

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 16th FEBRUARY, 2022

IN THE MATTER OF:

+ **CRL.M.C. 3517/2021**

ANOOP SINGH KARAYAT

..... Petitioner

Through: Mr. Tarun Chandiok, Advocate.

versus

STATE

..... Respondent

Through: Mr. Dayan Krishnan, Sr. Advocate with Mr. Amit Chadha, APP, Ms. Manvi Priya, SPP, Mr. A.T. Ansari, Mr. Sanjeevi Seshadri and Mr. Sukrit Seth, Advocates with IO/SI Nikhil Chaudhary.

Mr. Vikas Pahwa, Sr. Advocate with Ms. Raavi Sharma, Advocate for the complainant.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. *Vide* the present petitions, the Petitioner seeks to challenge the Order dated 03.12.2021 passed by the learned Additional Sessions Judge, Patiala House Courts, rejecting the application of the Petitioner herein filed under Section 389(2) Cr.P.C for suspension of sentence during the pendency of Appeal.

2. It is pertinent to mention here that the impugned Order arises from a batch of criminal appeals, being CrI. Appeals No. 89/2021 (filed by the co-accused - Gopal Ansal), 90/2021 (filed by the co-accused -Sushil Ansal),

91/2021 (filed by the co-accused - P.P. Batra), 92/2021 (filed by the co-accused - Dinesh Chandra Sharma) and 95/2021 (filed by Anoop Singh Karayat, the Petitioner herein). Co-accused Gopal Ansal and Sushil Ansal have also challenged the Order impugned herein by filing CRL.M.C. 3276/2021 & CRL.M.C. 3277/2021 respectively. All the petitions were heard together. Mr. Arvind Nigam, learned Senior Counsel appeared for Sushil Ansal (Petitioner in CRL.M.C. 3276/2021), and Dr. Abhishek Manu Singhvi, Mr. N. Hariharan, and Mr. Pramod K. Dubey, learned Senior Counsels appeared for Gopal Ansal (Petitioner in CRL.M.C. 3277/2021).

I. FACTUAL MATRIX:

3. For a better understanding of the instant petition, it is imperative to narrate the backdrop of the entire episode, which is stated as under:

A. The genesis of the entire proceedings stems from the devastating fire that occurred in Uphaar Cinema on 13.06.1997 which resulted in the death of 59 people due to *asphyxia* and caused injuries to more than 100 people. Initially the investigation was conducted by Delhi Police and later on it was transferred to the CBI which registered a case, being case No. RC-3 (S)/97/SIC.IV/New Delhi. After investigation, charge-sheet was filed on 15.11.1997 against 16 persons. There was delay in trial and a petition, being Criminal Writ Petition No. 353/2002, was filed by the Association of Victims of Uphaar Tragedy (*hereinafter*, “AVUT”) before this Court for a direction to expedite the trial. This Court *vide* Order dated 04.04.2002 in

Criminal Writ Petition No. 353/2002, titled as Association of Victims of Uphaar Tragedy v. Govt. of NCT of Delhi & Ors., directed the Ld. Trial Court to conduct the trial for ten days in a month from May 2002 onwards, except for June 2002. It was directed that the Ld. Trial Court shall adjust its calendar suitably in consultation with the Ld. Principal District and Sessions Judge, if need be, to ensure that no other matter was taken up on the fixed dates. CBI was directed to take steps to ensure that sufficient numbers of witnesses were present and available on the dates fixed for prosecution evidence. The Trial Court was directed to complete the examination of prosecution witnesses on a day-to-day basis. It was also directed that no adjournments would be granted for non-availability of a defence counsel resulting in deferring of the cross-examination of a prosecution witness and in that event, it would be open to the Ld. Trial Court to take recourse to various options in terms of Section 309 Cr.P.C, including closure of cross-examination or cancellation of bail of the accused persons. It was directed that the trial shall be completed by 15.12.2002.

- B. Material on record discloses that during the examination of PW-33 (Mr. T. S. Sharma - ADO, Delhi Fire Service), it was found that certain documents which had been marked and which had to be exhibited were found to be torn/mutilated. On 13.01.2003, an application was filed by the Ld. Special Public Prosecutor bringing to the knowledge of the Court that important documents that were seized by the investigating agencies during the course

of investigation, which were part of the charge-sheet and judicial record, were missing/mutilated and had been tampered with. On 20.01.2003, after scrutinizing all the papers, the Ld. Special Public Prosecutor filed an application before the Ld. Additional Sessions Judge stating that since certain documents in the Court file had been torn and were missing, therefore, permission must be given for leading secondary evidence. The application was allowed on 31.01.2003 and the prosecution was granted permission to lead secondary evidence to prove the following documents which were found to be missing/mutilated in the Court file.

- C. The learned Additional Sessions Judge directed for an inquiry against Dinesh Chandra Sharma, the Court Ahlmad. It is pertinent to mention here that Dinesh Chandra Sharma took charge as the Court Ahlmad in the Court in which trial of the Main Uphaar case was being concluded. Pursuant to the inquiry, it was found that Dinesh Chandra Sharma was *prima facie* guilty of misconduct as well as for the loss and tampering with the documents which formed a part of the judicial record. He was dismissed from service *vide* an Order dated 25.06.2004. It is stated that after his dismissal from service, Dinesh Chandra Sharma approached the co-accused, P.P. Batra, to secure any form of employment/job. P.P. Batra recommended Dinesh Chandra Sharma to Mr. D.V. Malhotra, the General Manager of Star Estates Management Ltd. (a subsidiary of Ansal Properties and Industries Ltd.) who in turn recommended Dinesh Chandra

Sharma for employment at A-Plus Security Agency, which was run by the Petitioner herein who was the Chairman of A-Plus Security Agency. It is stated that Dinesh Chandra Sharma was given job for a remuneration of Rs. 15,000/-, which was higher than the salary that he was paid as a Court Ahlmad. It is stated that this salary was paid to Dinesh Chandra Sharma through D.V. Malhotra (now deceased). It is stated that when the Petitioner herein was made aware of the connection between Dinesh Chandra Sharma and the Main Uphaar Case, the Petitioner herein applied white fluid on the name of Dinesh Chandra Sharma in the register of A-Plus Security Agency in order to shield the possible role that his Agency might have played in the conspiracy which was alleged against Dinesh Chandra Sharma.

- D. When the factum of tampering with the Court record came to light, AVUT filed an application before the Sessions Court on 14.02.2003 under Section 439(2) Cr.P.C for cancellation of bail granted to the accused in the Main Uphaar case. The Sessions Court *vide* Order dated 29.04.2003 dismissed the said application on the ground that the trial in the Main Uphaar case was at its fag end. AVUT challenged the Order dated 29.04.2003 before this Court by filing CRL. M.C. 2380/2003. Along with CRL. M.C. 2380/2003, CRL. M. No. 2229/2006 was also filed by the AVUT for registration of FIR for tampering with the Court records. This Court *vide* Order dated 05.05.2006 rejected CRL. M.C. 2380/2003, but allowed CRL. M. No. 2229/2006 and directed the Special Branch of Delhi Police to register a case under

appropriate provisions of law against all such persons who were responsible for the disappearance/mutilation and tampering of documents which formed a part of judicial record in the trial of the Main Uphaar case. This Court also directed that the investigation be conducted by an officer not below the rank of ACP. Resultantly, FIR No.207/2006 dated 17.05.2006 was registered at Police Station Tilak Marg for offences under Sections 109/193/201/218/409/120B IPC on the complaint by R. Krishnamoorthy, the General Secretary of AVUT.

E. The instant proceedings arise out of the aforementioned FIR. *Vide* Order dated 25.05.2006, the investigation of the case was transferred to the Economic Offence Wing (EOW). It is pertinent to mention that in the Main Uphaar case, Gopal Ansal, Sushil Ansal and other co-accused were convicted by an Order dated 20.11.2007 and were sentenced to undergo 2 years rigorous imprisonment for the offences punishable under Section 304-A read with Section 36 of the IPC. The Order on sentence and conviction were challenged before this Court in appeal and this Court *vide* Order dated 04.01.2008 suspended the sentence of the accused till the pendency of appeal. This order was challenged by the Association of Victims of Uphaar Tragedy (AVUT) and the CBI before the Supreme Court by way of filing Special Leave Petitions. The Supreme Court *vide* Order dated 10.09.2008 reversed the Order of this Court and directed this Court to hear the appeal on a day-to-day basis. This Court heard the appeals on a day-to-day basis and dismissed the appeals *vide* Order dated

19.12.2008. This Order was challenged by the accused before the Supreme Court and the Supreme Court *vide* Order dated 05.03.2014 dismissed the challenge and the accused were sentenced to undergo rigorous imprisonment for two years, but having regard to the advanced age of Gopal Ansal & Sushil Ansal, it was directed that the sentence would be reduced to the period of sentence already undergone, provided they paid Rs. 30 Crores each within three months from the date of Order. It was directed that if the amount was not deposited within the stipulated time, then the accused would have to undergo the full sentence.

- F. In the instant matter, FIR was registered in the beginning only against Dinesh Chandra Sharma, the Court Ahlmad. It is stated that during the initial stages of the investigation, the Petitioner herein was summoned as a prosecution witness in the matter against Dinesh Chandra Sharma. Subsequently, supplementary charge-sheets were filed and the Petitioner herein along with Gopal Ansal, Sushil Ansal, H.S. Panwar and D. V. Malhotra were arrayed as accused. Summons were issued and ultimately charges were framed *vide* Order dated 31.05.2014. Order framing charges was unsuccessfully challenged by the Petitioner herein and the other co-accused by filing CRL. REV. P. 262/2016, 263/2016, 264/2016 & 265/2016 before this Court. This Court *vide* Order dated 12.05.2017 dismissed the revision petitions. After going through the entire evidence, the Ld. Trial Court held that the evidence on record indicated that there was a conspiracy

on behalf of the accused (including the Petitioner herein) to ensure that the documents, which were essential to bring home offence against Gopal Ansal, Sushil Ansal and H.S. Panwar (now deceased), were mutilated by tearing of pages, spreading ink on the pages or by causing their disappearance - in connivance with other accused person. The Ld. Trial Court relied upon various circumstances to come to the conclusion that there was motive on the part of the accused to destroy the documents which had been entrusted to Dinesh Chandra Sharma who was the Court Ahlmad. The Ld. Trial Court had also found that this occurrence of the documents related to the Main Uphaar case being destroyed and tampered with would result in securing acquittal of the accused in Main Uphaar case. The Ld. Trial Court further held that the employment of Dinesh Chandra Sharma, post his dismissal, with the A-Plus Security Agency which was run by the Petitioner herein indicated that the conspiracy between the accused persons was subsisting till the matter attained finality by way of the judgments of the Supreme Court.

- G. *Vide* Order dated 08.10.2021, the Petitioner herein along with other accused persons were convicted for offences under Section 120B IPC and Section 409 IPC read with Section 120B and Section 201 IPC read with Section 120B IPC and by way of a separate Order dated 08.11.2021, the Petitioner herein was sentenced to undergo simple imprisonment for seven years with a fine of Rs. 1,00,000/- (Rupees One Lakh only) for the offence punishable under Section 120B IPC; for offence punishable

under Section 409 IPC read with Section 120B IPC, the Petitioner was sentenced to undergo simple imprisonment for a period of three years with a fine of Rs. 1,00,000/- (Rupees One Lakh only); and for offence punishable under Section 201 IPC read with Section 120B IPC, the Petitioner was sentenced to undergo simple imprisonment for three years with a fine of Rs. 1,00,000/- (Rupees One Lakh only), and in the event of default in payment of the fine, the Petitioner was directed to undergo simple imprisonment for six months for each offence. The sentences were to run concurrently

- H. Thereafter, the Petitioner herein along with other co-accused filed appeals, being Criminal Appeals No. 89/2021 (filed by the co-accused - Gopal Ansal), 90/2021 (filed by the co-accused - Sushil Ansal), 91/2021 (filed by the co-accused - P.P. Batra), 92/2021 (filed by the co-accused - Dinesh Chandra Sharma) and 95/2021 (filed by the Petitioner herein), against the Order on charge and Order on sentence. In the abovementioned appeals, applications were also filed by the accused under Section 389(2) Cr.P.C for suspension of sentence during the pendency of Appeal. The learned Additional Sessions Judge, Patiala House Courts, *vide* Order dated 03.12.2021, dismissed the applications filed by the Petitioner herein and the co-accused under Section 389(2) Cr.P.C for suspension of sentence during the pendency of appeal.
- I. It is this Order dated 03.12.2021 which has been challenged by way of the instant petitions.

4. Detailed arguments have been advanced on behalf of the Petitioner herein and the co-accused, and also on behalf of the State. Even though the jurisdiction of the High Court to interfere with the Orders passed by the Sessions Court in a petition under Section 482 Cr.P.C is extremely limited, however, given the nature of the case, this Court permitted the learned Counsels to advance detailed arguments on merits of the case to ascertain as to whether the impugned Judgment dated 03.12.2021 suffers from perversity of such nature which would require interference of this Court.

II. CONTENTIONS OF THE PARTIES:

5. Though Mr. Tarun Chandiook appeared for the Petitioner herein, but as majority of the arguments were advanced by Mr. Arvind Nigam, learned Senior Counsel appearing for Sushil Ansal (Petitioner in CRL.M.C. 3276/2021), Dr. Abhishek Manu Singhvi, Mr. N. Hariharan, and Mr. Pramod K. Dubey, learned Senior Counsel appearing for Gopal Ansal (Petitioner in CRL.M.C. 3277/2021), which covers certain legal issues in the present case, this Court is also recording the arguments of Mr. Nigam, Dr. Singhvi and Mr. Hariharan which would be applicable to the present case also.

6. Mr. Arvind Nigam, learned Senior Counsel appearing for the co-accused Gopal Ansal in CRL.M.C. 3276/2021, states that in conspiracy cases, it is extremely important to fix the parameters of conspiracy. He contends that Section 10 of the Indian Evidence Act, 1872 (*hereinafter*, "IEA") is based on the principle of agents and conspiracy cannot extend beyond the period where the object of conspiracy has been achieved or when

it gets frustrated. He states that once the object of conspiracy gets frustrated, Section 10 of the IEA is not available and statements made or things done after the conspiracy cannot be taken into account. He further submits that the Courts below have erred in taking into account the fact that the Court Ahlmad - Dinesh Chandra Sharma, who was given the job after his dismissal from the service of the Court, would amount to continuing of conspiracy. He states that this was a very important factor considered by the Ld. Trial Court to hold that the conspiracy continued much beyond 2003 when it was found that the documents have been torn/mutilated and, therefore, it could not have been taken into account at all for the purpose of the case. Mr. Nigam states that if Section 10 of the IEA is to be applied even beyond the period of conspiracy which is frustrated/unearthed, then it would mean that all the accused who were partners in crime would be partners in perpetuity, which is contrary to the settled law.

7. Mr. Nigam relies on the judgment of the Supreme Court in Bhagwan Swarup Lal Bishan Lal v. State of Maharashtra, AIR 1965 SC 682, to contend that the evidentiary value of the acts which have been done in furtherance of conspiracy is limited by two circumstances, namely, that the acts shall be in reference to their common intention and in respect of a period after such intention was entertained by any one of them. He, therefore, states that one cannot look into the acts that have been done beyond the period after conspiracy has been frustrated. For the same proposition, Mr. Nigam relies on the judgment of State v. Nalini, (1999) 5 SCC 253, wherein the Supreme Court has held that a statement made by a conspirator before the commencement of the conspiracy is not admissible against the co-conspirator under Section 10 of the Evidence Act. Similarly, a

statement made after the conspiracy has been terminated on achieving/abandoning/frustrating its object or on the conspirator leaving the conspiracy in between, is not admissible against the co-conspirator. He, therefore, states that the fact that Dinesh Chandra Sharma was given employment by a different agency cannot be stated to be evidence available against the co-accused – Gopal Ansal and Sushil Ansal, and it cannot be said that the conspiracy would extend up to a point where Dinesh Chandra Sharma was given a job by the agency.

8. Mr. Tarun Chandiok, learned Counsel appearing for the Petitioner herein, adopts the submissions of Mr. Nigam on the aspect of conspiracy. He reiterates that conspiracy cannot extend beyond the period where the object of conspiracy has been achieved or when it gets frustrated. He states that in the instant case, conspiracy ended when it was found that the documents had been tampered with and, therefore, the act of providing employment to Dinesh Chandra Sharma could not be factored into the period of conspiracy. Relying upon the statement of Mr. Nigam, Mr. Chandiok states that acts done beyond the period of conspiracy, especially after the period of conspiracy has been frustrated cannot be looked into.

9. Mr. Chandiok states that the factum of destruction of evidence was brought to the notice of the learned Trial Court on 13.01.2003 and consequently, Mr. Y.K. Saxena, Ld. SPP for the State, moved an application for leading secondary evidence on 20.01.2003 which was allowed on 31.01.2003. Mr. Chandiok states that when the factum of alleged tampering with the Court record came to light, AVUT filed an application before the Sessions Court on 14.02.2003 under Section 439(2) Cr.P.C for cancellation of bail granted to the accused in Main Uphaar case which was dismissed

vide Order dated 29.04.2003 and thereafter, AVUT challenged the Order dated 29.04.2003 before this Court by filing CRL. M.C. 2380/2003 along with which CRL. M. No. 2229/2006 was also filed by the AVUT for registration of FIR against Gopal Ansal, Sushil Ansal and other persons for tampering with the Court records and resultantly, FIR No.207/2006 dated 17.05.2006 was registered at Police Station Tilak Marg for offences under Sections 109/193/201/218/409/120B IPC. Mr. Chandiok states that in that FIR, the Petitioner herein was initially summoned as a prosecution witness and it is only by way of a supplementary charge-sheet that the Petitioner herein was arrayed as an accused.

10. Mr. Chandiok submits that the Ld. Trial Court's finding that the role of the Petitioner herein was limited to "causing disappearance of important piece of the evidence to screen the offender" was not based on any cogent evidence and there was no material on record to suggest that the Petitioner herein had anything to do with the conspiracy to tamper with the judicial record in the Main Uphaar case. He states that with regard to the charge of conspiracy, it is important to show that the Petitioner herein had knowledge of tampering with evidence and merely because the Petitioner herein is alleged to have used white fluid on the name of Dinesh Chandra Sharma in the register of A-Plus Security Agency is not sufficient to establish the complicity of the Petitioner herein. He states that the mere allegation that the Petitioner herein had employed Dinesh Chandra Sharma at A-Plus Security Agency was of no consequence as imputing that the said employment was to further the conspiracy without any shred of evidence was a stretch and ought to be dismissed. Mr. Chandiok submits that the Petitioner herein is 73 years

of age and is suffering from various ailments. He, therefore, prays that the sentence of the Petitioner be suspended during the pendency of appeal.

11. *Per contra*, Mr. Dayan Krishnan, learned Senior Counsel appearing for the State, submits that the parameters for grant of bail and parameters for considering an application for suspension of sentence under Section 389 Cr.P.C are different. He places reliance on the judgment of the Supreme Court in Preet Pal Singh v. State of U.P., (2020) 8 SCC 645, wherein the Apex Court has held that there is a difference between grant of bail under Section 439 Cr.P.C in case of pre-trial arrest and suspension of sentence under Section 389 Cr.P.C and grant of bail, post conviction. The Apex Court has held that while considering an application under Section 439 Cr.P.C, 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 way of 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. He contends that the Apex Court in the said judgment has held that the Courts while considering an application for suspension of sentence and grant of bail, have 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) Cr.P.C. He further submits that the while considering an application for suspension of sentence,

the Appellate Court only has to examine if there is such patent infirmity in the Order of conviction that renders the Order of conviction *prima facie* erroneous. He states that where there is evidence that has been considered by the Ld. Trial Court, it is not open to a Court considering application under Section 389 Cr.P.C. to reassess and/or re-analyse the same evidence and take a different view, to suspend the execution of the sentence and release the convict on bail.

12. Mr. Krishnan further contends that the Order on charge is clear and unambiguous. He states that the object of conspiracy was to ensure that certain key documents which would bring home the case of Section 304A against the accused in the Main Uphaar case were mutilated and tampered and the only purpose of doing so was to secure the acquittal of the co-accused Gopal Ansal and Sushil Ansal. Mr. Krishnan states that even though Gopal Ansal and Sushil Ansal were not successful in their endeavour, it has resulted in delay in the hearing of the matter. He states that the accused entered into conspiracy for committing various offences like criminal breach of trust by a public servant, being the Court Ahlmad - Dinesh Chandra Sharma, and, thereby, committing the act of missing/destroying/tampering/obliterating the documents which were vital for the case in order to give advantage to Gopal Ansal and Sushil Ansal during trial of the Main Uphaar case. He states that the object was to secure acquittal or delay the trial as much as possible. He further states that the charge is clear as the co-accused P.P. Batra, who acted as a link between Gopal Ansal, Sushil Ansal and the Court Ahlmad, remained in constant touch with the Court Ahlmad and after his dismissal from the service, the Court Ahlmad was provided a job at A-Plus Security Agency that was run

by the Petitioners herein at a monthly remuneration of Rs.15,000/- which was much more than his existing salary as a Court Ahlmad. Mr. Krishnan states that in any event, when this order on charge was challenged before this Court in Crl. Rev. P. No. 262/2016, 263/2016, 264/2016, 265/2016, this Court while affirming the said Order had observed as under:

"106. Coming now to the offence of conspiracy. The argument of the revisionists that the conspiracy came to an end when the conspiracy was frustrated, i.e., when the fact of the destruction of documents was brought to the knowledge of the concerned court, cannot be countenanced, inasmuch as, the object of the conspiracy was not the destruction of the documents, per se.

107. It is in fact, evident from the material hereinabove elaborated, that prima facie the object of conspiracy was to secure, favourable orders and the acquittal of Mr. Sushil Ansal, Mr. Gopal Ansal and Mr. H.S. Panwar, by employing illegal means. 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. [Ref: State v. Nalini (supra)]

108. In this regard, it is also trite to observe that, it is not necessary that all the actors in the conspiracy must have joined the offence from its very inception. Conspiracy is a continuing offence and the acts of the persons who join the conspiracy at a later point in time, in furtherance of the object thereof, form a part of the same offence of conspiracy. [Ref: State v. Nalini (supra); Yakub Abdul Razak Memon v. State of Maharashtra (supra), Leo Roy Frey (supra)]

109. Therefore, it follows that the acts allegedly committed in furtherance of the objective of the conspiracy include, (i) the act of destruction of the documents forming a part of the judicial file, which were vital to the case of the prosecution in the Main

Uphaar Trial as against Mr. Sushil Ansal, Mr. Gopal Ansal and Mr. H.S. Panwar; and (ii) providing a job to Mr. Dinesh Chandra Sharma, in order to 'take care' of him in lieu of his role in the conspiracy.

110. In view of the foregoing, the argument of the revisionists that the acts of commission and omission by Mr. D.V. Malhotra and Mr. Anoop Singh, did not form a part of the same alleged conspiracy, does not hold water and is thus, rejected."

13. Mr. Krishnan places reliance on the judgment of the Supreme Court in Main Pal v. State of Haryana, (2010) 10 SCC 130, wherein the Supreme Court after relying on the judgment of Willie (William) Slaney v. State of M.P., AIR 1956 SC 116, had held that when an accused is tried by a competent court, if he is told and clearly understands the nature of the offence for which he is being tried, if the case against him is fully and fairly explained to him and he is afforded a full and fair opportunity to defend himself, then, provided there is 'substantial' compliance of law, mere mistakes in procedure, mere inconsequential errors and omissions in the trial are regarded as venal by the Code and the trial is not vitiated unless the accused can show substantial prejudice. He states that the Petitioner knew and had been given notice of the fact that the charge against them was that the conspiracy extended up to a point where the Court Ahlmad was provided a job at the instance of Gopal Ansal and Sushil Ansal at a higher salary which was in furtherance of conspiracy.

14. Mr. Krishnan states that it cannot be said that the judgment of the Ld. Trial Court is based on null evidence or is completely unjustified. He states that there is a strong case against the Petitioner. He states that the Ld. Appellate Court has looked into all the factors while refusing to suspend the

sentence of the Petitioner herein. He further states that a High Court while exercising its jurisdiction under Section 482 Cr.P.C can interfere with the order of the Sessions Court only when the High Court comes to a conclusion that the order of the Sessions Court, in refusing to suspend the sentence of the Petitioner herein, was perverse or that it shook the consciousness of the Court. He states that the High Court should not substitute its own conclusion to the one arrived at by the Sessions Court just because some other view is possible.

15. Mr. Vikas Pahwa, learned Senior Counsel appearing for the Complainant, places reliance on the judgment of the Supreme Court in Atul Tripathi v. State of U.P., (2014) 9 SCC 177, wherein the Apex Court has laid down parameters to be considered while dealing with an application for suspending the sentence of a convict and has held that while releasing an accused by suspending his sentence during the pendency of appeal, the Court must see the manner in which the crime is committed, gravity of the offence, age of the convict, criminal antecedents of the convict, impact on public confidence in the justice-delivery system, etc. He states that the Petitioner is accused of a very serious offence. He states that Gopal Ansal and Sushil Ansal along with the Petitioner herein and other co-accused have tried to delay the proceedings at every stage and, therefore, they now cannot turn around and take advantage of their age. He further states that granting suspension of sentence to the Petitioner herein would have a major impact on public confidence inasmuch as the Petitioner in connivance with Gopal Ansal and Sushil Ansal has trampled the sanctity of law and that the majesty of Court has been lowered by them.

16. Dr. Abhishek Manu Singhvi, learned Senior Counsel appearing for Gopal Ansal (Petitioner in CRL.M.C. 3277/2021), in rejoinder, contends that the Courts must adopt a holistic approach while considering an application for suspension of sentence under Section 389 Cr.P.C. He contends that just because the High Court is hearing a petition under Section 482 Cr.P.C against an order of the Ld. Appellate Court rejecting an application filed by the Petitioner herein and other co-accused under Section 389 Cr.P.C., the High Court must treat the petition as if it is hearing an application under Section 389 Cr.P.C for suspension of sentence. He states that there is no statutory standing of the power of High Court while exercising its power under Section 482 Cr.P.C nor there is any judicial circumspection on the power of the High Court to grant bail. He states that when it comes to Article 21 of the Constitution of India, there cannot be implied circumspection of the power of a High Court. He states that once bail is granted, the superior Courts must be very slow in interfering with the order granting bail, but if bail is not granted, the superior courts have a duty to re-evaluate the entirety of the matter and then only decide whether bail should be denied or not. Dr. Singhvi contends that when applications were filed for secondary evidence, it was the legal right of the Petitioners to do so for furthering a genuine defence. He contends that the trial was never stayed and the Petitioner cannot be accused of delaying the trial. He also contends that the finding of the Main Uphaar case cannot be used in the present case and they have to be proved independently.

17. Dr. Singhvi draws the attention of this Court to paragraphs No.35, 36, 38 & 40 of the judgment of the Apex Court in Preet Pal Singh (supra) to contend that the Ld. Appellate Court, while considering an application under

Section 389 Cr.P.C has only to examine if there is such patent infirmity in the order of the Ld. Trial Court that renders the order of conviction *prima facie* erroneous. He states that a holistic approach must be made by the Courts while deciding an application under Section 389 Cr.P.C and not a technical approach. He states that in the Main Uphaar case, the Order framing charges was passed on 13.05.2014, while the third charge-sheet was filed on 12.02.2014. He, therefore, states that the trial could not have begun before the third charge-sheet was filed. He states that the trial concluded on 08.10.2021 and by any standards of trial, the trial in the Main Uphaar case has not been delayed. Dr. Singhvi submits that the authors of the documents have not been examined to prove the document and the documents have, therefore, not been proved in accordance with law. He relies on Paragraphs No.49 & 50 of the judgment passed by the Supreme Court in Malay Kumar Ganguly v. Dr. Sukumar Mukherjee, (2009) 9 SCC 221 and on Madholal Sindhu v. Asian Assurance Co. Ltd., AIR 1954 Bom 305.

18. Mr. N. Hariharan, learned Senior Counsel appearing for Gopal Ansal (Petitioner in CRL.M.C. 3277/2021), contends that this Court, while deciding a revision petition against an Order on charge has not expanded the scope of charge. He has taken this Court through paragraphs No.34 and 117 of the judgment dated 12.05.2017 passed by this Court in CRL. REV. P. Nos. 262/2016, 263/2016, 264/2016 & 265/2016 to substantiate his contention. He contends that Section 10 of the IEA is a rule of evidence and Section 10 of the IEA comes into play only when there is a reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong. He states that there is no finding by the Ld. Trial Court that the Petitioners have entered into a conspiracy

with any person. He, therefore, states that the second part of Section 10 of IEA being that anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed so to be conspiring, as well for the purpose of proving the existence of the conspiracy. To buttress his argument, Mr. Hariharan places reliance on Natwarlal Sakarlal Mody v. The State of Bombay, **1961 SCC OnLine SC 1**. He also places reliance on L.K. Advani v. Central Bureau of Investigation, **1997 SCC OnLine Del 382**, and more particularly on paragraph No. 87 of the said judgment wherein this Court has held that the prosecution must prove the factum of evidence other than the disputed evidence i.e. the diaries and the loose sheets. Paragraph No.87 of decision in L.K. Advani (supra), on which reliance has been placed by Mr. Hariharan, reads as under:

“87. There is another aspect of the matter. The prosecution must prove the factum of the conspiracy by evidence other than the disputed evidence i.e. the diaries and the loose sheets which have been placed on the record of this Court. It has been observed above that there is no such evidence. The alleged entries relate to past facts. The alleged entries must have been made after the disbursement. Hence they cannot be said to have been made in execution of the common intention of the conspiracy.”

19. Mr. Hariharan also places reliance on the judgments of the Supreme Court in State v. Nalini, **(1999) 5 SCC 253** and, Paragraphs No.84 and 102 of State (NCT of Delhi) v. Navjot Sandhu, **(2005) 11 SCC 600**. Mr.

Hariharan then contends that the Petitioner cannot be charged for an offence under Section 409 IPC read with Section 120B IPC or with Section 201 IPC read with Section 120B IPC without substantiating any evidence of a conspiracy for the offences punishable under Sections 409 IPC or 201 IPC. He states that since the Petitioner was not entrusted with any documents, an offence under Section 401 IPC is not made out against the Petitioner and the same analogy is applicable to the offence punishable under Section 201 IPC for the reason that there is nothing on record to show that the Petitioner conspired with Dinesh Chandra Sharma, the Court Ahlmad.

20. Mr. Hariharan further relies on Paragraph No.153 of the judgment of the Supreme Court in Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116, to contend that in case of circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn should be fully established. He states that a reading of the Ld. Trial Court judgment showcases that it is only based on probabilities without there being a definitive finding.

III. REASONING OF THIS COURT:

21. Heard Mr. Tarun Chandiok, learned Counsel appearing for the Petitioner herein, Mr. Dayan Krishnan, learned SPP for the State, and Mr. Vikas Pahwa, learned Senior Counsel appearing for the Complainant, i.e. Association of Victims of Uphaar Tragedy (AVUT), and perused the material on record.

22. The learned Counsels have taken this Court through the facts of the case, evidence on record, the scope of Section 482 Cr.P.C. while deciding a

challenge to an Order refusing to grant suspension of sentence, and also detailed arguments have been addressed on merits of the case.

23. A perusal of the material on record indicates that on 13.06.1997, a fire occurred at Uphaar Cinema which resulted in the death of 59 people due to *asphyxia* and caused injuries to more than 100 people. The investigation had been initially conducted by Delhi Police, but later on it was transferred to the CBI which registered a case, being case No. RC-3 (S)/97/SIC.IV/New Delhi. After investigation, charge-sheet was filed on 15.11.1997 against 16 persons. When charges were framed, all the documents were intact. Accused Dinesh Chandra Sharma took charge as the Court Ahlmad of the Court which was dealing with the trial on 30.04.2001. During the examination of PW-33 (Mr. T. S. Sharma - ADO, Delhi Fire Service), a letter dated 28.11.1996 was found half-torn from the judicial file. On scrutiny, it was found that certain documents were torn, stained with ink and/or were missing. CBI moved an application apprising the Ld. Trial Court about the tampering. CBI also sought permission from the Ld. Trial Court to lead secondary evidence with respect to the missing/tampered documents, which was subsequently allowed. An application under Section 439(2) Cr.P.C was filed for cancellation of the bail that had been granted to the accused in the Main Uphaar case alleging that they were responsible for the said tampering.

24. The material on record further reveals that an inquiry was conducted against Dinesh Chandra Sharma who was the Court Ahlmad and, after the said inquiry, it was held that the Ahlmad was responsible for tampering of certain documents, disappearance of certain documents and for spreading ink on certain documents. An application was filed by AVUT before this Court, being CRL.M.No.2229/2006, seeking registration of a criminal case

against the offenders for tampering with the documents. *Vide* Order dated 05.05.2006, this Court directed the Delhi Police to register a case against the accused with regard to the incident of tampering with the evidence. Resultantly, FIR No.207/2006 dated 17.05.2006 was registered at Police Station Tilak Marg for offences under Sections 109/193/201/218/409/120B IPC. Consequently, Dinesh Chandra Sharma was arrested and sent to police custody. First charge-sheet was filed on 12.02.2007. Supplementary charge-sheet was filed on 17.01.2008 against Gopal Ansal, Sushil Ansal, the Petitioner herein, H. S. Panwar, P.P. Batra, and Col. D. V. Malhotra. Summons were issued. Third supplementary charge-sheet was filed on 12.02.2014. Charges were framed on 31.05.2014 against all the seven accused persons and, after conclusion of the trial, the accused were convicted *vide* Order dated 08.10.2021 for offences under Section 120B IPC and Section 409 IPC read with Section 120B and Section 201 IPC read with Section 120B IPC. The accused filed appeals, being CrI. Appeals No. 89/2021 (filed by the co-accused - Gopal Ansal), 90/2021 (filed by the co-accused -Sushil Ansal), 91/2021 (filed by the co-accused - P.P. Batra), 92/2021 (filed by the co-accused - Dinesh Chandra Sharma) & 95/2021 (filed by the Petitioner herein), against the Order on charge and Order on sentence, along with applications under Section 389(2) Cr.P.C for suspension of sentence during the pendency of Appeal and the same was rejected *vide* Order dated 03.12.2021. The said Order is under challenge before this Court.

25. The charges framed against the accused are that from the date of filing of the charge-sheet in Case No. RC-3 (S)/97/SIC.IV/New Delhi, for offences under Sections 304/304A IPC till 13.01.2003, when the facts of the missing

documents came to the knowledge of the Ld. Trial Court, the accused had already entered into criminal conspiracy for committing various offences like criminal breach of trust by a public servant, by causing the disappearance/destruction/obliterating/tampering as well as spreading ink over the documents which were vital for the trial in the case arising out of Case No. RC-3 (S)/97/SIC.IV/New Delhi, to give advantage to Gopal Ansal, Sushil Ansal and H.S. Panwar during the trial of the Main Uphaar case. Charges were framed under Section 120B IPC and Section 409 IPC read with Section 120B and Section 201 IPC read with Section 120B IPC.

26. The germane allegation against the Petitioner is that after Dinesh Chandra Sharma was dismissed from service, he approached P. P. Batra, who was a stenographer at Ansal Properties and Infrastructure Ltd. (APIL) as well as the *pairvi* for the co-accused – Gopal Ansal and Sushil Ansal. It is stated that P.P. Batra introduced Dinesh Chandra Sharma to D. V. Malhotra, who was the General Manager of Star Estate Management Pvt. Ltd which was a subsidiary of APIL, which was run by Gopal Ansal and Sushil Ansal, for providing him a job and D. V. Malhotra in turn recommended Dinesh Chandra Sharma to A-Plus Security Agency which was run by the Petitioner herein. Dinesh Chandra Sharma was given job for a remuneration of Rs.15,000/- which was much more than what he was receiving as Court Ahlmad. It has further been alleged that D.V. Malhotra was acting on behalf of Gopal Ansal and Sushil Ansal and he was paying cash to A-Plus Security Agency for payment to Dinesh Chandra Sharma who, after a period 8 months, i.e. November 2004 to June 2005, left the said employment. It is, therefore, the allegation of the prosecution that Dinesh Chandra Sharma was provided the job with double the pay only to cover-up the tampering of the

documents done by Dinesh Chandra Sharma at the behest of Gopal Ansal and Sushil Ansal. It is further stated that when police went to the office of A-Plus Security Agency, an attempt was made to put white fluid on the registers in order to obscure the fact that Dinesh Chandra Sharma was in employment with A-Plus Security Agency. It is, therefore, the contention of the prosecution that the Petitioner herein was a part of the conspiracy and that his role was to cover-up the conspiracy by providing Dinesh Chandra Sharma a job.

27. The first issue which arises in the instant matter is whether the Petitioner's act of giving employment to Dinesh Chandra Sharma at A-Plus Security Agency, on the request of D. V. Malhotra, who was acting at the behest of Gopal Ansal and Sushil Ansal, and whether the Petitioner's act of applying white fluid on the register at A-Plus Security Agency to obscure Dinesh Chandra Sharma's name would amount to furtherance of the conspiracy that had been hatched to prevent conviction of Gopal Ansal and Sushil Ansal in the Main Uphaar case.

28. In State v. Nalini (supra), the Supreme Court has held that a statement made by a conspirator before the commencement of the conspiracy is not admissible against the co-conspirator under Section 10 of the IEA. Similarly, a statement made after the conspiracy has been terminated on achieving its object or it is abandoned or it is frustrated or the conspirator leaves the conspiracy in between, is not admissible against the co-conspirator. The Apex Court has further held that fixing the period and parameters of conspiracy is, thus, important as provisions of Section 10 IEA would apply only during the existence of the conspiracy.

*“575. In the present case, there is no evidence to support the charge as regards the period of conspiracy. It is as important to know the period as to ascertain the object of conspiracy. It appears that period of conspiracy in the charge from July 1987 to May 1992 has been mentioned as the Indo-Sri Lankan Accord was entered into in July 1987 and LTTE was declared an unlawful association by notification dated 14-5-1992 issued under the Unlawful Activities (Prevention) Act, 1967. There is, however, no evidence that the conspiracy was hatched immediately on entering into the Accord and was terminated only on the issue of the notification. A statement made by a conspirator before the commencement of the conspiracy is not admissible against the co-conspirator under Section 10 of the Evidence Act. **Similarly, a statement made after the conspiracy has been terminated on achieving its object or it is abandoned or it is frustrated or the conspirator leaves the conspiracy in between, is not admissible against the co-conspirator.** Fixing the period of conspiracy is, thus, important as provisions of Section 10 would apply only during the existence of the conspiracy. We have held that object of the conspiracy was the killing of Rajiv Gandhi. It is not that immediately after the object of conspiracy is achieved, Section 10 becomes inapplicable. For example principle like that of *res gestae* as contained in Section 6 of the Evidence Act will continue to apply.*

664. *Section 10 of the Evidence Act recognises the principle of agency and it reads as follows:*

“10. Things said or done by conspirator in reference to common design.—Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in

reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.”

665. *To apply this provision, it has to be shown that (1) there is reasonable ground to believe that two or more persons have conspired together; and (2) the conspiracy is to commit an offence or an actionable wrong. If these two requirements are satisfied then anything said, done or written by any one of such persons after the time when such intention was entertained by any one of them in furtherance of their common intention, is a relevant fact against each of the persons believed to be so conspiring as well as for the purpose of proving the existence of conspiracy and also for the purpose of showing that any such person is a party to it.”*

(emphasis supplied)

29. The Supreme Court has further succinctly delineated the principle of law governing Section 10 IEA in Bhagwan Swarup Lal Bishan L. & Ors. v. State of Maharashtra (AIR 1965 SC 682). The relevant portion has been reproduced as under:

“8. Before dealing with the individual cases, as some argument was made in regard to the nature of the evidence that should be adduced to sustain the case of conspiracy, it will be convenient to make at this stage some observations thereon. Section 120-A of the Indian Penal Code defines the offence of criminal conspiracy thus:

“When two or more persons agree to do, or cause to be done an illegal act, or an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy.”

The essence of conspiracy is, therefore, that there should be an agreement between persons to do one or other of the acts described in the section. The said agreement may be proved by direct evidence or may be inferred from acts and conduct of the parties. There is no difference between the mode of proof of the offence of conspiracy and that of any other offence: it can be established by direct evidence or by circumstantial evidence. But Section 10 of the Evidence Act introduces the doctrine of agency and if the conditions laid down therein are satisfied, the act done by one is admissible against the co-conspirators. The said section reads:

“Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.”

*This section, as the opening words indicate, will come into play only when the Court is satisfied that there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, **that is to say, there should be a prima facie evidence that a person was a party to the conspiracy before his acts can be used against his co-conspirators.** Once such a reasonable ground exists,*

anything said, done or written by one of the conspirators in reference to the common intention, after the said intention was entertained, is relevant against the others, not only for the purpose of proving the existence of the conspiracy but also for proving that the other person was a party to it. **The evidentiary value of the said acts is limited by two circumstances, namely, that the acts shall be in reference to their common intention and in respect of a period after such intention was entertained by any one of them.** The expression “in reference to their common intention” is very comprehensive and it appears to have been designedly used to give it a wider scope than the words “in furtherance of” in the English law; with the result, anything said, done or written by a co-conspirator, after the conspiracy was formed, will be evidence against the other before he entered the field of conspiracy or after he left it. Another important limitation implicit in the language is indicated by the expressed scope of its relevancy. Anything so said, done or written is a relevant fact only “as against each of the persons believed to be so conspiring as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it”. It can only be used for the purpose of proving the existence of the conspiracy or that the other person was a party to it. It cannot be used in favour of the other party or for the purpose of showing that such a person was not a party to the conspiracy. In short, the section can be analysed as follows: (1) **There shall be a prima facie evidence affording a reasonable ground for a court to believe that two or more persons are members of a conspiracy;** (2) if the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be evidence against the other; (3) anything said, done or written by him should have been said, done or written by him after the intention was formed by any one of them; (4) it would also be relevant for the said purpose against another who

entered the conspiracy whether it was said, done or written before he entered the conspiracy or after he left it; and (5) it can only be used against a co-conspirator and not in his favour.”

(emphasis supplied)

30. The Ld. Trial Court in its Order dated 08.10.2021 relied on various judgments of the Apex Court to hold that the conspiracy of tampering with documents extended much beyond the date on which the tampering of documents inside the Court was discovered and extended to Dinesh Chandra Sharma being employed by A-Plus Security Agency. It is the contention of the learned Counsel for the Petitioner that Section 10 of the IEA cannot be extended to a period after conspiracy has either achieved its purpose or has been frustrated. The Ld. Appellate Court in its impugned Order dated 03.12.2021 has found that the approach of the Ld. Trial Court in coming to the conclusion that the conspiracy would extend much beyond 13.01.2003 does not suffer with any perversity while deciding the application filed by the Appellant's for suspension of sentence during the pendency of Appeal.

31. The question as to whether the Petitioner herein knew about the conspiracy of tampering with the documents or whether he knew that Dinesh Chandra Sharma was being given a job only to cover-up the conspiracy of tampering with the documents as well as the question as to whether the white fluid that was applied on the register after coming to know about the conspiracy and Dinesh Chandra Sharma's connection with the same is a knee-jerk reaction or not, and whether Section 10 of the IEA can be stretched to this extent are all arguments which have to be dealt with by the Ld. Appellate Court while deciding the appeal of the Petitioner herein. Furthermore, the issue as to whether D.V. Malhotra had informed the

Petitioner herein that the employment at A-Plus Security Agency for a remuneration of Rs. 15,000/- was a favour that was being done to Dinesh Chandra Sharma for aiding Gopal Ansal and Sushil Ansal as a Court Ahlmad, and the Petitioner, after being cognizant of the same, had provided the job to Dinesh Chandra Sharma, or even if the Petitioner herein was not informed, would providing the job still be construed as being part of the conspiracy, are all matters that are to be dealt by the Ld. Appellate Court while deciding the appeal.

32. The second issue pertains to the scope of Section 389 Cr.P.C and the parameters that have to be kept in mind while granting suspension of sentence has been stipulated by the Supreme Court in a catena of judgments. It is well settled now that there is a difference between the factors that have to be taken into consideration for grant of bail under Section 439 Cr.P.C prior to conviction and grant of suspension of sentence under Section 389 Cr.P.C, which is post-conviction, for the simple reason that presumption of innocence is no longer applicable to the person who stands convicted for an offence. Even though presumption of innocence is lost, however, at this juncture, taking into account the nature of role of the Petitioner herein to provide employment to Dinesh Chandra Sharma after he was dismissed from service for tampering with the records of the Court to favour Gopal Ansal and Sushil Ansal, and to ensure that they are not convicted for the offence for which they were charged with in the Main Uphaar case, the fact that the Petitioner was not arrested during the pendency of trial as well as the fact that the Petitioner is 73 years of age and having no previous antecedents, this Court is inclined to suspend the sentence of the Petitioner herein during the pendency of the appeal on the Petitioner furnishing a

personal bond in the sum of Rs. 1,00,000/- with two sureties in the like amount to the satisfaction of the Trial Court. The petitioner shall not leave NCT of Delhi without the prior permission of the Court. He shall also surrender his passport in the Trial Court, if not already surrendered.

33. It is to be noted that since the matter relates to tampering of the judicial record, the same has to be decided as expeditiously as possible in order to ensure that the faith of the public in the judicial system is not eroded. This Court is of the view that cases of this nature should be heard and decided at the earliest as any delay in dealing with the same will only make people lose faith in the cherished institution, that is the judiciary. The Ld. Trial Court is, therefore, requested to expedite the hearing of the appeal filed by the Petitioner herein and conclude the same within a period of one month from the date of this Order and if necessary, conduct day-to-day hearing for the same and after concluding the hearing, pronounce the judgment as expeditiously as possible. If it is found that the Petitioner herein is trying to delay the proceedings, it is open to the State as well as to AVUT to approach this Court for cancellation of suspension of sentence during pendency of the Petitioner's appeal.

34. With the above observations, this petition is disposed of, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

FEBRUARY 16, 2022

Rahul