

a not the Competent authority to refuse or grant any sanction under section 19 of the Prevention of Corruption Act. However, the next Commissioner further refused to grant sanction on 3rd November, 2012. Thus, it was refusal by the Commissioner, who was competent to consider sanction by virtue of amended Section 59A of Maharashtra Municipal Council Act.

b 9. In the present case, there is nothing to show on record that additional material was placed before the Commissioner which led him to take decision of giving sanction to prosecute the petitioner on 2nd February, 2017. In view of this, Criminal Revision application is allowed. The order dated 6 th September, 2017 is set aside and the Applicant is discharged from Special Case No. 7 of 2017 from the offences punishable under section 7, 13(1)(d) r/w. 13(2) of Prevention of Corruption Act.

d **Result:-** Criminal Revision Application allowed.

ABC 2019 (I) 407 GUJ
ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT

(J.B.Pardiwala & A.C. Rao, JJ.)

e Criminal Misc. Application No. 1 of 2018

In R/Criminal Appeal No. 1259 of 2018

With

f Criminal Misc. Application No. 2 of 2018

In R/Criminal Appeal No. 1313 of 2018

With

g Criminal Misc. Application No. 2 of 2018

In R/Criminal Appeal No. 1314 of 2018

Decided on 5 February, 2019

SIKANDAR KARIM MALEK

- Appellant(s).

Versus

h STATE OF GUJARAT

- Respondent(s).

Law Covered:- (A) Code of Criminal Procedure, 1973 – Section 389 – Suspension of sentence – Indian Penal Code, 1860 – Sections 302 & 149 – acquittal under 302, simpliciter – Acquittal from 149 – Considered – the acquittal of the offence punishable u/s 149 IPC – the injuries suffered by the deceased – the injuries suffered by the accuseds & the non-explanation of such injuries by

prosecution – the individual liability fixed by the trial court of the applicants herein coupled with the evidence of the Investigating Officer – & above all, the time that is going to be consumed before the criminal appeals are taken up for final hearing – Plea for suspension of the substantive order of sentence accepted. (Para 71) a

(B) Code of Criminal Procedure, 1973 – Sections 437, 438, 439 vis-à-vis S 389 – Held, there happens to be a fine distinction between the prayer for bail at pre-conviction as well as the post-conviction stage, viz Sections 437, 438, 439 and 389(1) of the Cr.P.C. (Para 32) b

(C) Constitution of India – Article 21 – Right to life & personal liberty – Scope & ambit – The right to life includes the right to live with human dignity & all that what go along with the 'right to live with human dignity', such as, adequate nutrition, clothing, shelter and facilities for reading, writing and expressing one-self in diverse forms, freely moving about and mixing and commingling with fellow human beings – Francis Coralie Mullin v. Administrator, Union Territory of Delhi and Ors – referred. (Para 48) c
d

(D) Constitution of India – Article 21 – Right to life & personal liberty – the magnitude & content of the components – would depend upon the extent of the economic development of the country – but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self – Francis Coralie Mullin v. Administrator, Union Territory of Delhi and Ors – referred. (Para 48) e
f

(E) Constitution of India – Article 21 – Right to life & personal liberty – Explanation – every act, which offends against or impairs human dignity, would constitute deprivation pro tanto (to such extant) of this right to live – Francis Coralie Mullin v. Administrator, Union Territory of Delhi and Ors – referred. (Para 48) g

(F) Constitution of India – Articles 14 & 21 – Equality before law & Right to life & personal liberty – Rights of prisoner or detenu – Held, The prisoner or detenu cannot obviously move about freely by going outside the prison walls nor can he socialise at his free will with persons outside jail – However, as part of the right to live with human dignity and as a necessary component of the right to life, he would be entitled to have interviews with the members of his family & friends – & no prison regulation or procedure, laid down by prison, regulating the right to have h

a *interviews with members of the family and friends, can be upheld as constitutionally valid, under Articles 14 & 21, unless it is reasonable, fair and just. (Para 51)*

b (G) *Constitution of India – Article 21 – Right to life & personal liberty – a person, even during his imprisonment, punitive or preventive, is entitled to a treatment having due regard for the inherent dignity of the human person – Code of Criminal Procedure, 1973 – Sections 439 & 389. (Para 54)*

c (H) *Constitution of India – Article 21 – Right to personal liberty – Right of speedy trial – if the High Court is not in a position to hear the appeal of an accused within a reasonable period of time, it must ordinarily (unless there are cogent grounds for acting otherwise) release the accused on bail in cases of substantive appeals on life imprisonment pending before it – Code of Criminal Procedure, 1973 – Sections 439 & 389. (Para 56)*

d (I) *Criminal Jurisprudence – Tendency to include the innocent with the guilt in case of party factions – Safeguard from – insisting on acceptable evidence – which implicates such accused & satisfies the conscience of the court. (Para 63)*

e (J) *Interpretation of Statute – Free fight – interpretation of – a free fight is one when both sides starts fight from the start. (Para 64)*

f (K) *Criminal trial – Free fight – determination of – When one party after preparation & armed with deadly weapon went to the other party's house– it could not be said that both the parties were pre-determined for a trial of strength & had a free fight– rather the first party was the aggressor– Gajanand v. State of Uttar Pradesh – referred. (Para 64)*

g (L) *Indian Penal Code, 1860 – Section 96 –Right of private defence – Free fight– No right of private defence is available to either party & each individual is responsible for his own acts. (Para 67)*

h (M) *Interpretation of Statute – "Sudden fight" – interpretation of – When no party attacks the members of the opposite party at the commencement of the occurrence – & there is no evidence regarding formation of unlawful assembly with a particular common object – & the fight takes place as a result of heated passion & without premeditation, it can be said to be a "sudden fight" – Mariadasan and others v. State of Tamil Nadu – relied. (Para 68)*

(N) *Indian Penal Code, 1860 – Section 149 – Applicability in case of sudden fight – No unlawful assembly can be said to have been formed in such cases and the accused cannot be convicted under this Section – All the persons must be held responsible for their individual acts and not vicariously liable for acts of others– Mariadasan and others v. State of Tamil Nadu – relied. (Para 68)* a b

(O) *Indian Penal Code, 1860 – Section 147, 148 or 149 – Applicability of – in case sudden fight taken place on spur of moment – the accused cannot be convicted under Sections 147, 148 or 149. (Para 69)* c

(P) *Indian Penal Code, 1860 – Section 149 – Applicability of – in case of group rivalry & enmity– Held, it often happens that there is a general tendency to rope in as many persons as possible as having participated in the assault– To avoid this eventuality, in case of free fight, the law has been laid down that persons who caused injuries would be liable. (Para 70)* d

(Q) *Code of Criminal Procedure, 1973 – Section 389 – Suspension of sentence – Preference of Appeal against acquittal by State & the same has been admitted – Effect of – Held, none of the above aspects should be taken into consideration for the purpose of suspension of the substantive order of sentence. (Para 71)* e

(R) *Code of Criminal Procedure, 1973 – Section 389 – Suspension of sentence vis-à-vis Appeal against acquittal – Held, just because the State has thought fit to prefer an acquittal appeal – the Court should not ignore or overlook the basic infirmities in the judgment & order of conviction going to the root of the matter. (Para 71)* f

Facts:- *The present applications u/s 389, CrPC, filed at the instance of six convicts seeking suspension of the substantive order of sentence of life imprisonment. It was noticed that two cross-cases were tried together and both the sessions cases came to be disposed of by a common judgment and order. All the six applicants herein were convicted for the offence punishable u/s 302 IPC simpliciter by determining their individual liability and were sentenced to undergo life imprisonment. The trial court disbelieved the case put up by the prosecution of unlawful assembly and common object. Accordingly, all the accused persons of both the cases came to be acquitted of the offences punishable u/ss 147, 148, 149, 427, 504, 506 (2) and 120B, IPC. The State preferred the Criminal against the said acquittal of the accused persons. It was observed that just because the State* g h

a *has thought fit to prefer an acquittal appeal so far as the acquittal of the accused persons of the offence under Section 149 of the IPC, this Court should not ignore or overlook the basic infirmities in the judgment and order of conviction going to the root of the matter. Sentence was suspended.*

b **Law of relief:-** *In case sudden fight taken place on spur of moment the accused cannot be convicted under Sections 147, 148 or 149, IPC.*

c **Held:-** From perusal of Section 389 Cr.P.C., it is evident that save and except the matter falling under the category of sub-section 3 neither any specific principle of law is laid down nor any criteria has been fixed for consideration of the prayer of the appellant/convict and further, having a judgment of conviction erasing the presumption leaning in favour of the accused regarding innocence till contrary recorded by the court of the competent jurisdiction, and in the aforesaid background, there happens to be d a fine distinction between the prayer for bail at pre-conviction as well as the post-conviction stage, viz Sections 437, 438, 439 and 389 (1) of the Cr.P.C. (Para-32)

e Taking a clue from the above observations made in Sunil Batra (supra), the Supreme Court, in *Francis Coralie Mullin v. Administrator, Union Territory of Delhi and Ors. (AIR 1981 SC 746)*, observed that the question, which arises is whether the right to life is limited only to protection of limb or faculty or does it go further and embraces something more. The Supreme Court has pointed out, in f Francis Coralie Mullin (supra), that the right to life includes the right to live with human dignity and all that what go along with the 'right to live with human dignity', such as, adequate nutrition, clothing, shelter and facilities for reading, writing and expressing one-self in g diverse forms, freely moving about and mixing and commingling with fellow human beings. Of course, observed the Supreme Court, in Francis Coralie Mullin (supra), the magnitude and content of the components of this right would depend upon the extent of the economic development of the country; but it must, in any view of the h matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self. Held, therefore, the Supreme Court, in Francis Coralie Mullin (supra), that every act, which offends against or impairs human dignity, would constitute deprivation pro tanto of this right to live. (Para-48)

The prisoner or detenu, observed the Supreme Court, in Francis Coralie Mullin (*supra*), cannot obviously move about freely by going outside the prison walls nor can he socialise at his free will with persons outside jail. However, as part of the right to live with human dignity and as a necessary component of the right to life, he would, according to the Supreme Court, in Francis Coralie Mullin (*supra*), be entitled to have interviews with the members of his family and friends and no prison regulation or procedure, laid down by prison, regulating the right to have interviews with members of the family and friends, can be upheld as constitutionally valid, under Articles 14 and 21, unless it is reasonable, fair and just. (Para-51)

Thus, a person, even during his imprisonment, punitive or preventive, is entitled to a treatment having due regard for the inherent dignity of the human person. (Para-54)

The observations aforesaid were made nearly four decades ago and have since been consistently followed by the Supreme Court. We think that the time has come and, indeed, the earlier the better that the High Court of Gujarat should equally modulate their practice on identical lines spelt out by the Supreme Court itself. This really seems to be the more so in the expanded concept of liberty under Article 21 and the now universally accepted right of a speedy public trial thereunder. Recasting the words of Their Lordships above, if the High Court is not in a position to hear the appeal of an accused within a reasonable period of time, it must ordinarily (unless there are cogent grounds for acting otherwise) release the accused on bail in cases of substantive appeals on life imprisonment pending before it. [see *Jhandu @ Sundar Paswan v. State of Bihar* (Criminal Appeal No.2319 of 2017, dated 12.2.2018)] (Para-56)

In *Ranbir Yadav v. State of Bihar*, (1995)4 SCC 392, the Supreme Court highlighted that where there are party factions, there is a tendency to include the innocent with the guilt and it is extremely difficult for the court to guard against such a danger. It was pointed out that the only real safeguard against the risk of condemning the innocent with the guilt lies in insisting on acceptable evidence which, in some measure, implicates such accused and satisfies the conscience of the court. (Para-63)

The Supreme Court in the famous case of *Gajanand v. State of Uttar Pradesh*, AIR 1954 SC 695, had explained and defined the word "free fight" in the following manner :

a "A free fight is when both sides mean to fight from the start, go out to fight and there is pitched battle. The question of who attacks and who defends in such a fight is wholly immaterial and depends on the tactics adopted by the rival commanders. When one party after preparation and armed with deadly weapon went to the other party's house, it could not be said in these circumstances that both the parties were pre- determined for a trial of strength and had a free fight, rather the first party was the aggressor."

b Thus, it can be said that a free fight is one when both sides starts fight from the start. (Para-64)

c Moreover, no right of private defence is available in the case of free fight, and for that, the law laid down by the Supreme Court in the case of *Vishvas Aba Kurane v. State of Maharashtra, AIR 1978 (SC) 414*, may be referred to, in which the Supreme Court has observed as under:

d "(C) Penal Code (1860) Section 96- Right of private defence - Free fight-No right of private defence is available to either party and each individual is responsible for his own acts." (Para-67)

e The word 'sudden fight' has been defined by the Supreme Court in the case of *Mariadasan and others v. State of Tamil Nadu, AIR 1980 (SC) 573*, in the following manner :

f "Sudden fight- When no party attacks the members of the opposite party at the commencement of the occurrence and there is no evidence regarding formation of unlawful assembly with a particular common object and the fight takes place as a result of heated passion and without premeditation, it can be said to be a "sudden fight". No unlawful assembly can be said to have been formed in such cases and the accused cannot be convicted under this Section. All the persons must be held responsible for their individual acts and not vicariously liable for acts of others." (Para-68)

g The Supreme Court, in the case of *Mariadasan* (supra), further held that even in sudden fight which had taken place on spur of moment, the accused cannot be convicted under Sections 147, 148 or Section 149 IPC. (Para-69)

h It may further be stated that in case of group rivalry and enmity, it often happens that there is a general tendency to rope in as many persons as possible as having participated in the assault. To avoid this eventuality, in case of free fight, the law has been laid down that persons who caused injuries would be liable. (Para-70)

In such circumstances referred to above, we are persuaded to accept the plea of the applicants for suspension of the substantive order of sentence passed by the trial court. Prima facie, what has weighed with us, is the acquittal of the applicants of the offence punishable under Section 149 IPC; the injuries suffered by the deceased; the injuries suffered by the applicants herein and the other co-accused and the non-explanation of such injuries on the part of the prosecution; the individual liability fixed by the trial court of the applicants herein coupled with the evidence of the Investigating Officer, and above all, the time that is going to be consumed before the criminal appeals are taken up for final hearing. We find it extremely difficult to accept the submission of the learned APP appearing for the State as well as the learned senior counsel appearing for the original complainant that as the State has preferred acquittal appeal and the same has been admitted, none of the above aspects should be taken into consideration for the purpose of suspension of the substantive order of sentence. In the facts and circumstances of the case and the case-law discussed above, we are not impressed by such submission. Just because the State has thought fit to prefer an acquittal appeal so far as the acquittal of the accused persons of the offence under Section 149 of the IPC, this Court should not ignore or overlook the basic infirmities in the judgment and order of conviction going to the root of the matter. (Para-71)

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For Respondent(S): Mr Yogesh S Lakhani, Mr Meet R Modi, Mr Hk Patel and M R ronakraval, Advs.

Cases Referred:-

1. *Lala Jairam Das v. Emperor*, AIR 1945 PC 94, (Para-30)
2. *Punjab State Electricity Board, Patiala v. Ashok Kumar Sehgal*, AIR 1990 P & H 117 (FB), (Para-30)
3. *Kunhayammed v. State of Kerala*, (2000) 6 SCC 395 : AIR 2000 SC 2587, (Para-30)
4. *Pamapathy v. State of Mysore*, AIR 1967 SC 286, (Para-30)
5. *Rama Narang v. Ramesh Narang*, (1995) 2 SCC 513, (Para-30)
6. *T. N. v. A. Jaganathan*, AIR 1996 SC 2449, (Para-30)
7. *K. C. Sareen v. CBI*, AIR 2001 SC 3320, (Para-30)
8. *B.R. Kapur v. State of T.N.*, AIR 2001 SC 3435, (Para-30)

9. *State of Maharashtra v. Gajanan*, AIR 2004 SC 1188, (Para-30)
- a 10. *Ravikant S. Patil v. Sarvabhouna*, (2007) 1 SCC 673 : 2006 AIR SCW 6365, (Para-30)
11. *Navjot Singh Sidhu v. State of Punjab* (2007) 2 SCC 574 : AIR 2007 SC 1003, (Para-30)
- b 12. *Rajesh Ranjan Yadav @ Pappu Yadav v. C.B.I. through its Director*, (2007)1 SCC 70, (Para-33)
13. *Bhagirathsinh vs. State of Gujarat* 1984 (1) SCC 284, (Para-33)
14. *Shaheen Welfare Association vs. Union of India & Ors.* 1996(2) SCC 616, (Para-33)
- c 15. *Joginder Kumar vs. State of U.P. & Ors.* 1994(4) SCC 260, (Para-33)
16. *Ash Mohammad v. Shiv Raj Singh*, (2012)9 SCC 446, (Para-34)
17. *Gudikanti Narasimhulu v. Public Prosecutor*, AIR 1978 SC 439, (Para-35)
18. *Babu Singh v. State of U.P.*, AIR 1978 SC 527, (Para-36)
19. *Bhagwan Rama Shinde Gosai v. State of Gujarat*, AIR 1999 SC 1859, (Para-37)
- d 20. *Sidhartha Vashisht @ Manu Sharma v. State (NCT of Delhi)*, 2008 Cr.L.J. 3524, (Para-38)
21. *Surinder Singh @ Shingara Singh v. State of Punjab*, AIR 2005 SC 3669, (Para-39)
22. *Dharampal v. State of Haryana*, (2000)1 CLR 74, (Para-39)
- e 23. *Bakshish Ram v. State of Punjab*, (2009)6 SCC 561, (Para-40)
24. *Talab Haji Hussain vs. Madhukar Purshottam Mondkar*, 1958 SCR 1226, (Para-40)
25. *State of Maharashtra v. Anand Chintaman Dighe*, (1990) 1 SCC 397, (Para-40)
- f 26. *Kashmira Singh v. State of Punjab*, (1977) 4 SCC 291, (Para-40)
27. *Atul Tripathi v. State of Uttar Pradesh*, (2014) 9 SCC 177, (Para-42)
28. *Kishori Lal v. Rupa and others*, (2004)7 SCC 638, (Para-43)
29. *Vijay Kumar v. Narendra and others*, (2002)9 SCC 364, (Para-44)
30. *Ramji Prasad v. Rattan Kumar Jaiswal and another*, (2002)9 SCC 366, (Para-44)
- g 31. *Vasant Tukaram Pawar v. State of Maharashtra*, (2005)5 SCC 281, (Para-45)
32. *Gomti v. Thakurdas and others*, (2007)11 SCC 160, (Para-45)
33. *Chandra Shekhar Bharti v. The State of Bihar*, 2014 Cri.L.J. 2953, (Para-46)
34. *Sunil Batra v. Delhi Administration*, AIR 1980 SC 1579, (Para-47)
- h 35. *Francis Coralie Mullin v. Administrator, Union Territory of Delhi and Ors.* (AIR 1981 SC 746), (Para-48)
36. *Kashmira Singh v. State of Punjab*, AIR 1977 SC 2147, (Para-55)
37. *Mohd. Mohsin Khan alias Bhooria v. State*, 2013 Cri.L.J. 4156, (Para-57)
38. *Tahir Khan alias Shakeel v. State of Rajasthan*, 2005(4) WLC (Raj) 637, (Para-57)

39. *Babu Singh v. The State of Uttar Pradesh* AIR 1978 SC 527, (Para-58)
40. *Smt. Akhtari Bi v. State of M.P.* (2001) 4 SCC 355 : (AIR 2001 SC 1528), (Para-58) **a**
41. *Sarman and others v. State of M.P.*, AIR 1993 SC 400, (Para-61)
42. *Ranbir Yadav v. State of Bihar*, (1995)4 SCC 392,(Para-63)
43. *Gajanand v. State of Uttar Pradesh*, AIR 1954 SC 695, (Para-64)
44. *Kanbi Nanji Virji and others v. State of Gujarat*, AIR 1970 (SC) 219,(Para-65) **b**
45. *Puran v. State of Rajasthan*, AIR 1976 (SC) 912,(Para-66)
46. *Vishvas Aba Kurane v. State of Maharashtra*, AIR 1978 (SC) 414,(Para-67)
47. *Mariadasan and others v. State of Tamil Nadu*, AIR 1980 (SC) 573, (Para-68)

JUDGMENT

J.B.PARDIWALA, J.: - 1. As all the captioned applications under Section 389 of the Code of Criminal Procedure, 1973, for suspension of the substantive order of sentence of life imprisonment arise from a self-same judgment and order of conviction and sentence passed by the trial court, those were heard analogously and are being disposed of by this common order. **d**

2. These applications under Section 389 of the Code of Criminal Procedure, 1973, are at the instance of six convicts seeking suspension of the substantive order of sentence of life imprisonment passed by the 3rd Additional Sessions Judge, Surat, dated 1st May 2018, in the Sessions Case No.152 of 2011. **e**

3. We take notice of the fact that two cross-cases were tried together and both the sessions cases came to be disposed of by a common judgment and order. The six applicants herein seeking suspension of the substantive order of sentence are original accused nos.2, 10, 11, 17, 18 and 19 respectively of the Sessions Case No.152 of 2011. All the six applicants herein have been convicted for the offence punishable under Section 302 IPC simpliciter by determining their individual liability and have been sentenced to undergo life imprisonment. The trial court disbelieved the case put up by the prosecution of unlawful assembly and common object. Accordingly, all the accused persons of both the cases came to be acquitted of the offences punishable under Sections 147, 148, 149, 427, 504, 506(2) and 120B of the Indian Penal Code. The State has preferred the Criminal Appeal No.1077 of 2018 against the judgment and order of acquittal passed by the trial court in so far as the Sessions Case No.152 of 2011 is concerned. The State has thought fit to file acquittal appeal so far as the acquittal of the **f**
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accused persons of the offences punishable under Sections 147, 148, 149, 427, 504, 506(2) and 120B of the Indian Penal Code is concerned.

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4. It is the case of the prosecution that on the date of the incident, i.e. on 26th April 2011 at about 6:15 in the evening, 24 accused persons armed with deadly weapons like sword, stick, sickle, etc. formed an unlawful assembly and laid an indiscriminate assault on the prosecution witnesses. In the said assault, one Babukhan Yusufkhan Pathan sustained severe head injuries and succumbed.

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5. To give a fair idea as regards the case put up by the prosecution, we may reproduce some portion of the evidence of one of the eye-witnesses to the incident. The prosecution examined PW3 Rahenakhatoon Aslamkhan Pathan (Exh.135). She is one of the injured eye-witnesses. In her evidence, she has deposed as under :

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"(1) Afzalkhan happens to be my real brother. At the time of the incident, my brother was holding the post of Sarpanch in Bhatkol Lidiyad Group. He is having four daughters and one son as his children. As my brother Afzalkhan was having four daughters and one son as his children, the Deputy Sarpanch, namely Ashif Maiyuddin Malek, had made an application to the Taluka Development Officer to disqualify my brother from the post of Sarpanch. But, as my brother was not being disqualified as per the Government resolution, he continued to hold the post of Sarpanch. Thereafter, my brother had made an application to the Taluka Development Officer, Mangrol, to disqualify Ashif Maiyuddin as he was having three children. As per the Government resolution, Ashif Maiyuddin was liable to be disqualified, therefore, he was dismissed from the post of Deputy Sarpanch. Since then, they have been quarreling with my brother and his family members on trivial matters. My sister-in-law ('bhabhi') Rasimakhatun Afzalkhan Pathan was a candidate from the BJP party from Kosamba seat and she had also won in the election. Because of that reason also, they were keeping grudge. Since then, they have been keeping vengeance and finding an opportunity to fight with my brother and his family members.

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(2) At about 5:45 O'clock in the evening on 26.4.2011, I, along with my uncle, Gulamkhan Yusumkhan Pathan, my cousins Arbaz, Tausifkhan, Imrankhan, my paternal uncle ('fufaji') Iqbal Mirza and my brother Babukhan Nasrullakhan were sitting in the verandah of my brother Afzalkhan and we were discussing about the marriage of Naaznin, daughter of my uncle Gulamkhan Pathan. At that time, at about 6 O'clock, Ashif Maiyuddin Malek, driving his Passion Motorcycle, and Sajid, sitting as a pillion, had brought the vehicle to our side where we were sitting. At that time, my uncle

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Gulamkhan told them as to why you brought the vehicle on us. Upon that, they started hurling abusive words and said that, you people have gone out of control. You wait, we come in a while. Having said so, they had left the place. Thereafter, within a few minutes, both Ashif and Sajid accompanied by 22 members of their family and village people armed with lethal weapons came at our place. Ibrahim Rasul Malek and Afzal Malek Maiyuddin were armed with swords. Munavar Malek was armed with a spear. Sajid Malek, Maiyuddin Malek and Ashif Maiyuddin were armed with swords. Intiyaz Maiyuddin was armed with a stick. Imrahin Maiyuddin, Mosin Maiyuddin and Yakub Ismail were armed with swords. Habib Ismail and Irfan Yakub were armed with scythes. Anwar Khalek Malek was armed with a Farshi. Salim Malek was armed with a stick. Sabir Malek was armed with a spear. Tolis Gulam Malek was armed with a scythe. Shoeb Malek was armed with a sword. Siraj Malek was armed with a scythe. Nazir Mohammad Malek was armed with a sword. Yusub Suleman was armed with a sword. Sikandar was armed with a scythe. Basir Malek was armed with a stick. Yunus Raheman Mirza was armed with a stick. Tashlim Yunus Mirza was armed with a stick. Those 24 persons had come to the place where we were sitting. Thereafter, out of them, Maiyuddin Rasul shouted, "Kill them. No one should be spared". By saying so, they all had attacked us. In the mean time, as my family uncle Babukhan Pathan, who had gone to the Kim Cross-Roads, arrived with his Maruti Van, six out of the accused persons, viz. Ibrahim Malek, Afzal Malek, Maiyuddin Malek, Imran Maiyudin armed with swords, Intiaz Maiyudin Malek armed with stick, and Sikandar Karim Malek armed with scythe, opened the door of the Maruti Van, dragged my uncle and beat him up. They inflicted injuries on the back side of the head, on the chin, on the chest and on the leg. My uncle collapsed there in a bleeding condition. Yakum Malek inflicted sword blow on the left side of his head. Taslim Mij inflicted stick blow on my right hand. Salif Yusuf Malek inflicted stick blow on the knee of my left leg. Yakub Ismail Malek inflicted sword blow, Irfan Malek inflicted scythe blow and Sikandar Karim Malek inflicted scythe blow on my uncle Iqbal Mirza on his head and body. Habib Malek inflicted scythe blow and Sajid Malek inflicted sword blow on my cousin Tosif from head to mouth and on the hand. Thereafter, they caused injuries to my brother Babukhan, Nasrullakhan, my uncle Gulamkhan, my cousin Ishratkhan and Mumtaz Mirza. Thereafter, they all uttering abusive words, caused damage to our vehicles and fled. Thereafter, we were taken to Dinbandhu Hospital in a private vehicle. The doctor told us that,

a "Babukhan Yusufkhan has died". We were given primary treatment, and for further treatment, I, my brother Babukhan, Nasrulakhan were taken to Ashakta Ashram Hospital, Surat, and my uncle was taken to Ayush Hospital. My cousin was taken to Apollo Hospital. I, and my brothers Babukhan and Nasrulakhan were given treatment as indoor patient for 15 to 17 days there. On 28.04.2011, Waghela Sir and his
b Writer recorded my statement in the hospital."

6. All other witnesses examined by the prosecution have deposed by and large on the line that of the PW3 Rehanakhatun Aslamkhan Pathan.

c 7. We may straightway go to the postmortem report (Exh.514) of the deceased Babukhan Yusufkhan Pathan. The following injuries in Column No.17 have been noted in the postmortem report :

d (1) Lacerated wound over scalp rt. sided parieto temporal region. Size 1 cm x 2 cm x 2 cm deep - irregular - shape - blood oozing out from the wound.

(2) Stab puncture wound wedge shaped on the chin - obliquely placed - margins are clear cut size 4 cm x 2 cm x 1 cm.

e (3) Bruise anterior aspect of chest from left shoulder to rt. nipple - obliquely placed - size 35 cm x 3 cm black in colour.

(4) Bruise over anterior aspect of chest from sternum to rt. side chest - obliquely placed - size 18 cm x 2 cm black in colour.

(5) Abrasion 2 cm x 1 cm below rt. nipple - size 3 cm x 1 cm.

f (6) Lacerated injury left knee of anterolateral aspect - size 3 cm x 1 cm.

(7) Lacerated wound lateral aspect of rt. leg - 6 cm above ankle jt. 3 cm x 1 cm x 1 cm

g (8) Lacerated injury rt. ant aspect of middle of thigh - size 2 cm x ½ cm deep.

(9) Depressed fracture of rt. sided parieto temporal region.

h 8. The cause of death assigned in the postmortem report is neurogenic and hemorrhagic shock due to the head injury.

9. As noted above, out of the 24 accused persons put on trial for the offences punishable under Sections 302, 307, 147, 148, 149, 323, 324, 427, 504, 506(2) and 120B of the Indian Penal Code, 6 accused persons, i.e. the six applicants herein before this Court, have been convicted of the offence of murder determining their individual

liability, whereas the other co-accused have been convicted for the offence punishable under Sections 307, 324 and 323 of the Indian Penal Code. At the cost of repetition, we may state that all the accused came to be acquitted of the offences punishable under Sections 147, 148, 149, 504, 506(2) and 120B of the Indian Penal Code. a

SUBMISSION ON BEHALF OF THE APPLICANTS-CONVICTS :

10. Mr.J.M.Panchal, the learned senior counsel appearing for the applicants of the Criminal Misc. Application No.1 of 2018 in Criminal Appeal No.1259 of 2018, vehemently submitted that the conviction of the applicants for the offence punishable under Section 302 IPC simpliciter, is not tenable in law. Mr.Panchal brought to the notice of this Court that the trial court has recorded a categorical finding in its judgment that the case is one of a free fight between two groups of individuals; one, group of the accused persons of the Sessions Case No.152 of 2011, and another, group of the accused persons of the Sessions Case No.298 of 2012. b
c
d

11. Mr.Panchal submitted that both the groups are at inimical terms since a long period of time. The animosity between the two groups is on account of one Afzalkhan (convict of the cross-case) who, at the relevant point of time, was the Sarpanch of the village. An application was filed to remove Afzalkhan from the post of Sarpanch. However, instead of removing Afzalkhan, the original accused no.1, namely Ashif, who was the Deputy Sarpanch, came to be removed. This led to bitterness between the two families. Mr.Panchal submitted that on the date of the incident, a free fight ensued between the two groups in which various persons from both the sides suffered severe injuries. Mr.Panchal made available for our convenience a chart indicating the injuries sustained by the six applicants herein. The details are as under : e
f

S r . Name of the Appellants No.	Nature of injuries as well as the time of incident in the 2nd FIR	g
1 Sikander Karim Malek Original Accused No.2. Appellant No.1 in Criminal Appeal No.1259 of 2018	No injury.	h
2 Moiyuddin Rasul Malek, Age 58 years Original Accused No.10. Appellant No.2 in Criminal Appeal No.1259 of 2018	At Sarwajanik Lokhit Hospital, Surat. The witness gives the history at 8:20 pm on 26.7.2011 of assault with sharp edge weapon at 7 pm on 26.4.2011 by named persons (Exh.125)	

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- a (PW22/Exh.177 in Cross- Case) Ocular Examination:
 a) C.L.W. Measuring 3" x 1½" muscle-cut deep on the right hand with pain and bleeding.
 b) Abrasion on right back side.
 c) Abrasion on gluteus area.
- b 3 Imtiyaz Moiyuddin Malek, At Sarwajanik Lokhit Hospital, Age 33 years Surat at 8:20 pm where the history Original Accused No.11. given is of assault with sharp edge Appellant No.3 in Criminal weapon at 7 pm on 26.4.2011 by Appeal No.1259 of 2018 named persons (Exh.130)
- c (PW19/Exh.167 in Cross- Case) Ocular Examination:
 a) C.L.W. Measuring 3 c.m. X ½ c.m. deep on the right side of forehead with pain and bleeding.
 d b) C.L.W. On chest (sternum area) 2 cm. X ½ c.m. Deep.
- e 4 Imran Moiyuddin Malek, At Sarwajanik Lokhit Hospital, Age 30 years Surat. The witness gives the Original Accused No.17 history of assault on the left side Appellant No.1 in Criminal of the head and was admitted at Appeal No.1313 of 2018 10 pm on 26.4.2011 (Exh.129@9)
- f (PW18/Exh.163 in Cross- Case) CT Scan of Brain has revealed:
 a) acute sub-dural hematoma seen along the right front-temporalparietal convexity with mild adjacent effect of cerebral cortex.
 g b) multiple small hemorrhagic contusions seen in left parietal cortical region.
 h c) minimal small hematoma seen along the tentorial cerebelli and posterior inter-hemispheric region. Even in this case, the treatment doctor is examined as PW37/ Exh.508@329-331 who has produced an injury certificate (Exh.510@574) which details extremely grave head injuries.

- 5 Afzal Ibrahim Malek, Age 40 years
Original Accused No.18. Appellant No.2 in Criminal Appeal No.1313 of 2018 (PW17/Exh.161 in Cross-Case)
- In the M.L.C. Certificate at Pavan Hospital, Surat. The witness gives the history of having sustained injury to left arm and had sustained fracture of left humerus with radial nerve palsy. He was admitted on 26.4.2011 and operated for the same and he was discharged on 5.5.2011 and then transferred to Surat General Hospital and was discharged from Surat General Hospital on 9.6.2011.
The history given is of assault with sword at 7 pm today at Bhatkol : (Exh.106)
1) Pain and bleeding left hand and CLW in the middle of left arm with the injury measuring 1" x 5".
2) Bleeding of left leg and foot.
- 6 Ibrahimbhai No injury.

12. Mr. Panchal also made available the details with regard to the other co-accused who suffered injuries. However, they have been acquitted by the trial court. The details are as under :

Sr . Name of the Appellants No.	Nature of injuries as well as the time of incident in the 2nd FIR
1 Yusuf Suleiman Pathan, Age 32 years Original Accused No.16. Criminal Appeal (Acquittal) No.1077 of 2018 preferred by the State. (PW16/Exh.145 in Cross-Case)	The patient came to Sarwajanik Lokhit Hospital at 8:20 pm on 26.4.2011 (discharged on 3.6.2011) where the alleged history is of assault with sharp edge weapons at 7 pm on 26.4.2011 by named persons (Exh.128) <u>Ocular Examination :</u> 1) Abrasion on right hand 2) Abrasion on right back side 3) Abrasion on right shoulder 4) Abrasion on left knee joint

- a**
- b**
- c**
- d**
- e**
- f**
- g**
- h**
- 2 Irfan Yakub Malek, Age 32 years
Original Accused No.16.
Sentence suspended since 6.7.2018 in Criminal Appeal No.714 of 2018.
(PW20/Exh.171 in Cross-Case)
- At Sarwajanik Lokhit Hospital, Surat. The witness gives the history at 8:20 pm of assault with sharp edge weapon at 7 pm on 26.4.2011 by named persons (Exh.131)
- Ocular Examination :
a) C.L.W. Measuring 8 cm x 1½ cm deep on the left side of the cheek with muscle-cut with pain and bleeding.
b) Swelling on left hand
At Pavan Hospital, Surat. The witness was admitted on 27.4.2011 and operated to General Hospital, Surat, and he was discharged from General Hospital, Surat, on 18.5.2011. The history given is of assault with dhariya on 26.4.2011 at Bhatkol with injury to forearm, face etc. (Exh.108) in the evening where he has sustained :
a) injury to left forearm
b) left face and
c) fracture of radia and ulna of left forearm.
- 3 Mohsin Moiyuddin Malek, Age 22 years
Original Accused No.12.
Sentence suspended since 6.7.2018 in Criminal Appeal No.714 of 2018.
(PW21/Exh.174 in Cross-Case)
- At Sarwajanik Lokhit Hospital, Surat. The witness gives the history at 8:20 pm of assault with sharp edge weapon at 7 pm on 26.4.2011 by named persons (Exh.127)
- Ocular Examination :
a) C.L.W. Measuring 1 c.m. X 1 c.m. deep on the right side of forehead with pain and bleeding and swelling.

13 Mr.Panchal also made available the details with regard to the injuries suffered by the prosecution witnesses and who are the accused of the cross-case. The details are as under :

S r . Prosecution No. Witness	Time of incident (which has been consistently improved upon) stated in the history before the treatment doctors.	
1	Rehanakhatun Aslamkhan Pathan (PW-3/Exh.135)	At Ashaktashram, Surat. The witness gives the history of assault by 10-15 persons at 8.00 p.m. On 26.04.2011. (Exh-276 and Exh.177)
	Findings: a) abrasion at ankle b) stab wound on right hand c) CLW of left temporal region	a b c
	<u>At Venus Hospital Rampura Surat the witness gives the history of assault by 10-5 persons at 8.00 p.m. On 26.04.2011 (Exh.321)</u>	d
	Findings: a) Blunt injury to left calf/leg/ ankle/knee b) Abrasion of left ankle c) CLW over right hand on the 1st web-space d) Blunt injury to dorsal part of spine at many places. e) Sutured CLW on left temporal region.	e f
2.	Nasrullahkhan Habibkhan Pathan (PW-4/Exh.156)	<u>The MLC certificate of Deenbandhu Hospital, Kholwad, Kamrej, Surat before PW-12 (treatment doctor) records that the witness was brought by the relatives at 7.20 p.m. and history given is of having been assaulted by 'somebody' at around '6.15' p.m. with clear interpolation/ over-writing in respect of time (Exh.246)</u>
	CONVICTED	g
	Findings: a) CLW on parietal region measuring 10 X 1X.5 cm in size. b) CLW on right leg measuring 1 X .5 X .5 cm in size.	h

- a c) Stab wound and tenderness and swelling on the left side of neck measuring 8 X 1 X .5 cm in size.
At Ashaktashram, Surat. The witness gives the history of assault by 10-15 persons at 8.00 p.m. On 16.04.2011 (on 2 pages of Exh.279 & Exh.179 & Exh.180)
- b (Same as above)
At Venus Hospital Rampura, Surat. The witness gives the history of assault by 10-15 persons at 8.00 p.m. On 26.04.2011 (Exh.311)
- c **Findings:**
a) CLW on parietal region measuring 10 X 1 X .5 cm in size.
- d b) Stab-wound- semi circular- 6 X 1 X .5 cm
c) CLW on right leg measuring 1 X .5 X .5 cm in size.
d) Stab wound and tenderness and swelling on the left side of neck measuring 8 X 1 X .5 cm in size.
- e e) Blunt injury to right knee and right thigh.
f) Blunt injury to wrist.
g) Fracture of parietal bone.
- f 3. Babukhan
Habibkhan Pathan
(PW-5/Exh.170)
CONVICTED
- g The MLC certificates of Deenabandhu Hospital, Kholwad, Kamrej, Surat before PW-12 (treatment doctor) records that the witness was brought by the relatives at 7.20 p.m. and history given is of having been assaulted by 'somebody' at around '6.15' p.m. with clear interpolation/ overwriting in respect of time (Exh.245)
- h **Findings:**
a) CLW on scalp (multiple) occipital and parietal region
b) Injury on right ring finger
c) Stab wound on right ring finger

At Ashaktashram, Surat the witness gives the history of assault by 10-15 persons at 8.00 p.m. On 26.04.2011 (Exh.274, 297) a

Findings:

- a) pain and swelling of left knee and right hand
- b) multiple stab wounds over the head and face with pain b
- c) pain and bleeding wound on right middle finger.
- d) Amputation of right finger
- e) Pain on left forearm and left knee c
- f) CLW size 3 cm X 1 cm near amputation of right ring finger
- g) Fracture of middle phalanx
- h) CLW of left little finger d
- i) CLW of middle phalanx with active bleeding
- j) CLW of thumb
- k) Hematoma of left forearm

At Venus Hospital, Rampura, Surat. The witness gives the history of assault by 10-15 persons at 8.00 p.m. On 26.04.2011 (Exh.300-298) e

Findings:

- a) Near amputation at multiple of right fingers. f
- b) Very thin acute sub-dural hematoma along with temporalparietal convexity.
- c) Depressed fracture of the left high parietal bone. g
- d) Small hemorrhagic contusions in the left parietal cortico region.
- e) Multiple stab wound over scalp

4. Iqbal Ibrahim
Mirza
(PW-6/Exh.196)
NAME IN THE FIR
BUT ACQUITTED IN
THE TRIAL.

The MLC certificates of Deenbandhu Hospital, Kholwad, Kamrej, Surat before PW-12 (treatment doctor) records that the witness was brought by the relatives at 7.20 p.m. and history given is of having been assaulted by 'somebody' at around '6.15' h

- a p.m. with clear interpolation/overwriting in respect of time (3 pages of Exh.248)
- b **Findings:**
- c a) CLW measuring 11 X 3 X .5 cm deep with palpable on left Fronto parietal with active bleeding and surrounding hematoma. PW-6 was again admitted to Ayush ICU & Multi Speciality Hospital at 2100 hrs on 26.04.2011 where the history given is 'Assault injury by sharp instrument by 7-8 unknown person today (26.04.2011) at 7 p.m. at Kim Char-Rasta, near Bhatkol'. (Exh.268 @ 41-104)
(Same as the above findings)
- d 5. Tousifkhan
Dildarkhan Pathan
(PW-7/Exh.209)
NAME IN THE FIR
BUT ACQUITED IN
THE TRIAL.
- e At Apple Hospital Surat where was admitted at 9:9:54 p.m. On 26.04.2011, he has given a history of 'Assaulted injury over face and left hand by sharp weapon by some unknown person at around 7.30 p.m. on 26/04/2011 at Bhatkol gam, near Kim Char Rasta (Exh.257@ 37)
- f **Findings:**
- g a) incise wound measuring 19 cm x 2½ inches deep extending from scalp to the angle of mouth on the left side of the face with the active bleeding from facial wound.
b) Dislocation of thumb joint, fracture of metacarpel, cut extensor tendon of thumb etc.
- h At Apple Hospital, Surat in the MLC certificate, history given is of 'Assaulted injury over face and left hand by sharp weapon by some unknown person at around 7.30 p.m. on 26.04.2011 at Bhatkol Gam, near Kim Char Rasta (Exh.258 @39)
6. Irshaadkhan
Mehboobkhan
Pathan
(PW-8/Exh.213)
CONVICTED

Though claims to be treated, there is no MLC.

7. Gulamkhan
Yusufkhan Pathan
(PW-9/ Exh.216)
NAMED IN THE FIR
BUT ACQUITTED IN
THE TRIAL
- The MLC certificates of Deenbandhu Hospital, Kholwad, Kamrej, Surat before PW-12 (treatment doctor) records that the witness was brought by the relatives at 7.20 pm and history given is of having been assaulted by 'somebody' at around '6.15' pm with clear interpolation/ overwriting in respect of time (Exh.249 @ 23-25)
- Findings:**
- a) Swelling and tenderness of right forearm
8. Arbaazkhan
Babukhan Pathan
(PW-11/Exh.228)
- Not injured at all.
9. Mumtazben Nasru
Pathan
(PW-11/Exh.228)
- The MLC certificates of Deenbandhu Hospital, Kholwad, Kamrej, Surat before PW-12 (treatment doctor) records that the witness was brought by the relatives at 7.20 p.m. and history given is of having been assaulted by 'somebody' at around '6.15' p.m. with clear interpolation/ overwriting in respect of time (on 2 pages of Exh.224 @ 1-3)
- Findings:**
- a) CLW on left arm.
b) Odema and tenderness on left arm and elbow
c) Abrasion on left arm
- At Ashaktashram Rampura, Surat. The witness categorically gives the history of assault by 10-15 persons at 2000 hrs. PW-11 (Exh.282)
(Same as above)

14. Thus, according to Mr. Panchal, having regard to the genesis of the occurrence and the injuries suffered on both the sides, the trial court arrived at the conclusion that it was a free fight between the individuals of two groups, and in such circumstances,

a the trial court acquitted all the accused persons of the offence punishable under Sections 147, 148 and 149 of the Indian Penal Code. Of course, the State is dissatisfied with such acquittal and has preferred an acquittal appeal which has been ordered to be admitted by this Court.

b 15. As it was vehemently submitted on behalf of the Assistant Public Prosecutor appearing for the State as well as by the learned senior counsel appearing for the victim that the case is not one of free fight but two separate incidents occurred and the trial court committed an error in acquitting the accused persons of the offences punishable under Sections
c 147, 148 and 149 of the Indian Penal Code, Mr. Panchal took us through the relevant portions of the evidence of the Investigating Officer, namely Dhanaji Hothaji Waghela, PW44 (Exh.544). The PW44, in his evidence Exh.544, has, in no uncertain terms, admitted that the case is one of free fight between two groups. In his examination- in-chief, the Investigating
d Officer has deposed as under :

e *"...Thereafter, as the map of the place of incident was to be prepared in this matter, under the guidance of our higher authority I had sent a report under my signature to the Circle Officer, Mangrol, to prepare the map. Thereafter, as the opposite party also sustained injury in the fight, under the order of the P.S.O., a complaint No.I 65/2011 Kosamba under Section 307 etc. of the complainant was registered. As both the said incidents took place at the same place and at the same time, the investigation was taken over by me for further investigation..."*

f *"...It is true that I was looking into both the cross cases and the said investigation is not handed over to any other officer. The investigation of one of the cases could have been assigned to Shri Dhandhal, PSI, subordinate to me. In reply, I say that as per the instructions from my senior officer, both the investigations were assigned to me. I was instructed so by my senior officers ACP, DCP and CPI. The said instruction was not in writing but I was instructed orally. Such orders are not required to be taken in writing. It is true that both the parties sustained injury in a solitary incident. It is true that from the accused side also many people had sustained injuries. It is true that I have not called for the explanation from the eye-witnesses about how the injured from amongst the accused sustained the injury. I felt that I should have called for the explanation from the eye-witnesses about how the accused persons sustained the injuries..."*

"...It is true that in both the cross-cases of a solitary incident, the accused persons also sustained the injuries. It is true that the accused persons in the cross-cases, i.e. the complainant of the present case, were later arrested. It is true that the accused persons of the present case were immediately arrested after discharge from the hospital. It is true that Afzalkhan has been arrested after 80 days. It is true that the accused of the cross-cases were arrested mostly in the month of June..."

"...It is true that the investigation revealed that nine persons sustained injuries in the cross-case..."

16. Mr. Panchal submitted that the prosecution witnesses are conspicuously silent with regard to the injuries suffered by the accused persons referred to above. According to Mr. Panchal, the prosecution witnesses have deliberately suppressed the true facts leading to a free fight between the two groups. It is submitted that the genesis of the case are highly doubtful and the prosecution has tried to suppress the true origin of the occurrence.

17. Mr. Panchal submitted that the head injury suffered by the deceased proved to be fatal. However, it is very difficult to determine, having regard to the nature of the evidence, as to who is the author of the fatal injury. According to Mr. Panchal, his submission in this regard assure significance because the trial court has convicted the six applicants herein for their individual acts. According to Mr. Panchal, out of the six applicants herein, five are alleged to have been armed with swords, and one, i.e. the sixth applicant, with a stick. According to the version of the eye-witnesses, all the six laid indiscriminate assault on the deceased. However, Mr.Panchal pointed out that except the head injury, all other injuries are in the nature of lacerated wounds. There was one injury on the chin which could have been caused by a sharp cutting weapon. He would submit that if the six applicants, armed with swords and stick, are alleged to have laid an indiscriminate assault on the various parts of the body of the deceased, then the deceased would have sustained number of incised wounds.

18. Mr. Panchal, as well as Mr. I.H.Syed, the learned counsel appearing for the applicants also furnished the details with regard to the date of the arrest of each of the applicants and the period of sentence undergone.

	Name of the Convicts	Date of Arrest	Sentence Undergone
a	Sikandar Karim Malek (original accused no.2)	28.04.2011	7 years and 9 months
b	Maiyuddin Rasul Malek (original accused no.10)	06.05.2011	7 years and 8 months
	Imtiyaz Maiyuddin Malek (original accused no.11) (On bail since 25.09.2012)	28.04.2011 (In jail since 01.05.2018)	
c	Imran Moiuddin Malek (original accused no.17 in S.C. No.152/2011) (Date of Bail during trial - 18.10.2012)	09.06.2011 (At present lodged in Lajpore Central Jail, Rajkot,since 01.05.2018)	
d	Afzal Ibrahim Malek (original accused no.18 in S.C. No.152/2011) (Date of Bail during trial - 28.09.2012)	09.06.2011 (At present lodged in Lajpore Central Jail, Rajkot,since 01.05.2018)	
e			

19. Mr.I.H.Syed, the learned counsel appearing for the applicant of the Criminal Misc. Application No.2 of 2018 in Criminal Appeal No.1314 of 2018, submitted that the applicant, namely
f Ibrahimbhai Rasulbhai Malek, as on date, is 76 years of age.

20. Mr.Panchal pointed out that so far as the applicants of the Criminal Misc. Application No.1 of 2018 in Criminal Appeal No.1259 of 2018 is concerned, two of them, i.e. the original accused nos.2 and
g 10, are in custody since 6th May 2011. They have by now undergone 8 years of sentence. Mr.Panchal submitted that the criminal appeals are of the year 2018. He submitted that as on date this Court is taking up Criminal Appeals of the year 2015 and onwards. By the time the Appeals of the year 2018 are taken up for hearing, practically the
h convicts would have undergone almost 12 to 13 years of imprisonment.

21. Mr.Panchal as well as Mr.Syed vehemently submitted that the applicants have fair chances of getting acquitted having regard to the nature of the evidence on record. According to them, very weighty arguable points are available to them to be canvassed in the

appeals, and in such circumstances, the substantive order of sentence passed by the trial court may be suspended till the final disposal of the criminal appeals. Both the learned counsel pointed out that the substantive orders of sentence so far as the other convicts on both the sides are concerned, have been suspended pending the criminal appeals, of course, the sentence is of 10 years rigorous imprisonment with fine.

SUBMISSIONS ON BEHALF OF THE STATE :

22. On the other hand, all these applications seeking suspension of the substantive order of sentence have been vehemently opposed by Mr. Patel, the learned APP appearing for the State. Mr. Patel, the learned APP started his submission criticizing the judgment of the trial court severely. According to Mr. Patel, the trial court committed a serious error in holding that the case is one of a free fight. Mr. Patel tried his best to convince this Court that both the sides sustained injuries in two different and distinct incidents. According to the learned APP, the two incidents had nothing to do with each other. In such circumstances, according to Mr. Patel, the trial court committed a serious error in not believing the case of the prosecution that the accused persons formed an unlawful assembly and the common object of the unlawful assembly was to commit a particular crime. According to the learned APP, the acquittal of the accused persons of the offence punishable under Section 149 of the Indian Penal Code is erroneous in law.

23. Mr. Patel submitted that as the applicants have been sentenced to undergo life imprisonment, the substantive order of sentence should not be suspended and the convicts do not deserve to be enlarged on bail. Mr. Patel would submit that though out of the six applicants here before this Court four were on bail pending the trial court, yet that circumstance by itself is not sufficient to release the convicts on bail. Mr. Patel submitted that the prosecution is not obliged to explain the injuries suffered by the applicants herein and the co-convicts because the case is not one of a free fight. According to Mr. Patel, first in point of time, the accused party laid an assault on the prosecution witnesses and thereafter, in a second distinct and different incident, the accused persons, i.e. the applicants herein, suffered injuries. However, the learned APP is not clear in his submission as to how and in what manner and who inflicted the injuries on the applicants herein and the other co-convicts.

a 24. The learned APP fairly submitted that in the cross-case, the accused have been convicted for the offence punishable under Section 307 of the Indian Penal Code. However, according to the learned APP, the said cross-case has nothing to do with the case on hand. In such circumstances referred to above, Mr. Patel prays that no case is made out for suspension of the substantive order of sentence and the applications be rejected.

b 25. Mr. Lakhani, the learned senior counsel submitted that he has been instructed to appear on behalf of the victim and assist the prosecution.

c 26. We gave audience to Mr.Lakhani also. Mr.Lakhani, by and large, adopted the submissions canvassed by the learned APP on behalf of the State. Mr.Lakhani submitted that the deceased, in fact, had nothing to do with either of the side. For no fault on the part of the deceased, he was mercilessly beaten and ultimately succumbed to the injuries. Mr.Lakhani would submit that no case is made out for suspension of the substantive order of sentence.

SECTION 389 OF THE CODE AND THE LAW ON THE SUSPENSION OF SENTENCE :

e 27. Section 389 of the Code of Criminal Procedure, 1973, reads thus :

"389. *Suspension of sentence pending the appeal; release of appellant on bail.*

f (1) *Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond.*

g (2) *The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of an appeal by a convicted person to a Court subordinate thereto.*

h (3) *Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall,-*

(i) *where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years, or*

(ii) *where the offence of which such person has been convicted is a bailable one, and he is on bail, order that the convicted*

person be released on bail, unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court under subsection (1); and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended." a

28. Suspension conveys postponement or temporarily preventing a state of affairs from continuing. According to the Black's Law Dictionary (Seventh Edition), the word 'suspend' means, inter alia, to interrupt; postpone; defer. The Black's Law Dictionary (Seventh Edition) describes the word 'suspension' to mean, inter alia, an act of temporarily delaying, interrupting or terminating something. Attributing the same meaning to the word 'suspend' as pointed out above, the New Oxford Dictionary of English (1998 Edition) describes suspend as temporarily preventing from continuing or being enforced or given effect or defer or delay an action, event or judgment. b c d

29. Thus, when we speak of suspension of sentence after conviction, the idea is to defer or postpone the execution of the sentence. The purpose of postponement of sentence cannot be achieved by detaining the convict in jail; hence, as a natural consequence of postponement of execution, the convict may be enlarged on bail till further orders. e

30. The brief history of evolution of the law on suspension of sentence and conviction as well as the jurisdiction under Section 389 of the Cr.P.C. have been very exhaustively explained by a Division Bench of the Patna High Court in the case of Chandra Shekhar Bharti v. The State of Bihar, 2014 Cri.L.J. 2953. I may quote the relevant observations thus : f

"BRIEF HISTORY OF EVOLUTION OF THE LAW ON SUSPENSION OF SENTENCE AND CONVICTION : g

6. The law, on suspension of sentence, has evolved gradually and out of intense debate. In order to correctly appreciate the process of evolution, it will be appropriate to survey, in brief, the material decisions in this context so that the law, on this aspect, becomes clearer. h

7. In the case of Lala Jairam Das v. Emperor, AIR 1945 PC 94, the Privy Council had the occasion to sum up the sources of power, as it existed in those days, as regards granting of bail to a

convict. The various views, which prevailed at that point of time, may be summarized as under:

a

"(i) If special leave to appeal has been obtained from His Majesty in Council and the Judicial Committee has said that an application for bail must be dealt with by the High Court, the High Court will have power under Section 498 (Sec. 437 new) of the Code of Criminal Procedure (hereinafter referred to as "Cr.P.C.") to release a convicted person on bail pending hearing of his appeal. Thus, suspension of sentence was not the prime concern, the concern was the release of person on bail and, in doing so, the provisions of bail, applicable to persons accused of non-bailable offence, were resorted to;

b

c

d

(ii) The High Court has inherent power to release a convict on bail if special leave to appeal has been obtained from His Majesty in Council meaning thereby that bail of the convict was to be considered only when his appeal was admitted for hearing;

e

(iii) After disposal of a criminal appeal by High Court, the High Court becomes functus officio and, hence, cannot grant bail to a convicted person unless special leave to appeal had been obtained from His Majesty in Council;

f

(iv) The High Court's power to grant a convicted person bail, under Section 498 (439 new) Cr.P.C., would revive, when Judicial Committee grants special leave to appeal and permits the High Court to consider bail."

g

8. The Judicial Committee, having analysed the divergent views prevailing in those days, held, in *Lala Jairam Das* (supra), that even if the Judicial Committee had granted special leave to appeal against conviction and sentence under the Code of Criminal Procedure, a High Court, by taking resort to its inherent power, could not have granted bail to a convicted person, whose appeal had been dismissed by the High Court.

h

9. In conclusion, the Privy Council, *Lala Jairam Das* (supra), held that since provisions had been made in the form of Section 426 (389 new) Cr.P.C., recourse to, inherent power, under Section 561A (482 new) Cr.P.C., would not be permissible irrespective of the fact whether special leave to appeal had or had not been granted.

10. Section 426 Cr.P.C., in those days, provided as follows;

"(1) Pending any appeal by a convicted person, the appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail or on his own bond.

(2) The power conferred by this section on an appellate Court may be exercised also by the High Court in the case of any appeal by a convicted person to a Court subordinate thereto.

3) When the appellant is ultimately sentenced to imprisonment, penal servitude or transportation, the time during which he is so released shall be excluded in computing the term for which he is so sentenced."

11. According to Privy Council, in *Lala Jairam Das (supra)*, a consideration of Section 426 Cr.P.C. reinforced the view that Section 498 (439 new) Cr.P.C. had no reference to convicted persons and the Code of Criminal Procedure conferred no power, on a High Court, to grant bail, if appeal from conviction and/or sentence stood dismissed by High Court and the fact that the convicted person, whose appeal had been dismissed, had obtained special leave from His Majesty in Council to appeal from his conviction or sentence made no difference in this regard. This observation was the result of the fact that beyond High Court, there was no further Court of appeal in the form of Supreme Court, as we have today, and what was available to a person, whose appeal stood dismissed by High Court, was to seek special leave to appeal and if the special leave was granted, then, there would have been a regular appeal.

12. We may pause here to add that there exists a distinction between an appeal and a leave to apply for appeal. When an appeal is provided and the appeal is preferred, the appeal stands instituted; but when a leave for appeal is applied, then, until the leave is, in such a situation, granted, there is really no appeal. Hence, the disposal of the Special Leave Petition or of any petition for leave to appeal does not subsume the order from which the appeal arose, for, with the rejection of the petition for leave, no appeal survived. Article 136 of the Constitution of India deals with 'special leave to appeal', which may be granted by the Supreme Court. When special leave to appeal is dismissed by the Supreme Court, with or without a speaking order, the order from which the appeal arose does not merge into

a such an order, for, as already indicated hereinabove, with the
dismissal of the special leave petition, no appeal survives and no
appeal can be said to have been considered. In fact, when the special
leave to appeal is declined, there is no appeal. Hence, question of the
merger of the order into the order declining to grant special leave to
b appeal does not arise at all. One may, in this regard, refer to **Punjab
State Electricity Board, Patiala v. Ashok Kumar Sehgal**,
reported in AIR 1990 P & H 117 (FB), wherein it has been observed
thus,

c "Article 136(1) of the Constitution provides that
notwithstanding anything in Chapter IV, the Supreme
Court may, in its discretion, grant special leave to appeal
from any judgment, decree, determination, sentence or order
in any cause or matter passed or made by any Court or
tribunal in the territory of India. If the Supreme Court, in its
d discretion, refused to grant Special Leave to Appeal, then
there is no appeal. The doctrine of merger or fusing the
judgment of the lower Court in that of the appellate Court
does not apply to such a situation. Thus, in our view, we can
proceed with these matters despite the Special Leave Petition
in Kuldip Singh's case having been dismissed."

e 13. The above aspect of the law has been succinctly and
authoritatively laid down by the Supreme Court, in **Kunhayammed
v. State of Kerala, (2000) 6 SCC 395 : AIR 2000 SC 2587**.

f 14. Coming back to the case of Lala Jairam Das (supra), the
Privy Council further held, in Lala Jairam Das (supra), that Section
561A Cr.P.C., which embodies inherent power, confers no new
power on the High Court; rather, Section 561A Cr.P.C. merely
g safeguards all existing inherent powers possessed by a High Court
necessary (among other purposes) to secure the ends of justice.
According to the decision in Lala Jairam Das (supra), Section 426
(389 new) Cr.P.C. is, and was intended to contain, a complete and
exhaustive statement of the powers of a High Court, in India, to
grant bail pending appeal and excludes the existence of any
h additional inherent power, in a High Court, relating to the subject of
bail if the appeal was dismissed by High Court.

15. Later, in the case of **Pamapathy v. State of Mysore, AIR 1967 SC 286**, the question that arose before the Supreme Court was with respect to cancellation of bail already granted to a person in exercise of powers under Section 426 (389 new) Cr.P.C.

16. Section 426 Cr.P.C. as it existed prior to amendments in the form of Section 389 Cr.P.C., (which we have today), read as follows: a

"426. (1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail or on his own bond. b

(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of any appeal by a convicted person to a Court subordinate thereto. c

(2-A) When any person other than a person convicted of a non-bailable offence is sentenced to imprisonment by a Court, and an appeal lies from that sentence, the Court may, if the convicted person satisfies the Court that he intends to present on appeal, order that he be released on bail for a period sufficient in the opinion of the Court to enable him to present the appeal and obtain the orders of the Appellate Court under sub-section (1) and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended. d
e

(2-B) Where a High Court is satisfied that convicted person has been granted special leave to appeal to the Supreme Court against any sentence which the High Court has imposed or maintained, the High Court may, if it so thinks fit, order that pending the appeal the sentence or order appealed against be suspended, and also, if such person is in confinement, that he be released on bail. f

(3) When the appellant is ultimately sentenced to imprisonment, or imprisonment for life, the time during which he is so released shall be executed in computing the term for which he is so sentenced." g

17. The argument, raised before the Supreme Court, in Pamapathy (supra), was that when the High Court had once made an order suspending sentence and granting bail to an appellant under Section 426 Cr.P.C., the High Court retained no power to cancel bail subsequently and re-commit the appellant to jail-custody. It was also argued that there was no express power granted to the appellate court to cancel its order regarding suspension of sentence pending appeal or h

a to rescind the order of release, on bail, of an appellant. It was pointed
out that under Section 497(5) Cr.P.C., the Legislature had specifically
conferred power on specified courts to cancel bail granted to a person
accused of a non-bailable offence. It was further argued that under
Section 498(2) Cr.P.C., the Legislature had conferred power on the
High Court and the Court of Session to cancel bail granted to an
b accused person under Section 498(1) Cr.P.C. and order him to be
arrested and committed to jail-custody.

c 18. It was, thus, contented, in *Pamapathy (supra)*, that if the
Legislature intended to confer, on the appellate court, under Section
426 Cr.P.C., the power to cancel bail of an appellant and re-commit
the appellant to jail custody, it would have been very easy for the
Legislature to add an appropriate sub-section to Section 426 and
make express provision for such a power and, hence, in the absence
thereof, it would not be permissible to take recourse to the inherent
d power of the High Court as contained in Section 561A clothing the
appellate court with power to cancel bail in a case falling under
Section 426 Cr.P.C.

e 19. The Supreme Court, in the light of arguments so made,
in *Pamapathy (supra)*, observed that there was obviously a lacuna in
the legislation, but the omission of the Legislature to make a specific
provision to cancel bail of an appellant, who had been allowed to go
on bail pending his appeal, was clearly due to oversight or
inadvertence and ought not to be regarded as deliberate. The
Supreme Court pointed out, in *Pamapathy (supra)*, that if the
f contention of the appellants were sound, it would lead to fantastic
results, because the subsequent conduct of the appellant, howsoever
reprehensible it might be, would not justify revoking the order of bail
by the appellate court and ordering the re-arrest of the appellant.

g 20. The concern, expressed by the Supreme Court, in
Pamapathy (supra), on the above aspect of making of specific
legislative provisions with regard to cancellation of bail of a
convicted person, who had been granted bail pending disposal of his
appeal, may be set out, thus: An appellant may commit further acts
of violence; he may perpetrate, once again, the very same offences for
h which he stood convicted; he may even threaten and criminally
intimidate prosecution counsel, who may be in charge of the case in
the appellate court; he may attempt to abscond to a foreign country
in order to escape the outcome of appeal the trial; or he may commit
acts of violence in revenge against the police and prosecution
witnesses, who have deposed against him in the trial court, but the

appellate court will have no power to cancel the suspension of sentence and the order of bail made under Section 426 Cr.P.C. Such a situation could not have been in the contemplation of the Legislature and, therefore, the omission to make an express provision, in that behalf, is manifestly due to oversight or inadvertence. In a situation of this description, the High Court is not helpless and, in a proper case, it may take recourse to the inherent power conferred upon it under Section 561A Cr.P.C. a
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21. The Supreme Court, in *Pamapathy* (*supra*), while making a reference to the inherent power of the High Court, has observed that the inherent power of the High Court, mentioned in Section 561A Cr.P.C., can be exercised for either of the three purposes specifically mentioned in the said Section. The inherent power cannot be invoked in respect of any matter covered by specific provisions of the Code of Criminal Procedure. It cannot also be invoked if its exercise would be inconsistent with any of the specific provisions of the Code of Criminal Procedure. It is only if the matter, in question, is not covered by any specific provisions of the Code of Criminal Procedure that Section 561A can come into operation. The Supreme Court pointed out, in *Pamapathy* (*supra*), that no legislative enactment, dealing with procedure, can provide for all cases that can possibly arise and it is an established principle that the Courts should have inherent powers, apart from the express provision of law, which are necessary to their existence and for the proper discharge of the duties imposed upon them by law. This doctrine finds expression in Section 561A Cr.P.C., which does not confer any new powers on High Court, but merely recognizes and preserves the inherent powers previously possessed by it. c
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22. The Supreme Court, finally, concluded, in *Pamapathy* (*supra*), that in a proper case, the High Court had inherent power, under Section 561A Cr.P.C., to cancel the order of suspension of sentence and grant bail to an appellant under Section 426 Cr.P.C. g

23. The Supreme Court also distinguished, in *Pamapathy* (*supra*), the application of law laid down in the case of *Lala Jairam Das* (*supra*) and held that the question before the Judicial Committee, in *Lala Jairam Das* (*supra*), was whether the Code of Criminal Procedure conferred any power on a High Court, in India, to grant bail to a person, who had been convicted and sentenced to imprisonment and to whom the Judicial Committee had granted special leave to appeal against his conviction and/or sentence and it was held by the Judicial Committee, on this limited aspect of law, h

a that the High Courts had no such power under the Criminal
Procedure Code and could not grant bail to a person, who had been
convicted and sentenced to imprisonment and to whom the Judicial
Committee had granted special leave to appeal against his conviction
and sentence and the question, whether inherent power of the High
Court could be exercised for cancellation of bail, was not the subject-
b matter of consideration before the Judicial Committee. The ratio
decidendi of the decision of the Judicial Committee, in *Lala Jairam
Das (supra)*, was, therefore, held to be different.

c 24. The Supreme Court, in essence, upheld, in *Pamapathy
(supra)*, the invoking of inherent power of High Court to cancel bail
of a convicted person.

d 25. The ratio, which can be culled out from the case of
Pamapathy (supra), is that if a matter, in question, is not covered by
any specific provisions of the Code, then, Section 561A can come
into operation, because no legislative enactment, dealing with
procedure, can provide for all cases that can possibly arise and it is
an, established principle that the Courts should have inherent
powers, apart from the express provision of law, which are necessary
to their existence and for proper discharge of the duties imposed
e upon them by law.

f 26. It may be noted that in *Pamapathy (supra)*, the issue of
cancellation of bail of a convict, by taking recourse to Section 561A
(482) Cr.P.C., arose because the two proviso, which, now, have been
added to sub-section (1) of Section 389 (1) Cr.P.C., did not exist in
those days. However, since the 2nd proviso to sub-section (1) of
Section 389 Cr.P.C., now, deals with cancellation of bail, no inherent
power, would be required for cancellation of suspension of sentence
or bail of a convicted person, whose sentence stands suspended and
g who had been granted bail.

h 27. In course of time, thus, Section 389 Cr.P.C. underwent
amendment. Section 389 Cr.P.C., as it stands today, seeks to meet
the necessary circumstances arising out of an application seeking
suspension of sentence or bail. A question, however, arose as to
whether conviction of an accused can be stayed by taking recourse to
Section 482 Cr.P.C.

28. In *Rama Narang v. Ramesh Narang*, reported in
(1995) 2 SCC 513, a three Judges Bench of the Supreme Court,
having considered the question, as to whether an order of conviction

can be suspended or not in exercise of powers under Section 389(1), held, speaking through Ahmadi, CJ., as follows:

"19. That takes us to the question whether the scope of Section 389(1) of the Code extends to conferring power on the appellate court to stay the operation of the order of conviction. As stated earlier, if the order of conviction is to result in some disqualification of the type mentioned in Section 267 of the Companies Act, we see no reason why we should give a narrow meaning to Section 389(1) of the Code to debar the court from granting an order to, that effect in a fit case. The appeal under Section 374 is essentially against the order of conviction because the order of sentence is merely consequential thereto; albeit even the order of sentence can be independently challenged if it is harsh and disproportionate to the established guilt. Therefore, when an appeal is preferred under Section 374 of the Code the appeal is against both the conviction and sentence and therefore, we see no reason to place a narrow interpretation on Section 389(1) of the Code not to extend it to an order of conviction, although that issue in the instant case recedes to the background because High Courts can exercise inherent jurisdiction under Section 482 of the Code if the power was not to be found in Section 389(1) of the Code . We are, therefore, of the opinion that the Division Bench of the High Court of Bombay was not right in holding that the Delhi High Court could not have exercised jurisdiction under Section 482 of the Code if it was confronted with a situation of there being no other provision in the Code for staying the operation of the order of conviction. In a fit case if the High Court feels satisfied that the order of conviction needs to be suspended or stayed so that the convicted person does not suffer from a certain disqualification provided for in any other statute, it may exercise the power because otherwise the damage done cannot be undone; the disqualification incurred by Section 267 of the Companies Act and given effect to cannot be undone at a subsequent date if the conviction is set aside by the appellate court. But while granting a stay or suspension of the order of conviction the Court must examine the pros and cons and if it feels satisfied that a case is made out for grant of such an order, it may do so and in so doing it may, if it considers it appropriate,

a impose such conditions as are considered appropriate to protect the interest of the shareholders and the business of the company."

b 29. From what have been held in Rama Narang (supra), it becomes clear that the Supreme Court was of the view, in Rama Narang (supra), that there was no reason to give a narrow meaning to the expression, 'order appealed against', appearing in Section 389 (1) Cr.P.C., and debar thereby the appellate Court from suspending conviction if the facts of a given case so warranted. The Court pointed out, in Rama Narang (supra), that an appeal, under Section 374 Cr.P.C., was essentially against an order of conviction, for, the order of suspension was merely consequential to an order of conviction, though the order of sentence could be independently challenged if the sentence was harsh and disproportionate to the offence of which an accused had stood convicted. The Supreme Court has pointed out, that when an appeal was preferred under Section 374, the appeal was against both, conviction as well as sentence. Since the case of Rama Narang (supra) arose out of an order passed by High Court, which enjoys inherent power under Section 482, Cr.P.C., the Supreme Court held, in Rama Narang (supra), that if such a power of suspension of an order of conviction was not found in Section 389 (1), Cr.P.C., such a power could, indeed, be exercised by High Court taking resort to Section 482, Cr.P.C.

c 30. Moreover, having considered the decisions in State of T. N. v. A. Jaganathan, reported in AIR 1996 SC 2449, K. C. Sareen v. CBI, reported in AIR 2001 SC 3320, B.R. Kapur v. State of T.N., reported in AIR 2001 SC 3435 and State of Maharashtra v. Gajanan, reported in AIR 2004 SC 1188, a three Judges Bench, in Ravikant S. Patil v. Sarvabhouna, (2007) 1 SCC 673 : 2006 AIR SCW 6365, concluded, at para 12.5, thus:

d "12.5. All these decisions, while recognizing the power to stay conviction, have cautioned and clarified that such power should be exercised only in exceptional circumstances where failure to stay the conviction, would lead to injustice and irreversible consequences."

e 31. Having analysed the decisions in Rama Narang (supra), Ravikant S. Patil (supra) and all other authorities mentioned hereinbefore, a two Judges Bench, in Navjot Singh Sidhu v. State of Punjab (2007) 2 SCC 574 : AIR 2007 SC 1003, para 3, held that the expression 'order appealed against', appearing in sub-section (1)

of Section 389, Cr. P.C., encompasses an order of conviction and, hence, Section 389(1), Cr.P.C. empowers an appellate Court to suspend not only execution of sentence, but also, in a given case, the operation of the order of conviction. The fact that even an order of conviction can be suspended by invoking the provisions of Section 389(1) becomes crystal clear from the observations of the Court, in Navjot Singh Sidhu's case (supra), which read thus,

"This sub-section confers power not only to suspend the execution of sentence and to grant bail but also to suspend the operation of the order appealed against which means the order of conviction."

32. Reiterating that an appellate Court can suspend or grant stay of an order of conviction, the Court, in Navjot Singh Sidhu's case (supra), once again, observed and held, at para 6, thus,

"The legal position is, therefore, clear that an appellate court can suspend or grant stay of order of conviction."

33. In the face of the law as clearly discernible from the decision in Navjot Singh Sidhu (supra), there can be no escape from the conclusion that without taking aid of the High Court's inherent power under Section 482, Cr.P.C., every appellate Court, exercising jurisdiction under Section 389(1), Cr.P.C., has the power to suspend not only execution of sentence, but also the operation of the order of conviction.

JURISDICTION UNDER SECTION 389, CR.P.C.

34. Broadly speaking, Section 389, Cr.P.C., which relates to suspension of sentence, covers suspension of sentence by the Trial Court, which may have convicted an accused and passed sentence against him, as well as the Appellate Court to which the appeal has been preferred. As we would show, suspension of sentence, pending appeal, is possible by High Court even if the appeal may have been filed in a Court subordinate to the High Court.

TRIAL COURT:

35. So far as trial Court is concerned, the jurisdiction to suspend execution of sentence flows from sub-section (3) of Section 389, Cr.P.C., which provides as follows:

"(1) xxx xxx xxx

(2) xxx xxx xxx

a (3) Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall,- where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years, or where the offence of which such person has been convicted is a bailable one, and he is on bail, order that the convicted person be released on bail unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court under sub-section (1), and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended."

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d 36. It is of utmost importance to note that there is no provision made in sub-section (3) of Section 389, Cr.P.C. empowering Trial court to suspend sentence. However, since an order granting bail to a convicted person without suspending his sentence would make the sentence continue to run, despite the convicted person being on bail, a legal fiction has been created by Legislature by embodying, in sub-section (3) to Section 389, Cr.P.C., the expression 'the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.'

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f 37. For invoking the provisions of suspension as contained in sub-section (3) of Section 389, Cr.P.C., the first requirement is that the person, seeking suspension of sentence, ought to have been on bail. Thus, if the convicted person is an under-trial prisoner, trial Court would have no jurisdiction to suspend sentence irrespective of the quantum of sentence.

g 38. The second requirement for exercise of power of suspension is that the sentence of imprisonment should not exceed three years.

h 39. The third requirement is that the trial Court must be satisfied that the convict intends to prefer an appeal. There must, therefore, be reasons for the trial court to record its satisfaction that the convicted person intends to present an appeal.

40. If all the three requirements, mentioned above, are satisfied, suspension of sentence, under sub-section (3), is, ordinarily, the rule. If the three conditions, mentioned herein before, are present special reasons must exist for denying suspension. If the trial court decides not to suspend the sentence, which may have been passed, it must assign special reasons meaning thereby that a

convict, who, otherwise, satisfies the requirements of sub-section (3) of Section 389, Cr.P.C. must, ordinarily, be released on bail unless there are special circumstances dis-entitling him from being released on bail even if he intends to prefer an appeal. Such a situation may arise, where the record reveals that the convict, as an accused, had abused bail during trial by means, such as, absconding or intimidating witnesses, etc. Moreover, special reasons would mean reasons pertaining to the case, in question, and not those reasons, which may be general in nature. a
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41. When a trial court decides to grant bail, the question, which would naturally arise, would be as to what the period of bail shall be. In other words, once the bail has been ordered, the question would be what would be period of limitation of such bail. c

42. In the light of what have been discussed above, it becomes evident that the Legislature has empowered a trial court to suspend sentence to release a convicted person on bail so as to enable the convicted person prefer an appeal and obtain necessary order of suspension of his sentence from the Appellate Court as well as his release on bail. d

43. In a way, therefore, the release of a convict, on bail, by a trial Court, is, in the nature of interim bail. Consequently, the deemed suspension of his sentence, in such a case, must also be treated as interim deemed suspension. The interim bail is co-terminus with the order, which may be passed, under sub-section (1) of Section 389, Cr.P.C. or till such time the trial Court may have allowed the convict to remain on bail, whichever is earlier. The period of bail, as sub-section (3) of Section 389, Cr.P.C. envisages, has to be sufficient. What would be sufficient period has to be answered on the attending facts. Generally speaking, period of bail, ordered by a trial Court, must be in consonance with the period provided for preferring appeal, because no purpose would be served in allowing extension of period of suspension by a trial Court if the appeal, for which time was allowed, becomes barred by time. e
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44. It is equally necessary to point out here that in a given case, where all the factors for suspending the sentence are present, yet the trial Court may deny the suspension and commit the convict to custody if the conditions of bail, which the trial Court imposes, are not met by the convict. Thus, if the trial Court imposes a condition of two sureties and only one surety is furnished, the condition of bail, following suspension, having not been complied with, the convict has h

to be sent to imprisonment unless the conditions of bail are changed or modified."

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31. The principle underlying the theory of criminal jurisprudence in our country is that an accused is presumed to be innocent till he is held guilty by a court of the competent jurisdiction. Once the accused is held guilty, the presumption of innocence gets

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erased. In the same manner, if the accused is acquitted, then the presumption of innocence gets further fortified.

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32. From perusal of Section 389 Cr.P.C., it is evident that save and except the matter falling under the category of sub-section 3 neither any specific principle of law is laid down nor any criteria has been fixed for consideration of the prayer of the appellant/convict and further, having a judgment of conviction erasing the presumption leaning in favour of the accused regarding innocence till contrary recorded by the court of the competent jurisdiction, and in the

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aforesaid background, there happens to be a fine distinction between the prayer for bail at pre-conviction as well as the post-conviction stage, viz Sections 437, 438, 439 and 389(1) of the Cr.P.C.

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33. In *Rajesh Ranjan Yadav @ Pappu Yadav v. C.B.I. through its Director*, reported in (2007)1 SCC 70, it has been held under paras 8, 9, 10 which are as follows :

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"8. Learned counsel for the appellant then relied on the decision of this Court in Kashmira Singh vs. State of Punjab 1977(4) SCC 291. In paragraph 2 of the said decision it was observed as under:

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"It would indeed be a travesty of justice to keep a person in jail for a period of five or six years for an offence which is ultimately found not to have been committed by him. Can the Court ever compensate him for his incarceration which is found to be unjustified? Would it be just at all for the Court to tell a person: "We have admitted your appeal because we think you have a prima facie case, but unfortunately we have no time to hear your appeal for quite a few years and, therefore, until we hear your appeal, you must remain in jail, even though you may be innocent?" What confidence would such administration of justice inspire in the mind of the public? It may quite conceivably happen, and it has in fact happened in a few cases in this Court, that a person may serve out his full term

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of imprisonment before his appeal is taken up for hearing. Would a judge not be overwhelmed with a feeling of contrition while acquitting such a person after hearing the appeal? Would it not be an affront to his sense of justice? Of what avail would the acquittal to be such a person who had already served out his term of imprisonment or at any rate a major part of it? It is, therefore, absolutely essential that the practice which this Court has been following in the past must be reconsidered and so long as this Court is not in a position to hear the appeal of an accused within a reasonable period of time, the Court should ordinarily, unless there are cogent grounds for acting otherwise, release the accused on bail in cases where special leave has been granted to the accused to appeal against his conviction and sentence."

9. Learned counsel for the appellant then relied on the decision of this Court in **Bhagirathsinh vs. State of Gujarat 1984 (1) SCC 284**, **Shaheen Welfare Association vs. Union of India & Ors. 1996(2) SCC 616**, **Joginder Kumar vs. State of U.P. & Ors. 1994(4) SCC 260** etc.

10. In our opinion none of the aforesaid decisions can be said to have laid down any absolute and unconditional rule about when bail should be granted by the Court and when it should not. It all depends on the facts and circumstances of each case and it cannot be said there is any absolute rule that because a long period of imprisonment has expired bail must necessarily be granted."

34. The Supreme Court, in the case of **Ash Mohammad v. Shiv Raj Singh**, reported in **(2012)9 SCC 446**, has observed in para 30 as follows :

"30. We may usefully state that when the citizens are scared to lead a peaceful life and this kind of offences usher in an impediment in establishment of orderly society, the duty of the court becomes more pronounced and the burden is heavy. There should have been proper analysis of the criminal antecedents. Needless to say, imposition of conditions is subsequent to the order admitting an accused to bail. The question should be posed whether the accused deserves to be enlarged on bail or not and only thereafter issue of imposing conditions would arise. We do not deny for a moment that period of custody is a relevant factor but simultaneously the totality of circumstances and the criminal antecedents are also to be weighed. They are to be weighed in the scale of collective cry and desire. The

a *societal concern has to be kept in view in juxtaposition of individual liberty. Regard being had to the said parameter we are inclined to think that the social concern in the case at hand deserves to be given priority over lifting the restriction of liberty of the accused."*

b 35. In *Gudikanti Narasimhulu v. Public Prosecutor*, High Court of Andhra Pradesh, reported in *AIR 1978 SC 439*, wherein the appellant was acquitted by the trial court which was set aside by the High Court and while the SLP was allowed with regard to an appeal during the course of which a prayer for bail was made and considered, though allowed, under para 19, it has been held as follows :

c "19. The petitioners have suffered imprisonment around a year and a reasonable prediction of the time of the hearing of the appeal many take us to a few years ahead. Which means that incarceration during that period may possibly prove an irrevocable injury if the appeal ends in their favour. The Magistrate's report about the conduct of the petitioners while in sub-jail is not uncomplimentary."

d 36. In *Babu Singh v. State of U.P.*, reported in *AIR 1978 SC 527*, wherein the prayer for bail at an earlier occasion was rejected by the Supreme Court, revived subsequently, during the course of pendency of an appeal has taken into consideration apart from other decisions, the Kashmira Singh's case (*AIR 1977 SC 2147*) and held as follows in para 25 :

e "Having regard to this constellation of considerations, carefully viewed in the jurisprudential setting above silhouetted, we are of the view, that subject to certain safeguards, the petitioners are eligible to be enlarged on bail."

f 37. In *Bhagwan Rama Shinde Gosai v. State of Gujarat*, reported in *AIR 1999 SC 1859*, wherein the appellants were convicted by the trial court against which the appeal was pending before the High Court, the High Court successively rejected the prayer for grant of bail till the pendency of appeal after suspending the sentence, it has been held as follows :

g "3. When a convicted person is sentenced to fixed period of sentence and when he files appeal under any statutory right, suspension of sentence can be considered by the appellate court liberally unless there are exceptional circumstances. Of course if there is any statutory restriction against suspension of sentence it is

a different matter. Similarly, when the sentence is life imprisonment the consideration for suspension of sentence could be of a different approach. But if for any reason the sentence of limited duration cannot be suspended every endeavour should be made to dispose of the appeal on merits more so when motion for expeditious hearing the appeal is made in such cases. Otherwise the very valuable right of appeal would be an exercise in futility by efflux of time. When the appellate court finds that due to practical reasons such appeals cannot be disposed of expeditiously the appellate court must bestow special concern in the matter suspending the sentence, so as to make the appeal right meaningful and effective. Of course appellate courts can impose similar conditions when bail is granted."

38. In *Sidhartha Vashisht @ Manu Sharma v. State (NCT of Delhi)*, reported in 2008 Cr.L.J. 3524 (popularly known as the Jessica Lal's murder case), the Supreme Court had the occasion to consider the rival submissions as well as various judicial pronouncements referred to by both the sides over the prayer for bail, it has been held as follows :

"32. In the above cases, it has been observed that once a person has been convicted, normally, an appellate Court will proceed on the basis that such person is guilty. It is no doubt true that even thereafter, it is open to the appellate Court to suspend the sentence in a given case by recording reasons. But it is well settled, as observed in Vijay Kumar that in considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302, IPC, the Court should consider all the relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the desirability of releasing the accused on bail after he has been convicted for committing serious offence of murder, etc. It has also been observed in some of the cases that normal practice in such cases is not to suspend the sentence and it is only in exceptional cases that the benefit of suspension of sentence can be granted."

33. In *Hasmat*, this Court stated;

"6. Section 389 of the Code deals with suspension of execution of sentence pending the appeal and release of the applicant on bail. There is a distinction between bail and suspension of sentence. One of the essential ingredients of Section 389 is the requirement for the Appellate Court to record reasons in writing for ordering suspension of

a execution of the sentence or order appealed. If he is in
confinement, the said Court can direct that he be released on
bail or on his own bond. The requirement of recording
reasons in writing clearly indicates that there has to be
careful consideration of the relevant, aspects and the order
directing suspension of sentence and grant of bail should not
b be passed as a matter of routine".

c 34. The mere fact that during the period of trial, the accused
was on bail and there was no misuse of liberty, does not per se
warrant suspension of execution of sentence and grant of bail. What
really necessary is to consider whether reasons exist to suspend
execution of the sentence and grant of bail. "

d 39. In *Surinder Singh @ Shingara Singh v. State of Punjab*,
reported in AIR 2005 SC 3669, wherein the Supreme Court had the
occasion to consider the guidelines issued by the bench of the P&H
High Court in the case of *Dharampal v. State of Haryana*, reported in
(2000)1 CLR 74 and had considered other judgments including
Kashmira Singh's case (AIR 1977 SC 2147), had held as follows :

e "11. We agree with the submission urged before us that the
directions contained in the aforesaid judgment of the High Court are
only in the nature of guidelines and the High Court should not be
understood to have laid down an invariable rule to be observed with
mathematical precision. In fact in the very first paragraph of the
judgment the learned Judges observed that they were making "an
f attempt to frame certain guidelines" for the grant of bail. Difficulties
may arise if such a direction is treated as an invariable rule in the
matter of grant of discretionary relief.

g The rule laid down in *Dharampal's* case may be inferentially
understood to mean that unless a convict has undergone five years
imprisonment, he should not be released on bail. This would again
lead to travesty of justice, because in a given case having regard to
the evidence on record and the reasoning of the Court convicting the
accused, the High Court in an appeal may well be persuaded and
h justified in granting bail to the appellant even while admitting his
appeal.

12. We, therefore, hold that the High Court of Punjab and
Haryana in *Dharampal's* case laid down guidelines which ought to
be kept in mind by Courts dealing with applications for grant of bail
in a pending appeal. It does not lay down any hard and fast rule of

universal application. As we have observed earlier, it would be futile to lay down any strait jacket formula in such matters."

40. In *Bakshish Ram v. State of Punjab, reported in (2009)6 SCC 561*, where under the bail was granted to the appellant no.2, a lady aged about 80 years, the Court had considered various judgments on the issue of granting of bail during the pendency of the appeal after suspending the sentence under the following paragraphs :

"21. This Court in the case of *Talab Haji Hussain vs. Madhukar Purshottam Mondkar, 1958 SCR 1226*, has observed :

"It is to be remembered that it is not possible to give a list of all the factors which a court may consider in the disposal of a bail application. But, putting the whole thing singly the object, which a court dealing with in an application for bail must keep in mind, is that in any case there should not be any impediment in the progress of the fair trial."

8) This Court in the case of *State of Maharashtra v. Anand Chintaman Dighe, (1990) 1 SCC 397*, has stated that where the offence is of serious nature, the court has to decide the question of grant of bail in the light of such considerations as the nature and seriousness of offence.

9) It is clear from the various decisions of this Court as stated above that, cases where a serious offence had been committed and the accused had been held guilty for the said offence, then his application for grant of bail should not be decided leniently during the pendency of the appeal. The seriousness and gravity of the offence must be looked into before granting the bail. In the instant case, accused are convicted by the Trial Court for harassing, torturing and compelling the deceased to end her life by committing suicide, and the said conviction is confirmed by the High Court.

10) In the case of *Kashmira Singh v. State of Punjab, (1977) 4 SCC 291*, this Court observed that, so long as this Court is not in a position to hear the appeal of an accused within a reasonable period of time, the Court should ordinarily, unless there are cogent grounds for acting otherwise, release the accused on bail in cases where special leave has been granted to the accused to appeal against his conviction and sentence."

41. In *Sidhartha Vashisht @ Manu Sharma v. State (NCT of Delhi)* (supra), it has been held by the Supreme Court which is as follows :

a "16. We are conscious and mindful that the main matter
(appeal) is admitted and is pending for final hearing. Observations
on merits, one way or the other, therefore, are likely to prejudice one
or the other party to the appeal. We are hence not entering into the
correctness or otherwise of the evidence on record. It, however,
cannot be overlooked that as on today, the applicant has been found
b guilty and convicted by a competent criminal court. Initial
presumption of innocence in favour of the accused, therefore, is no
more available to the applicant."

c 42. In the case of *Atul Tripathi v. State of Uttar Pradesh*,
reported in (2014) 9 SCC 177, whereunder apart from identifying the
differences of consideration of prayer for grant of bail relating to pre-
conviction stage as well as post conviction stage, it has been held in
para 14 which is as follows :

d "14. Service of a copy of the appeal and application for bail
on the public prosecutor by the appellant will not satisfy the
requirement of first proviso to Section 389 Cr.P.C. The appellate
court may even without hearing the public prosecutor, decline to
grant bail. However, in case the appellate court is inclined to
consider the release of the convict on bail, the public prosecutor shall
e be granted an opportunity to show cause in writing as to why the
appellant be not released on bail. Such a stringent provision is
introduced only to ensure that the court is apprised of all the
relevant factors so that the court may consider whether it is an
appropriate case for release having regard to the manner in which the
f crime is committed, gravity of the offence, age, criminal antecedents
of the convict, impact on public confidence in the justice delivery
system, etc....."

g 43. In *Kishori Lal v. Rupa and others*, (2004)7 SCC 638, the
Supreme Court has indicated the factors that require to be considered
by the courts while granting benefit under Section 389 in cases
involving serious offences like murder etc., it is useful to refer to the
observations made therein. They are :

h "4. Section 389 of the Code deals with suspension of
execution of sentence pending the appeal and release of the appellant
on bail. There is a distinction between bail and suspension of
sentence. One of the essential ingredients of Section 389 is the
requirement for the appellate Court to record reasons in writing for
ordering suspension of execution of the sentence or order appealed. If
he is in confinement, the said court can direct that he be released on

bail or on his own bond. The requirement of recording reasons in writing clearly indicates that there has to be careful consideration of the relevant aspects and the order directing suspension of sentence and grant of bail should not be passed as a matter of routine. a

5. The appellate Court is duty bound to objectively assess the matter and to record reasons for the conclusion that the case warrants suspension of execution of sentence and grant of bail. In the instant case, the only factor which seems to have weighed with the High Court for directing suspension of sentence and grant of bail is the absence of allegation of misuse of liberty during the earlier period when the accused-respondents were on bail. b

6. The mere fact that during the trial, they were granted bail and there was no allegation of misuse of liberty, is really not of much significance. The effect of bail granted during trial loses significance when on completion of trial, the accused persons have been found guilty. The mere fact that during the period when the accused persons were on bail during trial there was no misuse of liberties, does not per se warrant suspension of execution of sentence and grant of bail. What really was necessary to be considered by the High Court is whether reasons existed to suspend the execution of sentence and thereafter grant bail. The High Court does not seem to have kept the correct principle in view." c

44. In *Vijay Kumar v. Narendra and others*, (2002)9 SCC 364, and *Ramji Prasad v. Rattan Kumar Jaiswal and another*, (2002)9 SCC 366, it was held by the Supreme Court that in cases involving conviction under Section 302 IPC, it is only in exceptional cases that the benefit of suspension of sentence can be granted. In Vijay Kumar's case (supra), it was held that in considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302 IPC, the court should consider the relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, and the desirability of releasing the accused on bail after they have been convicted for committing the serious offence of murder. d

45. The aforesaid view is reiterated by the Supreme Court in the case of *Vasant Tukaram Pawar v. State of Maharashtra*, (2005)5 SCC 281, and *Gomti v. Thakurdas and others*, (2007)11 SCC 160. e

46. A Division Bench of the Patna High Court in the case of *Chandra Shekhar Bharti v. The State of Bihar*, reported in 2014 f

Cri.L.J. 2953, has observed something important as regards Section 389 of the Cr.P.C. The observations are as under:

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"a. While considering an application for suspension of sentence, the Appellate Court has to record reasons, in writing. The requirement of recording of reasons must be preceded by careful consideration of the relevant aspects of the case at hand including issues of human rights or other relevant aspects as envisaged under Article 21 of the Constitution of India.

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b. The mere fact that during the period, when an accused person was on bail during trial, there was no misuse of liberty does not per se warrant suspension of execution of sentence and grant of bail. What really is necessary to be considered by the Court is whether reasons exist, on the merits of the case, to suspend the execution of sentence and, thereafter, grant bail to the appellant;

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c. During pendency of an appeal against conviction or sentence or both, temporary or interim or provisional suspension of sentence, on some extremely rare circumstances, is inherent in the jurisdiction of the Appellate Court, under Sec. 389 Cr.P.C., by the doctrine of implied power. Such a recourse must be taken only when pressing circumstances are shown to exist and when the Court is of the opinion that further inquiry would be required before finally disposing of the application for suspension of sentence pending decision on the convict's appeal.

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d. It may be equally necessary to mention that circumstances, which show existence of a right within the ambit of Article 21 of the Constitution of India, may be considered as valid circumstances, while granting interim suspension pending disposal of an appellant's application seeking suspension of sentence and bail.

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e. Notwithstanding the fact that a prisoner's application for suspension of sentence and his consequent release on bail cannot be allowed on merit or has been rejected on merit, the Appellate Court still retains the power to suspend sentence for such period as the Court may consider imperative, particularly, when the Court finds that such suspension of sentence would make the right to life, guaranteed by Article 21, meaningful. Thus, inordinate delay, in disposal of appeal, terminal ailments, marriage of daughter, performing last rites, etc., are circumstances falling in the broader definition of 'right to life' and can become valid grounds for suspension of sentence of a prisoner and his release on bail for a temporary period or until disposal of his substantive appeal."

47. In the case of *Sunil Batra v. Delhi Administration*, reported in AIR 1980 SC 1579, the Supreme Court, while dealing with the 'right to life', observed as follows; a

"By the term "life" as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body or amputation of an arm or leg or the putting out of an eye or the destruction of any other organ of the body through which the soul communicates with the outer world." b

48. Taking a clue from the above observations made in Sunil Batra (supra), the Supreme Court, in *Francis Coralie Mullin v. Administrator, Union Territory of Delhi and Ors. (AIR 1981 SC 746)*, observed that the question, which arises is whether the right to life is limited only to protection of limb or faculty or does it go further and embraces something more. The Supreme Court has pointed out, in Francis Coralie Mullin (supra), that the right to life includes the right to live with human dignity and all that what go along with the 'right to live with human dignity', such as, adequate nutrition, clothing, shelter and facilities for reading, writing and expressing one-self in diverse forms, freely moving about and mixing and commingling with fellow human beings. Of course, observed the Supreme Court, in Francis Coralie Mullin (supra), the magnitude and content of the components of this right would depend upon the extent of the economic development of the country; but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self. Held, therefore, the Supreme Court, in Francis Coralie Mullin (supra), that every act, which offends against or impairs human dignity, would constitute deprivation *pro tanto* of this right to live. c
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49. The Supreme Court further observes, in the case of Francis Coralie Mullin (supra), that any form of torture or cruel, inhuman or degrading treatment would be offensive to human dignity and constitute an inroad into this right to live and it would, on this view, be treated to have been prohibited by Article 21 unless it is in accordance with the procedure prescribed by law; but no law, which authorizes, and no procedure, which leads to such torture or cruel, inhuman or degrading treatment, can ever stand the test of reasonableness and non-arbitrariness: it would plainly be h

unconstitutional and void as being violative of Articles 14 and 21 of the Constitution of India.

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50. It would, thus, be seen, noted the Supreme Court, Francis Coralie Mullin (supra), that there is implicit in Article 21 the right to protection against torture or cruel, inhuman or degrading treatment, which is enunciated in Article 5 of the Universal Declaration of Human Rights and guaranteed by Article 7 of the International Covenant on Civil and Political Rights. This right to live, which is comprehended within the broad connotation of the right to life, can concededly be abridged according to the procedure established by law and, therefore, when a person is lawfully imprisoned, this right to live is bound to suffer attenuation to the extent to which it is incapable of enjoyment by reason of incarceration.

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51. The prisoner or detenu, observed the Supreme Court, in Francis Coralie Mullin (supra), cannot obviously move about freely by going outside the prison walls nor can he socialise at his free will with persons outside jail. However, as part of the right to live with human dignity and as a necessary component of the right to life, he would, according to the Supreme Court, in Francis Coralie Mullin (supra), be entitled to have interviews with the members of his family and friends and no prison regulation or procedure, laid down by prison, regulating the right to have interviews with members of the family and friends, can be upheld as constitutionally valid, under Articles 14 and 21, unless it is reasonable, fair and just.

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52. The relevant observations, made in Francis Coralie Mullin (supra), are reproduced below:

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"8. But the question which arises is whether the right to life is limited only to protection of limb or faculty or does it go further and embrace something more. We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing one-self in diverse forms, freely moving about and mixing and commingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self. Every act which offends against or impairs human dignity

would constitute deprivation pro tanto of this right to live and it would have to be in accordance with reasonable, fair and just procedure established by law which stands the test of other fundamental rights. Now obviously, any form of torture or cruel, inhuman or degrading treatment would be offensive to human dignity and constitute an inroad into this right to live and it would, on this view, be prohibited by Article 21 unless it is in accordance with procedure prescribed by law, but no law which authorises and no procedure which leads to such torture or cruel, inhuman or degrading treatment can ever stand the test of reasonableness and non-arbitrariness:

it would plainly be unconstitutional and void as being violative of Articles 14 and 21. It would thus be seen that there is implicit in Article 21 the right to protection against torture or cruel, inhuman or degrading treatment which is enunciated in Article 5 of the Universal Declaration of Human Rights and guaranteed by Article 7 of the International Covenant on Civil and Political Rights. This right to live which is comprehended within the broad connotation of the right to life can concededly be abridged according to procedure established by law and therefore when a person is lawfully imprisoned, this right to live is bound to suffer attenuation to the extent to which it is incapable of enjoyment by reason of incarceration. The prisoner or detenu obviously cannot move about freely by going outside the prison walls nor can he socialise at his free will with persons outside the jail. But, as part of the right to live with human dignity and therefore as a necessary component of the right to life, he would be entitled to have interviews with the members of his family and friends and no prison regulation or procedure laid down by prison regulation regulating the right to have interviews with the members of the family and friends can be upheld as constitutionally valid under Articles 14 and 21, unless it is reasonable, fair and just."

53. One of the striking features of the case of Francis Coralie Mullin (supra), is the recognition given to those rights, which can be exercised by a person even when he has been incarcerated. The Supreme Court, in Francis Coralie Mullin (supra), has, in a way, recognized and enforced Article 10 (1) of International Covenant for Civil and Political Rights, which provides as follows:

"All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

a 54. Thus, a person, even during his imprisonment, punitive or preventive, is entitled to a treatment having due regard for the inherent dignity of the human person.

b 55. However, the authority which seems to us as clinching the issue is that of the Supreme Court itself in the case of *Kashmira Singh v. State of Punjab*, AIR 1977 SC 2147. What was said there, to our mind, is doubly and even more forcefully applicable to the substantive criminal appeals pending before the High Court. To recall the memorable words therein in extenso whilst abandoning the long standing, fossilized practice of declining bail in such cases Bhagwati, c J. (the learned Chief Justice as he then was) observed as follows :

d *"The appellant contends in this application that pending the hearing of the appeal he should be released on bail. Now, the practice in this Court as also in many of the High Courts has been not to release on bail a person who has been sentenced to life imprisonment for an offence under Section 302 of the Indian Penal Code. The question is whether this practice should be departed from and if so, in what circumstances. It is obvious that no practice howsoever sanctified by usage and hallowed by time can be allowed to prevail if it operates to cause injustice. Every practice of the court must find its ultimate justification in the interest of justice. The practice not to release on bail a person who has been sentenced to life imprisonment was evolved in the High Courts and in this Court on the basis that once a person has been found guilty and sentenced to life imprisonment, he should not be let loose, so long as his conviction and sentence are not set aside, but the underlying postulate of this practice was that the appeal of such person would be disposed of within a measurable distance of time, so that if he is ultimately found to be innocent, he would not have to remain in jail for an unduly long period. The rationale of this practice can have no application where the Court is not in a position to dispose of the appeal for five or six years. It would indeed be a travesty of justice to keep a person in jail for a period of five or six years for an offence which is ultimately found not to have been committed by him. Can the Court ever compensate him for his incarceration which is found to be unjustified? Would it be just at all for the Court to tell a person : We have admitted your appeal because we think you have a prima facie case, but unfortunately we have no time to hear your appeal for quite a few years and, therefore, until we hear your appeal, you must remain in jail, even though you may be innocent?"* What confidence would such administration of justice inspire in the mind of the

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public? It may quite conceivably happen, and it has in fact happened in a few cases in this Court, that a person may serve out his full term of imprisonment before his appeal is taken up for hearing. Would a judge not be overwhelmed with a feeling of contrition while acquitting such a person after hearing the appeal? Would it not be an affront to his sense of justice? Of what avail would the acquittal be to such a person who has already served put his term of imprisonment or at any rate a major part of it? It is, therefore, absolutely essential that the practice which this Court has been following in the past must be reconsidered and so long as this Court is not in a position to hear the appeal of an accused within a reasonable period of time, the Court should ordinarily, unless there are cogent grounds for acting otherwise, release the accused on bail in cases where special leave has been granted to the accused to appeal against his conviction and sentence."

56. The observations aforesaid were made nearly four decades ago and have since been consistently followed by the Supreme Court. We think that the time has come and, indeed, the earlier the better that the High Court of Gujarat should equally modulate their practice on identical lines spelt out by the Supreme Court itself. This really seems to be the more so in the expanded concept of liberty under Article 21 and the now universally accepted right of a speedy public trial thereunder. Recasting the words of Their Lordships above, if the High Court is not in a position to hear the appeal of an accused within a reasonable period of time, it must ordinarily (unless there are cogent grounds for acting otherwise) release the accused on bail in cases of substantive appeals on life imprisonment pending before it. [see *Jhandu @ Sundar Paswan v. State of Bihar* (Criminal Appeal No.2319 of 2017, dated 12.2.2018)]

57. We may also refer to a Full Bench decision of the Rajasthan High Court in the case of *Mohd. Mohsin Khan alias Bhooria v. State*, reported in **2013 Cri.L.J. 4156**, wherein the following question was referred to the Larger Bench :

"Whether sentence of life imprisonment of a convict can be suspended solely on the ground of his having served five years or one-half of the maximum sentence, inclusive of remission, which would otherwise entitle him to release from jail, and whether the judgment of a Division Bench of this Court in *Tahir Khan alias Shakeel v. State of Rajasthan, 2005(4) WLC (Raj) 637*, holding so, has been correctly decided ?"

a 58. While answering the question noted above, Hon'ble Mr. Justice Ajay Rastogi (as His Lordship then was), speaking for the Full Bench, observed as under :

b "18. This Court can take notice that the nature of crime certainly remain the predominant factor in laying down broad guidelines which has to be kept in mind while dealing with an application for suspension of sentence to an appellant while appeal is pending for hearing. None of the decisions lay down any invariable rule for grant of bail on completion of a specified period of detention in custody. Indeed in a discretionary matter, like grant or refusal of bail it would be impossible to lay down any invariable rule or evolve a strait jacket formula and as regard the discretion vests with the Court it is always to be exercised taking note of relevant facts and circumstances of each case and certainly after view being expressed by the Apex Court in Surinder Singh's (*supra*) and what has been observed it certainly attract the applicability of Art.141 of the Constitution and obviously will have a binding effect and no Court or Tribunal will at all take a liberty of canvassing any view contrary to the one expressed by the Apex Court.

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e 19. It was also considered in **Babu Singh v. The State of Uttar Pradesh AIR 1978 SC 527**, the Apex Court observed *ad infra* :

f "Rationale of the practice can have no application where the Court is not in a position to dispose of the appeal for five or six years. It would indeed be a travesty of justice to keep a person in jail for a period of five or six years for an offence which is ultimately found not to have been committed by him. Can the Court ever compensate him for his incarceration which is ultimately found to be unjustified?"

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h 20. From the data made available, if a convict has undergone substantial part of sentence and is not released the very purpose of its filing of appeal may be defeated as he would undergo more than half of the sentence that has been imposed but, at the same time, if an accused is released it may have wrong message to the society that a person who under trial had remained in custody is released on bail soon after conviction, upon filing an appeal. It is in the said context that the 'balancing test' or the 'balancing process' as laid down in Abdul Rehman Antulay's case (AIR 1992 SC 1701) is to be applied so that even if there is no strait jacket formula still there is some

semblance of uniformity and parameters on the basis of which the parties know that their cases are to be considered and thereafter necessary orders are passed. a

It is true that it cannot lay down an absolute or invariable rule that delay in concluding the trial would ipso facto entitle an accused for the grant of bail. The right is of consideration and not an automatic right of bail. However, in case of delay of the prosecution, which is oppressive or unwarranted, and violative of Art. 21 of the Constitution appropriate remedial orders would be required to be passed in a given fact situation of each case and this has been noticed by Legislation to some extent and for which remedial measures were required to be taken and accordingly the legislation has inserted Sec. 436A in the Code by the Code of Criminal Procedure (Amendment) Act, 2005 for an under trial prisoners other than the one where the accused of an offence for which death has been specified as one of the punishments under that law, if under detention for a period extending to one-half of the maximum period of imprisonment provided for the alleged offence, he should be released on his personal bond with or without sureties. It will be relevant to quote the relevant Sec. 436A amended by Act 2005 ad infra : b
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"Section 436-A - Maximum period for which an under trial prisoner can be detained- e

Maximum period for which an under trial prisoner can be detained where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties : f
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Provided that the Court may, after hearing the public prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties : h

Provided further that no such person shall in any case be detained during the period of investigation inquiry or

a *trial for more than the maximum period of imprisonment provided for the said offence under that law.*

b *Explanation.- In computing the period of detention under this section for granting bail the period of detention passed due to delay in proceeding caused by the accused shall be excluded."*

c *21. The plight of under trial prisoners to the extent has been certainly taken note of by legislature by inserting Sec. 436A in the Code but in the case of post conviction cases where a convict seeks suspension of sentence, pending disposal of appeal complaint can always be made to the Court for long incarceration. It is true that there cannot be an absolute or invariable rule that the convict must necessarily undergo minimum sentence before his case is considered for suspension of sentence or release on bail pending hearing of the appeal. However, the period of five years of imprisonment or four years in the case of females as laid down in Dharam Pal's case (supra) was considered to be substantial period to be undergone by a convict for the purpose of consideration for his/her release on bail or suspension of sentence.*

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e *22. What has been observed by the Apex Court in Surinder Singh's case (AIR 2005 SC 3669) are the broad guidelines and it is always open for the Court to consider as and when application comes for suspension of sentence in the facts of each case and no invariable rule or strait jacket formula could be lay down in this regard.*

f *23. We would like to observe that the guidelines laid down by the Division Bench and later on observed by the Apex Court in Surinder Singh's case (supra) it is manifestly clear that detention period alone cannot be in isolation sufficient to entitle an accused to bail. It is also equally true that presumption of innocence of accused comes to an end with the recording of his conviction but at the same time when the appeal is a continuation of proceedings of trial as the conviction has not yet attained finality, in this regard observation has been made by the Apex Court in para 5 of the judgment in **Smt. Akhtari Bi v. State of M.P. (2001) 4 SCC 355 : (AIR 2001 SC 1528)** that appeal being a statutory right, the trial Court's verdict does not attain finality during pendency of the appeal and for that purpose his trial is deemed to be continuing despite conviction. Para 5 reads ad infra :*

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"To have speedy justice is a fundamental right which flows from Article 21 of the Constitution. Prolonged

delay in disposal of the trials and thereafter appeals in criminal cases, for no fault of the accused, confers a right upon him to apply for bail. This Court, has time and again, reminded the executive of their obligation to appoint requisite number of Judges to cope with the ever increasing pressure on the existing judicial apparatus. Appeal being a statutory right, the trial Court's verdict does not attain finality during pendency of the appeal and for that purpose his trial is deemed to be continuing despite conviction. It is unfortunate that even from the existing strength of the High Courts huge vacancies are not being filled up with the result that the accused in criminal cases are languishing in the jails for no fault of theirs. In the absence of prompt action under the Constitution to fill upon the vacancies, it is incumbent upon the High Courts to find ways and means by taking steps to ensure the disposal of criminal appeals, particularly such appeals where the accused are in jails, that the matters are disposed of within the specified period not exceeding 5 years in any case. Regular benches to deal with the criminal cases can be set up where such appeals be listed for final disposal. We feel that if an appeal is not disposed of within the aforesaid period of 5 years, for no fault of the convicts, such convicts may be released on bail on such conditions as may be deemed fit and proper by the Court. In computing the period of 5 years, the delay for any period, which is requisite in preparation of the record and the delay attributable to the convict or his counsel can be deducted. There may be cases where even after the lapse of 5 years the convicts may, under the special circumstances of the case, be held not entitled to bail pending the disposal of the appeals filed by them. We request the Chief Justices of the High Courts, where the criminal cases are pending for more than 5 years to take immediate effective steps for their disposal by constituting regular and special benches for that purposes."

24. *Even in the Court of appeal the appellate Court has to be satisfied affirmatively that the prosecution case is substantially true and the guilt of the accused has been proved beyond all reasonable doubt as the presumption of innocence with which the accused starts, continues right through until he is held guilty by the Court of appeal and that presumption is neither strengthened by an acquittal nor weakened by a conviction in the trial Court. The judicial*

a *approach in dealing with the case where an accused is charged of murder u/S. 302 has to be cautious, circumspect and careful taking note of nature of crime and all relevant material circumstances upholding conviction."*

b 59. The position as regards the pendency of the Criminal Appeals in the High Court of Gujarat, wherein sentence of life imprisonment has been imposed by the trial court, is made clear from the statement referred to herein below :

	Year	Pendency of number of Criminal Appeals	Number of convicts in jail
c	2012	13	5
	2013	83	112
	2014	116	169
d	2015	147	183
	2016	220	222
	2017	187	222
	2018	182	224
e	2019	4	4
	Total	952	1141

f 60. Thus, it appears that, as on date, there are 952 Criminal Appeals pending for final hearing in the High Court of Gujarat, in which almost about 1141 convicts are undergoing life imprisonment.

ANALYSIS :

g 61. The submissions advanced by the learned counsel appearing for the applicants would, prima facie, be construed as cogent and arguable points to assail the judgment of conviction. The picture that, prima facie, emerges from the materials on record is that the members of two groups of the same community fought with each other. In the said melee, on both the sides, injuries were suffered. One h Babukhan, i.e. the deceased, succumbed to the head injury suffered by him in the assault. We have given a fair idea as regards the injuries suffered by the deceased Babukhan and we have also given a fair idea as regards the case put up by the injured eye-witnesses. As on date, the fact remains that the applicants herein have been convicted for the offence punishable under Section 302 IPC simpliciter by determining

their individual liability. However, none of the eye- witnesses have said anything as regards which of the six applicants inflicted the fatal head injury on the deceased. In this context, we may refer to one decision of the Supreme Court in the case of *Sarman and others v. State of M.P., AIR 1993 SC 400*, wherein the Supreme Court has observed as under :

"5. Now coming to the nature of the offence it is true that the doctor found a number of injuries. However, it must be noted that even according to the prosecution all the appellants were only armed with lathies and were charged for offence punishable u/S. 147, IPC. 'The doctor, P.W.19 who conducted postmortem noticed 17 Injuries. Out of them injuries Nos. 1, 3, 10, 11 and 14 were described as incised wounds. Though they resulted in bleeding but no other damage was noticed. It is only injury No. 15 which resulted in a depressed fracture of parietal bone and ultimately proved in membrane puncture. Though the doctor in a general way stated cause of death was due to multiple injuries but he has specifically stated that on injury No. 15 he noticed a depressed fracture of parietal bone which individually was sufficient to cause death of the deceased. In these circumstances the question that arises is whether all the other accused are also responsible for the death of the deceased, the prosecution has not explained, as to how the deceased received incised wounds though they are simple. The prosecution case in general is that all of them were found with lathies. Nobody has stated that which of them caused the injury No. 15 which unfortunately resulted in the death of the deceased. If anyone of the appellants had exceeded the common object and acted on his own, it would be his individual act. In this case unfortunately no witness has come forward as to which of the accused has caused which injury. In these circumstances we find it difficult to award punishment under S. 302/149, IPC."

62. Besides the above, the fact remains that the injuries sustained on the side of the accused party has not been explained in any manner. The only argument in this regard canvassed by the learned APP appearing for the State is that the prosecution is not obliged to explain the injuries as the case is not one of a free fight and all the accused should have been convicted for the offence of murder with the aid of Section 149 IPC. Whether the acquittal of the applicants and the other co-accused of the offence punishable under Section 149 IPC is sustainable in law or not, will be looked into when

a the acquittal appeal filed by the State will be heard by this Court finally. As on date, it would not be proper for this Court to enter into meticulous examination of the entire evidence on record for the purpose of satisfying whether the case is one of formation of unlawful assembly with a particular common object.

b 63. In *Ranbir Yadav v. State of Bihar*, (1995)4 SCC 392, the Supreme Court highlighted that where there are party factions, there is a tendency to include the innocent with the guilt and it is extremely difficult for the court to guard against such a danger. It was pointed out that the only real safeguard against the risk of condemning the innocent with the guilt lies in insisting on acceptable evidence which, in some measure, implicates such accused and satisfies the conscience of the court.

d 64. The Supreme Court in the famous case of *Gajanand v. State of Uttar Pradesh*, AIR 1954 SC 695, had explained and defined the word "free fight" in the following manner :

e *"A free fight is when both sides mean to fight from the start, go out to fight and there is pitched battle. The question of who attacks and who defends in such a fight is wholly immaterial and depends on the tactics adopted by the rival commanders. When one party after preparation and armed with deadly weapon went to the other party's house, it could not be said in these circumstances that both the parties were pre-determined for a trial of strength and had a free fight, rather the first party was the aggressor."*

f Thus, it can be said that a free fight is one when both sides starts fight from the start.

g 65. In the case of *Kanbi Nanji Virji and others v. State of Gujarat*, AIR 1970 (SC) 219, the Supreme Court had observed as under:

h *"Where there was a melee at the time of the incident and the two groups indulged in a free fight resulting in injuries to persons of both groups and death of two, if the Court comes to the conclusion that the injuries sustained by the persons were in the course of a free fight, then only those persons who are proved to have caused injuries or death can be held guilty for the offence individually committed by them."*

66. In a case of free fight, question of conviction with the aid of Section 149 IPC does not arise and for that law laid down by the

Supreme Court in the case of *Puran v. State of Rajasthan*, AIR 1976 (SC) 912, may be referred to in which it was observed as under:

"In a case of sudden mutual fight between the two parties, there can be no question of invoking the aid of Section 149 for the purpose of imposing constructive criminal liability on accused. The accused in such a case the convicted only for the injuries caused by him by his individual acts."

67. Moreover, no right of private defence is available in the case of free fight, and for that, the law laid down by the Supreme Court in the case of *Vishvas Aba Kurane v. State of Maharashtra*, AIR 1978 (SC) 414, may be referred to, in which the Supreme Court has observed as under:

"(C) Penal Code (1860) Section 96- Right of private defence - Free fight-No right of private defence is available to either party and each individual is responsible for his own acts."

68. The word 'sudden fight' has been defined by the Supreme Court in the case of *Mariadasan and others v. State of Tamil Nadu*, AIR 1980 (SC) 573, in the following manner :

"Sudden fight- When no party attacks the members of the opposite party at the commencement of the occurrence and there is no evidence regarding formation of unlawful assembly with a particular common object and the fight takes place as a result of heated passion and without premeditation, it can be said to be a "sudden fight". No unlawful assembly can be said to have been formed in such cases and the accused cannot be convicted under this Section. All the persons must be held responsible for their individual acts and not vicariously liable for acts of others."

69. The Supreme Court, in the case of *Mariadasan* (supra), further held that even in sudden fight which had taken place on spur of moment, the accused cannot be convicted under Sections 147, 148 or Section 149 IPC.

70. It may further be stated that in case of group rivalry and enmity, it often happens that there is a general tendency to rope in as many persons as possible as having participated in the assault. To avoid this eventuality, in case of free fight, the law has been laid down that persons who caused injuries would be liable.

71. In such circumstances referred to above, we are persuaded to accept the plea of the applicants for suspension of the substantive

a order of sentence passed by the trial court. Prima facie, what has weighed with us, is the acquittal of the applicants of the offence punishable under Section 149 IPC; the injuries suffered by the deceased; the injuries suffered by the applicants herein and the other co-accused and the non-explanation of such injuries on the part of the prosecution; the individual liability fixed by the trial court of the applicants herein coupled with the evidence of the Investigating Officer, and above all, the time that is going to be consumed before the criminal appeals are taken up for final hearing. We find it extremely difficult to accept the submission of the learned APP appearing for the State as well as the learned senior counsel appearing for the original complainant that as the State has preferred acquittal appeal and the same has been admitted, none of the above aspects should be taken into consideration for the purpose of suspension of the substantive order of sentence. In the facts and circumstances of the case and the case-law discussed above, we are not impressed by such submission. Just because the State has thought fit to prefer an acquittal appeal so far as the acquittal of the accused persons of the offence under Section 149 of the IPC, this Court should not ignore or overlook the basic infirmities in the judgment and order of conviction going to the root of the matter.

e 72. Whether the trial court was justified in acquitting the applicants and the other co-accused of the offence punishable under Section 149 of the IPC, will have to be looked into in details by re-appreciating the entire evidence on record and this exercise will be undertaken by this Court while hearing the acquittal appeal filed by the State.

f 73. We make it clear and it goes without saying that any observations touching the merits of the case are purely for the purpose of deciding the question of grant of bail pending the final disposal of the criminal appeal and shall not be construed as an expression of the final opinion in the main matter.

g 74. In the result, all the three applications succeed and are hereby allowed. The applicants are ordered to be enlarged on bail on their executing bond of Rs.25,000/- (Rupees Twenty-Five Thousand Only) each with solvent surety of the like amount to the satisfaction of the trial court and subject to the conditions that :

h (1) The applicants-convicts shall not take undue advantage of or abuse their liberty granted to them by this Court. They shall maintain law and order and shall not indulge in any illegal act or offence.

(2) The applicants-convicts shall not enter into the revenue limits of the Taluka Mangrol, District Surat, till the Criminal Appeals are heard and disposed of. a

(3) The applicants-convicts shall furnish address of their place of residence to the officer incharge of the Kosamba Police Station, Taluka Mangrol, District Surat, and they shall not change their place of residence without the prior permission of this Court. b

75. In the meantime, the substantive order of sentence passed by the trial court on each of the applicants shall remain suspended till the final disposal of the Criminal Appeals. Bail bond before the trial court. Rule made absolute to the aforesaid extent. Direct service is permitted. c

Result:- Applications allowed.

ABC 2019 (I) 470 GUJ
ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT

(J.B.Pardiwala, J.)

R/Criminal Misc. Application No. 7933 of 2018

Decided on 1 February, 2019

AKHTARBHAI NOORBHAI SHAIKH - Appellant(s). d

Versus

STATE OF GUJARAT - Respondent(s). e

Law Covered:- Code of Criminal Procedure, 1973 – Section 439(2) – Cancellation of bail – Indian Penal Code, 1860 – Sections 307, 323, 324, 325, 294(B), 506(2) r/w 114 – Gujarat Police Act – Section 135 – Case under – Bail by the court below understanding that the accused persons have no criminal antecedents – Fact that the accused had criminal antecedents – Held, once it is brought to the notice of the court that the accused is a habitual offender having antecedents, then the court ordinarily should not release such an accused on bail as it would not be in the interest of the society at large – Incident is almost ten months old & the injured also discharged from the hospital long time back – Held, it would not be appropriate to cancel the bail granted by the court below at this point of time. (Para 12 & 13) f

Held:- There is no doubt that the court below was given to understand that the accused persons have no criminal antecedents. g

April 2019