

# **Rinku Geda Alias Manish Gupta vs State Of U.P. on 20 February, 2025**

**Author: Samit Gopal**

**Bench: Samit Gopal**

HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2025:AHC:25176

Reserved on : 21.01.2025

Delivered on : 20.02.2025

Court No. - 78

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42975 of 2024

Applicant :- Rinku Geda Alias Manish Gupta

Opposite Party :- State of U.P.

Counsel for Applicant :- Atharva Dixit,Tarun Jha

Counsel for Opposite Party :- G.A.

with

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 26984 of 2024

Applicant :- Bobby Gaida @ Sandeep Gupta

Opposite Party :- State of U.P.

Counsel for Applicant :- Ayush Mishra,Mohd. Afzal,Prabha Shanker Mishra,Vijay Singh Seng

Counsel for Opposite Party :- Deepak Dubey,G.A.

with

Case :- APPLICATION U/S 482 No. - 16379 of 2024

Applicant :- Rinku Gaida @ Manish Gupta And Another

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Anushriya Tripathi,Ashok Nath Tripathi,Rakesh Nath Tripathi

Counsel for Opposite Party :- Deepak Dubey,G.A.

Hon'ble Samit Gopal, J.

1. These two connected bail applications are of co-accused persons and as such are being decided by a common order.

2. Heard Sri Manish Tiwari, learned Senior Advocate assisted by Sri Atharva Dixit, learned counsel for the applicant-accused Rinku Geda @ Manish Gupta, Sri Prabha Shankar Mishra and Sri Vijay Singh Sengar, learned counsels for the applicant-accused Bobby Gaida @ Sandeep Gupta, Sri Deepak Dubey, learned counsel for the first informant in both the matters and Sri Ajay Singh, learned AGA-I for the State in both the matters and perused the records.

3. The First Information Report of the present matter was lodged on 21.07.2018 at 21:57 hours by Sanchit Verma against Sonu Geda, Rinku Geda, Bobby Geda, Angad Gurjar, Prahlad Gurjar, Udham Gurjar, Rajendra Gurjar, Shivam Gurjar and Pushpendra Gurjar for offences under Sections 147, 148, 149, 302, 307, 506 I.P.C. for an incident which took place on 21.07.2018 at about 1:30 hours with the allegation that he and his father Sanjay Verma went to the District Court on 21.07.2018 at about 11.00 AM. Date in the matter of his father was fixed in the court of District Judge, Jhansi and one date was fixed in the court of Civil Judge (Junior Division). His father after attending the date in the court came out at about 1:30 PM and was going on his Pajero Sports vehicle having registration No. UP-93-AN 6301 which was being driven by Ravi Verma. Along with his father his security personnel Jai Goswami resident of Jhansi, Sunil Kushwaha resident of Jhansi were also present. After that the first informant was following them on his motorcycle which was being driven by Ajay Soni. As soon as the vehicle of his father reached the crossing and started moving towards the bus stand a truck was standing there near a temple since before having registration No. UP-93 T 8047 and a loader having No. UP 93T 3437 was also standing, the shelter of which was taken by the accused who all of a sudden exhorted along with 2-3 unknown persons having country-made pistols in their hand and resorted to indiscriminate firing after surrounding them from all sides. From firing the driver received injury and thus the vehicle rammed in the loader & truck standing there and from the firing his father, Sanjay Verma and all persons sitting in the vehicle received serious and fatal injuries. The incident was seen by the first informant, Gaurav Verma and other persons.

The assailants while resorting to firing in the air and extending threats ran towards the bus stand on their motorcycles. There was lot of commotion at the place and fear spread in the area after which they closed their establishments and ran away. The people on the road also ran away. The injured were immediately taken to medical college Jhansi by the first informant and the other persons where they are being treated. At the time of they being admitted in the hospital the doctor declared Jai Goswami to be dead. Rinku Geda, Sonu Geda, Sardar Singh and others had murdered Ajay Verma his chacha in which the Allahabad High Court had affirmed their conviction and Maan Singh had filed a writ in Supreme Court which was dismissed and the pairvi of the said matters was done by his father due to which the accused persons many times earlier also in a planned manner tried to attack him but did not succeed but today the accused persons together in a daylight manner attacked his father. A report be lodged and action be taken. Deepak Kumar Soni was the scribe of the written report.

4. Jai Prakash Goswami is the deceased in the matter. His postmortem examination was conducted on 22.07.2018 at 11:45 AM. In his postmortem report the doctor has noted that he was brought dead on 21.07.2018 at 2:30 PM in Medical College Emergency, Jhansi. The injuries as noted in the postmortem examination are under the head "Gun Shot Injuries" which in total are reported as 11 injuries. A perusal of the same would go to show that the injury nos. i to viii are wounds of entry and the injury nos. ix to xi are exit wounds. Metallic pellets were recovered from the dead body of the deceased which are noted in the postmortem examination report to be sealed and are noted to be seven in number. The cause of death has been opined as shock & haemorrhage due to ante-mortem gun shot injury.

5. Three persons namely Sanjay Verma, Ravi Verma and Sunil Kushwaha are the injured persons in the present incident. Sanjay Verma was found to have received a single injury. Ravi Verma was found to have received two injuries on his body being on the back of skull mid area and the other on the left upper limb at wrist and both the injuries were opined to be due to firearm injuries. Sunil Kushwaha was found to have received three injuries on his body being at the right nipple left side, back right mid area and right wrist left laterally and all the injuries were opined to be due to firearm injuries.

6. The investigation concluded with filing a charge sheet against co-accused Rajendra Gurjar being charge sheet No. 311/2018, under Sections 147, 148, 149, 302, 307 IPC but the investigation was kept pending with regards to other accused persons. Subsequently, a supplementary charge sheet was submitted against Prahlad Gurjar, Sagar Rana and Rohit @ Rohitas on 12.11.2018 and the investigation was kept pending for other accused persons.

7. The Investigating Officer vide Parcha No. SCD 40-A dated 16.02.2019 came to the conclusion that the applicants were present in the city of Bhopal on the date and time of the present incident. In Parcha No. SCD 42 dated 25.02.2019 a conclusion were drawn regarding the non involvement of the applicants. The investigation in the matter was transferred and again the Investigating Officer in Parcha No. SCD 75A dated 01.10.2019 came to the conclusion that the applicants were not involved in the matter and exonerated them from the array of accused persons. The investigation was then transferred to the CBCID, Kanpur Division, Kanpur who closed its investigation vide Parcha dated

29.01.2021 and affirmed the opinion as submitted by the police. A protest petition was then filed by the first informant with the prayer that Rinku Geda @ Manish Gupta and Bobby Gaida @ Sandeep Gupta be summoned for offence punishable under Sections 147, 148, 149, 302, 307, 504, 506, 120-B IPC. The said protest petition was rejected vide order dated 26.10.2021 passed by the court concerned. The said order was challenged before the Sessions Judge, Jhansi in Criminal Revision No. 3 of 2022 (Sanchit Verma Vs. State of U.P. and 2 others) which was got dismissed as withdrawn vide order dated 03.01.2022. Thereafter, the trial in the matter started with regards to the charge sheeted accused being Session Trial No. 227 of 2018 (State of U.P. Vs. Rajendra Gurjar and others) before the Sessions Judge, Jhansi in which four witnesses were examined.

8. An application dated 15.07.2023 was then moved under Section 319 Cr.P.C. for summoning the applicants on which vide order dated 24.08.2023 passed by the Sessions Judge, Jhansi, the applicants were summoned under Sections 147, 148, 149, 302, 307, 506 IPC to face trial. Against the said order summoning dated 24.08.2023, the said accused persons preferred a Criminal Revision No. 4793 of 2023 (Rinku Gaida @ Manish Gupta and another Vs. State of U.P. and another) before this Court which was dismissed vide order dated 21.02.2024 passed by a co-ordinate Bench. The said order reads as under:

"1. Heard Sri Amit Daga, learned counsel for the revisionists, learned A.G.A. for the State, Sri Deepak Dubey, learned counsel appearing on behalf of opposite party no. 2 and perused the record.

2. This criminal revision has been filed by the revisionists against the order dated 24.08.2023, passed by Sessions Judge, Jhansi in Sessions Trial No. 227 of 2018 (State of U.P. vs. Rajendra Gurjar and others), arising out of Case Crime No. 344 of 2018, under Sections 147, 148, 149, 302, 307, 506 I.P.C., Police Station Nawabad, District Jhansi by which the application filed by informant under Section 319 Cr.P.C. was allowed and the revisionists were summoned to face trial.

3. Brief facts of the case are that the informant opposite party no. 2 had lodged the first information report against 9 accused persons including revisionists with the allegations that on 21.07.2018 at about 01:30 P.M., the father of informant was coming from district court after attending the date of his case by Pajero Sport bearing no.UP-93/AN-6301. The vehicle was driven by Ravi Verma and security persons Jai Goshwami and Sunil Kushwaha were also accompanying with his father. When they reached near the temple, the accused persons who were armed with Katta and pistol had opened fire and his father and other persons who were travelling in the vehicle had received gun shot injuries. This incident was witnessed by informant, Ajay Sony, Gaurav Verma and Prateek Verma. The first information report was registered as Case Crime No. 344 of 2018, under Sections 147, 148, 149, 302, 307, 506 I.P.C. The Investigating Officer has recorded the statement of informant and other witnesses under Section 161 Cr.P.C. and all the witnesses of prosecution have supported the prosecution case. The Investigating Officer after completion of investigation has submitted charge sheet against seven named accused persons and the revisionists

Rinku Gaida @ Manish Gupta and Bobby Gaida @ Sandeep Gupta were exonerated.

4. During trial, the informant appeared as PW-1 and has supported the prosecution case. The other two injured witnesses namely Sanjay Verma (PW-2) and Ravi Verma (PW-3), have also supported the prosecution case. All the three witnesses produced by the prosecution have named both the revisionists Rinku Gaida and Bobby Gaida in their statements that they were also accompanied with other accused persons and participated in committing the crime.

5. After the statements of PW-1, PW-2 and PW-3, the informant through Additional District Government Advocate (Criminal) has moved the application under Section 319 Cr.P.C. which is Paper No. 119A on the ground that the involvement of revisionists in the incident are fully established by the prosecution witnesses and they were also named in the first information report and the Investigating Officer with the collusion of revisionists has exonerated them and no charge sheet has been submitted against the revisionists.

6. The application was opposed by the learned counsel for the accused persons on the ground that the proposed accused persons were not present at the place of incident and have not participated in the crime as alleged by the prosecution. The plea of alibi was also taken by the learned counsel for the accused persons that the proposed accused persons were present some where else and have not committed any offence as alleged by the prosecution.

7. The learned trial court after considering the statements of PW-1, PW-2 and PW-3 and other materials which are available on record had found that there are specific allegations against the revisionists regarding their participation in the crime and their presence on the spot was fully established by the prosecution witnesses, had summoned them vide order dated 24.08.2023 by allowing the application filed under Section 319 Cr.P.C.

8. It is submitted by learned counsel for the revisionists that the revisionists were not present at the place of incident and have not participated in committing any crime and Investigating Officer after due investigation has not found the presence of revisionists at the place of incident and as such, has rightly exonerated the revisionists and charge sheet was not submitted against them. The Investigating Officer during investigation has obtained C.D.Rs. of mobile phones of both the revisionists and has arrived at the conclusion that the mobile locations of the revisionists were not at the place of occurrence at the time of incident and none of the revisionists had made any conversation on mobile numbers of other co-accused persons. It is further submitted that revisionist namely Rinku Gaida @ Manish Gupta was in Bhopal on the date of incident and CCTV footage was also obtained by Investigating Officer, which proves that on the date of incident, revisionist Rinku Gaida @ Manish Gupta had withdrawn money from A.T.M. Lastly, it is submitted

that the Investigating Officer during investigation had recorded the statements of independent witnesses, who also stated in their statements under Section 161 Cr.P.C. that the revisionists were in district Bhopal on the date and time of incident. Learned counsel for the revisionists further submits that both the revisionists were not present at the place of incident and on account of previous enmity, they have been named in the first information report. The presence of revisionists at the place of incident was not proved as they were in district Bhopal on the date of incident and the Investigating Officer after conducting fair investigation has found no evidence regarding participation of revisionists in the crime as alleged in the first information report, has exonerated the revisionists from any offence and submitted charge sheet against other seven named accused persons. Lastly, it is submitted that the involvement of revisionists in the present case has not been proved by the prosecution by adducing cogent evidence and the trial court has committed gross illegality in allowing the application filed under Section 319 Cr.P.C.

9. On the other hand, learned counsel appearing on behalf of opposite party no. 2 submits that both the revisionists were named in the first information report and specific role of firing has been assigned to them. The informant and other injured witnesses who appeared as P.W.-1, P.W.-2 and P.W.-3 have supported the prosecution case and named the revisionists with specific role. It is further submitted that the plea of alibi as claimed by the revisionists has rightly been denied by the learned trial court. The plea of alibi by the revisionists is only on the basis of call details and report of C.D.R. of the revisionists which can not be considered at the stage of summoning under Section 319 Cr.P.C., as the same is an electronic evidence which as per Section 3 of the Evidence Act would be certified by an expert under Section 65-B of the Evidence Act, which is required to be certified after the prosecution evidence.

10. Before considering the merits of the contention of rival parties it is necessary to refer Section 319 Cr.P.C. which reads as under:-

"319. Power to proceed against other persons appearing to be guilty of offence.

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub- section (1), then-

(a) the proceedings in respect of such person shall be commenced a fresh, and the witnesses re- heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced."

11. By bare reading of Section 319 Cr.P.C. it is clear that the power under Section 319 Cr.P.C. can be exercised by the trial court at any stage during trial to summon any person as an accused to face trial, if it appears from the evidence that such person has committed any offence for which such person could be tried together with other accused.

12. The provisions of Section 319 Cr.P.C. have been enacted in the Code of Criminal Procedure with a view to achieve objective that the real culprit should not get away unpunished and the court is empowered to proceed against any person not shown as an accused, if it appears from the evidence that such person has committed any offence then he may be summoned to face the trial along with other co-accused.

13. The Full Bench of Hon'ble Apex Court in the case of Hardeep Singh Vs. State of Punjab and others reported in 2014 (1) JIC 539 (SC) has laid down the principles in respect of summoning the persons who were not charge-sheeted during investigation but from the evidence they were found guilty for committing such an offence. The relevant paragraphs 96, 97, 107, 108 are quoted hereunder:-

"96. At the time of taking cognizance, the court has to see whether a prima facie case is made out to proceed against the accused. Under Section 319 Cr.P.C., though the test of prima facie case is the same, the degree of satisfaction that is required is much stricter. A two- Judges Bench of this Court in *Vikas v. State of Rajasthan*, 2013 (11) SCALE 23, held that on the objective satisfaction of the court a person may be 'arrested' or 'summoned', as the circumstances of the case may require, if it appears from the evidence that any such person not being the accused has committed an offence for which such person could be tried together with the already arraigned accused persons.

97. In *Rajendra Singh* (Supra), the Court observed:

"Be it noted, the court need not be satisfied that he has committed an offence. It need only appear to it that he has committed an offence. In other words, from the evidence it need only appear to it that someone else has committed an offence, to exercise jurisdiction under Section 319 of the Code. Even then, it has a discretion not to proceed, since the expression used is "may" and not "shall". The legislature apparently wanted to leave that discretion to the trial court so as to enable it to

exercise its jurisdiction under this section. The expression "appears" indicates an application of mind by the court to the evidence that has come before it and then taking a decision to proceed under Section 319 of the Code or not."

107. Power under Section 319 Cr.P.C. is a discretionary and an extra-ordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

108. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court not necessarily tested on the anvil of Cross-Examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C. the purpose of providing if 'it appears from the evidence that any person not being the accused has committed any offence' is clear from the words "for which such person could be tried together with the accused." The words used are not 'for which such person could be convicted'. There is, therefore, no scope for the Court acting under Section 319 Cr.P.C. to form any opinion as to the guilt of the accused."

14. The power of trial court under Section 319 Cr.P.C. in respect to arraign any person as an accused during the course of enquiry or trial is also dealt with by Hon'ble the Apex Court in the case of Babubhai Bhimabhai Bokhiria and another Vs. State of Gujarat and others, reported in (2014) 5 SCC 568. The relevant paragraph 8 is quoted hereunder:-

"8. Section 319 of the Code confers power on the trial court to find out whether a person who ought to have been added as an accused has erroneously been omitted or has deliberately been excluded by the investigating agency and that satisfaction has to be arrived at on the basis of the evidence so led during the trial. On the degree of satisfaction for invoking power under Section 319 of the Code, this Court observed that though the test of prima facie case being made out is same as that when the cognizance of the offence is taken and process issued, the degree of satisfaction under Section 319 of the Code is much higher."

15. The Hon'ble Apex Court in the case of Darshan Singh Vs. State of Punjab reported in (2016) 3 SCC 37, has held that the plea of alibi is required to be proved after prosecution evidence is over. The relevant para 17 is quoted herein below:-

"17. The word alibi means "elsewhere". The plea of alibi is not one of the General Exceptions contained in Chapter IV IPC. It is a rule of evidence recognised under Section 11 of the Evidence Act. However, plea of alibi taken by the defence is required



to be proved only after prosecution has proved its case against the accused. In the present case the said condition is fulfilled."

16. The pleas of alibi of the revisionists on the basis of Call Detail Reports of mobiles of revisionists can not be considered at the stage of summoning under Section 319 Cr.P.C., as the same is an electronic evidence, which as per Section 3 of Evidence Act would needed to be certified by an expert under Section 65B of Evidence Act, which is required to be certified after the prosecution evidence is over.

17. Considering the rival submissions of the learned counsels for the parties and on perusal of record, it is apparent that both the revisionists were named in the first information report and the informant and two injured witnesses had levelled specific allegations against the revisionists regarding their participation in committing the crime. The trial court has not committed any illegality or irregularity in allowing the application under Section 319 Cr.P.C.

18. No ground for interference is made out. The criminal revision is devoid of merits and is liable to be dismissed.

19. Criminal revision is dismissed accordingly. Interim order, if any, stands discharged."

9. Against the order dated 21.02.2024 a Special Leave to Appeal (Criminal) No. 3405 of 2024 (Rinku Gaida @ Manish Gupta and another Vs. State of U.P. and another) was preferred before the Apex Court which was also dismissed vide order dated 15.03.2024. The said order reads as under:

"We find no reason to interfere with the impugned order.

The Special Leave Petition is dismissed.

However, we make it clear that the observations made in the impugned order and also by the trial Court will have no bearing on the trial.

Pending applications stand disposed of."

10. The present applicants thus stand as an accused in the present case subsequent to their summoning under Section 319 Cr.P.C.

11. Learned counsel for the applicant-accused Rinku Geda @ Manish Gupta submitted as under:

i) The applicant has been falsely implicated in the present case.

ii) Despite the matter being investigated three times the applicant was exonerated in the present matter. Subsequent to filing of a protest petition being rejected and a revision against the said order being dismissed as withdrawn, the application U/s 319Cr.P.C. was filed on which the applicant has been summoned.

iii) The order summoning the applicant has although been upheld by this Court and the Apex Court but the fact that the applicant was not present at the place of occurrence and was in the city of Bhopal in Madhya Pradesh, is a fact which was found during investigation.

iv) The applicant-accused who has to be summoned under Section 319 Cr.P.C. has to be seen as an accused on more than prima facie evidence and there has to be something more than mere allegations which would in the present matter in no manner show that the applicant is involved.

v) The applicant is having a criminal history of five cases which have been disclosed and explained in para 76 of the affidavit.

vi) The alleged injured Sanjay Verma is a person of criminal antecedents and has a criminal history of 11 cases, para 71 of the affidavit has been placed to disclose the criminal history of Sanjay Verma.

vii) The applicant is in jail since 22.08.2024.

12. Learned counsel for the applicant-accused Bobby Gaida @ Sandeep Gupta adopted the arguments of learned counsel as raised in the case of Rinku Geda @ Manish Gupta. In addition it was submitted while placing para 78 of the affidavit of the bail application of Bobby Gaida @ Sandeep Gupta that he has been implicated in four other criminal cases which are disclosed and explained in it. The applicant is in jail since 05.06.2024. It is submitted that the applicant be thus released on bail.

13. Learned counsel for the first informant vehemently opposed the prayers for bail of both the accused-applicants and submitted as under:

i) The applicants are named in the First Information Report along with other accused persons and have been assigned the role of indiscriminate firing due to which one person received injuries and died and three persons received serious injuries and are the injured in the present matter.

ii) The applicants have motive to commit the aforesaid offence which is also disclosed in the FIR.

iii) The applicant-accused Bobby Gaida @ Sandeep Gupta had absconded in the present matter for about one year. The details are as under:

(a) During investigation non bailable warrants were issued against him since 27.10.2018 and proceedings under Section 82 Cr.P.C. were issued.

(b) Subsequently, final report dated 01.10.2019 submitted by the CBCID but he was summoned vide order dated 24.08.2023.

(c) Various challenges were made to the summoning order and lastly vide order dated 15.03.2024 the Apex Court dismissed the said challenge.

(d) He then preferred a 482 petition before this Court and was granted three weeks time to surrender and it was ordered that there would be no coercive measure against him vide order dated 17.05.2024.

iv) While being in jail, the applicants and two other persons namely Sumit Yadav and Amit Yadav indulged in criminal activities and as such a First Information Report as Case Crime No. 0584 of 2024, under Sections 126(2), 352, 109, 121(2), 132 BNS, 2023, P.S. Navabad, District Jhansi was lodged by Kasturilal Gupta against Sumit Yadav, Amit Yadav and two unknown persons.

v) Subsequently, Narendra Pateriya lodged a First Information Report on 10.01.2025 as Case Crime No. 0009 of 2025, under Sections 115(2), 352, 351(3), 308(5), 61(2) of BNS, 2023 against Kamlesh Yadav, Sonu Gaida @ Sachin Gupta, Bobby Gaida @ Sandeep Gupta, Amit Yadav and Sumit Yadav.

vi) While placing para 24 of the judgment of the Apex Court in the case of Jaibunisha Vs. Meharban and another : Criminal Appeal No. 76 of 2022, decided on 18th January, 2022 it is submitted that the Apex Court has held that abscondence by the accused and not following the order of the trial court is a gross violation of the Courts order and Rule.

vii) Bail of co-accused Sonu Gaida @ Sachin Gupta has been rejected by this Court vide order dated 17.12.2024 passed in Crl. Misc. Bail Application No. 54722 of 2023 (Sonu Gaida @ Sachin Gupta Vs. State of U.P.), copy of the order has been placed before the Court which reads as under:

"1. Heard Sri Kumar Kartikeya and Sri Arunendra Kumar Singh, learned counsels for the applicant, Sri Deepak Dubey, learned counsel for the first informant and Sri Ajay Singh, learned A.G.A.-I for the State and perused the material on record.

2. This second bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant- Sonu Gaida alias Sachin Gupta, seeking enlargement on bail during trial in connection with Case Crime No. 344 of 2018, under Sections 147, 148, 149, 302, 307, 506, 120-B I.P.C., Police Station Nawabad, District Jhansi.

3. Before advertng to facts of the matter some previous history of the case is important which is referred to herein at the very outset.

4. The applicant was initially granted bail in the present case by another Bench of this Court vide order dated 18.11.2021 passed in Criminal Misc. Bail Application No. 13264 of 2021 (Sonu Geda @ Sachin Gupta Vs. State of U.P.). The said order reads as under:-

"Counter affidavit filed on behalf of opposite party, is taken on record.

Heard Sri V.P. Srivastava, learned Senior Advocate assisted by Sri Amit Daga, learned counsel for the applicant, Sri Deepak Dubey, learned counsel for the opposite party and learned AGA for the State.

According to prosecution case, F.I.R. was lodged against nine accused persons, namely, Sonu Geda, Rikku Geda, Bobi Geda, Angad Gurjar, Prahlad Gurjar, Udham Gurjar, Rajendra Gurjar, Shivam Gurjar, Pushpendra Gurjar and three unknown persons alleging that on 21.7.2018, they assaulted Jai Prakash Goswami by indiscriminate firing. He died receiving seven gun shot injuries. The injured, namely, Sanjai Varma received one gun shot injury, Ravi Varma received two gun shot injuries and Sunil Kushawaha received one gun shot injury. During investigation, it was found that Sardar Singh, Ravraj, Bharat Singh, Prahlad Singh and Kamlesh had given supari of Rs.20 lac, Swift Car and Pulsar Motorcycle to Sagar Rana. In compliance thereof, Angad Gurjar, Udham, Rajendra Gurjar, Shivam Gurjar, Pushpendra Gurjar @ Bhupendra, Sagar, Rohit, Mange, Patwari, Ajay, Monti, Bobi Geda, Sonu and Rinku had taken supari and committed the incident.

Learned counsel for the applicant submitted that applicant has been falsely implicated in this case. On the date of incident i.e. 21.7.2018 he was not present on spot and he was present at Goa, the Investigating Officer visited Goa and reached Hotel ?The Fern Kadamba, Hotel & Spa?, Kadamba, Goa and obtained certificate from manager of said Hotel to the effect that applicant alongwith four other persons stayed in aforesaid Hotel from 17th July, 2018 to 21st July, 2018. Despite aforesaid certificate Hotel Manager had also given bills, receipt as well as copy of Aadhar Card of applicant to Investigating Officer. After making aforesaid document as part of Case Diary Investigating Officer claims to have recorded the statement of Hotel Manager namely Samul Sawant under section 161 Cr.P.C. in which he stated that as per documentary evidence Mr. Shailendra Gupta and Sandeep Sagar stayed in Room No. 412 and Mr. Narendra Kumar, Sachin Gupta (applicant) & Sanjeev Gupta stayed in Room No. 410 from 17th July, 2018 to 21st July, 2018, a copy of 16th Parcha of Case diary dated 13.03.2020, wherein I.O. collected evidence regarding presence of accused applicant in Goa and gave his conclusion, has been annexed as Annexure No. 40 to the affidavit filed in support of bail application. Though the alleged incident is said to have taken place in broad day light in a busy & densely located area, hardly 400 meters away from the District Court, Jhansi and various residence, shops including shops of firearm weapon are situated at the place of occurrence and CCTV Cameras have also been installed at various shops but during course of investigation

the Investigating Officer did not pay heed to collect footage of any CCTV Camera, installed at shops nor he observed regarding his efforts made for collecting CCTV footage from any house or shop. There is no independent witness of the vicinity who supports the case of prosecution and pointed out involvement of applicant in alleged crime in as much as I.O. failed to collect any credible and convincing evidence which shows involvement of applicant in alleged crime. It is alleged by prosecution that applicant is involved in hatching conspiracy of alleged crime but during course of investigation Investigating Agency failed to collect any evidence which suggests that applicant conspired the crime in question with co-accused persons. There is no evidence on record which goes to show that applicant met co-accused persons at any point of time. In other words there is no evidence of meeting of minds. In the absence of such evidence the allegation of hatching conspiracy of the crime in question leveled against the accused applicant does not inspire any confidence and appears to be a vague story. It is further submitted that co-accused persons namely Prahlad Gurjar, Gaurav @ Monti, Sagar Rana, Rohit @ Rohtash had been released on bail by this Hon?ble Court vide orders dated 23.07.2019, 10.02.2020, 26.02.2020 and 19.06.2020, the case of applicant stands on better footing than those of above mentioned accused persons who have been granted bail, a copy of orders have been annexed as Annexure No. 44 to the affidavit filed in support of bail application. It is admitted fact that on the date of incident, the applicant was present at spot, on the day and time of alleged incident and he did not cause any injury either to deceased or injured persons. It is also submitted that alleged injured Sanjay Verma is a white collared hardened criminal having criminal history of about 11 cases which has been properly explained in para 86 to the affidavit filed in support of bail application. Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been placed forth before the court. The circumstances which, according to the counsel, led to the false implication of the accused has also been touched upon at length. It has been assured on behalf of the applicant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required. It has also been submitted that the applicant is languishing in jail since 06.11.2020. Apart from instant criminal case applicant has been falsely implicated in eight criminal cases, which have been explained in Paras 90 to 97 to the affidavit filed in support of the bail application.

Learned A.G.A. as well as learned counsel for the complainant opposed the prayer for bail and submitted that applicant and other named co-accused persons named in the first information report are hard core criminal hence not a single prudent persons would dare to depose against them and at the same time it is also pertinent to mention here that bail application of co-accused of the present case Rav Raja has been rejected by the Hon?ble Apex Court passed in Special Leave Petition (Criminal) Diary No(s). 24115 of 2021, vide order dated 29.10.2021 and the bail applications of the other co-accused person namely Rajendra Gujar, Bhupendra Singh @ Pushpendra Singh and Kamlesh Yadav has also been rejected by this Hon?ble court by the common order dated 15.09.2021, passed in Criminal Misc. Bail Application

No. 17555 of 2020, a copy of said orders have been annexed as Annexure No. CA-1 to the counter affidavit.

Courts have taken notice of the overcrowding of jails during the current pandemic situation (Ref.: Suo Motu Writ Petition (c) No. 1/2020, Contagion of COVID 19 Virus in prisons before the Supreme Court of India). These circumstances shall also be factored in while considering bail applications on behalf of accused persons.

Having heard the submissions of learned counsel of both sides, nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, prima facie satisfaction of the Court in support of the charge, reformatory theory of punishment, and larger mandate of the Article 21 of the Constitution of India, the dictum of Apex Court in the case of Dataram Singh v. State of U.P. and another, reported in (2018) 2 SCC 22 and without expressing any opinion on the merit of the case, I find it to be a case of bail.

Let applicant- Sonu Geda @ Sachin Gupta be released on bail in Case Crime No. 344 of 2018, under Sections- 147, 148, 149, 302, 307, 506, 120-B IPC, Police Station- Nawabad, District- Jhansi on furnishing a personal bond and two sureties of Rs. Two Lacs each (One should be of a family member) before the magistrate/court concerned, subject to following conditions:-

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

The identity, status and residential proof of sureties will be verified by the court concerned and in case of breach of any of the above conditions, the court below shall be at liberty to cancel the bail and send the applicant to prison.

It is clarified that the observations, if any, made in this order are strictly confined to the disposal of this bail application and must not be construed to have any reflection on the ultimate merits of the case.

In case of breach of any of the above conditions, it shall be a ground for cancellation of bail."

5. Subsequently, there appears to be some correction in the said order and thus on a Correction Application, the same was allowed and the following order was passed on 26.11.2021 by the same Bench. The said order reads as under:

"In Re.: Criminal Misc. Correction Application No. 5 of 2021 This application has been filed for correction in the order dated 18.11.2021.

In ninth line at third page of the aforesaid order, a word 'not' is inserted between the words was and present. Thus, the sentence containing said words be read as "the applicant was not present at spot". The order dated 18.11.2021 stands corrected accordingly.

The correction application is allowed."

6. Against the order dated 18.11.2021 granting bail to the applicant, the first informant preferred a Special Leave Petition (Criminal) Diary No. 30140 / 2021 (Sanchit Verma Vs. The State of U.P. & Anr.) in which vide order dated 17.12.2021 the Apex Court stayed the operation of the impugned order. The said order reads as under:-

"Permission to file petition is granted.

Applications seeking exemption from filing C/C of the impugned judgment and exemption from filing O.T. are allowed.

Learned senior counsel for the petitioner has drawn attention to page No.103 to contend that the Trial Court by the Order dated 14.10.2020 had expressed his consternation at the access to the case diaries to the petitioner. He further submits that the petitioner absconded for over two years before he was arrested and got himself admitted to a Hospital. Now the case sought to be made out is on alibi and bail has been granted.

Issue notice.

We stay the operation of the impugned order as we are informed that the petitioner is in custody in another matter."

7. Before the Apex Court the matter was then numbered as Criminal Appeal No. 1827 of 2022 (Arising out of SLP (Crl.) No. 9968 / 2021) (Sanchit Verma Vs. The State of U.P. & Anr.) which was allowed vide order dated 20.10.2022 to the extent that the order impugned releasing the accused on bail was set-aside and the trial court was directed to conclude the trial and decide it within 12 months from the date of order. The said order reads as under:-

"Leave granted.

Feeling aggrieved and dissatisfied with the impugned judgment and order dated 18.11.2021 passed by the High Court of Judicature at Allahabad in Criminal Miscellaneous Bail Application No. 13264 of 2021, by which the High Court has allowed the said application preferred by respondent No.2-original accused and released him on bail, the original informant has preferred the present appeal.

At the outset, it is required to be noted that, while issuing notice, vide order dated 17.12.2021, this Court has stayed the order passed by the High Court, releasing the respondent-accused on bail which has been continued till date.

Shri Siddharth Dave, learned Senior Advocate, appearing for the respondent No.2 is not inviting any further reasoned order while quashing and setting aside the impugned order passed by the Va High Court releasing the accused on bail. However, it is requested that as the trial has already begun and two witnesses are already examined and/or being examined, the trial may be expedited and to reserve the liberty in favour of the accused to move the Court for fresh bail application, in case the trial is not concluded at the earliest.

The prayer is not opposed by the counsel appearing on behalf of the petitioner as well as the State.

In view of the above, we set aside the impugned order passed by the High Court releasing the accused on bail.

We direct the trial Court to finally decide and dispose of and conclude the trial at the earliest and preferably within a period of 12 months from today.

All concerned are directed to cooperate with the learned trial Court in early disposal of the trial and within the time stipulated hereinabove. It is the duty cast upon the State to present the witnesses before the Court for their examination, as and when directed by the learned trial Court. In case for any reason not attributable to the accused, the trial is not concluded within the time stipulated hereinabove, it will be open for respondent No.2- accused to move a fresh bail application before the trial



Court which may be considered in accordance with law and on its own merits.

The present Appeal is, accordingly, allowed to the aforesaid extent."

8. Subsequently a letter dated 26.10.2023 was sent by the Sessions Judge, Jhansi to the Apex Court requesting for grant of further time of one year for disposal of the trial. The same was granted by the Apex Court vide order dated 04.12.2023 in Miscellaneous Application No. 2475 of 2023 in Criminal Appeal No. 1827 of 2022 (Sanchit Verma Vs. The State of U.P. & Anr.). The said order reads as:-

"A letter dated 26th October, 2023 has been received from the office of the Sessions Judge, Jhansi requesting for grant of further period of one year for disposal of the matter arising from FIR No.344/2018.

Time as prayed for, to dispose of the aforesaid matter is granted.

Miscellaneous Application stands disposed of."

9. There next appears to be an application for clarification moved before the Apex Court with regards to disposal of the present bail application. Vide order dated 10.05.2024 the Apex Court in Miscellaneous Application No. 891 of 2024 in Miscellaneous Application No. 2475 of 2023 in Criminal Appeal No. 1827 of 2022 (Sonu Geda @ Sachin Gupta Vs. State of Uttar Pradesh & Anr.) clarified that the extension granted will not stand in the way of disposing of the bail application on its own merit. The said order is quoted herein below:-

"1. Heard learned counsel for the applicant/appellant.

2. I.A. No. 91274/2024 stands allowed with the clarification that the extension granted will not stand in the way of appellant in disposing of the pending bail application on its own merit.

3. Accordingly, the Miscellaneous Application stands disposed of."

10. Then there appears another application to have been filed by the accused for his grievance that the present bail application is pending before this Court on which vide order dated 25.10.2024 the Apex Court in Miscellaneous Application No. 2150 of 2024 in Criminal Appeal No. 1827 of 2022 (Sonu Geda @ Sachin Gupta Vs. State of Uttar Pradesh & Anr.) requested the High Court to dispose of the same expeditiously.

The said application was disposed of by the said order. The said order reads as:-

"We are not inclined to pass orders in this application.

However, taking into consideration the grievance of the petitioner that the bail application being Criminal Misc. Bail Application No.54722/2023, is pending since

December, 2023, we request the High Court to dispose of the same expeditiously.

The application is disposed of.

The Miscellaneous Application stands disposed of."

11. The present bail application thus on behalf of the aforesaid accused has been heard and records have been perused.

12. The pleadings in the matter have been exchanged.

13. The first information report of the present matter was lodged on 21.07.2018 at 21:57 hours by Sanchit Verma against Sonu Geda (the present applicant), Rinku Geda, Bobby Geda, Angad Gurjar, Prahlad Gurjar, Udham Gurjar, Rajendra Gurjar, Shivam Gurjar and Pushpendra Gurjar for offences under Sections 147, 148, 149, 302, 307, 506 I.P.C. for an incident which took place on 21.07.2018 at about 1:30 hours with the allegation that he and his father Sanjay Verma went to the District Court on 21.07.2018 at about 11.00 AM. Date in the matter of his father was fixed in the court of District Judge, Jhansi and one date was fixed in the court of Civil Judge (Junior Division). His father after attending the date in the court came out at about 1:30 PM and was going on his Pajero Sports vehicle having registration No. UP-93-AN 6301 which was being driven by Ravi Verma. Along with his father his security personnel Jai Goswami resident of Jhansi, Sunil Kushwaha resident of Jhansi were also present. After that the first informant was following them on his motorcycle which was being driven by Ajay Soni. As soon as the vehicle of his father reached the crossing and started moving towards the bus stand a truck was standing there near a temple since before having registration No. UP-93 T 8047 and a loader having No. UP 93T 3437 was also standing, the shelter of which was taken by the accuseds who all of a sudden exhorted along with 2-3 unknown persons having country-made pistols in their hand and resorted to indiscriminate firing after surrounding them from all sides. From firing the driver received injury and thus the vehicle rammed in the loader & truck standing there and from the firing his father, Sanjay Verma and all persons sitting in the vehicle received serious and fatal injuries. The incident was seen by the first informant, Gaurav Verma and other persons. The assailants while resorting to firing in the air and extending threats ran towards the bus stand on their motorcycles. There was lot of commotion at the place and fear spread in the area after which they closed their establishments and ran away. The people on the road also ran away. The injured were immediately taken to medical college Jhansi by the first informant and the other persons where they are being treated. At the time of they being admitted in the hospital the doctor declared Jai Goswami to be dead. Rinku Geda, Sonu Geda, Sardar Singh and others had murdered Ajay Verma his chacha in which the Allahabad High Court had affirmed their conviction and Maan Singh had filed a writ in Supreme Court which was dismissed and the pairvi of the said matters was done by his father due to which the accused persons many times earlier also in a planned manner tried to attack him but did not succeed but today the accused persons together in a day light manner attacked his father. A report be lodged and action be taken. Deepak Kumar Soni was the scribe of the written report.

14. Jai Prakash Goswami is the deceased in the matter. His postmortem examination was conducted on 22.07.2018 at 11:45 AM. In his postmortem report the doctor has noted that he was brought dead on 21.07.2018 at 2:30 PM in Medical College Emergency, Jhansi. The injuries as noted in the postmortem examination are under the head "Gun Shot Injuries" which in total are reported as 11 injuries. A perusal of the same would go to show that the injury nos. i to viii are wounds of entry and the injury nos. ix to xi are exit wounds. Metallic pellets were recovered from the dead body of the deceased which are noted in the postmortem examination report to be sealed and are noted to be seven in number. The cause of death has been opined as shock & haemorrhage due to antemortem gun shot injury.

15. The persons namely Sanjay Verma, Ravi Verma and Sunil Kushwaha are the injured persons in the present incident. Sanjay Verma was found to have received a single injury. Ravi Verma was found to have received two injuries on his body being on the back of skull mid area and the other on the left upper limb at wrist and both the injuries were opined to be due to firearm injuries. Sunil Kushwaha was found to have received three injuries on his body being right nipple left side, back right mid area and right wrist left laterally and all the injuries were opined to be due to firearm injuries.

16. This bail application has been titled as a second bail application. The present matter has been placed before this Bench by the office as per its report dated 26.11.2024 that in compliance of the order dated 23.09.2024 of Hon'ble The Chief Justice, the matter is to be put up before this Bench who has decided the bail application of co-accused in bail application no. 5153 of 2020 on 10.02.2020.

17. The order-sheet of the matter shows that a co-ordinate Bench of this Court vide order dated 10.07.2024 had called for a report from the learned trial Judge regarding the status of trial. The office through its report dated 15.07.2024 has placed on record a report received from the Sessions Judge concerned, a perusal of which goes to show that two accused have been summoned under Section 319 Cr.P.C. and charges against them have been framed on 09.10.2024. Cross examination on their behalf has to be done. It further states that the prosecution intends to examine as many as 33 witnesses out of which 15 witnesses have been examined.

18. The situation thus which could be deciphered is that the trial is going on in which the testimonies of witnesses are being recorded. Two persons have been summoned under Section 319 Cr.P.C. against whom charges have been framed.

19. Learned counsels for the applicant have submitted as under:-

(i) The applicant has been falsely implicated in the present case.

(ii) The applicant pleads and claims alibi as on the date of incident i.e. 21.07.2018 he was present in Goa for which the Investigating Officer visited "The Fern Kadamba, Hotel & Spa, Kadamba, Goa" and a certificate to the said effect was given by the Manager of the said hotel to the Investigating Officer that the applicant along with

four other persons had stayed in his hotel from 17th July, 2018 to 21st July, 2018. The bills of the hotel, receipts, copy of Aadhar card of the applicant was also given by the Manager of the hotel to the Investigating Officer and the said documents were made part of the investigation. The Investigating Officer also recorded the statement of Samul Sawant, the Manager of the said hotel under Section 161 Cr.P.C. who stated about the same.

(iii) The presence of the witnesses at the place of occurrence is doubtful. The first informant and the other witnesses had no reason and occasion to be present at the place of occurrence. The incident in the present case is said to have taken place on 21.07.2018 at about 01:30 hours but the first information report was lodged on 21.07.2018 at 21:57 hours wherein the distance between the place of occurrence and the police station was only 02 kms. but there is no explanation whatsoever regarding the delay in lodging of the first information report.

(iv) No persons who are alleged to be eye-witnesses of the incident were present at the place of occurrence which would be substantiated from the fact that the inquest on the body of the deceased Jai Goswami was conducted on 21.07.2018 in which in the opinion of the five panch witnesses of inquest it was opined that the death of Jai Goswami has occurred due to firing resorted by unknown assailants.

(v) The injured Sanjay Verma is a hardened criminal and his properties were attached by orders of competent authorities which has been stated by him in his statement recorded on 24.12.2022 as P.W.-2 before the trial court.

(vi) Sanjay Verma has enmity with Gurjars, Geda and Lakara. The said fact has been stated by Ravi Verma on 21.01.2023 before the trial court while being examined as P.W.-3.

(vii) The applicant although is reported to be having a criminal history of 08 cases but the said cases are false implication of the applicant, paragraph 99 of the affidavit has been placed as disclosure of the said 08 cases against the applicant and further paragraph 100 to 107 and Annexure-54 to 57 have been placed as their explanation.

(viii) The applicant is in jail since 06.11.2020 and thus deserves to be released on bail.

20. Learned counsel for the first informant opposed the prayer for bail and submitted as under:-

(i) The applicant is named in the first information report along with 08 other accused persons and has been assigned the role of indiscriminate firing due to which one person received injuries and died, three other persons received serious injuries and are the injured in the present matter.

(ii) The applicant has a motive to commit the said offence which is also clearly mentioned at the very outset in the first information report.

(iii) The applicant after lodging of the present first information report absconded and a charge-sheet dated 06.05.2019 was submitted against him as an absconder. Attachment proceedings were also taken up against the applicant since he had absconded.

(iv) It is only after about 02 years & 04 months the applicant was apprehended and was then arrested from Bhopal on 06.11.2020 and is in jail since then and thus there are good chances of his absconding again if granted bail.

(v) The criminal history of the applicant and other accused persons have been placed before the Court which is annexed as Annexure CA-2 to the short-counter affidavit dated 07.02.2024 filed on behalf of the first informant.

(vi) A first information report has been lodged by Indrajeet Rai, Inspector CBCID, Kanpur as Case Crime No. 0243 of 2022, under Sections 217, 218 I.P.C. and Section 13 (2) of Prevention of Corruption Act, 1988, Police Station Nawabad, District Jhansi against the previous Investigating Officer of the matter Jai Prakash Yadav for the reason that he was involved with the accused for incorrectly showing his alibi in Goa, the copy of the said first information report has been placed which is annexed as Annexure CA-8 to the said short-counter affidavit.

(vii) The alibi thus is totally fabricated.

(viii) In support of arguments learned counsel has placed judgements / orders of the Apex Court in the cases of Bohatie Devi (Dead) Through LR Vs. The State of U.P. & Ors. in Criminal Appeal No. 1294 / 2023 (@SLP (Crl) No. 4394 / 2021 (at page 21), Brijmani Devi Vs. Pappu Kumar & Anr. in SLP (Crl.) No. 6335 / 2021 (paragraph 12, 16, 20), Bhawna Jaiswal Vs. Manish Mishra & Anr. in Criminal Appeal No. 1304 of 2023 (@ SLP (Crl.) No. 4106 / 2023), Yashpal Singh Vs. State of U.P. & Anr. in Criminal Appeal No. 1509 of 2022 (paragraph 4.1) and Dinesh Kumar Singh Vs. State of Jharkhan through C.B.I. in Criminal Appeal No. 1076 of 2009 (arising out of S.L.P. No. 8761 of 2008).

(ix) The trial in the present matter is going on in which 15 witnesses have been examined. The release of the applicant may have an adverse effect in the trial and there are chances of his tampering with evidence if released on bail at this stage. The bail application be thus rejected.

(x) The bail of co-accused Rajendra Gurjar, Kamlesh Yadav and Bhupendra Singh @ Pushpendra have been rejected by another Bench of this Court vide order dated 15.09.2021 passed in Criminal Misc. Bail Application No. 17555 of 2020. Further bail

of co-accused Ravi Raja and Uddham Singh Gurjar were rejected by different Benches of this Court vide orders dated 26.11.2019 and 10.04.2024 passed in Criminal Misc. Bail Application Nos. 42916 of 2019 and 29905 of 2021. Further second bail applications of co-accused Bhupendra Singh @ Pushpendra, Bharat Singh and Uddham Singh Gurjar were rejected by different Benches of this Court vide orders dated 03.01.2023, 01.03.2024 and 08.08.2024 passed in Criminal Misc. Bail Application Nos. 15194 of 2022, 38682 of 2023 and 18555 of 2024. Further the criminal revision of accused Angad Singh Gurjar and Rinku Gaida @ Manish Gupta & another were rejected by different Benches of this Court vide orders dated 06.04.2022 and 21.02.2024 passed in Criminal Revision Nos. 1918 of 2020 and 4793 of 2023.

21. Learned counsel for the State while also vehemently opposing the prayer for bail submitted as under:-

- (i) The incident is a broad day light incident in which there are eye-witnesses present.
- (ii) The role assigned to the applicant and co-accused persons is of firing upon the deceased and injured persons.
- (iii) One person received extensive gun shot injuries & died whereas three persons are injured who have also received serious gun shot injuries and thus firing at the place of occurrence cannot be disputed. The same thus corroborates with the prosecution version.
- (iv) The applicant is reported to be having criminal history of 12 cases including the present case. Finding him to be a notorious criminal, National Security Act was invoked on him.
- (v) The applicant absconded for about 02 years & 04 months and even cash reward of Rs. 25,000/- was declared on him by the Government. The property of the applicant was attached in proceedings under Section 83 Cr.P.C. The charge-sheet against him was filed on 06.05.2019 as an absconder on which the court concerned took cognizance on 27.05.2019. The applicant was then arrested from Bhopal on 06.11.2020.
- (vi) The Investigating Officer of the matter tried to help him in his false alibi which was being claimed and taken during the period of his abscondence and thus even a first information report was lodged by the CBCID against the then Investigating Officer.
- (vii) The bail of the applicant deserves to be rejected looking to the facts of the matter.

(viii) Co-accused Gaurav @ Monti was although granted bail by this Court vide order dated 10.02.2020 passed in Criminal Misc. Bail Application No. 5153 of 2020 (Gaurav @ Monti Vs. State of U.P.) but the role of the applicant was only of conspiracy and thus while noting the same, this Court had granted bail to him. The case of the applicant is distinguishable from the said co-accused.

(ix) Looking to the allegations against the applicant, his continued abscondence for about 02 years & 04 months, claiming of false alibi, criminal history of 12 cases in all, the advance stage of trial which has been expedited by the Apex Court, the bail application be rejected.

22. After having heard learned counsel for the parties and perusing the record, it is evident that the present case is a broad day light incident. The applicant is named in the first information report along with 08 other accused persons and all accused persons have been assigned the role of firing. One person received injuries & died whereas three persons are injured. The deceased and the injured have received gun shot injuries. The prosecution story thus in so far as the use of firearms is concerned, stands corroborated. The applicant is reported to be having criminal history of 12 cases including the present case. Thus he cannot be said to be a person of clean antecedents.

23. After lodging of the present first information report although alibi was being claimed and was being investigated but he absconded and continued to abscond for about 02 years & 04 months. A reward of Rs. 25000/- was also declared on him by the State / Police. It cannot be said that he was not in the knowledge of the present case against him. The proceedings under Section 83 Cr.P.C. was also taken up against him. Charge-sheet was submitted against him as an absconder on which the court concerned took cognizance. The trial in the present matter is going on in which 15 witnesses have been examined and thus the same would go to show that it is progressing. The trial was expedited by the Apex Court to be concluded within one year but subsequently on a request letter by the concerned trial court for extending the said period of time the same has been extended by the Apex Court. The trial court is thus cognizant of the fact that the trial has been expedited and is to be concluded in a time bound manner by orders of the Apex Court. The alibi although is being claimed seriously and strenuously but proving the same is a matter to be taken up in trial and be decided by the trial court concerned since evidence needs to be led for it.

24. Looking to the overall facts & circumstances of the matter, this Court does not find it a fit case for bail, hence, the bail application is rejected.

25. Pending application (s), if any, shall stand disposed of."

viii) It is submitted that looking to the facts of the case, the criminal history of the accused applicants, their abscondence, nature of the case and also the fact that the trial of the matter is going on, the present bail applications be rejected.

14. Learned counsel for the State also while vehemently opposing the prayers for bail submitted as under:

- i) The incident is a broad daylight incident in which there are eye witnesses and injured witnesses.
- ii) The applicants have been assigned specific role along with co-accused persons of firing upon the deceased and injured.
- iii) One person has received extensive gun shot injuries whereas three persons have received serious injuries who have also received gun shot injuries.
- iv) Looking to the injuries and the version of the injured persons firing at the place of occurrence, cannot be disputed.
- v) The prosecution version is corroborated from the medical evidence.
- vi) Both the applicants have criminal antecedents.
- vii) The applicants had absconded and it was with great difficulty that they were arrested that there has been delay in trial because of their abscondence.
- viii) Bail of co-accused Sonu Gaida @ Sachin Gupta has been rejected by this Court vide order dated 17.12.2024.
- ix) Both the bail applications of the applicants be rejected.

15. After having heard learned counsels for the parties and perusing the records, it is evident that the applicants are named in the FIR. Although during investigation they were exonerated by the Investigating Agencies but in the trial, their complicity was disclosed by four prosecution witnesses subsequent to which they were summoned under Section 319 Cr.P.C. The order summoning them under Section 319 Cr.P.C. attained finality. Even after various challenges upto the Apex Court, the applicants had absconded for substantial period of time. They have criminal antecedents. Bail of co-accused Sonu Gaida @ Sachin Gupta has been rejected by this Court vide order dated 17.12.2024.

16. The trial of the matter has been expedited by the Apex Court. The trial court is cognizant of the fact that the trial has been expedited and is to be concluded in a time bound manner under the order of the Apex Court. The alibi although is being claimed but the same is a matter of trial which is to be proved like any other evidence.

17. Looking to the facts and circumstances of the case, the nature of offence, this Court does find it to be a fit case for bail, the bail applications of the applicants namely Rinku Geda @ Manish Gupta and Bobby Gaida @ Sandeep Gupta are, accordingly, rejected.

Order on Crl. Misc. Application U/s 482 Cr.P.C. No. 16379 of 2024 (Rinku Geda @ Manish Gupta and another Vs. State of U.P. and 2 others)



1. This matter is connected with the bail applications being Crl. Misc. Bail Applications Nos. 42975 of 2024 (Rinku Geda @ Manish Gupta Vs. State of U.P.) and 26984 of 2024 (Bobby Gaida @ Sandeep Gupta Vs. State of U.P.) in compliance of the order dated 08.01.2025 of this Court passed in Crl. Misc. Bail Application No. 42975 of 2024 (Rinku Geda @ Manish Gupta Vs. State of U.P.).
2. The records particularly the order sheet of the matter shows that the order dated 22.05.2024 passed in the present matter has been directed to be placed before Hon'ble the Rules Committee for consideration vide order dated 28.05.2024 of Hon'ble The Chief Justice.
3. No order thus needs to be passed in the same as of now.

Order Date :- 20.02.2025 M. ARIF (Samit Gopal, J.)