IN THE HIGH COURT OF KARNATAKA AT BENGALURU

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DATED THIS THE 29TH DAY OF MAY, 2023

PRESENT

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

AND

THE HON'BLE MR JUSTICE PRADEEP SINGH YERUR

CRL.A.NO.124/2023

BETWEEN:

...APPELLANT

(BY SRI. MOHAMMED TAHIR, ADVOCATE)

AND:

NATIONAL INVESTIGATING AGENCY,
MINISTRY OF HOME AFFAIRS, GOI,
BRANCH OFFICE HYDERABAD,
REP BY SPL PUBLIC PROSECUTOR,
OFFICE AT HIGH COURT COMPLEX,
OPP TO VIDHAN SOUDHA,
BANGALORE 560 001.

...RESPONDENT

(BY SRI. PRASANNA KUMAR P., ADVOCATE)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 21(4) OF NATIONAL INVESTIGATION AGENCY ACT, 2008 CR.P.C, PRAYING TO APPRECIATE THIS CRIMINAL APPEAL BY SET ASIDE THE IMPUGNED ORDER DATED 19.11.2022 AND

GRANTING REGULAR BAIL TO APPELLANT IN SPL.C.C.NO.141/2021 U/S.16,18,20 OF UA (P) ACT, 1967 AND 120-B,143,145,147,188,353,427 R/W SEC.34 AND 149 OF IPC AND SEC.2 OF THE PDLP ACT 1981 WHEREING THIS APPELLANT IS ARRAYED AS ACCUSED NO.22, SAME IS PENDING ON THE FILES OF 49TH ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AND SPL.COURT FOR NIA CASES, AT BENGALURU (CCH-50).

THIS CRIMINAL APPEAL HAVING BEEN HEARD AND RESERVED FOR ORDER, THIS DAY, ***KRISHNA S. DIXIT.J.,*** DELIVERED THE FOLLOWING:

JUDGMENT

This appeal by the accused seeks to lay a challenge to the order dated 19.11.2022 (Annexure-A) rendered by the learned XIX Addl. City Civil & Session Judge (Special Court for NIA cases) at Bangalore, whereby his regular bail petition filed u/s 439 of Code of Criminal Procedure, 1973 (hereafter 1973 Code) in Spl.C.C.No.141/2021, has been negatived, for the second time.

2. After service of notice, the respondent-National Investigating Agency (hereafter NIA) has entered appearance through its Senior Special Public Prosecutor, who vociferously opposed the appeal making submission in justification of the impugned order and the reasons on which it has been constructed.

3. **BRIEF FACTS OF THE CASE**:

(i) On the eventful night of 11.08.2020, riots broke out in the K.G.Halli area of Bangalore City; the miscreants had attacked the local police station and had set it on fire; there was extensive damage to the private & public property; the government & private vehicles were ransacked; members of the public were terrorized; police officials who could have run for saving their lives & limbs, held the ground despite being attacked with stones, iron rods, wooden sticks, 'improvised petrol bombs' and such other weapons. Ultimately, the police had to resort to lathi charge, and firing too to dispel the organized offenders. The incident with enormous infamy, came to be known as 'K.G.Halli Riots'.

(ii) Several criminal cases came to be registered against the miscreants huge in number, for the offences punishable under sections 143, 147, 148, 353, 332, 333, 436, 427 & 149 of Indian Penal Code, 1860 and under section 4 of the Prevention of Damage to Public Property Act, 1984 (hereafter '1984 Act'). Of these cases, Crime

Nos.227 of 2020, 228 of 2020 & 229 of 2020 are prominent. On 17.8.2020, after obtaining approval of the competent authority and permission from the learned XI ACMM, Mayo Halli, Bangalore City, other charging provisions namely sections 15, 16, 18 & 20 of the Unlawful Activities (Prevention) Act, 1967 (hereafter '1967 Act') were added in Crime No.229 of 2020. As many as 181 persons were accused and of them, 141 including a juvenile came to be arrested; 12 were cited as absconding and one had died during police firing.

(iii) Regard being had to the enormity of violence, the gruesome way things were accomplished by the organized offenders and extensive damage caused to the private & public property, the Central Government through its Ministry of Home Affairs, New Delhi, vide order dated 21.9.2020, issued under section 6(4) read with section 8 of National Investigating Agency Act, 2008, directed the respondent-NIA to take up the investigation of the case in Crime No.229 of 2020. Accordingly, the NIA re-registered the said crime as R.C.No.35/2020/NIA/DLI on 21.9.2020.

The re-registered FIR was submitted to the NIA Special Court on 22.9.2020. The case was endorsed to NIA Branch Office, Hyderabad. The State Police/CCB handed over the records to the NIA on 23.9.2020. The NIA having investigated into the offences, has filed the charge sheet which *inter alia* stated about the involvement and role of the appellant herein as accused No.22 in the incident; he was part of the terrorist gang, which had a common intention & object, in perpetrating the offences alleged. The greater details of the incident avail in the charge sheet and gist of that has been furnished in the NIA Statement of Objections filed resisting the bail petitions.

(iv) Appellant's earlier bail petition in Spl.C.C.No.141/2021 came to be rejected by the learned Spl. Judge of the Court below vide order dated 19.11.2022 and the same came to be affirmed in his earlier appeal in Crl.A.No.585/2021 a/w Crl.A.Nos.576/2021, 582/2021 & 745/2021 by a Coordinate Bench of this Court on 15.9.2021. Again, one more bail petition was presented in Spl.C.C.No.152/2021 and that too having been negatived,

he, in this appeal, is grieving against the same. Learned SPP has filed his Statement of Objections and resisted the appeal by making submission in justification of the impugned order. Both the sides have relied upon certain decisions in support of their respective versions.

4. CONTENTIONS OF THE PARTIES:

(a) As to what learned counsel for the accused argued:

(i) Learned counsel appearing for the appellant-accused, vehemently submitted that certain new material that was not available despite all diligent efforts, having come to hands, the second bail petition ought to have been favoured in the light of Apex Court decision in ***KALYAN CHANDRA SARKAR vs. RAJESH RANJAN @ PAPPU YADAV***[1]*;* had this new material been adverted to by the learned trial Judge whilst considering the earlier bail petition and the Coordinate Bench which considered appeal against denial of bail, the result would have been favourable to his client.

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[1] *(2005) 2 SCC 42*

(ii) All aspects of the matter have not been approached by the learned trial Judge in the right perspective; the first appeal being continuation of the original proceeding, both on law & facts, this court should re-appreciate the matter and enlarge the appellant from confinement. He also highlighted the longevity of confinement, the undue interest of the NIA in the matter of investigation which he called as a farce, the sanctity of basic human rights, the doctrine of innocence of accused till contra is proved, etc. He concluded his submission by quoting the famous dicta of Justice Krishna Iyer '*bail is the rule and jail is an exception'.*

(b) As to what the SPP in substance contended:

(i) Learned SPP vehemently opposed the same contending that: the offences alleged are grave; attack on a Police Station & the Police Personnel on duty is nothing short of attack on the Sovereignty of the country; the NIA being a special investigating agency established by a special statute has the advantage of accumulated wisdom; a thorough investigation having been done, the charge

sheet has been filed on 5.2.2021; a wealth of material produced on record *prima facie* shows involvement of the accused in the grave offences; the appellant being an integral part of the terrorist gang, if allowed to exit from the gaol, the public will loose faith in the criminal justice system; no witness would come forward to depose; members of civil society would not be able to walk on the street.

(ii) All aspects of the matter having been looked into, the bail petition was negatived earlier and the challenge thereto in the earlier Criminal Appeal met with the same fate; even the SLP (Crl) No.848/2022 filed by co-accused against the Coordinate Bench order has also been rejected by the Apex Court on 28.2.2022. There is absolutely no new material worth mentioning; whatever the appellant is pressing into service as the new material, would not dilute the *prima facie* findings that were the basis of denial of bail earlier and therefore, such material cannot be construed as the *'new material'* and courts should *abhor* repetitive bail petitions.

5. We have heard the learned counsel appearing for the appellant and the learned Spl. Public Prosecutor appearing for the respondent. We have perused the records and adverted to relevance of the Rulings cited at the Bar. We decline to grant indulgence in the matter for the following reasons:

A. BRIEF FACTS OF THE CASE AS EMANATING FROM THE RECORDS:

(a) The D.G.Halli riots which gave a sort of infamy to the garden city of Bangalore were perpetrated in a gruesome way on the night of 11th of August 2020; not only private & public property were extensively damaged, but the Police Station itself was set ablaze and Police Personnel on duty were brutally attacked; this attack was not by fists but by dangerous weapons including 'improvised petrol bombs'; added, such attack was not by a few hooligans but it was by a huge gang who had gathered at the spot very swiftly and accomplished the acts of 'dastardly terrorism' what was commonly intended; the swiftness of gathering, the hugeness of its size (500-

600), the enormity of the terror generated, the shortness of the duration of perpetration and the hugeness of loss to property make out a *prima facie* case for repelling the contention of the accused that all that had happened was at the spur of moment and as a reaction to a condemnable facebook post; the post was condemnable, cannot be disputed in the least.

(b) It is not a case of grave and sudden provocation; everything was meticulously preplanned and accordingly, was executed, to say the least. The fact that despite police warning through loudspeakers, the perpetrators did not dispel till after the police were perforced to resort to firing left with no other alternative, which eventually resulted into loss of a life. The NIA being a special investigating agency having investigated the matter has collected wealth of evidentiary material and filed the charge sheet on 5.2.2021, for the offences punishable under sections 143, 147, 148, 353, 333, 332, 436, 427, 34 read with section 149 of IPC, sections 15, 16, 18 & 20 of 1967 Act and section 4 of the 1984 Act; a

bare perusal of these sections repels the contention that the offences are not grave; the way offences have been perpetrated cannot be expressed without prefixing the superlatives to these '*gruesome and heinous*' organized acts.

B. AS TO MAINTAINABILITY OF SUCCESSIVE BAIL PETITIONS & THEIR LIMITATIONS:

(a) The vehement submission of learned counsel for the appellant that the filing of successive bail applications is not barred by law, is true; if there is some new material or a new circumstantial change, it is open to the accused to move a fresh bail application. In support of his submission, he rightly banked upon a Three Judge Bench decision of the Apex Court in *KALYAN CHANDRA SARKAR, supra,* wherein at paragraph 20, the following observations occur*:*

> *"...The decision given by a superior forum, undoubtedly, is binding on the subordinate fora on the same issue even in bail matters unless of course, there is a material change in the fact situation calling for a different view being taken. Therefore, even though there is room for filing a subsequent bail application in cases where earlier applications have been rejected, the same can be*

> *done if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused who has been denied bail earlier, can move a subsequent application…"*

We have no quarrel with the proposition of law canvassed, although a bit broadly than what has been laid down in the said decision. Fairly enough, learned SPP appearing for the NIA did not dispute the proposition, although he pointed out its inherent limitations, which we discuss in due course. To invoke the above proposition, the accused detenue has to demonstrate that the 'new material' or 'changed circumstance' pressed into service has the propensity, if not the effect of diluting the *prima facie* findings recorded in the earlier round of litigation. He has to probabalize a strong case that, had the so called 'new material' or circumstance been adverted to, by the court in the earlier petition, the outcome of proceedings would have been beneficially different to the accused-detenue. In other words, it is not that every new material produced or every arguable change of circumstance would automatically entitle the accused to the grant of bail.

(b) Keeping the above in view, let us peruse the following observations in the Coordinate Bench order dated 15.9.2021 in the earlier appeal of the accused i.e., Crl.A.No.585/2021; at paragraphs 43, 44 & 45 of the judgment, the following observations occur:

> *"…The overt acts noted above would clearly indicate the actions of the accused persons in forming a violent mob in front of the police station, attacking the police station and police personnel using lethal weapons such as, clubs, rods, usage of petrol bottles and indulging in arson indicates that entire action was done with an intention to strike terror at the public at large. The charge sheet material would also prima facie indicate presence of the appellants at the spot of incident at the time of committing offence… It is in this conspiracy and motive accused Nos.19 and 20 to 24 actively participated in the violent acts enumerated herein above. Accused No.20 was in contact with other accused persons including SDPI cadres and was active on WhatsApp group known as "K.G.Halli 45'. The charge sheet material would also indicate that accused Nos.19, 20 to 24 set ablaze Innova car parked near K.G.Halli police station by pouring petrol on it which act has been captured by accused No.21 on his mobile and shared with other through WhatsApp group. The role of accused persons – appellants has been established through prosecution witnesses, statement of protected witnesses, documentary/electronic evidence and CDRs of mobile numbers used by accused during the*

relevant point of time. Appellants with a common intention were part of unlawful assembly and with a common object to commit a terrorist act, destruction of public and private properties had disobeyed the promulgation of the orders issued under Section 144 Cr.P.C. In fact, any furtherance of the common objective to cause harm and destruction to the police station, they have attacked the police personnel who were on duty at the relevant date, time and place of incident. As a part of the conspiracy that was hatched with an intention to strike terror and cause fear in the mind of public, the appellants have acted accordingly. A perusal of the report made under Section 173 Cr.P.C and the charge sheet material, this court is of the considered view that accusations against persons are prima-facie true and proviso to Section 43D(5) is attracted to the facts on hand. Hence, we answer the points formulated herein above to the effect that impugned order passed by the Special Court rejecting the bail applications filed by the appellants would not call for interference and proviso to Section 43D(5) of UAP Act is squarely attracted to the facts on hand namely, charge sheet material would disclose the accusations made against appellants are prima-facie to be believed as true."

Thus there is a specific finding founded on cogent material as to inculpation of the accused.

C. AS TO THE NEW MATERIAL THAT WAS ARGUABLY NOT MADE AVAILABLE TO THE ACCUSED:

(a) Learned counsel for the appellant Mr.Mohammed Tahir relied upon: the statement of four

witnesses recorded by the NIA under section 161 of Cr.P.C., 1973; the charge sheet material in Crime No.235 of 2020 of K.G.Halli P.S.; extension report dated 3.11.2020 filed by the NIA under section 43D of 1967 Act; & the seizure mahazar dated 11.9.2020. Let us examine the same now: the charge sheet witness Mr.Ajaya Sarathy, the Inspector of Police made his statement on 27.9.2020 specifically naming the appellant herein, at internal page 3; charge sheet witness Mr.Sandeep S Mulage, a Police Constable of K.G.Halli Police Station gave his statement on 2.1.2020 and he too specified the name of appellant at internal page 2; the statement of Mr.Kaleed Aslam whose Innova car was set ablaze was recorded on 12.1.2021; however that does not advance anyone's case since he went to the spot two days after the incident to see his car and he specifically stated that he was not able to identify any miscreant. The statement of protected witness No.5 was recorded on 6.1.2021 and he specifically mentioned name of the appellant along with others. He has narrated the incident as a reasonable onlooker, in the

given circumstance. Mr.Mohammed Tahir drew our attention to the subsequent statement of Mr.Ajay Sarathy recorded on 12.8.2020; true it is, he has not specifically mentioned about the appellant there, although he has named a few others. What needs to be noted is, he mentioned about size of the gang i.e., it comprised of 600-800 miscreants; but he has specifically stated '*and others',* after specifying the names. That being the position, no nectar can be extracted from his statement, as would advance the case of accused for enlargement on bail.

(b) Similar to the above, the FIR in Crime No.235/2020 dated 13.8.2020, also does not come to the aid of appellant. It was registered two days after the incident. It also mentions about the gang comprising of 400-500 miscreants & about the weapons employed in the riot. It specifically states about setting the car ablaze. This F.I.R. was lodged by the third Charge Sheet Witness namely, Mr.Kaleed Aslam who is none other than a brother of R.C. holder of the damaged car. After all, it hardly

needs to be reiterated that F.I.R. is not a comprehensive encyclopedia of the incident; at times its contents are frugal in terms of facts & circumstances; and that the Constitutional Courts in the country have although with reluctance, not faltered them on that count, *per se*. Next coming to the NIA Report: Nothing beneficial to the appellant-accused turns out from this report filed by the learned SPP appearing for the NIA on 3.11.2020, in the Trial Court; for the purpose of grant of bail, the title of the report itself is '*BRIEF BACKGROUND OF THE CASE'.* That would not constitute a significant part of the record for the purpose of consideration of bail petitions, the same being a lawyer's version of the case at a particular stage. It cannot be treated as a part of pleadings of the parties, either arguably unlike in civil proceedings.

(c) The *Seizure Panchanama* was drawn on 11.9.2020; it mentions about 200-300 persons whom the gang comprised of; it says about the Head Constable Hiranyappa's mobile phone video recording of the incident on 11.8.2020 at 22:37 hours; this video is 343.08 mb,

duration being 2 minutes & 46 seconds; another video recording was done by him at 23:10 hours; it's 827.46 mb and duration is 6 minutes & 41 seconds. It also refers to two photographs clicked by him at 21:55 & 22:21 hours. We fail to understand how and in what way all this comes to the aid of appellant-accused. We are conscious that what we are considering is the bail matter in appeal and not an appeal against conviction or acquittal, there being a marked difference between the two.

D. AS TO THE DOCTRINE OF PRESUMPTION OF INNOCENCE & THE LIMITATIONS OF ITS INVOCABILITY:

(a) The submission of Mr.Tahir that there is presumption of innocence of the accused till contra is proved, is true; it was an English Barrister Sir William Garrow (1760-1840), who coined the 'presumption of innocence' in Criminal Jurisprudence, having been inspired by a French Cannon lawyer Jean Lemoine (1250-1313) from whom this idea originated. The House of Lords in *WOOLMINGTON vs. DPP*[2]*,* described this presumption '*as*

[2] (1935) UKHL 1

being the golden thread running through the web of English Criminal Law'. An accused is presumed to be innocent till proven guilty, has been firmly established even in our system, of course subject to all just exceptions.

(b) Mr.Tahir's further contention that on the invocation of this doctrine, his client is entitled to be enlarged from confinement, cannot be countenanced and reasons for this are not far to seek: appellant's earlier bail petition in Spl.C.C.No.141/2021 was negatived by the learned trial Judge on 19.11.2022, by a well considered order running into 12 pages; challenge to the same was dismissed by the Coordinate Bench in Crl.A.No.585/2021, etc., by a well considered order dated 15.9.2021 that ran into 106 pages. After examining the material on record, a specific finding as to *prima facie* complicity of the accused in the offences alleged against him has been recorded. A further challenge by the co-accused in SLP (Crl) No.848/2022 to the said order met with the same fate on 28.2.2022. The 1967 Act vide section 43-D(5)

incorporates a negative burden clause. That being the position, we are not sure whether the doctrine of innocence can be readily invoked in the case at hands. Added, the most probable & undesirable consequences of releasing an under trial involved in the perpetration of such a horrendous incident of such a magnitude & infamy repels the invocation of said doctrine, in the given circumstances of the case.

(c) We are in agreement with the vehement submission of learned SPP that all other contentions urged by the appellant/accused are miles away from the delineated ratio laid down in *KALYAN SARKAR supra* and therefore, need not be re-examined by this court. An argument to the contrary would virtually amount to seeking review of the judgment whereby the Co-ordinate Bench had dismissed the subject Criminal Appeal filed by the appellant herein, earlier. Learned SPP is more than justified in contending that in serious matters like this wherein after investigation the Charge Sheet has been filed by the specialized Investigating Agency, this court

should keep away from indulgence especially when the Co-ordinate Bench has affirmed Trial Judge's order declining bail; he draws attention of the court to each of the pages of that order which has discussed in a great detail the evidentiary material that *prima facie* shows the involvement of this accused & others in the alleged offences. The NIA after investigation has placed on record abundant material such as the videographs & photographs of the incident, the mobile phone call records, mobile tower records, weapons used, the statement of eye witnesses including injured police officials, etc., that *prima facie* demonstrates that the appellant-accused was an active participant in the said incident, that was like a nightmare to the city life. The new material pressed into service by the accused does not have a re-assessment of findings recorded by the Co-ordinate Bench; that order has been affirmed by the Apex Court in the subject SLP. The fact that the appellant had not filed any SLP against the said order unlike other accused, makes no difference.

We remind ourselves that what is being heard is not the Review Petition but a successive Bail Petition.

E. AS TO 'BAIL IS A RULE AND JAIL IS AN EXCEPTION', ITS LIMITATIONS & INVOCABILITY:

(a) The Apex Court speaking through Justice Krishya Iyer in **GUDIKANTI NARASIMHALU vs. PUBLIC PROSECUTOR, AIR 1978 SC 429** evolved a lenient norm of Bail Jurisprudence '*Bail is a rule & jail is an exception*'; that was decades ago and in a case that involved offences punishable under the provisions of Macaulay's Code i.e., IPC, 1860; terrorism & terrorists, were the subject matter with which the novels were composed. Much water has flowed under the bridges and we are living in different times; every daily newspaper will have some report or photograph about the terrorist acts. Legislative changes have been brought about to several penal statutes. Liberty of an individual as constitutionally guaranteed is important; however, what is even more important is, the safety of civil society. It hardly needs to be reiterated that the interest of an individual cannot march over the collective interest of the society. The writings of the jurists

since centuries say this and Apex Court rulings in this regard galore in the law reports.

(b) Almost all the norms in a legal system, be it civil or criminal, are relative; they are bound to the Society's Calendar. With ceaseless run of Time, these norms undergo change in their texture & colour for retaining their relevance as a living law of the people. *"The old order changeth, yielding place to new, And God fulfils Himself in many ways, Lest one good custom should corrupt the world…"* poetically said Lord Alfred Tennyson (1809-1892) in 'The Passing of Arthur'. Norms of the kind cannot be chanted like *mantra* or slogans, in every bail petition out of the contextual circumstance. Etymology of a norm is ever the arbiter of its worth. The norms which govern behaviour of individuals ordinarily cannot transcend the social conditions that obtained when they were evolved. Added, their efficacy level and invocability potential do not remain constant; variable, they are. All this cannot be lost sight of by the courts. Otherwise, invoking such principles to the sole benefit of an accused detenue, involved in heinous

offences, may result into a huge 'law & order' issue, and also cause a massive detriment to the societal interest.

(c) We are not much impressed with Mr.Tahir's invocation of the oft quoted dicta that 'Bail is a rule and jail is an exception'. It would not much come to the aid of his client and reasons for this are not far to seek: firstly, such a dicta has to remain miles away when the class of offences which the accused is ascribed of, arise under a special statute of great significance, like the one at hands; secondly, the Parliament in its accumulated wisdom has enacted the clauses in the 1967 Act that severely restrict the claim for grant of bail; thirdly, the statute also enacts a 'negative burden' clause, which places the onus on the shoulders of accused, much in variance with the normal rule i.e., the burden of proof lies on the prosecution. For invoking such a negative burden, the prosecution initially has to discharge its onus, is true, but it is beside the point. As to negative burden what a Co-ordinate Bench of this Court in a matter arising under the very 1967 Act had observed, needs to be profitably noticed. That was in

ASIM SHARIEF vs. STATE BY NIA[3], wherein para 24 reads as under:

> *"24. …. It is important to note that in case of offence invoked under the special enactment the burden is on the accused in terms of special provisions contained in Sec.43-D(5) of the UPA Act to demonstrate that the prosecution has not been able to show that there exist reasonable grounds to show that the accusation against the accused is prima facie true. …This Court has to take note of the gravity of the offences alleged against the appellant and also severity in its nature and chance of the appellant fleeing away from justice".*

Similarly, while treating a bail petition under the provisions of 1967 Act, what the Apex Court said is of immense importance. In **NIA vs. ZAHOOR AHMED SHAH WATALI[4],** at para 22, it observed: "W*hen it comes to offences punishable under special enactments such as the 1967 Act, something more is required to be kept in mind in view of the special provisions contained in Sec.43-D of the 1967 Act inserted by Act 35 of 2008 w.e.f. 31.12.2008…".* Again at para 26, the following observations occur:

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[3] ILR 2019 KAR 4557
[4] (2019) 5 SCC 1

> *"…once charges are framed, it would be safe to assume that a very strong suspicion was founded upon the materials before the Court, which prompted the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged against the accused, to justify the framing of charge. In that situation, the accused may have to undertake an arduous task to satisfy the Court that despite the framing of charge, the materials presented along with the charge-sheet (report under Section 173 CrPC), do not make out reasonable grounds for believing that the accusation against him is prima facie true…".*

The law declared by the Apex Court coupled with what has been observed by the Coordinate Bench as above, do not lend any scope for the ready invocation of the said principle.

F. AS TO WHAT WE CANNOT LOOSE SIGHT OF IN TREATING BAIL PETITIONS WHEN OFFENCES ARISE UNDER NIA ACT:

(a) Learned SPP is right in telling the court that in bail matters, what the court has to bear in mind is not only the rights & liberties of the accused but also the threat to safety of the civil society, should offenders of the kind be released from confinement. Women & children have to walk on the street; they have to go to milk booths & markets; parents need to take their children to the schools

and fetch them back; people have to go to work places; tillers have to till the land and labourers to sweat in the soil. All this may be jeopardized, if accused against whom charge sheet has been filed by the Spl. Investigating Agencies for grave offences, are let out. The argument of possible threat to the witnesses cannot be casually discounted. This apart, there are protected witnesses too, who are waiting to depose in the criminal prosecution; it is the duty of court to ensure their safety, as well.

(b) What the learned SPP passionately submitted, is supported by a ruling of Allahabad High Court; It was in **SUNIL ROY vs. STATE OF U.P.**[5], which dealt with a fact matrix involving an incident of lesser gravity; at para 17, what it observed as under, is worth reproducing:

> *"17. In the present case the allegation against the petitioner is that he hit the police inspector by a wooden rod who fell down and thereafter the entire police party present there was attacked by the petitioner and the co-accused. Several constables were injured and their fire-arms and ammunition were snatched and taken away. Thus the petitioner and his colleagues did not stop after causing injuries to the police officer and the constables but they*

[5] 1998 SCC ONLINE ALL 1178

acted further which caused all the difference. Had the attack been only to secure the release of the petitioner, there was no reason to further aggravate the situation by snatching the fire-arms and ammunition and taking away the same with them. All this happened at a public place police outpost in broad day light and in full view of the public watching it. One can well imagine the impact of such an incident on the general public watching it. Life of community has many shades and aspects. One of its important shades is the sense of security. This sense of security depends on the authority of the State through police. If the police from whom the public at large expects protection and security is subjected to the treatment like in the present case, in our opinion, it is bound to disturb the even tempo of life and morale of the public at large. It was not a case of hit and run to secure release of the petitioner. The incident continued for hours. It is also not a case of simple attack of an individual police officer or a group of them but it went much ahead of it. The authority of the police administration stood undermined to such an extent that it was bound to disturb the public order and tranquillity..."

G. AS TO PRINCIPLE AKIN TO RES JUDICATA IN CRIMINAL PROCEEDINGS:

(a) Learned SPP opposed the appeal by invoking a principle akin to *res judicata* contending that the grounds now urged on behalf of the appellant-accused having already been considered & rejected, this court cannot undertake the re-examination of the same in this appeal;

he pointed out that the views of the Co-ordinate Bench have received imprimatur at the hands of the Apex Court in the subject SLPs filed by other co-accused, against the very same judgment. As already observed, appellant's bail petition having been rejected earlier, he along with others had filed Criminal Appeal No.585/2021 which came to be dismissed by the Coordinate Bench, with elaborate discussion. There is no point left unattended. This dismissal was put in challenge in SLP(Crl) No.848/2022 by the co-accused and it met with the same fate. This appellant did not knock at the doors of Apex Court, is true but not relevant. The grounds urged in this appeal were already pressed into service in the earlier appeal and they did not weigh with the Co-ordinate Bench, need not be reiterated.

(b) We need not consider the contention founded on *res judicata* urged by the learned SPP, since there is no issue that has been heard & decided, as to become final between the parties. This being said, the SPP is right in telling the court that as a matter of judicial discipline

operating in a hierarchical system, the observations & findings recorded by the Co-ordinate Bench cannot be whished away, in the absence of new found material relevant for consideration. What is observed in **KALYAN CHANDRA** *supra* at paras 19 & 20 is significant in this regard; in a way they support the case of respondent-NIA:

> *"19. The principles of res judicata and such analogous principles although are not applicable in a criminal proceeding, but the courts are bound by the doctrine of judicial discipline having regard to the hierarchical system prevailing in our country. 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. In such an event, the courts must give due weight to the grounds which weighed with the former or higher court in rejecting the bail application. Ordinarily, the issues which had been canvassed earlier would not be permitted to be re- agitated on the same grounds, as the same it would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting.*
>
> *20. The decisions given by a superior forum, undoubtedly, is binding on the subordinate fora on the same issue even in bail matters unless of course, there is a material change in the fact situation calling for a different view being taken. Therefore, even*

though there is room for filing a subsequent bail application in cases where earlier applications have been rejected, the same can be done if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused who has been denied bail earlier, can move a subsequent application. Therefore, we are not in agreement with the argument of learned counsel for the accused that in view the guaranty conferred on a person under Article 21 of the Constitution of India, it is open to the aggrieved person to make successive bail applications even on a ground already rejected by courts earlier including the Apex Court of the country".

H. We have very carefully considered every aspect of the matter, keeping in mind the sanctity of human rights as recognized by the Apex Court in the light of constitutional guarantees; we are conscious to the possible societal implications should accused of the kind be enlarged from confinement. We are of the considered view that cause of justice would be served more by continuing him in confinement than setting him free. This being said, we hasten to add that the subject case needs to be expeditiously tried since there are several accused

persons, who have suffered rejection of their bail petitions and as a consequence, are continuing in judicial custody. They have a Fundamental Right to speedy justice, cannot be lost sight of. In our view, this is a fit case for speedy trial, if possible, on day to day basis. We are also aware of the burden that the learned trial Judge of Special Court shoulders.

In the above circumstances, this Criminal Appeal being devoid of merits, is liable to be dismissed and accordingly, it is.

The observations hereinabove made being confined to the disposal of appeal, shall not cast their shadow on the ongoing trial of the offences and the orders to be made by the court below, therein.

We will be failing in our duty if we do not appreciate the pains Mr.Gangadhara C.M, learned Special Judge for trial of NIA Cases, (CCH-50), Bengaluru, has taken in framing the impugned order. The beauty of language and its precision merit encomium.

The Registry shall send a copy of this order by Speed Post immediately, to the learned Judge of the court below, for his personal dossier.

Sd/-
JUDGE

Sd/-
JUDGE

Snb/