of the previous counsel and is thus at a loss and disadvantageous position to defend the accused and for conducting the case as per his acumen and legal expertise, the recalling of PWs are necessary. It may be noted that the defence of an undertrial is not expected to vary from counsel to counsel and irrespective of change of the counsel, an undertrial is expected to have a single and true line of defence which cannot change every time he changes a counsel. Nor can a new counsel defend the case of such an undertrial as per the new scheme and design in accordance with his acumen and legal expertise.”

Therefore, this court do not find merit in this contention of counsel for the applicant.

19. In the instant case, the record shows that on 04.01.2021, the Applicant’s previous counsel consciously made a written endorsement closing the pre-charge evidence under Section 244 Cr.P.C. This was a deliberate and formal legal step that allowed the Trial Court to evaluate whether the accused-persons should be discharged or charged. The Complainant did not raise any objection, file an affidavit of protest, or challenge the subsequent framing of charges on 04.03.2022.

20. It was only in late 2025, nearly four years after charges were framed and after an explicit order from this High Court on 30.05.2022 demanding a expeditious conclusion to the trial that the Complainant sought to reopen the Section 244 stage through a new counsel. If this Court were to permit a party to erase years of formal trial steps simply by hiring a new lawyer and claiming "my previous lawyer didn't inform me," the entire structure of the criminal justice system would collapse into endless delays.

21. Allowing the Complainant to introduce new witnesses at the Section 246 stage when they were never subjected to examination-in-chief under Section 244 would heavily prejudice the statutory rights of the accused and fundamentally disrupt the trial process.

22. After a careful review of the facts of the present case and applying these legal standards to the present case, this Court finds that the orders passed by both the learned Magistrate Court on **20.12.2025** and the learned Sessions Court on **07.04.2026** are well-reasoned, legally sound, and completely free from any perversity. There exist no patent illegality, abuse of process, or jurisdictional error in the impugned orders. The concurrent findings of the learned Courts are legally sound and require no interference.

23. Accordingly, the present Application under Section 528 BNSS is hereby, **Dismissed.**

(2026) 6 ILRA 120
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 02.06.2026

BEFORE

THE HON'BLE JAI KRISHNA UPADHYAY, J.

Application U/S 528 BNSS. No. 22924 of 2026

Rahul Yadav

...Applicant

Versus

State of U.P. & Anr.

...Opposite Parties

Issue for Consideration

Matter pertains to the scope and exercise of discretionary power under S. 143-A of the Negotiable Instruments Act, 1881 and whether the Trial Court and the Revisional Court rightly exercised such discretion in directing payment of interim compensation upon finding that the complainant had established a prima facie case and the defence raised by the accused did not warrant refusal of such relief. (Paras 8-13)

Headnotes

Criminal Law - Negotiable Instruments - Dishonour of cheque - Negotiable Instruments Act, 1881 - Ss. 138, 143-A, 118 and 139 - Interim compensation - Nature of power - Power under S. 143-A is discretionary and directory and not mandatory - Court is required to examine prima facie merits of the complaint and the defence raised while considering an application for interim compensation - Brief reasons indicating consideration of relevant factors must be recorded. (Paras 7, 8)

Criminal Law - Negotiable Instruments - Dishonour of cheque - Negotiable Instruments Act, 1881 - Ss. 138, 143-A, 118 and 139 - Prima facie case - Meaning and scope - At the stage of consideration under S. 143-A the Court is not required to undertake detailed appreciation of evidence or conduct a mini-trial - Defence requiring appreciation of evidence is a matter for trial. (Paras 8-10)

Criminal Law - Negotiable Instruments - Dishonour of cheque - Negotiable Instruments Act, 1881 - Ss. 118, 139 and 143-A - Statutory presumptions - Presumptions continue to operate unless rebutted during trial - Mere plea of misuse of cheques or denial of legally enforceable debt does not by itself disentitle the complainant from seeking interim compensation where prima facie ingredients are disclosed. (Paras 10, 11)

Criminal Law - Negotiable Instruments - Dishonour of cheque - Negotiable Instruments Act, 1881 - S. 143-A - Interim compensation - Application to facts - Cheques admittedly belonged to the accused and signatures thereon were not disputed - Complaint disclosed the nature of liability and issuance of cheques - Defence regarding misuse of cheques required adjudication after evidence - Trial Court rightly awarded interim compensation and Revisional Court rightly affirmed the order. (Paras 10-13)

Criminal Procedure - Inherent jurisdiction - Bharatiya Nagarik Suraksha Sanhita, 2023 - S. 528 - Interference with concurrent orders - No perversity or jurisdictional infirmity found in exercise of discretion by Trial Court and Revisional Court - Application dismissed. (Paras 13-15)

Held: The power conferred under S. 143-A of the Negotiable Instruments Act is discretionary and the Court is required to consider the prima facie merits of the complaint and the defence raised before directing payment of interim compensation - At such stage the Court is not required to conduct a detailed appreciation of evidence or decide the complaint on merits and the defence regarding misuse of cheques is a matter for trial - Where the cheques admittedly belonged to the accused, the signatures thereon were not disputed, the

complaint disclosed the nature of the liability and issuance of the cheques and the statutory presumptions under Ss. 118 and 139 continued to operate unless rebutted during trial, the prima facie requirements for exercise of power under S. 143-A stood satisfied - The Trial Court rightly considered the pendency of the complaint, the nature of allegations and the admitted signatures while awarding interim compensation and the Revisional Court rightly affirmed the order - The impugned orders suffered from neither perversity nor jurisdictional infirmity and no ground for interference under S. 528 BNSS was made out. (Paras 8-15) (E-7)

Case Law Cited

Rakesh Ranjan Shrivastava vs. The State of Jharkhand & Anr. (2024) 4 SCC 419; Rakesh Ranjan Shrivastava v. State of Jharkhand, (2024) 4 SCC 419; Balvir Singh v. State of Uttarakhand (AIR 2023 SC 5551); Sunil Bharti Mittal v. CBI (2015) 4 SCC 609; Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra (2021) 19 SCC 401.

List of Acts

Bharatiya Nagarik Suraksha Sanhita, 2023; Negotiable Instruments Act, 1881; Code of Criminal Procedure, 1973

List of Keywords

Dishonour of cheque; Interim compensation; Prima facie case; Discretionary power; Directory provision; Negotiable Instruments; Statutory presumption; Legally enforceable debt; Misuse of cheques; Mini trial; Financial distress; Quantum of interim compensation; Inherent jurisdiction; Revisional jurisdiction; Perversity; Jurisdictional infirmity.

Case Arising From

ORIGINAL JURISDICTION: Application under S. 528 BNSS filed for quashing the order dated 14.05.2026 passed by the Sessions Judge, Gautam Buddh Nagar in Criminal Revision No. 36 of 2026 affirming the order dated 20.11.2025 passed by the Special Court, 138 N.I. Act, Gautam Buddh Nagar in Complaint Case No. 9574 of 2024 allowing the application under S. 143-A of the Negotiable Instruments Act and directing payment of interim compensation.

Appearances for Parties

Advs. for the Applicant:

Sri Subham Kumar Yadav alongwith Shubhendu Mishra.

Advs. for the Respondents:

Sri Vishwa Deepak Mishra learned AGA-I for the State.

(Delivered by Hon'ble Jai Krishna Upadhyay, J.)

1. Heard Sri Subham Kumar Yadav alongwith Shubhendu Mishra, learned counsel for the applicant, Sri Vishwa Deepak Mishra, learned AGA-I for the State and perused the record.

2. This application under Section 528 BNSS has been filed by the applicant for quashing the order dated 14.05.2026 passed by the Court of learned Sessions Judge, Gautam Buddh Nagar in Criminal Revision No. 36 of 2026 (Rahul Yadav vs. Rohit Singh) as well as the order dated 20.11.2025 passed by the learned Special Court, 138 N.I. Act, Gautam Buddh Nagar arising out of Complaint Case No. 9574 of 2024, under Section 138 of N.I. Act, 1881 (Rohit Singh Vs. Rahul Yadav), P.S. Sector 39, District Gautam Buddh Nagar whereby the application under Section 143-A N.I. Act moved on behalf of opposite party no.2 has been allowed.

3. Learned counsel for the applicant submitted that the alleged transaction was found upon unverified and disputed cash payments allegedly made over a prolonged period without any independent documentary proof, receipt, banking transaction, income tax disclosure, or legally admissible evidence

establishing the existence of a legally enforceable debt or liability. It is further submitted that impugned order dated 20.11.2025 allowing the application under Section 143-A of N.I. Act, is illegal, arbitrary, perverse and contrary to the settled principle of law. It was further submitted that trial Courts while passing the impugned orders dated 20.11.2025 and 14.05.2026, failed to appreciate that the provision under Section 143-A N.I. Act is directory and discretionary in nature and not mandatory as has been held by Hon'ble Apex Court in ***Rakesh Ranjan Shrivastava vs. The State of Jharkhand & Anr. (2024) 4 SCC 419***. He further submitted that learned Trial Court failed to prima facie evaluate the merits of the complaint as well as the plausible defence raised by the applicant that no legally enforceable debt or liability existed between the parties, no business transaction or settlement of account ever took place and the aforesaid cheques were allegedly misused from the vehicle of the petitioner.

4.Per contra, learned AGA-I argued that the impugned order is well-reasoned and passed strictly in accordance with the law. It was submitted that the cheques admittedly belong to the accused and bear his signatures; therefore, the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act operate against the accused. It was further argued that Section 143-A was enacted specifically to strengthen the credibility of cheque transactions and prevent unnecessary delays in the disposal of cases under Section 138 N.I. Act.

5. After perusal of the record, it transpires that the complainant filed a complaint under Section 138 Negotiable Instrument Act on 30.07.2024 alleging that the accused-applicant, engaged in the real estate business, had a liability of Rs. 10,00,000/- towards the complainant. To discharge this liability, three cheques were issued (amounting to Rs. 3,00,000/-, Rs. 6,00,000/-, and Rs. 1,00,000/-), which were dishonoured upon presentation with the remarks "Funds Insufficient" and "Account Inoperative". Following this an application under Section 143-A of Negotiable Instrument Act was filed by the complainant seeking interim relief as per the said provision of law. The Learned Trial Court, after hearing both the parties and perusing the material available on the record, vide order dated 20.11.2025, directed the accused to pay 20% of the cheque amount (i.e., Rs. 2,00,000/-) as interim compensation within two months, which was subsequently upheld by the Revisional Court on 14.05.2026.

6.Before delving into the merits of the discretionary power under Section 143-A N.I. Act, it is pertinent to quote the said section. Section 143-A reads thus:

"143-A. Power to direct interim compensation-(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Court trying an offence under Section 138 may order the drawer of the cheque to pay interim compensation to the complainant"

(a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and

(b) in any other case, upon framing of charge.

(2) The interim compensation under sub-section (1) shall not exceed twenty per cent of the cheque amount.

(3) The interim compensation shall be paid within sixty days from the date of the order under sub-section (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.

(4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.

(5) The interim compensation payable under this section may be recovered as if it were a fine under Section 421 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) The amount of fine imposed under Section 138 or the amount of compensation awarded under Section 357 of the Code of Criminal Procedure, 1973 (2 of 1974), shall be reduced by the amount paid or recovered as interim compensation under this section."

7.The Hon'ble Apex Court in the case of **Rakesh Ranjan Shrivastava v. State of Jharkhand, (2024) 4 SCC 419** in paragraph nos. 22-27 has observed that:-

"Factors to be considered while exercising discretion;

22. When the court deals with an application under Section 143-A of the NI Act, the court will have to prima facie evaluate the merits of the case made out by the complainant and the merits of the defence pleaded by the accused in the reply to the application under sub-section (1) of Section 143-A. The presumption under Section 139 of the NI Act, by itself, is no ground to direct the payment of interim compensation. The reason is that the presumption is rebuttable. The question of applying the presumption will arise at the trial. Only if the complainant makes out a prima facie case, a direction can be issued to pay interim compensation. At this stage, the fact that the accused is in financial

23. Even if the court concludes that a case is made out for grant of interim compensation, the court will have to apply its mind to the quantum of interim compensation to be granted. Even at this stage, the court will have to consider various factors such as the nature of the transaction, the relationship, if any, between the accused and the complainant and the paying capacity of the accused. If the defence of the accused is found to be prima facie a plausible defence, the court may exercise discretion in refusing to grant interim compensation.

24. We may note that the factors required to be considered, which we have set out above, are not exhaustive. There could be several other factors in the facts of a given case, such as, the pendency of a civil suit, etc. While deciding the prayer made under Section 143-A, the Court must record brief reasons indicating consideration of all the relevant factors.

25. In the present case, the trial court has mechanically passed an order of deposit of Rs 10,00,000 without considering the issue of prima facie case and other relevant factors. It is true that the sum of Rs 10,00,000 represents less than 5% of the cheque amount, but the direction has been issued to pay the amount without application of mind. Even the High Court has not applied its mind. We, therefore, propose to direct the trial court to consider the application for grant of interim compensation afresh. In the meanwhile, the amount of Rs 10,00,000 deposited by the appellant will continue to remain deposited with the trial court.

26. Hence, the impugned orders are set aside, and the application made by the complainant in Complaint Petition No. 1103 of 2018 under Section 143-A(1) of the NI Act is restored to the file of Judicial Magistrate First Class, Bokaro. The learned Judge will hear and decide the application for the grant of interim compensation afresh in the light of what is held in this judgment. The amount deposited by the appellant of Rs 10,00,000 shall be invested in a fixed deposit till the disposal of the said application. At the time of disposing of the application, the trial court will pass an appropriate order regarding refund and/or withdrawal and/or investment of the said amount.

27. Subject to what is held earlier, the main conclusions can be summarised as follows:

27.1. The exercise of power under sub-section (1) of Section 143-A is discretionary. The provision is directory and not mandatory. The word "may" used in the provision cannot be construed as "shall".

27.2. While deciding the prayer made under Section 143-A, the court must record brief reasons indicating consideration of all relevant factors.

27.3. The broad parameters for exercising the discretion under Section 143-A are as follows:

27.3.1. The court will have to *prima facie* evaluate the merits of the case made out by the complainant and the merits of the defence pleaded by the accused in the reply to the application. The financial distress of the accused can also be a consideration.

27.3.2. A direction to pay interim compensation can be issued, only if the complainant makes out a *prima facie* case.

27.3.3. If the defence of the accused is found to be *prima facie* plausible, the court may exercise discretion in refusing to grant interim compensation.

27.3.4. If the court concludes that a case is made out to grant interim compensation, it will also have to apply its mind to the quantum of interim compensation to be granted. While doing so, the court will have to consider several factors such as the nature of the transaction, the relationship, if any, between the accused and the complainant, etc.

27.3.5. There could be several other relevant factors in the peculiar facts of a given case, which cannot be exhaustively stated. The parameters stated above are not exhaustive."

8. Therefore, it is a settled proposition of law that while the power under Section 143-A is discretionary, the Court is only required to consider the '*prima facie*' merits of the complaint and the defence raised. Now this court proceeds to discuss the outline of the '*prima facie*' standard as mentioned in the said provision of law. The Latin term '*prima facie*' translates to "at first sight" or "based on a 'first impression.' According to *Webster's Third International Dictionary*, a "*prima facie*" case means a case established by "*prima facie* evidence" sufficient in law to raise a presumption of fact unless rebutted. Legal jurists explain this not as a final standard of absolute proof, but as a threshold ensuring that a claim has enough legal merit to proceed to trial and shift the burden of proof. In criminal and quasi-criminal proceedings, this doctrine

prevents the judicial machinery from being used for frivolous harassment while ensuring legitimate offences are duly investigated and tried.

9. The Hon'ble Supreme Court of India has reaffirmed this doctrine in numerous precedents. In *Balvir Singh v. State of Uttarakhand (AIR 2023 SC 5551)*, the Court clarified that 'prima facie' only requires an initial, reliable impression rather than proof beyond a reasonable doubt. Similarly, in cases like *Sunil Bharti Mittal v. CBI (2015) 4 SCC 609* and *Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra (2021) 19 SCC 401*, the Hon'ble Apex Court observed that while a judge must actively apply their mind to ensure the facts disclose a genuine offence, they must avoid weighing the deeper merits, appreciating factual defences, or conducting a "mini-trial" at the preliminary stage.

10. Applying the aforementioned 'prima facie' standard to the present facts this Court finds that the Trial Court has rightly observed that; (i)The cheques in question admittedly belonged to the accused. (ii)The signatures on the cheques are not disputed.(iii) The accused had already been summoned and notice under Section 251 Cr.P.C. remained pending for a considerable time. Also, the fact that bank statements of accused-applicant shows that his account was already inoperative and out of money, makes his defence that the said cheques were misused , highly improbable. At the stage of consideration of an application under Section 143A N.I. Act, the Court is not required to conduct a detailed appreciation of evidence as if deciding the final complaint on merits. The defence sought to be raised by the accused regarding the alleged misuse of cheques is essentially a matter of trial and can only be adjudicated upon after evidence is led by the parties. Merely because the accused has taken a defence that the cheques were misused does not automatically exclude the complainant from seeking interim compensation.

11.Further, the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act continue to operate unless rebutted during the trial. The contention of the applicant that the complainant has not established a legally enforceable debt cannot be conclusively examined at this preliminary stage. The complaint discloses the nature of the liability and the issuance of the cheques thus, the 'prima facie' ingredients necessary for the exercise of power under Section 143-A N.I. Act stood satisfied.

12. This court also finds that the argument that the Trial Court awarded the maximum permissible amount (20%) without adequate reasons does not persuade this Court to interfere. The Trial Court properly considered the pendency of the complaint, the nature of allegations, and the admitted signatures on the cheques.

13.In the considered opinion of this Court, the impugned orders neither suffer from perversity nor from any jurisdictional infirmity. The learned Trial Court and learned Revisional Court exercised discretion vested under law upon consideration of the material available on the record. No ground is made out warranting interference by this Court.

14.Consequently, the application is devoid of merits and liable to be dismissed.

15. Accordingly, the application is **dismissed**.

16. Before parting with the order, I would like to put in a word of appreciation for my Research Associate Ms. Anjali Singh for her dexterity in research and assistance in drafting of this order.

(2026) 6 ILRA 126
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 03.06.2026

BEFORE

THE HON'BLE ANIL KUMAR-X, J.

Matters Under Article 227 No. 680 of 2025

Lala & Anr.

...Petitioners

Versus

State of U.P. & Ors.

...Respondents

Issue for Consideration

Matter pertains to whether the Magistrate was justified in summoning the petitioners for the offence punishable u/s 302 IPC after treating the protest petition as a complaint case, despite the submission of a final report by the Investigating Officer, when the complaint evidence contained material improvements, inconsistencies, unexplained circumstances and lacked sufficient prima facie material, and whether the summoning order suffered from non-application of judicial mind warranting interference under Article 227 of Constitution.

Headnotes

Indian Penal Code, 1860 - s. 302 - Code of Criminal Procedure, 1973 - ss. 200, 202 - Constitution of India, 1950 - Article 227 - Protest petition, treated as complaint - Submission of final report - Challenged summoning and revisional orders - Validity of - Scope of jurisdiction of magistrate- The case arose from the death of Rahul on 3 November 2013 - Initially, information was furnished to the police that the deceased, after consuming liquor, accidentally fell from the roof of a house and later succumbed to his injuries - Subsequently, the deceased's brother lodged an FIR alleging that the petitioners had first made Rahul consume liquor, assaulted him and committed his murder - During investigation, the police found no material implicating the petitioners and consequently submitted a final report - Dissatisfied with the investigation, the informant filed a protest petition, which was treated as a complaint case - After recording the statements of complainant and witnesses u/ss. 200 and 202 Cr.P.C., the Magistrate summoned the petitioners to face trial u/s 302 IPC - The revisional court affirmed the summoning order, whereupon the petitioners invoked the jurisdiction of High Court under Article 227 challenging the legality of both orders.

Held: In the present case, the material improvements regarding motive and possession of Rs.35,000/-, the absence of any such allegation in the FIR and protest petition, the unexplained circumstances regarding the place where the deceased was found, the doubtful and inconsistent testimony of witnesses, and the failure to conduct a meaningful enquiry into these aspects render the impugned order unsustainable - In view of the discussion, the Court is of the view that the Magistrate failed to properly scrutinize the material placed before it before summoning the petitioners for an offence punishable u/s 302 IPC - Therefore, impugned summoning order suffers from non-application of mind and cannot be allowed to stand - Accordingly, petition allowed, impugned orders set aside. [Paras 29 to 31] (E-13)

Case Law Cited

Nil

List of Acts

Indian Penal Code, 1860; Code of Criminal Procedure, 1973; Constitution of India, 1950

List of Keywords

Article 227; Constitution of India; Final Report; Protest petition; Complaint case; Intoxicated condition; Summoning order; s. 302 IPC; Murder; Assaulted; Investigation; Investigating Officer; Magistrate's duty; Criminal Revision; ss. 200, 202 Cr.P.C.; Material improvements; Motive; Circumstantial evidence; Credibility of witnesses; Further investigation; Scientific evidence; Forensic analysis; Electronic evidence; Call records; Additional principles; Grave offence; Application of judicial mind; Impugned orders set aside; Petition allowed.

Case Arising From

ORIGINAL JURISDICTION: Matters Under Article 227 No. - 680 of 2025

From the Judgment and Order dated 18.12.2024 passed by Special Judge (E.C. Act)/Additional Sessions Judge Court No.14 Bulandshahr in Criminal Revision No.47 of 2024 and also Order dated 20.01.2024 passed by Chief Judicial Magistrate, Bulandshahr in Complaint Case No.1871 of 2014, Police Station Ahmadgarh, District Bulandshahr in Case Crime No.221 of 2013.

Appearances for Parties

Advs. for the Petitioner(s):

Moez Uddin, Vikrant Gupta

Advs. for the Respondent(s):

G.A., Gaurav Singh Chauhan

(Delivered by Hon'ble Anil Kumar -X, J.)

1. This petition under Article 227 of the Constitution of India has been filed with a prayer to quash the order dated 18.12.2024 passed by Special Judge (E.C. Act)/Additional Sessions Judge Court No.14 Bulandshahr in Criminal Revision No.47 of 2024 (Mahesh and another Vs. State of U.P. and another) as well as order dated 20.01.2024 passed by Chief Judicial Magistrate, Bulandshahr in Complaint Case No.1871 of 2014 (Pradeep Vs. Lala and another) under section 302 I.P.C., Police Station Ahmadgarh, District Bulandshahr in Case Crime No.221 of 2013, under section 302 I.P.C., Police Station Ahmadgarh, District Bulandshahr.

Facts of the Case

2. The facts of the case, in brief, are that on 03.11.2013 at about 10:00 p.m., village Chaukidar Rajendra gave information at Police Station Ahmadgarh, District Bulandshahr, regarding the death of Rahul, son of Anokhe Lal. He stated that Rahul had allegedly consumed liquor and, after losing his senses, fell from the roof of Maharaj Singh. The villagers took him to a hospital at Bulandshahr for treatment, where he later died due to his injuries. Thereafter, on the same day, Pradeep Kumar, the brother of the deceased Rahul, lodged an FIR in Case Crime No. 221 of 2013 under Section 302 IPC at Police Station Ahmadgarh, District Bulandshahr.

3. In the FIR, he alleged that at about 7:00 p.m., Rahul was murdered by Lala, son of Mahesh, and Mahesh, son of Dhoom Singh. According to the informant, the accused persons first made Rahul consume liquor at their house and thereafter assaulted him, causing injuries on his head. On receiving information about the incident, villagers took Rahul to the District Hospital, Bulandshahr, where he was declared dead.

4. The matter was investigated by the police. Upon completion of investigation, a final report was submitted concluding that no case was made out against the accused persons. Being dissatisfied with the final report, the informant filed a protest petition before the Magistrate. The protest petition was treated as a complaint case. During the inquiry proceedings, statements of seven witnesses were recorded in support of the complaint. After considering the material available on record, the Magistrate found sufficient grounds to proceed and summoned both petitioners/accused persons to face trial for the offence punishable under Section 302 IPC.

Submissions on behalf of the petitioners

5. Shri Vikrant Gupta, learned counsel for the petitioners submitted that the allegations made against the petitioners are wholly false and are not supported by any reliable evidence. It is argued that during investigation the Investigating Officer found that Rahul had consumed liquor and, in an intoxicated condition, accidentally fell from the roof, resulting in the injuries which ultimately caused his death. On the basis of the material collected during investigation, a final report was submitted.

6. It is further submitted that Rajendra, the village Chaukidar, who had first informed the police about the incident and had stated that Rahul fell from the roof while intoxicated, has not been examined by the complainant. According to the petitioners, the non-examination of this material witness creates serious doubt regarding the prosecution version.

7. Learned counsel further contended that although statements of seven witnesses were recorded during the complaint proceedings, none of them claimed to have actually witnessed the occurrence. Their statements are based either on suspicion, hearsay, or information received from others. Therefore, there is no direct evidence connecting the petitioners with the alleged offence.

8. It is also argued that P.W.-2 Somveer, who is the brother-in-law of the informant Pradeep Kumar, stated that the petitioners had allegedly confessed before him that they had no intention to kill Rahul. According to learned counsel, even if such statement is accepted at its face value, it does not support the allegation of intentional murder and rather weakens the prosecution case under Section 302 IPC.

9. Learned counsel further submitted that the FIR is completely silent regarding any motive for the alleged murder. However, at a later stage, during the complaint proceedings, a new story was introduced that the petitioners had taken Rahul to their house with an

intention to grab Rs.35,000/- allegedly possessed by him and thereafter killed him. It is argued that this material improvement was never mentioned in the FIR and appears to be an afterthought introduced to strengthen an otherwise weak case.

10. On the strength of the aforesaid circumstances, learned counsel submitted that the statements of the witnesses are neither convincing nor reliable and suffer from material omissions and improvements. It is, therefore, argued that the summoning order has been passed without sufficient material and amounts to an abuse of the process of law, warranting interference by the Court.

Submissions on behalf of respondents

11. Shri Prateek Tyagi, learned A.G.A. as well as Shri Gaurav Singh Chauhan, learned counsel for private respondent submitted that at the stage of summoning, the Court is only required to see whether a prima facie case is made out from the material available on record and not whether the prosecution case is likely to result in conviction. It was contended that the complainant, Pradeep Kumar, in his statement recorded under Section 200 Cr.P.C., has specifically stated that the deceased Rahul had returned from Orissa one day prior to the incident and was carrying Rs.35,000/- with him. According to him, on the morning of 02.11.2013, both petitioners came to his house and took Rahul along with them on the pretext of having tea at their house. Thereafter, Rahul was found seriously injured and ultimately died.

12. It was further submitted that the statements recorded under Section 202 Cr.P.C. lend support to the version of the complainant. P.W.-1 Pawan, P.W.-3 Sheetal, who is the wife of the deceased, and P.W.-4 Rekha have consistently stated that Rahul was called by the petitioners from his house and had gone with them. These witnesses have also stated that Rahul was carrying Rs.35,000/- at that time.

13. It was further argued that the evidence collected during the complaint inquiry discloses that although Rahul was carrying Rs.35,000/- when he left his house with the petitioners, the said amount was found missing thereafter. This circumstance, coupled with the fact that the deceased was last seen in the company of the petitioners and was later found dead, constitutes a strong incriminating circumstance against them.

14. It was contended that the reliability, truthfulness and evidentiary value of the witnesses cannot be examined in detail at the stage of summoning. The defence put forward by the petitioners and the conclusions drawn by the Investigating Officer in the final report are matters to be considered during trial. At this stage, the statements recorded under Sections 200 and 202 Cr.P.C. disclose sufficient grounds for proceeding against the petitioners.

15. On the aforesaid grounds, it was submitted that the Magistrate has passed the summoning order after considering the statements of the complainant and the witnesses and

no illegality, perversity or jurisdictional error is made out warranting interference by this Court.

Conclusion and Findings of the Court

16. Having considered the rival submissions and carefully examined the material available on record, this Court finds that the impugned summoning order cannot be sustained.

17. At the outset, it is noticeable that the dead body of the deceased was found lying in front of the house of Maharaj Singh. Neither during investigation nor during the complaint proceedings has any satisfactory explanation been furnished as to how the deceased reached that place. The complaint version seeks to suggest that the deceased was taken by the petitioners to their house, where he was allegedly assaulted and murdered. However, no witness has explained the circumstances in which the deceased was thereafter found at a different place. This missing link goes to the root of the matter and creates a serious gap in the prosecution story.

18. It is further significant that neither the FIR nor the protest petition contains any allegation that the deceased was carrying Rs.35,000/- with him when he accompanied the petitioners to their house. Likewise, there is no allegation in either of these documents that the petitioners had taken the deceased with them for the purpose of grabbing the said amount. These facts surfaced for the first time in the statements recorded under Sections 200 and 202 Cr.P.C. A protest petition, once converted into a complaint, becomes the foundational pleading of the complaint case and must contain all material facts constituting the accusation. Material facts omitted from the protest petition cannot ordinarily be supplied later through oral statements. Introduction of such facts for the first time during enquiry amounts to a material improvement and raises serious doubts regarding the genuineness of the accusation. Such improvements assume greater significance when they seek to provide motive where none existed in the original version.

19. Another circumstance which renders the complaint version doubtful is that the incident is alleged to have occurred within the village itself. The deceased, the petitioners, the informant and most of the witnesses belong to the same village. It is, therefore, surprising that none of the witnesses claims to have knowledge of the actual occurrence, despite the fact that the deceased allegedly sustained fatal injuries within the village and was thereafter taken to the hospital by villagers. The circumstances under which the deceased was found injured and the identity of those who first reached the spot have remained unexplained.

20. Particular attention must be given to the testimony of P.W.-2 Somveer. In his statement under Section 202 Cr.P.C., he claimed that he had seen the petitioners assaulting the deceased in front of their house. According to him, he left the place out of fear and later informed his family members. However, the same witness also stated that the petitioners subsequently confessed before him that they had no intention to kill the

deceased. The conduct attributed to the witness appears unnatural. If he was so frightened that he could not intervene or remain at the spot, it is difficult to comprehend how the petitioners would thereafter make a confession before him. Such inconsistencies strike at the credibility of the witness and require careful scrutiny before any reliance can be placed upon his statement.

21. The pPresent case also highlights an important aspect concerning the exercise of jurisdiction by a Magistrate while dealing with a final report and a protest petition. The law undoubtedly permits a Magistrate to treat a protest petition as a complaint and proceed in accordance with Chapter XV of the Code. However, such power must be exercised with great caution, particularly where allegations relate to grave offences such as murder.

22. Where the accusation concerns a serious crime and the true facts can be unearthed only through a thorough investigation involving collection of scientific, medical, forensic or circumstantial evidence, the Court must first consider whether conversion of the final report into a complaint case would genuinely advance the cause of justice. The primary object of every criminal proceeding is discovery of truth. If that object cannot effectively be achieved through a complaint enquiry, the Court should consider directing further investigation rather than mechanically converting the final report into a complaint case.

23. Conversion of a final report into a complaint case should never become an empty formality. There may be cases where the police investigation is defective, incomplete or unfair. In such situations, further investigation may be the appropriate course. A complaint enquiry is not intended to substitute a full-fledged criminal investigation in cases where crucial facts can be established only through investigative processes. For example, where the prosecution case depends upon recovery of incriminating articles, scientific examination, electronic evidence, call records, forensic analysis, or reconstruction of the incident, a complaint enquiry may not be sufficient to ascertain the truth.

24. Even where the Magistrate is satisfied that conversion of the final report into a complaint case would serve the ends of justice, the Magistrate should not remain a mere spectator during the enquiry. The duty of the Court in such cases assumes greater importance because the Court itself becomes responsible for evaluating whether sufficient grounds exist for proceeding against the accused despite the police having found otherwise.

25. The Magistrate should therefore carefully examine each witness and, wherever necessary, put questions to test the credibility of the statements made. Merely recording statements under Sections 200 and 202 Cr.P.C. in a mechanical manner may not always serve the purpose of justice. Witnesses should be questioned regarding the source of their knowledge, the circumstances in which they acquired such knowledge, any delay in disclosure, any omissions in earlier versions and other relevant facts having a bearing upon the reliability of their testimony.

26. Experience shows that there are cases where allegations are ultimately found to be false or where the investigating agency is unable to collect reliable evidence in support of the accusation. It often happens that after submission of a final report, a protest petition is filed and witnesses are produced in support thereof. While such witnesses may make statements sufficient to create a superficial appearance of a prima facie case, the Court must remain vigilant, particularly where the offence alleged is grave and carries severe consequences.

27. In cases involving serious offences, mere repetition of allegations by witnesses may not be sufficient. The Court should examine whether the testimony appears natural, whether it is consistent with the earlier version, whether it is supported by surrounding circumstances and whether independent corroboration is available. If the testimony itself requires scrutiny, the Court should put appropriate questions to the witnesses. If corroborative evidence appears necessary, the Court should explore whether such evidence exists before placing reliance upon the statements.

28. The Magistrate should also keep in mind certain additional principles. **Firstly**, where the police investigation has resulted in a final report, the reasons assigned by the Investigating Officer must be carefully considered and dealt with. **Secondly**, the Court should identify the specific material which persuades it to disagree with the conclusions of the investigating agency. **Thirdly**, improvements, omissions and contradictions appearing between the FIR, the protest petition and statements recorded during enquiry should be examined with care. **Fourthly**, where the prosecution case rests upon circumstantial evidence, the circumstances relied upon should prima facie form a coherent chain pointing towards the accused. **Lastly**, the order summoning an accused for a grave offence must reflect application of judicial mind and should disclose the reasons which persuaded the Court to proceed against the accused.

29. In the present case, the material improvements regarding motive and possession of Rs.35,000/-, the absence of any such allegation in the FIR and protest petition, the unexplained circumstances regarding the place where the deceased was found, the doubtful and inconsistent testimony of the witnesses, and the failure to conduct a meaningful enquiry into these aspects render the impugned order unsustainable.

30. In view of the aforesaid discussion, this Court is of the view that the Magistrate failed to properly scrutinize the material placed before it before summoning the petitioners for an offence punishable under Section 302 IPC. Therefore, impugned summoning order suffers from non-application of mind and cannot be allowed to stand.

31. Accordingly, the petition is **allowed**. The impugned order dated 18.12.2024 passed in Criminal Revision No.47 of 2024 and order dated 20.01.2024 passed in Complaint Case No.1871 of 2014 arising out of Case Crime No.221 of 2013, under section 302 I.P.C., Police Station Ahmadgarh, District Bulandshahar, are hereby set aside.

(2026) 6 ILRA 133
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 03.06.2026

BEFORE

THE HON'BLE VINOD DIWAKAR, J.

Matters Under Article 227 No. 13425 of 2025

Avnesh Kumar Agarwal

...Petitioner

Versus

U.O.I. & Ors.

...Respondents

Issue for Consideration

Matter pertains to whether the rejection of petitioner's application for issuance of a No Objection Certificate (NOC) for renewal of his passport, solely on account of pending criminal proceedings arising from long-pending FIRs, was legally sustainable, particularly when one criminal proceeding had been stayed by High Court.

Headnotes

Indian Penal Code, 1860 - ss. Sections 406, 420, 424, 467, 468, 471, 120-B and 218 - Prevention of Corruption Act, 1988 - s. 13(1)(d) - Passport - Renewal of Passport - No Objection Certificate (NOC) - Pendency of criminal proceedings - Rejection of application - Validity of - The petitioner challenged the order of Special Judge rejecting his application for issuance of a No Objection Certificate (NOC) required for renewal of his passport - Two FIRs registered in the year 2007 alleged offences relating to corruption, forgery, criminal conspiracy and destruction of official records against officers of Commercial Tax Department and other accused, including the petitioner - The petitioner contended that one investigation had remained pending for nearly two decades, while in the other matter the charge-sheet was submitted after about eighteen years and criminal proceedings had already been stayed by High Court - During the course of hearing, the Court also examined the status of compliance with its earlier directions issued in *Manish Kumar Singh (Infra)* regarding the constitution of a High-Powered Committee for monitoring investigations in corruption cases, called for records and affidavits from the State authorities, and ultimately proceeded to examine both the validity of impugned order refusing the NOC and the State's compliance with the aforesaid directions.

Held: The Court apprehends that a significant impediment to the effective implementation of directions issued by the Court may lie in the mindset of certain sections of bureaucracy, whose approach is not inclusive and who tend to regard the retention of discretionary power as an end in itself, thereby undermining legal certainty - The apprehension of losing discretion may well be one of principal drivers of 'red-tapism' in public administration - It must be borne in mind that rules and regulations derive their very rationale from the imperative to limit unguided discretion as a means of achieving greater accountability and ensuring that public power is exercised in a transparent, principled and rule-bound manner - On merits of instant case, no response has been received from the office of respondent no.2 - the Regional Passport Authority, Bareilly, till the pronouncement of the judgment - In view of facts and circumstances, the impugned order dated 20.09.2025 passed by learned Special Judge, Bareilly, is hereby set aside - The instant petition allowed - No Objection Certificate (NOC) is hereby issued in favour of petitioner for renewal of his passport - Directions accordingly. [Paras 32, 35, 36] (E-13)

Case Law Cited

Manish Kumar Singh v. State of U.P. & Ors. (2023)SCC OnLine All 2501; relied on

List of Acts

Indian Penal Code, 1860; Prevention of Corruption Act, 1988

List of Keywords

Article 227; No Objection Certificate; Passport; Renewal; FIR; Charge-Sheet; Bail; Special Trial; Prevention of Corruption Act; Investigation; Destruction of official records; Sub inspector; Economic Offences Wing; Set the government office on fire; High-Powered Committee; Chief Secretary; Monitoring; Guidelines; Compliance; Welfare State; Zero Tolerance; Corruption; Final report; Cognizance; Accountability; Public Policy; Rule of Law; Administrative hierarchy; Superior responsibility; Contempt proceedings; Regional Passport Authority; State exchequer; State policy; Red-tapism; Impugned order set aside; Petition allowed.

Case Arising From

ORIGINAL JURISDICTION: Matter Under Article 227 No. 13425 of 2025

From the Judgment and Order 20.09.2025 passed by the learned Additional Sessions Judge/Special Judge (Prevention of Corruption Act), Bareilly in Special Trial No.18 of 2025.

Appearances for Parties

Adv. for the Petitioner(s):

Pavan Kumar

Adv. for the Respondent(s):

A.S.G.I, G.A., Sanjay Dwivedi

(Delivered by Hon'ble Vinod Diwakar, J.)

A. BRIEF HISTORY OF EARLIER PROCEEDINGS:

1. Heard Shri Pavan Kumar, learned counsel for the petitioner, Shri Manish Goel, learned Additional Advocate General assisted by Shri Roopak Chaubey, learned A.G.A.-I for the State-respondents, and perused the material available on record.

2. The instant petition has been preferred assailing the impugned order dated 20.09.2025 passed by the learned Additional Sessions Judge/Special Judge (Prevention of Corruption Act), Bareilly in Special Trial No.18 of 2025, whereby the petitioner's application- seeking a No Objection Certificate (hereinafter referred to as the 'NOC') for renewal of passport, was rejected.

3. Succinctly, the petitioner's case is that two First Information Reports ('FIRs') were registered against the petitioner; (i) FIR No.1634 of 2007, on 13.09.2007, under Sections 406, 420, 424, 467, 468, 471, 120-B and 218 of IPC, at Police Station- Najibabad, District- Bijnor; and (ii) FIR No.318 of 2007, under Sections 420, 406, 424, 467, 468, 471, 477, 218 and 120-B IPC, read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, at Police Station- Mandawali, District Bijnor. In both the FIRs, senior officers of the Commercial Tax Department, District Bijnor have been arrayed as accused, along with owners of a transport company and truck drivers, with the allegations of destruction of official records by setting the government office on fire by certain unknown miscreants, besides the allegation of corruption and forgery.

4. In brief, the facts narrated in FIR No.1634 of 2007 are that a Sub-Inspector posted at the Economic Offences Wing (EOW) of the Uttar Pradesh Police at Lucknow made a complaint arraying 25 persons as accused. Accused Nos.1 to 10 were the officers of the Trade Tax Department, whereas the remaining accused included drivers of trucks, traders and the owner of a transport company situated at Calcutta, Durgapur, Hazaribagh, Rishikesh and Muzaffarnagar. The allegations are that the officers of the Trade Tax Department, in collusion with businessmen, misused their official positions by giving undue benefits to traders through fabrication and creation of forged and fraudulent consignments, thereby causing heavy loss to the State treasury. Substantially similar allegations were also leveled against government officers and businessmen in FIR No.318 of 2007 registered at Police Station- Mandawali, District Bijnor.

5. It was further submitted that, in respect of FIR No.318 of 2007, the investigation had remained pending for nearly two decades, and with regard to FIR No.1634 of 2007, the charge-sheet was submitted only in the year 2024, and no effective orders have been passed therein. In view of the inordinate delay of 18 years in filing the charge-sheet and the fact that the petitioner was already on bail, the proceedings arising out of the FIR No.1634 of 2007 has been stayed by a Co-ordinate Bench of this Court vide order dated 21.11.2025. Relying upon the said order, learned counsel submitted that the Co-ordinate Bench after taking note of the submission that; (i) the allegations in FIR No.1634 of 2007 are false and frivolous, and were leveled with an ulterior motive to harass the petitioner, (ii) the main allegations are against government officials, who had allowed loaded trucks to pass through the Sales Tax Post without depositing the requisite receipt, (iii) the petitioner is a businessman, (iv) the charge-sheet was filed after 18 years of the registration of the FIR, (v) there was no pre-summoning evidence on record regarding commission of any offence by the petitioner, stayed the proceedings against the petitioner. Accordingly, it was urged that the petitioner is entitled to issuance of the NOC, and that the rejection of his application was wholly erroneous.

6. Per contra, learned Additional Government Advocate for State invited the attention of the Court to the gravity of the allegations against the petitioner, submitting that the accusations are of a serious nature, including the allegation that the accused persons set the government office on fire with the intent to destroy official records.

7. During hearing of the case, this Court also noted that the Division Bench of this Court in ***Manish Kumar Singh v. State of U.P. & Ors.1***, had directed the State Government to constitute a High-Powered Committee to formulate guidelines for monitoring the investigation of the FIRs registered by the government departments in cases involving corruption and cheating, and had further directed that the investigations be completed expeditiously in a phased manner, besides issuing other directions.

8. Accordingly, the learned A.G.A. was directed to obtain specific instructions from the Office of the Chief Secretary, Government of Uttar Pradesh, regarding the status of compliance with the said directions, and to place the complete record along with all relevant documents/guidelines, if any, before this Court on the next date of hearing. Learned counsel for the Union of India was also granted liberty to obtain necessary instructions with respect to the reliefs sought in the present petition and to apprise the Court accordingly.

9. Time was sought and granted on two occasions to Shri Manish Goel, learned Additional Advocate General, to comply with the directions contained in the orders dated 03.12.2025 and 18.12.2025. It was also directed that an officer not below the rank of Secretary shall file an affidavit detailing the steps taken by the Office of the Chief Secretary, Government of Uttar Pradesh, in compliance with the directions issued in Manish Kumar Singh (supra).

10. Thereafter, vide order dated 10.02.2026, this Court considered the affidavit filed on behalf of the State, which disclosed that pursuant to the order dated 29.11.2023 passed in Manish Kumar Singh (supra) by the Division Bench of this Court, a Committee had been constituted under the Chairmanship of the Chief Secretary, Government of Uttar Pradesh, vide order dated 10.12.2025. It was stated that the directions issued in Manish Kumar Singh (supra) have been complied with, may be after a delay of nearly two years, for reasons best known to the Department.

11. Accordingly, the Office of the Chief Secretary was directed to furnish the following details: (i) the original file relating to the constitution of the Committee, along with the file containing records of subsequent proceedings, to be produced before this Court for perusal, (ii) the names of the officers responsible for causing delay in complying with the directions issued in Manish Kumar Singh (supra), (iii) district-wise and date-wise details of the Commissioners of Police/Senior Superintendents of Police/Superintendents of Police who had complied with, as well as those who had failed to comply with, the directions contained in paragraph 29 of the order dated 29.11.2023, and (iv) the steps taken by the Home Department pursuant to Letter No.12358/RC (Civil) dated 04.12.2023 issued by the Registrar General of this Court to all the Commissioners of Police/ Senior Superintendents of Police/ Superintendents of Police through the Director General of Police, Government of Uttar Pradesh, Lucknow, and Letter No.12357/RC (Civil) dated 04.12.2023 addressed to the Chief Secretary, Government of Uttar Pradesh.

B. A BRIEF DESCRIPTION OF THE RELEVANT EXTRACTS OF THE MINUTES OF THE HIGH POWERED COMMITTEE MEETINGS:

12. Before proceeding further, it would be apposite to reproduce the operative portion of the judgment and order dated 29.11.2023 passed in Manish Kumar Singh (supra) for ready reference:

“26. In light of this context, this Court direct the State Government to constitute a High-Powered Committee, comprising of Chief Secretary, as its chairperson, to conduct a comprehensive examination of all relevant factors, particularly those outlined herein above. The Committee should include representatives from all relevant stakeholders, including the civil administration, public prosecutors, and police department officers. Their collective input should be used to develop comprehensive and well-structured guidelines for continuous/consistent monitoring the progress of investigations. The copy of the notification constituting the High-Powered Committee shall be forwarded immediately to the office of the Registrar General of this court to be kept in the record of this case.

27. In the event of non-compliance of the aforesaid guidelines as may be framed, a framework for holding individual officers accountable and establishing a supervision mechanism

at the District, Zonal, and State Levels should be devised. As one possible measure to hold errant officers accountable, their appointment as Station House Officer (S.H.O.), Station Officer (S.O.), or In-charge of a police station (Chowki-in-charge) could be withheld for a specified period, among other potential actions.

28. The authority to establish these guidelines indeed lies within the purview of the State government. In accordance with the principles expounded in the judgment, the Committee shall consider the following:

(i) In the initial phase, the Committee shall formulate guidelines for monitoring the investigation of First Information Reports (FIRs) registered by government departments in cases involving corruption and cheating. Subsequently, it will extend these guidelines in a phased manner to cover all other FIRs as may be found suitable and appropriate by the Committee.

(ii) The guidelines should ensure that investigations are completed within in a phased manner expeditiously, and strictly in accordance with the provisions outlined in Chapters-V, VI, VII, and XII of the Code of Criminal Procedure, 1973 as well as other applicable legal provisions intended to facilitate effective, fair, unbiased, and expeditious investigation.

(iii) In cases the police conclude that no case is made out against the accused or the suspect, the final report should be filed strictly in accordance with Regulation 122 (iii) of the U.P. Police Regulations. The Regulation 122 (i), (ii), and (iv) of the U.P. Police Regulations, 1861 should also be taken into consideration while formulating these guidelines.

(iv) The inclusion of mechanisms for systematic date-wise tracking of court proceedings, both at the district and state levels, is imperative to guarantee the expeditious disposal of the case. Moreover, it is imperative for the department to meticulously have a track on the testimony of witnesses, ensuring that they depose factually correct, just and necessary information in the court, devoid of any apprehension or external factors that could potentially sway the course of justice, and shall also develop a mechanism for fixing accountability if a witness act in defiance of law.

29. In the initial phase, this Court directs all Commissioners of Police/Senior Superintendent of Police/Superintendent of Police from all districts to provide a list of FIRs that have been registered on behalf of government departments. This list shall include the date of registration of FIR, the time and place of the incident, the name of the complainant, and the names of the suspects/accused persons. Additionally, a brief overview of the progress made in the investigations conducted thus far should be included. This information must be submitted within one month from the date of receiving a copy of this order to the Chief Secretary's office. This quantifiable data collected from all police stations be used to formulate comprehensive guidelines.

30. This Court directs all the Commissioners of Police/SSPs/SPs to endorse their subjective satisfaction by independently evaluating the circumstances and the material placed before them, thereby justifying the submission of a final report as outlined in Regulation 122 (iii) of the U.P. Police Regulations by a speaking order. The copies of this judgment shall be dispatched to all Commissioners of Police/SSPs/SPs in Uttar Pradesh for prompt adherence. A notification, if

any, by government delegating the authority of Commissioner of Police/S.S.P./S.P.s to any of the subordinate officer to sign and forward the closure report shall stand inoperative from the date of this order in cases registered by Government Department/PSUs/Public Authorities/Co-operative Societies of Government and/or organisations covered by Article 12 of the Constitution of India.

31. A copy of this order shall be forwarded to the Chief Secretary of Uttar Pradesh with an expectation that guidelines shall be formulated in a timely manner, preferably within three months and not exceeding, in any case, beyond a period of six months. In consequence thereof, the relevant directions/G.O. shall also be issued to all the civil and police departments as may be necessary in align with the spirit of this judgment.

32. A copy of this order be sent to all District Judges, who should then circulate it amongst all Magistrates, Civil Judges, and Chief Judicial Magistrates concerned. They are responsible for ensuring strict adherence to Regulation 122 (iii) of the U.P. Police Regulations, 2001. The respective judicial officers should also ensure compliance with the directives outlined in paragraph 30 of this order and shall take into account the endorsement provided by the Commissioner of Police/Senior Superintendent of Police/Superintendent of Police before taking cognizance of the matter.”

13. The original file relating to the constitution of the Committee was produced before this Court for perusal. Compliance with the remaining directions was directed to be made by way of an affidavit sworn by an officer not below the rank of the Secretary.

14. A perusal of the file produced before this Court reveals that the State Government has, by a unanimous resolution, reaffirmed its foundational commitment to the constitutional concept of a welfare state. Pursuant to this commitment, the State Government implements various public utility schemes and conducts government activities and operations aimed at the welfare of the general public. The State Government has declared a policy of zero tolerance towards corruption in such schemes, activities and operations, and remains firmly committed to initiate the strictest possible action against any individual found to have engaged in corrupt practices. Consequently, with a view to ensure effective execution of the State Government’s campaign against corruption, effective supervision of cases registered by various Government Departments in this regard has been held to be imperative and indispensable.

15. Pursuant to the aforesaid resolution, and in compliance with the order dated 29.11.2023 passed by this Court, a High-Powered Committee was constituted on 09.12.2025, comprising the Chief Secretary, Government of Uttar Pradesh, as a Chairman; the Principal Secretary/Additional Chief Secretary (Home); the Principal Secretary (Law) and Legal Adviser; the Director General of Police; and the Director General of Police (Prosecution), as its members. Provision was also made enabling the Chairman of the Committee to take the assistance of any other officer as he may deem fit and proper.

16. It is noteworthy that the Committee was constituted by the Chief Secretary, Uttar Pradesh, only after this Court took cognizance of the present matter, and that too after an inordinate delay of nearly two years, despite the specific direction requiring its constitution within six months.

It was further directed that, in the first phase, all Commissioners of Police, Senior Superintendents of Police, and Superintendents of Police across the State shall furnish a list of all FIRs registered at the instance of Government Departments. Such list was required to contain particulars including the date of registration of the FIR, the date, time, and place of occurrence, the name of the informant/complainant, the names of the suspected or accused persons, and a brief status report indicating the progress made in the investigation up to that stage.

17. The aforesaid information was directed to be submitted to the office of the Chief Secretary within one month from the date of receipt of a copy of the order. The quantifiable data so collected from all police stations across the State was intended to serve as the basis for formulating comprehensive guidelines in the matter.

18. Admittedly, there has been a delay of nearly two years in constituting the Committee. This Court proposes to examine the possible reasons for such delay and to consider measures for addressing and mitigating the factors responsible for delays in the implementation of the orders passed by this Court.

19. Shri Manish Goel, learned Additional Advocate General, appeared on behalf of the Chief Secretary, Uttar Pradesh, and apprised the Court that the Committee has started functioning and meetings of the Committee were convened on 17.12.2025 and 24.12.2025.

20. A brief account of the steps taken by the High-Powered Committee pursuant to the aforesaid directions is delineated in the succeeding paragraphs. The Committee took cognizance of the directions and conditions contained in paragraphs 26 and 28 of Manish Kumar Singh (supra), which have already been reproduced hereinabove. At the initial stage, the High-Powered Committee resolved to constitute two subordinate committees, namely: (i) the Divisional-Level Monitoring Committee; and (ii) the District-Level Monitoring Committee. The constitution of these committees was intended to facilitate effective monitoring, collection of relevant data, and implementation of the directions issued by this Court in a structured and time-bound manner.

21. The Divisional-Level Monitoring Committee shall comprise the Divisional Commissioner as the Chairperson; the Additional Director General of Police (Zone) as the Member Secretary; and the Inspector General of Police (Range), Divisional In-charge, Prison Administration, and Regional Additional Director (Prosecution) as Members.

22. The District-Level Monitoring Committee shall comprise the District Magistrate as the Chairperson; the Commissioner of Police/Senior Superintendent of Police/Superintendent of Police as the Member Secretary; and the Jail Superintendent, Joint Director (Prosecution), Head of the concerned Department, and such other officer(s) as may be nominated by the Chairperson, as Members.

23. At the initial stage, the Committee observed that although criminal cases are already being monitored under the Government of India's Interoperable Criminal Justice System (ICJS), an additional mechanism for monitoring at the departmental level is necessary to ensure effective supervision and coordination. A perusal of the minutes of the meetings indicates that information

relating to criminal cases registered at the instance of Government Departments is required to be forwarded to the Committee for review and monitoring.

24. The proceedings further reveal that the Committee considered the collection and consolidation of such information to be an essential prerequisite for assessing the status of investigations, identifying systemic deficiencies, and formulating appropriate recommendations for effective implementation of the directions issued by this Court.

25. On 18.02.2026, the Secretary (Home), Government of Uttar Pradesh, filed a compliance affidavit averring that the police, prosecution and other concerned departments have been directed to produce the requisite documents before the High-Powered Committee for further deliberations. The affidavit further records that the Letter No.12357/ARC (Civil) dated 04.12.2023, issued by the Registrar General of this Court, was received in the concerned Section through a letter dated 16.08.2024 issued from the Office of the Chief Secretary. The affidavit also places on record the following correspondence:

25.1 Letter No.DGJ-Saat-S-14(05)/2024 dated 17.02.2026 issued by the Additional Director General of Police (Crime), Uttar Pradesh, addressed to all Zonal Additional Directors General of Police, all Commissioners of Police, and the Additional Directors General of Police (GRP/EOW/ACO), Uttar Pradesh. It makes reference to the letter of the Special Secretary, Home (Police) Section-9, Government of Uttar Pradesh, bearing No.20/Chh-Pu-0-9-2026-1763301 dated 14.02.2026, through which information was sought in compliance with the order dated 10.02.2026 passed by this Court in the present petition. Pursuant to the said letter, all addressees were called upon to furnish; (i) the names of the officers responsible for the delay in compliance with the order dated 29.11.2023, and (ii) district-wise and date-wise details of the Commissioners of Police/ Senior Superintendents of Police/ Superintendents of Police, who had complied with, and those who had failed to comply with, the directions issued in paragraph 29 of the order dated 29.11.2023.

25.2 It was further noted therein that, in compliance with the order dated 29.11.2023, the Director General of Police, Uttar Pradesh, has already issued instructions on 22.12.2023 vide Letter No.DGJ-Das-Vi-Pu-Writ-470/2023/4387, directing all the Commissioners of Police and Senior Superintendents of Police/ Superintendents of Police that in cases registered by the Government departments, Public Sector Undertakings and Co-operative Societies where the first information report has reached the stage of a final report, speaking orders must be passed and placed before the concerned courts.

25.3 Letter No.2003/Chh-Pu-0-9-2025-1783301 dated 10.12.2025 was issued by the Principal Secretary, Home (Police) Section-9, Government of Uttar Pradesh, to all the Divisional Commissioners, Commissioners of Police, District Magistrates, Senior Superintendents of Police, Superintendents of Police, and Government Railway Police, Uttar Pradesh, on the subject of monitoring of FIRs registered by the Government departments. The letter begins by reaffirming the State Government's constitutional obligation to function as a welfare State and its policy of zero tolerance towards corruption. It further takes note of the Inter-Operable Criminal Justice System (ICJS) already operational in the State for monitoring criminal cases, while observing that better supervision of FIRs registered by Government departments remains necessary. The letter

then reproduces the operative directions from this Court's order dated 29.11.2023 in Criminal Misc. Writ Petition No.14349/2023, wherein this Court had directed the State to constitute a High-Powered Committee chaired by the Chief Secretary, comprising representatives from civil administration, the prosecution and the police, to develop comprehensive guidelines for monitoring the progress of investigations.

25.4 The directions further required that, guidelines ensure completion of investigations in a time-bound manner in accordance with Chapters V, VI, VII and XII of the Code of Criminal Procedure, 1973; final reports in cases of no evidence be filed strictly in accordance with *Regulation 122(iii) of the Uttar Pradesh Police Regulations*; and that systematic, date-wise tracking of court proceedings be maintained. Paragraph 29 of the order directed all the Commissioners of Police/ Senior Superintendents of Police/ Superintendents of Police to submit a list of FIRs registered by Government departments to the Office of the Chief Secretary within one month; paragraph 30 directed them to independently pass speaking orders before submitting any final report; paragraph 31 directed the Chief Secretary to formulate comprehensive guidelines within three to six months; and paragraph 32 directed all District Judges to circulate the order to all the Magistrates and Chief Judicial Magistrates for adherence. In accordance with the aforesaid directions, a State-level High-Powered Monitoring Committee was constituted under the Chairmanship of the Chief Secretary, Uttar Pradesh, comprising the Principal Secretary/Additional Chief Secretary (Home), the Principal Secretary (Law) and Legal Remembrancer, the Director General of Police, the Director General of Prosecution, and any other officer considered necessary.

C. FINDINGS OF THE COURT:

26. The State Government has, on repeated occasions, resolved and declared its policy of zero tolerance towards corruption and its commitment to eradicate corrupt practices from all organs of governance. Anti-Corruption Department of the Government of Uttar Pradesh are entrusted with the responsibility of dealing firmly with officers involved in corruption, which causes loss to the State exchequer and corrupts the administrative machinery. It is a well-recognized principle that absolute and untrammelled discretion breeds corruption and provides fertile ground for discrimination, both of which are antithetical to due process and the rule of law culture.

27. This Court continues to encounter frequent instances of non-compliance with its orders. The compliance of the directions issued in *Manish Kumar Singh (supra)* was rendered possible only by virtue of the intervention of this Court in the present case, and that too after an inordinate delay of two years.

28. In this backdrop, this Court finds itself confronted with several options; (i) to initiate contempt proceedings against the Chief Secretary, who occupies a unique and pivotal position in the administrative hierarchy, for failure to comply with the directions of this Court for more than two years, until the issue was re-agitated in the present proceedings, (ii) to persuade officers to comply through the salutary apprehension of contempt, and to await the outcome of their deliberations, (iii) to direct the Chief Secretary to appear in person before this Court and explain the reasons for non-compliance, (iv) to fix personal responsibility and impose exemplary costs, (v) to direct time-bound compliance monitoring, (vi) to record an adverse remark against the concerned

officers and transmit the same to the Cadre Controlling Authority, and (vii) to frame compliance mechanisms and take a strict view of repeated defiance, etc.

29. This Court records, without any hesitation or ambiguity, that it possesses full clarity to exercise any of the options enumerated above in order to maintain public confidence and uphold the rule of law. However, in the interest of the State and its institutions, this Court deems it appropriate to refrain, for the time being, from invoking any of the above said options. This restraint is exercised in the hope and expectation that public administrators, who are well familiar with the machinery of the government, are better placed and equipped to evolve and develop effective mechanisms for implementing public policy and programmes. Courts, to a considerable extent, consciously avoid prescribing a catalogue of □dos and don□ts□ for civil servants. However, such judicial restraint must not be mistaken for judicial indifference.

30. As partial compliance of the directions issued in Manish Kumar Singh (supra) has been effected, and it is given to understand that the High-Powered Committee has commenced its work, this Court expresses the hope and expectation that the remaining directions shall also be complied with in a time-bound manner. In that view of the matter, this Court does not consider it necessary, at this stage, to escalate the matter further.

31. Before parting with the present matter, this Court considers it appropriate to place on record certain observations which, in its considered opinion, warrant the attention of the Hon'ble the Chief Minister, Uttar Pradesh that the time has come for the State to evolve and adopt a doctrine of 'superior responsibility', whereby senior officers in an administrative hierarchy are held accountable- and, in appropriate cases, criminally responsible for their failure to prevent or punish acts of commission or omission by their subordinates. The expression 'failure to prevent' must be understood to include 'the failure to take timely administrative measures' or 'to report the matter to higher administrative authorities'. Exceptional situations that produce widespread, systematic and enduring adverse effects upon public administration demand exceptional remedies. A duty to report or act may appropriately be developed within administrative law to address systematic and prevalent under-performance, negligence, breach of service ethics and dereliction of service codes. Senior officers must be held accountable for the conduct and performance of their subordinates, as it is both their professional and administrative responsibility to ensure the effective delivery of public services. Such accountability may legitimately be extended to criminal liability where the failure to prevent or punish leads to criminal acts such as corruption, fraud, willful suppression of records, contempt of government orders and Gazette Notifications, and failure to implement '**State policy**', and '**Programmes**', such as zero tolerance towards organised, institutionalised corruption-whether corruption of the mind, whereby the decision-making process is deliberately perverted to serve private ends under the guise of official authority, or corruption of the purse, whereby public office is converted into an instrument of personal pecuniary gain.

32. This Court apprehends that a significant impediment to the effective implementation of directions issued by this Court may lie in the mindset of certain sections of the bureaucracy, whose approach is not inclusive and who tend to regard the retention of discretionary power as an end in itself, thereby undermining legal certainty. The apprehension of losing discretion may well be one of the principal drivers of '**red-tapism**' in public administration. It must be borne in mind that rules

and regulations derive their very rationale from the imperative to limit unguided discretion as a means of achieving greater accountability and ensuring that public power is exercised in a transparent, principled and rule-bound manner.

33. The present matter was listed and heard on 03.12.2025, 11.12.2025, 18.12.2025, 12.01.2026, 27.01.2026, 10.02.2026, 19.02.2026 and 24.02.2026. On 25.02.2026, the matter was reserved for orders. The learned Additional Advocate General assured this Court that the High-Powered Committee has been actively engaging in deliberations with the concerned stakeholders with a view to complying with the directions of this Court given in *Manish Kumar Singh (supra)*. This Court waited for a period of over three months with the expectation that it would be apprised of the progress of the decisions taken by the High-Powered Committee before the judgment was pronounced. Two days prior to the pronouncement of the present judgment, the office of this Court contacted the learned State counsels to enquire about the progress of the decisions taken by the High-Powered Committee. No information has been furnished to this Court till the date of pronouncement of this judgment, its unfortunate.

34. Learned Additional Advocate General, must appreciate that the Chief Secretary, functioning as the Secretary to the Cabinet and the Council of Ministers and serving, in that capacity, as the principal adviser to the Hon'ble Chief Minister and the Hon'ble Council of Ministers on all matters of civil administration, policy implementation, and inter-departmental coordination, occupies a special and privileged position and is, in every sense, the keystone of the arch of State administration. It is, therefore, imperative that the learned law officers conduct themselves with extraordinary vigilance, circumspection, and a heightened sense of institutional responsibility while discharging their duties.

35. On merits of the present case, no response has been received from the office of the respondent no.2- the Regional Passport Authority, Bareilly, till the pronouncement of this judgment.

D. ORDER:

36. In view of the facts and circumstances discussed hereinabove, the impugned order dated 20.09.2025 passed by the learned Special Judge, Bareilly, is hereby set aside. The instant petition is accordingly *allowed*. 'No Objection Certificate (NOC)' is hereby issued in favour of the petitioner for renewal of his passport. The Regional Passport Authority, Bareilly is directed to issue/renew the passport in favour of the petitioner, in accordance with the prescribed procedure.

37. The Registrar (Compliance) is hereby directed to forthwith transmit a certified copy of this order to the Chief Secretary, Government of Uttar Pradesh, with a direction that the proceedings of the High-Powered Committee be concluded in a timely and effective manner, so as to give full effect to the directions issued in *Manish Kumar Singh (supra)*, and that a structured procedure be evolved and comprehensive guidelines be framed to address the issues raised in the aforesaid judgment, along with an effective and swift accountability mechanism for the errant officers. The Chief Secretary is further directed to place a copy of this order before Hon'ble the Chief Minister of Uttar Pradesh for perusal and due consideration of the concerns flagged in '*paragraph 31*' of this order.

(2026) 6 ILRA 144
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 08.06.2026

BEFORE

THE HON'BLE SIDDHARTH, J.
THE HON'BLE VINAI KUMAR DWIVEDI, J.

Criminal Appeal No. 2851 of 1983
 Alongwith
 Criminal Appeal No. 2856 of 1983
 And
 Criminal Appeal No. 2862 of 1983

Satish & Ors.

...Appellants

Versus

State

...Respondent

Issue for consideration

Whether trustworthy eye witness be doubted on the ground that witnesses are inimical?

Headnotes

Indian Penal Code, 1860-sec.302-All the accused-appellants are named in the F.I.R- no delay in lodging the F.I.R-appellants with co-accused had assaulted Satish Kumar with guptis and knives held in their hands- case of direct evidence- two eye-witnesses- informant -PW-1 and PW-2 are natural eyewitnesses of the incident - only on the ground of inimical witnesses and enmity between the prosecution and defence side- reliable and trustworthy evidence that inspires confidence could not be doubted on the ground that the witnesses are inimical or there was enmity between both sides- ocular evidence and medical evidence corroborate and support each other- non-recovery of the murder weapon from the possession does not in any way affect the prosecution story.

Appeals dismissed. (E-9)

Case Law Cited

1. Suresh Sitaram Surve vs. State of Maharashtra, (2002) 10 SCC 28
2. Nankaunoo vs. State of Uttar Pradesh, (2016) 3 SCC 317
3. Rakesh and Another vs. State of Uttar Pradesh and Another, (2021) 7 SCC 188

List of Acts

1. Indian Penal Code, 1860

List of Keywords

Eye-witnesses; enmity between the prosecution side and the defence side; natural eyewitnesses; ocular evidence and medical evidence corroborate and support each other; non-recovery of the murder weapon; common object.

Appearances of parties

Counsel for Appellant(s) : Aushim Luthra (Amicus Curiae), K. Sahai, Sanjay Singh Counsel for Respondent(s) : A.G.A.

(Delivered by Hon'ble Vinai Kumar Dwivedi, J.)

1. Heard Mr. Aushim Luthra, learned Amicus Curiae for the appellant no. 1; Mr. Sanjay Singh, learned counsel for the appellant nos. 2 & 3; Mr. Ashwani Kumar Yadav, learned A.G.A.-I for the State; perused the Trial Court record as well as the judgment of the Trial Court.

2. These Criminal Appeal Nos. 2851 of 1983, 2856 of 1983 and 2862 of 1983 have been filed by the accused-appellants, Satish, Shiv Kumar, Ashok, Bhupat, Rakesh, Vijay and Vikram against the judgment and order dated 17.11.1983 of learned Trial Court passed in Sessions Trial No. 432 of 1982 (State vs. Vikram and others) arising out of Case Crime No. 426 of 1982, under Sections 147, 148, 323, 324, 307, 302/149 IPC, Police Station Haridwar, District Saharanpur.

3. Prosecution story as stated by informant Nathiram (PW-1) in written report, Exhibit Ka-1, is that on 10.08.1982, I along with Satish Kumar son of Pyare Lal and Shri Ram son of Beni Prasad resident of Balmiki Basti, Kankhal had gone to Haridwar to take medicines of my father on the bicycles. After exchanging the medicine, we all three were coming back to our houses at Kankhal. Along with me, Satish Kumar was sitting on carrier of my bicycle and Shri Ram was alone on his bicycle. At about 6:00 p.m., when three of us were riding bicycles and had reached near the Dak Kothi, close to a big mango tree, Satish son of Netram, Bhupat son of Ganesha Ram, Rakesh and Vijay sons of Hari Ram, Shiv Kumar son of Asha Ram Hawaldar, Vikram son of Shankar Lal, and Ashok son of Nathu Ram, all residents of our locality in Kankhal and with whom cases have been pending in Court for a long time, suddenly emerged from the direction of the mango tree, out of them, Satish Kumar and Shiv Kumar had gupti and Bhupat, Rakesh and Vikram had knives and Ashok had chain of bicycle and Vijay had country-made pistol in his hand. All those persons jointly stopped us, and after stopping us, Satish and Shiv Kumar asked us to come towards the side of the canal. Upon this, I refused to go towards the side of the canal, then Shiv Kumar had dragged Satish Kumar son of Pyare Lal, who was sitting on the backside of my bicycle and suddenly Satish, Shiv Kumar, Bhupat, Rakesh and Vikram with guptis and knives holding in their hands began to assault Satish Kumar. I and Shri Ram tried to save him then Ashok assaulted Shri Ram with the chain. Upon this, I and Shri Ram made a noise then Vijay had fired upon us with the country-made pistol with intention to kill. However, due to being hidden behind the tree, we managed to escape. On our noise, nearby peoples of the neighbourhood have come. Upon seeing coming of the people, accused persons ran away. Blood was oozing from the wounds sustained by Satish Kumar due to the knife and gupti injuries. We took Satish Kumar to hospital in a three-wheeler vehicle and on the way, he died. Prem Chandra Ghaghar has full hand behind execution of this incident.

4. This written report, Exhibit Ka-1, was written by informant Nathiram (PW-1) on 10.08.1982. On the basis of the said written report, the F.I.R., Exhibit Ka-6, was registered on the same day at 07:10 p.m. against the named accused at Case Crime No. 426 of 1982 under Sections 147, 148, 149, 323, 324, 307, 302, 120-B, and 34 of the IPC by Head Moharrir Omvir Singh (PW-6).

5. After registration of the F.I.R., Exhibit Ka-8, at the police station and on receiving the information of the incident, SI Devendra Pratap Singh (PW-7) has taken the investigation of the case in his hand. Investigating Officer Devendra Pratap Singh (PW-7) reached at the hospital where the dead body of the deceased Satish Kumar was lying. In the supervision and direction of the

Investigating Officer Devendra Pratap Singh (PW-7), S.S.I. Kunwar Singh Rana prepared the panchayatnama of the dead body of the deceased, Exhibit Ka-8. S.S.I. Kunwar Singh Rana also prepared the challan lash, Exhibit Ka-9, photo lash, Exhibit Ka-10, and letter to C.M.O., Exhibit Ka-11. Thereafter, Investigating Officer Devendra Pratap Singh (PW-7) reached at the place of occurrence with informant Nathiram and on the pointing of the informant, prepared the site plan of the place of occurrence, Exhibit Ka-12. Blood-stained clothes of informant Nathiram (PW-1) was also taken from informant Nathiram (PW-1) by the Investigating Officer Devendra Pratap Singh (PW-7), and the recovery memo of the same was prepared as Exhibit Ka-13. Blood-stained and simple soil were also taken from the place of occurrence and the recovery memo was prepared as Exhibit Ka-14. From the place of occurrence, one pair of slippers and a single piece of slippers were also taken into possession and the recovery memo was also prepared as Exhibit Ka-15. At the place of occurrence, one bicycle Hero No. AT96802, of the informant, was taken into possession, and a recovery memo was prepared, and that bicycle Hero No. AT96802, was handed over to the informant Nathiram (PW-1) and the memo was prepared as Exhibit Ka-16. The dead body of the deceased Satish Kumar was sent for post-mortem examination to Meerut, and injured Shri Ram was also sent by the police for medical examination of his injuries at Meerut. The Investigating Officer Devendra Pratap Singh (PW-7) recorded the statement of the prosecution witnesses under Section 161 Cr.P.C. After completing all the formalities of the investigation, the Investigating Officer filed a charge-sheet, Exhibit Ka-17, against the accused persons. The Investigating Officer also sent the shirt, pants received from Nathiram, and vest (banyan), loincloth (langot), one pair of sandals, and also blood-stained and simple soil taken from the place of occurrence to the Forensic Science Laboratory for their examination.

6. Shri Ram, son of Beni Prasad, who was injured in the incident at the place of occurrence, was sent by the police for medical examination. Dr. Yashpal (PW-4) examined the injuries found on the body of the injured Shri Ram and prepared the injury report, Exhibit Ka-3. According to the injury report, Exhibit Ka-3, which was prepared by Dr. Yashpal (PW-4), the following injuries were found on the body of the injured Shri Ram :

“(i) Contusion 14 cm. x 1 cm. on the body of the back upper 1/3rd. It is semicircular on the shoulder back level and then runs obliquely towards the middle of the back. Red in colour.

(ii) Contusion 12 cm. x 1 cm. on the middle part of the right half of the back 5 cm. below no.1 injury. Red in colour.

(iii) Contusion 10 cm. x 1 cm. on the right half of the back 3 cm. inside no.2 injury. Red in colour. Running vertical.

(iv) Contusion 8 cm. x 1 cm. on the right half of the back 2 cm. below no.3 injury. Running vertically. Red in colour.

(v) Contusion 8 cm. x 1 cm. on the middle of the left shoulder blade. Running obliquely. Red in colour.

(vi) Contusion 7 cm. x 1 cm. on the left half of the back temple 1/3rd. Red in colour.

All these injuries were simple in nature and could be caused by some blunt weapon. He is also of the opinion that these injuries could be caused by cycle chain. The injuries were fresh in duration at the time of medical examination and could be caused on that very day at about 6 p.m.”

7. Dr. Sumer Chandra Singhal (PW-3) conducted the post-mortem examination of the dead body of the deceased, Satish Kumar, and prepared the post-mortem report, Exhibit Ka-2. It is worthwhile to mention here that the defence has admitted the genuineness of the post-mortem report of the deceased, Satish Kumar. According to the post-mortem report of the deceased, Satish Kumar, Exhibit Ka-2, following ante mortem injuries were found on the dead body of the deceased, Satish Kumar :

“(i) Incised wound left side neck 1.5 cm. x 0.5 cm. 4.5 cm. below left ear. Vertical direction.

(ii) Stab wound on left scapular region 1 cm. x 0.5 cm. x 1.5 cm. deep the margin of the wound are clear cut and slightly everted.

(iii) Incised wound 2 cm. x 0.7 cm. x 1 cm. deep left forearm outer side.

(iv) Incised wound 2 cm. x 0.7 cm. x 1 cm. inner side forearm 4 cm. below elbow joint.

(v) Incised wound 1.5 cm. x 0.7 cm. on left forearm outer side 5 cm. above the left and joint.

(vi) Abrasion over back of elbow left measuring 1 cm. x 1 cm.

(vii) Stab wound with clean cut margins slightly everted left side chest 2 cm. x 1 cm. x long deep 7 cm. below and 9 cm. left to mid line vertically placed.

(viii) Stab wound 3.5 cm. x 1 cm. x long cavity deep left side chest 2 cm below injury no. 7. vertically placed.

(ix) Incised wound transversely placed in epegestic region measuring 2.5 cm. x 0.7 cm. x muscle deep.

(x) Liniar abrasion rt. side abdomen three cm. blow subcortal margin transversely placed.

(xi) Incised wound 2.5 cm. x 1 cm. x bone deep rt. side siproscapular region 5 cm. rt to shoulder joint.

(xii) Incised wound 2.5 cm. x 1 cm. x bone deep left side back 1.5 cm. below injury no. 11.

(xiii) Incised wound transversely placed 2 cm. x 1 cm. left side back x bone deep 2 cm. below longer angle of scapula.

(xiv) Incised wound left side back vertically placed 1 cm. x 0.5 cm. 1.5 cm. rt. to midscapular region.

(xv) Incised wound 1 cm. x 0.7 cm. x muscle deep rt. side back 2 cm. left to rt. scapular region.

Dr. Singhal (PW-3) is of the opinion that the death of the deceased was caused due to injury to lung causing haemorrhage and shock on account of injuries sustained by him. These injuries were in the ordinary course of nature sufficient to cause his death. He is also of the view that the death of Satish Kumar could be caused on 10.08.1982 at about 6 or 6.30 p.m. These injuries could be caused by knife and Gupti."

8. After submission of the charge-sheet, Exhibit Ka-17, by the Investigating Officer Devendra Pratap Singh (PW-7) in the concerned Magistrate Court having jurisdiction, learned Magistrate has committed the case to the Court of Sessions for trial.

9. Charges were framed by learned Trial Court against the accused-appellant, Ashok, under Sections 147, 323, 324/149, 307/149, and 302/149 IPC on 26.02.1983. Against the accused-appellant, Vijay, charges were also framed under Sections 148, 323/149, 324/149, 307, and 302/149 IPC on 26.02.1983 itself. Against the accused-appellants, Vikram, Satish, Bhupat, Rakesh, and Shiv Kumar, charges were also framed under Sections 148, 323/149, 324/149, 307/149, and 302/149 IPC on 26.02.1983. All accused persons have denied the charges and claimed trial.

10. In support of its case, the prosecution adduced informant Nathiram (PW-1) and Shri Ram (PW-2) as eye-witnesses of the incident along with Dr. Sumer Chand Singhal (PW-3), Dr. Yashpal (PW-4), Ravindra Singh (PW-5), Omveer Singh (PW-6), Investigating Officer Devendra Pratap Singh (PW-7), and Iqbal (PW-8) as formal witnesses. Apart from the oral evidence, the prosecution also relied on documentary evidence from Exhibit Ka-1 to Exhibit Ka-26.

11. After recording of the evidence in the Court, the accused-appellants were examined under Section 313 Cr.P.C. by the learned Trial Court. In their statements under Section 313 Cr.P.C., the accused-appellants expressed ignorance to the questions put to them and they all denied the allegations as levelled against them. All accused persons denied the prosecution story and stated that the prosecution story is totally false and fabricated and they were falsely implicated in this case due to enmity. The accused-appellants did not adduce any defence evidence in their support. After recording the evidence of the prosecution witnesses and examining the accused-appellants under Section 313 Cr.P.C., learned Trial Court heard the arguments of the prosecution and defence. Learned Trial Court, after perusing all the evidence available on the record, found all the accused-appellants guilty of the charges framed against them. Appellant, Ashok, was sentenced to one year's rigorous imprisonment under Section 147 IPC. He was also convicted for six month' rigorous imprisonment under Section 323 read with Section 149 IPC, one year's imprisonment under Section 324 IPC, four years' imprisonment under Section 307 read with Section 149 IPC and life imprisonment under Section 302 read with Section 149 IPC. Appellant, Vijay, was sentenced to undergo one year's rigorous imprisonment under Section 148 IPC, six months' imprisonment under Section 323 read with Section 149 IPC and one year's imprisonment under Section 324 read

with Section 149 IPC, four years's rigorous imprisonment under Section 307 read with Section 149 IPC, and life imprisonment under Section 302 read with Section 149 IPC. The accused-appellants, Vikram, Bhupat, Rakesh, Satish, and Shiv Kumar were sentenced to one year's rigorous imprisonment under Section 148 IPC, six months rigorous imprisonment under Section 323 read with Section 149 IPC, one year's rigorous imprisonment under Section 324 read with Section 149 IPC, four years' rigorous imprisonment under Section 307 read with Section 149 IPC, and life imprisonment under Section 302 read with Section 149 IPC. All the sentences of all the accused persons were directed to run concurrently.

12. Learned counsel for the accused-appellants have submitted that the prosecution story, as stated in the written report, Exhibit Ka-1, lodged by informant Nathiram (PW-1) is doubtful. The manner, mode, and place of occurrence where the incident happened appear to be suspicious. This fact makes the prosecution story highly suspicious. Learned counsel has also submitted that the so-called eye-witnesses of the incident, informant Nathiram (PW-1) and Shri Ram (PW-2), were not present at the place of occurrence and their presence at the place of occurrence is also doubtful. When the presence of the informant Nathiram (PW-1) and Shri Ram (PW-2) at the place of occurrence is highly suspicious, then their evidence about the happening of the incident would also be suspicious and unbelievable. Both the prosecution witnesses, informant Nathiram (PW-1) and Shri Ram (PW-2), are highly interested witnesses of the prosecution. There is no independent and impartial witness in this case who could support the prosecution case. Learned counsel has also submitted that there is clear-cut enmity between the prosecution side and defence side. Enmity is a double-edged weapon which cuts both sides. Only on the ground of enmity, no accused can be convicted for commission of the crime. It is also submitted by learned counsel for the appellants that there is no recovery of any incriminating material, objects or murder weapon from the possession of the accused persons. However, learned Trial Court, without considering and discussing this major and material aspect, by wrongly appreciating the evidence, has convicted the accused-appellants for commission of the crime. The prosecution was unable to prove its case beyond reasonable doubt against the accused-appellants, but learned Trial Court has not appreciated the prosecution evidence in proper perspective and in the light of the settled principles of law in this regard. Therefore, the judgment and order of conviction and sentence dated 17.11.1983 is liable to be set aside and the criminal appeals of the appellants are liable to be allowed.

13. Learned A.G.A. for the respondent-State has submitted that this case is based on direct evidence of eye-witnesses, the informant Nathiram (PW-1) and Shri Ram (PW-2). Both Nathiram (PW-1) and Shri Ram (PW-2) were present with the deceased, Satish Kumar, and they were returning to their home after taking medicines from a medical store at Haridwar to their home at Kankhal. Both the above eye-witnesses are the natural witnesses of the incident. Although there was enmity between the prosecution side and the defence side, however, this fact persuaded the accused-appellants and motivated them to commit the alleged crime. In retaliation against the deceased, Satish Kumar, the accused-appellants, with common object surrounded the deceased, Satish Kumar, on 10.08.1982, and before the eye-witnesses, informant Nathiram (PW-1) and Shri Ram (PW-2), dragged Satish Kumar from the bicycle of Nathiram (PW-1) and assaulted him with weapons held in their hands, by which Satish Kumar died on the way when he was being carried to the hospital to save his life. There are no material and major contradictions in the evidence of the

prosecution witnesses. The prosecution was successful in proving its case beyond reasonable doubt against the accused-appellants. The learned Trial Court has rightly appreciated the prosecution evidence in proper perspective and in a legal manner. The learned Trial Court has given sound findings and reasoning which are based on cogent evidence. There is no infirmity, illegality, or perversity in the impugned judgment and order of conviction and sentence dated 17.11.1983 of learned Trial Court. Hence, the criminal appeals of the appellants lack merits and, therefore, are liable to be dismissed.

14. At this stage, it is proper to mention here that, during the pendency of the appeal of appellant no. 2, Rakesh, in Criminal Appeal No. 2856 of 1983, has died. Due to his death, the appeal against him has abated. Therefore, now the appeals are being adjudicated only in respect of the surviving appellants, Satish, Shiv Kumar, Ashok, Bhupat, Vijay and Vikram.

15. In the light of the arguments and counter-arguments of learned counsel for the parties, and from perusal of the written report, Exhibit Ka-1, it appears that the incident happened on 10.08.1982 at 6:00 p.m. in the evening, when informant Nathiram (PW-1) with the deceased, Satish Kumar, on one bicycle, and injured eye-witness Shri Ram (PW-2) on another bicycle, had gone to Haridwar to exchange and take medicines for the father of the informant, Nathiram (PW-1). After exchanging the medicines of the father of the informant Nathiram, informant Nathiram (PW-1) was riding his bicycle, and the deceased, Satish Kumar, was sitting behind him on the carrier of the bicycle, while Shri Ram (PW-2) was riding his another bicycle. All the three persons were returning to their houses at Kankhal. In the meantime, when they reached at the place of occurrence, suddenly, the accused-appellants emerged from behind a big mango tree and attacked Satish Kumar with dangerous weapons, causing his death.

16. From perusal of the written report, Exhibit Ka-1, it is evident that all the accused-appellants are named as accused for commission of the crime in the F.I.R. After the incident, informant Nathiram (PW-1) has written himself the written report, Exhibit Ka-1, on 10.08.1982 and has lodged the same at Police Station Haridwar at 07:10 p.m. Thus, the F.I.R. has been lodged within one hour and ten minutes from the happening of the incident. Therefore, we find that there is no delay in lodging the F.I.R. at Police Station Haridwar. From perusal of the written report, Exhibit Ka-1, we find that in the written report, Exhibit Ka-1, it is stated that accused-appellant, Shiv Kumar, dragged Satish Kumar from the bicycle. Upon this, appellants, Satish Kumar, Shiv Kumar, Bhupat, Rakesh (now deceased) and Vikram had assaulted Satish Kumar with guptis and knives held in their hands. When informant Nathiram (PW-1) and Shri Ram (PW-2) tried to intervene and save the life of Satish Kumar, then the appellant, Vijay, fired from a country-made pistol upon them. However, they were saved from the gunshot injury because they hid themselves behind the mango tree. We find that in the written report, Exhibit Ka-1, the prosecution story has been stated in simple language without any artificiality or concoction.

17. From the record of this case, it is evident that this is a case of direct evidence. Informant Nathiram (PW-1) and Shri Ram (PW-2) are two eye-witnesses in this case who were with the deceased, Satish Kumar, when the accused-appellants assaulted the deceased, Satish Kumar. From perusal of the evidence of informant Nathiram (PW-1), who is an eye-witness of the incident, and Shri Ram (PW-2), who is also an eye-witness of the incident, it is revealed that the

accused-appellants and informant Nathiram (PW-1), Shri Ram (PW-2), and deceased Satish Kumar were residents of one and the same locality at Balmiki Basti, Kankhal. From the evidence of Nathiram (PW-1), it is revealed that three months before the incident, a hand bomb was thrown upon Surendra, brother of the deceased Satish Kumar, in which appellant, Satish, son of Netram, and Ashok were named as accused persons. Even at the time of the incident, a case under Section 107/116 Cr.P.C. was also pending in the Court. Informant Nathiram (PW-1) and Shri Ram (PW-2) have stated in their evidence the same facts as were written by the informant Nathiram in his written report, Exhibit Ka-1. There is no variation, improvement, or concoction in the evidence given by them in the Trial Court. From the perusal of the evidence of eye-witnesses informant Nathiram (PW-1) and Shri Ram (PW-2), it is stated by these witnesses that Shiv Kumar dragged Satish Kumar from the bicycle and the accused-appellants assaulted Satish Kumar with guptis and knives. When informant Nathiram (PW-1) and Shri Ram (PW-2) tried to intervene and save the life of Satish Kumar, then the appellant, Ashok, attacked Shri Ram with a chain. On hue and cry being made by them, appellant, Vijay, fired from his country-made pistol. However, that fire missed and did not hit any person. After the assault upon Satish Kumar, and even upon hue and cry being made by Nathiram (PW-1) and Shri Ram (PW-2), a few persons from the neighborhood came to the spot, whereupon the accused persons ran away from the spot. Thereafter, informant Nathiram (PW-1) took the body of the deceased, Satish Kumar, from the place of occurrence, placed him in a three-wheeler vehicle, and took him to the hospital. However, on the way, Satish Kumar died. In this process, the clothes of informant Nathiram (PW-1) stained with blood. Investigating Officer Devendra Pratap Singh (PW-7) took the blood-stained clothes of informant Nathiram (PW-1) from him and prepared a recovery memo, Exhibit Ka-13. One used terricot pants and one pink-colored full shirt stained with blood were taken from informant Nathiram (PW-1) and sent for examination.

18. On the record of the case, the report of the chemical examination of the shirt and pants of informant Nathiram (PW-1), which are at serial Nos. 1 and 2 respectively; the pants, shirt, vest (banyan), loincloth (langot), and one pair of sandals of the deceased, which are at serial Nos. 3, 4, 5, 6, and 7 respectively; and the blood-stained and simple soil taken from the place of occurrence, which is at serial No. 8, have been sent to the Forensic Science Laboratory, Agra, Uttar Pradesh, for examination.

19. Reports of the chemical examination of the above articles are on the record as Exhibits Ka-25 and Ka-26. From perusal of the report of the Forensic Science Laboratory, Agra, Uttar Pradesh, it is stated that in the examination report, shirt and pants of informant Nathiram (PW-1) were found stained with human blood. The pants, shirt, vest (banyan), loincloth (langot), and one pair of sandals of the deceased, Satish Kumar, were also found stained with human blood. Blood-stained and simple soil taken from the place of occurrence was examined, and disintegrated blood was found on it. Thus, this report that shirt and pants, which are stained with the blood, were taken from informant Nathiram (PW-1) was found stained with human blood in the examination report of the Forensic Science Laboratory, Agra, Uttar Pradesh. This fact corroborates and proves the presence of informant Nathiram (PW-1) at the place of occurrence. This fact clearly establishes that at the time of the happening of the incident, informant Nathiram (PW-1) was with the deceased, Satish Kumar, when the appellants surrounded and assaulted Satish Kumar. In this way, the presence of informant Nathiram (PW-1) at the place of occurrence is found to be corroborated from the examination reports, Exhibit Ka-25 and Ka-26, of the Forensic Science Laboratory, Agra, Uttar

Pradesh. This means that informant Nathiram (PW-1) is a natural witness who has seen the happening of the incident with his own eyes. Due to this reason, the presence of informant Nathiram (PW-1) at the place of occurrence is clearly proved beyond reasonable doubt. Therefore, in the light of the above facts and circumstances, we could not doubt the credibility and trustworthiness of the evidence of informant Nathiram (PW-1). From the evidence of prosecution witness Ravindra Singh (PW-5), who was Sales Man at Amba Medical Store, Haridwar, has also stated that on 10.08.1982, medicines of Ganga Sharan were taken from my shop by Nathiram (PW-1). He had made entry regarding this in cash memo. Original cash memo and register are Exhibit Ka-4 and Exhibit Ka-5, respectively. From the above evidence of Ravindra Singh (PW-5), it is evident that on 10.08.1982, on the date of incident, informant Nathiram (PW-1) had gone to Haridwar at Amba Medical Store to take medicines of his father, Ganga Sharan. After taking medicines of his father, when he was returning to his home at Kankhal then this incident happened. This fact also corroborates and supports the evidence of informant Nathiram (PW-1) and also the prosecution story. From this, it is clearly evident that informant Nathiram (PW-1) is a natural eye-witness of the incident who was present at the place of occurrence when the incident happened. Due to this reason, the written report, Exhibit Ka-1, and his evidence as given by him in the Court, is found fully reliable, trustworthy, and credible. In the light of the above facts, we find no force in the arguments of learned counsel for the appellants in this respect.

20. The next eye-witness, Shri Ram (PW-2), is also a natural eye-witness of the incident. His name found place in the written report, Exhibit Ka-1, lodged by the informant, Nathiram (PW-1). When this eye-witness tried to intervene and to save the life of the deceased, Satish Kumar, the accused-appellant, Ashok, assaulted him with a chain. Shri Ram (PW-2) has also received injuries in this incident. From the evidence of Dr. Yashpal (PW-4), who examined the injuries of this eye-witness, Shri Ram (PW-2), has stated in his evidence that police constable no. 608 brought the injured Shri Ram to Harmilap Hospital and at 10:10 pm, he examined him. Dr. Yashpal (PW-4) found total six injuries on the body of injured Shri Ram and prepared the injury report, Exhibit Ka-3. In his opinion, all the injuries were simple in nature, caused by a blunt object, and were fresh at the time of their examination. Dr. Yashpal (PW-4) has also given the opinion that the injuries could be caused by the chain of the bicycle. Thus, on the same date of the incident, i.e., 10.08.1982, at 10:10 p.m., eye-witness Shri Ram (PW-2) has been examined by Dr. Yashpal (PW-4) without any delay. Eye-witness Shri Ram (PW-2) has stated in his evidence that when he and Nathiram (PW-1) tried to save the life of Satish Kumar, Ashok assaulted him with a chain, and accused-appellant, Vijay, fired from the country-made pistol. However, the shot fired by the country-made pistol has not hit anyone. Thus, this fact that accused-appellant, Ashok, has assaulted Shri Ram with a chain of the bicycle found corroboration from the injury report, Exhibit Ka-3, and also from the evidence of Dr. Yashpal (PW-4), who examined the injured Shri Ram and prepared the injury report, Exhibit Ka-3. This fact clearly established the fact that eye-witness Shri Ram (PW-2) was also present at the place of occurrence when the accused-appellants committed the crime. In this way, there is no iota of doubt about the presence of Shri Ram (PW-2) at the place of occurrence. This fact clearly proves and establishes that the injured witness, Shri Ram (PW-2), was present at the place of occurrence when the incident happened, and he was a natural eye-witness who has seen the incident with his own eyes. His presence at the place of occurrence could not be doubted on any ground.

21. From the perusal of the evidence of informant Nathiram (PW-1) and Shri Ram (PW-2), it is clearly established that they are natural eye-witnesses of the incident, who have seen the commission of the crime with their own eyes. They have stated in the Court during recording of their evidence in a very simple and natural way and language, without any concoction or artificiality. Although we find that, according to the informant Nathiram (PW-1) and Shri Ram (PW-2), there was bitter enmity between the prosecution side and defence side, and many cases were running and were pending between them, however, from the perusal of the evidence of informant Nathiram (PW-1) and Shri Ram (PW-2), we find that their presence at the place of occurrence is clearly established beyond reasonable doubt. They have stated the happening of the incident in a very natural and simple way. There is no concoction, artificiality or embellishment in their statements. Therefore, only on this ground that there was enmity between the prosecution side and the defence side, and the witnesses are inimical towards the accused-appellants, the trustworthy testimony and credible evidence of eye-witnesses Nathiram (PW-1) and Shri Ram (PW-2), who were present at the place of occurrence, could not be rejected or doubted on this basis. What is required where witnesses are inimical towards the accused persons is that careful and cautious scrutiny of the evidence of inimical witnesses must be done by the Court. If, after careful and deep scrutiny and appreciation of evidence of inimical witnesses, it is revealed that the witnesses have stated the prosecution story without any concoction and artificiality in a very simple and natural way, and their presence at the place of occurrence is proved beyond reasonable doubt, then in this condition, the evidence of the eye-witnesses of the occurrence could not be doubted and rejected on this ground. Hon'ble Supreme Court in the case of **Suresh Sitaram Surve vs. State of Maharashtra, (2002) 10 SCC 28**, has held on this point in para 6 as follows:

“The evidence of the injured eyewitnesses cannot be discarded in toto on the ground of inimical disposition towards the accused or the improbability of narrating the details of actual attack. True, their evidence has to be scrutinized with caution taking into account the factum of previous enmity and the tendency to exaggerate and to implicate as many as possible. But on a perusal of the evidence tested in the light of the broad probabilities, the High Court was justified in reaching the conclusion that the prosecution witnesses are natural witnesses and they could not have concocted the case against the accused without any basis. The fact that the FIR was lodged almost immediately after the occurrence naming the appellant as the main assailant lends positive assurance to the credibility of the prosecution case as unfolded by the eyewitnesses, most of whom were injured. Both the trial court and the High Court found that there was sufficient light emitted by the tubelight in front of the house to identify the accused who were known persons. The fact that the incident occurred outside and inside the house cannot be doubted as there was blood both at the steps where the dead body lay and inside the house and weapons stained with human blood were found lying in the adjoining narrow lane and the injuries were found on almost all the inmates of the house. It is highly unlikely that within a short time of the occurrence the prosecution party could have come forward with a false version implicating the persons who were not at all seen, while leaving out the real culprits. The eyewitnesses' account of the attack by the appellant is quite consistent. Though certain doubts are sought to be created as to the genesis of the incident and the manner of attack, but the prosecution case is not belied on account of such factors.”

Thus, in the light of the law as enunciated by the Hon^{ble} Apex Court in the case of Suresh Sitaram Surve (supra), it is propounded that only on the ground of inimical witnesses and

enmity between the prosecution and defence side, reliable and trustworthy evidence that inspires confidence about the happening of the incident could not be doubted on the ground that the witnesses are inimical or there was enmity between both sides. Therefore, in the light of the above discussions, we find no force in the arguments of learned counsel for the appellants in this respect.

22. It is settled law that the evidence of an injured witness could not be doubted and rejected if, after deep and proper scrutiny of the evidence, it is found that the injured witness has received injury during the commission of the crime by the accused-appellants and there is no major inconsistency or improvement in the evidence of the injured witness, and also his presence at the place of occurrence is proved, then the evidence of the injured eye-witness could be wholly reliable and acceptable for the conviction of the accused-appellants for the commission of the alleged crime.

23. From perusal of the evidence as available on the record, it is evident that Investigating Officer Devendra Pratap Singh (PW-7) arrested the accused-appellants. However, Investigating Officer Devendra Pratap Singh (PW-7) has not cared to recover the murder weapon (guptis and knives) and other weapons, which were used by the accused-appellants in the commission of the alleged crime. From perusal of the evidence of eye-witnesses, informant Nathiram (PW-1) and Shri Ram (PW-2), we find that both the eye-witnesses have stated that the accused-appellants assaulted Satish Kumar with guptis and knives, causing his death. From perusal of the evidence of Dr. Sumer Chand Singhal (PW-3), who prepared the postmortem report, Exhibit Ka-2, of the deceased Satish Kumar, it is evident that total fifteen injuries were found on the body of the deceased Satish Kumar, out of which, ten injuries were incised wounds, three injuries were found to be stab wounds, one injury was of abrasion, and one injury was linear abrasion. Most of the injuries were on vital parts of the body of the deceased Satish Kumar. According to Dr. Sumer Chand Singhal (PW-3), the injuries could be caused by guptis and knives. Thus, it is clear that the ocular testimony of eye-witnesses, informant Nathiram (PW-1) and Shri Ram (PW-2), found corroboration from the postmortem report, Exhibit Ka-2, of the deceased Satish Kumar. Dr. Sumer Chand Singhal (PW-3) has also expressed his opinion that these injuries could be caused by guptis and knives. Thus, the ocular evidence finds support from the medical evidence. In other words, the ocular evidence and medical evidence corroborate and support each other.

24. It is a settled principle of law that if the prosecution story finds support and is fully corroborated by the ocular evidence, then in that situation, non-recovery of the murder weapon from the accused-appellants would not affect and could not be doubted in any way about the veracity of the prosecution story. In other words, if the prosecution story is fully corroborated and established by the ocular evidence or the evidence of the eye-witnesses of the prosecution and the Investigating Officer intentionally could not recover the murder weapon from the possession of the accused-appellants, then on this ground, the prosecution story and the ocular evidence of the eye-witnesses could not be doubted. Hon'ble Supreme Court in the case of **Nankaunoo vs. State of Uttar Pradesh, (2016) 3 SCC 317**, has held on this point in para 9 as follows:

“courts below failed to take note of the fact that the alleged weapon ‘country-made pistol’ was never recovered by the investigating officer and in the absence of any clear connection between the weapon used for crime and ballistic report and resultant injury, the prosecution cannot be said to have established the guilt of the appellant. In the light of unimpeachable oral evidence which is amply corroborated by the medical evidence, non-recovery of ‘country-made pistol’ does not materially

affect the case of the prosecution. In a case of this nature, any omission on the part of the investigating officer cannot go against the prosecution case. Story of the prosecution is to be examined dehors such omission by the investigating agency. Otherwise, it would shake the confidence of the people not merely in the law enforcing agency but also in the administration of justice."

Thus, in light of the law as laid down by the Hon'ble Supreme Court in the case of **Nankaunoo (supra)**, it is clear that the recovery of the murder weapon is not a sine qua non for the proof and veracity of the prosecution story. In the present case at hand, it is clearly evident from the perusal of the prosecution evidence that the ocular evidence found support from the medical evidence and corroborate each other, therefore, non-recovery of the murder weapon from the possession of the accused-appellants does not in any way affect the prosecution story.

25. Hon'ble Supreme Court in the case of **Rakesh and Another vs. State of Uttar Pradesh and Another, (2021) 7 SCC 188**, has held in paragraph 12 that :

"Now so far as the submission on behalf of the accused that as per the ballistic report the bullet found does not match with the firearm/gun recovered and therefore the use of gun as alleged is doubtful and therefore benefit of doubt must be given to the accused is concerned, the aforesaid cannot be accepted. At the most, it can be said that the gun recovered by the police from the accused may not have been used for killing and therefore the recovery of the actual weapon used for killing can be ignored and it is to be treated as if there is no recovery at all. For convicting an accused recovery of the weapon used in commission of offence is not a sine qua non."

In the light of the above legal principles as enunciated by the Hon'ble Supreme Court in the case of **Rakesh and Another (supra)**, we find that in the case at hand, the informant Nathiram (PW-1) and Shri Ram (PW-2) are eye-witnesses of the incident, and the incident happened before them, therefore, their presence at the place of occurrence is fully proved and established by their evidence, which is also corroborated from other evidence. They are reliable and trustworthy eye-witnesses of the incident. They have specifically and clearly stated in their evidence that the accused-appellants assaulted Satish Kumar with guptis and knives, due to which Satish Kumar suffered injuries of fatal nature and died. The post-mortem report, Exhibit Ka-2, and the opinion of Dr. Sumer Chand Singhal (PW-3) corroborate the evidence of the eye-witnesses Nathiram (PW-1) and Shri Ram (PW-2). Apart from this, the eye-witness Shri Ram (PW-2) is himself an injured witness who received injuries in the incident when he tried to intervene and save the life of Satish Kumar. Therefore, in the light of the credible, reliable, and trustworthy evidence of the eye-witnesses, informant Nathiram (PW-1) and injured eye-witness Shri Ram (PW-2), non-recovery of the murder weapon from the accused-appellants by the Investigating Officer, Devendra Pratap Singh (PW-7), has no effect on the prosecution case. On this ground, we cannot doubt or reject the credible, trustworthy, and reliable evidence of the eye-witnesses, informant Nathiram (PW-1) and Shri Ram (PW-2). Therefore, in the light of the above discussions, we find no force in the arguments of learned counsel for the appellants in this respect.

26. It is a settled principle of law that on the ground of non-availability and non-examination of independent witnesses, we cannot doubt and reject the prosecution story which found full support from the statement of the eye-witnesses account and from the evidence of the injured witness. In the present case at

hand, the informant Nathiram (PW-1) and the injured eye-witness Shri Ram (PW-2) were present at the place of occurrence when the incident happened. Their presence at the place of occurrence is fully established by the prosecution evidence. They have fully supported the prosecution case and the mode of the commission of the crime by the accused-appellants. Therefore, according to the law, there is no legal requirement to produce an independent witness in support of the prosecution story. In view of the above, we find no force in the arguments of learned counsel for the appellants in this respect.

27. We have also gone through the judgment and order of conviction and sentence dated 17.11.1983 passed by the learned Trial Court. From perusal of the judgment and order of the Trial Court, we find that the Trial Court has appreciated the evidence available on record in a legal and proper perspective. Trial Court has fully and minutely discussed the cogent evidence of the eye-witnesses, informant Nathiram (PW-1) and Shri Ram (PW-2), and other prosecution evidence, and found that the prosecution story is fully corroborated by the evidence of the witnesses. Trial Court has also found the presence and participation of the appellants in the commission of the crime fully established from the evidence of the prosecution. The finding and reasoning of the Trial Court are fully based on the cogent evidence available on record and in accordance with the settled principles of law in this regard. We find no infirmity or perversity in the judgment and order of conviction and sentence passed by the Trial Court. From the evidence of the prosecution, it is clearly established that on the date and time of the incident, the accused-appellants, in prosecution of a common object, surrounded the deceased, Satish Kumar, at the place of occurrence, and in prosecution of their common object, the accused-appellants assaulted Satish Kumar with deadly weapons.

28. In the light of the above discussions, we find that the criminal appeals of the accused-appellants are found to be devoid of merits and therefore are liable to be dismissed and the judgment and order of conviction and sentence as delivered by the Trial Court dated 17.11.1983 is liable to be affirmed.

29. From perusal of the record, it is revealed that after conviction of the appellants by the Trial Court, they have filed these criminal appeals before this Court and they were enlarged on bail by this Court. However, at the time of hearing of the appeals in the Court, due to non-appearance of learned counsel for the appellants or the appellants themselves, non-bailable warrants have been issued against the appellants and in the light of the non-bailable warrants issued by this Court, accused-appellants were arrested and presently they are languishing in jail.

30. In the result, the above three criminal appeals are **dismissed**. The impugned judgment and order dated 17.11.1983 passed by the learned Trial Court is affirmed. The appellants, Satish, Shiv Kumar, Ashok, Bhupat, Vijay and Vikram, are in jail. They shall remain in jail to serve out the sentence awarded to them by the Trial Court.

31. Let a copy of this judgment be transmitted to the Trial Court along with the Trial Court records forthwith for necessary compliance.

32. Learned Amicus Curiae is held entitled to professional fees of Rs.15,000/- payable to him within three weeks' for raising of bill.

(2026) 6 ILRA 157
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 03.06.2026

BEFORE

THE HON'BLE SIDDHARTHA VARMA, J.
THE HON'BLE JAI KRISHNA UPADHYAY, J.

Criminal Appeal No. 5563 of 2019

Kuntesh

...Appellant

Versus

State of U.P.

...Respondent

Issue for Consideration

Whether the prosecution had established the guilt of the appellant beyond reasonable doubt, particularly when the conviction rested predominantly on the sole testimony of a child witness, and whether such testimony, in the facts of the case, was of the quality of a "sterling witness" so as to sustain conviction

Headnotes

Evidence Act, 1872 – ss.118, 134 – Indian Penal Code, 1860 – ss.323, 376 – Protection of Children from Sexual Offences Act, 2012 – Conviction based on sole testimony of child witness – Allegation of rape introduced only in statement under s.164 CrPC and court testimony – Initial NCR and FIR contained allegations only of assault/molestation – Father of prosecutrix, despite accompanying the victim to the police station, did not disclose rape – Medical evidence did not conclusively establish or medically corroborate the allegations of sexual assault – No internal or external injuries; intact hymen; complete absence of seminal fluids.

Held: It is a well-settled principle of criminal jurisprudence that a conviction can be founded on the sole testimony of a witness, including a child, provided such a witness is a "sterling witness". A "sterling witness" is a witness whose version is wholly reliable, natural and inspires absolute confidence, requiring no corroboration whatsoever. Although it is absolutely true that in the case of rape, conviction can be based on the sole testimony of the prosecutrix, the Courts are bound to be very careful in examining such a witness and thus the testimony of such witness must inspire confidence of the Court. In the cases where the prosecutrix made improvements in her statements step by step, it becomes difficult to ascertain which of her versions is trustworthy and reliable. It is a law of criminal jurisprudence that when two views are possible on the evidence adduced in a case, the view favourable to the accused must be adopted.

Victim's father (PW-2) lodged the NCR alleging only that the appellant pressed the victim's throat causing her to fall unconscious. The initial report was conspicuously silent on any sexual assault. PW-2, during his deposition before the Trial Court, completely confined his testimony to his original written complaint and stated that he had only narrated to the police what was told to him by the victim. The allegation of rape was introduced for the very first time in the victim's statement under Section 164 CrPC and subsequently in her court testimony. Case of the prosecution also does not find corroboration from medical evidence. The Medical Officer explicitly stated that it is not necessary that rape had been committed. Medical findings fail to conclusively establish or medically corroborate the allegations of sexual assault. No internal or external injuries, intact hymen and complete absence of seminal fluids cast a shadow of doubt on the case of the prosecution. Court held that in the absence of definitive corroborative medical evidence, it is highly unsafe to sustain the conviction of the accused-appellant. The prosecution failed to bring home the guilt of the accused beyond a reasonable doubt. Conviction and sentence set aside. Appellant acquitted.

[Paras 22, 23, 24, 25, 27] (E-5)

Case Law Cited

Panchhi and Others v. State of U.P., (1998) 7 SCC 177;
State of Punjab v. Gurmit Singh, (1996) 2 SCC 384;
Rai Sandeep @ Deepu v. State (NCT of Delhi), (2012) 8 SCC 21;
State (GNCT of Delhi) v. Vipin @ Lalla, 2025 SCC OnLine SC 78;
Urmila Devi v. State of H.P. and Others, 2025:HHC:34588-DB.

List of Acts

Indian Penal Code, 1860;
 Indian Evidence Act, 1872;
 Protection of Children from Sexual Offences Act, 2012;
 Code of Criminal Procedure, 1973.

List of Keywords

Child witness; Sterling witness; Sole testimony; Improvements in statement; Section 164 CrPC; Medical corroboration; Benefit of doubt; Contradictions; Appreciation of evidence; POCSO; Acquittal.

Case Arising From

Criminal Appeal against the judgment and order dated 31.01.2019 passed by the Additional Sessions Judge/Special Judge (POCSO Act), Court No. 1, Auraiya in Special Case No. 34P/2017 (State v. Kuntesh), arising out of Case Crime No. 121 of 2017, Police Station Ayana, District Auraiya.

Appearances for Parties

Advs. for the Appellant: Ajay Singh Sengar, Kamlesh Kumar Tripathi, Vijay Singh Sengar
Advs. for the Respondents: G.A.

(Delivered by Hon'ble Jai Krishna Upadhyay, J.)

1. The present criminal appeal has been preferred against the judgement and order dated 31.01.2019 passed by Additional Sessions Judge/Special Judge (POCSO Act), Court No. 1, Auraiya in Special Case No. 34P/2017 (State Vs. Kuntesh), arising out of Case Crime No. 121 of 2017, u/s 376, 323 IPC & □ Protection of Children From Sexual Offence Act, Police Station ? Ayana, District ? Auraiya. thereby convicting and sentencing the appellant for life imprisonment and fine of Rs. 50,000/- for the offence under Section 376 IPC, in default of payment of fine one year additional R.I, 01 year R.I. for the offence under Section 323 IPC, and of 10 years R.I and fine of Rs. 50,000/- for the offence under Section - Protection of Children From Sexual Offence Act, in default of payment of fine 01 year additional R.I.. All the sentences were directed to run concurrently.

2. A brief narrative of the prosecution story, as discernible from the N.C.R., is that on 09.05.2017 at around 12:00 noon, the daughter of the informant had gone to buy some item from the shop of Kunwar Singh. After purchasing the item when she reached near the house of Kuntesh, the accused-appellant, he had pressed the throat of the victim due to which she fell down and become unconscious.

3. On the basis of written report, an FIR bearing case crime no. 121/2017 under section 323, 354-B of IPC and 7/8 of POCSO Act was registered against accused Kuntesh on 10.05.2017 at 4:30 pm at police station ? Ayana, District ? Auraiya. During investigation on the basis of the statement of the prosecutrix recorded under Section 164 C.r.P.C. offence under Section 376 IPC was added to the matter.

After completion of investigation, the Investigating Officer submitted charge-sheet against the accused, Kuntesh under Sections 323, 376 of IPC and Section-□ POCSO Act.

4. The case against accused Kuntesh being exclusively triable by the Court of Sessions was committed before the Trial Court. Accordingly, it was registered as Special Case No. 34P/2017 (State vs. Kuntesh).

5. The accused was charged for the offence punishable under Sections 323, 376 of IPC and Section - POCSO Act. He denied the charges and claimed to be tried.

6. In order to prove the prosecution case, the prosecution has examined seven witnesses i.e., P.W.-1, (the victim), PW-2, Daya Shankar, PW-3, Lady Constable, Mithlesh Kumari, PW-4, Dr. Seema Gupta, PW-5, Dr. Mrityunjay Kumar, PW-6, Smt. Amresh Kumari and PW-7, Sub Inspector Alma Ahirwar.

7. **P.W.1**, who was 8 years old at the time of incident in her oral testimony had stated that she had gone to a shop to buy Nirma Powder. While returning from the shop she found the accused Kuntesh on the way and he called out to her to his house and when she reached there Kuntesh locked the door from inside, removed her clothes, and then removed his own. Then, accused Kuntesh inserted his penis into her vagina. Blood oozed from her vagina. At that very moment, Kuntesh's brother, Rajesh, arrived and knocked the door then Kuntesh fled. By then, she had fallen unconscious. Rajesh poured water on her mouth, gave her water to drink, and called her father. When she regained consciousness, she told her father everything. Her father filed a report. Cross-examination of the victim had been done, but she had supported the prosecution story therein and stood firm.

8. **PW-2**, Daya Shankar, the informant, had stated that on 19.05.2017 at around 12:00 noon her daughter had gone to buy some item from the shop of Kunwar Singh. After purchasing the item when she had reached near the house of Kuntesh, the accused had pressed her throat due to which she fell down and become unconscious. In his cross examination he stated that he only narrated what her daughter had told to him.

9. **PW-3**, Constable Mithilesh Kumari, had recorded the statement of the victim under Section 161 Cr.P.C., which is Ex. Ka-1.

10. **PW-4**, Dr. Seema Gupta, Medical Officer, District Hospital, Auraiya who had prepared the medical report which is Ex-Ka-4, had stated that it is not necessary that rape had been committed with the victim.

11. **PW-5**, Dr. Mrityunjay Kumar, Medical Officer, Community Health Center, Ayana, District - Auraiya had medically examined the victim and he had reiterated the version of PW-4.

12. **PW-6**, Smt. Aamresh Kumar, Head Mistress, Primary School, Bhairapur Bhason, police station - Ayana, District Auraiya had appeared before the Court alongwith the school's record and submitted that the victim had taken admission in her school in class-1 on 09.07.2011 and studied up to class 5th, her registration number is ? 241 and date of birth mentioned is 07.04.2005.

13. **PW-7.** Sub Inspector, had proved the investigation done by him and proved the documents in this regard.

14. After closure of prosecution evidence, accused Kuntesh was examined under Section 313 Cr.P.C. The accused, Kuntesh stated that the evidence tendered against him was false. He was not present at the place of occurrence. A false report was lodged and false charge-sheet had been submitted. The accused denied the statements of the witnesses and had stated that due to old enmity and village party bandi he had been falsely implicated in the present case.

15. No evidence in defence was led by the accused.

16. We have heard Sri Kamlesh Kumar Tripathi, learned counsel for the appellant, Sri Amit Sinha, learned AGA for the State and perused the material available on record.

17. Learned counsel for the accused-appellant submitted that the appellant has been entirely falsely implicated in the present case due to an old enmity. He further contended that when the informant (the victim's father, PW-2) first approached the police to lodge the complaint, he was accompanied by the victim herself. Despite her presence, he only reported an incident of physical assault, which led to the registration of NCR under Section 323 of the IPC and later he reported incident of molestation which led to the registration of the FIR under Section 354B of the IPC rather than rape.

18. He added that during his examination before the Trial Court, the father of the victim strictly adhered to what he had stated in the complaint and did not raise any allegation regarding rape, proving the later fabrication.

19. He further submitted that there exist glaring contradictions in the victim's statements. In her initial statement recorded by the police under Section 161 Cr.P.C., the victim merely stated that the accused had done "gandi baat" (bad talk/behaviour) with her and did not allege any physical or sexual act. The allegation of rape was introduced as a gross improvement for the very first time much later, when her statement was recorded under Section 164 Cr.P.C. before the Magistrate.

20. Finally, he submitted that allegation of rape is completely unsupported by the medical evidence. The medical findings fail to conclusively establish or corroborate any act of sexual assault, thereby making the prosecution's case highly doubtful and the appellant's conviction unsustainable.

21. Learned AGA submitted that there is no illegality, infirmity, or perversity in the impugned judgment and order passed by the learned Trial Court, which correctly appreciated the entire evidence on record to convict the appellant. He further contended that the victim (PW-1) is a completely consistent, reliable, and sterling witness whose oral testimony before the court cannot be doubted. Furthermore, there is absolute consistency across her statements recorded under Section 161 Cr.P.C. and Section 164 Cr.P.C. Further, the learned AGA submits that it is settled law that the testimony of a child witness can be safely relied upon if the child is found to be a competent and sterling witness. He added that it is also settled law that a conviction can be validly sustained on the sole testimony of such a sterling child witness even without extensive corroboration. Lastly, he submitted that the prosecution has successfully proved its case against the

appellant beyond all reasonable doubt, and therefore, the present appeal lacks any merit and is liable to be dismissed.

22. We have carefully considered the rival contentions advanced by the learned counsel for the appellant, learned AGA for the State, and have meticulously perused the trial court record. The moot question before this Court whether the prosecution has established the guilt of the appellant beyond a reasonable doubt, particularly since the conviction rests predominantly on the sole testimony of a child witness. In evaluating this matter, two core principles of the Indian Evidence Act must be applied. First, under Section 134, the law prioritizes the quality of evidence over its quantity, establishing that no particular number of witnesses is required to prove any fact, meaning a conviction can legally rest on a single, wholly credible witness. Second, under Section 118, a child is recognized as a competent witness provided, they possess the capacity to understand the questions put to them and give rational answers, remaining unhindered by their tender years. It is a well-settled principle of law that while a conviction can be based on the sole testimony of a child witness, such evidence must be evaluated with great circumspection. The Hon'ble Supreme Court in the case of *Panchhi and Ors. v. State of U.P. [(1998) 7 SCC 177]* observed that the evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and thus a child witness is an easy prey to tutoring. Therefore, the court must seek adequate corroboration or be entirely convinced that the child's testimony is natural, un-tutored, and inspires absolute confidence.

23. Upon a critical analysis of the evidence on record, glaring infirmities surface which severely vitiates the prosecution's narrative. The legal machinery in the present case was set into motion by the victim's father (PW-2), who lodged the NCR alleging only that the appellant pressed the victim's throat, causing her to fall unconscious. This led to the initial registration of the case under Sections 323 of the IPC which was later converted into case of molestation under Section 354B of the IPC by the father of the victim. It is imperative to note that the victim accompanied her father to the police station when this initial report was lodged. Yet, the initial report is conspicuously silent on any sexual assault.

24. This Court is mindful of the settled proposition of law laid down by the Hon'ble Supreme Court in *State of Punjab v. Gurmit Singh [(1996) 2 SCC 384]*, wherein it was held that in cases of sexual assault, mere delay in lodging the FIR or the failure to report the incident at the very first instance is not necessarily fatal to the prosecution's case, given the social stigma and trauma involved for the victim and her family. However, the present matter presents a completely different factual matrix that goes beyond mere delay. Even if a margin is given for the initial reluctance to disclose a sexual offence, the father (PW-2) during his deposition before the Trial Court completely confined his testimony to his original written complaint and did not state anything regarding the commission of rape till the very end. More crucially, PW-2 stated before the Trial Court that he had only narrated that specific incident to the police which was told to him by his daughter (the victim) herself. This material omission at the earliest opportunity casts a heavy shadow of doubt on the genesis of the prosecution's case.

25. Further, this Court finds inconsistencies in the statements of the victim (PW-1). The allegation of rape was introduced for the very first time in her statement under Section 164 Cr.P.C. before the Magistrate, and subsequently in her court testimony. So, the central issue remains here is whether this 8-year-old victim can be safely relied upon as the sole basis for conviction. It is pertinent to note here that it is a well-settled principle of criminal jurisprudence that a conviction can be founded on the sole testimony of a witness,

including a child, provided such a witness is a "sterling witness." The Hon'ble Supreme Court in ***Rai Sandeep @ Deepu v. State (NCT of Delhi) [(2012) 8 SCC 21]*** comprehensively defined a "sterling witness" as a witness whose version is wholly reliable, natural, and inspires absolute confidence, requiring no corroboration whatsoever. The Court observed that the testimony of a sterling witness must be of such impeccable quality that the court instinctively accepts it as the unvarnished truth. Upon an objective consideration of the factual matrix of the present case, it is highly doubtful that victim (PW-1) can be elevated to the status of a sterling witness as improvements are made by her in her statements. In the latest case of ***State (GNCT of Delhi) v. Vipin @ lalla 2025 SCC OnLine SC 78***, Hon'ble apex Court reaffirmed that although it is absolutely true that in the case of rape, conviction can be based on the sole testimony of the prosecutrix but the courts are bound to be very careful in examining such a witness and thus the testimony of such a witness must inspire confidence of the court. In the case of ***Urmila Devi vs State of H.P. and others 2025:HHC:34588-DB***, it was observed by the Court that in the cases where the prosecutrix made improvements in her statements step by step, it becomes difficult to ascertain that which of her version is trustworthy and reliable. Taking note of the law settled by courts in this regard, we find that the surrounding circumstances of the present case including the improvements in the testimony of the witness, and conduct and statements of the father of the victim,

26. Additionally, the case of the prosecution does not find firm corroboration from medical evidence. The Medical Officer (PW-4) conducted medical examination of the victim and explicitly stated that it is not necessary that rape had been committed against her. Therefore, medical findings on record fail to conclusively establish or medically corroborate the allegations of sexual assault as narrated by the victim. No internal and external injuries, intact hymen and complete absence of seminal fluids when considered with other circumstances of the case cast a shadow of doubt on the case of the prosecution.

27. In the absence of definitive corroborative medical evidence, and viewing the improvements in the child witness's testimony and other circumstances of the case including the statements of father of the victim, it becomes highly unsafe to sustain the conviction of the accused- appellant.

28. In view of the aforesaid detailed analysis, this Court is of the considered opinion that the prosecution has failed to bring home the guilt of the accused beyond a reasonable doubt. It is a law of criminal jurisprudence that when two views are possible on the evidence adduced in a case, the view favourable to the accused must be adopted. The appellant is therefore entitled to the benefit of the doubt.

29. Accordingly, the present Criminal Appeal is **allowed**. The impugned judgment and order of conviction and sentence dated 31.01.2019 passed by the Additional Sessions Judge/Special Judge (POCSO Act), Court No. 1, Auraiya in Special Case No. 34P/2017 (State Vs. Kuntesh) is hereby set aside.

30. The appellant, Kuntesh, is acquitted of all the charges levelled against him under Sections 323 and 376 of the IPC and the relevant provisions of the POCSO Act. He is directed to be released from custody forthwith, provided his detention is not required in any other criminal case. His bail bonds are cancelled and sureties are discharged.

31. Let a certified copy of the judgment, along with the trial court record, be sent to the concerned Chief Judicial Magistrate/Trial Court for compliance.

(2026) 6 ILRA 163
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 19.06.2026

BEFORE

THE HON'BLE ARUN KUMAR SINGH DESHWAL, J.

Writ C No. 1213 of 2026

Reena Devi Patel
State of U.P. & Ors.

...Petitioner
Versus
...Respondents

Issue(s) for consideration

Whether a married daughter can be categorically excluded from the definition of "family" and denied consideration for appointment as a fair price shop dealer on compassionate grounds?

Headnotes

A. Consumer/Essential Commodities Law – U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016: Clause 2(p); Essential Commodities Act, 1955: Section 3 - The petitioner's father, Raj Bahadur Patel, held a fair price shop dealership in Gram Panchayat Chalakpur Kurmiyan (Tehsil Raniganj, District Pratapgarh). He passed away on 02.11.2025. On 30.12.2025, the petitioner applied for the allotment of the fair price shop dealership on compassionate grounds, stating that she continued to reside with her father even after her marriage and met the local residence eligibility criteria.

The Sub-Divisional Magistrate (SDM), Raniganj, Pratapgarh, rejected her application on 21.01.2026, solely because she is a married daughter and therefore did not fit the definition of "family" under the relevant rules.

B. A married daughter is also included within the definition of "family" and is entitled to apply for appointment as a fair price shop dealer after the death of her father or mother, subject to fulfillment of other eligibility conditions such as local residence, no objection from other adult family members, and other prescribed requirements. (Para 15)

Therefore, the rejection of the petitioner's application solely on the ground that she is a married daughter, for appointment as a fair price shop dealer on compassionate grounds, is arbitrary and contrary to the law laid down by the Hon'ble Apex Court. Accordingly, the impugned order dated 21.01.2026 is set aside. The matter is remitted to the concerned Sub-Divisional Magistrate to pass a fresh order in accordance with law and in light of the observations made hereinabove. (Para 16)

Writ petition allowed. (E-4)

Case Law Cited

1. Kulsum Nisha Vs. State of U.P., 2026 SCC OnLine SC 1059 (Para 4)
2. E.P. Royappa Vs. State of Madras (now Tamil Nadu), (1974) 4 SCC 3 (Para 12)
3. State of West Bengal Vs. Anwar Ali Sarkar, (1952) 1 SCR 284 (Para 12)

List of Acts

U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016; Essential Commodities Act, 1955.

List of Keywords

compassionate appointment, daughter, fair, price, shop, qualifications, article 14, constitution, family, objection, prescribed, requirement.

Appearances for Parties

For Petitioner(s): Daya Shankar Yadav

For Respondent(s): C.S.C.

(Delivered by Hon'ble Arun Kumar Singh Deshwal, J.)

1. Heard Shri Daya Shankar Yadav, learned counsel for the petitioner and Shri Badrish Kumar Tripathi, learned Additional Chief Standing Counsel for the State-respondents and perused the record.

2. Present petition has been filed, inter-alia, for the following relief :

"1) to issue a writ, order or direction in the nature of certiorari thereby quashing the impugned order dated 21.01.2026 passed by opposite party no. 4, as contained Annexure No. 1 to the writ petition.

(ii) to issue a writ, order or direction in the nature of mandamus commanding the opposite party no. 4 to appoint the petitioner under compassionate ground, as Fair Price Shop dealer in Village Panchayat Chalakpur Kurmiyan, Block-Baba Belkharnath Dham, Tehsil-Raniganj, District- Pratapgarh."

3. Learned counsel for the petitioner submitted that the petitioner's father, Raj Bahadur Patel, was allotted a fair price shop dealership in Gram Panchayat Chalakpur Kurmiyan, Block Baba Belkharnath Dham, Tehsil Raniganj, District Pratapgarh, who died on 02.11.2025, whereafter the petitioner, being his daughter and dependent, submitted an application dated 30.12.2025 seeking allotment of the said fair price shop dealership on the ground that she continued to reside with her father even after marriage and thus is a local resident fulfilling the requisite eligibility conditions, however, the said application was rejected by the Sub-Divisional Magistrate, Raniganj, Pratapgarh, vide order dated 21.01.2026.

4. It is further submitted that upon bare perusal of the impugned order, it is evident that the petitioner's application for appointment as fair price shop dealer on compassionate grounds has been rejected solely on the ground that she is a married daughter of the deceased allottee, Raj Bahadur Patel. It is submitted that the petitioner, being a dependent of the deceased, cannot be denied such appointment merely on the basis of her marital status, as the same is arbitrary, unreasonable, and violative of Article 14 of the Constitution of India. Learned counsel has further placed reliance upon the judgment of the Hon'ble Supreme Court in Kulsum Nisha v. State of U.P., 2026 SCC OnLine SC 1059, wherein it has been held that a married daughter cannot be excluded from consideration for appointment on compassionate grounds as a fair price shop dealer solely on the ground of her marriage.

5. It is next submitted that as per Clause 2(p) of the U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016 (hereinafter referred to as the 'Control Order, 2016'), the definition of 'family' includes the adult children of the deceased fair price shop dealer, and the term 'adult children' encompasses both sons and daughters, whether married or unmarried, and therefore the petitioner, being an eligible dependent within the meaning of the said provision, is entitled to be considered for compassionate appointment, and hence the impugned order deserves to be quashed.

6. Learned Additional Chief Standing Counsel (ACSC) vehemently opposed the aforesaid prayer and submitted that even though the petitioner, being a married daughter, may be eligible to apply for appointment as fair price shop dealer after the death of her father, she is still required to satisfy other necessary conditions such as local residence, dependency on the deceased fair price shop dealer, no objection from other adult family members, and prescribed educational qualifications. It is further submitted that against the non-issuance of licence for running the fair price shop, the petitioner has an efficacious alternative remedy of appeal under Order 13 of the Control Order, 2016, and therefore, the present writ petition is liable to be dismissed on the ground of availability of alternative remedy.

7. Considering the aforesaid submissions and upon perusal of the record, it is not in dispute that the petitioner is a married daughter of late Raj Bahadur Patel, who was a fair price shop dealer in Gram Panchayat Chalakpur Kurmiyan, Block Baba Belkharnath Dham, Tehsil Raniganj, District Pratapgarh, and that her application for appointment as fair price shop dealer on compassionate grounds was rejected on the ground that, being a married daughter, she does not fall within the definition of 'family' as prescribed under the Control Order, 2016 as well as Government Order No. 6 of 2019.

8. The State Government, in exercise of powers under Section 3 of the Essential Commodities Act, 1955 issued U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order, 2016, which has laid down the procedure for appointment, monitoring, and distribution of essential commodities through fair price shops and has further prescribed the eligibility criteria for appointment as a fair price shop dealer. The State Government has also issued Government Order dated 05.08.2019 in exercise of powers under Rule 7(2)(i) of the Control Order, 2016. Paragraph 4 of Government Order No. 6 of 2019 prescribes the essential qualifications for a person to be appointed to run a fair price shop in rural areas. The definition of 'family' has been provided under Clause 2(p) of the Control Order, 2016, which is being quoted as under:

"Family" means group of following persons, impugned order dated 21.01.2026 passed by opposite party no. 4

Head of the family. Husband/Wife, including legally adopted children.

Adult children, who are fully dependent on the head of the family.

Unmarried, legally separated and widow daughters; and

Fully dependent Mother/Father, of the head of the family."

9. Similarly, the Government Order dated 05.08.2019 issued by the State Government in pursuance of the Control Order, 2016 also lays down the essential qualifications and conditions for selection under Clause 4, and the same is being quoted as under:

IV) ग्रामीण क्षेत्र में राशन की दुकानों के चयन हेतु अनिवार्य अर्हताएं एवं शर्तें :

1 अभ्यर्थी के खाते में कम से कम ₹ 0 40000/- उपलब्ध हों, ताकि वह अपनी दुकान हेतु आवंटित एक माहकी सामग्री का एक बार में उठान करने के लिए आथक रूप से सक्षम हो।

2 अभ्यर्थी द्वारा अपने आवेदन के साथ जिलाधिकारी द्वारा निर्गत चित्र प्रमाण पत्र भी प्रस्तुत किया जायेगा।

3 उसकी शैक्षिक योग्यता कम से कम हाई स्कूल अथवा उसके समकक्ष परीक्षा उत्तीर्ण हो।

4 अभ्यर्थी की आयु 21 वर्ष से अधिक हो और परिवार में किसी अन्य सदस्य के नाम कोई उचित दर दुकान आवंटित न हो।

5 अभ्यर्थी स्थायी निवासी हो।

6 अभ्यर्थी द्वारा रुपये 1000/- की अनेस्ट मनी का बैंक ड्राफ्ट जिला पूति अधिकारी के पक्ष में जमा किया जायेगा। उक्त अनेस्ट मनी उचित दर दुकान के आवंटन की स्थिति में प्रतिभूति राशि में समायोजित कर ली जायेगी।

7 उचित दर दुकान की नियुक्ति की स्थिति में अभ्यर्थी को रुपये ...

8 अभ्यर्थी के विरुद्ध कोई भी आपराधिक मामला पंजीकृत न हो और न ही वह किसी आपराधिक मामले में दण्डित किया गया हो।

9 अभ्यर्थी अथवा उसके परिवार के किसी सदस्य के नाम पूर्व में आवंटित उचित दर दुकान अनियमितता के कारण निरस्त न हुई हो और उसके विरुद्ध आवश्यक वस्तु अधिनियम-1955 की धारा 3/7 के अन्तर्गत अथवा आपराधिक दण्ड संहिता के अन्तर्गत कारित किसी जघन्य अपराध में विधिक कार्यवाही न हुई हो।

10 ग्रामीण प्रधान के परिवार के सदस्यों के पक्ष में उचित दर की दुकान के आवंटन का प्रस्ताव नहीं किया जायेगा। परिवार की परिभाषा, जैसा कि 30 प्र 0 आवश्यक वस्तु वितरण के विनियमन का नियंत्रण आदेश 2016 में दी गई है, निम्नानुसार होगी :-

परिवार का मुखिया,

पितृ/पत्नी विधिक रूप से अपनाये गये दत्तक सन्तान सहित।

सन्तान जो परिवार के मुखिया पर पूर्ण रूप से आश्रित हो।
अविवाहित, विधिक रूप से पृथक और विधवा बेटी, और

परिवार के मुखिया पर पूर्ण रूप से आश्रित माता/पितृ

11 यदि किसी उचित दर विक्रेता अथवा उसके परिवार के सदस्य को जिसकी परिभाषा उपरोक्त बिन्दु -10 में दी गयी है, उन्हें प्रांम प्राधान चुन लिया जाता है, तो उसकी दुकान का आवंटन निरस्त कर दिया जायेगा। इस बिन्दु के प्रां विधान इस सम्बन्ध में पूर्व में निर्गत शासनादेश संख्या -276/29-6-02-162 सा0/01, दिनांक 18.07.2002 की तिथि से ही प्रभावी रहेंगे।"

10. Similarly, Clause 5 of the Government Order deals with the procedure for allotment of a fair price shop dealership under the dependent quota after the death of the dealer, and Paragraph 5 of the said Government Order is being quoted as under:

"(v) उचित दर विक्रेता की मृत्यु के उपरान्त मृतक आश्रित के रूप में उचित दर दुकानों की नियुक्ति के सम्बन्ध में प्रक्रिया का निर्धारण :-

(1) मृतक आश्रित द्वारा विक्रेता की मृत्यु के 30 दिनों के भीतर उचित दर दुकान के आवंटन हेतु मृतक आश्रित होने के प्रमाण पत्र तथा परिवार के अन्य बालिग सदस्यों के अनापित्त प्रमाण पत्र सहित उपजिलाधिकारी को प्राथमिकता प्रस्तुत किया जायेगा।

(2) मृतक आश्रित श्रेणी के अन्तर्गत उचित दर विक्रेता के रूप में नियुक्ति हेतु इच्छुक आश्रित द्वारा वांछित अर्हताएँ जो कि इस शासनादेश के प्रस्तर-IV में विणत हैं, को पूर्ण करेगा।

(3) मृतक आश्रित के रूप में उचित दर दुकानों में नियुक्ति हेतु परिवार का तात्पर्य इस शासनादेश के प्रस्तर-IV(10) के अनुसार होगी।

(4) मृतक आश्रित के रूप में अभ्यर्थी को प्राथमिकता प्रदान करने हेतु 30 दिनों की अवधि के उपरान्त अधिकतम 15 दिनों का अतिरिक्त समय दिया जायेगा।

(5) मृतक आश्रित श्रेणी के अन्तर्गत आश्रित के पात्रता की शर्त पूर्ण करने का परीक्षण तहसील स्तरीय चयन समितियों द्वारा किया जायेगा। समितियों द्वारा मृतक आश्रित के सम्बन्ध में प्रमाण पत्र तथा परिवार के अन्य बालिग सदस्यों के अनापित्त प्रमाण पत्र एवं अन्य अभिलेखों का परीक्षण करेगी।

(6) तहसील स्तरीय चयन समिति के परीक्षणोपरान्त आवेदन में सभी शर्तें पूर्ण होने की स्थिति में तहसील स्तरीय चयन समिति की संस्तुति के आधार पर मृतक आश्रितों को दुकान का आवंटन किया जायेगा।

(7) सम्पूर्ण प्रकरण का निस्तारण आवेदन की प्राप्ति के 02 माह के भीतर कर लिया जायेगा।

11. From a perusal of Clause 2(p) of the Control Order, 2016 as well as paragraph 4(1) of the Government Order, it is evident that the definition of 'family' includes children fully dependent on the head of the family who was appointed as a fair price shop dealer in rural areas, though a separate clause has also been provided for inclusion of daughters, which specifically covers unmarried, legally separated, and widowed daughters. If the aforesaid provisions are interpreted conjointly by adopting a literal interpretation, it would lead to an anomalous and absurd result which was never intended by the legislature, as daughters cannot be arbitrarily classified into married and unmarried categories for the purpose of extending a welfare measure. Such an arbitrary classification is violative of Article 14 of the Constitution of India, which prohibits discrimination based on unreasonable classification.

12. The Hon'ble Apex Court in *E.P. Royappa v. State of Madras* (now Tamil Nadu), (1974) 4 SCC 3, has observed that equality is antithetic to arbitrariness. The Hon'ble Apex Court has further held in *State of West Bengal v. Anwar Ali Sarkar*, (1952) 1 SCR 284, that while reasonable classification is permissible under Article 14 of the Constitution of India, such classification must be founded on an intelligible differentia having a rational nexus with the object sought to be achieved. The Act of 1935 as well as the Control Order, 2016 have been framed to ensure equitable distribution of essential commodities through the public distribution system, and therefore, the said provisions are required to be interpreted in a purposive manner rather than a literal interpretation.

13. The issue of excluding a married daughter from the purview of 'family' for the purpose of appointment as a fair price shop dealer on compassionate grounds was also considered by the Hon'ble Apex Court in *Kulsum Nisha* (supra), wherein it has been observed that the expression 'daughter' under Clause 2(p) of the Control Order, 2016 has to be read to include a married daughter, provided she establishes dependency on the deceased dealer and satisfies all other eligibility conditions prescribed under the Government Order, including the requirement of local residence. Clause 4 of the Government Order clearly prescribes the eligibility criteria for appointment as a fair price shop dealer, which inter alia requires that the applicant must have passed High School examination, must be at least 21 years of age, must be a local resident, and must not be involved in any criminal case.

14. Paragraphs 25 and 26 of the judgment of the Hon'ble Apex Court in *Kulsum Nisha* (supra) are being quoted as under:

"25. Bearing in mind the object of the provision, that is to provide immediate financial relief to the dependent family of the deceased dealer and to ensure continuity of public distribution system, on purposive interpretation, the words 'unmarried, legally separated and widowed daughters' in Clause 2(p) of 2016 Order, have to be read so as to include married daughters provided they fulfil other eligibility conditions laid down in G.O. for the following reasons:"

(i) The words 'unmarried, legally separated and widowed daughters' illustrate the specific categories of daughters who are expressly included. There is no express language of exclusion. The enumeration is a description of class of daughters who by reason of remaining in or returning to natal household, are most visibly placed in position of dependency. The absence of exclusionary language in respect of married daughters reflects an illustrative and not exhaustive character of enumeration;

(ii) The 2016 Order in Clause 2(p) itself defines one of the categories of family members as 'Adult children who are fully dependent on the head of the family', without any qualification of marital status or gender.

(iii) The object of dependent quota is unambiguously welfare oriented, that is to provide for immediate financial relief to dependent family member of deceased dealer and to ensure continuity of public distribution system. Dependency and not the marital status is the governing criteria of the G.O.

(iv) The descriptive categories of daughters in Clause 2(p) of 2016 Order whether unmarried, legally separated or widowed share a common characteristic that is they remain or have returned to their natal family. They are united by functional criteria of dependency. A married daughter who has not departed from the natal household and is dependent upon it, shares the same functional characteristic.

(v) The submission that a married daughter necessarily fails to satisfy the local residence requirement and therefore cannot be a dependent, needs a factual inquiry to be made in every case. A blanket exclusion of all married daughters on such a speculative presumption is unjustified and is constitutionally untenable.

(vi) To read the words 'unmarried, legally separated and widowed daughters' in Clause 2(p) of 2016 Order would produce a result which is inconsistent with constitutional guarantees under Articles 14 and 15(1) as the same would amount to exclusion of a married daughter on a gender-based stereotype which is constitutionally impermissible.

(vii) The exclusion of married daughter who is dependent upon the deceased dealer and resides with the family and is a capable of running the fair price shop would directly frustrate the purpose of the provision. To sum up, the expression 'daughter' in Clause 2(p) of 2016 Order, has to be read to include a married daughter provided she establishes the dependency on the deceased dealer and satisfies all other eligibility conditions prescribed under the G.O. including the requirement of local residence.

26. For the foregoing reasons, on a purposive construction of Clause 2(p) of 2016 Order, we hold that the expression 'daughters' used in the aforesaid provision includes a married daughter who furnishes a dependency certificate along with No Objection Certificates from other adult family members of the deceased dealer and is a local resident and satisfies all other eligibility conditions prescribed in the G.O. The provision, so construed, would neither suffer from any invalidity nor any constitutional infirmity. It is saved by the very meaning it bears when understood in the light of its purpose."

15. From the above analysis as well as the law laid down by the Hon'ble Apex Court in the aforesaid cases, it is clear that a married daughter is also included within the definition of 'family' and is entitled to apply for appointment as a fair price shop dealer after the death of her father or mother, subject to fulfillment of other eligibility conditions such as local residence, no objection from other adult family members, and other prescribed requirements.

16. Therefore, this Court is of the view that the rejection of the petitioner's application solely on the ground that she is a married daughter, for appointment as a fair price shop dealer on compassionate grounds, is arbitrary and contrary to the law laid down by the Hon'ble Apex Court in the judgments referred to above. Accordingly, the impugned order dated 21.01.2026 passed by opposite party no. 4 is **set aside**. The matter is remitted to the concerned Sub-Divisional Magistrate to pass a fresh order in accordance with law and in light of the observations made hereinabove. Consequently, the present petition is **allowed** with the aforesaid observations. The entire exercise shall be concluded by the Sub-Divisional Magistrate concerned within a period of two months from the date of production of a certified copy of this order before him.

(2026) 6 ILRA 170
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 22.06.2026

BEFORE

THE HON'BLE ALOK MATHUR, J.
THE HON'BLE AMITABH KUMAR RAI, J.

Writ C No. 4422 of 2012

Chandra Shekhar Nishad

...Petitioner

Versus

U.O.I. & Ors.

...Respondents

Issue for consideration

The matter pertains to a petitioner's attempt to secure Scheduled Caste reservation benefits for various OBC riverine communities (Mallah, Nishad, Kewat, etc.) by legally rebranding them as generic sub-castes of the notified "Majhwar" caste.

Headnotes

A. Constitution of India, 1950-Article 341 & 342-Exclusivity of Parliamentary Power-Only Parliament has the exclusive legislative authority to alter or amend the Presidential List of Scheduled Castes, rendering any attempt by courts or State Governments to declare unlisted OBC communities(like Mallah or Nishad) as synonyms or sub-castes of a notified caste (like Majhwar) entirely impermissible and legally unsustainable-The doctrine of sub-classification in Punjab Vs. Davinder Singh Case applies strictly to the internal allocation of benefits among already notified Scheduled Castes, and cannot be invoked to grant SC status to distinct riverine communities that are expressly statutory-recognized as Other Backward Classes within the State of Uttar Pradesh.-Dismissed.(Para 13 to 35)

Held

The court held that under Article 341, the power to vary or amend the Scheduled Castes list rests solely with Parliament by law, and the doctrine of sub-classification cannot be invoked to sneak non-notified, statutory-recognized Other backward classes into the Presidential order. (E-6)

Case law Cited

State of Maharashtra Vs Milind & Ors (2001) 1 SCC 4, Food Corpn. of India Vs S.N. Nagarkar (2002) 2 SCC 475, State of Rajasthan Vs Hindustan Sugar Mills Ltd. & Ors (1988) 3 SCC 449 & B.R. Ramabhadriah Vs Secretary, Food & Agriculture Department, A.P. & Ors (1981) 3 SCC 528, B.Basavalingappa Vs D. Munichinnappa & Ors AIR 1965 SC 1269, State of Orissa Vs Dasarathi Meher (Civil Appeal No. 7362 of 2013), Bhaiya Lal Vs Harikishan Singh AIR (1965) SC 1557, State of Punjab & Ors Vs Davinder Singh & Ors (2025) 1 SCC 1-referred to.

List of Acts

Constitution of India, 1950.

List of Keywords

Majhwar (Notified Scheduled Caste), Mallah, Nishad, Kewat, Kashyap, Bind, Presidential order, Bar on judicial review, Synonyms and generic names of castes, Rescission of government notification, Suppression of material facts, Sub-classification within Scheduled Castes.

Case Arising from

Civil jurisdiction: WRIT-C No. -4422 OF 2012

Chandra Shekhar Nishad Vs. Union of India Through Cabinet Secy. Central Sectt. New Delhi

From the judgment and order dated 22.06.2026 of the High court of judicature at Allahabad.

Appearances for Parties**Advs. for Petitioner(s):**

J.R Nishad, Anurag Shukla, Surendra Mohan Gandhi

Advs. for Respondent(s):

C.S.C., A.S.g

(Delivered by Hon'ble Amitabh Kumar Rai, J.)

1. Heard Shri Anurag Shukla, learned Senior Counsel for the petitioner, Shri Akhilesh Srivastava, learned Standing Counsel for the respondent nos.3 to 5 and Shri Varun Pandey, learned counsel for respondent nos.1 and 2.

2. The present writ petition has been filed seeking following reliefs :

(i) Issue a writ, order or direction in the nature of mandamus by commanding the opposite parties with direction to include the communities of Mallah, Majhwar, in the list of scheduled caste list as per law, constitution and order of this Court passed in Writ Petition No.9312 of 1988 contained as Annexure No.7 to this writ petition and be also directed to the opposite parties to provide facilities of scheduled caste to the aforementioned communities by fixing quota as per quantity.

(ii) Issue a writ, order or direction in the nature of mandamus by commanding the opposite parties with direction that a Gazat a notification of this effect be also made in compliance of the order of this Court within stipulated period as fixed by Hon'ble Court in the interest of justice.

3. Learned Standing Counsel, at the outset, has raised an objection regarding the relief claimed by the petitioner, submitting that the relief sought in the instant writ petition amounts to legislative enactment, as a caste can only be included by Parliament under Article 341 of the Constitution of India through law made under the Constitution (Scheduled Castes) Order, 1950. It has been submitted that in view of the Constitution Bench judgment of the Hon'ble Supreme Court in **State of Maharashtra vs. Milind and Others reported in 2001 (1) SCC 4**, it is not permissible to issue a direction declaring any caste as a Scheduled Caste. It has been submitted that for the aforesaid reasons, the instant writ petition, insofar as the relief sought is concerned, is not maintainable and is liable to be dismissed as infructuous.

4. Countering the aforesaid objection, the learned Senior Counsel appearing for the petitioner submitted that due to inadvertence, the relief has not been properly construed and the intention behind filing the present writ petition is to seek treatment of the communities of Nishad, Kashyap, Kewat, Mallah and Bind as synonyms or generic names of the caste Majhwar.

5. It has been submitted by learned Senior Counsel on behalf of the petitioner that in appropriate cases, the relief can be moulded in the interest of justice, placing reliance on the judgments rendered by the Hon'ble Supreme Court in **Food Corporation of India vs. S. N. Nagarkar reported in (2002) 2 SCC 475**, **State of Rajasthan vs. Hindustan Sugar Mills Ltd. and Others reported in (1988) 3 SCC 449** and **B. R. Ramabhadriah vs. Secretary, Food and Agriculture Department, Andhra Pradesh and Others reported in (1981) 3 SCC 528**.

6. It has been submitted by learned counsel for the petitioner that even the State Government, vide Notification No.4/1/2002-Ka-2/2005 dated 10.10.2005 issued in exercise of powers under Section 13 of the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 (hereinafter referred to as the "U.P. Act of 1994") made amendments whereby the castes of **Kewat, Mallah, Nishad and Bind** were held entitled to the benefits available to Scheduled Castes instead of those available to the Backward Class under the U.P. Act of 1994.

7. It has been submitted that the Appendices to Census Manual, Part-I issued for Uttar Pradesh issued by the Census of India, 1961 under Appendix-F, provide for List I which contains the names of Scheduled Castes along with their synonyms or generic names, wherein at Serial No.51, the caste Majhwar has been referred with the following synonyms or generic names: Manjhi (Districts Unnao and Pratapgarh); Mujbir or Mujabir (District Badaun); Rajgond (District Mirzapur); Mallah (Districts Agra, Etawah, Unnao, and Lucknow); Kewat (District Unnao); and Gond, Majhwar. It has been further submitted that as per Aadarsh Hindi Shabdkosh published by Bhargav Book Depo, Varanasi, the word "Manjhi" has been described as meaning a Boatman, Mallah or Kewat.

8. The thrust of the argument is that the castes Nishad, Kewat, Mallah and Bind are synonyms of the caste Majhwar, as they belong to the same community and are boatmen engaged in the same profession.

9. Reliance has been placed by learned counsel for the petitioner on the Constitution Bench judgment of the Hon'ble Supreme Court in **B. Basavalingappa vs. D. Munichinnappa and others reported in AIR 1965 SC 1269** in which Hon'ble Supreme Court, after due consideration, held that "Voddar" caste is the same as "Bhovi" caste, which is notified as a Scheduled Caste and a person belonging to "Voddar" caste is entitled to claim that he belongs to "Bhovi" caste. Further reliance has been placed on the judgment and order dated 27.02.2018 passed by the Hon'ble Supreme Court in Civil Appeal No.7362 of 2013, **State of Orissa vs. Dasarathi Meher** in which Hon'ble Supreme Court held that members of "Kuli" community are also entitled to be treated as Scheduled Tribes and "Kulis" have been recognized as Scheduled Tribes. In the aforesaid judgment, Hon'ble Supreme Court, after appreciating the material placed before it, came to the conclusion that there is no separate community by the name of "Kulis" and both the communities, "Kuli" and "Kulis" are the same.

10. Learned Senior Counsel appearing for the petitioner, on the strength of the documents referred to hereinabove as well as the judgments in the cases of Dasarathi Meher (supra) and B. Basavalingappa (supra), has submitted that the castes Nishad, Kewat, Mallah and Bind are

synonyms of the caste Majhwar and as such, are entitled to the same benefits as persons belonging to the caste Majhwar, which has been declared a Scheduled Caste and finds place at Entry No.52 of the Constitution (Scheduled Castes) Order, 1950.

11. On the other hand, learned Standing Counsel, relying on the case of **Milind (supra)**, particularly paragraph 36 of the judgment, has submitted that it is not permissible to hold any enquiry to declare that any caste or sub-caste can be included against an entry in which such caste or sub-caste is not specifically mentioned in the Constitution (Scheduled Tribes) Order, 1950.

12. It has been further submitted that it is not permissible to say that any caste, sub-caste, part of or group of any caste or community is synonymous with the one mentioned in the Constitution (Scheduled Castes) Order, 1950 and the Constitution (Scheduled Tribes) Order, 1950, as they cannot be modified.

13. Having heard learned counsel for the parties, the issue for consideration is whether the castes Nishad, Kashyap, Kewat, Mallah and Bind can be termed as synonyms of the caste Majhwar, which has been declared a Scheduled Caste and finds place at Serial No.52 in the Constitution (Scheduled Castes) Order, 1950 and whether they are entitled to the same benefits.

14. Articles 341 and 342 of the Constitution of India empower the President to issue a public notification specifying castes, races or tribes or parts of or groups within castes, races or tribes, which shall, for the purposes of the Constitution, be deemed to be Scheduled Castes or Scheduled Tribes in relation to a State or Union Territory, as the case may be.

15. Articles 341 & 342 of the Constitution of India reads as under :

“341. Scheduled Castes.

(1) The President may with respect to any State or Union territory, and where it is a State after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or group within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

342. Scheduled Tribes

(1) The President may with respect to any State or Union territory, and where it is a State after consultation with the Governor thereof, by public notification specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes

of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

16. The object of the aforesaid Articles is to provide additional protection to the members of the Scheduled Castes and Scheduled Tribes having regard to the social and educational backwardness from which they have been suffering for a considerable length of time. The words "castes" and "tribes" in the expressions "Scheduled Castes" and "Scheduled Tribes" are used in the sense of the definitions contained in Articles 366(24) and 366(25) of the Constitution. Thus, a caste is a Scheduled Caste or a tribe is a Scheduled Tribe, only if it is included in the Presidential Orders issued under Articles 341 and 342 of the Constitution. In exercise of such power, President has issued the Constitution (Scheduled Castes) Order, 1950 and the Constitution (Scheduled Tribes) Order, 1950.

17. The plain language and clear terms of Articles 341 and 342 indicate that the President under clause (1) of the said Articles may with respect to any State or Union Territory and where it is a State, after consultation with the Governor, by public notification, specify the castes, races or tribes or parts of or groups within the castes, races or tribes, which shall, for the purposes of the Constitution, be deemed to be Scheduled Castes or Scheduled Tribes in relation to that State or Union Territory, as the case may be. Under clause (2) of the said Articles, a notification issued under clause (1) cannot be varied by any subsequent notification except by a law made by Parliament. Meaning thereby, Parliament alone is competent, by law, to include in or exclude a caste or tribe from the list of Scheduled Castes and Scheduled Tribes specified in the notifications issued under clause (1) of the said Articles.

18. While including castes and tribes in the Presidential Orders, the President is authorized to limit the notification to parts or groups within a caste or tribe depending upon their educational and social backwardness. It is permissible that only parts or groups within them be specified and further that such castes or tribes be specified in relation to parts of a State and not the entire State, if it is considered necessary to do so having regard to social and educational backwardness. The States had the opportunity to present their views through the Governors when consulted by the President in relation to the castes or tribes or parts or groups within them either in relation to the entire State or parts thereof.

19. The object of clause (1) of Articles 341 and 342 was to avoid disputes regarding whether a caste or tribe is a Scheduled Caste or Scheduled Tribe for the purposes of the Constitution. Whether a particular caste or tribe is a Scheduled Caste or Scheduled Tribe, as the case may be, within the meaning of the entries contained in the Presidential Orders issued under clause (1) of Articles 341 and 342 is to be determined by looking at the entries as they stand. Clause (2) of the said Articles does not permit anyone to seek modification of the said Orders by leading evidence to establish that a caste or tribe other than the one mentioned in the Order should

be deemed to be a Scheduled Caste or Scheduled Tribe, as the case may be. It is only Parliament that is competent to amend the Orders issued under Articles 341 and 342.

20. It can be seen from the entries in the Schedules pertaining to each State that whenever a caste or tribe has another name, the same is mentioned in brackets after it in the Schedules. In this view, it serves no purpose to look at gazetteers or glossaries for establishing that a particular caste or tribe is a Scheduled Caste or Scheduled Tribe for the purposes of the Constitution, even though it is not specifically mentioned as such in the Presidential Orders. Orders once issued under clause (1) of Articles 341 and 342 cannot be varied by any subsequent order or notification, even by the President, except by a law made by Parliament. Thus, it cannot be said that the State Governments or any other authority, court or tribunal are vested with any power to modify or vary the said Orders. No inquiry is permissible and no evidence can be led for establishing that a particular caste or part or group within a caste or tribe is included in the Presidential Order, if it is not expressly included therein. Since any exercise or attempt to amend the Presidential Order, except as provided in clause (2) of Articles 341 and 342, is futile, it is neither permissible nor useful to hold any inquiry or lead any evidence in that regard.

21. The Constitution Bench Judgment of the Hon'ble Supreme Court in the case of **B. Basavalingappa (supra)** referred by learned counsel for the petitioner has specifically held as under in paragraph 6 :

"It may be accepted that it is not open to make any modification in the Order by producing evidence to show (for example) that though Caste A alone is mentioned in the Order, Caste B is also a part of Caste A and therefore must be deemed to be included in Caste A. It may also be accepted that wherever one caste has another name it has been mentioned in brackets after it in the Order [see Aray (Mala) Dakkal (Dokkalwar) etc.]. Therefore, generally speaking it would not be open to any person to lead evidence to establish that Caste B (in the example quoted above) is part of Caste A notified in the Order. Ordinarily therefore it would not have been open in the present case to give evidence that the Voddar caste was the same as the Bhovi caste specified in the Order for Voddar caste. is not mentioned in brackets after the Bhovi caste in the Order."

(Emphasis Supplied)

22. Another Constitution Bench judgment of the Hon'ble Supreme Court, in the later decision in the case of **Bhaiya Lal v. Harikishan Singh reported in AIR 1965 SC 1557**, rejected the plea of the appellant that although he did not belong to the Chamar caste, he could still claim the same status on the ground that he belonged to the Dohar caste, which is a sub-caste of the Chamar caste. Referring to the case of B. Basavalingappa (supra), Hon'ble Supreme Court held that an enquiry of that kind would not be permissible in light of the provisions contained in Article 341 of the Constitution. Paragraphs 8 to 11 of the judgment passed in the case of **Bhaiya Lal (supra)** are reproduced hereinbelow:

"8. Incidentally, we may point out that the plea that the Dohar caste is a sub-caste of the Chamar caste cannot be entertained in the present proceedings in view of the Constitution (Scheduled Castes) Order, 1950. This Order has been issued by the President under Article 341 of

the Constitution. Article 341(1) provides that the President may with respect to any State or Union Territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races, or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union Territory, as the case may be. Sub-article (2) lays down that Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification. It is thus clear, that in order to determine whether or not a particular caste is a scheduled caste within the meaning of Article 341, one has to look at the public notification issued by the President in that behalf. In the present case, the notification refers to Chamar, Jatav or Mochi, and so, in dealing with the question in dispute between the parties, the enquiry which the Election Tribunal can hold is whether or not the appellant is a Chamar, Jatav or Mochi. The plea that though the appellant is not a Chamar as such, he can claim the same status by reason of the fact that he belongs to the Dohar caste which is a sub-caste of the Chamar caste, cannot be accepted. It appears to us that an enquiry of this kind would not be permissible having regard to the provisions contained in Article 341. In the case of *B. Basavalingappa v. D. Munichinnappa* [AIR 1965 SC 1269] this Court had occasion to consider a similar question. The question which arose for decision in that case was whether Respondent 1, though Voddar by caste, belonged to the scheduled caste of Bhovi mentioned in the Order, and while holding that an enquiry into the said question was permissible, the Court has elaborately referred to the special and unusual circumstances which justified the High Court in holding that Voddar caste was the same as the Bhovi caste within the meaning of the Order; otherwise the normal rule would be:

“it may be accepted that it is not open to make any modification in the Order by producing evidence to show, for example, that though caste A alone is mentioned in the Order, caste B is also a part of caste A and, therefore, must be deemed to be included in caste A.”

That is another reason why the plea made by the appellant that the Dohar caste is a sub-caste of the Chamar caste and as such must be deemed to be included in the Order, cannot be accepted.

9. Whilst we are referring to this aspect of the matter, we may point out that the Order has taken good care to specify different castes under the same heading where enquiry showed that the same caste bore different names, or it had sub-castes which were entitled to be treated as scheduled castes for the purposes of the Order. In the district of Datia, for instance, Entry 3 refers to Chamar, Ahirwar, Chamar Mangan, Mochi or Raidas. Similarly, in respect of Maharashtra, Item 1, Entries 3 and 4 refer to the same castes by different names which shows either that the said castes are known differently or consist of different sub-castes. Likewise, Item 2, Entry 4 in the said list refers to Chamar, Chamari, Mochi, Nona, Rohidas, Ramnami, Satnami, Surjyabanshi or Surjyaramnami. It is also remarkable that in Maharashtra in certain districts Chamar and Dohar are included in the list separately. Therefore, we do not think that Mr Chatterjee can seriously quarrel with the conclusion of the High Court that the appellant has not shown that he belongs to the Chamar caste which has been shown in the Order as a scheduled caste in respect of the Constituency in question.

(Emphasis Supplied)

10. Mr Chattejee attempted to argue that it was not competent to the President to specify the lists of Scheduled Castes by reference to different districts or sub-areas of the States. His argument was that what the President can do under Article 341(1) is to specify the castes, races or tribes or parts thereof, but that must be done in relation to the entire State or the Union Territory, as the case may be. In other words, says Mr Chatterjee, the President cannot divide the State into different districts or sub-areas and specify the castes, races or tribes for the purpose of Article 341(1). In our opinion, there is no substance in this argument. The object of Article 341(1) plainly is to provide additional protection to the members of the Scheduled Castes having regard to the economic and educational backwardness from which they suffer. It is obvious that in specifying castes, races or tribes, the President has been expressly authorised to limit the notification to parts of or groups within the castes, races or tribes, and that must mean that after examining the educational and social backwardness of a caste, race or tribe, the President may well come to the conclusion that not the whole caste, race or tribe but parts of or groups within them should be specified. Similarly, the President can specify castes, races or tribes or parts thereof in relation not only to the entire State, but in relation to parts of the State where he is satisfied that the examination of the social and educational are backwardness of the race, caste or tribe justifies such specification. In fact, it is well known that before a notification is issued under Article 341(1), an elaborate enquiry is made and it is as a result of this enquiry that social justice is sought to be done to the castes, races or tribes as may appear to be necessary, and in doing justice, it would obviously be expedient not only to specify parts or groups of castes, races or tribes, but to make the said specification by reference to different areas in the State. Educational and social backwardness in regard to these castes, races or tribes may not be uniform or of the same intensity in the whole of the State; it may vary in degree or in kind in different areas and that may justify the division of the State into convenient and suitable areas for the purpose of issuing the public notification in question. Therefore, Mr Chatterjee is in error when he contends that the notification issued by the President by reference to the different areas is outside his authority under Article 341(1).

11. The result is, the appeal fails and is dismissed with costs.”

23. The Constitution Bench judgment of the Hon^{ble} Supreme Court, subsequently delivered in the case of **Milind (supra)**, while referring to the earlier two Constitution Bench judgments of the Hon^{ble} Supreme Court in the cases of B. **Basavalingappa (supra)** and **Bhaiya Lal (supra)**, though related to Article 342 of constitution equally applies in reference to Article 341, finally concluded in paragraphs 35 and 36 of the judgment, which are reproduced hereinbelow:

“35. In order to protect and promote the less fortunate or unfortunate people who have been suffering from social handicap, educational backwardness besides other disadvantages, certain provisions are made in the Constitution with a view to see that they also have the opportunity to be on par with the others in the society. Certain privileges and benefits are conferred on such people belonging to Scheduled Tribes by way of reservations in admission to educational institutions (professional colleges) and in appointments in services of State. The object behind these provisions is noble and laudable besides being vital in bringing a meaningful social

change. But, unfortunately, even some better-placed persons by producing false certificates as belonging to Scheduled Tribes have been capturing or cornering seats or vacancies reserved for Scheduled Tribes defeating the very purpose for which the provisions are made in the Constitution. The Presidential Orders are issued under Articles 341 and 342 of the Constitution recognising and identifying the needy and deserving people belonging to Scheduled Castes and Scheduled Tribes mentioned therein for the constitutional purpose of availing benefits of reservation in the matters of admissions and employment. If these benefits are taken away by those for whom they are not meant, the people for whom they are really meant or intended will be deprived of the same and their sufferings will continue. Allowing the candidates not belonging to Scheduled Tribes to have the benefit or advantage of reservation either in admissions or appointments leads to making mockery of the very reservation against the mandate and the scheme of the Constitution.

36. In the light of what is stated above, the following positions emerge:

1. It is not at all permissible to hold any inquiry or let in any evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or tribal community is included in the general name even though it is not specifically mentioned in the entry concerned in the Constitution (Scheduled Tribes) Order, 1950.

2. The Scheduled Tribes Order must be read as it is. It is not even permissible to say that a tribe, sub-tribe, part of or group of any tribe or tribal community is synonymous to the one mentioned in the Scheduled Tribes Order if they are not so specifically mentioned in it.

3. A notification issued under clause (1) of Article 342, specifying Scheduled Tribes, can be amended only by law to be made by Parliament. In other words, any tribe or tribal community or part of or group within any tribe can be included or excluded from the list of Scheduled Tribes issued under clause (1) of Article 342 only by Parliament by law and by no other authority.

4. It is not open to State Governments or courts or tribunals or any other authority to modify, amend or alter the list of Scheduled Tribes specified in the notification issued under clause (1) of Article 342.

5. Decisions of the Division Benches of this Court in *Bhaiya Ram Munda v. Anirudh Patar* [(1970) 2 SCC 825 : (1971) 1 SCR 804] and *Dina v. Narain Singh* [38 ELR 212 : (1968) 8 DEC 329] did not lay down law correctly in stating that the inquiry was permissible and the evidence was admissible within the limitations indicated for the purpose of showing what an entry in the Presidential Order was intended to be. As stated in Position (1) above no inquiry at all is permissible and no evidence can be let in, in the matter."

(Emphasis Supplied)

24. In the instant case, we find that the Constitution (Scheduled Castes) Order, 1950 issued on 10.08.1950 and published on 11.08.1950 in Schedule Part VIII □ Uttar Pradesh at Entry No.52, mentions the caste Majhwar. It is relevant to point out that the Caste Chamar is mentioned at Entry No.24, the castes Dhusia or Jhusia are mentioned at Entry No.31. Thus, it is clear that the only

caste mentioned at Entry No.52 is Majhwar and not any other caste whereas at Entry No.31, the caste Chamar is mentioned along with the other caste, Jhusia. Further by the Scheduled Castes and Scheduled Tribes Lists (Modification) Order, 1956 published on 29.10.1956, certain modifications were made resulting in the caste Majhwar finding place at Entry No.51 whereas the castes Chamar, Dhusia, Jhusia or Jatav finds mention at Entry No.24. If the castes Kewat, Mallah, Kashyap, Nishad & Bind were considered as sub-castes of Majhwar or its synonyms or generics, then certainly their names would have also mentioned at Entry No.51 along with the caste Majhwar.

25. By a further amendment through the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 published on 18.09.1976, the caste Majhwar found place in Part XVIII relating to Uttar Pradesh at Entry No.53. The caste Majhwar finds place in the Schedule to the Constitution (Scheduled Castes) Order, 1950, but the castes Nishad, Kewat, Mallah, Kashyap and Bind do not find mention therein. As such, the claim of the petitioner to include such castes as Scheduled Castes by considering them to be sub-caste synonyms or generic of the caste Majhwar is impermissible. If there had been any intention to include such castes along with the caste Majhwar in the Constitution (Scheduled Castes) Order, 1950, then such castes would also have been mentioned along with the caste Majhwar at Entry No.52 or at some other appropriate place.

26. It is noticeable that the castes Nishad, Kewat, Mallah and Bind do not find mention in the Constitution (Scheduled Castes) Order, 1950; rather, they are recognized as Other Backward Castes. In Schedule I of U.P. Act of 1994, at Serial No 13 as per notification No.792/64-1-2016 dated 26.12.2016 are recognized in the State of Uttar Pradesh as Other Backward Classes. The notification dated 10.10.2005, issued under the U.P. Act of 1994, whereby an amendment was made including the castes Kahar, Kashyap, Mallah, Nishad and Bind as Scheduled Castes, was rescinded by the State Government vide notification dated 04.07.2007, which has been annexed to the counter affidavit as Annexure No. CA-2.

27. It is unfortunate that the instant writ petition was filed in the year 2012 on the strength of the notification dated 10.10.2005 without disclosing the fact that the said notification had been rescinded vide notification dated 04.07.2007 and such conduct on the part of the petitioner cannot be appreciated.

28. Reliance placed by learned counsel for the petitioner on the case of **Dasarathi Meher (supra)** is misconceived, inasmuch as, in the case of **Dasarathi Meher (supra)**, there was no distinct caste recognized as □Kulis□ and it was held to be the same caste as □Kuli.□ However, in the present case, we find that the castes Nishad, Kewat, Mallah and Bind are specifically recognized as distinct castes and have been categorized as Other Backward Classes by the State Government under the U.P. Act of 1994.

29. Similarly, reliance placed upon the judgment in the case of **Dasarathi Meher (supra)** is also of no help to the petitioner, as in that case the caste Bhovi was earlier known as the Voddar caste. In fact, in the case of **B. Basavalingappa (supra)**, there was a specific Government Order directing that the community known as □Vodda□ would, in future, be called □Boyi□ in all Government communications and records and the issue under consideration related to a change in spelling.

30. Further, in the case of Bhaiya Lal (*supra*), which is subsequent to the judgment in **B. Basavalingappa (*supra*)**, Hon'ble Supreme Court considered the judgment passed in **B. Basavalingappa (*supra*)** and held that in that case, the question under consideration was whether a person belonging to the "Voddar" caste belonged to the Scheduled Caste □Bhovi□ mentioned in the Order and whether holding an enquiry into the said question was permissible. The Court elaborately referred to the special and unusual circumstances which satisfied the High Court in holding that the "Voddar" caste was the same as "Bhovi" caste within the meaning of the Order and held that otherwise, the normal rule would be that it is not permissible to make any modification in the Order by producing evidence.

31. At this stage, learned counsel for the petitioner has referred to the Constitution Bench judgment of the Hon'ble Supreme Court in the case of **State of Punjab and Others v. Davinder Singh and Others reported in (2025) 1 SCC 1** to submit that the castes Nishad, Kewat, Mallah and Bind are sub-castes of Majhwar and such sub-classification is permissible in view of the law laid down by the Hon'ble Supreme Court in the case of Davinder Singh (*supra*).

32. The argument advanced by learned counsel for the petitioner, relying on the judgment rendered by the Hon'ble Supreme Court in the case of Davinder Singh (*supra*) is completely misconceived, as the issue before the Constitution Bench in the aforesaid case was whether sub-classification is permissible within the Scheduled Castes. Hon'ble Supreme Court concluded that the phrase □deemed□ used in Article 341(1) of the Constitution means that the castes or groups notified by the President shall be regarded as Scheduled Castes and the castes included in the list shall receive the benefits that the Constitution provides to the Scheduled Castes. It further concluded that sub-classification within the Scheduled Castes does not violate Article 341(2), because the castes are not, per se, included in or excluded from the List. Sub-classification would violate the provision only when either preference or exclusive benefit is provided to certain castes or groups within the Scheduled Castes over all the seats reserved for the class.

33. The judgment rendered by the Hon'ble Supreme Court in the case of Davinder Singh (*supra*) pertains to a different issue regarding the sub-classification of Scheduled Castes already notified under the Presidential Order under Article 341(1) of the Constitution and not with respect to recognition of castes as Scheduled Castes not notified under Constitution (Scheduled Castes) Order, 1950. Therefore, the judgment passed in the case of **Davinder Singh (*supra*)** is not applicable to the facts and circumstances of the present case.

34. The law on the subject matter and the issue canvassed by the petitioner in the instant writ petition stands concluded by the Constitution Bench of the Hon'ble Supreme Court in the case of **Milind (*supra*)**. The castes Kahar, Kashyap, Mallah, Nishad and Bind are recognized in the State of U.P. as Other Backward Classes and as such, cannot be included in the Constitution (Scheduled Castes) Order, 1950 along with the caste Majhwar by deeming them to be sub-castes, synonyms, or generics of the caste Majhwar except by a law made by Parliament.

35. Thus, in view of the above discussions, the instant writ petition being devoid of merit is **dismissed**.

36. No order as to costs.

(2026) 6 ILRA 181
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 04.06.2026

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE ABDHESH KUMAR CHAUDHARY, J.

Writ C No. 6374 of 2024

M/S R.S. Contractors & Engineers & Ors. ...Petitioners
Versus
Debts Recovery Tribunal Lko & Ors. ...Respondents

Issue(s) for consideration

Whether the High Court should entertain a writ petition u/Article 226 of the Constitution to direct a bank to release title deeds and pay RBI-mandated delay compensation when there are ongoing factual disputes and statutory alternative remedies available under banking laws?

Headnotes

A. Debt Recovery Law – SARFAESI Act, 2002: Section 13(2), 14, 17 - The petitioner firm availed a credit facility of ₹70 Lakhs from Canara Bank. To secure the loan, Petitioner No. 3 mortgaged an immovable property located in Meerut by depositing the original title deed. The petitioners defaulted on the loan, prompting Canara Bank to initiate recovery actions under the SARFAESI Act, 2002 (including obtaining a Section 14 order for physical possession and publishing an auction sale notice).

The petitioners challenged the bank's action before the DRT, Lucknow. During the auction process (where a high bidder offered ₹62 Lakhs), the petitioners proposed to clear the dues by paying ₹70 Lakhs. The DRT permitted this arrangement, ordering specific payment timelines. The petitioners completed payments totaling ₹71.50 Lakhs by 11.10.2023, and the bank restored physical possession of the property to them. The petitioners contended that the loan was fully settled and demanded the return of their original title deed along with delayed compensation under RBI guidelines. Canara Bank refused, arguing that the petitioners actually had four separate loan accounts, only one of which was satisfied, and that the remaining accounts remained secured by the asset. Furthermore, the bank challenged the DRT's authority to unilaterally extend payment timelines.

B. High Court must insist that before availing remedy u/Article 226 of the Constitution of India, a person must exhaust the remedies available under the relevant statute. (Para 17, 18)

Once the loan has been settled and NOC granted, the Bank is under a statutory duty to return the title document without any reservation, however, since there is an impending dispute between the parties, the Court does not wish to lay its hand on the said dispute. True that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why to entertain a petition filed u/Article 226 of the Constitution of India ignoring the fact that the petitioners can avail effective remedy particularly contained in the legislation. (Para 24, 27)

Under a general law, after settlement of loan, petitioners are entitled for release of title document and in case of delay the respondent- Canara Bank is liable for damages. (Para 19)

As on date, there exist at least two controversies between the Bank and the petitioners relating to (i) quantum of interest, and (ii) legality of extension of period of deposit of settlement amount by the DRT.

Apparently, these issues have factual implications and are to be decided before a proper forum and then only the title document has to be released, which, according to this Court, is an act of subsequent event after a Bank has issued a NOC or at least have filed some pleadings admitting the settlement. This Court, while exercising its jurisdiction u/Article 226, does not wish to enter into any disputed questions of fact. (Para 20, 21)

These issues essentially being factual in nature and the DRT/DRAT essentially being the proper forum, cannot be decided by this Court, especially when an Appeal is stated to be pending before the Appellate Tribunal, wherein the very order of the DRT, which is the foundation for seeking relief in the present writ petition has been sought to be challenged by the Bank. (Para 22)

Petitioners should approach the DRT for release of title documents, in case the loan had been fully settled and that too on the direction of the DRT. The DRT is well equipped and sufficiently empowered to pass directions to the Bank for release of the title documents, in that regard. (Para 26)

Writ petition dismissed with liberty granted to the petitioners to file an appropriate application(s) before the DRT. (E-4)

Case Law Cited

1. United Bank of India Vs. Satyawati Tondon and others, 2010 (8) SCC 110 (Para 17)
2. South Indian Bank Ltd. Vs. Naveen Mathew Philip, (2023) 17 SCC 311 (Para 18)
3. Celir LLP Vs. Bafna Motors (Mumbai) (P) Ltd., (2024) 2 SCC 1; 2023 SCC OnLine SC 1209 (Para 18)

List of Acts

Recovery of Debts and Bankruptcy Act, 1993; SARFAESI Act, 2002.

List of Keywords

Debt, recovery, DRT, loan, title document, constitution, alternative remedy, discretion, bank NOC.

Appearances for Parties

For Petitioner(s): Apoorv Dev, Ashutosh Chaubey, Prashant Kumar Singh

For Respondent(s): Praveen Dwivedi, Alok Saxena

(Delivered by Hon'ble Abdhesh Kumar Chaudhary, J.)

1. Heard Shri Apoorv Dev, learned Counsel appearing on behalf of the petitioners, Shri Alok Saxena, learned Counsel appearing on behalf of the respondent no. 1 as well as Shri Praveen Dwivedi, learned Counsel appearing on behalf of respondent nos. 2 and 3 and perused the record.□□

2. The present writ petition under Article 226 of the Constitution of India has been filed by the petitioners, seeking direction to the□ respondent- Canara Bank to return the original title deed to one of the petitioners, who had deposited the same at the time of mortgage. Further, direction has been sought against the respondent- Canara Bank to issue No Dues Certificate in favour of the petitioners and also to pay compensation cost of Rs. 5,000/- per day with effect from 11.11.2023 to the actual date of release of title deed as per the Reserve Bank of India Circular dated 13.09.2023.

3. The factual matrix of the present lis lie in a narrow compass, the petitioner no. 1 is a partnership firm and the petitioner nos. 2 and 3 are its partners. Apparently, the firm availed a financial facility to the tune of Rs.70 Lacs from the respondent- Canara Bank and the petitioner no.

2 stood as a Guarantor and petitioner no. 3 mortgaged his property bearing Plot No.46, Khasra No.1581, Gopal Vihar, Village Malyana, Pargana, Tehsil and District Meerut, ad-measuring area 142.56 square meter, by depositing the original title deed with the respondent- Canara Bank.

4. Presumably, the petitioners failed to service the said financial facility granted by the respondent- Canara Bank and approached the respondent- Canara Bank for settlement of their dues and also offered for O.T.S. proposal.□ However, the respondent- Canara Bank did not accede to the request of the petitioners and in the intervening period got published a sale notice for action of the mortgaged property and also obtained an order under Section 14 of the SARFAESI Act, 2002 so as to obtain the physical possession of the property.

5. Being aggrieved with the aforesaid action of the respondent- Canara Bank, the petitioners approached learned Debts Recovery Tribunal, Lucknow□ (hereinafter referred to as the 'DRT') under Section 17 of the□SARFEASI Act, 2002 by filing Securitization Application No. 443 of 2022. Admittedly, during the pendency of the said securitization application, the respondent- Canara Bank sold the mortgaged property to the highest bidder for an amount of Rs. 62 Lacs and during the time the amount was being deposited by the highest bidder, the petitioners expressed their willingness to settle by making payment of Rs. 70 Lacs to the respondent- Canara Bank.

6. The learned DRT, while considering the aforesaid request of the petitioners for settlement for an amount of Rs.70 Lacs, vide an order dated 27.07.2023 directed the petitioners to deposit a sum of Rs. 20 Lacs within one week and further to pay rest of the amount of Rs.50 Lacs within two months i.e. before 26.09.2023.

7. The said order dated 27.07.2023 was modified on the same day during post-lunch session, wherein the learned DRT directed the petitioners not only to pay the aforesaid amount but also to pay additional amount of interest as applicable to a FDR on the 25% amount deposited by the highest bidder/auction purchaser to the respondent- Canara Bank.

8. As per the averments made in the writ petition, the petitioners have deposited an amount of Rs. 22,50,000/- on 22.09.2023, however,□ failed to make payment of the entire amount, which led to filing of an application for extension of time by the petitioners.

9. The learned DRT extended the time for depositing the entire amount to 31.10.2023 and also directed that if the petitioners deposit 60% of the agreed amount, then the respondent- Canara Bank shall restore the physical possession of the premises to the petitioners.□

10. Apparently, the petitioners□ paid last installment of Rs. 28,50,000/- on 11.10.2023 and also paid an additional amount of Rs.5,000/- towards the interest on the deposited bid amount of auction purchaser, which was accepted by the respondent- Canara Bank and in pursuance to the directions issued by the learned DRT also restored the physical possession of the property to the petitioners.□

11. The record further reveals that the respondent- Canara Bank was unhappy with the order passed by the learned DRT with respect to extension of time granted to the petitioners for

deposit of the entire amount and as such unsuccessfully filed a writ petition before this Court bearing Matters Under Article 227 No. 5154 of 2023; which was dismissed as not pressed vide an order dated 11.10.2023. Yet another writ petition was preferred by the respondent-Bank bearing Writ-C No. 9217 of 2023, challenging the extension order of the learned DRT, however, again the same was dismissed on the ground of alternative remedy vide an order dated 19.10.2023.

12. In the aforesaid background, the petitioners sent a representation dated 23.01.2024 to the respondent- Canara Bank for return of the original title deed and compensate the petitioners, as per the RBI Circular. The said representation dated 23.01.2024 was followed by a reminder dated 22.06.2024, however, since no response was given by the respondent- Canara Bank, the present writ petition has been filed.

13. Notice was issued to the respondent- Canara Bank vide an order dated 29.07.2024 and they were directed to file a counter affidavit. Subsequently, counter affidavit was filed by the respondent- Canara Bank and accordingly, rejoinder affidavit was also filed by the petitioners.

14. The respondent- Canara Bank took a ground in their counter affidavit that there had been deliberate and fraudulent concealment of facts by the petitioners in the writ petition inasmuch as, according to learned Counsel for the respondent- Canara Bank, four loan accounts were sanctioned in favour of the petitioners, bearing OCC Loan Account No. 4207261000033, WCTL Loan Account No. 4207746000001, FITL Loan Account No. 4207747000023 and Covid FITL Loan Account No. 4207710000039 amongst which amount of Loan Account No. 4207261000033 has only been paid and, as far as other loan accounts are concerned, charge of secured asset continues and liability subsists and as such, the title document cannot be released in favour of the petitioners. It has been also submitted by learned Counsel for the respondent- Canara Bank that the petitioners are deliberately misleading and misinterpreting the orders dated 27.07.2023 and 19.09.2023 passed by the learned DRT and according to him, both the orders nowhere provides that deposit of Rs.70 Lacs would result in full and final settlement of the account or would automatically lead to release of the title document as was being contended by learned counsel for the petitioners in the present writ petition.

15. However, the aforesaid submission made by learned Counsel for the respondent- Canara Bank have been strongly refuted by the learned Counsel for the petitioners who has strenuously submitted that the respondent- Canara Bank initially sanctioned a credit facility of Rs. 70 Lacs, but later on the said account was bifurcated into two accounts, one being OCC Account No. 4207261000033 with amount of Rs.20 Lacs and another being WCTL Account No. 4207746000001 with an amount of Rs. 50 Lacs. Subsequently, according to learned Counsel for the petitioners, the respondent- Canara Bank also sanctioned two FITL Accounts, one bearing Account No.4207710000039 with amount of Rs. 4 Lacs and another one bearing Account No.4207710000039 with amount of Rs.1,53,581/-. He further submitted that at the time of settlement, the respondent- Canara Bank has settled all the accounts as is apparent from the fact that the petitioners had deposited the entire amount of Rs.71,50,000/- in Account No. 4207261000033 in which the sanctioned amount was only Rs. 20 Lacs. He has vehemently submitted that the respondent- Canara Bank is misleading this Court relating to sanction of four loan accounts. In fact, the settlement with the respondent- Canara Bank had taken place for all the

four accounts. In any case, learned Counsel for the petitioners has submitted that if one account of the borrower becomes NPA, then the law provides that all the accounts are to be declared as NPA and whenever the Bank initiates any recovery proceeding against one account, the Bank is bound to initiate proceedings against other NPA accounts also. It has been submitted that the said fact can be also verified from the demand notice issued by the respondent- Canara Bank U/s 13(2) of the SARFAESI Act, 2002, which was a single demand notice for the entire outstanding amount of all the four loan accounts. He further submits that all the accounts were settled by virtue of the order dated 27.07.2023 of the learned DRT and as a matter of record, the respondent- Canara Bank had filed two writ petitions i.e. Writ Under Article 227 No.5154 of 2023 and Writ-C No.9217 of 2023; which were dismissed vide orders dated 11.10.2023 and 19.10.2023 respectively, and no appeal has been filed by the respondent- Canara Bank against the settlement order dated 27.07.2023 and in a way, the said order has already attained finality.

16. Having heard the learned Counsel for the parties and perused the material available on records. At the very outset, the learned Counsel for the Respondent-Bank, while making his oral submission at the bar has stated that after the rejection of their two successive writ petitions interdicting the order(s) of the DRT, the Bank has preferred a statutory Appeal before the DRAT and the same is pending adjudication before the said learned Appellate Tribunal. Although, this Court proposed to dispose of the present writ petition and offered to relegate the parties to the Appellate Tribunal with liberty to the parties to raise all their issues before the Appellate Tribunal including the release of title documents of the mortgaged property, however Mr. Apoorv Dev, learned Counsel appearing for the petitioners has submitted that the relief which has been sought in the present writ petition cannot be decided by the DRT/DRAT and as such in that eventuality has prayed that the present writ petition may be decided on merits by this Court.

17. Keeping in view the aforesaid prayer, we propose to tread on the aforesaid limited aspect and while doing so, are immediately confronted with the decision of the Hon'ble Supreme Court in a celebrated judgment rendered in the case of **United Bank of India Vs. Satyawati Tondon and others, reported in 2010 (8) SCC 110**; wherein the Apex Court after considering the aims and objects of the SARFAESI Act, 2002 has categorically observed that the High Court must insist that before availing remedy under Article 226 of the Constitution of India, a person must exhaust the remedies available under the relevant statute. The observations made in paragraph nos. 43, 44 and 45 read as under:-

"43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

44. *While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.*

45. *It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.*”

18. The aforesaid view of the Hon’ble Supreme Court has been consistently followed in various judgments, including in the landmark judgements in the cases of ***South Indian Bank Ltd. v. Naveen Mathew Philip*, (2023) 17 SCC 311; and *Celir LLP v. Bafna Motors (Mumbai) (P) Ltd.*, (2024) 2 SCC 1 : 2023 SCC OnLine SC 1209. In the *Bafna Motors (supra)*, their Lordships observed thus:**

“101. More than a decade back, this Court had expressed serious concern despite its repeated pronouncements in regard to the High Courts ignoring the availability of statutory remedies under the Rdbfi Act and the Sarfaesi Act and exercise of jurisdiction under Article 226 of the Constitution. Even after, the decision of this Court in Satyawati Tondon [United Bank of India v. Satyawati Tondon, (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260] , it appears that the High Courts have continued to exercise its writ jurisdiction under Article 226 ignoring the statutory remedies under the Rdbfi Act and the Sarfaesi Act.”

19. However, the learned Counsel for the petitioners has sought to argue a finer distinction with the aforesaid judgment of the Apex Court and has tried to highlight that the relief which has been sought by him cannot be granted by the DRT/DRAT as primarily the relief sought is not under the SARFAESI Act, 2002, but under a general law that after settlement of loan, petitioners are entitled for release of title document and in case of delay the respondent- Canara Bank is liable for damages. In order to address the said contention of the learned Counsel for the petitioners, we need to have a first-hand knowledge as to what exactly relief is being sought by the petitioners.

20. Succinctly, the case of the petitioners is that although they have settled the loan and paid the entire amount as per the order dated 27.07.2023 of the DRT, however, the Bank has not released the title-document, which was to be released to him within 15 days of squaring up the loan amount, additionally the compensation has been sought for the said delay in view of the RBI Guidelines. On the other hand, the Respondent-Bank in order to refute the claim of release of title document, has made three fold arguments, the first being the dispute of payment of entire outstanding amount, which according to them

existed for four loan account and not for one loan account, secondly the DRT does not have power to extend the time-limit of payment of settlement amount unilaterally, and thirdly, there is no specific direction of the DRT to handover the title documents of the property to the petitioners.

21. Prima-facie, we do not wish to subscribe to the contention of the Respondent-Canara Bank that the proposed settlement of the petitioners was not for four loan accounts but for one loan account, for the simple reason that the amount which has been paid by the petitioners and has been duly accepted by the Respondent-Bank, appears to be an approximate amount summing up all these four loan account and cannot be countenanced to have been paid for settling one loan account only. No doubt the Respondent-Bank may have an issue relating to the order of DRT, unilaterally extending the time for payment of the total settlement amount and amount of interest payable, as we see that the settlement proposed by the petitioners had been allowed by the DRT, after the auction purchaser had paid 25% of the auction amount. However, this Court does not wish to enter into the realms of the legality or otherwise of the order of the DRT, as we have been informed that these issues are pending in an appeal before the DRAT. In any case, the fact of the matter remains that as on date, there exist at least two controversies between the Bank and the petitioners relating to (i) quantum of interest, and (ii) legality of extension of period of deposit of settlement amount by the DRT. Apparently, these issues have factual implications and are to be decided before a proper forum and then only the title document has to be released, which, according to this Court, is an act of subsequent event after a Bank has issued a NOC or at least have filed some pleadings admitting the settlement. We do not find any such NOC or pleadings, rather a contrary stand has been taken by the respondent- Canara Bank. We are clear in our mind that this Court, while exercising its jurisdiction under Article 226 of the Constitution of India, does not wish to enter into any disputed questions of fact.

22. Having said so, we clarify that this Court is not even commenting on the aforesaid issues and does not wish to also sound that these issues actually exist between the parties, as it is always available to the petitioners to contend that the time was rightly extended by the DRT and the quantum of interest had not only been already decided between the parties but had also been paid by them, so as to make them eligible for return of title documents within the time limit, as stipulated by the RBI Guidelines. Thus, we are of the view that in both the cases, these issues essentially being factual in nature and the DRT/DRAT essentially being the proper forum, cannot be decided by this Court, especially when an Appeal is stated to be pending before the Appellate Tribunal, wherein the very order of the DRT, which is the foundation for seeking relief in the present writ petition has been sought to be challenged by the Bank. □

23. It may be pertinent to mention that the present case is not where NOC has been issued by the respondent- Canara Bank after payment of settlement amount and still the title document has not been handed over to the borrower.

24. We need not hold that the law is clear that once the loan has been settled and NOC granted, the Bank is under a statutory duty to return the title document without any reservation, however, since we see an impending dispute between the parties, we do not wish to lay our hand on the said issue. We are conscious of the fact that the powers conferred upon this Court under Article 226 of the Constitution of India are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved in several decisions. True that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why to entertain a petition filed under Article 226 of the Constitution of India ignoring the fact that the petitioners can avail effective remedy particularly contained in the legislation.

25. Further, we may note that by virtue of Section 17(7) of the SARFAESI Act, 2002 all the provisions of Recovery of Debts and Bankruptcy Act, 1993 (formerly RDBFI Act) has been made applicable to Debts Recovery Tribunal, for disposal of any Application. This Court finds that Section 19 of the R.D.B. Act, 1993 Act relating to application to the Tribunal enumerates various powers vested for administering the procedure adopted by the Tribunal in disposing of the matter filed before it. In this regard, we also note the residuary provisions mentioned in sub-Section 25 of Section 19, inter-alia states as :-

“(25) The Tribunal may made such orders and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.”

26. We do not find any cogent reasons as to why the petitioners did not approach the DRT for release of title documents and rushed to this Court, in case the loan had been fully settled and that too on the direction of the DRT. According to us, the DRT is well equipped and sufficiently empowered to pass directions to the Bank for release of the title documents, in that regard. □□

27. Apparently, the petitioners have approached in writ jurisdiction before this Court, although it has an efficacious alternative remedy available before the DRT. The law in this regard is well settled in catena of judgments, specially in case of **Satyawati Tondon** (supra) and **Bafna Motors** (supra), exposing a proposition that statutory remedy has to be exhausted first instead of filing writ petition. Therefore, we are not inclined to grant any relief in the present writ petition.

28. In view of above, the writ petition is **dismissed** with liberty granted to the petitioners to file an appropriate application(s) before the DRT. In case, if the petitioners file any such application(s), the Tribunal shall decide the same on its own merits, in accordance with law, uninfluenced by any of the observations made by this Court in the present writ petition.

29. There shall be no order as to cost.

(2026) 6 ILRA 189
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 03.06.2026

BEFORE

THE HON'BLE VINOD DIWAKAR, J.

Application U/S 482 No. 6547 of 2025

Rajendra Tyagi & Ors.

...Applicants

Versus

State of U.P. & Anr.

...Opposite Parties

ISSUE FOR CONSIDERATION

Whether the invocation of the U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 against the applicants was legally sustainable, particularly in light of Rule 5(3)(a) of the 2021 Rules requiring a joint meeting with the District Magistrate.

Whether the Commissioner of Police could independently approve the gang chart in Commissionerate districts.
 Whether the proceedings against the applicants amounted to misuse of police powers and systematic failure.

HEADNOTES

Criminal Law – Code of Criminal Procedure, 1973 – Sections 8, 20, 20(1), 20(2), 107–117, 133, 144, 145, 482 - Indian Penal Code, 1860 – Sections 406, 420, 504, 506, – U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 – Sections 2, 2(Kha)(1), 2(b), 2(c), 3, 3(1), 14(1), - U.P. Gangsters and Anti-Social Activities (Prevention) Rules, 2021 – Rule - 5(3)(a), 8(3), 10, 12, 12(5), 16, 16(1), 16(2), 16(3), 17(2), 20(3), - Constitution of India – Article 226 : - Application u/s 482 – Applicants challenged invocation of Gangsters Act and approval of gang chart by Commissioner of Police without District Magistrate's participation - FIR - U.P. Gangsters and Anti-Social Activities (Prevention) Act – FIR alleged offences of fraud, forgery, intimidation, land mafia activities – investigation led to arrests of applicants – bail granted subsequently – charge-sheets filed – trial initiated – connected civil disputes noted – Applicant pleaded misuse of police powers, absence of joint meeting with District Magistrate under Rule 5(3)(a), and lack of material showing habitual criminality – Court finds Commissioner of Police acted without proper compliance, misuse of authority prima facie established, systemic failures in prosecution and accountability highlighted – observations on administrative ethics, rule of law, and selective prosecution – held, - (i) affidavits of Home Department inadequate, show-cause notice issued to Additional Chief Secretary (Home), directions to furnish empirical data, accountability records, and prosecution statistics – (ii) Proceedings under the Gangsters Act did not satisfy statutory ingredients; approval of gang chart without proper supervision was misuse of authority; arrest and custody of applicant no. 3 unjustified – (iii) entire trial proceedings (*Special Sessions Trial No. 3072 of 2023*) were quashed - Section 482 CrPC application allowed - Commissioner of Police found responsible for supervisory failure - but taking a lenient view, he was directed to remain vigilant, circumspect, and adhere strictly to law in future postings.

(Para – 11, 13, 14, 15, 16, 19, 21, 23, 24, 29, 46, 61, 62, 65, 73, 75, 76, 7778, 79)

Application Allowed. (E-11)

CASE LAW CITED

Vinay Kumar Gupta v. State of U.P. and Others, 2025 SCC OnLine All 3026

Virendra Kasaudhan v. State of U.P. - 2023 SCC OnLine All 1431

Narender Kumar v. State of U.P. - 2023 SCC OnLine All 3979

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Gorakhnath Mishra v. State of Uttar Pradesh - SLP(Crl) No. 007453 / 2025; Diary No. 2673 of 2023

LIST OF ACTS

Code of Criminal Procedure, 1973,
U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986,
U.P. Gangsters and Anti-Social Activities (Prevention) Rules, 2021.

LIST OF KEYWORDS

Gang chart approval, Commissionerate system, District Magistrate exclusion, misuse of police powers, systemic failure, accountability, organized crime, preventive detention, judicial directions.

CASE ARISING FROM

FIR No. 0101 of 2023, Police Station Nandgram, Ghaziabad, registered under Sections 2 and 3 of the U.P. Gangsters Act, 1986 against Rajendra Tyagi (gang leader), Deepak Tyagi (gang member), and Lalita Tyagi (homemaker).

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Ronak Chaturvedi.
Counsel for Respondent(s): Shri Anoop Trivedi, Additional Advocate General, assisted by Shri Paritosh Kumar Malviya, A.G.A.-I.

(Delivered by Hon'ble Vinod Diwakar, J.)

1. Heard Shri Ronak Chaturvedi, learned counsel for the applicants, Shri Anoop Trivedi, learned Additional Advocate General assisted by Shri Paritosh Kumar Malviya, learned A.G.A.-I for the State-respondent, and perused the material available on record.

I- BACKGROUND, HISTORY OF PROCEEDINGS, AND ANALYSIS OF ORDERS:

(A) Genesis of the Case and Initial Orders

2. In brief, the prosecution's case is that Rajendra Tyagi, son of Siyanand, presently residing at of House No. A-30E, Nandgram, Police Station Nandgram, Ghaziabad, and permanent resident of Village Kakanda, Police Station Muradnagar, Ghaziabad, is the leader of an organized gang, of which his son Deepak Tyagi is also a member. Both, acting together for their financial, material, and personal gains, are alleged to have committed acts of fraud worth crores of rupees, forgery, and criminal intimidation in the name of providing plots/land in the districts of Ghaziabad

and Jalaun. The offences committed by this gang fall under Chapter XVII of the Indian Penal Code, 1860. It is further alleged that no member of the public has the courage to testify or file a complaint against this gang and that their free movement is not in the interest of the general public. The gang leader and gang members are stated to be not physically disabled. The crimes recorded in the gang chart, comprising previously committed anti-social activities by the gang leader and gang members, fall within the definition of Section 2(Kha)(1) of the U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 (hereinafter referred to as the "the Act of 1986"), and it is accordingly submitted that in order to control the criminal activities of gang leader Rajendra Tyagi and the members of his gang, it is necessary to take action under Section 3(1) of the Act of 1986.

3. On the basis of the aforesaid facts, FIR No. 0101 of 2023 was registered on 12.02.2023 under Sections 2 and 3 of the Act of 1986, at Police Station Nandgram, District Ghaziabad, against (i) Rajendra Tyagi, (ii) Deepak Tyagi, and (iii) Lalita Tyagi, the applicants herein. Applicant No. 1 has been shown as the gang leader, applicant no. 2 is the son of applicant no. 1 and has been shown as a gang member, and applicant No. 3 is the daughter-in-law of applicant no. 1, a homemaker, who has also been shown as a gang member. Aggrieved by the registration of the said FIR, the applicants have filed the present application under Section 482 of the Code of Criminal Procedure, 1973, challenging the invocation of the provisions of the Act of 1986 against them.

4. The case was initially listed on 22.02.2025, when the learned counsel for the applicants raised the specific issue of alleged misuse of police powers, contending that the gang chart pertaining to the applicants was approved by the Commissioner of Police, Ghaziabad, in contravention of Rule 5(3)(a) of the U.P. Gangsters and Anti-Social Activities (Prevention) Rules, 2021 (hereinafter referred to as "the Rules"). The primary grievance was that no joint meeting had been held between the Commissioner of Police and the District Magistrate before according such approval, and that the police authorities proceeded against the applicants without the requisite subjective satisfaction being arrived at in the manner prescribed by law, and procedure established by law. The applicants placed reliance upon *Vinay Kumar Gupta v. State of U.P. and Others*¹.

5. It is further contended that applicant nos. 1 and 2 were arrested on 13.02.2023, the very next day after registration of the FIR, and applicant no. 3 was arrested on 14.02.2023, the second day after registration of the FIR. The applicant no. 3 was granted bail on 03.05.2023 and was subsequently released on 06.05.2023, whereas applicant nos. 1 and 2 were granted bail on 31.05.2023 and were subsequently released on 03.06.2023.

6. It is also contended that the disputes underlying the present case are essentially civil in nature. There existed a pre-existing civil dispute between applicant nos. 1 and 2 and the complainants of both the base case FIRs, and a Memorandum of Undertaking had also been executed between applicant no. 2 and the complainant, as there were commercial transactions between the parties. It is submitted that there is no material on record which could substantiate that the applicants are habitual criminals so as to satisfy the requirements of Section 2(b) and (c) of the Act of 1986, and that neither are the applicants running a gang nor are they gangsters. It is accordingly submitted that the essential ingredients of Section 2(b) and (c) of the Act of 1986 are not satisfied in respect of the applicants.

7. So far as applicant no. 3 is concerned, she is a homemaker and the daughter-in-law of applicant no. 1. There is no allegation against her in either of the charge sheets filed in the base cases, and yet she was compelled to remain in judicial custody for approximately 80 days before release.

8. After hearing the learned counsel for the applicants and the learned Additional Government Advocate, this Court considered it appropriate to give a detailed hearing to the issues raised by the learned counsel for the applicants, as well as other connected issues. Accordingly, this Court passed a series of orders from time to time, a brief description of which is recapitulated hereunder for ready reference.

9. By order dated 03.03.2025, this Court examined the notification dated 19.01.2024 placed on record by the learned A.G.A. and found that it nowhere stated that in Commissionerate districts, there was no requirement for the District Magistrate to participate in a joint meeting with the Commissioner of Police for the purpose of approving the gang chart in compliance with Rule 5(3)(a) of the Rules. The Court observed that in all districts other than those notified as Commissionerates, the gang charts are being approved in a joint meeting between the District Magistrate and the Senior Superintendent of Police, whereas in the Commissionerate system, the approval is being accorded solely by the Commissioner of Police. This practice was found, *prima facie*, to contravene Rule 5(3)(a) of the Rules, as well as prior notifications issued by the State Government from time to time. Accordingly, the Additional Chief Secretary (Home), Lucknow, was directed to file a personal affidavit addressing four specific questions: (i) the relevance and significance of the District Magistrate's participation in the joint meeting in non-Commissionerate districts; (ii) the legal basis for waiving the District Magistrate's participation in Commissionerate districts; (iii) whether the objectives of the Act of 1986 would be effectively achieved by such waiver; and (iv) whether any government notification empowering the Commissioner of Police to approve the gang chart independently or in a joint meeting with subordinate officers has been issued. Simultaneously, the Commissioner of Police, Ghaziabad, was also directed to file a personal affidavit disclosing the basis for approving the gang chart without a joint meeting with the District Magistrate, the details of the joint meeting held, the material available before the approving authority, and the methodology employed to quantify the alleged earnings of the gang.

10. By order dated 11.03.2025, after taking on record the personal affidavits of the Principal Secretary (Home) and the Commissioner of Police, Ghaziabad, the Court heard arguments and examined the government's reliance on the notification dated 26.11.2022 and Section 20(2) of the Cr.P.C. The Court raised specific queries regarding the rationale for excluding the District Magistrate from the joint meeting in Commissionerate areas while mandating such inclusion in non-Commissionerate districts, and also examined the basis for including the District Magistrate's name in Rule 5(3)(a) of the Rules. The Government Advocate sought time to obtain instructions, which was granted, and the matter was adjourned for further arguments.

11. By order dated 12.11.2025, this Court heard the Additional Advocate General at length, who submitted that in the Commissionerate system, the gang chart is forwarded by the concerned Assistant Commissioner of Police (A.C.P.) and sanction therefor is accorded by the Commissioner of Police in a joint meeting with the concerned Deputy Commissioner of Police (D.C.P.). This

procedure was stated to be founded on the Government notification dated 26.11.2022, whereby the Governor, in exercise of powers under Section 20(1) of the Cr.P.C., appointed all Assistant Commissioners of Police, Additional Deputy Commissioners of Police, Additional Commissioners of Police, Joint Commissioners of Police, and Commissioners of Police of the metropolitan areas of Agra, Ghaziabad, and Prayagraj as Executive Magistrates. Further, in exercise of powers under Section 20(2) of the Cr.P.C., the Governor appointed all Additional Commissioners of Police, Joint Commissioners of Police, and Commissioners of Police of the said metropolitan areas as Additional District Magistrates and conferred upon them all powers of the District Magistrate with respect to their respective jurisdictions. The U.P. Gangsters Act, 1986 was noted to be listed at Serial No. 14 of paragraph 3 of the said notification. Notwithstanding this, the learned Additional Advocate General sought further time to obtain instructions on the issues highlighted in the order dated 11.03.2025 (*supra*).

II- DIRECTION ISSUED BY ORDER DATED 27.11.2025:

12. Detailed Analysis of the order dated 27.11.2025 is of significant importance and constitutes the most substantive order in the course of these proceedings. It merits detailed examination for the following reasons:

(A) Examination of the Instructions filed by the Home Department

13. In compliance with the direction contained in the order dated 12.11.2025, the learned Additional Advocate General produced instructions dated 26.11.2025, which were taken on record. Upon examining these instructions, this Court found the justification offered by the Home Department to be largely theoretical and not founded upon empirical data. The Home Department sought to justify the exclusion of the District Magistrate from the mandatory requirement of the joint meeting under Rule 5(3)(a) of the Rules, by placing reliance on Sections 107, 117, 133, 144 and 145 of the Cr.P.C. The instructions further placed reliance on the notification dated 26.11.2022 issued under Section 20(2) of the Cr.P.C., which replaced the SSP and District Magistrate with the Commissioner of Police and the Deputy Commissioner of Police in districts operating under the Commissionerate system, insofar as the provisions of the Act of 1986 and other Acts are concerned.

14. The instructions acknowledged that in the normal administrative framework, the District Magistrate is the head of criminal administration of the district and occupies a pre-eminent position in taking decisions concerning action against organized criminals. However, the position of the Home Department is that under the Commissionerate system, the Police Commissioner, functioning as both the head of criminal administration and the head of Executive Magistracy, supervises preventive proceedings under Sections 107-116, 144 and 145 of the Cr.P.C. The instructions further sought to justify the arrangement by contending that police Commissionerates have predominantly been established in metropolitan cities with populations exceeding ten lakh persons, where the nature and volume of urban crime differ significantly from rural areas. It was submitted that metropolitan centres serve as hubs for sophisticated organized crime, including complex financial fraud, real estate syndicates, and cyber extortion; that minimizing the administrative layer of the District Magistrate ensures rapid dismantlement of fast-moving criminal

networks without bureaucratic latency; and that since urban policing requires technical expertise in areas such as economic offences and digital forensics- capabilities housed within the police force rather than the revenue administration- direct police oversight ensures more effective enforcement against modern gangsterism.

(B) Court's Response to the Home Department's Justification

15. This Court, while making clear that it entertained no confusion regarding the authority of the legislative or executive branch to declare any district as a metropolitan area or to establish a Commissionerate for administrative purposes, firmly stated that its concern lay elsewhere. The Court expressed unequivocal agreement with the "noble objective" of adopting the Commissionerate system as a national best practice- on the lines of Delhi, Mumbai, Bengaluru, and Hyderabad- for achieving zero tolerance towards crime and criminals, however, the affidavit and instructions filed by the Home Department failed to satisfy the requirements of the previous orders, as department did not adequately explain the reasons for departing from the requirement of involving the District Magistrates, particularly with regard to compliance with the provisions of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Rules, 2021.

(C) The Core Judicial Concern: Misuse of Police Powers and Systemic Failure

16. The order dated 27.11.2025 highlights the concern of this Court and thus observed that the central problem was not the establishment of the Commissionerate system per se, but rather the recurring misuse of police powers and the over-application of stringent provisions by the police. However, the Court found that the affidavit and instructions filed by the Home Department failed to satisfy the requirements of the previous orders, as they did not adequately explain the reasons for departing from the requirement of involving the District Magistrates, particularly with regard to compliance with the provisions of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Rules, 2021, against street-level and petty offenders, while actual gangsters and organized crime syndicates- those involved in narcotics trade, financial frauds, land mafia activities, procurement of benami government contracts through sham companies, and white-collar criminals who harbour local offenders for ulterior motives- remained largely unaffected due to an absence of any systemic policy response.

17. The Court took serious note of several systemic failures, including: the absence of any State policy for the expeditious disposal of cases against habitual gangsters; the lack of any mechanism to secure witness production; the absence of a fair and effective witness protection scheme; the failure to ensure timely production of prosecution witnesses before the court; the failure to sensitize District Government Counsels to provide meaningful assistance to the Court; and, most significantly, the absence of any programme to fix accountability on the police beyond old-fashioned departmental inquiries, which were typically initiated only against officers of the rank of Inspector and below.

18. Further, the Court observed that criminal trials against individuals with two or more than two dozen FIRs had made no substantial progress even after two to three decades of the filing of a charge-sheet. Bail conditions were routinely flouted by gangsters and resourceful persons

engaged in organized crime, as the JD (Prosecution) and the DGCs were not effectively discharging their duties to secure their presence before the court on every date. Repetitive adjournment applications filed on behalf of accused persons are frequently allowed, while prosecutors neither objected to such adjournments nor pursued cancellation of bail. No mechanism or State programme existed to regulate the affairs of prosecutors or to fix their accountability.

(D) Judicial Observations on Administrative Ethics and Rule of Law

19. In a passage of considerable significance, this Court observed that even the most well-intentioned and ostensibly noble ideas are liable to miscarry when placed in the hands of poor administrators □ those who are inadequately trained and lacking in institutional competence, yet highly ambitious and adept at maneuvering constitutional authorities. The Court identified a fundamental flaw in traditional bureaucratic ethics: its tendency to treat morality as something external to the day-to-day practice of administration, rather than as an integral component of decision-making. The Court emphasized that discretion conferred on civil servants by the legislature is intended to be exercised strictly in furtherance of the policy and object underlying the statute, and that the policy and purpose of any gazette notification must be ascertained by construing the parent enactment- in this case, the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986. However, the Court found that the affidavit and instructions filed by the Home Department failed to satisfy the requirements of the previous orders, as they did not adequately explain the reasons for departing from the requirement of involving the District Magistrates, particularly with regard to compliance with the provisions of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Rules, 2021- as a whole.

20. The Court further reminded the Home Department that selective investigation and selective prosecution are antithetical to the rule of law and inevitably corrode public trust in governance, and that at the core of a democratic State, lies the premise that every citizen is not only equal before the law but equally entitled to its protection and equally significant in the eyes of a welfare State².

III- DIRECTIONS ISSUED BY THE ORDER DATED 27.11.2025:

21. In view of the foregoing deliberations, this Court issued the following specific directions:

(i) Again an affidavit was directed to be filed by an officer not below the rank of Secretary, Home Department, Government of Uttar Pradesh, with the prior approval of the competent authority. The affidavit was required to contain; (a) empirical data gathered from the districts and/or Commissionerates on the basis of which the Department has arrived at its subjective satisfaction that the exclusion of the District Magistrate from the joint meeting under Rule 5(3)(a) of the Rules was justified and was in the interest of the State and its citizens; (b) details of any data, comparative analysis, or study conducted by the Department to substantiate that the crime rate has decreased in Commissionerate districts subsequent to the introduction of the system, as compared to non-Commissionerate districts; and (c) details of any training programmes imparted to police officers assigned to discharge functions earlier performed by District Magistrates, along with

particulars of any study demonstrating whether the Home Department has successfully achieved its intended objective.

(ii) The Director General of Police (Prosecution) was directed to furnish comprehensive district-wise data for the last ten years in respect of cases under the U.P. Gangsters Act, including: the number of cases registered; the number of charge-sheets filed; the number of convictions secured; and the number of acquittals of charge-sheeted accused persons- with a comparative analysis vis-à-vis non-Commissionerate districts. The report was also required to disclose systemic reforms and policy decisions, if any, taken by the Home Department to improve police working insofar as the approval of the gang chart was concerned.

(iii) The Home Department was further directed to furnish details of: (a) the names and number of officers- SSP/SP/DCP and above in police, and Joint Director (Prosecution) and DGC in the prosecution department- against whom disciplinary or administrative action has been taken during the last ten years for acts of corruption, inefficiency, negligence, procedural lapses, misuse of power, or violation of guidelines in matters pertaining to the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Rules, 2021 or in any ancillary issue; and (b) the nature of such action, including warnings, adverse entries, suspensions, transfers, departmental inquiries, or any other penalties imposed.

22. Copies of the order were directed to be transmitted to the Additional Chief Secretary (Home), the Director General of Police (Prosecution), and the Chief Secretary, Government of Uttar Pradesh.

23. Detailed analysis of the order dated 09.01.2026 clarifies this Court's response to the affidavit filed by the Secretary (Home) in purported compliance with the extensive directions issued by the order dated 27.11.2025 (supra). Upon careful perusal, this Court found that the compliance was wholly inadequate and unsatisfactory, and the order dated 09.01.2026 reflects the Court's deepening concern at the conduct of the Home Department. Following are the further observations of the Court on the supplementary affidavit filed by the Secretary (Home).

(A) Inadequacy of the Affidavit filed by the Secretary (Home)

23.1 This Court in its order dated 09.01.2026, noted again that the affidavit filed by the Secretary (Home) highlighted the purported "noble objective" behind adopting the Commissionerate system- described as a national best practice on the lines of Delhi, Mumbai, Bengaluru, and Hyderabad- with the stated aim of achieving zero tolerance towards crime and criminals, but it failed entirely to address the specific, pointed requirements set out in paragraphs 10 and 11 of the order dated 27.11.2025 (supra) in letter and spirit. The Court made it clear that it has no quarrel with the Commissionerate system as an administrative model, as it had stated earlier; however, the failure to furnish empirical data, comparative crime statistics, training programme details, and accountability records- as specifically directed- rendered the compliance affidavit wholly inadequate.

(B) Judicial Observations on the Conduct of the Home Department

23.2 Upon perusal of the affidavits filed on behalf of the Home Department, this Court observed, prima facie, that the officers concerned has either failed to advert to the orders rendered by this Court or has approached the matter in a lackadaisical manner. This approach, the Court found, seemingly proceeded on the erroneous assumption that the power to issue notifications, being vested in the executive branch, may be exercised without due application of mind, by resorting to unfettered discretion and without examining the consequential effects thereof.

23.3 The Court also reminded the Home Department that courts have consistently reasserted their right to intervene in cases where administrative decisions are irrational, abusive, and arbitrary, and that the judiciary, rather than acting as guarantors of the rule of law by outsourcing this obligation to the executive branch, has an independent duty to uphold it. While the Court refrained from delving into the reasons underlying the conduct of the officers concerned, it unequivocally stated that it could not remain a mute spectator and would not hesitate to exercise the powers vested in it in the interest of the citizens of the State and for upholding the sanctity and authority of the judicial process.

(C) Issuance of Show-Cause Notice to the Additional Chief Secretary (Home)

23.4 In view of the repeated failure of the Home Department to furnish specific and pointed details sought through successive orders, this Court issued a show-cause notice to the Additional Chief Secretary (Home), requiring him to explain the reasons for, and disclose the legal impediments, if any, which has resulted in the Home Department's persistent non-compliance.

IV- DIRECTION REGARDING THE DIRECTOR GENERAL OF POLICE (PROSECUTION):

23.5 The order also noted that compliance with paragraph 10.1 of the order dated 27.11.2025, requiring the Director General of Police (Prosecution) to furnish comprehensive district-wise data under the Gangsters Act for the last ten years, was still pending. Accordingly, the Director General of Police (Prosecution) was granted one week's time to comply with the said direction.

23.6 By order dated 26.02.2026, after hearing arguments of both sides to their conclusion, this Court perused the affidavit dated 10.03.2025 filed by the then Commissioner of Police, Shri Ajay Kumar Mishra, and the affidavit dated 25.02.2026 filed by the incumbent Commissioner of Police, along with the enclosed true copies of the FIRs, charge-sheets, and the dossier pertaining to the accused Rajendra Tyagi and his daughter-in-law Lalita Tyagi. Upon perusal, this Court found, prima facie, that the then Commissioner of Police, Shri Ajay Kumar Mishra, appears to have misused and abused the authority vested in him for initiating proceedings against the applicants under the provisions of the U.P. Gangsters Act, 1986. A fair and reasonable opportunity of hearing was accordingly afforded to Shri Ajay Kumar Mishra to place his response, and the Government Advocate's office was directed to supply scanned copies of both affidavits enabling him to file response to the Court's observations forthwith.

V- SUMMARY OF THE AFFIDAVIT OF THE SECRETARY, HOME DEPARTMENT, GOVERNMENT OF UTTAR PRADESH:

(A) Policy Background and Promulgation of Rules, 2021

24. In view of the State's zero-tolerance policy towards crime and criminals and with the aim of taking effective action against organized criminals under the Act of 1986, the U.P. Gangsters and Anti-Social Activities (Prevention) Rules, 2021 were promulgated vide Notification No. 5203/6 Po-9-2021-31(43)/2013 TC dated 27.12.2021. For strict compliance of these Rules, guidelines have been further issued by the Additional Chief Secretary, Home, vide Letter No. 1208/6-Po-9-22-31(43)/2013 TC dated 18.04.2022, with a direction to strictly follow the Rules, 2021.

(B) Justification for the Commissionerate System

25. The affidavit again reiterated that most major global and Indian metropolitan cities, including Delhi, Mumbai, Bengaluru, and Hyderabad, operate under the Commissionerate system as it is the established "National Best Practice" for urban policing. Reverting to or imposing District Magistrate oversight in these areas would be a retrograde step deviating from this proven national model.

26. The State Government has issued notifications under Section 20 of the Cr.P.C. appointing the Commissioner of Police as Executive Magistrate and conferring upon him all the powers of the District Magistrate under the Cr.P.C., 1973 and 14 other statutes, including the U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986. Consequently, the Commissioner of Police exercises all powers previously held by the District Magistrate, including the power of attachment of property in Police Commissionerate districts. Based on this notification, Rule 5(3)(a) of the Rules provides for a joint meeting between the Commissioner of Police and the Deputy Commissioner of Police instead of the District Magistrate in Commissionerate districts.

27. It is further reiterated that the transition to the Commissionerate system represents a shift towards specialized urban policing and that the integration of DM powers into the office of the Police Commissioner is a constitutionally and legally valid exercise intended to bring precision and accountability to the fight against organized crime. The nature of crime in metropolitan cities like Lucknow, Noida, and Kanpur has evolved beyond traditional local disputes into real estate syndicates, shell companies (benami transactions), and complex cyber-extortion. The expertise required to dismantle such networks- digital forensics, financial auditing, and criminal intelligence- resides exclusively within the specialized wings of the Police Department such as the EOW and Cyber Cell, and not within the Revenue Administration. Hence, oversight by a Police Commissioner ensures that the Gang Chart is vetted by an authority with full technical understanding of modern gangsterism.

28. The affidavit also addresses the issue of accountability. It is submitted that in the traditional dual system, when an organized crime network thrives, the Police blame the Magistracy for lack of approvals while the Magistracy blames the Police for poor investigation. Under the

Commissionerate system, the Police Commissioner is solely accountable for both prevention and prosecution of gangs, creating a "single point of accountability" as sought by the Hon'ble Court in Para 7 of its order. Additionally, the State has institutionalized a "Post-Acquittal Audit" mechanism whereby every acquittal in a Gangsters Act case is reviewed to determine whether it resulted from procedural negligence at the Gang Chart approval stage.

(C) Measures Taken to Prevent Misuse

29. The affidavit details a series of administrative measures taken by the State to prevent misuse of the Act of 1986 and to ensure strict compliance with Rules, 2021.

30. The Rules, 2021 were notified with the specific aim of curbing the possibilities of misuse of the Act of 1986. Further letters were issued by the Additional Director General of Police, Crime, vide Letter No. DG-7 S 14-(09)/2021 dated 25.04.2022, and by the Director General of Police, U.P., vide Letter No. DG 73-14-(09)/2021 dated 02.06.2022. DG Circular No. 06/2023 dated 14.02.2023 was also issued to all Commissioners of Police and Senior Superintendents of Police/Superintendents of Police for compliance of Rules, 2021.

31. When it came to the notice of the Government that the instructions have not been strictly followed and that officers are negligent in preparing gang charts, directions for strict compliance were issued to all Police Commissioners, District Magistrates, and Senior Superintendents of Police/Superintendents of Police vide Government Order No. 3421/Ch-Pu-9-22-31(43)/2013 TC dated 24.07.2023, with a further direction that future negligence would entail personal responsibility of the concerned officers.

32. Thereafter, vide Government Order No. 4705/Chh-Po-9-23-31(43)/2013 TC dated 21.01.2024, the following specific directions were issued to all concerned officers:

(a) Gang charts shall not be approved summarily but only after due discussion in a joint meeting of the District Magistrate/Commissioner of Police and the Senior Superintendent/Superintendent of Police.

(b) Rule 8(3) of the Rules shall necessarily be complied with, requiring specific mention of the latest status of cases, convictions, and related proceedings against gang members.

(c) The Nodal Officer (Additional Superintendent of Police) shall record his satisfaction in clear words under Rule 16(1) of the Rules.

(d) Under Rule 16(2), the Senior Superintendent/Superintendent of Police shall thoroughly analyze the Nodal Officer's recommendation and forward the gang chart with recorded satisfaction to the District Magistrate or Commissioner of Police for approval.

(e) Signatures on gang charts bearing pre-printed rubber stamps are strictly prohibited under Rule 17(2); approval shall be recorded only after proper independent application of mind.

(f) Rule 20(3) shall be strictly complied with; all investigation documents must be examined by the concerned Prosecution Officer, and any illegality or irregularity must be rectified before forwarding to the concerned Police Officer.

(D) Empirical Data Supporting the Commissionerate System

33. The affidavit places on record empirical data from the period 25.03.2022 to 30.11.2025 to demonstrate the superior efficiency of the Commissionerate system in targeting organized crime.

34. In respect of enforcement action, the Commissionerate system recorded action against an average of 93 mafia members as against only 36 in non-Commissionerate districts, reflecting 258% higher enforcement in Commissionerate districts. In respect of asset seizure efficiency, the average value of property seized in Commissionerate districts was approximately Rs. 1,024,991,730/- which is 61% higher than the non-Commissionerate district average of Rs. 637,425,007/-.

35. A comparative table of gang chart approvals and court objections further demonstrates the superiority of the Commissionerate system. Out of 1,685 registered cases in Commissionerate districts, the Hon'ble Courts raised objections in only 24 cases, a rate of approximately 1.42 per 100 FIRs, as compared to 221 objections in 10,832 cases in non-Commissionerate districts, a rate of approximately 2.04 per 100 FIRs. This data demonstrates that greater due diligence is exercised in the Commissionerate system at the gang chart approval stage.

36. Comparative crime data for the period 2017-2020 (pre-Commissionerate) and 2021-2024 (post-Commissionerate) also shows a significant quantitative decrease in major crimes in the concerned Commissionerate districts. Furthermore, Police Commissionerates have demonstrated a more focused approach towards cyber-related crimes, as reflected in the significant increase in FIR registrations under the IT Act, indicating greater awareness and enforcement capacity.

(E) Training of Police Officers as Executive Magistrates

37. To ensure that police officers effectively discharge the functions previously handled by District Magistrates, extensive training has been imparted across all Commissionerate districts. The Lucknow Commissionerate conducted 162 workshops and programmes training officers from ACP to Commissioner rank on the Executive Magistrate's powers under the Cr.P.C., 1973, the Bharatiya Nagarik Suraksha Sanhita, 2023, and the Gangsters Act. Gautam Buddha Nagar organised 119 workshops focusing on legal provisions and the 14 specific Acts mentioned in the Commissionerate notification. Agra held specific training sessions on multiple dates between 10.12.2022 and 18.01.2025, and Prayagraj conducted workshops led by the Joint Director of Prosecution to provide legal and procedural training to gazetted officers.

38. A five-day special online orientation programme was also organized by the Judicial Training and Research Institute, U.P., Lucknow, from 22 October 2024 to 28 October 2024 for District Magistrates, Police Commissioners, Senior Superintendents of Police, and Superintendents of Police across the State. The programme covered preparation of gang charts, rules and procedures

in the light of case laws, attachment and release of property under the Act, 1986, and open house sessions. In this programme, the officers were also made aware of the instructions issued by the Hon'ble High Court regarding preparation of gang charts.

39. Various judgments of the Hon'ble High Court were referred to during the programme, including; *(i) Virendra Kasaudhan v. State of U.P.3*, *(ii) Narender Kumar v. State of U.P.4*, *(iii) Jaydeep Nishad v. State of U.P.5*, and six other reported judgments of the High Court.

40. The key points emphasized during the programme were that competent authorities must clearly record their satisfaction in writing under Rule 16 and not merely by affixing a pre-printed typed satisfaction; that such satisfaction must reflect application of mind on both the Gang Chart and all attached documents; that the date of filing of the charge sheet must be mentioned in Column 6 of the gang chart; that minutes of the joint meeting under Rule 5(3)(a) of the Rules must be maintained in a register; that competent authorities must date their signatures; that the approving authority must verify proper recording of satisfaction by the Nodal Officer and District Police Head; and that before invoking the Act, the competent authorities must record their satisfaction that the accused falls within the definition of "gangster" under Section 2(c) of the Act of 1986, with such satisfaction recorded in the minutes of the joint meeting.

(F) Disciplinary and Administrative Actions Taken

41. The affidavit discloses actions taken during the last 10 years against errant officials of the Police Department and the Prosecution Department under the U.P. Gangsters Act.

42. In the Police Department, Shri Anand Dev, Retd. IPS (2006), was suspended on 12.11.2020 following the killing of eight police personnel by the Vikas Dubey gang for allegedly providing protection to the accused; departmental proceedings were concluded on 11.05.2023 with a formal caution, besides him departmental proceedings have been commenced against three other Indian Police Services Officers for different reasons, including lack of supervision, and involvements of activities not commensurate with the office of SSP.

43. In the Prosecution Department, a Senior Prosecution Officer in Barabanki, faced departmental proceedings for indifference and negligence in the discharge of prosecution duties in a Gangsters Act case. Two Senior Prosecution Officers of Gorakhpur were found prima- facie guilty of illegal gratification (bribery) and were suspended; their departmental proceedings are currently in progress. A Joint Director (Prosecution) in Baghpat received a formal warning for the entry of false information in a Gang Chart and a second warning for procedural delays in submitting Gang Charts for legal opinion.

(G) Constitutional Validity and Further Government Orders

44. The affidavit raises a constitutional argument, submitting that the Hon'ble Supreme Court has historically recognized the legislature's wisdom in deciding the best administrative structure for a given area. Once a district is declared a Metropolitan Area, the vesting of DM powers in the Commissioner of Police is a statutory consequence of the Cr.P.C., and the Court's

interference with the "Joint Meeting" requirement may infringe upon the executive's policy-making domain.

45. Further detailed guidelines were issued vide Office Memorandum No.4080/Six-Pu-9-2024-1842633 dated 24.09.2024, and a comprehensive checklist of 29 points along with instructions for strict action against negligent officers was issued vide Office Memorandum No. 4619/6-50-9-2024-1867437 dated 02.12.2024.

VI- SUMMARY OF THE AFFIDAVIT OF SHRI AJAY MISHRA, INSPECTOR GENERAL OF POLICE, PRAYAGRAJ RANGE:

46. The affidavit filed by the Inspector General of Police, Prayagraj Range, records that he had earlier filed an affidavit dated 07.03.2025 before this Court in his capacity as Commissioner of Police, Ghaziabad. The present affidavit relates to the gang chart approved by him in Case Crime No. 101 of 2023, under Section 2/3 of the Act of 1986, registered at Police Station Nandgram, District Ghaziabad. At the outset, the deponent expressed his unshakable faith in the rule of law and unconditional commitment to it under all circumstances.

47. And further records that, while exercising his legal powers as Commissioner of Police, Ghaziabad, applied his independent mind on the basis of all facts and evidence available on record and approved the gang chart after due discussion with the Deputy Commissioner of Police, City Zone Ghaziabad, in a joint meeting held as per Sub-Rule 3 of Rule 5 of the Rules.

48. To initiate proceedings under the Act, the In-charge Inspector of Police Station Nandgram, District Ghaziabad, prepared a gang chart detailing the criminal activities of the gang. The applicant Rajendra Tyagi, his son Deepak Tyagi and his daughter-in-law Lalita Tyagi are stated to be members of the gang who were indulging in anti-social activities with the object of disturbing public order and gaining undue temporal, pecuniary, material, or other advantage for themselves. Criminal cases were lodged against them for offences punishable under Chapters XVII and XXII of the Indian Penal Code, 1860. They are alleged to be gangsters who abet or assist in the gang's activities as defined under clause (b) of Section 2 of the Act of 1986.

49. The gang chart rests on two base cases (i) Case Crime No. 912 of 2022- registered under Sections 406 and 506 of the IPC at Police Station Nandgram, District Ghaziabad. As per the FIR dated 02.09.2022, lodged by informant Pankaj Tyagi, the accused applicants took money from the informant and his business partners on the assurance of returning it, subsequently failed to do so, and with dishonest intent induced the informant into executing a registered agreement of sale in respect of their property, but never executed the sale deed. During the investigation, Section 420 IPC was also added, (ii) Case Crime No. 703 of 2021- registered under Sections 406, 504, and 506 of the IPC at Police Station Chandpur, District Bijnor. In this case, the accused induced the informant and accrued money from him; when pressurised, they agreed to pay Rs. 32 lakhs within 45 days but failed to do so, resulting in the aforesaid FIR. A settlement document between the informant and Deepak Tyagi, the other gang member, establishing the transaction of movable property, was also collected during the investigation, and the charge sheet was filed under Sections 406, 504, and 506 IPC.

50. The officer has perused the copies of the FIRs and charge sheets relating to the base cases, along with the gang chart, as required under Rule 10 of the Rules. The officer has also examined the current status of the trial of the base cases and the proceedings initiated under Section 14(1) of the Act of 1986. Further, the list of criminal activities of the gang leader and members, prepared by the SHO in Form No. 3 and annexed to the dossier, has been scrutinized. The particulars of the offences committed for pecuniary, materialistic, and temporal gains have been thoroughly verified and matched with the Case Diary records in accordance with the procedure prescribed under Rule 12 of the Rules, 2021.

51. The gang chart passed through the following chain of approval, with each officer independently applying his mind at every stage:

51.1 The SHO, after thoroughly matching and confirming all forms, forwarded the gang chart to the Assistant Commissioner of Police (ACP), Nandgram, with a noting that the applicants were involved in fraud and forgery worth crores of rupees under the garb of providing plots/land in District Ghaziabad, and that their criminal activities fall under Section 2(b) of the Act, 1986.

51.2 The ACP, after ensuring the correctness and reliability of the entries and facts as required under Rule 12(5) of the Rules, 2021, forwarded the gang chart to the Additional Deputy Commissioner of Police (Crime)/Nodal Officer for his perusal and independent application of mind.

51.3 The Nodal Officer, after independently applying his mind and being satisfied that there was just and satisfactory basis to proceed further, forwarded the gang chart with his approval as per Rule 16(1) of the Rules, 2021.

51.4 The Deputy Commissioner of Police (DCP), City District Ghaziabad, upon receiving the gang chart with the Nodal Officer's clear recommendation, thoroughly analyzed it. Only after confirming that all statutory formalities had been fulfilled and that there existed a legal basis for action, did the DCP forward the gang chart to the Commissioner of Police, Ghaziabad, after applying his independent mind as per Rule 16(2) of the Rules, 2021.

51.5 Finally, the Commissioner of Police, after thoroughly perusing all facts and satisfying himself that the basis for action existed, approved the gang chart after applying his independent mind in a joint discussion with the DCP concerned, in accordance with Rule 16(3) of the Rules, 2021.

VII- PROCEEDINGS ON SHOW CAUSE NOTICE TO ACS (HOME):

52. Aggrieved by the order dated 09.01.2026, whereby a show cause notice was issued to the ACS (Home), requiring him to explain the reasons and disclose the legal impediments, if any, for the failure to furnish the specific and pointed details, sought by this Court, preferred an SLP (Crl.) before the Supreme Court. The Supreme Court vide order dated 03.02.2026 disposed of the SLP (Crl.) Nos. 1714-1715/2026 by observing that in event the authorities fail to furnish the requisite details, as sought by the High Court, it is the exclusive prerogative of the High Court to

proceed to decide the main case, including the legality of the notification dated 26.11.2022 and permitted the applicant authorities to file one more personal affidavit, if so advised, within a period of one week from date of the order, and disposed of the SLP (Crl.) (supra) by keeping the para-9 of the impugned order dated 09.01.2026 in abeyance. In effect, the requirement of filing reply to the show cause notice was dispensed with.

VIII- SUBMISSIONS ON BEHALF OF ADDITIONAL ADVOCATE GENERAL:

53. Shri Manish Goel, learned Additional Advocate General assisted by Shri Roopak Chaubey, learned AGA-I drew attention to Section 20 of the Code of Criminal Procedure, 1973, to establish that appointment of Executive Magistrates and the District Magistrate is a matter of executive discretion vested solely in the State Government and is not subject to judicial interference in the absence of a challenge to the relevant notification or enactment.

54. He has further placed reliance upon the notification dated 26.11.2022, whereby the Assistant Commissioner of Police, Additional Deputy Commissioner of Police, Deputy Commissioner of Police, Additional Commissioner of Police, Joint Commissioner of Police, and Commissioner of Police of the metropolitan area of Ghaziabad have been appointed as Executive Magistrates. Further, all Additional Commissioners of Police, Joint Commissioners of Police, and the Commissioner of Police have been appointed as Additional District Magistrate for Ghaziabad and have been conferred the powers of the District Magistrate under the Code of Criminal Procedure in respect of 14 enactments as mentioned in the notification.

55. He next submitted that in the present case, neither a challenge has been laid to the notification dated 26.11.2022 nor has the validity of Section 20 of the Cr.P.C. been put to challenge. The law presumes that every notification is a valid piece of law and that the provisions of an enactment are duly valid unless and until declared to be ultra vires Part III of the Constitution of India or ultra vires the competence of the concerned Legislature. In the absence of such a challenge, the legislative wisdom cannot be put to question by the applicant. Dealing with Section 20 of the Cr.P.C., categorical pronouncements have been delivered by the Supreme Court holding that the Court cannot enlarge the scope of the legislation or its intention when the language of the statute is plain and unambiguous. The Court should avoid a construction which would reduce the legislation to futility, and every statute is to be interpreted without any violence to its language.

56. The learned Additional Advocate General relied upon; *(i) A.N. Roy, Commissioner of Police v. Suresh Sham Singh*⁶, *(ii) State of U.P. v. Kaushailiya*⁷, *(iii) Balamurugan v. State rep. by the Inspector of Police (Law and Order) and others*⁸, *(iv) Devi v. Executive Magistrate-cum-Deputy Commissioner of Police and another*⁹.

57. The State submits that the District Magistrate is not a persona designata. This position has been settled by various pronouncements of the Supreme Court, this Court, and different High Courts across the country. The Commissioner of Police for the purpose of certain enactments, who has been given the power of a District Magistrate by virtue of Section 20 of the Cr.P.C., will be competent authority for the purposes of such enactments inasmuch as the power vests in the Governor to issue notification in the name of the State Government, conferring such powers upon

the Commissioner. Therefore, a Commissioner who is to discharge duties by virtue of Section 20 Cr.P.C. will hold good as a District Magistrate for the purposes of the U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986. This position was long ago settled by a Constitution Bench of the Supreme Court in *(i) Central Talkies Ltd. v. Dwarka Prasad*¹⁰, *(ii) LIC v. Nandini J. Shah*¹¹, *(iii) Radha Kishan Yadav v. State of U.P. and others*¹², and *(iv) Babu Lal Jain v. District Judge, Bikaner*¹³.

58. He next submits that the Commissioner of Police exercises the powers of the District Magistrate and holds the joint meeting with the Deputy Commissioner of Police of the concerned Zone. There is no illegality in the same. The inclusion or exclusion and the classification is based on relevant criteria, inasmuch as Section 8 of the Cr.P.C. provides for the declaration of a metropolitan area, and once a metropolitan area is declared, there is a valid classification for invoking Section 20 of the Cr.P.C. There thus exists a valid basis for excluding the District Magistrate of the district in metropolitan areas for the purposes of the U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 and the other 13 Acts. The wisdom of the State Government in this regard is not open for review in a petition under Section 482 Cr.P.C. and can only be reviewed in judicial review proceedings under Article 226 of the Constitution of India, by laying a challenge to the notification as well as to Sections 8 and 20 of the Cr.P.C.

IX- FINDINGS AND OBSERVATIONS OF THE COURT ON THE BASIS OF MATERIAL ON RECORD AND ARGUMENTS ADVANCED:

59. On the last date of hearing, Shri Anoop Trivedi, learned Additional Advocate General, assisted by Shri Paritosh Malviya, learned A.G.A.-I, appeared and submitted that the constitutional validity of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 and the Rules framed thereunder is under challenge before a three-Judge Bench of the Supreme Court in *Rameez Nemat and Another v. State of Uttar Pradesh and Others*¹⁴, *Irfan Solanki v. State of Uttar Pradesh*¹⁵, and other connected matters. He further submitted that the Supreme Court has taken cognizance of all issues connected therewith and, therefore, this Court may refrain from undertaking an examination of the legality of the Government Order dated 26.11.2022. According to him, the issues raised in the present petition, as well as those that have emerged during the course of the proceedings, may appropriately be decided after the Supreme Court finally adjudicates upon the validity of the Gangsters Act.

60. However, the 3-judge Bench of the Supreme Court has granted liberty to this Court to examine and decide the legality of the notification dated 26.11.2022. Accordingly, this Court, in its wisdom, may undertake such examination. Nevertheless, since the larger issues concerning the constitutional validity of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986, and the Rules framed thereunder are presently under consideration before the Supreme Court, the outcome thereof is likely to have a direct bearing on the matters involved in the present petition. Therefore, this Court deems it appropriate to refrain from rendering a final determination on the issues raised in the present petition, but there are certain issues which engaged the attention of the Court during the court proceedings and needs deliberation in the interest of the State and Public Policy.□

61. Uttar Pradesh, by virtue of its demographic magnitude and political significance, has historically been a crucible of political hegemony, driven by the feudal mindset of politicians and bureaucrats. It has long reduced constitutional governance to an instrument of personal dominion rather than public service. The administrative machinery of the State has, over successive regimes, been susceptible to deep political penetration. This court has no hesitation in observing that transfers, postings, and promotions of officers have frequently been instruments of

political patronage rather than merit-based governance, barring a few. Officers perceived as loyalists are rewarded with preferred postings- urban Commissionerates, lucrative districts- while those demonstrating independence are transferred punitively to inconsequential assignments, a well-known fact.

62. A systemic and deeply entrenched culture has emerged wherein a considerable section of the officer cadre treats the rule of law not as a constitutional obligation but as an operational inconvenience. Arrests are effected without due process, many times FIRs are registered or suppressed with ulterior motives, and preventive detention provisions are invoked arbitrarily, at the whims of officers. The procedural safeguards under the Code of Criminal Procedure, and now the Bharatiya Nagarik Suraksha Sanhita, are routinely bypassed. Judicial orders are complied with in form but defeated in substance.

63. The vertical loyalty of officers runs not toward the Constitution but toward the ruling dispensation. Field officers, acutely conscious of the transfer-posting economy, calibrate their conduct to satisfy political superiors. Encounter killings, selective crackdowns, and targeted use of the Gangsters Act against inconvenient individuals have periodically attracted judicial notice. The High Court has, on numerous occasions, deprecated this tendency and reminded officers that their posts are constitutional in character and must not be reduced to instruments of individual convenience.

64. It is apposite to recall that the police officer, who was entrusted with the supervision of the entire operation in the Bikru massacre- wherein a gangster and his associates ambushed a police team that had arrived to effect his arrest, brutally killing eight policemen, including a Deputy Superintendent of Police- was, upon conclusion of the departmental enquiry, visited with nothing more than a "formal caution". This Court finds it difficult to reconcile such a disproportionately lenient outcome with the gravity of the supervisory failure involved, and it is precisely this culture of institutional impunity that emboldens those in authority to remain unaccountable, perpetuating the feudal and politically patronised administrative ecosystem that this Court has adverted to hereinabove.

65. With deep constitutional concern, this Court concludes that the Home Secretary, as the senior-most bureaucratic authority in the Home Department, occupies a pivotal position in this ecosystem. Rather than functioning as an independent constitutional authority charged with implementing the government's vision, policies, and programmes through impartial executive action. Certain officers who rose to the post of Home Secretary have, in practice, served as conduits for self-serving interests. Recommendations on postings, approvals of departmental proceedings, and responses to court proceedings have, in such instances, reflected considerations driven by personal or extrinsic calculations rather than dispassionate and constitutionally informed administrative judgment. This fundamentally compromises the institutional integrity that the position demands.

66. It is within this precise context that this Court's observation- that the Home Department must independently evaluate the suitability and operational effectiveness of its officers- carries profound constitutional significance. It is a solemn judicial reminder that constitutional governance cannot be held hostage to individual expediency or an individual's convenience, and that the State apparatus must remain answerable to the law and to the Constitution, and not to any ruling establishment.

X- FINDINGS ON THE MERITS OF THE PRESENT CASE UPON CONSIDERATION OF RECORD AND SUBMISSIONS:

67. On the merits of the present case, it is established that the proceedings under the Gangsters Act have been invoked on the basis of two FIRs: (i) FIR No. 912 of 2022, registered under Sections 406 and 506 of the Indian Penal Code at P.S. Nandgram, District Ghaziabad, pursuant to the FIR dated 02.09.2022 lodged by informant Pankaj Tyagi; and (ii) FIR No. 703 of 2021, registered under Sections 406, 504, and 506 of the Indian Penal Code at P.S. Chandpur, District Bijnor, lodged by informant Sapna Agarwal.

68. In FIR No.912 of 2022 (supra), there are two accused- Rajendra Tyagi and Deepak Tyagi, whereas in FIR No.703 of 2021 (supra), there are four accused- Deepak Tyagi, Dinesh alias Babli Tyagi, Rajendra Tyagi and Lalita Tyagi.

69. Admittedly, both FIRs pertain to financial transactions and payment of money in connection with the purchase of land, and the accused also issued certain cheques in favour of the complainant. Accused Rajendra Tyagi, Deepak Tyagi, and Lalita Tyagi are family members. Lalita Tyagi is the wife of Deepak Tyagi, who was aged about 35 years at the time of his arrest. On perusal of the entire charge-sheet, not a single averment has been made particularly against accused Lalita Tyagi, or cumulatively against the other two accused, which could satisfy the ingredients of Section 2 of the Gangsters Act. The accused may have committed offences of cheating and forgery; however, the same does not amount to, and cannot be construed as, running an organised gang.

70. The activities and the material placed on record do not satisfy the ingredients of Section 2(b) of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986. There is no material on record which could establish the use of violence, intimidation, coercion, or any other means with the object of disturbing public order or of gaining any undue temporal or pecuniary advantage.

71. This Court, vide order dated 03.03.2025, directed the Commissioner of Police, Ghaziabad, to place on record the material available with the Commissioner of Police and the Deputy Commissioner of Police before approving the gang-chart, and the methodology adopted to quantify the alleged earnings of the gang. No such material has been produced before this Court, except bald assertions. On the basis of mere assertions, the provisions of the Gangsters Act cannot be invoked.

72. The record suggest, the incumbent Commissioner of Police has not followed the directions issued by the Supreme Court in **Gorakhnath Mishra v. State of Uttar Pradesh**¹⁶, and this Court in **Vinay Kumar Gupta (supra)** while approving the gang-chart. The guidelines issued vide Office Memorandum No. 4080/Six-Pu-9-2024-1842633 dated 24.09.2024 has also not been adhered to, the charge-sheet suggests.

73. There is yet another aspect of the present case that warrants serious consideration, namely, the arrest of co-accused Lalita Tyagi- a young lady aged about 35 years, a homemaker- on the day immediately following the registration of the impugned FIR. No material whatsoever has been placed on record to justify or sustain her arrest, and on the face of it, the said arrest was patently illegal, arbitrary, and wholly unwarranted in law. The Investigating Officer exercised the power of arrest in a manifestly unjustified and high-handed manner, betraying a complete non-application of mind to the settled legal principles governing the necessity of arrest.

74. The Commissioner of Police has failed to supervise the investigation; in such nature of cases, all directions are flowed from the office of the Commissioner of Police. Government Order No. 3421/Ch-Pu-9-22-31(43)/2013 TC dated 24.07.2023, issued by the Additional Chief Secretary (Home), records that the officer concerned shall be personally responsible for dereliction of duty and misuse of authority. Office Memorandum No.

4619/6-50-9-2024-1867437 dated 02.12.2024 records a comprehensive checklist of 29 points, along with instructions for strict action against negligent officers.

75. It has been argued that the officer whose conduct has been called into question in the present case is known for a volatile and unpredictable temperament, and that he frequently reacts impulsively in professional situations without due application of mind. It has further been submitted that he has consistently displayed a maverick and arbitrary approach to administration, routinely disregarding established norms, procedures, and the rule of law, while exhibiting a marked tendency to abuse the authority vested in him by virtue of his office. It was further submitted that during his posting as Commissioner of Police, Ghaziabad, his conduct has, on several occasions, borne the unmistakable character of vindictiveness and high-handedness, which has raised grave concerns regarding his fairness, objectivity, and fitness for positions of responsibility that demand balanced judgment, institutional restraint, and scrupulous adherence to law.

76. However, this Court is of the considered view that it cannot examine or assess the behavioural attributes and officer-like qualities of an individual officer unless and until some concrete and credible material is placed before it. Moreover, judicial wisdom and institutional propriety restrain this Court from taking cognizance of, or placing reliance upon, unsubstantiated submissions advanced at the Bar. It is, therefore, for the Home Department, Government of Uttar Pradesh, to independently consider and evaluate the suitability and operational effectiveness of its officers insofar as field postings are concerned.

XI- ORDER:

77. In view of the aforesaid deliberations, the entire proceedings of Special Sessions Trial No. 3072 of 2023, titled State v. Rajendra Tyagi and Others, arising out of Case Crime No. 101 of 2023 under Sections 2/3 of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986, registered at P.S. Nandgram, District Ghaziabad, and pending before the learned Additional Sessions Judge, Ghaziabad, are hereby quashed. The application is, accordingly, **allowed**.

78. Shri Ajay Kumar Mishra, the then Commissioner of Police, Ghaziabad, failed to exercise supervisory control over his subordinates, and the actions in question occurred under his authority and watch as Commissioner of Police, Ghaziabad. On account of the approval of proceedings under the Gangsters Act, 1986, a young lady aged about 35 years remained in judicial custody for approximately 80 days. The case neither satisfies the ingredients of the Act of 1986 nor fulfils the parameters justifying arrest.

79. Taking a lenient view and having regard to the future career prospects of the officer, this Court considers it just and appropriate to direct Shri Ajay Kumar Mishra, Inspector General of Police, Prayagraj, to remain vigilant and circumspect in the discharge of his official functions, befitting the responsibilities of a position that demands balanced judgment, institutional restraint, and scrupulous adherence to law.

80. This Court places on record its appreciation for the valuable assistance rendered by Shri Roopak Chaubey, learned A.G.A-I, and Shri Paritosh Malviya, learned A.G.A.-I.

(2026) 6 ILRA 209
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 08.06.2026

BEFORE

THE HON'BLE RAJEEV BHARTI, J.

Criminal Misc. Bail Application No. 1908 of 2026

Varun Lat (Lath)

...Applicant

Versus

State of U.P.

...Opposite Parties

ISSUE FOR CONSIDERATION

Whether the applicant, a licensed wholesale dealer in medicines, can be prosecuted under the NDPS Act for purchase and sale of codeine-based cough syrup (Codeiva), or whether the case falls exclusively under the Drugs and Cosmetics Act, 1940.

HEADNOTES

Criminal Law - Code of Criminal Procedure, 1973 - Section 439 – Narcotic Drugs and Psychotropic Substances Act, 1985 - Sections 2, 8, 9, 21, 21(1)(d), 29, 37, 42, 80 - Drugs and Cosmetics Rules, 1945 – Rule 61, 61(1), 61(2), 65 - NDPS Rules, 1985 – Rule 52-A(3), 52-M :-

Bail application – seeking bail – FIR under Sections 8/21/29 NDPS Act – offence relating to diversion of codeine-based cough syrup – investigation revealed purchase of 14,040 bottles from licensed firm – affidavit under pressure – no recovery from applicant – applicant pleaded valid Licence, drug falls within Schedule H1, concentration only 0.2%, NDPS Act not attracted – non-compliance of Section 42 – grounds of arrest not furnished – Court finds large-scale procurement and distribution - commercial quantity involved - Section 37 rigours applicable - NDPS Act provisions in addition to Drugs and Cosmetics Act – mere Licence does not confer immunity, diversion for non-medicinal use indicated – Court held, applicant failed to satisfy twin conditions of Section 37 – bail rejected.

(Para – 45, 46, 48, 49, 50)

Bail Application Rejected. (E-11)

CASE LAW CITED

Karnal Singh v. State of Haryana (2009) 8 SCC 539
 State of Rajasthan v. Jag Raj Singh @ Hansa (2016) 11 SCC 687
 Vibhor Rana v. Union of India 2021 SCC OnLine All 908
 Ashok Kumar v. Union of India 2015 SCC 89 824
 Vihaan Kumar v. State of Haryana 2015 SCC OnLine SC 269
 Mihir Rajesh Shah v. State of Maharashtra (2026) 1 SCC 500
 Md. Sahabuddin v. State of Assam MANU/SC/0836/2012
 Hira Singh v. State of West Bengal SLP (Crl.) No.12419/2024
 Union of India v. Sanjeev V. Deshpande (2014) 13 SCC 1
 Mohd. Ahsan v. Customs 2022 SCC OnLine Del 2910
 Azhar Javad Rather v. UT of J&K AIR OnLine 2023 J&K 270
 Directorate of Revenue Intelligence v. Raj Kumar Arora 2025 SCC OnLine SC 819
 State of Punjab v. Rakesh Kumar (2019) 2 SCC 466

LIST OF ACTS

Narcotic Drugs and Psychotropic Substances Act, 1985,
Drugs and Cosmetics Act, 1940,
Drugs and Cosmetics Rules, 1945.

LIST OF KEYWORDS

Bail application, NDPS Act, Bail, Codeine cough syrup, Schedule H1, Commercial quantity, Drug licence, Section 37 rigours, Section 42 non-compliance, Grounds of arrest, Therapeutic practice, Diversion, Smuggling, Drugs & Cosmetics Act.

CASE ARISING FROM

Case Crime No. 244 of 2025, Police Station Tulsipur, District Balrampur, under Sections 8/21/29 NDPS Act.

APPEARANCE OF PARTIES

Counsel for Appellant(s): - Shri Ayodhya Prasad Mishra, Rituraj Mishra, Shesh Ram Verma,
Counsel for Respondent(s): - Sri Anoop Trivedi, AAG; Shri Alok Tiwari, A.G.A.

(Delivered by Hon'ble Rajeev Bharti, J.)

1. Heard Shri Ayodhya Prasad Mishra, learned counsel for the applicant, Shri Anoop Trivedi, learned Additional Advocate General who has appeared through Video Conferencing, assisted by Shri Alok Tiwari, learned AGA, and perused the record.

2. This is first bail application filed on behalf of the applicant who is involved in Case Crime No. 244 of 2025, under Sections 8/21/29 of the N.D.P.S. Act, Police Station- Tulsipur, District Balrampur.

3. The prosecution case in brief is that the informant Shri Sumit Kumar Verma, Drug Inspector submitted a written report to the SHO, Police Station Tulsipur stating that he is posted as Drug Inspector in District Gonda and is also holding additional charge of District Balrampur. Pursuant to the directions received from the Headquarter of Food Safety and Drug Administration, UP, Lucknow, Shri Shrikant Gupta, Drug Inspector inspected M/s Ashok Medical Store, Tulsipur, Balrampur on 16.10.2025. During the inspection, the proprietor of the firm Shri Ashok Kumar Lath was present and produced drug sale license bearing No. UP 4720800175 and UP 4721800175, which were valid up to 31.12.2026. During the inspection, he was required to produce purchase and sale invoices relating to □codeine-based medicine, Codeiva 100 ml and Proxiwim Spas capsules□ for the periods from 01.04.2024 to 31.03.2025 and from 01.04.2025 to 11.10.2025, as per the list supplied by the Headquarters. However, the same were not produced at the spot.

4. Consequently, he was directed to furnish the said invoices, considering the deficiencies found during inspection. The purchase and sale operations of the firm were suspended under Section 21(1)(d) of the Drugs and Cosmetics Act, 1940 until further orders. Thereafter, Shri Ashok Kumar produced certain purchase invoices relating to the aforesaid medicines.

5. Upon scrutiny of the purchase and sale records, it was found that the complete details relating to procurement and disposal of Codeiva cough syrup 100 ml and Proxiwim Spas capsules had not been furnished.

6. It is further submitted that not only above, the prosecution has tried to implicate the applicant in the present case on the basis of some affidavit taken under pressure from the applicant stating therein that he purchased some of cough syrup from M/s. Ashok Medical Store situated in Nai Bazar, Tulsipur, District- Balrampur and without providing any sale bill to the drug inspector. It has been presumed that the cough syrup purchased by applicant firm was diverted for other work than medicinal purposes assuming that he is guilty of the offence as provided under NDPS Act, that's why he has been sent to jail in the present case only with the presumption suspicion and imagination that the same was sold to the person other than medicinal purposes which was absolutely false, incorrect and erroneous presumption of the prosecution of the applicant.

7. It is also significant to mention here that the applicant is running the business of whole sale medical store of drug medicines in the name and style of M/s. Shyam Pharma situated in Purani Bazar, Tulsipur, District - Balrampur specified in Schedule C and C(1) excluding those specified in Schedule-X through Form 21-B and through Form 20-B the drug medicines excluding specified in the schedules C, C (1) and X for its sell, stock (or offer), or offering for sale, or distribute by whole sale under the drug licence vide No. UP04720B000197 as well as Licence No. UP04721B000197 dated 13.03.2020 granted by the drug licencing authority under Rule 61 (1) and (2) through Form 20-B and Form 21-B of the Drug and Cosmetics Rules, 1945 with the conditions stipulated under Rule 65 of Rules, 1945.

8. During inspection, the proprietor of the firm could not produce the sale bill of alleged drug medicine CODIEVA cough syrup 100 ml, in question.

9 It is further alleged that the firm in question has misused the drug licence granted by drug licensing authority and sold the codeine cough syrup in open market without medical prescription to the persons to get their pecuniary benefit by misusing the provisions of Act, 1940 as well as Rules, 1945.

10. It is further submitted that though the applicant is not named in the F.I.R. and even there is no allegation of any kind against him in the F.I.R. but under the pressure of higher authority, the name of the applicant has also been added in the present case and reason is best known to the authority concerned.

11. It is further submitted that in fact, the alleged cough syrup falls within the category of Schedule H-1 of the Drug and Cosmetics Act and Rules, 1945 and for, sale and stocking of such drug, the applicant has been granted drug licence by drug licensing authority, hence, he has legal right to sell, sale and stock of drug medicines in question according to the terms and conditions of the licence.

12. It is further submitted that the applicant firm purchased 14,040 bottles cough syrup from M/s. Ashok Medical which is a registered and licensee firm granted by drug authorities.

13. It is also submitted that there is no provision under NDPS Act for prosecution of any person in respect of such diversion of cough syrup, if any, is being done by any person except

under Act, 1940, hence, even though if any offense is constituted against the applicant then it is as only under the provisions of Act, 1940 but not under NDPS Act.

14. Learned counsel for the applicant has submitted that the applicant is not named in the FIR and was arrested only during the course of investigation. It has been argued that the applicant is a licensed wholesale dealer in medicines and holds valid drug sale licenses. The allegation against him is that the firm named in the FIR sold Codeine cough syrups to the applicant and solely on that basis, he has been implicated in this case.

15. It has further been submitted that being a valid license holder, the applicant is legally entitled to purchase and sell medicines. Mere purchase of codeine containing medicines cannot attract the provisions of the NDPS Act.

16. Reliance has been placed by the learned counsel for the applicant upon the Government Notifications dated 14.11.1985 and 29.01.1993, which deal with preparations containing methyl morphine and ethyl morphine and such preparations are compounded with one or more ingredients, not more than 100 mg of codeine per dose unit and with a concentration of not more than 2.5% in undivided preparation and are established for therapeutic practice.

17. It is also submitted that CODEIVA cough syrup contained 100 mg in 5 ml dose per unit, the concentration being only 0.2% which is well below the prescribed limit of 2.5%. Therefore, the medicine does not fall within the category of narcotic drugs and prohibitions contained in the NDPS Act are not attracted in this case. It has further been submitted that no recovery has been effected from the applicant; there is no evidence of unauthorized sale done by him; he is having no previous criminal history; and he undertakes to cooperate with the trial and comply with all the conditions that may be imposed by the Court.

18. It is further submitted that there is non-compliance of Section 42 of the NDPS Act as the prosecution has not placed any document to show that any alleged prior information regarding illicit involvement in the narcotic drugs was reduced into writing and forwarded to the superior officer within the prescribed time.

19. Reliance has also been placed upon the judgments of the Hon'ble Apex Court in **Karnal Singh Vs. State of Haryana : (2009) 8 SCC 539 (Relevant paras 15 and 17), State of Rajasthan Vs. Jag Raj Singh @ Hansa : (2016) 11 SCC 687 (Relevant paras 15, 24 to 27), Vibhor Rana Vs. Union of India : 2021 SCC Online All 908, Ashok Kumar vs. Union of India : 2015 SCC 89 824 (Relevant para 102), Vihaan Kumar vs. State of Haryana & Another : 2015 SCC Online SC 269 (Relevant paras 26 to 28, 31, 33) and Mihir Rajesh Shah vs. State of Maharashtra and another, (2026) 1 SCC 500**, the relevant para nos. 62 to 66.4 thereof are being quoted herein under:-

"62. We thus hold, that, in cases where the police are already in possession of documentary material furnishing a cogent basis for the arrest, the written grounds of arrest must be furnished to the arrestee on his arrest. However, in exceptional circumstances such as offences against body or property committed 2 (2026) 1 SCC 500 in flagrante delicto, where informing the

grounds of arrest in writing on arrest is rendered impractical, it shall be sufficient for the police officer or other person making the arrest to orally convey the same to the person at the time of arrest. Later, a written copy of grounds of arrest must be supplied to the arrested person within a reasonable time and in no event later than two hours prior to production of the arrestee before the Magistrate for remand proceedings. The remand papers shall contain the grounds of arrest and in case there is delay in supply thereof, a note indicating a cause for it be included for the information of the Magistrate.

"63. The above indicated lower limit of two hours minimum interval before the production is grounded in the functional necessity so that the right as provided to an arrestee under the Constitution and the statute is safeguarded effectively. This period would ensure that the counsel has adequate time to scrutinize the basis of arrest and gather relevant material to defend the arrestee proficiently and capably while opposing the remand. Any shorter interval may render such preparation illusory, thereby resulting in non-compliance of the constitutional and statutory mandate. The two-hour threshold before production for remand thus strikes a judicious balance between safeguarding the arrestee's constitutional rights under Article 22(1) and preserving the operational continuity of criminal investigations.

"64. In view of the above, we hold with regard to the second issue that non-supply of grounds of arrest in writing to the arrestee prior to or immediately after arrest would not vitiate such arrest on the grounds of non-compliance with the provisions of Section 50CrPC (now Section 47 of BNSS 2023) provided the said grounds are supplied in writing within a reasonable time and in any case two hours prior to the production of the arrestee before the Magistrate for remand proceedings.

"65. It goes without saying that if the abovesaid schedule for supplying the grounds of arrest in writing is not adhered to, the arrest will be rendered illegal entitling the release of the arrestee. On such release, an application for remand or custody, if required, will be moved along with the reasons and necessity for the same, after the supply of the grounds of arrest in writing setting forth the Explanation for non-supply thereof within the above stipulated schedule. On receipt of such an application, the Magistrate shall decide the same expeditiously and preferably within a week of submission thereof by adhering to the principles of natural justice.

"66. In conclusion, it is held that:

66.1. The constitutional mandate of informing the arrestee the grounds of arrest is mandatory in all offences under all statutes including offences under IPC, 1860 (now BNS 2023);

66.2. The grounds of arrest must be communicated in writing to the arrestee in the language he/she understands;

66.3. In case(s) where, the arresting officer/person is unable to communicate the grounds of arrest in writing on or soon after arrest, it be so done orally. The said grounds be communicated in writing within a reasonable time and in any case at least two hours prior to production of the arrestee for remand proceedings before the Magistrate.

66.4. In case of non-compliance of the above, the arrest and subsequent remand would be rendered illegal and the person will be at liberty to be set free."

(emphasis supplied)

20. It is further submitted that no written grounds of arrest were served upon the applicant at any point of time. Mere disclosure of the reason of arrest cannot be equated with communication of the grounds of arrest. The applicant was arrested on 01.02.2026. Therefore, the subsequent clarification in **Mihir Rajesh Shah (supra)** regarding written grounds of arrest was also relevant on the date of arrest.

21. Learned counsel for the applicant further submits that the applicant holds a valid wholesale licence for the sale and distribution of drugs in the name of M/s Ashok Medical Store. It is also submitted that in view of the fact that the drugs in question were mentioned in Schedule H1 (Serial No.20) appended to the Drugs and Cosmetic Rules and there is nothing on record to indicate that the same constitute narcotic drugs.

22. Reliance has also been placed upon by the learned counsel for the applicant in the case of **Vibhor Rana v. Union of India, 2021 SCC OnLine All 908**, this Court at Allahabad was seized with the writ petition, involving question whether "New Fancy Deal Linctus Cough Syrup" is a narcotic drug and it comes within the purview of N.D.P.S., Act. In the said judgement, this Court has held as under :-

"23. Thus, as per the aforesaid Notification, if any drug contains not more than 100 milligrams of Methyl Morphine, which is commonly known as Codeine, per dosage unit, and in that drug Codeine is compounded with one or more other ingredients and if in the drug the concentration of Codeine is not more than 2.5% in undivided preparations and the drug has been established in Therapeutic practice, will not be a "Manufactured Drug" and, therefore, it will not be a "Narcotic Drug".

24. The prohibition contained in Section 8 of the Act is applicable to "Narcotic Drugs" and since Phensedyl New Cough Linctus contains Codeine compounded with one other ingredient, namely Chlorpheniramine Maleate and since Phensedyl New Cough Linctus contains merely 10 milligrams per dosage unit of 5 ml, which is not more than 100 milligrams of the drug per dosage unit in undivided preparations and the concentration of Codeine in Phensedyl New Cough Linctus is merely 0.2%, which obviously is not more than 2.5% and which has been established in Therapeutic practice, it is not a "Manufactured Drug" and, therefore, it is not a "Narcotic Drug", the prohibition contained in Section 8 of the Act does not apply to it.

25. Phensedyl New Cough Linctus contains Codeine which is mentioned at Serial Number 20 in Schedule H1 appended to the Drugs Rules, 1945 and a note appended to Schedule H1 provides that "Preparations containing the above drug substances and their sales excluding those intended for topical or external use (except ophthalmic and ear or nose preparations) containing above substances are also covered by this Schedule". Therefore, Phensedyl New Cough Linctus is a drug covered by the Drugs and Cosmetics Act, 1940.

26. To clarify this position, on 26.10.2005 the Drug Controller General of India had written letter to all the State Drugs Controllers stating as follows:

"As you are aware there are number of Cough preparations like Corex of M/s Pfizer Ltd. Mumbai, Phensedyl of M/s.Nicholas Piramal India Limited, Mumbai, Codokuff of M/S. German Remedies, Codeine Linctus of M/s Zydus Alidac etc.moving in inter state commerce. These preparations contain among other drugs Codeine Phosphate 10 mg as one of the ingredients. By virtue of the fact that these preparations contain Codeine and it salts they do not fall under the provisions of NDPS Act and Rules of 1985 but they fall under Schedule H of the Drugs and Cosmetics Rules and are governed by the said rules. Though stocking and sale of these drugs do not attract the provisions of NDPS Act and Rules 1985 however these formulations are prescriptions drugs and are to be dispensed on the prescriptions drug and are to be dispensed on the prescription of a registered Medical Practitioner only. Further you may be already aware that under notification number S.O. 826(E) dated 14th Nov.1985 under the Narcotic Drugs and Psychotropic Substances Act and Rules 1985 certain preparations are exempted as manufactured drugs provided the preparations contain the Narcotic drug to the extent permitted. In respect of Codeine under entry no. 35 it is stated that Codeine and Ethyl Morphine and their salts including Dionine all dilutions and preparations are considered to be manufactured drugs except those which are compounded with one or more other ingredients and containing not more than 100 milligrams of the drug per dosage unit and with a concentration of not more than 2.5 per cent in undivided preparations and which have been established in therapeutic practice."

27. In March 2009 the Drugs Controller General (India) had issued a letter to the Associated Chambers of Commerce and Industry of India in response to a request for clarification of drug substance Cough Linctus containing codeine Phosphate stating that:--

"In this connection this Directorate had already issued a

circular letter vide our letter number X-11029/27/05-D dated 26/10/2005 to all State Drugs Controllers with a copy to various associations and copy Narcotic Control Bureau New Delhi (copy enclosed). The above circular inter alia stated that these preparations (Cough Linctus containing Codeine Phosphate) contains among other drugs Codeine Phosphate 10 mg as one of the ingredients. By virtue of the fact that these preparations contain Codeine and its salts they do not fall under the provisions of □NDPS Act□and the Rules of 1985 but they fall under Schedule H of the Drugs and Cosmetic Rules and are governed by the said rules. Though stocking and sale of these drugs do not attract the provisions of □NDPS Act□and Rules 1985, however these formulations are prescriptions drugs and are to be dispensed on the prescriptions of a registered Medical Practitioner only.

Further you may be aware that under notification number S.O.826(E) dated 14th November, 1985 under the Narcotic Drugs and Psychotropic Substances Act and Rules 1985 certain preparations are exempted as manufactured drugs provided the preparations contain the Narcotic drug to the extent permitted. In respect of Codeine under entry no. 35 it is stated that Codeine and Ethyl Morphine and their salts including Dionine all dilutions and preparations are considered to be manufactured drugs except those which are compounded with one or more other

ingredients and containing not more than 100 miligrams of the drug per dosage unit and with a concentration of not more than 2.5 per cent in undivided preparations and which have been established in therapeutic practice."

23. It is further submitted that the applicant has no criminal history and is in jail since 1.2.2026. There is no possibility of the applicant fleeing away after being released from jail or tampering with the prosecution witnesses. He undertakes that in case the applicant is enlarged on bail, he shall not misuse the liberty of bail.

24. Per contra, Shri Anoop Trivedi, learned AAG and Shri Alok Kumar Tiwari, learned AGA have vehemently opposed the prayer for bail and submitted that the material collected during investigation discloses involvement of the applicant in a systematic and organized chain relating to procurement and distribution of codeine-based cough syrup. It is further submitted that the quantity is of enormous magnitude and falls within the commercial quantity.

25. Learned AAG further submits that during investigation, it was found that thousands of bottles were purchased and distributed by the applicant and the transactions are not supported by complete statutory requirements. It is further argued that mere possession of a wholesale drug license does not confer immunity from prosecution. The prosecution case is that the medicine preparation was being diverted for non-medicinal use and the investigation has revealed circumstances indicating conscious involvement of the applicant in such activities. It is further submitted that the rigours of Section 37 of the NDPS Act are attracted in this case as the applicant has failed to satisfy the twin conditions prescribed therein.

26. Learned AAG has further submitted that the quantity involved is of commercial quantity. In view of the law laid down by the Hon'ble Supreme Court in **Hira Singh (supra)**, the entire picture is to be considered while determining the commercial quantity. The total quantity involved is far beyond the notified commercial quantity of codeine (1 kg), thereby directly attracting the rigours of Section 37 of the NDPS Act. According to the State, as many as 100 FIRs have already been registered alleging diversion of codeine-based cough syrup. The allegations against the accused persons are of organizing a syndicate on a large scale within the State as well as in other states, including the alleged smuggling to Bangladesh.

27. Learned AAG has placed reliance on the judgements of the Hon'ble Apex Court in **Md. Sahabuddin & another vs. State of Assam, MANU/SC/0836/2012; Hira Singh and others vs. State of West Bengal (Special Leave to Appeal (Crl.) No.12419/2024; and Union of India vs. Sanjeev V. Deshpande, (2014) 13 SCC 1.**

28. Learned AAG submitted that even if codeine constitutes less than 2.5 per cent of the total preparation of cough syrup, it comes in the category of manufactured narcotic drugs, though, it has been categorized as essential drugs. But even possession of such essential drug is regulated by the N.D.P.S., Act and in violation of such regulations, the applicant is liable to be prosecuted under the N.D.P.S., Act. In this regard, he refers to and relies upon the following judicial precedents:-

(i) Mohd. Ahsan Vs. Customs, 2022 SCC OnLine Del 2910

(ii) Azhar Javad Rather Vs. UT of J and K, AIR OnLine 2023 J & K 270

29. In Mohd. Ahsan case (supra), there was recovery of 110 bottles of cough syrup "New Fancy Drug Linctus Cough Syrup" containing a minuscule quantity of codeine i.e 0.17 per cent in each bottles. ere, Delhi High Court referred to all relevant statutory provisions of the N.D.P.S., Act and the relevant judicial precedents including the Vibhor Rana case (supra) and held that even in case of cough syrup, the N.D.P.S. Act and the Rules as made thereunder are applicable. It has further held that in the Vibhor Rana Case (supra),□Section 9□of the N.D.P.S. Act, providing for power to the Central Government to control and regulate and consequent Central Government Notifications were not considered.

Jammu and Kashmir High Court has also taken similar view in Azhar Javad Rather'case (supra).

30. Before considering the aforesaid rival contentions of the parties, it is imperative to discuss the relevant statutory provisions and binding judicial precedents.

31. The NDPS Act and the Rules made thereunder are in addition to and not in derogation of the Drugs and Cosmetics Act, 1940 of the Rules made thereunder as has been clearly provided under Section 80 of NDPS Act which reads as follows:

"80. Application of the Drugs and Cosmetics Act, 1940 not barred.--The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Drugs and Cosmetics Act, 1940 (23 of 1940) or the rules made thereunder."

32. The Drugs and Cosmetics Act, 1940 deals with the drugs which are intended to be used for therapeutic or medical uses. The NDPS Act, on the other hand, is a special law and it intends to curb and penalize the use of narcotic drugs which are used for intoxication or for getting stimulant effect.

33. The Drugs and Cosmetics Act is intended to prevent sub-standard drugs and to maintain high standards of medical treatment and curtail the menace of adulteration of drugs and also of the production, manufacture, distribution and sale of spurious and sub-standard drugs. However, the NDPS Act, on the other hand, intends to control and regulate the operation relating to Narcotic Drugs and Psychotropic Substances. In this context, one may refer to the following judicial precedents:-

(i) Directorate of Revenue Intelligence vs. Raj Kumar Arora, 2025 SCC OnLine SC 819

(ii) State of Punjab vs. Rakesh Kumar, (2019) 2 SCC 466 Patna High Court CR. MISC. No.54100 of 2025 dt.27-08-2025

(iii) Union of India vs. Sanjeev V. Deshpande, (2014) 13 SCC 1

34. Now coming to the statutory provisions of the NDPS Act, one may find that Section 8 prohibits certain operations. Section 8 reads as follows:-

"8. Prohibition of certain operations.- No person shall-

(a). xxxxx

(b) xxxxx

(c) produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or tranship any narcotic drug or psychotropic substance, except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules or orders made thereunder and in a case where any such provision, imposes any requirement by way of licence, permit or authorisation also in accordance with the terms and conditions of such licence, permit or authorisation.

Provided that, and subject to the other provisions of this Act and the rules made thereunder, the prohibition against the cultivation of the cannabis plant for the production of ganja or the production, possession, use, consumption, purchase, sale, transport, warehousing, import inter-State and export inter- State of ganja for any purpose other than medical and scientific purpose shall take effect only from the date which the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided further that nothing in this section shall apply to the export of poppy straw for decorative purposes."

(Emphasis supplied)

35. However, Section 9 of the NDPS Act gives power to the Central Government to permit, control and regulate certain operations. It reads as follows:-□

"9. Power of Central Government to permit, control and regulate.- (1) Subject to the provisions of □section 8 Central Government may, by rules-

(a) permit and regulate--

*..... □ (va) the
manufacture, possession, transport, import inter- State, export inter-State, sale, purchase,
consumption and use of essential narcotic drugs:*

Provided that where, in respect of an essential narcotic drug, the State Government has granted licence or permit under the provisions of □section 10 □prior to the commencement of the □Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2014, such licence or permit shall continue to be valid till the date of its expiry or for a period of twelve months from such commencement, whichever is earlier.

(vi) the manufacture, possession, transport import inter- State, export inter-State, sale, purchase, consumption or use of psychotropic substances;

.....

(ha) prescribe the forms and conditions of licences or permits for the manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use of essential narcotic drugs, the authorities by which such licence or permit may be granted and the fees that may be charged therefore;

(i) prescribe the forms and conditions of licences or permits for the manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use of psychotropic substances, the authorities by which such licences or permits may be granted and the fees that may be charged therefore;

....."

(Emphasis Supplied)

36. Section 21 of the NDPS Act provides for punishment for contravention in relation to manufactured drugs and preparations. It reads as follows:-

"21. Punishment for contravention in relation to manufactured drugs and preparations.- Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any manufactured drug or any preparation containing any manufactured drug shall be punishable,--

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both;

(b) where the contravention involves quantity, lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees."

(Emphasis Supplied)

37. Section 2 (xi) of the NDPS Act defines the word "manufactured drug". It reads as follows:-

"2 (xi). *"manufactured drug" means—*

(a) all coca derivatives, medicinal cannabis, opium derivatives and poppy straw concentrate;

(b) any other narcotic substance or preparation which the Central Government may, having regard to the available information as to its nature or to a decision, if any, under any International Convention, by notification in the Official Gazette, declare to be a manufactured drug;

but does not include any narcotic substance or preparation which the Central Government may, having regard to the available information as to its nature or to a decision, if any, under any International Convention, by notification in the Official Gazette, declare not to be a manufactured drug;"

(Emphasis Supplied)

38. □ Section 2 (viii) defines essential narcotic drug, as per which, essential narcotic drug means a narcotic drug which has been notified by Central Government for medical and scientific use. In the table provided under the Rule 52A(3) of the NDPS Rules, 1985, the names of essential narcotic drugs have been given and there are five entries in this table. Methyl morphine (commonly known as 'Codeine') and Ethyl morphine and their salts (including Dionine), all dilutions and preparations □ except those which are compounded with one or more other ingredients and containing not more than 100 milligrammes of the drug per dosage unit and with a concentration of not more than 2.5% in undivided preparations and which have been established in therapeutic practice, has been provided in entry No. 2 of the Table.

39. The commercial quantity of contraband has been defined by Section 2 (vii) as per which it means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette, whereas □ Section 2 (xiii) defines small quantity as per which it means any quantity lesser than the quantity specified by the Central Government by notification in the Official Gazette. In pursuance of these sub- Sections vii and xiii of Section 2 of NDPS Act, Central Government had issued a notification in the year, 1996 and thereafter, the same was replaced by notification dated 19.10.2001, specifying the small and commercial quantity of narcotic drugs and psychotropic substances by way of providing a table of such narcotic drugs and psychotropic substances. There were three Notes to this Table. However, on 18.11.2009, Note no. 4 was added, as per which the quantity of the neutral substances of any mixture or other preparations of narcotic drugs or psychotropic substances has to be taken into consideration while determining the "small or commercial" quantity of the Narcotic Drugs or Psychotropic Substances.

40. It was further held by Hon'ble Supreme Court in ***Hira Singh Case (supra)*** that in case of seizure of mixture of narcotic drugs or psychotropic substances with one or more neutral substance(s), the quantity of neutral substance(s) is not to be excluded and it has to be taken into

consideration along with actual content by weight of the offending drug, while determining the "small or commercial quantity" of the narcotic drugs or psychotropic substances.

41. As such, it clearly emerges from the statutory provisions of the NDPS Act and Rules made thereunder, that even the cough syrup containing codeine with concentration of less than 2.5% of total preparation is controlled and regulated for its possession, sale, purchase, transport, export, import etc. In this regard, Chapter-VA of the NDPS rules, 1985, containing Rules 52A to 52M provide detailed provisions, as it has been discussed above. Hence, the violation of such Rules in regard to Control and Regulation of the Essential Drugs is punishable under the NDPS Act. As such, if someone is found to be in possession of such drugs without authorization, he is liable to be prosecuted under the NDPS Act and not under the Drugs and Cosmetic Act, 1940.

42. The aforesaid view of this Court gets reinforced also in view of the decision of Union of India and Anr. Vs. Sanjeev V. Deshpande, (2014) 13 SCC 1, wherein Hon'ble Supreme Court has held as follows:

"25. In other words, DEALING IN narcotic drugs and psychotropic substances is permissible only when such DEALING is for medical purposes or scientific purposes. Further, the mere fact that the DEALING IN narcotic drugs and psychotropic substances is for a medical or scientific purpose does not by itself lift the embargo created under Section 8(c). Such a dealing must be in the manner and extent provided by the provisions of the Act, Rules or Orders made thereunder. Sections 9 and 10 enable the Central and the State Governments respectively to make rules permitting and regulating various aspects (contemplated under Section 8(c), of DEALING IN narcotic drugs and psychotropic substances."

(Emphasis supplied)

43. Hon'ble Apex Court in Mohd. Sahabuddin and Anr. Vs. State of Assam : (2012) 13 SCC 491, has again held as follows:

"10. It is not in dispute that each 100 ml bottle of Phensedyl cough syrup contained 183.15 to 189.85 mg of codeine phosphate and the each 100 ml bottle of Recodex cough syrup contained 182.73 mg of codeine phosphate. When the appellants were not in a position to explain as to whom the supply was meant either for distribution or for any licensed dealer dealing with pharmaceutical products and in the absence of any other valid explanation for effecting the transportation of such a huge quantity of the cough syrup which contained the narcotic substance of codeine phosphate beyond the prescribed limit, the application for grant of bail cannot be considered based on the above submissions made on behalf of the appellants."

44. Having considered the rival submissions and upon the perusal of the material brought on record, this Court finds that the allegations pertain to dealing with codeine-based cough syrup in a quantity far exceeding originally retail transactions. The material collected during investigation, prima facie, indicates dealing in a substantial quantity of the contraband substances through a chain in which the applicant is alleged to be a participant. The contentions that the applicant is having a wholesale drug license, and therefore, outside the purview of the NDPS Act cannot be accepted at

this stage. The possession of a license by itself does not conclusively establish lawful dealing when the prosecution alleges diversion and misuse of a notified narcotic preparation. Whether the transactions were genuinely done under the Drugs and Cosmetics Act or constituted unlawful diversion is a matter to be examined during trial on the basis of evidence.

45. So far as the contentions of learned counsel for the applicant regarding non-communication of grounds of arrest is concerned, it may be observed that a distinction exists between mere reason for arrest and the communication of the grounds on which the arrest is founded, as per the law laid down by the Hon'ble Supreme Court in **Mihir Rajesh Shah (supra)**. Learned AGA has drawn the attention of the Court to the arrest memo available on record along with the counter affidavit. A perusal of the said arrest memo reveals that the particulars of the case crime numbers, penal provisions involved, date, time and place of arrest as well as the grounds necessitating arrest have been specifically recorded therein. The arrest memo indicates that the arrest was considered necessary for preventing tampering with evidence, preventing destruction of material relevant to the investigation, preventing intimidation or influence over witnesses and securing the presence of the accused during the course of investigation and trial. The memo further records that the applicant was informed in a language understood by him about the reasons and grounds of his arrest as well as his legal rights. The signature of the applicant along with two witnesses acknowledging the arrest memo and the acknowledgement of the information of arrest by his (wife) family member are also available on record.

It is also noteworthy that the applicant was arrested on 01.02.2026 and has remained in custody thereafter. Despite having sufficient opportunity, the applicant did not challenge the legality of the arrest or the alleged non-communication of the grounds of arrest before the court concerned at the earliest stage nor did he initiate any independent proceedings questioning the validity of his arrest. Although the failure to raise such a challenge at an earlier stage may not, by itself, amount to a waiver of constitutional safeguard, it nevertheless constitutes a relevant stand while assessing the prima facie merit on the contention raised in the present bail application.

At this stage, there is no material on record to prima facie conclude that the grounds of arrest were not communicated to the applicant. The arrest memo appears to contain not only the statutory particulars relating to arrest, but also the grounds on which the investigating agencies considered the arrest necessary. Whether the communication made was legally sufficient in all respects and whether every procedural safeguard stood fully complied with are matters which may require deeper examination on the basis of evidence and the complete records at an appropriate stage. However, for the purposes of the present bail application, the Court is prima facie satisfied that the requirement of communicating the grounds of arrest cannot be said to have been wholly disregarded so as to persuade this Court to record a finding that the applicant is not guilty of the offence or that he is entitled to bail on this ground alone.

46. As far as the contentions regarding non-compliance of Section 42 of NDPS Act relating to the communication of the grounds of arrest and admissibility of the such statements require detailed examination during trial and at this stage, it does not persuade the Court to record a finding that the applicant is not guilty of the offence.

47. The Hon'ble Supreme Court in the case of **State of Kerala vs. Rajesh, 2020 (12) SCC 122** has held that the limitations under Section 37 of the NDPS Act are in addition to the limitations under the Code of Criminal Procedure and that a liberal approach in matters involving commercial quantity is not warranted. The Hon'ble Supreme Court in **NCB vs. Mohit Agarwal, 2022 (4) SCC 713** has reiterated that before granting bail in cases involving commercial quantity, the Court must be satisfied that there are reasonable grounds for believing that the accused is not guilty of the alleged offense and is not likely to commit any offense while on bail. The Court is also mindful of the law laid down in **Sanjeev V. Deshpande (supra)** and **Md. Sahabuddin (supra)**, wherein the Supreme Court emphasized that pharmaceutical preparations containing narcotic substances are not automatically excluded from the purview of the NDPS Act.

48. It is relevant to mention that Codeine-containing syrup is commonly misused as an intoxicating substance for non-medicinal purposes. The aforesaid firm, with the intention of earning excessive profits and obtaining wrongful gain, has misused the drug sale licence granted by the competent authority and has sold codeine-based medicines in violation of the provisions of the Drugs and Cosmetics Act, 1940 and the relevant Rules of 1945. Such sales were made without complying with the prescribed legal formalities relating to medical prescriptions and records, thereby facilitating the use of these medicines as intoxicants in the market. The said firm has committed the offence of selling codeine-containing medicines without maintaining the requisite sale records and statutory documentation.

49. The sale of codeine containing cough syrup without a prescription not only violates regulatory requirement but also facilitates its easy accessibility and potential misuse, particularly among young individuals. Unrestricted availability increases the risk of addiction, dependence, respiratory complications and other serious health consequences.

Therefore, strict compliance with prescription requirement, vigilant monitoring by drug authorities, and responsible dispensary practices are essential to prevent abuse and protect public health.

50. Considering the nature of accusation, quantity involved, the material collected during investigation, the allegations regarding diversion of codeine-based cough syrup and the twin conditions contained in Section 37 of the NDPS Act, this Court is unable to record its satisfaction that there are reasonable grounds for believing that the applicant is not guilty of the offenses. Likewise, at this stage, the second condition contained under Section 37 of the NDPS Act also remains unsatisfactory.

51. In view of the foregoing discussion and without expressing any opinion on the merits of the case, this Court does not find it a fit case for grant of bail to the applicant.

52. Accordingly, the bail application is **rejected**.

53. It is, however, clarified that the observations made herein-above are confined to the present bail application and shall have no bearing on the merits of the trial.

(2026) 6 ILRA 224
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 03.06.2026

BEFORE

THE HON'BLE SIDDHARTHA VARMA, J.
THE HON'BLE JAI KRISHNA UPADHYAY, J.

Criminal Appeal No. 6007 of 2018

Kiranpal @ Kiran

...Appellant

Versus

State of U.P.

...Respondent

Issue for Consideration

Whether the conviction of the appellant under Sections 376, 323 IPC and Sections 5/6 of the Protection of Children from Sexual Offences Act, 2012, on the basis of the sole testimony of the prosecutrix and the medical evidence on record, was justified.

Headnotes

Protection of Children from Sexual Offences Act, 2012, ss. 5, 6 – Indian Penal Code, 1860, ss. 376, 323 – Code of Criminal Procedure, 1973, ss. 161, 164, 313 – Sole testimony of prosecutrix – Conviction can be based on the sole testimony of the prosecutrix, if found wholly reliable – Medical evidence corroborating the prosecution case – Appeal against conviction – Justification: Held: Conviction can be founded on the sole testimony of the prosecutrix, if found to be worthy of credence and reliable, and for that no corroboration is required. Unless there are compelling reasons for seeking corroboration of her statement, the Court should find no difficulty in acting upon the testimony of the prosecutrix alone to convict the accused. The evidence of a prosecutrix is more reliable than that of an injured witness. Even minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Oral testimony can be classified into three categories, namely (i) wholly reliable, (ii) wholly unreliable and, (iii) neither wholly reliable nor wholly unreliable. In case of wholly reliable testimony of a single witness, the conviction can be founded without corroboration. In case the prosecution is based on wholly unreliable testimony of a single witness, the court has no option than to acquit the accused.

In the case in hand, PW-2, the victim, in her testimony had categorically stated that while she was sleeping in her house, the accused came inside, abducted her to the village school and committed rape with her. This witness was cross-examined in detail by the defence side but she stood firm. PW-3 stated that the victim's vaginal membrane 'hymen' was lacerated. On touching, a drop of blood was oozing. PW-3 further stated that the internal injuries of the victim are possible to be caused by a penis. The prosecution fully proved its case beyond reasonable doubt. Accordingly, the criminal appeal is hereby dismissed.

[Paras 26, 28, 31, 32, 34, 35, 37 and 38] (E-5)

Case Law Cited

State of Rajasthan v. Babu Meena, (2013) 4 SCC 206;
Hem Raj v. State of Haryana, JT 2014 (2) SC 399;
State of H.P. v. Asha Ram, (2005) 13 SCC 766;
Ganesan v. State, (2020) 10 SCC 573;
Phool Singh v. State of Madhya Pradesh, (2022) 2 SCC 74;

List of Acts

Protection of Children from Sexual Offences Act, 2012;
Indian Penal Code, 1860;
Code of Criminal Procedure, 1973

List of Keywords

Victim; Prosecutrix; Sole testimony of the prosecutrix; Worthy of credence; Reliable; No corroboration required; Wholly reliable witness; Wholly unreliable witness; Oral testimony; Medical examination; Hymen lacerated; Internal injuries; Penis; Sexual assault; Rape; Sterling witness; Prosecution proved beyond reasonable doubt; Testimony of the doctor; Protection of Children from Sexual Offences Act, 2012;

Case Arising From

From the judgment and order dated 24.08.2018 passed by the Additional District & Sessions Judge-VIII/Special Judge (POCSO Act), Muzaffarnagar in Special Session Trial No. 151 of 2015 (State v. Kiranpal @ Kiran), arising out of Case Crime No. 660 of 2014, Police Station Nai Mandi, District Muzaffarnagar.

Appearances for Parties

Advs. for the Appellant: Dharmendra Kumar Chaubey, Ishwar Chandra Tyagi, Pravin Kumar Tiwari, Shiv Prasad

Advs. for the Respondents: G.A.

(Delivered by Hon'ble Jai Krishna Upadhyay, J.)

1. This criminal appeal has been preferred by the accused appellant against the judgment and order dated 24.8.2018 passed by the Additional District & Sessions Judge-VIII/, Special Judge (POCSO Act), Muzaffarnagar in Special Session Trial No. 151 of 2015 (State vs. Kiranpal @ Kiran), arising out of Case Crime No. 660 of 2014, Police Station Nai Mandi, District Muzaffarnagar, convicting the appellant for the offences punishable under Sections 376, 323 of IPC and 5/6 POCSO Act and sentencing him to undergo rigorous imprisonment of life and a fine of Rs. 25,000/- under Section 6 POCSO Act and to undergo six months imprisonment for the offence under Section 323 of IPC.

2. All the sentences were directed to run concurrently with default clause.

3. The facts of the case, in nutshell, as unfolded by the informant Tejvir Singh son of Samey Singh in the First Information Report (in short 'F.I.R.') are that in the night of 8/9.7.2014, the informant along with his wife Nirmala was sleeping near the animals and inside the house, the informant's sister, Satviri was sleeping with her children Komal and Chhotu and the informant's daughter, victim, who was about 10 years old. During the night, an unidentified individual abducted the daughter of the informant. In the morning, when victim was not found on her cot, the informant and his family members searched for her and at about 5:30 AM, the informant's neighbor, Ompal Prajapati, brought the victim home and reported that he had found the girl near the school and he noted that her condition was poor and it appeared that the child had been raped and subjected to physical injury.

4. On the basis of the written report (Ext. ka-1), chik First Information Report was registered at Police Station concerned on 9.7.2014 as Case Crime No. 660 of 2014, under Sections 376, 323 IPC and □ POCSO Act. After lodging of the FIR, the informant gave another report (tehrir) to the effect that in the night of 8/9.7.2014, he had filed a complaint against unknown persons regarding the rape and physical assault of her daughter, victim. On July 9, 2014, when his daughter regained consciousness, she uttered the name "Kiran." He then asked her whether the incident had been perpetrated by Kiran, Sukhbir's son-in-law, who belongs to the □Bhangi□ community. Upon hearing this, tears welled up in his daughter's eyes, and she lost consciousness once again. He was now fully convinced that the crime was committed by Kiran, who resides right in his neighborhood. It was also possible that another young man was involved in the incident alongwith him.

5. Investigation in the matter was initiated by S.I. Jitendra Kumar Sharma. He inspected the place of occurrence and prepared site plan (Ext. ka-8). The Investigating Officer recorded the statement of the witnesses. Injured was medically examined and injury report was prepared. Statements of the victim under Sections 161 and 164 CrPC were also recorded. Memo in regard to pant shirt and underwear of the accused and kurti and salwar of the victim was prepared and sent for FSL. Memo in regard to plain soil and bloodstained soil was also prepared and the same were also sent for FSL.

6. On medical examination of the victim, following internal injuries were found :

“1. Both labia minora were red from the inner side.

2. Redness was present on the vestibule.

3. Hymen 'vaginal membrane' was lacerated at the 6 o'clock position. On touching, a drop of blood was oozing.

4. Posterior commissure/fourchette was red and on touching, blood was oozing.

5. Redness was present on the fossa navicularis, it was lacerated.

6. Periurethral redness was present.

7. Bleeding spotting stains were appearing.”

7. In the opinion of the doctor, the possibility of sexual assault could not be ruled out.

8. After completing the investigation, charge-sheet (Ext. ka-12) against the accused appellant was submitted before the concerned Magistrate and he took the cognizance. The case being exclusively triable by session court, was committed to the Court of sessions.

9. Accused-appellant appeared and charges under Sections 376, 323 of IPC and 5/6 POCSO Act were framed. Accused had denied the charges framed against him and pleading not guilty claimed his trial.

10. Trial proceeded and in order to prove its case on behalf of prosecution, six witnesses, namely, PW-1, Tejvir Singh (informant), PW-2 victim girl, PW-3 Dr. Abha Aatrey, PW-4 Dr. Vineet Kaushik and PW-5 S.I. Jitendra Kumar Sharma, were examined.

11. In documentary evidence, written report Ex. ka.-1, another written report Ext. ka-2, medical examination report Ext. ka-3, reference slip of victim Ext. ka-4, supplementary medical examination report Ext. ka-5, x-ray report Ext. ka-6, site plan Ext. ka-8, memo regarding kurta of victim Ext. ka-9, memo plain and bloodstained soil Ext. ka-10, site plan of place of occurrence Ext. ka-11, memo regarding clothes of accused Ext. ka-12, charge sheet Ext. ka-12, chik FIR Ext. ka-13, copy of G.D. entry Ext. ka-14, and FSL report have been proved.

12. **P.W.-1** - Tejveer Singh has fully proved the prosecution version as taken in the First Information Report.

13. **P.W.-2** the victim, with whom the offence is alleged to have been committed by the accused was examined. This witness had clearly stated in her evidence that on the day of the incident, she was sleeping in her house. Her Bua and her siblings were sleeping near her. Her mummy and papa were sleeping in the house. At around 12.00 midnight, Kiran, who is her neighbour in the village, came inside and abducted her to the village school. He removed her clothes and salwar, committed a bad act with her meaning thereby he raped her, and fled from there. She became unconscious. The next morning, she regained consciousness at her home. She further stated that her clothes were soiled with blood. She had recognized Kiran in the light of the electricity bulb. Her medical examination was conducted. In this manner, the most important witness of the present case, the victim P.W.-2, had fully proved the incident by her testimony. This witness was cross-examined in detail by the defence side, but no such fact emerged in her cross-examination which could have an adverse impact on her testimony.

14. **PW-3** - Dr. Abha Aatrey had also been examined in the Court. This witness had clearly stated in her evidence that there were 11 injuries on the body of the victim, which were in the nature of abrasions and contusions. In relation to the internal examination of the victim, she had stated that the victim's vaginal membrane 'hymen' was lacerated. On touching, a drop of blood was oozing. This witness also stated in her testimony that the internal injuries of the victim are possible to be caused by a penis, and the injuries sustained by the victim were possible to have been caused sometime during the midnight of 8/9-7-2014. Thus, the prosecution version is fully supported by the oral testimony of P.W.-3.

15. **PW-4** - Dr. Vineet Kaushik, Radiologist stated before the Court that he had conducted the X-ray of the victim for age determination and on the basis of which the age of the victim was determined by the Chief Medical Officer to be about 07 years.

16. **PW-5** - S.I. Jitendra Kumar Sharma is the Investigating Officer. This witness in his evidence before the Court had proved the investigation proceeding and various documents in this regard.

17. The prosecution has also filed the Forensic Science Laboratory (FSL) report from Agra on the record as Paper No. 16k/3, dated 16-9-2015, which relates to the clothes of the victim Sonam (kurta and salwar), wherein the fact of human blood being found has been recorded.

18. After closure of prosecution evidence the incriminating evidence and circumstances were put to the accused in his statement under Section 313 Cr.P.C. wherein he claimed the entire prosecution case as false and fabricated and he was falsely implicated due to enmity.

19. The learned trial court upon scrutiny of the evidence on record concluded that the case of prosecution was proved beyond reasonable doubt against the accused appellant and recorded conviction and sentenced him, as mentioned here-in-above. Hence, this appeal.

20. We have heard Shri Dharmendra Kumar Chaubey, learned counsel for the appellant and Shri C. B. Dhar Dubey, learned AGA for the State at length, and perused the entire record carefully.

21. Assailing the impugned judgment on various grounds, learned counsel appearing for the appellant submitted that the prosecution has not proved its case beyond reasonable doubt. Several glaring inconsistencies and contradictions that manifest on a bare reading of the oral evidence were brushed aside by the trial court. It has been submitted that the impugned judgment and order is not sustainable under law. Learned counsel has further submitted that PW-1, informant, father of the victim, is not an eye witness. It has further been submitted that medical evidence does not support the prosecution case. Victim is not a reliable witness rather she is tutored witness. Several other submissions have been made on behalf of the appellant to demonstrate the falsity of the allegations made against him.

22. Learned A.G.A. has supported the impugned judgment and order and has stated that the judgment is well reasoned and well-discussed. Testimony of PW-1, informant and PW-2, victim is constantly consistent. PW-3 doctor has also stated that possibility of sexual assault cannot be ruled out. Therefore, medical evidence fully supports the oral version. Findings recorded by trial court in the impugned judgment and order are based on correct appreciation of facts, evidence and law and do not suffer from any infirmity or illegality warranting interference by this Court.

23. We have considered the rival submissions made by the learned counsel for the parties and have gone through the entire record including the impugned judgment and order carefully.

24. Before dealing with the submissions, we consider it appropriate to revisit the law laid down by the Hon'ble Apex Court regarding the weight to be attached to the testimony of the victim in matters involving sexual offences where the prosecution's case hinges on the victim's evidence.

25. The law on the point is settled that if the evidence of victim of offence of rape is found to be wholly reliable, the same can be made basis for conviction.

26. The Hon'ble Apex Court in the case of **State of Rajasthan Vs. Babu Meena reported in (2013) 4 SCC 206** wherein Hon'ble Apex Court has observed in para 9 as under:-

"We do not have the slightest hesitation in accepting the broad submission of Mr. Jain that the conviction can be based on the sole testimony of the prosecutrix, if found to be worthy of credence and reliable and for that no corroboration is required. It has often been said that oral testimony can be classified into three categories, namely (i) wholly reliable, (ii) wholly unreliable and, (iii) neither wholly reliable nor wholly unreliable. In case of wholly reliable testimony of a single witness, the conviction can be founded without corroboration. This principle applies with greater vigour in case the nature of offence is such that it is committed in seclusion. In case prosecution is based on wholly unreliable testimony of a single witness, the court has no option than to acquit the accused."

27. In the case of **Hem Raj S/o Moti Ram V. State of Harayana reported in JT 2014 (2) SC 399**, the Hon'ble Apex Court has again considered this aspect and has observed in paragraph no. 6 as under:-

"In a case involving charge of rape the evidence of the prosecutrix is most vital. If it is found credible; if it inspires total confidence, it can be relied upon even sans corroboration. The court may, however, if it is hesitant to place implicit reliance on it, look into other evidence to lend assurance to it short of corroboration required in the case of an accomplice. [State of Maharashtra v. Chandraprakash Kewalchand Jain [JT 1990 (1) SC 61 : 1990 (1) SCC 550]]. Such weight is given to the prosecutrix's evidence because her evidence is on par with the evidence of an injured witness which seldom fails to inspire confidence. Having placed the prosecutrix's evidence on such a high pedestal, it is the duty of the court to scrutinize it carefully, because in a given case on that lone evidence a man can be sentenced to life imprisonment. The court must, therefore, with its rich experience evaluate such evidence with care and circumspection and only after its conscience is satisfied about its creditworthiness rely upon it."

28. The Apex Court in **State of H.P. Vs. Asha Ram, (2005) 13 SCC 766**, has observed in para-5, which reads as under:-

"5. We record our displeasure and dismay, the way the High Court dealt casually with an offence so grave, as in the case at hand, overlooking the alarming and shocking increase of sexual assault on minor girls. The High Court was swayed by the sheer insensitivity, totally oblivious of the growing menace of sexual violence against minors much less by the father. The High Court also totally overlooked the prosecution evidence, which inspired confidence and merited acceptance. It is now a well-settled principle of law that conviction can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for seeking corroboration. The evidence of a prosecutrix is more reliable than that of an injured witness. The testimony of the victim of sexual assault is vital, unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It is also a well-settled principle of law that corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under the given circumstances. The evidence of the prosecutrix is more reliable than that of an injured witness. Even minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case."

29. The Apex Court in **Ganesan Vs. State represented by its Inspector of Police, (2020) 10 SCC 573**, while considering the judgments of *Vijay v. State of M.P.*, (2010) 8 SCC 191, *State of Maharashtra v. Chandraprakash Kewalchand Jain*, (1990) 1 SCC 550, *State of U.P. Vs. Pappu*, (2005) 3 SCC 594, *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384, *State of Orissa v. Thakara Besra*, (2002) 9 SCC 86 and *Krishan Kumar Malik v. State of Haryana*, (2011) 7 SCC 130 has observed that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient, provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality.

30. In the case of **Phool Singh v. State of Madhya Pradesh, (2022) 2 SCC 74**, the Apex Court has considered the judgment of *Sham Singh vs. State of Haryana*, (2018) 18 SCC 34, wherein the Apex Court has observed that the testimony of the victim is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of the victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable.

31. Thus, the law that emerges on the issue is that the statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court can record conviction of the accused on the sole testimony of the prosecutrix.

32. In the case in hand, PW-2, the victim in her testimony had categorically stated that on the day of the incident, she was sleeping in her house and about 12.00 midnight, Kiran came inside and abducted her to the village school. He removed her clothes and salwar, committed rape with her and fled from there. She became unconscious. The next morning, she regained consciousness at her home. She further stated that she had recognized Kiran in the light of the electricity bulb. PW-2, the victim had fully proved the incident by her testimony. This witness was cross-examined in detail by the defence side but she stood firm.

33. PW-1, informant □ father of the victim has also supported the prosecution story.

34. PW-3 - Dr. Abha Aatrey had clearly stated in her examination before the Court that the victim's vaginal membrane 'hymen' was lacerated. On touching, a drop of blood was oozing. This witness also stated in her testimony that the internal injuries of the victim are possible to be caused by a penis, and the injuries sustained by the victim were possible to have been caused sometime during the midnight of 8/9-7-2014.

35. Applying the principle of law to the facts of the case at hand, in the backdrop of the prosecution evidence, in our view, the prosecution version is proved beyond reasonable doubt. The victim PW-2 informed her father PW-1 in the morning on returning home. The prosecutrix with clarity stated and identified the appellant- accused of having committed the offence of rape. The offence is duly corroborated by the testimony of the doctor PW-3. The statement of the victim is consistent right from the starting point till the end. Her evidence is natural and consistent with the case of the prosecution qua the accused. She is 'sterling witness'.

36. Further, the POCSO Act had been enacted to provide more stringent punishments for the offences of various kinds against the child. The crime committed by the appellant is very gruesome which calls for very stringent punishment. The impact of the obnoxious act on the mind of the minor victim will be life long. The impact is bound to adversely affect the healthy growth of the victim. There is no dispute that the age of the victim was less than twelve years at the time of the incident.

37. In view of the above discussions and considering the totality of the facts and circumstances of the case, medical examination report, testimony of the prosecutrix, we do not find any substance in the arguments of learned counsel for the appellant. The prosecution has fully proved its case beyond reasonable doubt. The impugned judgment and order of conviction and sentence dated 24.8.2018, which has been sought to be assailed, calls for no interference.

38. Accordingly, the criminal appeal is hereby **dismissed** and the impugned order is affirmed. Appellant is in jail. He shall serve the remaining sentence.

39. Office is directed to send a copy of this judgment along with trial court record to the court concerned forthwith for immediate compliance.

(2026) 6 ILRA 232
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 10.06.2026

BEFORE

THE HON'BLE KARUNESH SINGH PAWAR, J.

Writ A No 2342 of 2026

Santosh Kumar Singh

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

Issue for Consideration

- (1) Applicability of principle of natural justice to an enquiry proceeding, and consequence of not holding the oral enquiry by examining the witnesses and affording the delinquent-employee an opportunity to cross-examine the witnesses relied upon by the department.
- (2) Effect of not considering the specific defence raised by the delinquent-employee before awarding the punishment.
- (3) Effect of inordinate delay in holding the disciplinary proceeding.

Headnotes

(A) Service law – UP Government Servant (Discipline and Appeal) Rules, 1999 – Rule 7 – Punishment – Permanent withholding of one annual increment along with the penalty of censure – Enquiry – Principle of natural justice – Application – Allegation of committing misconduct during allotment of housing site – No date, time or place for holding enquiry was fixed – No oral inquiry was conducted – Findings of Inquiry Officer was based solely on the documentary material – Neither witnesses were examined nor the delinquent-employee was given opportunity to cross-examine the witnesses relied upon by the department – Effect – Significance of oral enquiry felt into consideration

Held : Where no oral evidence is led by the department to prove the documents relied upon in support of the charge-sheet, such documentary evidence cannot be taken into consideration by the Inquiry Officer for recording a finding of guilt against the charged employee – Consequently, the entire disciplinary proceedings stand vitiated, having been conducted in complete disregard of the principles of natural justice as well as the mandatory procedure prescribed under the Rules, 1999 – The procedure adopted by the Inquiry Officer is, therefore, in complete contravention of Rule 7 of the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999. [Para 30, 31 and 43]

(B) Service law – UP Government Servant (Discipline and Appeal) Rules, 1999 – Rule 7 – Punishment – Disciplinary proceeding – Non-consideration of defence as raised by the delinquent-employee and of the report of Board of Revenue – No finding has been recorded on the specific defence raised by the delinquent-employee – The disciplinary authority has merely reproduced the contents of the charge-sheet, the inquiry report and the reply of the delinquent-employee – No independent analysis or finding was recorded – Effect

Held : A disciplinary authority exercising quasi-judicial powers is under a legal obligation to consider the defence put forth by the delinquent employee and to assign reasons while accepting or rejecting the same. The recording of reasons is an essential facet of fair decision-making and constitutes a safeguard against arbitrary exercise of power – The failure of the disciplinary authority to deal with the petitioner's defence and to record reasons while affirming the findings of guilt clearly demonstrates total non-application of mind, rendering the impugned punishment order unsustainable in law. [Para 35 and 45]

(C) Service law – Punishment – Disciplinary proceeding – Inordinate delay – Disciplinary proceedings were initiated on 13.02.2019 – Even after submission of the petitioner's final representation against the inquiry report on 27.02.2021, the State Government continued to sit over the matter for nearly four years and the final punishment order came to be passed only on 10.09.2025 – Effect

Held : Prolonged delay defeats the very object of disciplinary proceedings and causes serious prejudice to a government servant, who remains under a cloud of uncertainty for an indefinite period – Such delay causes serious prejudice to the delinquent employee. [Para 42 and 47] (E-1)

Case Law Cited

State of U.P. vs. Saroj Kumar Sinha, (2010) 2 SCC 772; Satyendra Singh vs. State of Uttar Pradesh and another, 2024 SCC OnLine SC 3325; State of Uttar Pradesh vs. Saroj Kumar Sinha, (2010) 2 SCC 772; Roop Singh Negi vs. Punjab National Bank, (2009) 2 SCC 570; State of Madhya Pradesh vs. Bani Singh, 1990 Supp (1) SCC 738; P.V. Mahadevan vs. Managing Director, Tamil Nadu Housing Board, (2005) 6 SCC 636 – referred to.

List of Acts

Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999 – Rule 7.

List of Keywords

Punishment, Consequential service benefits, Disciplinary proceeding, Irregularities, Charge-sheet, Inquiry, Representation, Show cause notice, Eligibility, Ineligibility, Beneficiary, Withholding of one annual increment, Censure, Oral inquiry, Documentary material, Opportunity, Cross examine the witness, Oral evidence, Documentary evidence, Principle of natural justice, Defence, Non-speaking order, Cryptic order, Devoid of reason, Independent analysis, Guilt, Non-application of mind, Inordinate and unexplained administrative delay, Justifiable reason, Fundamental procedural infirmities, Admissible oral evidence, Quasi-judicial power, Essential facet of decision-making, Independent discussion, Objective analysis, Mala fide intention, Ulterior motive, Arbitrary, Prolonged delay, Unexplained delay, Personal benefits, Corruption, Dishonesty, Misappropriation, abuse of official position, Effective opportunity of defence, Judicial scrutiny, Legally unsustainable.

Case Arising From

Punishment order dated 10.09.2025 passed by the State Government.

Appearances for Parties

Advs. for the Appellant : Ravi Singh; Rajesh Kumar; Raj Kumar Singh.

Advs. for the Respondents : Sudhir Kumar Singh, S.C.

(Delivered by Hon'ble Karunesh Singh Pawar, J.)

1. Heard Shri Ravi Singh, learned counsel for the petitioner, and Shri Sudhir Kumar Singh, learned Standing Counsel for the respondent-State.

FACTS AND RELIEFS SOUGHT

Reliefs Claimed in the Writ Petition

2. By means of the present petition, the petitioner has sought quashing of the impugned punishment order dated 10.09.2025 passed by respondent No. 2, as contained in Annexure-1 to the writ petition.

3. Another writ in the nature of certiorari has been sought for setting aside the consequential order dated 09.12.2025 passed by respondent No. 2, as contained in Annexure-2 to the writ petition, whereby the representation submitted by the petitioner against the punishment order has been rejected.

4. The petitioner has further prayed for issuance of a writ, order or direction in the nature of mandamus commanding the respondents not to give effect to the impugned orders dated 10.09.2025 and 09.12.2025 and to restore all consequential service benefits, including the withheld increment, as if the impugned orders had never been passed.

Facts Giving Rise to the Present Petition

5. The brief facts of the case are that the District Magistrate, Lucknow, vide letter dated 13.12.2018, recommended initiation of disciplinary proceedings against the petitioner, who was then posted as Sub-Divisional Magistrate, Mohanlalganj, Lucknow, for alleged irregularities committed by him in the allotment of a housing site in Village Bhasanda, Pargana Nigoha, Tehsil Mohanlalganj, District Lucknow.

6. Consequently, vide order dated 13.02.2019, disciplinary proceedings were initiated against the petitioner under Rule 7 of the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999 (hereinafter referred to as the "Rules, 1999"), and the Commissioner, Lucknow Division, Lucknow, was appointed as the Inquiry Officer.

7. Thereafter, an approved charge-sheet dated 28.05.2019 was served upon the petitioner. The petitioner submitted his reply to the charge-sheet, whereafter the Inquiry Officer conducted the inquiry and submitted his inquiry report to the State Government vide letter dated 26.11.2020.

8. From a perusal of the record, it appears that out of the two charges levelled against the petitioner, Charge No. 1 was found proved in the inquiry report. Thereafter, the State Government, vide letter dated 17.12.2020, forwarded a copy of the inquiry report to the delinquent petitioner and called for his representation thereon. In response, the petitioner submitted his reply/representation to the Government vide letter dated 27.02.2021.

Findings Recorded by the Disciplinary Authority

9. After considering the charge-sheet, the inquiry report, and the reply submitted by the petitioner to the show-cause notice, it was found that the petitioner had approved the list prepared by the Naib Tehsildar and the Kanoongo for allotment of housing sites in Village Bhasanda without properly scrutinizing the eligibility and ineligibility of the beneficiaries, for which he was held responsible.

10. It was further found that the petitioner had granted approval to the proposal passed by the Land Management Committee without due scrutiny, which reflected laxity and negligence on his part in the discharge of his official duties. The competent authority also recorded that no new facts had been brought on record by the petitioner in his representation.

11. Accordingly, it was concluded that the petitioner had committed misconduct. Thereafter, vide letter dated 30.06.2025, the State Government sought the concurrence of the Uttar Pradesh Public Service Commission. The Commission accorded its concurrence vide communication dated 30.08.2025.

12. Consequently, vide order dated 10.09.2025, the State Government imposed upon the petitioner the punishment of permanent withholding of one annual increment along with the penalty of censure.

13. Aggrieved by the aforesaid punishment order dated 10.09.2025, the petitioner submitted a representation before the State Government. However, the said representation was rejected and the punishment order was upheld.

SUBMISSIONS ADVANCED ON BEHALF OF THE PETITIONER

14. Learned counsel for the petitioner submits that no regular inquiry was conducted by the Inquiry Officer. It is contended that no date, time or place for holding the inquiry was ever fixed and that no oral inquiry was conducted. According to the petitioner, the entire inquiry proceedings were conducted dehors the provisions of the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999.

15. It is further submitted that after the petitioner had submitted his reply to the inquiry report, the State Government sought the opinion of the Board of Revenue with respect to the charges levelled against him in the inquiry proceedings.

16. The Board of Revenue, after examining the records as well as the Government Order dated 18.05.1972, opined that the petitioner, Shri Santosh Kumar Singh, had exercised the requisite vigilance and that, immediately upon coming to know of certain irregularities, he had initiated proceedings for cancellation of the allotments. The Board further opined that there was no mala fide intention or ill will on the part of the petitioner in the matter.

17. It was also observed that the proceedings relating to cancellation of the lease deeds concerning the allotment of housing sites were pending adjudication in Case No. 12/2008-09 before the Additional Commissioner. Therefore, the Board of Revenue opined that it would be appropriate to initiate proceedings against the petitioner only if the concerned court were to record any adverse finding against him. Lastly, the Board of Revenue found the explanation submitted by the petitioner to be satisfactory.

SUBMISSIONS ADVANCED ON BEHALF OF THE RESPONDENTS

18. Per contra, learned Standing Counsel has opposed the aforesaid contention and submitted that the petitioner never requested for an oral hearing during the course of the inquiry proceedings.

19. It is contended that since no such request was ever made by the petitioner, no occasion arose for granting an oral hearing.

20. It is further submitted that, having failed to seek an oral hearing at the relevant stage, the petitioner is now estopped from contending that he was denied an opportunity of oral hearing or that the inquiry proceedings stand vitiated on that account.

21. Lastly, it is contended that Charge No. 1 has been found proved by the Inquiry Officer. It has been recorded in the inquiry report that, despite being the supervisory/reviewing authority, the charged officer-petitioner approved the recommendations/comments submitted by the subordinate revenue officials as they were, without undertaking any independent scrutiny. Such conduct was found to be contrary to the Government Order dated 19.05.1972.

CONSIDERATION BY THE COURT

Findings Regarding Conduct of Inquiry

22. Perused the record.

23. It is not disputed that no oral inquiry was conducted by the Inquiry Officer. Admittedly, no date, time or place for holding the inquiry was ever fixed. Further, no oral evidence was led by the Presenting Officer/department before the Inquiry Officer to prove the documents and other materials relied upon in support of Charge No. 1 and appended to the charge-sheet.

24. The record further reveals that the findings recorded by the Inquiry Officer are based solely on the documentary material available on record, without examining any witness or affording the petitioner an opportunity to cross-examine the witnesses relied upon by the department.

RELEVANT STATUTORY PROVISIONS

Rule 7 of the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999

25. Admittedly, the disciplinary proceedings against the petitioner have been conducted under the provisions of the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999. The relevant portion of Rule 7 of the Rules, 1999 is extracted below:

"7. Procedure for imposing major penalties. Before imposing any major penalty on a Government, servant, an inquiry shall be held in the following manner:

(i) The Disciplinary Authority may himself inquire into the charges or appoint an authority subordinate to him as Inquiry Officer to inquire into the charges.

(ii) The facts constituting the misconduct on which it is proposed to take action shall be reduced in the form of definite charge or charges to be called charge-sheet. The charge-sheet shall be approved by the Disciplinary authority: "

Provided that where the Appointing Authority is Governor, the charge-sheet may be approved by the Principal Secretary or the Secretary, as the case may be, of the concerned department.

(iii) The charges framed shall be so precise and clear as to give sufficient indication to the charged Government servant of the facts and circumstances against him. The proposed documentary evidences and the name of witnesses proposed to prove the same along with oral evidences, if any, shall be mentioned in the charge-sheet.

(iv) The Charged Government servant shall be required to put in a written statement of his defence in person on a specified date which shall not be less than 15 days from the date of issue of charge-sheet and to state whether he desires to cross-examine any witness mentioned in the charge-sheet and whether desires to give or produce evidence in his defence. He shall also be informed that in case he does not appear or file the written statement on the specified date, it will be presumed that he has none to furnish and inquiry officer shall proceed to complete the inquiry ex parte.

(v) The charge-sheet, along with the copy of documentary evidences mentioned therein and list of witnesses and their statements, if any shall be served on the charged Government servant personally or by registered post at the address mentioned in the official records in case the charge-sheet could not be served in aforesaid manner, the charge-sheet shall be served by publication in a daily newspaper having wide circulation:

Provided that where the documentary evidence is voluminous, instead of furnishing its copy with charge-sheet, the charged Government servant shall be permitted to inspect the same before the Inquiry Officer.

(vi) Where the charged Government servant appears and admits the charges, the Inquiry Officer shall submit his report to the Disciplinary Authority on the basis of such admission.

(vii) Where the charged Government servant denies the charges the Inquiry Officer shall proceed to call the witnesses proposed in the charge-sheet and record their oral evidence in presence of the charged Government servant who shall be given opportunity to cross-examine such witnesses. After recording the aforesaid evidences, the Inquiry Officer shall call and record the oral evidence which the charged Government servant desired in his written statement to be produced in his defence:

Provided that the Inquiry Officer may for reasons to be recorded in writing refuse to call a witness.

(viii) The Inquiry Officer may summon any witnesses to give evidence or require any person to produce documents before him in accordance with the provisions of the Uttar Pradesh Departmental Inquiry Act, 1976.

(ix) *The Inquiry Officer may ask any question he pleases, at any time of any witness or from person charged with a view to discover the truth or to obtain proper proof of facts relevant to charges(x) Where the charged Government servant does not appear on the date fixed in the inquiry or at any stage of the proceeding in spite of the service of the notice on him or having knowledge of the date, the Inquiry Officer shall proceed with the inquiry ex parte. In such a case the Inquiry Officer shall record the statement of witnesses mentioned in the charge-sheet In absence of the charged Government servant.*

(xi) *The Disciplinary Authority, if it considers it necessary to do so, may, by an order appoint a Government servant or a legal practitioner, to be known as "Presenting Officer" to present on its behalf the case in support of the charge.*

(xii) *The Government servant may take the assistance of any other Government servant to present the case on his behalf but not engage a legal practitioner for the purpose unless the presenting officer appointed by the Disciplinary Authority is a legal practitioner of the Disciplinary Authority having regard to the circumstances of the case so permits:*

Provided that this rule shall not apply in following cases :-

(1) *Where any major penalty is imposed on a person on the ground of conduct which has led to his conviction on a criminal charge; or*

(ii) *Where the Disciplinary Authority is satisfied, that for reason to be recorded by it in writing, that it is not reasonably practicable to held an inquiry in the manner provided in these rules; or*

(iii) *Where the Governor is satisfied that, in the. Interest of the security of the State, it is not expedient to hold an inquiry in the manner provided in these rules."*

LAW LAID DOWN BY THE HON'BLE SUPREME COURT

26. The Hon'ble Supreme Court in **State of U.P. v. Saroj Kumar Sinha, (2010) 2 SCC 772**, while interpreting Rule 7 of the Rules, 1999, has held that where the entire inquiry proceedings are conducted without leading any oral evidence to prove the charges, the inquiry stands vitiated.

27. The relevant paragraphs 25, 30, 37, 39, 40, 41 and 43 from the judgment of Saroj Kumar Sinha are extracted below:

"25. A bare perusal of the aforesaid charges shows that the three charges were based on official documents/official communications. We have earlier noticed the relentless efforts made by the respondent to secure copies of the documents, which was sought to be relied upon, to prove the charges. These were denied by the Department in flagrant disregard of the mandate of Rule 7 sub-rule (v). Therefore the inquiry proceedings are clearly vitiated having been held in breach of the mandatory sub-rule (v) of Rule 7 of the 1999 Rules.

30. *When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.*

37. *We are of the considered opinion that the aforesaid observations are fully applicable in the facts and circumstances of this case. Non-disclosure of documents having a potential to cause prejudice to a government servant in the enquiry proceedings would clearly be denial of a reasonable opportunity to submit a plausible and effective rebuttal to the charges being enquired into against the government servant.*

39. *The proposition of law that a government employee facing a departmental enquiry is entitled to all the relevant statements, documents and other materials to enable him to have a reasonable opportunity to defend himself in the departmental enquiry against the charges is too well established to need any further reiteration. Nevertheless given the facts of this case we may re-emphasise the law as stated by this Court in State of Punjab v. Bhagat Ram [(1975) 1 SCC 155 : 1975 SCC (L&S) 18] : (SCC p. 156, paras 6-8)*

"6. *The State contended that the respondent was not entitled to get copies of statements. The reasoning of the State was that the respondent was given the opportunity to cross-examine the witnesses and during the cross-examination the respondent would have the opportunity of confronting the witnesses with the statements. It is contended that the synopsis was adequate to acquaint the respondent with the gist of the evidence.*

7. *The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the government servant is afforded a reasonable opportunity to defend himself against charges on which inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the government servant. Unless the statements are given to the government servant he will not be able to have an effective and useful cross-examination.*

8. *It is unjust and unfair to deny the government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the government servant. A synopsis does not satisfy the requirements of giving the government servant a reasonable opportunity of showing cause against the action proposed to be taken."*

40. *We may also notice here that the counsel for the appellant sought to argue that the respondent had even failed to give a reply to the show-cause notice issued under Rule 9. The removal order, according to him, was therefore justified. We are unable to accept the aforesaid*

submission. The first enquiry report dated 3-8-2001, is clearly vitiated, for the reasons stated earlier. The second enquiry report cannot legally be termed as an enquiry report as it is a reiteration of the earlier enquiry report. Asking the respondent to give reply to the enquiry report without supply of the documents is to add insult to injury.

41. In our opinion the appellants have deliberately misconstrued the directions issued by the High Court in Writ Petition No. 937 of 2003. In terms of the aforesaid order the respondent was required to submit a reply to the charge-sheet upon supply of the necessary document by the appellant. It is for this reason that the High Court subsequently while passing an interim order on 7-6-2004 in Writ Petition No. 793 of 2004 directed the appellant to ensure compliance of the order passed by the Division Bench on 23-7-2003. In our opinion the actions of the inquiry officers in preparing the reports ex parte without supplying the relevant documents has resulted in miscarriage of justice to the respondent. The conclusion is irresistible that the respondent has been denied a reasonable opportunity to defend himself in the enquiry proceedings.

43. Taking into consideration the facts and circumstances of this case we have no hesitation in coming to the conclusion that the respondent had been denied a reasonable opportunity to defend himself in the inquiry. We, therefore, have no reason to interfere with the judgment of the High Court."

28. Recently, in the judgment of Satyendra Singh v. State of Uttar Pradesh and Another, reported in 2024 SCC OnLine SC 3325, the Hon'ble Supreme Court, while relying upon State of Uttar Pradesh v. Saroj Kumar Sinha (2010) 2 SCC 772 and Roop Singh Negi v. Punjab National Bank (2009) 2 SCC 570, reiterated the aforesaid legal position.

29. The relevant paragraphs 6, 8, 15 and 17 are extracted below:

"6. Learned counsel representing the appellant urged that the inquiry proceedings conducted against the appellant were in gross dereliction of Rule 7(3) of the Uttar Pradesh Government Servant(Discipline and Appeal) Rules, 19996. The disciplinary proceedings were initiated and allegations constituting major penalty were proposed by Inquiry Officer. Since the appellant had emphatically denied the charges, it was incumbent upon the Inquiry Officer to have recorded evidence to establish the charges attributed to the appellant. However, admittedly, not a single witness was examined by the Inquiry Officer to bring home the charges, and thus, the inquiry report is non est in the eyes of law. He, therefore, urged that the Tribunal was perfectly justified in quashing the inquiry proceedings and the order imposing penalty vide order dated 5th June, 2015 and that the High Court fell in grave error of law whilst allowing the writ petition and reversing the order passed by the Tribunal. He, therefore, implored the Court to accept the appeal, set aside the judgment passed by the High Court and restore the order passed by the Tribunal.

8. We have given our thoughtful consideration to the submissions advanced at bar and have carefully gone through the impugned judgments and the material available on record.

15. Same view was reiterated in State of Uttar Pradesh v. Saroj Kumar Sinha,12 wherein, this Court held that even in an ex-parte inquiry, it is the duty of the Inquiry Officer to examine the evidence

presented by the Department to find out whether the un rebutted evidence is sufficient to hold that the charges are proved. The relevant observations made in Saroj Kumar Sinha¹³ are as follows:-

"28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents. ...

33. As noticed earlier in the present case not only the respondent has been denied access to documents sought to be relied upon against him, but he has been condemned unheard as the inquiry officer failed to fix any date for conduct of the enquiry. In other words, not a single witness has been examined in support of the charges levelled against the respondent. The High Court, therefore, has rightly observed that the entire proceedings are vitiated having been conducted in complete violation of the principles of natural justice and total disregard of fair play. The respondent never had any opportunity at any stage of the proceedings to offer an explanation against the allegations made in the charge-sheet."

(emphasis supplied)

17. Thus, even in an ex-parte inquiry, it is sine qua non to record the evidence of the witnesses for proving the charges. Having tested the facts of the case at hand on the touchstone of the Rules of 1999, and the law as expounded by this Court in the cases of Roop Singh Negi¹⁵ and Nirmala J. Jhala¹⁶, we are of the firm view that the inquiry proceedings conducted against the appellant pertaining to charges punishable with major penalty, were totally vitiated and non-est in the eyes of law since no oral evidence whatsoever was recorded by the department in support of the charges."

FINDINGS OF THIS COURT

Violation of Rule 7 and Principles of Natural Justice

30. Thus, it is well settled that where no oral evidence is led by the department to prove the documents relied upon in support of the charge-sheet, such documentary evidence cannot be taken into consideration by the Inquiry Officer for recording a finding of guilt against the charged employee.

31. In the present case, it is an admitted position that no oral inquiry was conducted. No date, time or place for holding the inquiry was ever fixed. Consequently, the entire disciplinary proceedings stand vitiated, having been conducted in complete disregard of the principles of natural justice as well as the mandatory procedure prescribed under the Rules, 1999.

Non-Consideration of Petitioner's Defence

32. Further, the reply/representation submitted by the petitioner on 27.02.2021 has not been duly considered by the disciplinary authority. A perusal of the impugned punishment order reveals that no finding

has been recorded on the specific defence raised by the petitioner in his reply. The impugned order is wholly non-speaking, cryptic and devoid of reasons.

33. It is also evident that up to paragraph 7 of the punishment order, the disciplinary authority has merely reproduced the contents of the charge-sheet, the inquiry report and the reply submitted by the petitioner. No independent analysis or finding has been recorded.

34. It is only in paragraphs 8 and 9 that the disciplinary authority has recorded its conclusions. Even therein, no consideration whatsoever has been given to the specific defence taken by the petitioner, nor has any reason been assigned for rejecting the same.

35. The failure of the disciplinary authority to deal with the petitioner's defence and to record reasons while affirming the findings of guilt clearly demonstrates total non-application of mind, rendering the impugned punishment order unsustainable in law.

Non-Consideration of Board of Revenue Report

36. The impugned punishment order further appears to have been passed without even making any reference to the opinion of the Board of Revenue dated 19.04.2022, as contained in Annexure RA-5 to the Rejoinder Affidavit.

37. The opinion of the Board of Revenue constituted a relevant material bearing directly upon the culpability of the petitioner. The complete omission to consider the same further vitiates the impugned punishment order.

Inordinate and Unexplained Delay

38. This Court has also noticed that the impugned order dated 10.09.2025, as contained in Annexure-1 to the writ petition, suffers from inordinate and unexplained administrative delay in the conclusion of the disciplinary proceedings.

39. The disciplinary proceedings were initiated on 13.02.2019. Even after submission of the petitioner's final representation against the inquiry report on 27.02.2021, the matter remained pending without any justifiable reason.

40. The State Government continued to sit over the matter for nearly four years and sought the opinion of the Uttar Pradesh Public Service Commission only in June, 2025. Thereafter, the final punishment order came to be passed only on 10.09.2025.

41. The Hon'ble Supreme Court in *State of Madhya Pradesh v. Bani Singh*, 1990 Supp (1) SCC 738, and *P.V. Mahadevan v. Managing Director, Tamil Nadu Housing Board*, (2005) 6 SCC 636, has deprecated prolonged and unexplained delay in disciplinary proceedings and has held that such delay causes serious prejudice to the delinquent employee.

Conclusion

42. Having considered the rival submissions advanced by the learned counsel for the parties and upon a careful examination of the record, this Court finds that the disciplinary proceedings conducted against the petitioner suffer from fundamental procedural infirmities which strike at the very root of the inquiry.

43. The record unequivocally demonstrates that no oral inquiry was ever conducted by the Inquiry Officer. No date, time or place was fixed for holding the inquiry and no witness was produced by the department in support of the charges levelled against the petitioner. The documents relied upon in support of the charge-sheet were not proved through admissible oral evidence. The petitioner was consequently deprived of his valuable right to cross-examine the witnesses relied upon by the department and to effectively defend himself against the allegations. The procedure adopted by the Inquiry Officer is, therefore, in complete contravention of Rule 7 of the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999.

44. This Court further finds that the law on the issue is no longer *res integra*. The Hon'ble Supreme Court in *State of U.P. v. Saroj Kumar Sinha*, (2010) 2 SCC 772, and more recently in *Satyendra Singh v. State of Uttar Pradesh and Another*, 2024 SCC OnLine SC 3325, has categorically held that even in an *ex parte* inquiry it is mandatory for the department to lead evidence in support of the charges and for the Inquiry Officer to record the statements of witnesses so as to establish the allegations levelled against the delinquent employee. The Hon'ble Supreme Court has further held that documentary evidence, unless proved in accordance with law, cannot by itself form the basis of a finding of guilt. The inquiry proceedings in the present case have been conducted in complete disregard of the aforesaid settled principles of law.

45. The impugned punishment order further reveals that the disciplinary authority has failed to independently consider the defence raised by the petitioner. A disciplinary authority exercising quasi-judicial powers is under a legal obligation to consider the defence put forth by the delinquent employee and to assign reasons while accepting or rejecting the same. The recording of reasons is an essential facet of fair decision-making and constitutes a safeguard against arbitrary exercise of power. However, in the present case, except for a mechanical reproduction of the charge-sheet, inquiry report and the petitioner's explanation, no independent discussion or objective analysis is discernible from the impugned order.

46. This Court also finds substance in the submission advanced on behalf of the petitioner regarding the opinion rendered by the Board of Revenue. The material available on record indicates that the Board of Revenue, after examining the relevant records and the applicable Government Orders, opined that the petitioner had exercised due vigilance and had initiated corrective measures immediately upon noticing the alleged irregularities. The Board of Revenue further found no *mala fide* intention or ulterior motive attributable to the petitioner and considered his explanation satisfactory. Such opinion constituted a relevant and material piece of evidence which ought to have been considered by the disciplinary authority before arriving at any final conclusion. The complete omission to consider such material renders the decision-making process arbitrary and vitiates the impugned order.

47. This Court is also unable to ignore the inordinate and unexplained delay which has occurred in the conclusion of the disciplinary proceedings. Although the inquiry report was submitted on 26.11.2020 and the petitioner furnished his representation on 27.02.2021, the matter remained pending for nearly four years thereafter without any satisfactory explanation forthcoming from the respondents. The final punishment order came to be passed only on 10.09.2025. Such prolonged delay defeats the very object of disciplinary

proceedings and causes serious prejudice to a government servant, who remains under a cloud of uncertainty for an indefinite period. The Hon'ble Supreme Court in *State of Madhya Pradesh v. Bani Singh and P.V. Mahadevan v. Managing Director, Tamil Nadu Housing Board* has repeatedly cautioned against such unexplained delays and has recognized the prejudice caused thereby to the delinquent employee.

48. Apart from the procedural violations noticed above, the nature of the allegation itself also deserves consideration. The charge against the petitioner essentially relates to alleged lack of adequate scrutiny while granting approval on the recommendations forwarded by subordinate revenue officials. There is no finding recorded by the disciplinary authority that the petitioner derived any personal benefit from the alleged transaction or that he acted with any mala fide intention. There is also no finding of corruption, dishonesty, misappropriation or abuse of official position. In such circumstances, strict adherence to the prescribed procedure and the principles of natural justice assumes even greater significance. Once the mandatory procedure has not been followed, the punishment imposed upon the petitioner cannot be sustained.

49. The cumulative effect of the aforesaid circumstances, namely, (i) complete absence of oral inquiry, (ii) failure to prove the charges through admissible evidence, (iii) denial of effective opportunity of defence, (iv) non-consideration of the petitioner's detailed representation, (v) omission to consider the opinion of the Board of Revenue, (vi) non-speaking and mechanical nature of the punishment order, and (vii) inordinate and unexplained delay in concluding the disciplinary proceedings, leaves this Court with no manner of doubt that the impugned punishment order cannot withstand judicial scrutiny.

50. Accordingly, this Court is satisfied that the impugned punishment order dated 10.09.2025 and the consequential order dated 09.12.2025 are legally unsustainable and are liable to be quashed.

51. The writ petition is accordingly **allowed**.

52. The impugned punishment order dated 10.09.2025, as contained in Annexure-1 to the writ petition, is hereby quashed.

53. The consequential order dated 09.12.2025, as contained in Annexure-2 to the writ petition, is also hereby quashed.

54. A writ in the nature of mandamus is issued commanding the respondents to restore all consequential service benefits to the petitioner, including restoration of the withheld annual increment, refixation of pay, release of consequential monetary benefits and all attendant service benefits, as if the impugned orders had never been passed.

55. The aforesaid exercise shall be completed by the competent authority within a period of three months from the date of production of a certified copy of this order before the authority concerned.

56. No order as to costs.

(2026) 6 ILRA 245
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 22.06.2026

BEFORE

THE HON'BLE ALOK MATHUR, J.
THE HON'BLE AMITABH KUMAR RAI, J.

Writ C No. 6153 of 2011

Jagdish Singh

...Petitioner

Versus

Election Commission of India

...Respondents

Issue for Consideration

(1) Maintainability of writ petition under Article 226 of the Constitution of India on the issue of questioning the validity of law relating to delimitation of the constituencies or the allotment of the seats to such constituencies, particularly when the vires of the provision of this law was also challenged.

(2) Enforceability of right to vote and right to contest election in the light of its harmony with Articles 330 and 332 of the Constitution providing reservation of seats in favour of S.C./S.T. in the Assembly/ Parliamentary constituencies.

(3) Constitutional validity of the provision of Section 9(1)(c) of the Delimitation Act, 2002.

(4) Applicability of the principle of rotation in the matter of reservation of seats in favour of S.C./S.T. in the Assembly/ Parliamentary constituencies.

Headnotes

(A) Constitutional law – Constitution of India – Article 226 and 329(1) – Writ – Maintainability – Issue of validity of law relating to delimitation of the constituencies or the allotment of the seats to such constituencies – Prohibition of Article 329(1) – Enforceability – Preliminary objection regarding maintainability of writ was raised – Permissibility – Vires of statute also challenged in writ petition – Effect

Held : The instant writ petition, for the relief sought, is maintainable, as the challenge in the writ petition is to the vires of Section 9(1)(c) of the Act, 2002 relating to the mechanism to be adopted for reserving seats for SC/ST. The Hon'ble Supreme Court in the case of *Kishorchandra Chhanganlal Rathod* has specifically held that Article 329 of Constitution cannot be construed to completely debar citizens from pleading their grievance in cases where interpretation of constitutional provisions is required for facilitating the elections or when a case for malafide or arbitrary exercise of power is made out. [Para 17]

(B) Constitutional law – Constitution of India – Article 327, 328, 329, 330 and 332 – Reservation of seats in favour of S.C./S.T. in the Assembly/Parliamentary constituencies – Right to vote and right to contest the election – Enforceability :

Held : The Constitution itself provides, under Articles 330 and 332, for reservation of seats, and therefore the constitutional rights to vote and to contest elections must be considered in harmony with Articles 330 and 332 of the Constitution, which provide for reservation of seats in favour of the SC/ST candidates. Consequently, a citizen belonging to a reserved constituency cannot legitimately complain that his constitutional rights to vote and contest elections are hampered merely because the constituency stands reserved. [Para 27]

(C) Constitutional law – Constitution of India – Article 14, 15, 16, 19, 330 and 332 – Delimitation Act, 2002 – Section 9(1)(c) – Reservation of seats for S.C./S.T. candidates in those area where the S.C./S.T. population is comparatively large – Vires of S. 9(1)(c) of the Act, 2002 was challenged alleging it violative of Article 14, 15, 16, 19, 330 and 332 of the Constitution of India

– Principle of rotation – Applicability – Scope of judicial review to decide the constitutional validity of an Act also felt into consideration

Held : The validity of Act can be challenged only on two grounds, namely, (i) lack of legislative competence, and (ii) violation of any Fundamental Rights contained in Part III of the Constitution or any other constitutional provisions, with an exception carved out by the courts where the statutory enactment is manifestly arbitrary and unreasonable. We do not find that providing reservation under Section 9(1)(c) of the Act, 2002 for Scheduled Castes and Scheduled Tribes in those areas where comparatively the population of Scheduled Castes and Scheduled Tribes is large suffers from manifest arbitrariness or can be said to be unreasonable inasmuch as the legislature in its wisdom has provided for reserving seats where population of SC/ST is comparatively larger which cannot be termed as arbitrary or unreasonable. [Para 30]

Further held : The goals of social justice, political justice and equality as provided in our Constitution can only be achieved by rotation of seats enabling the SC/ST candidates to get elected even from those seats where their population is comparatively much low to the overall population of the constituency. It is for the parliament to ponder on the issue and legislate as per its wisdom and this court cannot issue any direction so as to compel the State for providing roster in reservation for SC/ST in Assembly/ Parliamentary constituencies in view of the settled principles of law as discussed hereinabove. [Para 40] (E-1)

Case Law Cited

Meghraj Kothari vs. Delimitation Commission, AIR 1967 SC 669; Civil Appeal No. 7930 of 2024, Kishorchandra Chhanganlal Rathod vs. Union of India and others decided on 23.07.2024; Rajbala and others vs. State of Haryana and Others, (2016) 2 SCC 445; People's Union for Civil Liberties (PUCL) and another vs. Union of India and another, (2003) 4 SCC 399; K.S. Puttaswamy (Retired) and another (AADHAAR) vs. Union of India and Another, (2019) 1 SCC 1; Union of India vs. Deoki Nandan Aggarwal, 1992 Supp (1) SCC 323; Vemareddy Kumaraswamy Reddy vs. State of A.P., (2006) 2 SCC 670; Suresh Seth vs. Indore Municipal Corporation, (2005) 13 SCC 287; Supreme Court Employees' Welfare Association vs. Union of India, (1989) 2 SCC 187; Manoj Sharma vs. State and others, (2008) 16 SCC 1; State of U.P. vs. Mahindra and Mahindra Ltd., (2011) 13 SCC 77 – **referred to.**

List of Acts

Constitution of India – Article 14, 15, 16, 19, 168, 170, 329(a), 330 and 332; Delimitation Act, 2002 – Section 9(1)(c); Representation of the People Act, 1951 – Sections 3, 5(a) and 7.

List of Keywords

Notification, Scheduled Cast, Ultra vires, Reservation, Embargo, Candidates for generations, Discriminatory, Fundamental Right to Equality, Allocation of seats, Proportionate ration, Census, Incorrect interpretation, Principle of rotation, Stagnation in reservation of seats, Preamble, Social, economic and political justice, Right to a free vote, Freedom of speech, Right to vote, Delimitation of Constituencies, Preliminary objection, Proportion, Population, Electoral matter, Legislative domain, distribution of seats, Supersession, Methodology for identification of the seats, Rotational basis, Rights of a general category candidates, Right to elect, Right to be elected, Arbitrary, Unreasonable, Unconstitutional, Statutory enactment, Wisdom, Parliament, Legislative competence, Legislative wisdom, Population-based rosters, Jurisdiction, Aid of reservation, Goal of social justice, Political justice, Equality.

Case Arising From

Notification dated 18.12.2006 issued by the opp. no. 2 notifying the Kadipur Assembly Constituency (191) for the Scheduled Castes.

Appearances for Parties

Advs. for the Appellant : Ajay Pratap Singh; Surya Bhan Singh.

Advs. for the Respondents : O.P. Srivastava, Sr. Adv.; Anupriya Srivastava; Raj Kumar Singh; Akhilesh Srivastava, S.C.; S. B. Pandey.

(Delivered by Hon'ble Amitabh Kumar Rai, J.)

(1) Heard Shri Ajay Pratap Singh, learned counsel appearing on behalf of petitioner, Shri Raj Kumar Singh, learned counsel for the Union of India, Shri Akhilesh Srivastava, learned Standing Counsel for State-respondent No.4 and Shri O.P. Srivastava, learned Senior Advocate assisted by Ms. Anupriya Srivastava, learned counsel for the Election Commission.

(2) The instant petition has been filed for the following reliefs :-

“(a) Issue a writ order or direction in the nature of certiorari quashing the impugned notification dt. 18.12.2006 issued by the opp. no.2 notifying the Kadipur Assembly Constituency (191) for the Scheduled Caste as it relates with the Kadipur Assembly Constituency (191) District Sultanpur as contained in the Annexure No.1 to the writ petition after summoning the original from the records.

(aa) Issue a writ order or direction declaring the following part of Section 9(1)(c) of the Delimitation Act, 2002;

“and located as far as practicable in those areas, where the proportion of their population to the total is comparatively large□ as ultra vires being violative of the Article 14, 15, 16, 19 and Article 330 and 332 of the Constitution of India.

(b) Issue a writ order or direction in the nature of mandamus commanding the O.P. No.2 to consider the representation of the petitioner dt. 09.09.2006 and declare the Kadipur Assembly Constituency (191) District Sultanpur as a general constituency before the fourth coming Assembly Election.”

(3) The petitioner is a resident of Village Gajendrapur, Tehsil Kadipur, District Sultanpur which falls in 191 Kadipur Assembly Constituency of District Sultanpur, U.P. and is an elector of the Kadipur Assembly Constituency. The grievance raised by him is that since the creation of the Kadipur Assembly Constituency, the seat has stood reserved for the Scheduled Caste category for almost six decades. Due to such reservation, the petitioner, who claims to be a social worker and politically active is restrained from voting of a candidate of his choice in the Legislative Assembly Election of the State Legislature to a candidate of general category due to the embargo of Section 5(a) of the Representation of the People Act, 1951 as seat is reserved for the Scheduled Caste.

(4) It has been submitted by learned counsel for the petitioner that the petitioner is compelled to cast a caste-bonded vote in favour of only Scheduled Caste candidates for generations, which is discriminatory compared to fellow citizens residing in other assembly constituencies, and also violative of the Fundamental Right to Equality as provided under Article 14 and 15 of the Constitution of India.

(5) Learned counsel for the petitioner, while arguing, referred to Article 168 of Chapter III, Part VI of the Constitution of India, which provides for constitution of legislatures in the States, and also referred to Part XVI of the Constitution of India, which provides for special provisions

relating to certain classes. Specific mention is made of Article 332 of the Constitution of India, which provides for the reservation of seats for Scheduled Castes and Scheduled Tribes (hereinafter referred to as □SC/ST□) in the Legislative Assemblies of the State. Reference is also made to Article 170 of the Constitution of India, which lays down the maximum number of seats in Legislative Assemblies of State and certain principles to be followed in allocating seats in the State Legislative Assembly.

(6) It has further been submitted that as per provisions of Section 7 of the Representation of the People Act, 1950, the total number of seats in the Assembly Constituency in State of U.P. has been determined as 403, of which 85 seats are reserved for Scheduled Castes as per the proportionate ratio of Scheduled Castes population in accordance with the census of 2001. It has been submitted that as per the mandate of Article 332 of the Constitution of India, the number of seats has to be reserved for SC/ST, but it nowhere provides that the seats with the comparatively large SC/ST population are to be reserved always for SC/ST. The grievance raised by the petitioner is that due to an incorrect interpretation of the provisions contained in Article 332, the seats having highest number of SC/ST population are always reserved for SC/ST candidates without following the principle of rotation, which is followed in Panchayat elections and Municipal elections as per Part IX and IX-A of the Constitution of India.

(7) It has been submitted that the Delimitation Act, 2002 (hereinafter referred to as “Act, 2002”) was notified, which, as per Section 9 of the Act, provides manner in which the Delimitation Commission shall distribute and locate seats as far as practicable in those areas where the proportion of SC/ST population is comparatively large, resulting in stagnation in reservation of seats. As a consequence, the constituency once reserved for SC/ST has remained reserved indefinitely, which is against the very object of the concept of reservation.

(8) It has been argued that Section 9(1)(c) of the Act, 2002, for the aforesaid reasons, is unconstitutional as it is against the Preamble of the Constitution, which provides for securing social, economic and political justice to its citizens and equality of status and liberty of thought, expression, belief, faith and worship. It has been submitted that Section 9(1)(c) of the Act, 2002 is violative of Articles 14, 15 and 19 of the Constitution of India, inasmuch as it creates discrimination between one section of Scheduled Caste population residing in an area with a high population percentage of Scheduled Castes in a constituency, in comparison to other Scheduled Castes in areas having a low population percentage and deprives the residual voters of the right to a free vote, compelling them to cast a “conditional vote” for generations.

(9) It has further been submitted that such discrimination is arbitrary under Article 15 of the Constitution of India, as no such discrimination can be made solely on the basis of religion, race, caste, sex or place of birth. It has also been argued that protection of certain rights regarding freedom of speech includes the right to vote, which is derived from Article 326 of the Constitution and is an electoral expression available under Representation of People Act, 1950. This right cannot be curtailed by a conditional vote system for all time to come and such an act is violative of Article 19 of the Constitution of India.

(10) Learned counsel for the petitioner also referred to the Constitutional debates of the Constituent Assembly of India on proposed Articles 292/294 (numbered in the Constitution of India as Articles 330/332) in which a proposal was made through Amendment No.22 for adding a proviso to proposed Article 292, providing that the constituencies for the seats reserved for the Scheduled Caste or Scheduled Tribes should comprise, so far as possible, such contiguous areas where they were comparatively more numerous than in other areas. The proposed Amendment No.22 was negatived and, as such, it has been contended by learned counsel for the petitioner that it was never the intention of the framers of the Constitution to provide reservation of seats in Assembly/Parliament confined to those constituencies where the number of Scheduled Castes and Scheduled Tribes is maximum/largest. It has also been pointed out that the National Commission for Review of the Working of the Constitution, in its report dated 31.03.2002 Chaired by Hon'ble Justice M.N. Venkatachaliah recommended in para nos. 4-17 under heading 'Delimitation of Constituencies' for rotation of seats reserved for Scheduled Castes and Scheduled Tribes so as to reflect the plural composition of society.

(11) It has been argued that Act, 2002 has been misinterpreted to deem it mandatory, including the provisions of Articles 14, 15, 19(1)(a), 81, 82, 170, 330, 332 and 334 of the Constitution of India by putting a moratorium on the status of existing seats in the Legislative Assemblies of all States as fixed on the basis of 1971 census to remain unaltered till the first census to be taken up after the year 2026. It has been submitted that the petitioner appeared before the Delimitation Commission on 09.09.2006 and requested/suggested the adoption of the rotational principle for allotting the constituencies for the reserved category as provided by the Panchayat elections.

(12) On the other hand, Shri O.P. Srivastava, learned Senior Advocate, for the Election Commission of India has raised objections regarding the maintainability of the writ petition on the strength of Article 329 (a) of the Constitution, which prohibits a challenge to the validity of any law relating to delimitation of the constituencies or the allotment of the seats to such constituencies from being called in question in any Court. It has been submitted that the order passed by the Delimitation Commission and published in the Gazette of India regarding delimitation and reservation of the constituencies has the force of law and is not liable to be called in question.

(13) It has been submitted that, as per the proviso under the Explanation below clause (3) of Article 330 of the Constitution, no change of the reservation of seats as determined by the Delimitation Commission based on 2001 census can be made until the census figures of the census to be held after 2026 are published.

(14) It has further been submitted that the Hon'ble Supreme Court in the case of *Meghraj Kothari vs. Delimitation Commission* reported in AIR 1967 SC 669, specifically held that the orders passed by the Delimitation Commission and published under the provisions of the Act, 2002 have the same effect as a law made by the Parliament under Article 327, and such orders cannot be called in question. As such, the present writ petition, for the said reason, is not maintainable and is liable to be dismissed at the threshold.

(15) It has further been submitted that, in the instant writ petition, the methodology adopted by the Delimitation Commission while determining the constituencies has been put under challenge, but no such objection was raised during the course of hearing before the Delimitation Commission and the writ petition has been filed after a long delay following the publication of the order of the Delimitation Commission in the Gazette of India way back in the year 2008. Therefore, the present writ petition suffers from delay and laches. It has been submitted that the contention of the learned counsel for the petitioner for following the rotational principle in allotting the constituencies for the reserved category is a policy matter for which a writ of mandamus is not maintainable, particularly when the Constitution itself does not provide for rotation in the allotment of seats for the reserved category.

(16) Learned counsel for the petitioner, regarding the preliminary objections as to the maintainability of the writ petition, has placed reliance on the judgment of the Hon'ble Supreme Court in the case of *Kishorchandra Chhanganlal Rathod vs. Union of India and Ors. Civil Appeal No.7930 of 2024* decided on 23.07.2024, wherein it was held in paragraph 5 of the judgment that the exercise of judicial review under Article 226 of the Constitution of India is permissible despite the restrictions contained in Article 329 of the Constitution.

(17) Regarding the preliminary objection, we are of the view that the instant writ petition, for the relief sought, is maintainable, as the challenge in the writ petition is to the vires of Section 9(1)(c) of the Act, 2002 relating to the mechanism to be adopted for reserving seats for SC/ST. The Hon'ble Supreme Court in the case of *Kishorchandra Chhanganlal Rathod* (supra) has specifically held that Article 329 of Constitution cannot be construed to completely debar citizens from pleading their grievance in cases where interpretation of constitutional provisions is required for facilitating the elections or when a case for malafide or arbitrary exercise of power is made out. The relevant paragraphs 5 to 9 of the judgment of the Hon'ble Supreme Court in *Kishorchandra Chhanganlal Rathod* (supra) are reproduced hereinbelow:-

“5.We, however, do not approve the view taken by the High Court that the order of delimitation of constituencies, issued in exercise of statutory powers under the Delimitation Act, is entirely insusceptible to the powers of judicial review exercisable under Article 226 of the Constitution. Although Article 329 undeniably restricts the scope of judicial scrutiny re: validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, it cannot be construed to have imposed for every action of delimitation exercise. If judicial intervention is deemed completely barred, citizens would not have any forum to plead their grievances, leaving them solely at the mercy of the Delimitation Commission. As a constitutional court and guardian of public interest, permitting such a scenario would be contrary to the Court's duties and the principle of separation of powers.

*6.This understanding is supported by a three-Judge Bench decision of this Court in *Dravida Munnetra Kazhagam v. State of T.N.*, (2020) 6 SCC 548, para 14] where the Court was called upon to interpret Articles 243-O and 243-ZG of the Constitution, which mirror the aforementioned Article 329. Rejecting the contention that these provisions place a complete bar on judicial intervention, it was noted that a constitutional court can intervene for facilitating the elections or when a case for mala fide or arbitrary exercise of power is made out. Using this, the*

*Court directed delimitation to be conducted for nine new districts. Recently, a three-Judge Bench of this Court in *State of Goa v. Fouziya Imtiaz Shaikh*, (2021) 8 SCC 401, para 67, affirmed the ratio of the above-cited decision while discussing principles on Article 329(a), and rejected the contention which sought to prove it as per incuriam.*

7. Therefore, while the Courts shall always be guided by the settled principles regarding scope, ambit and limitations on the exercise of judicial review in delimitation matters, there is nothing that precludes them to check the validity of orders passed by the Delimitation Commission on the touchstone of the Constitution. If the order is found to be manifestly arbitrary and irreconcilable to the constitutional values, the Court can grant the appropriate remedy to rectify the situation.

*8. In order to prove that any kind of judicial intervention is fully prohibited, the respondents relied upon a Constitution Bench decision of this Court in *Meghraj Kothari v. Delimitation Commission*, 1966 SCC OnLine SC 12. A closer examination of the aforementioned case, however, would show that the Court in that case restricted judicial intervention when the same would unnecessarily delay the election process. This is writ large from the following paragraph, where the Court explicated the reason behind adopting the hands-off approach: (SCC OnLine SC para 20)*

20. In our view, therefore, the objection to the delimitation of constituencies could only be entertained by the Commission before the date specified. Once the orders made by the Commission under Sections 8 and 9 were published in the Gazette of India and in the Official Gazettes of the States concerned, these matters could no longer be reagitated in a court of law. There seems to be very good reason behind such a provision. If the orders made under Sections 8 and 9 were not to be treated as final, the effect would be that any voter, if he so wished, could hold up an election indefinitely by questioning the delimitation of the constituencies from court to court. Section 10(2) of the Act clearly demonstrates the intention of the legislature that the orders under Sections 8 and 9 published under Section 10(1) were to be treated as law which was not to be questioned in any court."

9. Hence, the aforementioned judgment does not support the respondents' contention regarding complete restriction on judicial review. A constitutional court can undertake the exercise of judicial review within the limited sphere at an appropriate stage."

(18) Thus, we are of the considered opinion that the preliminary objection regarding the maintainability of the writ petition is liable to be rejected, and accordingly, we hold that the present writ petition, for the relief sought, is maintainable.

(19) Having heard the learned counsel for the parties and perused the record, the question that falls for consideration in the present writ petition is whether Section 9(1)(c) of the Act, 2002 is ultra vires on the ground that it provides for allotment of constituencies for the reserved category in those areas where the proportion of their population is comparatively large without providing for rotation, resulting in stagnation of a particular seat remaining reserved for the reserved category for all times to come, thereby being violative of Articles 14, 15, 19, 330 and 332 of the Constitution of

India. The ancillary question that arises for consideration is that whether, in exercise of powers under Article 226 of the Constitution of India, this Court can issue directions for providing reservation on the basis of rotation in the constituencies for the Legislative Assembly by issuing a writ of mandamus for inserting such a provision in the Act, 2002.

(20) Article 330 of the Constitution provides for reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People. Clause (2) of Article 330 provides for the number of seats to be reserved in a State or Union Territory for the Scheduled Castes or Scheduled Tribes shall, as nearly as may be, bear the same proportion to the total number of seats allotted to that State or Union Territory in the House of the People as the population of the Scheduled Castes or Scheduled Tribes in that State or Union Territory bears to the total population of the State or Union Territory. Clause (3) of Article 332 of the Constitution mandates reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the State and provides that the number of seats reserved for the Scheduled Castes and Scheduled Tribes shall be in proportion to the population of the Scheduled Castes and Scheduled Tribes in the State to the total population of the State. Thus, Articles 330(1) and 332(1) contain a mandate which is evident from the use of the expression "seats shall be reserved" for the Scheduled Castes and Scheduled Tribes in the House of the People and in the Legislative Assembly of every State and the number of seats required to be reserved is to be as stipulated in clause (2) of Article 330 and clause (3) of Article 332. The principle adopted by both these provisions requires that the number of seats so reserved shall, "as nearly as may be", bear the same proportion to the total number of seats allotted to the State in the House of the People and in the Legislative Assembly, as the case may be, as the proportion of the population of the Scheduled Castes and Scheduled Tribes in respect of which seats are so reserved bears to the total population of the State.

(21) The implementation of the constitutional mandate for reserving seats for the Scheduled Castes and Scheduled Tribes in the House of the People and in the State Legislative Assemblies is governed by a statutory regime and does not provide for reservation for any particular Scheduled Caste or Scheduled Tribe. Article 327 of the Constitution entrusts Parliament with the power to make provisions with respect to elections to either House of Parliament or to the Legislature of a State, whereas Article 329 provides for a bar to interference by courts in electoral matters, including the validity of any law relating to the delimitation of constituencies or the allotment of seats to constituencies made under Articles 327 and 328. Entry 72 of the Union List of the Seventh Schedule deals with elections to Parliament and to the legislatures of States, among other subjects. Thus, the legislative domain lies exclusively with Parliament in terms of Articles 245 and 246 read with Entry 72 of List I with regard to legislation in the election matters.

(22) The Representative of the People Act, 1950, vide Section 3 provides for allocation of seats to the States in the House of the People and the number of seats reserved for the Scheduled Castes and Scheduled Tribes as indicated in the First Schedule. Section 7(1) provides that the total number of seats in the Legislative Assembly of all the States specified in the Second Schedule by direct election from assembly constituencies and the number of seats reserved for the Scheduled Castes and for the Scheduled Tribes, shall be as indicated in that Schedule. Parliament enacted the Act, 2002 providing for the constitution of the Delimitation Commission. The Delimitation Commission is required to readjust the division of States into territorial constituencies for the

purpose of elections to the House of the People and to the State Legislative Assemblies. In terms of Section 8, the Delimitation Commission is empowered to determine the seats to be allocated to each State in the House of the People and in the Legislative Assemblies of the States on the basis of census figures of 1971. The Delimitation Commission is also empowered to determine the number of seats reserved for the Scheduled Castes and Scheduled Tribes on the basis of the 2001 census.

(23) Section 9 of the Act, 2002 provides for distribution of the seats allocated to each State in the House of the People. Section 10 of the Act, 2002 pertains to the publication of orders by the Delimitation Commission in accordance with the exercise of powers under Sections 8 and 9. Section 10(4) of the Act, 2002 specifically states that the orders so published under Section 10 shall apply to every election to the House of the People and to the Assemblies if such elections are held after the publication of such orders. The orders apply in supersession of all other provisions pertaining to representation and delimitation contained in any other law, order or notification.

(24) Article 330 of the Constitution provides for reservation of seats of Scheduled Castes and Scheduled Tribes in the House of the People and the number of seats reserved should be in proportion to the population of the Scheduled Castes and Scheduled Tribes to the total population in that State or Union Territory. Article 332, on the other hand, provides for reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States or of the Scheduled Tribes in the State or part of the State, as the case may be, bears to the total population of the State. It does not provide any methodology for identification of the seats to be reserved. Articles 330 as well as 332 of the Constitution do not provide any methodology for reservation of seats by applying reservation to constituencies on a rotational basis, as expressly provided under Article 243D for Panchayat elections and Article 243T for Municipal elections.

(25) Articles 330 and 332 of the Constitution are silent on the issue of methodology to be adopted for identifying reserved seats in favour of Scheduled Castes and Scheduled Tribes and confine themselves only to the determination of number of seats to be allotted/reserved for Scheduled Castes and Scheduled Tribes in a State or Union Territory. The Act, 2002 provides the methodology for identification of reserved seats as contained in Section 9(1)(c), providing therein for reservation of seats in favour of Scheduled Castes or Scheduled Tribes in those areas where the proportion of their population to the total population is comparatively large, meaning thereby that those areas where the population of Scheduled Castes and Scheduled Tribes is comparatively large are to be reserved for Scheduled Castes and Scheduled Tribes constituencies. The Act, 2002 thus provides the methodology for reservation of seats for Scheduled Castes and Scheduled Tribes in those areas where the proportion of population of Scheduled Castes and Scheduled Tribes are comparatively large, for which there is no bar under Article 330 and 332 of the Constitution of India so as to contend that the provisions of Section 9(1)(c), to that extent, are in conflict with the scheme provided under Articles 330 and 332 of the Constitution of India.

(26) The argument of the learned counsel for the petitioner contends that the provision for reservation of seats in those area where the population of SC/ST is comparatively large is arbitrary and hit by Article 14, as it amounts to curtailment of the right to vote and the right to contest elections in such constituencies by a general category candidate. The argument so advanced deserves to be rejected for the reason that when seats are reserved for SC/ST candidates, it cannot

be said that the rights of a general category candidate are violated, inasmuch as the constitutional scheme itself provides for reservation of seats under Articles 330 and 332 of the Constitution of India. The right of a general category candidate to contest an election cannot override the constitutional scheme envisaged under Articles 330 and 332 of the Constitution.

Further argument of the learned counsel for the petitioner that the petitioner's constituency has remained reserved for decades as a Scheduled Castes constituency, thereby depriving him of the right to vote for a general category candidate and forcing him into "conditional voting", is also devoid of any merit. The right to vote does not imply that a voter can dictate the terms of allotment of a constituency or insist that a constituency be allotted to candidates of a particular category. The right to vote of every citizen in an election, whether to the Lok Sabha or Legislative Assembly is recognized under Articles 325 and 326 of the Constitution subject to the limitations prescribed by or under the Constitution. Article 327 of the Constitution empowers the Parliament to make laws with respect to all matters relating to elections to either House of Parliament or to the House or either House of the Legislature of a State, including the preparation of electoral rolls and all other matters necessary for securing the due constitution of such House or Houses. Thus, the claim of the petitioner that his right to vote is adversely affected by continuing reservation of his constituency for a reserved category is misconceived, as the right to vote in elections to the Lok Sabha or the Legislative Assembly is a constitutional right subject to laws made by Parliament under Article 327 of the Constitution.

(27) Hon'ble Supreme Court in the case of **Rajbala and others vs. State of Haryana and Others** reported in (2016) 2 SCC 445, delved into the questions of the right to vote and the right to contest elections and concluded that every citizen has a constitutional right both to elect and to be elected to either Parliament or a State Legislature, subject to restrictions prescribed by law. Relying upon the judgment in **People's Union for Civil Liberties (PUCL) and another vs. Union of India and another** reported in (2003) 4 SCC 399, the Hon'ble Supreme Court held that both the right to elect and the right to be elected are constitutional rights created by the Constitution. The Constitution itself provides, under Articles 330 and 332, for reservation of seats, and therefore the constitutional rights to vote and to contest elections must be considered in harmony with Articles 330 and 332 of the Constitution, which provide for reservation of seats in favour of the SC/ST candidates. Consequently, a citizen belonging to a reserved constituency cannot legitimately complain that his constitutional rights to vote and contest elections are hampered merely because the constituency stands reserved. The relevant paragraph 31 to 38 of the judgment in **Rajbala (supra)** are reproduced hereinbelow :

"31. "The right to vote of every citizen at an election either to the Lok Sabha or to the Legislative Assembly is recognised under Articles 325 and 326 subject to limitations (qualifications and disqualifications) prescribed by or under the Constitution. On the other hand, the right to vote at an election either to the Rajya Sabha or to the Legislative Council of a State is confined only to Members of the electoral colleges specified under Articles 80(4) and (5) and Articles 171(3)(a), (b), (c) and (d) respectively. In the case of election to the Rajya Sabha, the electoral college is confined to elected members of Legislative Assemblies of various States and representatives of Union Territories. In the case of the Legislative Council, the electoral college is divided into four parts consisting of : (i) members of various local bodies specified under Article

171(3)(a); (ii) certain qualified graduates specified under Article 171(3)(b); (iii) persons engaged in the occupation of teaching in certain qualified institutions described under Article 171(3)(c); and (iv) Members of the Legislative Assembly of the State concerned. Interestingly, persons to be elected by the electors falling under any of the abovementioned categories need not belong to that category, in other words, need not be a voter in that category.

32. □ The electoral college for election to the Office of the President consists of elected members of both Houses of Parliament and elected members of the Legislative Assemblies of the State while the electoral college with respect to the Vice-President is confined to Members of both Houses of Parliament.

33. □ The Constitution prescribes certain basic minimum □ qualifications □ and □ disqualifications □ to contest an election to any of the abovementioned offices or bodies. Insofar as election to the Offices of the President and Vice-President is concerned, they are contained under Articles 58 and 66 respectively. Insofar as Parliament and the State Legislatures are concerned, such □ qualifications □ are stipulated under Articles 84 and 173, and □ disqualifications □ under Articles 102 and 191 respectively. The Constitution also authorises Parliament to make laws prescribing both further □ qualifications □ and □ disqualifications.

34. □ Interestingly, insofar as elections to Offices of the President and Vice-President are concerned, the Constitution does not expressly authorise either Parliament or Legislative Assemblies of the State to prescribe any further □ qualifications □ or □ disqualifications □ to contest an election to either of these Offices. It stipulates only two conditions which qualify a person to contest those Offices, they are □ citizenship of the country and the minimum age of 35 years. Under Articles 58(1)(c) and 66(3)(c), it is further stipulated that a person who was otherwise eligible to contest for either of the abovementioned two Offices shall not be eligible unless he is qualified for election as a Member of the Lok Sabha or the Rajya Sabha respectively.

35. □ An examination of the scheme of these various Articles indicates that every person who is entitled to be a voter by virtue of the declaration contained under Article 326 is not automatically entitled to contest in any of the elections referred to above. Certain further restrictions are imposed on a voter's right to contest elections to each of the abovementioned bodies. These various provisions, by implication create a constitutional □ right to contest □ elections to these various constitutional offices and bodies. Such a conclusion is irresistible since there would be no requirement to prescribe constitutional limitations on a non-existent constitutional right.

36. □ Articles 84 and 173 purport to stipulate □ qualifications □ for membership of Parliament and legislatures of the State respectively. Articles 102 and 191 purport to deal with □ disqualifications □ for membership of the abovementioned two bodies respectively. All the four articles authorise Parliament to prescribe further □ qualifications □ and □ disqualifications, as the case may be, with reference to the membership of Parliament and legislatures of the State, as the case may be.

37. *The distinction between the expressions “qualification” and “disqualification” in the context of these four articles is little intriguing. There is no clear indication in any one of these four articles or in any other part of the Constitution as to what is the legal distinction between those two expressions. In common parlance, it is understood that a qualification or disqualification is the existence or absence of a particular state of affairs, which renders the achievement of a particular object either possible or impossible. Though there are two sets of articles purporting to stipulate “qualifications” and “disqualifications”, there is neither any logical pattern in these sets of articles nor any other indication which enables discernment of the legal difference between the two expressions. We reach such a conclusion because citizenship of India is expressly made a condition precedent under Articles 84 and 173 for membership of both Parliament and State Legislatures. Lack of citizenship is also expressly stipulated to be a disqualification for membership of either of the abovementioned bodies under Articles 102 and 191. In view of the stipulation under Articles 84 and 173 “citizenship is one of the requisite qualifications for contesting election to either Parliament or the State Legislature, we do not see any reason nor is anything brought to our notice by the learned counsel appearing on either side to again stipulate under Articles 102 and 191 that lack of citizenship renders a person disqualified from contesting elections to those bodies. The learned counsel appearing on either side are also unanimously of the same opinion. We are, therefore, of the opinion that the distinction between “qualifications” and “disqualifications” is purely semantic.*

38. *We, therefore, proceed on the basis that, subject to restrictions mentioned above, every citizen has a constitutional right to elect and to be elected to either Parliament or the State Legislatures.*

(28) The next question that falls for consideration is whether the reservation of seats in favour of SC/ST candidates in those areas where the SC/ST population is comparatively larger is arbitrary and, for that reason, whether the relevant provision contained in Section 9(1)(c) of the Act, 2002 is liable to be struck down, inasmuch as such a scheme of reservation has resulted in certain constituencies reserved in favour of SC/ST candidates for decades, which is alleged to be arbitrary and unreasonable. The issue as to whether a statute can be declared unconstitutional on the ground that it is arbitrary and therefore violative of Article 14 of the Constitution was specifically considered by the Hon’ble Supreme Court in the case of **Rajbala (supra)**. It was specifically held in paragraph 65 of the judgment that it is not permissible to declare a statute unconstitutional merely on the ground that it is “arbitrary”. The relevant paragraphs 51 to 65 of the judgment in **Rajbala (supra)** is reproduced hereinbelow:

“51. *We first deal with the submission of violation of Article 14 on the ground of arbitrariness.*

52. *The petitioners argued that the scheme of the Constitution is to establish a democratic, republican form of Government as proclaimed in the Preamble to the Constitution and any law which is inconsistent with such scheme is irrational and therefore “arbitrary”. In support of the proposition that the Constitution seeks to establish a democratic republic and they are the basic features of the Constitution, the petitioners placed reliance upon “Kesavananda Bharati v. State of Kerala” [Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225] ,*

SCC para 1159 and Indira Nehru Gandhi v. Raj Narain [Indira Nehru Gandhi v. Raj Narain, 1975 Supp SCC 1] , SCC paras 563 and 578. There cannot be any dispute about the proposition.

53. *In support of the proposition that a statute can be declared unconstitutional on the ground that it is arbitrary and therefore violative of Article 14, the petitioners relied upon the judgments of this Court in Subramanian Swamy v. CBI [Subramanian Swamy v. CBI, (2014) 8 SCC 682, Indian Council of Legal Aid & Advice v. Bar Council of India [Indian Council of Legal Aid & Advice v. Bar Council of India, (1995) 1 SCC 732] , B. Prabhakar Rao v. State of A.P. [B. Prabhakar Rao v. State of A.P., 1985 Supp SCC 432] and D.S. Nakara v. Union of India [(1983) 1 SCC 305] and certain observations made by A.C. Gupta, J. in his dissenting judgment in R.K. Garg v. Union of India [(1981) 4 SCC 675] .*

54. In our opinion, none of the abovementioned cases is an authority for the proposition that an enactment could be declared unconstitutional on the ground it is arbitrary.

55. *In Subramanian Swamy case [Subramanian Swamy v. CBI, (2014) 8 SCC 682] , the dispute revolved around the constitutionality of Section 6-A of the Delhi Special Police Establishment Act, 1946, which was introduced by an amendment in the year 2003. It stipulated that the Delhi Special Police Establishment shall not conduct any enquiry or investigation into any offence falling under the Prevention of Corruption Act, 1988, alleged to have been committed by certain classes of employees of the Central Government, etc. The said provision was challenged on the ground it was arbitrary and unreasonable and therefore violative of Article 14. The submission was resisted by the respondent (Union of India) on the ground that such a challenge is impermissible in view of the decision in State of A.P. v. McDowell & Co. [(1996) 3 SCC 709, para 43] But the Constitution Bench eventually declared the impugned provision unconstitutional not on the ground of it being arbitrary but on the ground that it makes an unreasonable classification of an otherwise homogenous group of officers accused of committing an offence under the Prevention of Corruption Act without there being reasonable nexus between the classification and the object of the Act.*

56. *Coming to Indian Council of Legal Aid & Advice v. Bar Council of India [Indian Council of Legal Aid & Advice v. Bar Council of India, (1995) 1 SCC 732] , it was a case where the legality of a rule made by the Bar Council of India prohibiting the enrolment of persons who completed the age of 45 years was in issue. The rule was challenged on two grounds. Firstly, that the rule was beyond the competence of the Bar Council of India as the Advocates Act, 1961 did not authorise the Bar Council of India to prescribe an upper age-limit for enrolment. Secondly, that the rule is discriminatory and thirdly, the fixation of upper age-limit of 45 years is arbitrary.*

57. *On an examination of the scheme of the Advocates Act, this Court came to a conclusion that the impugned rule was beyond the rule-making power of the Bar Council of India and, therefore, ultra vires the Act. This Court also held that the rule was unreasonable and arbitrary.*

58. □ *We are of the opinion that in view of the conclusion recorded by the Court that the rule is beyond the competence of the Bar Council of India, it was not really necessary to make any further scrutiny whether the rule was unreasonable and arbitrary. Apart from that, in view of the conclusion recorded that the rule was clearly discriminatory, the inquiry whether the choice of the upper age-limit of 45 years is arbitrary or not is once again not necessary for the determination of the case. At any rate, the declaration made by this Court in the said case with regard to a piece of subordinate legislation, in our view, cannot be an authority for the proposition that a statute could be declared unconstitutional on the ground that in the opinion of the Court the Act is arbitrary.*

59. □ *Now we shall examine □ Prabhakar Rao case □ [1985 Supp SCC 432] . The facts of the case are that the age of superannuation of employees of the State of Andhra Pradesh was 55 till the year 1979. In 1979, it was enhanced to 58 years. The Government of Andhra Pradesh in February 1983 decided to roll back the age of superannuation to 55 years and took appropriate legal steps which eventually culminated in passing of Act 23 of 1984. The said Act came to be amended by Ordinance 24 of 1984, again enhancing the age of superannuation to 58 years which was followed up by Act 3 of 1985. While enhancing the age of superannuation to 58 for the second time by the abovementioned Ordinance 24 of 1984 and Act 3 of 1985, benefit of the enhanced age of superannuation was given to certain employees who had retired in the interregnum between 20-2-1983 and 23-8-1984; while others were denied such benefit. Prabhakar Rao and others who were denied the benefit challenged the legislation.*

60. □ *This Court placing reliance on □ D.S. Nakara case □ [(1983) 1 SCC 305] concluded that the impugned Act insofar as it denied the benefit to some of the employees who retired in the interregnum between two dates mentioned above was unsustainable and held as follows : (Prabhakar Rao case □ [B. Prabhakar Rao □ v. □ State of A.P., 1985 Supp SCC 432] , SCC p. 461, para 20)*

□ 20. □ *The principle of □ Nakara □ clearly applies. □ The division of government employees into two classes, those who had already attained the age of 55 on 28-2-1983 and those who attained the age of 55 between 28-2-1983 and 23-8-1984 on the one hand, and the rest on the other and □ denying the benefit of the higher age of superannuation to the former class is as arbitrary □ as the division of government employees entitled to pension in the past and in the future into two classes, that is, those that had retired prior to a specified date and those that retired or would retire after the specified date and confining the benefits of the new pension rules to the latter class only. □*

(emphasis supplied)

The Bench also observed : (SCC p. 461, para 20)

“20. □ *Now if all affected employees hit by the reduction of the age of superannuation formed a class and no sooner than the age of superannuation was reduced, it was realised that injustice had been done and it was decided that steps should be taken to undo what had been done, there was no reason to pick out a class of persons who deserved the same treatment and exclude from the benefits of the beneficent treatment by classifying them as a separate group merely*

because of the delay in taking the remedial action already decided upon. We do not doubt that the Judge's friend and counsellor, "the common man", if asked, will unhesitatingly respond that it would be plainly unfair to make any such classification. The commonsense response that may be expected from the common man, untrammelled by legal lore and learning, should always help the Judge in deciding questions of fairness, arbitrariness, etc. Viewed from whatever angle, to our minds, the action of the Government and the provisions of the legislation were plainly arbitrary and discriminatory."

The petitioners in the present case placed reliance on the last sentence which said that the "action of the Government and the provisions of the legislation were plainly arbitrary and discriminatory" in support of their submission that an Act could be declared unconstitutional on the ground that it is arbitrary.

61. "We are of the opinion that "Prabhakar Rao case" [1985 Supp SCC 432] is not an authority on the proposition advanced by the petitioners. The ratio of "Prabhakar Rao case" is that there was an unreasonable classification between the employees of the State of Andhra Pradesh on the basis of the date of their attaining the age of superannuation.

62. "Observations by Gupta, J. in "R.K. Garg case" [R.K. Garg v. Union of India, (1981) 4 SCC 675 : 1982 SCC (Tax) 30] no doubt indicate that the doctrine propounded by this Court in "E.P. Royappa v. State of T.N." [E.P. Royappa v. State of T.N., (1974) 4 SCC 3 : 1974 SCC (L&S) 165] and "Maneka Gandhi v. Union of India" [Maneka Gandhi v. Union of India, (1978) 1 SCC 248] that arbitrariness is antithetical to the "concept of equality" is also relevant while examining the constitutionality of a statute but such observations are a part of the dissenting judgment and not the ratio decidendi of the judgment.

63. "The learned Attorney General heavily relied upon para 43 of the "State of A.P. v. McDowell & Co." [State of A.P. v. McDowell & Co., (1996) 3 SCC 709, para 43] which dealt with the question of declaring a statute unconstitutional on the ground it is arbitrary : (SCC pp. 737-39, paras 43-44)

"43. Shri Rohinton Nariman submitted that inasmuch as a large number of persons falling within the exempted categories are allowed to consume intoxicating liquors in the State of Andhra Pradesh, the total prohibition of manufacture and production of these liquors is "arbitrary" and the amending Act is liable to be struck down on this ground alone. Support for this proposition is sought from a judgment of this Court in "State of T.N. v. Ananthi Ammal" [State of T.N. v. Ananthi Ammal, (1995) 1 SCC 519]. Before, however, we refer to the holding in the said decision, it would be appropriate to remind ourselves of certain basic propositions in this behalf. In the United Kingdom, Parliament is supreme. There are no limitations upon the power of Parliament. No court in the United Kingdom can strike down an Act made by Parliament on any ground. As against this, the United States of America has a Federal Constitution where the power of the Congress and the State Legislatures to make laws is limited in two ways viz. the division of legislative powers between the States and the Federal Government and the fundamental rights (Bill of Rights) incorporated in the Constitution. In India, the position is similar to the United States of America. The power of Parliament or for that matter, the State

Legislatures is restricted in two ways. □ A law made by Parliament or the legislature can be struck down by courts on two grounds and two grounds alone □ viz. (1) lack of legislative competence, and (2) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision. □ There is no third ground. We do not wish to enter into a discussion of the concepts of procedural unreasonableness and substantive unreasonableness □ concepts inspired by the decisions of United States Supreme Court. Even in USA, these concepts and in particular the concept of substantive due process have proved to be of unending controversy, the latest thinking tending towards a severe curtailment of this ground (substantive due process). The main criticism against the ground of substantive due process being that it seeks to set up the courts as arbiters of the wisdom of the legislature in enacting the particular piece of legislation. It is enough for us to say that by whatever name it is characterised, the ground of invalidation must fall within the four corners of the two grounds mentioned above. In other words, say, if an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of the fundamental rights guaranteed by clauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the clauses (2) to (6) of Article 19 and so on. □ No enactment can be struck down by just saying that it is arbitrary □ [□ Per Jeevan Reddy, J. □ : An expression used widely and rather indiscriminately □ an expression of inherently imprecise import. The extensive use of this expression in India reminds one of what Frankfurter, J. said in □ Tiller □ v. □ Atlantic Coast Line Railroad Co., 1943 SCC OnLine US SC 36 : 87 L Ed 610 : 318 US 54 (1943). □ The phrase begins life as a literary expression; its felicity leads to its lazy repetition and repetition soon establishes it as a legal formula, indiscriminately used to express different and sometimes contradictory ideas □, said the learned Judge. □] or unreasonable. Some or other constitutional infirmity has to be found before invalidating an Act. □ An enactment cannot be struck down on the ground that court thinks it unjustified. Parliament and the legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. □ The court cannot sit in judgment over their wisdom. In this connection, it should be remembered that even in the case of administrative action, the scope of judicial review is limited to three grounds viz. (i) unreasonableness, which can more appropriately be called irrationality, (ii) illegality, and (iii) procedural impropriety (see □ Council of Civil Service Unions □ v. □ Minister for the Civil Service □ [Council of Civil Service Unions □ v. □ Minister for the Civil Service, 1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] which decision has been accepted by this Court as well). The applicability of doctrine of proportionality even in administrative law sphere is yet a debatable issue. (See the opinions of Lords Lowry and Ackner in □ R. □ v. □ Secy. of State for Home Deptt., ex p Brind □ [R. □ v. □ Secy. of State for Home Deptt., ex p Brind, (1991) 1 AC 696 : (1991) 2 WLR 588 : (1991) 1 All ER 720 (HL)] , AC at pp. 766-67 and 762.) □ It would be rather odd if an enactment were to be struck down by applying the said principle when its applicability even in administrative law sphere is not fully and finally settled. It is one thing to say that a restriction imposed upon a fundamental right can be struck down if it is disproportionate, excessive or unreasonable and quite another thing to say that the court can strike down enactment if it thinks it unreasonable, unnecessary or unwarranted. Now, coming to the decision in □ Ananthi Ammal □ [State of T.N. □ v. □ Ananthi Ammal, (1995) 1 SCC 519] , we are of the opinion that it does not lay down a different proposition. It was an appeal from the decision of the Madras High Court striking down the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 as violative of Articles 14, 19 and 300-A of the Constitution. On a

review of the provisions of the Act, this Court found that it provided a procedure which was substantially unfair to the owners of the land as compared to the procedure prescribed by the Land Acquisition Act, 1894, insofar as Section 11 of the Act provided for payment of compensation in instalments if it exceeded rupees two thousand. After noticing the several features of the Act including the one mentioned above, this Court observed : (SCC p. 526, para 7)

“7. When a statute is impugned under Article 14 what the court has to decide is whether the statute is so arbitrary or unreasonable that it must be struck down. At best, a statute upon a similar subject which derives its authority from another source can be referred to, if its provisions have been held to be reasonable or have stood the test of time, only for the purpose of indicating what may be said to be reasonable in the context. We proceed to examine the provisions of the said Act upon this basis.”

44. It is this paragraph which is strongly relied upon by Shri Nariman. We are, however, of the opinion that the observations in the said paragraph must be understood in the totality of the decision. The use of the word “arbitrary” in para 7 was used in the sense of being discriminatory, as the reading of the very paragraph in its entirety discloses. The provisions of the Tamil Nadu Act were contrasted with the provisions of the Land Acquisition Act and ultimately it was found that Section 11 insofar as it provided for payment of compensation in instalments was invalid. The ground of invalidation is clearly one of discrimination. It must be remembered that an Act which is discriminatory is liable to be labelled as arbitrary. It is in this sense that the expression “arbitrary” was used in para 7.

(emphasis supplied)

64. “From the above extract from “McDowell & Co. case” [State of A.P. v. McDowell & Co., (1996) 3 SCC 709, para 43] it is clear that the courts in this country do not undertake the task of declaring a piece of legislation unconstitutional on the ground that the legislation is “arbitrary” since such an exercise implies a value judgment and courts do not examine the wisdom of legislative choices unless the legislation is otherwise violative of some specific provision of the Constitution. To undertake such an examination would amount to virtually importing the doctrine of “substantive due process” employed by the American Supreme Court at an earlier point of time while examining the constitutionality of Indian legislation. As pointed out in the above extract, even in United States the doctrine is currently of doubtful legitimacy. This Court long back in “A.S. Krishna v. State of Madras” [A.S. Krishna v. State of Madras, AIR 1957 SC 297 : 1957 Cri LJ 409] declared that the doctrine of due process has no application under the Indian Constitution. As pointed out by Frankfurter, J., arbitrariness became a mantra.

65. “For the above reasons, we are of the opinion that it is not permissible for this Court to declare a statute unconstitutional on the ground that it is “arbitrary”.”

(emphasis supplied)

(29) Articles 330 and 332 of the Constitution of India do not contain any prohibition against the provisions contained in Section 9 (1)(c) of the Act, 2002, which provide for reservation

of seats for SC/ST candidates in those areas where the SC/ST population is comparatively large. Hence, it cannot be said that such a provision is violative of any constitutional provision. In fact, Parliament, in its wisdom, enacted such a provision in the Act, 2002 in exercise of the powers conferred under Article 327 of the Constitution, which neither forbids nor infringes any constitutional provision.

(30) The validity of Act can be challenged only on two grounds, namely, (i) lack of legislative competence, and (ii) violation of any Fundamental Rights contained in Part III of the Constitution or any other constitutional provisions, with an exception carved out by the courts where the statutory enactment is manifestly arbitrary and unreasonable. We do not find that providing reservation under Section 9(1)(c) of the Act, 2002 for Scheduled Castes and Scheduled Tribes in those areas where comparatively the population of Scheduled Castes and Scheduled Tribes is large suffers from manifest arbitrariness or can be said to be unreasonable inasmuch as the legislature in its wisdom has provided for reserving seats where population of SC/ST is comparatively larger which cannot be termed as arbitrary or unreasonable. It is not the case of the petitioner that Section 9(1)(c) in any manner lacks legislative competence or violates any of the Fundamental Rights or any other constitutional permission.

(31) The Hon^{ble} Supreme Court in the case of ***K.S. Puttaswamy (Retired) and another (AADHAAR) vs. Union of India and Another*** reported in **(2019) 1 SCC 1**, reiterated the law as laid down by the Hon^{ble} Supreme Court in the case of **Rajbala (supra)** and held, in paragraph 103 of the judgment, as reproduced hereinbelow:

“103. In support of the aforesaid proposition that an Act of Parliament can be invalidated only on the aforesaid two grounds, passages from various judgments were extracted [State of M.P. v. Rakesh Kohli, (2012) 6 SCC 312 : (2012) 3 SCC (Civ) 481] , [Ashoka Kumar Thakur v. Union of India, (2008) 6 SCC 1 : 3 SCEC 35] . The Court also noted the observations from State of A.P. v. McDowell and Co. [State of A.P. v. McDowell and Co., (1996) 3 SCC 709] wherein it was held that apart from the aforesaid two grounds, no third ground is available to validate any piece of legislation. In the process, it was further noted that in Rajbala v. State of Haryana [Rajbala v. State of Haryana, (2016) 2 SCC 445] (which followed McDowell and Co. case [State of A.P. v. McDowell and Co., (1996) 3 SCC 709]), the Court held that a legislation cannot be declared unconstitutional on the ground that it is arbitrary inasmuch as examining as to whether a particular Act is arbitrary or not implies a value judgment and courts do not examine the wisdom of legislative choices, and, therefore, cannot undertake this exercise.

(32) In view of the settled principle of law as indicated hereinabove, we find that the challenge in the petition to the constitutional validity of Section 9(1)(c) of the Act, 2002 does not suffer from any infirmity or illegality and the petitioner has miserably failed to point out any ground so that it can be held that Section 9(1)(c) is unconstitutional. We find that Section 9(1)(c) has been enacted by the Parliament, which is within its competence falling under Entry 72 of List I of the Seventh Schedule of the Constitution. The provisions of Section 9(1)(c) neither violate the Fundamental Rights contained in Part III of the Constitution nor violates any constitutional provisions. Further, as Article 330 and 332 of the Constitution do not provide any methodology for reservation, leaving it open to the Parliament to make appropriate measures through legislation, the

same has been done by the enactment of Act, 2002, which provides for reservation of seats for Scheduled Castes and Scheduled Tribes on the basis of areas where the population of Scheduled Castes and Scheduled Tribes is comparatively large. We are of the view that a statute enacted by Parliament or a State Legislature cannot be declared unconstitutional unless it can be held that the appropriate Legislature does not have the competence to make the law or that it violates any of the Fundamental Rights enumerated in Part III of the Constitution or any other constitutional provisions.

(33) The Constitutional debate negating the proposal for allotment of seats in favour of Scheduled Castes and Scheduled Tribes in areas where the population of Scheduled Castes and Scheduled Tribes is comparatively large does not mean that the Parliament, in its legislative wisdom, cannot provide for the same, as it in no manner violates any constitutional provisions. In fact, the petitioner, through the present writ petition, has sought to implement the population-based rosters in reservation of seats for Scheduled Castes and Scheduled Tribes in State Elections as well as Parliament Elections, which is a legislative function, and this Court, in exercise of Article 226 of the Constitution of India, cannot issue any such direction to the legislature to enact the law in a particular manner as sought by the petitioner.

(34) Hon'ble Supreme Court in the case of **Union of India vs. Deoki Nandan Aggarwal** reported in **1992 Supp (1) SCC 323** has held in Paragraph 14 that the power to legislate has not been conferred on the courts and, therefore, the court cannot add words to a statute or read words into it which are not there. Paragraph 14 of the judgment in the case of **Deoki Nandan Aggarwal (supra)** is reproduced hereinbelow:

"14. We are at a loss to understand the reasoning of the learned Judges in reading down the provisions in paragraph 2 in force prior to November 1, 1986 as □more than five years□ and as □more than four years□ in the same paragraph for the period subsequent to November 1, 1986. It is not the duty of the court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the constitutional harmony and comity of instrumentalities. Vide P.K. Unni v. Nirmala Industries [(1990) 2 SCC 378, 383-84 : (1990) 1 SCR 482, 488] , Mangilal v. Suganchand Rathi□[(1964) 5 SCR 239 : AIR 1965 SC 101] ,□Sri Ram Ram Narain Medhi□v.□State of Bombay□[1959 Supp 1 SCR 489 : AIR 1959 SC 459] ,□Hira Devi (Smt)□v.□District Board, Shahjahanpur□[(1952) 2 SCC 154 : 1952 SCR 1122, 1131 : AIR 1952 SC 362] ,□Nalinakhya Bysack□v.□Shyam Sunder Haldar□[(1953) 1 SCC 167 : 1953 SCR 533, 545 : AIR 1953 SC 148] ,□Gujarat Steel Tubes Ltd.□v.□Gujarat Steel Tubes Mazdoor Sabha□[(1980) 2 SCC 593 : 1980 SCC (L&S) 197 : (1980) 2 SCR 146] ,□G.

Narayanaswami v. G. Pannerselvam [(1972) 3 SCC 717 : (1973) 1 SCR 172, 182], *N.S. Vardachari v. G. Vasantha Pai* [(1972) 2 SCC 594 : (1973) 1 SCR 886], *Union of India v. Sankal Chand Himatlal Sheth* [(1977) 4 SCC 193 : 1977 SCC (L&S) 435 : (1978) 1 SCR 423] and *CST v. Auriaya Chamber of Commerce, Allahabad* [(1986) 3 SCC 50, 55 : 1986 SCC (Tax) 449 : (1986) 2 SCR 430, 438]. *Modifying and altering the scheme and applying it to others who are not otherwise entitled to under the scheme, will not also come under the principle of affirmative action adopted by courts sometimes in order to avoid discrimination. If we may say so, what the High Court has done in this case is a clear and naked usurpation of legislative power.*”

(35) Similarly, in the case of **Vemareddy Kumaraswamy Reddy vs. State of A.P.** reported in (2006) 2 SCC 670, the Hon’ble Supreme Court in Paragraph 15 observed hereinbelow :

“15. Where, however, the words were clear, there is no obscurity, there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to innovate or take upon itself the task of amending or altering the statutory provisions. In that situation the judges should not proclaim that they are playing the role of a law-maker merely for an exhibition of judicial valour. They have to remember that there is a line, though thin, which separates adjudication from legislation. That line should not be crossed or erased. This can be vouchsafed by an alert recognition of the necessity not to cross it and instinctive, as well as trained reluctance to do so. (See Frankfurter Some Reflections on the Reading of Statutes in Essays on Jurisprudence, Columbia Law Review, p. 51.)”

(36) Hon’ble Supreme Court in the case of **Suresh Seth vs. Indore Municipal Corporation** reported in (2005) 13 SCC 287 has held in Paragraph 5 that the Court cannot issue any direction to the legislature to make any particular kind of enactment because, under the constitutional scheme, Parliament and Legislative Assemblies exercise sovereign power to enact laws and no outside power or authority can issue a direction to enact a particular piece of legislation.

(37) Hon’ble Supreme Court in the case of **Supreme Court Employees’ Welfare Association vs. Union of India** reported in (1989) 2 SCC 187 has ruled in Paragraph 51 as hereinunder :

“51. There can be no doubt that no court can direct a legislature to enact a particular law. Similarly, when an executive authority exercises a legislative power by way of subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which he has been empowered to do under the delegated legislative authority.”

(38) Hon’ble Supreme Court in the case of **Manoj Sharma vs. State and others** reported in (2008) 16 SCC 1 has held in Paragraph 21 as under:

“21. Ordinarily, we would have agreed with Mr B.B. Singh. The doctrine of judicial restraint which has been emphasised repeatedly by this Court e.g. in Aravali Golf Club v. Chander Hass [(2008) 1 SCC 683 : (2008) 1 SCC (L&S) 289 : JT (2008) 3 SC 221] and Govt. of A.P. v. P. Laxmi Devi [(2008) 4 SCC 720] restricts the power of the Court and does not permit the Court to ordinarily encroach into the legislative or executive domain. As observed by this Court in the above decisions, there is a broad separation of powers in the Constitution and it would not be proper for one organ of the State to encroach into the domain of another organ.”

(39) Hon’ble Supreme Court in **State of U.P. vs. Mahindra and Mahindra Ltd.** reported in **(2011) 13 SCC 77** has held in Paragraph 10 that the judiciary has been vested with the power to interpret legislation and to give effect to it, as the parameters of the jurisdiction of both organs are distinct and earmarked. Paragraph 10 of the judgment is reproduced hereinbelow :

“10. Within our Constitution, we have specifically demarcated the ambit of power and the boundaries of the three organs of the society by laying down the principles of separation of powers, which is being adhered to for carrying out democratic functioning of the country. So far as the legislation is concerned, the exclusive domain is with the legislature. Subordinate legislations are framed by the executive by exercising the delegated power conferred by the statute, which is the rule-making power. The judiciary has been vested with the power to interpret the aforesaid legislations and to give effect to them since the parameters of the jurisdiction of both the organs are earmarked. Therefore, it is always appropriate for each of the organs to function within its domain. It is inappropriate for the courts to issue a mandate to legislate an Act and also to make a subordinate legislation in a particular manner. In this particular case, the High Court has directed the subordinate legislation to substitute wordings in a particular manner, thereby assuming to itself the role of a supervisory authority, which according to us, is not a power vested in the High Court.”

(40) Thus, it is not within the domain of this court to issue directions for legislating the Act, 2002 in a manner so as to provide for rotation of reserved seats for Assembly/Parliamentary constituencies as provided under Article 243(D) and 243(T) for Panchayats and Municipalities etc. and it is the Parliament which has to take call on the subjects. Further, we are of the view that where the populations of SC/ST are comparatively larger, then in such constituency a SC/ST candidate by virtue of its large population can itself get elected without the aid of reservation. The goals of social justice, political justice and equality as provided in our Constitution can only be achieved by rotation of seats enabling the SC/ST candidates to get elected even from those seats where their population is comparatively much low to the overall population of the constituency. It is for the parliament to ponder on the issue and legislate as per its wisdom and this court cannot issue any direction so as to compel the State for providing roster in reservation for SC/ST in Assembly/ Parliamentary constituencies in view of the settled principles of law as discussed hereinabove.

(41) Accordingly, the writ petition is **dismissed**. No order as to costs.

(2026) 6 ILRA 266
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 10.06.2026

BEFORE

THE HON'BLE KARUNESH SINGH PAWAR, J.

Civil Misc. Review Application No. 65 of 2025

Tapish Sharma

...Applicant

Versus

State of U.P. & Ors.

...Opposite Party

Issue for Consideration

Whether incomplete and manipulated written instructions were produced before the Court and one page containing the applicant's EWS certificate was omitted, as a result of which the Court proceeded on an incorrect factual premise while dismissing the writ petition and whether the findings recorded in paragraphs 2 and 4 of the judgment under review suffer from a factual error apparent on the face of the record.

Head Notes

The Code of Civil Procedure, 1908-Section 114 & Order XLVII- Mere omission, misplacement or non-tagging of a particular page in a compilation of documents, by itself, would not automatically render the judgment under review erroneous, unless it is further shown that such omission has resulted in a patent error apparent on the face of the record or has occasioned manifest miscarriage of justice. Review cannot be entertained on every procedural irregularity or alleged defect in presentation of papers.

Perusal of the original record produced by the learned Chief Standing Counsel prima facie demonstrates that the missing page no. 16/17 of the application form uploaded by the petitioner/review applicant are very much present in the original record and are identical to running page 22 of the written instructions. Therefore, the contention of the review petitioner that the instructions were manipulated with a view to mislead the Court and were incomplete appears to be misconceived. Admittedly, the petitioner had applied under the Unreserved Category and the EWS certificate uploaded by the petitioner was not in the prescribed format. As such, no prejudice appears to have been caused to the petitioner.

Held- Unless the error is manifest, self-evident and strikes one on mere perusal of the record without requiring a process of reasoning, the same cannot be corrected in review proceedings. The plea regarding page no.16, being at best a matter requiring elaborate examination and factual adjudication, does not satisfy the settled parameters for review. **Review application dismissed.** (E-15)

(Para 10, 15 & 17)

Case Law Cited

Kamlesh Verma vs. Mayawati and others; (2013) 8 SCC 320; Vikram Singh alias Vicky Walia vs. State of Punjab and another, (2017) 8 SCC 518; AIR 2024 SC 2694; Union Public Service Commission vs. Gaurav Singh and others (Civil Appeal No. 4152 of 2022 decided on 18.05.2022); Rajat Yadav vs. State of U.P. (Writ-A No. 779 of 2023, decided on 06.07.2023); Kumari Soni Singh vs. State of U.P. and others (Writ-A No. 4139 of 2025, decided on 29.04.2025); Renu vs. State of U.P. and others (Writ-A No. 21430 of 2022, decided on 31.07.2023)

List of Acts

The Code of Civil Procedure, 1908

List of Keywords

Section 114 & Order XLVII C.P.C; patent error apparent on the face of the record : has occasioned manifest miscarriage of justice; the same cannot be corrected in review proceedings

Case Arising From

The present review application has been filed by the applicant, Tapish Sharma, seeking review/modification of paragraphs 2 and 4 of the judgment and order dated 21.04.2025 passed in Writ-A No. 4076 of 2025 (Tapish Sharma vs. State of U.P. and others).

Appearances for Parties

Counsel for Applicant(s) : Dr. Pooja Singh, Abhishek Yadav, Surya Prakash Tiwari

Counsel for Opposite Party(s) :

(Delivered by Hon'ble Karunesh Singh Pawar, J.)

1. Heard Dr. Pooja Sharma, learned counsel for the review applicant and Ms. Deepshikha, learned Chief Standing Counsel-II, assisted by Mr. Ashwani Singh, learned counsel for opposite party no. 2/Board.

2. The present review application has been filed by the applicant, Tapish Sharma, seeking review/modification of paragraphs 2 and 4 of the judgment and order dated 21.04.2025 passed in Writ-A No. 4076 of 2025 (Tapish Sharma vs. State of U.P. and others).

3. Learned counsel for the review applicant submits that the applicant had applied for appointment to the post of Assistant Operator (Radio Cadre) pursuant to Advertisement dated 06.01.2022 under the EWS category and had uploaded a valid EWS certificate issued by the competent authority along with the OnLine application form. It is contended that despite the applicant securing higher marks than the last selected EWS candidate, he was illegally denied consideration under the EWS category.

4. It is further submitted that when the writ petition was taken up on 21.04.2025, incomplete and manipulated written instructions were produced before the Court and one page containing the applicant's EWS certificate was omitted, as a result of which the Court proceeded on an incorrect factual premise while dismissing the writ petition. Thus, her submission is that the findings recorded in paragraphs 2 and 4 of the judgment under review suffer from a factual error apparent on the face of the record.

5. Per contra, learned Chief Standing Counsel submits that the review application is wholly misconceived and not maintainable in law. It is contended that as specifically stated in the written instructions placed before the Court, the petitioner, while applying through OnLine, had not filled under the EWS category. She further submits that the EWS certificate subsequently produced by the petitioner was not in the prescribed format and therefore, the benefit of reservation under the EWS category could not be extended to him. The final select list had already been declared on 26.03.2025 and forwarded to the Inspector General of Police for further necessary action, after

which the jurisdiction of the Recruitment Board came to an end. She further submitted that the allegations regarding manipulation, concealment or suppression of record are baseless. Even if any page was inadvertently omitted, the same document was otherwise available on record and no prejudice was caused to the applicant. Thus, her submission is that review jurisdiction cannot be invoked to re-agitate factual disputes or seek rehearing of the matter on merits. In support of her contentions, she relied upon the decisions of the Hon'ble Supreme Court in *Meera Bhanja vs. Nirmala Kumari Choudhary*; (1995) 1 SCC 170, *Parison Devi and others vs. Sumitri Devi and others*; (1997) 8 SCC 715, *Rajasthan High Court, Jodhpur and another vs. Neetu Harsh and another*; (2021) 11 SCC 383; and *Madhya Pradesh Public Service Commission vs. Manish Bakawale and others* (2021) 18 SCC 61.

6. Having regard to the submissions advanced by learned counsel for the parties and the material brought before this Court, it is pertinent to mention that the scope of review jurisdiction has been considered and adjudicated by the Hon'ble Supreme Court in a catena of cases and the well-settled principles have been reiterated time and again. It would be sufficient to refer to the judgment of the Hon'ble Supreme Court in *Kamlesh Verma vs. Mayawati and others*; (2013) 8 SCC 320, wherein the scope of review jurisdiction has been elaborately considered. The Hon'ble Supreme Court has held that review is maintainable only in cases of discovery of new and important matter or evidence which, despite due diligence, was not within the knowledge of the applicant or could not be produced earlier; mistake or error apparent on the face of the record; or any other sufficient reason analogous thereto. It has further been held that review is not an appeal in disguise and the Court cannot reappraise evidence or re-hear the matter on merits.

7. The aforesaid principles have also been reiterated in *Karnail Singh vs. State of Haryana* (supra) and *Vikram Singh alias Vicky Walia vs. State of Punjab and another*, (2017) 8 SCC 518.

8. Applying the parameters of review jurisdiction as noticed above, this Court now proceeds to examine whether any ground exists for exercising review jurisdiction to review the judgment dated 21.04.2025.

9. The principal grievance of the review applicant rests upon the assertion that the EWS certificate had been duly uploaded and that the judgment under review proceeded on an incorrect factual premise. However, it has been the consistent stand of the State that the present review application is wholly misconceived and is nothing but an attempt to secure a rehearing of the writ petition on merits under the guise of review. According to learned counsel for the State, all relevant facts and written instructions available at the time of hearing of the writ petition were placed before this Court, whereafter the writ petition came to be dismissed by a reasoned order dated 21.04.2025. The State has further categorically asserted that the review applicant had never applied under the EWS category in the original online application form and had consciously submitted his candidature under the Unreserved (UR) category. Once the applicant himself opted for the UR category at the stage of submission of the online form, no subsequent claim for migration or conversion to the EWS category could be entertained contrary to the express terms of the advertisement and governing selection conditions. It has also been submitted that the judgment relied upon by the review applicant in *Kumari Soni Singh* (supra) is clearly distinguishable and has no application to the facts of the present matter, inasmuch as in the said case the candidate had

admittedly applied under the EWS category, whereas in the instant case, according to the respondents, the applicant had applied under the UR category from the very inception.

10. So far as the grievance raised by the review applicant regarding alleged non-placement/missing of page no.16 from the set of written instructions furnished before the Court is concerned, the same, in the considered opinion of this Court, does not constitute a ground warranting exercise of review jurisdiction. Even otherwise, mere omission, misplacement or non-tagging of a particular page in a compilation of documents, by itself, would not automatically render the judgment under review erroneous, unless it is further shown that such omission has resulted in a patent error apparent on the face of the record or has occasioned manifest miscarriage of justice. Review cannot be entertained on every procedural irregularity or alleged defect in presentation of papers.

11. The plea raised by the applicant necessarily invites this Court to enter into disputed factual enquiries, namely, whether page no.16 was in fact part of the original set of instructions; whether it was omitted inadvertently or deliberately; what was the exact nature and contents of the said page; whether the same was otherwise available elsewhere on record; and what impact, if any, it would have had upon the conclusions already recorded. All such questions require appreciation of facts and scrutiny of evidence beyond the self-evident record and, therefore, travel outside the narrow confines of review jurisdiction.

12. However, in the interest of justice, this Court summoned the concerned Officer who provided the said instructions to learned Chief Standing Counsel by means of order dated 13.05.2026. In compliance thereof, Shri Satyarth Aniruddha Pankaj, Deputy Inspector General (Personnel, Selection & Recruitment/Promotion Board), appeared before this Court on 20.05.2026. Upon a query being made by the Court, Ms. Deep Shikha, learned Chief Standing Counsel, submitted that page nos. 16/17 of the written instructions were inadvertently omitted earlier; however, the same has caused no prejudice to the petitioner in any manner. She has produced the original records before the Court and demonstrated that page nos. 16/17, as uploaded by the petitioner, are identical to running page 22 of the written instructions available on record. She further submitted that it is an admitted case of the petitioner that he had applied under the Unreserved Category. She submitted that the EWS certificate furnished/uploaded by the petitioner was not in the prescribed format.

13. Per contra, learned counsel for the review applicant, placing reliance upon the judgment of upon the decisions of the Hon'ble Supreme Court in Karnail Singh vs. State of Haryana and others, AIR 2024 SC 2694; Union Public Service Commission vs. Gaurav Singh and others (Civil Appeal No. 4152 of 2022 decided on 18.05.2022); and decisions of Coordinate Benches of this Court in Rajat Yadav vs. State of U.P. (Writ-A No. 779 of 2023, decided on 06.07.2023), Kumari Soni Singh vs. State of U.P. and others (Writ-A No. 4139 of 2025, decided on 29.04.2025), and Renu vs. State of U.P. and others (Writ-A No. 21430 of 2022, decided on 31.07.2023), submitted that procedural technicalities should not override substantive justice and that an otherwise eligible candidate cannot be denied the

benefit of reservation on hyper-technical grounds. She further submitted that due to a technical glitch in the computer application system, while filling up the original OnLine application form, the petitioner was shown under the Unreserved Category. According to the learned Counsel, the same was attributable to a system error, and the review applicant/petitioner ought not to suffer on that account.

14. Learned counsel for the State rebutted the aforesaid submissions and contended that several thousand candidates participated in the recruitment process and submitted their OnLine applications and that only the review applicant/petitioner has raised a grievance regarding alleged malfunctioning of the computer system of the Recruitment Board and such a plea, raised for the first time, cannot be readily accepted in the absence of any supporting material.

15. Perusal of the original record produced by the learned Chief Standing Counsel prima facie demonstrates that the missing page no. 16/17 of the application form uploaded by the petitioner/review applicant are very much present in the original record and are identical to running page 22 of the written instructions. Therefore, the contention of the learned counsel for the review petitioner that the instructions were manipulated with a view to mislead the Court and were incomplete appears to be misconceived. Admittedly, the petitioner had applied under the Unreserved Category and the EWS certificate uploaded by the petitioner was not in the prescribed format. As such, no prejudice appears to have been caused to the petitioner.

16. Even otherwise, the judgment sought to be reviewed was not founded solely upon the presence or absence of one page alone, but upon the overall pleadings, written instructions, conditions of the advertisement and submissions advanced by learned counsel for the parties. Therefore, the attempt of the review applicant to attribute the entire judgment to the alleged missing of page no.16 is misconceived.

17. Unless the error is manifest, self-evident and strikes one on mere perusal of the record without requiring a process of reasoning, the same cannot be corrected in review proceedings. The plea regarding page no.16, being at best a matter requiring elaborate examination and factual adjudication, does not satisfy the settled parameters for review.

18. Accordingly, the contention founded on alleged missing/non- placement of page no. 16 is rejected and cannot be accepted as a valid ground to reopen the judgment under review.

19. In view of the aforesaid facts and circumstances, this Court finds that no error apparent on the face of the record exists so as to warrant interference with the judgment and order under review.

20. Accordingly, the present review application lacks merit and is hereby dismissed.

(2026) 6 ILRA 271
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 03.06.2026

BEFORE

THE HON'BLE VINOD DIWAKAR, J.

Habeas Corpus Writ Petition No. 946 of 2025

Megha Raikwar

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

Issue for Consideration

Whether the directions issued in Subhash Chandra Versus State of U.P have not been effectively implemented despite the lapse of nearly a year from the date of the judgment

Head Notes

The Constitution of India, 1950-Article 226 (Habeas Corpus)- The corpus was illegally enticed away by respondent no.5, the petitioner lodged a complaint before the Station House Officer, pursuant to which an FIR was registered as Case Crime No.212 of 2025, under Sections 87 and 137(2) of the Bharatiya Nyaya Sanhita, 2023, at P.S. Sipri Bazar, District Jhansi- Perusal of the charge-sheet and the documents annexed thereto, it prima-facie appeared that the investigation has not been conducted in an effective, fair, impartial and comprehensive manner. The material brought on record further indicated that the charge-sheet had not been submitted in conformity with the directions issued by this Court in *Subhash Chandra*- liberty was granted to the Principal Secretary (Home), Government of Uttar Pradesh, to place on record, if so advised, an affidavit explaining the reasons for persistent non-compliance of the directions issued by this Court.

The judgment in Subhash Chandra was delivered on 12.05.2025. Questions regarding its non-compliance were raised by this Court on 11.02.2026. The State disclosed its intention to file a Special Leave Petition only, through the affidavit dated 20.02.2026, after the issue of noncompliance raised by the Court.

Secretary of the Home Department, filed an affidavit dated 20.02.2026, for the first time intimated the intention of the ACS (Home) to challenge the judgment before the Supreme Court, and no order or any document produced before this Court till the signing of the judgment that the Supreme Court has taken cognizance of the directions issued in Subhash Chandra (supra), even after lapse of more than three months- The conduct of Shri Sanjay Prasad, prima-facie reflects a deliberate and calculated attempt to undermine the authority of this Court by projecting the proposed Special Leave Petition as a basis for seeking restraint in the enforcement of judicial directions, while simultaneously failing to pursue the said remedy with any degree of diligence or bona fides. Such conduct, if left unaddressed, would have the effect of rendering the orders of Constitutional Courts nugatory at the hands of recalcitrant administrative officers and would set a pernicious precedent for the manner in which judicial directions concerning accountability and police reforms may be treated by the executive. This Court cannot be a silent spectator to such conduct.

Accordingly, it is directed that the Registrar (Compliance) of this Court shall transmit a certified copy of the present order and the order passed by this Court in Subhash Chandra (supra) to the

Secretary, Department of Personnel and Training (DoPT), Government of India, being the Cadre Controlling Authority of Shri Sanjay Prasad, IAS (DR 1995), for their record, reference, and such consideration as may be deemed appropriate in the context of the assessment of the said officer's suitability for future assignments by the Appointment Committee of the Cabinet (ACC)

During the course of proceedings, this Court has been informed that the corpus has since been recovered by the local police and has been safely restored to the custody of her parents, the principal grievance raised in the present petition no longer survives for consideration on merits, and no further orders are required to be passed in that regard. The present petition is, accordingly, disposed of (E-15)

(Para 39, 40, 41 , 42 & 43)

Case Law Cited

Subhash Chandra & Others v. State of U.P. & Another (2025) SCC OnLine All 3029; Sanuj Bansal v. State of U.P. and Another SLP (Crl.) No. 10536 of 2023 , Dablu Kujur v. State of Jharkhand (2024) 6 SCC 758 , R.K. Dalmia etc. v. Delhi Administration (1962) SCC OnLine SC 83; Sharif Ahmed and Another v. State of Uttar Pradesh and Another (2024) SCC OnLine SC 726; State of Gujarat v. Kishanbhai (2014) 5 SCC 108; R. Sarala v. T.S. Velu (2000) 4 SCC 459

List of Acts

The Constitution of India, 1950

List of Keywords

Subhash Chandra Versus State of U.P; Directions issued; Non compliance ; Deliberate attempt ; Undermine authority of Court; by projecting proposed SLP; seeking restraint the enforcement of judicial directions

Case Arising From

The present writ petition, in the nature of a writ of habeas corpus, has been filed by the petitioner- the mother of the corpus- seeking a direction to respondent nos.1 to 3 to recover the corpus, a minor girl aged about 15 years, from the alleged illegal custody of respondent no.5 and to restore her custody to the petitioner.

Appearances for Parties

Counsel for Petitioners(s) : Jay Prakash Singh Yadav, Raghvendra Yadav
Counsel for Respondent(s) : G.A.

(Delivered by Hon'ble Vinod Diwakar, J.)

Kautilya1, in his Arthashastra, prescribes that those possessed of ministerial qualifications shall, in accordance with their individual capacity, be appointed as Superintendents of Government Departments. While engaged in the discharge of their duties, they shall be examined daily; for men are by nature fickle-minded and, like horses at work, exhibit constant changes in their temperament. Accordingly, the agencies and instruments of which they avail themselves, the place and time of the work in which they are engaged, as well as the precise form of the work, the expenditure incurred, and the results achieved, shall all be daily ascertained.

A fine of twice the amount of their daily remuneration and of the expenditure incurred by them shall be levied in respect of any inadvertence or neglect on their part in discharge of their duties.

Whosoever among the Superintendents realizes revenue equal to, or in excess of, the amount fixed shall be honoured with promotion and rewards. The present matter is a reminder that, this ancient wisdom remains as relevant to the governance of public administration, today as it was when first articulated, almost 2300- 2400 years ago.

1. Heard Shri Raghvendra Yadav, learned counsel for the petitioner, Shri M.C. Chaturvedi, learned Additional Advocate General assisted by Shri Vibhav Anand Singh, learned A.G.A. for the State, and perused the material available on record.

2. The present writ petition, in the nature of a writ of habeas corpus, has been filed by the petitioner- the mother of the corpus- seeking a direction to respondent nos.1 to 3 to recover the corpus, a minor girl aged about 15 years, from the alleged illegal custody of respondent no.5 and to restore her custody to the petitioner.

3. Learned counsel for the petitioner submits that the corpus was illegally enticed away by respondent no.5 on 10.06.2025. Thereafter, the petitioner lodged a complaint before the Station House Officer, P.S. Sipri Bazar, Jhansi (respondent no.3), pursuant to which an FIR dated 11.06.2025 was registered as Case Crime No.212 of 2025, under Sections 87 and 137(2) of the Bharatiya Nyaya Sanhita, 2023, at P.S. Sipri Bazar, District Jhansi.

4. It is further submitted that, subsequently, on 16.06.2025, another application was submitted before the Senior Superintendent of Police, Jhansi. However, despite the aforesaid efforts, the corpus has not yet been recovered. Learned counsel further states that respondent no. 5, who is the named accused in the aforesaid case, was arrested during the course of investigation and was thereafter released on bail. It is also submitted that a charge-sheet came to be filed on 13.08.2025, i.e., within approximately sixty days from the date of registration of the FIR, without arraying real accused.

5. In response to the contentions raised in the petition, learned A.G.A. filed the instructions, and upon perusal of the instructions, it appears that the charge-sheet has been submitted primarily on the basis of the statements of the accused and certain other witnesses, who have stated that the victim had accompanied the accused and was with him at the railway station. According to their version, the victim subsequently boarded a train while the accused was asleep at the railway station, without informing him of her destination. The manner in which the investigation has been conducted gives rise to serious concerns. Prima-facie, it appears that the Investigating Officer has failed to conduct a fair, impartial, and effective investigation. The investigation does not appear to have been carried out with the requisite diligence and objectivity expected in law, and the conduct of the Investigating Officer appears to have compromised the propriety and integrity of the investigative process.

6. In the aforesaid circumstances, the Senior Superintendent of Police, Jhansi, was directed to file a personal affidavit indicating: (i) the particulars of the officer, who supervised the investigation and approved/forwarded the charge-sheet; (ii) whether the supervising officer was satisfied with the findings and conclusions arrived at by the Investigating Officer; and (iii) the

reasons for the failure to take effective steps for the recovery of the corpus, despite her being a minor, notwithstanding the allegations leveled in the FIR.

7. In compliance with the order dated 02.12.2025, learned A.G.A. had handed over, on behalf of the State, the personal affidavit of the Senior Superintendent of Police, Jhansi, which was taken on record. Upon perusal of the said affidavit, it was evident that the same did not address the specific requirements stipulated in paragraphs 5 and 6 of the order dated 02.12.2025. In particular, paragraph 6 of the aforesaid order expressly required the Senior Superintendent of Police, Jhansi, to state in the affidavit as to whether the directions issued by this Court in *Subhash Chandra & Others v. State of U.P. & Another2*, had been duly complied with by the Investigating Officer during the course of investigation and, if so, to furnish the particulars of such compliance. The affidavit filed in compliance of the aforesaid order was, however, conspicuously silent on this material aspect and failed to disclose, whether the mandate laid down by this Court in the aforesaid decision was adhered to while conducting the investigation.

8. In view of the aforesaid deficiencies and the failure to comply with the specific directions issued by this Court, the Senior Superintendent of Police, Jhansi, was directed to remain present before this Court through video conferencing on the next date fixed at 12:30 p.m. The said officer was further directed to explain the reasons for such non-compliance and to ensure that the directions previously issued by this Court have been complied with in their true letter and spirit. It was also observed that the Court expected the Senior Superintendent of Police, Jhansi, to acquaint himself thoroughly, prior to his appearance, with the directions laid down by this Court in *Subhash Chandra* (supra), so as to ensure meaningful compliance thereof and to enable him to render proper and effective assistance to the Court on the next date of hearing.

9. In compliance with the order dated 10.12.2025, learned A.G.A. had placed written instructions on record. A perusal thereof shows that at Serial No.95 it has been specifically stated that the charge-sheet in the present case was submitted after due compliance with the directions issued by this Court in *Subhash Chandra* (supra). In view of the aforesaid statement, the Station House Officer concerned was directed to place on record a copy of the charge-sheet along with the legal opinion obtained from the Law Department and all other approvals, recommendations, and documents relied upon to demonstrate compliance with the directions contained in the aforesaid judgment.

10. Upon perusal of the charge-sheet and the documents annexed thereto, it prima-facie appeared that the investigation has not been conducted in an effective, fair, impartial and comprehensive manner. The material brought on record further indicated that the charge-sheet had not been submitted in conformity with the directions issued by this Court in *Subhash Chandra* (supra). In view of the aforesaid, this Court directed the police to place on record ten charge-sheets, one each from ten different districts, so as to enable the Court to examine whether charge-sheets are being submitted in accordance with the directions and mandate laid down by this Court in *Subhash Chandra* (supra).

11. For the sake of convenience and ready reference, the directions issued by this Court in *Subhash Chandra* (supra) are reproduced hereinbelow:

“33. This is an appropriate stage where this Court suo-motu exercises the powers vested in it to uphold the majesty of the judicial process and to strike a balance between the unfettered power of the police to investigate and the need to maintain the purity of the legal system. Accordingly, the Court hereby directs the Director General of Police, Uttar Pradesh, to ensure;

33.1 Develop a need-based, customized training program tailored specifically for Constables, Head Constables, Sub-Inspectors and Inspectors- the key officers involved in criminal investigation. The course material contained 1282 pages and compiled in five volumes shall be divided into-small, self contained booklets-each covering specific subject area focusing on specific nature of offence for easier understanding and flexible learning. The objective of the program is to enhancing the professional capabilities of the investigators at the police station level to ensure accessibility and practical relevance.

33.2 Column-16 of the police report must contain clear and complete entries, (i) brief contents of the FIR, (ii) name of the suspects in the FIR, (iii) name of the accused mentioned in the charge-sheet, (iv) name of the suspect against whom the investigation has been pending and the reason thereof, (v) specify the role of each accused in the commission of the crime surfaced during investigation, (vi) details of seizure made- date, time, and particulars of recoveries, (vii) brief statement of prosecution witnesses- public, police, and formal- who said what?, (viii) details of scientific and forensic evidence, (ix) details of C.D.R. or C.C.T.V., (x) names of the accused arrested during investigation, (xi) name of the accused who have been granted anticipatory bail during investigation, (xii) name(s) of the accused whose arrest has been stayed by the High Court/Supreme Court, (xiii) name(s) of the accused qua whom charge-sheet has been filed without arrest, (xiv) name of the person(s) against whom Section 94 B.N.S.S., 2023 has been issued to produce which document or other thing, (xv) name of the person(s) against whom proceedings under Section 84 and 85 B.N.S.S., 2023 have been commenced, (xvi) details- number of notices issued by the I.O. to the accused(s) to join investigation, (xvii) number of date(s) the accused premises have been raided during investigation, (xviii) details of order(s) obtained by the accused from the High Court/Supreme Court during the investigation, (xix) any other incriminating evidence collected by the Investigating Officer forming part of the column-4 of the case diary, and (xx) any additional information by the investigating officer.

33.3 The details mentioned herein above are for illustrative purposes only. It is the sole prerogative of the Investigating Officer to exercise discretion and decide whether any other details need to be included in the police report, based on the requirements of each individual case.

33.4 The Director General of Police, through the Commissioner of Police and Senior Superintendent of Police, shall initiate a training drive for Investigating Officers to equip them with the necessary skills to prepare charge-sheets in accordance with the law.

33.5 The Director General of Police, Uttar Pradesh shall ensure the strict implementation of the circular bearing no. DG/Circular No.-06/2018 dated 19.02.2018, issued by the Director General of Police, whereby it has been made mandatory to every Investigating Officer that upon completion of investigation, prior to submission of charge-sheet/final report, the Investigating Officer must forward the draft charge sheet along with case diary to the Prosecution

*Officer through the Circle Officer. The Prosecution Officer shall review the case diary and evaluate the evidence collected during the investigation. If any shortcomings or inconsistencies are found, they shall be indicated, and further investigation shall be directed to address those issues. The case diary shall be returned to the Investigating Officer via the same channel after the Prosecution Officer's review, and only thereafter, the charge sheet or final report shall be submitted to the Court. The aforesaid circular has been issued in accordance with the judgment of Supreme Court titled as "**Perumal v. Janaki [(2014) 5 SCC 377]**". The true typed copy of the circular has been annexed herewith as Enclosure-I.*

33.6 If the charge-sheet is filed for offenses where life imprisonment is the prescribed punishment, the Investigating Officer must forward the draft charge-sheet along with the case diary to the Prosecution Officer through the Commissioner of Police or Senior Superintendent of Police, as applicable. The other directions contained in Enclosure-I shall remain same. Pursuant to this order and for the aforesaid purpose, the aforementioned police officers are hereby directed not to delegate this responsibility to any subordinate officers.

33.7 The Director General (Prosecution) shall issue general guidelines to all the Prosecution Officers to review the charge sheet along with the case diary in a time-bound manner. The number of days to complete the said exercise shall be decided by the Department of Prosecution.

33.8 The charge sheet shall be filed along with a duly paginated Index containing; (a) serial number, (b) date-wise brief description of the investigation in serialim- C.D. wise details, (c) details of document collected during investigation, (d) brief description of steps taken by Investigating Officer, (e) details of Section 94 B.N.S.S., 2023 notice, issued to "any person" to produce document and other thing, and (f) or any other details as deem fit by the Investigating Officer.

*33.9 Every Investigating Officer, upon completion of the investigation, prior to submission of charge-sheet/final report, must make an endorsement in the case diary a day prior or on the date of submission of the charge sheet to the Court that the **steps mentioned in the check list and the mandate of circular bearing no. DG/Circular No.-06/2018 dated 19.02.2018, issued by the Director General of Police, and directions issued herein in 33.5 & 33.8** has been complied with in letter and spirit. The copy of the Case Diary, containing the aforesaid details, shall be forwarded to the Court following the report under Section 193 BNSS, 2023.*

*33.10 If preceding **Direction Nos. 33.5 & 33.8**, have not been complied with by the Investigating Officer, the learned Special Judge, Chief Judicial Magistrate, or the learned Magistrate, as the case may be, shall immediately communicate the non-compliance to the Commissioner of Police or the Senior Superintendent of Police/Superintendent of Police and direct that appropriate departmental action be initiated against the Investigating Officer. It is equally the duty of the Court to ensure that the orders passed by the Constitutional Courts are strictly implemented by the authorities, upholding the rule of law in both letter and spirit.*

33.11 If preceding Direction No. 33.6 has not been complied with by the Investigating Officer, and Commissioner of Police or Senior Superintendent of Police or Superintendent of Police, as applicable, the learned Special Judge, Chief Judicial Magistrate, or the learned Magistrate, as the case may be, shall immediately communicate the non-compliance to the ACS (Home) and a copy of the same shall be sent to Director General of Police for necessary action.

33.12 The concerned Station House Officer (S.H.O.) shall be held primarily accountable for dereliction of duty if, upon completion of the investigation and prior to submission of the charge sheet or final report before the Court, the police report is not forwarded to the Prosecution Officer through the Circle Officer or the Police Commissioner/Senior Superintendent of Police (S.S.P.), as applicable. In instances where the Police Commissioner or the S.S.P. declines to forward the charge sheet for review to the Prosecution Officer in cases involving a prescribed punishment of life imprisonment, the S.H.O. shall make a corresponding endorsement in the case diary and submit a report detailing the same to the senior officers.

33.13 The Commissioner of Police/S.S.P./S.P. shall file monthly report about the compliance of DG/Circular-06/2018 dated 19.02.2018, to the Director General of Police, Uttar Pradesh with a copy to Director General (Prosecution), without fail.

33.14 A fresh Office Memorandum/Circular should be accordingly issued by the Home Department, instructing the Director General of Police and the Directorate (Prosecution) to issue a fresh Circular/Office Memorandum to their respective officers based on the foregoing directions, at the earliest.”

12. Upon examination of the ten charge-sheets produced from the respective districts pursuant to the orders of this Court, it has been observed that the directions laid down in Subhash Chandra (supra) have not been uniformly adhered to. The material placed on record indicates that, in a number of cases, the investigating agencies have failed to ensure compliance with the requirements mandated therein, thereby reflecting a lack of effective implementation of the aforesaid directions at the field level.

13. Before advertng to the merits of the present case, it would be apposite to briefly examine the background and context in which the directions in Subhash Chandra (supra) came to be issued. The directions contained in Subhash Chandra (supra) are founded upon the principles laid down by the Supreme Court in **Sanuj Bansal v. State of U.P. and Another**³, **Dablu Kujur v. State of Jharkhand**⁴, **R.K. Dalmia etc. v. Delhi Administration**⁵, and **Sharif Ahmed and Another v. State of Uttar Pradesh and Another**⁶, wherein emphasis was laid upon fair, impartial, scientific, and legally sustainable investigation as an indispensable component of the criminal justice system, and entries to be made in Column-16 of the charge-sheet proforma.

13.1 Pursuant to the directions issued by this Court in Subhash Chandra (supra), the Director General of Police (Training), Uttar Pradesh, placed before the Court a comprehensive set of five compilations comprising more than 1,282 pages. Each compilation contained extensive material relating to the training, supervision, and standardisation of criminal investigation under the new criminal laws. The documents, inter-alia, included training course materials for Sub-

Inspectors, Deputy Superintendents of Police (Law and Investigation), Constables (Law and Investigation), and other investigating personnel; the objectives and curriculum relating to training under the newly enacted criminal laws; promotional course syllabi for Constables, Head Constables, Sub-Inspectors, and Inspectors; circulars and directions issued from time to time by the Director General of Police, Uttar Pradesh, for improving the quality of investigation; Crime SOP Handbooks; Standard Operating Procedures relating to crime-scene investigation; digital library resources; details of officers trained outside the State by specialised agencies.

13.2 A copy of Memoranda of Understanding executed with the National Institute of Electronics and Information Technology (NIELIT) and the National Raksha University; communications concerning forensic investigation issued by the Uttar Pradesh State Institute of Forensic Science; checklists for investigation of heinous offences circulated by the Additional Director General (Crime); action plans for investigation circulated to various zones, ranges, and districts; the updated Investigation Handbook, 2021; SOPs issued by the Director General of Police, Uttar Pradesh, as well as the Directorate of Prosecution; compilations of crime-specific checklists prepared by different units; and numerous circulars providing for departmental action against errant Investigating Officers whose investigations were found to be deficient or unsatisfactory. The aforesaid material demonstrates the extensive institutional framework, training infrastructure, procedural safeguards, and supervisory mechanisms that have been developed by the State authorities to ensure that criminal investigations are conducted in a professional, scientific, and legally compliant manner.

14. Upon a detailed examination of the five volumes of material placed before it, the Coordinate Bench of this Court observed that the numerous circulars, guidelines, handbooks, and standard operating procedures issued from time to time may not be readily comprehensible to police personnel at the field level, particularly those serving in the ranks of Constable, Head Constable, Sub-Inspector, and Inspector. The Court noted that the effective implementation of such directions would depend not merely upon their issuance, but also upon their proper dissemination and understanding through continuous and practical training imparted in simple and accessible language. Accordingly, the Director General of Police (Training), Uttar Pradesh, was directed to prepare □chapter-wise□ and □offence-wise checklists□ in a simplified format, categorising various offences and the corresponding investigative requirements in a manner capable of being easily understood and implemented by police personnel at all levels. The object behind the said direction was to translate the existing legal and procedural framework into a practical investigative tool, so as to ensure uniformity, efficiency, and legal compliance in the conduct of criminal investigations throughout the State.

15. Pursuant to the aforesaid directions, the Director General of Police constituted an Expert Committee headed by the Director General of Police (Prosecution) to examine and deliberate upon the suggestions and recommendations received from various stakeholders. Inputs were also invited from different wings and specialised branches of the police department so as to ensure a comprehensive and practical framework for investigations.

15.1 The Directorate of Prosecution thereafter undertook an extensive review of the checklists and recommendations submitted by various departmental units, District Joint Directors

(Prosecution), and Prosecution Officers across the State. Upon a detailed assessment of the material received, the Committee classified and categorised offences and formulated a uniform and standardised □checklist□ with a view to ensuring quality, consistency, and legal compliance in criminal investigations. While preparing the said checklist, particular emphasis was laid upon harmonising investigative practices with the provisions introduced under the new criminal laws of 2023. Special attention was accorded to the collection, preservation, and evaluation of forensic and digital evidence in relation to each category of offences, with the objective of strengthening the evidentiary foundation of investigations and ensuring that the investigative process remains in conformity with contemporary legal and technological requirements. It was in the backdrop of these materials, and the law laid down by the Supreme Court, that this court in Subhash Chandra (supra) formulated and issued the directions intended to strengthen the quality of investigation and ensure accountability within the investigating machinery.

16. After hearing learned counsel for the parties and considering the affidavits filed by the Station House Officer concerned as well as the Senior Superintendent of Police, Jhansi, this Court, by order dated 11.02.2026, reserved the petition for judgment and directed that it be listed on 19.02.2026 for pronouncement of judgment. While doing so, liberty was granted to the Principal Secretary (Home), Government of Uttar Pradesh, to place on record, if so advised, an affidavit explaining the reasons for persistent non-compliance of the directions issued by this Court. Such affidavit was directed to be filed before the next date of listing, i.e., 19.02.2026.

16.1 This Court further observed that the present matter does not appear to be an isolated instance of non-compliance. Prima-facie, the material placed on record indicated that the directions issued in Subhash Chandra (supra) have not been effectively implemented despite the lapse of nearly a year from the date of the judgment. The Court also noted that, in the charge-sheets examined by it, including those submitted subsequent to the decision in Subhash Chandra (supra), the mandate and requirements laid down therein had not been duly complied with, thereby disclosing a pattern of systemic non-adherence to the directions issued by the High Court, and no effective steps have been taken by Home Department to ensure that the □checklist□ prepared by it be uniformly implemented.

17. On 19.02.2026, learned Additional Advocate General appeared on behalf of the State and placed on record the personal affidavit of the Senior Superintendent of Police, Jhansi. Learned Additional Advocate General further sought a short accommodation to obtain and place before the Court the necessary instructions from the Additional Chief Secretary (Home), Government of Uttar Pradesh. Considering the request so made, time was granted, and the matter was again directed to be listed on 23.02.2026 for further consideration.

18. On 23.02.2026, learned Additional Advocate General again appeared and placed on record an affidavit dated 20.02.2026 sworn by the Secretary (Home), Government of Uttar Pradesh. Learned Additional Advocate General submitted that the Home Department has taken a decision to challenge the judgment rendered in Subhash Chandra (supra) before the Supreme Court by filing a Special Leave Petition. On the strength of the aforesaid decision, it was urged that this Court may refrain from passing any further orders concerning the implementation or enforcement of the

directions issued in Subhash Chandra (supra) until the said judgment attains finality from the Supreme Court.

19. The relevant contents of the affidavit dated 20.02.2026, filed by the Secretary (Home), Government of Uttar Pradesh, Lucknow, are recapitulated hereinbelow:

19.1 The deponent, Secretary (Home), Government of Uttar Pradesh, Lucknow is stated to be fully acquainted with the facts of the case. The affidavit is filed in compliance with the order dated 11.02.2026 passed by this Court. The deponent professes the highest regard for the orders of this Court and tenders an unconditional and unqualified apology for any act or omission found to be in violation thereof. Upon receipt of the Court's order, the deponent directed the Senior Superintendent of Police, District Jhansi, to furnish a report, which was duly submitted on 17.02.2026.

19.2 The complainant, Smt. Prabha, wife of Ram Kumar, P.S. Sipri Bazar, District Jhansi, reported that her daughter eloped on 10.06.2025 at about 05:00 a.m. with accused- Kallu, son of Deshraj. An FIR being Case Crime No.212 of 2025 under Sections 137(2)/87 BNS was lodged on 11.06.2025 at P.S.- Sipri Bazar, District Jhansi. Investigation was initially entrusted to Sub-Inspector Vikas Kumar, who recorded the chik report, rapat, statements of the complainant and scribe, and inspected the spot.

19.3 The accused, upon examination on 18.06.2025, admitted taking the victim to Delhi and thereafter to Bina on 12.06.2025, whereafter the victim allegedly fled. CCTV footage at Bina Junction corroborated the presence of both the accused and the victim together. Consequently, Section 87 BNS was deleted, and the investigation continued under Section 137(2) BNS. The accused was arrested on 18.06.2025, produced before the Juvenile Justice Board, and sent to Bal Sudhar Grih, Lalitpur. A charge-sheet was filed on 13.08.2025.

19.4 Extensive searches were conducted on multiple dates- 20.06.2025, 02.07.2025, 10.07.2025, 15.07.2025, 24.07.2025, 17.10.2025, 01.11.2025, 14.12.2025, 23.12.2025, 05.02.2026, and 08.02.2026- at numerous locations including Brahm Nagar Colony, Sidheshwar Nagar, ITI, Sudama Puri Colony, Pal Colony, Gwalior Road, Bhojla, Bajrang Colony, Badagaon, Chirgaon, Jhansi Railway Station, Bus Stand, PS Kotwali Dehat, and GRP Shivpuri. The Marg Register and Khoya-Paya Register kept at P.S.- Shivpuri were examined, and red-light areas of Shivpuri were also searched. Talash-gashti was circulated through Akashvani, Doordarshan, Press, and social media groups. Pamphlets were pasted in public places. All efforts yielded no clue, and went in vain.

19.5 CDRs of the accused's mobile and the complainant's mobile were obtained and examined, but yielded no useful results. The Instagram ID of the victim was identified, and a notice under Section 94 BNS was issued to Meta Platforms, Menlo Park, California, USA. It was subsequently informed that the said ID was created using mobile number xxxxxxxxxx on 02.12.2025. CDR and CAF details of the said number were sought from Cyber Cell, Jhansi.

19.6 Records of the One Stop Centre, District Shivpuri (M.P.) were examined. An unidentified body of a girl aged approximately 15-18 years, burnt to approximately 90%, recovered vide Marg No.41/2025 dated 22.09.2025 at P.S.- Bhonti, Shivpuri (Case Crime No.311/2025, under Sections 103(1)/238 BNS), is being investigated in coordination with local police to rule out any connection with the missing victim.

19.7 On 16.02.2026, the SSP, Jhansi, constituted a special police team under Inspector Kuldeep Tiwari, SHO, AHTU Jhansi, and Inspector Jai Prakash Chaubey, SHO, Sipri Bazar, along with seven other personnel, to intensify recovery efforts.

19.8 The DGP, Uttar Pradesh, vide Letter No.19/2024 dated 15.04.2024, had already issued directions for the recovery of missing persons and children below 18 years to all police units.

19.9 That with regard to the order dated 11.02.2026 passed by this Court, concerning compliance of paragraphs 33.5 to 33.14 of the order dated 12.05.2025 passed in Subhash Chandra (supra), it was duly sworn that the Supreme Court *in State of Gujarat v. Kishanbhai*⁷, emphasised application of prosecutorial mind to investigation and post-investigation scrutiny, but no mandatory direction was issued requiring the Investigating Officers to have the charge-sheet reviewed by the Prosecution Officer prior to its submission. Therefore, the directions contained in paragraphs 33.5 to 33.14 of the order dated 12.05.2025, to the extent they mandate such pre-submission review, raise substantial questions of law, which require consideration by Supreme Court in the light of the judgment of the Supreme Court in *R. Sarala v. T.S. Velu*⁸. In view of the aforesaid legal position, the said directions could not be implemented in the manner contemplated by this High Court. Accordingly, on the proposal by Police Headquarters, the State Government has decided to challenge Subhash Chandra (supra) before the Supreme Court.

19.10 That with regard to the order dated 11.02.2026 passed by High Court, it is averred that the State Government has already complied with the directions issued by the Supreme Court in the governing field and continues to act in accordance with the said binding directions. The State Government reiterates that G.O. No.1909 dated 05.08.2015 and DGP Circular No.06/2018 dated 19.02.2018, issued in compliance with the directions of the Supreme Court in *State of Gujarat v. Kishanbhai* (supra) shall remain in force. However, in view of the legal position arising from the judgments of the Supreme Court in *R. Sarala* (supra) and the substantial questions of law involved in the present matter, certain directions contained in Subhash Chandra (supra) could not be implemented in the manner contemplated. Accordingly, the State Government is proceeding for instituting a Special Leave Petition before the Supreme Court.

20. At the outset, it may be noted that liberty was granted to the Additional Chief Secretary (Home) to file an affidavit explaining the reasons for persistent non-compliance of the directions issued by this Court. However, without seeking any leave or clarification from this Court, the Additional Chief Secretary (Home) chose to have an affidavit filed through the Secretary (Home), for reasons best known to him.

20.1 A perusal of the affidavit filed by the Secretary (Home) reveals that the State Government had already issued Government Order No. 1909/PU-CHAH-9-2015-31(36)/2014

dated 05.08.2015. It further transpires that the Director General of Police, Uttar Pradesh, had issued Circular No.06/2018 dated 19.02.2018 providing for scrutiny of draft charge-sheets by Prosecuting Officers through the supervisory channel, in compliance with the directions of the Supreme Court in *State of Gujarat v. Kishanbhai* (supra).

20.2 The affidavit further discloses that the aforesaid Government Order and Circular specifically recognised and incorporated the principle laid down by the Supreme Court and this Court that, upon completion of investigation in a criminal case, the prosecuting agency must independently apply its mind to the material collected during investigation and ensure that all deficiencies and shortcomings are duly rectified, including, where necessary, by recommending or directing further investigation. Thus, the mechanism for prosecutorial scrutiny of investigations and charge-sheets was already in existence much prior to the judgment in *Subhash Chandra* (supra).

20.3 It is noteworthy that no challenge was laid to the *Subhash Chandra* (supra) for almost a year after its pronouncement on 12.05.2025. It was only when this Court, by order dated 11.02.2026, sought an explanation from the Additional Chief Secretary (Home) regarding the persistent non-compliance of the directions issued in *Subhash Chandra* (supra), he chose to challenge the said judgment before the Supreme Court. Thereafter, through the affidavit dated 20.02.2026, this Court was informed that the Home Department has decided to file a Special Leave Petition and, on that basis, a request was made that this Court may refrain from passing further orders concerning compliance with the directions so issued until the matter was considered and decided by the Supreme Court.

20.4 This Court deferred the matter and awaited information regarding the status of the proposed Special Leave Petition. However, till dictation and signing of the present order, no order or judgment passed by the Supreme Court on the proposed SLP was produced by the learned State counsel till lapse of more than three months.

20.5 The chronology of events is, therefore, of considerable relevance. The judgment in *Subhash Chandra* (supra) was delivered on 12.05.2025. Questions regarding its non-compliance were raised by this Court on 11.02.2026. The State disclosed its intention to file a Special Leave Petition only, through the affidavit dated 20.02.2026, after the issue of non-compliance raised by this Court. These facts are matters of record and necessarily fall for consideration while evaluating the conduct of ACS (Home) regarding the continued non-implementation of the directions issued by this Court.

21. The right of the State to prefer a Special Leave Petition (SLP) under Article 136 of the Constitution of India is well-established and beyond dispute. The State, as a litigant, occupies no inferior position before the Supreme Court; it may invoke extraordinary jurisdiction just as any aggrieved party would. The constitutionality of a right and the propriety of its invocation are two distinct inquiries, still it was always open for the State to take a conscious decision on it.

22. When a department of the Government feels aggrieved by a judicial decision that adversely affects public interest, statutory duties, or the rights of citizens dependent on

governmental action, the filing of an SLP is not merely appropriate- it is sometimes a constitutional obligation. In such cases, the locus standi of the State is beyond challenge.

23. The ACS (Home), on the other hand, while being a senior officer in the administrative hierarchy, occupies a supervisory and coordinating role. His approval or concurrence in filing litigation is part of the internal administrative process. However, when this approval is motivated not by a genuine assessment of institutional grievance, but by personal satisfaction- a desire to vindicate a personal position, settle a personal score, or see an adversarial proceeding through its conclusion regardless of merit- the character of the litigation fundamentally changes.

24. The two domains- departmental grievance and personal satisfaction- are not merely different in degree; they are different in kind. One is institutional; the other is individual. One is grounded in public duty; the other in private motive.

25. Upon a consideration of the sequence of events and the material placed on record, this Court finds it difficult to overlook the conduct of Shri Sanjay Prasad, IAS (DR 1995), Additional Chief Secretary (Home), Government of Uttar Pradesh, in the present matter. The record reflects that, despite informing this Court in February 2026 that a decision had been taken to challenge the judgment in Subhash Chandra (supra) before the Supreme Court, no order was produced before this Court till date. This Court is not aware whether the SLP was ever listed before the Supreme Court or not, till the dictation of the order.

25.1 In these circumstances, the plea that this Court should defer consideration of the issue of non-compliance on account of the proposed challenge to Subhash Chandra (supra) does not inspire confidence. The conduct of incumbent ACS (Home) gives rise to a reasonable apprehension that the proposed Special Leave Petition was relied upon as a justification for postponing scrutiny of the continued non-compliance of the directions issued by this Court, rather than as a bona fide and diligent effort to obtain an authoritative determination from the Supreme Court at the earliest opportunity.

25.2 The facts on record, therefore, prima-facie indicates a lack of diligence on the part of incumbent ACS (Home) in pursuing the very remedy, which he himself projected before this Court as the basis for seeking restraint in the enforcement of the directions contained in Subhash Chandra (supra). Such conduct has the effect of impeding effective consideration of the issue of compliance and cannot be viewed with approval by this Court.

26. This Court has given its anxious consideration to the question as to why the implementation of police reforms and investigative safeguards has repeatedly encountered resistance at the administrative level. The record placed before the Court indicates that, on more than one occasion, judicial initiatives intended to strengthen the quality, fairness, and accountability of criminal investigations have not received the degree of institutional support that would ordinarily be expected from the authorities entrusted with civil administration.

27. It is not for this Court to speculate upon the motives of any individual officer or department. However, the sequence of events noticed hereinabove raises legitimate concerns

regarding the apparent reluctance of the incumbent ACS (Home) to facilitate and effectively implement measures aimed at improving investigative standards and ensuring compliance with judicial directions. Such an approach, if sustained, has the potential to impede reforms intended to enhance transparency, professionalism, and accountability within the police machinery.

28. The constitutional objective of police reforms is not to diminish the authority of the executive over police administration, but to ensure that investigations are conducted in a fair, impartial, professional, and legally sustainable manner. Any resistance to measures designed to achieve these objectives would be inconsistent with the constitutional mandate of ensuring the rule of law and strengthening public confidence in the criminal justice system.

29. The traditional '*Whitehall ethos*' that governs the civil services in Westminster-style parliamentary democracies is one that prized discretion, secrecy, and anonymity. There may be institutional reasons for such a culture; however, one of its untoward effects is that it renders it extremely difficult for those outside the system to discern how the civil services operate. Such officials are, if not positively secretive, at least extremely discreet.

30. One aspect attached to the civil services is that administrative discretion is both important and desirable. Most would agree that bureaucratic discretion is something to be valued, insofar as it enables public officials to apply rules in a flexible, intelligent, and compassionate manner when circumstances warrant. The other aspect is, unbridled discretion carries with it serious risks- it undermines the rule of law; it serves as a source of illicit power for administrative officials; it relieves them of the obligation to furnish reasons for their decisions; it undermines legal certainty; and it frees public officials from accountability to individuals whose rights may be affected. In practice, such unchecked discretion often amounts to what is commonly characterised as □discrimination□.

31. Essentially, the exercise of discretion represents a necessary evil in a hierarchical model, an evil to be tolerated only so long as a more precise form of official action cannot be formulated. The rules and regulations have their origin in the desire to limit discretion as a means of achieving greater accountability.

32. Bureaucratic rigidity, an excess of rules, abundant resources without corresponding wisdom to utilize, and the absence of any formal system of peer assessment are, collectively, the antithesis of accountability. It may be true that, where decisions are taken with absolute and untrammelled discretion, on any ground or for any reason that may suggest itself to the mind of the administrator, no legislative act can, without express language, curtail such unlimited arbitrary power, save that such decisions may be brought within the purview of fraud and corruption; but this is not consonant with the principles of due process and the culture of the rule of law⁹.

33. Before parting with the present matter, this Court considers it appropriate to place on record certain observations which, in its considered opinion, warrant the attention of the ***Secretary, Department of Personnel and Training, Government of India***, being the apex authority entrusted with the governance, regulation, and oversight of the All India Services. The time has come for the State to evolve a doctrine of □superior responsibility□ and to hold senior officers in a hierarchy

criminally accountable for □ failure to prevent and/or punish acts □ of commission or omission on the part of their subordinates.

34. The expression 'fail to prevent' must be understood to include the taking of administrative measures and the reporting of subordinate misconduct to higher administrative authorities. Exceptional situations with widespread, systematic, and enduring effects on public administration demand exceptional solutions. A 'duty to report or act' may appropriately be developed in administrative law to address systematic and widely prevalent underperformance, negligence, breaches of ethics, and violations of service codes.

35. Superior officers must be held accountable for the conduct and performance of their subordinates, as it is their professional and administrative responsibility to ensure the effective delivery of public services. Such responsibility may be elevated to criminal liability, where the failure to prevent or punish subordinate misconduct leads to criminal acts such as corruption, fraud, wilful suppression, contempt of Government Orders and Gazette Notifications, and the failure to implement □ State Policy □ and □ Programs □, such as zero tolerance towards organised, institutionalised corruption- whether corruption of the mind, whereby the decision-making process is deliberately perverted to serve private ends under the guise of official authority, or corruption of the purse, whereby public office is converted into an instrument of personal pecuniary gain.

36. This Court, accordingly, recommends to the ***Secretary, Department of Personnel and Training, Government of India***, that the aforesaid observations and recommendations be placed before the competent legislative and executive authorities for due consideration, with a view to evolving an appropriate statutory and regulatory framework incorporating the doctrine of □ superior responsibility □ in the governance of the All India Services and other Central Services. Such a framework, if effectively implemented, would serve to strengthen the culture of accountability, transparency, and rule of law within the civil services and would ensure that the authority vested in senior officers is exercised not as a privilege of rank but as a public trust, answerable to the people and to the institutions of constitutional governance.

37. This Court apprehends that resistance to such a framework may find its source in the fear of losing discretion- that very discretion which has long served as a shield against accountability, and which underlies much of what is commonly described as “***red tapism***”. The rules and regulations have their origin in the desire to limit discretion in order to achieve greater accountability, and that objective must not be allowed to be subverted.

38. This Court now turns to the issue of the appropriate direction to be issued in the present matter in view of the conduct of Shri Sanjay Prasad, IAS (DR 1995), Additional Chief Secretary (Home), Government of Uttar Pradesh.

39. As deliberated in foregoing paragraphs, it appears that the directions issued in Subhash Chandra (supra) were the product of an extensive consultative process involving

the police establishment, the prosecution department, and the Home Department itself. Notwithstanding the aforesaid, the said directions were not complied with for a period of nearly a year after their issuance. It was only upon this Court specifically raising the issue of non-compliance by order dated 11.02.2026 that a Secretary of the Home Department, even though he was not called upon, filed an affidavit dated 20.02.2026, for the first time intimated the intention of the ACS (Home) to challenge the judgment before the Supreme Court, and no order or any document produced before this Court till the signing of the judgment that the Supreme Court has taken cognizance of the directions issued in Subhash Chandra (supra), even after lapse of more than three months. This Court is not aware whether the matter ever listed before the Supreme Court.

40. The conduct of Shri Sanjay Prasad, as noticed above, prima-facie reflects a deliberate and calculated attempt to undermine the authority of this Court by projecting the proposed Special Leave Petition as a basis for seeking restraint in the enforcement of judicial directions, while simultaneously failing to pursue the said remedy with any degree of diligence or bona fides. Such conduct, if left unaddressed, would have the effect of rendering the orders of Constitutional Courts nugatory at the hands of recalcitrant administrative officers and would set a pernicious precedent for the manner in which judicial directions concerning accountability and police reforms may be treated by the executive. This Court cannot be a silent spectator to such conduct.

41. In view of the aforesaid, while this Court refrains from passing any further order at this stage with respect to the non-compliance of Subhash Chandra (supra), having regard to the resolve of the affidavit dated 20.02.2026 filed by the Secretary (Home).

42. Accordingly, it is directed that the Registrar (Compliance) of this Court shall transmit a certified copy of the present order and the order passed by this Court in Subhash Chandra (supra) to the *Secretary, Department of Personnel and Training (DoPT), Government of India*, being the Cadre Controlling Authority of Shri Sanjay Prasad, IAS (DR 1995), for their record, reference, and such consideration as may be deemed appropriate in the context of the assessment of the said officer's suitability for future assignments by the Appointment Committee of the Cabinet (ACC).

43. During the course of proceedings, this Court has been informed that the corpus has since been recovered by the local police and has been safely restored to the custody of her parents. It has further been brought to the notice of the Court that the recovery was effected pursuant to the concerted efforts undertaken under the supervision of the Senior Superintendent of Police, Jhansi. In view of the aforesaid development, the principal grievance raised in the present petition no longer survives for consideration on merits, and no further orders are required to be passed in that regard. The present petition is, accordingly, *disposed of*.

44. Before parting, this Court places on record its appreciation for the efforts made by the Senior Superintendent of Police, Jhansi, and the police team concerned in securing the recovery of the corpus and reuniting her with her family.

(2026) 6 ILRA 287
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 29.06.2026

BEFORE

THE HON'BLE J.J. MUNIR, J.
THE HON'BLE VINAI KUMAR DWIVEDI, J.

Habeas Corpus Writ Petition No. 1070 of 2025

Narendra Sharma	...Petitioner
	Versus
State of U.P. & Ors.	...Respondents

Issues for Consideration

Whether the order of preventive detention passed against the petitioner under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, is vitiated on the ground of non-application of mind, where the Detaining Authority proceeded on the mistaken premise that the petitioner was in judicial custody in connection with Crime No. 691 of 2024, when in fact he had already been granted bail therein and was in jail in connection with a different crime under the U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986

Headnotes

Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 --- s.3(1) --- Constitution of India --- Art.22 --- Preventive detention --- Detenue already in judicial custody -- - Subjective satisfaction of Detaining Authority --- Awareness of correct crime in connection with which detenue is in jail --- Sine qua non for valid exercise of power.

HELD: The most fundamental postulate for valid exercise of the power of preventive detention in respect of a person already in judicial custody is, firstly, awareness on the part of the Detaining Authority that the person is in jail, and secondly, awareness of the crime in connection with which he is in jail. The second condition is essential because the Detaining Authority must be subjectively satisfied, on the basis of objective material, that there is real likelihood of the detenue being released on bail in that very crime; for this purpose the Detaining Authority must know the facts, the evidence appearing against the detenue and orders of bail or refusal passed in relation to similarly circumstanced co-accused. Where the Detaining Authority, though aware that the detenue is in jail, is unaware of, or wrongly identifies, the crime in connection with which he is incarcerated, it can never exercise subjective satisfaction to form an opinion regarding likelihood of bail. [Paras 25, 26, 27]

Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 --- s.3(1) --- Detention order --- Petitioner shown to be in jail in connection with Crime No.691 of 2024 --- Petitioner in fact already granted bail therein on 11.07.2025 and in custody in connection with a different crime under U.P. Gangsters Act --- Non-application of mind --- Detention order vitiated.

HELD: Where the Detaining Authority was unaware that the detenue had already been granted bail in the crime under the NDPS Act mentioned in the grounds of detention, and was actually in jail on account of his involvement in a different crime under the U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986, there was no basis for the Detaining Authority to form an opinion, founded on objective material, that there was likelihood of the petitioner being released on bail; the Detaining Authority could not form an opinion

about likelihood of bail being granted to the petitioner in connection with a case it did not know about. The subjective satisfaction of the Detaining Authority is, in such circumstances, clearly vitiated due to non-application of mind. [Paras 25, 30]

Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 --- Habeas corpus --- Detention vitiated on ground of non-application of mind --- Other grounds of challenge --- Not required to be examined.

HELD: Once the detention order stands vitiated on the short ground of non-application of mind regarding the crime in connection with which the detenue was in judicial custody, there is no occasion to consider the other grounds of challenge, including snapping of live and proximate link, competence of the Sponsoring Authority, absence of independent application of mind by the Screening Committee, classification of the petitioner as a habitual offender, and alleged violation of Article 22 of the Constitution on account of procedural lacunae in the PIT-NDPS Act. [Para 31]

Rule nisi made absolute. Continued detention of the petitioner declared illegal. Petitioner directed to be set at liberty forthwith, unless wanted in connection with some other case. (E-14)

Case Law Cited

Mortuza Hussain Choudhary v. State of Nagaland and others, 2025 SCC OnLine SC 502 — relied on; Jahanara Bibi @ Jahanara Begam @ Jahanara Mondal @ Janu v. Union of India and others, 2025 SCC OnLine Cal 7003 — referred to

List of Acts / Statutes

Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988; Narcotic Drugs and Psychotropic Substances Act, 1985; Indian Penal Code, 1860; The Drugs and Cosmetics Act, 1940; Bharatiya Nyaya Sanhita, 2023; Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986; National Security Act, 1980; Constitution of India.

List of Keywords

Habeas corpus; Preventive detention; PIT-NDPS Act; Subjective satisfaction; Non-application of mind; Detenue already in jail; Likelihood of release on bail; Live and proximate link; Sponsoring Authority; Screening Committee; Habitual offender; Article 22; Rule nisi; Detention order quashed.

Case Arising From

Detention order dated 01.08.2025 passed by the Secretary, Department of Home, Government of Uttar Pradesh, Lucknow, under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, confirmed by the Advisory Board on 17.10.2025; representation of the petitioner rejected by the Detaining Authority on 14.10.2025.

Appearance for Parties

For the Petitioner(s): Ajay Kumar Pandey

For the Respondent(s): Anoop Trivedi, Additional Advocate General, assisted by Shashi Shekhar Tiwari, Additional Government Advocate, for respondents nos. 1, 3, 4, 5, 6 and 7; Shiv Kumar Pal, Deputy Solicitor General of India, for respondent no. 2

(Delivered by Hon'ble J.J. Munir, J.)

This petition for a writ of habeas corpus has been instituted by the petitioner Narendra Sharma, praying that a rule nisi be granted, ordering him to be produced before the Court and set at liberty, after declaring the detention order dated 01.08.2025 passed by the Secretary, Department of

Home, Government of Uttar Pradesh, Lucknow under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 illegal. It is in these terms that the petitioner prays that the rule be made absolute.

2. The case of the petitioner is that he was arrested on 08.07.2023 in Case Crime No. 348 of 2023, under Sections 8/21/22/25/27A/29/60 of the Narcotic Drugs and Psychotropic Substances Act, 19852, read with Sections 149/420/467/468/471 of the Indian Penal Code, 1860 and Sections 17(B), 27(C), 18(C) and 27 of The Drugs and Cosmetics Act, 19403, Police Station Jagdishpura, District Agra. Next, on 09.07.2023, the petitioner was arrested in Case Crime No. 494 of 2023, under Sections 8/21/22/25/27A/29/60 NDPS Act, read with Sections 149/420/467/468/471 IPC and Sections 17(B), 27(C), 18(C) and 27 of the Act of 1940, Police Station Sikandra, District Agra. This implication came on the basis of the statement of a co-accused in this crime, while the petitioner was in jail. The next implication that the petitioner faced in quick succession was on 29.07.2023 in Case Crime No. 393 of 2023, under 8/21/22/25/27A/29/60 NDPS Act, Police Station Jagdishpura, Agra. The petitioner's implication in Case Crime No. 393 of 2023 aforesaid was, again, one while he was still in custody of the respondents, after the arrest of co-accused Raj Kumar in the crime, without any valid or cogent reason. The petitioner was granted bail by this Court in Case Crime No. 393 of 2023 (*supra*) on 04.10.2023; in Case Crime No. 494 of 2023 (*supra*) on 01.11.2023; and, in Case Crime No. 348 of 2023 on 24.01.2024. It is emphasised that until 29.07.2023, the petitioner was in the custody of the respondents and implicated in two other cases, while in their custody, without there being any event, apparently on the basis of the statements of the co-accused.

3. After release on bail, on 21.10.2024 at around 05:45 p.m., the petitioner was driving in his car, when officers of the Anti-Narcotics Task Force⁴, Operational Unit Agra, Zone Agra, District Agra forcibly stopped his car and apprehended him. The petitioner asserts that he was kept in illegal custody by the ANTF aforesaid for two days. He was then arrested in connection with Case Crime No. 691 of 2024, under Sections 8/21/22/25/27A/29/60 NDPS Act, read with Section 319(2)/318(4)/338/ 336(3)/340(2)/111/276/277 of the Bharatiya Nyaya Sanhita, 2023⁵ and Sections 17(B), 27(C), 18(C) and 27 of the Act of 1940, Police Station Sikandra, District Agra. This arrest was shown as if the petitioner had been apprehended on the spot, while involved in the crime. There is an assertion that there exists CCTV footage, clearly showing that the entire act of the officers of the ANTF was one of illegally apprehending the petitioner and forcibly taking him away in their vehicle.

4. While the petitioner was in jail in connection with Crime No. 691 of 2024 (*supra*), the respondents opened a gang chart, and on its basis, registered Case Crime No. 156 of 2026, under Section 2/3 of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986⁶, Police Station Jagdishpura, District Agra. The gang chart included Crime Nos. 393 of 2023, 348 of 2023 and 494 of 2023. The petitioner was granted bail by the order dated 11.07.2025 passed by this Court in Crime No. 691 of 2024. He asserts that seven out of the ten co-accused in Case Crime No. 156 of 2025, under Section 2/3 of the UP Gangsters Act were granted bail by this Court, while the petitioner's bail application in Crime No. 156 of 2025 was pending before this Court.

5. The Secretary (Home), Government of Uttar Pradesh, Agra, acting as the Detaining Authority, passed the impugned order of detention under Section 3(1) PIT-NDPS Act. The petitioner was informed about the detention order on 03.08.2025, while lodged in the District Jail, Agra. The petitioner submitted his reply against the detention order to the Jail Superintendent, District Jail, Agra on 24.08.2025. The Detaining Authority rejected the petitioner's representation on 14.10.2025. On 17.10.2025, the Advisory Board upheld the detention order and approved it for the period of one year.

6. Aggrieved by the detention order dated 01.08.2025, this habeas corpus writ petition has been instituted.

7. This petition was admitted to hearing on 26.11.2025 and a rule nisi issued. A counter affidavit bearing number 2 of 2025 has been filed on behalf of the State Government; another, on behalf of the District Magistrate, Agra; and still another, on behalf of the Commissioner of Police, Agra. The last two affidavits bear numbers 4 of 2025 and 3 of 2025, respectively. A counter affidavit was filed on behalf of the Jail Superintendent, District Jail, Agra, bearing number 7 of 25, and another one, on behalf of the Drug Inspector, Department of Food Safety and Drug Administration, Agra. This affidavit bears number 5 of 2025. A counter affidavit was filed on behalf of the Union of India, and another, on behalf of the Anti-Narcotics Task Force, Operational Unit, Agra Zone Agra by the Deputy Superintendent of Police, Anti-National Task Force, Agra. These affidavits bear numbers 14 of 2026 and 15 of 2026, respectively. To the eight counter affidavits thus filed on behalf of the respondents, the petitioner has filed an equal number of rejoinders. A supplementary affidavit dated 31.01.2026 has been filed on behalf of the petitioner.

8. Heard Mr. Ajay Kumar Pandey, learned Counsel for the petitioner, Mr. Anoop Trivedi, learned Additional Advocate General assisted by Mr. Shashi Shekhar Tiwari, learned Additional Government Advocate on behalf of respondents nos. 1, 3, 4, 5 and 6 and Mr. Shiv Kumar Pal, learned Deputy Solicitor General of India appearing on behalf of respondent no. 2.

9. It is argued by Mr. Ajay Kumar Pandey, learned Counsel for the petitioner, that it is a case of non-application of mind on the part of the Detaining Authority, while ordering the petitioner's detention under the PIT-NDPS Act. He submits that the petitioner was already on bail granted by this Court on 11.07.2025 in Crime No. 691 of 2024, but, in the grounds of detention, the petitioner is shown to be in jail in the aforesaid crime. This fact, according to learned Counsel for the petitioner, clearly discloses non-application of mind to relevant facts. The impugned order was made on 01.08.2025, leaving approximately a clear period of 20 days for the Detaining Authority to know the current status of the petitioner as regards his bail in Crime No. 691 of 2024, but the Detaining Authority wrongly, and without knowing the status of the petitioner's bail, passed the order impugned, mentioning an incorrect fact that the petitioner was in jail in connection with Crime No. 691 of 2024. Learned counsel argued that the order of detention was made primarily on two ill-founded assumptions; firstly, that if the petitioner were enlarged on bail, he would abscond and prejudice the trial; and, secondly, he would again indulge in the same crime for monetary benefit. Both the assumptions are urged to be ill-founded, because there was no fact, circumstance or document to substantiate the aforesaid ill-founded apprehension of the detaining authority.

10. The next ground on which Mr. Pandey assails the impugned order is what is called □snapping of the live and proximate link□. He submits that there are three situations under which the principle of live and proximate link, developed through judicial precedent can be applied to judge the validity of a detention order. The first is where there is a substantial gap between the arrest of the person (in the crime) and the detention order; secondly, where there is a significant gap between the last alleged offence and the date of the detention order; and, thirdly, where there is a considerable gap between the report of the Sponsoring Authority and the passing of the detention order. The submission is that in the petitioner's case, it is the second principle that is violated, inasmuch as the last First Information Report against the petitioner was lodged on 23.10.2024, whereas the detention order was passed on 01.08.2025, resulting in an unexplained time gap of nine months and nine days, snapping the live and proximate link between the alleged prejudicial activity and the order of detention.

11. It is next submitted that the Sponsoring Authority has relied upon a report prepared on 20.05.2025 by the ANTF, Meerut i.e. after a lapse of 32 days from the completion of investigation in Crime No. 691 of 2024 on 18.04.2025. It is pointed out that the ANTF, Meerut, was assigned investigation of Crime No. 691 of 2024 alone due to allegations of corruption against the ANTF, Agra surfacing in the media. It is urged that on 18.04.2025, the ANTF, Meerut ceased to be the competent authority to act as the Sponsoring Authority to propose preventive detention. Consequently, the delay involved and the lack of jurisdiction of the Sponsoring Authority render the detention arbitrary. There is clearly a breach of the principle of live and proximate link, which stands snapped in this case.

12. The next ground of attack to the detention that the learned Counsel for the petitioner comes up with is that the Detaining Authority's subjective satisfaction about the necessity of making the order of detention is not based on objective material and merely based on apprehension. It is submitted by Mr. Pandey that the petitioner was on bail in all four cases, upon which, the detention order is founded and was duly participating in all the ongoing trials. This fact does not find mention in the grounds of detention. The detention order and the grounds only show that the petitioner is bailed out in all cases except Crime No. 691 of 2024. At the time of the making of the detention order, the petitioner had been granted bail in this case as well. The Detaining Authority, without application of mind, recorded its subjective satisfaction that is based upon the report of the Sponsoring Authority, accepting it as gospel.

13. The other contention is that the detention order classifies the petitioner as a habitual offender, which is certainly not the case, according to the learned Counsel. Mr. Pandey submits that the petitioner has not been convicted in any of the four cases. He further submits that no person can be classified as a habitual offender until and unless he has at least been convicted in any one of the cases registered against him. Here, the petitioner was arrested in one of the cases and his involvement in the three others is based on statements of co-accused. This kind of implication in four criminal cases cannot serve as basis to classify the petitioner a habitual offender.

14. In support of these submissions, Mr. Pandey has placed reliance upon **Jahanara Bibi @ Jahanara Begam @ Jahanara Mondal @ Janu v. Union of India and others**⁷. It is emphasised that assuming for argument's sake that the ANTF, Meerut is the competent Sponsoring Authority, the Screening Committee report and the detention order, read together, demonstrate a complete absence of subjective satisfaction. Both documents are verbatim reproductions of each other, reflecting a mechanical exercise of power, with no independent application of mind or effort to collect and consider latest and relevant material concerning the cases against the petitioner.

15. Learned counsel for petitioner next questions the detention order on the ground of violation of his fundamental right, particularly that under Article 22 of the Constitution. The PIT-NDPS Act, when compared with other statutes that provide for preventive detention, like the National Security Act, 1980 is completely silent on various aspects central to a citizen's liberty. Mr. Pandey enumerates these wanting provisions in the NDPS Act as follows :

- i. The Act doesn't provide the "opportunity of representation"
- ii. There is no provision that governs the making of the sponsoring authority report or the screening committee report.
- iii. Proper procedural information regarding the preparation of reports is absent from the Act, and even the procedural information regarding who can be a sponsoring authority or who are members of the screening committee is not found in the Act.
- iv. The procedures regarding detention are completely working on the whims and fancies of the police, the prime example being that there are no criteria that provide for a minimum conviction to impose the PIT-NDPS Act, even if any person is allegedly accused of an offence under the NDPS Act, the police can take steps and invoke the PIT-NDPS Act.

16. Mr. Pandey advances a novel argument on the basis of these features in the NDPS Act, which he says violate the mandate of Article 22 of the Constitution. He submits that in circumstances where such major discrepancies are discernible in the Act aforesaid, the benefit of doubt must go to the petitioner. Elucidating further on his submissions under this limb of challenge, learned Counsel for the petitioner says that the petitioner was taken before the Advisory Board during the hearing, but not allowed legal representation, much in violation of Article 22. The petitioner was not informed about various orders of rejection passed by the State Government. It is again emphasised that the PIT-NDPS Act is completely silent regarding the opportunity of representation. The NSA, though enacted earlier, talks about the opportunity of representation by Section 8 thereof, but the PIT-NDPS Act is silent regarding representation, contrary to the mandate under Article 22 of the Constitution. Mr. Pandey submits that it is a case of curtailment of the petitioner's liberty without trial. It is also urged that a cryptic order of detention is more punitive in nature than preventive.

17. Mr. Anoop Trivedi, learned Additional Advocate General has resisted the challenge laid by the petitioner and urged that the detention order has been passed after taking into consideration relevant and objective material. Subjective satisfaction, therefore, is well-founded. The order of detention neither suffers from non-application of mind nor is this a case of snapping of the live and proximate link. The petitioner was consistently involved in three cases under the NDPS Act and was apprehended in a fourth, after he was released on bail in three cases in the year 2024. The submission is that the petitioner is persistent and relentless in his deviant behavior and involved in illegal manufacture of spurious narcotic drugs, that have a serious impact on the society at large. The order of detention has been passed taking into consideration the entire dossier forwarded to the Sponsoring Authority recommending detention. The petitioner's representation against the detention order has been considered by the Detaining Authority, which was made on 24.08.2025 through the Jail Superintendent, District Jail, Agra. It was forwarded to the Home Department on the said date itself by the jail authorities.

18. Upon the said representation, comments were called from the Office of the District Magistrate, Agra. These were received from the District Magistrate on 18.02.2025. The matter was then sent for approval to the Chief Secretary and subsequently, the petitioner's representation rejected vide order dated 14.10.2025. It is further submitted that the petitioner was facilitated in appearing before the Advisory Board, Preventive Detention, Uttar Pradesh, Lucknow on 25.09.2025, and thereafter, upon receiving the report of the Advisory Board, the detention order dated 01.08.2025 was confirmed for a period of one year on 17.10.2025, under section 9(f) PIT-NDPS Act.

19. A perusal of the grounds of detention reveals that the petitioner, Narendra Sharma, along with a number of other persons, which includes Rohit Kushwaha son of Vijay Singh, Diwan Singh son of Radhe Shyam, Vijay Goyal son of Rajesh Goyal, Rekha Goyal wife of Vijay Goyal, Shani Raj son of Harish Chand, Amit Pathak son of late Jagannath Prasad, Ashok Kumar Kushwaha, Bhola Kushwaha son of Ashok Kumar Kushwaha, Shiv Kumar Kushwaha son of Raghuveer Singh Kushwaha, Jitendra Kushwaha son of Bachchu Singh, Lokendra Kushwaha son of Kamal Singh, Alok Kushwaha son of Purushottam, Ravi Kant son of Murari Lal, Vishal Agrawal son of Shankar, Bhudeo, Mukesh Kumar son of Sahab Singh and Suraj Gaur son of Mangal, is involved, according to the grounds, in a racket of manufacture of spurious drugs, which involves possession of narcotic drugs and psychotropic substances. The petitioner is the leader of this gang and they have factories in residential areas manufacturing spurious drugs, where machinery for the manufacture of these drugs, raw materials, packaging machines and material have all been recovered by the officers of the ANTF, Agra.

20. In case of the first crime i.e. Crime No. 348 of 2023, the grounds of detention show that on 08.07.2023, the ANTF, Agra, along with some police force from Police Station Jagdishpura, Agra, and a Drug Inspector, acting on the information of a police informer, apprehended a Grand Vitara Car bearing registration number UP 80 GN 3989 at the Bichhpuri-Pithauli Canal, near the Bicchpuri cut, laden with medicines such as Ocirex

C Syrup 230 units, Alprasaft 0.5 mg. 1200 units, Phensedyl Syrup 200 units and cash in the sum of ₹1,20,000, apparently, money earned of the business in illicit dealing in drugs. The occupants of the car, to wit, Rohit Kushwaha and Diwan Singh, were arrested. Rohit Kushwaha and Diwan Singh, on their pointing, led the ANTF to a house in Krishna Vihar, Bichhpuri, located near the Patahuli Canal, under the construction bridge. In the said pucca house, an illegal factory of drugs was found, wherefrom the petitioner, Narendra Sharma, besides Mukesh Kumar, were arrested. The factory had a unit of compressor machine of 27 stations, another unit of compressor machine of 23 stations, one blister pack machine, a multi mill, a mass mixer, a dryer, one unit sickter, a stove of steel for the purpose of making pastes, a furnace together with cylinder, a printer machine, another unit of air compressor, a generator with an output of 30 kilowatts, beside a number of small tools necessary in the manufacture of drugs. In addition, a scale and one unit of electronic scale were found. The ANTF also found on this premises a unit of aluminum packing roll for Alprasaft tablets, 800 unprinted cartons, 179 tablets of Alfinex Plus, 7680 Alprasaft tablets, 600 tablets of Alprasaft without print, 120 units of Onerex Syrup, 834 grams of Alprazolam Powder, 22.480 kgs. of Orange-coloured powder, 162 kgs. of Dibasic Calcium Powder, 38.460 kgs. of Pharmaceutical Excipient IP, 200 kgs. of micro crystalline cellulose, 32.460 kgs. of Alprasaft tablets, 52 kgs. of aluminum foil, 22.420 kgs. of powder without label, 100 kgs. of corn flour, 8.22 kgs. of Pyrazonic Silica, 60.22 kgs. of Talcum Powder, 17.22 kgs. of Sodium Starch Glyco, 72.80 kgs. of micro-crystalline cellulose, 25.420 kgs. of Croscarmellose Sodium, 50.16 kgs. of Paracetamol IP, 5 kgs. of Dicyclomine Hydrochloride.

21. The grounds mention that the aforesaid illegal drug factory was owned by Narendra Sharma, resident 58, Shankarpuri, Kedarnath, Police Station Shahganj, Agra and Vijay Goyal son of Rajesh Goyal, resident of Plot No. 8, Icon City, Magtai, Police Station Jagdishpura, Agra, who are running it in partnership. They would raise forged bills in the name of reputed companies, label, seal and package drugs in their name and launch these in the national and international markets. The vehicle, that was apprehended with Rohit Kushwaha and Diwan Singh on board, carrying some of these spurious narcotic drugs, bearing Registration No. UP 80 GN 3989, also stand in the petitioner's name.

22. The grounds further show that in relation to the other Crime No. 494 of 2023, the ANTF, at the pointing out of Rohit Kushwaha, discovered another illegal drug factory situate in House No. 5381, Avas Vikas Colony, Bodhla, Police Station Jagdishpura, Commissionerate Agra. Elaborate stock of spurious medicines and equipment was found there, including NDPS drugs. From the said premises, one Ajit Parashar son of Kishan Swarup and another Shani Raj, son of Harish Chand were arrested. They revealed that this factory is run in partnership with Narendra Sharma, the petitioner and also Vijay Goyal.

23. Likewise, in Crime No. 393 of 2023, on 29.07.2023, the ANTF, Agra, along with the Police of Police Commissionerate, Agra and the Drug Inspector, on the information of an informer, apprehended a Loader bearing number UP 80 DT 2506 near the Chahar Academy. It was loaded with drugs such as Welcyrex Syrup 240 units, Alprasaft 0.5 mg. 60000 tablets and Alzocel 0.5 mg. 18000 tablets, which were in custody of Raj

Kumar alias Bantu son of Rakesh, who was arrested. He disclosed that the consignment belonged to Vijay Goyal and Narendra Sharma, the petitioner, and that the said medicines had been loaded at the godown and were meant for delivery to a companion of Vijay Goyal, Deepak. Spurious narcotic drugs recovered were stored away for some time in a shop, and on Raj Kumar's pointing, the ANTF crossed the Bichhpuri Gate and went to Rama Vihar Colony. In front of the colony, they were led to the Baba Natthi Gayasi Market, where a godown of drugs was located. There, they found, in large quantity, narcotic drugs detailed in the grounds of detention. The last of the two cases surfaced while the petitioner was in jail in connection with the first crime mentioned in the grounds. Thereafter, he was granted bail.

24. On 23.10.2024, Sub-Inspector Gaurav Sharma of the ANTF, Agra, was led to a godown in the basement of one Udaiveer Singh's house, where, illegally manufactured spurious psychotropic drug, Montair FX tablets, were found in the quantity 4006 110x15 tablets, Proxywel Spas capsule bearing Batch No. P06CA29 were found in the quantity of 82200x8 capsules, Alzocel tablets in the quantity of 61320x10 tablets and a number of other medicines in large quantities. Machines to manufacture these drugs were also recovered from the petitioner, along with Vijay Goyal and a number of other co-accused. Another thirteen were found to be the owners of the factory and the godown as well. It is this material, on the foot of which, the Detaining Authority has proceeded to pass the impugned order.

25. We first proceed to test the petitioner's submission regarding the detention being bad on account of non-application of mind in permitting the grounds of detention. Two points that have been raised to bring home the case of non-application of mind have already been noted. So far as the case of the petitioner being granted bail in Crime No. 691 of 2024 is concerned, whereas it is mentioned in the grounds that he was in jail in relation to the said crime, in fact, he had already been granted bail there. We are of opinion that the fact that the Detaining Authority was not aware in relation to what crime the petitioner was in jail would vitiate his subjective satisfaction, in any event. The reason is that for the detainee who is already in jail in connection with a crime, the power of preventive detention can be exercised by the Detaining Authority if he is aware that the detainee is in jail and there is likelihood of his being released on bail.

26. The next concomitant of the exercise of this power is that the Detaining Authority should also be satisfied that once released on bail, he would re-indulge in crime, in this case, under the NDPS Act. The object of an order of preventive detention is to prevent the detainee from again indulging in the same crime and it has nothing to do with the prosecution. Nevertheless, the most fundamental postulate to a valid exercise of the power of preventive detention in regard to a person already in judicial custody in connection with a crime is, firstly, awareness about the fact that the person is in jail; and, secondly, about the crime, in connection with which, he is in jail. The second condition is necessary, because, it is essential for the exercise of the power of preventive detention by the Detaining Authority in the case of a person already in jail that he should be

subjectively satisfied, again, on the basis of some object material, that there is real likelihood of the person being released on bail in the crime.

27. In order to assess whether there is likelihood of a person being released on bail in the crime, the Detaining Authority must know what the crime is, the facts, the evidence appearing against the detainee, and, may be, the orders of bail or refusal passed in relation to similarly circumstanced co-accused by the Court. If, therefore, the Detaining Authority, while being rightly aware that the detainee is already in jail, does not know in connection with what case he is in jail or wrongly knows the case that is keeping him behind bars, he can never exercise his subjective satisfaction to form an opinion that there is likelihood of the detainee being released on bail in the near future. This part of the satisfaction is a *sine qua non* for the exercise of power of preventive detention by the Detaining Authority in case of a person already in jail. The facts here are very unusual, because it seldom happens that the Detaining Authority, while being aware that the detainee is in jail, considers his detention as one made in relation to a case different than the one he is actually incarcerated in. There have been cases where the detainee, though already released on bail, is considered by the Detaining Authority to be in jail, while passing the order of detention. In that case, the detention order would be vitiated. Reference in this connection may be made to a very recent decision of the Supreme Court in **Mortuza Hussain Choudhary v. State of Nagaland and others**⁹. In that authority of their Lordships, recapitulating the law regarding preventive detention of persons already in judicial custody, it was observed :

8. We may now note precedential law on the subject. In *Kamarunnissa v. Union of India*, the detenus were already in judicial custody at the time the orders of preventive detention were passed against them. This Court affirmed that detention orders could be validly passed against detenus who were in jail, provided the officers passing the orders were alive to the factum of the detenus being in custody and there was material on record to justify the conclusion that they would indulge in similar activities, if set at liberty. Reference was made to the earlier decision of this Court in *Binod Singh v. District Magistrate, Dhanbad, Bihar*, wherein it was held that there must be cogent material before the officer passing the detention order to infer that the detenu was likely to be released on bail and such an inference must be drawn from the material on record and must not be the ipse dixit of the officer passing such order. This Court, therefore, emphasized that before passing the detention order in respect of a person who is in jail, the concerned authority must satisfy himself and such satisfaction must be reached on the basis of cogent material that there is a real possibility of the detenu being released on bail and, further, if released on bail, the material on record must reveal that he/she would indulge in prejudicial activity again, if not detained.

9. On similar lines, in *Rekha v. State of Tamil Nadu*, a 3-Judge Bench of this Court affirmed that, where a detention order is passed against a person already in jail, there should be a real possibility of the release of that person on bail, that is, he must have moved a bail application which is pending. It was observed that if no bail application is pending it logically followed that there is no likelihood of the person in jail being released on bail. The Bench, however, pointed out that the exception to this Rule would be where a

co-accused, whose case stood on the same footing, was granted bail. The Bench cautioned that details in this regard have to be recorded, otherwise the statement would be mere ipse dixit and cannot be relied upon. The law laid down in *Rekha (supra)* was reiterated and followed in *Huidrom Konungjao Singh v. State of Manipur*.

10. Earlier, in *Union of India v. Paul Manickam*, this Court observed that, where detention orders are passed against persons who are already in jail, the detaining authority should apply its mind and show awareness in the grounds of detention of the chances of release of such persons on bail. It was observed that the detaining authority must be reasonably satisfied, on the basis of cogent material, that there is a likelihood of the detenu's release and in view of his/her antecedent activities, which are proximate in point of time, he/she must be detained in order to prevent him/her from indulging in such prejudicial activities. It was held that an order of detention would be valid in such circumstances only if the authority passing the order is aware of the fact that the detenu is actually in custody; the authority has a reason to believe, on the basis of reliable material, that there is a real possibility of the detenu being released on bail; and that, upon such release, he/she would, in all probability, indulge in prejudicial activities; and it is felt essential to detain him/her to prevent him/her from so doing. This principle was again reiterated and applied in *Union of India v. Dimple Happy Dhakad*.

28. Further, in **Mortuza Hussain Choudhary** (*supra*), it was held :

12. Given the settled legal position, as set out *supra*, we are of the opinion that the orders of detention passed against Ashraf Hussain Choudhary and Adaliu Chawang cannot be sustained. The authorities concerned paid mere lip service to the mandatory requirements and mechanically went through the motions while dealing with the cases of these two individuals. The proposals submitted by the Investigating Officer noted the fact that both the detenus were arrested on 12.04.2024 and that they had not been released on bail. Reference was also made to their involvement in earlier cases. In the case of Adaliu Chawang, the Investigating Officer stated that she was arrested in Meghalaya in connection with FIR dated 21.04.2021 but noted that she was not treated as absconding after being granted bail. In the case of Ashraf Hussain Choudhary, the Investigating Officer stated that he was earlier arrested in connection with a case registered by Dimapur East PS in the year 2022, but noted that he was also not absconding in relation thereto after securing bail.

13. The Investigating Officer, however, did not state anything about either of the detenus seeking bail in relation to Narcotics PS Case No. 005/24, after being arrested on 12.04.2024. The covering letters dated 14.05.2024 and 17.05.2024 addressed by the Additional Director General of Police to the Special Secretary, Home Department, Government of Nagaland, reiterated the factum of both the detenus having been arrested on 12.04.2024 and their being in judicial custody on that date. He, however, went on to state that, if granted bail, there was a great chance of both of them continuing with illicit trafficking of narcotic drugs and psychotropic substances. There was no basis whatsoever for this ipse dixit statement, as it is an admitted fact that neither Ashraf Hussain Choudhary nor Adaliu Chawang had applied for bail at the time the detention orders were passed

against them. As noted earlier, it was only on 28.11.2024 that they were granted default bail owing to the failure of the prosecution to do the needful within the prescribed time. Therefore, the edicts of this Court, referred tosupra, would squarely apply as there was no material for the detaining authority to have formed an opinion that there was a likelihood of either Ashraf Hussain Choudhary or Adaliu Chawang being released on bail.

29. In **Mortuza Hussain Choudhary**, the subjective satisfaction of the Detaining Authority was regarded vitiated by the Supreme Court, because, no bail application had been moved by the two persons involved there in the crime, in connection with which, they were in jail on the date on which the detention order was passed. Therefore, there was no basis for the Detaining Authority to conclude that the detenues were likely to be released on bail. There is consistent authority about cases where no bail applications were made and yet the Detaining Authority inferred that there was likelihood of the detainee being released on bail, where, by preponderant opinion, it was held that the subjective satisfaction of the Detaining Authority about the likelihood of the detainee being released on bail was vitiated.

30. Here, as already remarked, the subjective satisfaction is vitiated for a very different reason. If the Detaining Authority was unaware about the fact that the detainee had already been granted bail in Crime No. 691 of 2024 under the NDPS Act, and was actually in jail on account of his involvement in Crime No. 156 of 2025 under the UP Gangsters Act, there is no basis for the Detaining Authority to form an opinion, founded on objective material, that there was likelihood of the petitioner being released on bail. He could not form an opinion about the likelihood of bail being granted to the petitioner, in connection with a case he did not know about. The subjective satisfaction of the Detaining Authority in this case is, therefore, clearly vitiated due to non-application of mind.

31. Once we have reached this conclusion, there is no occasion to consider the other points raised by learned Counsel for parties and pronounce upon them, because, the detention stands vitiated on this short ground alone.

32. We are informed that the petitioner has been enlarged on bail in Crime No. 156 of 2025 by this Court vide order dated 14.01.2026 passed in Criminal Misc. Bail Application No. 25679 of 2025. A copy of the order, downloaded from the official website of the High Court, has been shown to us.

33. In the result, this petition **succeeds** and stands **allowed**. The *rule nisi* is made **absolute**. The continued detention of the petitioner, pursuant to the detention order dated 01.08.2025 passed by the Secretary, Department of Home, Government of U.P., Lucknow, under Section 3(1) PIT-NDPS Act, is declared illegal. The petitioner be set at liberty forthwith, unless wanted in connection with some other case.

34. The Registrar (Compliance) is directed to communicate this order to the Secretary, Department of Home, Government of U.P. Lucknow through the learned Chief Judicial Magistrate, Lucknow.

(2026) 6 ILRA 299
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 17.06.2026

BEFORE

THE HON'BLE MRS. GARIMA PRASHAD, J.

Matters Under Article 227 No. 14541 of 2025

Santosh Yadav & Ors.	...Petitioners
	Versus
State of U.P. & Anr.	...Respondents

Issues for Consideration

Whether the Sessions Judge was justified in rejecting a transfer application filed under Section 408 Cr.P.C., seeking trial of cross-cases by a common court, solely on the ground that the petitioners ought to have approached the Magistrate under Section 323 Cr.P.C., without examining whether the two cases were in fact cross-cases arising from the same occurrence and whether transfer was expedient in the interest of justice.

Headnotes

Code of Criminal Procedure, 1973 --- ss.323, 408 --- Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 --- Cross-cases --- Transfer application before Sessions Judge --- Rejection on ground that Magistrate ought to have been approached u/s.323 Cr.P.C. --- Distinct spheres of ss.323 and 408 Cr.P.C. --- Sessions Judge bound to examine expediency of transfer for ends of justice.

Sections 323 and 408 Cr.P.C. operate in distinct spheres — Section 323 confers power of committal upon a Magistrate, whereas Section 408 confers power of transfer upon the Sessions Judge; availability of remedy under Section 323 Cr.P.C. before the Magistrate does not exclude or oust the jurisdiction of the Sessions Judge under Section 408 Cr.P.C. Once an application is presented before the Sessions Judge asserting that two criminal proceedings arise out of the same incident and constitute cross-cases, the Sessions Judge is required to examine whether the facts warrant exercise of power under Section 408 Cr.P.C., having regard to the allegations in both FIRs, the nature of offences, the stage of proceedings and the possibility of conflicting findings if tried by different courts — such necessity assumes greater significance where one case is pending before a Magistrate and the connected case before a Special Court under the SC/ST Act. Rejection of the transfer application solely on the ground that recourse to Section 323 Cr.P.C. was available, without recording any finding on whether the two cases were in fact cross-cases, reflects a failure to exercise jurisdiction vested under Section 408 Cr.P.C. and is unsustainable. [Paras 14-24]

Matter remitted to the Sessions Judge to consider the transfer application afresh on merits, keeping in view the principles governing trial of cross-cases, and after recording a reasoned finding as to whether the two prosecutions arise out of the same occurrence and whether transfer would be expedient for the ends of justice. [Para 25]

Petition allowed. (E-14)

Case Law Cited

Nathi Lal v. State of U.P., 1990 Supp SCC 145 — relied on; Sudhir and Others v. State of Madhya Pradesh, (2001) 2 SCC 688 — relied on.

List of Acts / Statutes

Code of Criminal Procedure, 1973; Indian Penal Code, 1860; Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989; Constitution of India.

List of Keywords

Cross-cases; Transfer application; Section 408 Cr.P.C.; Section 323 Cr.P.C.; Committal; Sessions Judge; Ends of justice; Common trial; SC/ST Act; Conflicting findings.

Case Arising From

Order dated 23.05.2025 passed by the Sessions Judge, Mirzapur in Transfer Application No.158 of 2025 arising out of Sessions Trial No.1309 of 2024 (State vs. Surendra Yadav and others)

Appearance for Parties

For the Petitioner: Mayank Yadav, Shailendra Kumar Gupta

For the Respondents: Ravi Prakash Singh

(Delivered by Hon'ble Mrs. Garima Prashad, J.)

1. Heard Sri Dhirpal Singh, learned counsel holding brief of Sri Shailendra Kumar Gupta, learned counsel for the petitioners, Sri Rakesh Prasad Mishra, learned counsel for respondent no.2 and the learned AGA for the State.

2. The present petition under Article 227 of the Constitution of India has been filed challenging the order dated 23.05.2025 passed by the Sessions Judge, Mirzapur in Transfer Application No.158 of 2025 arising out of Sessions Trial No.1309 of 2024 (State vs. Surendra Yadav and others).

3. The case of the petitioners is that respondent no.2 lodged a first information report which was registered as Case Crime No.252 of 2023 under Sections 147, 323, 352, 504 and 506 IPC and Sections 3(2)(Va), 3(1)(da) and 3(1)(dha) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 at Police Station Kotwali Dehat, District Mirzapur. It is further stated that the mother of petitioner no.2 lodged a counter first information report against respondent no.2 and his family members, which was registered as Case Crime No.253 of 2023 under Sections 147, 323, 427, 504 and 506 IPC at the same police station.

4. According to the petitioners, both the aforesaid FIRs arise out of the same incident and constitute cross-cases. Since offences under the SC/ST Act have been alleged in Case Crime No.252 of 2023, the said case is pending before the learned Special Judge, SC/ST Act, Mirzapur, whereas Case Crime No.253 of 2023 is pending before the Court of Chief Judicial Magistrate, Mirzapur.

5. It is submitted that in view of the law laid down by the Hon'ble Supreme Court in *Nathil Lal Vs. State of U.P., 1990 Supp SCC 145*, both cases ought to be tried by the same Court. Accordingly, the petitioners moved an application before the learned Sessions Judge seeking transfer of Case Crime No.253 of 2023 from the Court of the Magistrate to the Court where the connected case arising out of Case Crime No.252 of 2023 is pending.

6. The learned Sessions Judge, by the impugned order, rejected the said application holding that the petitioners ought to have approached the learned Magistrate under Section 323 Cr.P.C.

7. Assailing the said order, learned counsel for the petitioners submits that once a transfer application had been filed under Section 408 Cr.P.C., it was incumbent upon the learned Sessions Judge to examine whether the two cases were cross-cases and whether transfer was required in the interests of justice. It is submitted that the application could not have been rejected merely on the ground that recourse to Section 323 Cr.P.C. was available before the learned Magistrate.

8. Per contra, learned counsel for respondent no.2 as well as the learned AGA support the impugned order and submit that the petitioners ought to have first approached the learned Magistrate under Section 323 Cr.P.C. and, therefore, no interference is called for.

9. This Court has considered the submissions of the learned counsels for the parties and perused the record.

10. The principal issue which falls for consideration in the present petition is whether the learned Sessions Judge was justified in rejecting the transfer application on the ground that the petitioners ought to have approached the learned Magistrate under Section 323 Cr.P.C., despite the petitioners having invoked the jurisdiction of the Sessions Court under Section 408 Cr.P.C.

11. It is not disputed that two criminal cases have been registered between the parties in relation to the incident in question. According to the petitioners, both cases arise out of the same occurrence and constitute cross-cases. While one of the cases is pending before the learned Special Judge, SC/ST Act, Mirzapur, the other is pending before the Court of the learned Magistrate. On this basis, the petitioners moved an application before the learned Sessions Judge seeking transfer of the case pending before the Magistrate so that both matters could be tried by the same Court.

12. In **Nathi Lal (supra)**, the Hon'ble Supreme Court observed that where there are two criminal cases arising out of the same incident, both cases should ordinarily be tried by the same Court. The object underlying such a procedure is to avoid conflicting judgments and inconsistent findings regarding the same occurrence and to ensure a fair adjudication of the rival versions put forward by the parties.

13. The aforesaid principle was subsequently reiterated and elaborated in ***Sudhir and Others Vs. State of Madhya Pradesh, (2001) 2 SCC 688***. The Supreme Court noticed the practical difficulty that frequently arises where one of the cross-cases is triable by a Court of Session while the counter-case is triable by a Magistrate. The Court held that such procedural distinctions ought not to frustrate the principle laid down in *Nathi Lal (supra)* and emphasized that both cases should ultimately be tried by the same Court. The Supreme Court further observed that the Sessions Court is competent to try offences under the

Indian Penal Code and can adopt a procedure ensuring that both cross-cases are heard by the same Judge one after the other.

14. The learned Sessions Judge has rejected the transfer application on the ground that the petitioners ought to have approached the learned Magistrate under Section 323 Cr.P.C. It is therefore necessary to examine the scope of Sections 323 and 408 Cr.P.C. and the field in which each of the said provisions operates. Section 323 Cr.P.C. reads as under:-

"323. Procedure when, after commencement of inquiry or trial, Magistrate finds case should be committed.? If, in any inquiry into an offence or a trial before a Magistrate, it appears to him at any stage of the proceedings before signing judgment that the case is one which ought to be tried by the Court of Session, he shall commit it to that Court under the provisions hereinbefore contained and thereupon the provisions of Chapter XVIII shall apply to the commitment so made."

15. A plain reading of Section 323 Cr.P.C. shows that the provision empowers a Magistrate to commit a case to the Court of Session if, during the course of inquiry or trial, it appears to him that the case is one which ought to be tried by the Court of Session. The power under the provision is thus one of committal and is exercisable by the Magistrate in relation to the proceedings pending before him.

16. However, the controversy in the present case is not merely whether the case pending before the Magistrate ought to be committed to the Court of Session. The petitioners have approached the Sessions Judge with a specific plea that the two criminal cases arise out of the same incident and constitute cross-cases and, therefore, should be tried by the same Court. Such a prayer necessarily requires consideration of the scope of Section 408 Cr.P.C. as well. Section 408(1) Cr.P.C. provides as follows:-

"408(1) Whenever it is made to appear to a Sessions Judge that an order under this sub-section is expedient for the ends of justice, he may order that any particular case be transferred from one Criminal Court to another Criminal Court in his sessions division."

17. The power conferred under Section 408 Cr.P.C. is wide in nature. The provision empowers the Sessions Judge to transfer a criminal case from one Court to another within the Sessions Division whenever such transfer is considered necessary in the interests of justice. The test under the provision is whether the proposed transfer would serve the ends of justice.

18. In the considered opinion of this Court, the power under Section 323 Cr.P.C. and the power under Section 408 Cr.P.C. operate in distinct spheres. Section 323 concerns the power of committal exercisable by a Magistrate, whereas Section 408 concerns the power of transfer exercisable by the Sessions Judge. Merely because recourse to Section 323 Cr.P.C. may be available in a given case, it does not follow that the jurisdiction vested in the Sessions Judge under Section 408 Cr.P.C. stands excluded.

19. Once an application is presented before the Sessions Judge asserting that two criminal proceedings arise out of the same incident and constitute cross-cases, the Sessions Judge is required to examine whether the facts warrant exercise of powers under Section 408 Cr.P.C. Such examination necessarily requires consideration of the allegations in both FIRs, the nature of offences involved, the stage of proceedings and the possibility of conflicting findings if the matters are tried by different Courts.

20. The necessity of such examination assumes greater significance where one case is pending before the Court of the Magistrate and the connected case is pending before the Special Court constituted under the SC/ST Act. The plea that both matters arise out of the same occurrence and should be tried by the same Court cannot be effectively examined without considering both proceedings together.

21. In the present case, the petitioners had specifically asserted before the learned Sessions Judge that the two prosecutions arose out of the same occurrence and constituted cross-cases. The application, therefore, squarely invoked the jurisdiction of the Sessions Judge under Section 408 Cr.P.C.

22. The learned Sessions Judge, however, did not examine whether the two cases were in fact cross-cases. No finding has been recorded regarding the identity of the occurrence, the nature of allegations, or the desirability of a common trial. The transfer application has been rejected solely on the ground that the petitioners ought to have approached the learned Magistrate under Section 323 Cr.P.C.

23. In the opinion of this Court, such an approach cannot be sustained. The availability of a remedy under Section 323 Cr.P.C. could not by itself furnish a ground for declining to consider an application otherwise maintainable under Section 408 Cr.P.C. Once the jurisdiction of the Sessions Judge had been invoked, it was incumbent upon him to examine whether transfer of the case was expedient for the ends of justice.

24. The impugned order thus reflects a failure to exercise the jurisdiction vested in the learned Sessions Judge under Section 408 Cr.P.C. and is liable to be set aside.

25. Consequently, the impugned order dated 23.05.2025 passed by the Sessions Judge, Mirzapur is hereby set aside. The matter is remitted to the learned Sessions Judge, Mirzapur to consider the petitioners' transfer application afresh on its own merits in accordance with law, keeping in view the principles governing trial of cross-cases as laid down in **Nathi Lal (supra)** and **Sudhir (supra)**, and after recording a reasoned finding as to whether the two prosecutions arise out of the same occurrence and whether transfer of one case to the Court where the other is pending would be expedient for the ends of justice.

26. Accordingly, the writ petition is **allowed**.

(2026) 6 ILRA 304
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 16.06.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Criminal Misc. Bail Application No. 3976 of 2026

Umesh Mali

...Applicant

Versus

State of U.P. & Ors.

...Opposite Parties

Issue for Consideration

- (i) Whether a bail application in a case involving offences under Section 5/6 of the POCSO Act can be heard in the absence of the informant/complainant, despite information of the application having been duly delivered to the complainant, in view of Section 483(2) BNSS and Rule 4(13) and 4(15) of the POCSO Rules, 2020;
(ii) Whether, on the facts and circumstances of the case, the applicant is entitled to be released on bail.

Headnotes

Bharatiya Nagarik Suraksha Sanhita, 2023 --- s.483(2) --- Protection of Children from Sexual Offences Rules, 2020 --- r.4(13), 4(15) --- Bail application --- Presence of informant --- Obligatory nature --- Non-appearance of complainant despite due information --- Hearing of bail application.

HELD: The statutory mandate under Rule 4(13) and 4(15) of the POCSO Rules, 2020 is to ensure that the SJPU or local police informs the child and the local guardian/parents about the schedule of court proceedings, including bail applications filed by the accused; once such information has been duly delivered, it is thereafter at the sweet will of the complainant to appear before the Court at the time of hearing of the bail application or not. Where the informant chooses not to appear despite having been given information about the application, and reposes trust in the learned Public Prosecutor/A.G.A. to advance submissions in opposition to the bail application, it cannot be said that the bail application cannot be heard in the absence of the informant. Preliminary objection raised on behalf of the State turned down. [Paras 5, 6, 7]

Protection of Children from Sexual Offences Act, 2012 --- ss.5, 6 --- Bharatiya Nyaya Sanhita, 2023 --- ss.70(2), 351(3) --- Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 --- s.3(2)(v) --- Bail --- Rape --- Contradiction between FIR and statement u/s.183 BNSS regarding involvement of co-accused --- Medico-legal examination report not corroborating allegation of use of force --- No mark of injury --- Hymen intact --- Clothes neither torn nor stained --- Investigation concluded without pathological examination of samples --- Applicant young, aged about 20 years, no criminal history - Bail granted.

HELD: Prima facie, the victim herself is the complainant, and while she alleged in the FIR that the named co-accused had shut her mouth and the applicant had forcibly raped her, in her statement recorded before the Magistrate under Section 183 BNSS she stated that she did not know who the other person involved in the incident was. The allegation of the victim having been forcibly taken away and raped is not supported by the medico-legal examination report, as no mark of injury or sign of use of force was found on any part of the victim's body, the hymen was found intact, and the clothes were neither torn nor stained. The investigation stands concluded without pathological examination of the samples drawn during the medico-legal examination of the victim. These facts, coupled with the applicant being a young man aged about 20 years with no

criminal history and having remained in custody since 12.02.2026, while the investigation stands concluded, are sufficient for enlargement of the applicant on bail. [Paras 13, 14]]

Bail Application allowed. (E-14)

Case Law Cited

Rohit v. State of U.P., 2021 SCC OnLine All 1071 — relied on.

List of Acts / Statutes

Bharatiya Nagarik Suraksha Sanhita, 2023; Bharatiya Nyaya Sanhita, 2023; Protection of Children from Sexual Offences Act, 2012; Protection of Children from Sexual Offences Rules, 2020; Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

List of Keywords

Bail; POCSO; Rape; Presence of informant; SJPU; Medico-legal examination; Hymen intact; No injury mark; Contradictory statements; Investigation concluded; No pathological examination; Young accused; No criminal history.

Case Arising From

Sri Ali Hasan and Sri Manish Kumar Singh.

Appearance for Parties

For the Appellant: Ashutosh Kumar Shukla

For the Respondents: Learned A.G.A.

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Shri Ashutosh Kumar Shukla, the learned counsel for the applicant, and Shri H.S. Maurya, learned A.G.A. for the State, and perused the record.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 0035 of 2026, under Sections 70(2), 351(3) BNS, Section 5/6 of the POCSO Act and Section 3(2)(v) of the SC/ST Act, registered at Police Station Naseerabad, District Raebareli.

3. The learned A.G.A has further stated that although the police has delivered the information of the present application to the complainant on 26.05.2026, as nobody is present on behalf of the complainant/victim, the bail application cannot be heard in view of the provision contained in Section 483(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023, which provides that "The presence of the informant or any person authorised by him shall be obligatory at the time of hearing of the application for bail to the person under Section 65 or sub-section (2) of Section 70 of BNS, 2023."

4. In this regard, it would be appropriate to have a look at the provisions contained in Sub-Rules (13) and (15) of Rule 4 of the Protection of Children from Sexual Offences Rules, 2020, which read as follows: -

"4. Procedure regarding care and protection of Child

*(13) It shall be the responsibility of the SIPU, or the local police to keep the child and child's parent or guardian or other person in whom the child has trust and confidence, and where a support person has been assigned, such person, informed about the developments, including the arrest of the accused, applications filed and Court proceedings. * * **

(15) The information to be provided by the SJPU, local police, or support person, to the child and child's parents or guardian or other person in whom the child has trust and confidence, includes but is not limited to the following: --

(i) the availability of public and private emergency and crisis services;

(ii) the procedural steps involved in a criminal prosecution;

(iii) the availability of victim's compensation benefits;

(iv) the status of the investigation of the crime, to the extent it is appropriate to inform the victim and to the extent that it will not interfere with the investigation;

(v) the arrest of a suspected offender;

(vi) the filing of charges against a suspected offender;

(vii) the schedule of Court proceedings that the child is either required to attend or is entitled to attend;

(viii) the bail, release or detention status of an offender or suspected offender;

(ix) the rendering of a verdict after trial; and (x) the sentence imposed on an offender."

5. In **Rohit v. State of U.P.: 2021 SCC OnLine All 1071**, a Coordinate Bench of this Court referred to the aforesaid Rules and held that the aforesaid Rules make it incumbent upon the SJPU or local police to inform the child and the local guardian regarding the schedule of court proceedings and the Court is required to ensure that the SJPU informs the local guardian/parents of the child about the bail application filed by the accused. This has been done in the present case. However, despite information of the application having been given, the complainant has chosen not to come forward to oppose the bail application.

6. The statutory mandate is to provide an opportunity of hearing to the complainant and, thereafter, it is at the sweet will of the complainant to appear before the Court at the time of hearing of the bail application or not. In case the informant chooses not to appear in spite of having been given information about the application and he reposes trust in the learned Public Prosecutor or the learned A.G.A, who would be there to advance submissions in opposition to the bail application, it cannot be said that the bail application cannot be heard in absence of the informant.

7. In view of the foregoing discussion, the preliminary objection raised by the learned A.G.A. is turned down and the court proceeds to examine the merits of the application.

8. The aforesaid case has been registered on the basis of an FIR lodged on 11.02.2026 by the 14 years old victim herself against the applicant and another person Kuldeep Singh, alleging that when she had gone to attend the call of nature to a field at about 7:00 p.m. on 10.02.2026, both the accused persons pressed her mouth and took her to a place at a distance of about 300 meters, where the other accused person kept shutting her mouth and the applicant forcibly raped her.

9. In the statement recorded under Section 180 BNSS, the victim reiterated the FIR version. While narrating the incident before the doctor during the medico-legal examination, the victim did not mention about the presence of the other accused person. The medico-legal examination report mentions no mark of injury on any part of the victim's body and the hymen was found to be intact. The doctor has mentioned that the clothes of the victim were collected, which were not torn and were not stained.

10. In the statement recorded under Section 183 BNSS, the victim reiterated her earlier version, but she stated that she did not know as to who was the other person involved in the incident.

11. In the affidavit filed in support of the application, it has been stated that the applicant is an innocent young man aged about 20 years, he has been falsely implicated in the present case and he has no criminal history.

12. The learned A.G.A has opposed the bail application and he has submitted that the allegations have been established during investigation and a charge-sheet has already been submitted on 14.04.2026. However, he states that the pathological examination reports of the samples drawn during the medico-legal examination of the victim are not available in the case diary.

13. Having considered the aforesaid facts and circumstances of the case, prima facie it appears at this stage that the victim herself is the complainant in the present case and initially she alleged in the FIR that the named co-accused Kuldeep Singh had shut her mouth and the applicant had forcibly raped her, whereas in her statement recorded before the Magistrate, she stated that she did not know as to who was the other person involved in the incident. Although the victim has alleged that the accused persons forcibly took her away to a place at a distance of about 300 meters and raped her, this allegation is not supported by the findings of the medico-legal examination report as no mark of injury or sign of use of force has been found on any part of the victim's body and the hymen has been found to be intact. The clothes of the victim were also not found to be torn and no stain was found on the clothes. The investigation stands concluded without pathological examination of the samples drawn during the medico-legal examination of the victim.

14. The facts mentioned in the preceding paragraph, coupled with the facts that the applicant is a young man aged about 20 years, having no criminal history and is languishing in jail since

12.02.2026, whereas the investigation already stands concluded, are sufficient for making out a case for enlargement of the applicant on bail.

15. Accordingly, this bail application stands *allowed*.

16. Let the applicant- *Umesh Mali* be released on bail in aforementioned case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of Magistrate/Court concerned, subject to the following conditions:-

- (i) the applicant shall not tamper with the prosecution evidence;
- (ii) the applicant shall not pressurize the prosecution witnesses;
- (iii) the applicant shall appear on each and every date fixed by the trial court.
