

Gujarat High Court

Teesta Atul Setalvad vs State Of Gujarat on 1 July, 2023

Bench: Nirzar S. Desai

R/CR.MA/14435/2022

CAV JUDGMENT DATED: 01/07/2023

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 14435 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE NIRZAR S. DESAI

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1 Whether Reporters of Local Papers may be allowed YES to see the judgment ?

2 To be referred to the Reporter or not ? YES 3 Whether their Lordships wish to see the fair copy NO of the judgment ?

4 Whether this case involves a substantial question NO of law as to the interpretation of the Constitution of India or any order made thereunder ?

===== TEESTA ATUL
S E T A L V A D V e r s u s S T A T E O F G U J A R A T
===== Appearance:

MR MIHIR THAKORE SR ADVOCATE with MR S M VATSA(6000) ADVOCATE for the Applicant(s) No. 1 MR MINTESH AMIN PUBLIC PROSECUTOR assisted by MR MANAN MEHTA ADDL. PUBLIC PROSECUTOR and MR RONAK RAVAL ADDL. PUBLIC PROSECUTOR for the Respondent =====
CORAM:HONOURABLE MR. JUSTICE NIRZAR S. DESAI Date : 01/07/2023 CAV JUDGMENT R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023

1. By way of this application preferred under Section 439 of the Code of Criminal Procedure, 1973 ['Cr.P.C.', for short] , the applicant is seeking her release on regular bail in respect of FIR being 1ST C.R.No. 11191011220087 of 2022 registered with DCB Crime Branch Police Station, Ahmedabad City for offences punishable under Sections 468, 469, 471, 194, 211, 218 and 120B of the Indian Penal Code.

2.1 The matter was extensively heard on 12.06.2023, 13.06.2023, 14.06.2023, 16.06.2023, 19.06.2023, 20.06.2023 and 21.06.2023 for at least 1 1/2 hrs on each day.

2.2 Learned senior advocate Mr.Mihir Thakore with learned advocate Mr.S.M.Vatsa made submissions on behalf of the applicant and learned Public Prosecutor Mr.Mitesh Amin with learned Additional Public Prosecutor Mr.Manan Mehta and learned Additional Public Prosecutor Mr.Ronak Raval made submissions on behalf of respondent State.

R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 2.3 As the record in the form of charge-sheet papers of this application runs into almost around five thousands pages and though both the learned counsels appearing for respective parties were directed to file brief written submissions, however, learned counsels appearing for both the sides filed lengthy written submissions and therefore, despite the Court knowing fully well that in a bail application the judgment should not be normally lengthy and usually must not discuss evidence on record, considering the lengthy submissions, the Court could not keep the judgment as short as it should have been and as the learned counsel for the applicant has touched certain aspects relating to certain evidence and though the Court is conscious about the fact that at the stage of bail, the evidence need not be discussed, I am constrained to consider certain aspects in this judgment as the submissions made by either sides were such that the Court was required to at least touch those aspects.

3. The brief facts giving rise to filing of the present application are stated as under:

R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 3.1 In the FIR registered by one Mr.D.B.Barad serving as Police Inspector of Crime Branch, Ahmedabad City it is noted that the Hon'ble Supreme Court, in its judgment pronounced on 24.06.2022 in Diary No.34207.2018 (Zakia Ahsan Jafri vs. State of Gujarat and Anr.) inter alia, in para:88, has observed as under:

"88. At the end of the day, it appears to us that a coalesced effort of the disgruntled officials of the State of Gujarat alongwith others was to create sensation by making revelations which were also to their own knowledge. The falsity of their claims had been fully exposed by the SIT after a thorough investigation. Intriguingly, the present proceedings have been pursued for last 16 years (from submissions of complaint dated 8.6.2006 running into 67 pages and then by filing protest petition dated 15.04.2013 running into 514 pages) including with the audacity to question the integrity of every functionary involved in the process of exposing the devious stratagem adopted (to borrow the submission of learned counsel for the SIT), to keep the pot boiling, obviously, for ulterior design. As a matter of fact, all those involved in such abuse of process, need to be in the dock and proceeded with in accordance with law."

R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 3.2 The said matter pertains to the complaint submitted by Smt.Jakia Nasim Ahsan Jafri dated 08.06.2006 to the Director General of Police, Gujarat State, Police Bhavan, Gandhinagar for the registration of FIR under Section 302 read with Section 120(B) of the Indian Penal Code and Section 193 read with Section 114 of the Indian Penal Code, under Sections 186 and 153A, 186 and 187 of the Indian Penal Code and under Section 6 of the Commission of Inquiry Act, The Gujarat Police Act and the Protection of Human Rights Act,

1951 wherein the allegations were regarding the incidents which took place in Gujarat as an aftermath of Godhra Train burning incident.

3.3 As per the FIR, after the killing of kar sevaks travelling in Sabarmati Express Train took place at Godhra railway station on 27.02.2002, a call for Gujarat Bandh was given by Vishwa Hindu Parishad and other Hindu Organizations on 28.02.2002 and on 28.02.2002, a huge mob indulged in attack on the properties, shops and houses of Muslims as well as Madarasa, mosques of Gulberg society located at R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 Meghaninagar, Ahmedabad City took place which resulted into the death of 39 muslims including Ex- M.P. Late Ahesan Jafri. It is also noted in the FIR that said Late Ahesan Jafri fired from his private licensed weapon in self defense causing injuries to 15 persons in the mob for which an offence registered at Meghaninagar Police Station commonly known as 'Gulberg Society case' for that offence.

3.4 Meanwhile the National Human Right Commission approached the Hon'ble Supreme Court by way of a Writ Petition (Cri.) No.109 of 2003 and pursuant to the same trial of Sessions Case No.152 of 2002 and other eight Godhra Riots cases were stayed on 21.11.2003 by the Hon'ble Supreme Court. Vide order dated 26.03.2008 the Hon'ble Supreme Court directed the State Government to constitute a five members Special Investigation Team ('SIT', for short) to undertake inquiry and investigation including further investigation in the nine cases stated therein. The SIT filed three supplementary charge sheets before the concerned Metropolitan Magistrate in this case.

R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 3.5 One Smt Jakia Nasim Ahesan Jafri submitted a complaint on 08.06.2006 i.e. almost after more than four years for the incident to Director General of Police, Gujarat State, Police Bhavan, Gandhinagar for registration of FIR under Section 302 read with Section 120(B) of IPC and Section 193 read with Section 114 of IPC, 186 and 153A, 186 and 153A, 186, 187 of IPC and under Section 6 of Commission of Inquiry Act, the Gujarat Police Act and the Protection of Human Rights Act, 1951. On receipt of the complaint, the Director General of Police entrusted the matter to Additional Director General of Police (Intelligence) Gujarat to inquire into the same who took up the complaint and fixed dates to record the statement of Smt.Jakia Naseem Ahesan Jafri. However, Smt Jafri insisted that complaint given by her may be treated as FIR.

3.6 Smt. Jafri, on 01.03.2007, with the support of Ms.Teesta Setalwad, who happens to be Secretary, Citizens of Justice and Peace, filed an application before this Court seeking direction from this Court to direct the Director General of Police to register an FIR R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 and further direct the same to be investigated by an independent agency i.e. CBI.

3.7 The aforesaid petition was dismissed by this Court on 02.11.2007 stating that the petitioner did not adopt the procedure to file the complaint under Section 190 read with Section 200 of the Code of Criminal Procedure and this Court directed the petitioner to file appropriate private complaint if she wished to do so.

3.8 Being aggrieved by the aforesaid order, Smt.Jakia Jafri and Citizens for Justice and Peace through its Secretary Ms.Teesta Setalvad filed a Special Leave Petition (Cri.) No.1088 of 2008 on 18.12.2007 before the Hon'ble Supreme Court of India and the Hon'ble Supreme Court of India passed an order dated 27.04.2009 directing that the complaint dated 08.06.2006 sent by Smt.Jafri shall be examined by the Special Investigation Team constituted pursuant to the orders of this Court and the Special Investigation Team was directed to take steps as required in law and give its report to this Court within three months.

R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 3.9 Once the investigation was done by SIT and inquiry and further inquiry was conducted by SIT, periodical reports were submitted before the Hon'ble Supreme Court of India, the Hon'ble Supreme Court of India directed the Amicus Curiae to scrutinize all these reports and to give opinion on the same.

3.10 After final report was submitted by learned Amicus Curiae on 12.09.2011 the Chairman, SIT was directed to forward final report along with entire material collected by SIT to the Court which had taken cognizance of Crime Report No.67 of 2002 as required under Section 173(2) of the Cr.P.C. Ultimately, final report under Section 173(2) of the Cr.P.C. was submitted on 08.02.2012 in two volumes before the Metropolitan Magistrate, Court No.11 by the SIT and in the said closure report it was concluded by SIT that there is no prosecutable material available against any of the accused person and all the documents collected and statements recorded during the course of inquiry and investigation along with reports of learned Amicus Curiae were submitted before the concerned Court R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 against which the complainant preferred protest petition before the learned Magistrate which was not entertained and hence Revision Application being Criminal Revision Application No.205 of 2014 was preferred before this Court which was rejected vide order dated 05.10.2017.

3.11 Smt.Jafri and Ms.Teesta Setalwad i.e. present applicant thereafter filed Special Leave Petition before the Hon'ble Supreme Court on 12.09.2018 having Diary No.34207.2018 against the said judgment and order dated 05.10.2017 wherein vide order dated 24.06.2022 the prayers of the petitioners were rejected by giving elaborate reasons and in that context as the accused persons found involved individually, collectively and or in collusion with other individuals entities and organizations in other offences, in this backdrop of the case, FIR was registered against the present applicant and other accused persons.

3.12 The present FIR is filed mainly against three persons viz. (i) Sanjiv Bhatt, the then DIG, (ii) R.B.Sreekumar retired IAS and Teesta Setalvad i.e. R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 present applicant wherein it is stated that all these three accused have conspired to abuse the process of law by fabricating false evidence to make several persons to be convicted for an offence that is punishable with capital punishment and thereby committed offence punishable under Section 194 of the Indian Penal Code. They have also instituted false and malicious criminal proceedings against innocent persons with an intention cause injury which is an act punishable under Section 211 of the Indian Penal Code. The accused had at the time of their acts of commission and omission were public servants and they had framed incorrect records with intent to cause injury to several persons for which they are culpable under Section 218 of the Indian Penal

Code and they had also conspired and had prepared false record and dishonestly used those records as genuine with an intention to cause damage and injury to several persons.

3.13 As far as present applicant is concerned, in the FIR it was stated that in the final report submitted by R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 SIT the present applicant had conjured, concocted, forged and fabricated facts and documents and / or evidence including fabrication of documents by persons who were prospective witnesses of the complainant. It is not just a case of fabrication of documents but also influencing and tutoring the witnesses and making them depose on pre-typed affidavits as has been noted in the judgment of this High Court dated 11.07.2011 rendered in Criminal Miscellaneous Application No.1692 of 2011.

3.14 Even Smt.Jakia Jafri, during her cross examination, in Gulberg Society case being CR No.67 of 2002 as Prosecution Witness No.337 had conceded that she knew Teesta Setalvad for some time and she was tutored by Teesta Setalvad and that she had given statement on 22.08.2003 before Nanavati Commission and after giving statement she had no occasion to read copy of that statement. All throughout she had followed instructions of Teesta Setalvad and in the final supplementary report filed by SIT in Gulberg Society Case it was categorically stated that 19 R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 witnesses insisted to take on record their prepared signed statements which according to them were prepared by Teesta Setalvad and one advocate Mr.M.M.Tirmizi. The statements so prepared were stereotyped copies and were computerized prepared statements given to them by Teesta Setalvad and advocate Mr.M.M.Tirmizi and they had merely signed those prepared statements prepared by them and they did not show their willingness to show their own statements to them.

3.15 For the aforesaid act of the present applicant, an FIR was registered against her along with two other co-accused viz. Sanjiv Bhatt and R.B.Sreekumar.

3.16 Once the FIR was registered, the applicant herein preferred an application under Section 439 of the Cr.P.C. for bail before the City Civil and Sessions Court at Ahmedabad being Criminal Miscellaneous (Regular) Application No.4617 of 2022 and the same was rejected vide common order dated 30.07.2022 by the learned Additional Principal Judge, Court No.2, City Civil and Sessions Court, Ahmedabad. The R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 aforesaid order of rejection was passed by way of a common order in respect of three bail applications being Criminal Miscellaneous (Regular) Application No.4617 of 2022, Criminal Miscellaneous (Regular) Application No.4646 of 2022 and Criminal Miscellaneous (Interim) Application No.4869 of 2022.

3.17 In this application, the coordinate Bench of this Court vide order dated 03.08.2022 issued Rule making it returnable on 19.09.2002. The aforesaid order was challenged by the present applicant along with the order dated 30.07.2022 passed by the Sessions Court, Ahmedabad in Criminal Miscellaneous Application No.4617 of 2022 and allied matters and the present applicant was released on interim bail by the Hon'ble Supreme Court of India vide order dated September 2nd, 2022 in Criminal Appeal No.1417 AND 1418 of 2022.

3.18 While passing the order dated 02.09.2022 allowing the appeal preferred by the applicant, the Hon'ble Supreme Court has observed as under:

R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 "We hasten to add that the relief of interim bail is granted to the appellant in the peculiar facts including the fact that the appellant happens to be a lady. This shall not be taken to be a reflection on merits and shall not be used by the other accused. As and when such occasion arises, the submissions on behalf of the concerned accused shall be considered purely on their own merits.

We, therefore, direct as under:

a. The appellant shall be produced before the Sessions Court tomorrow i.e. on 03.09.2022 and the Sessions Court shall release the appellant on interim bail, subject to such conditions as the Sessions Court may deem appropriate to impose, to ensure the presence and participation of the appellant in the pending proceedings. It shall be open to the Sessions Court to grant the relief of interim bail on submission of cash security or bond rather than insisting upon local surety.

b. The appellant shall surrender her Passport forthwith and the Passport which shall be kept in custody by the Sessions Court till the matter is considered by the High Court in Miscellaneous Criminal Application No.14435 of 2022.

c. The appellant shall render complete cooperation in the pending investigation.

At the cost of repetition, we may observe R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 that we have considered the matter from the standpoint of considering interim bail and we shall not be taken to have expressed any view touching upon the merits of the submissions advanced on behalf of the appellant. The pending applications before the High Court shall be considered by the High Court independently and uninfluenced by any of the observations made by this Court in the instant order.

8 The appeals are allowed to the extent indicated above."

3.19 While passing the aforesaid order, the Hon'ble Supreme Court categorically observed that the pending application before the High Court shall be considered by the High Court independently and uninfluenced by any of the observations made by this Court in the instant order and, therefore, both the learned counsel appearing for the respective parties made lengthy submissions based on merits of the matter.

3.20 In view of above, the matter was heard at length as stated in forgoing paragraphs and both learned counsels appearing for the respective parties had submitted written submissions which are R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 reproduced as it is as under:

4.1 WRITTEN SUBMISSIONS ON BEHALF OF THE APPLICANT SUBMITTED BY LEARNED SENIOR ADVOCATE MR.MIHIR THAKORE:

"1. Before going into the submissions in law, it would be pertinent to highlight that the Supreme Court, in Diary No.34207 of 2019, pronounced its judgment on 24.06.2022, inter alia, observing in Para 88 that a coalesced effort of disgruntled officers of the State of Gujarat, along with others, was to create sensation by making revelations which were false to their knowledge and pursuing the proceedings for 16 years to keep the pot boiling for ulterior motive. The Supreme Court observed "As a matter of fact, all those involved in such abuse of process, need to be in the dock and proceeded with in accordance with law." This observation resulted in the State filing the FIR the very next day i.e. 25.06.2022. It is claimed that the Applicant had conjured, concocted, forged and fabricated documents, including fabrication of documents by persons who are prospective witnesses and also tutoring the witnesses. The affidavits, which are alleged to be forged in the FIR and the charge sheet, are filed by different witnesses before the Supreme Court in Transfer Petitions filed by National Human Rights Commission. These affidavits are all dated between 06.11.2003 and 17.11.2003 (Please see, Item No.17 in the List of Dates furnished by the Applicant to the Court. It gives the page numbers of the Supreme Court affidavit, Court evidence, statements under Section 161 of the CrPC before the State appointed SIT and the details in respect of which case they are witnesses).

R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 2 The Applicant is seeking regular bail from this Hon'ble Court in respect of the above-referred FIR, where the Applicant was accused No.3 and charge sheet, where the Applicant is accused No.1. The Sessions Court, in Criminal Miscellaneous Application No. 4617 of 2022, by order dated 30.07.2022, rejected the bail application filed by the Applicant. The High Court, in the present Criminal Miscellaneous Application, on 03.08.2022, issued rule making it returnable on 19.09.2022. The Applicant approached the Supreme Court in Criminal Appeals No. 1417 and 1418 of 2022. The Supreme Court, considering that -

(i) the Appellant is a lady;

(ii) the Appellant has been in custody since 25.06.2022;

(iii) the offences alleged against her relate to the year 2002 till 2012;

(iv) and the investigating machinery has had the advantage of the custodial interrogation which is completed, while clearly observing that the High Court shall consider the bail application independently and uninfluenced by any observation made by the Supreme Court in the said order, granted interim bail till the matter is considered by the High Court by its order dated 02.09.2022. The Applicant was, accordingly, enlarged on bail since 03.09.2022. The Applicant has never been called by the investigating agency till the filing of charge sheet or even thereafter for investigation. There is not an iota of allegation against the Applicant that the Applicant has tried to influence any witness or even approach any witness during the last 9 months. Even before the Supreme Court, there was not even a whisper that the Applicant has influenced or is likely to influence any witness or has tampered or is likely to tamper with evidence. It is in this background that the present R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 application is required to be considered.

3. The relevant provisions for grant of bail in the Criminal Procedure Code, 1973 are Sections 437 (by Court, other than High Court or Court of Session) and 439 (High Court or Court of Session). They are reproduced below:

"437. When bail may be taken in case of non-bailable offence. -[(1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but -

(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

(ii) such person shall not be so released if such offence is a cognisable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of [a cognisable offence punishable with imprisonment for three years or more but not less than seven years]:

Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm:

Provided further that the Court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 other special reason:

Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court].

[Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more, be released on bail by the Court under this sub-Section without giving an opportunity of hearing to the Public Prosecutor.] (2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are no reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, [the accused shall subject to the provisions of Section 446-A and pending such inquiry, be released on bail], or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code (45 of 1860) or abetment of, or conspiracy or attempt

to commit, any such offence, is released on bail under sub-section (1), [the Court shall impose the conditions,-

(a) that such person shall attend in accordance with R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 the conditions of the bond executed under this Chapter,

(b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and

(c) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence, and may also impose, in the interests of justice, such other conditions as it considers necessary.] (4) An officer or a Court releasing any person on bail under sub-section (1) or sub-section (2), shall record in writing his or its [reasons or special reasons] for so doing.

(5) Any Court which has released a person on bail under sub-section (1) or sub-section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.

(6) If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail, to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

(7) If, at any time after the conclusion of the trial of a R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 person accused of a non-bailable offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered. (emphasis supplied)

439. Special powers of High Court or Court of Session regarding bail.- (1) A High Court or Court of Session may direct-

(a) that any person accused of an offence and in custody, be released on bail, and if the offence is of the nature specified in sub-section (3) of Section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section;

(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified:

Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public

Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.

[Provided further that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence triable under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian Penal Code, give notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 notice of such application.] [(1A) The presence of the informant or any person authorised by him shall be obligatory at the time of hearing of the application for bail to the person under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian Penal Code.] (2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody." (emphasis supplied) From the aforesaid emphasized provisions, it would become evident that certain offences are treated differently and considerations for releasing a person on bail is different if he is under the age of 16 years, or is a woman, or is sick, or infirm.

4. The following general principles, as enunciated by the Supreme Court in different judgments, are required to be considered while granting or refusing bail:

(i) The Court has to presume innocence of the accused while considering a bail application.

(ii) Denial of bail amounts to deprivation of personal liberty, and grant of bail is the rule and refusal is exception.

(iii) Object of detention or imprisonment of the accused is to secure his appearance and submission to the jurisdiction and judgment of the Court. Primary inquiry is whether bond would effect that end. Object of detention is never punishment before trial.

(iv) Whether the accused is likely to abuse the discretion granted in his favour by tampering with evidence or influencing witnesses or threatening the R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 complainant. Mere apprehension of tampering with evidence or influencing witnesses or threatening the complainant without anything else is not ground for refusal of bail.

(v) The nature of accusations and the severity of punishment in the case of conviction and the nature of materials relied upon by the prosecution.

(vi) Character behaviour and standing of the accused.

The aforesaid principles are laid down in various judgments of the Supreme Court which are enumerated below:

(i) Gurbux Singh Sibbiya vs. State of Punjab, (1980) 2 SCC 565 (Para 26 to 30)

(ii) Bhagirathsinh Mahipatsinh Jadeja vs. State of Gujarat, (1984) 1 SCC 284 (Para 7)

(iii) State of UP vs. Armani Tripathi, (2005) 8 SCC 21 (Para 18 to 23)

(iv) Ranjitsinh Brahmajitsinh Sharma vs. State of Maharashtra, (2005) 5 SCC 294 (Para 35 to 49) (matter arising under MCOCA with more stricter provisions for granting bail)

(v) P. Chidambaram vs. Central Bureau of Investigation, (2020) 13 SCC 337 (Para 21 to 26, 30 to 33)

(vi) P. Chidambaram vs. Directorate of Enforcement, (2020) 13 SCC 791 (Para 16 to 31)

5. The Supreme Court, in a recent decision in Satender Kumar Antil vs. Central Bureau of Investigation and another, (2022) 10 SCC 51, after categorizing the various offences and after referring to Arnesh Kumar vs. State of Bihar, (2014) 8 SCC 273, has laid down various principles for grant and refusal of bail. The Hon'ble Court would be pleased to consider the following relevant paragraphs 2, 12, 14 to 19, 27, 51, 66, 68, 69, 71 and 78 of the said judgment.

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6. Considering the above principles, the following would become evident:

(i) It would be pertinent to highlight that while considering the bail application, the Court has to presume innocence in respect of the accused not only for the present proceedings, but all the earlier proceedings which are being referred to by the prosecution.

(ii) It would be pertinent to highlight that every accused is entitled to personal liberty and deprivation of bail to the Applicant would amount to pretrial detention which is contrary to the principles laid down in various judgments.

(iii) The Applicant is not a flight risk and would certainly be available to the Court and the police whenever required. It is pertinent to point out that the investigation agency has never called the Applicant, even once, since her release on interim- bail order dated 3/09/2022. It would be pertinent to highlight and as would be evidence from the documents produced by the Applicant, that the Applicant has been granted bail and anticipatory bail in various proceedings by the Trial Court, High Court and the Supreme Court. A factor which would weigh while granting such orders, would be whether the Applicant is flight risk or would not be available for interrogation or trial. The fact that these courts have granted orders itself shows that the Applicant has never been flight risk and would be always available for interrogation and the Court during trial. The object of detention can never be punishment and, therefore, denial of bail would amount to deprivation of personal liberty, which R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 ought not to be considered.

(iv) During the course of arguments, the only allegation made regarding tampering with witnesses is in respect of alleged excavation in Lunawada Taluka (Charge Sheet Pg.4430-4433). In the said case, anticipatory bail has been granted to Applicant by the Sessions Court on 15.02.2011 (Applicant's Paper Book Pg.665-674, Item No.56 in the List of Dates). Although charge sheet has been filed, the Applicant is not shown as an accused in Column No.1 and the accused was never absconder. There is

no allegation that the Applicant has tried to influence or approach any witnesses who had filed affidavits in the Supreme Court since the date the affidavits were filed till today. They have independently given statement before the Supreme Court appointed SIT as well as, as witnesses in various trials which have concluded. There is no allegation even in any of the statement or evidence of the witnesses cited in the present chargesheet that the Applicant has approached them or tried to influence them since their evidence in their respective trials. Since the Applicant was released by the Supreme Court on 03.09.2022, till today there is no allegation even by the prosecution that the Applicant has tried to tamper with evidence or influence any witnesses. There is not even an allegation against the Applicant that she has approached any witness in any other criminal case filed against her where bail or anticipatory bail has been granted to her and no application by the State has been filed in any of those cases for cancellation of bail on such ground. The sole allegation made by any person is by Raees Khan, that too, two years after he was removed from service of Citizen for Justice and Peace ("CJP" for short). Even the complaints alleged to R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 have been made by Raees Khan Pathan has not resulted in any inquiry or finding against the Applicant that Applicant has tried to influence or threaten him.

(v) The Applicant has been a journalist over last 30 years and there is nothing to indicate anything against her character or behaviour.

(vi) The investigation agency has not shown or identified any other person in Coloumn No.-2 of the chargesheet as absconding or 'not arrested' not chargesheeted etc.

(vii) In respect of the nature of accusations and the material relied upon, the submissions are made in the paragraphs following.

7. In the charge sheet, the Applicant is accused of offences covered under the following sections of the IPC: Section 468, 469, 471, 194, 211, 218 and 120B. It is submitted that to be convicted under Sections 468, 469 or 471, it is essential that the accused should have committed forgery as defined under Section 463.

(a) Section 463 of the IPC reads as under:

"463. Forgery. - Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery." (emphasis supplied) R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 To accuse a person of forgery, there has to be an intention to cause damage or injury to public or any person or to support any claim with intent to commit fraud, etc., but it is essential that such person has to make a false document. Unless he makes a false document, it cannot be alleged that he has committed any forgery even if he has intent to cause damage or injury to public or any person.

(b) Making of a false document is defined in Section 464, which reads as under:

"464. Making a false document. - A person is said to make a false document or false electronic record

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First. - Who dishonestly or fraudulently -

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any [electronic signature] on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the [electronic signature].

With the intention of causing it to be believed that such document or part of document, electronic record or [electronic signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 authority he knows that it was not made, signed, sealed, executed or affixed; or Secondly. - Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with [electronic signature] either by himself or by any other person, whether such person be living or dead at the time of such alteration; or Thirdly. - Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his [electronic signature] on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration." (emphasis supplied)

(c) Considering the emphasis supplied in the Section above, a person is said to make a false document, when he makes, signs, seals or executes such document with an intention to causing it to be believed that it is signed or executed by or by the authority of person whom the maker knows that it was not made, signed, sealed or executed, etc. The word 'making' here cannot imply drafting of a document or transmission of a document for the purpose of signature of some person. 'Making' has to go with the words 'signs', 'seals' or 'execute' and a person is said to make a document, if it is either signed by him as if it is signed by the other or executed by him as if it is executed by the other. Consequently, when all the affidavits R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 presented before the Supreme Court in 2003 are signed and affirmed before a Notary Public by the respective persons, whose affidavit it was, and when none of whom have alleged that it was not signed by them, there is no question of any false document being created. None of the affidavits can be said to be a false document under the first part of Section 464. It may be also

pertinent highlight that even the prosecution has not laid any emphasis on the first part of Section 464.

(d) With respect to the third part of Section 464, it would be important to highlight that it would only come into play if one person dishonestly or fraudulently causes any person to sign, seal, execute or alter a document and by reason of deception practiced upon him, he does not know the contents of the document. It is an essential ingredient for invocation of the third part of Section 464 that one person should act dishonestly or fraudulently as defined under the Indian Penal Code. Section 24 of the Indian Penal Code defines 'dishonestly' as under:

"24. "Dishonestly". - Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly"."

To appreciate the meaning of dishonestly the definition of wrongful gain and wrongful loss given in Section 23 become relevant.

"23. "Wrongful gain". - "Wrongful gain" is the gain by unlawful means of property which the person gaining is not legally entitled.

R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 "Wrongful loss". - "Wrongful loss" is the loss by unlawful means of property to which the person losing it is legally entitled.

Gaining Wrongfully /Losing wrongfully. - A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property." (emphasis supplied) In view of the above definition, there has to be gain of property to the person acting dishonestly or loss of property to the person who is deceived. Property cannot mean reputation or image. It only means either immovable or moveable property. The offences against property are covered in Chapter 17 of the Indian Penal Code commencing from Section 378 to Section 462, all of which only deal with either moveable or immovable property. Damage to the reputation or image cannot be termed as wrongful gain or wrongful loss, as it is separately covered as an offence under Chapter 21. There is not an iota of allegation that any person, who has filed affidavits in 2003, have wrongfully lost any property, whether moveable or immovable, or that the Applicant has gained any property. Consequently, even the third part of Section 464 would have no application. Independently, the term 'fraudulently' is defined in Section 25, which reads as under:

"25. "Fraudulently". - A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise." (emphasis supplied) R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 There is not an iota of allegation that the Applicant, with an intent to defraud any of the deponents, had got the affidavits affirmed by the deponents. Consequently, even the third part of the Section 464 will have no application. (Mohd. Ibrahim vs. State of Bihar, reported in (2009) 8 SCC 751, See- Paras 20 to 21 and 28)

(e) If there is no false document made by the Applicant, Applicant has not committed, prima facie, any forgery as defined under Section 463 of the Indian Penal Code and, therefore, has not committed any offence under Section 468, 469 and 471 of the Indian Penal Code.

(f) Without prejudice to the above, the following facts in respect of the affidavits would show that under no circumstances it can be said that they were false documents:

(i) In respect of Gulberg case, those whose statements have been recorded by the present SIT, are those who have not filed any affidavit in the Transfer Petition before the Supreme Court in 2003. Therefore, there cannot be any allegation of forgery or making false document in respect of the same. (Refer charge sheet, Pg.838-888 and 326-445 and in Applicant's List of Documents at Item No.17- Witness Nos.37 and 19)

(ii) In respect of Sardarpura case, the witnesses, whose statements have been recorded by the present SIT, have admitted in the course of evidence during trial that the affidavits which they have signed and which are filed before the Supreme Court were read over and R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 explained to them in Gujarati. (Refer charge sheet, Pg.704-837 @ 732, 733, 739, 740, back-side of 751, 755, 757, back-side of 767, 774, back-side of 785, 786, 790, 798, 807, 817, back-side of 817, 821, 836 and See- Applicant's List of Document at Item No.17, Nos.30-36)

(iii) In respect of Ode case, the witnesses, whose statements have been recorded by the present SIT, have admitted in the course of evidence during trial that the affidavits, which were filed before the Supreme Court, were read over and explained to them and were signed and executed by them. (Refer charge sheet, Pg.1214-1319, 1327-1339, and 1419-1469 @ 1235-1236, 1267, 1291, 1309, 1338 and See- Applicant's List of Document at Item No.17, Nos.44-47 and 49)

(iv) In respect of Naroda Gam case, the witnesses, whose statements have been recorded by the present SIT, have admitted in the course of evidence during trial that the affidavits which they have signed and which are filed before the Supreme Court were read over and explained to them in Gujarati. (Refer charge sheet, Pg.567-664 @ 578 and in Applicant's List of Document at Item No.17, Nos.23-25) Further, these witnesses, whose statements have been recorded by the present SIT in reference to their SC affidavit in reference to Naroda Patiya case, it is clear that no where in the affidavit, they have claimed to be eye- witnesses to Naroda Patiya incident (Refer charge sheet, Pg.567-664 @ 544, 571, 597, R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 628, 671 and in Applicant's List of Document at Item No.17, Nos.23-25)

(v) In respect of the following affidavits which have been relied upon by the prosecution, the following features emerge from the statement before the SIT along with the evidence given by these witnesses during the trial which clearly rule out practice of deception being the reason for not knowing the contents of the affidavit so signed by the respective witnesses. With respect to their evidence, the Applicant submits as under:

(1) Imran Khan Pathan. He has admitted to have signed the affidavit filed before the Supreme Court in the Transfer Petition in English. Further, even before the present SIT, he has not stated that he had signed on the affidavit without reading. Even otherwise, in the evidence before the trial court, he denies having any conversation with the present Applicant over phone before drafting of the SC affidavit which was done by Raeeskhan. (Refer charge sheet Pg.537- 565 @ 537, 555-556) (2) Madinabanu wife of Rafik Khan Chand Khan Pathan. Before the present SIT, certain explanation has been sought from this witness about the affidavit of one Nannu Miya, who has since died and, therefore, his statement before the present SIT is not on record. Even assuming that the affidavit of Nannu Miya contains some description in R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 respect of this witness, there is no allegation that the affidavit of Madinabano also contains that false description. Further, the charge sheet papers also include the statement on oath made in 2002 before the Nanavati Commission prior to Supreme Court affidavit in 2003. A mere perusal of the affidavit before the Supreme Court and before the Nanavati Commission would show similarity. Before the Trial Court, this witness has specifically feigned ignorance to the suggestion that neither affidavits were read over nor explained which fact is different from denial of the contents. (Refer charge sheet Pg.665-687 @ 667, 673-675 and 681) (3) Abdul Majid Mohammad Usman Shaikh.

This witness has specifically admitted that the contents of the affidavit in respect of the incident of rape committed on his daughter was specifically told to him by his daughter while she was receiving treatment in the hospital. The falsity as alleged before the present SIT is in respect of the fact that he was an eyewitness to the incident.

However, it is clear that the incident of rape on his daughter did take place and was disclosed to him while his daughter was receiving treatment. Further, he has also admitted that all the facts that was known to him was disclosed in the affidavit before the Supreme Court and the contents was read over to him in the language that he understands and he has R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 not been tutored by the Applicant. (Refer charge sheet Pg.961-1152 @ 979-980, 981, 984-985, 1067, 1048, 1090-1093, 1020) (4) Reshmabanu Nadimbhai Sayed. This witness of Naroda Patiya has admitted in terms in her evidence before the Trial Court that not only the affidavit was typed as per her say and that its contents were explained to her before signing, but she also states that Raeeskhan Pathan was given specific authority to file this affidavit before the Supreme Court in the Transfer Petition. (Refer charge sheet Pg.889-960 @ 941-

942, 953) (5) Rafikanbanu Rehmanbhai Shakurbhai Sayed. The present SIT has tried to suggest that certain details and identity of the accused persons were not told by this witness to the Applicant and that such details are falsely attributed to her in her Supreme Court affidavit. However, the evidence before the Trial Court is wholly contrary in all such respects such as helping of the rioters by the police personnel, identity of the accused persons who burnt her daughter alive.

Both these facts are not only stated but she has withstood rigorous cross examination in this regard. She has also admitted in her evidence before the Trial Court that where certain details were missing, it was because of the fact that she might have forgotten to supply that R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 fact to the person writing the affidavit. The prosecution has tried

to selectively read from few paragraphs here and there in order to attribute falsity which fact is not borne out when the entire evidence is concerned. She has also admitted that she sought transfer of case out of Gujarat as others were also doing it.

(Refer charge sheet Pg.1340-1418 @ 1347, 1349-1350, 1352, 1360-1361, 1372-1373, 1376, 1384, 1404-1405) In addition to the above, it is pertinent to note that except in Naroda gaam case, no other Ld. Trial Courts have even deemed it appropriate to initiate a proceeding under S. 340 of the Code of Criminal Procedure for false evidence. Even Naorda Gaam case, despite registration of M. Case way back in 2011, no chargesheet has been filed.

8. As explained above, prima facie the Applicant has not committed any offence under Section 467, 468 and 469 as the Applicant has not committed any forgery. None of the above documents can be said to be forged documents. In view of that, the only other offences which have to be looked at, are Sections 194, 211 and 218 of the Indian Penal Code. Section 194 reads as under:

"194. Giving or fabricating false evidence with intent to procure conviction of capital offence. - Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital [by the laws for the time being in force in [India] shall be punished with [imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine;

R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 if innocent person be thereby convicted and executed. - and if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished either with death or the punishment hereinbefore described." (emphasis supplied) For a person to commit an offence under Section 194, he has to give false evidence or fabricate false evidence. Giving false evidence and fabricating false evidence are defined under Section 191 and 192 of the Indian Penal Code, which are reproduced below:

"191. Giving false evidence. - Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.

Explanation 1. - A statement is within the meaning of this section, whether it is made verbally or otherwise.

Explanation 2. - A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

192. Fabricating false evidence. - Whoever causes any circumstance to exist or makes any false entry in any book or record, or electronic record or makes any document or electronic record containing a false statement, intending that such circumstance, false entry R/CR.MA/14435/2022 CAV

JUDGMENT DATED: 01/07/2023 or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said "to fabricate false evidence".

Of the aforesaid two Sections, Section 191 would have no application. The Applicant was not required by oath or by any express provision of law to state the truth. Even in respect of Section 192, it cannot be said that the Applicant made any circumstance to exist or made any document. In this context, Illustration (c) to Section 192 would be relevant, which is reproduced below:

"(c) A, with the intention of causing Z to be convicted of a criminal conspiracy, writes a letter in imitation of Z's handwriting, purporting to be addressed to an accomplice in such criminal conspiracy, and puts the letter in a place which he knows that the officers of the Police are likely to search. A has fabricated false evidence."

In view of the above, it cannot be said that the Applicant has given any false evidence or fabricated any false evidence and cannot be accused under Section 194.

9. Without prejudice to the above, it would be pertinent to highlight that offence under Section 194 falls under Section 195(1)(b)(i) of the Code of Criminal Procedure and no Court shall take cognizance of such offence except on a complaint in writing of that Court, or by such officer of that Court as the Court may authorize in writing in this behalf, or of some other Court to which that Court is R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 subordinate. A clear distinction is required to be drawn between Section 195 (1) (b) (i) and 195 (1) (b) (ii). While offences described in Section 463 or punishable under Section 471, 475 or 476 of the Indian Penal Code, if committed in respect of documents produced in Court but outside the Court, it is not necessary that the complaint should be filed in writing by the Court. This is evident from the decision of Iqbal Singh Marwah vs. Meenakshi Marwah, (2005) 4 SCC 370, (Para 10 and 11). The law laid down by the Supreme Court applies only to offences covered under Section 195 (1)(b)(ii) and not to offences covered Section 195 (1)(b)(i). This proposition is laid down recently in Bandekar Brothers Private Limited vs. Prasad Vasudev Keni, (2020) 20 SCC 1 (Para 23, 26-28 and 30). In view of the above, while Sections 467, 468 and 471 were not applicable, they were invoked solely to get out of the requirement of complaint being filed by the Court in respect of Section 194 of the Indian Penal Code as contemplated under Section 195 (1)(b)(i) of the Code of Criminal Procedure. This is not permissible as laid down by the Supreme Court.

10. Without prejudice to the above, the prosecution has tried to give a camouflage or colour of Sections 463, 464 of the Indian Penal Code in the impugned FIR solely to get out of the rigor of lodging a complaint as contemplated in Section 195 (1)(b)(i) and resorting this device has been held to be impermissible in the case of Basir-Ul-Haq vs. State of West Bengal, AIR 1953 SC 293 (Para 14). It is pertinent to note that the judgment of the Supreme Court in Basir-Ul-Haq holds field even as of date and has been followed with approval in innumerable cases.

11. Having dealt with all the major allegations in the charge sheet and the FIR, the Applicant submits that the accusations do not support any of the offences alleged to have been committed by the Applicant and the material R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 relied upon cannot occasion the Ld. Trial Court to even take cognizance and initiate in any criminal proceedings, much less any conviction.

12. The only other allegation made in the charge sheet and the statements taken by the SIT and under Section 164 of the Code of Criminal Code is of large conspiracy. This is based only on the statement of Raees Khan taken under Section 164 of the Code of Criminal Procedure before the Magistrate on 08.07.2022 and 11.07.2022. (Note supplied by the prosecution, Pg.21-46). The statement refers to the alleged conversation between late Ahmed Patel and Teesta Setalvad in the presence of Raees Khan in 2002. This statement does not see the light of the day from 2002 till 08.07.2022. Raeeskhan worked with CJP from 28.02.2002 to 18.01.2008. After he was removed from CJP by the Applicant, Raeeskhan has made various statements which are enumerated below:

(i) Letter dated 01.09.2010 by Raeeskhan to Supreme Court appointed SIT Chairman R.K. Raghavan. (Charge sheet Pg.472)

(ii) Letter/Complaint dated 09.09.2010 by Raeeskhan to the Commissioner of Police, Ahmedabad complaining regarding hacking of his emails, etc. No action initiated by police on the basis of such complaint. (Charge sheet Pg.473-474)

(iii) Letter/Complaint dated 17.09.2010 by Raeeskhan to the Commissioner of Police, Ahmedabad repeating the complaint. No action initiated by police on the basis of such complaint. (Charge sheet Pg.475)

(iv) Affidavit dated 19.10.2010 before the Nanavati Inquiry Commission which was inter alia inquiring also into the conduct of the then Chief Minister of Gujarat. In this affidavit, there is not a murmur of a larger conspiracy targeting the then Chief R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 Minister. (Charge sheet Pg.494-501)

(v) Application dated 28.10.2010, under Section 311 is filed in the Naroda Gam trial case by Raeeskhan. (Applicant's Paper Book, Vol.2, Pg.827-833)

(vi) Application dated 30.10.2010, under Section 311 is filed in the Sardarpura trial case by Raeeskhan. (Applicant's Paper Book, Vol.2, Pg.778-787)

(vii) Application dated 01.11.2010, filed under Section 311 is filed in the Gulberg Society trial case by Raeeskhan. (Applicant's Paper Book, Vol.2, Pg.803-

811)

(viii) On 03.10.2013, a complaint is filed by Raeeskhan to the Police Commissioner, enclosing a CD of conversation with R.B. Shreekumar of 2010. The said conversation does not disclose any larger

conspiracy alleged for the first time in the statement under Section 164 by Raees Khan and the conversation only indicates that he was preparing to defend himself against accusation which were being levied. (Charge sheet Pg.460-461, 514-520)

(ix) Complaint dated 30.03.2018, Raeeskhan filed against the Applicant and her husband in respect of alleged forged project. (Charge sheet, Pg.4452-4454)

(x) Statement recorded by the present SIT on 30.06.2022.

If all the aforesaid statements are perused, it would become evident that at no point of time, Raees Khan has alleged any larger conspiracy which is alleged in the statement under Section 164 before the Magistrate. There is also clear contradictions between the statement under Section 164 of Raeeskhan Pathan and of Narendra Brambhatt recorded on 15.07.2022 on the aspect of whether any conversation ever took place in respect of "larger conspiracy of implicating high political functionaries and top government functionaries". It may also be pertinent to highlight at this stage that no R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 statement of Raeeskhan Pathan till the statement before the SIT dated 30.06.2022 and statement under Section 164 on 08.07.2022, implicates the Applicant of making Zakia Ahsan Jafri of filing a Complaint before then Director General of Police as a part of a larger conspiracy. Such theory comes for the first time only post the Supreme Court judgment dated 24.06.2022 and Raeeskhan, who is charge sheeted accused in Lunawada excavation case, is sought to be made a star witness and heavily relied upon by the prosecution to deny the present Applicant bail.

Note: With relation to Items (v), (vi) and (vii) with deal with the Applications of Raees Khan before the Special Trial Courts appointed as an outcome of the Transfer Petition, none of the Trial Courts have made any findings on the controverted affidavits by the Applicant.

13. The prosecution, in order to allege the existence of a larger conspiracy, has tried to portray the fact that the Applicant was using victims and witnesses and was collecting large funds in their names. However, the charge sheet papers belie this claim and categorically demonstrate that in the case of one witness Qutub-uddin Ansari, an Appeal has been made to the general public in the following manner:

"(CC feels that he is an unlikely victim of the genocide. He is in need of financial assistance. Any contribution for him, by cheque or draft, should be made to 'Qutub-uddin Ansari' and posted to our address - Editors.)" (Charge sheet Pg.528)

14. The allegation of keeping the pot boiling is totally uncalled for in light of the fact that (1) NHRC had filed Transfer R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 Petitions in the Supreme Court, (2) the Government of Gujarat had itself enlarged the scope of inquiry to the include the Chief Minister, other Ministers and Government Officials, (3) the Supreme Court had directed the complaint filed by Zakia Ahsan Jafri to be investigated in the SIT and on filing of the final report, entitled the said Zakia Ahsan Jafri to appear before the Magistrate and object to the final report and the final judgment of the Supreme Court arises from those proceedings. Approaching higher Courts

cannot be termed as keeping the pot boiling. There is no allegation against Zakia Ahsan Jafri in respect of any of the sections invoked in the present charge sheet, when she was the person who had filed the complaint. This is being done solely on the basis that the Applicant used her as a tool which comes out in the statement of Raeeskhan Pathan. Further, it would be important to highlight Para 56 of the evidence of Zakia Ahsan Jafri in Gulberg Society case, which reads as under:

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(Charge sheet Pg.3832) While the learned Public Prosecutor read the first portion of the above paragraph and was completely silent on the above-mentioned underlined portion that was not read by him. Read in entirety, this statement does not in any manner indicate that Zakia Ahsan Jafri was a tool of the Applicant. Moreover, in the entire cross examination in the Gulberg Society case, her complaint dated 08.06.2006 to the Director General of Police was not even put to her. In the circumstances, to rely on this statement for the purpose of saying that she was used as a tool, is completely unfair.

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15. The argument that the present Applicant ought not to be released on bail on the sole ground that the investigation is at critical stage appears to be an argument of last resort adopted by the prosecution. This fact is belied by the reply of the prosecution vide Exh.24 dated 12.06.2023 to an application under Section 207 of the Code of Criminal Procedure in the Ld Sessions Court. The prosecution has specifically declared before the Trial Court that during the further investigation, if any documents are collected, the same will be produced in accordance with law. Further, there is no other document which has been seized during investigation till date which has not been produced before the Trial Court.

16. In view of the above, interim-bail as granted by the Hon'ble Apex court is required to confirmed and the Applicant is required to be granted regular bail pending trial.

5.1 WRITTEN SUBMISSIONS ON BEHALF OF
RESPONDENT STATE SUBMITTED BY LEARNED
PUBLIC PROSECUTOR MR. MITESH AMIN:

"1. FIR is registered at DCB Police Station on 25.06.2022 for the offences punishable under Section-468, 471, 194, 211, 218 and 120(B) of the Indian Penal Code against the petitioner and two other accused named Sanjiv Bhatt and R.B. Shreekumar.

2. Petitioner and two other accused were arrested in the matter of above referred FIR. Petitioner preferred regular bail application by filing Criminal Misc Application No. 4617 of 2022 in the Court of Ld.

R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 City Sessions Judge at Ahmedabad which came to be rejected through order dated 30.07.2022. Against this order of rejection of regular bail application filed by the applicant, applicant has preferred present application. During the pendency of present petition, petitioner preferred Criminal Appeal No. 1417 and 1418 of 2022 before the Hon'ble Supreme Court and the Hon'ble Supreme Court vide order dated 02.09.2022 granted interim bail to the petitioner. Following part of the order would be relevant for deciding present application.

"We are therefore not considering whether the appellant be released on regular bail or not. That issue will be gone into by the High Court in the pending application"

"At the cost of repetition, we may observe that we have considered the matter from the standpoint of considering interim bail and we shall not be taken to have expressed any view touching upon the merits of the submissions advanced on behalf of the appellant. The pending applications before the High Court shall be considered by the High Court independently and uninfluenced by any of the observations made by this Court in the instant order.

In view of the above this Hon'ble Court needs to consider material of investigation and other aspects relating to granting or otherwise of the bail independently and uninfluenced by any of the observation made by Hon'ble Supreme Court in the order granting interim bail to the applicant.

3. During the pendency of the present application R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 investigator submitted charge-sheet on 20.09.2022 clarifying in it that investigation is still in progress as per the provisions of Section-173(8) of the Code of Criminal Procedure Code. Petitioner is arraigned as accused no.1 in the charge-sheet and other accused named R.B.Shreekumar and Sanjiv Bhatt are arraigned as accused no.2 and 3. At the time of submitting charge-sheet investigator has added offence punishable under Section-469 of Indian Penal Code along with other offences as alleged in the FIR.

4. As the offences are punishable by court of Ld.

Sessions Judge, charge-sheet is committed to the court of Ld. Sessions Judge and it is numbered as Sessions Case No. 159 of 2023.

5. On behalf of the applicant broadly following submissions are made broadly.

(1) Applicant has placed judgment of Hon'ble Supreme Court delivered in SLP Diary No. 34207 of 2018 at Page No. 1 to 452.

(2) Applicant has also submitted list of dates and events dated 10.03.2023.

(3) Applicant also submitted charge-sheet against all the accused.

(4) Applicant has also submitted different orders from Page-453 to Page No. 865.

(5) Applicant has also relied upon certain judgments on the issue of bail.

(6) After placing reliance on above referred material applicant had submitted that she cannot be consider to be maker of false document as R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 alleged false document which are in the nature of affidavits submitted by different persons in transfer proceedings initiated before the Hon'ble Supreme Court are not affirmed by her and therefore, if at all any wrong is committed, applicant has not committed one. Applicant had also challenged the applicability of Section-463, 464, 468 and 471 as not only that no wrong is committed by her but there is also no case against her, about applicant's involvement in any act of forgery and as a matter of fact, there is no act of forgery either. Applicant has also relied upon definitions of dishonestly, fraudulently etc as defined in Indian Penal Code to substantiate the submissions that there is no act of making of false documents, forgery etc. Applicant also submitted that as investigator has applied Section-194, 463 and few other Sections of Indian Penal Code alleging about an act of forgery as well as giving or fabricating false documents etc, there is requirement of adhering to provisions of Section 195 of the Code of Criminal Procedure Code.

(7) Applicant has also submitted about she having not signed any affidavit and even if it is assumed that affidavit is drafted by her, that will not amount to making of false documents.

(8) Applicant has also disputed applicability of Section-211 and 218 of Indian Penal Code. (9) Applicant had also submitted that she had nothing to do with complaint submitted by M/s. Jakia Jafri.

(10) Applicant had also submitted about reliability of the witness namely Rais Khan, Narendra Brahambhatt and others as there are contradictory versions and witnesses have not stated version R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 stated by them in present investigation though at earlier point of time they had opportunity to state or narrate the same.

(11) Applicant has submitted that though there are different FIRs filed against her, applicant is granted anticipatory bail and no charge-sheet is yet laid in such FIR matters.

(12) Applicant also submitted that in the application submitted by witness Rais Khan for examining him under Section-311 of Code of Criminal Procedure, court has ordered initiation of prosecution against him and others.

(13) Applicant had made many other submissions as well.

6. On behalf of opponent State of Gujarat convenience compilation is submitted running around 208 pages which is part of charge-sheet and 2 other very short compilation are also submitted which includes different FIR's showing criminal antecedents of the applicant as well as certain orders / judgments, pleadings etc connecting applicant which are at 31 and 126 pages.

7. Opponent has also relied upon 3 judgments on the issuance of bail.

8. It is submitted on behalf of the opponent, that present proceedings are pursuant to filling of FIR as well as charge-sheet against the applicant and two other accused consequent to the judgment of Hon'ble Supreme Court which was delivered on 24.06.2022 in SLP bearing diary no. 34207 of 2018. Considering the material placed before the Hon'ble Supreme Court in the above judgment as well as also considering R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 material of investigation in the present FIR more than Prima facie case is made out by investigation agency about involvement of applicant and two other accused propagating issue of larger conspiracy i.e. when the different incidents of riots took place across the State of Gujarat on and after 27.02.2002 in which large number of persons belonging to minority community were brutally massacred by majority community is the handy work of the then existing establishment including highest functionary of the State i.e. the then Hon'ble Chief Minister, other Hon'ble Ministers, Bureaucrats, Politicians and Private persons and to substantiate this issue of larger conspiracy, it is the case of investigator that different affidavits were prepared by applicant stating therein falsehood and also making false claims which were fully known to the applicant being false in nature. Similarly other two accused as co-conspirators also had made false claim, false statement etc propagating above referred theory of larger conspiracy. It is submitted that this issue of larger conspiracy was kept boiling to the benefit of applicant and other two accused since February, 2002 onwards for lot many years and during these many years issue of larger conspiracy was continuously politicized and sensationalized.

9. It is submitted that offence committed by applicant and others are not only serious in nature but are offences against public justice.

10. Investigator would rely on different witnesses more particularly witnesses named (1) Raiskhan Azizkhan Pathan (2) Narendra Jethalal Brahambhatt (3) Qutbuddin Nasruddin Ansari (4) Yasminbanu Nafitulla R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 Shaikh, (5) Affidavit of Abdul Majid Mohammad Usman Shaikh and his evidence as witness in concerned Sessions Case as well as (6) Affidavit of Rafikkanbanu Rehmanbhai Saiyed also with her evidence in concerned Sessions Case, (7) Affidavit of Nanumiya Rasulmiya Malek (8) Affidavit of Madina Aarifhusen Malek along with her evidence in concerned Sessions Case, (9) Affidavit of Imrankhan Asrafkhan Pathan along with his evidence in concerned Sessions Case (10) Statement of notary advocate Shivkumar Chotelal Gupta and email communication involving all the three accused including applicant, as well as such communications also involving local politicians and one of the accused etc.

11. On the basis of the above referred material it is submitted that close associates of applicant i.e. witness Raiskhan Azizkhan Pathan very clearly implicates applicants and other two accused about various and different meetings having taken place between all these three accused as well as applicant meeting very strong politician of one of the oldest political party and also receiving money from him to the tune of Rs.30lakhs/- and their target of propagating larger conspiracy by going to the extent of doing so much so that the then Chief Minister of the State goes behind bar / jail.

12. Witness Raiskhan has also stated about applicant's involvement in publishing magazines / news articles which would defame the then Chief Minister so much so that the then Chief Minister would be forced to give his resignation. It is also stated by witness that whatever fund / money is received would be used to R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 pursue the theory of larger conspiracy. Witness also stated about complaint propagating larger conspiracy being prepared by the applicant initially in the name of one Shri Vitthalbhai Pandya who also went to meet applicant at Mumbai but refused to pursue the complaint as prepared by applicant and on his refusal Ms. Jakia Jafri was chosen as complainant. There is sufficient material to Prima facie establish that in all other proceedings relating to pursuing the complaint filed in the name of Ms. Jakia Jafri applicant constantly had done all necessary things to take complaint of Ms. Jakia Jafri to its logical conclusion but such efforts ultimately faded and frustrated considering the judgment delivered on 24.06.2022 by the Hon'ble Supreme Court and subsequent there to different acts of propagating larger conspiracy came out openly during the investigation of present FIR proceedings. Witness has named different victims of different riots cases whose affidavits containing falsehood were drafted and prepared by applicant which came to him and same got affirmed etc. There is also reference where applicant has claimed that their group / side would come into power very soon. Witness also states about different acts of tutoring of riot victims committed by applicant, as also applicant engaging certain riot victims in various activities to achieve desired purpose. Witness also states about making certain payment in terms of money to certain riot victims. Witness further states about misuse of another witness named Qutbuddin Ansari in different ways, manners and devices by projecting him as major riot victim time and again. Witness also involves applicant in the act of one another FIR matter registered at Lunavada Police Station where applicant through others exhumes buried dead bodies R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 for the purpose of creating sensation and showing it to public through electronic mode. Witness also states about applicant having collected crores of rupees in the name of riot victims. It is also stated by witness that after he separated from applicant, he received threats from applicant for which he had filed complaint at Rakhial Police Station and one other complaint at Shahpur Police Station. Witness also stated about another accused named R.B.Shreekumar having telephoned him regarding witness having filed affidavit against applicant to which applicant through this accused suggested witness to arrive at settlement or else that would benefit highest functionary of the State and while concluding he also states about there being threat to his life. Witness has also filed affidavit in the Commission of Inquiry on Godhara incident. Investigator has also collected telephonic conversation between witness and R.B.Shreekumar and relevant transcription of conversation is also submitted.

13. To substantiate witness Raiskhan's version about erstwhile, now deceased, political leader of oldest political party giving Rs.30lakhs/- to the applicant, investigator has also interrogated another

witness named Shri Narendra Jethalal Bhrambhatt who gave money to the applicant on behalf of above political leader who clearly states that he had given Rs.25 + 5 i.e. Rs.30lakhs/- to applicant on instruction of erstwhile political leader, who named in the statement. Witness belongs to the same political party to which above mentioned political leader were belonging. Witness also realised that applicant and others were propagating as if whatever is happening (during communal riots), existing political R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 establishment of that time is responsible for it. Witness also states about applicant, after instigating other persons was taking their interviews, preparing fake videos which were shown in gulf countries and other countries and thereby was collecting money. This witness has also given statement under Section-164 of Code of Criminal Procedure.

14. It is submitted that one another witness name Qutbuddin Nasruddin Ansari whose photo which was in a very poor and Pitable condition as well as the witness himself was misused by applicant for the purpose of showing same as riot victim and also arranging press conference portraying him as very serious riots victim, one such photo is also submitted showing picture of this witness besides petitioner in press conference. It is the case of the witness that he was given some money and his pitiable photo was used for the purpose of getting help from different corners. Detailed narration is given by witness as to how witness as well as pitiable photo was misused by applicant during communal riots and post communal riots period. Witness has given statement under Section 164 of the code of CRPC.

15. One another Charge-sheet witness No.46 named Yasminbanu Nafitulla Shaikh has also given statement under Section 164 of code of CRPC which also states about applicant having used her by tutoring her and she being made to sign certain papers on instruction of applicant. Investigator had also collected affidavit of this witness submitted by her before Hon'ble Bombay High Court which also shows applicant's role in different acts of tutoring committed on her as well as applicant having collected huge sum of money in R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 the name of victims of Best Bakery case though actually nothing was paid to such victims.

16. Witness named Abdul Majid Mohammad Usman Shaikh is also one another witness whose affidavit is used by applicant. This witness has also given his evidence in concerned session case wherein, witness has accepted about his affidavit being prepared by applicant which contained false facts about his daughter named Sufia and he being witness to the incident of his daughter named Sufia being raped. Opponent relies on affidavit as well as relevant part of witness deposition and he is shown as charge- sheet witness no. 30 and also interrogated by the investigator.

17. It is submitted that one another charge-sheet witness no. 41 named Rafikkanbanu Rehmanbhai Saiyed is also interrogated and her affidavit is also prepared by applicant which is submitted along with relevant part of witness deposition, which clearly states about contention in her affidavit relating to false involvement of persons named Jaydeep Patel and Raju Patel. As such these two persons are not known to the witness.

18. It is also submitted that there is one another charge-

sheet witness no. 18 named Madina Aarifhusen Malek who in concerned session case when examined this witness has accepted that she was not subjected to act of rape and she has not stated about she being subjected to rape. Witness also states about person name Nanumiya Rasulmiya Malek and Sajid who were responsible for executing her affidavit but on bare reading of her affidavit it clearly shows that she R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 had made statement in her affidavit on detailed questioning by applicant. Reference is made by this witness about one Nanumiya whose affidavit is also placed before Hon'ble Court which contains in it that an act of rape was committed upon witness Madina. Affidavit of Nanumiya also contains false involvement of the then highest functionary of the state responsible for loss of life and property in Naroda Gam. Affidavit of Nanumiya clearly states that he had affirmed his affidavit on detail questioning made by applicant. On trying to know whereabouts of Nanumiya investigating agency had known that he is dead.

19,. It is submitted that one another witness who is charge-sheet witness no. 14 named Imrankhan Ashrabkhan Pathan on examination of said witness in concerned session case he has accepted that no incident of murdering 110 persons as well as burning them was ever witnessed by him and he had not stated such facts in his affidavit which is part of investigation material. On bare examination of his affidavit this aspect which is denied by witness is stated in paragraph 27 of his affidavit. Witness's affidavit also involves highest state functionary of that time as well as involves powerful Political persons who are not prosecuted and are required to be punished for their hand in the carnage.

20. It is also submitted that investigator has also recorded statement of charge-sheet witness No.64 Shivkumar Chotalal Gupta who had stated that witness was called by applicant at her office and had told him about affirmation of affidavits and applicant instructed this witness to not inquire and verify R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 about contents of affidavit prepared by applicant to concerned deponents. Witness further states that as per instructions given to him by applicant, he affirmed all the affidavits without verifying contents of affidavit of deponents under instructions of applicant.

21. Investigator has also collected email communication of applicant and two other accused of relevant period i.e., post communal riot time which refers to different litigation involving applicant as well as different names narrated in it in abbreviation like RKR, RR, RB, MS, etc. This email communication also referred in it engaging lawyer, copies of affidavit naming of lawyer preparing ghost questions, draft press note prepared by applicant which was sent to co-accused Bhatt referring date of May 6, 2011. Reference of writ Petition filed by Malika Sarabhai, reference of news reporter named Himanshu Thakkar, reference of communication by co-accused Bhatt to applicant stating about requirement of FIR and Petition memo and co-accused Bhatt stating to local political leader about accused waiting for blackberry as well as copy of note so that accused Bhatt can suggest points if necessary.

22. On the basis of above referred material it is submitted that there is more than prima facie case against applicant and other accused showing their involvement in the commission of offence as narrated in the charge-sheet namely about making of false document, forgery, fabricating, false evidence, etc. Applicant is challenging this material on the strength of witness relied upon by investigator having not revealed these facts never before which they stated in R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 the present investigation and therefore according to applicant, witnesses versions are full of contradiction, omissions, etc.

23. It is submitted that evaluation of prima facie case while considering grant or otherwise of bail is very limited to only extent of examining material only to evaluate prima facie case and nothing beyond that at this stage, scrutinizing material of investigation for deciding credibility and reliability of witness is not required at all. Further aspect of examining issue of their conspiracy which was kept boiling for lot many years by applicant and two other accused which ultimately on judgment of Hon'ble Supreme Court dated 24.06.2022 was examined further pursuant to present FIR and investigation. Hence, witness cannot be blamed for contradiction as it will be relevant only at the time of trial. Even different judgments relied upon by applicant also states about limited examination of material of investigation only for the purpose of evaluating Primafacie case not to scrutinize reliability and credibility of witness.

24. It is submitted that applicant is involved in number of FIR proceedings which are narrated here under.

A

1. FIR registered at Lunavada Police Station on 02.01.2006 for the offences punishable under Section-192, 193, 201, 120(B), 295(A), 297 and 114 of Indian Penal Code relating to exhuming of buried dead bodies and creating sensation by displaying the same through electronic media. This FIR is submitted at Page-1 to 4 of convenient compilation running into 31 pages submitted by opponent in support of this FIR in the same compilation Page-5 R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 to 8 affidavit of witness named Rahul Singh Senior Reporter of India Today running Sahara Samay TV Channel is also submitted.

2. Applicant initially challenged her involvement in this FIR proceedings which is not considered by this Hon'ble Court and thereafter, applicant had challenged same before the Hon'ble Supreme Court and after Hon'ble Supreme Court also didn't considered applicants prayer, applicant had again approached this Hon'ble Court with a prayer of quashing FIR as well as charge-sheet registered at Lunavada Police Station through Criminal Misc. Application No. 23184 of 2017 and the same is pending before this Hon'ble Court. Memo of petition and certain orders passed in this proceedings are submitted along with another convenient compilation running into 126 pages at page no.1 to

26.

3. As the proceedings were stayed for about 6 to 7 years by virtue of Hon'ble Supreme Court's order matter has not proceeded further.

B

1. One another FIR is registered at DCB Police Station, Ahmedabad City where first informant is Firozkhan Saeedkhan Pathan for the offences punishable under Section-406, 420, 120(B) and Section-72 of Information and Technology Act against applicant and few others, this FIR is at Page-9 to 14 of the convenient compilation running into 31 pages.
2. Applicant along with other accused preferred anticipatory bail application which after rejection it by Ld. Sessions Judge came before this Hon'ble Court and vide CAV Judgment dated 12.02.2015 this Hon'ble Court had rejected applicant's application bearing Criminal Misc. Application No. 4677 of R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 2014 praying for anticipatory bail. This judgment is placed at Page-60 to 120 of convenient compilation running into 126 pages. Some relevant observation regarding purchase of items like wine, shoes, holiday resort, air tickets, grocery, clothes, regular hair salon etc as well as applicant been guilty of tempering with witness etc and also about non co- operation and requirement of custodial interrogation is observed at Page-70, 71, 73, 74, 79 and few other pages.
3. Applicant on denial of anticipatory bail by this Hon'ble Court through above referred judgment had approached Hon'ble Supreme Court and applicant is protected for now and matter of applicant is still pending.

C

1. One another FIR is also registered before DCB Police Station Ahmedabad City on 30.03.2018 where first informant is Raiskhan Azizkhan Pathan and accused persons are applicant her husband and other for the offences punishable under Section-120(B), 153(B), 153(A), 406, 409, 420 of Indian Penal Code as well as also under Section-13(1)(D)(I), 13(2) of Prevention of Corruption Act. Copy of this FIR is placed at Page-29 to 31 in the convenient compilation running into 31 pages.
2. Applicant is granted anticipatory bail in the matter of above referred FIR and the State has challenged the order granting anticipatory bail to the applicant and challenge is presently pending before the Hon'ble Supreme Court.
3. Challenge of opponent State in the matter of above referred FIR is tagged with challenge of applicant not granting anticipatory bail in the matter of FIR of Firozkhan referred herein above by Hon'ble R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 Supreme Court.

D

1. Applicant challenged the order of this Hon'ble Court in Criminal Misc. Application No. 1692 of 2011 dated 11.07.2011 whereby this Hon'ble Court refused to interfere with order permitting investigation under Section-156(3) passed by court of Ld. Magistrate pursuant to rejection of Raiskhan's application praying for examining him as court witness under Section-311 of Code of Criminal Procedure, 1973, before the Hon'ble Supreme Court.

2. Challenge before Hon'ble Supreme Court as referred herein above failed and thereafter, applicant preferred Criminal Appeal No. 497 of 2018 praying for setting aside order passed by Ld. Sessions Judge on which FIR came to be registered against Raiskhan. Memo of this appeal is at page-32 to 57 in convenient compilation running into 126 pages.

3. Applicant preferred anticipatory bail application in above preferred bail proceedings and the same came to be allowed by Ld. Sessions Judge against which State preferred cancelation of granting of anticipatory bail through Criminal Misc. Application No. 13195 of 2011 and the same is pending as for almost about 7 years, matter remained stayed on the order of Hon'ble Supreme Court. This Hon'ble Court passed order dated 16.02.2018 in State's Criminal Misc. Application No. 13195 of 2011 and the same is at Page-123 to 125 in the convenient compilation running into 126 pages.

4. Presently, above referred Criminal Misc. Application No. 13195 of 2011 praying cancelation of anticipatory bail granted in favour of applicant is pending.

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25. Applicant is rewarded by erstwhile establishment by conferring PADMASHRI through notification dated 23.03.2007. this notification is placed at Page-28 to 31 of CC running into 126 pages.

26. Opponent is relying upon following judgments

1. 2015(11) SCC 502 Vinod Bhandari Versus State of Uttar Pradesh
2. 2021(6) SCC 191 Naveen Singh Versus State of Uttar Pradesh and others
3. 2007(11) SCC 195 Satish Jaggi Versus State of Chhattisgarh.

27. It is also submitted that not only that it is the tendency of applicant to tamper and tutor with witnesses but Hon'ble Supreme Court had also considered petitioner's conduct of sending / marking petitioner's letter addresses by her to SIT also sent to UNHRC at Geneva as a misadventure. It is submitted that one of the parameter of consideration of granting or otherwise of bail is conduct, behaviour and position of accused in the society as observed in judgments placed by applicant.

28. In view of above and oral submissions made on behalf of State of Gujarat, applicant does not deserve relief as prayed for."

6. I have heard learned senior counsel Mr.Mihir Thakore assisted by learned advocate Mr.S.M.Vatsa for the applicant and learned Public Prosecutor R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 Mr.Mitesh Amin for the respondent State.

7. The lengthy submissions made by learned counsels for the parties coupled with the equally lengthy written submissions can be summarised as under:

7.1 Broadly the following submissions were made by learned senior counsel Mr.Mihir Thakore.

7.1.1 The affidavits which are alleged to be forged in the FIR and in the charge-sheet were filed by different witnesses before Hon'ble Supreme Court in transfer petition filed by National Human Right Commission between 06.11.2003 and 17.11.2003.

7.1.2 The applicant is also accused and the aforesaid fact was considered by the Hon'ble Supreme Court while releasing her on interim bail. Proviso to Section 437 (1) (ii) of the Cr.P.C. provides that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 woman or is sick or infirm and, therefore, the applicant being a lady accused looking to the aforesaid proviso she should be enlarged on bail.

7.1.3 Section 439 of the Cr.P.C., more particularly Section 439 (1)(A) provides that any person accused of an offence and in custody, be released on bail, and if the offence is of the nature specified in sub- section (3) of Section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section and, therefore, considering the fact that present applicant is charge- sheeted for an offence which would fall within scope of and ambit of Section 437(3) of Cr.P.C., present applicant is required to be enlarged on bail.

7.1.4 The general principles governing the Law of bail are required to be considered while granting or refusing the bail which are as under:

(i) The Court has to presume innocence of the accused while considering a bail application;

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(ii) Denial of bail amounts to deprivation of personal liberty, and grant of bail is the rule and refusal is exception;

(iii) Object of detention or imprisonment of the accused is to secure his appearance and submission to the jurisdiction and judgment of the Court. Primary inquiry is whether bond would effect that end. Object of detention is never punishment before trial;

(iv) Whether the accused is likely to abuse the discretion granted in his favour by tampering with evidence or influencing witnesses or threatening the complainant. Mere apprehension of tampering with evidence or influencing witnesses or threatening the complainant without anything else is not ground for refusal of bail;

(v) The nature of accusations and the severity of punishment in the case of conviction and the nature of materials relied upon by the prosecution; and

(vi) Character behavior and standing of the accused.

R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 7.1.5 The applicant is not a flight risk and would be available to the Court and Police whenever required. Though the allegations about tampering with the evidence is made in respect of alleged excavation in Lunawada Taluka, the applicant is granted anticipatory bail by the Sessions Court and though the charge-sheet is filed, the applicant is not shown as accused in column no.1 nor the accused is absconder.

7.1.6 The applicant has been a journalist for over 30 years and there is nothing to indicate anything against her character or behavior. The investigation is over and investigating agency has not shown or identified any other person in column no.2 in the charge-sheet as absconding or not arrested or not charge-sheeted etc. 7.1.7 Looking to the definition of 'Forgery' as per Section 463 of the Indian Penal Code and Section 464 making a false statement and looking to the role attributed to the present applicant she cannot be said to have forged any document or R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 made a false document in view of the definition of 'dishonestly' as defined under Section 24 of the IPC, 'wrongful gain' as defined under Section 23 with 'wrongful loss' and 'gaining wrongfully / losing wrongfully'.

7.1.8 Even the definition of word 'fraudulently' as defined under Section 25 of IPC would not applicable considering the role attributed to the present applicant and, therefore, once when the applicability of Section 463 qua applicant is not made out as she herself has not forged any document, she cannot be said to have committed offences under Sections 468, 469 and 471 of the Indian Penal Code.

7.1.9 Looking to the statements of various witnesses viz. (i) Imran Khan Pathan, (ii) Madinabanu w/o. Rafik Khan Chand Khan

Pathan, (iii) Abdul Majid Mohammad Usman Shaikh, (iv) Reshmabanu Nadimbhai Sayed, (v) Rafikanbanu Rehmanbhai Shakurbhai Sayed, none of the above witnesses have supported the case R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 of the prosecution.

7.1.10 Looking to the role attributed to the present applicant as well as considering the definition of Sections 194, 211 and 218 of the Indian Penal Code, the applicant cannot be said to have committed offences.

7.1.11 Insofar as offence under Section 194 of Indian Penal Code is concerned, the same would fall under Section 195 (1)(b)(i) of Cr.P.C. and no Court shall take cognizance of such offence except on a complaint in writing of that Court or by such officer or that Court as the Court may authorize in writing in this behalf or of some other Court to which that Court is subordinate and, therefore, no offence is made out under Section 194 of the Indian Penal Code.

7.1.12 As far as the allegations made in the charge-sheet against the present applicant are concerned, same are on the basis of statement given by one Raees Khan Pathan under Section R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 164 of the Cr.P.C which is of larger conspiracy and considering the material on record, it is evident that at no point of time earlier the said Raees Khan Pathan has alleged any larger conspiracy which is alleged in the statement under Section 164 before the Magistrate and there is also clear contradictions between the statement under Section 164 of Raees Khan Pathan and of Narendra Brahmhatt which were recorded on 15.07.2022. On the aspect of whether any conversation ever took place in respect of larger conspiracy of implicating high political functionaries and top government functionaries.

7.2 Whereas the submissions made by learned Public Prosecutor Mr.Mitesh Amin can be summarised as under:

7.2.1 The Hon'ble Supreme Court, vide its order dated 02.09.2022, while granting interim bail to the applicant, passed in Criminal Appeal No.1417 and 1418 of 2022 categorically observed as under:

R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 "We are therefore not considering whether the appellant be released on regular bail or not. That issue will be gone into by the High Court in the pending application"

"At the cost of repetition, we may observe that we have considered the matter from the standpoint of considering interim bail and we shall not be taken to have expressed any view touching upon the merits of the submissions advanced on behalf of the appellant. The pending applications before the High Court shall be considered by the High Court independently and uninfluenced by any of the observations made by this Court in the instant order".

And in view of above specific observations of the Hon'ble Supreme Court this Court needs to consider the material of investigation and other aspects relating to granting or otherwise of the bail independently and uninfluenced by any of the observation made by Hon'ble Supreme Court of in the order granting interim bail to the applicant.

7.2.2 Though charge-sheet is filed on 20.09.2022, it was already clarified that investigation is still going R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 on as per provisions of Section 173(8) of Cr.P.C. The offence committed by the applicant and others are not only serious in nature but are offences against public justice.

7.2.3 By relying upon statement of witnesses viz. (1) Raiskhan Azizkhan Pathan (2) Narendra Jethalal Brahmhatt (3) Qutbuddin Nasruddin Ansari (4) Yasminbanu Nafitulla Shaikh, (5) Abdul Majid Mohammad Usman Shaikh (6) Rafikkanbanu Rehmanbhai Saiyed, (7) Nanumiya Rasulmiya Malek (8) Madina Aarifhusen Malek (9) Imrankhan Asrafkhan Pathan and (10) notary advocate Shivkumar Chotelal Gupta as well as email communication it is submitted that statements of above witnesses and communication provide ample evidence against present applicant having involved in an offence in question which is serious in nature and the said communication also involves local politicians which indicates sufficiency of material against the present applicant. It also indicates that

it was the present applicant who participated in a meeting with very strong politician of one of the oldest R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 political party and she received sum of Rs.30,00,000/- from the aforesaid political leader for propagating larger conspiracy by going to the extent of doing so much so that the then Chief Minister of the State goes behind bar. As per the statement of witness Raeeskhan Pathan whereby he has stated about applicant's involvement in publishing magazines / news articles which would defame the then Chief Minister to the extent that the then Chief Minister would be forced to resign and as stated by witnesses that whatever funds / money is received would be used used to pursue the theory of larger conspiracy.

7.2.4 The statement of Raeeskhan Pathan is elaborately relied upon by the prosecution to indicate as to how the entire conspiracy was hatched and how ultimately after refusal by one Vitthal Pandya's to file affidavit the same was filed by Smt.Jakia Jafri. The learned Public Prosecutor Mr.Amin relied upon the statements of witnesses viz. Raiskhan Azizkhan Pathan, Narendra Jethalal Brahambhatt, Qutbuddin Nasruddin Ansari, Yasminbanu Nafitulla Shaikh, Abdul Majid R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 Mohammad Usman Shaikh, Rafikkanbanu Rehmanbhai Saiyed, Nanumiya Rasulmiya Malek, Madina Aarifhusen Malek, Imrankhan Asrafkhan Pathan and notary advocate Shivkumar Chotelal Gupta to indicate that how the applicant has acted in respect of allegations levelled against him and attention was also drawn to the Court about different email communications between the applicant and two other accused at the relevant period i.e. post communal riot at Godhra which refers to different litigation involving applicant as well as different names narrated in it in abbreviation like RKR, RR, RB, MS etc. and it also refers to copies of affidavit naming of lawyer for preparing ghost questions, draft press notes which were prepared by the applicant.

7.2.5 By referring to the aforesaid material in the form of statement and emails, it is submitted that there is prima facie involvement of the applicant in commission of offence of making of false documents and in forgery of fabricating documents etc. 7.2.6 While considering the grant or otherwise of R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 bail, the evaluation of prima facie case that the Court may examine only to the extent of examining materials to evaluate prima facie case and nothing beyond at this stage as scrutinizing material of investigation for deciding credibility and reliability of witness is not required at this stage.

7.2.7 Any contradiction in the statement of witnesses would be subject matter of trial and the same cannot be examined at this stage.

7.2.8 It is submitted by learned Public Prosecutor that present applicant is also involved in four similar cases which indicates the instances of the present applicant.

7.2.9 It is the tendency of the applicant to tamper and tutor with witnesses. The Hon'ble Supreme Court also considered the conduct of the applicant of sending / marking petitioner's letter addressed by her to SIT and also send to UNHRC at Geneva which would indicate his conduct.

R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 7.2.10 Gravity of offence is a relevant consideration for grant or refusal of bail and, therefore, while considering other

parameters, this Court may also consider the gravity of offence.

7.2.11 By making aforesaid submissions, learned Public Prosecutor Mr.Mitesh Amin prays for rejection of bail of the applicant.

8. Heard learned counsels for the parties and perused the record as well as the written submissions and judgments relied upon by both the sides.

9. In view of above, my analysis of the aforesaid submissions of rival counsels are as under:

9.1 SUBMISSION ABOUT APPLICABILITY OF SECTIONS 468, 469, 471, 194, 211 AND 218 OF THE INDIAN PENAL CODE:-

9.1.1 Learned senior advocate Mr.Mihir Thakore made lengthy submissions and by relying upon the R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 definition of Section 463 of IPC i.e. about 'Forgery', Section 464 of IPC i.e. about 'Making a false document, Section 24 of IPC i.e. about 'Dishonestly', Section 23 of IPC i.e. about 'Wrongful gain, Wrongful loss and Gaining Wrongfully / Loosing Wrongfully' and Section 25 of IPC i.e. about 'Fraudulently' submitted that in view of aforesaid definitions as the applicant has neither made, signed, sealed, executed, transmitted or affixed the affidavits before Hon'ble the Supreme Court or before Special Investigation Team, she would not fall under scope and ambit of Section 464 and as the same was not done with an intent of causing damage or injury to public or any person or to support any claim or with intent to commit fraud or that fraud may be committed in view of aforesaid definitions as the documents were executed by respective witnesses and not by applicant herself, the applicability of Sections 462, 468, 469 and 471 of the IPC has been questioned. Similarly the applicability of Section 194, 211 and 218 of IPC was questioned by stating that Section 194 of IPC would be applicable only to those who give or fabricate false evidence with an R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 intention to cause or procure any person to be convicted for capital punishment offence and as giving false evidence and fabricating false evidence are defined in Sections 191 and 192 of Indian Penal Code, the same would be applicable only in respect of a person who is legally bound by an oath or by an express provision of law to state the truth or to make declaration upon any subject or to make any statement which is false would constitute an offence of giving false statement. Similarly fabricating a false evidence can be said to be applicable only when a person makes any document containing a false statement intending that such circumstance or false statement may appear in evidence in a judicial proceedings are signed by that person.

9.1.2 Learned senior advocate Mr.Thakore further submitted that there is clear distinction between Section 195(1)(b)(i) and Section 195(1)(b)(ii). The offence under Section 194 would fall under Section 195(1)(b)(i) of Cr.P.C. and the Court can take cognizance of such offence only when a complaint in R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 writing of that Court, or by such officer of that Court as the Court may authorize in writing in this behalf, or of some other Court to which that Court is subordinate. Since an offence allegedly committed under Sections 463, 471, 475 or 476 of Indian Penal Code are committed in respect of documents produced in the Court but prepared outside the Court it is not necessary that the complaint should be filed in writing by

the Court and, therefore, considering the fact that as per the law laid down by Hon'ble the Supreme Court in the case of Iqbal Singh Marwah vs. Meenakshi Marwah (supra) and in the case of Banekar Brothers Private Limited vs. Prasad Vasudev Keni (supra), as the offence committed in respect of Section 194, though Sections 467, 468 and 471 of the Indian Penal Code were not applicable and they were invoked only to bring the offence within a purview of Section 194 of Indian Penal Code.

9.1.3 As far as aforesaid submissions regarding applicability of Sections 468, 469 and 471 of the IPC is concerned, I have perused the record and definitions of R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 relevant sections and the judgment cited by learned senior advocate Mr.Thakore in case of Iqbal Singh Marwah vs. Meenakshi Marwah (supra) and in the case of Banekar Brothers Private Limited vs. Prasad Vasudev Keni (supra).

9.1.4 However, before proceeding ahead in respect of applicability of sections, the first and foremost question that the Court must consider would be about the aspect of whether the Court should consider the applicability of relevant sections in respect of offence in question or not. While considering the bail application whether the Court should restrict itself to material available on record and peruse the same or that the Court can carry out an exercise in a direction of applicability of various sections by analysing the material on record and form prima facie conclusion about applicability of certain sections and, therefore, keeping the aforesaid aspects in mind, a specific query was raised to learned senior advocate Mr.Mihir Thakore as to whether any proceeding in respect of this FIR are initiated by this applicant either for R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 quashing of the entire FIR or challenging the applicability of certain sections under which the offence is registered or any other petition either under Section 482 of the Cr.P.C. or under Article 226 of the Constitution of India before the High Court or under Article 32 before Hon'ble the Supreme Court and in response to the aforesaid query, learned senior advocate Mr.Mihir Thakore had fairly submitted that present applicant has not preferred any petition either for quashing or any other appropriate application whereby applicability of certain sections of the FIR qua the applicant or all the accused persons are challenged.

9.1.5 Though charge-sheet is filed as back as on 20.09.2022 and hearing of this application took place in June, 2023 and though an offence was registered in the month of March, 2022, during all these time the applicant has not challenged or questioned the applicability of any of the section under which FIR was registered initially or while filing charge-sheet any other section was added.

R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 9.1.6 The aforesaid aspect would go to show that except for making submissions in the present bail application, the present applicant has not challenged or questioned the applicability of above referred sections in the FIR. When the applicant has not challenged the applicability of any section even after filing of FIR or charge-sheet, prifa caie, I am of the view that when the applicant had other remedies available in the form of petition or application of for quashing to question and challenge the applicability of certain sections incorporated in FIR at the stage of FIR, even for quite considerable long time thereafter if the applicant had not availed those remedies and questioned the applicability of certain sections which according to the applicant are not applicable to her, considering her role as stated or coming out from the charge-sheet papers, in that case, venturing into the applicability of these sections by the

Court in bail application is impermissible. As it prima facie indicates that the applicant has accepted that subject to the outcome of the trial even if she is acquitted on the basis of evidence adduced, prima facie, the offence registered R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 and subsequently after investigation charge-sheet filed is filed under Sections mentioned in the FIR or charge- sheet would be applicable in the facts of the case.

9.1.7 If a Court is permitted to venture into carrying out exercise about applicability of certain sections under which FIR is registered or charge-sheet is filed, in that case, it would lead to a situation whereby while exercising powers to grant bail under Section 439 of the Cr.P.C., if the Court expands its scope and starts analysing material as if it is hearing the petition either under Section 482 of the Cr.P.C. or under Article 226 of the Constitution of India, the same would amount to acting beyond powers and parameters of Section 439 of Cr.P.C. and in that case there would not be any demarcation of exercising of powers under Article 226 of the Constitution of India, under Section 482 of the Code of Criminal Procedure and under Section 439 of the Code of Criminal Procedure. The legislature while enacting the provisions of Act or while preparing the constitution had after careful consideration only have decided the scope and R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 ambit of exercising of powers in a particular section or article and, therefore, even if some submissions in respect of applicability of particular sections are made before the Court, this Court believes that it is for the concerned Judge to apply the measure of self-restraints and to consider the material on record, as it is, to analyse whether there is prima facie case against applicant or not and by keeping in mind the parameters for grant or refusal of bail and thereby decide the bail application.

9.1.8 If while deciding the bail application under Section 439 of the Cr.P.C. if the Courts start analysing the applicability of various sections under which the offence is registered or charge-sheet is filed, in that case, that would not only amount to exercise of powers beyond its scope and ambit, but may also lead to a situation whereby if the same applicant prefers the application challenging the applicability of certain sections by way of a petition under Article 226 of the Constitution of India or under Section 482 of the Cr.P.C. and also prefers application for bail and makes R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 submissions in respect of applicability of certain sections in bail application also, and if both the Courts takes contrary view even if prima facie about applicability of certain sections, in that case, that will not only create problem for the trial Court in conducting the trial but will also unnecessary prolong the trial only because of the Courts higher than the trial Court has taken two contradictory views in respect of applicability of certain sections in respect of two different applications preferred by the same applicant - accused and, therefore, in my view, in an application under Section 439 of the Cr.P.C. when the Court is considering as to whether the applicant is entitled to grant of bail or not the Court must confine itself to the question as to whether the material available on record is such that it would constitute prima facie case against the applicant or not, for grant of bail and the genuineness of material or the applicability of certain sections must be left to the trial Court to consider it at the stage of trial or in case if the applicant chooses to challenge the applicability of certain sections or FIR itself by way of appropriate R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 proceedings, in that case, it is for the Court taking up the matters under Section 482 of the Cr.P.C. or under Article 226 of the Constitution of India to examine and analyse the material within the

permissible limits.

9.1.9 In view of this Court, for a Court taking up bail matters, it would be improper to form any opinion, even prima facie, about applicability of any section and Court is expected to decide the bail application on the basis of material available before it by considering parameters and principles for considering the bail application rather than analysing the evidence or deciding or opining anything or expressing any view about applicability of certain sections and hence in the instant case, though lengthy submissions were made by learned senior counsel Mr.Thakore questioning the applicability of sections 468,469, 471, 194, 211 and 218 of the IPC, I do not deem it proper to go into the aspect of applicability of those sections and would decide this application on the basis of material available on record and by keeping in mind the principles governing the law related to bail R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 and the factors which may attribute while deciding a bail application.

9.1.10 In view of aforesaid discussion, it is not open for this Court to analyse the material on record and thereby to form even prima facie opinion about applicability of any section at the stage of bail and, therefore, this Court does not propose to venture into the analysis of material vis-a-vis the applicability of section and, therefore, the aforesaid submissions cannot be accepted and the same is required to be rejected outrightly.

9.1.11 In view of above, this Court shall consider the material on record to determine the aspect about grant or refusal of bail on the basis of material available on record without analysing its applicability which has not been questioned till date by the applicant by way of any other proceedings before any Court of Law and the same has been questioned for the first time only before this Court.

R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 9.2 SUBMISSIONS IN RESPECT OF GRANT OF BAIL TO A WOMAN ACCUSED:

9.2.1 One of the limb of submissions of learned senior advocate Mr.Thakore was that present applicant is lady accused and that in view of proviso to section 437 (1) (ii) of Cr.P.C. which provides for grant of bail to a person, who is under the age of sixteen years or is a woman or is sick or infirm and about sub-section (3) of Section 437 providing for grant of bail in respect of offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter VII of the Indian Penal Code.

9.2.2 As far as this submission is concerned, no one can question the aforesaid provisions of Law. However, in the aforesaid section the word used is 'MAY' and the word 'SHALL' is not used which, in view of this Court, indicates that under normal or ordinary circumstances, the Court may release a person under the age of 16, a lady accused, sick or infirm on bail. However, though ordinarily Courts are expected R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 to adhere to other provisions of Act, the word 'MAY' also indicates that if the Court, upon perusal of the material, feels that though the accused person is aged below sixteen years or is a lady accused, is sick or is infirm, the material on record and nature of offence is such that the person falling in any of above category

is not required to be enlarged on bail. In that case, the Court upon giving reasons for the same can certainly reject the application for bail in view of the fact that the word used in Section 437 is 'MAY' and, therefore, it is not a straight jacket formula that the Court must release a lady accused, person below age of 16, child or infirm on bail irrespective of material against him or irrespective of gravity of offence or without considering the overall material available on record and, therefore, though the applicant is a lady accused, that is the only one of the grounds available to release her on bail in case if remaining material against her is not that serious and if the Court is satisfied that this is fit case to exercise powers under Section 437 of Cr.P.C.

9.2.3 In the instant case, this Court is mindful of R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 the fact that while enlarging the present applicant on interim bail, the Hon'ble Supreme Court considered the aspect that the present applicant is a lady accused, however, in the said order dated 02.09.2022 the Hon'ble Supreme Court has also directed this Court to consider the matter on merits and, therefore, this Court is required to consider the application for bail preferred by the applicant by taking into consideration the merits of the matter as well and not merely on the ground of considering the fact that present applicant is lady accused and, therefore, though this Court is mindful of the fact that the applicant is lady accused, this Court will consider the case of the applicant on the basis of overall material and, therefore, it is the duty of the Court to bear in mind the fact that applicant is lady accused but at the same time overall material is required to be considered.

9.3 SUBMISSION IN RESPECT OF PARAMETERS / PRINCIPLES THAT THE COURT MUST BEAR IN MIND IN RESPECT OF GRANT OF BAIL:

9.3.1 Learned senior advocate Mr.Thakore made R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 submissions in respect of various principles and parameters enunciated by Hon'ble Supreme Court in different judgments which are required to be considered while granting or refusing bail.

9.3.2 By relying upon the judgments in the case of Gurbux Singh Sibbiya vs. State of Punjab (supra), in the case of Satender Kumar Antil vs. Central Bureau of Investigation and another (supra), in the case of Bhagirathsinh Mahipatsinh Jadeja vs. State of Gujarat (supra), in the case of State of U.P. vs. Armani Tripathi (supra), in the case of Ranjitsinh Brahmajitsinh Sharma vs. State of Maharashtra (supra), P. Chidambaram vs. Central Bureau of Investigation (supra) and P. Chidambaram vs. Directorate of Enforcement (supra), learned senior advocate Mr.Thakore submitted that the Court is required to consider following general principles as enunciated by the Ho'nble Supreme Court by way of different judgments which are referred hereinabove. Such principles are , -

(i) The Court has to presume innocence of the R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 accused while considering a bail application.

(ii) Denial of bail amounts to deprivation of personal liberty, and grant of bail is the rule and refusal is exception.

(iii) Object of detention or imprisonment of the accused is to secure his appearance and submission to the jurisdiction and judgment of the Court. Primary inquiry is whether bond would effect that end. Object of detention is never punishment before trial.

(iv) Whether the accused is likely to abuse the discretion granted in his favour by tampering with evidence or influencing witnesses or threatening the complainant. Mere apprehension of tampering with evidence or influencing witnesses or threatening the complainant without anything else is not ground for refusal of bail.

(v) The nature of accusations and the severity of punishment in the case of conviction and the nature of materials relied upon by the prosecution.

(vi) Character behaviour and standing of the accused.

R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 9.4 Learned Public Prosecutor Mr.Mitesh Amin submitted that there cannot be any dispute about the fact that Law of bail is governed by aforesaid principles. However, learned Public Prosecutor Mr.Amin drew attention of this Court that gravity of offence is also one of the major and important consideration while dealing with an application for bail.

9.5 Learned Public Prosecutor Mr.Amin in support of his submissions relying upon the case of Vinod Bhandari vs. State of Madhya Pradesh reported in (2015) 11 SCC 502, in case of Navinsing vs. State of UP and others reported in (2021) 6 SCC 191 and in case of Satish Jaggi vs. State of Chhatisgarh and others reported in (2007) 11 SCC 195 and submitted that the seriousness of offence or gravity of offence is also one of the relevant considerations while considering the grant of bail.

9.6 In case of Vinod Bhandari vs. State of Madhya Pradesh (supra) the Hon'ble Supreme Court has observed in para:17 as under:

R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 "17. In the light of above settled principles of law dealing with the prayer for bail pending trial, we proceed to consider the present case. Undoubtedly, the offence alleged against the appellant has serious adverse impact on the fabric of the society. The offence is of high magnitude indicating illegal admission to large number of undeserving candidates to the medical courses by corrupt means. Apart from showing depravity of character and generation of black money, the offence has the potential of undermining the trust of the people in the integrity of medical profession itself. If undeserving candidates are admitted to medical courses by corrupt means, not only the society will be deprived of the best brains treating the patients, the patients will be faced with undeserving and corrupt persons treating them in whom they will find it difficult to repose faith. In these circumstances, when the allegations are supported by material on record and there is a potential of trial being adversely influenced by grant of bail, seriously jeopardising the interest of justice, we do not find any ground to interfere with the view taken by the trial Court and the High Court in declining bail.

9.7 In case of Navinsing vs. State of UP and others (supra) the Hon'ble Supreme Court in paras:12.2 and 12.3 observed as under:

R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 "12.2 If we consider the impugned judgment and order passed by the High Court, it appears that the High Court has not adverted itself to the seriousness of the case and the offences alleged against Respondent 2 - accused and the gravity of the matter. From the impugned order, it appears that the High Court has released Respondent 2-accused on bail in a routine and casual manner and without adverting to the seriousness of the offence and the gravity of the matter relating to forgery and/or manipulating the court order. From the impugned judgment and order passed by the High Court, it appears that the High Court has only observed that since the innocence and complicity of the accused can be decided only after taking evidence with regard thereto, without commenting anything on merit as to the complicity, involvement and severeness of the offences, the case being triable by the Magistrate and the charge-sheet having been filed and the accused is languishing in jail since 22-11-2018, is entitled to be released on bail.

12.3 However, the High Court has not at all considered that the accused is charged for the offences under Sections 420, 467, 468, 471 and 12-B IPC and the maximum punishment for the offence under Section 467 IPC is 10 years and fine/imprisonment for life and even for the offence under Section 471 IPC the similar R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 punishment. Apart from that forging and / or manipulating the court record and getting benefit of such forged / manipulated court record is a very serious offence. If the court record is manipulated and / or forged, it will hamper the administration of justice. Forging / manipulating the court record and taking the benefit of the same stands on altogether a different footing than forging / manipulating other documents between two individuals. Therefore, the High Court ought to have been more cautious / serious in granting the bail to a person who is alleged to have forged / manipulated the court record and taken the benefit of such manipulated and forged court record more particularly when he has been charge-sheeted having found prima facie case and the charge has been framed.

9.8 In case of Satish Jaggi vs. State of Chhatisgarh and others (supra), in para:12, the Hon'ble Supreme Court observed as under:

" 12. Normally if the offence is non-bailable also, bail can be granted if the facts and circumstances so demand. We have already observed that in granting bail in non-bailable offence, the primary consideration is the gravity and the nature of the offence. A reading of the order of the learned Chief Justice shows that the nature and the gravity R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 of the offence and its impact on the democratic fabric of the society was not at all considered. We are more concerned with the observations and findings recorded by the learned Chief Justice on the credibility and the evidential value of the witnesses at the stage of granting bail. By making such observations and findings, the learned Chief Justice has virtually acquitted the accused of all the criminal charges levelled against him even before the trial. The trial is in progress and if such findings are

allowed to stand it would seriously prejudice the prosecution case. At the stage of granting of bail, the court can only go into the question of the prima facie case established for granting bail. It cannot go into the question of credibility and reliability of the witnesses put up by the prosecution. The question of credibility and reliability of prosecution witnesses can only be tested during the trial."

9.9 The aforesaid observations made by the Hon'ble Supreme Court in aforesaid three judgments make it abundantly clear that it is the duty of the Court to keep in mind the aspect of seriousness or gravity of offence as well while considering the application for bail preferred by the accused. Of course, the personal liberty and presumption of innocence of accused are R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 very important factors to be considered as can be seen from principles enunciated by various judgments referred to herein above and relied upon by learned senior advocate Mr.Mihir Thakore but gravity of offence is also one of the serious factor or ground which cannot be overlooked or ignored by the Court while deciding the bail application. Therefore, though principles of grant or refusal of the bail as relied upon by learned senior advocate Mr.Mihir Thakore are well settled, but at the same time the Court also must not ignore or overlook the factor like gravity of offence and past antecedents as well as overall conduct of the applicant and, therefore, this Court proposes to proceed further in direction of considering the material on record to come to conclusion as to whether prima facie there is case made out against the applicant or in favour of applicant for grant or refusal of bail or not and, therefore, now after aforesaid discussion in respect of various principles of Law, the applicability of certain sections etc., I may proceed to consider the material on record and evaluate it in view of above referred principles.

R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 9.10 On merits of the matter on the basis of material available on record, learned senior counsel Mr.Mihir Thakore submitted that affidavits which are filed before the Hon'ble Supreme Court were filed by the respective witnesses. The present applicant herself did not file any affidavit nor gave any statement and, therefore, at the most what can be alleged against her is the fact that she had only drafted those affidavits. Drafting of affidavits on behalf of witnesses or any other person would not constitute any offence.

9.11 Further, in respect of Gulbarg case those statements were recorded by present SIT and those who have not filed any affidavit before Hon'ble the Supreme Court in the year 2003 cannot be said to have forged any document or made any false document.

9.12 As far as Sardarpura Case, Ode Case and Naroda Gam Case 'Naroda Patiya' are concerned, the statements of witnesses are recorded by present SIT who have admitted during the course of evidence R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 during trial that the affidavits which they have signed were read over and explained to them in Gujarati.

9.13 It was also contended that in respect of Naroda Patiya incident, the witnesses have not claimed to be eye witnesses.

9.14 Learned senior advocate Mr.Mihir Thakore by relying upon various statements of Imran Khan Pathan, Madinabanu W/o. Rafik Khan Chand Khan Pathan, Abdul Majid, Reshmabanu Nadimbhai

and Rafikabanu Rehmanbhai, which are already incorporated in forgoing paras while reproducing the written statements of the applicant submitted that the statement of all these witnesses would not constitute any offence under Sections 467, 468 and 469 of the Indian Penal Code against the applicant as she has not committed any forgery and except Naroda Gam Case in no other cases trial Court have deemed it appropriate to initiate proceedings under Section 340 of the Cr.PC. For producing false evidence.

9.15 Learned senior advocate Mr.Mihir Thakore R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 further submitted that for the first time in the year 2022 while recording the statement under Section 164 of the Cr.P.C. witness Raees Khan Pathan referred to alleged conversation between Late Ahemad Patel and Teesta Setalwad. Though Raees Khan worked with Citizen for Justice and Peace from 28.02.2002 to 18.01.2008 and he had occasion to file affidavit, make application and write letters to various authorities before also, for the first time he named have Late Ahemad Patel in July, 2022 and at no point of time, he alleged any larger conspiracy which was alleged by statement under Section 164 of the Cr.P.C. before the Magistrate and there are clear contradictions between the statements made under Section 164 of Cr.P.C by Raees Khan as well as Narendra Brahmbhatt in comparison to their earlier statements / affidavits.

9.16 By referring to aforesaid statements and contradictions thereof in detail, learned senior advocate Mr.Mihir Thakore submitted that the present applicant should be enlarged on bail.

10. Learned Public Prosecutor Mr.Mitesh Amin also R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 submitted that it was the present applicant who participated in a meeting with congress leader Late Ahemad Patel and as she was paid sum of Rs.30,00,000/- in two installments by Late Ahemad Patel through Narendra Brahmbhatt she took up the task of unsettling the then establishment and tarnishing the image of the then Hon'ble Chief Minister of Gujarat.

11.1 In view of aforesaid submissions as well as in view of submissions and statements of witnesses referred to by learned senior advocate Mr.Thakore, the Court perused the statements of Raees Khan and Narendra Brahmbhatt given under Section 164 of the Cr.P.C. as well as other statements which are on record and the Court also perused the statements of Imran Khan Pathan, Madinabanu wife of Rafik Khan Chand Khan Pathan , Abdul Majid Mohammad Usman Shaikh, Reshmabanu Nadimbhai Sayed and Rafikanbanu Rehmanbhai Shakurbhai Sayed which have been relied upon by learned senior advocate Mr.Mihir Thakore.

R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 11.2 The Court also considered the submissions about contradiction in statements of Raees Khan and Narendra Brahmbhatt as well as other witnesses and also perused the statements of Raikhan Azizkhan Pathan (2) Narendra Jethalal Brahmbhatt (3) Qutbuddin Nasruddin Ansari (4) Yasminbanu Nafitulla Shaikh, (5) Affidavit of Abdul Majid Mohammad Usman Shaikh and his evidence as witness in concerned Sessions Case as well as (6) Affidavit of Rafikkanbanu Rehmanbhai Saiyed also with her evidence in concerned Sessions Case, (7) Affidavit of Nanumiya Rasulmiya Malek (8) Affidavit of Madina Aarifhusen Malek along with her evidence in concerned Sessions Case, (9) Affidavit of Imrankhan Asrafkhan Pathan along with his evidence in concerned Sessions Case (10) Statement of notary advocate Shivkumar

Chotelal Gupta and email communication involving all the three accused including applicant.

11.3 The aforesaid statements are examined by the Court bearing in mind the fact that it was specifically submitted by learned senior advocate Mr.Thakore that R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 Imrankhan Pathan, in his statement, denied having any conversation with the present applicant over phone before drafting of the SC affidavit, Madinabanu wife of Rafik Khan Chand Khan Pathan before the trial Court had specifically signed ignorance to the suggestion that neither affidavits were read over nor explained with Abdul Majid Mohammad Usman Shaikh though was not an eye-witness to the incident of alleged rape upon his daughter, the incident of rape did take place and the same was discussed to him while receiving treatment, the statement of Reshmabanu Nadimbhai Sayed had stated that affidavit was typed as per her say and its contents were explained to her before signing whereas Rafikanbanu Rehmanbhai Shakurbhai Sayed had specifically submitted in her evidence before the trial Court that she might have forgotten to supply certain facts to the person drafting the affidavit and, therefore, those facts were missing from the affidavit.

11.4 However, in respect to aforesaid submissions, if we look at the material relied upon by learned Public Prosecutor Mr.Amin, the Court found that there is R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 ample material against the present applicant coming out from statements of witnesses as Raees Khan, in his statement under Section 164 of the Cr.P.C, recorded on 08.07.2022, stated that he knew present applicant since the year 1992 ever since the present applicant was reporter in an English newspaper and worked in relief camp after riots in 1992. The present applicant told witness Raees Khan to send photographs of the relief camp in the manner in which the relief camp work being done in the relief camp and thereafter when she came to Ahmedabad, present applicant introduced him to one Father Sedric Prakash and co-accused Sanjeev Bhatt and thereafter the present applicant introduced him to leader of a political party i.e. Late Ahemad Patel at the Circuit House in Ahmedabad. Where present applicant alleged to have discussed about the riots in Gujarat with that political leader and that Late Political leader expressed his happiness over the way she had worked in the past at Bombay and insisted her to work in Gujarat in such a manner that the establishment in power at the relevant point of time and the then Chief Minister are sent behind the R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 bars and his reputation is tarnished. When the present applicant told, that to carry out such activities of working in the manner that it may disrepute the then Chief Minister and the establishment and for doing the work in such manner that the then Chief Minister is sent to jail, would require huge fund which she did not had. Late Ahemad Patel told her that she need not to worry for that and she would get ample funds as per her requirement. He called one Narendra Brahmhatt, introduced him to present applicant and immediately arranged for a fund of Rs.5,00,000/- which was given to present applicant. Not just that thereafter further amount of Rs.25,00,000/- was also given to the present applicant by Narendra Brahmhatt at the instance of Late Ahemad Patel. At the circuit house when the applicant met that political leader and aforesaid amount of Rs.25/- Lakhs was given to the present applicant by Narendra Brahmhatt, Late Political Leader by pointing out to other persons told that present applicant that '....please do see that whenever any further amount is required by you, you will get it from any of these persons'.

R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 11.5 On that day, present applicant told late Mr.Patel that in the month of April she will publish special edition of her magazine i.e. Communalism Combat and will break a big news in that. Though magazine would be in English, she would translate it in Gujarati and news that would be published in that special edition of magazine would be such that it would tarnish the image of the then Chief Minister to such an extent that he will have to resign. Hearing this, political leader late Mr.Ahemad Patel was very happy and said that he would be very eagerly waiting for that special edition of magazine to be published and assured that he would ensure that present applicant would never be short of funds and told the present applicant to tarnish the image of the then Chief Minister to the best possible extent.

11.6 Not only that, as per above statement of Raees Khan Pathan, the present applicant also managed for press ID for the aforesaid Raees Khan Pathan to ensure free movement of the present applicant during those period of riots. Thereafter with the help of one R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 advocate Mr.Tirmizi and his team of advocates, present applicant prepared certain affidavits of people from Gulbarg Society, Naroda Camp, Ode Camp, Best Bakery incident, Godhra Lunavada, Modasa etc. will lead to those persons narrating exaggerated versions which were drafted in the form of affidavit and on the basis of those statements and certain provocative photographs related to riots were printed in the magazine showing distribution in the relief camp by the present applicant throughout Gujarat.

11.7 The present applicant also created an NGO i.e. Citizen for Justice and Peace in April, 2002 at Bombay and took 40 affected persons of riots to Delhi and in presence of certain political leaders of congress and leftist parties and in presence of international and national media, programme was held which was arranged by the present applicant. She called one after another witness on stage and those victims had spoken what they were tutored by present applicant from stage and thereafter applicant appealed for funds and in turn she received huge funds and thereafter took her to the R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 residence of political leader to assure them that though at present their government is not in power, therefore, they may support the present applicant and do whatever she asked them to do and they will get power very soon and given them justice and will give them government jobs and financial assistance and will repair their houses. From there present applicant took them to residence of Late Mr.Patel who also assured them in line with other political party leaders assured and then they came back to Ahmedabad.

11.8 What is shocking is that as per the statement of witness Raees Khan is that one Munsafkhan was ready to file affidavit and he came with affected persons in four jeeps and got the affidavits of affected persons prepared. In those affidavits, name of certain innocent persons were also mentioned and those who were having enmity with Munsafkhan. The present applicant told them in those affidavits you may mention whomsoever names you want to mention even if that person is innocent and she will see to it that those persons will be punished and accordingly those R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 affidavits were prepared.

11.9 The statement of Raees Khan also mentioned about how Smt Jakia Jafri entered into the scene. As per statement, one Vitthal Pandya was approached to file an affidavit but upon learning that he will have to file affidavit implicating certain innocent persons and some ministers also, upon perusal

of the draft affidavit that Vitthal Pandya got angry and refused to sign the affidavit and, therefore, they approached son of Smt. Jakia Jafri viz. Tanvir Jafri telephonically and convinced Smt. Jafri to file affidavits. Thereafter Tanvir Jafri took Jakia Jafri at Ahmedabad and press conferences were held and Tanvir Jafri and Jakia Jafri addressed those press conferences in the manner they were tutored.

11.10 There are also some more factors showing revelation in the aforesaid statement of Raees Khan which show that to what an extent present applicant can be gone. As per statement when the then President of India visited one of the relief camps i.e. Haj House at Kalupur and when present applicant came to know R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 about President visiting Haj House, just before 24 hours before visiting of the President, she immediately rushed to Ahmedabad and informed the witness Raees Khan to enter Haj House at any cost. Though the same was cordoned, no one were in position to go inside, somehow witness Raees Khan managed to enter Haj House. The present applicant also entered Haj House wearing Burkha. Though camp organization decided that only two persons would speak to President i.e. one lady and one male member, only mentioning about some Muslim lady and not the name she managed to meet. It was decided to give present applicant to name of Muslim lady and to speak to Hon'ble the then President. Even on the previous night when police came to check the people, she did not reveal her identity and wrapped witness Raees Khan also in blanket and when President visited relief camp at that time she removed her Burkha and though Hon'ble President did not know that it was present applicant, she brought out an edition of 'Communalism Combat' in Tamil language which was very provocative and gave it to Hon'ble President.

R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 11.11 Similarly, the present applicant approached one more victim Zahira, tutored her and arranged her for press conference and thereafter as she did not fulfil promise given to Zahira [as per statement of Zahira before taking her to Bombay, present applicant promised her to buy two flats to her and one shop and to provide money] and as nothing was done despite the fact that applicant was collecting huge funds in the name of victims, said Zahira parted away and even she was subjected to beaten up with her mother and therefore she left Vadodara where she held press conference against present applicant.

11.12 Similarly, the present applicant told Raees Khan to approach one Qutubuddin Ansari, whose picture in a miserable condition during the riot had hit the headlines and was published by many publishing houses and convinced him to hold the press conference to speak about the then Chief Minister and also got his affidavit drafted and filed.

11.13 The statement under Section 164 given by R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 Raees Khan is very lengthy statement but it gives an idea about as to how the present applicant collected money just to unsettle the establishment and to defame and disapprove the then Chief Minister and ultimately parted ways with said Raees Khan since year 2008.

11.14 The affidavit also throws light of the present applicant who was journalist in the year 1992 and though was never into social services registered an NGO i.e. Citizen for Justice and Peace, collected funds for unsettling the establishment and ultimately went on to become the member of the

National Planning Commission.

11.15 Similarly, as per the statement of Narendra Brahmhatt given under Section 164 of Cr.P.C. he also has stated that Teesta Setalvad along with Raees Khan had meeting with Late Ahemad Patel and as Teesta Setalvad said that she is sort of funds, he gave sum of Rs.30,00,000/- in two instalments of Rs.5,00,000/- and Rs.25,00,000/- and while performing his duty to provide necessary things to the riot victims in the R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 relief camps, he found present applicant ear-poisining the victims against the Government. Even one journalist of BBC viz. Pankaj Shankar met witness Narendra Brahmhatt and said that he is a part of NGO run by present applicant, looking after Britain and Gulf countries and they used to provoke the people against the government, take their interviews and due to that used to get from the Britain and Gulf countries.

11.16 Aforesaid statement of Raees Khan also speaks about how by making false allegations about how the minorities in Gujarat are tortured, oppressed and not getting justice and by fabricating evidence in the form of false affidavits and by holding press conferences, by influencing witnesses and by projecting wrong facts and by framing innocents, the present applicant has collected huge funds from Islamic countries.

11.17 Similarly I have also perused the transcription between co-accused Shree Kumar and witness Raees Khan which also forms part of charge sheet papers R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 which is also indicating an active role of the present applicant and the statement of Qutbuddin Nasruddin Ansari under Section 164 of the Cr.P.C. In the aforesaid statement of said Ansari, he has specifically stated that he had met present applicant and convinced him to settle at Calcutta, arranged for a press conference of the present applicant and was used politically by the present applicant. Though the present applicant used her photographs in her magazine and appealed for seeking funds in the name of Qutuudin Ansari, the funds were collected by the present applicant and only sum of Rs.1,000/- was paid. The aforesaid statement of Qutbudin Ansari specifically mentions about the fact that the present applicant got his signature in some papers related to Court, however, in the statement, he has not stated about what that paper was.

11.18 Similarly, one more victim Yasminbanu Nafitulla Shaikh in her statement under Section 164 of Cr.P.C. stated that she is the victim of Best Bakery case and she was taken to Bombay to meet the present R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 applicant and told the witness Yasminbanu that even if she had already given statement to the police, despite that present applicant would show her certain names and photographs and the present applicant along with one more person used to come to take them, show the names and photographs and used to take them to Court and used to bear all expenses. The present applicant also took her signature on certain documents and all these was done by promising her that she would construct a house for her and see to it that her daughter got married.

11.19 Similarly on perusal of statement of other persons and material like affidavit of Abdul Majid Mohammad Usman Shaikh and his evidence as witness in concerned Sessions Case, affidavit of Rafikkanbanu Rehmanbhai Saiyed also with her evidence in concerned Sessions Case, affidavit of

Nanumiya Rasulmiya Malek, affidavit of Madina Aarifhusen Malek along with her evidence in concerned Sessions Case, affidavit of Imran Asrafkhan Pathan along with his evidence in concerned Sessions Case and statement of R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 notary advocate Shivkumar Chotelal Gupta and email communication involving all accused including applicant, this Court found that even those persons whose statements / affidavits were referred to by learned Public Prosecutor have also categorically deposed against the present applicant and crux of their statements / affidavits is that present applicant arranged meeting with other political leader late Mr.Ahemad Patel, collected sum of Rs.30,00,000/- and get collected funds by using the names and photographs of riots victims and ultimately duped them.

11.20 Prima facie it seems that those persons were not actually helped by the applicant but only with a view to gain personal and political benefits, the present applicant used them and collected huge funds in their names and ultimately person who started as a Journalist in English news paper by passage of time conveniently projected herself to a social leader and ultimately became the member of Planning Commission.

R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 11.21 The aforesaid statements also indicate the fact that present applicant had prepared false affidavits and convinced and ensured the victims to file those false and fabricated affidavits before the Hon'ble the Supreme Court and other forums. What is shockingly is that those affidavits were far from truth as it named innocent persons also in it, and those affidavits were prepared and filed just to fulfil personal / political agenda of present applicant and of the late leader of the political party.

11.22 It is true that learned senior advocate Mr.Thakore has questioned the authenticity and genuineness of the aforesaid statements by stating that there are contradictions and inconsistency in those statements and affidavits of the witnesses which are relied upon by prosecution. However, the fact remains that today those statements are on record and considering the seriousness of those statements and the material coming out of those statements, at this stage, looking to the larger conspiracy alleged by way of FIR, R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 substantiated by voluminous record and material running into around 5000 pages after investigation, by way of charge sheet papers and also considering the fact that even today the investigation is going on under Section 173(8) of the Cr.P.C. the material against the present applicant cannot be ignored completely.

11.23 Though the issue relates back to the year 2002 and the time thereafter and various litigations before Hon'ble the Supreme Court were pending till March, 2022 and as the present FIR is registered pursuant to the observations made by Hon'ble Supreme Court in its order dated 22.03.2022, fact remains that each and every close associate of the present applicant and even the riots victims who were used by the present applicant by influencing them to file false and fabricated affidavits before the Hon'ble Supreme Court with a view to unsit the establishment and to tranish the image of establishment and the then Chief Minister, have unequivocally given statement against the present applicant making serious allegations against the present applicant which prima facie supports the R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 case of the prosecution.

11.24 What is important to see is when in a democratic country, the constitution provides for any State to be Rule and run through democratically elected government as per the wish of people of that State, if a person becomes part of the larger conspiracy and just for money and to fulfil her personal ambition [in the instant case i have seen that a Journalist i.e. applicant has started her career as Journalist and prima facie it seems that by using victim and witnesses as ladder for her own benefits the present applicant ultimately reached on to Padmashree to become Member of Planning Commission.] to hold prestigious position goes to any extent and thereby make active efforts not just to unsettle democratically elected government by disreputing the then Chief Minister, government machineries and by using the victims by convicing them to file false affidavits before various forums and before the Hon'ble Supreme Court and by playing with the sentiments of two wounded communities as she had used sentiments of a particular R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 community to her benefit, collected money for her and ultimately did not help those victims as promised, and thereby because of all her efforts and by utilising her intelligence by instituting litigations without any basis as the affidavits which were filed by witnesses at her instance before various forums including the Hon'ble Supreme Court were far from truth and inteded to implicate innocent persons and to unsettle the government and with an intention to tarnish the image of the then Hon'ble Chief Minister and thereby to send him to jail and compel him to resign and, therefore, if any leniency is shown towards such person, there is strong possibility that in future also, we may see many more persons coming out openly to help any entity in fulfilling their agenda in an illegal and unlawful manner and show readiness to do anything by playing with the sentiments of the community just to ensure that particular political party gets sufficient swing in their favour by changing the mindset of people by exploiting their religious and communal feelings and provoking them as persons who are oppressed and are not given justice by the establishment R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 11.25 Prima facie, this Court is of the view that, today, if the applicant like this is enlarged on bail, that will deepen and widen the communal polarisation as prima facie this Court is of the view that on one hand when we are heading towards the progress of the country with an efforts to strengthen the communal harmony and brotherhood which would create an atmosphere which can accelerate and develop the progress of the country. Any social work in the direction or making efforts to ensure that poor, oppressed or needy people / victims of social system or administration may get justice is always welcome things but in that case such efforts should be genuine, self-less and unbiased. However, in the instant case, prima facie it seems that though present applicant has formed an NGO in the name of Citizen for Justice and Peace, she has never worked in the direction of securing justice and peace. In fact she has even dared to file false affidavits before the highest forum of the country i.e. Hon'ble the Supreme Court. Her work was mainly in the direction to polarise the people of a R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 particular communally which would disturb the peace rather than creating an atmosphere of peace and brotherhood and all this was done by provoking the people and by even misleading the various forums including the Hon'ble Supreme Court by filing false and fabricated affidavits and even by writing letters to UNHRC for which she was warned by the Hon'ble Supreme Court.

11.26 Further, I have also perused other materials on record and I have found that in the past also there were allegations against present applicant that she has utilised the funds which were meant for NGO for her personal use and that out of that funds she has purchased some luxurious items for

herself.

11.27 Further, as it comes out prima facie from the record that present applicant has not let any stone unturned to exploit the feelings of minorities by provoking them and by engineering and by manipulating things in respect of various things in respect of FIR registered at Lunavada Police Station, DCB Police Station Ahmedabad City, this Court prima R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 facie is of the view that present applicant has not only past track record of going to any extent to achieve the agenda which is entrusted to her as she had already done by influencing the witnesses and by aggressively propagating against government and its machinery as well as the then Chief Minister and she has shown courage in the past to threaten the witnesses, tampering with the evidence and to influence the people.

11.28 Further, if the present applicant even if she is lady is enlarged on bail, looking to the material against her as in the past also all throughout the efforts is that she has tried to win-over the witnesses in the manner that suits her as agenda and considering the fact that the present applicant was funded freely by political party and was assured of more funds if requires, shows how influential she is. Further, considering the fact that present applicant is not only closely associated with political leaders but also considering the fact that present applicant is having close relations with not just political leaders of Gujarat R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 and Maharashtra but also has roots at Delhi and she has contacts with the people from all fields and fraternity. Even if present applicant is a lady accused, considering the gravity of offence along with other parameters based on the principles enunciated by various judgments of Hon'ble Supreme Court, if the present applicant is released on bail, who is facing allegation of larger conspiracy of unsettling the then establishment and disreputing the then Chief Minister, if any leniency is shown to the applicant and is enlarged on bail, there are ample chances that she may temper with the witnesses as she is very influential person who reached upto Padmashree become Member of Planning Commission as also considering the fact that if such person facing such kind of charges and having courage to file false affidavits before the Hon'ble Supreme Court and to write letters at UNHRC Geneva, in that case, enlarging such kind of person would send wrong signal as it may give signal that in democratic country everything would be so lenient that even if person go to extent of making efforts to unsit the then establishment and to R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 disrepute the image of the then Chief Minister to the extent to see that he is sent to jail, that will encourage others also to act in similar manner.

11.29 Further, I have also considered the fact that prima facie appears that all these was done by the present applicant by influencing, threatening and giving false promises to the riot victims and to file false affidavits before various forums including the Hon'ble Supreme Court and thereby made attempts to create an atmosphere to unsettle democratically elected government to disrepute the image of the then Chief Minister and to see that he goes to jail, today some political party is alleged to have given her task to the aforesaid things, tomorrow situation may raise that some outside force may utilise and convince a person to make efforts in similar line causing danger to Nation or to a particular State by adopting the same modalities and, therefore, considering the totality of the facts and circumstances as also considering the fact that any such attempts may not take place in future, the bail application of the present applicant is required R/CR.MA/14435/2022 CAV JUDGMENT

DATED: 01/07/2023 to be dismissed 11.30 In view of above discussion, to summarize this Court is of the view that, prima facie, there is ample material against the present applicant which is of grave nature to deny her the bail and even looking to her past conduct and considering the fact that present applicant is an influential person there are chances that she may tamper with the evidence, I do not deem it appropriate to enlarge the present applicant on bail and, therefore also, the present application is required to be dismissed and the same is dismissed.

12. In view of above discussion, the present application stands dismissed. Rule is discharged. No order as to costs.

13. As the present applicant is on interim bail granted by Hon'ble the Supreme Court of India vide order dated 02.09.2022 passed in Criminal Appeal No.1417 and 1418 of 2022, the applicant is directed to surrender immediately.

R/CR.MA/14435/2022 CAV JUDGMENT DATED: 01/07/2023 FURTHER ORDER:

14. Learned senior advocate Mr.Thakore, after pronouncement of this order, prayed for stay of this order for a period of thirty days. However, considering the aforesaid discussion, request is rejected.

(NIRZAR S. DESAI,J) MISHRA AMIT V.