

A.F.R.

Reserved on 15.07.2022

Delivered on 26.07.2022

Court No. - 16

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13762 of 2021

Applicant :- Ashish Mishra @ Monu

Opposite Party :- State of U.P.

Counsel for Applicant :- Brij Mohan Sahai, Prabhu Ranjan Tripathi, Salil Kumar Srivastava

Counsel for Opposite Party :- G.A., Ajai Kumar, Amarjeet Singh Rakhra, Shanshank Singh, Vivek Kumar Rai

Hon'ble Krishan Pahal,J.

1. Heard Sri G.S. Chaturvedi, learned Senior Counsel, connected through Video Conferencing, assisted by Sri Salil Kumar Srivastava, Sri B.M. Sahai, Sri Prabhu Ranjan Tripathi and Sri Rahul Srivastava, learned Advocates for the applicant and Sri Amarjeet Singh Rakhra, learned counsel assisted by Sri Shashank Singh, Sri Vivek Rai and Ms. Anumita Chandra, learned Advocates appearing for one of the victims, Jagjeet Singh as well as Sri Vinod Kumar Shahi, learned Additional Advocate General, assisted by Sri Prachish Pandey, learned AGA for the State.

2. Applicant seeks bail in Case Crime No. 219 of 2021, under Sections 147, 148, 149, 307, 326, 427, 34, 302, 120-B IPC, Section 30 Arms Act, 1959 and Section 177 Motor Vehicles Act, 1988, Police Station Tikuniya, District Lakhimpur Kheri, during the pendency of trial.

3. The counter affidavits filed on behalf of the victim as well as the State and the rejoinder affidavits are already on record. The

written submissions filed by the parties at the conclusion of arguments are also taken on record.

4. For the sake of brevity, the prosecution story is not being repeated here, as the same is already discussed in earlier orders.

RIVAL CONTENTIONS :

ARGUMENTS ON BEHALF OF THE APPLICANT:

5. Sri Gopal Chaturvedi, learned Senior Counsel has submitted that applicant has been falsely implicated in present case. He has further submitted that in the ancestral village of applicant i.e. Banveerpur, a traditional wrestling competition is organized annually. As such on 3.10.2021, a public meeting was also organized in the wrestling competition, in which the Deputy Chief Minister, Mr. Keshav Prasad Maurya, was the Chief Guest. Learned Senior Counsel has categorically stated that in the name of farmers, some leaders of the opposition parties, in association with anti-social elements, decided to protest the visit of the Chief Guest in village, Banveerpur, against a statement made by the father of applicant, namely, Ajay Mishra "Teny", regarding protest of the farmers in relation to the three Agricultural Laws. It is stated that the helicopter of the Chief Guest was to be landed at Maharaja Agrasen Play Ground Helipad, Tikuniya and thereafter, the Chief Guest had to proceed by road to the place of wrestling competition. However, without any permission, a number of protesters, who were armed with lathis, swords etc., gathered there along with notorious persons and encroached the entire area and even dug up the helipad, making it impossible to land the helicopter there. He has further stated that the description of the incident as narrated in the F.I.R. is false, rather three persons including the driver of the vehicle of applicant were killed by the protesters and no such incident, as alleged in the F.I.R., had taken place.

6. Learned Senior Counsel has further submitted that on being chased by the protesters, the driver of the vehicle tried to run away from there in order to save himself as well as the applicant, but since the road, which was only 12 ft. wide, and on which, admittedly (in the F.I.R. itself) the protesters were standing on both sides of the road, the vehicle overturned and fell into the ditch on the side of the road. He has next submitted that one F.I.R. No. 220 of 2021, u/s 143, 147, 148, 149, 323, 324, 336, 302, 109 I.P.C., P.S. Tikuniya, District Kheri, was also lodged by one Sumit Jaiswal stating therein that on 3.10.2021, a wrestling competition was scheduled to be held at the village of Ajay Mishra "Teny", in which Deputy Chief Minister, Mr. Keshav Prasad Maurya, Government of U.P. was the Chief Guest. It is alleged in the F.I.R. that the informant, along with other persons, went to receive the Chief Guest. The informant was in the Thar vehicle, which was being driven by one Hari Om Mishra. However, on the way, the protesters attacked the vehicles, in which the driver of the Thar vehicle, namely, Hari Om Mishra received head injury and he stopped the vehicle on the side of the road. Thereafter, the driver was dragged from the vehicle by the protesters. The informant and others somehow succeeded to run away from the spot to save their lives, but the driver, Hari Om Mishra and two others were not so lucky and were caught by the protesters and later on, as per information, were killed by them. There being a cross version of the present case, the applicant is entitled for bail.

7. Learned Senior Counsel has also vehemently pointed out that Crime No. 220/2021 lodged from the accused side is a sort of cross version on the ground that both the sides have sustained injuries including the death of eight persons and the lodging of subsequent FIR by way of cross version is permissible under law on the basis of Full Bench judgment of Supreme Court in the case of *Upkar Singh*

*vs. Ved Prakash & others*¹, and as such the present bail application is sought to be decided on the basis of evidence of both the cases arising out of same transaction relating to the same occurrence at the same point of time and same place as propounded by Full Bench judgment of Supreme Court and the contents of paras 23 & 24 of the aforesaid judgment of three Judges is being quoted below:

“23. Be that as it may, if the law laid down by this Court in T.T. Antony case is to be accepted as holding that a second complaint in regard to the same incident filed as a counter-complaint is prohibited under the Code then, in our opinion, such conclusion would lead to serious consequences. This will be clear from the hypothetical example given hereinbelow i.e. if in regard to a crime committed by the real accused he takes the first opportunity to lodge a false complaint and the same is registered by the jurisdictional police then the aggrieved victim of such crime will be precluded from lodging a complaint giving his version of the incident in question, consequently he will be deprived of his legitimated right to bring the real accused to books. This cannot be the purport of the Code.

24. We have already noticed that in the T.T. Antony case this Court did not consider the legal right of an aggrieved person to file counterclaim, on the contrary from the observations found in the said judgment it clearly indicates that filing a counter-complaint is permissible.”

8. Sri Gopal Chaturvedi, learned Senior Counsel, has argued that a false and concocted story of firing has been cooked up by the prosecution. As per the FIR itself, after the said incident, the applicant is stated to have run away firing as a cover, but admittedly there is no such firearm injury sustained by any of the deceased person or injured person either. Learned Senior Counsel, to buttress his arguments, has placed much reliance on the autopsy report of deceased farmers, wherein not a single firearm injury has been observed by the doctor. During the course of investigation, the statement of the doctor, who conducted the autopsy of the deceased farmers, was recorded under

1. (2004) 13 SCC 292

Section 161 Cr.P.C., in which, he has opined that all these injuries may have been caused in an accident. Learned Senior Counsel has also submitted that the protesters brutally killed three persons, namely, Hari Om Mishra, Shubham Mishra and Shyam Sunder, who were traveling in the ill-fated Thar vehicle. He has further submitted that the applicant was called during the course of investigation and he joined and cooperated in the investigation and never misused the liberty given by the Investigating Agency.

9. Regarding the criminal history of the applicant, learned Senior Counsel has submitted that in Case Crime No. 92 of 2005, u/s 147, 323, 504, 506, 452 I.P.C., P.S. Tikuniya, District Kheri, the applicant has been acquitted by the trial court vide judgment and order dated 24.03.2018 passed in Criminal Case No. 1497 of 2017 (State Vs. Ashish Mishra @ Monu). A copy of the judgment and order dated 24.03.2018 is on record. The applicant has no other case pending against him. The other case was withdrawn by the State.

10. Learned Senior Counsel has submitted that as per the admitted case of the prosecution, the Thar vehicle was being driven by Hari Om Mishra, and the applicant was sitting on the left side, therefore, the case of prosecution of crushing the protesters by the applicant is improbable.

11. Learned Senior Counsel for the applicant has submitted that the applicant went to jail on 10.10.2021, and was released on 15.2.2022. He surrendered in compliance of the order of the Apex Court on 24.4.2022 and is in jail since then. He has complied with the order of the Apex Court and has even cooperated in investigation. The charge-sheet has already been filed and the applicant is ready to cooperate in the trial and there is no likelihood of him misusing the liberty, in case, he is enlarged on bail.

12. Learned Senior Counsel has further stated that the applicant was enlarged on bail by this Court vide order dated 10.2.2022 (corrected vide order dated 14.2.2022). The Supreme Court has not rejected the bail application. Rather, it has remanded it back for consideration on the ground that the victim has not been heard. The said order shall not affect the merits of the case as the case of the applicant for bail is clearly made out.

13. Learned Senior counsel has stated that as per paragraph 43 of the order of the Supreme Court, the case has been remanded back to the High Court for fresh adjudication in a fair, impartial and dispassionate manner. Paragraph 43 of the said order reads as follows :-

“43. This Court is tasked with ensuring that neither the right of an accused to seek bail pending trial is expropriated, nor the ‘victim’ or the State are denuded of their right to oppose such a prayer. In a situation like this, and with a view to balance the competing rights, this Court has been invariably remanding the matter(s) back to the High Court for a fresh consideration. We are also of the considered view that ends of justice would be adequately met by remitting this case to the High Court for a fresh adjudication of the bail application of the Respondent-Accused, in a fair, impartial and dispassionate manner, and keeping in view the settled parameters which have been elaborated in paragraphs 30 & 31 of this order.”

14. Learned Senior Counsel has further referred to paragraph 46 of the order of Supreme Court, wherein no opinion has been expressed on the facts or merits and all questions of law have been left open for this Court to consider and decide preferably within a period of three months. Paragraph 46 of the said order reads as follows :-

“46. We set aside the impugned order dated 10.02.2022 (corrected on 14.2.2022) and remit the matter back to the High Court. Respondent No.1 shall surrender and be taken into custody as already directed in paragraph 39 above. We have not expressed any opinion either on facts or merits, and all questions of law are left open for the High Court to consider and decide. The High Court shall decide the bail application afresh expeditiously, and preferably within a

period of three months. The appeal is disposed of in the above terms.”

15. Learned Senior Counsel has stated that the bail applications of the co-accused persons, Lavkush, Ankit Das, Sumit Jaiswal and Shishupal, which have been rejected by this Court vide order dated 9.5.2022, passed in Criminal Misc. Bail Application Nos. 2986 of 2022, 1853 of 2022, 2461 of 2022 and 2699 of 2022, shall have no bearing on the case of the applicant, as he was not a party *in personam* in the case decided by the co-ordinate Bench of this Court.

16. Learned Senior Counsel has further stated that the prosecution has not come with clean hands as the case was later on modified from being that of gunshot injuries to that of injuries due to crushing by vehicles. The applicant was admittedly not driving the said Thar vehicle, rather was sitting by the side of the driver, and it was the driver, who might have panicked due to rage of the public at large. The case is of mob lynching and there was so hue and cry at the place of occurrence that there was no chance of anybody hearing the applicant saying “*teach them a lesson.*”

17. Counsel for the applicant, Sri B.M. Sahai, has stated that the applicant has not abused the bail and has complied with the conditions thereof, when he was accorded bail. He should again be enlarged on bail. The police has filled up the lacuna in the prosecution case by roping in the new witnesses. There is no possibility of applicant daring to commit such an offence, who happened to be a political person, as there is no possibility of three vehicles crushing 15,000 persons, who are said to have gathered at the place of occurrence.

18. Learned counsel has further stated that the provisions of Section 144 Cr.P.C. were applicable to the agitating farmers as well and they have categorically flouted the proclamation under Section 144 Cr.P.C., as they are stated to have even dug up the helipad meant for the landing of the helicopter of the Deputy Chief Minister, making it non-

functional. The procession by any means cannot be termed as peaceful.

19. Learned counsel has further stated that initially at the time of lodging of the FIR, Sections 279, 338 and 304-A IPC were mentioned, but the same have been deleted later on by the investigating agency with the permission of the C.J.M. concerned. This implies that the vehicles were being driven at a normal speed.

20. Learned counsel has further placed reliance on para 40 of the remand order dated 18.4.2022, passed by the Apex Court, wherein it has been observed as follows:-

“40. regardless of the stringent provisions in a penal law or the gravity of the offence, has time and again recognized the legitimacy of seeking liberty from incarceration. To put it differently, no accused can be subjected to unending detention pending trial, especially when the law presumes him to be innocent until proven guilty. Even where statutory provisions expressly bar the grant of bail, such as in cases under the Unlawful Activities (Prevention) Act, 1967, this Court has expressly ruled that after a reasonably long period of incarceration, or for any other valid reason, such stringent provisions will melt down, and cannot be measured over and above the right of liberty guaranteed under Article 21 of the Constitution. (See *Union of India v. K.A. Najeeb*, (2021) 3 SCC 713).”

21. Learned counsel has further stated that in paragraph 28 of the order of the Apex Court, it has been propounded that the grant of bail under Section 439 Cr.P.C. is one of wide amplitude and this discretion is unfettered. On the contrary, the High Court or the Sessions Court must grant bail after the application of a judicial mind, following well-established principles, and not in a cryptic or mechanical manner.

22. Sri Salil Kumar Srivastava, learned counsel arguing on behalf of the applicant, has stated that the capturing of helipad in order to show protest is itself an offence, which is established by the statements of the witnesses, which have been annexed to the counter

affidavit filed on behalf of the victim. This shows the malice at the part of the protestors.

23. Learned counsel has further stated that one Punto car from the side of the applicant was ransacked by the protestors with an ulterior motive, which goes to show their defiance of law.

24. Learned counsel has next stated that the statement recorded under Section 164 Cr.P.C. of one witness, namely, Prabhujeeet Singh categorically indicates that he had seen one Satish Rana running away from the Thar vehicle and later on, he is said to have seen Sumit Jaiswal running from the said vehicle firing in air. The said statement is on page number 164 of the counter affidavit filed by the victim/complainant, indicating the absence of applicant at the scene of occurrence.

25. Sri Salil Kumar Srivastava, learned counsel, has further stated that the district administration has provided one gunner each to all the ninety-eight witnesses and moreover, their family members are being provided proper security and a coverage of CCTV cameras alongwith a barrier on the road to their residence and thus, there is no possibility of any person hampering or tampering with the prosecution witnesses.

26. Learned counsel for applicant has further stated that in the statement of another witness, namely, Simranjeet Singh, recorded under Section 164 Cr.P.C., copy whereof has been filed in the rejoinder affidavit, it has been stated that the applicant and the co-accused person, Sumit Jaiswal are said to have taken the refuge in a sugarcane field after firing in air.

27. Learned counsel has placed much reliance on the site plan, wherein no sugarcane field finds mention. The said discrepancy categorically falsifies the prosecution story that applicant had alighted from Thar vehicle after firing and had taken shelter in the sugarcane field.

28. Sri Salil Kumar Srivastava, learned counsel, has further stated that from the side of the applicant, three persons were put to death and three had sustained grievous injuries including fractures, which have not been explained by the prosecution. The said non-explanation of the injuries caused is fatal to the prosecution and the applicant is entitled for bail on this ground. Learned counsel has placed reliance on the judgement of the Supreme Court in *Padam Singh vs. State of U.P.*², wherein it has been held that:-

“5.when the prosecution does not explain the injury sustained by the accused at about the time of the occurrence or in the course of occurrence, the court can draw the inference that the prosecution has suppressed the genesis and origin of the occurrence and has thus, not presented the true version. It is also well settled that where the evidence consists of interested or inimical witnesses, then, non-explanation of the injury on the accused by the prosecution assume greater importance.....”

29. Learned counsel has placed much reliance on the judgement of the Supreme Court passed in *Vijayee Singh vs. State of U.P.*³, which is quoted below:

10. It was further observed that:

"... in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the court can draw the following inferences:

(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable.

(3) that in case there is a defence version which explains the injuries on the person of the accused it is

2. (2000) 1 SCC 621

3. (1990) 3 SCC 190

rendered probable so as to throw doubt on the prosecution case."

30. Learned counsel has next stated that it is undisputed fact that in the charge sheet, after filing of the bail application, new sections were added and a correction/amendment application was moved in this Court which was allowed vide order dated 18.1.2022 and the sections so mentioned in the charge sheet were amended in the memo of the bail application, which has already been undertaken in the original memo of the bail application. Pursuant thereto, Sections 279/338/304A IPC were deleted and Sections 307/326/427/34 IPC, Section 30 Arms Act and Section 177 Motor Vehicles Act, 1988 were added.

31. Learned counsel has further argued that the FIR is the foundation stone of the offence and the story as narrated in it, has been later on completely changed by the prosecution, which itself is indicative of false implication. It is not a case of improvement or embellishment, rather a case of turning the case upside down.

32. Learned counsel has further stated that right of the private defence as contemplated under Section 97/103 IPC is available to the accused side as even according to the prosecution case, the three persons sitting in Thar vehicle were murdered and three others are stated to have sustained grievous injuries. There was no possibility of applicant being present there and escaping.

33. Learned counsel has next stated that the investigating agency inspected the place of occurrence and also reconstructed/re-created the alleged occurrence and in the inspection report of recreation, it has been mentioned that at the time of occurrence, the Thar vehicle was running at a normal speed from the place of meeting i.e. Maharaja Agrasen Inter College ground upto 98 meters approximately, till turning to Kalesharan and thereafter, due to some reason, the speed of Thar vehicle was increased from its normal speed. It is also submitted

that while reconstructing the alleged occurrence, the inspection team installed the dummy of farmers at both sides of the road and the dummy Thar vehicle alongwith two other dummies of Fortuner and Scorpio vehicles by running with normal speed upto 98 meters approximately, from Maharaja Agrasen Inter College were collided with the dummies of farmers after increasing the speed of the vehicles, which corroborates the factum of loosing of mental equilibrium of the driver of Thar vehicle, Hari Om Mishra, who has been murdered by the complainant side.

34. Learned counsel has further stated that the story set up by the prosecution is false as the ballistics expert report of the weapons seized from the applicant side does not support the same.

35. Learned counsel has placed reliance on the call detail report (CDR) which reveals that the mobile no. 9721258797 of the applicant Ashish Mishra @ Monu was attended 25 times within a span of 40 minutes between 2.48 pm and 3.28 pm on 3.10.2021, and the location report of the said mobile reveals his presence at the same place throughout the day. Thus, the plea of alibi of the applicant of having been present at the place of dangal finds support from the CDR and location report available. The said fact finds support from the statement of a considerable number of witnesses, who have filed their notarial affidavits and submitted through registered posts demonstrating that the applicant was not present at the place of occurrence but rather, he was present at the place of dangal. The SIT has deliberately not recorded their statements under Section 161 Cr.P.C.

36. Learned counsel has further stated that the charge-sheet under Sections 188 and 143 IPC has also been filed against the protesters indicative of their malice having formed unlawful assembly, disobeying the order duly promulgated by the public servant.

37. Learned counsel has submitted that in the present subject matter, charge sheet has been filed under Sections 34, 149 and 120-B IPC which is against the principles of constructive criminality. It was the complainant side, which was aggressor and not the applicant. The three accused persons in the cross FIR are in jail. Much reliance has been placed on para 60 of the judgement of Allahabad High Court in *Nanha S/o Nabhan Kha vs. State of U.P.*⁴, which reads as under:

“60. As regards the second part of the referred question whether it is duty of the co-accused to disclose in his bail application the fact that on an earlier occasion the bail application of another co-accused in the same case has been rejected. The prior rejection of the bail application of one of the accused cannot preclude the court from granting bail to another accused whose case has not been considered at the earlier occasion. The accused who comes up with the prayer for bail and who had no opportunity of being heard or placing material before the Court at the time when the bail of another accused was heard and rejected, cannot be prejudiced in any other manner by such rejection.”

38. Learned counsel has further placed reliance on the judgment of Supreme Court in *Sanjay Chandra vs. Central Bureau of Investigation*⁵, which reads as under:

“18. In his reply, Shri. Jethmalani would submit that as the presumption of innocence is the privilege of every accused, there is also a presumption that the appellants would not tamper with the witnesses if they are enlarged on bail, especially in the facts of the case, where the appellants have cooperated with the investigation. In recapitulating his submissions, the learned senior counsel contended that there are two principles for the grant of bail - firstly, if there is no prima facie case, and secondly, even if there is a prima facie case, if there is no reasonable apprehension of tampering with the witnesses or evidence or absconding from the trial, the accused are entitled to grant of bail pending trial. He would submit that since both the conditions are satisfied in this case, the appellants should be granted bail.

.....

4. (1992) SCC Online All 871

5. (2012) 1 SCC 40

21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.

.....

39. Coming back to the facts of the present case, both the Courts have refused the request for grant of bail on two grounds: The primary ground is that the offence alleged against the accused persons is very serious involving deep rooted planning in which, huge financial loss is caused to the State exchequer ; the secondary ground is that the possibility of the accused persons tampering with the witnesses. In the present case, the charge is that of cheating and dishonestly inducing delivery of property and forgery for the purpose of cheating using as genuine a forged document. The punishment for the offence is imprisonment for a term which may extend

to seven years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration.

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

41. This Court in *Gurcharan Singh v. State (Delhi Admn.)*⁶, observed that two paramount considerations, while considering petition for grant of bail in a non-bailable offence, apart from the seriousness of the offence, are the likelihood of the accused fleeing from justice and his tampering with the prosecution witnesses. Both of them relate to ensure the fair trial of the case. Though, this aspect is dealt by the High Court in its impugned order, in our view, the same is not convincing.

42. When the undertrial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated. Every person, detained or arrested, is entitled to speedy trial, the question is: whether the same is possible in the present case.”

39. Learned counsel has also referred the judgment of Privy Council in *Mirza Akbar vs. King Emperor*⁷, which reads thus:

“This being the principle, their Lordships think the words of Sec. 10 must be construed in accordance with it and are not capable of being widely construed so as to include a statement made by one conspirator in the absence of the other with reference to past acts done in the actual course of carrying out the conspiracy, after it has been completed. The common intention is in the past. In their Lordships' judgment, the

6. (1978) 1 SCC 118

7. AIR 1940 Privy Council 176

words "common intention" signify a common intention existing at the time when the thing was said, done or written by the one of them. Things said, done or written while the conspiracy was on foot are relevant as evidence of the common intention, once reasonable ground has been shown to believe in its existence. But it would be a very different matter to hold that any narrative or statement or confession made to a third party after the common intention or conspiracy was no longer operating and had ceased to exist is admissible against the other party. There is then no common intention of the conspirators to which the statement can have reference. In their Lordships' judgment Sec. 10 embodies this principle. That is the construction which has been rightly applied to Sec. 10 in decisions in India, for instance, in *Emperor v. Ganesh Raghunath*, I.L.R. 55 Bom. 839 (1931) and *Emperor v. Abani* I.L.R. 38 Cal. 169. In these cases the distinction was rightly drawn between communications between conspirators while the conspiracy was going on with reference to the carrying out of the conspiracy and statements made, after arrest or after the conspiracy has ended, by way of description of events then past.”

40. Learned counsel has referred to the judgment of the Supreme Court in *Satender Kumar Antil vs. Central Bureau of Investigation & another*⁸, which reads thus:

“66. What is left for us now to discuss are the economic offences. The question for consideration is whether it should be treated as a class of its own or otherwise. This issue has already been dealt with by this Court in the case of *P. Chidambaram v. Directorate of Enforcement*, (2020) 13 SCC 791, after taking note of the earlier decisions governing the field. The gravity of the offence, the object of the Special Act, and the attending circumstances are a few of the factors to be taken note of, along with the period of sentence. After all, an economic offence cannot be classified as such, as it may involve various activities and may differ from one case to another. Therefore, it is not advisable on the part of the court to categorise all the offences into one group and deny bail on that basis...”

41. He has also placed reliance on the case law of *P. Chidambaram v. Directorate of Enforcement*⁹, which reads as under:-

8. *Misc. Application No. 1849 of 2021 In Special Leave Petition (Crl.) No. 5191 of 2021*
9. (2020) 13 SCC 791

“23. Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of “grave offence” and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial.

CONTENTIONS OF THE VICTIM/COMPLAINANT:

42. Learned counsel for the victim/complainant, Sri Amarjeet Rakhra, at the outset, has vehemently opposed the prayer for bail of the applicant on the ground that the bail rejection order of the applicant at the Court of Sessions does not include all the sections, wherein the bail is being sought by the applicant from this Court. The bail application in the added sections i.e. 307, 326, 427, 34 IPC, 30

Arms Act and 177 Motor Vehicles Act, 1988, has been directly moved before the High Court without taking recourse to the Sessions Court, Kheri, which is not permissible under law.

43. Learned counsel has further stated that applicant is the mastermind of the crime and is the main accused person to whom the lead role has been assigned. He is the only named accused person in the FIR, who is alleged to have been involved in the gruesome and cold-blooded murder of five innocent, unarmed persons. The bail application of four co-accused persons, who were not named in the FIR and whose role was of assisting, aiding and conspiring with the applicant in the commission of the said offence, have already been rejected by a detailed and reasoned order of this Court dated 9.5.2022 passed in Criminal Misc. Bail Application Nos. 2986 of 2022, 1853 of 2022, 2461 of 2022 and 2699 of 2022.

44. Learned counsel has next stated that as far as rejection of bail is concerned, there may not strictly be parity, yet propriety and consistency in judicial approach demands that this Court may reject the bail application of the applicant, Ashish Mishra @ Monu, whose role in the commission of crime is much more prominent than of the co-accused persons, whose bail applications have been rejected.

45. Learned counsel has further argued that the applicant, who is the son of Union Minister of State For Home, and who himself is a political person, was a contender on BJP ticket from Nighasen Constituency for Uttar Pradesh Assembly Elections held in the year 2022. The applicant has a criminal history of two more cases in addition to the present case. Learned counsel has stated that the power, the applicant yields, can be appreciated from the fact that in one of the cases, the applicant has been acquitted, while the other case has been withdrawn by the State Government. The character, behavior, means, position and standing of the accused, when viewed

in juxtaposition of crime in question, is such that releasing him on bail would result in justice being thwarted.

46. Learned counsel, Sri Rakhra has further stated that appreciating the fact that free and fair investigation was not possible due to the status and profile of the applicant and sensing the seriousness of the offence committed by him, none other than the Apex Court had constituted a Special Investigation Team (SIT) of five senior police officers and the said team was headed by a retired Judge of Punjab and Haryana High Court.

47. Learned counsel for the victim has further stated that in addition to this, notwithstanding the powers of the trial court in this regard, the Apex Court, while sensing the gravity of the situation, had directed the State Government to provide security/armed gunners to the prosecution witnesses in the present case and it was also directed that the statements of the witnesses under Section 164 Cr.P.C. may be recorded by the Magistrate, to prevent the possibility of the witnesses being pressurized, threatened or won over by the accused.

48. Learned counsel has next stated that despite the protection provided to the witnesses, two of them, namely, Diljyot Singh and Hardeep Singh have been assaulted and threatened by the associates and supporters of the applicant warning them to dare depose against the applicant. A copy of the FIR No. 46 of 2022, P.S.- Tikuniya, District- Kheri, lodged on 11.3.2022 and FIR No. 126 of 2022 lodged on 11.4.2022 at P.S.- Bilaspur, District- Rampur, have also been annexed to the counter affidavit, which indicates that the release of the applicant shall lead to witnesses being won over by him.

49. Learned counsel has next stated that gravity of the offence and the severity of the punishment in the event of conviction are also the relevant factors, which weigh heavily against the relief of bail being granted to the applicant.

50. The applicant alongwith his associates has been charge-sheeted for causing a premeditated and cold-blooded murder of as many as five persons (four farmers and one journalist) and injuring thirteen other persons. The offence committed by applicant includes murder, which is punishable with death or imprisonment for life.

51. Learned counsel has contended that there are other injured witnesses, who have given the statement that the applicant was the inmate of the Thar vehicle that had deliberately run over them with an intention to cause their death and the inmates are said to have been seen and heard exhorting to kill the farmers. The witnesses had seen the applicant getting off from Thar vehicle and running towards the fields under the cover of his own firing. Learned counsel has placed reliance on the statements of several witnesses recorded under Section 164 Cr.P.C. to the effect. Learned counsel has referred to the call detail record (CDR) of the applicant, wherein he is said to have made extra judicial confession. Learned counsel has referred the statements of witnesses, namely, Taufeeq Ahmad, Arun Kumar Gupta and Yasin Mohammad in support of the said contention. Learned counsel has also referred the statements of independent witnesses, the photographer and the police officials, who have stated that the applicant was missing from the site of wrestling competition at the time of offence thereby negating his plea of alibi.

52. Learned counsel has further stated that the motive to commit crime is also proved and the applicant had full knowledge of the fact that the road route from which the Chief Guest was to travel, had been altered and yet the applicant, in a premeditated and cold-blooded manner, went on the route of the retrieving farmers running at a high speed with a view to teach them a lesson and ran them over from behind.

53. Learned counsel has also stated that the FSL report conclusively establishes the fact that the fire arms (pistol and rifle) of the applicant were used, thus corroborating the statement of the eye witnesses.

54. Learned counsel has stated that the prosecution allegations are further substantiated by the CCTV camera footages/DVR suggesting that on the date of incident i.e. 3.10.2021, the three vehicles (carrying the applicant and other co-accused persons) headed to the place of incident, with other miscreants/assailants clinging to them.

55. Learned counsel has stated that there are other video clips to prove that the unarmed farmers, who were running to their homes, were trampled and crushed under the wheels of the Thar vehicle and the other two vehicles, namely, Fortuner and Scorpio, coming from behind.

56. Learned counsel for the victim/complainant has stated that the arguments tendered by the counsels for the applicant such as inconsistency of the injuries sustained by the deceased with the version of the FIR are not tenable, the fact is that the charge sheet having already been filed and the circumstance has already been dealt with by the Apex Court at the time of setting aside the bail granted to the applicant.

57. Learned counsel has further stated that the police officers and the district authorities to name a few, Awdhesh Kumar Yadav, Vishambher Yadav, SDM Swati Shukla, have categorically stated that the three vehicles in question were being driven at a high speed and despite their efforts to stop them, the vehicles in question drove past them and crushed the innocent farmers. There are statements of twenty witnesses, who have testified that they saw the applicant in the Thar jeep running over the farmers.

58. Learned counsel has further submitted that eight witnesses have stated before SIT that they saw and heard the applicant abetting and

asking the driver of the Thar vehicle to kill the protestors by crushing them.

59. Learned counsel has stated that the said vehicles have been used as a weapon in view of the settled case law of the Supreme Court referred in the order of the Supreme Court. The ratio of this case is applicable to the present case. Para 45 of the judgement of the Supreme Court in the case of *Alister Anthony Pereira vs. State of Maharashtra*¹⁰, reads hereinunder:-

“45. In *Prabhakaran v. State of Kerala*, 2007 (14) SCC 269, this Court was concerned with the appeal filed by a convict who was found guilty of the offence punishable under Section 304 Part II IPC. In that case, the bus driven by the convict ran over a boy aged 10 years. The prosecution case was that the bus was being driven by the Appellant therein at the enormous speed and although the passengers had cautioned the driver to stop as they had seen children crossing the road in a queue, the driver ran over the student on his head. It was alleged that the driver had real intention to cause death of persons to whom harm may be caused on the bus hitting them. He was charged with offence punishable under Section 302 IPC. The Trial Court found that no intention had been proved in the case but at the same time the accused acted with the knowledge that it was likely to cause death, and, therefore, convicted the accused of culpable homicide not amounting to murder punishable under Section 304 Part II IPC and sentenced him to undergo rigorous imprisonment for five years and pay a fine of Rs.15,000/- with a default sentence of imprisonment for three years. The High Court dismissed the appeal and the matter reached this Court.

46. While observing that Section 304A speaks of causing death by negligence and applies to rash and negligent acts and does not apply to cases where there is an intention to cause death or knowledge that the act will in all probability cause death and that Section 304A only applies to cases in which without any such intention or knowledge death is caused by a rash and negligent act, on the factual scenario of the case, it was held in *Prabhakaran* case that the appropriate conviction would be under Section 304 IPC and not Section 304 Part II IPC. *Prabhakaran* does not say in absolute terms that in no case of an automobile accident that results in death of a

10. *AIR 2012 SC 3802*

person due to rash and negligent act of the driver, the conviction can be maintained for the offence under Section 304 Part II Indian Penal Code even if such act (rash or negligent) was done with the knowledge that by such act of his, death was likely to be caused. Prabhakaran turned on its own facts.

47. Each case obviously has to be decided on its own facts. In a case where negligence or rashness is the cause of death and nothing more, Section 304A may be attracted but where the rash or negligent act is preceded with the knowledge that such act is likely to cause death, Section 304 Part II Indian Penal Code may be attracted and if such a rash and negligent act is preceded by real intention on the part of the wrong doer to cause death, offence may be punishable under Section 302 Indian Penal Code.”

60. Learned counsel has further stated that 37 witnesses have got their statements recorded u/s 161 Cr.P.C. that they saw the applicant and his associates firing from the weapons as a cover and running away from the scene of occurrence.

61. Learned counsel has placed much reliance on the statement of photographer Manish Gupta, who has stated that of the twenty photographs clicked by him, none of them shows the applicant at the scene of occurrence between 02:03:49 and 04:03:42.

62. Learned counsel has stated that by the FIR No. 220 of 2021 from the side of the applicant, a cross version has been tried to be created and the FIR has been registered on the next date of incident in which the name of the applicant is deliberately missing who was sitting in the Mahindra Thar car.

63. Learned counsel has stated that a perusal of the final report prepared by the SIT reveals that with a view to deal with the protesting farmers and teaching them a lesson, the applicant Ashish Mishra @ Monu, as a premeditated plan, collected his friends and associates and lodged them at Shiva Hotel, Tikuniya. The co-accused persons, Ankit Das, Lateef @ Kale, Nandan Singh Bhist, Satyam Tripathi and Shekhar Bharti, all associates of Ashish Mishra @ Monu,

gathered at Lakhimpur Kheri with the arms and ammunition notwithstanding the fact that Section 144 Cr.P.C. was in place and it was not permissible to carry firearms in the region. The applicant, Ashish Mishra @ Monu, the applicant got piqued and wanted to take revenge from the protesting farmers because the Punto vehicle carrying his supporters was damaged to some extent in the protest. In addition to it, the hoardings bearing the photographs of the applicant and his father, Ajay Mishra @ Teny (Union Minister of State for Home) were damaged and due to the protest of the farmers, the then Deputy Chief Minister, Keshav Prasad Maurya, had to alter the route to the wrestling venue. With the anger and revenge in mind, the applicant is said to have left the wrestling venue armed with firearms, alongwith his associates and conspired to teach the protesting farmers a lesson and with this intent, drove his Mahindra Thar vehicle over the farmers, who were returning home after peaceful demonstration.

64. Learned counsel has stated that as a malafide intent, the applicant has attempted to place all the blame on the driver- Hari Om Mishra, who is no more, while as a matter of fact, he was nothing more than a tool to execute the evil designs of the applicant. Learned counsel has further referred the portion of the remand order of the Apex Court dated 18.4.2022, wherein it has been observed that :-

“35. The High Court has completely lost sight of the principles which conventionally govern the Court’s discretion when deciding the question whether or not to grant bail, held that while the allegations in the FIR that the accused used his firearm and the subsequent postmortem and injury reports may have some limited bearing, there was no legal necessity to give undue weightage to the same.”

65. He has argued that while remitting the Bail Application to the High Court for adjudication afresh, the Apex Court has cited certain earlier decisions given by it on the principles which should govern the discretion of bail vested with the Courts.

66. It has been held in *Kanwar Singh Meena vs. State of Rajasthan*.¹¹, that:

“10. Each criminal case presents its own peculiar factual scenario and therefore, certain grounds peculiar to a particular case may have to be taken into account by the court.....The High Court or the Sessions Court is bound to cancel such bail orders particularly when they are passed releasing accused involved in heinous crimes they ultimately result in weakening the prosecution case and have adverse impact on the society.

67. In *Prasanta Kumar Sarkar vs. Ashis Chatterjee & Anr.*¹², it has been held that:-

“9. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

“(i) whether there is any *prima facie* or reasonable ground to believe that the accused had committed the offence;
(ii) nature and gravity of the accusation;
(iii) severity of the punishment in the event of conviction;
(iv) danger of the accused absconding or fleeing, if released on bail;
(v) character, behaviour, means, position and standing of the accused;
(vi) likelihood of the offence being repeated;
(vii) reasonable apprehension of the witnesses being influenced; and
(viii) danger, of course, of justice being thwarted by grant of bail.”

68. In the case of *Mahipal vs. Rajesh Kumar alias Polia & Anr.*¹³, it has been held that:-

“12. The determination of whether a case is fit for the grant of bail involves the balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a *prima facie* view of the involvement of the accused are important. No straitjacket formula exists for courts to assess an application for the grant or rejection of bail. At the stage of assessing whether a case is fit for the grant of bail, the court is

11. (2012) 12 SCC 180
12. (2010) 14 SCC 496
13. (2020) 2 SCC 118

not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt the commission of the crime by the accused. That is a matter for trial. However, the Court is required to examine whether there is a *prima facie* or reasonable ground to believe that the accused had committed the offence and on a balance of the considerations involved, the continued custody of the accused subserves the purpose of the criminal justice system. Where bail has been granted by a lower court, an appellate court must be slow to interfere and ought to be guided by the principles set out for the exercise of the power to set aside bail.”

69. In *Shahzad Hasan Khan vs. Ishtiaq Hasan Khan and Another*¹⁴, it is held that :-

“8. Having regard to the facts and circumstances of this case we are of the opinion that the learned judge committed serious error in recalling his order dated June 3, 1986 and enlarging the respondent on bail. The occurrence took place, in broad daylight, in a busy market place and there are a number of eye witnesses to support the case against the respondent who was named as an assailant in the First Information Report. Immediately after the occurrence he could not be traced (it was alleged that he had absconded) for more than a month, attempts were made on his behalf to tamper with evidence. In view of these facts and circumstances respondent 1 was not entitled to bail if the seriousness of the matter was realized and a judicious approach was made....”

70. In *Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana (Koli) and others*¹⁵, it is held that:-

“20. The first aspect of the case which stares in the face is the singular absence in the judgement of the High Court to the nature and gravity of the crime. The incident which took place on 9 May 2020 resulted in five homicidal deaths. The nature of the offence is a circumstance which has an important bearing on the grant of bail. The orders of the High Court are conspicuous in the absence of any awareness or elaboration of the serious nature of the offence. The perversity lies in the failure of the High Court to consider an important circumstance which has a bearing on whether bail should be granted.”

14. (1987) 2 SCC 684

15. 2021 (6) SCALE 41

CONTENTIONS OF THE STATE:

71. Sri Vinod Kumar Shahi, learned A.A.G. assisted by Sri Prachish Pandey, learned AGA for the State has reiterated the arguments tendered by learned counsel for the victim/complainant and has stated that in the peculiar circumstances, there are three first informants including the victim, who is being represented through his advocate.

72. Learned A.A.G. has stated that the present clash between the accused persons and the farmers was not a face to face one, rather the applicant and the other accused persons came from the back at a fast speed and crushed five innocent persons to death and injured thirteen others.

73. Learned A.A.G. has further stated that the point raised by the defence that no one sustained any gunshot injuries, carries no weight because the first informant Jagjeet Singh himself has stated that he was not an eye witness to the incident and as the FIR is not an encyclopedia of events, it cannot be said that the prosecution version stands falsified.

74. Learned A.A.G. has further argued that the carrying of kirpans by a Sikh is by his religious belief, and some of the farmers were carrying lathis, which does not fall within the category of deadly weapons, and which categorically proves that the innocent farmers were not the aggressors at all. The autopsy report corroborates the *modus operandi* of the applicant and other accused persons as five innocent persons were put to death in a most brutal, barbaric and gruesome manner.

75. Learned A.A.G. has also stated that in compliance of the order of the Apex Court, all the witnesses have been provided protection by the State Government and despite that, the applicant has threatened and even got the two witnesses assaulted. The charge sheet filed by

the SIT is elaborate and well documented and the applicant was found the main perpetrator of the events that took place on 3.10.2021.

76. Sri V.K. Shahi, learned A.A.G. has submitted that on the directions of the Supreme Court, the investigation of the present case as well as of F.I.R. No.220 of 2021 was conducted by the SIT under the monitoring of Justice (Retd.) Rakesh Kumar Jain, Hon'ble Judge, Punjab & Haryana High Court and supervised by S.B. Shiradkar, A.D.G., Intelligence Headquarter, Nanded, Maharashtra with the members (1) Ms. Padmaja Chauhan, I.G., I.P.S., (2) Dr. Preetinder Singh, D.I.G., IPS.

77. Learned A.A.G. further submitted that in the said incident, by the vehicle of the applicant and his followers, about eighteen protesters were crushed of which four protesting farmers namely, Nakshatra Singh, Daljeet Singh, Lavpreet Singh, Gurvinder Singh and one journalist Raman Kashyap had expired and thirteen other persons were injured.

78. Learned A.A.G. has submitted that the statements of all the injured persons were recorded during the course of investigation u/s 161 Cr.P.C. The statements of other eye witnesses were also recorded and they have supported the prosecution story. He further submitted that the statements under Section 164 Cr.P.C. were also recorded of few of the witnesses and all the witnesses of the fact have supported the prosecution version that the applicant reached the spot with his vehicle followed by other vehicles at a high speed and barged into them and crushed the protesters. Thereafter, he had run away firing as cover. Learned A.A.G. has also submitted that the statements of the doctors, who conducted the autopsy of the body of the deceased persons as well as medico legal examination of injured persons, were also recorded, in which, all of them have categorically stated that injuries found on the body of the deceased persons may have been

caused by hitting from a vehicle. Sri Shahi also submitted that in the video clip, it is also found that vehicles are reaching the spot.

79. Learned A.A.G. has placed much reliance on the FSL report of the weapons of the accused persons, which categorically indicates that the said weapons were used. He has lastly submitted that in the incident, involvement of 17 persons was found along with the applicant, out of which, three persons, namely, Hari Om Mishra, Subham Mishra and Shyam Sunder were killed by the crowd of the protesters and after detailed investigation, charge sheet has been submitted against rest of the 14 persons including the applicant.

CONCLUSION:

80. Had both the sides observed a bit of restraint, we would not have seen the loss of eight invaluable human lives. As per the arguments tendered by both the parties, five persons (four farmers and one journalist) from the side of the first informant/victim are said to have died in the incident, and three persons are said to have been put to death from the side of the applicant. In addition to it, 13 persons sustained injuries from the side of informant and 3 from the side of applicant.

81. Both the sides have referred certain pictures and audio visuals that were taken up from social media. The media has an indispensable role in highlighting the matters pertaining to public utility at large. The media is supposed to provide news to the society, but sometimes we have seen that individual views are overshadowing the news thus putting an adverse effect on truth. Of late, media is seen overstepping upon the sanctity of judiciary in high profile criminal cases, as was evident in the cases of Jessica Lal, Idrani Mukherjee and Aarushi Talwar etc.

82. The three Judge Bench led by Chief Justice of India, R.M. Lodha, found the issue to be very serious and even considered to frame a few guidelines in order to balance the interest and rights of the stake holders.

83. The vital difference between the convict and accused has to be looked into by keeping at stake the cardinal principles of ‘presumption of innocence until proven guilty’ and ‘guilt beyond reasonable doubt’. Media trial apart from taking up the investigation on its own leads to forming public opinion against the suspect even before the court takes cognizance of the case as a result the accused who should have been presumed innocent is treated a criminal. The excessive publicity of the suspect in the media before the trial in a court of law, either incriminates a fair trial or results in characterizing the accused or suspect as the one who has certainly committed the crime. The reason the jury members were kept aloof of the access to media was obvious. Classic examples of the menace are the cases of K.M. Nanawati and O.J. Simpson.

84. In the case of *Saibal Kumar Gupta and Ors. v. B.K. Sen and Anr.*¹⁶, the Supreme Court held that when there is an ongoing trial by one of the regular tribunals of the country then trial by newspapers must be prohibited. This is based upon the view that such action by the newspaper of doing an investigation tends to interfere with the course of justice, whether the investigation tends to prejudice the accused or the prosecution.

85. Now the problem has been multiplied by the electronic and social media especially with the use of tool kits. At various stages and forums, it has been seen that ill-informed and agenda driven debates are being undertaken by media running Kangaroo Courts.

86. It is true that hearing of the bail plea cannot be converted into a mini trial, but owing to the circumstances, the parties i.e. the

16. (1961) 3 SCR 460

applicant, the victim and the State have been heard at length. It is also very true that after the amendment in the Cr.P.C. and by adding Section 2 (wa) and proviso to Section 24(8) the rights of the victim are on a higher pedestal than that of the complainant provided under Section 301 Cr.P.C.

87. The District Administration had issued a proclamation under Section 144 Cr.P.C., which was in effect on the date of incident and was equally applicable to not only the applicant and his associates, but also to the agitating/protesting farmers. The same has not been followed by either of the parties.

88. The change of route of the Chief Guest was an open secret, as it was known to one and all including the applicant and the protestors.

89. The trial has not yet started as charge have not been framed, so the ambiguity in sections, if any, in the final report can be corrected at the stage of framing of charge.

90. The controversy of some sections not finding mentioned in the bail rejection order of the Court of Sessions has already been put to rest by this Court vide order dated 18.1.2022, and it does not require fresh adjudication.

91. Several inconsistencies, embellishments and improvements have been referred by the defence in the statements of witnesses to the site plan, which cannot be delved into at this stage, rather are to be seen by the trial court concerned.

92. It is also true that the prosecution cannot claim parity as a right to the co-accused whose bail applications have been rejected by this Court, but yet the presence of the three vehicles at the spot from one of which the applicant was seen coming out is a crucial circumstance weighing against the applicant. The said Thar vehicle was registered in the name of father of the applicant and he was seen in the said vehicle recovered from the spot, although the applicant was not seen

driving it. There are two FIRs lodged by the witnesses having being threatened. The cross-version to the present case does not help the accused.

93. Taking into consideration the complicity of the applicant, there being apprehension of the witnesses being influenced, severity of punishment as drawn from the nature and gravity of the accusations, after taking due consideration of the submissions of the parties, and the settled case law of *Alister Anthony Pereira (supra)*, without expressing any opinion on the merits of the case, I do not find it a fit case for bail.

94. The bail application of the applicant-**Ashish Mishra @ Monu** is hereby **rejected**.

95. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 26.7.2022

Shalini

(Justice Krishan Pahal)