

Mohd. Khalid vs State Of Up on 27 March, 2018

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

Reserved

A.F.R.

(1) Case :- BAIL No. - 3547 of 2016

Applicant :- Mohd. Khalid

Opposite Party :- State Of Up

Counsel for Applicant :- Amar Singh,Brij Mohan Sahai,Diwakar Gautam

Counsel for Opposite Party :- Govt. Advocate

(2) Case :- BAIL No. - 3961 of 2015

Applicant :- Allwyn Bruce Lecil D'Sa (Second Bail)

Opposite Party :- The State Of U.P.

Counsel for Applicant :- Atul Verma,Sanjai Kumar Singh

Counsel for Opposite Party :- Govt.Advocate

(3) Case :- BAIL No. - 4652 of 2014

Applicant :- Mantu Sharma @ Sanjay Singh

Opposite Party :- State Of U.P.

Counsel for Applicant :- Pramod Kumar Punhani,Saroj Kumar Shukla

Counsel for Opposite Party :- Govt.Advocate

(4) Case :- BAIL No. - 5982 of 2015

Applicant :- Montoo Sharma @ Sanjay Singh

Opposite Party :- State Of U.P.

Counsel for Applicant :- Pramod Kumar Punhani,Brij Mohan Sahai,Jai Kishan Arora,Prabhakar

Counsel for Opposite Party :- Govt.Advocate

(5) Case :- BAIL No. - 9654 of 2015

Applicant :- Anil Kumar Jain (Second Bail)

Opposite Party :- State Of U.P.

Counsel for Applicant :- Atul Verma,Diwaker Singh

Counsel for Opposite Party :- Govt. Advocate

(6) Case :- BAIL No. - 7889 of 2016

Applicant :- Ramzan

Opposite Party :- State Of Up

Counsel for Applicant :- Sanjai Kumar Singh,Diwakar Gautam

Counsel for Opposite Party :- Govt. Advocate,S N Tilahri

(7) Case :- BAIL No. - 8265 of 2016

Applicant :- Zafar Arsad @ Babar

Opposite Party :- State Of U.P.

Counsel for Applicant :- Diwakar Gautam,Sanjai Kumar Singh

Counsel for Opposite Party :- Govt. Advocate,S N Tilahri

(8) Case :- BAIL No. - 3733 of 2016

Applicant :- Junaid Arshad @ Chotey (Second Bail)

Opposite Party :- The State Of U.P.

Counsel for Applicant :- Atul Verma,Diwakar Gautam,Sanjai Kumar Singh

Counsel for Opposite Party :- Govt. Advocate

(9) Case :- BAIL No. - 9998 of 2015

Applicant :- Ajay Pal Singh

Opposite Party :- The State

Counsel for Applicant :- Arun Sinha,Siddhartha Sinha

Counsel for Opposite Party :- Govt.Advocate

(10) Case :- BAIL No. - 8011 of 2016

Applicant :- Vimal Kumar Vishwakarma @ Kallu (Second Bail)

Opposite Party :- State Of U.P.

Counsel for Applicant :- Sanjai Kumar Singh, Diwakar Gautam

Counsel for Opposite Party :- Govt. Advocate, S.N Tilhari (A.G.A.)

(11) Case :- BAIL No. - 7488 of 2013

Applicant :- Amit Pal Singh

Opposite Party :- State Of U.P.

Counsel for Applicant :- Vinod Kumar Shahi, Nisar Ahmad, Suresh Mishra, Swetashwa Agrawal

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Virendra Kumar-II, J.

1. Heard Shri B. M. Sahai, Shri I. B. Singh, learned Senior Counsels, Shri Sanjay Kumar Singh, Shri Atul Verma, Shri Siddharth Sinha, Shri Ajay Arora, learned counsel for the accused-applicants and Shri Shiv Nath Tilhari, learned AGA for the State.

2. The above mentioned all the bail applications relates to Case Crime No. 01 of 2013, Sessions Trial No. 1169 of 2014 for offences punishable under Sections 420, 467, 468, 471, 120-B, 121-A, 122 I.P.C. and Sections 3/5/25/30 Arms Act, Police Station A.T.S., District Lucknow. Therefore, all these bail applications are being taken up together for decision by a common order.

3. Learned Special Judge, E.C. Act, Lucknow vide order dated 09.03.2016 rejected the bail application No. 578 of 2016 moved on behalf of Mohd. Khalid.

4. Bail Application moved by Allwyn Bruce Lecil D'sa was rejected by Additional District & Sessions Judge, Court No.2, Lucknow vide order dated 17.06.2013 passed in Criminal Misc. Case No. 1543 of 2013 under Sections 420, 467, 468, 471, 120B IPC, Section 3/5/25/30 Arms Act and under Sections 121A, 122 I.P.C. bail application has been rejected vide order dated 11.07.2013 by Sessions Judge, Lucknow.

5. Learned Additional District and Sessions Judge, Court No. 2, Lucknow vide order dated 14.03.2014 rejected the bail application : Criminal Misc. Case No. 25 of 2014 moved on behalf of Mantoo Sharma @ Sanjay Singh.

6. Learned Additional Sessions Judge, Court no.15, Lucknow vide order dated 11.05.2015 rejected the bail application No.1263 of 2015 moved on behalf of Mantoo Sharma @ Sanjay Singh.

7. Bail Application moved by Anil Kumar Jain was rejected by learned Additional District & Sessions Judge, Court No.2, Lucknow vide order dated 07.10.2013 passed in Criminal Misc. Case No. 3052 of 2013 .

8. Learned Additional District and Sessions Judge, Court no.2, Lucknow vide orders dated 25.07.2013 and 05.07.2014 rejected the bail applications, Criminal Misc. Case No. 2423 of 2013 and Criminal Misc. Case No. 1551 of 2014 moved on behalf of Ramzan.

9. Learned Additional District and Sessions Judge, Court no.2, Lucknow vide order dated 06.11.2013 rejected the bail application, Criminal Misc. Case No. 3501 of 2013 moved on behalf of Zafar Arshad @ Babar.

10. Bail Application moved by Junaid Arshad @ Chhotey was rejected by the learned Additional District & Sessions Judge, Court No.2, Lucknow vide order dated 17.06.2013 passed in Criminal Misc. Case No. 1627 of 2013.

11. Learned Additional District and Sessions Judge, Court no.2, Lucknow vide order dated 08.01.2014 rejected the bail application Criminal Misc. Case No. 30 of 2014 moved on behalf of Ajay Pal Singh.

12. Bail Application moved by Vimal Kumar Vishwakarma was rejected by Additional District & Sessions Judge, Court No.2, Lucknow vide order dated 07.09.2013 passed in Criminal Misc. Case No. 2812 of 2013 .

13. Bail Application moved by Amit Pal Singh was rejected by Additional District & Sessions Judge, Court No.2, Lucknow vide order dated 25.09.2013 passed in Criminal Misc. Case No. 3059 of 2013. This Court vide order dated 18.05.2016 granted bail to Amit Pal Singh. Hon'ble Supreme Court vide order dated 18.07.2017 passed in Criminal Appeal No. 1184 of 2017/ SLP (Crl.) No. 9251 of 2016 (State of Uttar Pradesh and others Vs. Amit Pal Singh) has set aside the order dated 18.05.2016 and remitted the matter for fresh consideration with a direction to pass orders expeditiously and preferably, within a period of three months from the date of receipt of a copy of judgment.

Mohd. Khalid Grounds and Arguments:

14. This is first bail application moved on behalf of accused-applicant Mohd. Khalid.

15. Learned Counsel for accused-applicant Mohd. Khalid has submitted that as per F.I.R./Recovery Memo dated 17.04.2013 accused-applicant was allegedly arrested with three pistols, firearm licenses, parts of firearm, amount of Rs. 1,32,000/-, train traveling ticket, arms sales receipt and car. No independent public witness was associated at the point of time of alleged recovery by Sri Tej Bahadur Singh, Inspector A.T.S. and his team.

16. It is further submitted that another four accused persons has been named in the recovery memo, whereas only accused-applicant was arrested by the A.T.S. team, therefore, recovery memo has been prepared by A.T.S. ante-time, which makes the very genesis of prosecution story doubtful. A team was also sent at Kanpur on the basis of information given by the accused-applicant for arrest of other accused.

17. It is contended that team member Commando Santosh Singh was on sanctioned leave from 14.04.2013. According to duty chart and G.D. No. 09 at 10.05 dated 18.04.2013 he had to resume his duty after availing casual leave. According to recovery memo, he is also shown as member of an A.T.S. team, therefore, arrest of the applicant is fabricated. The arms licences allegedly recovered from the possession of the accused were found genuine. These licences were released by the Presiding Officer of Court of Additional District Judge-12, Lucknow and vehicle No. UP32 EE 2012 was released in favour of brother of the accused.

18. It is further pleaded that on 18.04.2013 recovery of several arms licences and other material was allegedly recovered on pointing out of the accused, but no independent public witness or any family member of the applicant was made witness by A.T.S.. Therefore, these recoveries are also fake. The alleged recovered material was not produced before the Presiding Officer of the Court of A.C.J.M. VIIIth, Lucknow, therefore, entire prosecution story becomes fake and fabricated.

19. It is further submitted that offences under Sections 121-A and 122 I.P.C. has been invoked on 12.06.2013 against the accused-applicant after 1 month and 24 days of his arrest on the basis of statement of N.I.A. Inspector Hridayanand Pandey. His statement was recorded on 20.05.2013. Case Crime No. 353 of 2008, under Sections 414, 120-B, 122 I.P.C. and 25/35 Arms Act and 07 Criminal Law Amendment Act, Police Station Gandhi Maidan, District Patna has been registered also against co-accused Sardar Gurcharan Singh and Mantoo Sharma @ Sanjai Singh. A.T.S. has not recovered single arm, allegedly sold to anti-nationals during the course of investigation, which could connect the applicant regarding the fact of misuse of arms, alleged to be sold by him. Inspector Hridayanand Pandey has not stated involvement of accused, therefore, no evidence is available against applicant for offence punishable under Section 121-A and 122 I.P.C.

20. It is further pleaded that accused-applicant was not associated with M/s. National Gun House in any capacity. He has no responsibility in any affair related to M/s National Gun House. The Investigating Officer of Case Crime No. 04 of 2013, under Section 2/3 U.P. Gangster Act, Police Station A.T.S., Lucknow sought information from the District Magistrate, Lucknow, in response of it the District Magistrate vide order dated 08.05.2014 informed the Investigating Officer that applicant was not operating the said shop in any capacity either as partner or salesman. It is further pleaded that when M/s. National Gun House was searched in presence of City Magistrate and Circle Officer, Kaiser Bagh, Lucknow, signature of these witnesses were not obtained on recovery memo.

21. It is further submitted that sample of handwriting of accused was sent to CFSL, Mahanagar. The handwriting expert reported that handwriting of accused was not matched with the hand writing available on records of M/s National Gun House. Likewise, expert opinion given by C.F.S.L. (C.B.I.), New Delhi regarding voice sample of accused applicant is based on assumptions only, no definite

opinion was given in this report regarding conversation with co-accused Alvin D'SA. Co-accused Sardar Gurcharan Singh is Proprietor of M/s. National Gun House and he has stated in his statement recorded under Section 161 Cr.P.C. that he let out his shop to accused-applicant only to absolve himself.

22. It is contended that no offence under Sections 120B I.P.C. Sections 420B, 467, 468, 471 I.P.C. and Section 3/5/25/30 Arms Act is made out against the applicant. Likewise, Investigating Officer of A.T.S. has not forwarded the report to the State Government according to provision of Section 6 of the National Investigation Agency Act, 2008, whereas according to definition of Scheduled Offences provided under Section 2 (f), the alleged offences should have been reported to the State Government according to this provision. A.T.S. in order to proceed with unfair investigation in this case and to implicate the applicant in false and fabricated offence has not forwarded the report to State Government in malicious manner. Therefore, the entire investigation conducted by A.T.S. in the present offence is absolutely without jurisdiction.

23. It is mentioned that according to charge-sheet total number of prosecution witness are 58, out of which only statement of PW-1 is being in process of recording before trial Court. The Trial of the case will take considerable time, therefore, it is expedient in the interest of justice that the applicant may be enlarged on bail. The applicant is detained in jail since 18.04.2013. The applicant does not have any previous criminal history available against him. He is innocent and is not involved in this crime. There is no likelihood that he will abscond and tamper with evidence of witnesses.

24. Learned Counsel for the accused-applicant has vehemently relied upon the averments of counter affidavit made in para 18 and 20 and submitted that during search of National Gun House, it is alleged that so many entries in Stock and Sale, Purchase registers have been made fictitiously by the accused-applicant and these entries were sent along with hand-writing sample of the accused-applicant.

25. It is mentioned in para 20 specifically that up to 08.08.2016, F.S.L. Mahanagar, Lucknow had not sent report to trial Court or A.T.S. Agency. The report was still awaited, whereas the accused-applicant through supplementary affidavit, has contended that prosecution had withheld the hand writing report dated 03.02.2015 and it was brought on 25.03.2017 in knowledge of trial Court. The accused-applicant along with supplementary affidavit provided report dated 03.02.2015 sent by CFSL, Mahanagar, Lucknow. In which it was opined that disputed entry Q-1 to Q-8 were not written by accused-applicant. Likewise, sample of handwriting/ signatures were marked by Forensic Lab as S-1 to S-18, therefore, disputed hand writing was not matched/ compared with the sample hand writing of the accused, even then charge-sheet was submitted against him by the investigating officer.

26. It is further mentioned in para 5 of supplementary counter affidavit that a contemptuous and wrong affidavit was again filed on 24.04.2017 by the Investigating Agency that expert report regarding hand writing of the accused-applicant shall be considered during the course of trial and the entires in stock, sale and purchase register is not a sole allegation against the accused-applicant.

27. The accused-applicant in supplementary affidavit dated 03.05.2017 has reiterated his earlier contentions and further submitted that statement of PW-2 Muneesh Pratap Singh, Sub Inspector has also been recorded. It is also mentioned that charges were framed on 16.11.2015 and trial was commenced after period of 01 year, 01 month and 08 days, after passing of the order of Hon'ble Apex Court, while bail of Gurcharan Singh Bhalla, who is proprietor of M/s National Gun House, Lucknow was cancelled vide order dated 08.10.2014.

Arguments of A.G.A.

28. Learned A.G.A. has opposed this bail by submitting that statement of witnesses Vijay Peter, Parvez Khan and Ashish Mehrotra discloses involvement of accused in this case. Likewise, co-accused Mantoo Sharma, Gurcharan Singh Bhalla, Ajay Pal Singh and Anil Kumar Jain has also disclosed complicity/ involvement of the accused in this crime. It is further submitted that statement of Ram Lal Singh and Nirmal Kumar Verma also corroborates the version of prosecution. The facts mentioned in recovery memo dated 17.04.2013, 18.04.2013 and 19.04.2013 discloses involvement of the accused.

29. Learned A.G.A. has further relied upon CDR call details of the accused made with co-accused persons, which is collected by the Investigating Officer during the course of investigation. District Arms Officer has also sent verification report of arms licenses, on basis of which, arms and ammunition were sold. These were found fake arm licenses. Record of sale-purchase of duplicate/ improvised weapons was also relied upon by learned A.G.A., which was recovered by the Investigating Officer from National Gun House owned by co-accused Gurcharan Singh and Amit Pal Singh.

30. Learned A.G.A. has also relied upon CFSL report regarding improvised firearms recovered from the possession of co-accused persons and accused-applicant and his connection with Naxalites through co-accused Mantoo Sharma, who was having contacts with Naxalites in Bihar and Jharkhand.

31. Learned A.G.A. has further submitted that co-accused Amit Pal was arrested on 02.09.2013 and this Court granted bail to him vide order dated 18.05.2016. The State filed SLP before Hon'ble Supreme Court. On 18.07.2017 Hon'ble Supreme Court has set aside order dated 18.05.2016 passed by this Court. This Court vide order dated 14.12.2016 has also rejected his bail application C.M.C. No. 6212 of 2016 for offence punishable under Section 2/3 Gangster Act.

32. Likewise, this Court vide order dated 30.09.2013 passed in Criminal Misc. Case No. 4820 (B) of 2013 granted bail to co-accused Gurcharan Singh Bhalla, father of co-accused Amit Pal Singh. The State Government again preferred SLP No. 5193 of 2014 before Hon'ble Supreme Court and vide order dated 08.10.2014 bail granted to co-accused Gurcharan Singh Bhalla was cancelled by Hon'ble Supreme Court. This Court vide order dated 24.07.2014 passed in C.M.C. No. 3080 of 2014 has denied bail to co-accused Kallu Sharma for offences punishable under Sections 467, 468, 471, 120-B, 121, 122 I.P.C. and Arms Act, whereas bail was granted to Kallu Sharma by trial Court in Crime No. 01 of 2013. Accused Kallu Sharma filed SLP before Hon'ble Supreme Court, which was dismissed

with the observation that trial Court may conclude the trial as expeditiously as possible.

33. It is further submitted by learned A.G.A. that Hon'ble Supreme Court has specifically observed that it is not a fit case for bail.

34. It is mentioned by him that Mohd. Khalid co-accused is master mind and he was managing the National Gun House. He is supplier of illegal firearms after getting it manufactured with the help of co-accused persons. Co-accused Kallu Sharma is operator of EDM (Electronic Discharge Machine) and co-accused Vimal Kumar Vishwakarma is operator of surfacing and grinding machine. Co-accused Alvin Disa is smuggler of parts of foreign arms. Co-accused Amit Pal Singh is owner of Guru Ram Das Armoury. He supplies arms to anti national elements and is son of co-accused Gurcharan Singh. Co-accused Anil Kumar Jain is owner of M/s. Jain Brothers, Sirsa, Haryana. He supplies the illegal arms to anti national elements. Co-accused Ajay Pal is owner of Kishan Gun House and he also supplies illegal arms.

35. Learned A.G.A. has also submitted that accused-applicant Mohd. Khalid gave threats to public witnesses of Case Crime No. 01 of 2013. First Information Report of Case Crime No. 46 of 2013 under Sections 504 and 506 I.P.C. was registered at Police Station MoolGanj, District Kanpur against Junaid Arshad and Zaffar Arshad.

36. It is mentioned by learned A.G.A. that trial Court vide order dated 07.11.2015 has observed that accused persons are not liable to be discharged and prima facie case is established on the basis of evidence available to frame the charge and to proceed for trial. Learned Trial Court has observed vide order dated 15.5.2015 that the accused persons are trying to delay the proceedings of the case and they are misusing the judicial process. Learned Trial Court has also observed specifically that there is direction of Hon'ble Supreme Court to conclude the trial expeditiously, but the accused persons are trying to delay the proceedings of the trial.

37. Learned Trial Court vide order dated 13.10.2015 has found the material for framing charge against the accused persons. Copy of orders dated 15.05.2015, 07.11.2015, 01.03.2016, 02.06.2016 and 13.10.2015 have been provided with supplementary counter affidavit dated 25.10.2017 filed in application of co-accused Amit Pal Singh.

38. It is further submitted by learned A.G.A. that Mohd. Khalid was running the shop of National Gun House owned by Gurcharan Singh Bhalla and Amit Pal Singh. He was giving share and profit to the owner on each and every sale/ purchase. This fact was provided by witnesses Vijay Peter, Parvez Khan and Ashish Mehrotra to the Investigating Officer.

39. It is further argued by learned AGA that National Gun House was searched in presence of owner Gurcharan Singh and prosecution witness Vijay Peter and City Magistrate Arun Kumar and Sri Hirdesh Kumar Circle Officer, Kaiser Bagh were also present at this inspection. Many entries were found fake in the sale and purchase registers. About 08 pistols and 01 revolver were found in excess for which there was no entry in the stock register of National Gun House. Recovery Memo dated 19.04.2013 has been relied upon. Thirteen accused persons have been arrested including the

accused-applicant Mohd. Khalid, who are committing the present crime in a gang in an organized way.

Discussions:-

40. As per prosecution version accused Mohd. Khalid was arrested on 17.04.2013. Inspector Tej Bahadur Singh and his team acted upon information given by informer and accused was intercepted, while he was driving vehicle no. U.P. 32 EE 2012 at about 14.30 and coming from Kanpur towards Lucknow. Pistol PIETRO BERETTA GARDONE V.T.CAL 7.65, MOD-70 made in Italy bearing No. 97542 and another pistol CAL 7.65 M/M (3.2) "LLAMA" GABILONDO V.C. ELGOIBAR (ESPANA) No. 78812, PAN Card, State Bank shopping Card, Debit Card of ICICI Bank, Two Railway tickets one dated 13.04.2013 from Lucknow to Lokmanya Tilak (Bombay), another ticket dated 14.04.2013 from Lokmanya Tilak (Bombay) to Lucknow, two receipts (hand written) of M/s. Jain Brothers regarding sale-purchase of arms were recovered.

41. It is mentioned in recovery memo further that one polythene containing Pistol No. PIETRO BERETTA GARDONE V.T.CAL 7.65, MOD-70 made in Italy bearing No. 97687, old pistol PIETRO BERETTA CAL 7.65, MOD-70 made in Italy bearing No. 97958 and parts of arms rapped in news paper were recovered from this polythene, amount of Rs. 1,00,000/- was recovered also and amount of Rs. 32,000/- was recovered from the pocket of the accused. 07 arms licences of different persons mentioned in the recovery memo were recovered from his possession. He was not having any licence for keeping these arms with him.

42. The accused-applicant Mohd. Khalid informed the A.T.S. team that his maternal uncle Haji Afsar introduced him to Arms Dealers including Anil Jain, owner of M/s. Jain Brothers, Sirsa, Haryana. He contacted accused Anil Jain, then he apprised him that he could earn more money through Shivanand Shetty resident of 07, Bangla Andheri West, Mumbai. He had a conversation with Shivanand Shetty on phone through Anil Jain, co-accused. He was informed that parts of foreign arms shall be provided by Shivanand Shetty. The accused met Shivanand Shetty at Mumbai and obtained parts of foreign arms from him.

43. He also informed the A.T.S. team that he manufactures duplicate arms. Shivanand Shetty introduced him to co-accused Alvin Disa son of Walter Joseph resident of resident of Dadar, Mumbai, who provided him parts of foreign arms brought from Canada and Singapore. He also informed the A.T.S. team that after arrest of Shivanand Shetty, he purchased parts of foreign arms from co-accused Alvin Disa by contacted him personally at Mumbai and by Speed Post parcel.

44. The accused Mohd. Khalid also provided information that he and his brother-in-law Khurram deposited money in Bank account of co-accused Elvin Disa and his wife in branch of Central Bank at Wazeerganj, Aminabad, etc., Lucknow. He sold fabricated and improvised foreign arms 22 to 25 in number to Ravi Sanjeeva Shetty, resident of Ghatkopar West Mumbai and earned money.

45. Likewise, he informed A.T.S. team that he contacted co-accused Gurcharan Singh and got authority in the year 2011 to operate National Gun House at Lucknow owned by co-accused

Gurcharan Singh. He obtained old arms from licensees and sold it. He also obtained old arms and manufactured duplicate arms with the help of EDM machine and marked forged numbers on these arms. He sold pistols for amount of Rs. 6 lacs to 14 lacs to licence holders, M/s Jain Brothers, Sirsa, Haryana(co-accused Anil Jain proprietor) to Ravi Shetty resident of Mumbai, Faisal resident of Calcutta and other anti-national elements. He had disclosed that about 150 to 160 arms were supplied by him.

46. He also provided information to the A.T.S. team that he contacted Chhotey and Babar co-accused S/o of Arshad Miyan, who was proprietor of Bareilly Gun House, Kanpur for procuring pistol frames for amount of Rs.50,000/-. Co-accused Babar and Chhotey procured, manufactured pistol frames for amount of Rs. 10,000/- from other persons. Co-accused Qurban and his brother Ramzan were performing work of assembling, polishing and finishing of arms at National Gun House for amount of Rs. 10,000/-.

47. The accused-applicant also informed that he purchased 60 bigha land from his earning and he is doing work of sale and purchase of property also. On the pointing of accused recovery was made by A.T.S. from his residence and National Gun House. Parts of foreign arms and catalogue and licences were recovered. Accused was arrested by A.T.S. at 17.35 on 17.04.2013.

48. I have perused recovery memo dated 18.04.2013, which is provided with supplementary counter affidavit as SCA-09 submitted in connected bail application of co-accused Amit Pal Singh. This recovery was made on the pointing of accused Mohd. Khalid from his house. Sub-Inspector Ravindra Singh and police party searched house of the accused Mohd. Khalid on 18.04.2013 at 00.05 at night. One Catalogue made in America/2012. Literature by hartink relating to pistol and revolver, another literature regarding hand guns, literature/catalogue of manufacturing part of arms were recovered. These things has been mentioned in this recovery memo at serial no. 01 to 11. Four licences of no.1076, 9393, 9921, 9371 were also recovered from his house.

49. I have also perused recovery memo dated 19.04.2013 (SCA-18), which is related to search of National Gun House, Latoush Road, Lucknow. This search was made by team of Abhay Narayan Shukla, Inspector A.T.S. in presence of co-accused Gurcharan Singh and witness Vijay Peter. Sri Hirdesh Kumar, C.O. and Sri Arun Kumar City Magistrate were also associated with the search team. Stock/repair register was verified 11 pistols and 07 revolver were entered in this register, whereas 01 pistol and 01 revolver was in excess. Seven revolver details of which is mentioned in the recovery memo and 06 pistols were verified from entries of Stock/repair registers. It was found that pistol no. 80 434 Lama, B 05400 Bekal Rasia, B 06036 Jawodi Yugoslavia were prima facie fake and fabricated. Pistal no.D03647 Vizar Czechoslovakia and revolver No. 001885 Irma Germany were found fabricated and improvised. 01 revolver and 08 pistal were taken into possession by A.T.S. team. Two body frame, four pieces of barrel, 0.22 Cylinder (Garari) were also recovered. Stock register from the date 01 Oct, 2005 up to 16.04.2013, repairing register from 22.01.2011 up to date, Sale register from 27.11.2006 up to 16.04.2013 and Cash Memos books were taken in to possession.

C.D.R. Call details of accused persons

50. Learned A.G.A. has also provided SCA-19 with supplementary counter affidavit filed in connected bail application of Amit Pal Singh, which is in form of chart based on CDR call details collected by the Investigating Officer. Telephone numbers used by accused persons Khalid, Anil Jain, Gurcharan Singh, K.G.H. Pandey, Alvin Disa, Ramjan and Qurban, Junaid and Babar, Kallu Sharma, Vimal Kumar Vishwakarma, Pawan Pentographer, Raju Blockwala has been shown in form of chart. Accused Khalid made 180 calls on mobile phone of Alvin Desa, 50 calls to co-accused Anil Jain, 371 calls to Gurcharan Singh, 200 calls to Ramzan and Qurban, 339 calls were with K.H.G. Pandey, 20 calls were made with co-accused Qurban. Qurban made 300 calls to co-accused Ramzan. Ramzan and Qurban made 50 calls to co-accused Vimal Kumar Vishwakarma. 30 calls were made between Chhotey @ Junaid and Babar and Vimal Kumar Vishwakarma. Co-accused Kallu Sharma made 200 calls with Chhote @ Junaid and Babar. Pawan Pentographer made 20 calls to Ramzan and Qurban. Therefore, there is substance in argument of learned A.G.A. that co-accused persons were in close contact with each other.

51. Fire Arm Examination report (SCA-10) has also been provided by learned A.G.A. Pistol No. 78912 of bore 7.65, No. 97687 of bore 7.65 and no. 97547 of bore 7.65 were recovered from the possession of Mohd. Khalid on 17.04.2013 were found improvised and non-standard firearm. Pistol No. 80434 of bore 7.65 mm. recovered on 19.04.2013 from National Gun House, which was recovered on pointing of accused Khalid was found non-standard firearm. Pistol No. D83647 of bore 7.65 and Pistol No. 06036 of 7.65 bore were found improvised. Pistol No. 23582-S of bore 7.65 sold to Ashish Mehrotra, witness and Pistol No. 206414 of bore 0.22 sold to Parvez Khan were found improvised. Pistol of bore 7.65 recovered on 24.4.2013 on pointing out of accused Khalid, which was recovered from house of Ramzan, co-accused was also found non-standard. Rifle No. 37830 of bore 30.06 recovered on 23.04.2013 from witness Ram Pal Singh was found improvised. Rifle No. 97932 of bore 30.06 recovered on 25.04.2013 from Ram Pal Singh (correct name Nirmal Verma) was also found improvised. Rifle No. 4420 of bore 30.06 recovered on 09.09.2013 from witness Ram Milan was also found improvised. Rifle No. 28709 of bore 30.06 and No. 355964 of this bore recovered on 13.12.2013 from Kishan Gun House owned by Ajay Pal Singh were also found improvised. Likewise, three rifle recovered from possession of co-accused Mantoo Sharma were sold from Guru Ram Rai Armory owned by co-accused Gurcharan Singh and Amit Pal Singh.

52. Mantoo Sharma @ Sanjai Singh in his statement (SCA-21) has informed that in the year 2007 he went at Guru Ram Das Armoury along with Rang Nath Sharma. He was introduced by Rang Nath Sharma to co-accused Gurcharan Singh @ Jangoo. 01 Rifle of 315 bore and 100 Cartridges were purchased by him in the month of January, 2008. He again visited and purchased rifle 315 bore and 100 Cartridges again. These rifles and cartridges were supplied to Vikash Yadav area commander of NCC. He also informed to Investigating Officer that in the month of March-April, 2007 he went along with Mrityunjay Singh, who was relative of Rang Nath Sharma and visited shop of Gurcharan Singh. One rifles of 315 bore and 100 cartridges were purchased in the month of February, 2008. 01 rifle of 315 bore and 100 cartridges were purchased in April. He again purchased 01 rifle of 315 bore and cartridges, which were provided to Rang Nath Sharma. In May 2008, 01 rifle and 100 cartridges were purchased and provided to Chandra Shekher, who was cousin of Ranj Nath Sharma.

53. He also informed that when he visited shop of co-accused Gurcharan Singh, Deepak Kumar r/o Sirsa met him. In month of October, 2008 Rang Nath Sharma received Scorpio vehicle from Gurcharan Singh and brought 02 rifles of 315 bore and 01 rifle of 30.06 bore and 2500 cartridges were obtained from co-accused. Bhikhan Ganju did not purchase rifle, but purchased cartridges for amount of Rs. 04 lacs. Dhananjay alighted on the way and Rang Nath Sharma and he reached at Gandhi Maidan at Patna, where they were arrested. Deepak r/o of Sirsa met him in July, 2009 at shop of co-accused Gurcharan Singh.

54. The investigating Officer has recorded statement of witness Sri Hridyanand Pandey, Inspector, N.I.A., Lucknow, who apprised the Investigating Officer that Mantoo Sharma purchased rifle and cartridges in the month of April, 2007 from National Gun House, Latoush Road, Lucknow owned by co-accused Gurcharan Singh and Amit Pal Singh. The entries of stock register and sale register maintained at Guru Ram Das Armoury were verified and it was found that these co-accused sold several firearms to terrorist and criminals of Bihar and Jharkhand. Additional Superintendent of Police, Rajesh Shahni was conducting investigation against co-accused Gurcharan Singh. On the basis of this statement, Investigating Officer on 20.05.2013 recorded in Case Diary that investigation under Section 121-A and 122 I.P.C. is required to be conducted.

55. The Investigating Officer has recorded statement of witness Ram Lal Singh, who has informed the Investigating Officer that on 07.02.2011 he purchased rifle from accused Mohd. Khalid, which was at National Gun House, Latoush Road, Lucknow. Accused provided receipt of Rs. 15,000/- instead of amount Rs. 3 lacs paid by him. He predicted this rifle is foreign firearm and accused sold it to him by deceitful means.

56. The Investigating Officer perused seized documents from National Gun House owned by co-accused Gurcharan Singh and Amit Pal Singh. The Investigating Officer found entry in stock register of period 01.04.2010 up to 31.03.2011 in which N.P. bore Rifle No. LT 37830 by Westley made in England was procured from M/s Jain Brothers, Arms Dealer, Mandi Dabwali District, Sirsa (HR). According to sale register (page no. 09) this rifle was sold to Ram Lal Singh son of Bhagwan Deen Singh and particulars were mentioned as "one N.P. 30.06 Bore Rifle No. LT 37830 by Westley Richards London S/H. One NPB 318 Bore Rifle No. L.T. 37930 was procured from from M/s Jain Brothers (co-accused Anil Jain). The bore of this riffle was converted and sold to Ram Lal Singh. This rifle was converted by fabrication from bore 318 to 30.06, which was recovered on 23.04.2013 from house of Ram Lal Singh.

57. Ram Lal Singh has further apprised the Investigating Officer that this rifle was purchased by him from accused Mohd. Khalid for amount of Rs. 3 lacs, whereas receipt of Rs. 15,000/- was provided to him by the accused Mohd. Khalid. He predicted that this rifle was foreign firearm, which was sold to him by accused Mohd. Khalid by deceitful means.

58. Likewise, Investigating Officer found that NP Bore rifle (30.06) No. 97932 after converting bore this rifle was sold to Mohd. Rahil by accused Mohd. Khalid and its entry was found in stock register of National Gun House, which was of bore 355 and it was procured on 24.04.2010. This rifle was again sold to Nirmal Kumar Verma, who purchased it from Kishan Gun House, Lucknow on

15.10.2010. This rifle was sold by Kisan Gun House (co-accused Ajay Pal Singh) of converted bore 30.06 No. 97932 to Nirmal Kumar Verma.

59. The Investigating Officer has recorded statement of Nirmal Kumar Verma on 25.04.2013, who was Ex-MLA of BSP party. He purchased this rifle No. 97932 predicting it as foreign firearm for amount of Rs. 3,25,000/-. Receipt of amount of Rs. 25,000/- was issued to him. This rifle was sold to him on 15.10.2010 by deceitful means by Kisan Gun House owned by co-accused Ajay Pal Singh, which was improvised firearm, because its bore was converted from 355 bore to 30.06 bore by accused Mohd. Khalid.

60. Learned A.G.A. has provided statement of witness Vijay Peter, who was employee of co-accused Gurcharan Singh and Amit Pal Singh, which is provided as SCA-7 in supplementary counter affidavit filed in bail application of co-accused Mantoo Sharma. He has stated that he got job in the year 2006-07 at shop of Guru Ram Das Armoury, Meston Road as cleaning staff on the salary of Rs. 1,000/- per month. He learnt work of this shop and used to maintain record and prepared reports also, which were sent to Superintendent of Police and District Magistrate.

61. He has also apprised Investigating Officer that accused Khalid was known to co-accused Guru Chanran Singh and Amit Pal Singh from 04-05 years ago. In the year 2008-09 National Gun House was seldom opened. Co-accused Gurcharan Singh and Amit Pal Singh usually brought register of National Gun House at Kanpur and sale and purchase of firearms were shown in the records of National Gun House and Guru Ram Das Armory. It is also stated by him that co-accused Gurcharan Singh and Amit Pal Singh provided National Gun House to Mohd. Khalid. Accused Mohd. Khalid employed Laeek @ Guddu, Qurban and Ramzan as workers. Gurcharan Singh and Amit Pal Singh visited National Gun House after span of one week or 15 days and checked register. Qurban and Ramzan usually performed work on arms at National Gun House.

62. Witness Vijay Peter also apprised the Investigating Officer that Gurcharan Singh and Amit Pal Singh usually talked with accused Mohd. Khalid alone and instructed him to go out side. Ajay Pal Singh, owner of Kisan Gun House also made transaction with co-accused Gurcharan Singh and Amit Pal Singh. Likewise, Arms Dealer Anil Kumar Jain of Mandi Dabwali Sirsa, Haryana had also visiting terms with Mohd. Khalid at Guru Ram Das Armoury and National Gun House. Arms were sold, purchased and repaired by them.

63. Witness Vijay Peter also provided information to the Investigating Officer that co-accused Gurcharan Singh and Amit Pal Singh also sold rifle and cartridges 08 to 10 times to Mantoo Sharma @ Sanjai Singh and other persons. Co-accused Gurcharan Singh and Amit Pal Singh usually talked with Mantoo Sharma and these persons in their cabin. Firearms and cartridges were entered on forged licenses. Mantoo Sharma @ Sanjai Singh and Dhananjay supplied these firearms to Nexalites in Bihar and Jharkhand. Co-accused Gurcharan Singh and Amit Pal Singh were aware of these facts. He did not apprise the police due to fear of termination of his job. He has also apprised that Mantoo Sharma was arrested at Patna, Bihar and rifles sold from Guru Ram Das Armoury were recovered from him. He has also accepted that on 19.04.2013 he went with Gurcharan Singh at National Gun House, Latoush Road, Lucknow and in presence of City Magistrate search was made at National

Gun House, Lucknow.

64. Vijay Peter, witness in his additional statement recorded on 26.12.2015 has apprised the Investigating Officer that stock register of Guru Ram Das Armoury contains entry dated 25.05.2011 in hand writing of Gurcharan Singh relating to rifle no. 30657 of bore 295.

Likewise, he has stated that entry of arms of .22 and .32 bore were also made in handwriting of Gurcharan Singh. In sale register of Guru Ram Das Armoury entry of rifle no. 9440 and rifle no. 30657 converted bore 30.06 was made in hand writing of Amit Pal Singh. Rifle no. 6628 of 0.22 bore SBBL rifle converted bore 315 was sold and entry was made by Gurcharan Singh. Usually he and co-accused Gurcharan Singh made entries in record of sale and purchase of firearms at Guru Ram Das Armoury. He made entries on instruction of Gurcharan Singh and Amit Pal Singh.

He has further stated that stock register dated 04.06.2010 and sale register dated 10.09.2011 and sale register dated 06.04.2010 contains entries in his hand writing. He identified hand writing of Gurcharan Singh and Amit Pal Singh on the basis of fact that he worked with them.

65. The Investigating Officer has also recorded statement of Parvez Khan, who purchased pistol of .32 bore from Capital Gun House. Employee Pandey of Kisan Gun House has introduced him to accused Mohd. Khalid. This pistol was sold to him by Munindra Singh R/o Gomti Nagar. Again he purchased revolver of .32 bore from Raj Kumar Singh resident of Gomti Nagar. This revolver was recorded through Mohd. Khalid accused in records of M/s. Jain Brothers, Sirsa. He again purchased Pistol of 0.22 bore from National Gun House from accused Mohd. Khalid for amount of Rs. 2.5 lacs. His license was obtained by Mohd. Khalid accused for renewal and permission for sale-purchase. He has also apprised the Investigating Officer that his license of rifle was with Mohd. Khalid for extending its date. He could not purchase rifle, but he inquired from District Magistrate office then he came to know that rifle was entered on his license. Therefore, he stated that accused Mohd. Khalid deceived him.

66. Therefore, prima facie, it reveal from statement of witness Parvez Khan that accused Mohd. Khalid was having contact with owner Ajay Pal Singh of Kisan Gun House and its employee Hari Shanker Pandey. Accused Khalid was having contact with M/s. Jain Brothers (Proprietor of Anil Kumar Jain of Sirsa, Haryana). Fake entry of revolver .32 bore purchased from Raj Kumar Singh was entered in record of M/s. Jain Brothers, Sirsa through accused Khalid.

67. Investigating Officer has also recorded statement of Ashish Mehrotra, who purchased pistol for Rs. 09 lacs from Mohd. Khalid at National Gun House. He was came in contact with Mohd. Khalid on 13.04.2013 at Kishan Gun House. This duplicate pistol was sold to witness Ashish Mehrotra by Mohd. Khalid by deceitful means.

68. On the basis of evidence provided to the Investigating Officer by the above mentioned witnesses, prima facie it reveal that Mohd. Khalid was operating National Gun House unauthorizedly, on instructions of co-accused Gurcharan Singh and Amit Pal Singh and he was also having contacts with Ajay Pal Singh owner of Kishan Gun House and Sri Anil Jain owner of Jain Brothers, Sirsa,

Haryana. Fake entries of sale-purchase of fire arms were made illegally and were entered in the records of Guru Ram Das Armory, National Gun House, Kisan Gun House and M/s. Jain Brothers, Sirsa with help of accused Mohd. Khalid.

69. There is no substance in the contention of accused Mohd. Khalid that District Magistrate, Lucknow has provided information to Investigating Officer of Gangster Act that accused Khalid was not partner or any way associated with National Gun House owned by Gurcharan Singh and Amit Pal Singh co-accused persons.

70. Learned AGA has provided Annexure SCA-1, call details of Mobile No. 9807799858 and Mobile No. 9819954112 allegedly used by accused Mohd. Khalid and accused Alwyn Bounce Lecil D'isa. Call details dated 03.04.2013, 30.03.2013, 26.03.2013, 03.04.2013 and 20.03.2013 are related to supply of arms, magazines, assembly and parts of fire arms, rifle, etc., and money to be deposited by accused Mohd. Khalid in account number of accused Alwyn Bounce Lecil D'isa. Reference of procurement of parts of fire arms from Canada and visit of accused Mohd. Khalid at Mumbai is apparent from the details of call made between accused Mohd. Khalid and Alwyn Bounce Lecil D'isa which was intercepted by Investigating Officer.

71. Learned AGA has also relied upon the case diary dated 15.05.2013 in which details of conversation made by accused Mohd. Khalid with Alwyn Bounce Lecil D'sa on 20.11.2012, 02.01.2013, 03.01.2013, 05.01.2013, 20.01.2013, 26.03.2013, 30.03.2013 and 03.04.2013 has been mentioned by the Investigating Officer. According to these call details intercepted by the Investigating Officer, in Account No. 1127837222 of Central Bank, Dadar of Alwyn D'sa and in Account No. 1128022105 of his wife Amiliya D'sa, money was deposited from the branch of Central Bank situated at Aminabad and Nakhas, Lucknow. The Investigating Officer has collected deposition slips and these were compared with the Bank statements of Account No. 1127837222 of Alwyn Bounce Lecil D'sa and Account No. 1128022105 of his wife, Amiliya D'sa. The details of money deposited in these account numbers are as follows:

Date of deposit Amount (in Rs.) 07.01.2013 25000/-

10.01.2013 45,000/-

09.02.2013 49,000/-

07.01.2013 25,000/-

12.03.2013 49,000/-

13.01.2013 45,000/-

10.01.2013 45,000/-

07.01.2013 25,000/-

12.03.2013 49,000/-

02.02.2013 49,000/-

08.01.2013 25,000/-

23.03.2013 49,000/-

25.05.2012 25,000/-

26.05.2012 25,000/-

22.06.2012 25,000/-

21.07.2012 25,000/-

21.07.2012 25,000/-

26.05.2012 25,000/-

25.05.2012 25,000/-

22.06.2012 25,000/-

23.03.2013 49,000/-

08.01.2013 25,000/-

02.02.2013 49,000/-

72. In Criminal Misc. Case No. 9654 (B) of 2015 : Anil Kumar Jain Vs. State of U.P. and others in para 26 of the counter affidavit it is contended that on 23.03.2010 accused Anil Kumar Jain deposited amount of Rs. 10,000/- in bank account No. 216227 of Central Bank of India of co-accused Alwyn D'sa for purchase of foreign arms parts. This amount was transferred/debited from his account no. 11155288159, which was at State Bank of India. In support of this contention, SCA-3, statement of Account of Anil Kumar Jain has been provided in which entry of debit of amount of Rs. 10,000/- has been shown on 23.03.2010 in favour of accused Alwyn D'sa. This amount was credited by accused Anil Kumar Jain in his account on 22.03.2010.

73. These money deposited from the branch Aminabad and Nakhas of Central Bank of India correlates with the call details based on interception of conversation of Mobile Nos. 9807799858 used by Mohd. Khalid and 9819954112 used by accused Alwyn Bounce Lecil D'sa.

74. Accused Mohd. Khalid has accepted this fact that sample of his voice was sent to expert of forensic lab, who has submitted his report that these voice matched with the call details intercepted by the Investigating Agency. There is no substance in the submission of learned counsel for the accused Mohd. Khalid that expert opined on the basis of assumptions and these bank statements and deposition slips were not proved by any witness of Central Bank of Branch Aminabad and Nakhas at Lucknow. The statement of any Bank employee was not recorded by the Investigating Officer under Section 161 Cr.P.C.

75. It is relevant to mention here that prosecution, during the course of trial may produce such evidence on which it relies, therefore, intercepted call details, above mentioned Bank statements and deposition slips may be proved by the prosecution during the course of trial. Learned AGA has provided Bank statements (Annexure-C.A.-5), page upto 34 to 46) and deposition slips (page-47 and 48). On perusal of these deposition slips along with Bank statements, it reveals prima facie that according to intercepted call details of conversation made between Mohd. Khalid and Alwyn Bounce Lecil D'sa, this amount was deposited from Aminabad and Nakhas Branch of Central Bank in account of Alwyn Bounce Lecil D'sa and his wife Amiliya D'sa in their account at Branch of Central Bank of India, Dadar, Mumbai.

76. It is submitted by the learned counsel for the accused that ATS has illegally conducted investigation of this case in violation of Section 6 of NIA Act, 2008, because according to the definition of Scheduled Offences provided under Section 2(f) of the Act, these offences must be reported by the State Government to Central Government according to Section 6 Clause 2 of the Act.

77. It is relevant to mention here that initially this Crime No. 01 of 2013 was registered by ATS on the arrest of accused Mohd. Khalid on 17.04.2013 for the offences punishable under Sections 420, 467, 468, 471, 120-B IPC and Section 3/5/25/30 of Arms Act against accused Mohd. Khalid, Junaid Arshad @ Chhotey, Qurban, Ramzan and Zafar Arshad @ Babar. During the course of investigation, the Investigating Agency found that offences punishable under Section 121A and 122 IPC should also be invoked against the accused persons and name of accused Mantoo Sharma @ Sanjay Singh, declared naxalite came to light who was having contacts with co-accused Mohd. Khalid, Amit Pal Singh and Gurcharan Singh. Therefore, Investigating Agency, after obtaining the prosecution sanction from Home Affairs of State Government, submitted charge sheet under Section 121A and 122 IPC also.

78. It is also mentioned in counter affidavit that provisions of Section 6 of NIA Act are silent on Section 173 Cr.P.C. regarding Scheduled Offences, which added during the course of investigation, as would be evident from the NIA Act itself. It is contended that as such investigation conducted by ATS is just and proper and moreover no prejudice has been caused to the accused persons by the investigation conducted by the ATS Agency. The investigation cannot be said to be malice nor it will vitiate the trial proceedings.

79. I have perused the provisions of Section 6 Clause 7 which provides as follows:

"6(7).- For the removal of doubts, it is hereby declared that till the Agency takes up the investigation of the case, it shall be the duty of the officer-in-charge of the police station to continue the investigation."

80. Therefore, until Agency under NIA Act takes up the investigation of the case it shall be a duty of Officer Incharge of police station to continue the investigation.

-- Likewise, Section 22 of NIA Act provides for trial of the cases of Scheduled Offences. Clause 3 and 4 provides as follows:

"22. Power of State Government to constitute Special Courts.-(1) The State Government may constitute one or more Special Courts for the trial of offences under any or all the enactments specified in the Schedule.

(2).....

(3). The jurisdiction conferred by this Act on a Special Court shall, until a Special Court is constituted by the State Government under sub-section (1) in the case of any offence punishable under this Act, notwithstanding anything contained in the Code, be exercised by the Court of Session of the division in which such offence has been committed and it shall have all the powers and follow the procedure provided under this Chapter.

(4) On and from the date when the Special Court is constituted by the State Government the trial of any offence investigated by the State Government under the provisions of this Act, which would have been required to be held before the Special Court, shall stand transferred to that Court on the date on which it is constituted."

81. These provisions provides for conduct of trial by the court of Sessions of the division in which such offence has been committed, until such special court is constituted by the State Government and from the date when special court is constituted by the State Government, the trial of any offence under the provisions of this Act shall stand transferred to the court on the date on which special court is constituted.

82. During the course of hearing, it is informed that in Session Trial No. 1169 of 2014, statements of P.W.1 to P.W.7 have been recorded and date 14.11.2017 was fixed for cross-examination of P.W.7 Ram Milan Yadav. Charges were framed by the trial court against accused persons after disposal of their applications moved for their discharge.

83. No contention was taken by the accused persons in their applications moved for their discharge that investigation was conducted by ATS illegally in violation of provisions of Section 6 of the NIA Act. During the course of hearing of discharge applications along with written arguments were submitted on 21.10.2015 before the trial court on behalf of accused Amit Pal Singh and Gurcharan Singh. Application dated 02.11.2015 submitted by co-accused Junaid Arshad @ Chhotey, Zafar

Arshad @ Babar and Ramzan, application for discharge dated 03.11.2015 moved by accused Ajay Pal Singh, application for discharge dated 03.11.2015 moved by accused Harishchandra Pandey, application dated 31.10.2015 moved on behalf of accused Mohd. Khalid and application dated 03.11.2015 moved on behalf of accused Anil Kumar Jain, were also decided by the trial Court.

84. In these applications none of the accused persons have contended that ATS conducted investigation in violation of provisions of Section 6 of NIA Act. Charges has been framed against the accused persons. Sanction for prosecution has been granted by Hon'ble Governor of Uttar Pradesh vide order dated 17.07.2014 (SCA-33) filed along with the supplementary counter affidavit of bail application of accused Amit Pal Singh. The District Magistrate, Lucknow, vide order dated 06.09.2013 has granted sanction for prosecution under Section 25(1)(i)(b) of Arms Act against the accused persons. The District Magistrate has considered recovery of firearms and ammunition from the possession of each accused persons. The details of recovery has been mentioned relating to each accused persons in this order dated 06.09.2013.

85. The Investigating Officer has also recorded statement of Raju Gautam, who has provided his statement regarding the fact that co-accused Qurban, his brother Ramzan, Junaid Arshad @ Chhotey and Mohd. Khalid contacted him two-three times and on their instructions he prepared 20-30 blocks of pistol and revolver.

86. Learned counsel for accused Amit Pal Singh and learned AGA have provided information that first charge sheet was submitted on 14.07.2013 against the accused Mohd. Khalid, Junaid Arshad @ Chhotey, Kallu Sharma, Alwyn Bounce Lecil D'sa and Sardar Gurcharan Singh under Sections 420, 467, 468, 471, 120-B IPC and Section 3/5/25/30 Arms Act. Second charge sheet was submitted on 03.10.2013 against the accused person Ramzan. Third charge sheet was submitted on 14.11.2013 against the accused Amit Pal Singh. Fourth charge sheet was submitted on 15.12.2013 against Zafar Arshad @ Babar and Mantoo Sharma @ Sanjay Singh. Fifth charge sheet was submitted on 12.03.2014 against Harishchandra Pandey and Ajay Pal Singh. Last charge sheet was submitted on 19.07.2014 and offences under Section 121A and 122 IPC were added in this charge sheet.

87. Therefore, during the course of investigation, offences under Section 121-A and 122 were invoked against the accused persons on 19.07.2014 during the course of investigation after submission of five charge sheets before the court. In these circumstances, there is no substance in the arguments of learned counsels for accused Mohd. Khalid, Vimal Vishwakarma, Ramzan and Zafar Arshad @ Babar that ATS has conducted investigation against the accused persons in violation of provisions of Section 6 of NIA Act. Because trial court had taken cognizance from 14.07.2013 up to 12.03.2014 on the five charge sheets submitted by the Investigating Officer.

88. Hence, involvement of accused Mohd. Khalid in this crime is prima facie apparent on the basis of evidence collected by the Investigating Officer. There is no reasonable ground to believe that accused had not committed the offences. Nature and gravity of charge against the accused persons does not entitle him to be enlarged on bail. There is likelihood of the offences being repeated by him. There is possibility of his absconding or fleeing, if released on bail. He may also tamper with evidence of witnesses.

89. Learned AGA has relied upon the case law State of U.P. Vs. Amarmani Tripathi : 2005 (8) SCC 21 and Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav : 2004 (7) SCC 528 in this regard.

90. Learned Senior Counsel for accused Amit Pal Singh have also relied upon another case law of Prasanta Kumar Sarkar Vs. Ashis Chatterjee and another : (2010) 14 SCC 496, in which in para-9, Hon'ble Supreme Court has held as follows:

"9. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail.

91. On the basis of above exposition of law propounded by Hon'ble Supreme Court, case of accused is not of such nature in which accused should be released on bail.

Mantoo Sharma @ Sanjay Singh Grounds and Arguments:

92. It is submitted by the learned accused that initially this crime was registered on 17.04.2013 under Sections 420, 467, 468, 471, 120-B IPC and Section 3/5/25/30 of Arms Act at Police Station ATS, Lucknow against the accused persons Mohd. Khalid, Junaid Arshad @ Chhotey, Qurban, Ramzan, Babar @ Zafar Arshad. On the basis of statement of Shri Hridayanand Pandey, Inspector of NIA, Lucknow, accused was involved in this case on 20.05.2013 by the Investigating Officer whereas he was detained in jail from eight months ago.

93. It is further submitted that Bail Application No. 4652 of 2014 was moved on behalf of accused on the basis of FIR of Crime No. 01/2013 for the offences mentioned in it and after addition of offences punishable under Section 121-A and 122 IPC, he moved Bail Application No. 5982 of 2015. His bail applications are pending for about three years. On the basis of period of his detention for five years he should be released on bail in the interest of justice.

94. Accused Mantoo Sharma @ Sanjay Singh moved applications personally on 28.01.2017 and on 04.01.2018, which are being considered along with his above mentioned two bail applications moved by his counsel.

95. Learned counsel for the accused has submitted that the offences punishable under Section 121-A and 122 IPC has been added during the course of investigation. He has been involved on the basis of statement of witness Vijay Peter, who is employee of co-accused Gurcharan Singh, who is arm dealer. Accused is not named in the FIR. He is innocent and has not committed any offence. The allegations that he purchased firearms and cartridges on the basis of fake arms license are false. No other evidence except statement of witness Vijay Peter is available against the accused-applicant. No recovery was made from the possession of accused as he was already detained in jail.

96. It is also submitted that accused was discharged by the Court of Sessions Judge, Mansa vide order dated 03.10.2013 for the offences punishable under Sections 420, 465, 467, 468, 471, 120-B IPC, Section 25 of Arms Act and Section 16(A) of Unlawful Activities (Prevention) Act, 1967. No credible evidence is available on record against the accused regarding alleged offences. The judicial remand of applicant was sought by the Investigating Officer on 22.11.2013. The accused was released on bail vide order dated 29.10.2013 passed by Chief Judicial Magistrate, Sirsa. On the point of time of raid in present case conducted by ATS the applicant was in jail in another case.

Arguments of AGA:-

97. Learned AGA has submitted that Investigating Officer has submitted charge sheet against Zafar Arshad @ Babar and accused applicant Mantoo Sharma @ Sanjay Singh on 17.12.2013 and the Presiding Officer of the Court of ACJM-VIIIth has taken cognizance of offences under Sections 420, 467, 468, 471, 120-B IPC and Section 3/5/25/30 of Arms Act. During the course of investigation offence under Section 121-A and 122 IPC was invoked against the applicant.

98. Learned AGA has further submitted that there is criminal history of six cases pending against the accused, the details are mentioned in para-15 of the counter affidavit submitted in Bail Application No. 4652 of 2014. Crime No. 368 of 2012, Crime No. 353 of 2008 and Crime No. 421 of 2009 are related to Police Station Gandhi Maidan and Kankarbagh, Patna, Bihar. Case Crime No. 6 of 2012 is related to Police Station Sirsa, Haryana. Crime No. 12 of 2008 is of Police Station Devkund, Aurangabad. These offences are registered against him under Sections 420, 467, 468, 471 IPC and Arms Act. Crime No. 368 of 2012 has been registered under Sections 386, 387, 121, 121-A, 414, 120-B IPC and Arms Act.

99. Learned AGA has submitted that accused is absconder of Army and his arms licence was found fake and fabricated. He relied upon SCA-14, verification letter dated 13.04.2015 sent by District Magistrate, Udhampur. It is informed that arms licence No. 110ADC/07 dated 12.03.2017 of accused Mantoo Sharma, S/o Vijay Kumar Sharma for rifle of .315 bore was not issued by the District Magistrate, Udhampur, Jammu Kashmir.

100. He has also provided letter dated 25.04.2016 of Superintendent of Police, ATS, Bihar, Patna (SCA-13) and submitted that supplementary counter affidavit is available on the bail application of accused Amit Pal Singh, which is perused by me. It is informed through this letter that Mantoo Sharma @ Sanjay Singh, S/o Vijay Kumar left service of army and he is supplying arms to Bhakapa, Maoists. He supplied arms, grenades, rocket launcher, AK-47 and articles used for land mines and ammunitions to Vijay Yadav @ Sandeep @ Rupesh in Bihar, Jharkhand and Chhattisgarh. It is also informed that accused Mantoo Sharma provided firearms and ammunitions to Anil Kumar Yadav and Lalesh @ Prashant (since dead) also.

101. It is also reported that Rangnath Sharma @ Baba (since dead), R/o Aurangabad, Chandrashekhar Azad @ Commander @ Azad Sharma, Saket Kumar @ Badey Sharma, Manoj Kumar Singh @ Rakeshji, Praphul Malakar were reported to involved in naxalite activities of Bhakapa Maoists.

102. Learned AGA has also argued that co-accused Gurcharan Singh and Amit Pal Singh are owner of Guru Ramdas Armory, Kanpur and National Gun House, Lotoush Road, Lucknow. Accused Mantoo Sharma had purchased rifles and cartridges, as informed by him to the Investigating Officer and stated by witness, Vijay Peter. Out of which, three rifles along with Scorpio Car and Rs. 4,02,900/- were recovered from his possession on 16.11.2008 at 8:30.

Discussions:-

103. I have perused recovery memo, this alleged recovery was made by police party of Shri Narain Singh of Police Station Gandhi Maidan, Patna. This recovery memo (SCA-20) has been provided along with the supplementary counter affidavit which is available on record of bail application of accused Amit Pal Singh.

104. As per this recovery memo, Mantoo Sharma @ Sanjay Singh along with Ranjit Kumar Sharma was sitting in Scorpio-CRD No. DL4C-NB-0320 and other seven persons were sitting in Wagon-R LXI No. BR1-AK-6756, who were Amit Ranjan @ Pintu, Rajiv Ranjan @ Ramesh, Sunil Kumar, Narayan Das @ Guddu, Saket Kumar @ Badmelo, Chandrashekhar Azad @ Kumauji @ Azad, Manoj Kumar Singh. They were arrested in presence of witnesses Mohd. Rasheed and Narayan Pasad. A box was made below the rear seat of Scorpio-CRD DL4C NB 0320. From this box regulator rifle of bore 30.6, armory No. 20533840 rifle 315 bore and regulator rifle, total three were recovered and these were found to be purchased from Ramdas Armory owned by accused Amit Pal Singh and Gurcharan Singh. He informed the police party that he purchased 2700 cartridges from their shop and sold to Nexalites of Piparwar, Chatra/ Jharkhand including Bhikan Ganju.

105. Witness Vijay Peter has provided evidence to the Investigating Officer that accused Mantoo Sharma was having visiting terms with the accused Amit Pal Singh and Gurcharan Singh. Accused has provided information to the Investigating Officer that he purchased rifle and cartridges from these accused persons. Details of which are mentioned in CA-21, which is mentioned by me on the proper place while discussing the evidence available against Mohd. Khalid.

106. Learned AGA has also relied upon the charge sheet submitted by the Investigating Officer of RC No. 8/12/NIA/DLI under Sections 386, 387, 121, 121-A, 414, 120-B IPC, Section 25(1-b) of Arms Act and Section 17 of Criminal Law Amendment Act (SCA-24) and argued that Mantoo Sharma is Accused No.3, along with other co-accused Praphul Malakar and Anil Kumar Yadav. It was found by the Investigating Officer that conversations of Anil Kumar Yadav, Praphul Malakar and Mantoo Sharma were intercepted. They were in constant touch with each other along with Bullu Singh and Rakesh Singh. Praphul Malakar was active member of CPI (Maoist) and these accused persons were involved in naxal activities. Anil Kumar Yadav was also active member of CPI (Maoist).

107. It was also found by Investigating Officer that accused Mantoo Sharma, Anil Kumar Yadav and Praphul Malakar never used sim purchased in their names. Mantoo Sharma also obtained Mobile No. 9304870208 in the name of other person. Another Mobile No. 9693623361 and 9135345120 were obtained in the name of other persons. Mobile No. 9135345120 was used by Smt. Shobha Devi, who was wife of Mantoo Sharma.

108. In para-17.20 and 17.21 of this charge sheet on the basis of statement of eye witnesses recorded under Section 161 Cr.P.C., it was found that accused Mantoo Sharma and Praphul Malakar had done deal of M16 rifle with Vikram Singh and Mantoo was engaged in illegal trade of arms and ammunitions and they used to supply the arms and ammunitions mostly to the banned organization CPI(Maoist). Voice sample of Mantoo Sharma, Praphul Malakar and Anil Kumar Yadav were also sent to CFSL for comparison of their voice by expert. Therefore, the Investigating Officer submitted charge sheet against Mantoo Sharma for the offences punishable under Section 121, 121A, 414, 120-B IPC and 25 Arms Act and other offences.

109. The evidence of eye witness is also mentioned in para-18.23 and 18.24 who witnessed the deal of M16 rifle which took place between Mantoo Sharma and Vikram Singh. This witness had seen Mantoo Sharma, while he supplied another rifle to naxals. The statement of some few other witnesses were recorded by Investigating Officer, who stated that Mantoo Sharma had been supplying weapons to CPI(Maoist) on regular interval. These witnesses mentioned in para-17.20, 17.21, 18.23 and 18.24 can be produced by the prosecution during the course of trial of this case also.

110. Therefore, involvement of Mantoo Sharma for purchasing rifle and cartridges from accused Amit Pal Singh and Gurcharan Singh and supplying these arms to naxalites and members of CPI(Maoist), a banned terrorist organization is prima facie apparent. He was having contacts with Praphul Malakar and Anil Kumar Yadav, member of this organization.

111. Hence, there is no substance in the arguments of learned counsel that there is no evidence available against him except the statement of Vijay Peter, employee of accused Amit Pal Singh and

Gurcharan Singh. He purchased arms and ammunitions on fake and forged arm license and supplied it in naxalite affected areas of Bihar and Jharkhand. Prima facie his involvement in this crime is also apparent on the basis of evidence collected by Investigating Officer against him.

Elwyn Bruce Lecil D'sa Grounds and Arguments:-

112. Learned counsel for applicant-accused Elwyn Bruce Lecil D'sa has submitted that this is the second bail application moved on behalf of the applicant. The first bail application No. 5040 of 2013 was dismissed as not pressed on 31.07.2014. Therefore, first bail application of the accused has not been decided on merits.

113. It is submitted that the accused-applicant is not named in the FIR. This case was initially registered on the basis of alleged recovery made on 17.04.2013 from the possession of Mohd. Khalid. It is submitted that applicant is old, sick and infirm person, aged about 80 years. He has already been undergone open heart surgery. His date of birth is of the year 1934. He is very weak, feeble and sick man. He is suffering from several old age diseases, as such his life is at stake. He is suffering from severe neurology problem. The applicant has already in jail for a considerable long time. The applicant is suffering from severe cardiac problem and as such he was advised to undergo cardiac operation at the cardiac department of the KGMU. He was not admitted even after directions issued by the trial court. The applicant is unable to move properly. His condition may deteriorate for want of proper treatment. The applicant has no criminal antecedents prior to the instant arrest shown by the police. He is detained in jail from 31.04.2013. The applicant is ready to furnish adequate and reliable sureties for his release. He is a permanent residence and there is no chance of his absconding.

114. It is pertinent to mention here that Senior Consultant of District Jail, Lucknow, vide report dated 31.12.2015 has reported that accused was sent to KGMU and Balrampur Hospital, Lucknow. On second and fourth Saturday, a team of specialist doctors visited jail and accused applicant was treated for hypertension and backache. The medicines are being administered to him. Therefore, no serious ailment has been reported by Senior Consultant of District Jail.

Arguments of A.G.A.:-

115. Learned AGA has argued that the accused procured parts of foreign arms from Singapore and Canada, which was supplied to the accused Mohd. Khalid and payment was deposited in his Bank account by accused Mohd. Khalid and Anil Kumar Jain. Contentions in this regard has been made in para-10 of the counter affidavit filed in the bail application of accused Mohd. Khalid regarding deposition of amount in the account of accused-applicant Alwyn Bruce Lecil D'sa and his wife Amiliya D'sa which has been relied upon through Annexure-CA-5 (paper No.34 up to 48).

116. Learned AGA has also relied upon the recovery memo dated 29.04.2013 (C.A.-2) and contentions mentioned in paras-5, 10, 14, 17 and 18 regarding recovery of illegal firearms from the possession of accused and supply of parts of firearms and transactions made by the accused.

Discussions:-

117. I have perused recovery memo dated 29.04.2013 (Annexure-CA-2).

118. The Investigating Officer proceeded for Mumbai on 29.04.2013 and reached there on 30.04.2013 along with Constable Tanveer Ahmad and went at Police Station Dadar. The Police party of Police Station Dadar was associated with the Investigating Officer Ravindra Singh. Investigating Officer and police party on 30.04.2013 at 11.30 a.m. searched House No. 504, Salvation Apartment NH Kale Marg, Dadar, Mumbai in presence of witness Shri Mukesh Prahlahd Srivastava, who was Society Manager. Accused Alwyn D'sa was present in his house.

119. BHPC Mark Trolley Briefcase was searched, which contained letter pad, on which, number of parts of arms and its cost was written on three pages. Two diagram of Walther pistol, on which photo of parts and their size were mentioned on it. Five invoices issued in favour of accused Alwyn D'sa Salvation along with his address issued on 14.01.2013 by Hock Ann (Sports) PTE Ltd., two receipts dated 05.02.2013 and one receipt of 06.02.2013 were recovered, on which details of sale of parts was mentioned. Name of parts and its account was mentioned on another letter pad. Walther diagram along with details of parts of Walther pistol and diagram of government model pistol and 04 invoice of Machine tool Prototype factory, Amber Nath were recovered from his briefcase.

120. A bag was also searched, from which five magazines 32 walther, 04 magazine 30 carbine magazine, 10- 7.62 magazine, 210 cartridges of .22 rifle, 05 big thick gun spring, 05 grip of pistol walther, revolver grip gray colour, one grip of walther pistol, 29 cartridges of rifle 401 bore, 08 empty cartridges of 45 bore, 10 dummy cartridges of 45 bore, 01 gun body, 07 pistol barrel, 01 screw and parts for repair were found in a packet, 01 grip of pistol of 45 bore, parts of rifle i.e. lock, one gun part New Merik Corporation book, passport of DSA Bruce Cecil, Passbook of account no. 1128022105 in name of DSA Bruce issued by Central Bank of India, one Passbook of Account No. 1127837222 issued by Central Bank of India in favour of Emiliya wife of accused, one Air Travel Ticket Slip issued for Lucknow. Account of sale of parts of pistol by Disa uncle was mentioned on Pad of National Gun House and Nokia phone were recovered from this bag.

121. The articles recovered by the Investigating Officer on 30.04.2013 from the house of accused Alwin D'sa son of Walter Joseph D'sa prima facie substantiates prosecution version that he was involved in illegally importing the parts of foreign arms from Singapore and Canada, which were sold to National Gun House through co-accused Mohd. Khalid.

122. The bank statements of Account No. 1128022105 were provided by Senior Managar of Central Bank of India, Nakhas Branch, Lucknow vide letter dated 10.05.2013 and Assistant Manager of Central Bank of India, Ameenabad Branch, Lucknow to the Investigating Officer. The details of deposition of amount by co-accused Mohd. Khalid was corroborated by the call details intercepted by the Investigating Officer. The Investigating Officer has also collected deposits slips from the Nakhas and Ameenabad branch. The amount mentioned in it were deposited in Account No. 1128022105 of accused Alwin D'sa and Account No. 1127837222 of Smt. Emiliya, who is wife of this accused.

123. Likewise, accused Alwin D'sa traveled to Singapore and Canada, according to travel details mentioned in his Passport. Therefore, prima facie it is apparent that accused Alwin D'sa supplied parts of foreign firearms to Mohd. Khalid, which were used by Mohd. Khalid and co-accused persons for manufacturing duplicate and improvised foreign firearms. These firearms were sold by Amit Pal Singh, co-accused Gurcharan Singh, Anil Kumar Jain, Ajay Pal Singh to innocent license holders, anti social elements and through accused Mantoo Sharma, firearms and ammunitions were supplied to members of CPI (Maoist)/ naxalites of Bihar and Jharkhand.

124. I have perused Annexure-CA-5 (paper No.34 up to 48) and details of deposition slips collected by Investigating Officer. The details of comparison of statement of these accounts, deposit slips and telephonic conversations of the accused with the co-accused Mohd. Khalid has been discussed on the proper place by me, while evidence collected by the Investigating Officer against the co-accused Mohd. Khalid was appreciated.

125. In supplementary counter affidavit it is submitted that Hon'ble Supreme Court, while cancelling the bail of co-accused Gurcharan Singh vide order dated 08.10.2014, was pleased to observe that it is not a fit case for enlarging the co-accused Gurcharan Singh on bail at this stage. It is mentioned in para-7 that the trial proceedings are being delayed on behalf of the accused persons and the learned trial court in its different orders has been pleased to observe that accused persons are causing delay in proceedings.

126. It is further submitted that the trial court in its order dated 07.11.2015 has been pleased to observe that accused persons are not liable to be discharged and prima facie case is established on the basis of evidence available on record to frame the charge and to proceed with the trial. Order passed by trial court dated 07.11.2015 has been provided as Annexure-SA-4. Accused-applicant is not entitled for any benefit on account of his age and the ground of period spent in jail. It is submitted in para-13 that the accused had undergone for certain period of incarceration by itself would not entitle to the accused to be enlarged on bail, specifically when the accused stands charged offences of punishable with life imprisonment or death penalty.

127. In para-15 it is mentioned that accused Junaid Arshad @ Chhotey and Zafar Arshad @ Babar have been named in the FIR of Crime No. 46 of 2013 under Sections 504, 506 IPC, P.S. Moolganj, District Kanpur for giving threats to witnesses. Witness Raju Gautam has apprised the Investigating Officer during the course of investigation that threats were given to him by Gurcharan Singh, co-accused, on behalf of himself and Mohd. Khalid. These facts clearly indicate that accused persons tried to tamper with evidence of the prosecution witnesses. Statement of Raju Gautam has been provided as Annexure-CA9 and CA10.

128. Learned trial court, vide different orders passed on 15.05.2015 has rejected the application moved on behalf of accused Anil Kumar Jain, Vimal Kumar Vishwakarma @ Kallu, Ajay Pal Singh, Amit Pal Singh, Kalloo Sharma and Mohd. Khalid. These applications were moved on behalf of these accused persons for providing copy of documents under Sections 207, 208 Cr.P.C.

The application of accused Mohd. Khalid was disposed of by the trial court vide order dated 01.03.2016 for inspection of documents and to append admission/ denial note according to provisions of Section 294 Cr.P.C.

129. It was found by the trial court vide order dated 07.11.2015 that on the basis of evidence available on record there is sufficient ground to frame charges against the accused persons for offences punishable under Sections 420, 467, 468, 471, 120-B 121-A, 122 IPC and Sections 3/5/25/30 Arms Act. It was observed by the trial court that accused Mohd. Khalid did not admit or deny genuineness of the documents inspected by him according to provisions of Section 294 Cr.P.C. Application was moved by accused Mohd. Khalid for the purpose to delay the proceedings of trial.

130. P.W.1, witness Tejbahadur Singh, whose statement was recorded on 02.03.2016, was present before the trial court. Vide order dated 02.06.2016 opportunity of cross-examination of accused persons Kallu Sharma, Vimal Kumar Jain, Alwyn Bruce Lecil D'sa and Mantoo Sharma was closed by the trial court. Raju Gautam, witness, provided application to Incharge, ATS, Lucknow regarding threat given to him by Gurcharan Singh on 02.01.2014 at about 1:00-2:00 p.m. It is mentioned in this complaint that Gurcharan Singh asked this witness that he is adducing evidence against him and Mohd. Khalid. He should not adduce evidence against them. He offered amount of Rs.50,000/- to one one lakh to him.

131. In these circumstances, it is not a fit case to grant bail to accused Alwyn Bruce Lecil D'sa.

Junaid Arshad alias Chotey:

Vimal Kumar Vishwakarma:

Grounds and Arguments of Junaid Arshad:-

132. This is second bail application moved on behalf of applicant. The first bail application bearing Crl. Misc. Case No. 6185 (B) of 2013 was rejected as not pressed vide order dated 31.7.2014, therefore, first bail application was not decided on merits.

133. It is submitted on behalf of applicant- Junaid Arshad alias Chotey that the applicant is innocent and has committed no offence as alleged by the prosecution. It is further submitted that as per prosecution version, Crime No. 1 of 2013 was registered on the basis of recovery of certain incriminating articles from the possession of co-accused Mohd. Khalid. On the basis of confessional statement made by him, name of the present applicant came into light. He was arrested on 18.4.2013. The alleged incriminating material was not recovered from his possession. One sketch of pistol on piece of paper was recovered from right pocket of trouser of the applicant and incomplete frame of pistol was recovered from right side pocket. The applicant was implicated in this crime only on the basis of statement of co-accused Mohd. Khalid. The prosecution has not collected cogent evidence against him. The prosecution has relied upon certain call details collected by the Investigating Officer that accused persons were telephonically in touch with each other. There is no evidence available against the accused applicant for offence punishable under Section 121-A and 122

I.P.C. The investigating agency has relied upon the statement of co-accused Mantu Sharma recorded on 18.6.2013 that he supplied weapons to certain anti-national nexalite groups. Co-accused Mantu Sharma has not named him in his statement. The prosecution has failed to collect any evidence against the applicant. The applicant has not indulged in any illegal sales of arms and ammunitions, which could attract the provisions of waging war against the State. The applicant has no criminal antecedent. The applicant will cooperate with investigating agency. The applicant has not committed any offence and has falsely been implicated in this crime.

Grounds of Vimal Kumar Vishwakarma

134. Learned counsel for applicant Vimal Kumar Vishwakarma has submitted that recovery memo dated 18.4.2013 is false and fabricated. The applicant Vimal Kumar Vishwakarma is in jail since 18.4.2013. Other grounds has been taken same as averred by co-accused Junaid Arshad.

Arguments of A.G.A.

135. Per contra, learned A.G.A. has submitted that co-accused Mohd. Khalid was arrested by ATS on 17.4.2013, who informed the team of ATS that he was procuring manufactured firearms from Junaid Arshad alias Chotey and his brother Zafar Arshad alias Babar, Vimal Vishwakarma and co-accused Kallu Sharma.

Discussions:-

136. The witness Raju Gautam has provided information to the Investigating Officer that accused persons, namely, Junaid Arshad alias Chotey, Mohd. Khalid, Ramjan and Qurban contacted him for preparation of blocks of pistol and revolver. He provided 25-30 blocks to them. Witness Raju Gautam has also provided complaint to Investigating Officer that Gurcharan Singh threatened him not to adduce evidence against him and Mohd. Khalid.

137. On perusal of recovery memo dated 17.4.2013, it reveal that on the basis of information given by co-accused Mohd. Khalid, a separate team was formed and sent to Kanpur, therefore, recovery dated 18.4.2013 is discovery under Section 27 of the Indian Evidence Act and this fact may be proved by the prosecution that this discovery of one sketch of pistol and frame of pistol was made from the possession of present applicant. He and his brother Zafar Arshad alias Babar and both are the sons of Arshad Mirza, who is owner of Bareilly Gun House, Western Road, Kanpur. He has informed the Investigating Officer that he has supplied 100 arms to co-accused Mohd. Khalid. Co-accused Mohd. Khalid provided parts of firearms to accused, which were handed over to co-accused Kallu Sharma and Vimal Kumar Vishwakarma. Who in their turn, assemble foreign firearm by using grinding and surfacing machine and thereafter they handover the firearm to present applicant Junaid Arshad alias Chotey and these arms were handed over to co-accused Mohd. Khalid for amount of Rs. 50,000/- each.

138. Junaid Arshad has informed the Investigating Officer that Mohd. Khalid provided him all foreign arms Colt, Lama, Bareta and parts of foreign arms, which were provided by him to Kallu

Sharma and Vimal Vishwakarma, who with help of EDM Machine Manufactured Body, slide and surfacing diagram, trigger hammer and trigger guard and Pawan with Pantography machine was writing name on these arms. Ramjan and Qurban were performing work of assembling, polishing and finishing at National Gun House. Mohd. Khalid paid Rs. 10,000/- to them for each firearm. Junaid also paid Rs. 10,000/-Rs.10,000/- each to Kallu Sharma and Vimal Vishwakarma and Rs. 2,500/- to Pawan. He supplied old firearms purchased from licensees and 100 duplicate firearms to co-accused Mohd. Khalid.

139. On perusal of recovery memo SCA-8 of supplementary counter affidavit filed in Crl. Misc. Case No. 7488 (B) of 2013 (Amit Pal Singh Vs. State), S.I. Mr. Vimlesh Kumar Singh tried to associate independent witness, but none was prepared to become witness. On the basis of information given by co-accused Mohd. Khalid, his team raided at house of accused applicant, but he was found in lane near his house and sketch of pistol and semi manufactured pistol frame was recovered from his possession. He informed that on the basis of sketch prepared by him, order was given to co-accused Kallu Sharma and Vimal Kumar Vishwakarma and he was arrested on 18.4.2013.

140. On basis of the information given by applicant Junaid Arshad alias Chotey, work shop of Kallu Sharma was raided and sketch of pistol and two iron plates containing blocks/ cut space of firearm pistol, grips slide and space of magazine assembly and parts for manufacturing firearms were recovered at 14:45 a.m.

141. On the basis of information given by Junaid Arshad alias Chotey and Kallu Sharma, workshop of co-accused Vimal Kumar Vishwakarma was raided, he was working on Kharad machine. Mobile phone and Rs. 210/- was recovered. On search of room, plate containing cut space of blocks for manufacturing pistol, assembly and other parts of firearms were recovered. At 8:30, these three accused persons were arrested by the police team.

142. The Investigating Officer has also collected call details of mobile phone of Junaid Arshad alias Chotey. He by phone no. +919506887604 and his brother Zafar Arshad alias Babar by mobile no. +919580562099 and +917499601562, contacted Vimal Kumar Vishwakarma 30 times on his mobile phone no. +919795975475 and made 200 calls with Kallu Sharma on his mobile no. +919838167642. Both these accused persons, namely, Junaid Arshad alias Chotey and his brother Zafar Arshad alias Babar made 300 calls to Ramjan and Qurban on their mobile phone. Likewise they made 300 calls to co-accused Mohd. Khalid and six calls to Qurban.

143. Therefore, according to CDR details of co-accused persons, collected by Investigating Officer, it reveal that they were in close contact with each other and facilitating each other for manufacturing illegal arms for co-accused Mohd. Khalid, who procured parts of foreign arms from co-accused Allwyn Bruce Lecil D'sa. These arms were further supplied by him to co-accused Gurcharan Singh, Anil Jain, Ajay Pal Singh and Amit Pal Singh, which were sold to co-accused Mantu Sharma and other anti-social elements and nexalites in Bihar and Jharkhand.

144. The Investigating Officer has collected evidence of witnesses, the details of which has been discussed by this Court in proper place. Prima facie, involvement of present applicant Junaid

Arshad alias Chotey and his brother Zafar Arshad alias Babar is apparent.

145. In Case Crime No. 46 of 2013, under Sections 504 and 506 I.P.C., Police Station Moolganj, District Kanpur, FIR has been registered against them regarding extending threats to public witnesses. Another Case Crime No. 4 of 2013, under Section 2/3 of the Gangster Act, Police Station ATS, U.P. Lucknow has been registered against him. On appreciation of evidence collected by Investigating Officer, it reveal that applicant is one of the active member of the said gang, which is involved in anti-national activities. The applicant is in constant touch with co-accused Mohd. Khalid, Ramjan, Qurban, Kallu Sharma, Vimal Vishwakarma and Pawan Pantographer. The fact of discovery under Section 27 Evidence Act may be proved by S.I. Vimlesh Kumar Singh and his team legally.

Zafar Arshad alias Babar Ramzan Grounds and Arguments on behalf of accused Zafar Arshad @ Babar:-

146. It has been mentioned in the grounds of bail of applicants, namely, Zafar Arshad alias Babar, Vimal Kumar Vishwakarma and Ramjan that Case Crime No. 1 of 2013 was registered on the basis of alleged illegal recovery made from the possession of co-accused Mohd. Khalid. Ten persons were disclosed by Mohd. Khalid, whereas only five persons were named in the F.I.R. Constable Santosh Singh was on casual leave for three days, i.e., 14.4.2013 upto 18.4.2013, even then he has been shown as member of the ATS team, therefore, arrest of Mohd. Khalid on 17.4.2013 is false and fabricated.

147. It is also pleaded by Zafar Arshad @ Babar that the recovery was made in the territorial place of police station Ajgain, District Unnao, but no FIR was registered at this police station. It is further submitted that the court concerned directed that accused may be taken on police remand on 8.10.2013 from 5:00 p.m. upto 11:30 p.m. He was not medically examined nor counsel for applicant was allowed to go with applicant Zafar Arshad alias Babar and a false recovery memo was prepared by ATS police personnel on 8.10.2013. Applicant Zafar Arshad alias Babar has been implicated in this crime on the basis of statement of co-accused Mohd. Khalid. Co-accused Amit Pal Singh was granted bail by this Court vide order dated 18.5.2016 in Crl. Misc. Case No. 7488 (B) of 2013 and co-accused Harish Chandra Pande was also enlarged on bail vide order dated 29.4.2016 passed in Bail Application No. 10676 of 2015. The case of applicant Zafar Arshad alias Babar is on better footing in comparison to other accused persons. Applicant Junaid Arshad alias Chotey and Zafar Arshad alias Babar are real brothers and they are sons of Arshad Miyan, who was owner of Bareilly Gun House. It is further mentioned that on 15.12.2013, charge sheet has been filed by the Investigating Officer and supplementary charge sheet has been filed on 19.7.2014 for offence punishable under Sections 121-A and 122 I.P.C.

148. It is also contended that according to CFSL report dated 09.10.2014 relating to examination of pistol Sl. No. 67124 which was found only non standard, therefore, the applicant has been falsely implicated in this case. No offence has been made out against applicant Zafar Arshad alias Babar as per prosecution case. The offence under Section 121-A and 122 I.P.C. are scheduled offence and Investigating Officer has violated the provisions of Section 6 of the NIA Act and the applicant is not

a previous convict and detained in jail since 23.9.2013.

149. Learned AGA has opposed this bail by submitting that he actively participated in this crime intentionally.

Discussions:-

150. I have perused recovery memo dated 8.10.2013. The applicant Zafar Arshad alias Babar was taken on police remand by the Investigating Officer. On the basis of order passed by the Presiding Officer, Court No. 1, A.C.J.M., Lucknow. S.I. Shailendra Kumar Singh and his police party was informed by him that after arrest of accused Mohd. Khalid, Ramjan handed over him a pistol, Semi manufactured frame, block for writing on pistol, paper tracing paper, which were kept by him in delipilated Kothari, which was situated near Jaipuriya Railway Crossing/Ganna Godam adjacent to transformer of Railway Station. These articles were kept in a bag provided by Ramjan, which was hidden by him by digging floor of Kothari and it was covered by bricks. This information can be proved by the prosecution under Section 27 of the Indian Evidence Act. One pistol P. Beretta Cal 7.65 no. 67124, semi manufactured pistol along with barrel magazine, trigger and three blocks of writing on pistol, two tracing paper, LLAMA Cal .32 PIETRO BERETTA were recovered on the pointing out of accused Zafar Arshad alias Babar. He acted under the direction of co-accused Mohd. Khalid. He collected raw-material, iron pipe, spring body, frame for manufacturing illegal foreign make firearms, to get the arms prepared from co-accused Kallu Sharma and Vimal Kumar Vishwakarma. Thereafter got the number printed on these arms by Pawan Pantographer. He has also informed the police party that he supplied 100 arms to co-accused Mohd. Khalid.

151. As far as it is contended in bail application of applicant Zafar Arshad alias Babar that ATS conducted Investigating Officer of this crime in violation of Section 6 A, it has been discussed at proper place while, I discussed bail application of co-accused Mohd. Khalid.

152. In the above-mentioned facts and circumstances, accused persons, namely, Junaid Arshad alias Chotey, Zafar Arshad alias Babar, Vimal Kumar Vishwakarma and Ramjan were felicitating co-accused Mohd. Khalid for manufacturing duplicate foreign arms, which were supplied by co-accused Mohd. Khalid to accused persons, namely, Ajay Pal Singh, Amit Pal Singh, Gurcharan Singh and Anil Jain. Amit Pal Singh and co-accused Gurcharan Singh further supplied these arms to Mantu Sharma, who further supplied these arms in Nexalite affected area in Bihar and Jharkhand. The detailed discussion has been mentioned by me while discussing bail application of co-accused Mohd. Khalid and Mantu Sharma. Junaid Arshad alias Chotey and Zafar Arshad alias Babar were in close contact with co-accused Mohd. Khalid for this purpose.

Ramzan:-

Grounds and Arguments:-

153. It is submitted by the learned counsel for Ramzan that the recovery memo dated 6.7.2013 of accused Ramzan is false and fabricated. He was arrested in front of Petrol Pump of Deepak Kumar

within the limits of Police Station Ghanghata, District Unnao. The investigating agency has falsely implicated him in this crime. The applicant Ramzan has never made any confessional statement before any authority. He was taken into custody on 6.7.2013 by ATS. No independent witness was associated on the point of arrest of the accused. He is in jail since 7.7.2013. He has no criminal history. The long detention of the applicant is resulting into starvation in family and causing irreparable damage to the applicant Ramzan. Co-accused Mohd. Khalid has given information to the investigating agency at the point of time of his arrest on 17.4.2013 that applicant Ramzan and co-accused Qurban had worked at National Gun House for finishing polishing and assembling of semi manufactured firearms and Mohd. Khalid paid to them amount of Rs. 10,000/- per firearm.

154. Learned AGA has opposed this bail by submitting that he has actively participated in this crime and facilitated manufacturing and supply of duplicate foreign firearms in Naxalite area of Bihar and Chhattisgarh through Mohd. Khalid, Amit Pal Singh, Ajay Pal Singh, Anil Kumar Jain and Mantoo Sharma.

Discussions:-

155. I have perused recovery memo dated 24.4.2013. It reveal that on the pointing out of co-accused Mohd. Khalid, one pistol 32 bore, semi manufactured pistol, the purchase certificate on the letter head of M/s. Jain Brothers, letter pad of National Gun House and diagram of Baretta pistol was recovered from the house of Ramzan. This discovery may be proved by the prosecution under Section 27 of Indian Evidence Act.

156. I have perused recovery memo dated 06.07.2013. S.I. Shailendra Singh and his police party acted upon tip off given by informer. His motorcycle UP78 CW 0973 was intercepted by the police party. It is mentioned in this recovery memo that public witnesses were asked by police party to become witness, but none was prepared to become a witness. Pistol PIETRO BERETTA MOD-70 GARDONE BT CAL 7.65 MOD-70 No. 975225 made in USA along with magazine, driving license, voter ID card and amount of Rs. 175/- were recovered from the possession of accused Ramzan. Three railway tickets dated 5.7.2013, Firozabad to Kanpur Central, Nokia Phone, Passport Size photo were recovered.

157. The accused Ramzan was holding bag on his shoulder, which was also searched. Two frames of pistol along with slide, two barrel, four magazine and 70 diagram of MOD-70 with specification and tracing paper bearing No. 97687 along with written words LLAMA and PIETRO BERETTA and telephone diary containing Mobile numbers of different persons, four blocks of pistol and revolver were recovered from his bag. He was not having license for the recovered manufactured and semi manufactured pistols, magazine, barrel etc.

158. He informed the police party that Mohd. Khalid was arrested on 17.4.2013. He tried to talk him on telephone, but he anticipated his arrest. He removed articles from National Gun House, Lucknow and handed over semi manufactured foreign fabricated pistol, its parts, tracing papers, diagram and pistol parts to Khurram. Khurram was brother-in-law of Mohd. Khalid. Some articles were handed over to Zafar Arshad alias Babar and Qurban at Kanpur and remaining articles recovered from his

possession was kept by him. Applicant Ramzan was arrested at 20:35 hours by police party.

159. The investigating officer has collected CDR call details of his conversations with co-accused Mohd. Khalid, i.e., 200 calls, 300 calls with Junaid Arshad alias Chhotey and Zafar Arshad alias Babar, 50 calls with Vimal Kumar Vishwakarma, 300 calls with Qurban, 20 calls with Pawan Pantographer, six calls to Raju Blockwala, who used to make blocks for them.

160. On perusal of CDR call details, it reveal that accused Ramjan was in close contact with other accused persons and was facilitating manufacturing of duplicate foreign arms and worked at National Gun House along with Qurban, his brother on the instructions of Mohd. Khalid.

161. Therefore, I find aforesaid bail applications bearing CrI. Misc. Case No. 3733 (B) of 2015, 8265 (B) of 2016, 8011 (B) of 2016 and 7889 (B) of 2016 deserve to be rejected and it is not fit case for granting bail. Therefore, bail applications of applicants, Junaid Arshad alias Chotey, Zafar Arshad alias Babar, Vimal Kumar Vishwakarma and Ramzan are liable to be rejected.

162. As far as it is contended by learned counsel for applicants, Zafar Arshad alias Babar, Vimal Kumar Vishwakarma and Mohd. Khalid that commando Santosh Singh was shown as a member of ATS team where as G.D. dated 18.4.2013 reveal that he was on casual leave from 14.4.2013.

163. In counter affidavit filed in bail applications of applicants, Zafar Arshad alias Babar, Mohd. Khalid and Vimal Vishwakarma, Investigating Officer has contended that two persons, namely, Santosh Singh are posted at ATS, Headquarter and one of them is Head Constable, who was on casual leave, while Constable Santosh is commando of ATS force and he was not on leave and was one of the member of raid party. Therefore, contentions made by these accused applicants in this regard is misconceived.

164. Likewise, learned counsel for applicant Mohd. Khalid has vehemently aruged that CFSL report sent by Forensic Science Laboratory, Mahanagar, Lucknow was suppressed by ATS agency and false affidavits were filed in this regard.

165. I have perused report dated 3.2.2015 sent by the Director of Forensic Science Laboratory. The handwriting of Mohd. Khalid and Allwyn Bruce Lecil D'sa were compared by handwriting expert. It was found that specimen signatures of handwriting s-22 and s-34 were matched with disputed handwriting are available on Q-10 to Q-12. Therefore, these handwriting of co-accused Allwyn Bruce Lecil D'sa was found on disputed documents Q-10 to Q-12. This report was sent by the Director directly to the court concerned. The Presiding Office of court of ACJM-VIII, passed an order on 26.9.2016 that "report be perused by the Investigating Officer and be kept along with case diary". Therefore, Investigating Officer came to know about this report dated 3.2.2015 on the basis of order dated 26.9.2016.

There is no substance in argument of learned counsel for applicant-Mohd. Khalid that this report was ever suppressed by the Investigating Officer. On appreciation of evidence collected by Investigating Officer, it reveal that Qurban (absconded) and Ramzan, who are real brothers also, are

the active members of the said gang, which is involved in anti-national activities. Learned AGA has submitted that there is other evidence available against accused Mohd. Khalid. The expert opinion is not the only evidence. This fact has been contended by Investigating Officer in supplementary counter affidavit.

Amit Pal Singh Ajay Pal Singh Anil Kumar Jain Grounds and Arguments on behalf of Accused Amit Pal Singh:-

166. Accused Amit Pal Singh has pleaded in grounds of bail that co-accused Mohd. Khalid was arrested by the police party of Tej Bahadur Singh, Inspector, ATS, U.P., Lucknow. On the basis of this recovery memo Crime No. 1 of 2013 was registered on 17.04.2013. Accused is not named in the FIR. Alleged recovery from the possession of co-accused Mohd. Khalid is false, fabricated and unfounded. Initially this FIR was lodged against Mohd. Khalid, Junaid Arshad @ Chhotey, Qurban, Ramzan and Zafar Arshad @ Babar. Afterward applicant and his father were made accused on the basis of statements of co-accused Mohd. Khalid. Offences under Section 121-A and 122 IPC has been added during the course of investigation. The applicant has been implicated solely for the reason that he happens to be the license holder of Guru Ram Das Armory. No role has been attributed to him in the commission of offence. His father, co-accused Gurcharan Singh cooperated with the ATS officials. On 19.04.2013 he was present at his shop. The applicant had been operated upon for major brain surgery for removal of tumor in the year 2005. He was undergoing regularly post operation care and checkups. For this reason, the applicant could not run and maintain the shop and had to rely on others for running of his shop. There is absolutely no evidence that applicant had dishonestly and illegally sold weapons to the Maoists or to any other anti social elements. There is neither any evidence against the applicant to the effect that applicant was beneficiary of any sale transaction involving forged and fabricated weapons nor works as a gang with the other co-accused persons. Applicant has no concern with the alleged making of fake pistols and its sale thereafter. Applicant is still under continuous treatment of competent doctors. Accused-applicant was arrested on 02.09.2013 and he is detained in jail since then. There is no chance of applicant's absconding or tampering with the prosecution witnesses.

167. Accused Amit Pal Singh moved this first bail application No. 7488 of 2013 which was allowed vide order dated 18.05.2016 passed by this Court.

168. Hon'ble Supreme Court, vide order dated 18.07.2017 has observed as under:-

"Para-4. Having gone through the impugned order passed by the High Court and having heard the learned counsel appearing for the State as well as the learned senior counsel appearing for the respondent, we are of the view that the matter needs a fresh look by the High Court in the light of the affidavit extracted above.

Para-5. Accordingly, without expressing any further opinion on the merits of the impugned order passed by the High Court, we set aside the impugned order and remit the matter to the High Court for fresh consideration in the light of the affidavit extracted above.

Para-6. Needless to say that the parties will be free to raise all available contentions before the High Court. We request the High Court to pass orders expeditiously and preferably, within a period of three months from the date of receipt of a copy of this Judgment."

169. On the basis of the order dated 08.05.2017 passed by Hon'ble Supreme Court, State filed affidavit dated 13.07.2017 before the Hon'ble Supreme Court. Paragraphs-4 to 9 of the said affidavit read as under:

"4. That in compliance of the aforementioned order it is submitted that regarding the conduct of the accused Respondent/ Amit Pal Singh it is stated that Respondent Amit Pal Singh is a licensee of shop Gur Ramdas Armoury. Further it is stated that even in stock registers it has not been mentioned that for which State license has been issued by licensing authorities to whom fire arms have been sold.

5. The record of sale of arms of Guru Ram Das Armoury, Kanpur further reveals that many weapones have been shown to be sold in the naxalite affected States like Jharkhand, Bihar and Udhampur under Jammu and Kashmir State and when enquiry was made by the Investigating Officer of case regarding verification of licenses as many as 26 Arm licenses were not found in existence upon which weapons have been shown to be sold.

6. It is further pertinent to mention to state herein that in the year 2008 co-accused Mantoo Sharma @ Sanjay Singh along with 06 naxalite were arrested at Gandhi Maidan by the police personnel of Police Station - Gandhi Maidan Patna, Bihar and during the search and seizure 03 rifles along with vehicle and cash were recovered from the possession of co-accused Mantoo Sharma @ Sanjay Singh who was going to sell these rifles to the naxalites and in his admission he has admitted that all these rifles were purchased by him from Guru Ram Das Armoury, Meston Road, Kanpur, which belongs to present accused & also that he is an absconder from Army.

That further the records of Guru Ram Das Armoury further reveals that accused was also involved in purchasing useless fire arms from Bombay and Kanpur and later on these so purchased useless fire arms have been re-assembled with the addition of foreign fire arm parts and after changing the respective bore of these fire arms the entry of these fire arms have been in stock registers of Guru Ram Das Armoury and later on these fire arms after change of their respective bores have been sold to innocent license holders as well anti social elements and some of which were recovered by the Investigating Agency from the innocent purchasers. The report of CFSL, CBI, New Delhi reveals that all these weapons were improvised.

Therefore, it is most humbly submitted that Respondent herein has grave nexus with other accused persons and are in accomplice in providing illegal weapons to the Naxalites and hence in view of such circumstances the bail granted to the Respondent

herein ought to be cancelled.

7. It is further pertinent to state herein that accused/applicant was arrested by the Investigating Agency after finding his involvement in the present case however, later on the accused/applicant along with other co-accused persons have moved more than 40 applications on different dates just to avoid framing of charge and it is only on date charge has been framed against accused/applicant and other co-accused persons.

It is pertinent to mention here that accused was also facing trial under special provision u/s 2/3 U.P. Ganster Act in Case Crime No. 4/2013, wherein the Respondent herein has preferred a bail application no. 6122 of 2016, which has already been rejected by the Hon'ble High Court of Judicature at Allahabad High Court, Lucknow Bench, Lucknow on 14.12.2016 & hence the accused is still in jail (Annexed as Annexure-12 of Additional Documents).

8. That it is worthy to mention here that although vide the impugned order the accused Respondent herein has been enlarged on Bail by the Hon'ble High Court in the present case, but he is still languishing in Jail in another Case Crime No. 4/2013, wherein the bail is rejected by the Hon'ble High Court vide order dated 14.12.2016.

It is further pertinent to mention here that in the present case this Hon'ble Court vide its Order dated 8.10.2014 was pleased to cancel the Bail of one of the co-accused person i.e. Gurcharan Singh who also happens to be the father of the Respondent herein (annexed as Annexure A-2 of Additional Document.)

9. It is humbly submitted that the trial is going on in speedy manner on day to day basis and the same may be concluded within 6 months. Further it is stated that there are 13 accused persons and they are unreasonably delaying the trial. It is submitted that Respondent/accused and other co-accused persons are themselves responsible in delaying the trial."

170. On the basis of above mentioned order dated 18.07.2017, it is argued by the learned Senior Counsel for the accused-applicant Amit Pal Singh that this Court is bound to consider the facts narrated in the affidavit dated 13.07.2017 filed by the State and in light of previous bail order dated 18.05.2016 passed by this Court. Because no further new fact has been argued on behalf of State regarding availability of evidence against the accused-applicant. Statement of Vijay Peter, witness, and recovery from the co-accused Mantoo Sharma was considered by this Court earlier.

171. It is further submitted by the learned Senior Counsel for accused-applicant that verification of alleged 26 arms licenses was sent by the State authorities with wrong particulars/ number of arm licenses and no physical verification was made by the Investigating Officer. On the other hand, learned trial court has observed against the said fact vide order dated 02.05.2015 passed in Session Trial No. 1169 of 2014, State Vs. Khalid and others, that "conduct of ADGC and ATS is objectionable.

Trial was to be conducted expeditiously. They are negligent and killing the precious time of the trial court. They are reluctant to cooperate the proceedings of trial, therefore, I.G., ATS was informed for necessary action". Therefore, State authorities itself is delaying the proceedings of Session Trial No. 1169 of 2014. It is further submitted by the learned counsel that on the next day transfer application was moved against the Presiding Officer of the court on behalf of State.

172. It is pertinent to mention here that learned AGA has informed that case was committed to the court of Sessions on 10.12.2014 and charges were framed against the accused persons on 16.11.2015. In the meanwhile different applications, forty in numbers, as alleged in affidavit filed before Hon'ble Supreme Court, were moved on behalf of the accused persons which were moved only with intention to delay the proceedings of this trial.

173. Now, through supplementary counter affidavit, learned AGA has relied upon the applications (Annexure-S.A.1) dated 28.02.2015 moved by accused Kallu Sharma, application dated 01.04.2015 moved by accused Gurcharan Singh, application dated 01.04.2015 moved on behalf of Amit Pal Singh, application dated 08.04.2015 moved on behalf of accused Ajay Pal Singh, for providing copy of documents under Section 207 Cr.P.C. On 14.04.2015, Inspector, ATS, Lucknow, informed the trial court that photocopy of all the relevant documents relied upon by the prosecution annexed with the case diary has been provided to accused persons. Trial court vide order dated 15.05.2015 has rejected the applications moved on behalf of Amit Pal Singh, Mohd. Khalid, Anil Kumar Jain, Vimal Kumar Vishwakarma and Kallu, which was moved for providing copies of documents under Section 207/208 Cr.P.C.

174. After perusing the evidence collected by the Investigating Officer, trial court vide order dated 07.11.2015 has found that there is sufficient ground to proceed and frame the charges against the accused persons under Sections 420, 467, 468, 471, 120-B, 121-A, 122 IPC and Section 3/5/25/30 Arms Act. Vide order dated 01.03.2016 accused Mohd. Khalid was permitted to inspect the documents relied upon by the prosecution. Vide order dated 02.06.2016, opportunity for cross-examination of P.W.1, Tej Bahadur was closed for accused persons Kallu Sharma, Vimal Kumar Vishwakarma @ Kallu, Anil Kumar Jain and Mantoo Sharma.

175. The discharge application moved on behalf of accused Gurcharan Singh was rejected vide order dated 13.10.2015 relating to the offence punishable under Section 3 of the Gangster Act and it was found that there is sufficient ground to proceed and frame charge for this offence against him. Learned trial court has specifically observed in these orders that accused persons are misusing judicial process and applications were moved by them only to delay the proceedings of the trial. They have also not cooperated with the recording of statement of witnesses, as trial court was compelled to close opportunity of cross-examination of the above mentioned accused persons vide order dated 02.06.2016.

176. Therefore, there is substance in the averments made before Hon'ble Supreme Court in the affidavit dated 13.07.2017 in para-7 that more than 40 applications on different dates were moved by the accused persons just to avoid framing of charge. There is no averment in para-7 on behalf of State that these applications were adjournment applications as argued by the learned Senior

Counsel for the accused-applicant.

177. As far as the averment made in para-5 of the affidavit dated 13.07.2017 that 26 arms licenses were not found in existence upon which weapons have to be sold by accused Amit Pal Singh and Gurcharan Singh. Learned AGA has relied upon Annexure-2 which was also filed as SCA-25, details of 26 persons has been provided. They belong to 8 places, i.e., four from Patna, one from Begusarai, one from Bhojpur Aara, one from Kaimur(Bhabhua) two from Buxar Bihar, five from Saharsa, two from Nalanda, four from Bhojpur, two from Jahanabad, three from Vaishali and one from Muzaffarpur. Arm licenses of these persons were found fake and forged.

178. I have perused this verification report. Arm licenses of Ashok Kumar, Rajendra Vikram Singh and Surendra Singh from Patna were not issued by District Arms Officer. Although license no.49/90 has been mentioned in list (Annexure-2) but correct no.48/90 has been shown in letter dated 18.11.2013 sent by District Arms Officer, Patna, which was also not issued.

179. Arm license of Sunil Kumar Singh of Begusarai was not verified to be issued by District Magistrate, Begusarai. Regarding arm license of Santosh Kumar Singh it was reported by the District Magistrate, Bhojpur Aara that arm license was not issued in his favour. Arm license of Birbal Singh of Kaimur(Bhabhua) was not issued by District Arms Officer, Kaimur (Bhabhua).

180. Arm license of Ram Shankar Singh was not issued from District Arms Officer of Buxar, Bihar. Likewise, arm license of Kapil Dev Singh was not issued by this office. Arm licenses of Arvind Kumar Singh No. 4122/03 rifle 315 bore and his another license of revolver 0.32 bore was not issued from the office of District Arms Officer, Saharsa.

181. In list Annexure-2, license No.72/03 has been mentioned whereas licence No.1211/84 of rifle of bore 315 was not issued in favour of Laleshwar Prasad by this office. This license verification entry is doubled on next page at Serial No.40. According to list Annexure-2 it was found that license No.72/03 of 315 bore rifle was not issued from the office of District Arms Officer, Saharsa. Likewise, license of Vishwajeet Kumar Singh of pistol 0.32 bore was not issued by this office.

182. License No.68/2002 of Captain Vijay Kumar Singh was not issued by the office of District Arms Officer, Nalanda. Likewise, license of Ejaz Ahmad was not issued by this office. Arm license of Gupteshwar Singh, Bhagwan Singh, Bindhyachal Singh and Vikash Kumar were not issued by the office of Arms Officer, Bhojpur. Arm license of Nand Kishore Sharma license no. 149/87 and of Kamlesh Singh license no.1387/02 were not issued from the office of District Arms Officer, Jahanabad.

183. Arm licenses of Uday Prasad, Pankaj Kumar Singh, Kalika Sharma were not issued by the District Arms Officer, Vaishali, Bihar. Vide letter dated 03.12.2013 this fact was informed to Deputy Superintendent of Police, ATS Headquarter, Uttar Pradesh.

184. District Arms Officer, Muzaffarpur, vide letter dated 13.11.2013 has reported to Deputy Superintendent of Police, ATS Headquarter, Uttar Pradesh, Lucknow that arms license of Krishna

Bhushan Kumar which was mentioned at Serial No.1 of arms register was issued in his favour, whereas arm license mentioned at Serial No.2 was not issued in his favour. Specific report about license no.2014/88 of rifle of 315 bore has not been mentioned in letter dated 13.11.2013 or list annexed with it.

185. On perusal of details provided by State regarding verification of 26 arms license it reveals that these licenses were not issued by the concerned District Arms Officers. These were found fake and fabricated, therefore, averments made on behalf of State in para-5 of the affidavit dated 13.07.2013 is not found by me incorrect.

186. There is no substance in the argument of learned counsel for applicant that wrong details were sent for verification of arms licenses as averred in para-5 of the affidavit dated 13.07.2013. 26 arms licenses on which accused Amit Pal Singh and his father Gurucharan Singh sold arms, were found fictitious and fabricated.

187. Learned Counsel for the accused Amit Pal Singh has also argued that according to license issued to Arms Dealer (Form-XI), its condition 'b' provides, "This license entitles the licensee to fabricate components and parts of firearms and ammunition for the purpose of repair or conversion or report of ammunition of categories shown in Column 4, but does not entitle him to manufacture such components or parts for the purpose of, or utilised for, assembling into complete arms or ammunition".

188. It is relevant to mention here that licence issued in favour of accused Amit Pal Singh or his father co-accused Gurcharan Singh for operating Guru Ram Das Armory, Kanpur and National Gun House, Latoush Road, Lucknow has not been provided by the accused persons. Therefore, it is not clear for which purpose licence was issued to the accused persons. On the basis of evidence collected by Investigating Officer, it reveal that co-accused Khalid was looking after work at National Gun House, Latoush Road, Lucknow on the instructions of co-accused Amit Pal Singh and his father Gurcharan Singh and he used parts of foreign arms supplied by co-accused Alwin Disa to him for converting bore of rifle, pistol and revolver through co-accused persons Junaid Arshad, Jafar Arshad @ Babar, Kallu Sharma and Vimal Vishwakarma.

These firearms were found improvised and non-standard, according to CFSL report, details of which has been mentioned at proper place by me. Therefore, Form-XI does not support in any way to the accused Amit Pal Singh. Likewise, there is no substance in argument of learned Counsel for accused Amit Pal Singh that he was obliged to sale firearms on licences issued by competent authority to any person, if he wants to purchase arms from the accused, even if arms licence was issued by the competent authority of other State.

189. Learned Counsel has relied upon condition-15 of Schedule 3rd which provides that "subject to the other conditions contained herein, no licensee shall, without reasonable cause, refuse to sell arms or ammunition to any person who is entitled to purchase or acquire such arms or ammunition under the provisions of the Arms Act, 1959 or the Arms Rules, 1962". Explanation provides the possibility or exception of the seller obtaining a higher price at a later date or the refusal by a person

to purchase or acquire arms of ammunition partly of a description demanded by him and partly of a different description suggested by the licensee, shall not be deemed to be a reasonable cause for the purpose of this condition.

190. It is also argued by learned Counsel for the applicant that vide letter dated 22.03.1974 Government of U.P. has directed all the District Magistrate of U.P. that Arms Dealer cannot refuse to sale arms to the purchaser according to condition 15 of Form-XI, Condition 14 of Form-XII and Condition 20 of Form-XIII. District Magistrate cannot impose ban on sale of arms on the basis of license issued by competent authority of another State.

191. Prima facie 26 licenses on basis of which arms were sold by accused Amit Pal Singh and his father co-accused Gurcharan Singh were found fake and fictitious. It is not pleaded in the application for bail that the accused applicant Amit Pal Singh or his father ever tried to verify these arms licenses, whether these were genuine or fictitious, after sale of arms on these licenses. Therefore, arguments put forth by learned Counsel does not in any way help to the accused.

192. Accused persons had moved application under Sections 294 and 227 Cr.P.C. during the course of trial. These are application dated 23.05.2015 of accused Mohd. Khalid, application dated 23.05.2015 moved on behalf of Harishchandra Pandey. Two applications dated 01.06.2015 moved on behalf of Amit Pal Singh and Gurcharan Singh. Written arguments were also filed by both these accused persons on 21.10.2015. Objection dated 31.10.2015 was filed by accused persons Amit Pal Singh and Gurcharan Singh against the CFSL report. Discharge application dated 02.11.2015 was moved on behalf of Junaid Arshad @ Babar, Zafar Arshad @ Babar and Ramzan. Discharge application was moved on behalf of Harishchandra Pandey dated 03.11.2015. Discharge application dated 03.10.2015 was moved on behalf of accused Mohd. Khalid. Discharge application dated 03.11.2015 was moved on behalf of accused Anil Kumar Jain. These all applications have been rejected by the trial court and it was observed that there is sufficient ground to proceed with the trial and to frame charges against the accused persons.

193. As far as the averments made in para-4 of the affidavit, details of arm licenses on which Amit Pal Singh and his father, co-accused Gurcharan Singh sold fire arm from their Guru Ramdas Armory, Kanpur and National Gun House, Lucknow, has not been mentioned in the stock register that these arm licenses were issued for which State. This fact has not been controverted by the accused Amit Pal Singh and his father Gurcharan Singh at the stage of framing charge against them. This fact is based on defence of the accused persons that particulars of arm licenses were mentioned by them in stock registers maintained at their Guru Ramdas Armoury and National Gun House, Latoush Road, Lucknow. There is no substance in the argument of learned counsel for the accused Amit Pal Singh that these averments was wrongly made by the State.

194. As far as in para-6 averments has been made regarding co-accused Mantoo Sharma @ Sanjay Singh, the facts and evidence collected by the Investigating Officer has to be analyzed during the course of trial. Prima facie the evidence collected by the Investigating Officer has been discussed by me at the proper place, while I considered the bail applications of accused Mohd. Khalid and Mantoo Sharma @ Sanjay Singh. It reveals prima facie that accused Amit Pal Singh, his father,

co-accused Gurcharan Singh, co-accused Ajay Pal Singh and co-accused Anil Kumar Jain manipulated the entries in their stock registers, sale/ purchase registers and repair registers and facilitated each other for sale of duplicate and improvised fire arms, of which bore were converted and parts of foreign arms supplied by co-accused Alwyin Bruce Lecil D'sa were used to manufacture these duplicate and improvised arms. Accused Mohd. Khalid, Junaid Arshad @ Chhotey, Zafar Arshad @ Babar, Vimal Kumar Vishwakarma, Kalloo Sharma, Ramzan and Qurban (he has absconded) facilitated manufacturing of these fire arms.

195. Mantoo Sharma @ Sanjay Sharma often purchased rifles and cartridges from Guru Ramdas Armory, which was recovered from his possession, when he was arrested with six naxalites at Gandhi Maidan in the year 2008. These arms and ammunitions purchased by Mantoo Sharma @ Sanjay Sharma were supplied in naxalite operated areas of Bihar and Jharkhand.

196. Accused Amit Pal Singh, his father co-accused Gurcharan Singh, co-accused Ajay Pal Singh and Anil Kumar Jain sold these improvised and duplicate arms to innocent license holders and also to anti social elements. All the accused persons had participated in this crime in consultation with each other. Call details collected by Investigating Officer confirms this fact. Therefore, averments made in para-6 of the affidavit dated 13.07.2017 also corroborated by the evidence collected by the Investigating Officer and CFSL report received by him.

197. The firearms recovered from the possession of accused persons, the details of which has been mentioned by me at the proper place, these were found improvised and non standard. All the accused persons committed this crime by facilitating each other and under conspiracy to supply these arms through Mantoo Sharma @ Sanjay Singh who was having contacts with Praphul Malakar, Anil Yadav and Vijay Singh, who were members of CPI(Maoist), a terrorist organization.

198. Investigating Officer has recorded statement of witness Awdesh Kumar Mishra, who has apprised the Investigating Officer that he sold Revolver No. 40552 on 19.10.2012 to Singh Armory Kanpur Nagar. Owner of Jai Jawan Gun House brought him at Guru Ram Das Armory, Kanpur for purchase of pistol. Owner of this Armory told him that this pistol was used by Shooter Abhinav Bindra. There is total 07 pistols of this kind. He has also informed the Investigating Officer that owner of Guru Ram Das Armory sold this pistol to him for amount of Rs. 6 lacs, but receipts for amount of Rs. 22,000/- was provided to him. Owner of Guru Ram Das Armory sold this pistol to him by deceitful means.

199. Investigating Officer inspected the stock register of National Gun House and found that pistol no. 053775 Czechoslovakia of bore 32 was entered on 16.10.2012, which was sold by Sajid son of Saleem, resident of Khurja, Bulandshahr to National Gun House on 16.10.2012. National Gun House, Lucknow sold this pistol to Guru Ram Das Armory, Kanpur in Sale Register of National Gun House entry to this effect was found on 08.06.2012. In Repair Register of National Gun House, Sajid deposited his pistol No. 143032 CZ Czechoslovakia for repair at National Gun House. This pistol was released to Sajid by making entry of No. 053775 CZ Czechoslovakia. Witness Awdhesh Kumar Mishra was present on the date of inspection of stock, sale and repair register of National Gun House. Pistol no. 053775 was found improvised. This witness purchased this pistol predicting it

foreign firearm.

200. Investigating Officer has also recorded statement of Javed Saeed son of Mohd. Saeed, who has apprised the Investigating Officer that Rifle no. 30657 of bore 30.06 was sold by Gurcharan Singh and Amit Pal Singh, who were owner of Guru Ram Das Armory, Western Road, Kanpur to him by stating that rifle is of good quality. This rifle was of bore 295. He has no knowledge in which circumstances, its bore was converted.

201. Witness Ubaid son of Jan Alam has apprised the Investigating Officer that that he is owner of Alam Arms Company, Beconganj, Kanpur. He purchased Rifle No. 9440 of bore 30.06 on 13.09.2011 from Amit Pal Singh, owner of Guru Ram Das Armoury, Western Road, Kanpur. He sold this rifle to Mohd. Tauseef son of Mohd. Raees on 15.09.2011 and Mohd. Tauseef returned this rifle to him and purchased another rifle from this witness. This witness returned rifle to Amit Pal Singh, owner of Guru Ram Das Armoury.

202. Witness Zainul Abdeen son of Mohd. Ismail also apprised the Investigating Officer on 04.06.2011 that Gurcharan Singh and Amit Pal Singh contacted him to sale English rifle No. 6628 of 315 bore. He further sold it on 06.06.2011 to his brother. He does not know whether the mechanism of this rifle was converted by Amit Pal Singh or not.

203. It is pertinent to mention here that accused Amit Pal Singh is also involved in Crime No. 4 of 2013 under Section 2/3 of U.P. Gangsters Act and his Bail Application No. 62 of 2016 has been rejected by this Court vide order dated 14.12.2016. Hon'ble Supreme Court vide order dated 08.10.2014 has cancelled the bail of co-accused Gurcharan Singh, who is father of this accused-applicant Amit Pal Singh.

204. Learned AGA has relied upon the case law of Central Board of Dawoodi Bohra Community Vs. State of Maharashtra : 2005 AIR (SC) 752 and argued that Hon'ble Supreme Court has observed that proceedings or orders passed by Benches higher in hierarchy, due respect and regard has to be given by courts to these orders.

205. Learned AGA has further relied upon the case law of Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav : 2004 (7) SCC 528 and argued that the principle of res judicata and such analogous principles although are not applicable in a criminal proceedings, still the courts are bound by the doctrine of judicial discipline having regard to the hierarchical system prevailing in our country. It is also observed that the findings of a higher court or a coordinate Bench must receive serious consideration at the hands of the court entertaining a bail application at a later stage when the same had been rejected earlier and in such an event the court must give due weight to the grounds, which weighed with the former or higher court in rejecting the bail application.

206. It is also argued by the learned AGA that seven witnesses have been examined during the course of trial and accused persons are not cooperating the trial court for expeditious disposal of Session Trial No. 1169 of 2014. The accused persons themselves are trying to delay the disposal of this Session Trial.

207. Learned counsel for the accused has relied upon the case law of Prasanta Kumar Sarkar Vs. Ashis Chatterjee and another : (2010) 14 SCC 496, but prima facie there is reasonable ground to believe that all the accused persons are involved and participated in crime in gang and there is likelihood to threaten the public witnesses and tampering with the evidence. There is possibility that accused persons may abscond if they are released on bail. There is also likelihood of the offence being repeated. Therefore, there is no substance in the arguments of learned counsel for the accused and this case law does not in any way help the accused persons. Accused Amit Pal Singh is not entitled to be released on bail. His bail application deserves to be rejected.

208. Learned counsel for applicants have vehemently argued that they are detained in jail for a considerable period and trial has not yet been concluded as directed by Hon'ble Supreme Court.

209. Learned AGA has relied upon the case laws of Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav : 2004 (7) SCC 528 and State of U.P. Vs. Amarmani Tripathi : 2005 (8) SCC 21, and argued that the fact that the trial is not likely to be concluded in the near future would not entitle the accused for bail specially in cases of offences punishable with life or death penalty and prolonged delay in trial is for the fault of the accused.

210. I have perused these case laws and other case laws which are as follows regarding long detention of accused persons during the course of trial:

Hon'ble Supreme Court in the case of Ram Govind Upadhyay Vs. Sudarshan Singh and others reported in AIR 2002 SC 1475 observed as under :-

....The High Court thought it fit not to record any reason far less any cogent reason as to why there should be a departure when in fact such a petition was dismissed earlier not very long ago. The consideration of the period of one year spent in jail cannot in our view be a relevant consideration in the matter of grant of bail more so by reason of the fact that the offence charged is that of murder under Section 302 IPC having the punishment of death or life imprisonment - it is a heinous crime against the society and as such the Court ought to be rather circumspect and cautious in its approach in a matter which stands out to be a social crime of very serious nature.

....Grant of bail though being a discretionary order - but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for Bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the Court and facts however do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic consideration for the grant of bail - more heinous is a crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

.... Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture though however, the same are only illustrative and not exhaustive neither there can be any. The considerations being:

(a) While granting bail the Court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the Court in the matter of grant of bail.

(c) While it is not accepted to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the Court in support of the charge.

(d) 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.

Hon'ble Supreme Court in the case of Prahlad Singh Bhati Vs. N.C.T. Delhi & another reported in AIR 2001 SC 1444 observed as under :-

....The jurisdiction to grant bail has to be exercised on the basis of well settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behavior, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not excepted, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.

This Court in the case of Hari Om Vs. State of U.P. reported in 1992 CriLJ 182 has observed as under :-

....In this view I find support from a Full Bench decision of Gujarat High Court given in the case of Shardulbhai Lakhmanbhai Pancholi v. State of Gujarat MANU/GJ/0083/ 1989. The Full Bench has held that on the failure of an accused to make application prior to submission of charge-sheet, the accused has no right to be released on bail after filing of the charge-sheet solely on the ground that the charge-sheet was not submitted within the prescribed period.

... Learned counsel for the applicant has also argued the application on merits and has raised two contentions. Firstly, that the applicant has been in jail for about 8 months; secondly, that all the remaining co-accused have been enlarged on bail. Both these contentions have no force. The accused is charged with a heinous offence. Before her death, as would appear on a perusal of the F.I.R. the deceased had made a statement to her father and mother that it was the accused who had poured kerosene upon her and had set her on fire. No such allegation was made by the deceased against the remaining co-accused. Thus, according to the statement of the deceased, the main role was played by the accused which resulted in the death of Smt. Guriya. He cannot claim parity with the other co-accused. The mere fact that the applicant has been in jail for about 8 months would not justify his release.

Hon'ble Supreme Court in the case of State through C.B.I. Vs. Amarmani Tripathi with State of U.P. through C.B.I. Vs. Madhumani Tripathi reported in AIR 2005 SC 3490 observed as under :-

... It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of accused absconding or fleeing if released on bail; (v) character, behavior, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail (Prahlaad Singh Bhatt v. NCT, Delhi 2001 CriLJ 1730 and Gurcharan Singh v. State (Delhi Administration) 1978 CriLJ 129. While a vague allegation that accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in Kalyan Chandra Sarkar v. Rajesh Ranjan, 2004 CriLJ 1796 :

"The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted

particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

- a. The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.
- b. Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.
- c. Prima facie satisfaction of the court in support of the charge.

(Ram Govind Upadhyay vs. Sudarshan Singh, 2002 (3) SCC 598 and Puran vs. Ram Bilas 2001 (6) SCC 338)."

This Court also in specific terms held that:

"the condition laid down under section 437(1)(i) is sine qua non for granting bail even under section 439 of the Code. In the impugned order it is noticed that the High Court has given the period of incarceration already undergone by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to enlarge the accused on bail, in spite of the fact that the accused stands charged of offences punishable with life imprisonment or even death penalty. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to being enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail."

Hon'ble Supreme Court in the case of Gudikanti Narasimhulu and others Vs. Public Prosecutor, High Court of Andhra Pradesh reported in (1978) 1 SCC 240 observed as under :-

... In Archbold it is stated that -

"The proper test of whether bail should be granted or refused is whether it is probable that the defendant will appear to take his trial....."

The test should be applied by reference to the following considerations :

- (1) The nature of the accusation.....

- (2) The nature of the evidence in support of the accusation.....
- (3) The severity of the punishment which conviction will entail.....
- (4) Whether the sureties are independent, or indemnified by the accused person....."

7. It is thus obvious that the nature of the charge is the vital factor and the nature of the evidence also is pertinent. The punishment to which the party may be liable, if convicted or conviction is confirmed, also bears upon the issue.

Hon'ble Supreme Court in the case of State of Pramod Kumar Saxena Vs. Union of India and others reported in (2008) 9 SCC 685 observed in para-16 and 28 as under :-

16. As held by this Court, mere long period of incarceration in jail would not be per se illegal. If the petitioner has committed offences, he has to remain behind bars. Such detention in jail even as an undertrial prisoner would not be violative of Article 21 of the Constitution. If the petitioner has committed non-bailable offences and in connection with those offences, he is in jail, the custody can never be said to be unlawful or contrary to law and he is not entitled to be enlarged on bail.

28. Narinderjit Singh Sahni v. Union of India [(2002) 2 SCC 210] (three Hon'ble Judges) was also referred to. In that case, this Court held that if an accused commits an offence, he has to remain in jail and he cannot make complaint to this Court under Article 32 of the Constitution on the ground of the so-called infraction of Article 21.

Hon'ble Supreme Court in Narinderjit Singh Sahni v. Union of India, (2002) 2 SCC 210 (Hon'ble Three Judges) has held as follows:

.....Let us however, try and analyse the grievance of the petitioners and consider as to whether there is any substance in such a grievance. Shortly put, the petitioners' grievance, which stands identical in all the writ petitions, stands out to be that though the petitioners were favoured with an order of bail in one case but are being detained by reason of production warrant in another matter and resultantly the petitioners are languishing in the jails being deprived of the order of grant of bail. This aspect of the matter has been stated to be violative of Article 21. In our view, however, the situation as noticed above does not ipso facto render it violative of Article 21. Article 21 of the Constitution postulates deprivation of life or personal liberty except according to the procedure established by law. Admittedly, the protection of personal liberty stands expanded to make the right to life under Article 21 more meaningful, the language of the article itself records an exception indicating thereby that a person may be deprived of his liberty in accordance with the procedure established by law and it is in this sphere the courts will scrupulously observe as to whether the same stands differently and contra as regards the procedure established by law and in the event it is not so done, it would be a plain exercise of judicial power to grant redress

to the petitioner. While there is no difficulty in appreciating the grievance and grant of relief in a given case but facts are too insufficient however, to come to a conclusion as regards the infraction of Article 21. Production warrants have been spoken of without any details whatsoever therefor -- the reason offered is that the petitioners, in fact, are not in the know of things being behind the prison bars and it starts pouring in from all parts of the country and in the factual backdrop, as noticed above it is well-nigh impossible to come to a finding as regards the infraction of Article 21 and since in the factual matrix, no infraction can be identified and thus question of sustaining the plea of infringement of Article 21 would not arise. In any event the liberty of the petitioners cannot be said to have been trifled with in the absence of due process of law. Deprivation, if any, cannot be claimed to be not in accordance with due process of law.

.....It is no doubt true that this Court earlier on two occasions in Writ Petition (Crl.) No. 256 of 1999 and Writ Petitions (Crl.) Nos. 72-75 of 2000, has granted the relief that in the event of the arrest of the petitioner in connection with any criminal case in his capacity as Managing Director/Director of the group of companies, the arresting officer shall release him on bail on his executing a bond to the satisfaction of the arresting officer. This order obviously tantamounts to an order, invoking the provisions of Section 438 of the Code of Criminal Procedure. The Court adopted the aforesaid procedure to find out a solution in the peculiar situation and being of the opinion that even though the accused is able to get orders for bail from different courts, where cases are pending, but in view of the large number of cases against the accused throughout the country, it has physically not become possible to release the accused from the custody. If an accused facing a charge under Sections 406, 409, 420 and 120-B is ordinarily not entitled to invoke the provisions of Section 438 of the Criminal Procedure Code unless it is established that such criminal accusation is not a bonafide one, it is difficult to conceive that an accused who is involved in thousands of cases in different parts of the country by cheating millions of countrymen, can be given benefit of the privilege of anticipatory bail as a matter of routine, as was done in the two cases, on the basis of which the present batch of cases have been filed. In the manner in which these white-collared crimes are committed and the extent to which it has pervaded the society at large, we are of the considered opinion that the two cases decided by this Court earlier would not be of universal application and cannot be used as a precedent for availing of the privilege in the nature of an anticipatory bail. The Court itself was conscious of the peculiar situation and, therefore, noticed that the Court is exercising its discretion in the peculiar nature and facts of the case. We do not agree with the proposition that an accused being involved in large number of criminal cases in different parts of the country, if is not able to be released from custody even on getting bail orders in some cases, itself would tantamount to violation of the right of a citizen under Article 21 of the Constitution. The object of Article 21 is to prevent encroachment upon personal liberty by the executive save in accordance with law, and in conformity with the provisions thereof. It is, therefore, imperative that before a person is deprived of his life or personal liberty, the

procedure established by law must strictly be followed and must not be departed from, to the disadvantage of the person affected. In each case where a person complains of the deprivation of his life or personal liberty, the Court, in exercise of its constitutional power of judicial review, has to decide whether there is a law authorising such deprivation and whether in the given case, the procedure prescribed by such law is reasonable, fair and just, and not arbitrary, whimsical and fanciful. On account of liberal interpretation of the words "life" and "liberty" in Article 21, the said article has now come to be invoked almost as a residuary right, even to an extent which the founding fathers of the Constitution never dreamt of. In a country like ours, if an accused is alleged to have deceived millions of countrymen, who have invested their entire life's saving in such fictitious and frivolous companies promoted by the accused and when thousands of cases are pending against an accused in different parts of the country, can an accused at all complain of infraction of Article 21, on the ground that he is not being able to be released out of jail custody in view of different production warrants issued by different courts. Issuance of production warrants by the court and the production of accused in the court, in cases where he is involved is a procedure established by law and consequently, the accused cannot be permitted to make a complaint of infraction of his rights under Article 21. In our considered opinion, it would be a misplaced sympathy of the court on such white-collared accused persons whose acts of commission and omission has ruined a vast majority of poor citizens of this country. Though we agree that in a given case, the court may be justified in directing release of the accused, taking a stock of the entire situation in the case. While, therefore, we agree with the submissions of the counsel for the accused-petitioners that an accused could maintain a petition under Article 32, but the court would not be justified in directing the release of such accused under a blanket order like the one, which has been relied upon by the counsel for the accused persons and such a course of action would perpetrate gross injustice.

.....In that view of the matter, we conclude that while in the contextual facts, a petition under Article 32 is maintainable but the petitioners are not entitled to any relief by reason of insufficiency of available materials on record as regards the issue of infraction of Article 21. In regard to the prayer for consolidation the petitioner would be at liberty to approach the High Court in accordance with law. Similar is the situation as regards the orders of the Consumer Forum and the petitioner in the normal course of events would be at liberty to ventilate the grievance if any, before the Appellate Forum in accordance with law.

Hon'ble Supreme Court in the case of Rajesh Ranjan Yadav @ Pappu Yadav Vs. CBI through its Director reported in 2007 CriLJ 304 has observed as under :-

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

has expired bail must necessarily be granted.

.... We are of the opinion that while it is true that Article 21 is of great importance because it enshrines the fundamental right to individual liberty, but at the same time a balance has to be struck between the right to individual liberty and the interest of society. No right can be absolute, and reasonable restrictions can be placed on them. While it is true that one of the considerations in deciding whether to grant bail to an accused or not is whether he has been in jail for a long time, the Court has also to take into consideration other facts and circumstances, such as the interest of the society.

In the case of Dipak Shubhashchandra Mehta Vs. C.B.I. and another reported in AIR 2012 SC 949, Hon'ble Constitutional Bench has held as follows :-

....The Court granting bail has to consider, among other circumstances, the factors such as (a) the nature of accusation and severity of punishment in case of conviction and the nature of supporting evidence; (b) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant and; (c) prima facie satisfaction of the court in support of the charge. In addition to the same, the Court while considering a petition for grant of bail in a non-bailable offence apart from the seriousness of the offence, likelihood of the accused fleeing from justice and tampering with the prosecution witnesses, have to be noted. Considering the present scenario and there is no possibility of commencement of trial in the near future and also of the fact that the appellant is in custody from 31.03.2010, except the period of interim bail, i.e. from 15.09.2011 to 30.11.2011, we hold that it is not a fit case to fix any outer limit taking note of the materials collected by the prosecution.

....The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail, a detailed examination of evidence and elaborate documentation of the merits of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted, particularly, where the accused is charged of having committed a serious offence.

In the case of Abdul Rehman Antulay and Ors. Vs. R.S. Nayak and Anr. reported in 1992 CriLJ 2717, (five Hon'ble Judges) has held as follows :-

....The Constitution Bench, in A.R. Antulay's case, heard elaborate arguments. The Court, in its pronouncement, formulated certain propositions, 11 in number, meant to serve as guidelines. It is not necessary for our purpose to reproduce all those propositions. Suffice it to state that in the opinion of the Constitution Bench (i) fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily; (ii) right to speedy trial following from Article 21 encompasses all the stages, namely, the stage of investigation, inquiry, trial, appeal, revision and re-trial; (iii) who is responsible for the delay and what factors have

contributed towards delay relevant factors. Attendant circumstances, including nature of the offence, number of accused and witnesses, the work-load of the court concerned, prevailing local conditions and so on-what is called the systemic delays must be kept in view; (iv) each and every delay does not necessarily prejudice the accused as some delays indeed work to his advantage. Guidelines 8, 9, 10 and 11 are relevant for our purpose and hence are extracted and reproduced hereunder :-

"(8) Ultimately, the court has to balance and weight the several relevant factors-'balancing test' or 'balancing process'-and determine in each case whether the right to speedy trial has been denied in a given case.

(9) Ordinarily speaking, where the court comes to the conclusion that right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open. The nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice.

(10) It is neither advisable nor practicable to fix any time-limit for trial of offences. Any such rule is bound to be qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on the shoulders of the prosecution. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the court to weight all the circumstances of a given case before pronouncing upon the complaint. The Supreme Court of USA too has repeatedly refused to fix any such outer time-limit in spite of the Sixth Amendment. Nor do we think that not fixing any such outer limit in effectuates the guarantee of right to speedy trial.

(11) An objection based on denial of right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in High Court must, however, be disposed of on a priority basis."

....During the course of its judgment also the Constitution Bench made certain observations which need to be extracted and reproduced :-

"But then speedy trial or other expressions conveying the said concept are necessarily relative in nature. One may ask speedy means, how speedy? How long a delay is to long? We do not think it is possible to lay down any time schedules for conclusion of criminal proceedings. The nature of offence, the number of accused, the number of witnesses, the workload in the particular court, means of communication and several other circumstances have to be kept in mind".

"....it is neither advisable nor feasible to draw or prescribe an outer time-limit for conclusion of all criminal proceedings. It is not necessary to do so for effectuating the right to speedy trial. We are also not satisfied that without such an outer limit, the right becomes illusory".

"....even apart from Article 21 courts in this country have been cognizant of undue delays in criminal matters and wherever there was inordinate delay or where the proceedings were deemed to be oppressive and unwarranted, they were put an end to by making appropriate orders."

....The other reason why the bars of limitation enacted in Common Cause (I), Common Cause (II) and Raj Deo Sharma (II) cannot be sustained is that these decisions though two or three-judge Bench decisions run counter to that extent to the dictum of Constitution Bench in A.R. Antulay's case and therefore cannot be said to be good law to the extent that they are in breach of the doctrine of precedents. The well settled principle of precedents which has crystalised into a rule of law is that a bench of lesser strength is bound by the view expressed by a bench of larger strength and cannot take a view in departure or in conflict therefore. We have in the earlier part of this judgment extracted and reproduced passages from A.R. Antulay's case. The Constitution Bench turned down the fervent plea of proponents of right to speedy trial for laying down time-limits as bar beyond which a criminal proceedings or trial shall not proceed and expressly ruled that it was neither advisable nor practicable (and hence not judicially feasible) to fix and time-limit for trial of offences.

This case-law has been upheld by Hon'ble Supreme Court in the case of P. Ramchandra Rao Vs. State of Karnataka reported in AIR 2002 SC 1856 (seven Hon'ble Judges).

211. It is trite of law that long detention of accused in jail during the course of trial is not the sole ground for grant of bail to such accused. Exposition of law propounded by Hon'ble Supreme Court and this Court, provides that other circumstances and facts, like nature of crime, gravity of crime having impact on society, likelihood of the offence being repeated, possibility of accused to abscond or tamper with evidence of witnesses have to be considered.

212. Accused persons are not cooperating trial court for expeditious disposal of Session Trial. On the other hand, accused Junaid Arshad and his brother Zafar Arshad @ Babar and co-accused Gurcharan Singh for himself and for Mohd. Khalid had threatened Raju Gautam and other public witnesses. There is further possibility that accused persons would tamper with evidence of public witnesses.

There is no substance in the arguments of learned counsels for accused persons in this regard.

213. As far as learned counsels for the accused Anil Kumar Jain and Ajay Pal Singh argued that Investigating Agency is unable to connect these persons with supply of improvised and duplicate fire arms to the naxalites or their contact with them.

214. It is relevant to mention here that Anil Kumar Jain, Proprietor of M/s Anil Brothers, Sirsa introduced Mohd. Khalid accused to Shivanand Shetty and co-accused Alwyn Bruce Lecil D'sa. Both these accused persons supplied parts of foreign arms procured from Singapore and Canada.

215. Mohd. Khalid procured, manufactured duplicate and improvised firearms by using parts of foreign arms through co-accused Junaid Arshad @ Chhotey, Zafar Arshad @ Babar and Vimal Kumar Vishwakarma and Kallu. Co-accused Ramzan and his brother co-accused Qurban performed work of finishing, polishing and assembling at National Gun House at Latoush Road, Lucknow, which was unauthorizedly operated by accused Mohd. Khalid on instructions of accused Gurcharan Singh and Amit Pal Singh.

216. It is relevant to mention here that Kisan Gun House is situated in the same building in which National Gun House is situated at Lucknow. Accused Ajay Pal Singh is owner of Kisan Gun House and Anil Kumar Jain is owner of M/s. Jain Brothers, Sirsa, Haryana. Both these accused persons permitted and facilitated the accused Mohd. Khalid to manipulate fake and fictitious entries of fire arms in their stock, sale and purchase registers. There is no substance in the argument of learned counsel for Ajay Pal Singh that his call details were not collected by the Investing Officer and he had no contacts with other accused persons.

217. It is relevant to mention here that witness Ramlal Singh has proved this fact that rifle recovered from his possession was sold by Mohd. Khalid at National Gun House and this was entered in stock register of M/s. Jain Brothers. Nirmal Kumar Verma has also proved this fact that rifle recovered from his possession was purchased by him from Kisan Gun House, Latoush Road, Lucknow which was improvised. Accused Khalid introduced this witness to accused Ajay Pal Singh, owner of Kisan Gun House. According to CFSL report, rifle of Rampal Singh was found improvised rifle of 30.06 bore and rifle purchased by Nirmal Kumar Verma was also found improvised of bore 30.06. Therefore, prima facie it reveal that both accused Ajay Pal Singh and Anil Kumar Jain are involved in this crime intentionally under conspiracy and to facilitate the accused Mohd. Khalid, Amit Pal Singh and his father co-accused Gurcharan Singh.

218. The witnesses Awdhesh Kumar Mishara, Javed, Ubaid and Zainul Abideen have disclosed involvement of Amit Pal Singh and his father co-accused Gurcharan Singh, owner of National Gun House, Lucknow and Guru Ram Das Armory. Kanpur for selling duplicate foreign firearms by them.

219. Witnesses Vijay Peter, Parvez Khan and Ashish Mehrotra have disclosed his involvement for supply of duplicate/ improvised foreign arms to innocent licensees, anti-social elements and naxalites through Mohd. Khalid and Mantoo Sharma.

Discussions:-

Ajay Pal Singh

220. Accused Ajay Pal Singh has pleaded same grounds as of the other co-accused Amit Pal Singh. He has further contended that mother of applicant, Smt. Jarjina became proprietor of Kisan Gun

House after the death of her husband namely Satpal Singh Sarna. The applicant was minor when his father died and the entire shop namely Kisan Gun House was being run by the Manager Harish Chandra Pandey as the mother of applicant was a housewife. Copy of agreement in which entire working of Kisan Gun House was handed over to the co-accused Harish Chandra Pandey by the mother of applicant which has been taken away by the ATS at the time of raiding of premises of M/s. Kisan Gun House. The applicant has submitted that Harishchandra Pandey was looking after the shop. Even then the records of shop were duly provided to ATS by Harish Chandra Pandey whenever they were called for. If the fire arms sold by M/s. Kisan Gun House are purported to be illegal, then why they have not been seized by the ATS, when the respective buyers showed the arms and other documentation pertaining to the same to the ATS. The Investigating Agency on 17.07.2013 called for and received all the relevant documents of M/s. Kisan Gun House.

221. It is also submitted that the applicant has not given any statement to the police, but the police has falsely have recorded the same. The alleged offences are not made out against him. Accused is detained in jail since 13.12.2013. He has no criminal history.

222. Witness Alamgir Ansari has provided his evidence to Investigating Officer that he and his elder brother Khurshid had looked after T.G. Arms House, Nahar, Lagan. In the year 2005 Khurshid came to Lucknow in the year 2008. He obtained power of attorney and looked after the work of Rajdhani Arms House, Nahar, Lagan. He contacted various arm dealers including Kisan Gun House at Lucknow and purchased pistols, rifles and cartridges. Ajay Pal Singh was owner and Harish Chandra Pandey who was salesman was dealing with him. He stated about Receipt No. 004700516832129 issued by Ajay Pal Singh from the receipt book of Kisan Gun House. Nirmal Kumar Verma, witness has purchased rifle No. 97932 from Kisan Gun House made in Germany which was found improvised. Likewise, Mohammad Zaman also purchased pistol No. 80434 of 32 bore Lama Spain from Kisan Gun House. Co-accused Khalid was present with Harish Chandra Pandey on 28.05.2012 at Kisan Gun House. This pistol, bore 7.65 mm No. 80434 was found non standard fire arm according to CFSL report.

223. It is contended in para-26 to 30 of the counter affidavit that in presence of the accused applicant assembled fictitious pistol and rifle was recovered from Kisan Gun House on the pointing out of co-accused Harish Chandra Pandey. One assembled pistol and one semi assembled pistol was recovered from the house of the accused applicant. A reference of cancellation of bail of accused Gurucharan Singh has also been mentioned. It is mentioned in para-28 that applicant accused Ajay Pal Singh along with other accused persons have involved himself in anti social activities, in as much as he is collecting fictitious fire arms in his gun shop, have been transferred from one gun shop to another and lastly to anti social activities. Witness Harmeet Singh is relation of accused applicant and stated that from the year 2005. Ajay Pal Singh and Harish Chandra Pandey is looking after the shop Kisan Gun House of which Smt. Jarjina Singh is licensee who is housewife and mother of Ajay Pal Singh. Statements of witnesses Vijay Peter, Parvez and Ashish Mehrotra are also available against these accused persons as discussed at proper place by me.

224. Witness Nirmal Kumar Verma and Vijay Peter have disclosed involvement of Ajay Pal Singh, being owner of Kisan Gun House, Lucknow for selling foreign duplicate firearms by him.

Discussions:-

Anil Kumar Jain:-

Grounds and Arguments:-

225. This is second bail application moved on behalf of accused-applicant Anil Kumar Jain. First bail application No. 3887 (B) of 2014 was not pressed on 31.07.2014, therefore, it was not disposed of on merits.

226. This accused has pleaded same grounds as averred by co-accused Amit Pal Singh. It is submitted that he was not named in the F.I.R., which was registered at A.T.S. on the basis of alleged recovery dated 17.04.2013 from the possession of Mohd. Khalid. Offences under Sections 121A and 122 I.P.C. has been subsequently added during the course of investigation. No recovery as alleged in entire F.I.R. of Crime No. 01/2013 took place and the entire F.I.R. is false and fabricated. Accused-applicant has falsely been implicated in the case, because he is an authorized arms dealer and is owner of M/s. Jain Brothers, Arms Dealer, District Sirsa, Haryana. In the entire recovery memo, there is no incriminating allegation made against the applicant and no avert act has been assigned to him regarding import of pistol parts or preparation of frames or in making false pistols or in assembling or polishing of pistols. No evidence is available against him. He is detained in jail since 30.08.2013. He has no criminal history.

227. Learned AGA has opposed this bail by submitting that he introduced co-accused Mohd. Khalid to co-accused Shivanand Shetty and Alwyn D'sa, who supplied parts of foreign firearms to him. He was having contact with co-accused Amit Pal Singh and his father Gurcharan Singh. He and Ajay Pal Singh manipulated entries in their stock sale/purchase, repair registers on behest of co-accused Mohd. Khalid. He had made calls to Mohd. Khalid on his phone. He sold out duplicate/ improvised foreign firearms to innocent licensees and anti social elements. He is also member of gang of accused persons.

228. The Investigating Officer has recorded statement of Virendra Singh son of Inder Singh, resident of Sahanpur, Police Station Safindo, District Jind, Haryana. It was found that on 18.08.2011 Rifle No. 5551457 of NPB 30 Bore was purchased from M/s. Jain Brothers. Fake entry was made by accused, because this was 30 Carbine Rifle Semi Automatic firearm which was purchased by M/s. Jain Brothers. It is relevant to mention here that for this firearm license is being issued by Home Ministry of Government of India. Rifle was taken into possession in presence of witness Bhoopendra Singh son of Lokmani.

229. The accused Anil Jain made 50 calls to co-accused Mohd. Khalid, according to CDR call details of his phone numbers. Therefore, he was in close contact with co-accused Mohd. Khalid. He permitted and facilitated to manipulate entries in his stock registers on behest of co-accused Mohd. Khalid. He introduced Mohd. Khalid to co-accused Shivanand Shetty and Alwyn D'sa, who supplied parts of foreign arms, which were used by accused persons Mohd. Khalid, Junaid Arshad, Jafar Arshad @ Babar, Kallu Sharma and Vimal Vishwkarma to manufacture duplicate and improvised

firearm. Therefore, intentional and active participation in the crime of the case is apparent prima facie on the basis of evidence collected by the Investigating Officer. Ramzan and Qurban, co-accused persons were engaged at National Gun House by Mohd. Khalid to perform work of assembling, polishing and finishing of semi manufactured fire arms provided by co-accused persons.

230. Anil Kumar Jain deposited on 22.03.2010 amount of Rs. 10,000/- in his account of State Bank of India, Mandi Dabwali, Chautala Road (Haryana), which was debited on 23.3.2010 in favour of accused Allwyn D'sa in his bank account No. 216227 of Central Bank of India.

231. Witnesses Vijay Peter, Ramlal Singh and Virendra Singh, C.D.R. call details of accused persons and deposition of money in the account of co-accused Alwyn D'sa discloses involvement of Anil Kumar Jain, accused-applicant, who is owner of M/s. Jain Brothers.

232. Learned Counsels for the accused persons have vehemently argued that there is no evidence connecting the accused persons with Nexalites of Bihar and Jharkhand is available according to ingredients of Section 121A and 122 I.P.C.

233. I have perused provisions of Section 121A and 122 I.P.C., which is as follows:

"[121-A. Conspiracy to commit offences punishable by Section 121.-- Whoever within or without conspires to commit any of the offences punishable by Section 121, or conspires to overawe, by means of criminal force or the show of criminal force, [the Central Government or any State Government], shall be punished with [imprisonment for life], or with imprisonment of either description which may extend to ten years, [and shall also be liable to fine].

Explanation.-- To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof.]

122. Collecting arms, etc., with intention of waging war against the Government of India.-- Whoever collects men, arms or ammunition or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the [Government of India], shall be punished with [imprisonment for life] or imprisonment of either description for a term not exceeding ten years, [and shall also be liable to fine]."

234. Co-accused Mantoo Sharma was having contacts with CPI (Maoist), a terrorist organization, who purchased rifles and ammunition from Guru Ram Das Armoury, Kanpur owned by Amit Pal Singh and his father Gurcharan Singh. Three rifles were recovered along with cartridges while he was arrested with 06 nexalites. Eye witness provided evidence to the Investigating Officer of Crime registered at Patna regarding supply of firearms to Prafful Malakar and Anil Kumar Yadav and Vijay Singh, member of CPI (Maoist). These witnesses may also be produced against the accused persons during the course of trial. Investigation is also in progress against co-accused Gurcharan Singh in crime registered at Patna. Shri Vinay Kumar Rao, A.S.I. of Police Station Gandhi Maidan, Patna and

Shri Hirday Nath Pandey, Inspector, N.I.A., Lucknow are witnesses in this case also.

235. In the above mentioned circumstances, there is no substance in the arguments of learned Counsels that offences under Sections 121A and 122 I.P.C. are not attracted and there is no evidence available against them for committing these offences.

236. It is pertinent to mention here that in nexalites operated area of Bihar and Jharkhand, nexalites are committing murders of administrative and police officers, CRPF personnel and waging war against the country. The accused persons in form of a gang has facilitated activities of nexalites of Bihar and Jharkhand by supplying arms and ammunition to them. It is relevant to mention here that discharge application of accused persons has been rejected by trial Court and found that there is sufficient evidence to frame charges against the accused and trial against the accused persons is in progress.

237. It is informed by learned A.G.A. that 07 witnesses have been recorded during the course of trial. Therefore, there is no substance in the arguments of learned Counsel for the accused persons that no evidence is available against the accused persons regarding offences punishable under Section 121A and 122 I.P.C.

238. Learned Counsel for the accused persons have argued that this Court has allowed bail application no.10676 of 2015 :Harish Chandra Pandey Vs. The State, vide order dated 29.04.2016 and accused Harish Chandra Pandey has been enlarged on bail. Special Leave to Appeal (Criminal) No. 118 of 2017 instituted before Hon'ble Supreme Court was dismissed vide order dated 08.12.2017. Vijay Peter was also employee of National Gun House and he was in the same category of Harish Chandra Pandey and he has been made prime witness against the accused persons by A.T.S. Therefore, on the ground of parity, accused persons are entitled for bail.

239. On the other hand learned A.G.A. has argued that accused Harish Chandra Pandey was granted bail on the ground that he was salesman of Kishan Gun House, whereas co-accused Mohd. Khalid was operating the National Gun House on instructions given by co-accused Amit Pal Singh and co-accused Gurcharan Singh. Witness Vijay Peter observed the illegal acts/ misdeeds committed by Mohd. Khalid and co-accused Amit Pal Singh and Gurcharan Singh. He has also provided his statement to Investigating Officer that co-accused Mantoo Sharma @ Sanjay Singh often visited Guru Ram Das Armoury. Amit Pal Singh and co-accused Gurcharan Singh and Mohd. Khalid were also having relations with owner Ajay Pal Singh and Harish Chandra Pandey of Kisan Gun House. Mantoo Sharma @ Sanjay Singh and Dhananjay purchased arms and ammunition from Guru Ram Das Armoury owned by co-accused Gurcharan Singh and Amit Pal Singh.

240. Therefore, case of Vijay Peter is differentiable from Harish Chandra Pandey. Vijay Peter has provided evidence against these accused persons and also stated that Ramzan and Qurban were workers at National Gun House on behest of co-accused Mohd. Khalid, by whom they were engaged. On the other hand parity is not sole ground for granting bail to any accused persons.

241. Likewise, Hon'ble Supreme Court while canceling bail of co-accused Gurcharan Singh has observed that this is not a fit case for grant of bail.

242. This Court has also rejected bail application of Amit Pal Singh in Case Crime No. 4/13, under section 2/3 U.P. Gangsters and Anti Social Prevention Act, 1986, vide order dated 14.12.2016 passed in Bail Application No. 6212 of 2016. Hon'ble Supreme Court in Special Leave Petition (Crl.) No. 9251 of 2016 has set aside order dated 18.5.2016 passed in bail application No. 7488 of 2013 : Amit Pal Singh Vs. State of U.P., by which accused Amit Pal Singh was granted bail by this Court.

243. Learned Counsel for Mantoo Sharma has argued that Division Bench of Hon'ble High Court of Jharkhand at Ranchi has granted bail vide order dated 06.04.2015 passed in Criminal Appeal (DB) No. 68 of 2015: Praful Malakar @ Praful Kumar Malakar & Praful Bhagat Vs. The State of Jharkhand through National Investigation Agency, Ranchi relating to Crime No. 187 of 2012: Special (NIA) Case No. 01 of 2012 of Police Station Chauparan. This crime 187 of 2012 was registered for offence punishable under Sections 386, 387, 121, 121A, 414, 120B I.P.C., Section 25/35 Arms Act and Section 10 and 13 of the Unlawful Activities (Prevention) Act and accused Anil Kumar Yadav has been granted bail vide order dated 06.04.2015 passed in Criminal Appeal (D.B.) No. 95 of 2015.

244. Learned Counsel for Mantoo Sharma submitted that Mantoo Sharma has been released by C.J.M. Sirsa vide order dated 29.10.2013 in Case F.I.R. No. 06 dated 04.01.2010 for offences punishable under Sections 406, 420, 467, 468, 471, 120-B/25/54 Arms Act, Police Station City Sirsa and vide order dated 03.10.2013 he has been granted bail in Case F.I.R. No. 64 dated 15.04.2011, Police Station, City-II, Mansa, offences under Sections 420, 465, 467, 468, 471, 120-B of I.P.C. and Section 25 Arms Act and Section 16 (A) of Unlawful Activities (Prevention) Act, 1967. It is also submitted that accused has also been enlarged on bail vide order dated 01.08.2013 passed in Criminal Misc. 25027 of 2013 passed by Hon'ble High Court of Judicature at Patna for offences punishable under Sections 25 (1-B)A, 26 and 35 of the Arms Act, Crime No. 368 of 2012, Police Station Kankarbagh.

245. As per prosecution version accused Mantoo Sharma was having relations with these two above mentioned accused persons, Praphul Malakar and Anil Kumar Yadav, who were member of CPI (Maoist), a banned terrorist organization and supplied them firearms and ammunitions illegally. Therefore, bail applications of accused persons has to be considered by this Court in the facts and circumstances of this case and considering the participation of accused persons in this crime. Therefore, bail orders relied upon by learned counsels for Mantoo Sharma does not help him in any way.

246. Regarding parity for granting bail, the following Case Law is relevant:

A Division Bench of this Court in the case of Chander alias Chandra Vs. State of U.P. reported in 1998 (I) A.Cr.R. 356 in para-3 and 21 has held as under:-

Para-3.

"Sri V.P. Srivastava learned counsel for applicant has submitted that if an accused is granted bail a similarly placed co-accused should also be granted bail on the principle of parity. He has further submitted that not granting bail to a similarly placed co-accused would amount to discrimination and would violate his fundamental right guaranteed under Article 14 of the Constitution. The contention based on Article 14 does not impress us in *Naresh vs. State of Maharashtra* AIR 1967 SC 1, a decision rendered by a Bench of nine Judges Chief Justice Gajendra Gadakar after referring to *Prabhani Transport Cooperative Society Ltd. vs. Regional Transport Authority*, AIR 1960 SC 801 observed as follows in para-48 of the reports.

..... It is clear that the observations made by this Court in this case unambiguously indicate that it would be inappropriate to suggest that the decision rendered by a Judicial Tribunal can be described as offending Article 14 at all. It may be right or wrong decision and if it is a wrong decision it can be corrected by appeal or revision as may be permitted by law, but it cannot be said *per se* to contravene Article 14.....

This authoritative pronouncement shows that Article 14 cannot have application on judicial order and a similarly placed co-accused cannot make any grievance on that account."

Para-21.

"(1) If the order granting bail to an accused is not supported by reasons, the same cannot form the basis for granting bail to a co-accused on the ground of parity.

(2) A judge is not bound to grant bail to an accused on the ground of parity even where the order granting bail to an identically placed co-accused contains reasons, if the same has been passed in flagrant violation of well settled principle and ignores to take into consideration the relevant factors essential for granting bail.

(3) A Judge hearing bail application of one accused cannot cancel the bail granted to a co-accused by another Judge on the ground that the same had been granted in flagrant violation of well settled principles. If he considers it necessary in the interest of justice, he may, after expressing his views, refer the matter to the Judge who had granted bail, for appropriate orders.

(4) If it appears that a bail order has been passed in favour of an accused on the basis of wrong or incorrect documents it is open to any Judge to initiate action for cancellation of bail."

A Division Bench of this Court in the case of *Nanha S/o Nabban Kha vs. State of U.P.* reported in 1993 CRI L.J. 933 in paras-23 and 24 has held as under:-

"23.....Thus, the case of an accused has to be examined individually. Simply because the co-accused has been granted bail cannot be the sole criteria for granting bail to the main accused. Even at the stage of second or third bail the court has to examine whether on facts, the case of the applicant before the Court is distinguishable from other released co-accused and the role played by the applicant is such which may disentitle him to bail....."

"24.....The parity cannot be the sole ground for granting bail even at the stage of second or third or subsequent bail applications when the bail applications of the co-accused whose bail application had been earlier rejected are allowed and co-accused is released on bail. Even then the court has to satisfy itself that on consideration of more materials placed further developments in the investigations or otherwise and other different consideration, there are sufficient grounds for releasing the applicant on bail....."

A Single Bench of this Court in the case of Satyendra Vs. State of Uttar Pradesh reported in 1997 ACC 34 has held as under:-

Rule of parity- Not applicable in all cases where one or more accused have been granted bail or similar role has been played. Facility of bail on ground of parity with other co-accused, declined.

"In case any order of bail is passed in a heinous crime by any Hon'ble Judge when the learned counsel is not properly instructed or he has only incomplete material to assist the Court such rule may be erroneous and other Judge is not bound to follow that order blindly on the plea of parity and grant bail to the accused before him on the ground that other co-accused similarly placed has already been enlarged on bail by another Judge. There may be easily where one Judge may be impressed by a particular point, which is not considered to be sufficient ground in law for granting bail to the accused. In that situation , another Hon'ble Judge is free to take a different view and refuse bail by giving his own reasons.

The orders granting, refusing or cancelling bail are orders of interlocutory nature. It is true on discretion in passing interim orders, should be exercised judiciously but rule of parity is not applicable in all the cases, where one or more accused have been granted bail or similar role has been assigned inasmuch as bail is granted as the totality of facts and circumstances of a case parity cannot be a sole ground and is one of the grounds for consideration of the question of bail."

247. Learned A.G.A. has also submitted that bail application of co-accused Kallu Sharma was rejected by this Court vide order dated 24.07.2014 passed in CRMC No. 3080 of 2014. Special Leave to Appeal (Criminal) No. 6040 of 2015 instituted before Hon'ble Supreme Court was dismissed vide order dated 23.05.2016 with the observation that the trial Court may conclude the trial as expeditiously as possible.

248. Learned AGA has argued that vide order dated 08.10.2014 passed in Special Leave to Appeal (Criminal) No. 5193 of 2014 which was instituted before Hon'ble Supreme Court challenging the order dated 30.09.2013 passed by this Court in Criminal Misc. Case No. 4820 (B) of 2013 (Gurcharan Singh Vs. State of U.P.), Hon'ble Supreme Court has observed as under:

"We have heard learned counsel for the parties and perused the order passed by High Court. We are of the opinion that it is not a fit case for enlarging the respondent on bail at this stage. For the reasons aforesaid, we set aside order dated 30th September, 2013 passed by High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Case Bail No. 4820 of 2013 with liberty to respondent to file an application for bail, if trial is not commenced within one year. Once the trial is commenced, the Court after taking into consideration the statement of witnesses may decide the matter afresh."

Therefore, this Court cannot take different view as expressed by Hon'ble Supreme Court.

249. I have discussed evidence collected by the Investigating Officer and prima facie it is apparent that all the accused persons participated in the crime in consultation with each other. Accused Amit Pal Singh and his father co-accused Gurcharan Singh, Anil Kumar Jain and Ajay Pal Singh facilitated and manipulated entries in their stock, sale-purchase and repair registers through co-accused Mohd. Khalid. Mohd. Khalid was operating National Gun House un-authorizedly on instructions given by co-accused Gurcharan Singh and Amit Pal Singh. Accused Anil Kumar Jain introduced co-accused Mohd. Khalid to co-accused Shivanand Shetty. Afterwards accused Mohd. Khalid came into contact with accused Alwyn D'sa, who supplied him parts of foreign arms, which were used to manufacture improvised and duplicate arms. Amit Pal Singh and his father co-accused Gurcharan Singh sold firearms on 26 fake and fictitious arms licenses in Naxalite area of Bihar and Jharkhand. Co-accused Mohd. Khalid, Junaid Arshad, Zafar Arshad @ Babar, Kallu Sharma, Vimal Vishwakarma, Ramzan and Qurban felicitated for manufacturing duplicate/ improvised firearms by using parts of foreign arms supplied by Alwyn D'sa.

250. Amit Pal Singh and his father, co-accused Gurcharan Singh sold rifle and cartridges to Mantoo Sharma @ Sanjay Singh on various occasions which were supplied by Mantoo Sharma @ Sanjay Singh in the nexalite area of Bihar and Jharkhand. The police party of P.S. Gandhi Maidan, Patna reached at Gandhi Maidan on 16.11.2008 at 19:10 hours and arrested Mantoo Sharma @ Sanjay Singh along with other nexalites. Three rifles were recovered from his possession, which were found to be sold by co-accused Amit Pal Singh and Gurcharan Singh. He also informed the police party on the same day that he sold 2700 cartridges, purchased from Guru Ramdas Armory to nexalites of Piparwar, Chhatra, Jharkhand and to Bhikan Ganju, who belonged to banned T.P.C. naxal party, therefore, prima facie it is also apparent that all the accused persons operated in a form of a gang.

251. On the basis of above discussion, facts and circumstances, no ground is available to differ from observations made by Hon'ble Supreme Court that this is not a fit case to grant bail to accused persons.

252. All bail applications moved on behalf of accused persons deserve to be rejected. Accordingly rejected.

Order Date:- 27.03.2018 [Virendra Kumar-II, J] Arvind Mustaqeem Virendra