

1 THE HIGH COURT OF MADHYA PRADESH
Criminal Appeal No.5870/2021
Sikandar Singh Narvariya alias Lalu Vs. State of M.P. and another
Gwalior, Dated:04/10/2021

Shri Pradeep Katare, Advocate for appellant.

Shri C.P. Singh, Panel Lawyer for the State.

None for the complainant.

It is submitted by the counsel for the State that the complainant has been informed about the pendency of this appeal as required under Section 15-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

2. Case Diary is available.

3. This first Criminal Appeal for grant of bail has been filed under Section 14A(2) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), Act, 1989 against the order dated 31/5/2021 passed by Second Additional Sessions Judge, Bhind/Special Judge, Bhind by which the application filed by the appellant for grant of bail has been rejected.

4. The appellant has been arrested on 19/2/2021 in connection with Crime No.21/2021 registered at Police Station Barohi, District Bhind for offence punishable under Sections 302, 465, 467, 471, 166, 166-A, 193, 196, 197, 199, 203, 218, 201 of IPC and under Sections 3(2)(vi), 3 (2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), Act.

5. It is submitted by the counsel for the appellant that the

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Sessions Judge, Bhind by its order dated 10/8/2021 passed in BA No.978/2021 has granted bail to the co-accused Gajendra Singh, whose case is identical to that of the present appellant. It is further submitted that according to the prosecution case, the appellant and other co-accused persons, namely, Daplu alias Omkar and Gajendra had assaulted the deceased-Shyamlal by means of Lathi and thereafter they took him to JA Hospital, Gwalior, where they got the deceased-Shyamlal admitted in the name of Nathuram and ultimately Shyamlal succumbed to the injuries. Death certificate in the name of Nathuram was also prepared, however, at a later stage it was found that in fact Nathuram had already expired on 15/6/2013 and the appellant and other co-accused, namely, Daplu alias Omkar and Gajendra Singh Narwariya had got the injured admitted in the hospital in the fake name. The case of the present appellant is identical to that of the co-accused Gajendra. The appellant is in jail from 19/2/2021. The trial is likely to take sufficiently long time and there is no possibility of his absconding or tampering with the prosecution case.

6. *Per contra*, it is submitted by counsel for State that there are serious allegations of assaulting the deceased Shyamlal by Lathi and above all the appellant as well as co-accused Omkar and Gajendra Singh took the deceased Shyamlal to the hospital and got him

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admitted in the fake name of Nathuram and also succeeded in getting the death certificate in the name of Nathuram, whereas Nathuram had already expired on 15/06/2013.

7. Considered the submissions made by learned counsel for parties.

8. According to prosecution case, the complainant Upendra Singh Jatav made a complaint to the police that his neighbor Shyamlal was beaten by the appellant, Daplu S/o Nathu Singh Narwariya, Gajendra Singh Narwariya, about 6-7 days back and thereafter they took the injured to Gwalior and from thereafter the whereabouts of Shyamlal are not known. On this information, an enquiry was initiated and the statement of witnesses in the Merg enquiry were recorded. The Police found that in fact the deceased Shyamlal was beaten by appellant, co-accused Daplu @ Omkar and Gajendra by Lathi and thereafter they took the deceased to Gwalior and got him admitted in the J.A. Hospital Gwalior in the fake name of Nathuram S/o Hukum Singh. The injured Shyamlal who was admitted in the hospital by co-accused Omkar Singh in the name of Nathuram s/o Hukum expired on 08/06/2020. Accordingly, the dead body of Shyamlal was handed over to Omkar Singh after the postmortem. It appears that the dead body of Shyamlal, who was admitted in the fake name of Nathuram, was not brought in the village and his cremation was done

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somewhere else and since whereabouts of Shyamlal was not known, therefore, his neighbor Upendra Singh had made a report to the Police. During the Merg enquiry, the statement of witnesses were recorded who had claimed that the name of deceased was Nathuram and ultimately those statements found to be incorrect. Thus, the Police after completing investigation, has filed the charge-sheet against the present appellant, Omkar Singh and Gajendra Singh apart from Ghanshyam, Ravindra, Vinod Sharma, Smt. Sangeeta, Upendra Singh Jatav, Jarman Singh Narwariya, Hotam Singh Narwariya and Sudamalal Kadere. The allegations against the remaining co-accused persons are that they had given false information to the Police. Thus, there are two sets of accused persons which are as under :

1. Sikander Singh Narwariya @ Lalu, Omkar @ Daplu and Gajendra Singh against whom it is alleged that not only they had assaulted the deceased Shyamlal by Lathi, but they took him to the hospital and got him admitted in the hospital in the fake name of Nathuram and after the death of Shyamlal on 08.06.2020, who was admitted in the fake name of Nathuram, his dead-body was received by co-accused Omkar and it was not brought to the village and the cremation was done somewhere else in Gwalior itself.
2. Whereas, the allegations against the remaining co-accused

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persons are that they had given false information to the Police that Nathuram had fallen from the roof of the house and he died in the hospital.

9. The appellant has filed the copy of order dated 10/8/2021 passed by Sessions Judge, Bhind in B.A. No.978/2021 by which the co-accused Gajendra Singh was granted bail. This Court has gone through the order passed by the Sessions Judge, Bhind. The relevant part of the order is reproduced as under:

“According to prosecution case, on dt. 29.05.2020 or 31.05.2020 at or about 07:00 to 08:00 AM accused person namely Gajendra Singh, Sikandar Singh, Omkar Singh, Sudama Kadere, Hotam Singh, Jarman Singh, Upendra Singh & Sangeeta Narwariya has assaulted the Nathuram S/o Hukum Singh with Dandas, as seized from the accused persons. The said Nathuram sustain various injuries including vital part and succumbed to the injuries.

Ld. Counsel for the applicants submits that, applicant is in custody from February 2021 and Hon'ble High Court has granted bail to other co-accused. Applicant is ready to submit proper security. Hence, he be released on bail.

The prayer is opposed by the Ld. Spl. G.P. for the State.

Record of the SC ATR Case No. 71/2021 dt. 18.05.2021 perused.

As per Para-11 & 12 of the Arrest memo dt. 19.02.2021 it is transpired that, applicant is not dangerous, he has no previous criminal record, he is not habitual offender and there is no possibilities fleeing from justice. The applicant has no crime antecedent.

Investigation is over and Chalan has been filed on 18.05.2021. Further custodial interrogation is no more required and no purpose

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would be served to continue incarceration of applicant. Co-accused Jarman Singh, Smt. Sangeeta, Upendra Jatav, Hotam Singh has been enlarged on bail by Hon'ble High Court of Madhya Pradesh, Bench at Gwalior in CRA No. 4328/21, CRA No. 4204/21, CRA No. 3964/21 & CRA No. 4075/21 respectively. Role of the applicant is not specifically mentioned in the Charge-Sheet.

Considering the above facts and looking to special circumstances of second wave Covid-19 pandemic and that early conclusion of the trial is a bleak possibility and looking the nature and gravity of accusations, means and standing of the applicant, danger of applicant absconding, if granted Bail and reasonable apprehension of the witnesses being influenced and applying the doctrine of parity this Court deem it proper and fit to enlarge the applicant on Bail. Accordingly, the Bail Application dt. 04.08.2021 is hereby **allowed.**”

10. Thus it is clear that the Sessions Judge, Bhind has mentioned that the allegation against Gajendra, appellant, Omkar Singh, Sudama Kadere, Hotam Singh, Jarman Singh, Upendra Singh and Sangeeta Narwariya are similar as all of them had assaulted Nathuram S/o Hukum Singh with *dandas* whereas the aforesaid observation is completely false and there are no allegation of assault against Sudama Kadere, Hotam Singh, Jarman Singh, Upendra Jatav and Sangeeta Narwariya. Further, the Court below has held that the High Court has also granted bail to the co-accused Sangeeta Narwariya by order dated 29/7/2021 passed in Criminal Appeal No.4204/2021, the co-accused Jarman Singh passed in Criminal Appeal No.4328/2021

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to Upendra Singh by order dated 9/7/2021 passed in Criminal appeal No.3964/2021 to Hotam Singh passed in Criminal Appeal No.4075/2021.

11. Surprisingly, it was also mentioned by the Court below that the role of the appellant is not specifically mentioned in the charge sheet. Unfortunately, the above-mentioned observation made by the Sessions Judge, Bhind is just contrary to record. In the charge sheet itself it is mentioned as under:

“मर्ग अनुसंधान में साक्षी हीरा सिंह नरवरिया कोटवार ग्राम मदनपुरा ने अपने कथनों में मृतक का श्यामलाल जाटव पुत्र बुद्धू लाल जाटव होना तथा दिनांक 29.05.2020 को ग्राम मदनपुरा के लल्लू नरवरिया, डपलू उर्फ ओमकार नरवरिया पुत्रगण स्व. श्री नाथूसिंह नरवरिया एवं गजेंद्र सिंह नरवरिया के द्वारा मृतक श्यामलाल की उसके आवास इन्द्रा आवास कॉलोनी मदनपुरा में लाठी डंडो से मारपीट करना जिससे उसके सिर के बगल में डण्डे की चोट से खून बह जाना और चोट आना और उसके बाद इन तीनों लोगों के द्वारा मृतक श्यामलाल को लोडिंग गाडी में डालकर इलाज के लिये गांव से ले जाना बताया है।”

12. Thus in the charge sheet it was specifically mentioned that 29/5/2020 the appellant, the co-accused Daplu @ Omkar Singh, Gajendra Singh had assaulted the injured/deceased Shyamlal by *lathi* and thereafter all the three persons took the injured Shyamlal to the hospital. Even in the police case diary there are various witnesses who have specifically stated that Shyamlal was beaten by the appellant and co-accused Daplu @ Omkar Singh and Gajendra and they took the injured to hospital on their loading vehicle. It is really

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surprising that the Sessions Judge has given a complete go by to the allegations made by the co-accused Gajendra in the charge sheet and has granted bail to him by observing certain facts which are just contrary to record. Further, by referring to the orders of bail granted to the co-accused persons the Sessions Judge, Bhind has given an impression that the case of the co-accused Gajendra is identical to that of the co-accused Jarman Singh, Smt. Sangeeta Narwariya, Upendra Singh and Hotam Singh which is not correct. For the sake of convenience, this Court is reproducing the relevant part of order passed in the case of Upendra Jatav on 9/7/2021 in Criminal Appeal No.3964/2021:

“It is submitted the appellant has been falsely implicated in the case. He has not committed any offence in any manner. As per the prosecution story, the appellant was initially the complainant in the case who has informed the Police authorities regarding the offence but subsequently he has joined with the accused persons and given a false statement pointing out the fact that Nathuram has died in the incident. During the investigation, it was found that Nathuram had expired in the year 2013 itself and it was Shyamlal who has beaten by the co-accused persons and owing to the injuries has expired in the matter. It is argued that there is no allegation of inflicting any injury to the deceased on the present appellant. As per the prosecution story only he has to save the other accused persons by informing the false name to the Police authorities regarding deceased. He is in custody since 20.02.2021. Investigation is over and charge-sheet has already been filed. Appellant is the first offender. The appellant is ready to abide by all the

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terms and conditions which may be imposed by this court while considering the application for grant of bail.

Per contra, learned Panel Lawyer for the State opposed the application stating that there is active participation of the appellant in commission of offence. He has tried to save all the other accused persons who have inflicted injuries to the deceased and given false statement to the Police authorities but he fairly admits the fact that he was the first informer regarding the commission of offence. Filing of charge-sheet and appellant being the first offender is not disputed by the State counsel. All other co-accused are in custody.”

13. Similarly, the co-accused Jarman Singh has been granted bail by order dated 29/7/2021 passed in Criminal Appeal No.4328/2021 with the following observations:

“It is submitted by the counsel the appellant that the only allegation is regarding concealing the fact that he has disclosed the incorrect information to the Police authorities regarding the deceased by providing incorrect name. Appellant claims parity with co-accused Sudhamalal who was enlarged on bail vide order dated 22.07.2021 passed in Cr.A.4082/2021.

Per contra, learned Public Prosecutor for the State could not dispute the fact the factum of parity to the co-accused. There is no allegation against the appellant regarding committing of offence under Section 302 of IPC. Incorrect information was provided to the Police authorities.

Considering the overall facts and circumstances of the case without commenting upon the merits of the case, this Court deems it appropriate to allow this application subject to the verification of the fact that appellant is having no criminal history. Accordingly, the application is

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allowed.”

14. Thus it is clear that the co-accused persons were granted bail on the ground that there is no allegation of assaulting the deceased Shyamlal and the only allegations were that they have given incorrect information to police whereas there are specific allegation of assault against the appellant, co-accused Gajendra Singh and Daplu @ Omkar Singh. Thus it is clear that the Sessions Judge, Bhind has completely ignored the factual aspect of the matter. That is not the end of the case.

15. It appears that the Sessions Judge, Bhind has also completely ignored the legal aspect of the matter. Whenever a Court grants bail on the ground of parity, then it is always expected that the Court shall determine whether the reasons of parity are made out or not.

16. The Supreme Court in the case of **Shri Mahadev Meena vs. Praveen Rathore & Anr. by order dated 27/9/2021 passed in Criminal Appeal No.1089/2021** has held as under:

“13. Having analyzed *prima facie* the circumstances in which the offence was committed and the nature of the allegations, it will be useful to refer to the precedents of this Court governing the grant of bail. A two-judge Bench of this Court in **Ram Govind Upadhyay v. Sudharshan Singh** has listed the considerations that govern the grant of bail without attributing an exhaustive character to them. This Court has observed:

“4. Apart from the above, certain other which may be attributed to be relevant

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considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

This Court has further elucidated on the power of the court to interfere with an order of bail in the following terms:

“3. Grant of bail though being a discretionary order -- but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained.”

The above principles have been reiterated by a two judge Bench of this Court in **Prasanta Kumar Sarkar v. Ashis Chatterjee**:

“9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally

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incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. 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.

[internal citation omitted]”

In **Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana**, a two judge Bench of this Court of which one of us (Justice DY Chandrachud) was a part, has held that the High Court while granting bail must focus on the role of the accused in deciding the aspect of parity. This Court observed:

“26....The High Court has evidently misunderstood the central aspect of what is meant by parity. Parity while granting bail must focus upon the role of the accused. Merely observing that another accused who was granted bail was armed with a similar weapon is not sufficient to determine whether a case for the grant of bail on the basis of parity has been established. In deciding the aspect of parity, the role attached to the accused, their position in relation to the incident and to the victims is

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of utmost importance. The High Court has proceeded on the basis of parity on a simplistic assessment as noted above, which again cannot pass muster under the law.”

14. The High Court ought to have had due regard to the seriousness and gravity of the crime. The deceased was employed with the Intelligence Bureau in New Delhi. The first respondent is an employee of the Anti-Corruption Bureau at Jhalawar. The material which has emerged during the course of investigation cannot simply be ignored or glossed over (as the High Court has done). The first respondent himself being an employee of the Anti-Corruption Bureau at Jhalawar, the likelihood of the evidence being tampered with and of the witnesses being suborned cannot be discounted. At this stage, when the Court is called upon to evaluate whether a case for the grant of bail has been made out, it is inappropriate to enter upon matters which would form the subject of the trial when evidence is adduced by the prosecution. Bail was granted to the co-accused Anita Meena primarily and substantially on the ground that she had a child of eleven months with her in jail. This cannot be the basis to a claim of parity on the part of the first respondent. The first respondent cannot claim parity with the co-accused since the allegations in the FIR and the material that has emerged from the investigation indicate that a major role has been attributed to him in the murder of the deceased.”

Further, the Supreme Court in the case of **Ramesh Bhavan**

Rathod vs. Vishanbhai Hirabhai Makwana (Koli) & Anr. reported

in **(2021) 6 SCC 230** has held as under:

“**26.** Another aspect of the case which needs emphasis is the manner in which the High Court has applied the principle of parity. By its two orders both dated 21-12-2020 [*Pravinbhai Hirabhai Koli v. State of Gujarat*, 2020 SCC

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OnLine Guj 2986], [*Khetabhai Parbatbhai Makwana v. State of Gujarat*, 2020 SCC OnLine Guj 2988] , the High Court granted bail to Pravin Koli (A-10) and Kheta Parbat Koli (A-15). Parity was sought with Sidhdhraisinh Bhagubha Vaghela (A-13) to whom bail was granted on 22-10-2020 [*Siddhraisinh Bhagubha Vaghela v. State of Gujarat*, 2020 SCC OnLine Guj 2985] on the ground (as the High Court recorded) that he was “assigned similar role of armed with stick (sic)”. Again, bail was granted to Vanraj Koli (A-16) on the ground that he was armed with a wooden stick and on the ground that Pravin (A-10), Kheta (A-15) and Sidhdhraisinh (A-13) who were armed with sticks had been granted bail. The High Court has evidently misunderstood the central aspect of what is meant by parity. Parity while granting bail must focus upon the role of the accused. Merely observing that another accused who was granted bail was armed with a similar weapon is not sufficient to determine whether a case for the grant of bail on the basis of parity has been established. In deciding the aspect of parity, the role attached to the accused, their position in relation to the incident and to the victims is of utmost importance. The High Court has proceeded on the basis of parity on a simplistic assessment as noted above, which again cannot pass muster under the law.”

17. Thus, it is clear that whenever an accused seeks bail on the ground of parity, then the Court must focus upon the role of the accused. The role played by the aspirant in the incident should be considered in order to find out as to whether the case of the aspirant who is seeking bail is identical to that of the co-accused, who has already been granted bail or not.

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18. In the present case, not only, the Sessions Judge, Bhind has given a complete go by to the above principle of law and without ascertaining the allegations made against the accused Gajendra and the other co-accused persons, who have been granted bail by the High Court, surprisingly observed that there are no specific allegations against the accused Gajendra in the charge-sheet.

19. It is true that the power of grant of bail under Section 439 of CrPC is discretionary, but the said discretion has to be exercised judiciously.

20. The Supreme Court in the case of **State of Kerala Vs Mahesh** by judgment dated **19.03.2021** passed in **Criminal Appeal No. 343/2021** has held as under:-

“16. It is well settled that though the power to grant bail under Section 439 of the Cr.P.C is discretionary, such discretion has to be exercised judiciously, as held by this Court in **Ram Govind Upadhyay v. Sudarshan Singh and Ors.** reported in (2002) 3 SCC 598. Speaking for the Court, Umesh Chandra Banerjee, J. said:-

“3. Grant of bail though being a discretionary order —but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and

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the same should and ought always to be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

18. In Mahipal v. Rajesh Kumar and Anr. reported in (2020) 2 SCC 118, this Court held:-

“14. The provision for an accused to be released on bail touches upon the liberty of an

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individual. It is for this reason that this Court does not ordinarily interfere with an order of the High Court granting bail. However, where the discretion of the High Court to grant bail has been exercised without the due application of mind or in contravention of the directions of this Court, such an order granting bail is liable to be set aside. The Court is required to factor, amongst other things, a prima facie view that the accused had committed the offence, the nature and gravity of the offence and the likelihood of the accused obstructing the proceedings of the trial in any manner or evading the course of justice. The provision for being released on bail draws an appropriate balance between public interest in the administration of justice and the protection of individual liberty pending adjudication of the case. However, the grant of bail is to be secured within the bounds of the law and in compliance with the conditions laid down by this Court. It is for this reason that a court must balance numerous factors that guide the exercise of the discretionary power to grant bail on a case-by-case basis. Inherent in this determination is whether, on an analysis of the record, it appears that there is a prima facie or reasonable cause to believe that the accused had committed the crime. It is not relevant at this stage for the court to examine in detail the evidence on record to come to a conclusive finding.”

22. There is no straight jacket formula for grant or refusal of bail. Seriousness of the charge is undoubtedly one of the relevant considerations while considering bail applications as held in **Sanjay Chandra** (supra) cited on behalf of the Respondent Accused. All the relevant factors have to be weighed by the Court considering an application for bail, including the gravity of the offence, the evidence and material which prima facie show the involvement of applicant for bail in the offence alleged, the extent of involvement of the applicant for bail, in the offence alleged, possibility of the applicant accused absconding or otherwise defeating or delaying the

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course of justice, reasonable apprehension of witnesses being threatened or influenced or of evidence being tempered with, and danger to the safety of the victim (if alive), the complainant, their relatives, friends or other witnesses.”

The Supreme Court in the case of **Harjit Singh Vs. Inderpreet Singh @ Inder and another** by judgment dated **24.08.2021** passed in **Criminal Appeal No. 883/2021** has held as under:-

“7. We have heard the learned counsel for the respective parties at length.

Before considering the rival submissions on behalf of the respective parties, few decisions of this Court on how to exercise the discretionary power for grant of bail and the duty of the appellate court, particularly when bail was refused by the court(s) below and the principles and considerations for granting or refusing the bail are required to be referred to and considered.

7.1 In the case of *Gudikanti Narasimhulu v. Public Prosecutor, High Court of A.P., (1978) 1 SCC 240*, this Court has observed and held that deprivation of freedom by refusal of bail is not for punitive purposes but for the bifocal interests of justice. The nature of the charge is a vital factor and the nature of the evidence is also pertinent. The severity of the punishment to which the accused may be liable if convicted also bears upon the issue. Another relevant factor is whether the course of justice would be thwarted by him who seeks the benignant jurisdiction of the Court to be freed for the time being. The Court has also to consider the likelihood of the applicant interfering with the witnesses for the prosecution or otherwise polluting the process of justice. It is further observed that it is rational to enquire into the antecedents of the man who is applying for bail to find out whether he has a bad record, particularly a record

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which suggests that he is likely to commit serious offences while on bail.

7.2 In the case of *Ash Mohammad v. Shiv Raj Singh*, (2012) 9 SCC 446, this Court in paragraphs 17 to 19 observed and held as under:

“17. We are absolutely conscious that liberty of a person should not be lightly dealt with, for deprivation of liberty of a person has immense impact on the mind of a person. Incarceration creates a concavity in the personality of an individual. Sometimes it causes a sense of vacuum. Needless to emphasise, the sacrosanctity of liberty is paramount in a civilised society. However, in a democratic body polity which is wedded to the rule of law an individual is expected to grow within the social restrictions sanctioned by law. The individual liberty is restricted by larger social interest and its deprivation must have due sanction of law. In an orderly society an individual is expected to live with dignity having respect for law and also giving due respect to others' rights. It is a well-accepted principle that the concept of liberty is not in the realm of absolutism but is a restricted one. The cry of the collective for justice, its desire for peace and harmony and its necessity for security cannot be allowed to be trivialised. The life of an individual living in a society governed by the rule of law has to be regulated and such regulations which are the source in law subserve the social balance and function as a significant instrument for protection of human rights and security of the collective. It is because fundamentally laws are made for their obedience so that every member of the society lives peacefully in a society to achieve his individual as well as social interest. That is why Edmond Burke while discussing about liberty opined, “it is regulated freedom”.

18. It is also to be kept in mind that individual liberty cannot be accentuated to such an extent or elevated to such a high pedestal which would bring in anarchy or disorder in the

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society. The prospect of greater justice requires that law and order should prevail in a civilised milieu. True it is, there can be no arithmetical formula for fixing the parameters in precise exactitude but the adjudication should express not only application of mind but also exercise of jurisdiction on accepted and established norms. Law and order in a society protect the established precepts and see to it that contagious crimes do not become epidemic. In an organised society the concept of liberty basically requires citizens to be responsible and not to disturb the tranquillity and safety which every well-meaning person desires. Not for nothing J. Oerter stated:

“Personal liberty is the right to act without interference within the limits of the law.”

19. Thus analysed, it is clear that though liberty is a greatly cherished value in the life of an individual, it is a controlled and restricted one and no element in the society can act in a manner by consequence of which the life or liberty of others is jeopardised, for the rational collective does not countenance an anti-social or anti-collective act.”

7.3 In the case of *State of Maharashtra v. Sitaram Popat Vetal*, (2004) 7 SCC 521, it is observed and held by this Court that while granting of 14 bail, the following factors among other circumstances are required to be considered by the Court:

1. The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;
2. Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant; and
3. Prima facie satisfaction of the court in support of the charge.

It is further observed that any order *dehors* such reasons suffers from non-application of mind.

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7.4 In the case of *Mahipal v. Rajesh Kumar* (2020) 2 SCC 118, where the High Court released the accused on bail in a case for the offence under Section 302 of the IPC and other offences recording the only contention put forth by the counsel for the accused and further recording that “taking into account the facts and circumstances of the case and without expressing the opinion on merits of case, this Court deems fit just and proper to enlarge/release the accused on bail”, while setting aside the order passed by the High Court granting bail, one of us (Dr. Justice D.Y. Chandrachud) observed in paragraphs 11 and 12 as under:

“11. Essentially, this Court is required to analyse whether there was a valid exercise of the power conferred by Section 439 CrPC to grant bail. The power to grant bail under Section 439 is of a wide amplitude. But it is well settled that though the grant of bail involves the exercise of the discretionary power of the court, it has to be exercised in a judicious manner and not as a matter of course. In *Ram Govind Upadhyay v. Sudarshan Singh* (2002) 3 SCC 598, Umesh Banerjee, J. speaking for a two-Judge Bench of this Court, laid down the factors that must guide the exercise of the power to grant bail in the following terms:

“3. Grant of bail though being a discretionary order — but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. ... The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

4. Apart from the above, certain other which may be attributed to be relevant

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considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

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 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

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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.

7.5 That thereafter this Court considered the principles that guide while assessing the correctness of an order passed by the High Court granting bail. This Court specifically observed and held that normally this Court does not interfere with an order passed by the High Court granting or rejecting the bail to the accused. However, where the discretion of the High Court to grant bail has been exercised without the due application of mind or in contravention of the directions of this Court, such an order granting bail is liable to be set aside. This Court further observed that the power of the appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for cancellation of bail. It is further observed that the correctness of an order granting bail is tested on the anvil of whether there was a proper or arbitrary exercise of the discretion in the grant of bail. It is further observed that the test is whether the order granting bail is perverse, illegal or unjustified. Thereafter this Court considered the difference and distinction between an application for cancellation of bail and an appeal before this Court challenging the order passed by the appellate court granting bail in paras 13, 14, 16 and 17 as under:

“13. The principles that guide this Court in assessing the correctness of an order [Ashish Chatterjee v. State of W.B., CRM No. 272 of 2010, order dated 11-1-2010 (Cal)] passed by the High Court granting bail were succinctly laid down by this Court in Prasanta Kumar Sarkar v. Ashis Chatterjee (2010) 14 SCC 496. In that case, the accused was facing trial for an offence punishable under Section 302 of the Penal Code.

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Several bail applications filed by the accused were dismissed by the Additional Chief Judicial Magistrate. The High Court in turn allowed the bail application filed by the accused. Setting aside the order [Ashish Chatterjee v. State of W.B., CRM No. 272 of 2010, order dated 11-1-2010 (Cal)] of the High Court, D.K. Jain, J., speaking for a two-Judge Bench of this Court, held:

“9. ... It is trite that this Court does not, normally, interfere with an order [Ashish Chatterjee v. State of W.B., CRM No. 272 of 2010, order dated 11-1-2010 (Cal)] passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. 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.

10. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of nonapplication of mind, rendering it to be illegal.”

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14. The provision for an accused to be released on bail touches upon the liberty of an individual. It is for this reason that this Court does not ordinarily interfere with an order of the High Court granting bail. However, where the discretion of the High Court to grant bail has been exercised without the due application of mind or in contravention of the directions of this Court, such an order granting bail is liable to be set aside. The Court is required to factor, amongst other things, a prima facie view that the accused had committed the offence, the nature and gravity of the offence and the likelihood of the accused obstructing the proceedings of the trial in any manner or evading the course of justice. The provision for being released on bail draws an appropriate balance between public interest in the administration of justice and the protection of individual liberty pending adjudication of the case. However, the grant of bail is to be secured within the bounds of the law and in compliance with the conditions laid down by this Court. It is for this reason that a court must balance numerous factors that guide the exercise of the discretionary power to grant bail on a case by-case basis. Inherent in this determination is whether, on an analysis of the record, it appears that there is a prima facie or reasonable cause to believe that the accused had committed the crime. It is not relevant at this stage for the court to examine in detail the evidence on record to come to a conclusive finding.

16. The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an

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application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted. In *Neeru Yadav v. State of U.P.* (2014) 16 SCC 508, the accused was granted bail by the High Court [*Mitthan Yadav v. State of U.P.* [2014 SCC OnLine All 16031]. In an appeal against the order [*Mitthan Yadav v. State of U.P.*, 2014 SCC OnLine All 16031] of the High Court, a two-Judge Bench of this Court surveyed the precedent on the principles that guide the grant of bail. Dipak Misra, J. held:

“12. ... It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail have not been taken note of, or bail is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the Court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the Court.”

17. Where a court considering an application for bail fails to consider relevant factors, an appellate court may justifiably set aside the order granting bail. An appellate court is thus required to consider whether the order granting bail suffers from a non-application of mind or is not borne out from a prima facie view of the evidence on record. It is thus necessary for

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this Court to assess whether, on the basis of the evidentiary record, there existed a prima facie or reasonable ground to believe that the accused had committed the crime, also taking into account the seriousness of the crime and the severity of the punishment. The order [Rajesh Kumar v. State of Rajasthan, 2019 SCC OnLine Raj 5197] of the High Court in the present case, insofar as it is relevant reads:

“2. Counsel for the petitioner submits that the petitioner has been falsely implicated in this matter. Counsel further submits that, the deceased was driving his motorcycle, which got slipped on a sharp turn, due to which he received injuries on various parts of body including ante-mortem head injuries on account of which he died. Counsel further submits that the challan has already been presented in the court and conclusion of trial may take long time.

3. The learned Public Prosecutor and counsel for the complainant have opposed the bail application.

4. Considering the contentions put forth by the counsel for the petitioner and taking into account the facts and circumstances of the case and without expressing opinion on the merits of the case, this Court deems it just and proper to enlarge the petitioner on bail.”

Thereafter this Court set aside the order passed by the High Court releasing the accused on bail.” Thereafter, this Court set aside the order passed by the High Court releasing the accused on bail.

8. At this stage, a recent decision of this Court in the case of Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana (koli) 2021 (6) SCALE 41 is also required to be referred to. In the said decision, this Court considered in great detail the considerations which govern the grant of bail, after referring to the decisions of this Court in the case of

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Ram Govind Upadhyay (Supra); Prasanta Kumar Sarkar (Supra); Chaman Lal vs. State of U.P. (2004) 7 SCC 525; and the decision of this Court in Sonu vs. Sonu Yadav 2021 SCC Online SC 286. After considering the law laid down by this Court on grant of bail, in the aforesaid decisions, in paragraphs 20, 21, 36 & 37 it is observed and held as under:

“20. The first aspect of the case which stares in the face is the singular absence in the judgment 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. In the two-judge Bench decision of this Court in Ram Govind Upadhyay v. Sudharshan Singh, the nature of the crime was recorded as “one of the basic considerations” which has a bearing on the grant or denial of bail. The considerations which govern the grant of bail were elucidated in the judgment of this Court without attaching an exhaustive nature or character to them. This emerges from the following extract:

“4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the

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apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

21. This Court further laid down the standard for overturning an order granting bail in the following terms:

“3. Grant of bail though being a discretionary order -- but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained.”

XXX XXX XXX

36. Grant of bail under Section 439 of the CrPC is a matter involving the exercise of judicial discretion. Judicial discretion in granting or refusing bail - as in the case of any other discretion which is vested in a court as a judicial institution - is not unstructured. The duty to record reasons is a significant safeguard which ensures that the discretion which is entrusted to the court is exercised in a judicious manner. The recording of reasons in a judicial order ensures that the thought process underlying the order is subject to scrutiny and that it meets objective standards of reason and justice. This Court in Chaman Lal v. State of U.P (2004) 7 SCC 525 in a similar vein has held that an order of a High Court which does not contain reasons for prima facie concluding that a bail should

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be granted is liable to be set aside for nonapplication of mind. This Court observed:

“8. Even on a cursory perusal the High Court's order shows complete non-application of mind. Though detailed examination of the evidence and elaborate documentation of the merits of the case is to be avoided by the Court while passing orders on bail applications. Yet a court dealing with the bail application should be satisfied, as to whether there is a prima facie case, but exhaustive exploration of the merits of the case is not necessary. The court dealing with the application for bail is required to exercise its discretion in a judicious manner and not as a matter of course.

9. There is a need to indicate in the order, reasons for prima facie concluding why bail was being granted particularly where an accused was charged of having committed a serious offence...”

37. We are also constrained to record our disapproval of the manner in which the application for bail of Vishan (A-6) was disposed of. The High Court sought to support its decision to grant bail by stating that it had perused the material on record and was granting bail “without discussing the evidence in detail” taking into consideration:

- (1) The facts of the case;
- (2) The nature of allegations;
- (3) Gravity of offences; and
- (4) Role attributed to the accused.”

21. Thus, the nature and gravity of accusation, whether there is any *prima facie* or reasonable ground to believe that the accused had committed the offence, likelihood of offence being repeated, danger of accused absconding or fleeing, character behaviour, position and standing of accused, reasonable apprehension of witness being influenced and danger, and of justice being thwarted by grant of bail

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are some of the factors which are to be kept in mind while deciding the bail application.

22. When the facts of the present case are considered, then the applicant, co-accused Gajendra and Daplu had not only assaulted the deceased Shaymlal, but they got him admitted in the hospital in the fake name of Nathuram, who had already expired in the year 2013. The dead body of Shyاملal was received by Omkar and cremation was done somewhere in Gwalior itself without bringing the dead body in the village.

23. Since the allegations made against Gajendra were not considered at all by the Court below and on the contrary, incorrect observation has been made that there is no specific allegation against accused Gajendra in the charge-sheet, this Court is of the considered opinion that it is a fit case where a notice to Gajendra Singh S/o Bheemsen Singh Narwariya, aged about 26 years resident of village Dongarpur, Police Station Gormi, District Bhind be issued to show cause as to why the bail granted to him by order dated 10.08.2021 by the Sessions Judge, Bhind in Bail Application No. 961/2021 be not recalled.

24. Accordingly, issue show cause notice to Gajendra Singh as to why the bail granted to him by order dated 10.08.2021 passed by the

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Sessions Judge, Bhind in Bail Application No. 978/2021 be not recalled.

25. The office is directed to register a case separately under Section 439(2) of CrPC.

26. The notice be served through S.P., Bhind.

27. **List the case for cancellation of bail on 20/10/2021.**

28. So far as the case of the present appellant is concerned, in view of the specific allegation that not only, he had assaulted the deceased Shyamlal, but he got him admitted in the hospital in the fake name of Nathuram and also succeeded in getting the death certificate prepared in the name of Nathuram and the dead body was received by co-accused Daplu @ Omkar and it was cremated somewhere in Gwalior itself without bringing it to the village, this Court is of the considered opinion that it is not a fit case for grant of bail.

29. Before parting with this order, this Court would like to consider the conduct of Shri Axay Kumar Dwivedi, Sessions Judge, Bhind. The illegality which has been committed by the Sessions Judge, Bhind while granting bail to the co-accused Gajendra by order dated 10/8/2021 passed in BA No.978/2021 has already been considered in detail. However, unfortunately it is not the first case where such a blunder mistake has been committed by the Judicial Officer. Earlier Shri Axay Kumar Dwivedi was posted as Chairman,

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STAT, MP, Gwalior. While deciding Appeal No.21/2020 Shri Axay Kumar Dwivedi, the then Chairman STAT, Gwalior had observed in its order dated 8/12/2020 that the judgments of the High Court passed in the cases of **Smt. Sunita Jaiswal Vs. State of M.P.** and **M/s Shri Sher Singh Bus Services and Others Vs. State of M.P. and others** passed on **5/3/2019** and **14/09/2020** are not reported judgments and they have not considered the entire facts in its entirety, therefore, had observed as under:-

16. माननीय म.प्र. उच्च न्यायालय की मुख्यपीठ जबलपुर की रिट याचिका क्रमांक 4466/2019 (श्रीमती सुनीता जायसवाल विरुद्ध म.प्र. राज्य) एवं रिट याचिका क्रमांक-12503/2020 (मे.श्री शेर सिंह बस सर्विसेस एवं अन्य विरुद्ध म.प्र. राज्य एवं अन्य) में किये गये आदेश क्रमशः दिनांक 05.03.2019 एवं दिनांक 14.09.2020 में उक्त नियम 77 (1-क) एवं (1-ख) को प्रत्युत्पादित कर उक्त मामलों में किये गये आलोच्य आदेश एवं शर्तों को अपास्त व खत्म किया था । उक्त कोई भी आदेश रिपोर्टेड नहीं है और संबंधित मामलों के संपूर्ण तथ्य समाविष्ट नहीं है ।

30. The order passed by Shri Axay Kumar Dwivedi on 8/12/2020 in Appeal No.21/2020 was challenged by the petitioner Shreeram Sharma by filing MP No.3423/2020, which was decided by this Court by order dated 23/2/2021. Since this Court was aware of the above-mentioned adventurous observations made by Shri Axay Kumar Dwivedi that the order passed by the High Court is not reported and has also not considered the facts in its entirety, therefore, the file of MP No.3423/2020 was summoned and the above-mentioned paragraph has been reproduced from the order dated 8/12/2020

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passed by Shri Axay Kumar Dwivedi in Appeal No.21/2020 in the capacity of Chairman, STAT, MP, Gwalior and the said order was the impugned order in MP No.3423/2020. Considering the conduct of Shri Axay Kumar Dwivedi in making distinction in reported and unreported judgments of the High Court, it was observed by this Court by order dated 23/2/2021 passed in MP No.3423/2020 as under:-

“It appears that the STAT has given complete go bye to the judicial discipline in making distinction in unreported judgment and the reported judgment of the High Court. Accordingly, it is held that observation made by the STAT in paragraph 16 of its order dated 8.12.2020 passed in appeal number 21/2020 is contrary to law.”

31. It appears that the Judicial Officer is in the habit of passing orders which are just contrary to the settled principle of law. Accordingly, the Registrar General of the High Court of MP is directed to immediately place the copy of this order before Hon'ble the Chief Justice of High Court of MP for necessary action on administrative side.

32. With aforesaid observations, the Criminal Appeal filed by the appellant for grant of bail is hereby **dismissed**.

**(G.S. Ahluwalia)
Judge**

Arun*