

**Court No. - 1**

**Case :-** CRIMINAL APPEAL No. - 549 of 2016

**Appellant :-** Devendra Pandey and others

**Respondent :-** State Of U.P. Thru. C.B.I.

**Counsel for Appellant :-** Arun Sinha, Alok Shukla, Anil Kumar, Arti Ganguly, Aseem Goswami, Atul Verma, Edward Sam Julius Paul, Gaurav Shukla, Hari Krishna Verma, Hemant Kumar Mishra, Janardan Singh, Nagendra Mohan, Rajendra Prasad Mishra, Ram Mohan Mishra, Salil Mohan, Sanjay Kumar Srivastava, Saroj Kumar Shukla, Sheikh Wali-Uz Zaman, Umesh Chandra Yadav

**Counsel for Respondent :-** Rishad Murtaza, Anurag Kumar Singh, B. Nath, Ishan Baghel, S.B. Pandey, Vivek Kumar Rai

***Connected with***

**Case :-** CRIMINAL APPEAL No. - 513 of 2016

**Appellant :-** Vijendra Singh And Ors.

**Respondent :-** State Thru. C.B.I.

**Counsel for Appellant :-** Manish Bajpai, Atul Verma, Nagendra Mohan, Rajat Singh Chauhan, Rajendra Prasad Mishra, Rajesh Vishwakarma, Salil Mohan, Sanjay Kumar Srivastava, Sarvesh Kumar Pandey, Sheikh Wali-Uz Zaman

**Counsel for Respondent :-** Rishad Murtaza, Ishan Baghel, S.B. Pandey, Vivek Kumar Rai

***with***

**Case :-** CRIMINAL APPEAL No. - 551 of 2016

**Appellant :-** Rajendra Singh and Ors.

**Respondent :-** State Of U.P. Thru. C.B.I.

**Counsel for Appellant :-** Indu Prakash Singh, Nagendra Mohan, Rajendra Prasad Mishra, Salil Mohan, Sanjay Kumar Srivastava, Sheikh Wali-Uz Zaman

**Counsel for Respondent :-** Rishad Murtaza, Ishan Baghel, S.B. Pandey, Vivek Kumar Rai

**Hon'ble Ramesh Sinha, J.**

**Hon'ble Brij Raj Singh, J.**

**(Oral by Ramesh Sinha, J.)**

- (1) Forty seven accused persons, namely, **Gyan Giri, Subhash Chandra, Lakhn Singh, Nazim Khan, Harpal Singh, Rajendra Singh, Narayan Das, Krishna Veer, Karan Singh,**

**Rakesh Singh, Nem Chand, Shamsheer Ahmed, Badan Singh, Devendra Pandey, Mohd. Anis, Ramesh Chandra Bhartiya, Veer Pal Singh, Natthu Singh, Dhani Ram, Sugam Chandra, Collector Singh, Kunwar Pal Singh, Shyam Babu, Banwari Lal, Dinesh Singh, Sunil Kumar Dixit, Ram Nageena, Vijay Kumar Singh, Vijendra Singh, M.P. Mittal, M.C. Durgapal, R.K. Raghav, Surjeet Singh, Munna Khan, Durvijay Singh s/o Tadinal, Mahaveer Singh, Gaya Ram, Register Singh, Rashid Hussain, Durvijay Singh s/o Dilaram, Syed Ale Raja Rizvi, Satya Pal Singh, Harpal Singh and Ram Chandra Singh,** were tried by the Special Judge, C.B.I. Court No.1/Additional District Judge, Lucknow in Criminal Case No.1800439 of 2001: State of U.P. Through C.B.I. Vs. Gyan Giri & others, arising out of (i) R.C.1(S)/1993; (ii) R.C.2(S)/1993; and (iii) R.C.3(S)/1993, under Sections 120-B, 302, 364, 365, 218, 117 I.P.C., Police Station C.B.I./S.I.C., New Delhi.

- (2) Vide judgment and order dated 04.04.2016 the Special Judge, C.B.I. Court No.1/Additional District Judge, Lucknow convicted and sentenced the accused persons in the manner stated hereinbelow :-

<b>Conviction</b>	<b>Sentence</b>	<b>Fine</b>
Under Section 302 read with 120-B I.P.C.;	Life imprisonment	Rs.2 lac. In default, to undergo 1 ½ simple imprisonment
Under Section 364 read	10 years R.I.	Rs.50,000/- In

with 120-B I.P.C.		default to undergo one year simple imprisonment
Under Section 365 read with 120-B I.P.C.	5 years R.I.	Rs.25,000/- In default to undergo six months simple imprisonment.
Under Section 218 read with 120-B I.P.C.	2 years R.I.	----
Under Section 117 read with 120-B I.P.C.	1 year R.I.	----

- (3) Feeling aggrieved by their aforesaid conviction and sentence, convicts/appellants, Devendra Pandey, Mohd. Anis, Ramesh Chandra Bhartiya, Veer Pal Singh, Natthu Singh, Dhani Ram, Sugam Chand, Collector Singh, Kunwar Pal Singh, Shyam Babu, Banwari Lal, Dinesh Singh, Sunil Kumar Dixit, Arvind Singh, Ram Nagina, Vijay Kumar Singh, have preferred Criminal Appeal No.549 of 2016, whereas convicts/appellants Vijendra Singh, M.P. Mittal, M.C. Durgapal, R.K. Raghav, Surjeet Singh, Udai Pal Singh, Munna Khan, Durvijay Singh, Mahaveer Singh, Gaya Ram, Register Singh, Rashid Hussain, Durvijay Singh, Syed Ale Raza Rizvi, Satya Pal Singh, Harpal Singh, Ram Chandra Singh have preferred Criminal Appeal No.513 of 2016 and convicts/appellants Rajendra Singh, Harpal Singh s/o Shri Bhim Sen, Gyan Giri, Subhas Chandra, Lakhan Singh, Nazim

Khan, Narayan Das, Krishna Veer, Karan Singh, Rakesh Singh, Nem Chandra, Shamsheer Ahmed, Satendra Singh, Badan Singh have preferred Criminal Appeal No.551 of 2016.

**(A) APPLICATIONS**

**A.1 C.M. Application No. 39897 of 2019 in Re: Criminal Appeal No. 549 of 2016**

(4) It transpires that during pendency of his first application for bail (C.M. Application No. 42989 of 2016), appellant no.10 – Shyam Babu has preferred C.M. Application No.39897 of 2019 under the heading ‘*Bail Application*’, hence the subsequent application (C.M.A. No.39897 of 2019) for the same cause of action, i.e. grant of bail, is not maintainable. Therefore, C.M.A. No.39897 of 2019 is hereby **rejected**.

**A.2. C.M. Application No. 36615 of 2020 in Re: Criminal Appeal No. 549 of 2016**

(5) By means of this application, appellant no.10-Shyam Babu is seeking short term bail on the ground of ailment.

(6) It transpires from the application for short term bail filed on behalf of appellant no.10 that the prescription enclosed with the instant short term bail application is of the year 2020 and thereafter no medical report has been submitted on behalf of appellant no.10-Shyam Babu in support of his ailment, hence the plea of grant of short term bail by appellant no.10-Shyam Babu is hereby **rejected**. However, this Court hope and trust that Jail

Authorities shall provide all necessary treatment to appellant no.10-Shyam Babu.

**A.3 C.M. Application No. 67787 of 2020 in Re: Criminal Appeal No. 549 of 2016**

- (7) This short term application for bail has been filed on behalf of appellant no.4-Veerpal Singh on 20.11.2020, praying therein to release him for a period of six weeks so that he may fix the marriage of his children.
- (8) On due consideration, this Court is of view that relief sought by the appellant no.4-Veerpal Singh to release him on short term bail for a period of six weeks, has become infructuous by efflux of time, hence his application for short term bail is **rejected as infructuous.**

**A.4. C.M. Application No. 140714 of 2021 in Re: Criminal Appeal No. 549 of 2016**

- (9) It transpires that C.M. Application No. 42989 of 2016 has been filed by the convicts/appellants (including appellant nos.11, 13, 15 and 16) in Criminal Appeal No. 549 of 2016 under the heading '*Bail Application under Section 389 Cr.P.C.*' through their Counsel Sri Arun Sinha, Advocate. During pendency of the aforesaid first application for bail (C.M. Application No.42989 of 2016), convict/appellant No. 11-Banwari Lal, appellant no.13-Sunil Kumar Dixit, appellant no.15-Ram Nagina and appellant no.16-Vijay Kumar Singh have filed this application (C.M. Application No. 140714 of 2021) in Criminal Appeal No. 549 of

2016 under the heading 'Application for Bail under Section 389 Cr.P.C.' through Shri Umesh Chandra Yadav, Advocate.

(10) On due consideration, this Court is of the view that since the first application for bail (C.M. Application No. 42989 of 2016) of appellant No. 11-Banwari Lal, appellant no.13-Sunil Kumar Dixit, appellant no.15-Ram Nagina and appellant no.16-Vijay Kumar Singh, is pending before this Court, therefore, the subsequent application for bail (C.M. Application No.140714 of 2021) by them for the same cause of action i.e. grant to bail is not maintainable.

(11) Accordingly, C.M. Application No. 140714 of 2021 is **rejected as not maintainable.**

**A.5. C.M. Application No.155299 of 2021 in Re: Criminal Appeal No. 549 of 2016.**

(12) By means of this application, appellant no.5-Nathu Singh is seeking short term bail on the ground that marriage of his son has been fixed for 10.12.2021. In our view, since the said date of the marriage of his son has already been expired and no other ground for short term bail has been made by the appellant no.5, hence his short term bail application (C.M. Application No.155299 of 2021) is **rejected.**

**A.6 C.M. Application No. 36611 of 2020 in Re: Criminal Appeal No. 513 of 2016**

(13) It transpires that appellant no.10–Gaya Ram has preferred short term bail application (C.M.A. No.36611 of 2020), stating therein that he was suffering from heart disease, on account of which he was brought at Balrampur Hospital, Lucknow by the Jail Authorities, from where he was referred to K.G.M.U., Lucknow for medical treatment and his treatment was done at K.G.M.U., Lucknow on 05.03.2020 at Cardiology Department wherein his E.C.G. report was found abnormal.

(14) On due consideration, this Court finds that the prescription enclosed with the instant short term bail application is of the year 2020 and thereafter no medical report has been submitted on behalf of appellant no.10 with regard to his ailment, hence the plea of grant of short term bail by appellant no.10 is hereby **rejected**. However, this Court hope and trust that Jail Authorities shall provide all necessary treatment to appellant no.10-Gaya Ram.

**A.7. C.M. Application No. 39414 of 2016 and C.M. Application 111120 of 2021 in Re: Criminal Appeal No. 513 of 2016 : Application for Bail filed by convict/appellant no.11-Register Singh**

(15) It transpires that on 15.04.2016, C.M. Application No. 39414 of 2016 has been filed by the convicts/appellants (including appellant no.11-Register Singh) in Criminal Appeal No. 513 of 2016 under the heading '*First Application under Section 389 Cr.P.C.*' through their Counsel Sri Manish Bajpai, Advocate. During pendency of the aforesaid first application for bail (C.M.

Application No.39414 of 2016), convict/appellant no.11-Register Singh has filed C.M. Application No. 11120 of 2021 in Criminal Appeal No. 513 of 2016 under the heading 'Application for Bail' through Shri S.W. Zaman, Advocate, stating therein that convict/appellant no.11 has turned handicap due to paralytic attack and now it is impossible for him to remain anywhere without helper, he may be released on bail on the ground of his ailment. In support of his claim, he has annexed the medical prescription of Balrampur Hospital, Lucknow, K.G.M.U. and R.M.L.U., Lucknow.

- (16) On a pointed query made to Sri S.W. Zaman, learned Counsel for the appellant no.11-Register Singh as to how the subsequent bail application i.e. C.M. Application No. 11120 of 2021 for the same cause of action i.e. to grant bail is maintainable when the first application for bail filed on behalf of appellant no.11-Register Singh i.e. C.M. Application No. 39414 of 2016 is pending before this Court, Sri S.W. Zaman, learned Counsel for the appellant no.11-Register Singh submits that he does not want to press both applications for bail i.e. *C.M. Application No. 11120 of 2021 and C.M. Application No. 39414 of 2016* filed on behalf of appellant no.1-Register Singh as he wishes to file proper application for bail on behalf of appellant no.11-Register Singh by annexing the necessary document(s) relating to the medical treatment of appellant no.11-Register Singh.



(17) In view of the submission of Sri S.W. Zaman, learned Counsel for the appellant no.11-Register Singh, both the applications for bail i.e. C.M. Application No. 111120 of 2021 and C.M. Application No. 39414 of 2016 filed on behalf of appellant no.11-Register Singh are **rejected as not pressed with liberty to the appellant no.11-Register Singh to file proper application for bail by annexing the necessary document(s) relating to the medical treatment of appellant no.11-Register Singh, if so desire.**

**A.8 (I) C.M. Application No. 42989 of 2016 in Re: Criminal Appeal No. 549 of 2016;**

**(II) C.M. Application No.39414 of 2016 in Re: Criminal Appeal No. 513 of 2016; and**

**(III) C.M. Application No. 43117 of 2016 in Re: Criminal Appeal No. 551 of 2016**

(18) It is pertinent to mention here that convict/appellants have preferred the aforesaid first application for bail in their respective appeals.

(19) In **C.M. Application No. 42989 of 2016 in Re: Criminal Appeal No. 549 of 2016**, a Co-ordinate Bench of this Court, vide order dated 28.05.2018, enlarged appellant no.1-Devendra Pandey and appellant no.2-Mohd. Anis on bail, on the ground of their age and ailment and further clarified that bail application for remaining convicts/appellants shall be treated as pending. Hence, now this Court proceed to decide the first application for bail of the rest of convicts/appellants in this application.

(20) In **C.M. Application No.39414 of 2016 in Re: Criminal Appeal No. 513 of 2016**, a Co-ordinate Bench of this Court, vide order dated 28.05.2018, enlarged appellant no.4-R.K. Raghav and appellant no.5-Sujeet Singh on bail on the ground of their age and ailment and further clarified that bail application for remaining convicts/appellants shall be treated as pending. Thereafter, appellants no. 1, 2, 3, 12, 14 and 15 were granted bail by a Co-ordinate Bench of this Court on the ground of ailment vide orders dated 18.04.2019, 18.04.2019, 22.07.2020, 11.06.2018, 05.10.2018, 09.05.2019, respectively. Hence, now this Court proceed to decide this first application for bail of the remaining appellants.

(21) In **C.M. Application No. 43117 of 2016 in Re: Criminal Appeal No. 551 of 2016**, appellant no.2 and appellant no.4 were granted bail by a Co-ordinate Bench of this Court vide orders dated 22.07.2020 and 05.10.2018 on the ground of ailment and this application for remaining of the appellants are pending. Hence, now this Court proceeds to decide this first application for bail of the remaining appellants.

#### **A.8.1 FACTUAL MATRIX**

(22) The case set up by the prosecution is that the police party of district Pilibhit stopped a bus of pilgrims who were returning from Gurudwara and after that, 10-11 persons, belonging to Sikh community, were alighted from the said bus and boarded them to

another bus and committed fake encounters in the intervening night of 12/13.07.1991 at Dhamela Kuan, Fagunia Gath, Barhai Range (Pattabhoji), which come within the territorial jurisdiction of police stations Neoria, Bilsanda and Puranpur in District Pilibhit.

- (23) The local police of district Pilibhit, after conducting the investigation in regard to the alleged encounter of 10-11 terrorists at district Pilibhit in the intervening night of 12/13.07.1991, had filed closer report in Crime No. 144-148/91, Crime No. 136-40/91 and Crime No. 363-365/91. However, pursuant to the order dated 15.05.1992 passed by the Hon'ble Supreme Court in Writ Petition (Criminal) No. 1118 of 1991 : *R.S. Sodhi, Advocate Vs. State of U.P.*, the re-investigation of the said encounter of alleged eleven terrorists was entrusted to Central Bureau of Investigation (hereinafter referred to as "C.B.I."). After that, C.B.I had registered three cases i.e. (i) R.C. 1 (S)/1993 under Sections 147, 148, 149, 307 I.P.C. and Section 25 of the Arms Act corresponding to Crime No. 144 of 148/91 Police Station Neoria, District Pilibhit; (ii) R.C. 2 (S)/1993 under Sections 147, 148, 149, 307 I.P.C., Section 25 of the Arms Act and Section 3/4 of TADA Act corresponding to Case Crime No. 136 to 140/1991 Police Station Bilsanda, District Pilibhit; and (iii) R.C. 3 (S)/93 under Sections 147, 148, 149, 307 I.P.C. and Section 25 of the Arms Act corresponding to Case Crime No. 363 to 365/91, police

station Puranpur, District Pilibhit, were registered in SIU.V/SIC.II/New Delhi Branch of CBI on 01.01.1993.

- (24) After due investigation, the Investigating Officer had charge-sheeted 57 accused persons under Sections 120-B, 302, 364, 365, 218, 117 I.P.C. During pendency of the trial, ten accused persons, namely, Munesh Khan, Rajesh Chandra Sharma, Madan Pal Singh, Kishan Bahadur, Suraj Pal, Ashok Kumar, Ram Swaroop, Sukh Pal Singh, Chandra Pal Singh and Brahm Pal Singh, died, hence their trial was abated. However, the trial Court commenced the trial against 47 accused persons/ appellants.
- (25) During trial, the prosecution in support of its case have examined 67 witnesses. After due trial, the trial Court believed the depositions of the prosecution witnesses and convicted and sentenced the 47 accused persons/appellants in the manner as stated in paragraph-2 hereinabove.
- (26) Heard Shri Nagendra Mohan, Shri Daya Shankar Mishra, Senior Advocate assisted by Shri Atul Verma, Shri R.P. Mishra, Shri Indu Prakash Singh, Shri Sheikh Wali-Uz Zaman, learned Counsels for the appellants, Shri Anurag Singh, learned Counsel for the C.B.I. and Shri I.B. Singh, Senior Advocate assisted by Shri Vivek Kumar Rai, learned Counsel for the victim and perused the material brought on record on the first application for bail.

**A.8.2 SUBMISSIONS ON BEHALF OF THE APPELLANTS**

- (27) Shri Nagendra Mohan, learned Counsel for the appellants, while pressing the first application for bail, has argued that out of 57 accused persons, ten accused died during the pendency of trial and the trial was commenced against 47 accused persons/appellants. The trial Court had convicted and sentenced 47 accused persons by means of the impugned judgment and order dated 04.04.2016. He argued that out of 47 convicts/appellants, 12 convicts/appellants have been granted bail by a Co-ordinate Bench of this Court either on the ground of age or severe ailment.
- (28) Shri Nagendra Mohan has further argued that there was vigilance report that hardcore terrorists of Khalistan Liberation Front are present in Pilibhit and adjoining area and they are committing heinous crimes like murder, loot, land grabbing etc. and have created panic in the public, which was proved by P.W.42-Shri Dhruv Singh, Inspector Intelligence vide D-1 and D-2. On the basis the aforesaid input, a meeting of higher authorities of police personnel was held to decide the action taken against the terrorists.
- (29) Learned Counsel for the appellant has further argued that the case of the prosecution is that the police personnel (appellants) had killed a number of terrorists in fake encounter, by using fire-arms, provided by the police department to them. If that was so, it had been committed by the police personnel only while

discharging their official duties as public servant. Hence the sanction from the State Government for prosecuting them was mandatory. In the absence of sanction, the entire proceedings get vitiated. In the instant case, admittedly, no sanction was obtained, hence the police personnel are liable to be enlarged on bail.

- (30) It has also been argued by the learned Counsel for the appellant that eye-witnesses P.W.11-Smt. Swarnjeet Kaur and P.W.13-Smt. Balvinderjeet Kaur have stated that 10-11 persons belonging to Sikh community were travelling in the bus along with them and they were taken away by the police, however, on the next day their deadbodies were found, but both these eye-witnesses did not identify any police personnel either in identification parade nor in Court that they were the police personnel, who took 10-11 persons belonging to Sikh community from the bus. He further argued that the presence of P.W.11 in the bus is also doubtful as she stated that immediately after the occurrence, she sent a telegram to her father-in-law i.e. P.W.4-Ajeet Singh, informing about the incident but P.W.4-Ajeet Singh had deposed that he got the information about the death of his son through the newspaper and not through the telegram. Thus, the evidence of P.W.11 is not trustworthy and was a got up witness.
- (31) Shri Nagendra Mohan further argued that P.W.11 and P.W.13 are interested witnesses as they are the wives of two deceased persons. He further argued that though there were a number of

passengers in the bus but the police had failed to examine the other witnesses, including the driver and conductor of the bus who have stated to have seen the police personnel taking away the deceased persons from the bus, hence, non-examination of those independent witnesses will affect the credibility of the prosecution case.

- (32) It has further been argued by learned counsel for the appellant that CBI took up the case for investigation not on the fresh F.I.R. but on the basis of the three F.I.R. already registered by the accused/police personnel. The investigation cannot be continued by the C.B.I. on the F.I.Rs. registered by the local police, on account of the fact that those F.I.Rs. were encounters, whereas the C.B.I. took up the case for investigation after having formed the opinion that those are fake encounters. If fresh investigation is conducted on the basis of the earlier F.I.R., then, the C.B.I. must have established that earlier F.I.Rs. and the investigation conducted by the local police on the basis of those F.I.R. was false but no evidence has been adduced by the C.B.I. to prove that the earlier F.I.Rs and the initial investigation was fake and farce. This shows serious infirmities on the part of the C.B.I.
- (33) Learned counsel for the appellant has next argued that there are totally three encounters at different places in the intervening night of 12/13.7.1991. From each place, the fire-arms used by the terrorists were seized and proper procedure had been followed by the police personnel for preparing 'panchnama' and other

documents. The competent officer, namely, S.D.M., came to the scene and conducted inquest on the deadbodies of the terrorists, post-mortem was conducted by the doctors. Immediately, in respect of the encounters, three F.I.Rs were registered by the accused/police personnel in the same police station. This shows that there were real encounters in which the accused/police personnel have used their fire arms as against the terrorists by way of self-defense.

(34) Sri Nagendra Mohan had further argued that fire arms used in the commission of the offence were not recovered by the Investigating Officer but the trial Court erred in not considering this aspect of the matter. He argued that the appellants were convicted under Sections 302, 364, 365, 218, 117 I.P.C. with the aid of Section 120-B I.P.C but the trial Court, while convicting the appellants for the aforesaid offences, had lost sight of the fact that none of the ingredients as provided under Section 120-B I.P.C. have been levelled against the appellants as the appellants had only obeyed the directions of the superior officers and did official duty as per directions of superior officers and further there was no intention to commit criminal conspiracy. He argued that appellants were on bail during trial and did not misuse the liberty of bail, hence the appellants are liable to be enlarged on bail.

(35) Shri Daya Shanker Mishra, learned Senior Advocate, appearing on behalf of the appellants Devendra Pandey, Vijay Kumar



Singh, Ram Nagina and Banwari Lal in Criminal Appeal No. 549 of 2016, has argued that appellants are the Constables in Pradeshik Armed Constabulary (P.A.C.). On the date of the incident, on the directions of the superior officers i.e. *Senanayak*, the appellants were deputed to police station, from where under the directions of the superior officers of the concerned police station, they joined the said encounter. His submission is that appellants were only obeyed the directions of superior officers and if they disobeyed the directions of the superior officers, definitely, they would have been punished with imprisonment for term which may extend to seven years with fine or without fine as per the provisions of Section 7 of the U.P. Pradeshik Armed Constabulary Act, 1948. Thus, there was no fault of the appellants to join the said encounter.

- (36) Shri Daya Shanker Mishra has further argued that the prosecution has failed to produce any evidence with regard to specific role of each appellant, i.e. which of the accused/appellants had fired upon which deceased person. Furthermore, the fire arms used in commission of offence had not been recovered. He further argued that there is no evidence on record to show that the appellants had committed criminal conspiracy, therefore, findings of the guilt of the appellants in the said encounter by the trial Court for the offences with the aid of Section 120-B I.P.C. cannot be sustainable.

- (37) Shri Mishra has further argued that the Investigating Agency has not put up any of the appellants for identification or any co-accused persons by any prosecution witnesses. He argued that the trial Court had convicted the appellants under Sections 302, 364, 365, 218, 217 I.P.C. with the aid of Section 120-B I.P.C. but none of these offences are attracted against the convicts/appellants in the facts and circumstances of the case.
- (38) While drawing attention towards Section 173 (8) Cr.P.C. and placing reliance upon **Rama Chaudhary Vs. State of Bihar:** (2009) 6 SCC 346, learned Senior Counsel has argued that the re-investigation of the case could not be permissible under Section 173 (8) Cr.P.C.
- (39) Learned Senior Counsel has also placed reliance upon **Godadhar Chandra Vs. The State of West Bengal** (Criminal Appeal No. 1661 of 2009, decided on 15.03.2022) and argued that as the prosecution has failed to produce any eye-witness who had identified the appellants to commit the crime, hence in absence of such eye-witness, the existence of a prior concert and pre-arranged plan is extremely doubtful.
- (40) Learned Senior Counsel has placed reliance upon **Dattaram Singh Vs. State of Uttar Pradesh and another** : 2018 (3) SCC 22 and has argued that all the appellants are the Government servants and there is no chance of their absconding; during trial,

appellants were on bail and did not misuse the liberty of bail, hence the appellants are liable to be enlarged on bail.

- (41) Shri Indu Prakash Singh, learned Counsel for the appellant no.1 in Criminal Appeal No. 551 of 2016 and Shri R.P. Mishra, learned Counsel for the other appellants have adopted the aforesaid arguments advanced by Shri Nagendra Mohan and Shri Daya Shanker Mishra. However, in addition, Shri Indu Prakash Singh, learned Counsel for the appellant no.1 in Criminal Appeal No. 551 of 2016 has drawn our attention to paragraphs 8 to 12 of the supplementary affidavit filed on 20.10.2020 and argued that deceased, namely, (i) Baljit Singh alias Pappu, (ii) Jaswant Singh alias Blijji, (iii) Harminder Singh alias Minta and (iv) Surjan Singh alias Bittu, were belonging to terrorist outfits, namely, Khalistan Liberation Army and against them, number of cases, as mentioned in paragraphs 8 to 12 of the supplementary affidavit, under the heinous offences including murder, robbery, dacoity, kidnapping for ransom and extortion, assaulting police personnel etc. were registered, which itself establishes that they were indulged in illegal and anti-national activities.

#### **A.8.3. SUBMISSIONS ON BEHALF OF THE VICTIM**

- (42) Shri I.B. Singh, learned Senior Advocate, appearing on behalf of the victim, has argued that 10 innocent persons were murdered by the police personnel/appellants in a pre-planned manner, showing it to be a fake encounter and eleventh one was a child whose whereabouts would not be traced out and his parents were given

compensation by the State. The police personnel/appellants involved in the said encounter tried to close the case by conducting the tainted investigation. Ultimately, the Apex Court intervene into the matter and passed an order dated 15.05.1992 in Writ Petition (Criminal) No. 1118 of 1991, directing the CBI to investigate the matter. He argued that accused persons/appellants being the police personnel were supposed to be protector of innocent person but they themselves have committed a heinous crime and thereafter they tried to close the matter by conducting a tainted investigation.

- (43) Shri Singh has argued that 28 pilgrims belonging to Sikh community were returning after visiting Gurudwaras. In the meanwhile, a local journalist had published a news in the newspaper under the heading “सौ-सौ चूहे खाकर बिल्ली.....”. In the said news-item, it was published that some of the terrorists were also travelling in the bus of pilgrims of Sikh. The police personnel/appellants, without verifying the sanctity of the said news, caught the pilgrims bus immediately just entering into the territory of district Pilibhit and thereafter, police personnel/appellants alighted 11 Sikh persons from the bus and boarded them on another bus and later on killed them in a fake encounter in a three different places of district Pilibhit. He further argued that during investigation, the Investigating Officer found the marks of bullet in the said bus.

- (44) Sri Singh has further argued that it is admitted by the appellants that 11 persons belonging to Sikh community (so called terrorists as per the appellants) were killed by the police personnel, for which the police papers were prepared by some of the appellants. He further argued that the involvement of the appellants in the said encounters reflects from the GD entry made by the police personnel/appellants themselves. He argued that ten persons belonging to Sikh community were eliminated in a fake encounter and the appellants/police personnel themselves have endorsed their individual role in the G.D. entry.
- (45) It has been argued by the learned Senior Counsel for the victim that even after the conclusion of the trial, the act of the accused persons/appellants, which has been narrated on page nos. 239 to 243 of the impugned judgment itself, shows that the accused persons are neither entitled for release on bail nor entitled for suspension of sentence.

#### **A.8.4. SUBMISSION ON BEHALF OF C.B.I.**

- (46) Sri Anurag Singh, learned Counsel appearing on behalf of the C.B.I. has vehemently opposed the prayer of the appellants to grant them bail and argued that being police personnel, the appellants were the protector of law and order but contrary to it, convicts/appellants made fake encounter to 11 innocent Sikh pilgrims. The C.B.I., after thorough investigation, found the involvement of the appellants in a fake encounter and as such, they were charge-sheeted after completion of the investigation.

The Trial Court has rightly convicted the convicts/appellants in the fake encounter.

#### **A.8.5 FINDINGS**

- (47) The instant case is serious of nature and cannot be treated like an ordinary case. The convicts/appellants, who are policemen, are supposed to uphold the law, but the allegation against them is that they functioned as contract killers.
- (48) It is pertinent to mention here that as learned Counsel for the parties are only pressing to adjudicate the first application for bail of the appellants, which is pending since 2016, hence this Court is not proceeding to decide the above-captioned appeals finally, but this Court only examines the material on record in deciding whether there is a *prima facie* case against the convicts/appellants which entitles them to bail or not.
- (49) Certain material facts which can be gathered from the documents, which are on record, need to be stated. As per prosecution case, on 12.07.1991, a bus, bearing registration No. U.P. 26/0245, whose temporary permit was issued by ARTO, Bareilly in the month of June 1991 for using it for passengers/pilgrims to visit various Gurdwaras, was returning. In the said bus, 26 passengers/pilgrims including the deceased (10 in number), P.W.11-Smt. Swarn Kaur and P.W.13-Smt. Balvinderjeet Kaur alias Lado, were travelling. On the said date i.e. on 12.07.1991, when the bus crossed a river bridge near Pilibhit at about 09-10 a.m., a team of

Uttar Pradesh Police of district Pilibhit (appellants), stopped this bus; alighted 10 Sikh youths from the pilgrims bus; boarded them in their blue coloured bus (police bus); and some police personnel sat in the bus along with remaining passengers/pilgrims (P.W.11, P.W.13, children, ladies and old man). Thereafter, remaining passengers/pilgrims kept roaming the pilgrims bus whole day here and there by the police personnel and after that they left this bus in a Gurudwara in Pilibhit at night, whereas 10 Sikh youths, who were alighted from the pilgrims bus, were killed by the police personnel (appellants) showing them as terrorist in the night of 12/13.7.91 by dividing them into three parts.

- (50) In respect of the aforesaid incident occurred at three different places in district Pilibhit in the intervening night of 12/13.7.1991, three F.I.Rs. i.e. Case Crime No. 144 of 1991, Case Crime No. 136 of 1991 and Case Crime No. 363 of 1991, were registered at police station Neuria, Bilsanda and Puranpur, respectively, in district Pilibhit by the police personnel of district Pilibhit. Case Crime No. 144 of 1991 related to the incident occurred in police station Neuria of Dhamela Kuan forest, wherein four young Sikh persons were killed, in which Rajendra Singh, S.O. Amaria, Sri Harpal Singh, S.O., Gajraula, Constable Narayan Das, Constable Nazim Khan, Constable Krishna Pal Singh, Constable Samsher Ahmad, Constable Subhash Chandra, Constable Karan Singh, Constable Rakesh Singh, Constable Nem Chandra, Constable

Lakhan Singh, Constable Gyan Giri, Head Constable Satyendra Singh and Constable Badan Singh (appellants) were involved. Case Crime No. 136 of 1991 was related to so called encounter occurred in police station Bilsanda of Phagunai Ghat, wherein four young Sikhs were killed, in which Inspector Mohd. Anis, Police Station Bisalpur, S.I. Veerpal Singh, Constable Dhani Ram, Constable Shyam Babu, Constable Kunwar Pal Singh, Constable Collector Singh, Constable Banwari Lal, Constable/P.A.C. Ram Nagina, Constable/P.A.C. Vijay Singh, S.I. Devendra Pandey, S.O. Bilsanda, Constable/P.A.C. Dinesh Singh and Constable Ashok Kumar (appellants) were involved. The third case i.e. Case Crime No. 363 of 1991 was related to the incident occurred in police station Puranpur of Pattabojhi forest area, wherein two young Sikhs were killed, in which, S.O. Vijendra Singh, S.I. R.K. Raghav, S.I. Surjeet Singh, S.I. Udai Pal Singh, S.I. M. P. Vimal, S.I. Satya Pal Singh, S. I. M.C. Durgapal, Constable Rashid Husain, Constable Munna Khan, Constable Dayaram, Constable Ragister Singh, Constable Durvijay Singh, Constable Harpal Singh, Constable Durvijay Singh, Constable Mahabir, Constable Ale Raza (appellants), S.I. Rajesh Chandra Sharma (died during trial), S.I. M.P. Singh (died during trial), Constable Munis Khan (died during trial), Constable Krishna Bahadur (died during trial) and Constable Suraj Pal Singh (died during trial), were involved.



- (51) Initially, the investigation of the aforesaid incident was conducted by local police of district Pilibhit and closure report was filed by the local police of district Pilibhit. However, Hon'ble Supreme Court, vide judgment and order dated 15.05.1992 passed in Writ Petition (Criminal) No. 1118 of 1991 : *Shri R.S.Sodhi, Advocate Vs. State of U.P.*, entrusted the investigation of the incidents relating to the so called encounter to the C.B.I. After that, three cases RC-1(S)/93, under Sections 147, 148, 149, 307 I.P.C. and Section 25 of the Arms Act corresponding to crime no. 144 to 148/91 of police station Neoria, district Pilibhit, RC-2 (S)/93 under Sections 147, 148, 149, 307 I.P.C. and Section 25 of the Arms Act and Section 3/7 of TADA Act corresponding to Case Crime No. 136 to 140/91 of Police Station Bilsanda, District Pilibhit and R.C. 3 (S)/93, under Section 147, 148, 149, 307 I.P.C. Section 25 of the Arms Act corresponding to Case Crime No. 363 to 365/91 of P.S. Puranpur, District Pilibhit, were registered in SIU.V./SIC.II/ New Delhi Branch of CBI on 01.01.1993.
- (52) The contention of the learned Counsel for the appellants is that instead of conducting the investigation on fresh FIRs, the CBI started the case for investigation on the basis of three F.I.Rs. already registered by the police personnel/appellants, hence the investigation cannot be continued by the C.B.I. on the F.I.Rs. registered by the local police for the reason that those F.I.Rs. were encounters, whereas C.B.I. took up the case for

investigation after having formed the opinion that those are fake encounters. In our view, this plea of the learned Counsel for the appellants has no substance, as First Information Report is a report which gives first information with regard to any offence. There cannot be second FIR in respect of the same offence/incident because whenever any further information is received by the investigating agency, it is always in furtherance of the first FIR.

- (53) In **Babulal vs. Emperor** : AIR 1938 PC 130, the Privy Council has held that if several persons conspire to commit offences, and commit overt acts in pursuance of the conspiracy (a circumstance which makes the act of one the act of each and all the conspirators), these acts are committed in the course of the same transaction, which embraces the conspiracy and the acts done under it. The common concert and agreement which constitute the conspiracy, serve to unify the acts done in pursuance of it.
- (54) In **Nirmal Singh Kahlon vs. State of Punjab** : (2009) 1 SCC 441, the Apex Court has carved out an exception for filing a second FIR. As per the exception carved out in the said case, the second FIR lies in a case where the first FIR does not contain any allegations of criminal conspiracy.
- (55) In the instant case, the first FIR itself discloses an offence of alleged criminal conspiracy, therefore, the CBI has rightly proceeded the investigation of the case by registering three cases

corresponding to three F.I.Rs registered by the local police. Hence the contention of the learned counsel for the appellants that CBI started investigation on the basis of F.I.Rs. registered by the local police of Pilibhit and not on the basis of registering fresh F.I.Rs., is rejected.

- (56) In order to prove its case, the prosecution examined 67 witnesses, out of which P.W.11-Smt. Swarn Kaur and P.W.13-Smt. Balvinderjeet Kaur alias Lado are the eye-witnesses of the incident. Both these witnesses have supported the prosecution case and also established their presence. P.W.11-Smt. Swarn Kaur, in her deposition, stated before the trial Court that on 29.06.1991, she along with her husband Harmindra Singh Minta went on a various pilgrimage including Nanakmatha, Patna Saheb, Hujur Saheb (Nanded), Maharashtra, by a bus alighted from Nanakmatha. In the bus, about 25-26 persons were travelling. After 12-13 days i.e. on 12.07.1991, when she along with her husband Harmindra Singh Minta were returning from the said bus, the police personnel (appellants) stopped the bus near the river bridge barrier; number of police personnel boarded on their bus; alighted 10-11 young Sikhs from the said bus; permitted to sit 2-3 old men, children and women in the said bus; some police personnel were also sat in their bus; and some police personnel took away 10-11 young Sikhs by police bus. Thereafter, the police personnel, who sat in their bus, were roaming their bus here and there and not allowed any one for

urinal and in the evening, the police personnel left the bus at Pilibhit Gurdwara, where she stayed whole night. In the morning, on the saying of one *Sewadar*, she sent telegram to her father-in-law, who, after receipt of it, came there and took away her to home, where she knew from her father-in-law that her husband was killed. She proved the photograph (Ext. Ka. 9, D-176/3) of her husband.

- (57) P.W.13-Smt. Balvindrejeet Kaur alias Lado has also supported the prosecution case and also established her presence. She stated before the trial Court that on 29.06.1991, she along with her husband Baljeet Singh alias Pappu, her brother-in-law Jawant Singh and mother-in-law Surjeet Kaur went on various pilgrimage, namely, Nanakmatha, Patna Saheb, Hujur Saheb etc. In the said bus, 25-26 persons/pilgrims, out of which, 10-11 young Sikhs, 2-3 old men, 2-3 children and rest women, were travelling. After 12-13 days i.e. on 12.07.1991, when they were returning, some police personnel stopped her bus near the big river bridge. Thereafter, 8-10 police personnel boarded on her bus from both doors of the bus and alighted 10-11 young Sikhs including her husband and her brother-in-law from bus and boarded them on blue coloured police bus. Thereafter, police personnel sat on her bus and roaming her bus whole day here and there. Later on, in the evening, the police personnel left her bus in Pilibhit Gurdwara. The police personnel asked her that they alighted the terrorists from her bus and did not say anyone. She

further stated that her father-in-law Surjeet Kaur had now died. She proved the photograph of her husband Baljeet Singh alias Pappu (paper no. D-176/2) and her brother-in-law Jaswant Singh Jassi (paper no. D-176/1)

- (58) It transpires from the evidences of P.W.11 and P.W.13 that the said 10 young Sikhs were travelling along with them on the pilgrims bus. While returning from pilgrimage, the pilgrimage bus was stopped near the big river bridge at Pilibhit on 12.07.1991 in the morning by the police personnel (appellants). Thereafter, the police personnel alighted 10 young Sikhs from pilgrims bus and boarded them on a blue coloured police bus. On the next day i.e. on 13.07.1991, they came to know about killing of 10 young Sikhs.
- (59) In the instant case, there was no dispute to the fact that 10 young Sikhs were killed. The Trial Court has found appellants were present at the place of the incident as their presence themselves noted down in the GD on the date, time and place of the incident.
- (60) P.W.67 Sri Satya Pal Khana, Retired Scientist, C.F.S.L., in his deposition before the trial Court, has categorically stated that marks of firearms were present in the blue coloured bus, from which 10 young Sikhs were brought by the police personnel.
- (61) The evidence of P.W.31-Dr. Vimal Kumar, who conducted the post-mortem, shows that apart from fire wounds, marks of rub

and lacerated wounds were present on the deadbodies of the deceased. As per his opinion, the fire arm wound could be attributable by fire arms, whereas rub marks and lacerated wounds could be attributable by blunt object like lathi or wood. The Trial Court, after appreciating the medical evidence, has recorded specific finding that injuries of rub and lacerated wound found on the deadbodies of the deceased were not explained by the police personnel and if it was a case only of encounter, then, only injuries of firearms ought to be found on the deadbodies of the deceased but contrary to the injuries of fire arm wounds found on the deadbody of the deceased establishes that before killing of young Sikhs, police personnel had also assaulted them.

- (62) Moreover, as pointed out and argued by Sri Indu Prakash Singh, learned Counsel for the appellants that four of the deceased were involved in several criminal cases and were belonging to terrorist outfit, namely, *Khalistan Liberation Front*, which was rebutted by the learned Counsel for the victims saying that it is correct that some of the deceased had some criminal antecedents but they were not terrorists or belong to *Khalistan Liberation Front*.
- (63) Be that it may be, the gruesome murder of the deceased who had no criminal antecedents along with some of the deceased who had criminal antecedents, cannot be in any manner justified treating all the deceased to be the terrorists by separating them from their wives and their children, who were going to a pilgrimage in the bus, by the appellants and taking them in

another bus and killing them in a fake encounter at three different places of district Pilibhit. Moreso, if some of the deceased were involved in anti-social activities and criminal cases were registered against them, then too procedure established by law should have been adhered to, to bring them to task and not indulging in such a barbaric and inhuman killing of the innocent persons in the name of terrorists by the appellants.

- (64) Taking into consideration the facts and circumstances of the case and also considering the gravity of offence; evidences of the prosecution witnesses; presence of two eye-witnesses P.W.11 and P.W.13, who supported the prosecution case; medical evidence corroborates the prosecution case; non-explanation of injuries of mark of rub and lacerated wounds found on the deadbodies of the deceased persons by the appellants; non-explanation of mark of bullet on the blue coloured bus by which eye-witnesses P.W.11 and P.W.13 had stated to bring 10 young Sikhs by the police personnel/appellants; non-explanation of source of inputs gathered with regard to travelling of terrorists from the pilgrims bus by the appellants on the date of the incident, this Court do not find it a fit case to enlarge the appellants on bail.

#### **A..8.6 CONCLUSION**

- (65) Accordingly, first bail applications moved by the appellant no. 3-Ramesh Chandra Bharti, appellant no.4-Veer Pal Singh, appellant no.5-Nathu Singh, appellant no.6-Constable No. 567, C.P. Dhani Ram, appellant no.7-Constable No.540, C.P. Sugam Chand,

appellant no.8-Constable No.551, Collector Singh, appellant no.9-Constable No.19, C.P. Kunwar Pal Singh, appellant no.10-Constable Shyam Babu No. 392, U.P., appellant no.11-H.C. No. 42335 Banwari Lal, appellant no.12-Constable No. 13938 Dinesh Singh, appellant no.13-Constable No. 42855 Sunil Kumar Dixit, appellant no.14-Constable No. 42943 Arvind Singh, appellant no.15-Constable No. 42231 Ram Nagina and appellant no.16-Constable No. 42237 Vijay Kumar Singh in Criminal Appeal No. 549 of 2016 (C.M. Application No. 42989 of 2016); appellant no. 6-Udai Pal Singh, appellant no.7-Munna Khan, appellant no.8-Durvijay Singh son of Todi Lal (Todinal), appellant no.9-Mahavir Singh, appellant no.10-Gaya Ram, appellant no.13-Durvijay Singh son of Dila Ram, appellant no.16-Harpal Singh son of Munshi Singh and appellant no.17-Ram Chandra Singh in Criminal Appeal No. 513 of 2016 (C.M. Application No. 39414 of 2016); and appellant no. 1-Rajendra Singh, appellant no.3-Gyan Giri, appellant no.5-Lakhan Singh, appellant no.6-Nazim Khan, appellant no.7-Narayan Das, appellant no.8-Krishna Veer, appellant no.9-Karan Singh, appellant no.10-Rakesh Singh, appellant 11-Nem Chandra, appellant no.12-Shamsher Ahmad, appellant no.13-Satinder Singh and appellant no.14-Badan Singh in Criminal Appeal No. 551 of 2016 (C.M.Application No.43117 of 2016), involved in Criminal Case No. 1800439 of 2001, arising out of (i) R.C. 1(s)/1993, (ii) R.C. 2(s)/1993, and (iii) R.C.3 (s)/1993, under Sections 120B, 302, 364, 365, 218, 217



I.P.C., Police Station C.B.I./S.I.C., New Delhi, are hereby **rejected.**

(66) However, it is made clear that observations made hereinabove are only to decide the question of grant of bail and shall not be treated to be expression of any opinion on merits of the case. The case relating to acceptability or otherwise of the evidence is the subject to final decision of the above-captioned appeals.

(67) The paper book of the above-captioned appeals has been prepared as is evident from the office report dated 27.04.2022 in Criminal Appeal No. 551 of 2016 and the appeals are ripe for hearing, hence, the hearing of the above-captioned appeals is **expedited.**

(68) Let the above-captioned appeals be listed on **25<sup>th</sup> July, 2022** for final hearing.

**(Brij Raj Singh, J.)**

**(Ramesh Sinha, J.)**

**Order Date :- 19.5.2022**

Anand Sri./Ajit/-