* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
\+ Crl.M.C.338/2017 & Crl.M.C.339/2017

Judgment reserved on : 12th December, 2017
Date of decision : 22nd February, 2018

\+ CRL.M.C. 338/2017

STATE THROUGH SPECIAL INVESTIGATION TEAM
S.I.T.(1984 RIOTS) ..... Petitioner

versus

SAJJAN KUMAR ..... Respondent

AND

\+ CRL.M.C. 339/2017

STATE THROUGH SPECIAL INVESTIGATION TEAM
S.I.T.(1984 RIOTS) ..... Petitioner

versus

SAJJAN KUMAR ..... Respondent

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. Vide the present petitions both under Section 439(2) read with Section 482 of the Code of Criminal Procedure, 1973, the petitioner, i.e., the State through the Special Investigation Team (1984 Riots) has assailed the impugned orders in Bail Appln. No. 14072/2015 and in

Bail Appln. No. 14073/2015 both dated 21.12.2016 of the learned Additional Sessions Judge-01/Special Judge (P.C. Act) (CBI-03), Dwarka Courts in FIR No.227/1992, under Sections 147/148/149/295/395/307/302 and 436 of the Indian Penal Code, 1860, Police Station Janakpuri and FIR No.264/1992, under Sections 147/148/149/302/307 of the Indian Penal Code, 1860 Police Station Vikaspuri. As virtually common grounds are urged against the respondent in both the FIRs i.e., FIR No. 227/1992, Police Station Janakpuri and FIR No. 264/1992, Police Station Vikaspuri as virtually similar impugned orders dated 21.12.2016 have been passed by the learned ASJ-01, Dwarka Courts in the respective bail applications, it has been considered appropriate to take up both the petitions together inasmuch as the arguments addressed on behalf of the petitioner and on behalf of the respondent were common qua both the petitions.

REGISTRATION AND CLOSURE OF FIRs INITIALLY

2. The FIR No.227/1992, Police Station Janakpuri is indicated to have been registered on the basis of the DD Entry No.15 A dated 17.4.1992 lodged at 12.05 a.m. under Sections 147/148/149/295/395/307/302 and 436 of the Indian Penal Code, 1860, and the FIR No.264/1992, Police Station Vikaspuri is indicated to have been registered on the basis of the DD Entry No.21 A dated 25.6.1992 at 8:20 p.m. under Sections 147/148/149/302/307 of the Indian Penal Code, 1860.

3. The FIR No.227/1992, Police Station Janakpuri relates to an occurrence of riots on 1.11.1984 at 11 a.m. and the FIR No.264/1992

relates to an occurrence at 7 a.m. on 2.11.1984. Both occurrences relate to the 1984 anti Sikh riots in Delhi, pursuant to an aftermath to the assassination of Smt. Indira Gandhi, the then Prime Minister of India. Both the FIRs are on the basis of the same affidavit of the complainant Sh. Harvinder Singh dated 8.9.1985 submitted to the Justice Ranganath Mishra Commission of Inquiry to examine the cases relating to the 1984 riots in Delhi recommended registration of two fresh cases. As the incidents narrated had not been investigated as recommended vide letter dated 7.2.1992 of the Justices J.D.Jain and D.K.Aggarwal Committee constituted by the Delhi Administration, these two separate FIRs are indicated to have been registered on the basis of the affidavit of the complainant Sh. Harvinder Singh dated 8.9.1985. The Riots Cell of the Delhi Police investigated both the FIRs which were both sent as untraced by the Riots Cell, Delhi Police i.e., FIR No.264/1992 Police Station Vikaspuri was sent as untraced on 22.12.1992 and was accepted as untraced by the learned Metropolitan Magistrate on 27.8.1994 and FIR No.227/1992 was sent as untraced by the Riots Cell of the Delhi Police on 5.1.1994 and the concerned learned Metropolitan Magistrate accepted the untraced report in the said case on 16.2.1996, and thus the investigations and proceedings in relation to both the FIRs were closed.

JUSTICE G.P.MATHUR COMMITTEE REPORT

4. After the recommendations of the Justice G.P.Mathur Committee report, the Government of India, Ministry of Home Affairs vide order dated 12.2.2015 constituted a Special Investigation Team,

i.e., SIT for investigation/re-investigating the cases of the 1984 riots with the following terms of reference.

> "*To re-investigate the appropriately serious criminal cases which were filed in the National Capital Territory of Delhi in connection with the 1984 riots and have since been closed. For this purpose, the SIT shall examine the records afresh from the Police Stations concerned and also the files of justice J.D Jain and Sh. D.K. Agrawal Committee and take all such measures under the law for a thorough investigation of the criminal cases:*
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> *To file charge sheet against the accused in the proper court where after investigation sufficient evidence is found available."*

5. The office of the Special Investigation Team (SIT 1984 riots) was notified as a police station with jurisdiction over the entire National Capital Territory of Delhi by the Lt. Governor of Delhi vide GNCT Delhi Notification No.6/13/2015/2124 to 2131 dated 09/07/2015.

AFFIDAVIT DATED 8.9.1985 OF SH.HARVINDER SINGH

6. The affidavit of Sh.Harvinder Singh dated 8.9.1985 submitted before the Justice Ranganath Mishra Commission of Inquiry, as already adverted to herein above, forms the basis of the registration of both the FIRs in relation to the occurrences stated to have taken place on 1.11.1984 in the area of Police Station Janakpuri and in relation to the occurrences on 2.11.1984 in the area of Police Station Vikaspuri.

7. As regards the incident of 1.11.1984, it has been stated in the affidavit dated 8.9.1985 of the complainant, Sh. Harvinder Singh, to the effect:

> *"Too much smoke was seen from the neighbouring colonies at about 11.00 morning of 1.11.84. That smoke started coming nearer slowly. Meanwhile, a crowd consisting of 200/250 people at once reached in front of the Gurdwara of our colony and set the Gurdwara on fire and started looting the things kept in the Gurdwara. The people of the mob came by a D.T.C. bus boarded on the same bus after looting and burning. One white car and the other red driven by some leader-brand people were leading the mob. The residents of the colony came out when mob had gone ahead and started extinguishing the fire of the Gurdwara. The mob again came back when they were still standing and thinking what to do next. They attacked the Sikhs with bricks, stones and rods as a result of which we sustained injuries. Then they burnt our house.*
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> *On reaching home, I found my father who sustained a deep rod injury. He was lying unconscious. Whole of his body was blood stained. A mob of about 200/250 culprits attacked the house of Sardar Nath Singh, the president of our colony in the street of our back side, when I was still helping my father. They started beating the members of his family and set the truck on fire, parked outside. I and the members of my family were witnessing all the incident peeping through the holes of rear door of our house. They threw 15/16 years old son of Sh. Nath Singh, alive into the burning truck but the residents of the colony saved him later on. We were so scared*

that we ran away leaving the doors of the house open. My jeejaji (husband of the sister) and my father went to the house of one old lady who locked the house from the outside. Then we came to know that some Hindu brother had got my injured mother admitted in to the Rana Nursing Home, Rajouri Garden. The noises of burning were heard by us while sitting inside the closed room. The condition of the father was going to be much more poor. All the three of us were hungry and helpless in the closed room. We passed the night there."

8. As regards the incident of 2.11.1984, it was stated in the said affidavit:

"*The old mother opened the door at 5.00 morning of the 2nd date and borrowed two cycles from somewhere. I started on one cycle with my father and the other was driven by my brother-in-law and a Hindu boy. We reached Uttam Nagar when it struck 7.00 O' clock. A crowd of about 200/250 persons surrounded us there in front of the office of the cong.(I) Party and started beating us with rods. We fell down with the injuries. They gave rod blows at my head, legs and hands. The blood coming from my head. Meanwhile a noise of shouting came, they should be burnt alive with Kerosene oil. I started running on hearing it. They were going to give me rod blows at the back side. I reached near the police post, Uttam Nagar running fast. I requested the police with folded hands to save my brother-in-law and my father who were being beaten by the mob in the opening on the road. But they started abusing me and did not listen to me, on the other hand, they said " you Sikhs deserve such behavior". The S.P.Said " What can we do?" The dead bodies of the Hindus,*

filled in the roads are too coming from Punjab." Blood was coming from my head, hands were not in working order. I begged the police for help but they refused to help me. I prayed to allow me to phone. I phoned the owners of my factory. They were also Sardars. I remained lying till 3.00 O' Clock at noon. The police refused to provide me medical aid in spite of my repeated requests. They said, "It will make no difference if you die when thousands of Sikhs are dying. The S.P. Uttam Nagar, came to the police post at about 3.15 noon. I requested him to send me to the hospital. That S.P. brought some injured mothers and children to the police post from the Najafgarh side. About 40/50 sardars had reached there till 5.00 in the evening. He sent me and two or three more injured to Din Dayal Hospital, Hari Nagar. My head was stitched and I was again sent to the police post, Uttam Nagar, after a short while. My masters came to bring me at 8.00 at night. They left me and some other Sikhs to the Gurdwara of Hari Nagar. Charanjit Singh, a friend mine, took me to his house at Hari Nagar, where I was got treated medically from a private doctor.

2. I saw two or three constables who came to the police post with the goods looted from the neighbouring shops when I was praying for water in the injured condition, in the Police post, Uttam Nagar. They had soap cakes, tooth paste and honey bottles in their hands. The policemen were enjoying and watching sitting carefree when the shops of the Sikhs were being looted opposite to them. My brother-in-law and my father lost their lives during this incident. My sister who had only twenty seven days old son at that time, became widow. I have been disabled due to the injuries at the hands."

9. The letter dated 7.2.1992 of the Secretary of the Delhi Administration Committee to examine the cases relating to the riots in Delhi during October and November, 1984 addressed to the Administrator, Union Territory of Delhi, Raj Niwas, Delhi, puts forth the incident of 1.11.1984 and 2.11.1984 as follows:

> *"2. The deponent has alleged inter-alia that on 1st November, 1984 a large mob came to their colony in a D.T.C. bus and set the Gurdwara on fire and looted the same. Sometime after, the mob attacked the houses of Sikhs with brick bats, stones and iron rods, as a result of which his father also sustained a deep injury. The mob also attacked the house of S.Nath Singh, the President of their colony and the deponent saw that his (Nath Singh) house-hold goods were looted and the son of Nath Singh was thrown in a burning truck which was set on fire by the mob. The boy was however saved by the residents of the colony. Feeling scared and apprehensive, he along with his father and his sister's husband, went to the house of a Hindu and spent the night there. He learnt that his injured mother was got admitted in the Rana Nursing Home, Rajouri Garden.*
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> *3. The deponent has further alleged that on 2nd November, 1984 he along with his father and brother-in-law proceeded towards Uttam Nagar on borrowed cycles. At Uttam Nagar a mob of 200-250 persons surrounded them and started beating them with rods, as a result he sustained injuries on his head, legs and hands. He reached police post Uttam Nagar and requested for protection but in vain. At about 3.15 p.m. when S.P.came to the police post with some other injured women and children, he was sent for medical aid to Deen Dayal Upadhyaya Hospital,*

Hari Nagar along with others. His brother-in-law and his father were killed in the incident and he himself was disabled on account of injuries sustained by him."

10. It is further stated in the said letter dated 7.2.1992 that Sh. Harvinder Singh had been examined by the Committee who had confirmed his affidavit and gave the name of his brother-in-law as being Avtar Singh, s/o Raghubir Singh R/o B-I/96, Janakpuri, and that the scrutiny of the police records revealed that the incidents narrated by them had neither been investigated nor linked in any of the case registered at Police Station Najafgarh vide FIRs No. 256/84, 257/84 and 258/84 relating to the October-November, 1984 riots. In view of the injuries as a very serious nature of the crime was revealed in the affidavit, the Committee recommended that fresh cases be registered regarding the incidents narrated by the deponents with it having been observed to the effect that two cases had to be registered one under Sections 147/148/149/295/395/307/302 and 436 of the Indian Penal Code, 1860 qua the incident of 1.11.1984 and the other in regard to an incident date 2.11.1984 under Sections 147/148/149/302 & 307 of the Indian Penal Code, 1860 to be investigated by an independent agency other than the local police.

SUBMISSIONS OF THE PETITIONERS

11. Through the petitions it has been submitted that on the scrutiny by the SIT which took up the present case along with few other cases/FIRs for further investigation of the case records of the previous FIR/ complaint made at that relevant time which had been closed and

it found that the complainant due to fear could not disclose the name of the respondent as an accused as the respondent was then very influential with a lot of influence in the then Government and that the complainant also could not depose fearlessly against the respondent. It is further submitted through the petitions that it had also been found that at the relevant time when the case was under investigation, important and relevant evidences through available had not been collected and enquired upon by the then Investigating Team due to the reasons best known to them and thus the closure report had been filed.

12. The State has further submitted that pursuant to the recommendations of the Justice G.P. Mathur Committee on the SIT having been constituted with the specific mandate to investigate/re-investigate the criminal cases which were filed in the National Capital Territory of Delhi in connection with the 1984 anti sikh riots and to examine the record afresh, intimation regarding further investigation of the case was given to the Court and further investigation was taken up and during the course of investigation by the SIT, the complainant, Harvinder Singh, was examined afresh and some fresh witnesses were also examined under Section 161 of the Code of Criminal Procedure, 1973 for the very first time who corroborated the contents of the FIR and the affidavit of the complainant, and that they had never been examined by any other agency previously.

13. It was further stated through the petitions that it had been categorically stated by the complainant and the fresh witnesses that the respondent, the then Member of Parliament from the outer Delhi constituency had formed an unlawful assembly armed with deadly

weapons for the purpose of committing criminal acts including rioting, arson, murder, causing disharmony and hatred between the different religious groups and destruction of properties belonging to the Sikh Community during the 1984 riots.

14. It was further submitted by the State that despite the Justices Jain & Aggarwal Committee having recommended that the investigation be conducted by an independent agency other than the local police, the investigation of FIR No.227/92 Police Station Janakpuri for the incident of 1.11.1984 and of the FIR 264/92, Police Station Vikaspuri for the incident of 2.11.1984, the investigation of these cases was not handed over to any independent agency as recommended and the closure report was filed by the Delhi Police through its Riots Cell. The State further submitted that the delay in registration of the FIR and non-assigning of the investigation of the cases to an independent agency clearly suggests the influence of the respondent herein even at that time. It has been submitted through the petitions that in the affidavit before the Justice Ranganath Mishra Commission of Inquiry, the complainant, i.e., Sh.Harvinder Singh, mentioned that some leaders were leading the mob who came in a white car but the name of the leader was not disclosed due to fear/influence of the respondent herein but in the further investigation conducted by the SIT, the complainant had disclosed clearly that the leader who came in the white Car was the then Congress-I Member of Parliament, Sajjan Kumar, i.e., the respondent herein herein and he further deposed that after the assassination of Smt.Indira Gandhi on 1.11.1984 during the day time a violent mob led by the respondent

herein came towards the Gurudwara near Gulab Bagh and that the witnesses could clearly identify the respondent amongst the mob whom they know very well and the respondent pointed out towards the Gurudwara near Gulab Bagh and then the violent mob rushed towards the Gurudwara Saheb and started looting and burning the property of the Gurudwara and also set the Gurudwara on fire. It was also stated by Sh. Harvinder Singh in his affidavit that the rioters led by the respondent herein attacked the Sikhs in order to kill them in which the complainant, his father Sohan Singh S/o Amar Singh and the mother Smt. Jaspal Kaur sustained serious injuries and that the violent mob also attacked the houses and shops of the Sikh community including the house of one Sardar Nath Singh who was the Pradhan of the Gurdwara as well as the Gulab Bagh Colony and the respondent also set their truck on fire. It has been further submitted through the petition that Gurcharan Singh son of Sardar Nath Singh was thrown in the burning truck who was saved by the neighbours. It was further submitted through the petitions that on 2.11.1984 the complainant along with his injured father and brother-in-law proceeded towards the hospital, after remaining in hiding overnight on two bicycles for the treatment of his injured father and reached at the main road Uttam Nagar Bus Terminal, when about 20/25 persons came from the nearby Congress-I office and after the crowd further swelled, they were attacked. It was further averred through the petition that the complainant's father Shri Sohan Singh and brother-in-law Sh.Avtar Singh were also killed by the mob and set on fire but the complainant managed to escape and reached the Police Post Uttam Nagar.

15. The affidavit dated 8.9.1985 of the complainant in relation to the incident dated 1.11.1984 makes mention of one white car and another red car driven by some leader brand people leading the mob on the date 1.11.1984. No specific name of the leaders of the mob, who came in the white and the red cars on 1.11.1984, have been mentioned in the affidavit dated 8.9.1985 of the complainant. In the incident of 2.11.1984 as mentioned in the affidavit dated 8.9.1985 of the complainant there is no reference to any person by a specific name as being the assaulter or the instigator of assault on him, i.e., the complainant. Through the petition it has been submitted that during the investigation conducted by the SIT, the complainant and other witnesses had disclosed that the leader who came in the white car was the then Member of Parliament, Sajjan Kumar, i.e., the applicant, whom the witnesses could clearly identify amongst the mob as they knew him very well and that the respondent had directed the mob by pointing towards the Gurudwara Saheb whereafter the mob started looting, burning and damaging the property of the Gurudwara Saheb and that the so led mob also set the Gurudwara Saheb on fire and the rioters also led by the respondent had attacked the Sikhs in order to kill them and that the violent mob /rioters under the leadership of the respondent herein, also attacked the house of Sardar Nath Singh the Pradhan of the Gurudwara as well as the president of the Gulab Bagh Colony.

STATEMENT UNDER SECTION 164 OF THE CODE OF CRIMINAL PROCEDURE, 1973

16. It has been submitted on behalf of the State through the SIT that the statement under Section 164 of the Code of Criminal Procedure, 1973 of the complainant, Harvinder Singh, recorded by the SDJM Dara Bassi District Mohali, Punjab in FIR No.264/1992, Police Station Vikaspuri, speaks volumes against the present respondent whereby the complainant has categorically identified the respondent and that the statements of other witnesses recorded under Section 161 of the Code of Criminal Procedure, 1973 also corroborated the said averment of the complainant. Vide a letter dated 2.2.2017, the SHO Inspector Anil Kumar Police Station SIT (1984 Riots Cell) requested that the statement under Section 164 of the Code of Criminal Procedure, 1973 of the complainant which was recorded in Punjabi be got translated by the Punjabi Academy, Government of Delhi. The translated version thereof was received by the SHO, Police Station SIT (1984 Riots Cell) from the Secretary of the Punjabi Academy, Ministry of Home Affairs on 3.2.2017.

17. As per his statement under Section 164 of the Code of Criminal Procedure, 1973, it was stated by the complainant to the effect that in November, 1984, he used to live with his parents and brothers and sisters at Delhi in House No. RZ-134-A, Gulab Bagh, Near Nawada, New Delhi – 69 and that he woke up at about 9 .00 a.m. and after his bath at about 11.00 a.m., he came out and saw that there was a black smoke spreading in the sky till the fire stopped and that on going to the main road he asked the passers-by as to why there was a black smoke then he was informed by a passer-by that riots had broken out after the death of the then Prime Minister Smt. Indira Gandhi and that

the vehicles belonging to the Sikh residents and the places where they reside had been got set on fire. The complainant further stated that at the time of the incident he was aged 25 years and when he gave his statement under Section 164 of the Code of Criminal Procedure, 1973 to the SDJM Dara Bassi, District Mohali, he was aged 58 years and that he went home and told his family members about the incident. He further stated that his brother-in-law i.e. Avtar Singh had also come to his house in the evening he had also come to the road and saw a crowd of 100/150 persons coming who were armed with lathies and sarias, and that when the crowd came near him then they also saw the two cars came from the back and stopped near the crown. One car was white and the other car was almost red. It was further stated through the affidavit of the complainant that from those cars five/six persons got down, one of them being the then Member of Parliament, Sajjan Kumar and the entire crowd collected around him. As sated in his affidavit at that time itself a DTC bus came and stopped near Sajjan Kumar. He further stated that from that DTC bus 50/60 persons got down and got mixed in the crowd and that Sajjan Kumar gave a signal to those persons and also had a conversation and since Sajjan Kumar had given a signal with his hands pointing towards the Gurudwara Saheb, the crowd of rioters ran towards the Gurudwara Saheb and set it on fire and started looting from the same and he, i.e., the complainant and his brother-in-law stood behind the wall on the other side of the road and were watching the incident from the side of the wall.

18. It was further stated by the complainant in the statement that they ran till the colony and shouted and informed the residents of the colony that the Gurudwara Saheb had been set on fire and that after setting the Gurudwara Saheb on fire, Sajjan Kumar, i.e., the respondent herein and his associates had sat in two cars and the persons coming through the bus boarded the bus and the rioters who were on foot went forward. After the rioters went, the residents of the colony ran to the Gurudwara and started putting out the fire on the Gurudwara and whilst they were putting out the fire, both those cars, the bus and the mob of rioters suddenly attacked them with Sarias, dandas and stones and the residents of the colony ran towards the colony. As per the statement of the complainant the mob of rioters entered into the colony and his father Sohan Singh s/o Amar Singh and mother Jaspal Kaur came into the clutches of the rioters and both got injured. He further stated that he somehow dragged his father into the house but he had been seriously injured with having been repeatedly assaulted with a saria on his head and his mother was also injured on the forehead with a brick by having been hit with a brick but as she was within the crowd, he could not bring her into the house. As per this statement under Section 164 of the Code of Criminal Procedure, 1973 of the complainant, the mob of rioters entered into the house of Nath Singh which was behind the house of the complainant and also set on fire trucks standing outside the house of Nath Singh and the rioters threw Gurcharan Singh s/o Nath Singh aged 15 to 16 years into the burning truck in the presence of the complainant and on seeing this, he, i.e., the complainant and his

family members i.e. his brothers, sisters, brother-in-law and his injured father left their house open and went into the house in front of their house and his sisters entered the house of Tilak Raj in front of their house, whereas his brother hid in a house in another lane and his brother-in-law, injured father and he i.e. the complainant hid in an old lady's house and that old lady locked them inside the house and herself sat inside the temple. That old lady, as per the statement of the complainant, was a Hindu and whilst they continued to be locked inside the house, they could continuously hear the sound of shouting, beatings and of burning fires. As per this statement of the complainant under Section 164 of the Code of Criminal Procedure, 1973, after an hour he learnt that some Hindu brother had admitted his mother to the Rana Nursing Home at Rajouri Garden. He further stated that he along with his injured father and brother-in-law hid without food and water throughout the night and the next morning at 5 a.m. that old lady opened the lock and asked them to run away from there as the rioters had learnt of their having been hidden in her house and she also stated that they would kill them. As per this statement of the complainant, Harvinder Singh, he went to the house of Tilak Raj, who resides in front of his house and requested him to help them as his father's condition was very bad and Tilak Raj got two bicycles arranged and also sent a Hindu boy with them and that he made his brother-in-law sit on one of the cycles and his brother-in-law tied his father to him i.e. the complainant with a Pagdi inasmuch as the complainant's father was very seriously injured and the complainant thus sat with his father. He further stated that on the other cycle his brother-in-law and

the Hindu boy took his father to Uttam Nagar which was at a distance of 4 to 5 km from their house but as they were crossing by the Congress-I office at Uttam Nagar then the rioters surrounded there and started beating them with Sarias. The complainant further stated that his brother-in-law Avtar Singh, who was coming on the other cycle was also surrounded by the rioters and the rioters were assaulting all three of them and that in the meantime a sound came from the truck "Aag lagakar maar do, i.e., set on fire and kill" and on hearing this he, i.e., the complainant started running blindly and the rioters were running behind him and he ran towards the Police Post, Uttam Nagar and requested the police personnel that his father and his brother-in-law were being assaulted by the rioters on the road but the police did not help him and that he continued to cry that his father and brother-in-law be saved, but the police personnel started abusing him, saying that these Sikhs had killed Indira Gandhi and thus they should be dealt with as they were being dealt. He further stated that he was bleeding profusely as he had been assaulted with the Sarias on his head and that four of his bones of his two arms had also got broken and that his eyes had also been seriously injured because of the fist blows given to him and that he had asked them that he be provided medical aid but he was not provided any medical assistance and rather the police personnel were spreading rumors that corpses of Hindus were coming in trains from Punjab and after sometime they spread another rumor that the Sikhs had put poison into the water tank.

19. In his statement under Section 164 of the Code of Criminal Procedure, 1973, the complainant Harvinder Singh, also stated that at

about 2 to 3 p.m. a senior officer whose name he learnt from his badge, as V.K. Katna came to the police post and the complainant requested him for medical assistance and in the meantime the Officer received a wireless message and thus went in his jeep from the spot and returned after two hours with a police bus containing 40/50 injured Sikh men, ladies and children and then put the complainant and four other persons into the jeep and took them to the D.D.U Hospital Hari Nagar, where due to the lack of doctors, nurses and other staff without any anesthesia he was given 14/15 stitches on his head and was also treated for his eyes but there was no treatment given that day for his broken bones. As per this statement under Section 164 of the Code of Criminal Procedure, 1973 of the complainant, the complainant requested the police in the hospital to leave him at his friend's house at Hari Nagar but the police left him and the two other injured persons at the Uttam Nagar, Police Post and from 7 a.m. till 5 p.m., he remained at the Police Post, Uttam Nagar and that he could see from the Police Post that shops near the road were being looted and burnt and that the police was sitting as a silent spectator and that he also saw some police personnel were taking out the looted articles from the shop and brought them to the Police Post. As per the statement under Section 164 of the Code of Criminal Procedure, 1973 the entire day he continued to remain hungry and thirsty and injured at the Police post and despite his repeated requests he was given one glass of water and on inquiries at the Police Post, he learnt that his father and brother-in-law had been burnt alive and they were also not handed over the dead bodies of his father and brother-in-

law. It was learnt by him subsequently that the police had burnt several dead bodies together.

20. As per this statement under Section 164 of the Code of Criminal Procedure, 1973 at about 9 p.m. the complainant and other persons at the Police Post were taken by the complainant's friend Charanjit Singh and his employer Sharan Singh were taken to the Fateh Nagar Gurudwara Saheb and on the next day he was treated for his broken bones and other injuries. Through the statement under Section 164 of the Code of Criminal Procedure, 1973, the complainant stated that he would make an appeal to the Court that Sajjan Kumar (the respondent herein) and other persons who brought the crowd had killed his father Sohan Singh and brother-in-law Avtar Singh and had injured his mother and he thus sought action against them and stated that the massacre had taken place at the instigation of Sajjan Kumar i.e. the respondent herein. He also requested through the statement under Section 164 of the Code of Criminal Procedure, 1973 that a day-to-day trial be given in the instant case inasmuch as 32 years had already elapsed and he sought that he got justice during his lifetime and sought the incarceration of the killers.

21. As per the certificate issued by the learned SDJM, District Mohali, Punjab, the said statement under Section 164 of the Code of Criminal Procedure, 1973 was as per her belief made voluntarily by the complainant Sh. Harvinder Singh in her presence and was read over to the complainant Sh. Harvinder Singh who admitted the same to be correct and to contain a true account of the statement made by him.

SUPPLEMENTARY STATEMENTS OF THE COMPLAINANT AND WITNESSES RECORDED BY SIT

22. The State through the SIT has also placed reliance on the supplementary statements dated 24.11.2016 and 23.12.2016 of the complainant Sh. Harvinder Singh in FIR No. 227/92 Police Station Janakpuri and on the statement dated 05.09.2016 and supplementary statements dated 09.11.2016 and 23.12.2016 of the complainant Sh. Harvinder Singh in FIR No. 264/92 Police Station Vikaspuri.

23. The State has also placed reliance on the statements of two witnesses dated 24.11.2016 in the FIR No. 227/92 Police Station Janakpuri and dated 25.10.2016 in the FIR No. 264/92 Police Station Vikaspuri, whose names have been requested to be withheld.

FIR NO. 227/92 POLICE STATION JANAKPURI

24. Through his statement dated 24.11.2016 under Section 161 of the Code of Criminal Procedure, 1973 in FIR No. 227/92 Police Station Janakpuri, it was *inter alia* stated by the complainant Sh. Harvinder Singh that the Investigating Officer had queried from him that in his affidavit before the Commission he had not given the name of Sajjan Kumar i.e. the respondent herein in his affidavit to which he replied that as the respondent herein was a Member of the Parliament with a lot of power and money and due to the riots, he the complainant Sh. Harvinder Singh had lost his father and brother-in-law and he had to bring up his younger brother and had to provide for his old mother and four sisters and that his house had been completely looted and he in this condition was unable to put forth the name of the respondent

herein as he did not to want to put his entire family into danger at that time it was the Government of the Congress Party to which the respondent herein belonged to and was a Member of the Parliament and as a consequence he the complainant Sh. Harvinder Singh feared that if he gave the name of the respondent herein he would not get any justice and he was also afraid that if he gave the name of the respondent herein, he would lose the rest of his family members also as a consequence of which he also sold out his Delhi accommodation and had gone to Punjab and now all his sisters have got married and his younger brother was self sufficient and now he / the complainant was not afraid of anyone and thus he could give the name of the respondent herein and that he had also due to this reason requested that his statement under Section 164 of the Code of Criminal Procedure, 1973 be recorded in Punjab and was so recorded and that he had given the details of the incident of the dates 01.11.1984 and 02.11.1984 to the Court and that he was even then as on 24.11.2016 afraid to come to Delhi.

25. In this statement under Section 161 of the Code of Criminal Procedure, 1973 dated 24.11.2016 *inter alia* the complainant Sh. Harvinder Singh had stated allegedly to the effect that on the date 01.11.1984 when he was residing at RZ-134A Block, Gulab Bagh, Nawada at about 9/10 a.m., he had seen black smoke from far about which he learnt from the people, of rioters having burnt the house of Sikhs and that the black smoke related to the same and at that time he saw the black smoke near his house. According to the statement of the complainant Sh. Harvinder Singh, his elder sister and her husband

Avtar Singh came to his house and that he and his brother-in-law were outside the house on the main road of Gulab Bagh to see the situation and saw a group of 100-125 rioters who were coming towards his house and in the meantime two cars, one white car and another car, the colour of which he did not recall came and that he did not know the registration numbers of the those two cars which stopped near the crowd of rioters and 5-6 members got down from the cars and that his brother-in-law Avtar Singh and he were watching from the side of the wall and he saw that one of the persons who got down from the car was a person named Sajjan Kumar i.e. the respondent herein, who was known to him previously, inasmuchas had come to his mohalla several times and as the complainant Sh. Harvinder Singh's father also used to vote for the Congress and thus his family members also used to vote for the Congress and so he was able to identify Sajjan Kumar i.e. the respondent herein very well and that the respondent herein i.e. Sajjan Kumar was standing with the rioters and with the movements of his hands was telling them something and soon two DTC buses came and stopped near the crowd and several persons got down from the bus and that the Congress leader Sajjan Kumar i.e. the respondent herein got into the crowd and at his instance and signal and pointing out, the crowd of rioters ran towards the Gurudwara and went inside the Gurudwara and began breaking and looting some articles and after breaking and setting the Gurudwara on fire, they then boarded the DTC bus. **It was also stated by this witness that apart from Sajjan Kumar i.e. the respondent herein he did not recognize any other person.**

STATEMENT DATED 23.12.2016 IN FIR NO. 264/92 POLICE STATION VIKASPURI OF THE COMPLAINANT

26. Through his statement dated 23.12.2016 under Section 161 of the Code of Criminal Procedure, 1973, in FIR No. 264/92 Police Station Vikaspuri, the complainant Sh. Harvinder Singh is stated to have informed the Investigating Officer and pointed out the place from where he had seen the incidents whilst hiding and had also seen Sajjan Kumar i.e. the respondent herein coming from the car and pointing out towards the Gurudwara and also pointed out to the place where Sajjan Kumar i.e. the respondent herein was standing with the crowd though he stated that the area had changed since the time of the occurrence with constructions having been raised.

STATEMENTS OF WITNESSES DATED 24.11.1986

27. Through his statement dated 24.11.2016 in the FIR No. 227/92 Police Station Janakpuri, one of the witnesses of the prosecution (name withheld on the request of SIT) stated that after the assassination of the Prime Minister Indira Gandhi, riots had commenced on 01.11.1984 at about 10.00 a.m. and they had come out on to the road to see as to what was happening because his house was at the main Nazafgarh Road and that it could be seen that there was smoke of fire at several places and in sometime itself a crowd of 100-150 persons came shouting slogans and came towards their mohalla and there were two DTC buses which were loaded with people also came there and mingled amongst that crowd and at that time two cars came and stopped near the crowd, the registration numbers of which

he did not know and one of the cars was of white colour and the other car, the colour of which car he did not recall. As per this statement from the white car, 3-4 persons came down of which one of them was Sajjan Kumar i.e. the respondent herein whom he recognized from before, who spoke to the persons in the crowd and who pointed out with his hand towards the Gurudwara to the crowd, as a consequence of which the crowd whilst shouting slogans went towards the Gurudwara and started breaking the Gurudwara and that that time his father was the Pradhan of the Gurudwara and of the colony and when he reached the Gurudwara to put out the fire then the rioters attacked his father but he somehow escaped but the crowd followed his father to his house and attacked them and looted their house and started attacking their house and breaking the same and also set a truck bearing No. DLL 8770 standing behind their house on fire and also set their scooter bearing No. DLU 8150 on fire and that the rioters had also taken out his father Nath Singh and him and his four brothers from the house and had attacked them with Dandas, Lathis and as a consequence of which they were all injured seriously.

28. This witness is also stated to have stated in his statement under Section 161 of the Code of Criminal Procedure, 1973 dated 24.11.2016 that in 1986 his father sold the house of Nawada and went to Mohali, Punjab with his family and only his elder brother started living in a small house with his family in Delhi and that one of his brothers' died in 1993 and his father expired on 16.05.1996 and his mother expired in 2003 and that he had looked after his ailing brothers. He also stated that his brothers (name withheld on the

request of SIT), who had been injured in 1984 riots was still lying disabled on the bed due to the injuries.

29. Another witness stated to have been examined u/s 161 of the Code of Criminal Procedure, 1973 in FIR No. 227/92 Police Station Janakpuri (whose name has also been requested to be withheld by the SIT) vide his statement dated 24.11.2016 under Section 161 of the Code of Criminal Procedure, 1973 allegedly stated qua the role of the respondent herein i.e. Sajjan Kumar of having instructed the crowd on 01.11.1984 by signaling towards the Gurudwara whereupon the crowd in anger whilst shouting slogans went inside the Gurudwara and started breaking it and set it on fire. This witness in his statement under Section 161 of the Code of Criminal Procedure, 1973 dated 24.11.2016 has further stated that apart from Sajjan Kumar i.e. the respondent herein, he would not be able to identify any other rioter. He also stated that because of his being paralyzed he had not made any complaint and had not given his statement earlier. He also stated that he was being looked after by his brother (name withheld at the request of the SIT).

STATEMENT DATED 05.09.02016 OF SH. HARVINDER SINGH i.e. THE COMPLAINANT

30. Through his statement under Section 161 of the Code of Criminal Procedure, 1973 dated 05.09.2016 in FIR No. 264/92 Police Station Vikaspuri, the complainant Sh. Harvinder Singh *inter alia* stated to the effect that on 01.11.1984, he along with his brother-in-law went to the Main Road, Gulab Bagh where about a group of 100-125 rioters was seen coming and two cars one white and the other of

which he did not recall the colour were seen coming and they came near the rioters and that he does not know the registration numbers of those cars and from those cars, 5-6 persons got down and he and his brother-in-law stood behind the wall and saw Sajjan Kumar i.e. the respondent herein getting out from the car and that he had also come several times previously to his mohalla and to his house because the father of the complainant Sh. Harvinder Singh always used to vote for the Congress and thus his family always voted for the Congress and that is why he the complainant Sh. Harvinder Singh recognized the said Sajjan Kumar i.e. the respondent herein very well and he came and stood near the road and with the signal of his hands said something to the rioters and in the meantime two DTC buses came and stopped and from the same also a large number of people got down and Sajjan Kumar i.e. the respondent herein, the leader of the Congress pointed out towards the Gurudwara and just as he did the same, the group of rioters started running towards the Gurudwara and started causing damage and set it on fire and after setting it up on fire, started looting the same and thereafter boarded the DTC bus. It was also stated by the complainant Sh. Harvinder Singh that apart from Sajjan Kumar i.e. the respondent herein he did not recognize any of the other rioters.

SUPPLEMENTARY STATEMENT DATED 09.11.2016 OF THE COMPLAINANT SH. HARVINDER SINGH

31. Through his supplementary statement dated 09.11.2016 in FIR No. 264/92 registered with Police Station Vikaspuri, the complainant Sh. Harvinder Singh stated that his statement dated 20.09.2016 under

Section 164 of the Code of Criminal Procedure, 1973 made after Dera Basti Court was correct and that the Hindi translation of the same also was to the effect as to what he had stated in his statement under Section 164 of the Code of Criminal Procedure, 1973.

STATEMENT DATED 23.12.2016 IN FIR NO. 227/1992, POLICE STATION JANAKPURI OF THE COMPLAINANT

32. Through his statement in FIR No.227/1992, registered with Police Station Janakpuri dated 23.12.2016, the complainant Sh. Harvinder Singh also identified the places of occurrence where he had seen Sajjan Kumar i.e. the respondent herein on the date of the alleged commission of the offence on 01.11.1984.

STATEMENT DATED 25.10.2016 OF WITNESS IN FIR NO.264/92 POLICE STATION VIKASPURI

33. Through his statement dated 25.10.2016 under Section 161 of the Code of Criminal Procedure, 1973, the witness of the prosecution in FIR No. 264/92 Police Station Vikaspuri (name withheld at the request of the SIT) also stated to the effect that on 01.11.1984 at about 10.00 / 10.30 a.m. riots had commenced after the assassination of the Prime Minister Indira Gandhi and stated that he had seen outside his house which falls on the main Najafgarh Road at different places there was smoke of fire and a crowd of 100-150 persons was coming shouting slogans towards his mohalla and two DTC buses loaded with people also came and at that time two cars came, one of them was of white colour in which there were 3-4 persons, who got down, one of them being Sajjan Kumar i.e. the Congress M.P., whom he knew from before, who got down and went into the crowd and started talking to

the persons in the crowd and pointed out towards the Gurudwara whereafter the crowd started shouting slogans and went towards the Gurudwara and started attacking the Gurudwara and caused damage and set it on fire. He stated further that his father was the Pradhan of the colony and of the Gurudwara and on reaching the Gurudwara the crowd attacked but somehow his father escaped as a consequence of which the crowd followed to his house and attacked at their house also and set the truck bearing No. DLL 8770 standing behind their house on fire and also set their scooter bearing No. DLU 8150 on fire.

34. The statement of another witness of the prosecution under Section 161 of the Code of Criminal Procedure, 1973 (name withheld at the request of the SIT) dated 25.10.2016 in the FIR No. 264/92 is also to the effect that the respondent herein got down from the white car on 01.11.1984 when the crowd of rioters had collected and he spoke to the rioters and on his having pointed out to the Gurudwara as a consequence of which the crowd went shouting slogans towards the Gurudwara and caused breakage there and set it on fire. This witness also identified Sajjan Kumar i.e. the respondent herein whom he stated that he had seen him several times.

CONTENTIONS OF THE STATE

35. It has thus been submitted by the State through the SIT that in view of the statement under Section 164 of the Code of Criminal Procedure, 1973 of the complainant Harvinder Singh and the statements of other witnesses under Section 161 of the Code of Criminal Procedure, 1973, the witnesses during investigation had

clearly identified the respondent herein and the interrogation of the respondent herein was required and a notice dated 19.11.2016 was issued to the respondent to put in appearance before the Investigating Officer of the case on 22.11.2016 at 3 p.m. on which date the respondent herein did come with a fleet of advocates to the office of the SIT but did not answer any question of the Investigating Officer and rather tried to dictate the terms of the investigation and in a tone of instruction asked the Investigating Officer of the SIT to give a written questionnaire and stated that he would not participate in the investigation unless a written questionnaire is given to him and stated that he would only give a written reply to the already prepared questionnaire. It was further submitted by the State that after all these tantrums, the respondent herein left with his advocates and the Investigating Officer failed to proceed with his investigation.

36. It was further submitted by the SIT that on the next date of appearance i.e. on 14.12.2016 in relation which the notice dated 5.12.2016 was issued to the respondent, he did not appear on the ground of ill health and he was called thus to put in appearance on 21.12.2016. It was thus submitted on behalf of the SIT that though the respondent has pretended to join the investigation with his fleet of advocates, he has in fact not joined the investigation inasmuch as he did not cooperate in the same.

37. It was further contended on behalf of the petitioner that even after the order dated 21.12.2016 of the learned ASJ-01, Dwarka Courts, on the anticipatory bail applications filed by the applicant, the notice dated 2.1.2017 was issued to the accused to join the

investigation on 4.1.2017 in connection with the FIR No.227/1992, Police Station Janakpuri but even then during interrogation, the attitude of the respondent was non-cooperative and he did not reply to any question asked in connection of the case.

38. Further submissions have been made on behalf of the petitioner submitting *inter alia* to the effect:

- that there was no reason for the respondent/the accused to believe that he might be arrested;
- that the matter was at the stage of investigation in relation to a very serious crime and anticipatory bail ought not to have been granted by the learned ASJ-01, Dwarka Courts;
- that there is all the reason to believe that the accused might or has the capability to influence the witness and tamper with the evidences and thus invocation of Section 438 of the Code of Criminal Procedure, 1973 would hamper the overall investigation;
- that anticipatory bail is a grant of an extraordinary privilege which can be granted only in exceptional cases and that the applicant has

failed to give any exceptional ground for grant of anticipatory bail;

- that it was mandatory on the part of the learned ASJ-01, Dwarka Courts to ensure compliance of pre-requisite conditions for grant of anticipatory bail including the nature and gravity of the accusation;
- that the Court ought to have recorded reasons for grant of anticipatory bail which could have been granted if the Court was of the *prima facie* view that the applicant had been falsely enroped in the case and would not misuse his liberty;
- that the learned ASJ-01, Dwarka Courts has erroneously held the arrest of the applicant for the purpose of interrogation after 32 years of the incident was not required inasmuch as there was nothing to be recovered at the instance of the applicant;

- that the learned ASJ-01, Dwarka Courts had failed to appreciate that the complainant had given his affidavit dated 8.9.l985 before Justice Ranganath Mishra Commission of Inquiry as the FIR was registered only after more than seven years and that investigation despite recommendation of the Jain & Agrawal Committee had not been handed over to an independent agency which itself suggests the influence of the respondent and the lackadaisical approach of the then investigation agency;
- it was an admitted fact that the complainant and other eye-witnesses who had shifted from Delhi to Punjab after riots were apprehensive about their life and safety and were not willing to visit Delhi due to fear of the respondent and;
- that it was only after constitution of SIT as an independent entity to investigate the 1984 riots cases that the complainant and other witnesses

reposed their faith in the system and gave their statement and identified the respondent.

39. It has thus been submitted on behalf of the SIT that the respondent is a very influential person with muscle and money power and it is not possible to proceed with the investigation without keeping him in custody and that the learned ASJ-01, Dwarka Courts had failed to appreciate that the incident in question had such a serious effect that the witnesses had to flee from Delhi and had given their statements only after the SIT was constituted.

40. It has also been submitted on behalf of the applicant that pursuant to investigation being made by the SIT, the respondent is required to be confronted with the eye-witnesses, facts and the crime spot and in view of the non-cooperative behavior of the respondent, it would not be possible for the SIT to proceed smoothly with the investigation and the constitution of the SIT would become futile.

41. It has also been submitted on behalf of the State that the anticipatory bail granted to the applicant has been in derogation of the established principles of the Code of Criminal Procedure, 1973.

42. *Inter alia,* apart from seeking that the impugned order dated 21.12.2016 of the learned ASJ-01, Dwarka Courts in Bail Appln. No. 14073/16 in FIR No.264/1992 under Sections 147/148/149/302/207 of the Indian Penal Code, 1860, Police Station Vikas Puri and in Bail Appln. No. 14072/2016 in FIR No.227/1992, under Sections 147/148/149/295/395/307/302 and 436 of the Indian Penal Code, 1860, Police Station Janakpuri be set aside, the applicant through the

said petition has also sought an expungment of observations made in paragraphs No.24 and 26 of the impugned orders dated 21.12.2016.

IMPUGNED ORDER DATED 21.12.2016

43. It is essential to advert to the impugned order dated 21.12.2016 of the learned ASJ-01 Dwarka qua the Bail Appln. No. 14073/16 and Bail Appln. No. 14072/2016 in relation to the FIR Nos. 264/1992 Police Station Vikas Puri and 227/1992 Police Station Janakpuri respectively, vide which it was observed similarly in each to the effect:

> **FIR No.264/1992 registered at Police Station Janakpuri Vikaspuri and FIR No.227/1992 registered at Police Station Janakpuri.**
>
> *"16. I have considered the rival submissions and have carefully perused the police file and reply of the Investigating Officer.*
>
> *17. It is an admitted fact between the parties that the present FIR was registered in the year 1992 on the basis of affidavit dated 09.09.1985 of complainant Sh.Harvinder Singh sworn before Justice Ranganath Mishra Commission. It is also an admitted fact that alleged offence pertains to incident dated 01.11.1984 and 02.11.1984. It is also an admitted fact that neither complainant Sh.Harvinder Singh nor any of the witnesses examined by the Special Riot Cell had found any evidence to connect the applicant with the offence in question. It is also an admitted fact that earlier investigation was closed as untraced and the closure report was accepted by the Ld.MM on **27.08.1994/16.02.1996**. It is also an admitted fact that from 1994 till examination of witnesses including the complainant in the year 2016,*

nothing incriminating had come against the applicant.

18. The deposition made by complainant Sh.Harvinder Singh under Section 164 Cr.P.C. statement against applicant has been made for the first time after 32 years of the incident and in the previous affidavit dated 09.09.1985, no such allegations were made.

19. Similarly, some of the witnesses (names of witnesses withheld at the "request of Ld.Addl.PP for SIT) examined in 2016 under Section 161 Cr.P.C. were also examined during the course of investigation in the year 1992 and at that time, they had not identified the applicant to be the person, who had incited the mob to burn down the property of the Sikhs or to murder them.
20. Some of the witnesses (names of witnesses withheld at the request of Ld.Addl.PP for SIT), who have been examined under Section 161Cr.P.C. happen to be the relatives of the witnesses, who were examined in the previous investigation and in the previous investigation, their relatives had not stated anything incriminating against the present applicant. Therefore, from where these witnesses have derived the information regarding the role of the present applicant is also a matter of trial.

21. Some of the witnesses (names of witnesses withheld at the request of Ld.Addl.PP for SIT), who have been examined under Section 161 Cr.P.C. in 2016 are witnesses of hear-say evidence regarding the role of the present applicant and their statements do not incriminate the present applicant.

22. Although an explanation has been given by the complainant in his statement under Section

164 Cr.P.C. as to why he had not named the applicant earlier but whether such explanation can be believed or not, after 32 years, is a matter of trial. However, some of the witnesses examined in this case under Section 161 Cr.P.C in 2016, have not provided any explanation as to why at the time of their earlier examination in the year 1992, they did not depose anything against the present applicant. This delay of around 24 years from the registration of the FIR do not make out a case for custodial interrogation of the applicant when admittedly at the time of first investigation, nothing incriminating had come against the present applicant. Nothing has come on record to show that applicant, during this course of 24 years, had threatened or influenced any of the witnesses so as to refrain any of them from making statement against him. Further, applicant is having deep roots in the society and thrice, he remained as a member of the Parliament. Therefore, chances of applicant fleeing from justice are also quite remote.

23. In the opinion of this court, for the purpose of interrogation of the applicant after 32 years of the incident, arrest of applicant is not required as there are no allegations that anything used in the commission of offence is to be recovered at the instance of the applicant.

24. The submission of the Id.counsel for the applicant that the case has been re-opened for political consideration just to falsely implicate the applicant also cannot be ignored and makes out a ground for anticipatory bail to the applicant.

25. The judgments relied upon by the Id.counsel for the complainant as well as Ld.Chief Public Prosecutor for State delivered in Sajjan Kumar's case (supra) are not applicable to the

facts of the present case as same pertain to framing of charge and none of these judgments relied upon, pertain to grant or refusal of anticipatory bail where after a delay of 32 years, witnesses, who had not deposed anything against applicant earlier have turned around to depose otherwise.

26. There can be no dispute with regard to ratio laid down by the Hon'ble Supreme Court of India in the matter of Jai Prakash Singh's case (supra) regarding the principles for grant of anticipatory bail relied upon by the Ld.counsel for SIT. In the present case also, exceptional circumstances have been made out for grant of anticipatory bail as there is prima facie material to show that the applicant has been falsely enroped in the crime in question after 32 years of the incident and his chance of mis-using the liberty is also non-existent.

27. In the facts and circumstances, the anticipatory bail application of the applicant is allowed. In the event of arrest, lO/SHO concerned is directed to release the applicant on bail on his furnishing a personal bond in the sum of Rs.1,00,000/- with one surety of the like amount with the conditions that applicant shall join the investigation as and when directed by the lO, shall not threaten or influence any of the witnesses and shall not leave the country without prior permission of the concerned court."

ARGUMENTS OF STATE THROUGH SIT

44. On behalf of the State, it has been submitted that though the parameters of cancellation of regular bail apply also to cases of cancellation of anticipatory bail, it was submitted on behalf of the

State by the then learned ASG Sh. Sanjay Jain that the present case was not a normal case which could fall within the domain of a case in which anticipatory bail granted could be withdrawn only on violation of the conditions imposed by a Court. *Inter alia*, it was contended on behalf of the SIT that this was a case of massacre/genocide in which pursuant to the assassination of the then Prime Minister Smt.Indira Gandhi the anti Sikh riots had taken place and that the complainant alone could not have got the FIR registered.

45. During the submissions that were made on behalf of the State through the SIT (1984 riots) the learned ASG contended that there was a fundamental flaw in the impugned orders of the learned ASJ-01, Dwarka Courts, New Delhi granting anticipatory bail to the respondent in Bail Appln. No. 14072/2015 and in Bail Appln. No. 14073/2015 both dated 21.12.2016 of the learned Additional Sessions Judge-01/Special Judge (P.C. Act) (CBI-03), Dwarka Courts in FIR No.227/1992, under Sections 147/148/149/295/395/307/302 and 436 of the Indian Penal Code, 1860, Police Station Janakpuri and FIR No.264/1992, under Sections 147/148/149/302/307 of the Indian Penal Code, 1860 Police Station Vikaspuri, inasmuchas the seriousness and gravity of the offences had not been taken into account, that irrelevant considerations had been taken into account and that the factum that the complainant and other witnesses had pursuant to the further investigation done by the SIT had categorically identified the respondent herein as being the leader of the mob, who had got down from the white car on 01.11.1984 and on his signaling towards the Gurudwara, the mob had moved towards to the Gurudwara and had

proceeded towards the Gurudwara and had started plundering, looting and damaging the same and had set it on fire which had been ignored and it was thus submitted on behalf of the petitioner by the SIT that the said statements could not have been ignored by the Trial Court at the time of consideration of the applications filed by the respondent herein seeking grant of anticipatory bail.

JUDICIAL VERDICTS LAW RELIED UPON BY THE STATE

46. It was submitted on behalf of the petitioner placing reliance on the verdict of the Hon'ble Apex Court on ***Adri Dharan Das Vs. State of West Bengal (2005) 4 Supreme Court Cases 303*** to submit that the applicant i.e. the respondent ought to have shown that he had reason to believe that he may be arrested in a non-bailable offence and the same was required to be founded on reasonable grounds and that, it could be so founded only if there is something tangible to go by on the basis of which it could be said that the applicant's apprehension that he may be arrested was genuine and that mere fear is not belief for which reason it was not enough for the applicant to show that he has some sort of vague apprehension that someone is going to make an accusation against him in pursuance of which he may be arrested and that the grounds on which the belief of the applicant is based that he may be arrested in a non-bailable offence must be capable of being examined.

47. In the instant case the SIT has sought to submit that there are grave allegations against the petitioner in the statements made by the complainant and other witnesses whose names have been sought not to be disclosed by the SIT for their safety and well being and the State

has sought the cancellation of grant of anticipatory bail granted vide impugned order of the learned ASJ-01, Dwarka Courts submitting *inter alia* to the effect that the custodial interrogation of the respondent is required.

48. Reliance was placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in ***Kiran Devi Vs. State of Rajasthan and Another 1987 (Supp) Supreme Court Cases 549*** in which it had been laid down to the effect that in a murder case when the investigation was incomplete the proper course to adopt was to leave it to the Trial Court to do the needful if and when the person concerned was arrested in the light of the record available at that point of time and that the anticipatory bail ought not to have been granted in a murder case. It was thus submitted on behalf of the SIT that as the investigation was in progress there was all the reason to believe that the respondent might or had the capability to influence witnesses and tamper with the evidence and that the discretionary relief under Section 438 of the Code of Criminal Procedure, 1973 ought not to have been granted.

49. Reliance was placed on behalf of the petitioner on the verdict of the Hon'ble Apex Court in the ***Raghuvir Saran Agarwal Vs. State of UP and Others (1998) 8 Supreme Court Cases 617*** in which in a dowry death case anticipatory bail granted by the Court where the investigation was still in progress without giving any reasons whatsoever, was set aside.

50. Placing reliance on the verdict of the Hon'ble Supreme Court in ***Jai Prakash Singh Vs. State of Bihar and Another (2012) 4 Supreme Court Cases 379*** it was contended that the discretion under Section

438 of the Code of Criminal Procedure, 1973 should be guided by law duly governed by rule and cannot be arbitrary, fanciful or vague and the Court must not yield to spasmodic sentiment nor to unregulated benevolence and anticipatory bail cannot be granted without recording any reason through parameters laid down in judicial pronouncement without considering the nature and gravity of the offence specifically where the assailants / the accused were named. Reliance was specifically placed in para 19 of the said verdict to the effect that : -

> ***"Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty. (See D.K. Ganesh Babu v. P.T. Manokaran, State of Maharshtra v. Modh. Sajid Husain Mohd. S. Hussain and Union of India v. Padam Narain Aggarwal)."***

51. The verdict of the Hon'ble Apex Court in ***Japani Sahoo Vs. Chandra Sekhar Mohanty (2007) 7 Supreme Court Cases 394*** was relied upon on behalf of the State to contend that the observations in the impugned order to the effect that the statement under Section 164 of the Code of Criminal Procedure, 1973 and the statement under Section 161 of the Code of Criminal Procedure, 1973 of the complainant and other witnesses recorded in 2016, and to delay in the recording of the statements of around 24 years from the registration of the FIR did not make a case for custodial interrogation could not have

been the sole ground to throw away the prosecution version and that mere delay in approaching the Court of law by itself is not sufficient ground for dismissing the case though it may be a relevant circumstance in reaching the final verdict.

52. Specific reliance was placed in para 14 of this verdict to the effect that : -

> ***"14. The exercise of judicial discretion in favour of the respondents, who are ascribed leadership roles, on irrelevant grounds of they having not tampered with the evidence or being unlikely to commit other offence was highly improper and perverse and calls for interference, particularly when the investigation is still underway and the respondents still hold the status or position from where they can influence the witnesses. The relevant considerations for grant of anticipatory bail, viz. gravity of the offence, status and position of the accused persons, stage of investigation, likelihood of evidence being tampered, wider interest of justice and public at large and prima facie case appearing against the accused persons as also severity of punishment to which they may be exposed, are disregarded in the impugned orders making them even more vulnerable. The distance in time from the date of the alleged offences to the present stage of investigation is unfortunate and attributable to the failure of law enforcement agencies, but it cannot derogate from the requirements of bringing to book all the persons who might have had a role in rudely disrupting the lives of millions of citizens eking out their living in harmony in a progressive state of secular democratic republic of India, As observed by the***

Supreme Court in its order dated 26.3.2008 (supra):

"...Communal harmony is the hallmark of democracy.... If in the name of religion people are killed, that is absolutely a slur and blot on the society governed by the rule of law.... Religious fanatics really do not belong to any religion. They are no better than terrorists who kill innocent people for no rhyme or reason.... And, when the State Government is pursuing the proceedings for proper investigation by the SIT constituted by the Supreme Court and consisting of independent high-ranking and experienced officers, the contention without any supporting material that there is a conspiracy to frame the respondents cannot be countenanced."

53. A further submission was made on behalf of the SIT, placing reliance on the verdict of the Hon'ble High Court of Madras in case titled as ***V.N. Sudhagaran Vs. Enforcement Officer 1997 CriLJ 2630*** to contend that the petitioner therein had been issued summons to join the investigation and all that was required was that he should appear before the authority and join the investigation proceeding and to assist the investigating agency in the matter for which he was summoned and that it was not proper to grant anticipatory bail, which amounted to imparting fetters on the powers conferred under the Act, as there was no accusation and reasonable apprehension of being arrested for a non-bailable offence. Reliance was thus placed on observations in para 4 of the said verdict tot the effect : -

"4. The exercise of power under section 438 Cr.P.C. contemplates existence of two

conditions, namely, an existing accusation and reasonable apprehension of arrest on the basis of such accusation [see Thangapandi Nadar v. State, 1982 Mad LJ (Cri) 250].

"Reason to believe" is much stronger than the expression "reason to suspect" and not identical with the expression "Knowledge"; Mere "fear" is not "belief". It must be capable of being examined by the Court objectively, because, it is then alone Court can examine whether applicant has reason to believe that he may be arrested. In order to successfully invoke the jurisdiction under Section 438 Cr.P.C. the petitioner has to make out a special case to secure an order of anticipatory bail which is of an exceptional type. He must prove that the charge levelled against him is mala fide and, stems from ulterior motive and it is for the petitioner to prima facie substantiate his allegation that the charge of serious non-bailable offence against him has been levelled mala fide [see Mahanthagowda v. State of Karnataka, 1978 Cri LJ 1045]. The High Court of Kerala in Thayyanbadi Meethal Kunhiraman v. Sub-Inspector of Police, Panoor (1985 Mad LJ (Cri) 263) : (1985 Cri LJ 1111) has held that a mere apprehension of arrest will not suffice. That means apprehension must be reasonable and based on existing facts. Imaginary accusation or future possible accusations will not be sufficient. On such accusations which are yet to come there cannot be any reasonable apprehension of an existing threat of arrest. It is a condition, precedent for an application under section 438 that there must be an existing reasonable apprehension of arrest on an existing accusation of having already committed a non-bailable offence prior to the

point of time of filing the application. That accusation will have to be specified in the application and the direction to be sought for is for the release in case of arrest in connection with that accusation. In Sankaranarayanan v. Sub-Inspector of Police, 1983 M.L.J. (Cri) 13 this court has held that where the accused asserting that he may be arrested, State on the other hand contending that so far no case has been registered against the petitioner, the grant of anticipatory bail on the basis of vague and general allegation amounts to harming oneself in perpetuity against a possible arrest."

Furthermore, it was submitted on behalf of the SIT, that the learned ASJ-01, Dwarka Courts has erroneously held that the case has been re-opened for political consideration which is just for false implication of the applicant and that the learned ASJ-01, Dwarka Courts had failed to appreciate that the SIT has been constituted by Ministry of Home Affairs on the recommendation of the Hon'ble Justice G.P.Mathur Committee keeping in view all the earlier reports of various commissions and committees pertaining to 1984 riots formed under earlier governments also, only in order to give justice to the victims of 1984 riots. It was reiterated on behalf of the petitioner that the SIT is an independent agency having no influence of any kind and that the SIT is committed to do a fair investigation on the cases, and in furtherance thereof, is in the process of connecting the chain of the events of the evidence collected by them and there was absolutely no cogent material on record for the learned ASJ-01, Dwarka Courts to be persuaded by the accused to the effect that the case has allegedly

been re-opened due to the political considerations and thus the very making of such an observation is an act of judicial impropriety.

54. Reliance was placed on behalf of the petitioner on the verdict of the case titled as ***State of Gujarat Vs. Mayaben Surendrabhai Kodnani and Another (2010) CriLJ 1095*** submitting to the effect that Courts shall consider prima facie case the attitude and activities of accused while granting anticipatory bail whilst adverting to observations in para 11 of the said verdict to the effect :

> ***"11. In the facts emerging from the record, it was clear that the respondents were leaders and had taken a leadership role in inciting the mob which attacked absolutely innocent persons, according to the submission. It was also submitted that the respondents were, by virtue of their position and influence, already kept away from the investigating agency of the State and hence the apprehension of their wielding effective influence on the witnesses was real and perfectly plausible. It was also pointed out that no sooner their alibis were fully investigated and their presence was satisfactorily established by independent record of location of their mobile phones at the relevant time, they had become unavailable to the SIT and approached the Court for anticipatory bail, rather than even responding to the call of the SIT."***

Specific reference was to paras 21 & 22 of the said verdict to the effect that :

> ***"21. Considering all the contentions and averments made on both sides as also the material appearing against the respondents, it is clear and not in serious dispute that the respondents were, at the relevant time,***

prominent leaders of VHP which had called the bandh, or of the party in power and they were present at the scenes of offences for some time. It is also in evidence that violent mobs had gathered with weapons and the atmosphere was surcharged with anger and hatred following burning of a railway coach along with passengers at Godhra on the previous day; and 54 burnt bodies being brought to Ahmedabad on 28.2.2002. The attitude and activities of the respondents in that milieu is not even claimed to be towards quelling or controlling the mobs nor is it believable that they visited the scenes of offences for any personal or private purpose. In such circumstances, prima facie, the allegations of inciting or encouraging the mobs into wanton display of hatred, destruction of properties and killing of innocent men, women and children produce a chilling picture of communal violence on an unprecedented scale, leaving on the psyche of ordinary citizens scars which might take decades to fade. Therefore, the offences which are alleged to have been committed by faceless mobs of thousands of persons led by few have to be treated as very heinous and having far reaching implications. As recently observed by the Apex Court in State of Punjab v. Rakesh Kumar [2008 (12) SCALE 95

"...For instance, a murder committed due to deep-seated mutual and personal rivalry may not call for penalty of death. But an organized crime or mass murders of innocent people would call for imposition of death sentence as deterrence...." While such crimes are investigated by one after the other agency and matters have reached upto the highest court for redressal of grievances about investigation, there

is no doubting that the belated investigation must not be hampered by providing protective umbrella to the persons who may be found to be involved.

22. The exercise of judicial discretion in favour of the respondents, who are ascribed leadership roles, on irrelevant grounds of they having not tampered with the evidence or being unlikely to commit other offence was highly improper and perverse and calls for interference, particularly when the investigation is still underway and the respondents still hold the status or position from where they can influence the witnesses. The relevant considerations for grant of anticipatory bail, viz. gravity of the offence, status and position of the accused persons, stage of investigation, likelihood of evidence being tampered, wider interest of justice and public at large and prima facie case appearing against the accused persons as also severity of punishment to which they may be exposed, are disregarded in the impugned orders making them even more vulnerable. The distance in time from the date of the alleged offences to the present stage of investigation is unfortunate and attributable to the failure of law enforcement agencies, but it cannot derogate from the requirements of bringing to book all the persons who might have had a role in rudely disrupting the lives of millions of citizens eking out their living in harmony in a progressive state of secular democratic republic of India, As observed by the Supreme Court in its order dated 26.3.2008 (supra): "...Communal harmony is the hallmark of democracy.... If in the name of religion people are killed, that is absolutely a slur and blot on the society governed by the rule of law....

Religious fanatics really do not belong to any religion. They are no better than terrorists who kill innocent people for no rhyme or reason...." And, when the State Government is pursuing the proceedings for proper investigation by the SIT constituted by the Supreme Court and consisting of independent high-ranking and experienced officers, the contention without any supporting material that there is a conspiracy to frame the respondents cannot be countenanced."

Reliance was further placed on behalf of the SIT on the verdict of the Hon'ble Apex Court in the case titled as ***Pokar Ram Vs. State of Rajasthan (1085) 2 SCC 597*** to contend that the learned ASJ-01, Dwarka Courts had exercised discretion against the established principles of law under Section 438 of the Code of Criminal Procedure, 1973 and that exercise of the discretion under Section 438 of the Code of Criminal Procedure, 1973 has to be guided by law, duly governed by rule of law and cannot be arbitrary and vague as has been erroneously done. Specific reference was made to the observations in para 11 of the said verdict to the effect:

"The only question which we are called upon to decide is whether : the learned Sessions Judge was justified in granting anticipatory bail in the facts and circumstances of this case? Unquestionably, no case was made out for granting anticipatory bail in this case. Let it be made distinctly clear that status in life, affluence or otherwise, are hardly relevant considerations while examining the request for granting anticipatory bail. Anticipatory bail to some extent intrudes in the sphere of investigation of crime and the court must be cautious and circumspect in exercising such power of a

discretionary nature. This case amply illustrates that the power was exercised sub silentio as to reasons or on considerations irrelevant or not germane to the determinations. This Court, to avoid miscarriage of justice, must interfere."

55. Reliance was also placed on behalf of the SIT in case titled as ***Prakash Kadam v. Ramprasad Vishwanath Gupta, (2011) 6 SCC 189*** to contend that it is not an absolute rule that considerations of cancellation of bail are different from consideration of grant of bail and that depends on the facts and circumstances. It has thus been contended on behalf of the SIT that even if it be contended on behalf of the respondent that he had not misused the grant of anticipatory bail as granted by the learned ASJ-01, Dwarka Courts, the same did not amount to a consideration of the aspect as to whether the said bail ought to have been granted or not, reliance was thus placed on behalf of the SIT on the paras 17, 18, 19 & 20 of the said verdict to the effect: -

"17. It was contended by learned Counsel for the Appellants before us, and it was also contended before the High Court, that the considerations for cancellation of bail are different from the consideration of grant of bail vide Bhagirathsingh s/o Mahipat Singh Judeja v. State of Gujarat, Dolat Ram and Ors. v. State of Haryana and Ramcharan v. State of M.P. However, we are of the opinion that that is not an absolute rule, and it will depend on the facts and circumstances of the case.

18. In considering whether to cancel the bail the Court has also to consider the gravity and nature of the offence, prima facie case

against the accused, the position and standing of the accused, etc. If there are very serious allegations against the accused his bail may be cancelled even if he has not misused the bail granted to him. Moreover, the above principle applies when the same Court which granted bail is approached for canceling the bail. It will not apply when the order granting bail is appealed against before an appellate/revisional Court.

19. In our opinion, there is no absolute rule that once bail is granted to the accused then it can only be cancelled if there is likelihood of misuse of the bail. That factor, though no doubt important, is not the only factor. There are several other factors also which may be seen while deciding to cancel the bail.

20. This is a very serious case and cannot be treated like an ordinary case. The accused who are policemen are supposed to uphold the law, but the allegation against them is that they functioned as contract killers. Their version that Ramnarayan Gupta was shot in a police encounter has been found to be false during the investigation. It is true that we are not deciding the case finally as that will be done by the trial court where the case is pending, but we can certainly examine the material on record in deciding whether there is a prima facie case against the accused which disentitles them to bail."

56. Reliance was also placed on behalf of the SIT on the verdict of the Hon'ble Apex Court in case titled as ***"Ash Mohammad vs Shiv Raj Singh @ Lalla Babu & Anr 2012 CriLJ 4670 Criminal Appeal No. 1456 of 2012 decided on 20.09.2012*** to contend that whilst referring to para nos. 18 & 19 in ***Prakash Kadam v. Ramprasad***

Vishwanath Gupta (supra), the Hon'ble Apex Court had reiterated to principles laid down thereunder whilst observing to the effect :

> ***"18. We have referred to the above authorities solely for the purpose of reiterating two conceptual principles, namely, factors that are to be taken into consideration while exercising power of admitting an accused to bail when offences are of serious nature, and the distinction between cancellation of bail because of supervening circumstances and exercise of jurisdiction in nullifying an order granting bail in an appeal when the bail order is assailed on the ground that the same is perverse or based on irrelevant considerations or founded on non-consideration of the factors which are relevant.***
>
> ***19. We are absolutely conscious that liberty of a person should not be lightly dealt with, for deprivation of liberty of a person has immense impact on the mind of a person. Incarceration creates a concavity in the personality of an individual. Sometimes it causes a sense of vacuum. Needless to emphasize, the sacrosanctity of liberty is paramount in a civilized society. However, in a democratic body polity which is wedded to Rule of Law an individual is expected to grow within the social restrictions sanctioned by law. The individual liberty is restricted by larger social interest and its deprivation must have due sanction of law. In an orderly society an individual is expected to live with dignity having respect for law and also giving due respect to others' rights. It is a well accepted principle that the concept of liberty is not in the realm of absolutism but is a restricted one. The cry of the collective for justice, its desire for peace and harmony and its necessity***

for security cannot be allowed to be trivialized. The life of an individual living in a society governed by Rule of Law has to be regulated and such Regulations which are the source in law subserve the social balance and function as a significant instrument for protection of human rights and security of the collective. It is because fundamentally laws are made for their obedience so that every member of the society lives peacefully in a society to achieve his individual as well as social interest. That is why Edmond Burke while discussing about liberty opined, "it is regulated freedom".

20. It is also to be kept in mind that individual liberty cannot be accentuated to such an extent or elevated to such a high pedestal which would bring in anarchy or disorder in the society. The prospect of greater justice requires that law and order should prevail in a civilized milieu. True it is, there can be no arithmetical formula for fixing the parameters in precise exactitude but the adjudication should express not only application of mind but also exercise of jurisdiction on accepted and established norms. Law and order in a society protects the established precepts and sees to it that contagious crimes do not become epidemic. In an organized society the concept of liberty basically requires citizens to be responsible and not to disturb the tranquility and safety which every well-meaning person desires. Not for nothing J. Oerter stated:
Personal liberty is the right to act without interference within the limits of the law.

21. Thus analyzed, it is clear that though liberty is a greatly cherished value in the life of

an individual, it is a controlled and restricted one and no element in the society can act in a manner by consequence of which the life or liberty of others is jeopardized, for the rational collective does not countenance an anti-social or anti-collective act."

57. Reliance was also placed on the observation in paras 32 & 34 of the said verdict of the Hon'ble Apex Court, which are to the effect : -

"32. 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 the 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 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.

34. We may note with profit that it is not an appeal for cancellation of bail as cancellation is not sought because of supervening circumstances. The present one is basically an appeal challenging grant of bail where the High

Court has failed to take into consideration the relevant material factors which make the order perverse."

It was thus submitted on behalf of the petitioner that the present petition though couched as being one under Section 439 (2) of the Code of Criminal Procedure, 1973 was also one under Section 482 of the Code of Criminal Procedure, 1973 filed on behalf of the petitioner seeking the setting aside of the grant of the anticipatory bail to the respondent in Bail Appln. No. 14072/2015 and in Bail Appln. No. 14073/2015 both dated 21.12.2016 of the learned Additional Sessions Judge-01, Dwarka Courts in FIR No.227/1992, under Sections 147/148/149/295/395/307/302 and 436 of the Indian Penal Code, 1860, Police Station Janakpuri and FIR No.264/1992, under Sections 147/148/149/302/307 of the Indian Penal Code, 1860 Police Station Vikaspuri granted vide orders dated 21.12.2016 and that both the petitions filed were not merely ones seeking cancellation of the bail sought because of any supervening circumstances but rather challenges to grant of the bail inasmuchas the learned Additional Sessions Judge-01, Dwarka Courts had failed to take into consideration the material factors which rendered the impugned orders perverse.

58. Reliance was also placed on behalf of the SIT on the verdict of the Hon'ble Supreme Court in the case titled as ***Dinesh M.N. (S.P.) Vs. State of Gujarat (2008) 9 SCC 66*** with specific reference to para 23 of the said verdict to contend that at the time of grant of bail, the Court dealing with an application for the cancellation of bail under

Section 439 (2) of the Code of Criminal Procedure, 1973 can consider whether irrelevant materials were taken into consideration at the time of grant of bail. Even though the re-appreciation of the evidence was not called for and it was thus contended as was also observed vide para 26 of the said verdict that once it is concluded that the bail was granted on untenable grounds, the plea of absence of supervening circumstances has no leg to stand.

59. Reliance was also placed on behalf of the petitioner on the verdict of the Hon'ble Apex Court in the case titled as ***Neeru Yadav Vs. State of Uttar Pradesh and Another (2014) 16 SCC 508*** with specific reference to para 12 of the said verdict which lays down as follows : -

> ***"12. We have referred to certain principles to be kept in mind while granting bail, as has been laid down by this Court from time to time. It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail and have not been taken note of bail or it is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the Court does not dwell upon the violation of conditions by the accused or the***

> ***supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the Court."***

to contend that if in a case, the relevant factors which have been taken into consideration while dealing with the application for bail ought not been taken note of and where the grant of bail is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail.

60. Reliance was also placed on behalf of the SIT on the verdict of the Hon'ble Supreme Court in the case titled as ***Harbans Kaur and Another Vs. State of Haryana (2005) 9 SCC 195*** to the effect : -

> ***"There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield actual culprit and falsely implicate the accused. No evidence has been led in this regard. So far as the delay in lodging the FIR is concerned, the witnesses have clearly stated that after seeing the deceased in an injured condition immediate effort was to get him hospitalized and get him treated. There cannot be any generalization that whenever there is a delay in lodging the FIR, the prosecution case becomes suspect. Whether delay is so long as to throw a cloud of suspicion on the seeds of the prosecution case, would depend upon the facts of each case. Even a long delay can be condoned if the witnesses have no motive of implicating the accused and have given a plausible reason as to why the report was lodged belatedly. In the instant case, this has been done. It is to be noted that though there***

was cross- examination at length no infirmity was noticed in their evidence. Therefore, the trial Court and the High Court were right in relying on the evidence of the prosecution witnesses."

61. It was thus submitted on behalf of the petitioner that the anticipatory bail granted in Bail Appln. No. 14072/2015 and in Bail Appln. No. 14073/2015 both dated 21.12.2016 of the learned Additional Sessions Judge-01, Dwarka Courts in FIR No.227/1992, under Sections 147/148/149/295/395/307/302 and 436 of the Indian Penal Code, 1860, Police Station Janakpuri and FIR No.264/1992, under Sections 147/148/149/302/307 of the Indian Penal Code, 1860 Police Station Vikaspuri as virtually common grounds are urged against the respondent in both the FIRs i.e., 227/1992, Police Station Janakpuri and 264/1992, Police Station Vikaspuri as virtually similar impugned orders dated 21.12.2016 be set aside and the observations made in the para 24 & 26 of the impugned orders dated 21.12.2016 in relation to both the FIRs above mentioned be expunged.

RESPONDENT'S CONTENTIONS

62. Through the reply submitted on behalf of the respondent and as contended by learned counsel for the respondent Sh. Anil Kumar Sharma, it was submitted at the very outset that both the cases Crl. M.C. 338/2017 and 339/2017 are in respect of FIR No. 227/92 and 264/92 registered with Police Stations Janak Puri and Vikas Puri respectively but both the aforesaid FIR's are on the strength of the same affidavit dated 08.09.1985 submitted by the complainant before Justice Ranganthan Mishra Commission pertaining to the same

incident and on the same subject matter i.e. both the said FIR's stated the same contents and both the cases were sent for closure by the investigating agency of the respective Police Stations and both the closure reports were accepted on 16.02.1996 and 27.08.1994 respectively but the SIT was treating them as two different cases.

63. It was further submitted on behalf of the respondent that the SIT has no reason to move the application under section 439(2) r/w section 482 of the Code of Criminal Procedure, 1973 against the grant of anticipatory bail order dated 21.12.2016 neither on the facts nor on the law and that the impugned order was neither erroneous nor arbitrary nor a blanket one and that the order was comprehensive, reasoned and a speaking one taking into consideration the material on record.

64. It was also submitted on behalf of the respondent that the contention of the prosecution that the respondent had no reason to believe that he may be arrested on an accusation of having committed a non-bailable offence was erroneous inasmuchas the respondent had every reason and apprehension for the same and thus the respondent had preferred an application for grant of anticipatory bail in the present case. The respondent also submitted that the prosecution had stated that there was a likelihood of tampering with the prosecution witnesses but there was not a whisper of his involvement in the 1984 riots cases and that in the year 1990, i.e. after six years of the alleged occurrence, the case was registered vide RCl/90/SIV.II/SIC(l), New Delhi against the Respondent pertaining to riots that took place on 01.11.1984 in the Sultanpuri area in which this Court had granted anticipatory bail to the respondent in the case titled as "***Sajjan Kumar***

Vs. State" vide order dated 07.11.1990 which is reported as 43 (1991) DLT 888 and that this Court had observed that after the lapse of six long years, the respondent could not be allowed to be detained and had further observed that for mere interrogation, the arrest of the respondent was not at all necessary and that in the above said case, the respondent was also acquitted by the then learned Court of the Additional Sessions Judge, Patiala House Courts, New Delhi, vide order dated 23.12.2002.

65. It was further submitted by the respondent that in the year 2005, on the recommendation of the Hon'ble Justice Nanavati Commission, FIRs no. 250/84, 347/91 and 307/94 of Police Station Sultan Puri and 416/84 of Police Station Delhi Cantt. were re-registered as RC7(S)/05/SCB-II/DLI/2005, RC8(S)/05/SCB-II, DLI both dated 28.11.2005, RC25(S)/05/SCB-I/SCR-I/DLI dated 22.11.2005 in respect of Sultan Puri area and RC24 2005 S 2004 dated 22.11.2005 for the Delhi Cantt area and that in these cases this Court vide its order dated 26.02.2010 had granted anticipatory bail in the aforesaid four cases whilst observing that it would not be justifiable to detain the respondent in custody after the lapse of 25 years of the incident and that against the above said order of this Court, a petition for special leave to appeal (CrI.) No. 2770 & 2771 of 2010 was preferred and the same was dismissed by the Hon'ble Supreme Court of India vide order dated 29.03.2010.

66. It was further submitted on behalf of the respondent that in the present case, the respondent was named after 32 years of the incident and the case was referred by the Ministry of Home Affairs vide its

order dated 12.02.2015 to re-open after constituting the petitioner i.e. the SIT on the recommendation of the Justice G.P. Mathur Committee report and the petitioner in-turn had taken up further investigation on 11.08.2016 and prior to that the respondent was never named in any of the FIRs. It was submitted by the respondent that it can thus not be said that the impugned order of the learned ASJ-01, Dwarka Courts is manifestly erroneous, illegal and perverse and it was submitted that rather the learned ASJ-01, Dwarka Courts had rightly appreciated the material and rendered just findings where no interference was called for and that apparently, no custodial interrogation of the applicant was needed and that the Court of learned ASJ-01, Dwarka Courts had rightly observed that for the purpose of interrogation of the applicant after 32 years of the incident, arrest of the applicant was not required as there were no allegations that anything used in the commission of offence was to be recovered at the instance of the applicant. *Inter alia* it was submitted on behalf of the respondent that there was nothing that had been stated whether the prosecution has any new material which was required to be considered and there was no cogent, overwhelming ground and circumstances, which, so required the cancellation of the anticipatory granted to the respondent.

67. *Inter alia* it was submitted on behalf of the respondent that he had not misused the terms / conditions imposed while granting the bail nor had he misused the concession of bail and that the prosecution had not mentioned any specific instances of any abuse of liberty by the respondent or probable apprehension in relation thereto and that it was

the case of the prosecution that the respondent had never been named earlier when the matter had been sent for a closure.

68. It was further contended on behalf of the respondent that the contention of the prosecution through the statements under Section 161 of the Code of Criminal Procedure, 1973 of witnesses that they had corroborated the contents of the FIR and the affidavit of the complainant could not be accepted, inasmuchas the said witnesses had never been examined before any other agency and thus the contention of the petitioner that they have categorically stated and alleged that the respondent was an MP from Outer Delhi Constituency and had formed an unlawful assembly, armed with deadly weapons for the purpose of committing criminal acts including riots, arson, murder causing disharmony and hatred between different religious groups and destruction of the properties belonging to Sikh community during 1984 riots was absolutely incorrect. The respondent further contended that in 1990, the Special Riot Cell had been created to investigate the cases of the victims of 1984 riots and not a single word was stated in the entire petition as to how the Delhi Police was wrong in filing the closure report/untraced report in both the cases.

69. *Inter alia*, it has been submitted on behalf of the respondent that the contents of the affidavit of the complainant are nowhere suggestive of the fact that the leader leading the mob who came in a white car was the respondent and thus the petitioner has no reason to contend that the name of the leader was not disclosed by the complainant due to fear and influence of the respondent and that the name of the respondent given now by the complainant after a gap of

32 years speaks aloud that he has been named only to target him. It has also been submitted on behalf of the respondent that the statements made under Sections 161 and 164 of the Code of Criminal Procedure, 1973 of the complainant are weighed on the touchstone of trial and admittedly the name of the respondent has been brought forth through the said statements for the first time after the constitution of the SIT and that prior to the constitution of the SIT neither the complainant nor any other witness had ever named the respondent and that it was thus apparent that the respondent has been named after having been so tutored him.

70. The respondent through his reply has further categorically stated that he had always cooperated with the Investigating Agency and stated that he had joined the investigation each time and categorically denied that he had gone with the fleet of advocates on 22.11.2016 though he was accompanied by his counsel and stated that the counsel was nowhere involved in the interrogation proceedings. The respondent also denied that he had not answered any of the questions of the Investigating Officer though he was interrogated at length for about 2 hours. The respondent *inter alia* denied that he tried to dictate the terms of the investigation and also asked the Investigating Officer to give a written questionnaire and also denied that he would not answer till the questionnaire was given and rather requested the Investigating Officer to supply him a copy of the complaint/questions, if any, so that he could give appropriate and comprehensive reply. It was contended thus on behalf of the

respondent that if there was a CCTV surveillance in the office of the petitioner it must have retained the record. The reply of the respondent is accompanied by an affidavit of the respondent dated 27.11.2017.

71. The respondent has further submitted that the status report filed by the petitioner Annexure P-7 supports the apprehension of the respondent that the petitioner had made up its mind to arrest him and that the SIT had opposed the anticipatory bail tooth and nail and the present proceedings under Section 439(2) of the Code of Criminal Procedure, 1973 also support the intention of the State to arrest him and thus the respondent apparently had every reason to believe that he would be arrested and thus the prayer made by the respondent seeking grant of anticipatory bail was wholly merited. The respondent has further categorically denied that there is any likelihood of his influencing the witnesses or tampering with the evidence and has categorically submitted that the respondent is not even remotely connected with the case. The respondent has further contended that the FIR was registered in the year 1997 and that in the affidavit dated 8.9.1985 of the complainant there were no allegations made against the respondent and that the Justice Ranganath Mishra Commission had concluded that no responsible person and the authority of the Congress-I had hatched any conspiracy organizing large scale rioting, etc. and the Commission had itself recommended new Committees to be appointed to go through individual cases of omission and non-registration of the case by the local police whereupon the Delhi Administration by notification of 21.2.1987 had constituted a

Committee of Hon'ble Mr.Justice M.L.Jain and Mr. A.K.Banerjee, a Retired Officer of the IPS, to examine *inter alia* whether there were cases of omission to register or properly investigate offences committed in Delhi during the period of the riots from October 31, 1984 to November 7, 1984. Pursuant to the recommendation of Jain Banerjee Committee a writ petition being W.P.(C) No.3327/1987 was preferred by Sh. B.N.Gupta and thereafter on 22.3.1990, the Delhi Administration appointed another Committee comprising Hon'ble Mr. Justice P.S. Poti, the former Chief Justice of Gujarat High Court and Mr.P.A. Rosha, a retired IPS officer whereafter the riot cell was constituted which investigated the present case and filed a closure report which was accepted on 27.8.1994 by the concerned competent Court. The respondent denied that the Riot Cell constituted in 1990 and which filed the closure reports which were accepted was not an independent agency as recommended by the Jain Aggarwal Committee and submitted that the petitioner had no reason to blame the respondent for delay being under the influence of the respondent.

72. The respondent has further stated that the shifting of the complainant from Delhi to Punjab after the incident is a matter of record but denied that the same was due to any fear of the respondent or because all the witnesses and the complainant were apprehensive about their life and safety and were not willing to visit Delhi due to fear of the respondent and that it could not be accepted that the complainant and other witnesses got faith in the system only after the

constitution of the SIT to investigate the cases in relation to the 1984 riots.

73. Through the written submissions, the respondent reiterated that the FIRs 227/92 and 264/92 are identical and based on a single complaint of Harvinder Singh in relation to two different police stations, i.e., Janakpuri and Vikaspuri based on the affidavit dated 8.9.1985 of Harvinder Singh filed before the Justice Ranganath Mishra Commission and that the SIT has treated the FIR of Police Station Janakpuri in relation to the incident dated 1.11.1984 and of Vikaspuri in relation to the incident of 2.11.1984 but the contents of the affidavit contained incidents of both the dates and thus the respondent sought to ascertain whether the complaint with Janakpuri Police Station would be read to be the portion of the first day and the remaining contents for the other date and submitted that this brought forth the intention of the SIT, i.e., the petitioner as to how the petitioner was trying to multiply one incident.

74. The respondent has further contended placing reliance on the verdict of the Apex Court ***Dolat Ram and Others Vs. State of Haryana***; (1995) 1 SCC 349 (para 4) to contend that there is difference between rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted and that very cogent and over whelming circumstances are necessary for orders directing cancellation of bail already granted and that the grounds for cancellation of bail are (broadly illustrative and not exhaustive). It was further contended on behalf of the respondent that no concrete

material had been produced by the prosecution to show that the accused had interfered or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or that the abuse of the concession granted to the accused in any manner. Reliance was placed on the observations in paragraph 4 of the verdict of the Apex Court which lays down to the effect:

> *"4. Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of Justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail,*

already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a nonbailable case in the first instance and the cancellation of bail already granted."

75. It was also submitted on behalf of the respondent that there was no concrete material that had been produced by the petitioner to show that the accused had interfered or attempted to interfere with the due course of administration of justice by threatening the complainant and his family members and the truth will surface when the evidence is adduced and in view of the conditions that have been imposed by the Sessions Judge for grant of anticipatory bail, the Investigating Agency could interrogate the accused, i.e., the respondent effectively and that it is settled law that for cancellation of bail the conduct subsequent to release on bail and the supervening circumstances alone are relevant.

76. The respondent has contended that the conditions imposed on the respondent at the time of grant of anticipatory bail vide the impugned orders were to the effect:

"(i). Respondent Shall join the investigation as and when directed by the I.O.

(ii) Respondent shall not threaten or influence any of the witnesses

(iii) And, shall not leave the country without prior permission of the concerned Court."

77. Reliance was also placed on behalf of the respondent on the verdict of the Apex Court in ***Padamakar Tukaram Bhavnagre and***

anr. V. State of Maharashtra and Anr. (2012) 122 AIC 237 (SC), on para 13 of the said verdict to the effect:

> *"13. It is true that this Court has held that generally speaking the grounds for cancellation of bail broadly are interference or attempt to interfere with the due course of justice or abuse of the concession granted to the accused in any manner. This Court has clarified that these instances are illustrative and bail can be cancelled where the order of bail is perverse because it is passed ignoring evidence on record or taking into consideration irrelevant material. Such vulnerable bail order must be quashed in the interest of justice. No such case, however, was made out to persuade learned Single Judge to quash the anticipatory bail order passed in favour of accused 6 & 7. Order granting anticipatory bail to them, therefore, deserves to be confirmed. We feel that if the conditions imposed by learned Sessions Judge are confirmed, it would be possible for the investigating agency to interrogate the accused effectively.*
>
> *14. In the circumstances, we quash and set aside the impugned orders. Anticipatory bail granted to the appellants-accused 6 and 7 by learned Additional Sessions Judge by order dated 23/01/2012 is hereby confirmed. The appellants-accused 6 and 7 shall cooperate with the investigating agency and abide by the conditions imposed on them. Needless to say that it will be open to learned Additional Sessions Judge seized of the case to vary the conditions if necessary in accordance with law. Needless to say further that all observations made by us touching the merits of the case are prima facie observations and the trial*

court shall decide the case without being influenced by them."

78. The respondent has further submitted that the conduct of the respondent indicated that he had fully cooperated and was fully cooperating with Investigating Agency, inasmuch as the respondent was granted bail on 21.12.2016 and had been summoned by the petitioner to join the investigation on 21.12.2016 itself at 3 p.m. and admittedly the respondent had gone to join the investigation at the petitioner's office on 21.12.2016 at 3 p.m. but the Investigating Officer was not there and had gone to the Court to collect the case file and the order. The respondent had never been summoned by the Investigating Agency for interrogation till date and thus there is no question of non-cooperation by the respondent and that the respondent had joined the investigation every time except on 14.12.2016 for medical reasons which had been appreciated by the petitioner and had been allowed and merely asking for a copy of complaint, document or questionnaire to ensure a proper reply cannot be taken as non-cooperation by the Investigating Agency.

79. The respondent has further contended that it is not the case of the petitioner that :

"a) the respondent will flee away from justice or will not be readily available during trial;

b) or, has misused or abused the concession/liberty granted to him; c) or, has interfered or attempt to interfere with the due course of administration of justice;

d) or, has threatened someone or tampered with the prosecution witnesses and;

e) or, has breached some conditions imposed upon him while granting the anticipatory bail."

80. The respondent further contends that there is no material suggestive of cancellation of bail and that it has not been disputed by the petitioner that the respondent has been named for the first time after 32 years of the incident and that the first case was registered against the respondent in the year 1990 vide RC-1/90/SIV.II/SIC(1) and that the respondent had been granted bail in this case on 7.11.1990 by this Court in the case titled ***Sajjan Kumar V. State*** in Crl.Misc. (Main) No.2073/1990 though similar stereotyped allegations had been levelled with specific reference to para 6 of the verdict wherein the contentions of the Investigating Agency were set forth to the effect:

"(6) The submission of the learned counsel for the respondent is that the petitioner is politically a powerful and influential person who can directly or indirectly interfere in the course of investigation. Considering the seriousness of the offence and keeping in view the events that happened on 11th September, 1990, coupled with the fact that it has taken six long years to start investigation, there is every likelihood that if the petitioner is allowed to remain at large, no witness will come forward and depose about the events concerning this case. This potential threat to the prosecution witnesses, who have already experienced a haul cast during the riots will prevent them from bringing to book the accused and others charged of committing acts of brutality

against the community. Under the circumstances, it is a fit case where the anticipatory bail be not confirmed."

and the observations of this Court in para 29, 30, 31 and 32 in this verdict were relied upon which are to the effect:-

"(29) Before parting with this case, we may note that the basic rule for an applicant who seeks his enlargement on bail from the court may be tersely put as bail, not jail, except where there are circumstances suggestive of the applicant fleeing from Justice or throttling the course of justice or creating other trouble in the shape of repeating offences or intimidating witnesses and the like.

……

……..

30. The considerations which weigh with the Courts while granting bail either under Section 438 or Section 439 Criminal Procedure Code are :-

(1) The nature and gravity of the circumstances in which the offence is committed;

(2) The position and the status of the accused with reference to the victim and the witnesses;

(3) The likelihood of the accused fleeing from justice;

(4) Of repeating the offence;

(5) Of jeopardising his own life being faced with a grim prospect of possible conviction in the case;

(6) Of tampering with witnesses;

(7) The history of the case as well as of his investigation; and

(8) Other relevant grounds which may apply to the facts and circumstances of a particular case.

31. In this case, all these factors were carefully taken into consideration when the petitioner was initially granted anticipatory bail and are being kept in view while disposing of the present petition. It is now well settled by a catena of judgments of the Supreme Court that this power is not to be exercised as if a punishment before trial is being imposed. The only material considerations in such a situation are whether the accused would be readily available for his trial and whether he is likely to abuse the discretion granted in his favor by tampering with the evidence. As observed earlier, there is no material on record to suggest that the petitioner who has a status in the society, and enjoys good reputation, love and affection from the persons at large, is likely to repeat the offence, abuse the trust placed in him by the court, or avoid the trial.

32. After a lapse of 6 long years of the incident, the petitioner cannot be allowed to be detained, particularly when there is no averment that a weapon of offence with which the petitioner is alleged to have caused any injury to the deceased is yet to be recovered for mere interrogation, in my opinion, the arrest of the petitioner is not at all necessary. Even otherwise, the CBl does not appear to be serious in interrogating the petitioner. On 27-9-90, when the case was taken

up, learned counsel for the respondent frankly conceded that from the day when the petitioner was granted anticipatory bail, he has not been summoned for interrogation. It was only thereafter that the petitioner was summoned once on 28-9-90, and thereafter no attempt has been made to further interrogative him."

81. It was also submitted on behalf of the respondent that the second time the cases were registered by the CBI in the year 2010 on the recommendations of the Nanawati Commission vide RC7 (S)/ 05/ SCB-II/DLI/2005, RC8(S)/05/SCB-II/DLI, RC25(S)/05/SCB-I//SCR-I/DLI and RC24.2005(S) 2004 and that the Hon'ble High Court of Delhi granted anticipatory bail vide order dated 26.02.2010 in case titled ***Sajjan Kumar V. The State through C.B.I. (****Bail Appln. No. 306/2010, 311/2010,312/2010 and 313/2010)* and it was submitted that in this case too, similar allegations were levelled which are levelled now.

82. Reliance was placed thus on behalf of the petitioner on specific paragraphs of this verdict to the effect:-

"*26. As against this, Mr.R.S.Cheema, learned senior counsel for respondent has contended that petitioners are involved in serious offences of murder, arson and rioting. Petitioner Sajjan Kumar had organized a mob and targeted the persons of Sikh community; instigated the said mob to kill and burn the houses of members of Sikh community. The incident of arson, looting, killing of male members of Sikh community was*

perpetrated in a barbaric, inhuman and cold blooded manner, as a consequence whereof victims were isolated, felt insecure, threatened and at that time had no courage to go before the investigating agency or the court to make a statement against the culprits. Some of the close relatives of the deceased persons had migrated to Punjab. They had no courage to return to Delhi, so as to make a statement before the court or the investigating agency. With the passage of time they mustered up the courage and approached the Commission and filed their affidavits. All these years the truth was not allowed to come to surface which shows the pervading influence which the local administration had over the whole matter, as petitioner Sajjan Kumar was holding high political position. Accordingly, delay of 25 years in this case will be of no consequence.

27. Learned senior counsel has further contended that if petitioners are granted bail witnesses will not be able to depose freely; the confidence of people in the system will erode and a fallacious message will go that these petitioners are above the law. In case petitioners are granted bail it will hamper the fair trial, inasmuch as, the witnesses may not come forward to depose in the matter and/or they may be threatened or influenced by the petitioner. In nutshell, it is contended that in the facts of this case, bail cannot be granted.

28. From what has been stated hereinbefore, it is clear that in respect of the same incident four FIRs were registered earlier and the same were

investigated by the Delhi police and statement of witnesses were recorded. In two FIRs, closure reports were filed which were duly accepted by the learned Metropolitan Magistrate after recording statement of complainants. In two other FIRs as many as ten charge sheets were filed in the court of learned Additional Sessions Judge. After full fledged trial accused involved therein, were acquitted, which included the petitioners as well. So far as petitioner Sajjan Kumar is concerned, he was not sent up to face trial in the FIRs registered by the Delhi Police. A separate case was registered against him in the year 1990 by CBI pursuant to the recommendation of above-referred Committee, wherein role was ascribed to him that he had instigated the mob by holding public meeting in the Sultanpuri area and thereafter, he led the mob which went on rampage and burnt the properties; looted the belongings and killed several persons belonging to Sikh community. However, after a full-fledged trial this petitioner was also acquitted in the said case. Several witnesses, whose statements have been recorded by the CBI had also made statements in earlier FIRs. Present FIRs are relating to the same incidents which were involved in earlier cases. Some more witnesses have come forward and made statements implicating the petitioners. So far as other witnesses, who are common in earlier FIRs as well as in the present FIRs, have again made statements implicating the petitioners, however, their version had already been tested in earlier cases sent for trial. The new witnesses

have to explain as to why they did not come forward earlier, during the trial.

29. Be that as it may, the statement of such witnesses cannot be brushed aside completely at this stage but at the same time, they have to explain during trial as to why they had not deposed against the petitioner on earlier occasions. 25 years have gone by and this delay undoubtedly tilts the balance in favour of the petitioners, at least for the purpose of grant of bail to them.

30. I do not find much force in the contentions of learned senior counsel that in case petitioners are enlarged on bail it will hamper fair trial and witnesses may not depose against the petitioners due to the fear and threat. Admittedly all along for the last 25 years petitioners have remained at large as they were not in custody. CBI conducted investigation almost for about five years. During this period, CBI did not deem it fit to arrest any of the petitioners. In spite of petitioners being at large, witnesses came forward and made statements before the CBI. There is no specific allegation against the petitioners of having threatened or influenced any of the witnesses, so as to refrain any of them from making statement against them. Besides this, it is evident from the facts narrated herein above that after the unfortunate and appalling incident the relatives or the family members of victims were not left alone to fend for themselves as members of various Commission/Committees including

eminent jurists had been visiting the affected areas and even met the families of the victims residing in camps and interacted, counselled, encouraged, offered support to them right from the beginning.

31. Indeed, it is true, that offence with which petitioners have been charged by the CBI is of grave nature and ordinarily in such cases courts would be slow in admitting the accused on anticipatory bail, in the face of statements of eye witnesses. However, in the peculiar facts and circumstances of this case and for the reasons as mentioned in the preceding paras hereinabove, I am of the view that it would not be justifiable to detain the petitioners in custody, after lapse of 25 years of incident."

83. *Inter alia* it was submitted on behalf of the respondent that an SLP was also preferred against the afore-cited verdict to the Supreme Court which was dismissed vide order 29.3.2010 in the case titled ***Jagdish Kaur v. Sajjan Kumar & Ors***. Crl.No.2770/2010 and 2771/2010, with it having been observed by the Apex Court to the effect:

" Permission to file SLPs is granted.

In view of the reasons stated in the impugned order, we are not inclined to interfere with the same. We make it clear that the observation and conclusion arrived by the High Court are confined only for the disposal of the anticipatory bail. At the time of trial the court concerned is free to decide the issue on the basis of the

materials placed and uninfluenced by any of the observation made in the impugned order.

With the above observations, the special leave petitions are dismissed."

84. Reliance was also placed on behalf of the respondent on the verdict of the Supreme Court in ***Badresh Bipinbhai Seth v. State of Gujarat and Anr.***; (2016) 1 SCC 152 to contend that bail is not to be withheld as a punishment and merely because an accused is charged with a serious offence that by itself cannot be a reason to refuse the grant of anticipatory bail which is otherwise justified and though it is also the obligation of an applicant to make out a case for grant of anticipatory bail, that does not mean that he has to make out a special case and that a wise exercise of judicial power inevitably takes care of evil consequences which are likely to flow out of its intended use. Reference was made in this verdict relied upon on behalf of the respondent to the judgment of the Division Bench of the SC in ***Siddharam Satlingappa Mhetre v., State of Maharashtra***; 2001 11 SCC 294 which lays down that the conflicting interests are to be balanced while taking a decision as to the bail is to be granted or not and reliance was thus placed on observations in para 1 of the ***Siddharam Satlingappa Mhetre's case (supra):***

"*1. Leave granted.*

2. This appeal involves issues of great public importance pertaining to the importance of individual's personal liberty and the society's interest.

3. The society has a vital interest in grant or refusal of bail because every criminal offence is the offence against the State. The order granting or refusing bail must reflect perfect balance between the conflicting interests, namely, sanctity of individual liberty and the interest of the society. The law of bails dovetails two conflicting interests namely, on the one hand, the requirements of shielding the society from the hazards of those committing crimes and potentiality of repeating the same crime while on bail and on the other hand absolute adherence of the fundamental principle of criminal jurisprudence regarding presumption of innocence of an accused until he is found guilty and the sanctity of individual liberty."

85. Reliance was also placed on behalf of the respondent on the verdict of the Apex Court in ***Mahant Chand Nath Yogi V. State of Haryana***; (2003) 1 SCC 326, to contend that where the anticipatory bail has been granted on relevant considerations supported with reasons, the same cannot be set aside by holding the grant of anticipatory bail erroneous and merely because the submission made by the Public Prosector that earlier investigation made by the police officers and scrutinized by the superiors was faulty and *mala fide,* is not a ground to be put against an applicant.

86. Reliance was also placed on behalf of the respondent on the verdict of the Division Bench of this Court in ***Brahmanand Gupta v. Delhi Administration*** W.P.(C) No.3337/1987 decided on 4.10.89 whereby notification No.F-1/PS/HS/87- 1227-1244 to 1433 dated

23.2.1987 by virtue of which the Lt. Governor had appointed Mr.Justice M.L.Jain (Retd.) and Mr.Justice A.K.Banerjee as a Committee *inter alia* to monitor the investigation of criminal cases relating to criminal offence which had been committed during the riots which had taken place after 31.10.1984 which verdict quashed the said notification and vide order dated 8.2.1996 the Civil appeal filed by the Citizen Justice Committee and other against this verdict was dismissed by the Supreme Court.

87. Reliance was also placed on observations in ***Brahmanand Gupta*** (Supra) on the observations of the Division Bench of this Court to the effect :

> *"We are however, in agreement with Mr.Gupta that the Committee was not authorized to accept or act on any fresh allegations against individuals pertaining to the said incidents of rioting. In other words, whereas it was open to the committee to get information where there has been omission to register or properly investigate offences, the Committee had no jurisdiction to accept any affidavits in which fresh allegations were levelled for the first time, which allegations were not sought to be levelled at the time of or soon after the riots had taken place."*

88. and it was thus contended on behalf of the respondent that the setting up of the SIT vide notification dated 12.2.2016 for the investigation of appropriate and serious criminal cases which were filed in Delhi in connection with the 1984 riots which had earlier been investigated and closed, could not be relied upon.

ANALYSIS

89. On a consideration of the rival submissions on behalf of either side, it is essential to observe that the incident in relation to FIR 227/92, Police Station Janakpuri relates to the incident dated 1.11.1984 at 11 a.m. and the incident in relation to FIR 264/92, Police Station Vikaspuri relates to an occurrence of 2.11.1984 at 7 a.m. both the FIRs are registered on the basis of the affidavit of the same complainant Sh.Harvinder Singh s/o Sh. Sohan Singh dated 8.9.1985 placed before the Justice Ranganath Mishra Commission in relation to which FIRs after investigation by the Special Riot Cell, the cases were sent untraced and the closure reports were accepted on 16.2.1996 and 27.8.1984 respectively, both of which cases were reopened after the Government of India constituted the Special Investigation Team on 12.2.2015 for investigation of the cases of the 1984 anti-sikh riots.

90. The affidavit of the complainant did not name the respondent as an accused and mentions a white coloured car and another red car driven by some leader brand people leading the mob on 1.11.1984 at 11 a.m. and makes no mention of the presence of any such leaders on 2.11.1984. The statement under Section 164 of the Code of Criminal Procedure, 1973 of the complainant was recorded on 20.09.2016 in the Court of SDJM Dera Bassi Mohali, Punjab after constitution of the SIT pursuant to notification with the SIT (1984 riots having been noted as a Police Station). Through his statement under Section 164 of the Code of Criminal Procedure, 1973, it was stated by the complainant that he along with his brother-in-law Avtar Singh had

come on to the road and had seen a crowd of 100- 150 persons coming from a distance who had lathis and sarias with them and when the crowd came closer, then two cars came from the back and stopped near the crowd. One of the said cars was white and the other was almost red and from those cars five/six persons got down and one of them was the respondent Mr.Sajjan Kumar, a Member of Parliament, and the crowd collected around him.

91. As per the statement, it was stated by the complainant to the effect that in November, 1984, he used to live with his parents and brothers and sisters at Delhi in House No. RZ-134-A, Gulab Bagh, Near Nawada, New Delhi – 69 and that he woke up at about 9 .00 a.m. and after his bath at about 11.00 a.m., he came out and saw that there was a black smoke spreading in the sky till the fire stopped and that on going to the main road he asked the passers-by as to why there was a black smoke then he was informed by a passer-by that riots had broken out after the death of the then Prime Minister Smt. Indira Gandhi and that the vehicles belonging to the Sikh residents and the places where they reside had been got set on fire. The complainant further stated that at the time of incident he was aged 25 years and when he gave his statement under Section 164 of the Code of Criminal Procedure, 1973 to the SDJM Dara Bassi, District Mohali, he was aged 58 years and that he went home and told his family members about the incident. He further stated that his brother-in-law that Avtar Singh had also come to his house in the evening he had also come to the road and saw a crowd of 100/150 persons coming who were armed

with lathies and sarias, and that when the crowd came near him then they also saw the two cars came from the back and stopped near the crown. One car was white and the other car was almost red. It was further stated through the affidavit of the complainant that from those cars five/six persons got down, one of them being the then Member of Parliament, Sajjan Kumar and the entire crowd collected around him. As sated in his affidavit at that time itself a DTC bus came and stopped near Sajjan Kumar. He further stated that from that DTC bus 50/60 persons got down and got mixed in the crowd and that Sajjan Kumar gave a signal to those persons and also had a conversation and since Sajjan Kumar had given a signal with his hands pointing towards the Gurudwara Saheb, the crowd of rioters ran towards the Gurudwara Saheb and set it on fire and started looting from the same and he, i.e., the complainant and his brother-in-law stood behind the wall on the other side of the road and were watching the incident from the side of the wall.

92. It was further stated by the complainant in the statement that they ran till the colony and shouted and informed the residents of the colony that the Gurudwara Saheb had been set on fire and that after setting the Gurudwara Saheb on fire, Sajjan Kumar, i.e., the accused/respondent herein and his associates had sat in two cars and the persons coming through the bus boarded the bus and the rioters who were on foot went forward. After the rioters went, the residents of the colony ran to the Gurudwara and started putting out the fire on the Gurudwara and whilst they were putting out the fire, both those card,

the bus and the mob of rioters suddenly attacked them with Sarias, dandas and stones and the residents of the colony ran towards the colony. As per the statement of the complainant the mob of rioters entered into the colony and his father Sohan Singh s/o Amar Singh and mother Jaspal Kaur came into the clutches of the rioters and both got injured. He further stated that he somehow dragged his father into the house but he had been seriously injured with having been repeatedly assaulted with a saria on his head and his mother was also injured on the forehead with a brick by having been hit with a brick but as she was within the crowd, he could not bring her into the house. As per this statement under Section 164 of the Code of Criminal Procedure, 1973 of the complainant, the mob of rioters entered into the house of Nath Singh which was behind the house of the complainant and also set on fire trucks standing outside the house of Nath Singh and the rioters Gurcharan Singh s/o Nath Singh aged 15 to 16 years and put him into the burning truck in the presence of the complainant and on seeing this, he, i.e., the complainant and his family members i.e. his brothers, sisters, brother-in-law and his injured father left their house open and went into the house in front of their house and his sisters entered the house of Tilak Raj in front of their house whereas his brother hid in a house in another lane and his brother-in-law, injured father and he hid in an old lady's house and that old lady locked them inside the house and herself sat inside the temple. That old lady, as per the statement of the complainant, was a Hindu and whilst they continued to be locked inside the house, they could continuously hear the sound of shouting, bearing and burning

fires. As per this statement of the complainant under Section 164 of the Code of Criminal Procedure, 1973, after an hour he learnt that some Hindu brother had admitted his mother to the Rana Nursing Home at Rajauri Garden. He further stated that he along with his injured father and brother-in-law hid without food and water throughout the night and the next morning at 5 a.m. that old lady opened the lock and asked them to run away from there as the rioters had learnt of their having been hidden in her house and she also stated that they would kill them. As per this statement of the complainant, Harvinder Singh, he went to the house of Tilak Raj, who resides in front of his house and requested him to help them as his father's condition was very bad and Tilak Raj got two bicycles arranged and also sent a Hindu boy with them and that he made his brother-in-law sit on one of the cycles and his brother-in-law tied his father to him i.e. the complainant with a Pagdi inasmuch as the complainant's father was very seriously injured and the complainant thus sat with his father. He further stated that on the other cycle his brother-in-law and the Hindu boy took his father to Uttam Nagar which was at a distance of 4 to 5 km from their house but as they were crossing by the Congress-I office at Uttam Nagar then the rioters surrounded there and started beating them with Sarias. The complainant further stated that his brother-in-law Avtar Singh, who was coming on the other cycle was also surrounded by the rioters and the rioters were assaulting all three of them and that in the meantime a sound came from the truck "Aag lagakar maar do, i.e., set on fire and kill" and on hearing this he, i.e., the complainant started running blindly and the rioters were

running behind him and he ran towards the Police Post, Uttam Nagar and requested the police personnel that his father and his brother-in-law were being assaulted by the rioters on the road but the police did not help him and that he continued to cry that his father and brother-in-law be saved, but the police personnel started abusing him, saying that these Sikhs had killed Indira Gandhi and thus they should be dealt with as they were being dealt. He further stated that he was bleeding profusely as he had been assaulted with the Sarias on his head and that four of his bones of his two arms had also got broken and that his eyes had also been seriously injured because of the fist blows given to him and that he had asked them that he be provided medical aid but he was not provided any medical assistance and rather the police personnel were spreading rumors that corpses of Hindu were coming in trains from Punjab and after sometime they spread another rumor that the Sikhs had put poison into the water tank.

93. As per this statement under Section 164 of the Code of Criminal Procedure, 1973, the complainant Harvinder Singh, also stated that at about 2 to 3 p.m. a senior officer whose name he learnt from his badge, as V.K.Katna came to the police post and the complainant requested him for medical assistance and in the meantime the Officer received a wireless message and thus went in his jeep from the spot and returned after two hours with a police bus containing 40/50 injured Sikh men, ladies and children and then put the complainant and four other persons into the jeep and took them to the D.D.U Hospital Hari Nagar, where due the lack of doctors, nurses and other

staff without any anesthesia he was given 14/15 stitches on his head and was also treated for his eyes but there was no treatment given that day for his broken bones. As per his statement under Section 164 of the Code of Criminal Procedure, 1973 of the complainant, the complainant requested the police in the hospital to leave him at his friend's house at Hari Nagar but the police left him and two other injured persons at the Uttam Nagar, Police Post and from 7 a.m. till 5 p.m., he remained at the Police Post, Uttam Nagar and that he could see from the Police Post that shops near the road were being looted and burnt and that the police was sitting as a silent spectator and that he also saw some police personnel were taking out the looted articles from the shop and brought them to the Police Post. As per the statement under Section 164 of the Code of Criminal Procedure, 1973 the entire day he continued to remain hungry and thirsty and injured at the Police post and despite his repeated requests he was given one glass of water and on inquiries at the Police Post, he learnt that his father and brother-in-law had been burnt alive and they were also not handed over the dead bodies of his father and brother-in-law. It was learnt by him subsequently that the police had burnt several dead bodies together.

94. As per this statement under Section 164 of the Code of Criminal Procedure, 1973 at about 9 p.m. the complainant and other persons at the Police Post were taken by the complainant's friend Charanjit Singh and his employer Sharan Singh were taken to the Fateh Nagar Gurudwara Saheb and on the next day he was treated for his broken

bones and other injuries. Through the statement under Section 164 of the Code of Criminal Procedure, 1973, the complainant stated that he would make an appeal to the Court that Sajjan Kumar (the respondent herein) and other persons who brought the crowd had killed his father Sohan Singh and brother-in-law Avtar Singh and had injured his mother and he thus sought action against them and stated that the massacre had taken place at the instigation of Sajjan Kumar i.e. the respondent herein. He also requested through the statement under Section 164 of the Code of Criminal Procedure, 1973 that a day-by-day trial be given in the instant case inasmuch as 32 years had already elapsed and he sought that he got justice during his lifetime and sought the incarceration of the killers."

95. Through his statement under Section 164 of the Code of Criminal Procedure, 1973 dated 20.09.2016, no specific averment in relation to the presence of the respondent at the spot of occurrence on the date 2.11.1984 has been stated. Through his statement under Section 161 of the Code of Criminal Procedure, 1973 dated 24.11.2016 adverted to herein above as well, it was stated by the complainant to the effect that Sh. Harvinder Singh, his elder sister and her husband Avtar Singh came to his house and that he and his brother-in-law were outside the house to the main road of Gulab Bagh to see the situation and saw 100-125 rioters who were coming towards his house and in the meantime two cars, one white car and another car the colour of which he did not recall and that he did not know the registration numbers of the those two cars which stopped near the

rioters and the crowd and 5-6 members got down from the each car and that his brother-in-law Avtar Singh and he were watching from the side of the wall and he saw that one of the persons who got down from the car was a person named Sajjan Kumar i.e. the respondent herein, who was known to him previously, inasmuchas had come to his mohalla several times and as the complainant Sh. Harvinder Singh's father also used to vote for the Congress and thus his family members also used to vote for the Congress and so he was able to identify Sajjan Kumar i.e. the respondent herein very well and that the respondent herein i.e. Sajjan Kumar was standing with the rioters and with the movements of his hands was telling them something and soon two DTC buses came and stopped near the crowd and several persons got down from the bus and that Sajjan Kumar i.e. the respondent herein got into the crowd was identified as being the Congress leader and on his signal and pointing out, the crowd again ran towards the Gurudwara. It was also stated by this witness that the respondent herein i.e. Sajjan Kumar was a leader of the area of the Congress and at his instance and signal the rioters went inside Gurudwara and began breaking and looting the same and after breaking and setting the Gurudwara on fire, the rioters set the Gurudwara on fire and set its articles on fire. It was also stated by this witness that apart from Sajjan Kumar i.e. the respondent herein he did not recognize any other person.

96. Through his statement dated 23.12.2016 under Section 161 of the Code of Criminal Procedure, 1973, the complainant Sh. Harvinder

Singh is stated to have seen Sajjan Kumar i.e. the respondent herein, informed the Investigating Officer and pointed out the place from where he had seen in hiding and had also seen the Sajjan Kumar i.e. the respondent herein coming from the car and pointing out towards the Gurudwara and also pointed out the place where Sajjan Kumar i.e. the respondent herein was standing with the crowd though he stated that the area had changed since the time of the occurrence with construction having been raised.

97. Through his statement dated 24.11.2016 in the FIR No. 227/92 Police Station Janakpuri, one of the witnesses of the prosecution (name withheld on the request of SIT) stated that after the assassination of the Prime Minister Indira Gandhi, riots had commenced on 01.11.1984 at about 10.00 a.m. and they had come out on to the road to see as to what was happening because his house was at the main Nazafgarh Road and held that it could be seen that there was smoke of fire at several places and in sometime itself a crowd of 100-150 persons came shouting slogans and came towards their mohalla and there were two DTC buses which were loaded with people also came there and amongst that crowd at that time two cars came and stopped near the crowd, the number of which he did not know and from one of the cars which was of white colour and other car the colour of which car he did not recall and the colour of the other case from the white car 3-4 persons came down of which one of them was Sajjan Kumar i.e. the respondent herein whom he recognized from before, who pointed out from his hands towards the Gurudwara

to the crowd, as a consequence of which the crowd whilst shouting slogans went towards the Gurudwara and started breaking the Gurudwara and that that time his father was the Pradhan of the Gurudwara and of the colony and when he reached the Gurudwara to put out the fire then the rioters attacked his father but he somehow escaped but the crowd followed his father to his house and attacked them and looted their house and started attacking their house and breaking the same and also set a truck bearing No. DLL 8770 standing behind their house on fire and also set their scooter bearing No. DLU 8150 on fire and that the rioters had also taken out his father Nath Singh and him and his four brothers from the house and had beaten them with Dandas, Lathies and Sariyas as a consequence of which they were all injured seriously.

98. This witness is also stated to have stated in his statement under Section 161 of the Code of Criminal Procedure, 1973 dated 24.11.2016 that in 1986 his father sold the house of Nawada and went to Mohali, Punjab with his family and only his elder brother started living in a small house with his family and that his one of his brother died in 1993 and his father expired on 16.05.1996 and his mother expired in 2003 and that he had looked after his brothers. He also stated that his brother (name withheld with the request of SIT), who had been injured in 1984 riots was still lying disabled due to the injuries on the bed.

99. Another witness (whose name has also been requested to be withheld by the SIT) vide his statement dated 24.11.2016 under

Section 161 of the Code of Criminal Procedure, 1973 allegedly stated qua the role of the respondent herein i.e. Sajjan Kumar of having instructed the crowd on 01.11.1984 to attack on the Gurudwara by signaling towards it. This witness in his statement under Section 161 of the Code of Criminal Procedure, 1973 dated 24.11.2016 has further stated that apart from Sajjan Kumar i.e. the respondent herein, he would not be able to identify any other person. He also stated that because of his being paralyzed he had not made any complaint and had not given his statement earlier. He also stated that he was being looked after by his brother (name withheld at the request of the SIT).

100. Through his statement under Section 161 of the Code of Criminal Procedure, 1973 dated 05.09.2016 in FIR No. 264/92 Police Station Vikaspuri, the complainant Sh. Harvinder Singh inter alia stated to the effect that on 01.11.1984, he along with his brother-in-law went to the Main Road, Gulab Bagh where about 100-125 a group of rioters was seen coming and two cars one white and the other colour of which he did not recall were seen coming and they came near the rioters and that he does not know the registration numbers of those cars and from each of those cars, 5-6 persons got down and he and his brother-in-law stood behind the wall and saw Sajjan Kumar i.e. the respondent herein getting out from the car and that he had also come several times previously to his mohalla and to his house because the father of the complainant Sh. Harvinder Singh always used to vote for the Congress and thus his family always voted for the Congress and that is why he the complainant Sh. Harvinder Singh recognized

the said Sajjan Kumar i.e. the respondent herein very well and he came and stood near the road and with the signal of his hands said something to the rioters and in the meantime two DTC buses came and stopped and from the same also a large number of people got down and Sajjan Kumar i.e. the respondent herein, the leader of the Congress pointed out towards the Gurudwara and just as he did the same, the group of rioters started running towards the Gurudwara and started causing damage and set it on fire and after setting it up on fire, started looting the same and thereafter boarded the DTC bus. It was also stated by the complainant Sh. Harvinder Singh that apart from Sajjan Kumar i.e. the respondent herein he did not recognize any other rioters. Through his supplementary statement dated 09.11.2016 in FIR No. 264/92 registered with Police Station Vikaspuri, the complainant Sh. Harvinder Singh stated that his statement dated 20.09.2016 under Section 164 of the Code of Criminal Procedure, 1973 made after Dera Basti Court was correct and that the Hindi translation of the same also was to the effect as to what he had stated in his statement under Section 164 of the Code of Criminal Procedure, 1973.

101. Through his statement in FIR No.227/1992, registered with Police Station Janakpuri dated 23.12.2016, the complainant Sh. Harvinder Singh also identified the places of occurrence where he had seen Sajjan Kumar i.e. the respondent herein on the date of the alleged commission of the offence on 01.11.1984.

102. Through his statement dated 25.10.2016 under Section 161 of the Code of Criminal Procedure, 1973, the witness of the prosecution

in FIR No. 264/94 PS Vikaapuri (name withheld at the request of the SIT) also stated to the effect that on 01.11.1984 at about 10.00 a.m. riots had commenced after the assassination of the Prime Minister Indira Gandhi and stated that he had seen outside his house which falls on the main Nazafgarh Road at different places there was smoke of fire and a crowd of 100-150 persons was coming shouting slogans towards his mohalla and two DTC buses boarded with people also came and at that time two cars came, one of them was of white colour in which there were 3-4 persons, who got down, one of them being Sajjan Kumar i.e. the Congress M.P., whom he knew from before, who got down and went into the crowd and started talking to the persons in the crowd and pointed out towards the Gurudwara whereafter the crowd started shouting slogans and went towards Gurudwara and started attacking the Gurudwara and caused damage and set it on fire. He stated further that his father was the Pradhan of the colony and of the Gurudwara and on reaching the Gurudwara the crowd attacked but somehow his father escaped as a consequence of which the crowd followed to his house and attacked at their house also and set the truck bearing No. DLL 8770 standing behind their house on fire and also set their scooter bearing No. DLU 8150 on fire.

103. The statement of another witness of the prosecution under Section 161 of the Code of Criminal Procedure, 1973 (name withheld at the request of the SIT) dated 25.10.2016 in the FIR No. 264/92 is also to the effect that the respondent herein got down from the white car on 01.11.1984 when the crowd of rioters had collected and of his

having pointed out to the Gurudwara as a consequence of which the crowd went towards the Gurudwara and caused breakage there. This witness also identified Sajjan Kumar i.e. the respondent herein whom stated that he had seen him several times.

104. The presence of the respondent at the time of the incident on 2.11.1984 is not mentioned in the statement under Section 164 of the Code of Criminal Procedure, 1973 of the complainant. The witnesses examined by the prosecution under Section 161 of the Code of Criminal Procedure, 1973 also speak of the presence of the respondent on 1.11.1984 and not on 2.11.1984. As observed by the learned ASJ-01, Dwarka Courts all the statements have been made virtually 32 years after the incident when for the first time the respondent is named as being the leader in question who got down from the white car and on his instigation there were attacks made on the Gurudwara and on Sikhs.

105. In the circumstances of the case the observations of the learned ASJ-01, Dwarka Courts that the veracity of allegations levelled against the respondent herein can only be determined during trial cannot be termed to be erroneous at this stage. To the same effect are the observations made by this Court in ***Sajjan Kumar V. State*** in 43 (1991) DLT 88 wherein an affidavit dated 15.7.87 of Anwar Kaur was taken up for consideration by the Jain Banerjee Committee appointed on 21.2.1987 and before that she did not make any complaint before the police from the date of the incident nor before the Justice Ranganath Mishra Commission, taking into account the factum that

that it was contended by the investigating agency that the investigation could commence only after six years of the incident as the witnesses were afraid and frightened and would not come to testify and that if the respondent herein was allowed to remain enlarged on bail, (who is also the respondent herein to the present petition), whilst observing that bail not jail was the basic rule unless the process of justice was sought to be throttled by the applicant by influencing witnesses or tampering with the evidence or by creating other trouble in the shape of repeating offences, bail ought to be granted and anticipatory bail was thus granted to the very same accused arrayed as the respondent herein in the said case.

106. During the course of the submissions made on behalf of the SIT, it was contended that this judgment had been appealed against. However, no orders in relation thereto have been submitted before this Court.

107. To the same effect are the observations of this court, in Sajjan Kumar Vs. CBI in Bail application No. 306/2010 which verdict significantly has been upheld by the Supreme Court in Crl. M.P. No. 6021/2010 vide verdict dated 29.03.2010 i.e. in Jagdish Kaur Vs. Sajjan Kumar and Ors. The verdict of the Hon'ble Supreme Court in Bhadresh Bipinbhai Sheth Vs. State of Gujarat and Another in (2016) SCC 152 also spells guidelines on the aspect of grant of cancellation of anticipatory bail.

108. It is essential to observe that the verdicts relied upon on behalf of the petitioner are in facts and circumstances of cases, which are not in *pari materia* with the facts and circumstances of the instant case.

109. This is so inasmuchas the verdicts relied upon on behalf of the petitioner are on facts distinguishable from the instant case as set forth hereinbelow.

110. In ***Adri Dharandas vs. State of West Bengal;*** (2005) 4 SCC 303 which has been relied upon on behalf of the SIT on the ground that there exist no reason to believe that the respondent may be arrested and that mere fear is not belief, and that it was not sufficient for the respondent to show that he had some sort of vague apprehension that someone is going make an accusation against him in pursuance of which he may be arrested, the available record speaks eloquently in the form of the petitions Crl. M.C. 339/2017 and Crl.M.C. 338/2017 filed by the petitioner herein seeking cancellation of anticipatory bail granted to the respondent herein vide orders dated 21.12.2016 of the learned ASJ-01, Dwarka Courts in Bail Appln. Nos. 14072/2015 and 14073/2015 which had been filed on the basis of the respondent having been named as an accused by the complainant and other witnesses 32 years after the date of incident and thus the contention of the respondent that he had the apprehension of his arrest and had a reason to believe that he could be arrested cannot be rejected.

111. The verdict of the Supreme Court in ***Raghuvir Saran Aggarwal v. State of U.P.;*** (1988) 8 SCC 617 lays down that anticipatory bail

ought not to be granted without any reason for exercise of such jurisdiction or else every person against whom a first information report is lodged alleging a serious crime would rush to the High Court or the Sessions Court that the case may be considered and may seek anticipatory bail which would render the provisions of the Criminal Procedure Code in the matter of arrest, redundant. As regards the reliance placed on this verdict which related to a case of a dowry death, it is essential to observe that in the instant case, the impugned orders dated 21.12.2016 of the learned ASJ-01 South West, Dwarka, categorically set forth reasons for the grant of anticipatory bail to the effect :

> *"17. It is an admitted fact between the parties that the present FIR was registered in the year 1992 on the basis of affidavit dated 09.09.1985 of complainant Sh.Harvinder Singh sworn before Justice Ranganath Mishra Commission. It is also an admitted fact that alleged offence pertains to incident dated 01.11.1984 and 02.11.1984. It is also an admitted fact that neither complainant Sh.Harvinder Singh nor any of the witnesses examined by the Special Riot Cell had found any evidence to connect the applicant with the offence in question. It is also an admitted fact that earlier investigation was closed as untraced and the closure report was accepted by Ld.MM on* ***27.8.94/16.02.1996.*** *It is also an admitted fact that from 1996 till examination of witnesses including the complainant in the year 2016, nothing incriminating had come against the applicant.*
>
> *18. The deposition made by complainant Sh.Harvinder Singh under Section 164 Cr.P.C.*

statement against applicant has been made for the first time after 32 years of the incident and in the previous affidavit dated 09.09.1985, no such allegations were made.

19. Similarly, some of the witnesses (names of witnesses withheld at the request of Ld.Addl.PP for SIT) examined in 2016 under Section 161 Cr.P.C. were also examined during the course of investigation in the year 1992 and at that time, they had not identified the applicant to be the person, who had incited the mob to burn down the property of the Sikhs or to murder them.

20. Some of the witnesses (names of witnesses withheld at the request of Ld.Addl.PP for SIT), who have been examined under Section 161 Cr.P.C. happen to be the relatives of the witnesses, who were examined in the previous investigation and in the previous investigation, their relatives had not stated anything incriminating against the present applicant. Therefore, from where these witnesses have derived the information regarding / the role of the present applicant is also a matter of trial.

21. Some of the witnesses (names of witnesses withheld at the request of Ld.Addl.PP for SIT), who have been examined under Section 161 Cr.P.C. in 2016 are witnesses of hear-say evidence regarding the role of the present applicant and their statements do not incriminate the present applicant.

22. Although an explanation has been given by the complainant in his statement under Section 164 Cr.P.C. as to why he had not named the applicant earlier but whether such explanation can be

believed or not, after 32 years, is a matter of trial. However, some of the witnesses examined in this case under Section 161 Cr.P.C in 2016, have not provided any explanation as to why at the time of their earlier examination in the year 1992, they did not depose anything against the present applicant. This delay of around 24 years from the registration of the FIR do not make out a case for custodial interrogation of the applicant when admittedly at the time of first investigation, nothing incriminating had come against the present applicant. Nothing has come on record to show that applicant, during this course of 24 years, had threatened or influenced any of the witnesses so as to refrain any of them from making statement against him. Further, applicant is having deep roots in the society and thrice, he remained as a member of the Parliament. Therefore, chances of applicant fleeing from justice are also quite remote.

23. In the opinion of this court, for the purpose of interrogation of the applicant after 32 years of the incident, arrest of applicant is not required as there are no allegations that anything used in the commission of offence is to be recovered at the instance of the applicant.

24. The submission of the Id.counsel for the applicant that the case, has been re-opened for political consideration just to falsely implicate the applicant also cannot be ignored and makes out a ground for anticipatory bail to the applicant.

25. The judgments relied upon by the Id.counsel for the complainant as -well as Ld.Chief Public Prosecutor for State delivered in Sajjan Kumar's case (supra) are not applicable to the facts of the

present case as same pertain to framing of charge and none of these judgments relied upon, pertain to grant or refusal of anticipatory bail where after a delay of 32 years, witnesses, who had not deposed anything against applicant earlier have turned around to depose otherwise.

26. There can be no dispute with regard to ratio laid down by the Hon'ble Supreme Court of India in the matter of Jai Prakash Singh's case (supra) regarding the principles for grant of anticipatory bail relied upon by the Id.counsel for SIT. In the present case also, exceptional circumstances have been made out for grant of anticipatory bail as there is prima facie material to show that the applicant has been falsely enroped in the crime in question after 32 years of the incident and his chance of mis-using the liberty is also non-existent."

112. The reliance on the verdict in ***Jai Prakash v. State of Bihar and Anr***.; (2012) 4 SCC 379 is thus placed inasmuch as in the said case, it was observed that the FIR had been lodged promptly which itself was an assurance regarding truth of the informant's version and that undeserved and unwarranted sympathy to an accused was shown, which is not so in the instant case that the parameters for grant of anticipatory bail had not been applied and rather undeserving and unwarranted sympathy had been shown to the accused and it had thus been laid down in the facts and circumstances of that case where the FIR has been lodged promptly within a period of two hours at the time of the incident which had occurred at midnight as mentioned in para 11 of the verdict relied upon.

113. The verdict in ***Japani Sahoo vs. Chandra Sekhar Mohanty***: (2007) 7 SCC 394 is in a case which related to an incident of a threat of the payment of a demand of Rs.5,000/- was made by a police personnel to the respondent therein claiming that if the complainant did not make the payment by the next morning of Rs.5000/- he would be booked in cases like NDPS and dacoity whereafter the complainant had silently returned home and on the next day had lodged a complaint in question before the competent court on the advice of his lawyer and it was held that the criminal offence is a wrong against the State and the society even if committed against an individual and it was further held by the said verdict that normally in serious offences, prosecution is launched by the State and the Court of law has no power to throw away the prosecution solely on the ground that there has been a delay and that mere delay in approaching a court of law would not by itself afford a ground for dismissing a case although it may be a relevant circumstance in reaching the final verdict. In the instant case the delay in naming the respondent is of 32 years. In the case relied upon the offence was alleged to have been committed by the accused on 2.2.96 and the complaint was filed on 5.2.96.

114. Reliance placed by the State on the verdict of the Apex Court in ***Sajjan Kumar v. CBI,*** (2010) 9 SCC 368, vide which the appeal by the appellant therein who is the present respondent against the order of the learned ASJ-01, Dwarka Courts in State Case 26/10 and appeal against order dated 19.7.2010 of the High Court of Delhi whereby the order of learned ASJ-01, Dwarka Courts framing charges under Sections 153A/295/302/395/427/436/339/505 was upheld and the

application which had been filed for discharge by the applicant, i.e., the respondent herein had been declined and it had been observed to the effect that in the said case on hand though delay may be a relevant ground in the light of materials which were available before the Court through CBI, without testing the same at trial the proceedings could not be quashed merely on the ground of delay is wholly inapt. In the instant case, the petitioner is seeking cancellation of grant of anticipatory bail granted to the respondent herein vide orders dated 21.12.2016 of the learned ASJ-01, Dwarka Courts.

115. Reliance is placed on ***State of Maharashtra & Ors. V. Mohd. Sajid Hussain, Mohd. S. Hussain;*** (2008) 1 SCC 213 to contend that even though the respondent may not have been named in the First Information Report as laid down in this Court by the Apex Court it was sufficient to observe that the FIR may not be encyclopedic and in the said case the accused had been absconding and had not cooperated with the Investigating Agency and there was also a mistake in relation to the age of the prosecutrix who had been allegedly raped and she was found to be below the age of 16 years is in facts not in *pari materia* with the instant case, inasmuchas the respondent herein is not absconding.

116. In ***Dinesh M.N. v. State of Gujarat;*** (2008) 5 SCC 66 the order of grant of bail was held to be vulnerable with it having been held that the accused could not take a plea while applying for bail that a person whom he killed was a hardened criminal and this was not a factor which could be taken into account and irrelevant materials of a substantial nature having swayed the trial Court by the fact that the

deceased had a shady representation and criminal antecedents while granting bail to the accused had been taken into account, the cancellation of anticipatory bail by the High Court of Gujarat was upheld by the Supreme Court observing to the effect that once it was concluded that when bail had been granted on untenable grounds, the plea of absence of supervening circumstances had no legs to stand on and in that case it was held that irrelevant materials had been taken into account and relevant materials had been kept out of consideration while granting bail inasmuch as the factum that the FIR had been lodged by one of the co-accused to divert attention from the fake encounter by the appellant accused, a senior police officer and other police officer for entering into a criminal conspiracy and causing a fake encounter of a hardened criminal and destroying the evidence relating to the death of his wife, it was held that these material factors had been kept out of consideration while granting bail and that even though the re-appreciation of the evidence as done by the Court granting bail is to be avoided, the Court dealing with an application for cancellation of bail under Section 439 of the Code of Criminal Procedure, 1973 can consider whether relevant materials were taken into consideration inasmuch as it was not known as to what extent the irrelevant materials weighed with the Court for accepting the prayer for bail.

117. The verdict in ***State v. Anil Sharma*** (1997) 7 SCC 187 relied upon by the State held that the apprehension of the CBI that the respondent in that case who was the member of the legislative assembly of the State of HP and was also a minister of HP State

Government for three years and a son of a former Union Minister for Telecommunication and the CBI was conducting an investigation of a case against him for an offence punishable under Section 13 (2) of the Prevention of Corruption relating to acquiring wealth, power in excess of his known sources of income and where according to CBI there was clear cut evidence pointing to transfer of assets to the respondent by his father, the contention of the CBI that the respondent's was a clear case of corruption in high places and considering the responsible and high offices which the respondent held and wide influence which he could wield and the great handicap which the Investigating Officer would be subject to while interrogating a person armed with an order of anticipatory bail and the application having been dealt with by the High Court as if it was considering the prayer for grant of regular bail after the arrest, it was observed to the effect that the consideration which should weigh with the Court while dealing with the request for anticipatory bail need not be the same as an application to release on bail after arrest and that the High Court ought not to have side stepped the apprehension expressed by the CBI (that the respondent would influence the witnesses) as one which can be made against all accused persons in all cases and that the apprehension was quite reasonable while considering the high position which the respondent held and the nature of the accusation relating to the period during which he held such office and it was observed also in the said case that in a case of that kind effective interrogation of a suspected person was of tremendous advantage in disinterring many useful informations and also materials which would have been concealed and that often

interrogations in such a condition would reduce to a mere ritual if the suspected person knew that he was well protected and insulated by a pre-arrest bail order during the time he was interrogated. The verdict of the High Court Madras in case titled as ***V.N.Sudhagaran v. Enforcement Officer, Enforcement Directorate, Shastri Bhawan Madras*** 1196 (2) MWM Cr 30 lays down that as a condition precedent for an application under Section 438 of the Code of Criminal Procedure, 1973, that there must be an existing reasonable apprehension of arrest on an existing accusation of having already committed a non-bailable offence prior to the point of time of filing the application and in that case merely because another person has been arrested, it was held that the applicant could not take it as a basis to infer arrest and in the said case it was observed that there was no accusation nor any reasonable apprehension of the applicant and where in that case where only summons were issued by the Enforcement Directorate to the applicant it was not proper for him to presume that he was an accused and at that stage no anticipatory bail could be granted by putting fetters and spokes in the wheels of investigation to render nugatory and defeat the very purpose and scope of FERA 1973, and that in that case there was no accusation or reasonable apprehension of the applicant being arrested in the non-bailable offence and the application was thus rejected. As already observed herein above the factum that the petitioners seeks cancellation of anticipatory bail of the applicant now itself is bound to make the applicant apprehensive of arrest.

118. As regards the reliance placed on behalf of the SIT on the verdict of the High Court of Gujarat in case titled as **State of Gujarat Vs. Mayaben Surendrabhai Kodnani and Another 2010 Cri LJ 1095**, it is essential to observe that the FIRs in that case were registered on the same day when the riots and lootings had not ceased and it was observed by the Hon'ble High Court of Gujarat in para 16 of the said judgment to the effect : -

> *"16. It could also not be disputed that members of the minority community were fleeing from the scenes of the offences and taking shelter elsewhere or in the relief camps set up for the riot affected people. The statements or complaints made by such victims of the riots in such circumstances have to be read in the context of the prevailing situation and the state of affairs in which names of prominent persons like the respondents were clearly alleged to have been omitted from their statements by the investigating officer and the complaints about such investigation had led to filing of petitions before the Supreme Court and ultimately the constitution of SIT after six petitions before the Supreme Court and ultimately the constitution of SIT after six years. Therefore, absence of important details about the offences or names of the respondents in the earlier statements or complaints made before the investigating agency or the lapse of time of six years could not by itself make the subsequent statements of the same witnesses contradictory or unreliable.* ***However, it is not that no witness has ever implicated the respondents before the investigation by SIT. No less than six witnesses have mentioned the names of the respondents in the year 2002 itself.*** *Therefore, the argument that the respondents are being implicated for the first*

time by or through the SIT cannot be accepted at this stage. In both the cases, there are statements of witnesses indicating that a huge crowd armed with weapons had gathered at the scene of the offences when the respondents had reached and they had incited and instigated the mob into attacking the area populated by minority community. The respondents were identified as operating with the mob after coming to the spot by particular vehicles and several victims had fallen to the bullets of the police, while one of the respondents was present. It is also alleged that the respondents had offered weapon or cans of inflammable liquid and subsequently intimidated some of the witnesses for removal of the name of one of the respondents presumably from the list of persons being implicated during investigation by the SIT. It has been clearly alleged that the names of the respondents were not being recorded by the investigating officer while earlier statements were : recorded in the year 2002."

Thus it is indicated that in the said case relied upon on behalf of the SIT that six witnesses had mentioned the name of the accused persons at the time when the initial investigation was being conducted and much before the SIT took over the investigation. Furthermore, there are observations on para 7 of the said verdict that the presence of the accused in that case was also brought forth through the records of the mobile phone of the accused persons at the place and at the time of the occurrence.

119. Qua reliance placed on behalf of the SIT on the verdict of the Apex Court in the case titled as ***Pokar Ram Vs. State of Rajasthan and Others (1985) 2 SCC 597,*** it is essential to observe that such

reliance was placed on behalf of the SIT on observation in para 11 of the said verdict to the effect: -

> ***"11. The accusation against the respondent is that he has committed an offence of murder punishable-under Sec. 302 IPC. Surprisingly, when anticipatory bail was granted on September 30, 1983, there is not a whisper of it in the order of the learned Sessions Judge, Jodhpur. When a person is accused of a offence of murder by the use of a fire arm, the Court has to be careful and circumspect in entertaining an application for anticipatory bail. Relevant considerations are conspicuous by silence in the order of the learned Sessions Judge. Could it be said in this case that the accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive ? Could it be said that the object being to injure and humiliate the respondent by having him arrested ? What prompted the learned Sessions Judge to grant anticipatory bail left us guessing and we arc none the wiser by the discussion in the order of the learned Single Judge declining to interfere"***

120. It is essential however to advert to the facts of this case which are reproduced in paras 8 & 9 of the said verdict to the effect : -

> ***"8. The incident in which Bhanwaria was injured with fire arm occurred on August 23, 1983 in respect of which the first information report was lodged on August 24, 1983, in which it was in clear and unambiguous terms alleged that the respondent was at the relevant time armed with a gun and fired towards Bhanwaria who suffered injuries by gun shot- The incident occurred as stated earlier around 4.00 P. M. On***

August 23, 1983 and this information is lodged with the Police Station at a distance of 30 k.m. from the scene of occurrence on August 24, 1983 at 11.30 a.m. Amongst others, the offence registered was under Sec. 307 IPC i.e. attempt to commit murder. The first information report thus discloses use of fire arm with which the respondent attempted to commit murder of Bhanwaria. Surprisingly, the Investigating Officer had not arrested him till September 29, 1983 when he moved an application for anticipatory bail under Sec.438 of the Code of Criminal Procedure presumably after coming to know that injured Bhanwaria has succumbed to his injuries and the offence would one of murder punishable under Sec. 302 IPC. This conduct of the Investigating Officer left us guessing. Some light is shed by some averments from the affidavit filed in the High Court and extracted by the learned Judge in his judgment. It is stated that the respondent is the Sarpanch of Vil. Danwara and is an influential person and that his father Ranjit Singh is ex-M.L.A. and is at present Pradhan of the Panchayat Samiti. Are these relevant considerations for not cancelling anticipatory bail when it appears to have been granted by a clear misconception of the relevant considerations governing of anticipatory bail ? The answer is emphatically in the negative in view of the extracted observations from the decision of the Constitution Bench in Gurbaksh Singh Sibbia's case.

9. The accusation against the respondent is that he has committed an offence of murder punishable-under Sec. 302 IPC. Surprisingly, when anticipatory bail was granted on September 30, 1983, there is not a whisper of it

in the order of the learned Sessions Judge, Jodhpur. When a person is accused of a offence of murder by the use of a fire arm, the Court has to be careful and circumspect in entertaining an application for anticipatory bail. Relevant considerations are conspicuous by silence in the order of the learned Sessions Judge. Could it be said in this case that the accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive ? Could it be said that the object being to injure and humiliate the respondent by having him arrested ? What prompted the learned Sessions Judge to grant anticipatory bail left us guessing and we arc none the wiser by the discussion in the order of the learned Single Judge declining to interfere".

121. Reliance placed on behalf of the SIT on the verdict in the case titled as ***Harbans Kaur And Another Vs. State of Haryana (2005) 9 SCC 195,*** it is essential to observe that the same is on the basis of the evidence led and is not in facts *pari materia* to the instant case inasmuchas in the instant case the investigation is still in progress.

122. Reliance placed on behalf of the petitioner on the verdict of Supreme Court in the case titled as ***Prakash Kadam and Others Vs. Ramprasad Vishwanath Gupta and Another (2011) 6 SCC 189*** is also on facts not in *pari materia* to the facts in the instant case inasmuchas in that case the appellants were policemen accused of contract killing in Case No. 317 of 2010 then pending before the Sessions Judge, Greater Bombay and had been charge sheeted for the offences punishable under Section 302/34/120B, 364/34 of the Indian Penal Code, 1860 and other minor offences and the prosecution case

was that the appellants were engaged as contract killers by a private person to eliminate the accused. As observed vide para 20 of the said verdict the version of the accused therein that the accused was shot dead in a police encounter was found to be false during investigation and it was observed vide para 25 of the said verdict that *prima facie* some police officers and staff were engaged by some private persons to kill their opponent and the police officers and the staff acted as contact killers for them and it was observed further that if such police officers and staff could be engaged as contract killers to finish some person there may be very strong apprehension in the minds of the witnesses about their own safety and if the police officers and staff could kill a person at the behest of a third person, it cannot be ruled out that they may kill the important witnesses or their relatives or give threat to them at the time of trial of the case to save themselves and that this aspect had been completely ignored by the Sessions Judge while granting bail to the accused persons and thus it was held vide para 26 that the High Court was perfectly justified in cancelling the bail to the appellant accused who were police personnel and it was their duty to uphold the law but far from performing their duty they appeared to have operated as criminals and that the protectors had become the predators.

123. As regards the reliance placed on behalf of the SIT on the verdict in ***Neeru Yadav v. State of Uttar Pradesh & Anr.*** (Supra), it is essential to observe that the accused therein was a history-sheeter of Police Station Kavi Nagar, District Ghaziabad with 15 cases registered against him of which four *inter alia* were in relation to

offences punishable under Section 302 of the Indian Penal Code, 1860 and two cases were punishable under Sections 307 of the Indian Penal Code, 1860 and three cases were in relation to Section 25 under the Arms Act and it was observed by the Court that the number and nature of crimes registered against the accused spoke voluminously about his antecedents. Furthermore the allegations against the accused in relation to whom the appellant therein sought cancellation of bail were found to be not in parity to the facts against the co-accused who was on bail and it was thus observed vide para 17 of the said verdict to the effect:

> ***" Coming to the case at hand, it is found that when a stand was taken that the second respondent was a history-sheeter, it was imperative on the part of the High Court to scrutinize every aspect and not capriciously record that the second respondent is entitled to be admitted to bail on the ground of parity. It can be stated with absolute certitude that it was not a case of parity and, therefore, the impugned order clearly exposes the non-application of mind. That apart, as a matter of fact it has been brought on record that the second respondent has been charge-sheeted in respect of number of other heinous offences. The High Court has failed to take note of the same. Therefore, the order has to pave the path of extinction, for its approval by this Court would tantamount to travesty of justice, and accordingly we set it aside."***

124. It has thus to be re-emphasized as already observed herein above that the verdicts relied upon on behalf of the petitioner herein

are in facts and circumstances of the said cases not in *pari materia* with the facts and circumstances of the instant case and on the facts sought to be put forth in the instant case as alleged are distinguishable from those in the cases relied upon on behalf of the petitioner.

125. Apart from the factum that the grounds for cancellation of bail, i.e., an interference or attempt to interfere in the due course of administration of justice, or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner are not made out against the respondent, in the facts and circumstances of the instant case the contentions raised on behalf of the State through the SIT, the petitioner, that the grant of anticipatory bail to the applicant vide the impugned orders in FIR No.227/1992, under Sections 147/148/149/295/395/307/302 and 436 of the Indian Penal Code, 1860, Police Station Janakpuri and FIR No.264/1992, under Sections 147/148/149/302/307 of the Indian Penal Code, 1860 Police Station Vikaspuri was perverse by ignoring evidence on record or taking into account irrelevant considerations cannot be accepted. This is so inasmuch as the impugned orders dated 21.12.2016 take into account the factum that the FIR as initially registered in both cases on the basis of the affidavit of the complainant did not contain a whisper of any allegation against the respondent regarding his participation in the 1984 riots in the affidavit dated 8.9.1985 sworn before the Justice Ranganath Mishra Commission.

126. The impugned orders also take into account the factum that neither the complainant nor any of the witnesses examined by the Special Riot Cell had found any evidence to connect the applicant

with the offence in question in relation to incidents dated 1.11.1984 and 2.11.1984 and admittedly earlier investigations were closed as untraced and the closure reports were accepted by the Courts of the Metropolitan Magistrates. It was further more observed by the impugned orders that admittedly from 1994 till examination of the witnesses including the complainant in the year 2016 (an apparent reference to statements recorded under Section 161 of the Code of Criminal Procedure, 1973) nothing incriminating had come against the respondent herein and that the deposition made by the complainant under Section 164 of the Code of Criminal Procedure, 1973 had been made for the first time after 32 years of the incident and some of the witnesses who were examined in 2016 had also been examined in the year 1992 and at that time had not named the respondent to be the person who had incited the mob to burn down the properties of the Sikhs or to murder them.

127. Undoubtedly a submission has been made on behalf of the State that some of the witnesses examined under Section 161 of the Code of Criminal Procedure, 1973, where statements were recorded after re-investigation by the SIT had been never ever been examined earlier. It was also observed vide the impugned orders that though an explanation had been given in the statement under Section 164 of the Code of Criminal Procedure, 1973 as to why he had not named the respondent earlier, that as to whether such an explanation would be believed or not after 32 years was a matter of trial. It was also observed vide the impugned orders that some of the witnesses who had been examined in the year 1992 had not deposed anything against

the respondent herein and that the delay of around 24 years from the registration of the FIR did not make out a case of a custodial interrogation of the respondent herein when admittedly at the time of first interrogation nothing incriminating had come against the respondent. It was also observed vide the impugned orders that there was nothing on record to show that the respondent herein during this course of 24 years had threatened or influenced any of the witnesses to refrain any of them making any statement against him and that further more the respondent had deep roots in society and had thrice been a Member of the Parliament and chances of him fleeing from justice were also quite remote and that there were no allegations against the respondent that anything used in the commission of the offence was to be recovered at the instance of the respondent.

128. As observed in ***Sajjan Kumar v. State*** 43 1991 DLT 88 by this Court the basic rule is 'bail not jail' except where there are circumstances suggestive of an accused fleeing from justice or throttling the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like.

129. The verdict of this Court in ***Sajjan Kumar V. State (Through CBI)*** in Bail application No.306/2016 dated 26.10.2010 in which the aspect of re-registration of FIR 250/1984, 347/1991, 307/.94 PS Sultanpuri and FIR 416/84 PS Delhi Cantt. was ordered on 24.10.2005, in which the charge sheets were submitted after the case having been submitted untraced, in which the CBI therein had contended that new witnesses had come forward witnessing the incidents of arson and killing after the closure report had been filed

and duly accepted by the Metropolitan Magistrate and wherein the accused had even been acquitted for want of evidence, it was contended on behalf of the accused that the fresh prosecution on the same facts having been launched and where the name of the accused had for the first time surfaced before the Jain Banerjee Committee which recommended registration of the case, and that some of the witnesses who had earlier not named the accused which showed that they had improved their version and that the witnesses had surfaced after a lapse of 25 years, it was observed by this Court that the delay in making the statements was required to be explained during trial and veracity of these witnesses had to be tested when they appear in the witness-box and it was held that in that case there was a delay of 25 years from the date of incident when the prayer of the respondent herein seeking anticipatory bail was opposed and it was observed that it would not be justifiable to detain the appellant in custody after a lapse of 25 years of taking incident.

130. The contention of the CBI in that case relied upon on behalf of the respondent herein was that the accused were involved in serious offences of arson, killing and rioting and the specific contentions raised on behalf of the CBI were to the effect:

> ***"26…….…….. Petitioner Sajjan Kumar (****i.e. the very same respondent herein)* ***had organized a mob and targeted the persons of Sikh community; instigated the said mob to kill and burn the houses of members of Sikh community. The incident of arson, looting, killing of male members of Sikh community was perpetrated in a barbaric, inhuman and cold***

blooded manner, as a consequence whereof victims were isolated, felt insecure, threatened and at that time had no courage to go before the investigating agency or the court to make a statement against the culprits. Some of the close relatives of the deceased persons had migrated to Punjab. They had no courage to return to Delhi, so as to make a statement before the court or the investigating agency. With the passage of time they mustered up the courage and approached the Commission and filed their affidavits. All these years the truth was not allowed to come to surface which shows the pervading influence which the local administration had over the whole matter, as petitioner Sajjan Kumar was holding high political position. Accordingly, delay of 25 years in this case will be of no consequence."

131. Undoubtedly, in the case relied upon on behalf of the respondent, the respondent had already been acquitted in the said case and witnesses had also been examined during trial but on re-registration of the case during investigation some of the witnesses who were common in the earlier FIR again made statements implicating the respondent accused, i.e., respondent herein and it was observed by this Court that the new witnesses would have to explain as to why they did not come forward earlier during the trial and though their statements could not be brushed aside as they had to explain during trial as to why they did not depose against the accused on earlier several occasions and that 25 years had gone by and this delay undoubtedly tilted the balance in favour of the accused at least for the purpose of grant of bail to them. This Court also did not

accept the contentions of the CBI in that case that the release of the accused therein, i.e. the very same respondent to the present petition, being enlarged on bail would hamper the fair trial and that witnesses may not depose against the petitioner due to fear and threat was not accepted by this Court, it having been observed vide para 30 thereof to the effect:

> ***"30. I do not find much force in the contentions of learned senior counsel that in case petitioners are enlarged on bail it will hamper fair trial and witnesses may not depose against the petitioners due to the fear and threat. Admittedly all along for the last 25 years petitioners have remained at large as they were not in custody. CBI conducted investigation almost for about five years. During this period, CBI did not deem it fit to arrest any of the petitioners. In spite of petitioners bearing at large, witnesses came forward and made statements before the CBI. There is no specific allegation against the petitioners of having threatened or influenced any of the witnesses, so as to refrain any of them from making statement against them. Besides this, it is evident from the facts narrated herein above that after the unfortunate and appalling incident that relatives of the family members of the victims were not left alone to fend for themselves as members of various Commission/Committees including eminent jurists had been visiting the affected areas and even met the families of the victims residing in camps and interacted, counselled, encouraged, offered support to them right from the beginning.***

31. Indeed, it is true, that offence with which petitioners have been charged by the CBI is of grave nature and ordinarily in such cases courts would be slow in admitting the accused on anticipatory bail, in the face of statements of eye witnesses. However, in the peculiar facts and circumstances of this case and for the reasons as mentioned in the preceding paras hereinabove, I am of the view that it would not be justifiable to detain the petitioners in custody, after lapse of 25 years of incident.

32. Accordingly, it is ordered that in the event of their arrest, petitioners shall be released on bail, subject to furnishing personal bond in the Sum of Rs.50,000/- each with one surety in the like amount to the satisfaction of Investigating Officer/Arresting Officer/SHO."

132. The appeal against this order to the Supreme Court of India was declined in Crl.M.P. No.(S). 6021/2010 observing to the effect:

"Heard Mr.Anil B. Divan and Mr.Ravi Shankar Parsad, Senior Advocates appearing for the petitioner.

Permission to file SLPs is granted.

In view of the reasons stated in the impugned order, we are not inclined to interfere with the same. We make it clear that the observation and conclusion arrived by the High Court are confined only for the disposal of the anticipatory bail. At the time of the trial the court concerned is free to decide the issue on the basis of the materials placed and uninfluenced by any of the observation made in the impugned order."

133. The verdict of the Hon'ble Supreme Court in Badresh Bipinbhai Seth V. State of Gujarat and Anr.; (Cr.Appeal No.1134-1135/2015) reiterates the factors and parameters delineated by the Supreme Court in Siddharam Salingappa Mhetre v. State of Maharashtra: (2011) 1 SCC 694 which need to be taken into consideration while dealing with the aspect of grant or rejection of anticipatory bail as under :-

> *(a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*
>
> *(b) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence.*
>
> *(c) The possibility of the applicant to flee from justice;*
>
> *(d) The possibility of the accused's likelihood to repeat similar or other offences;*
>
> *(e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;*
>
> *(f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;*
>
> *(g) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should*

consider with even greater care and caution, because over implication in the cases is a matter of common knowledge and concern;

(h) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(i) The court should consider reasonable apprehension of tapering of the witness or apprehension of threat to the complainant;

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

134. The following observations of the Apex Court in **Badresh Bipinbhai Sheth (Supra)** are germane and relevant to the instant case:

"25.3 It is imperative for the courts to carefully and with meticulous precision evaluate the facts of the case. The discretion to grant bail must be exercised on the basis of the available material and the facts of the particular case. In cases where the court is of the considered view that the accused has joined the investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided. A great

ignominy, humiliation and disgrace is attached to arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-conviction stage or post-conviction stage.

25.4 There is no justification for reading into Section 438 CrPC the limitations mentioned in Section 437 CrPC. The plentitude of Section 438 must be given its full play. There is no requirement that the accused must make out a "special case" for the exercise of the power to grant anticipatory bail. This virtually, reduces the salutary power conferred by Section 438 CrPC to a dead letter. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints and conditions on his freedom, by the acceptance of conditions which the court may deem fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

25.5 The proper course of action on an application for anticipatory bail ought to be that after evaluating the averments and accusations available on the record if the court is inclined to grant anticipatory bail then an interim bail be granted and notice be issued to the Public Prosecutor. After hearing the Public Prosecutor the court may either reject the anticipatory bail application or confirm the initial order of granting bail. The court would certainly be entitled to impose conditions for the grant of anticipatory bail. The Public Prosecutor or the complainant would be at liberty to move the same court for cancellation or modifying the conditions of anticipatory bail at any time if liberty granted

by the court is misused. The anticipatory bail granted by the court should ordinarily be continued till the trial of the case.

25.6 It is a settled legal position that the court which grants the bail also has the power to cancel it. The discretion of grant or cancellation of bail can be exercised either at the instance of the accused, the Public Prosecutor or the complainant, on finding new material or circumstances at any point of time.

25.7……
……
……

25.8 Discretion vested in the court in all matters should be exercised with care and circumspection depending upon the facts and circumstances justifying its exercise. Similarly, the discretion vested with the court under Section 438 CrPC should also be exercised with caution and prudence. It is unnecessary to travel beyond it and subject the wide power and discretion conferred by the legislature to a rigorous code of self-imposed limitations."

CONCLUSION

135. The available records indicate that pursuant to the impugned orders the respondent has made himself available for investigation and it has been submitted on his behalf that he shall continue to do so.

136. On a consideration of the totality of the circumstances put forth it is held that presently, there are no grounds made out by the petitioner for cancellation of anticipatory bail granted vide orders

dated 21.12.2016 in Bail Appln. 14072/2016 in relation to FIR 227/92 Police Station Janakpuri and Bail Appln. 14073/2016 in relation to FIR No.262/92 Police Station Vikaspuri granted by the ASJ-01, Dwarka Courts, New Delhi. The prayer made by the petitioner to that extent is disallowed.

137. However, the respondent shall not ask **for** a questionnaire from the SIT to answer to its queries during investigation, subject to protections enshrined under Article 20(3) of the Constitution of India. Furthermore, the respondent shall comply with all conditions imposed on him vide the impugned orders dated 21.12.2016 at the time of the grant of the anticipatory bail in FIR No.227/1992 Police Station Janakpuri and FIR No.264/1992 Police Station Vikaspuri.

138. A prayer is made by the petitioner seeking expunction of observations made in para 24 and 26 of the impugned orders dated 21.12.2016 which paragraphs are identical in both the impugned which paragraphs 24 and 26 read to the effect:

> ***"24. The submission of the ld.Counsel for the applicant that the case has been re-opened for political consideration just to falsely implicate the applicant also cannot be ignored and makes out a ground for anticipatory bail to the applicant.***
>
> ***25. …….***
>
> ***26. There can be no dispute with regard to ratio laid down by the Hon'ble Supreme Court of India in the matter of Jai Prakash Singh's case (Supra) regarding the principles for grant of anticipatory bail relied upon by the ld.cousnel for SIT. In the present case also, exceptional***

circumstances have been made out for grant of anticipatory bail as there is prima facie material to show that the applicant has been falsely enroped in the crime in question after 32 years of the incident and his chance of mis-using the liberty is also non-existent,

139. That the High Court can in the exercise of its inherent jurisdiction may expunge remarks made by it or by the Court over which it exercises supervisory, appellate and revisional jurisdiction, if it be necessary to do so to prevent abuse of the process of the Court or otherwise to secure the ends of justice is laid down by the Hon'ble Supreme Court in its verdict dated 15.3.1963 in the ***The State of Uttar Pradesh v. Mohammad Naim***;, AIR 1964 SC 703 which also lays down that this jurisdiction is of an exceptional nature and has to be exercised in exceptional cases only. It has also been observed by the Apex Court in its verdict that :

"if there is one principle of cardinal importance in the administration of justice, it is this: the proper freedom and independence of judges and Magistrates must be maintained and they must be allowed to perform their functions freely and fearlessly and without undue interference by anybody, even by this court. At the same time it is equally necessary that in expressing their opinions judges and Magistrates must be guided by considerations of justice, fair play and restraint. It is not infrequent that sweeping generalizations defeat the very purpose for which they are made.

It has been judicially recognized that in the matter of making disparaging remarks against persons or authorities whose conduct

comes into consideration before courts of law in cases to be decided by them, it is relevant to consider

(a) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself; (b) whether there is evidence on record bearing on that conduct justifying the remarks; and (c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct. It has also been recognised that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve."

140. The ratio of these observations were referred to in ***R.K.Laxmanan v. A.K. Srinivasan and Anr***.; [1976] 1 S.C.R. 204 and in the verdict of Apex Court in ***Niranjan Patnaik v. Shashibhusan Kar and Anr***.; AIR 1986 SC 819, wherein it was observed vide paragraph 24 to the effect:

> ***"It is, therefore, settled law that harsh or disparaging remarks are not to be made against persons and authorities whose conduct comes into consideration before courts of law unless it is really necessary for the decision of the case, as an integral part thereof to animadvert on that conduct. We hold that the adverse remarks made against the appellant were neither justified nor called for.",***

whilst also adverting to the observations ***in Panchanan Banerji v. Upendra Nath Bhattacharji***, A.I.R. 1927 Allahabad 193 Sulaiman, J. held as follows :

> ***"The High Court, as the supreme court of revision, must be deemed to have power to see that Courts below do not unjustly and without any lawful excuse take away the character of a party or of a witness or of a counsel before it."***

141. The verdict of the Supreme Court in Abani Kami Ray v. State of Orissa and Ors.; 1995(6) SCALE 41 also observes to the effect:

> ***"What we have said above is nothing new and is only a reiteration of the established norms of judicial propriety and restraint expected from everyone discharging judicial functions. Use of intemperate language or making disparaging remarks against any one unless that be the requirement for deciding the case, is inconsistent with judicial behaviours. Written words in judicial orders for permanent record which make it even more necessary to practice self-restraint in exercise of judicial power while making written orders. It is helpful to recall this facet to remind ourselves and avoid pitfalls arising even from provocation."***

142. As regards the observations in para 26 of the impugned orders, it is essential to observe that the observations to the effect:

> ***"****In the present case also, exceptional circumstances have been made out for grant of anticipatory bail as there is* ***prima facie material to show that the applicant has been falsely enroped in the crime in question after 32 years of the incident and his chance of mis-using the liberty is also non-existent."***

have essentially to be expunged as without completion of investigation, it could not have been concluded by the learned ASJ-01,

Dwarka Courts that there was prima facie material to show that the applicant, i.e., the respondent to the present petitioner, has been falsely enroped in the crime in question after 32 years of the incident and his chance of misusing the liberty was also non-existent. This is so inasmuch as the recommendations for the re-investigation in the instant cases was on the basis of the recommendations of the Justice G.P.Mathur Committee report whereafter vide order dated 12.2.2015 the Government of India, Ministry of Home Affairs had constituted a Special Investigation for investigating/re-investigating the cases of the 1984 riots and to take all such measures under the Law for a thorough investigation of the criminal cases and to file the charge sheet against the accused in the proper Court where after investigation sufficient evidence was found available. The SIT was constituted by the Ministry of Home Affairs, Government of India vide No. 13018/13/-Delhi-I (NC) dated 12.02.2015 for re-investigation of the communal cases which were filed in the NCT of Delhi in connection with the 1984 riots and investigation in these cases was taken up thereafter by the SIT (1984 riots) a notified police station having jurisdiction over the whole of the NCT of Delhi by the Lt. Governor of Delhi vide GNCT Delhi Notification – Notification No. 6/13/2015-2129 to 2131 dated 09.07.2015. In these circumstances, the observations in para 26 of the impugned orders to the effect:

> *"In the present case also, exceptional circumstances have been made out for grant of anticipatory bail as there is* ***prima facie material to show that the applicant has been falsely enroped in the crime in question after 32 years***

of the incident and his chance of mis-using the liberty is also non-existent."

are expunged.

143. In para 24 of the impugned orders also, which states to the effect i.e. the submission of the ld. Counsel for the applicant that the case has been re-opened for political consideration just to falsely implicate the applicant also cannot be ignored and makes out a ground for anticipatory bail to the applicant, which accepts the contention of the respondent herein that the cases have been re-opened for political consideration just to falsely implicate him and that this fact cannot be ignored and makes out a case of grant of bail, have essentially to be expunged, and are accordingly expunged as the learned Trial Court could not have pre-judged the issues involved.

144. The petitions CRL.M.C. 338/2017 and CRL.M.C. 339/2017 are disposed of accordingly. The copies of the statements under Section 161 of the Code of Criminal Procedure, 1973 filed by the State during the course of submissions made are directed to be placed in a sealed cover as the State has requested for withholding the identities of the witnesses examined other than the complainant. The Case Diary submitted by the SIT on 12.12.2017 is hereby directed to be returned to the Investigating Agency, the SIT.

ANU MALHOTRA, J

FEBRUARY 22nd, 2018
MK/SV