

**THE COURT OF SHRI ANIL ANTIL
ADDITIONAL SESSIONS JUDGE-04, NEW DELHI DISTRICT
PATIALA HOUSE COURTS, NEW DELHI**

1. Crl Appeal Number 89/2021

**Mr. Gopal Ansal
s/o Late Sh. Chiranji Lal Ansal,
r/o 1,6 Aurangzeb Road,
New Delhi.**

2. Crl Appeal Number 90/2021

**Mr.Sushil Ansal
s/o Late Sh. Chiranji Lal Ansal,
r/o 26, Feroz Shah Road,
New Delhi 110001.**

3. Crl Appeal Number 91/2021

**Mr. P.P. Batra
S/o Sh. Mohan Lal Batra
R/o A 38 , Shakti Apartments,
Rohini Sector-9,
Delhi 110085.**

4. Crl Appeal Number 92/2021

**Mr. Dinesh Chandra Sharma
s/o Sh. Jagram Sharma,
r/o 1/1609 Mansarovar Park,
Delhi**

5. Crl Appeal Number 95/2021

**Mr. Anoop Singh Karayat
s/o Late Sh. D.S. Karayat**

**r/o M-74B, Ground Floor,
Malviya Nagar,
New Delhi-110017.**

(Appellants)

Versus

State (NCT of Delhi)

Respondent

FIR No. 207/2006
u/s 120-B/409/201/109 r/w 120B IPC
P.S Tilak Marg (EOW)

ORDER

1. By this common order, I shall dispose of separate applications as filed under Section 389(1) Cr.P.C seeking suspension of Sentence awarded to all the above mentioned five appellants/convicts namely *Sushil Ansal (A-1), Gopal Ansal (A-2), P.P. Batra (A-3), Dinesh Chandra Sharma (A-4) and Anoop Singh Karayat (A-5)* ; stay qua filing of fine or compensation amount as per mandate of Section 357(2) Cr.P.C and for their release on bail till the disposal or the final outcome of their respective appeals as filed under Section 374(3) Cr.P.C on behalf of all the above mentioned five appellants/ convicts.

2. All the above mentioned appeals are offshoots of common FIR, investigation, trial concluded by the learned trial court, its verdict announced vide judgment dated 08.10.2021 and Order on quantum of sentence dated 08.11.2021, hence,

disposed of by this composite order.

3. It was submitted by the learned counsels for the appellants/convicts that the above mentioned five appeals were preferred by the above named five appellants challenging the impugned judgment dated 08.10.2021 and impugned Order on Sentence dated 08.11.2021 vide which all the appellants were held guilty and convicted by the court of learned Chief Metropolitan Magistrate, Patiala House Courts New Delhi for the respective offences for which they were allegedly charged during the trial of the case.

4 All the appellants /convicted persons were, by order dated 08.11.2021, Order on Quantum of Sentence, passed by the learned CMM, PHC, New Delhi were sentenced for the respective offences and for the sake of convenience same is mentioned as under :

A. For offence under Section 120-B IPC:-

(i) appellants/convicts Sh. Sushil Ansal & Sh. Gopal Ansal were sentenced to Seven years Simple Imprisonment and fine of Rs. 1,00,00,000/- (Rupees One Crore) and in default of payment of fine to undergo Simple imprisonment for six months, separately each.

ii) appellants/convict Sh. P.P.Batra, Sh. Dinesh Chand Sharma and Sh. Anoop Singh Karayat were sentenced to Seven years Simple Imprisonment and fine of Rs. 1,00,000/- (Rupees One Lakh) and in default of payment of fine to undergo Simple imprisonment for six months, each separately.

B. For offence u/s 409/120-B IPC

(i) appellants/convicts Sh. Sushil Ansal and Sh. Gopal Ansal were further sentenced to Seven years simple imprisonment and fine of Rs. 1,00,00,000/- (Rupees One Crore) and in default of payment of fine to undergo Simple imprisonment for six months, each separately.

ii) appellants/convicts Sh. P.P.Batra, Sh. D.C. Sharma and Sh. Anoop Singh Karayat were sentenced to Seven years simple imprisonment and fine of Rs. 1,00,000/- (Rupees One Lakh), and in default of payment of fine to undergo simple imprisonment for six months, each separately.

C. For offence u/s 201/120-B IPC

(i) appellants/convicts Sh. Sushil Ansal and Sh. Gopal Ansal were sentenced to three years simple imprisonment and fine of Rs. 25,00,000/- (Rupees 25 lacs), and in default of payment of fine to undergo simple imprisonment for six months, each separately.

ii) appellants/convicts Sh. P.P.Batra, Sh. Dinesh Chand Sharma and Sh. Anoop Singh Karayat were sentenced to Seven years Simple Imprisonment and fine of Rs. 1,00,000/- (Rupees One Lakh), and in default of payment of fine to undergo Simple imprisonment for six months, each separately.

It was also directed that all the sentences shall run concurrently and Benefit of Section 428 Cr.P.C, wherever applicable was also granted to them.

5. The case of the prosecution in brief is as under :-

(i). that during the period started from filing of the charge sheet on 15.11.1997, in case FIR bearing no. RC No. 3/97/SIC IV/New Delhi (UPHAAR CINEMA CASE) with the allegations that accused Sushil Ansal, (A-2) Gopal Ansal (A-1) and H.S. Panwar (now deceased) amongst other accused persons had committed the offences under section 304 and 304A IPC ;

ii) and the trial of the said case was being tried by the then court of Ms. Mamta Sehgal, Ld ASJ, PHC, New Delhi till 13.01.2003 ;

(ii) that then the fact of missing some relevant documents concerning the said case came to the knowledge of the trial court; after investigation and filing of the charge sheet, all the appellants/convicts, thereafter were put to trial on the charges of entering into criminal conspiracy with Dinesh Chandra Sharma (A-4), the then Ahalmad of the said learned court, being a public servant, with the intention to commit the various offences like criminal breach of trust etc., and thereby committed the act of missing / destructing / tampering / obliterating and spreading the ink over the documents of the said judicial case file, with the intention to give benefit to accused Sushil Ansal, Gopal Ansal and H. S. Panwar, in the trial of the above mentioned Uphaar case.

(iii) that Dinesh Chandra Sharma appellant/accused in the capacity of Ahalmad of the Court, being a Government Servant, was entrusted with the judicial records and was having dominion over the judicial case file and its enclosures,

(documents/records) had committed an act of criminal breach of trust regarding those documents/records to save the skin of offenders of the above mentioned case.

(iv) that it was also revealed that for this act, appellant/convict Mr. P. P. Batra acted as connecting link between other accused persons namely Mr. Gopal Ansal, Mr.Sushil Ansal, Mr.H. S. Panwar and Mr. Dinesh Chandra Sharma.

(v) It is further the case of the prosecution that the accused Mr. P. P. Batra was the main link between Ansal brothers and D.C. Sharma, who used to remain in touch with Sh. Dinesh Chandra Sharma for the purpose of execution of the said agreement executed between them to commit various offences, through his mobile phone and land line number installed at the office of Ansal Properties and Industries Limited. (AIPL) .

(vi) It is further the case that in pursuance to the said agreement, after the dismissal from the government job, appellant/accused Mr. Dinesh Chandra Sharma was provided a private job through Mr. P. P. Batra on the directions of accused Mr. Sushil Ansal and Mr. Gopal Ansal, with A-Plus Security Agencies; and accused Mr. D.V. Malhotra (now deceased) was the General Manager of SEML, who actively participated in the said commission of offence by secretly providing job to Dinesh Chand Sharma in A Plus Securities with a salary of Rs. 15,000/- per month i.e. double the amount of his previous

employment, for the services rendered by him in pursuance to the conspiracy to give benefit to accused persons namely Mr. Sushil Ansal, Mr. Gopal Ansal and Mr. H. S. Panwar.

(vii) It is also alleged that Anoop Singh Karayat tampered with the data reflecting that Mr. Dinesh Chandra Sharma was employed in the said firm, by applying fluid on the records of A-Plus Securities Agencies over the name of accused Mr. Dinesh Chandra Sharma and the amount of salary paid to him, with the intent to hide the factum of conspiracy. .

(viii) That during investigations, it was revealed that over this fluid, the name of some other person was mentioned and all this was done to keep the conspiracy secret and out of the reach of the investigating agency.

6. That after the completion of the investigation of the case, all the convicts / accused persons were put to trial for committing offences punishable under section u/s 120-B IPC, *u/s 409/ read with Section 120 B IPC ; 201 r/w Section 120B IPC u/s 109 IPC r/w Section 120B IPC .*

7. After a lengthy trial, all the appellants/convicts were held guilty for the above said offences and were awarded sentences for the aforesaid sections alongwith fine, as noted above.

The said judgment and the order on sentence is challenged by all the appellants vide the present appeals in which the present application under Section 389(1) Cr.P.C, seeking suspension of sentence during pendency of the

appeals, have been filed and pressed upon by all the appellants.

8. Arguments were heard at length on the respective applications moved on behalf of all the appellants/convicts. Trial Court Record was summoned.

9. Before proceeding further, I must mention that some common grounds have been raised by all the learned Senior Counsels appearing on behalf of the convicts/appellants and the same are dealt with accordingly in terms of their submissions, which might overlap or be repetitive in nature.

10. **Arguments on behalf of accused Mr. Gopal Ansal :**

10.1 The learned Senior Counsel for the appellant submitted that the prosecution launched in the present case was only on the basis of circumstantial evidence as there is no complete chain of circumstances and events which can be linked with the offences alleged as well as the evidence adduced by the prosecution, therefore the very factum of the conspiracy remains not proved by the prosecution, and the finding of the learned trial court is contrary to the established legal principles.

10.2. Learned Senior counsel argued that no conspiracy has been proved between the parties (appellants/convicts) as per the evidence brought on record by the prosecution before the learned trial court, and there are number of lacunas and other infirmities which creates a strong doubt over the story of the prosecution.

10.3 The learned Senior counsel argued that the prosecution was required to prove the complete chain of circumstances connecting the accused to the alleged conspiracy beyond reasonable doubt, which the prosecution has miserably failed to do so.

10.4 It was vehemently argued by the learned senior counsel that the prosecution and the learned trial court itself seems to be confused viz a viz the duration of the conspiracy. It is stated that, even otherwise, the said conspiracy was terminated when an application in that regard was moved by the special PP highlighting tampering of the judicial record. It is stated that subsequent acts thereto cannot be read as done in pursuance to the conspiracy, more the so, at the cost of repetition, the conspiracy itself got frustrated on discovery of the alleged offences. Strong reliance is placed on the legal propositions established in the cases of :

1. State Vs. Nalini & Ors (1999) 5 SCC 253 and

2. L.K. Advani Vs. CBI 1997 SCC Online Del 382

10.5 Further, it was argued that prosecution has failed miserably to prove the facts and circumstances by leading any evidence, to complete the chain of event, such as : -

- that the tampering in the judicial record was the act of Mr. Dinesh Chandra Sharma, the then Ahalmad of the concerned court, and other appellants/convicts.

- that the accused Mr. P.P. Batra, employee of Ansal Properties and Industries Ltd (APIL) was in constant touch with

accused Mr. Dinesh Chandra Sharma, for the purpose of tampering of the said documents.

- that Mr. D.V. Malhotra used to work as SEML as AGM and the 98% share of the SEML was held by APIL.

- that Mr. Gopal Ansal was the director of APIL or that he had any role to play into the tampering of the documents or in the alleged employment of Mr. D.C. Sharma provided by A-Plus Securities.

- that the contract was given to SEML to provide security by A-Plus ; and Mr. D.V .Malhotra recommended Mr. Dinesh Chandra Sharma, after his dismissal from the services, for the job at A-Plus Securities on the instructions of accused Mr. Gopal Ansal ;

- that accused Mr. Anoop Singh was the chairman of A-plus where accused Mr. Dinesh Chandra Sharma was employed on double of the normal wages or that salary was also paid in cash to him.

- that the fluid was put on the register by Mr. Anoop Singh on the name of accused Mr. Dinesh Chandra Sharma.

- Pointing out these facts learned Senior counsel submits that except to state that the judicial record/documents were tampered with, there is not an iota of evidence qua the facts highlighted above or to prove that these alleged acts, if any, were done in pursuance to the criminal conspiracy between the convicts.

10.6 It was argued by learned senior counsel that the

prosecution has failed to prove that Mr. D.C. Sharma was in exclusive custody of the judicial file during the relevant period, the substantive offence under Section 409 IPC also remains to be proved by the prosecution with any positive evidence in that regard.

10.7 that the acts of Mr. D.V Malhotra (since deceased) and Mr. Anoop Singh, if at all , were subsequent to the alleged conspiracy being frustrated on the discovery of the tampering; their acts were thus separate and independent, alien to the alleged conspiracy of destroying the judicial file ; and the said job to Mr. D.C. Sharma is also alleged to have been provided almost after a year or so from the date of his termination, and the findings of the learned trial court in regard to the same are contrary to the well established principles of law.

10.8 It was further argued that Mr. Gopal Ansal had never ever objected to the secondary evidence which the prosecution was leading to prove the said documents, nor he ever objected to the marking of the said documents in evidence.

10.9 Learned Senior Counsel further submitted that accused Gopal Ansal is aged about 73 years or so, and is suffering from various ailments like Prostate disease, Cataract in both eyes, severe hearing loss, prolapse intervertebral Disc, Hypertension, Diabetes, Renal disorder and liver damage etc.

10.11 It was submitted that appellant Mr. Gopal Ansal is involved into various corporates social responsibilities ; is chairman of educational institution ; is a permanent resident of

Delhi ; bears a good conduct, no false information or any statement was made by the present appellant in any proceedings and undertakes to present himself before the appellate court or as well directed to do so and is also ready to abide by any terms or conditions, if any, imposed while suspending the sentence and admitting him to bail.

10.12 To sum up, learned senior counsel submitted that the prosecution has miserably failed to adduce relevant evidence to prove its case beyond reasonable doubt and the judgment and order on sentence passed by the learned trial court suffers from legal infirmities and material illegalities, and the applicant has a good case to succeed in appeal filed herein in challenge to the impugned judgment and order on sentence and the appellant be accordingly admitted to bail during the pendency of the appeal.

11. Arguments on behalf of appellant/convict Mr. Dinesh Chandra Sharma

11.1 It was argued that the impugned judgment suffers from numerous legal infirmities and pre-dominantly is based on conjunctures and surmises. It is submitted that the prosecution has failed to establish by any worthy evidence that the judicial file of the case, in which the documents were tampered with, was in exclusive possession of the appellant during the said period or thereafter.

11.2 Learned counsel during his arguments highlighted the cross examination of previous Ahalmad and other staff

members posted in the said learned court at the relevant time (PW-4 Mr. Jagannath, Stenographer, PW-6 Sh. Shyam Lal, Senior Assistant, PW8 Sh. Sunil Kumar Nautiyal, Sr. Judicial Assistant/Reader) to state that they have specifically admitted during cross examination that the case files moved from Ahalmad to the Court room - to the Reader – Steno and - to the Presiding Officer ; that in between usually the case file were also accessed by the Police witnesses and the investigating officer during the hearing of the case without any formal applications in that regard.

11.3 It was further submitted that the Departmental Inquiry Report relied upon by the prosecution can not be read in the evidence against the present appellant ; further that the cheque in question was subsequently found and placed on judicial file, seizure memo was also produced, and there is no direct evidence, nor the specific dates, on record to connect the appellant with the alleged case crime of conspiracy.

11.4 Further, it was argued that the CDR's of the relevant month was not produced nor any effort was made by the IO to take the same, in term of the Notice u/s 91 Cr.P.C issued to the service providers. The CDR's for the month of May-2002, November-2002 were sought for /obtained and no CDR's record of relevant month (July) or thereafter has been deliberately taken which further dents the case of the prosecution.

11.5 It is further submitted that peace-meal evidence is produced on record by the prosecution which remains to be far

from any positive conclusion to arrive at the findings of the conspiracy or that the appellant/convict was part of the same.

11.6 That the case of the prosecution is based on vague and unconvincing evidence and finding of the conviction relied upon by the learned trial court is perverse.

11.7 It is further submitted that the applicant has undergone four and half months incarceration during the trial of the case, and further incarceration would cause a great hardship and be violative of his constitutional rights. It is submitted that the appellant had never objected to secondary evidence nor had taken any adjournments, and above all, the appellant has a very good case to succeed and he accordingly be admitted to bail after suspending sentence awarded to him.

12 Arguments on behalf of appellant/convict Mr. P.P. Batra

12.1 It is submitted by the learned Senior counsel that the only circumstances appearing against the appellant/convict herein are the CDR's of Mr. Dinesh Chandra Sharma vide which appellant is shown to be in contact with him, and purportedly, acting as a link between Ansal brother's and Mr. Dinesh Chandra Sharma.

12.2 It is submitted that Mr. Batra was doing Parvi of the Uphaar Cinema's trial case being an employee of the Ansals ; that this innocuous circumstance of doing Parvi is being adversely inferred against him as being conduit and in conspiracy to the present case crime.

12.3 It was also submitted that there were other five

persons employed with the Ansals who were doing Parvi on their behalf in the said case and their exoneration by the prosecution at a threshold without any rhyme and reason, renders the accusation against him untenable.

12.4 It is stated that in the first initial charge sheet filed in the case at hand, the appellant was cited as one of the witnesses, however, subsequently on some extraneous considerations and in contravention to settled position of law the appellant accused was arrayed as co-conspirator, without even complying the procedural aspects under Cr.P.C and taking requisite permission by the Court concerned.

12.5 It is further submitted that there are inherent flaws in the CDR's Exhibited as PW-36/B to PW36/L, and Ex PW36/N taken on record and read against the accused persons.

12.6 The learned Senior counsel during his arguments traversed through the chart prepared by him of the said CDR's and to buttress his arguments qua its veracity and manipulation, stated that :-

- i) the date format as appearing there is in different format as generally appears in auto generated CDR's ;
- ii) variations and disturbances in chronology of time not following natural sequence in asymmetrical pattern ;
- iii) similarly variations in chronology of the dates wherein calls purportedly made on precedents dates randomly reflected subsequently and on later dates ;
- iv) missing data and long gaps in the said CDRs.

- It was further stated that the CDR's of May, June, August, September and November were produced, however, CDR's of the July and October were inexplicable not produced on record, nor supplied to the accused persons. Even the CDR's so produced have missing dates of numerous dates without any explanation forthcoming from the prosecution.

12.7 Learned Senior counsel also pointed out the cross examination of PW-36, to state that the missing data of 25 days of August and 12 days of May and gaps of several days of the calls for the month of September and November 2002, were specifically admitted by the said witness.

12.8 Deposition of IO of the case (PW-38) was also gone through to state that he admitted that he had thoroughly analyzed the CDRs at the time of investigation, but feigned his ignorance and was evasive qua the discrepancies in the chronology of the CDR. It was further argued that PW 36 also specifically admitted that disturbances in the chronology of date, time etc as noted above by stating that format of CDR's is generally changed to suit the requirement of investigating agency. However, at the same time he failed to produce any correspondence to state in which format the CDR's were requisitioned by the IO.

- A strong reliance was placed on the judgment of **Ravi Kant Sharma Vs. State 2011 SCC Online Del 4342 (2011) 183 DLT 248 (DB)** decided by Hon'ble High Court of Delhi, to state that the CDR's are unreliable piece of evidence.

12.9 Next, the admissibility of the CDRs were also impeached by the learned senior counsel for want of valid certificate under 65B of the Evidence Act, a pre-requisite condition to render it (CDR) admissible ; that no contemporaneous 65B certificate was filed and the same was produced at a later stage, subsequently, on his own by the witness after a gap of almost 12-13 years, and that too, directly in the court without even being summoned for that.

12.10 Further, it was argued that the prosecution has miserably failed to prove the ownership of mobile phone no. 9818031897 ; that prosecution has relied upon a letter Ex PW27/B issued by Sh. R.K. Singh examined as PW35 and statement of co-accused u/s 313 Cr.P.C, and the said materials / statements are inadmissible being hit by Section 162 Cr.P.C in evidence against the present applicant/convict, and the statement u/s 313 Cr.P.C of co-accused also can not tantamount to admission and proof of ownership of the said mobile phone.

12.11 It was argued that no Customer Application Form nor any other document to prove that the said number was assigned to the appellant/convict P.P. Batra was produced by the prosecution to substantiate their case ; even otherwise from their own documents, it is reflected to have been assigned to Mr. P.P.Batra in the month of October 2002, whereas the alleged tampering of documents was done prior to said period.

12.12 Next, it was argued that the job allegedly provided to

Dinesh Chandra Sharma at A-Plus Securities, post his dismissal from service on 25.06.2004, is completely an independent and separate transaction. Assuming it to be true, though not admitted, it is a irrelevant circumstance for construing the complicity of the appellant in the alleged conspiracy for the reason that :-

a) a period of conspiracy already had frustrated by the time, if any

b) the charge is framed against the accused persons indicate the conspiracy period between from the date of filing of the charge sheet in Uphaar Tragedy case on 15.11.1997 till 13.01.2003 when the fact of missing documents came to the knowledge of the learned trial court. Therefore, any subsequent act of the other persons i.e. circumstances of new employment after a gap of one year is well beyond the said conspiracy and can not be read against the appellant to infer his complicity.

12.13 That conspiracy came to an end when the mutilation of the documents had surfaced. It was also argued that PW-38 stated that the job to Dinesh Chandra Sharma was provided on the recommendation of Mr D.V. Malhotra (since expired during the trial) and was employed by Mr. Anoop Singh, no name of Mr. P.P. Batra has been mentioned by any of the witness to state that he had recommended his name for the said post/job, nor any overt act has been attributed to him during the trial as to show that he was in agreement and /or participated in the alleged conspiracy.

12.14 It is thus argued that there is absolutely no link or nexus between Mr.P.P. Batra and Mr. Dinesh Chandra Sharma proved on record by any reliable evidence by the prosecution.

12.15 Learned counsel for the accused Mr **P.P. Batra** submitted that he is aged about 60 years, has already lost almost two decades of his life during the trial of this case since 2002 and no useful purpose would be served by keeping him in custody, and the appellant has a very good case to succeed and he accordingly be admitted to bail after suspending the sentence awarded to him by the learned trial court.

13 Arguments on behalf of appellant/convict Mr.Sushil Ansal

13.1 Augmenting further, it was argued that Mr. Sushil Ansal has not derived any advantage or any other benefit from the destruction / mutilation etc of the said documents ; that there were three documents allegedly pertaining to the appellant/convict Sushil Ansal qua which the tampering was done, however, **there were other documents in the form of statement of accounts, bank records of the appellants to prove the said facts, which the prosecution alleged that the documents were tampered with the object to screen him from said alleged offences in the main Uphaar case.**

13.2 It is submitted that there is absolutely no cogent evidence against accused Sushil Ansal or for that matter against other accused persons to show the factum of the conspiracy or that any of the accused was part of the alleged

conspiracy. That the entire case of the prosecution is based upon the presumption and assumptions de-hors the evidence on record.

13.3 It was submitted that appeal is a statutory right and the appellate court is required to divulge into the evidence adduce during the trial, appreciate the same and arrived at its independent findings, may be not even looking at the findings of the learned trial court.

13.4 It was argued that perversity in the judgment is apparent from the fact that one of the accused Mr. Anoop Singh is shown to be the conspirator in a conspiracy allegedly hatched to tampered/removed/mutilated or destroy the records of the judicial case, despite being the factual position, even as per the case of the prosecution, that Mr. Anoop Singh is alleged to have provided job two years after the said documents were noticed and Mr. Dinesh Chandra Sharma was terminated from services.

13.5 Learned counsel has minutely traversed through the charges so framed in the present case and to state that it is not even the case of the prosecution, nor could it be, that Mr. Anoop Singh is a conspirator in destruction etc of the said documents.

13.6 It was further argued that at best without prejudice he could have only been put to trial for offence u/s 201 IPC, and finding of the learned Chief Metropolitan Magistrate, qua him being one of the conspirator to conspiracy is manifest illegality in the impugned judgment.

13.7 It was further submitted that handwriting samples of

the co-accused Mr. Anoop Singh was taken in violation of statutory provisions under section 311-A Cr.P.C, whereby no prior permission of the learned MM was taken and the same cannot be read in evidence against the accused persons. Strong reliance is placed on the judgment of **Sapan Haldar Vs. State (2012) 191 DLT 225 (FB)** in support thereof.

13.8 learned counsel submitted that the learned trial court is taking conflicting stands with respect to the documents exhibited in the main Uphaar case ; at some point learned trial court is relying on said documents contrary to the established principles of evidence act, at other times ignoring the same. The admissibility of the documents produced in the Uphaar case in the facts of the present case would do require appreciation of evidentiary principles governing the criminal trial.

13.9 Taking similar lines as argued by other learned Senior counsels, it was urged that the said documents were discovered by the learned SPP in the month of July, 2002 (20.07.2002) during the examination of PW- 49, therefore on the discovery of the said offence against the documents, the conspiracy, if any, though not admitted, came to an end on the said date, and subsequent acts thereafter can not be said to be done in furtherance of the conspiracy. Such finding of the trial court to consider the subsequent acts as the part of the conspiracy are in violation to the well established under Section 10 of the Evidence Act.

13.10 It was also submitted that no effort at any time was

made by the investigating officer to take the mobile phones of the other co-accused persons, except that of Mr. Dinesh Chandra Sharma, nor any CDR's or transcripts of said co-accused was placed on record by the prosecution. That the entire built up of the conspiracy by the prosecution is in air, merely on hypothetical assumptions.

13.11 It was also argued that no substantive charge under 409 IPC was separately framed against Mr. Dinesh Chandra Sharma or any other accused. Therefore, in absence thereof the other charges for conspiracy and abatement against other accused persons can not be sustained.

13.12 Learned counsel further submitted that the accused persons have a strong prima facie case in their favour in succeeding the appeals as there is manifest error in the approach and finding of the learned trial court, to arrive at the conclusion on the findings of the facts and the law appreciated therein.

13.13 It is submitted that the appeal at hands shall require details arguments, not only qua the factual facts but the legal aspects would also be re-appreciated at the time of hearing of the final appeals.

13.14 Thus concluding on merits, it was stated that the case of the prosecution is based upon circumstantial evidence and complete chain of circumstances to bring home the offence against the appellants remains to be established with any substantial evidence ; there are number of missing links to

connect the accused with each other or to prove that they agreed to commit the case crime ; that prosecution and the learned trial court itself seems to be confused qua duration of the conspiracy, the object as such thereto, or whether it was a single conspiracy or multiple conspiracies.

13.15 Learned counsel for the accused Sushil Ansal further, submitted that he is aged about 82 years and is suffering from various ailments like Hypertension, CAD (Coronary Artery Disease) and BHP (benign prostatic hypertrophy) Diabetes mellitus and hypothyroidism, dizziness pre syncope and history of Covid last year etc. ; and that the appellant has a very good arguable case and he accordingly be admitted to bail after suspending sentence awarded to him. Strong reliance is placed on the judgment of **State of UP Vs. Ram Babu Misra (1990) 2 Supreme Court Cases 343** to seek bail during the pendency of the appeal.

16. Arguments on behalf of appellant/convict Mr. Anoop Singh Karayat.

16.1 Supplementing further, touching upon the illegality of the trial and the sentence awarded thereto by the trial court learned Sr. counsel Sh.Ramesh Gupta argued that the trial before the court of learned CMM is ill-legal in contravention to Section 3 & 4 read with Section 26 and Schedule of the Cr.P.C, wherein the main offence Section 409 IPC is to be tried by First Class Magistrate who is empowered to sentence only upto three years. Whereas in the present case the appellants have

been sentenced to undergo seven years alongwith fine as mentioned therein.

16.2 It was argued that there is no basis of any discrimination, when an accused is tried by learned CMM and sentenced upto seven years imprisonment viz a viz other accused wherein the trial is being conducted by the learned MM and sentenced to undergo maximum imprisonment of three years.

16.3 It is further argued that the case against the present applicant is built upon surmises and assumptions and in total disregard to the established principles of law governing the conspiracy. At best, the act of the appellant herein in providing the job, if any, to Mr. Dinesh Chandra Sharma can not be stressed by any imagination to be in furtherance of the alleged conspiracy.

16.4. It was submitted on behalf of the appellants/convicts that for the disposal of the present application, it has to be seen that during the pendency of the trial before the learned trial court, appellant/accused was regular, maintained a good conduct and dignity of the court orders, not absented themselves on any occasion, and has not tried to delay the trial of the matter or hamper or tamper the evidence or influenced the prosecution witnesses.

16.5 It was also submitted that the appellant/convict has deep roots in the society, is responsible citizen of nation, is permanent resident of Delhi and there is no chances of fleeing

from justice.

16.6. Learned counsel also submitted that except appellant/convict Mr.Dinesh Chandra Sharma, no other appealnt was arrested by the police in the present case and they all were enlarged on regular bail on their appearance before the learned court and they all remained on bail during trial and have not misused the liberty granted to them.

16.7. Thus, it is argued that prosecution has miserably failed to prove its case against the appellants/convict beyond reasonable doubt, there is no shed of evidence ; much any reliable evidence or any link evidence in the entire chain of circumstances to prove the factum of the conspiracy or that any of the accused/appellant was part of it ; finding of the learned trial court is based upon assumptions and presumptions, in contravention to factual aspects as well as well established legal principles governing the offences alleged against the appellants/convicts, for which they have been sentenced to imprisonment and fine as noted above.

17. **Per contra** the learned Addl. PP for the State alongwith Sh. Vikas Pahwa, learned Senior Counsel has vehemently opposed the grant of suspension of sentence and the enlargement of the appellants on bail during the pendency of the appeal by urging that conduct of the appellants should also be kept in mind while disposing of the application.

17.1 Learned Senior counsel on merits argued that prosecution has proved its case with reliable evidence that Mr.

Dinesh Chandra Sharma was entrusted with and was custodian of the case file of Uphaar's Case at the relevant point of time when the documents were tampered with, through the testimony of previous Ahalmad Mr. Sunil Kumar Nautiyal (PW8) and PW10 Sh. R.K. Khattri ; that nothing has come in the cross examination to impeach their credibility

17.2 It was argued that that during the continuation of the said conspiracy, Mr Dinesh Chandra Sharma was provided a job as a reward, as he committed criminal breach of trust by destructing the file for his illegal gain, in the form of future job for higher remuneration.

17.3 It was stated that pursuant to the disclosure statement Ex PW18/A, it was proved that police party visited the office of A Plus Securities and seized two registers Ex PW18/C and Ex PW18/D vide seizure memo Ex PW18/B.

17.4 Learned counsel further argued that it has been established on record during evidence of the case by PW 36 that several calls were made by Mr Dinesh Chandra Sharma through his mobile no. 9811027522 to Mr P.P. Batra on his mobile no. 9818031897 and vice-versa ; and the digital evidence produced by witness remains un-rebutted, and thus is reliable and trustworthy piece of evidence, which has been rightly read by the learned trial court against the appellants /accused persons and in favour of the State.

17.5 Learned senior counsel argued that two important circumstances i.e. the job of the accused with A Plus Securities

and CDR of Phone have been duly proved during evidence, and the factum of job has been authenticated through GEQD report Ex PW23/A ; that PW 23 also proved that in the year 1993, the landline no. 23352269, 23352270 and 23352518 were allotted to M/s Ansal Properties & Industries Ltd and thereafter changed to M/s Ansal Properties & Infrastructure Ltd w.e.f. 21.03.2005.

17.6 It was further argued that most of the appellants have given bald and vague statements under Section 313 Cr.P.C ; the statements were traversed by the learned APP to highlight the manner of answers given there specifically stating to be tendered / answered as per the legal advice, a fact which is completely in contravention to the intent and object of the said provisions. The appellants have deliberately not answered the questions under their statements from their own personal knowledge and the findings of the learned trial court to draw an adverse inference can not be illegal.

17.7 It was further stated that the charge was specific qua the conspiracy hatched by the appellants to tamper with the evidence/documents of the trial court with their common design to seek acquittal for Ansal brothers and Mr. Panwar. The charge so framed was duly upheld by the Hon'ble High Court as well as by the Hon'ble Supreme Court. The acts of the accused persons subsequent to the revelation of the tampered documents by the trial court do form part of the conspiracy which was hatched ultimately to seek advantage for the

accused persons in the main Uphaar Case.

17.8 It was also submitted that the act of the appellants was not simple, it was done by hatching a conspiracy in a well planned manner and colour was given to their wishes with the help of concerned official to save their skin from the punishment of parent case (Uphaar Cineme Case). And sufficient material has already come on record which strengthen the version of prosecution, hence, there is no reason to trust on the defence put forth by them, at this stage, and extending the benefit of suspension of sentence to the appellants would result in miscarriage of justice.

17.9 It was further submitted that for an offence of conspiracy it is not necessary that all the accused must necessary derived benefit and advantage therefrom. It was stated that the disclosure statement of main accused Mr. Dinesh Chandra Sharma was admissible and relevant in terms of Section 27 of the Evidence Act, whereby two registers proving the employment of accused Mr D.C.Sharma was seized by the Investigating Agency/ the said registers were also tried to be tampered with by the accused persons by putting fluid over its name and mentioning the name of some other person.

18 To further show their involvement, knowledge and conduct -

18.1 Learned Special APP also submitted that PW10 (in the main Uphaar Case), Company Secretary of the company, owned by the Ansals turned hostile and did not deliberately

produce the original documents in the form of meetings of Board of Directors/ AGM of Share holders/members/files of correspondence and when the said documents were directed to be exhibited by the revisional court of ASJ, the said order was again challenged by the appellant/convict Mr. Sushil Ansal before superior Court.

18.2 That all the accused persons (in the said case) had objected vehemently, directly or indirectly, to the secondary evidence when the prosecution was trying to prove the said documents leading secondary evidence.

18.3 It was further submitted that each and every order of the learned trial court was challenged by the accused persons so as to screen themselves from the clutches of law and to delay the outcome of the trial.

18.4 It was further submitted that the contention of the appellant Mr. Sushil Ansal that other documents were there on record in the form of Statement of Accounts to reflect the name of the drawee of the cheque, and other witnesses to prove the said fact, is totally off the record. ; that there was no such statement of account as argued by learned counsel on his behalf.

18.5 Reiterating, learned APP vociferously argued that the Ansal brother's, in one way or the other, have objected to the progress of the trial at each and every stage by raising frivolous pleas. It is submitted that both Mr. Sushil Ansal and Mr. Gopal Ansal were managing the affairs of the company where Uphaar

Tragedy occurred, and the said tampered documents were reflecting the culpability of the Ansal Brother's in the main Uphaar Case and therefore they were intentionally and deliberately distorted / tampered through a well hatched conspiracy to seek acquittal.

18.6 It was further argued by learned APP that accused persons had committed the crime in their individual capacity and not for and on behalf of the companies, therefore, the doctrine of reverse *alter ego* would have no application to the facts of the case, and the arguments that the companies were not made an accused has no basis at all.

18.7 It was further submitted that the testimony of PW R K. Singh is not hit by provisions of Section 162 read with Section 161 Cr.P.C as the witness has produced the records of the mobile phones as per the data stored in his computer pursuant to the notice issued by the IO under Section 91 Cr.P.C.

18.8 It was also submitted that CAF became mandatory only after year 2006 in terms of the judgment passed by the Hon'ble Supreme Court as was discussed by the learned trial court in the impugned judgment.

18.9 It is submitted that applicants have been found guilty of offences which are severe in nature, they have played with the administration of justice, the offence of the magnitude of this nature has large repercussions and therefore no indulgence of this court is required, at this stage, to suspend the sentence of the appellants/convicts ; that a strong message

should go to the society, ***Be you ever so high the law is always above you.***

18.10 It was further stated that it is not only important to look at the circumstances of the appellants/accused persons but equally important is for the court to consider and appreciate the circumstances of the victims, the mental agony, age etc and their sufferings, which they suffered during this procrastinated trial at the hands of the accused persons.

18.11 It was also stated that even during the trial of this case a false information was submitted before the concerned authorities while seeking to travel abroad by accused Mr/ Sushil Ansal, and subsequent thereto, a FIR was registered against him in the EOW cell pursuant to the directions of the Hon'ble Court. It was thus submitted by the APP that Mr.Sushil Ansal is a habitual offender and has no regard for the law of the land and merely because he is aged about 83 years is no ground to admit him to bail.

18.12 It was stated that the learned trial court had already shown leniency in imposing the sentence of imprisonment upon the appellants by way of awarding them simple imprisonment instead of rigorous imprisonment for which they were entitled to as per the severity of the offences.

18.13 **Concluding**, it is submitted that there is no illegality or infirmity in the impugned judgment and the order on sentence. The learned trial court has passed well reasoned judgment and order on sentence after taking into consideration

all the aspects of the case, the evidence/testimony of prosecution witnesses and the documents and the legal principles applicable thereto. Chain of circumstances connecting all the accused to the conspiracy to tamper with the judicial record are duly established and proved on record and the arguments raised by the appellants are frivolous having no legal basis. It is thus prayed that the application moved on behalf of the appellants u/s 389(1) Cr.P.C be dismissed accordingly.

19. I have given thoughtful consideration to the submissions advanced at length by the learned senior counsels, and have gone through the trial court record and the findings thereto, and is of the considered view that there appears to be no prima facie illegality or impropriety in the impugned judgment of conviction and order on sentence and the applications moved on behalf of the appellants/convicts under section 389(1) Cr.P.C deserves dismissal for the reasons discussed here under :-

20 Before proceeding further, it is stated that lengthy arguments were addressed at bar by the learned counsels, and plethora of judgments were cited in support of their contentions. Voluminous compilation was filed by the parties. The judgments were gone through. At the outset, I must say that there is no dispute to the proposition of law expounded therein. The governing principles are well established and remains the same, each case is to be decided on peculiar facts and circumstances of its own.

21. The relevant provision 389(1) is quoted herein for ready reference.

**“389 Suspension of Sentence pending the appeal ;
release of appellant on bail :**

(1) Pending any appeal by a convicted person, the appellate court may, for reasons to be recorded by it in writing order that execution of the sentence order appeal against be suspended and also if he is in confinement, that he be released on bail, or on his own bond, with the proviso that in case of offences of serious nature the learned APP shall be given notice to file written objections , if any.

22 The Sub-clause (1) will show that the appellate court has the discretion to release the appellant on bail during the pendency of the appeal and although no guidelines have been given but the only obligation is to record reasons for granting bail and suspending the sentence appreciating the totality of facts and circumstances including amongst others – arguable case towards the success of the appeal ; conduct of the accused/appellant – adverse or satisfactory ; long incarceration in custody and no/little possibility of the appeal being heard in future.

23. It is no more res-integra that there is a difference between grant of bail under [Section 439](#) of the CrPC in case of pre-trial arrest and suspension of sentence under [Section 389](#) of the CrPC and grant of bail, post conviction. In the earlier case there may be presumption of innocence, which is a

fundamental postulate of criminal jurisprudence, and the courts may be liberal, depending on the facts and circumstances of the case, on the principle that bail is the rule and jail is an exception.

However, in case of post conviction bail, by suspension of operation of the sentence, there is a finding of guilt and the question of presumption of innocence does not arise. Nor is the principle of bail being the rule and jail an exception attracted, once there is conviction upon trial.

Rather, the Court considering an application for suspension of sentence and grant of bail, is to consider the prima facie merits of the appeal, coupled with other factors. There should be strong compelling reasons for grant of bail, notwithstanding an order of conviction, by suspension of sentence, and this strong and compelling reason must be recorded in the order granting bail, as mandated in Section 389(1) of the Cr.P.C. **(2020) Volume 8 SCC 645.**

(Emphasis supplied)

24. It is also equally well settled that in considering the application for suspension of sentence, the Appellate Court is only to examine if there is such patent infirmity in the order of conviction that renders the order of conviction prima facie erroneous.

25. So while considering the application for suspension of sentence one of the important factor in my view would be that a bird's eye view of the appreciation of evidence and the way the

finding of guilt has been returned has to be seen. In other words if the appellant has a prima facie arguable case which may go to the root of the matter and the matter is not likely to be reached in near future then the discretion may be exercised in favour of the appellant in a given fact and situation.

26. Where there is evidence that has been considered by the Trial Court, it is not open to a Court considering application under [Section 389](#) to re-assess and/or re-analyze the same evidence and take a different view, to suspend the execution of the sentence and release the convict on bail.

27. Keeping these legal principles in mind, now I proceed to examine the submissions advanced on behalf of the parties.

28. It is nobody's case that the documents in question before the learned trial court were not tampered/ mutilated/ destroyed etc during the trial of the main Uphaar Tragedy case . It is also not in dispute to a great extent that these documents pertained to / or were incriminating to show the culpability of the three accused mainly i.e. Mr Sushil Ansal, Mr. Gopal Ansal, Mr. Panwar (since expired), in terms of their defence, that they were not at the helm of the affairs of the Uphaar Cinema where the alleged tragedy had occurred and that all requisite legal formalities were complied with.

29. It has also come on record that Mr. P.P. Batra appellant/Convict was acting as a conduit for and on behalf of Ansals and was in constant touch with the main accused Mr. Dinesh Chandra Sharma, the then Ahalmad of the Court during

the time he was incharge/custodian of the records of the main case.

30. It is also in evidence that subsequent to the termination of Mr Dinesh Chandra Sharma was provided a job with A Plus Securities on by another appellant/convict MR. Anoop Singh on the recommendation of Mr. P.P. Batra through co accused Mr D.V. Malhotra (since expired).

31. The main thrust of the arguments of the learned Senior Counsels appearing on behalf of the appellants/convicts is on the duration of the period of conspiracy by vehemently arguing that on coming to light of the tampering/mutilation of the documents by the learned special PP in the month of July 2002, and /or may be subsequently on formally moving an application in January 2003, by the special PP, the conspiracy so alleged had frustrated, and the acts subsequent thereto viz a viz between other co-accused can not be treated and read as in furtherance of the conspiracy or that the prosecution is continuously shifting its goal post qua the period of conspiracy during the course of trial.

32. It must be noted at this stage that there was a specific charge against all the accused persons whereby the period of conspiracy during which the documents were tampered with /mutilated/destroyed etc. was specifically mentioned. It was also specifically stated that subsequent thereto, and to achieve the illegal design and to keep the conspiracy under the wraps, co accused Mr. Anoop Singh conspirator, provided the job to

accused Mr. D.C. Sharma.

33. That the said charge was upheld by the Hon'ble High Court and attained its finality on being sustained by the Hon'ble Supreme Court. Implying thereby that all the accused persons were well put to the notice of the conspiracy hatched by them, and pursuant thereto that the documents were tampered with, with the object of conspiracy to secure, favourable orders and the acquittal of Mr. Sushil Ansal, Mr. Gopal Ansal and Mr. H.S. Panwar, by employing illegal means.

34. Therefore, all acts of commission and omission, done in furtherance of the object of the conspiracy, can be considered to form a part of the same offence of the alleged conspiracy. It beg to state that the learned senior counsels are mistakenly treating the acts done in pursuance of the conspiracy as the offence of conspiracy itself which is contrary to the law established in terms of ***Nalini & Ors (Supra)***, *the authority relied upon by the appellant themselves, as well as was held by the Hon'ble High Court.*

35. As highlighted by the prosecution, these documents were relevant to show the culpability of the three main accused, Mr Sushil Ansal, Mr. Gopal Ansal and Mr. Panwar (now deceased). Interestingly, out of total 16 accused persons who were put to trial of the main case, the documents pertaining to only these accused went missing / tampered /destroyed / mutilated etc., is a fact to be given due consideration.

36. In case at hand, the appellants especially namely Mr

Gopal Ansal, Mr. Sushil Ansal and Mr. Panwar were the ultimate beneficiaries of the said tampering. Strong motive existed for the accused to get the documents tampered as those documents reflected the culpability of Ansal brothers in managing the affairs of the companies. And there can be none other than three appellants/accused out of 16 others also could have benefited by such tampering/mutilating of documents

37. It must also be noted that some times, may be, not always, the criminal intent may be inferred from the knowledge of the accused of the unlawful use made of the goods/services in question. It is manifestly clear that the tampered documents including the one cheque which went missing at relevant point of time could have been used, or tampered with only with the intent to use the same for illegal design.

38. *Nextly*, the magical appearance of the cheque under certain suspicion in pursuance of an application moved on behalf of Mr Gopal Ansal to travel abroad is also an interesting fact which can not be ignored. The application was never pressed nor supported by any document, only the cheque was produce on record by the delinquent Ahalmad (Mr. Dinesh Chandra Sharma) at that time, which further strengthen the case of the prosecution and finding of learned trial court qua the knowledge and intentions of the Ansal Brother's and their active involvement in the said act. So the contention of the appellants that the intention and knowledge in terms of first part of the evidence act is not proved by the prosecution against Mr. Gopal

Ansal and Mr Sushil Ansal can not be sustained.

39. In so far as challenge to recovery of Registers Ex PW18/C and Ex PW18/D seized vide seizure memo Ex PW18/B is concerned, it needs to be stated that the recovery in terms of Section 27 Evidence Act, incorporates the doctrine of confirmation by subsequent events of discovery, and pertinently discovery is of a new fact and not necessarily be that of an article or a thing. So, knowledge of the accused/appellant Mr. Dinesh Chandra Sharma, with respect to the said two register of A Plus Securities relating to his employment, is a discovery of new fact thereto, in terms of his disclosure statement and does not appears to be hit by the bar created in terms of Section 25-27 of the Evidence Act.

40. These exhibits Ex PW18/C and Ex PW18/D were also tampered with its data, by the accused persons, by applying fluid on the name of Mr Dinesh Chandra Sharma and subscribing name of other person to mislead the investigation and subvert the process of law.

41. Coming to the contentions regarding discrepancies in the CDR's of Mr. Dinesh Chandra Sharma as PW-36/B to PW36/L, and Ex PW36/N, suffice to state at this stage that **firstly** : it is not specifically denied by the appellant Mr. P.P. Batra that he was not in touch with co accused Mr. Dinesh Chandra Sharma, as per their own case he was one of the *Pervi officer* on behalf of the Ansal brother's in main Uphaar Tragedy Case, so the CDR's are relevant only to show the

connecting link between Mr. Dinesh Chandra Sharma and Mr. P.P. Batra, which as noted above, is not a disputed fact.

secondly : in a specific question under Section 313 Cr.P.C, the accused/appellant Mr P.P. Batra feigned his ignorance to his ownership for the said number by simply stating that it is incorrect, supplementing it with further by putting answers to the same in terms of his legal advise, a thing unheard of.

42. There is no qualm to the preposition that the statements made by the accused under Section 313 Cr.P.C is not substantive piece of evidence, nor can the accused be compelled to answer any question which he deem fit it not to, nor can inculpatory part be considered sans the prosecution establishing its own case, but certainly evasive and ambiguous answers can be considered to draw an adverse inference against the accused in the facts and circumstances of the case.

43. Further, the defence has also failed to lead any defence evidence to discredit the explanation furnished by the Nodal Officer of the Hutch-PW-38 R.K. Singh whereby the discrepancies were countenanced with the explanation that When the memory of online server get filled, they randomly transfer some datas to DAT file and when there is request to provide the datas/ records, they retrieved it from DAT and during that process of decoding as per required format sought by the investigating agency, they extracted the data from DAT file.

44. On the contentions raised qua applicability of section

311-A Cr.P.C raised by Mr. Sushil Ansal and reliance upon the judgment of Sapan Haldar (Supra), it is stated that the said case has been distinguished in the recent judgments of our own Hon'ble High Court in cases titled as **Om Prakash & Ors Vs. CBI decided on 05.09.2017.** ; **Rekha Sharma & Or Vs. CBI decided on 05.03.2015** and **State & Ors Vs. Ravi Kapoor & Ors dated 04.01.2018.** Contention so raised is totally unfounded.

45. Thus, appreciating and analyzing the totality of facts and circumstances, the findings thereon of the learned trial court as discussed above, in my considered opinion, the submissions advanced and the grounds raised by the learned Senior counsels for the appellants/convicts does not inspire the confidence of this court.

46. **Now coming to the gravity of the offence :-**

- The case at hand is one of the gravest of its kind. The offence herein appears to be outcome of a calculated design on the part of the appellants/convicts to interfere with the course of justice. The polluters of the judicial firmament are required to be shown no leniency to maintain the sublimity of the institution, and recourse faith in general public in the administration of justice ;

- any interference in the course of justice, any obstruction caused in the path of those seeking justice are an affront to the magistry of law and needs to be viewed seriously ;

47. Nextly, it is also not the case that the appellants have

suffered a long incarceration or appeal is not likely to be heard in near future. In so far as the said question of hearing of the appeals in nearby future is concerned, the same can well be taken care by expediting the final arguments on merits and the convenient date can be given, in light of other pendency and scheduled work loads of the court, and the counsels can also conclude their arguments within a time frame.

48. I must also state that age by itself can not be the sole criteria to grant relief to the convicts / appellants herein, more the so, when the appellants themselves were involved into the procrastinated trial of the case. They can not be permitted to take benefit of their own wrongs. On the other hand, inordinate delay in the trial of the case also does cause acute suffering and anguish to the victims of the offence, and the rights of the victims can not by any yardstick be subservient to the rights of the accused/convicts .

49. Furthermore, the medical status of the appellants/convicts Mr. Gopal Ansal and Mr. Sushil Ansal was also called from the concerned Jail Supdt/Medical Officer and in terms of the status report filed therein the general condition of the appellants is stable. Beside suffering from age related ailments no other deceases cited which requires immediate / urgent intervention.

50. A criminal justice system drives its legitimacy not only from legislation but more so from the faith that the public at large reposes in it.

51. The nature of the crime is such that it strikes at the very

edifice of functioning of the court. A finding of guilt has already been given by the learned trial court. Thus the presumption of innocence that attaches to the accused during the trial of the case does not apply at the stage of consideration of suspension of sentence, whereby the appellants/accused persons stands guilty by the court concerned.

52. Although the appeal is pending before this court, and the fate of it shall be decided in due course, but at this stage in my considered opinion no extraordinary circumstances exists in favour of the appellants that require the court to exercise power under section 389(1) Cr.P.C.

53. As discussed above, the crime involved in the present case is of a very grave nature, suspending sentence at this stage were not only be against the established principles of criminal law but shake the confidence of general public in the judicial system. It is trite to say that if the judiciary as institution began to loose confidence of the public our cherished value of democracy shall come under serious threat.

54. Thus, in light of my above discussion, considering the nature and gravity of the offence, the antecedents of the convicts, the impact of the public confidence in courts, and importantly absence of any extraordinary circumstances meriting suspension of sentence, the application u/s 389(1) Cr.P.C moved on behalf of all the above named appellants/convicts namely Mr. Gopal Ansal, Mr. Sushil Ansal, Mr. P.P. Batra, Mr. Dinesh Chandra Sharma and Mr. Anoop

Singh Karayat accordingly stands disposed off as Dismissed.

55. Ordered accordingly.

56. Copy of the order be given dasti to the learned counsel for the parties.

**Announced in the open
Court on 03.12.2021**

**(ANIL ANTIL)
ADDITIONAL SESSIONS JUDGE-04
PATIALA HOUSE COURTS,
NEW DELHI
03.12.2021**