

Reserved On 22.9.2021

Delivered On 04.10.2021

Court No. - 52

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14950 of 2021

Applicant :- Smt. Rekha Agnihotri

Opposite Party :- State of U.P.

Counsel for Applicant :- P.K. Singh, Prabha Shanker Mishra, Shashi Kant Singh

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. Heard Sri Prabha Shanker Mishra learned counsel for the applicant, Sri Rajesh Mishra learned A.G.A. for the State and perused the material on record.

2. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Smt. Rekha Angihotri, seeking enlargement on bail during trial in Special Sessions Trial No. 1263 of 2020, arising out of Case Crime No. 192 of 2020, under Sections 147, 148, 149, 302, 307, 504, 506, 353, 332, 333, 396, 412, 120B, 34 I.P.C., Section 7 Criminal Law Amendment Act and, 3/4 Explosive Substance Act, registered at Police Station Chaubepur, District- Kanpur Nagar.

3. Learned counsel for the applicant argued that the applicant is not named in the F.I.R. which has been registered naming 21 accused persons and referring to 60-70 other persons as accused who were also armed. The statement of the first informant Vinay Kumar Tiwari, Station House Officer of Police Station- Chaubeypur, District- Kanpur Dehat is the same as has been stated in the F.I.R. It is argued that subsequently Sub-Inspector Kunwar Pal Singh of Police Station Chaubeypur, District Kanpur Dehat, was interrogated and his statement under Section 161 Cr.P.C. was recorded wherein for the first time he names the applicant in the present matter and states that on the roof of the house of Vikas Dubey (an accused who is now dead) and on the roof of nearby houses some ladies were shouting loudly that the police personnels have come and they will not be able to go back and were exhorting the accused persons to kill the police personnels and were saying that no one should be left. He then inquired about the ladies and came to know that the ladies who were shouting are Smt. Kshama the wife of Sanjay Dubey@Sanju, Smt. Khushi the wife of Amar Dubey and Smt. Rekha Agnihotri (the present applicant) the wife of Daya Shanker @ Kallu.

4. It is argued that there is no recovery of any incriminating material either from the possession or pointing out of the applicant. The applicant has not been assigned any overt act whatsoever. She has been assigned only an ornamental role of exhortation. The applicant is a lady and is entitled to the benefit of Section 437 Code of Criminal Procedure. The applicant is having

no criminal history as stated in para- 15 and 17 of the affidavit in support of bail application and is in jail since 05.7.2020.

5. Per contra, Sri Rajesh Mishra, learned A.G.A. has vehemently opposed the prayer for bail and has argued that the first informant of the present case i.e. Vinay Kumar Tiwari the then Station House Officer of Police Station Chaubeypur, District Kanpur Dehat, is also an accused in the present matter now. He has also played an important and vital role in the matter. The bail application of the first informant Vinay Kumar Tiwari was connected with the bail application of co-accused K.K. Sharma (Krishna Kumar Sharma) which has been rejected vide order dated 21.9.2021 passed by a co-ordinate Bench of this Court.

6. Smt. Khushi the wife of Amar Dubey, whose case is also identical to the present applicant, has claimed juvenility and as such after rejection of her plea for bail, approached this Court by filing a Criminal Revision No. 113 of 2021, Khushi Vs. State of U.P. and another, which has also been dismissed vide judgement and order dated 16.7.2021 passed by a co-ordinate Bench of this Court.

7. Occurrence in the present case is on the night of 2/3.7.2020 in which eight police personnels had died and six police personnels had received gunshot injuries. A driver of the then Station House Officer of local Police Station also sustained injuries.

8. The role of the applicant is at par with Smt. Kshama and Smt. Khushi of aiding and instigating their husbands and other accused persons.

9. Paragraphs-7 and 8 of the counter affidavit dated 8.4.2021 filed on behalf of the State have been placed which reads as under :-

“7. That in reply to the contents of paragraphs nos. 5, 6, 7, 8 and 9 of the affidavit, it is stated that the applicant is the wife of Dayashankar Agnihotri who is named accused of the F.I.R. in question, not only this, applicant and her husband were the employee/servant of the main accused Vikas Dubey, while raid was conducted, all the accused persons were in a planned manner waiting for the Police team and when the Police team has rushed on the spot near Gate, the accused persons have opened fire to the Police team and the applicant was informing the accused persons about the location of Police personnels and was also shouting to kill each and every Police personnel of the team. The team members Kunwar Pal Singh in his statement has stated that the applicant was the servant of Vikas Dubey, was indulged in helping in all criminal activities, in which Vikas Dubey and the husband of the applicant were involved. The Sub-Inspector Azhar Ishrat has identified the accused-applicant and her presence on the roof who informed the other accused persons about the location of the Police team and was instigating them to aim and kill each and every Police personnels. The statement of Azhar Ishrat is being recorded in C.D. Parcha No. 1, 9 and 76 of the case diary. It is

further relevant to mention here that constable Rajeev Kumar and constable Abhishek Kumar have also identified the presence of the applicant on the roof of Vikas Dubey and was helping by all means the other accused persons to kill the police personnels in the present crime, in which 8 police personnels were shot dead and 6 other police personnels have received received injuries besides one private driver of the then Station Officer, Police Station Chaubeypur, who also received severe injuries.

8. That in reply to the contents of paragraph no. 10 of the affidavit, it is stated that while Vikas Dubey was arrested at District Ujjain (M.P.) and while he was in U.P. Police custody under remand, he also in his statement accepted the presence of the applicant and also to the effect that she was providing help to the accused persons. The statement of Vikas Dubey is being recorded in C.D. Parcha No. 10 of the case diary. Not only this the other accused person namely Ram Singh, in his statement recorded in C.D. Parcha No. 35 of the case diary. The statements of all accused witnesses namely Shivam@Ajeet Dubey, Govind Saini, Dharmendra@Heeru, Vishnu Pal @ Zildar, Shiv Tiwari and Daya Shankar Agnihotri, husband of the applicant in their statements have informed that the applicant was on the roof of the main accused Vikas Dubey and identified the presence of Police personnels and was instigating the accused persons to aim and kill each and every police personnels. The constable Shiv Murat Nishad, who also received grievous injuries on his person and injury report is also part of the case diary in C.D. Parcha No. 72. The constable Shiv Murat Nishad was also one of team members who have witnessed the presence of the applicant and her involvement in the offence. While the applicant was arrested, she confessed her guilt and has accepted her participation in the offence.”

10. The statement of Constable 1068 Abhishek Kumar which is annexed at page-43 of the counter affidavit of the State, has been placed in which while giving an eye witness account of the incident he has stated that the ladies were giving location of the Police personnels to the accused persons.

11. Further the second statement of Constable 2550 Rajeev Kumar has been placed which is annexed at page-49 of the counter affidavit of the State in which he also while giving an eye witness account of the incident, has stated that he saw the applicant above the roof of the house of Vikas Dubey, instigating the accused persons along with other ladies and giving the location of the Police personnels. It is prayed that as such the bail application of the applicant be rejected.

12. To appreciate the facts of the case and evidence involved in the matter, the judgement and order dated 16.7.2021 passed in Criminal Revision No. 113 of 2021, Khushi Vs. State of U.P. and another, is quoted herein below :-

“This Criminal Revision is directed against a judgment and order of Mr. Ranjeet Kumar, the Additional District and Sessions Judge, Court No. 13/Special Judge (POCSO Act), Kanpur Dehat dated 24.11.2020, dismissing Criminal Appeal No. 40 of 2020 and affirming orders dated 15.09.2020 and 13.10.2020 passed by the Juvenile Justice Board, Kanpur Dehat refusing bail to the revisionist pending trial, in the case arising out of Case Crime No. 192 of 2020, under Sections 147, 148, 149, 302, 307, 396, 332, 333, 412, 353, 504, 506, 34, 120B of the Indian Penal Code, 1860¹ and Section 7 of The Criminal Law (Amendment) Act, 1961 and Section 3/4 of The Explosive Substances Act, 1908, Police Station - Chaubeypur, District - Kanpur Nagar.

2. It appears that the nuptials were hardly over for the revisionist, Khushi and her husband Amar Dubey, on July the 3rd, 2020, when the infamous incident at Village Bikru, Kanpur Nagar took place. It all happened at the house of one Vikas Dubey, whom the Police, in strong numbers, had gone to arrest. It is the prosecution case that Vikas Dubey, who was a dreaded gangster, somehow, laid in wait, along with his henchmen, for the Police to arrive. Vikas's associates, that included his relatives, had positioned themselves at strategic points, atop the roof of his house and those abutting it. They opened indiscriminate fire on the incoming police force, which led to eight police personnel being shot dead and another six sustaining grievous gunshot injuries. A private driver of the then Station House Officer of the local police station also sustained injuries. It is the prosecution case, much of which figures in the eye-witness account of the surviving police personnel, recorded in their statements under Section 161 of the Code of Criminal Procedure, 1973² that while the menfolk pumped bullets into the police personnel, the wives of all the accused were aiding and instigating their husbands. The revisionist is also credited with the role of instigating the menfolk to do the policemen to death. She is stated to have been atop a house adjoining Vikas Dubey's, during entire course of the brutal assault.

3. The revisionist applied to be declared a juvenile to the Juvenile Justice Board, Kanpur Dehat³. She was found to be 16 years, 10 months and 12 days old on the date of occurrence. She was, thus, well below 18 years of age. She was declared a juvenile by the Board, vide order dated 01.09.2020. The revisionist then made an application for bail to the Board, which came up for determination on 15.09.2020. It was rejected by the Board. She then preferred a second application for bail to the Board, that came to be rejected again by an order dated 13.10.2020.

4. Aggrieved by the orders dated 15.09.2020 and 13.10.2020, declining bail, the revisionist carried an appeal to the learned Sessions Judge, Kanpur Dehat, under Section 101 of the Juvenile Justice (Care and Protection of Children) Act, 2015⁴. The appeal came up for determination before the learned Additional District and Sessions Judge, Court No. 13/ Special Judge (POCSO Act) Kanpur Dehat, on 24.11.2020. The learned Judge dismissed the appeal and affirmed the Board.

5. Disillusioned by concurrent refusal of bail pending trial by the two courts below, this revision has been instituted.

6. Heard Mr. Prabha Shanker Mishra, learned Counsel for the revisionist in support of this revision and Mr. Manish Goyal, the learned Additional Advocate General assisted by Mr. Rajesh Mishra, learned Additional Government Advocate on behalf of the State.

7. The submission of Mr. Prabha Shanker Mishra, learned Counsel for the revisionist, made very persuasively, is that the revisionist has been implicated in this crime, because she had the misfortune of marrying Amar Dubey, a few days before the occurrence. It is urged by Mr. Mishra that the revisionist is a minor and a young girl, a month and some days shy of 17 years. She or her family, that is to say, her parents and siblings, have no criminal antecedents. In her own right, she was neither an associate of the principal accused, Vikas Dubey, or a member of his gang. She was no more than an innocent person in the wrong place, at the wrong time. Mr. Mishra says that she had reasons perfectly compatible with her innocence, to be at or about Vikas Dubey's house, as her husband, Amar Dubey, was a relative of Vikas's. It was that, that she was there with her husband when this skirmish took place. She had not the slightest role in the entire episode. All that has been said about her is utter concoction by the Police, who have gone after every family member, relative and associate of Vikas Dubey, after the occurrence, with a

vindictiveness that does not behove a state law enforcement agency. Quite apart, it is argued by Mr. Mishra that Khushi, being a child in conflict with law, is entitled to bail by dint of Section 12(1) of the Act of 2015 and placed in the care of her father, who has applied for bail on her behalf. He says that Khushi's father is a respectable man and can keep her insulated from all kind of moral, physical and psychological danger. Her father can well ensure that she does not come into association with any known criminal, while on the liberty of bail. He submits that Khushi being not at all particeps criminis, it is not a case where extending her the liberty of bail would lead to ends of justice being defeated.

8. Mr. Manish Goyal, the learned Additional Advocate General, on the other hand, submits that Khushi was no silent spectator to the gruesome crime committed by Vikas Dubey and his gang, that included her deceased husband Amar Dubey. He has drawn the Court's attention to the statements of more than one policemen, who were part of the beleaguered police party, eight of whose members fell in action, and six others sustained grievous gunshot injuries. He emphasized with reference to the statements of the survivors of that ghastly episode, that Khushi was an active participant throughout the assault. She was aiding and instigating the men not to spare any policeman. Mr. Goyal then submits that Khushi, though a child in conflict with law and adjudged to be so by the Board, is nevertheless above the age of 16 years, though less than 18. She has been subjected by the Board to an inquiry under Section 15 of the Act of 2015. Considering that she is above 16 years of age, and the offence involved is heinous in nature, it is pointed out that the Board have opined, on a preliminary assessment, that the revisionist has the requisite mental and physical capacity to commit the offence, as also the ability to understand the consequences. The Board have also considered the circumstances in which she committed the dereliction and doing all this, opined, in exercise of powers under Section 18(3) of the Act of 2015, that it is fit case where the revisionist deserves to be tried as an adult. In consequence, by the order dated 17.12.2020, the Board have transferred the revisionist's case for trial to the Children's Court of competent jurisdiction. Mr. Goyal has drawn the Court's attention to the last mentioned order, annexed as Annexure SCA-1 to the supplementary counter affidavit dated 24.06.2021.

9. Mr. Goyal has further drawn the Court's attention to the conduct of the revisionist, while interned in the Government Observation Center (Girls) at Barabanki. In this connection, he has placed before this Court a copy of the memo dated 23.10.2020 addressed by the Assistant Superintendent of the Observation Home at Barabanki to the Board. The Assistant Superintendent has drawn the Board's attention to the fact that the Center have two rooms at their disposal, where 48 girls are interned. The revisionist has been reported to be wayward. It is said that she tells the other inmates that she has contacts with persons of great influence. She also repeatedly threatens other inmates that she can get anyone abducted from the Center any time, and that no one in the Observation Center can hold her to account. A copy of the said letter has been annexed as Annexure SCA-2 to the supplementary counter affidavit dated 24.06.2021 filed on behalf of the State. In the circumstances in which the gruesome crime has been committed and the apparent participation of the revisionist there, Mr. Goyal submits that it is a case where enlarging the revisionist on bail pending trial would defeat the ends of justice. In support of his contention, Mr. Goyal has placed reliance on a decision of this Court in **Raju alias Ashish v. State of U.P. & Another: 2018 SCC OnLine All 3100** and counted on another decision of this Court in **Raju (Minor) v. State of U.P. and Another: 2020 (6) All. LJ 451**.

10. This Court has given a thoughtful consideration to the submissions made on both sides and perused the record. It is true that bail to a child in conflict with law has to be granted as a matter of right de hors the merits of the case against him/her. The aforesaid rule of universal bail is subject only to the three disentitling grounds, envisaged under the proviso to Section 12(1) of the Act of 2015. Section 12(1) reads :

12. Bail of juvenile.--

(1) When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or

without surety 1[or placed under the supervision of a Probation Officer or under the care of any fit institution of fit person] but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

11. The case here is one where the association between the revisionist and her deceased husband might have been short; it was not sweet. This Court has carefully looked into the submissions of Sub-Inspector Vishwanath Mishra, Constable Rajiv Kumar, Sub-Inspector Azhar Ishrat, Sub-Inspector Kunwar Pal Singh and Constable Sudhakar Pandey, besides Constable Nem Singh. These statements are recorded in C.D. No. 1 dated 03.07.2020, C.D. No. 4 dated 06.07.2020, C.D. No. 72 dated 10.09.2020, C.D. No. 74 dated 12.09.2020 and C.D. No. 86 dated 25.09.2020. Sub-Inspector Vishwanath Mishra, in his statement under Section 161 of the Code, has stated that there were women atop the house, who were exhorting that no police personnel should go back alive, and were instigating the men to do so. The Sub-Inspector has stated that he inquired about the identity of the women and came to know that they were - Smt. Bhavna, wife of Samir Dubey alias Sanju, Smt. Khushi, wife of Amar Dubey (the revisionist), Smt. Rekha Agnihotri, wife of Daya Shanker alias Kallu. All the officers and men, whose statements have been recorded, have credited the revisionist with the role of instigating and exhorting the men to do every man in the police party to death. Constable Rajiv Kumar, who was in the thick of action, has stated that Vikas Dubey and his men looked around the entire place, searching out police officers and men to shoot them. He has said that he saw Smt. Rekha Agnihotri, wife of Daya Shanker standing atop the rooftop of Vikas Dubey's house, exhorting men to shoot down the police personnel, and his companions present on the spot told him that Khushi, along with Bhavna Dubey and Shanti Devi were giving out locations of the policemen, who had concealed themselves to save their lives and exhorting Vikas Dubey's men to do the policemen to death. Likewise, in the statement of Sub-Inspector Azhar Ishrat recorded under Section 161 of the Code, it is said that there were a few women atop the other houses located around Vikas Dubey's house, who were exhorting Dubey's associates to eliminate all policemen. He has further stated that he inquired about the identity of those women, and came to know that they were Smt. Bhavna, wife of Samir Dubey *alias* Sanju, Smt. Khushi, wife of Amar Dubey (the revisionist), Smt. Rekha Agnihotri, wife of Daya Shanker *alias* Kallu. There are, thus, accounts of various policemen about the very overt participation of the revisionist in the gruesome murder of as many as eight policemen in uniform, who were about their duty. She is credited with the role of exhorting men in Vikas Dubey's gang to eliminate every one of the policemen. The officers and men, whose statements have been recorded under Section 161, were all part of the police party that was in the thick of action, when they came under heavy fire from Vikas Dubey and his men, on the fateful night. Their statements on account of the occurrence at this stage, therefore, cannot be ignored.

12. It may be true, as already said, that the revisionist was married to Amar Dubey a few days before the occurrence, but from the account of all the eye-witnesses, she was certainly not one who was an idle spectator. She played a decisive role *prima facie* in the gruesome crime. The question now is that the revisionist, being a child in conflict with law, does her case fall into any of the exceptions to the universal rule of bail, postulated under the proviso to Section 12(1) of the Act of 2015? This Court does not know under what circumstances and by what origins of association she was married to Amar Dubey, who was, apparently, a faithful associate of Vikas Dubey. It is quite possible that the marriage was short-lived, but the association was long, on account of which, a newly-wed bride was seen moving around with men wielding guns, directing their fire to hidden policemen, and exhorting them to shoot each policemen to death. If the witnesses, who were all policemen and members of the party, many of whom fell in action, are to be believed, the revisionist's act in standing atop the roof of a house close to Vikas Dubey's, in the thick of gunfire and exhorting Dubey's men to eliminate all members of the police party, is conduct not even remotely compatible with the picture of a newly-wed bride, who was caught unawares, that Mr. Mishra wants this Court to believe.

13. This Court also cannot ignore the conduct of the revisionist reported by the Assistant Superintendent of the Observation Home, where she is interned. There is

no reason why the Assistant Superintendent would come forward with complaints of that kind against an inmate, contents whereof we have noticed above. Whatever has been reported by the Assistant Superintendent, shows the revisionist's continuing close association with hardened criminals, inasmuch as she has threatened other inmates of her resources to get anyone abducted from the Observation Home. This Court is of considered opinion that the short-lived association of the revisionist's with Amar Dubey, a close associate of Vikas Dubey's, followed by her participation in the gruesome crime, and her subsequent conduct in the observation home, firmly place her case in the category where, if released on bail, she would come into association with known criminals. That, in turn, would cause moral, physical and psychological danger to her. Quite apart, the submission advanced by Mr. Mishra, that the merits of the charge is irrelevant to the bail plea of a juvenile, in view of the provision under Section 12(1) of the Act of 2015, is not well founded. The merits of the prosecution case ipso facto may not be relevant to judge a juvenile's bail plea, but is certainly one of the factors to be taken into account while assessing whether grant of bail to the juvenile would lead to ends of justice being defeated. I have extensively dealt with this issue in **Mangesh Rajbhar v. State of U.P. : (2018) 6 ADJ 60**, where I have held :

24. This court from what appears on a further (sic further) reading of the judgment in Raja (minor) (supra) did not construe the last of the three grounds for the refusal of bail to a juvenile in the proviso to Section 12(1) of the Act ejusdem generis; rather, this court in that case referred to the merits of the case and related the ground for denying bail to the juvenile being released on bail "would defeat the ends of justice" with the merits of the prosecution case. In other words, this Court found in the expression "defeat the ends of justice" a repose for the society to defend itself from the onslaught of a minor in conflict with law by certainly making relevant though not decisive, the inherent character of the offence committed by the minor. In this connection paragraph nos. 11, 12 and 13 of the judgment in Raja (minor) (supra) may be gainfully quoted.

"11. The report of the medical examination of the victim clearly shows that the revisionist had forced himself upon the victim, who was seven years old child and in the statements under sections 161 Cr.P.C. and 164 Cr.P.C., the child had clearly deposed about how she was taken away by the revisionist and later on caught on the spot by the public and he pretended to be taking a bath. In the orders impugned, there is specific mention about the fact that the revisionist was accused by name by the victim, who was studying in class II and the release on bail of the revisionist would defeat the ends of justice.

12. Having gone through the record of the case including statement under section 161 Cr.P.C. and the statement under section 164 Cr.P.C. given by the victim and also the report of the medical examination of the victim, which shows penetration by force and resultant injury, I am of the opinion that there is no legal infirmity in the orders impugned as the release on bail of the revisionist would indeed defeat the ends of justice.

13. No doubt, the Juvenile Justice Act is a beneficial legislation intended for reform of the juvenile/child in conflict with the law, but the law also demands that justice should be done not only to the accused, but also to the accuser."

25. It is not that this aspect of the gravity of the offence has been considered irrelevant to the issue of grant or refusal of bail to a minor in the past and before the present Act of 2015 came into force. In a decision of this Court under the Juvenile Justice Act, 2000 where the interest of the society were placed seemingly not on a level of playing field with the juvenile, this Court in construing the provisions of Section 12 in that Act that were pari materia to Section 12 of the Act in the matter of grant of bail to a minor held in the case of Monu @ Moni @ Rahul @ Rohit v. State of U.P., 2011 (74) ACC 353 in paragraph Nos. 14 and 15 of the report as under:

"14. Aforesaid section nowhere ordains that bail to a juvenile is a must in all cases as it can be denied for the reasons".....if there appears

reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice."

15. In the light of above statutory provision bail prayer of the juvenile revisionist has to be considered on the surrounding facts and circumstances. Merely by declaration of being a juvenile does not entitle a juvenile in conflict with law to be released on bail as a matter of right. The Act has a solemn purpose to achieve betterment of juvenile offenders but it is not a shelter home for those juvenile offenders who have got criminal proclivities and a criminal psychology. It has a reformatory approach but does not completely shun retributive theory. Legislature has preserved larger interest of society even in cases of bail to a juvenile. The Act seeks to achieve moral physical and psychological betterment of juvenile offender and therefore if, it is found that the ends of justice will be defeated or that goal desired by the legislature can be achieved by detaining a juvenile offender in a juvenile home, bail can be denied to him. This is perceptible from phraseology of section 12 itself. Legislature in its wisdom has therefore carved out exceptions to the rule of bail to a juvenile."

26. The Hon'ble Supreme Court in the case of **Om Prakash vs. State of Rajasthan and another, (2012) 5 SCC 201: 2012 (2) ACR 1825 (SC)** has brought in due concern in matters relating to juveniles where the offences are heinous like rape, murder, gang-rape and the like etc., and, has indicated that in such matters, the nature and gravity of the offence would be relevant; the minor cannot get away by shielding himself behind veil of minority. It has been held in Om Prakash (supra) by their Lordships thus:

"3. Juvenile Justice Act was enacted with a laudable object of providing a separate forum or a special court for holding trial of children/juvenile by the juvenile court as it was felt that children become delinquent by force of circumstance and not by choice and hence they need to be treated with care and sensitivity while dealing and trying cases involving criminal offence. But when an accused is alleged to have committed a heinous offence like rape and murder or any other grave offence when he ceased to be a child on attaining the age of 18 years, but seeks protection of the Juvenile Justice Act under the ostensible plea of being a minor, should such an accused be allowed to be tried by a juvenile court or should he be referred to a competent court of criminal jurisdiction where the trial of other adult persons are held.

23. Similarly, if the conduct of an accused or the method and manner of commission of the offence indicates an evil and a well planned design of the accused committing the offence which indicates more towards the matured skill of an accused than that of an innocent child, then in the absence of reliable documentary evidence in support of the age of the accused, medical evidence indicating that the accused was a major cannot be allowed to be ignored taking shelter of the principle of benevolent legislation like the Juvenile Justice Act, subverting the course of justice as statutory protection of the Juvenile Justice Act is meant for minors who are innocent law breakers and not accused of matured mind who uses the plea of minority as a ploy or shield to protect himself from the sentence of the offence committed by him."

27. It seems thus that the suggestion of the learned counsel for the revisionist that bail to a juvenile or more properly called a child in conflict with law can be denied under the last ground of the proviso to Section 12 ejusdem generis with the first two and not with reference to the gravity of the offence, does not appear to be tenable. The gravity of the offence is certainly relevant though not decisive. It is this relevance amongst other factors where gravity of the offence committed works and serves as a guide to grant or refuse bail in conjunction with other relevant factors to refuse bail on the last ground mentioned in the proviso to Section 12 (1) of the Act, that is to say, on ground that

release would "defeat the ends of justice".

28. Under the Act, as it now stands there is further guidance much more than what was available under the Act, 2000 carried in the provisions of Section 15 and 18 above extracted and the definition of certain terms used in those sections. A reading of Section 18 of the Act shows that the case of a child below the age of 16 years, who has committed a heinous crime as defined in the Act is made a class apart from cases of petty offence or the serious offence committed by a child in conflict with the law/juvenile of any age, and, it is further provided that various orders that may be made by the Board as spelt out under clause (g) of Section 15 depending on nature of the offences, specifically the need for supervision or intervention based on circumstances as brought out in the social investigation report and past conduct of the child. Though orders under Section 18 are concerned with final orders to be made while dealing with the case of a juvenile, the same certainly can serve as a guide to the exercise of power to grant bail to a juvenile under Section 12(1) of the Act which is to be exercised by the Board in the first instance.

29. Read in the context of the fine classification of juveniles based on age vis-a-vis the nature of the offence committed by them and reference to a specifically needed supervision or intervention, the circumstances brought out in the social investigation report and past conduct of the child which the Board may take into consideration, while passing final orders under Section 18 of the Act it is, in the opinion of this court, a good guide for the Board while exercising powers to grant bail to go by the same principles though embodied in Section 18 of the Act, when dealing with a case under the last part of the proviso to Section 12 (1) that authorizes the Board to deny bail on ground that release of the juvenile would "defeat the ends of justice."

30. Thus, it is no ultimate rule that a juvenile below the age of 16 years has to be granted bail and can be denied the privilege only on the first two of the grounds mentioned in the proviso, that is to say, likelihood of the juvenile on release being likely to be brought in association with any known criminal or in consequence of being released exposure of the juvenile to moral, physical or psychological danger. It can be equally refused on the ground that releasing a juvenile, that includes a juvenile below 16 years would "defeat the ends of justice." In the opinion of this Court the words "defeat the ends of justice" employed in the proviso to Section 12 of the Act postulate as one of the relevant consideration, the nature and gravity of the offence though not the only consideration in applying the aforesaid part of the disentitling legislative edict. Other factors such as the specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child would also be relevant that are spoken of under Section 18 of the Act.

31. In this context Section 12 and 18 and also Section 15 (Section 15 not relevant in the case of a child below 16 years) and other relevant provisions all of which find place in Chapter IV of the Act are part of an integrated scheme. The power to grant bail to a juvenile under Section 12(1) cannot be exercised divorced from the other provisions or as the learned counsel for the revisionist argues on the other specific disentitling provisions in the grounds mentioned in the proviso to Section 12(1) of the Act. The submission made based on the rule of *ejusdem generis* urged by the learned counsel for the revisionist is misplaced, in the opinion of this Court."

14. In the context of the aforesaid decision in **Mangesh Rajbhar (supra)** I have held in **Raju alias Ashish (supra)**:

11. Going by the aforesaid principle it cannot be said that bail to a juvenile can be denied on the first two grounds mentioned in the proviso alone or that the 3rd ground that speaks about the result of release being to defeat the ends of justice would have no reference to the nature and gravity of the offence. Its impact on the society certainly deserves some consideration of the prosecution case *prima facie*. Of

course, other facts such as specific need for supervision or intervention or circumstances brought out in the social investigation report and past conduct of the child would also be relevant that find mention in Section 18 of the Act.

12. The facts of the case in hand show that it is a case where the revisionist along with co-accused to begin with indulged in an act of eve teasing followed by molestation of one of the victims who was a minor girl, and, when her brother came to her rescue they engaged in an altercation with him, and then, pushed both the brother and the sister into a well. The entire act in itself about which there is prima facie good evidence and a deeper finding not warranted, is an act that shakes the conscience of the society. The offence is heinous. It is a double murder preceded by molestation of a young girl. It precisely falls, in the opinion of the court, into that category of cases where if, release on bail were to be ordered, it would defeat the ends of justice.

15. An overall look on the circumstances of the case brings to mind the fact that the occurrence, in which the revisionist was involved, was not of an ordinary kind. Not only the spontaneous elimination of eight policemen in action and six others left injured, is a horrendous crime that shocks the conscience of the society, but also an act that strikes at the roots of the State's authority in its territory. It speaks about the unfathomable extent of the lack of fear of the State in the minds of those who conceived and executed the dastardly act. Prima facie, if not at the center stage of this diabolical act, certainly as an important player, the revisionist seems to have actively participated. In the circumstances, permitting the revisionist to walk out free on bail would shake the law abiding citizens' faith in the rule of law and the State's authority. If that were to be done, it would certainly defeat the ends of justice.

16. This Court, therefore, finds the revisionist disentitled to bail under all the three exceptions to the rule, envisaged under the proviso to Section 12(1) of the Act of 2015.

17. It is, however, clarified that the remarks here are confined to judging the revisionist's bail plea and should, in no way, be understood or construed as comments on the merits of the case, that is to be judged at the trial.

18. In the result, this criminal revisions fails and stands dismissed.

19. Let this order be communicated to the Children's Court, Kanpur Dehat concerned as well as the Juvenile Justice Board, Kanpur Dehat, through the learned Sessions Judge, Kanpur Dehat, by the Registrar (Compliance).”

13. Further to appreciate the facts of the case, the order dated 21.9.2021 passed in Criminal Misc. Bail Application No. 48444 of 2020, Vinay Kumar Tiwari Vs. State of U.P., which was connected with Criminal Misc. Bail Application No. 49354 of 2020, K.K. Sharma (Krishna Kumar Sharma) Vs. State of U.P., is quoted herein below :-

“1. Since both the bail applications are connected and arisen from same case crime number, therefore, both the bail applications are being disposed off by a common order.

2. Heard Shri V.P. Srivastava, learned Senior Counsel assisted by Shri Satyendra Singh, learned counsel for the applicant (Vinay Kumar Tiwari), Shri Shyam Narayan Verma, Shri Anurag Pathak and Shri Harshit Pathak, learned counsel for the applicant (K.K. Sharma) and Shri Manish Goyal, learned Additional Advocate General assisted by Shri Rajesh Mishra, Shri R.P. Pandey, Shri Kaushalesh Prasad Tiwari and Shri Mayank Mishra, learned AGA, Shri Abhijeet Mukherjee, learned Brief Holder for the State and perused the record.

3. The present bail applications have been filed by the accused-applicants Vinay Kumar Tiwari and K.K. Sharma in Case Crime No. 0192 of 2020, under sections 147, 148, 149, 302, 307, 504, 506, 353, 332, 333, 396, 412, 120B, 34 IPC, section 7 of Criminal Law Amendment Act and section 3/4 of Explosive Substances Act, P.S.- Chaubeypur, District - Kanpur Nagar.

4. In the year 1981, in **Prem Chand (Paniwala) vs Union Of India, AIR 1981 SC 613**, Justice V. R. Krishna Iyer opened the judgment with a question "*Who will police the police?*" About 40 years have passed, but, that question is still there with a bigger question mark. On the date of incident, the raid conducted by police force was countered by the gangster Vikas Dubey and member of his gang in a very planned way and 8 police personnels including Circle Officer of the area were brutally killed and several police personnels sustained serious firearms injuries. The accused persons were carrying sophisticated firearms and the accusation against the accused-applicants is that they were in collusion with the gangster and his associates. Under a conspiracy, they leaked information of police raid and gave them opportunity to remain in preparedness and did not render due support to police personnels nor informed the police force regarding their preparedness to effectively counter the raid and their being equipped with sophisticated firearms.

5. As per FIR version and police papers, the brief facts are that on 03.07.2020, at 1 AM in the midnight, the incident took place in respect of which on the same day in the early morning at 5:35 AM, the FIR was lodged in which 21 accused persons were named with 60 to 70 unnamed accused persons and the allegation was that an FIR was registered on 02.07.2020, Crime No. 191/20, under section 147, 148, 504, 323, 364, 342, 307 IPC and section 7 of Criminal Law Amendment Act, 1932 against Vikas Dubey, Sunil Kumar, Bal Govind, Shivam Dubey and Amar Dubey. In order to arrest the accused persons, with reference to GD No. 5 at 00:27 AM midnight, SO Vinay Kumar Tiwari with other SI and Constables keeping weapon and cartridges reached at Bela crossing, where, as planning CO Bilhour Shri Devendra Kumar Mishra with other police officers along with Govt. Vehicle and Driver and SHO Bithoor, Shri Kaushalendra Pratap Singh with other police officers along with Government Vehicle and Driver and also SHO Shivrajpur, Shri Mahesh Yadav with SI and Constables (all mentioned in the FIR by name), after due consideration, set out from the place in search and arrest of the accused persons. Between the police parties of three police stations mentioned above, in view of fencing around the house of accused which is surrounded by big walls of adequate heights with barbed wire fencing and huge iron gates in different directions, it was decided that on reaching on the main gate in the leadership of CO Bilhour, the police will be divided into three teams. The first police team was led by CO Bilhour, the second by SHO Bithoor and the third by SO Chaubepur. The police teams and police officers ensured that there was no illegal article with them. Thereafter, the police party departed from Diwedi Atta Chakki to Bikru village and the moment they reached 20 meters close to the house of accused Vikas Dubey (now dead), it was found that on the road, a JCB machine was standing horizontally in such manner that the road was almost blocked. The police party anyhow, from the remaining space, managed to reach to the Tiraha close to the house gate of accused Vikas Dubey. The first police party lead by CO Bilhour stopped at the gate and the second party led by SO, Bithoor proceeded towards left side in east direction, and from the right side towards south direction the third police group led by SO Chaubepur was proceeding.

6. All the police personnels were in police uniform except one Guard who was in civil dress. There was sufficient light of electricity and dragon light. Suddenly, from the room situating on the first floor on the north east side from the roof of Vikas Dubey, accused Vikas Dubey and other co-accused persons with rifle, pistol and firearms in their hands, in a preplanned way, with intention to kill the police personnels, opened fire shouting loudly how the police personnels dared to raid and nobody would escape alive from this place. Side by side, from the roof of Raja Ram alias Prem Kumar Pandey, situating in front of the house of accused Vikas Dubey, Prem Kumar Pandey and other accused persons Shyam Bajpai, Chhotu Shukla, Monu, Jahan Yadav and others, and from the roof of the house of Atul situating in the west of the house of accused Vikas Dubey, Atul Dubey, Dayashankar Agrahari, Shashikant Pandey, Shiv Tiwari, Vishnu Pal Yadav, Ram Singh, Ramu Bajpai and other co-accused persons opened firing in a planned way with intention to kill the members of the police party. Because of this sudden and indiscriminate firing, most of the policemen of the first group and second group were seriously injured. Some of the members of police party after positioning themselves proceeded towards the house of Rajaram Pandey and some proceeded towards the open land of Pappu Mishra. At the same time when the police party was so proceeding, the accused persons from the roof of their house came down and started firing on already injured police personnel. The police party led by SO Caubepur, because of indiscriminate firing, did not proceed further. There was no place to shelter and there was regular firing by the main accused persons from the roof. They, therefore, covered the firing

in order to reach at a safe place. The accused persons coming from all sides surrounded the police personnel, fired and killed SI Anoop Kumar Singh Chawki in-charge Mandhana, Constable Jitendra Pal, Constable Bablu Kumar, Constable Rahul Kumar and Constable Sultan Singh by causing gunshot injuries. In the veranda of the house of accused Rajaram Pandey, SO Shivrajpur, Shri Mahesh Yadav and SI Nimbu Lal were also killed by the accused persons. CO Bilhour was dragged inside the house of Prem Kumar Pandey by accused Vikas Dubey, Prem Kumar Pandey, and Amar Dubey, Prabhat Mishra, Gopal Saini, Heeru Dubey, Bauwan Shukla, Shivam Dubey, Balgovind, Bauwa Dubey, and other co-accused persons and was killed brutally by them by causing injuries by fire arms and sharp weapons.

7. Meanwhile, remaining members of first, second and third police party, in their self-defense, started firing and saved 7 police personnels including SO Bithour, Shri Kaushalendra Singh, SI Sudhakar Pandey, Constable Shiv Moorat Nishad, Home Guard Jai Narayan Katiyar, Constable Ajay Kumar Kashyap, Constable Ajay Singh Sengar and took them to safe place. During the incident the accused persons looted the Govt. pistol of injured SO Bithour, but because of cover firing caused by the police party, the accused persons could not succeed in causing death of SO Bithour, Kaushalendra Singh. The accused persons looted the Government arms from the police personnels and absconded away. The alive policemen, in the light of electricity and other light, recognized the accused persons. Injured policemen were admitted in the Regency Hospital for their treatment. Thereafter, the police reached at the place of occurrence and found the dead body of the policemen lying there. 9MM pistol with 10 cartridges of SO Mahesh Chandra Yadav, 9MM pistol with 10 cartridges of SI Anoop Kumar Singh, AK-47 with 30 cartridges of Constable Jitendra Kumar, insas rifle with 20 round cartridges magazine of Constable Sultan Singh were already looted by the accused persons during incident. Besides the named accused persons, there were 60 to 70 more armed accused persons who in a very planned way, initially hiding themselves at a high place, with intention to kill the policemen, caused fire and subsequently, they jumped down from the roof and from very close range they committed brutal murder of the policemen. The policemen also fired, but, because of this incident and indiscriminate and daring firing by the accused persons, a situation of lawlessness and sense of fear was created. The accused persons were led by accused Vikas Dubey was a known gangster and history sheeter of the area and there remained fear and terror of the gangster and his gang around the vicinity. Because of the criminal activities, the gang had gained a lot of movable and immovable properties. The police inspected the place of occurrence where cartridges were scattered here and there and the sign of firing was also present on the walls around and other places. Human blood was also scattered all over the place. On this basis, the FIR was lodged by SO Vinay Kumar Tiwari, who is presently one of the accused applicants.

8. The statement of informant was recorded by the Investigating Officer. The dead bodies were also taken into possession, inquest report was prepared, dead bodies were sealed and were sent for postmortem. The statement of SI Azhar Isirat was recorded on the same day who stated in accordance with the FIR version. Thereafter, the statement of SI Vishwanath Mishra, P.S. Chaubepur, was also recorded who also stated to the tune of FIR and had additionally stated that from the roof of the house of the Vikas Dubey some women were loudly shouting that no police personnel should escape today and they were instigating the accused persons to kill the policemen. These women were Smt. Chhama, Smt. Khushi, Smt. Rekha Agnihotri, a maid of accused Vikas Dubey who used to live in the house of accused Vikas Dubey and she was also involved in his criminal activities.

9. Thereafter, SO Vinay Kumar Tiwari was suspended by order dated 4th July, 2020 of SSP, Kanpur Nagar on account of his inaction, suspicious role and for not apprising the police force about the kind and quality of weapon accused Vikas Dubey and the members of his gang were keeping, nor he apprised about the way to get away from the place of occurrence. It was also found that when the firing started from the side of accused persons, the applicant did not lead his team and escaped from the place. Because the police personnels were not having any knowledge about the way to get away from the place, a number of them were killed and in a great number sustained injuries.

10. The IO recorded the statement of constable Rajeew Kumar who stated to the tune of SI Vishwanath Mishra and further added that SI Krishna Kumar Sharma and SO Vinay Kumar Tiwari of the police station were closely related with accused Vikas

Dubey and prior to the incident, SI Krishna Kumar Sharma talked with Vikas Dubey for 20 minutes on mobile. He has also stated that these police officers (accused-applicants) were conspired with accused Vikas Dubey to humiliate and give lesson to CO Bilhour out of jealous and bad relationship.

11. Statement of constable Abhishek Kumar was also recorded and he also stated that SI Krishna Kumar Sharma and SO Vinay Kumar Tiwari were closely related with accused Vikas Dubey. He has also supported the statement of Constable Rajeev Kumar on that point. Statement of co-accused Suresh Verma was also recorded and he also stated in similar fashion showing the closeness of these two with accused Vikas Dubey and the prior talk with SI Krishna Kumar Sharma with him just before 20 minutes from the time of incident.

12. SI Azhar Ishrat was again examined by the IO, and despite that he supported the FIR version, he also stated about the involvement of the women who instigated the accused persons for commission of the offence and said that he saw Sanjay Dubey @ Sanju who was firing on the police party who was known to him because he used to come to the police station regularly. Co-accused Suresh Verma was also instigating the other accused persons. On being asked by the IO, he stated that SI K.K. Sharma was not present there during the raid who was present in the police station but deliberately did not join the raid. He was asked to join but he avoided. He had already given information about the raid much before the time of incident to gangster Vikas Dubey with whom he was closely related. He has also stated that he knew the accused persons with name because he is posted in the police station from the last about 3 years and he had gone to the village of Vikas Dubey several times in respect of his official duty and Vikas Dubey and his other associates were well known to him. He saw and recognized the accused persons in the solar light which is installed at the main gate of Vikas Dubey and also in the light on the roof of the house of Vikas Dubey, Prabhat Dubey, Gopal Ji Saini, Govind Saini, Raja Ram @ Prem Kumar Pandey. He identified the other accused persons going from the side of house of Agar Dubey to the house of Vikas Dubey. The witness has stated that he also fired 7 times but realizing that by firing his location will be exposed, he stopped firing and concealed himself in the veranda of the neighbour of the Prabhat Mishra. Constable Navneet also concealed himself there. Thereafter there was power cut and Prabhat Mishra who was firing from his roof came down with his rifle and seeing them, he fired on Constable Navneet but because the witness intervened by slapping on the butt of rifle, constable Navneet escaped and thereafter he and constable Navneet, because they were fully acquainted with the geographical situation, through the field, came to the road. The JCB driver was Rahul Pal and not Monu as he had stated earlier. He has named the accused persons who fired on the members of the police party.

13. Subsequent statement of SI Vishwanath Mishra was recorded and he has given detailed statement and besides that he supported the FIR version, he has also stated that the accused persons were firing from the roof of Prabhat Mishra. He has stated that Vikas Dubey was a known criminal and, in the area, he used to possess and grab lands of others with the help of police. He used to create terror and organize gambling. SO Vinay Kumar Tiwari was in his contact through SI K.K. Sharma and they used to regularly associate with them. This came in the knowledge of CO Bilhour and he had submitted adverse report about them to the superior authority. On the date of incident, K.K. Sharma deliberately avoided in participating in the raid and during the period he was regularly in touch with the accused persons. He and SO Vinay Kumar Tiwari just to lower down the image of CO Bilhour, conspired with the criminals and consequently 8 police persons were killed and 7 police persons sustained serious injuries.

14. SI Ajhar Ishrat was re-examined by IO and he also stated that the accused persons were well informed about the raid which is also clear from electronic surveillance and other evidence. The relationship between SO Chaubepur and Circle Officer was bad and the CO had sent adverse report regarding misconduct of SO Vinay Kumar Tiwari to superior officer. He stated that SI K.K. Sharma and SO Vinay Kumar Tiwari were in contact with accused Vikas Dubey and used to regularly associate with him and therefore, the accused persons succeeded in causing such a horrible incident only because SI K.K. Sharma and SO Vinay Kumar Tiwari leaked the information about raid to them. He has also stated that he recognized the accused persons in the road light and accused persons were also lighting torch from their roof and were shouting.

15. Certain call details have been also annexed at page 156 and onward showing that accused-applicant K.K. Sharma had talked with the gangster and his gangmen. The learned counsels for the applicants have contended that constable Rajeev Kumar was also in touch with Vikas Dubey. The audio conversation of Constable Rajeev Kumar with Vikas Dubey has also been annexed to show that he was in regular touch with Vikas Dubey and he has not been made accused. Constable Rajeev Kumar has been subsequently examined and he has stated that Vikas Dubey was having prior knowledge of the police raid and he rang him on mobile phone but, being occupied in work, he could not pick up the same and when he saw that there was miss call of Vikas Dubey, he dialed him and Vikas Dubey gave a lot of threatening and abuse and threatened that he will kill all the police personnels who will be found on the police jeep and he would commit such a big offence which will be unprecedented. The witness has stated that he recorded the phone call and told about this threatening to Vinay Tiwari, SO, Chaubepur and also said that the gangster has prior information of police raid, but, SO Vinay Tiwari ignored and did not take him seriously. He was also accompanying SO Vinay Tiwari during the raid. He recognized most of the accused persons. He has stated that Chhama Dubey, Khushi Dubey and Shanti Devi from the roof of Atul Dubey were disclosing the location of police personnels to the accused persons and were instigating them to kill the policemen. The accused persons continued firing from 1 AM in the night for 30 to 35 minutes.

16. From the description above, it is clear that 8 police personnel including the Circle Officer were brutally murdered by the accused persons and 7 police personnel sustained serious injuries. The accused persons who were named in the FIR with 60-70 more accused persons constituted unlawful assembly with firearms and deadly weapons killed eight police personnels in a brutal way and injured the police personnel very badly by causing firearm injuries. Some of the police personnels were killed and part of their limbs was also separated from body. The police witnesses who were one time colleagues of the accused applicants have given statement that the accused applicants were very close to gangster Vikas Dubey and his gangmen and they leaked the information of raid which gave opportunity to the accused persons to prepare and plan the brutal murder of the police personnels.

17. Submission of the learned Senior counsel for accused applicant Vinay Tiwari is that there is no direct or indirect evidence against him. It was a police raid conducted by the police party which was countered by the main accused persons and in the incident 8 police persons were killed by gunshot injuries and 7 policemen also sustained gunshot injuries. The accused applicant was himself leading one of the police party. He himself lodged the FIR against the main accused persons and he also lodged FIR on the basis of information given by Rahul Tiwari implicating them. Therefore, it has been submitted that there is no question of the accused-applicant being involved in the commission of the offence. He has no motive nor there was any reason for him to enter into so called conspiracy which resulted in such a heinous crime. Further submission is that the witnesses have changed their version when they were subsequently examined by IO and all of them in a tutored way have stated about the closeness of the accused-applicants with gangster Vikas Dubey and his gang. There is no substantial evidence and there is only some scattered evidence against the accused applicants which is insufficient for the accusation of criminal conspiracy. Nothing can be concluded against them on the basis of CDR, particularly against SO Vinay Tiwari who never made any communication on mobile with either Vikas Dubey or his gangmen. There is no such CDR collected by the Investigating Officer.

18. It has been further submitted that the applicants have been falsely implicated. Late CO Devendra Mishra was informed about the incident of Rahul Tiwari who directed him not to make entry in GD as the police is going to take stern action and this will alert gangster Vikas Dubey. The policemen including CO Devendra Kumar Mishra were posted there for much longer period and were well-versed with history sheeter Vikas Dubey. The accused-applicants had no cordial relation with them. The said viral letter of CO indicating close relation is forged and has been obtained from social media. No such letter was sent by CO Mishra to SP, Kanpur Nagar nor the applicant was put to any departmental proceeding nor any explanation was asked from him. It has also not been mentioned in his suspension order. The allegations regarding his conduct during raid are vague, imaginary and false and is not supported by any evidence.

19. On the contrary, the learned additional Advocate General Shri Manish Goyal

has argued that it is not a case of simple crime and the crime has been committed because the police assisted the gangster and leaked the information with regard to raid and, because of the prior information about the raid, the gangster was in preparedness and he planned the murder of the policemen and it is why so many accused persons assembled with the main accused and were active at the time of raid. They were inhabitants of area falling within the same police station in which house of the gangster situated and where the incident took place. Being the member of police force and working at the local police station, the accused-applicants had enough information about the geographical situation and path ways around the vicinity. The police force reached to the place of gangster and could not get away from the place as the accused applicants did not render support nor cooperated and remained inactive. The role of SI K.K. Sharma is rather evident in view of the fact that he was regularly in touch with Vikas Dubey and his gang and through him SO Vinay Tiwari was also in his touch. Both the accused applicants certainly helped them and always closed their eyes towards the criminal activities of the gang. They, during the incident, maintained distance from the other police party and went away to save themselves. In case of such an organized crime where members of police force were assisting the gangster and his group, it is not possible to have a direct evidence. Moreover, in a case of conspiracy, there is no possibility of direct evidence. The evidence which can be available is only circumstantial in nature and may be in the form of inaction on the part of the accused applicants who, in their endeavor to assist the accused persons, kept themselves out from the picture. Therefore, the conclusion of conspiracy is to be drawn from the circumstances of the case and the situation that the applicants, being member of police force, were indulged in assisting gangster Vikas Dubey and his gang, and all the paper work was done by them. It has been submitted that the IO examined several witnesses of police force who worked with the accused applicants and they have stated about conspiracy and their close links with the gangster and his gang.

20. Moreover, it has been also pointed out on behalf of the State that, on being arrested, gangster Vikas Dubey gave statement to the IO revealing that the accused applicants used to give prior information of police activities and on the date of incident also he was informed about the police raid. The gangster is dead and his statement given to police is legally admissible as the same is statement of a dead man. Therefore, it has been submitted that taking into consideration over all circumstances, the culpability is writ large and the accused applicants do not deserve to be released on bail.

21. This case raises certain serious questions which relate to administration of criminal justice system in the country with reference to organized crime and criminals and the role and efficiency of police force in combating the problem. The police force is one of the most important force with great potential, easily approachable to the people facing criminal wrong and law and order problem and the most visible component of the criminal justice system. Like other departments, there has been a general fall and deterioration in the standard of functioning of the police force also. With time, it has been seen that the police force, not as a whole, but in small groups, has gone through a phase of moral and professional deterioration. There are black sheep also in the police force and they reflect upon the whole department which has led to growing concern, and a number of attempts have been made to mend this situation. In this direction, the past few years have been particularly eventful, with a number of positive developments having taken place towards a solution of the problem and the state appears to have observed zero tolerance policy towards organized crime and criminals. Strict and rigorous steps have been taken to break and demolish financial network of gangsters. In future, this shall certainly bring about more and more positive results towards restricting criminal activities and organized crime.

22. Organized crime is not confined to a single state, or any one country and has become an international problem in view of their wide spread network and sometimes they have been also found to be a natural ally of terrorist groups. Organized crime is an act of threat involving murder, kidnapping, gambling, arson, robbery, burglary, extortion or dealing in narcotics or dangerous drugs and other crime. The basic features of organized crime involves a group of individuals that is structured, sophisticated and widely spread across nations; it is a section of society that seeks to operate outside control of the people and government and it is a self-perpetuating, continuing criminal conspiracy for profit and power, using fear and corruption and seeking protection from law. The focus areas of organized crime are

smuggling, drug trafficking, women and child trafficking, arms trade, hawala, circulation of fake currency, extortion and contract killing. With financial solidarity, these criminals have entered into business of film financing, hotel business, house building, government contracts and the like. The gangsters are divided into three categories, namely, sharp shooters, money collectors and liaison agents. The liaison agents deal with lawyers and law enforcement officials to resolve legal problems and to ensure easy bail to gangsters. **(For details see S M Sharma The Organized Crime in India, Tokyo: United Nations Asia and Far East Institute (UNAFEI), 1999, Vol. 54, pp 24,88)**

23. The police force faces some real difficulty in combating with organized crime and criminal activities. The police personnels are mostly not provided with that kind of sophisticated arms which are available in plenty to the gangsters and their gang members. The police stations are mostly under-manned and the strength of police force is remarkably less in comparison to the population. The police has to act in accordance with legal norms and while acting so, they are required to avoid any excesses and human rights violation. They have to behave like a disciplined force actuated to uphold rule of law and motivated by sense of public security and service. The force also face the problem of some police personnels who may be close and in collusion with the local mafia. They can leak the confidential informations and strategy of police for taking action and conducting raid to arrest the gangsters. On the contrary, the organized criminals keep with them all kinds of sophisticated weapons, they use the same indiscriminately and they can cause any amount of damage to the human life and property. Where they are having support from some members of police force, their potential to execute criminal act is adequately enhanced.

24. The problems of police force has been time and again highlighted by several Law Commissions appointed for making recommendations for police reforms and needless to point out that several recommendations have been suggested from time to time. It is pertinent to mention that the Supreme Court has also issued directions in view of recommendations in some of the judgments such as **Vineet Narain v Union of India, AIR 1998 SC 889** and **Prakash Singh v Union of India, (2006) 8 SCC 1**. *Professor M P Singh*, in his book **Police Problems and Dilemmas in India 10 (1989)** has discussed the fundamental complexities of Indian police system and has remarked that the police in the country faces tremendous challenges and works under extreme pressure due to a number of reasons such as growing unemployment, deterioration in educational environments, conflicting claims of socio-economic components, fluctuations in political order, rampant corruption etc. Frequent transfers to unfavorable positions or locations have demoralizing effects on the police force and it becomes a survival technique for police to have close relationship with one or other political person.

25. The purpose of the above discussion is to show the prevalent conditions in which the police has to perform the complicated and difficult job of ensuring law and order, maintaining security and peace, preventing crime and taking action against and causing arrest of offenders. These all require home work and team work and if any member of police force starts giving clues about and leak the police strategy, the strategies are bound to fail and shall certainly result sometimes, particularly when police is confronting against organized crime and criminals, in disastrous situation as has resulted in this case. In such situation, policing such police personnels is a big task and it requires early identification of such black sheep, monitoring of their conduct, isolating them and taking immediate strict disciplinary action against them.

26. Now coming to the facts of this case. The accusation against the accused-applicants is that they had close friendly relationship with the gangster Vikas Dubey who and the members of his gang were running organized criminal activities of all sorts and was residing and flourishing within the local jurisdiction of the police station in which both the applicants were posted. IO has examined several witnesses and they have stated about the close relationship of the applicants with the gangster Vikas Dubey and gang. Submission of the learned senior counsel and other counsel for the the applicants is that the witnesses have stated against the applicants only when they have been examined subsequently on second and third time and their subsequent statement is after thought to meet the case against the applicants. Otherwise, the witnesses had not stated anything against the applicants.

27. It is pertinent to mention that gangster Vikas Dubey was arrested in Ujjain and while he was being brought to Kanpur Nagar, the Investigating Officer took his

statement. On the way, the police vehicle suffered accident. Vikas Dubey snatched the pistol of IO and attempted to run away from the police custody. He opened fire on police personnels and by police firing in self-defense, he was shot dead. The IO got hospitalized and after being discharged, he wrote the said statement of Vikas Dubey in CD. Some of the part of his statement has been also quoted in the bail application. In brief, Vikash Dubey, giving detailed description of the incident, has stated to the IO that on 2/3.07.2020, he had prior information of police raid at about 04:00 PM and the information was given by SI K.K. Sharma. The JCB of Sultaan Ahmad was working there from the last one and half months and in the night at about 12:00 PM, he called upon driver Rahul Pal with JCB and he got obstructed the road by JCB so that the police suddenly might not come to his house. He further stated that one Rahul Tiwari was harassing him by giving false complaints against him and the police was also supporting him. Therefore, hatred was generated in him towards the police and he had decided that he might be killed but he will give lesson and kill as many as police personnels as he can. He called his associates Raja Ram @ Prem Kumar (maternal brother), Shashi Kant, Shyamu Vajpayee, Chotu Shukla, Jahaan Yadav, Atul Dubey, Daya Shanker Agnihotri, Shiv Tiwari, Vishnu Pal Yadav, Ram Singh, Ramu Vajpayee, Amar Dubey, Prabhat Mishra, Gopal Shaini, Govind Shaini, Dharmendra @ Jeeru Dwivedi, Manish @ Veeru Dwivedi, Dheeraj @ Dheeru Dwivedi, Vitul, Uma Kant @ Guddan @Bada Bauwan, Shivam Dubey, Bal Govind Dubey, Pauwa @ Pradhan Dubey, Shivam @ Dalal, Nandu Yadav and Balloo Musalmaan. Licence holders came with their arms and to the remaining persons, he provided guns, country made pistols and cartridges. CO, Bilhaur, Devendra Mishra was behind him and, therefore, he was brutally killed. He was having animosity with SO, Shivrajpur also as in February, 2020, in the election in Kota, his nephew Aman Tiwari was contesting election and SO Shivrajpur got his man arrested with illegal pistol whereupon he felt very humiliated. His close companions were on the roof with arms and he had made planning on every pathway coming to his house to kill the police personnels. Fortunately, the police force came from the way on which J.C.B. was planted and it made the task very easy and they surrounded the police officials and killed them. When there was power cut, he used code words which was a signal to run away from the place. He had also intended to kill his distant associates in order to implicate the police force but this could not happen. The women of his family and close to him such as Rekha Agnihotri, Kshama, Khushi, Shanti Devi were told to cry seeing the police personnel as "thief-thief". Manu Pandey was also having the knowledge of planning. Thereafter, with the help of his close associates, he went to Ujjain Mahakal Temple.

28. Submission, in this respect, from the side of accused-applicants has been two fold- that the statement of Vikas Dubey is not relevant against accused-applicants as he was the prime accused in the FIR and secondly, he did not state any thing against SO Vinay Tiwari and has only taken the name of SI K K Sharma. From the side of State, it has been contended that the statement of Vikas Dubey is statement of a dead man and it has legal effect under section 32(3) of the Indian Evidence Act. Moreover, other witnesses have stated that SO Vinay Tiwari was very much close to Vikas Dubey through SI K K Sharma and therefore, the statement can be well considered against both the applicants. Section 32(3) provides as follows:

"32 Cases in which statement of relevant fact by person who is dead or cannot be found, etc, is relevant. --Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:--(3) or against interest of maker. --When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages."

29. It is clear from the reading of section 32(3) that statement of a dead man has been legally recognized and used in evidence even though the same does not relate to the cause of his death. Although, a final view is not required to be expressed at this stage as the same will be considered by the trial court, yet, this much is clear that the statement is of a dead man and the same has legal relevance in view of the provision of the Evidence Act.

30. CDR has been annexed with the bail application at page 156 to 163 to show

the relationship of accused-applicants with the gangster. On the basis of study of CDR, the IO has noted that on the date of incident, prior to incident, the accused persons contacted each other and this call pattern is exceptional in the last one month as this type of communication between them is unique; the CDR of the mobile number of Vikas Dubey shows that his location was in Village Bikaru where the incident took place; between Vikas Dubey and co-accused persons of his gang, there is 15 calls by the gangster, again a unique pattern, by which he talked to the co-accused persons which indicates that he was preparing for the incident; Vikas Dubey talked with one police personnel Rajiv Kumar prior to incident which is full of abusive language and threatening to kill police personnels and of committing big criminal incident; it further indicates that he was having prior information of police raid and he was in full preparedness to commit the offence and kill police personnels as many as he can; and call details also show that between co-accused Ramsingh and applicant K.K. Sharma, there were two calls and the location was in Village Bikaru, and as such by the mobile of Ramsingh, Vikas Dubey was in contact before and during the incident. The accusation is that the accused-applicants, particularly accused-applicant K.K. Sharma, were giving information to the gangster and were working as agent to the aid and assistance of the gangster and it is why accused K.K. Sharma kept himself in the police station deliberately and both the accused-applicants had conspired with Vikas Dubey and gang as it was not possible for the accused-applicant Vinay Kumar Tiwari to contact the gangster at the time or during the incident.

31. The learned Senior Counsel for the accused-applicant Vinay Kumar Tiwari has submitted that constable Rajiv himself had also contacted on mobile with Vikas Dubey and as such he should have been also made accused on the basis of the analogy put forward by the State. Moreover, there appears to be no such communication by applicant Vinay Kumar Tiwari with the gangster or his gang-men. The statement of constable Rajiv however shows that he found a miss call of Vikas Dubey and he called back to him. In respect of second argument, it has been submitted by State that applicant Vinay Tiwari used to be in contact with the gangster through K.K. Sharma. Whatever the truth may be, this much is clear that the accused-applicants who were posted in the same police station could not have any professional relationship with the gangster and his men and communication on mobile with him is certainly a relevant circumstance which can be considered during trial.

32. From the side of the State it has been also pointed out that the incident took place in the notified area under the UP Dacoity Affected Area Act and due attention is required to be given to the law provided under section 10 of the Act. The relevant part of Section 10 is as below:

"10. Special provisions regarding bail. - Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no person accused or convicted of a scheduled offence shall, if in custody, be released on bail or on his own bond, unless-

(a) the prosecution has been given an opportunity to oppose the application for bail, and

(b) where the prosecution opposes the application for bail, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence:....."

Submission is that after investigation, finding sufficient evidence, charge-sheet has been already submitted by police and at this stage there is no reason to believe that the accused- applicants are innocent.

33. From the side of accused-applicants, it has been pointed out that the witnesses examined by the IO initially did not state any thing against the accused-applicants and only in their second and third statements, they have started making allegations against them. As such, their subsequent statement is nothing but an after thought in order to falsely implicate the accused-applicants. It has been specifically mentioned that the allegations have been made by the witnesses mostly in the last part of their statements and a reading thereof shows that the words and expressions used are same and similar which is not possible if statements have been given by the witnesses individually and separately. This contention appears to have no weight as it has been rightly pointed out on behalf of the State that all the statements are part of CD and a view at this stage has to be taken after due consideration to all the

material on record.

34. The bail applications have been also opposed on behalf of State on the ground that applicants are police officers and they are in a position to influence the witnesses if they are released on bail. They hatched conspiracy with the gangster and deliberately acted in such a manner which helped the gang in the commission of this offence. It has been submitted that in the counter affidavit dated 25.1.2021, in order to save skin, accused-applicant Vinay Tiwari set up a false case that while he was on patrolling duty on 2.7.2020, he saw Vikas Dubey and his gang-men beating one Rahul Tiwari and while he confronted him, Vikas Dubey pointed his rifle on him and to save himself, he came back and convinced Rahul Tiwari to lodge FIR against Vikas Dubey. The falsity of this version is clear from the two facts, one, this has not been mentioned by the accused-applicant in the relevant GD, and two, this fact has been nowhere mentioned in the FIR of Rahul Tiwari nor it has been mentioned therein that he saved the informant during the said incident. Further submission is that applicant Vinay Kumar Tiwari himself lodged FIR and all papers were either prepared by him or on his direction, and he made all efforts to save his skin and after the applicants were made accused in this case, during investigation, incriminatory things have been revealed against them.

35. Further submission is that the applicant as SHO of concerned police station was very much aware about the activities of Vikas Dubey and was having healthy relation with him. The then Circle officer Sri Devendra Mishra (deceased) had also made a complaint against the working of the applicant highlighting his close relationship with gangster Vikas Dubey. On the date of incident, the raid was planned which is clear from GD entry of 03.07.2020 of 12:27 AM in the mid night about movement of the police team. When the police team reached near the house of accused Vikas Dubey led by Circle Officer, Bilhaur, late Sri Devendra Mishra and SO Shivraj Pur, SHO Bithoor, the applicant requested to be the part of third team and convinced CO, Bilhaur to lead the main team and to enter from the main gate and while the team of CO proceeded towards the gate, they found that a JCB had blocked the main gate and a narrow passage was left there. Anyhow, when they reached close to the gate, suddenly from all the three sides, indiscriminate firing was started from the side of the gangster and his associates. The accused-applicant as per plan had to conduct raid from the right side. But neither he proceeded towards the right side nor he provided any help to the other teams. As such, the conduct of the accused-applicant shows that he was having knowledge of the plan of Vikas Dubey and he was also aware about the topography of the place and he knowingly avoided to lead the team which raided from the main gate and on account of conspiracy, the accused-applicant did not provide necessary information.

36. All the aforesaid contentions relate to one or other circumstance and they will be examined during trial and, therefore, it is not desirable to express any final opinion. The fact is that in the incident, CO Devendra Mishra, SHO Mahesh Kumar Yadav, two Sub Inspectors Anoop Kumar Singh, Nebulal and four Constables Jitendra Kumar, Sultan Singh, Rahul Kumar and Babloo Kumar were brutally murdered and seven police personnels SI Kaushalendra Pratap Singh, SI Sudhakar Pandey, Home Guard Jairam Katiyar, constables Ajay Singh Sengar, Shiv Murat Nishad and Ajay Kumar Kashyap received gun shot injuries and one person also received injury. Perusal of injuries found on the dead bodies shows that several gunshot injuries were caused to them and it was ensured that they could not survive. The gunshot injuries of all the deceased police personnels affirm that injuries were caused from close range as blackening and charring has been found. This also shows intention and knowledge in causing death and extreme culpability on the part of the main accused persons.

37. At no point of time, applicant Vinay Tiwari along with the members of his team responded to provide any backup to the team. While the members of other two teams, late Sri Devendra Mishra, late Sri Mahesh Chandra Yadav and late Nabu Lal, Sub Inspector and from second team SHO Bithur Kaushlendra Singh sustained fire arm injury and from his team five other police personnels including Sub Inspector Anoop Kumar were shot dead, only two persons from the team of accused-applicant sustained injuries who, as submitted, by default joined the first team at the time of firing. The accused-applicant did not receive any injury and this also shows that he avoided active participation in the raid. The accused-applicant deliberately concealed the availability of automatic weapons with gangster Vikas Dubey and also concealed the incident which took place at the time of alleged saving of Rahul Tiwari. For this lapse and misconduct, the accused-applicant was suspended.

38. During the course of investigation, several witnesses present at the time of incident have stated that the accused-applicants were having cordial relationship with accused Vikash Dubey. Constable Rajeev Kumar who was the fellow of applicant Vinay Tiwari has in his first statement stated that the applicant Vinay Tiwari, co-accused Sub Inspector K.K Sharma were having cordial relationship with gangster Vikash Dubey. Constable Abhishek Kumar and others have also stated the same facts. The call details show that Sub Inspector K.K. Sharma on 02.07.2020 made several calls to the gangster and informed them about the raid as he talked with the accused for more than 20 minutes in different calls. There is enough evidence on record to show that the accused-applicants were having very good relationship and soft corner towards Vikas Dubey. This fact has also been stated by accused Kshama and Rekha Agnihotri in their statements.

39. The witnesses have stated that Sub Inspector K.K. Sharma was regularly in touch with the main accused and was regularly informing him about the movement of police team. The call details of K.K. Sharma sufficiently demonstrate his involvement in the crime. Moreover, Applicant Vinay Kumar Tiwari was having jealous and bad relation with Circle Officer Devendra Mishra and it is why he was convinced by accused-applicant to lead from the main gate as a result of which 8 police personnels were killed and 7 policemen received gunshot injuries. After investigation, sufficient credible evidence was found against the accused-applicants showing their involvement in the whole criminal conspiracy which led to the commission of such a horrendous crime. They conspired with gangster Vikas Dubey, leaked confidential information about the raid and facilitated the gangster and his gang to commit such a crime which resulted in death of 8 police officers. The enmity and bad relation of accused-applicant with Circle Officer Devendra Mishra is very much evident and the Investigating Officer has taken note of the viral letter in his CD in which Circle Officer Devendra Mishra had intimated to higher authorities that integrity of Vinay Tiwary was completely doubtful and he was regularly meeting with Vikas Dubey and was communicating with him. It was also complained that if Vinay Tiwari does not modify his conduct, any time some serious incident can take place. With the CD, the report of Sri Devendra Mishra, Circle Officer has been annexed by the accused-applicant in his rejoinder affidavit dated 22.02.2021. At this stage, it cannot be ruled that the said letter of Devendra Mishra is fake as contended on behalf of accused-applicants.

40. It has been also argued from the side of accused-applicants that investigation has been completed and charge-sheet has been already filed in this matter. The applicants are in jail from the last more than one year. Their pretrial detention for such a long period is resulting in deprivation of their right to liberty and freedom. The learned counsel for applicant K.K. Sharma, has relied on the judgments of **Dalvir Hussain v State of Gujarat, AIR 1991 SC 56, Pawan Kumar v State of UP, 2015(90) ACC 9 (SC), Mukesh Kumar Kashyap v State of Uttarakhand, 2015(89) ACC 903, State of UP v Rajju, 2005(53) ACC 343, and K R Purushothaman v State of Kerla, 2006(54) ACC 255(SC)**. Therefore, it has been requested that, taking into consideration overall circumstances and the long period to which they are in jail, the court should take sympathetic view and the applicants should be released on bail.

41. This court is not oblivious about the fact that the release on bail is crucial to the accused as the consequences of pretrial detention are grave. If release on bail is denied to the accused, it would mean that though he is presumed to be innocent till the guilt is proved beyond reasonable doubt, he would be subjected to the psychological and physical deprivations of jail life. The jailed accused loses his job and is prevented from contributing effectively to the preparation of his defence. Equally important, the burden of his detention frequently falls heavily on the innocent members of his family. But, if the accused is involved in a conspiracy for commission of a heinous offence by a hardened criminal, his release on bail will give him an opportunity to abscond or temper with witnesses. Against such crime, social reaction is also sharp. Therefore, a balance between the need for protection of individual liberty which is so important and the requirements of the society for being shielded from the hazards of being exposed to the misadventures of organized crime has to be maintained.

42. The criminal justice system is often criticized for its pro-active approach towards the accused. The rights of the accused are protected not only during trial but also during investigation and even after the delivery of judgment, more particularly when the case has resulted in conviction. The accused cannot be kept in police custody unless with the order of Magistrate and that too is possible only within first

fifteen days of his arrest. The bail provisions are liberal and for arresting the accused there must be prima facie evidence collected by the Investigation Officer. He can also be released on anticipatory bail. The accused cannot be put to cruel or inhuman treatment at any stage. There is a strong presumption of innocence in favor of accused and consequently, it creates a heavy burden on prosecution to establish the guilt beyond any shadow of reasonable doubt. The accused has been given constitutional protection against self incrimination and he has right to keep silence throughout and his silence will not be taken adversely against him. Moreover, he enjoys all the rights associated with his fair trial claim including free legal aid and impartial justice delivery. Thus, protection of rights of accused is natural feature of democracy which is accorded for the simple reason that the criminal law machinery is controlled by the State. Accused is given free food, free lodging, free clothes etc. and if he has been directed to undergo rigorous imprisonment, he will have to be paid by the state for the work he has rendered during jail life. But, the victim who is the most adversely affected person by the criminal incident has no such claim. The guilty man is lodged, fed, clothed, entertained and educated by the state at the expense of the public, but ironically, the victim is left to pay for even his medical expenses which may be the result of that criminal event. There is no free education, free housing, free clothing and free food for the victim. The injured party, in the criminal law, often takes a back seat and after being examined in court as witness, he stands aside waiting and watching the criminal justice in action satisfied by conviction and sentence. He is fortunate if he gets a little compensation or even expenses of the litigation. The administration of criminal justice inspired and dominated by human rights and humanitarian causes does every effort to reform, treat and rehabilitate the offender, but does not show equal concern for the poor victim who has suffered loss or injury. **(See for details Stephen Schafer, Restitution to victim of crime, Stevens & Sons Ltd., London (1960) p. VII as quoted by Bharat C. Das, Victims in the criminal justice system , 19 (New Delhi), APII Publishing Corporation, 1997, Proff. S.V. Joga Rao, Victim Restitution, the Lawyer, June 1990, p. 17 and Proff. A. Lakshminath & Dr. J. Krishnakumari, Criminal Trial and Justice, ALT publication (2003) p. 258)**

43. Crime, corruption and population are three major problems the society is facing at present. While against crime and corruption, particularly when it is organized crime and corruption, strict state action and intervention is necessary to restrict and minimize the same to maximum extent, control over population growth requires legal steps and strategy inclusive of motivation, spread of education and awareness and some positive incentive to those who opt for family planning. Against crime and corruption, the State must continue with the policy of zero tolerance. The political parties should rise above board against crime and corruption without being influenced by consideration of "his man" and "our man" as this approach will not only undermine rule of law but will also damage the democratic set up of the nation.

44. This is not an unknown phenomenon that there are policemen, may be very few in numbers, who show their loyalty more to such gangster than to their department for the reasons best known to them. Such policemen tarnish the image, name and fame of police and it is necessary that suspicious police personnels should be taken to task and their conduct should be regularly monitored for which a mechanism should be evolved, and if it exists already, the same should be geared up at different levels. There is a concerning trend that one or other political party welcomes gangsters and criminals involved in organized crime in the party and try to back and protect them, painting and spreading an imaginary image of Robinhood. They are given tickets to contest elections and sometimes they win also. This trend needs to be stopped as soon as possible. All the political parties should sit and together a decision is required to be taken by them that gangsters and criminals will be discouraged in politics and no political party will give ticket to them in public elections. The political parties should rise to the occasion and must guide themselves keeping in view that there cannot be a concept of "my criminal" and "his criminal" or "my man" and "his man," as a gangster is gangster only and is required to be condemned from all corners and even people/voters should also take note of it while making their choice for a candidate in a general election. We must have the idea in mind that if we are entrusted with responsibility of nation building, our responsibility is to think about the future generation to whom we have to handover a legacy. We need to ponder what kind of nation and society we want to leave for our future generation. A sooner decision is necessary lest one day these gangsters and criminals will become "Bhasmasur" and will give such serious dent to the country and democratic set up which cannot be repaired.

45. The pursuit of life, liberty and peace includes freedom from crime. The State's foremost duty is to provide these basic rights to each citizen. The success of a Criminal Justice System can only be measured by how successful it is in ensuring these rights in word and spirit. The extent to which these rights are successfully protected, will be reflected in the confidence of the public in the system. The organized crime should be treated differently from traditional individual criminality. Conspiracy is an integral aspect of organized crime. There cannot be a direct evidence of conspiracy in such cases and the law has to deal with organized crime on a footing different from that of individual or conventional crime, as regards admissibility and appreciation of the evidence.

46. The discussion aforesaid certainly goes to show that the nature of offence and amount of culpability is serious, heinous, shocking and unprecedented. It is also evident that the main accused persons had prior information of the police raid and naturally, in the present set of facts, this information was revealed by police which not only made the main accused persons alert but also provided them fullest opportunity to prepare for attack and commit such a horrendous crime in which 8 police personnels including the Circle Officer sustained gunshot injuries and died. The situation of crime was such and so sudden that the police force could not get opportunity to sustain and counter and could do nothing. The accusation against the accused-applicants is that they conspired with the main accused for the commission of the offence because of their good relationship and loyalty with main accused and also they wanted to score their personal grudge with the Circle Officer. It is not possible to give a final opinion at this stage. Certain witnesses who were part of the police raid have given evidence against the accused-applicants showing their closeness with the main accused persons which is supported by circumstances such as the magnitude of the crime and the preparedness on the part of gangster Vikas Dubey and his associates; the statement of Vikas Dubey given to the IO before his death that he had prior information about the raid; the conduct of the accused-applicants before and during incident; applicant Vinay Kumar Tiwari though leading one team but did not give any backup support nor sustained any injury and showed complete inaction; and applicant K K Sharma deliberately avoided in participating in raid and the accusation is that he stayed and was deliberately left on police station to pass information to the gangster.

47. In view of the above discussion, the serious and heinous nature of the offence, complicity of the accused-applicants in the conspiracy and taking into consideration overall circumstances of the case, I do not find any reason sufficient to allow the bail applications. Hence, the bail applications of accused-applicants **Vinay Kumar Tiwari and K. K. Sharma are rejected.**

48. The learned trial court to expedite the trial. If the case is not disposed nor a substantial development is found towards progress of trial in one year, the accused-applicants will be at liberty to move fresh bail application.

49. It is also made clear that no observation of this Court in this order will have any binding effect on the trial court and the case shall be decided on the basis of evidence adduced during trial.”

14. After having heard learned counsels for the parties and perusing the records, it is evident that the present case is a case in which 8 police personnels lost their lives while they were on their duty to raid the house for arrest of accused persons. 06 police personnels received grievous gunshot injuries in the incident. One private person being the driver of a Police personnel also received injuries. The dare devil manner in which the incident took place leaves much to be said. The incident cannot be committed with just a handful persons. It was a pre-planned incident wherein all the aspects appeared to have been designed and persons were entrusted their jobs which had been performed by them independently and even collectively. The bail application of co-accused Khushi identically placed co-accused, though she claimed minority, has been rejected by a co-ordinate Bench of this Court. The involvement of the applicant is there in the present matter. Her

participation is also there for which there are eye witnesses stating about it.

15. Looking to fact and circumstances of the case, nature of evidence and gravity of offence, I do not find it a fit case to release the applicant on bail.

16. Accordingly, the bail application is rejected.

17. The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.

18. The computer generated copy of such order shall be self attested by the counsel of the party concerned.

19. The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

(Samit Gopal,J.)

Order Date :- 04.10.2021

Naresh