Court No. 84 **AFR**

Reserved on 04.7.2024
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Neutral Citation No.-2024:AHC:121066

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL NO. 5295 OF 2023

(Afjal Ansari Vs. State of U.P.)

Appellant through : Mr. G.S. Chaturvedi, Senior Advocate
Mr. D.S. Mishra, Senior Advocate
Mr. Upendra Upadhyay, Advocate

State through : Mr. P.C. Srivastava, AAG
Mr. J.K. Upadhyay, AGA

Victim through : Mr. Sudist Kumar, Advocate

Connected With

GOVERNMENT APPEAL NO. 198 of 2024

(State of U.P. Vs. Afjal Ansari)

State through : Mr. P.C. Srivastava, AAG
Mr. J.K. Upadhyay, AGA

Accused-O.P. through : Mr. G.S. Chaturvedi, Senior Advocate
Mr. D.S. Mishra, Senior Advocate
Mr. Upendra Upadhyay, Advocate

And

CRIMINAL REVISION NO. 3535 of 2023

(Piyush Kumar Rai Vs. State of U.P. and another)

Revisionist through : Mr. Sudist Kumar, Advocate

State through : Mr. P.C. Srivastava, AAG
Mr. J.K. Upadhyay, AGA

Accused-O.P. through : Mr. G.S. Chaturvedi, Senior Advocate
Mr. D.S. Mishra, Senior Advocate
Mr. Upendra Upadhyay, Advocate

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CORAM : **Hon'ble Sanjay Kumar Singh,J.**

JUDGMENT

1- Criminal Appeal No. 5295 of 2023 under Section 18 of Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986 read with Section 374 (2) of Criminal Procedure Code has been filed by appellant Afjal Ansari against the judgement and order dated 29.04.2023 passed by the learned Additional Sessions Judge/Special Judge, M.P./M.L.A Court, Ghazipur in Special Session Trial No. 980 of 2012 arising out of Case Crime No. 1052 of 2007, under Section 3(1) of the Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986, (hereinafter referred to as "the Gangsters Act") police station Mohammadabad, district Ghazipur, whereby the learned Trial Court convicted and sentenced the appellant to four years' simple imprisonment and a fine of Rs. 1,00,000/- (rupees one lac) and in case of default in payment of fine, the appellant was further directed to undergo six months' rigorous imprisonment.

2- A Government Appeal No. 198 of 2024 under Section 377 of Criminal Procedure Code has been filed by the State against the judgement and order dated 29.04.2023 passed by the Additional Sessions Judge/Special Judge, M.P./M.L.A Court, Ghazipur in Special Session Trial No. 980 of 2012 arising out of Case Crime No. 1052 of 2007, under Section 3(1) of the Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986, police station Mohammadabad, district Ghazipur for enhancement of sentence awarded to the appellant.

3- One Piyush Kumar Rai, son of late Krishna Nand Rai (one of the deceased) of case crime No. 589 of 2005, under Sections 147, 148, 149, 302, 404, 120-B IPC and 7 Criminal Law

Amendment Act, police station Bhawarkol, district Ghazipur has also filed Criminal Revision No. 3535 of 2023 Under Section 397/401 Cr.P.C. against the aforesaid judgement and order dated 29.04.2023 for enhancement of sentence awarded to the appellant.

4- After the conviction of the appellant by the Trial Court, when this appeal (Criminal Appeal No. 5295 of 2023) was filed, a Coordinate Bench of this Court vide order dated 24.07.2023 has suspended the sentence of the appellant and he was directed to be released on bail, but prayer to stay the conviction of the appellant was rejected.

5- The State of U.P. did not challenge the above order dated 24.07.2023, whereby this Court while suspending the sentence, granted bail to the appellant before the Hon'ble Supreme Court, but the appellant being aggrieved and dissatisfied with the part of above order of this Court dated 24.07.2023 refusing to stay the conviction of the appellant, has filed Criminal Appeal No. 3838 of 2023 before the Hon'ble Supreme Court, which has been disposed of suspending the conviction of the appellant vide order dated 14.12.2023 **[Afjal Ansari Vs. State of Uttar Pradesh, (2024)2 SCC 187]** with certain directions, which are as under:-

> *"24. We, thus, deem it appropriate to partially allow this appeal and suspend the conviction awarded to the Appellant in Special Sessions Trial No. 980/2012 subject to the following conditions, clarifications and directions:*
>
> *i. The Ghazipur Parliamentary Constituency shall not be notified for bye-election, in terms of Section 151 of the RPA, till the decision of the Appellant's criminal appeal by the High Court;*

ii. The Appellant shall, however, not be entitled to participate in the proceedings of the House. He shall also not have the right to cast his vote in the House or to draw any perks or monetary benefits;

iii. The continuance of MP led welfare schemes in the Ghazipur Parliamentary Constituency without the Appellant being associated for the release of grants for such schemes, is not an irrevocable consequence as all such Schemes can be given effect, even in the absence of the local parliamentary representative;

iv. The Appellant shall not be disqualified to contest future election(s) during the pendency of his criminal appeal before the High Court and if he is elected, such election will be subject to outcome of the First Criminal Appeal; and

v. The High Court shall make an endeavour to decide the Appellant's criminal appeal expeditiously and before 30.06.2024."

6- Thereafter, on being nominated by Hon'ble the Chief Justice, this Criminal appeal along with above mentioned connected matters was placed before this Bench for hearing.

Brief facts

7- The facts that formed the bedrock of the present Criminal Appeal No. 5295 of 2023 are that a first information report was got lodged by Shri Ram Darash Yadav, the then Inspector, police station Kotwali, Mohammadabad, district Ghazipur alleging inter-alia that on 19.11.2007 he along with Constable Amit Kumar Rai, Ramashray Yadav, Akhilesh Yadav left the police station at about 09.30 hours by Government Jeep No. UP61B 2408 for patrolling and in search of wanted criminal. During patrolling, he came to

know that in town Mohammadabad Yusufpur one notorious criminal Mukhtar Ansari, son of Subhan Ullah Ansari, resident of Mohammadabad Yusufpur, police station Mohammadabad, district Ghazipur is running an illegal gang of Mafias, who individually or collectively with the assistance of members of the gang, for the material and monetary benefit, are indulged in murder, loot, abduction, extortion and other serious offences, whereby they amassed and are acquiring immense wealth. The gang is being run by Mukhtar Ansari himself from jail by issuing orders. He has a long criminal history and due to his terror, nobody could muster courage to lodge FIR or to depose either against him or against members of his gang. Recently on 29.11.2005 at about 2:45 PM, they have committed the murder of Krishna Nand Rai, MLA Mohammadabad, for their political benefit as a result thereof, law and orders were disturbed. Report of the murder of Krishna Nand Rai was lodged by the informant Ram Narayan, which was registered at case crime No. 589 of 2005, under Sections 147, 148, 149, 302, 404, 120-B IPC and 7 Criminal Law Amendment Act, police station Bhawarkol, district Ghazipur against Mukhtar Ansari, Afjal Ansari, Aejazul Haq, Munna Bajrangi alias Prem Prakash Singh, Ataur Rehman @ Babu, Firdaus alias Javed, in which after culmination of investigation, charge sheet Nos. 06 of 2006 dated 21.02.2006 and 06A of 2006 dated 15.03.2006 were submitted. Similarly, on 22.1.1997 at about 17:45 PM one Nand Kishore Rugta alias Nandu Babu was abducted in a Maruti car by four persons. The report of the said case was got registered by Mahavir Prasad Rugta against some unknown persons including Vijay Singh. During investigation by C.B.I., the name of Mukhtar Ansari,

Shahabuddin, Ataur Rehman @ Babu, Barvindar, Gurmeet Singh, Jasveer Singh, Laxmi Yadav and Jitendra surfaced and charge sheet has been submitted in the said case crime No. 19/1997 under Section 364A, 365 IPC (converted under Section 364A, 365, 302,120B,34 IPC), Police Station, Bhelu Pur District Varanasi. Taking cognizance of said cases, the gang chart has been approved by the District Magistrate, Ghazipur on 19.11.2007 qua Mukhtar Ansari, Afjal Ansari and Aejazul Haq with the allegation that they with the help of their associates for pecuniary, material, political and temporal gain, committed offence under chapter XVI, XVII and XXII of IPC, therefore, it is necessary to lodge FIR against them under Section 3(1) of the Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986.

8- On the basis of the aforesaid first information report dated 19.11.2007, three cases being case crime No. 1051 of 2007 against Mukhtar Ansari, case crime No. 1052 of 2007 against Afjal Ansari (appellant) and case crime No. 1053 of 2007 against Aejaz alias Aejazul Haq under Section 3(1) of the Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986 were separately registered at police station Mohammadabad, district Ghazipur. Charge sheet was also separately filed against each of them and they have also been tried separately. Details of the same are as under:-

(i) Special Session Trial No. 90 of 2012 arising out of case crime No. 1051 of 2007 against Mukhtar Ansari, in which vide judgment and order dated 29.04.2023 of the trial Court, he was convicted and sentenced under Section 3(1) of the Uttar Pradesh

Gangsters and Anti Social Activities (Prevention) Act, 1986 to ten years, against which he preferred Criminal Appeal no. 6029 of 2023 before the High Court, but during pendency of said Criminal Appeal, Mukhtar Ansari died on 28.03.2024.

(ii) Special Session Trial No. 980 of 2012 arising out of case crime No. 1052 of 2007 against Afjal Ansari (appellant), in which vide judgment and order dated 29.04.2023 of the trial Court, he has been convicted and sentenced under Section 3(1) of the Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986 to four years' simple imprisonment against which he preferred present Criminal Appeal No. 5295 of 2023.

(iii) Special Session Trial No. 8 of 2012 arising out of case crime No. 1053 of 2007 against Aejaz alias Aejazul Haq, but he also died during pendency of his trial.

9- In the gang chart prepared against the appellant-Afjal Ansari, only one case being Case Crime No. 589 of 2005, under Sections 147, 148, 149, 302, 307, 404, 120-B IPC and 7 Criminal Law Amendment Act, police station Bhawarkol, district Ghazipur has been cited.

10- In the present case arising out of case crime No. 1052 of 2007, under Section 3(1) of the Gangsters Act, after culmination of investigation, the charge sheet No. 100/2010 dated 02.09.2010 was filed against the appellant-Afjal Ansari, on which the learned Special Judge, Gangsters Act, Varanasi took cognizance of offence on 15.9.2010.

11- After twelve years from the date of taking cognizance, on 23.9.2022 charges were framed against appellant-Afjal Ansari.

12- In order to prove its case beyond the hilt, the prosecution has examined as many as following seven witnesses :-

PW-1, Shri Ram Darash Yadav,

PW-2, Shri Surya Prakash Yadav,

PW-3, Head Constable Ram Dular Yadav,

PW-4, Shri Narendra Pratap Singh,

PW-5, Om Prakash Singh,

PW-6, Ram Narayan Rai

PW-7, Om Prakash Singh.

13- Out of the aforesaid prosecution witnesses, only PW-6, Ram Narayan Rai has been examined as a witness of fact to prove that the appellant is a Gangster and is member of a gang of Mukhtar Ansari. Rest of the witnesses are formal one. It would also be worthwhile to refer the statement of prosecution witnesses.

14- PW-1, Ram Darash Yadav in his examination-in-chief, which was recorded on 12.1.2023, has stated that on 19.11.2007 he was posted as Inspector of police station Kotwali, Mohammadabad, Ghazipur. On that date while he was on patrolling and in search of criminal, he got information from the people that there is a gang of Mukhtar Ansari, which is involved in anti-social activities and criminal activities, like murder and extortion etc. for his political benefit. Due to the aforesaid act of the gang, there is an atmosphere of fear and terror in the vicinity as a result thereof people do not report the matter in the police station or depose against them. On the aforesaid

information and keeping in view the past criminal history, gang chart was prepared and was got approved by the higher authorities on 19.11.2007 at 22:30 hours and thereafter three separate cases were registered against Mukhtar Ansari, Afjal Ansari and Aejaz alias Aejazul Haq at case crime No. 1051 of 2007, 1052 of 2007 and 1053 of 2007 respectively under Section 3(1) of the Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986.

15- He further deposed that as per gang chart, Afjal Ansari is named in the murder case of Krishna Nand Rai along with Mukhtar Ansari, Aejaz alias Aejazul Haq and Munna Bajrangi alias Prem Prakash in case crime No. 589 of 2005, under Sections 147, 148, 149, 302, 504, 120-B IPC and Section 7 Criminal Law Amendment Act.

16- He also deposed that when the aforesaid incident was occurred, he was posted in the Narcotic Cell of CBCID Headquarters, Lucknow as Inspector. In Ghazipur, he was posted on 08.07.2007 as In-charge Inspector, Mohammadabad. During patrolling of his area, there was general discussion among the public about the atmosphere of fear and terror, which persists for about 3-4 months, thereafter gradually the atmosphere became normal.

17- This witness further deposed in his examination-in-chief that as per his knowledge, the leader of the gang was Mukhtar Ansari, who was having a criminal history of 32 cases. Against the present appellant Afjal Ansari, who was a member of the gang, there is only one case being case crime No. 589 of 2005. Against Aejazul Haq also there is only one case.

18- He has also proved his first information report, which is available on record at paper No. 102B/3 and 102B/4, the original copies whereof are available in SST No. 90 of 2012. He also proved the certified copies and marked as Ext. Ka-1. He also deposed that on the basis of one first information report, three cases have been registered, in which after investigation, separate charge sheet has been submitted.

19- This witness also proved his signature on the certified copy of the gang chart. He also deposed that original copy of the gang chart is available in SST No. 90 of 2012. He also deposed that first information report is in his writing and he put his signature thereon and proved his signature, which has been marked as Ext. Ka-2.

20- There is signature of Ritu Maheshwari, the then District Magistrate on the gang chart. This witness has also stated that as per his knowledge, the modus operandi and purpose of this gang was to gain political, economic and social benefit. His statement under Section 161 Cr.P.C. was also recorded by the investigating officer during investigation.

21- PW-2, Inspector Surya Prakash Yadav, son of Ram Navmi Yadav, in his examination-in-chief, which was recorded on 19.1.2023, has stated that on 16.04.2008, he was posted at police station Bhawarkol as Station House Officer. Case Crime Nos. 1051 of 2007, 1052 of 2007 and 1053 of 2007, under Section 3(1) of the Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986 were registered at police station Mohammadabad, district Ghazipur, which were initially investigated by Ram Swaroop Verma. On 16.04.2007, he has

also gone through the earlier papers written by the previous investigating officer and recorded the statement of writer of the FIR Ram Dular Yadav, writer of FIR of case crime No. 589 of 2005, Head Muharrir Om Prakash Singh and investigating officer Shri Om Prakash Singh of case crime No. 589 of 2005, under Sections 147, 148, 149, 302, 307 and 120-B IPC as well as the complainant of that case Ram Narayan Rai in the case diary. Thereafter, he was transferred and investigation was done by Paltu Ram, S.O. Bhawarkol.

22- PW-3, Head Constable Ram Dular Yadav, in his examination-in-chief dated 19.1.2023, has deposed that on 19.11.2007, he was posted at police station Mohammadabad as Constable-Muharrir. On that date, on the basis of written information of In-charge Inspector Ram Darash Yadav, he lodged cases at case crime No. 1051 of 2007, 1052 of 2007 and 1053 of 2007, under Section 3(1) of the Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986 at police station Mohammadabad, district Ghazipur against Mukhtar Ansari, Afjal Ansari and Aejazul Haq respectively. He has also proved the copy of Chik FIR at paper Nos. 102B/1 and 102B/2, the original whereof is available in the record of Session Trial No. 90 of 2012. He has proved his writing and signature on the original copy of the FIR by stating that original copy of FIR is in my writing and signature. After matching the photocopy of the FIR with the original one, he also certified it, which has been marked as Ext. Ka-3. He has also proved GD No. 34 of 22:30 O'clock, the certified copy whereof is paper No. 6A, carbon copy of the same is available in Session Trial No. 90 of 2012.

23- He also deposed that GD has been destroyed as per rule and the copy of the report thereof has been proved by him and marked as Ext. Ka-4. Copy of GD has been marked as Ext. Ka-5. His statement was also recorded by the investigating officer.

24- PW-4, Narendra Pratap Singh, son of late Gareeb Das Singh presently posted as Superintendent of Police (Legal), Headquarters Director General of Police, Lucknow, in his examination-in-chief dated 25.01.2023, deposed that in the year 2006, he was posted as Station House Officer, Kasimabad, Ghazipur. He investigated case crime No. 589 of 2005, under Sections 147, 148, 149, 307, 302, 404, 120-B IPC and 7 Criminal Law Amendment Act, police station Bhawarkol, district Ghazipur, which was related to the murder of the then M.L.A Krishna Nand Rai and six others.

25- He further deposed that he filed the charge sheet against three persons. Second charge sheet was filed against Aejazul Haq, Afjal Ansari and Mukhtar Ansari. He proved the charge sheet filed against Afjal Ansari and Aejazul Haq, which was marked as Ext. Ka-6. This case was mentioned in the gang chart and concerned investigating officer has recorded his statement.

26- PW-5, Om Prakash Singh, retired Inspector, son of Jeet Bahadur Singh, in his examination-in-chief dated 25.01.2023, deposed that in the year 2005, he was posted as In-charge Inspector of police station Bhawarkol. He had initially investigated case crime No. 589 of 2005 (State Vs. Mukhtar Ansari and others), under Sections 302, 147, 148, 149, 120-B IPC, police station Bhawarkol, district Ghazipur, in which Afjal Ansari was also accused.

27- He further deposed that during initial investigation he filled two papers for investigation, but on the same day, he was suspended. Thereafter, the investigation of the case was transferred to SI Kasimabad. In this incident the then MLA and 6-7 other persons have been assassinated. There was anguish in the public over this incident and law and order situation was badly disturbed. After his removal from the investigation, he does not have any information about the investigation. During his suspension period, he was transferred to Ballia. His statement was also recorded by the investigating officer.

28- PW-6, Ram Narayan Rai, son of late Jagannath Rai, in his examination-in-chief, which was recorded on 04.02.2023, deposed that he has come to depose in the case related to Gangsters Act. This case has been registered for the criminal conspiracy in the murder case of his brother Krishna Nand Rai, who was murdered on 29.11.2005. When Krishna Nand Rai was assassinated, he was with him. In the murder of his brother, 6-7 persons were involved. Munna Bajrangi and Jeeva etc. were involved. Murder was committed at 2:45 PM in village Basniya and the persons who committed the murder was armed with heavy weapons. After this incident, there was an atmosphere of fear among the people.

29- This witness further deposed that as per his knowledge, Afjal Ansari was conspirator. Afjal Ansari and Mukhtar Ansari etc. were having a gang consisting of 50-60 persons. He also stated that leader of the gang is Afjal Ansari against whom 5-6 cases are registered. In addition thereto about 50-60 cases are registered against Mukhtar Ansari. The main aim of this gang is

to murder people and to grab the land by putting the people in fear. In the murder case of his brother Krishna Nand Rai, six people were also assassinated. An atmosphere of fear continued for five-six months after this incident.

30- He also deposed that in the murder case of his brother accused were acquitted. He cannot say why accused were acquitted in that case. He got the case registered at police station Bhawarkol relating to murder case of his brother. His statement was also recorded by the investigating officer.

31- After the statement of PW-6, Ram Narayan, on an application under Section 311 Cr.P.C., PW-2, Inspector Surya Prakash Yadav, son of Ram Navmi Yadav was recalled for cross-examination. He, in his cross-examination dated 14.02.2023 deposed that the statement given by the informant Ram Narayan Rai in paragraph No. 3 of his examination-in-chief that " *as per his knowledge, Afjal Ansari was conspirator. Afjal Ansari and Mukhtar Ansari were have a gang having 50-60 persons. He also stated that leader of the gang is Afjal Ansari against whom 5-6 cases are registered. In addition thereto about 50-60 cases are registered against Mukhtar Ansari. The main object of this gang is to murder the person and to grab the land by putting the people in fear"* has not been told to him, but he has only stated that accused persons are vicious criminals, who have a gang.

32- PW-7, SI Om Prakash Singh, son of Daya Shanker Singh, in his examination-in-chief dated 04.02.2023, deposed that on 29.11.2005, he was posted at police station Bhawarkol as Head Muharrir. On that date, on the written information of Ram Narayan Rai he has registered a case at case crime No. 589 of

2005, under Sections 147, 148, 149, 302, 307, 120-B and 404 IPC and 7 Criminal Law Amendment Act against Munna Bajrangi, Mukhtar Ansari, Afjal Ansari, Aejazul Haq. He proved the photocopy of the Chik FIR and marked it as Ext. Ka-7.

33- This witness further deposed that the investigation of the case was conducted by SO Paltu Ram and SHO of Bhawarkol Daya Shanker Pandey. The charge sheet was filed by Daya Shanker Pandey in the year 2010. When he was posted at police station Bhawarkol, district Ghazipur, he was familiar with his writing and signature. He verified the writing and signature of Daya Shanker Pandey. As such he proved the charge sheet, which was marked as Ext. Ka-8.

34- SO Paltu Ram and SHO Bhawarkol Daya Shanker Pandey have died and their death reports are on record.

35- After the closure of prosecution evidence, the statement of the accused, Afjal Ansari, son of late Subhanullah Ansari under Section 313 Cr.P.C. was recorded in question-answer form, translated version whereof are reproduced herein-under:

> Question No. 1: As per prosecution, you have a gang, of which your are a leader. What do you have to say in this regard?
>
> Answer: Statement of the prosecution is absolutely wrong. Neither have I any gang nor am I a member of any gang.
>
> Question No. 2: The prosecution has stated that you along with other members have formed an organized gang for their economic and material gain, who are in the habit of committing offence mentioned under Chapter 16, 17 and

22 IPC. What do you want to say in this regard?

Answer: The statement of the prosecution is completely false and baseless.

Question No. 3: In the gang chart related to this case, a case has been registered against you, being case crime No. 589 of 2005, under Sections 302, 307, 147, 148, 149, 120-B IPC and 7 Criminal Law Amendment Act. What do you have to say in this regard?

Answer: The complainant of that case Ram Narayan Rai, due to political reason, has made allegation of criminal conspiracy against me. The trial of that case was conducted by the Special CBI Court/MP/MLA in New Delhi, in which he has been acquitted. He had nothing to do with that incident. The certified copy of order of the Court has been produced before the Court.

Question No. 4: Where were you at the time of death of Krishna Nand Rai, the deceased of case crime No. 589 of 2005, under Sections 302, 307, 147, 148, 149, 120B IPC and Section 7 Criminal Law Amendment Act, PS Bhawarkol, district Ghazipur?

Answer: On the date of alleged incident, I was in Delhi and was attending the Lok Sabha Session, which was going on that day. As per the report of the complainant, role of hatching conspiracy has been attributed to me and as per prosecution story I have hatched conspiracy before the incident on 25th October, 2005 in Ghazipur Court, whereas the fact is that on 24th and 25th of October, I was in

Lucknow and on 26th October, I met His Excellency the President of India along with a delegation in Delhi, which clearly goes to show that on 25th October, 2005 I cannot hatched any conspiracy in Ghazipur.

Question No. 5: Apart from you, the names of 06 other accused persons are mentioned in the gang chart. What do you want to say in this regard?

Answer: In respect of incident, which took place on 29th November, 2005, the persons, who have been made accused and charge sheeted, and whose names also find place in the gang chart, he has also been made co-accused in the said gang chart. In that case judgment of the Court has come. He does not have any other criminal history with other people named in gang chart. Out of the persons whose names are mentioned in the gang chart, Aejazul Haq, who is my brother-in-law is 90% disabled, Mukhtar Ansari is my younger brother and rest are not known to him.

Question No. 6: According to the prosecution, your alleged gang has been assigned number IS 191. What do you want to say in this regard?

Answer: During the entire trial, no such fact has come on record that I am a member of any IS 191 gang. I am not aware of any such fact.

Question No. 7: What do you want to say in respect of evidence of PW-1 Shri Ram Darash Yadav.

Answer: As a complainant of this case, Shri Ram Darash

Yadav under the influence of his higher officers, has lodged the FIR against me on false and baseless allegation only on hearsay and on the basis of previously registered case crime No. 589 of 2005.

Question No. 8: What do you want to say in respect of FIR (Ext. Ka-1) and Gang Chart (Ext- Ka-2), proved by PW-1.

Answer: In this regard I had raised an objection at that stage that on the basis of one first information report, three cases have been registered against three different persons and separate charge sheet has been filed. There is only one FIR, which bears the signature of the complainant. The gang chart, which has been prepared for this case is also only one, which bears the signature of the complainant and as per convenience two cases have been registered after getting it photocopied, which is against the rule. The gang chart was also forwarded and approved on the same day by all the officers, for which no plausible reason has been tendered, which is also against the rule. The gang chart was also prepared wrongly under the pressure of the higher officers.

Question No. 9: What do you have to say regarding the evidence of PW-2 Surya Prakash Yadav?

Answer: In the capacity of investigating officer, Shri Surya Prakash Yadav has not investigated the case fairly. The investigation has been conducted in an arbitrary manner.

Question No. 10: PW-3 HC Shri Ram Dular Yadav has proved the first information report and GD etc. What do

you want to say?

Answer: The case has been registered ante-timed at the behest of higher officers.

Question No. 11: What do you have to say in respect of evidence of PW-4, Shri Narendra Pratap Singh?

Answer: There is nothing to say in this regard.

Question No. 12: What do you want to say in respect of evidence of PW-5 Om Prakash Singh?

Answer: I have nothing to say as he has not given any evidence against me.

Question No. 13: It has been alleged by PW-6, Ram Narayan Rai that you have been a conspirator in the murder of his brother. What do you have to say in this regard?

Answer: The allegations are absolutely false and has been levelled due to political malice.

Question No. 14: PW-7 SI Om Prakash Singh has proved Ext. Ka-7 and Ka-8. What do you have to say in this regard?

Answer: Since, he has not given any evidence against me, therefore, I have nothing to say.

Question No. 15: Do you want to say anything more?

Answer: I will file my brief written statement.

Question No. 16: Do you want to give defence evidence.

Answer: Yes

36- After the statement of the accused-Afjal Ansari under Section 313 Cr.P.C. is over, in support of his case, the accused-appellant has also produced following three defence witnesses.

DW-1, retired Honorary Captain Heera Lal Singh Yadav,

DW-2, Shanker Dayal Rai

DW-3 Baliram Patel.

37- DW-1, retired Honorary Captain Heera Lal Singh Yadav, son of Shri Ramjas Yadav in his examination-in-chief dated 21.2.2023 has deposed that his residence falls within the constituency of Ballia and Shri Afjal Ansari is Member of Parliament from Ghazipur. He knows Afjal Ansari since 2001. After his retirement from army, he is doing agriculture, animal husbandry as well social work. On account of social work, he used to come and go to the public representatives. Popularity of Afjal Ansari was not only confined to Ghazipur, but in whole of eastern region. His reputation and his working is very good. He does not discriminate amongst the public.

38- There are certain political opponent of Afjal Ansari and in spite of his opposition, his reputation is good. His Ancestor late Usman Ali was in the Indian Army and he was martyred. Ghazipur is known for its Army. Family of Afjal Ansari is also having history and with confidence I can say that neither he has any gang nor a member thereof.

39- Grand father of Afjal Ansari late Mukhtar Ahmad Ansari also participated in the freedom movement and Afjal Ansari also

has great respect for the work done by his ancestor. Afjal Ansari also helps poor, downtrodden and neglected people as per their demand.

40- DW-2, Shanker Dayal Rai, son of late Vashishth Narain Rai in his examination-in-chief, which was recorded on 23.2.2023 has deposed that he had been a teacher in Mohammadabad Inter College and retired from the said school as Principal in the year 2014. Thereafter, he started agriculture and social work. He knows Afjal Ansari for the last about 40 years. He is very popular for his public service and public welfare. His reputation in the society is to help the poor and downtrodden.

41- He further deposed that his residence comes within the constituency of Mohammadabad. Due to his popularity, Afjal Ansari was the Member of Legislative Assembly for five consecutive terms and at present he is Member of Parliament from Ghazipur constituency. Prior to this from 2004-2009 also he was elected member from Ghazipur constituency. He is a member of reputed Ansari's family. His ancestor has also sacrificed for the freedom movement. In the society, his reputation is of a popular public representative. He has neither any illegal gang in society nor he has been a member of any such gang. He does not ready to do any illegal work at anyone’s request and also refused to do such work. He has firm belief in the Constitution of India.

42- This witness also deposed that although the unsuccessful and depressed political opponent used to make false accusation against him, but they did not get success in it and no aspersion is cast on the reputation of Afjal Ansari and he gets full public

support.

43- DW-3, Shri Baliram Patel, son of Kishun Patel, in his examination-in-chief, which was recorded on 23.2.2023 has deposed that he had been Gram Pradhan for two terms, his wife and uncle were also Gram Pradhan. His family hold the post of Gram Pradhan for four terms. He does agricultural and animal husbandry work. In addition thereto he also has interest in social work. He knows Afjal Ansari for the last 40 years. Afjal Ansari belongs to a reputed family and he also helps the poor for which he is very popular in the society.

44- He further deposed that due to his popularity, he was elected Member of Legislative Assembly for the five terms and Member of Parliament for two terms. At present, he is Member of Parliament from Ghazipur constituency. He is a symbol of communal harmony. His door is always open for the poor, downtrodden and neglected section of the society and he helps every one. A fist of person advertise against him for their political gain, but the general public are in his support. Due to his work and reputation in the society, he is very popular and has good hold in the society.

45- This witness also deposed that Afjal Ansari is neither having any illegal gang nor is a member of any gang. He always opposed the persons indulged in illegal activities.

46- Learned Additional Sessions Judge/Special Judge, M.P./M.L.A Court, Ghazipur after having heard the learned counsel for the parties and scrutinizing the evidence, convicted and sentenced the accused-appellant as mentioned in paragraph No.1. Hence the aforesaid two Criminal Appeals and one Criminal

Revision have been preferred. They are being dealt with and decided together. Firstly this Court proceeds to deal Criminal Appeal No. 5295 of 2024.

Submissions on behalf of the appellant in Appeal

47- Shri Gopal Swaroop Chaturvedi, learned Senior Counsel appearing on behalf of the appellant has placed the following submissions:

47.1- Armed with the decision of Hon'ble Supreme Court in the case of **Farhana Vs. State of U.P. and others** 2024 SCC OnLine SC 159, Shri Chaturvedi submits that if the single base case on the basis whereof, the Gangsters Act has been imposed, has ended in acquittal, the case under the Gangsters Act cannot be sustained, hence impugned judgment and order of conviction and sentence of Appellant-Afjal Ansari is liable to be set-aside.

47.2- Relying upon the judgment of the Hon'ble Apex Court in the case of **Sangeetaben Mahendrabhai Patel Vs. State of Gujarat and another** (2012) 7 SCC 621 and **Ashwani Kumar @ Ashu & another Vs. State of Punjab** (2015) 6 SCC 308, it is next submitted that findings of acquittal recorded in favour of the appellant-Afjal Ansari by the Trial Court at Delhi while acquitting him by judgment and order dated dated 03.07.2019 in base case being FIR No. 46/2005 dated 29.11.2005 (case crime No. 589 of 2005) would constitute as estoppel against the prosecution in the present case, hence the same cannot be doubted taking any adverse inference that acquittal was undeserved or unwarranted.

47.3- Relying upon the judgment of the Hon'ble Apex Court in

the case of **Kharkan and others Vs. State of U.P.** (1965) AIR (SC) 83, it is submitted that in view of provisions of Section 40 to 43 of Evidence Act, whatever observations regarding the witnesses being hostile have been made by the trial Court in the judgment and order of acquittal dated 03.07.2019 of the appellant in base case, are not admissible in the present case for the purpose of relying upon the appreciation of the evidence. The said judgment is admissible only to show the parties and the decision.

47.4- The evidence cannot be led to rebut a finding recorded between the same party in previous trial.

47.5- PW-6 Ram Narayan Rai is the only witness of fact of this case and he is also informant /complainant of base case crime No. 589 of 2005 claiming himself to be one of the eye witnesses of the incident dated 29.11.2005 and was examined as PW-35 in that case, but presence of Ram Narayan Rai on the spot in the incident dated 29.11.2005 of base case, has been disbelieved by the Trial Court at Delhi, therefore he is wholly unreliable witness and his testimony cannot be taken into consideration in the present case.

47.6- It is also pointed out that each and every ingredients of offence under Section 3(1) of the Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986 are lacking in the statement under Section 161 Cr.P.C. of PW-6.

47.7- Referring to the judgment of the Hon'ble Apex Court in the case of **Tahsildar Singh Vs. State of U.P.** (1959) AIR (SC) 1012, it is submitted that there are several omissions in the statement under Section 161 Cr.P.C. of PW-6, which amounts to

material contradictions and will hit by Section 162 Cr.P.C. Mr. Chaturvedi in order to strengthen his submission, while referring the para 3 and 6 to 11 of the statement of Ram Narayan Rai (PW-6) further submitted that the omissions are with regard to existence of gang of the appellant-Afjal Ansari as well as object and antisocial activities of his gang.

47.8- Mr. G.S. Chaturvedi, summarizing his submissions, further argued that PW-6 Ram Narayan Rai in his statement under Section 161 Cr.P.C. has not disclosed the material ingredients of gang, gangster and act of extortion, etc. relating to appellant-Afjal Ansari, hence the material ingredients to constitute an offence punishable under Section 3(1) of the Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986 are lacking in the present case. The facts which have been stated by the prosecution witnesses for the first time before the trial Court can neither be relied upon nor can form the basis for conviction of the appellant.

47.9- The testimony of PW-4, 5 and 7 are not relevant with regard to offence under the Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act.

47.10- Referring the statement of defence witnesses, it is submitted that they have given the evidence of good character of the appellant under Section 53 of the Indian Evidence Act, which has not been rebutted by the prosecution in accordance with Section 54 of the Indian Evidence Act.

47.11- There are ample animosity between the family of PW-6 and family of appellant-Afjal Ansari, who is a social worker and politician, therefore he has been falsely implicated in this case

because he happens to be brother of Mukhtar Ansari.

47.12- Mr. Chaturvedi, also submits that case of present appellant Afjal Ansari is distinguishable from that of Mukhtar Ansari, who was not tried along with the appellant and no material evidence against Mukhtar Ansari was brought on record by the prosecution in the trial of the appellant, hence the criminal history of Mukhtar Ansari cannot be made basis of conviction of the appellant.

48- On the basis of above submissions, Mr. Chaturvedi implored the Court to set aside the impugned judgment and order of conviction of the appellant.

49- Stretching the submissions, Mr Daya Shanker Mishra, learned Senior Counsel, who also appears on behalf of the appellant-Afjal Ansari, argued that :-

49.1- PW-1 Ram Darash Yadav, the then Inspector, police station Mohammadabad, district Ghazipur who lodged F.I.R. has not disclosed that who had given information to him regarding the gang of Mukhtar Ansari and anti-social activities as well as heinous crimes being committed by the said gang. In cross-examination he has stated that at present, he does not know that place of Mohammadabad police station area, where people had told him about Mukhtar Ansari's gang. He does not remember the name and address of the people at this time who told him about the gang and it's activities. PW-1 further admitted that in F.I.R. and in the statement under Section 161 Cr.P.C. of PW-1, it is not mentioned that Afjal Ansari is member of gang of Mukhtar Ansari. For the first time PW-1 before the trial Court has stated that Afjal Ansari was member of Mukhtar Ansari's gang,

which is an omission and amounts to contradiction.

49.2- PW-1 in his cross-examination has stated that since July 2007 to January 2009, he was posted as in-charge Inspector, at police station, Mohammadabad, District Ghazipur and during his posting in police station Mohammadabad, no one had made any oral or written complaint against Afjal Ansari regarding any criminal act and no facts came to light against Afjal Ansari in relation to the offences committed under chapter 16, 17 and 22 of IPC.

49.3- F.I.R. was registered by PW-1 on hearsay basis and on the basis of one case only, which is not sustainable.

49.4- Much emphasis has been given by stating that name of seven persons were mentioned in the gang-chart dated 19.11.2007, but on the instruction of higher officers, the inspector, police station Kotwali, Mohammadabad/PW-1 submitted proposal for taking action under the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act only against three persons namely Mukhtar Ansari, Afjal Ansari (appellant) and Aejaz alias Aejazul-Haq. The said gang chart was further forwarded to District Magistrate through circle officer and Additional Superintendent of Police concerned with their recommendations for approval against above three persons only, on which District Magistrate illegally granted approval for taking action against three persons namely Mukhtar Ansari, Afjal Ansari (appellant) and Aejaz alias Aejazul Haq on the same day without recording any reason, which indicates his non application of mind.

49.5- PW-2 Surya Prakash Yadav who is second investigating

officer of this case has also deposed in his cross-examination that during investigation, no complaint of any kind against Afjal Ansari came to his notice, which could prove that accused Afjal Ansari had committed or was involved in crimes mentioned in chapter XVI, XVII and XXII of IPC.

49.6- In the base case being case crime No. 589 of 2005, appellant has been acquitted, in which it was not found that appellant-Afjal Ansari was gangster and the said incident was done by any gang.

49.7- During the trial, prosecution could not bring any material on record to satisfy the ingredients of charge dated 23.09.2022 framed against the appellant for the offence under Section 3 (1) of Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986.

49.8- The appellant has been Member of Legislative Assembly (hereinafter referred to as the "MLA") from Mohammadabad Constituency, District Ghazipur five times since 1985 and twice Member of Parliament from Ghazipur Constituency. He has also won the "Parliamentary Election 2024" from Mohammadabad Constituency, District Ghazipur and has been administered oath of Member of Parliament on 01 July 2024.

49.9- The prosecution could not bring any material on record against the appellant to establish that appellant has earned/gained any movable or immovable property out of antisocial activities as provided under Section 2(b) of the Gangsters Act.

49.10- In summation, Mr. Mishra, relying upon the Full Bench

judgment of this Court in the case of **Ashok Kumar Dixit Vs State of U.P. AIR 1987 All 235** and another recent judgment of this Court in the matter of **Pappu alias Dhani Ram Vs State of U.P. 2024 0 Supreme (All) 258**, it is submitted that the proceedings under Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986 has been illegally invoked against the appellant at the behest of the then ruling party due to political rivalry to settle political score, whereas by no stretch of imagination, the appellant can be said to be a Gangster or a member of any Gang. The prosecution could not prove its case beyond reasonable doubt rather prosecution witnesses have given evidence in favour of appellant, even then trial Court has illegally convicted and sentence the appellant by the impugned judgement and order dated 29.4.2023, which is liable to be set aside.

49.11- No other point has been raised on behalf of the appellant.

Submissions on behalf of the State and victim.

50- Mr. P.C. Srivastava, learned Additional Advocate General, assisted by Mr. J.K.Upadhyay, learned Additional Government Advocate for the State argued that:-

50.1- Mukhtar Ansari was the gang leader and a gangster having long criminal history. At the time of incident dated 29.11.2005, he was having criminal history of 40 cases and was running a gang. The appellant was one of the gang member of Mukhtar Ansari's gang along with others.

50.2- The provisions of The Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986 have been invoked after

following due procedure provided at the relevant point of time.

50.3- The gang-chart of seven persons namely 1-Mukhtar Ansari, 2-Afjal Ansari, 3- Aejaz @ Aejazul Haq, 4-Munna Bajrangi alias Prem Prakash Singh, 5-Ataur Rehman @ Sikander @ Babu, 6-Firdaus alias Javed and 7-Shahbuddin was prepared by the Inspector of police station-Kotwali, Mohammadabad on the basis of information received by him, but recommendation for taking action under the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act 1986, was made only against three persons namely Mukhtar Ansari, Afjal Ansari (appellant) and Aejaz @ Aejazul Haq because at that time other three members of Mukhtar Ansari's gang mentioned above at serial No. 4, 5 and 7 were absconding and Firdaus alias Javed whose name was mentioned at serial No. 5 of the gang-chart had died. The gang chart was further forwarded by the authorities concerned with their recommendations to the District Magistrate, who finally approved the same.

50.4- The activity and criminal history of all the members of the gang who have faced trial under the Gangster Act will be seen. Criminal history of all the three persons, against whom District Magistrate granted approval for proceeding under the Gangster Act has been brought on record for the first time by the State before this Court by means of affidavits dated 22.05.2024 and 24.05.2024 mentioning that Mukhtar Ansari who died on 28.4.2024 was having criminal history of sixty five cases and Aejaz alias Aejazul Haq, who also died was having criminal history of two cases.

50.5- So far as the judgment of the Hon'ble Apex Court in the

case of **"Farhana (Supra)**" relied upon on behalf of the appellant is concerned, it is argued that the same is distinguishable on the facts of this case because in the said case sole F.I.R. registered against the appellants for the offences under chapter XVII IPC was quashed by the High Court by exercising the powers under Section 482 of Code of Criminal Procedure, 1973 which was not further challenged and had attained finality. Whereas in the present case, appellant-Afjal Ansari has been acquitted in base case crime No. 589 of 2005 by the trial Court because most of eye witnesses of the incident and other material prosecution witnesses turned hostile. Against the said judgment and order of acquittal of appellant-Afjal Ansari, Criminal Appeal No. 1178/2019 (Smt. Alka Rai Versus C.B.I. and others) has been preferred before the Delhi High Court which has been admitted on 15.10.2019 and direction has been issued for preparation of paper-book and listing of the appeal for hearing

50.6- The order of framing of charge dated 23.09.2022 was also challenged by the appellant in an Application under Section 482 Cr.P.C. No. 38478 of 2022 on the ground that appellant has been acquitted in base case crime No. 589 of 2005 relating to murder of late Krishna Nand Rai, the then MLA along with six others, therefore continuation of the proceedings under the Gangsters Act is an abuse of process of the Court, but the said application u/s 482 Cr.P.C was dismissed by the High Court vide order dated 06.01.2023 and the same was not further challenged before the Hon'ble Supreme Court.

50.7- Presence of Ram Narayan Rai on the spot in the incident

dated 29.11.2005 has been wrongly and illegally disbelieved by the trial Court in base case crime No. 589 of 2005 relying upon the statement of hostile prosecution witnesses PW-19, 21, 22, 23 and 26. The stand of Ram Narayan Rai as PW-6 in the present case and as PW-35 in base case crime No. 589 of 2005 is same. He is fully reliable witness, hence his testimony cannot be discarded.

50.8- The appellant-Afjal Ansari has been acquitted of charge of conspiracy because three witnesses namely PW-20 Nand Lal Rai, PW-21 Prem Chand Rai and PW-23 Ramesh Chand Rai also turned hostile.

50.9- It is also argued that "doctrine of precedent" is not applicable in the present case as the facts are entirely different.

50.10- Refuting the submissions of the learned counsel for the appellant, it is also submitted that in view of proviso to Section 33 of the Evidence Act, the principle of estoppel is not applicable as both the cases are not between the same parties. The trial of base case crime No. 589 of 2005 was held between the "C.B.I. versus Afjal Ansari and 12 others", whereas trial of this case has been held between the "State of U.P. versus Afjal Ansari.

50.11- So far as submission on behalf of appellant with regard to certain material omissions are concerned, Mr. P.C. Srivastava relying upon the judgment of the Hon'ble Apex Court in the matter of **Selvamani Versus The State Rep. by the Inspector of Police, 2024 SCC OnLine SC 873,** argued that PW-6 Ram Narain Rai in paragraph No. 7 of his statement has clearly stated that he had given such statement to Investigating Officer that Afjal Ansari and Mukhtar Ansari have a gang. If

Investigating Officer has not written this in his statement then he cannot give any reason for it. When Investigating officer was again summoned under Section 311 Cr.P.C. and confronted on 14.02.2023, he has stated inter alia that PW-6 had told him that the accused persons are vicious criminal, who have a gang, hence there is no material omissions with regard to existence of their gang and crime. It is also argued that other omissions are minor contradictions which are meaningless.

50.12- It is next argued that the contents of F.I.R. as a whole will be taken into consideration and not in isolation by picking some words from here and there. In the F.I.R. it is also mentioned that out of fear of members of illegal gang, any person from the society and the public does not have the courage to get a case registered against the gang members and give evidence in the Court. The said fact is corroborated from the facts of base case crime No. 589 of 2005, in which appellant has been acquitted by the judgment and order dated 03.07.2019 due to hostility of the eyewitnesses.

51- Mr. Sudist Kumar, learned Counsel appearing on behalf of victim also submits that:

51.1- The trial Court while acquitting the appellant and other co-accused in base case crime No. 589/2005 has also taken judicial notice of the facts by observing in last paragraph No. 943 of the judgment dated 03.07.2019 that "*the case in hand is another example of prosecution failing due to hostile witnesses. If the witnesses in this case had the benefit of Witness Protection Scheme, 2018 during trial, the result may have been different.*"

51.2- It is next submitted that since the said observations / judicial notice have not been challenged by the appellant and the same is still intact, therefore the judicial notice taken by the trial Court in base case crime No. 589/2005 is also liable to be considered by this Court in the present case.

51.3- Referring the judgment of this Court in the case of **Smt. Alka Rai and another versus Union of India and others** 2006 (5) ADJ 199 (DB), it is also submitted that when investigation of base case crime No. 589 of 2005 was transferred to C.B.I., at that time also the High Court had observed inter-alia that the Court cannot refrain from taking judicial notice that sometimes in such type of matters the police forces under the State cannot avoid biasness.

51.4- Mr. Sudist Kumar, placing reliance upon the judgment of the Hon'ble Apex Court in the case of **Harendra Rai versus State of Bihar and Others,** 2023 SCC OnLine SC 1023, contended that in the said case the trial Court as well as High Court acquitted the accused, but taking the judicial notice of special facts, the Hon'ble Supreme Court convicted the accused.

51.5- Lastly, it is submitted that the prosecution has proved its case beyond reasonable doubt, hence this Criminal appeal is liable to be dismissed.

52- Now this Court proceed to take note of submissions made on behalf of the State and victim in Government appeal No. 198 of 2024 and Criminal Revision No. 3535 of 2023 respectively, filed for enhancement of sentence awarded to accused Afjal Ansari.

Submissions on behalf of State and victim in Government Appeal and Criminal Revision

53- Mr. J.K Upadhyay, learned Additional Government Advocate for the state relying upon the judgement of Apex Court in the case of **Sumer Singh vs. Surajbhan Singh and Others**, (2014) 7 SCC 323 and **Suryakant Baburao Alias Ramrao Phad vs. State of Maharashtra and Others**, (2020) 17 SCC 518 submitted that although it is a matter of discretion of the trial court that how much sentence should be awarded to the accused, but aggravating circumstances like criminal history, gravity of offence, role assigned to accused and knowledge of offence as well as mitigating circumstances like mental or physical condition, age of accused at the time of offence are the relevant consideration to decide the quantum of sentence. It is submitted that the trial court has awarded inadequate sentence of four years to the appellant instead of awarding maximum sentence of ten years. Much emphasis has been given by contending that if MPs and MLAs who are law makers and are involved in such an act, should be given maximum punishment. Mr. Sudist Kumar, learned Counsel appearing in above Criminal Revision on behalf of revisionist-victim has borrowed the argument advanced on behalf of the State.

Submissions on behalf of accused Afjal Ansari in Government Appeal and Criminal Revision

54- On the other hand Mr. G.S.Chaturvedi, learned Senior Advocate appearing on behalf of the accused-Afjal Ansari refuting the submissions made on behalf of the State and victim submits that the judgements relied upon by the learned

Additional Government Advocate is not applicable to the facts of the present case and in view of the doctrine of proportionality the same are distinguishable on facts. The criminal history of Afjal Ansari cannot be taken into consideration for awarding sentence, which are only relevant factor for the purpose of considering bail application. The Hon'ble Supreme Court while suspending the conviction of Afjal Ansari vide order dated 14.12.2023 has discussed his criminal history in detail. There is no serious criminal history of Afjal Ansari. Only the serious offences and impact of alleged offences on the society can be taken into consideration.

55- Shri Chaturvedi, lastly submits that since Afjal Ansari stood acquitted in base case crime No. 589 of 2005 by the Judgment and order dated 03.07.1019 based upon authoritative material, therefore, he is entitled to be acquitted in the present case in the light of dictum and guideline laid down by the Hon'ble Supreme Court. Hence, there is no question of enhancement of sentence and Government appeal No. 198 of 2024 and Criminal Revision No. 3535 of 2023 are liable to be dismissed.

56- Before delving into the matter, it would be apposite to take note of the definition of Gang, Gangster as well as punishment under the Gangsters Act, which are as follow:-

56.1 "Gang" as provided under Section 2(b) of the Gangsters Act, read as under:-

> "Gang" means a group of persons, who acting either singly or collectively, by violence, or threat or show of violence, or intimidation, or coercion or otherwise with the object of disturbing public order or of

gaining any undue temporal, pecuniary, material or other advantage for himself or any other person, indulge in anti-social activities, namely :-

(i) offences punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code (Act No. 45 of 1860), or

(ii) distilling or manufacturing or storing or transporting or importing or exporting or selling or distributing any liquor, or intoxicating or dangerous drugs, or other intoxicants or narcotics or cultivating any plant, in contravention of any of the provisions of the U.P. Excise Act, 1910 (U.P. Act No. 4 of 1910), or the Narcotic Drugs and Psychotropic Substances Act, 1985 (Act No. 61 of 1985), or any other law for the time being in force, or

(iii) occupying or taking possession of immovable property otherwise than in accordance with law, or setting-up false claims for title or possession of immovable property whether in himself or any other person, or

(iv) preventing or attempting to prevent any public servant or any witness from discharging his lawful duties, or

(v) offences punishable under the Suppression of Immoral Traffic in Women and Girls Act, 1956 (Act No. 104 of 1956), or (vi) offences punishable under Section 3 of the Public Gambling Act, 1867 (Act No. 3 of 1867), or

(vii) preventing any person from offering bids in auction lawfully conducted, or tender, lawfully invited, by

or on behalf of any Government department, local body or public or private undertaking, for any lease or rights or supply of goods or work to be done, or

(viii) preventing or disturbing the smooth running by any person of his lawful business, profession, trade or employment or any other lawful activity connected therewith, or

(ix) offences punishable under Section 171-E of the Indian Penal Code (Act No. 45 of 1860), or in preventing or obstructing any public election being lawfully held, by physically preventing the voter from exercising his electoral rights, or

(x) inciting others to resort to violence to disturb communal harmony, or

(xi) creating panic, alarm or terror in public, or

(xii) terrorising or assaulting employees or owners or occupiers of public or private undertakings or factories and causing mischief in respect of their properties, or

(xiii) inducing or attempting to induce any person to go to foreign countries on false representation that any employment, trade or profession shall be provided to him in such foreign country, or

(xiv) kidnapping or abducting any person with intent to extort ransom, or

(xv) diverting or otherwise preventing any aircraft or public transport vehicle from following its scheduled course;

(xvi) offences punishable under the Regulation of

Money Lending Act, 1976;

(xvii) illegally transporting and/or smuggling of cattle and indulging in acts in contravention of the provisions in the Prevention of Cow Slaughter Act, 1955 and the Prevention of Cruelty to Animals Act, 1960;

(xviii) human trafficking for purposes of commercial exploitation, bonded labour, child labour, sexual exploitation, organ removing and trafficking, beggary and the like activities.

(xix) offences punishable under the Unlawful Activities (Prevention) Act, 1966;

(xx) printing, transporting and circulating of fake Indian currency notes;

(xxi) involving in production, sale and distribution of spurious drugs;

(xxii) involving in manufacture, sale and transportation of arms and ammunition in contravention of Sections 5, 7 and 12 of the Arms Act, 1959;

(xxiii) felling or killing for economic gains, smuggling of products in contravention of the Indian Forest Act, 1927 and Wildlife Protection Act, 1972;

(xxiv) offences punishable under the Entertainment and Betting Tax Act, 1979;

(xxv) indulging in crimes that impact security of State, public order and even tempo of life.

56.2 "Gangster" has been defined under Section 2(c) of the Gangsters Act, which reads as under :-

> "Gangster" means a member or leader or organizer of a gang and includes any person who abets or assists in the activities of a gang enumerated in clause (b), whether before or after the commission of such activities or harbours any person who has indulged in such activities.

56.3 Punishment under the Gangsters Act

Section 3(1) of the Gangsters Act provides for punishment of gangster, which would be two years and may extend to ten years with fine and fine should not be less than Rs. 5,000/-. If a gangster commits an offence against public servant or any member of public servant, then the minimum punishment would be of three years and fine.

Ingredients

57- In view of the definition of Gang and Gangster as noted above, the essential requirements to constitute the offence under Section 3 (1) of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act are being enumerated below:-

(i) There should be a group of persons, who acting either singly or collectively;

(ii) By violence or threat or show of violence or intimidation or coercion or otherwise;

(iii) With object of disturbing public order or of gaining any undue temporal, pecuniary, material or other advantage for himself or for any other person;

(iv) Indulge in anti-social activities in any manner categorized in twenty five categories of Section 2(b) of the Gangsters Act.

Main issues

58- Now the centripetal questions which arise for consideration before this Court are that:-

(a) Whether prosecution has proved its case and charges under Section 3 (1) of Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986 against the appellant beyond reasonable doubt ?

(b) Whether in the light of judgment of the Apex Court in the case of Farhana versus State of Uttar Pradesh and others (supra), impugned judgment and order dated 29.04.2023 of conviction and sentence of the appellant under Section 3 (1) of Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986 after his acquittal in base case crime No. 589 of 2005 is sustainable ?

(c) Whether judgment of the Apex Court in the case of Farhana (supra), which has been decided on 19.02.2024 will have retrospective effect ?

59- Having heard the learned counsel for the parties at length and examined the record in its entirety, now this Court proceeds to analyse the facts and evidence on record in the light of submissions raised on behalf of the parties.

Analysis about base case

60- Regarding an incident dated 29.11.2005, in which Krishna Nand Rai (the then sitting MLA) was murdered along with six other persons, F.I.R. No. 46/05 was registered at Case Crime No. 589 of 2005, under Sections 147,148, 149, 302, 307, 404 and

120 B IPC and 7 Criminal Law Amendment Act at police station Bhawarkol, district Ghazipur, in which appellant-Afjal Ansari has been assigned role of conspiracy with Mukhtar Ansari on 25.10.2005 at Ghazipur Court.

61- After investigation of Case Crime No. 589 of 2005, U.P. police submitted first charge-sheet No. 26/2006 dated 21.02.2006 against the appellant-Afjal Ansari and Aejazul-ul-Haq (who were in custody) as well as Prem Prakash Singh, Atta-ur-Rehman and Firdaus (who were absconding). Second charge-sheet dated 15.03.2006 was submitted against Mukhtar Ansari. Thereafter, vide order dated 23.05.2006 of the Division Bench of this Court passed in Civil Misc. Writ Petition No. 1552 of 2006, investigation of the said Case Crime No. 589 of 2005 was transferred to C.B.I., who submitted third charge-sheet dated 30.08.2006 against Sanjeev Maheshwari @ Jeeva, fourth charge-sheet dated 12.12.2006 against Rakesh Pandey and Ramu Mallah. Fifth charge-sheet was submitted on 20.03.2007 against Mansoor Ansari and sixth supplementary charge-sheet was filed on 15.03.2014 against Prem Prakash Singh @ Munna Bajrangi.

62- Thereafter vide order dated 22.04.2013 of Hon'ble Supreme Court, the trial of case crime No. 589 of 2005 was transferred from the Sessions Court, Ghazipur, U.P. to the appropriate Sessions court CBI in Delhi. Accordingly, trial of the said case was conducted by the Court of Special Judge (PC Act): CBI-9 (MPs/MLAs Cases), RACC, New Delhi.

63- In the said case crime No. 589 of 2005, the appellant has been acquitted by the trial Court vide judgment and order dated 03.07.2019 after recording a specific finding inter alia that the

prosecution could not prove the charge of conspiracy against the appellant Afjal Ansari.

64- The judgment and order of acquittal dated 03.07.2019 of the appellant has not been challenged by the State / C.B.I. but the same has been challenged by Smt. Alka Rai (wife of deceased Krishna Nand Rai) by means of Criminal Appeal No. 1178 of 2019 before the High Court of Delhi, which has been admitted and is still pending.

Analysis about the gang chart

65- On the basis of Case Crime No. 19 of 1997 and Case Crime No. 589 of 2005, gang chart of seven persons namely 1-Mukhtar Ansari, 2-Afjal Ansari, 3-Aejaz alias Aejaz-ul-Haq, 4-Munna Bajrangi alias Prem Prakash Singh, 5-Ataur Rehman @ Sikander @ Babu, 6-Firdaus alias Javed and 7-Shahbuddin was prepared on 19.11.2007 (after ten years from the date of incident dated 22.01.1997 relating to crime No 19 of 1997 and after about two years from the date of incident dated 29.11.2005 relating to crime No. 589 of 2005), but recommendation for taking action under Section 3 (1) of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 was made only against three persons namely Mukhtar Ansari, Afjal Ansari (appellant) and Aejaz alias Aejaz-ul-Haq and the same was forwarded to the District Magistrate through the authorities concerned on 19.11 2007, who granted approval on the same day mentioning "Approved for Sl. No.1 to 3." No reason has been recorded for not granting approval in respect of remaining three persons, who were absconding at that time.

Analysis about charge

66- First of all, it would be profitable to mention the contents of the charges framed against the appellant on 23.9.2022, which are as under:

आरोप

मैं, रामसुध सिंह, विशेष न्यायाधीश, एम0पी0/एम0एल0ए0/प्रथम अपर सत्र न्यायाधीश, गाजीपुर आप अभियुक्त अफजाल अंसारी को निम्न आरोप से आरोपित करता हूँ–

''यह कि आप अभियुक्त के विरूद्ध अपराध सं0–589/2005, धारा – 147, 148, 149, 302, 307, 404, 120बी भा0दं0सं0, थाना भांवरकोल, जनपद गाजीपुर में पंजीकृत हुआ तथा आप द्वारा अन्य लोगों के साथ मिलकर एक समाज विरोधी क्रियाकलाप के उद्देश्य से गैंग बनाकर संचालित किया जा रहा था और आपके उक्त गैंग द्वारा भौतिक उद्देश्य से धन एवं सम्पत्ति अर्जित की जा रही थी।

आपका यह कृत्य धारा 3(1) उत्तर प्रदेश गिरोहबन्द एवं समाज विरोधी क्रियाकलाप निवारण अधिनियम के तहत दण्डनीय अपराध है, जो इस न्यायालय के प्रसंज्ञान में है।''

67- Careful examination of charges framed against the appellant, I find that the same are in three parts.

(i) The first part of the charge is that case crime No. 589 of 2005 under section 147, 148, 149, 302, 307, 404 and 120-B IPC was registered against the appellant at PS Bhanwarkol, district Ghazipur.

(ii) The second part of the charge is that appellant for the purpose of antisocial activities formed a gang along with other people and is running the same.

(iii) The third part of the charge is that the gang of appellant was for acquiring money and property for material gain/purpose.

Discussion about first part of charge

68- In this regard it is admitted fact that in the said case crime No. 589 of 2005, the appellant has been acquitted by the trial Court vide judgment and order dated 03.07.2019 after recording a specific finding inter alia that the prosecution has not proved the charge of conspiracy against the appellant Afjal Ansari.

Discussion about second part of charge

69- Record reveals that in the F.I.R. dated 19.11.2007, main allegation has been leveled against Mukhtar Ansari alleging inter alia that the illegal gang of his gangsterism (*mafiagiri*) is active in district Ghazipur, who himself and with the assistance of members of his gang, for the material and monetary benefit, by getting involved in the incident like murder, loot, abduction, extortion and other serious offences, earned a lot and was acquiring immense wealth. The gang was being run by Mukhtar Ansari himself from jail by issuing orders who had a long criminal history.

70- Neither in gang chart dated 19.11.2007 nor in the F.I.R. dated 19.11.2007, it is specifically mentioned that the appellant-Afjal Ansari was member of Mukhtar Ansari's gang.

71- F.I.R. shows that the appellant has been made accused in this case because of incident dated 29.11.2005 relating to case crime No. 589 of 2005, wherein allegation of hatching conspiracy was leveled against the appellant, in which he has been acquitted by the Trial Court as noted above.

72- Now this Court proceeds to deal the evidences led by the prosecution and defence before the trial Court.

73- On careful examination of statement of PW-1 Ram Darash Yadav, who had prepared gang-chart and lodged F.I.R., I find that this witness in his cross-examination has admitted that in the F.I.R. dated 19.11.2007 he had not mentioned that Afjal Ansari was member of Mukhtar Ansari's gang. When he was shown his statement under Section 161 Cr.P.C. dated 28.12.2007, he further admitted that it was not mentioned in his statement that he had told Afjal Ansari to be a member of Mukhtar Ansari's gang. For the first time after fifteen years on 12.01.2023 this witness has stated before the trial Court that Afjal Ansari was a member of Mukhtar Ansari's gang. He has also stated that at present, he does not know that place of Mohammadabad police station area, where people had told about Mukhtar Ansari's gang. He also does not remember the name and address of the people at this time who told him about the gang and its activities. PW-1 further stated that during the period of his posting in police station Mohammadabad, no one had made any oral or written complaint against Afjal Ansari regarding any criminal act and no facts came to light against Afjal Ansari in relation to the offences committed under chapter XVI, XVII and XXII of IPC, whereas, he in his examination-in-chief, has stated that objective of this gang's modus operandi was to obtain political, economic and social benefits. He also admitted that F.I.R. was registered by him on hearsay basis and on the basis of one case only.

74- Except the incident of base case crime No. 589 of 2005, no other specific incident of any such crime has been mentioned by PW-1 Inspector Ram Darash Yadav to show that the appellant has been indulging in antisocial activities and crimes

like murder, ransom etc. There is no corroboration of testimony of PW-1 Inspector Ram Darash Yadav from any other evidence.

75- PW-2 Inspector, Surya Prakash Yadav who was the second investigating officer, in his cross-examination dated 19.01.2023, has stated that during investigation, no such fact came to his notice which could prove that accused Afjal Ansari had committed or been involved in the crimes mentioned in chapter XVI, XVII and XXII of IPC. No complaint of any kind against Afjal Ansari came to his notice.

76- PW-3, Head constable Ram Dular Yadav, who had registered F.I.R. of this case, in his examination-in-chief, has stated inter-alia that original F.I.R. has been filed in the record of S.T. No. 90 of 2012. Original G.D. has been destroyed. He proved the destruction report, which was exhibited as Exhibit-Ka-4. He, in his cross-examination has stated that original copy of F.I.R. is not available in the record of this case. Three separate cases were registered on the basis of one F.I.R.

77- PW-4, Narendra Pratap Singh, who, in the year 2006, was posted as Circle Officer, Kasimabad, Ghazipur and had investigated case crime No. 589 of 2005 relating to murder of late Krishna Nand Rai and six others and submitted charge-sheet against Afjal Ansari, Aejazul Haq and second charge sheet against Mukhtar Ansari has proved the charge-sheet against the appellant. He, in his cross-examination, has stated that further investigation of case crime No. 589 of 2005 was conducted by C.B.I. On putting query by the trial Court he has stated that he does not remember which investigating officer took his statement. The trial Court has also observed that even after

showing the file, this witness failed to tell the name of investigating officer and stated that he does not remember what was asked by the investigating officer and regarding which facts.

78- PW-5, Inspector Om Prakash Singh, who had made initial investigation of case crime No. 589 of 2005, in his cross-examination, has stated inter alia that no such fact has come to his notice that Afjal Ansari does not allow any witness to testify. During his posting, no person had made any complaint against Afjal Ansari. He also stated that no such fact has come to his notice that Afjal Ansari has acquired property by committing crimes for himself or for anyone else. His entire family is a respectable and political family.

79- PW-6, Ram Narayan Rai who is brother of deceased Krishna Nand Rai and informant of base case crime No. 589 of 2005 claims himself to be an eye witness of incident dated 29.11.2005, but the trial Court in that case has disbelieved his presence at the spot. First of all it would be apposite to discuss paragraph No. 3 of examination-in-chief dated 04.02.2023 of PW-6 and statement dated 14.02.2023 of PW-2 Surya Prakash Yadav recorded on his re-examination, on which learned counsel for the parties advanced extensive argument. Paragraph No. 3 of examination-in-chief of PW-6 are as follow :

> *"As per my knowledge, Afjal Ansari was conspirator in murder case. Afjal Ansari and Mukhtar Ansari etc. are having a gang consisting of 50-60 persons. The main leader of this gang is Afjal Ansari against whom 5-6 cases are registered. In addition thereto about 50-60 cases are registered against*

Mukhtar Ansari. The main aim of this gang is to murder people and to grab the land by putting the people in fear."

80- After the above statement of PW-6 (Ram Narayan Rai), on an application under Section 311 Cr.P.C, PW-2-Inspector Surya Prakash Yadav (investigating officer) was recalled for further cross-examination. On putting specific question with regard to statement given in paragraph No. 3 of the examination-in-chief by PW-6 as noted above, PW-2 in his cross-examination dated 14.2.2023 deposed that Ram Narayan Rai did not give him the same statement as he has given in paragraph No. 3 of his examination-in-chief. Seeing the statement under Section 161 Cr.P.C., this witness stated that PW-6 has only stated that accused persons are vicious criminals, who have a gang. The relevant extract, which I culled out from the cross-examination examination of PW-6 are as follows :-

Para-6. At this moment I cannot remember when the Investigating Officer of this case took my statement. I am B.A. I have not passed L.L.B. We are three brothers. Krishna Nand was the youngest. The families of all the three brothers live jointly. I don't remember whether I told the Investigating Officer about the atmosphere of fear, that arose after this murder or not. (First omission)

Para-7. It is wrong to say that today I am telling for the first time in the Court about the fear that created after the murder. I had never told this to

Investigating Officer before. I had given this statement to Investigating Officer that Afjal Ansari and Mukhtar Ansari have a gang. If Investigating Officer has not written this in my statement then I cannot give any reason for it.(Second omission)

Para-8. I don't remember whether I told the Investigating Officer about the presence of 50-60 people in the gang or not. It is wrong to say that I am telling about this for the first time today in the court. I had told this to the Investigating Officer that the leader of gang is Afjal Ansari. If the Investigating Officer has not written this in my statement then I cannot give any reason for it. It is wrong to say that I am telling this for the first time in the court today.(Third omission)

Para-9. I don't remember whether I had told the Investigating Officer about 5-6 cases being registered against Afjal Ansari or not. It is wrong to say that I am telling this for the first time in the court today. (Fourth omission)

Para-10. I don't even remember whether I had told the Investigating Officer about registration of 50-60 cases against Mukhtar Ansari or not. It is wrong to say that I am telling this for the first time in court today.(Fifth omission)

Para-11. I had told the investigating officer that purpose of this gang is to commit murder and to take over the land by threatening people. If the

> Investigating Officer has not written this in my statement then I cannot give any reason for it. It is wrong to say that I am telling this for the first time in the court today.(Sixth omission)

81- PW-6 in his cross-examination has also disclosed the fact relating to an incident in which bomb was blast in the house of Mrs Alka Rai, wherein her gunner lost his life stating that in the said case his son Manoj Rai had named Afjal Ansari and Mukhtar Ansari, but on the same day, their involvement was found false. In the said incident, his son Manoj Rai and one Babu Dhan Chaudhary were arrested.

82- The statement under Section 161 Cr.P.C. of PW-6 shows that ingredients of gang and gangster qua the appellant-Afjal Ansari are lacking. The cross-examination of PW-6 shows that on putting questions by the defence relating to the essential ingredients for a gang and gangster qua appellant, PW-6 has either stated that he does not remember or stated that he had told every thing to the Investigating Officer and if the Investigating Officer has not written this in his statement then he cannot give any reason thereof. The aforesaid statements of PW-6 do not inspire confidence.

83- At this juncture it would be useful to refer the judgment of the Hon'ble Apex Court in the case of **Tahsildar Singh Vs. State of U.P.** (1959) AIR (SC) 1012. In paragraph Nos. 16 and 17, it was held as under-

> *"16. The object of the main section as the history of its legislation shows and the decided cases indicate is to impose a general bar against the use of statement made*

before the police and the enacting clause in clear terms says that no statement made by any person to a police officer or any record thereof, or any part of such statement or record, be used for any purpose. The words are clear and unambiguous. The proviso engrafts an exception on the general prohibition and that is, the said statement in writing may be used to contradict a witness in the manner provided by s. 145 of the Evidence Act. We have already noticed from the history of the section that the enacting clause was mainly intended to protect the interests of accused. At the stage of investigation, statements of witnesses are taken in a haphazard manner. The police- officer in the course of his investigation finds himself more often in the midst of an excited crowd and label of voices raised all round. In such an atmosphere, unlike that in a Court of Law, be is expected to hear the statements of witnesses and record separately the statement of each one of them. Generally he records only a summary of the statements which appear to him to be relevant. These statements are, therefore, only a summary of what a witness says and very often perfunctory. Indeed, in view of the aforesaid facts, there is a statutory prohibition against police officers taking the signature of the person making the statement, indicating thereby that the statement is not intended to be binding on the witness or an assurance by him that it is a correct statement.

17. At the same time, it being the earliest record of the statement of a witness soon after the incident, any contradiction found therein would be of immense help to an accused to discredit the testimony of a witness making the statement. The section was, therefore, conceived in

an attempt to find a happy via media, namely, while it enacts an absolute bar against the statement made before a police- officer being used for any purpose whatsoever, it enables the accused to rely upon it for a limited purpose of contradicting a witness in the manner provided by section 145 of the Evidence Act by drawing his attention to parts of the statement intended for contradiction. It cannot be used for corroboration of a prosecution or a defence witness or even a Court witness. Nor can it be used for contradicting a defence or a Court witness. Shortly stated, there is a general bar against its use subject to a limited exception in the interest of the accused, and the exception cannot obviously be used to cross the bar."

84- The Apex Court in the case of **V.K. Mishra & Another vs. State of Uttrakhand & Another**, AIR 2015 SC 3043 has also held as under:-

15. Section 162 Cr.P.C. bars use of statement of witnesses recorded by the police except for the limited purpose of contradiction of such witnesses as indicated there. The statement made by a witness before the police under Section 161(1)Cr.P.C. can be used only for the purpose of contradicting such witness on what he has stated at the trial as laid down in the proviso to Section 162 (1) Cr.P.C. The statements under Section 161 Cr.P.C. recorded during the investigation are not substantive pieces of evidence but can be used primarily for the limited purpose:- (i) of contradicting such witness by an accused under Section 145 of Evidence Act; (ii) the contradiction of such witness also by the prosecution but with the leave of the Court and (iii) the re-examination of the witness if necessary.

85- It is also well settled in plethora of cases that unless the

omission in statement recorded under Section 161 Cr.P.C. of a witness is significant and relevant having regard to context in which omission occurs, it will not amount to contradiction of evidence of witness recorded in Court.

86- Considering the statement of Ram Narayan Rai recorded under Section 161 CrPC on 14.12.2008 and his statement recorded before the trial Court as PW-6 on 04.02.2023 as well as statement of PW-2 recorded on 14.02.2023, I find that in the light of judgment of the Hon'ble Apex Court in the case of **Tahsildar Singh (supra) and VK Mishra & another (supra)** there are material and significant omissions relating to be a member of gang and gangsterism qua the present appellant which amount to material contradictions in the prosecution case.

87- PW-7 Om Prakash Singh who had registered the F.I.R. of case crime No. 589 of 2005 has proved the photocopy of chik FIR which was exhibited as Ext. Ka-7. Since investigating officer namely SO Paltu Ram and SHO of PS Bhanwarkol Daya Shanker Pandey who submitted charge sheet No. 100 /2010 (Paper No.3A) against the appellant in this case had died, therefore, PW-7 has proved signature of Daya Shanker Pandey (investigating officer) on the charge sheet of this case, which was exhibited as Ext. Ka-8.

88- Apart from above mentioned base case crime No. 589 of 2005, the prosecution could not bring any material on record to establish that the appellant-Afjal Ansari was co-accused along with Mukhtar Ansari or other members of his gang in connections with the other offences under chapter XVI, XVII and XXII of IPC.

Discussion about third part of charge

89- In this regard, it is also not in dispute that prosecution could not bring any material evidence on record to establish that the appellant has acquired any movable or immovable property out of the anti-social activities provided under sub-section (b)(i) to (xxv) of Section 2 of the Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986. No proceedings of attachment of property of the appellant as provided under Section 14 the Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986 were initiated by the District Magistrate.

Analysis of statement under Section 313 Cr.P.C.

90- After going through the statement under Section 313 Cr.P.C. of the appellant, I find that appellant has specifically stated that on the day of incident (i.e. on 29.11.2005) of the base case crime No. 589 of 2005, he was in Delhi and was attending the Lok Sabha Session, which was going on that day. So far as allegation of hatching conspiracy in Krishna Nand Rai's murder case on 25th October, 2005 in Ghazipur Court is concerned, the appellant has stated that on 24th and 25th of October 2005, he was in Lucknow and on 26th October 2005, he met His Excellency the President of India along with a delegation in Delhi, which clearly goes to show that on 25th October, 2005 he could not have hatched any conspiracy in Ghazipur. The prosecution could not bring on record any material to disbelieve the said stand of the appellant.

Analysis about defence evidence

91- The appellant in order to show his good character, for his own aid, has produced defence witnesses namely retired Honorary Captain Heera Lal Singh Yadav, Shanker Dayal Rai and Baliram Patel. The word "character" includes both reputation and disposition. "Reputation" means what is thought of a person by others, and is constituted by public opinion. "Disposition" respect the whole frame and texture of mind. The prosecution in rebuttal had an opportunity to lead evidence of bad character of the appellant, but the same has not been done by the prosecution in accordance with Section 54 of the Indian Evidence Act.

Criminal history of appellant-Afjal Ansari

92- It is crucial to emphasis at this stage that the appellant himself has disclosed the seven criminal cases registered against him, hence it is necessary to discuss the same elucidating their context and significance in relation to act and conduct of the appellant. A concise overview and summary of those cases are as under:-

(i) Case Crime No. 28/1998 was registered under Section 171F of the Indian Penal Code, 1860 (hereinafter, 'IPC') and Section 135(2) of the Representation of People's Act, 1951 (hereinafter, 'RPA') on 16.02.1998, at Police Station Nonhara, District Chandauli, Uttar Pradesh, for violation of the Model Code of Conduct during the election period. The Appellant has not yet been summoned by the investigating officer or the concerned Court in this case.

(ii) Case Crime No. 260/2001 was registered on 09.08.2001, at Police Station Mohammadabad, Uttar Pradesh, under Sections 147, 148 and 353 of the IPC, and Section 3 of the Prevention of Public Properties from Damages Act, 1984 along with Section 7 of the Criminal Law Amendment Act, 1932. The Appellant has since been granted bail in this case and his trial is pending.

(iii) Case Crime No. 493/2005 was registered under Sections 302, 506, 120B of IPC on 27.06.2005, at Police Station Mohammadabad, Uttar Pradesh in which the appellant was named as a conspirator. However, since the appellant was found to have played no active role in the subject crime, his name was dropped/expunged during the early stages of investigation and no charge sheet was filed against him.

(iv) Case Crime No. 589/2005 was registered under Sections 147, 148, 149, 307, 302, 404 and 120B of the IPC, at Police Station Bhanwarkol, District Ghazipur, on 29.11.2005. The Appellant was accused of hatching conspiracy in the said murder case, in which he has been acquitted by the Trial Court at Rouse Avenue, New Delhi vide judgment and order dated 03.07.2019. This is the only case mentioned in the gang chart that was prepared and relied upon in the instant case.

(v) Crime Case No. 1051/2007 was registered under Sections 302, 120-B, 436, 427 of the IPC and Sections 3, 4 and 5 of the Explosive Act, 1884 and Section 7 of the Criminal Law Amendment Act, 1932. In this case, the name of the appellant was dropped after it was deduced that he had no role to play in the reported crime. The appellant was neither chargesheeted nor summoned by the concerned Trial Court in this particular

instance.

(vi) Case Crime No. 607/2009 under Sections 171 and 188 of the IPC was registered on 11.04.2009 at Police Station, Mohammadabad, Uttar Pradesh, alleging violation of the Model Code of Conduct during the election period. The appellant has admittedly not been summoned in this case.

(vii) Case Crime No. 18/2014 was registered under Sections 171J, 188 of the IPC and Section 121(2) of the RPA, at Police Station Chakarghatta, District Chandauli, Uttar Pradesh and the appellant has already been granted bail in this matter.

Impact of Criminal History of Mukhtar Ansari in this case

93- It is well settled that each case has to be decided on its own merit. Although FIR of Mukhtar Ansari, Afjal Ansari and Aejaz alias Aejazul-Haq is the same, but separate case was registered against them at different crime number and charge sheet was also filed separately. They have also been tried separately. The criminal history of Mukhtar Ansari and Aejazul Haq was neither brought on record by the prosecution in the trial of the appellant nor same was put to the appellant during his statement under Section 313 Cr.P.C. The appellant Afjal Ansari is also not a co-accused in the cases registered against Mukhtar Ansari except case crime No. 589 of 2005, in which he has been acquitted by the trial Court at Delhi. The case of appellant is distinguishable from the case of Mukhtar Ansari. As such criminal history of Mukhtar Ansari has no bearing on the merit of this case against appellant Afjal Ansari.

Judicial Notice

94- So far as submission on behalf of the State and victim that the trial court while acquitting the appellant in base case crime No. 589 of 2005 has taken judicial notice by observing that "*the case in hand is another example of prosecution failing due to hostile witnesses. If the witnesses in this case had the benefit of Witness Protection Scheme during trial the result may have been different"* is concerned, this Court is of the view that since the judgement and order dated 03.07.2019 of acquittal of the appellant and other accused persons of case crime No. 589 of 2005 is subject matter of Criminal Appeal No. 1178 of 2019, which is sub-judice before the High Court of Delhi, therefore, at this stage, this Court has no jurisdiction to make any comment upon the said judgement and order of acquittal of the appellant. So far as judgment in the case of **Harendra Rai versus State of Bihar and Others (supra)** relied upon on behalf of the prosecution is concerned, there is no dispute about the propositions of law laid down by the Hon'ble Supreme Court in the said case, but the same is distinguishable on the facts of the case in hand. In the said case the Hon'ble Supreme Court convicted the accused taking judicial notice of special facts (incident of assault on the witness occurred before the trial Court, conduct of the presiding officer, influence of accused and report of inspecting judge, etc), whereas it is not so in the present case. The judicial notice has been taken by the trial Court at Delhi in the judgment and order dated 03.07.2019 of the base case crime No. 589 of 2005, which is the subject matter of above noted Criminal Appeal pending before the High Court of Delhi. Hence the judgement in the case of **Harendra Rai**

(supra) is not helpful to the prosecution in the present case at this stage.

Principle of estoppel

95- The principle of issue of estoppel in a criminal trial has been well settled by the Hon'ble Supreme Court in catena of judgements that where an issue of fact has been tried by a competent court on an earlier occasion and a finding has been recorded in favour of accused, such a finding would constitute an estoppel or res judicata against the prosecution, not as a bar to the trial and conviction of the accused for a different or distinct offence, but as precluding the acceptance/rejection of evidence to disturb the finding of fact when the accused is tried subsequently for different offence. In the present case it is not in dispute that appellant has been acquitted in base case crime No. 589 of 2005 and as on date there is nothing adverse against the appellant in the said case, hence the judgement of acquittal of appellant in that case will operate estoppel against the prosecution in the present case and the same is binding in all subsequent proceeding between the parties unless the said finding in favour of accused or judgment is altered, modified or set aside by the superior court. A latin maxim which means that a judicial decision must be accepted as correct, may be usefully extracted here "res judicata pro veritate accipitur".

Findings recorded by the trial Court

96- I find that the trial court while convicting the appellant has not considered the fact in proper prospective that appellant had already been acquitted in base case crime No. 589 of 2005, in which allegation of hatching conspiracy was leveled against him.

From the perusal of impugned judgement and order of conviction of appellant, it seems that the trial judge of this case was quite influenced by the observations given by the trial court at Delhi in base case crime No. 589 of 2005 relating to hostile attitude of most of the prosecution witnesses in that case. Although the trial judge at Delhi has taken a judicial notice of the fact that the witnesses turned hostile, but did not make any observation or quoted any specific evidence that appellant-Afjal Ansari was instrumental in turning the witnesses hostile. In the present case under the Gangster Act also no such evidence was led by the prosecution before the trial court at Ghazipur that how the appellant-Afjal Ansari was instrumental in turning the witnesses hostile in base case crime No. 589 of 2005.

Principles laid down in the case of Farhana versus State of U.P.(Supra)

97- After going through the judgment of the Apex Court in the case of **Farhana versus State of Uttar Pradesh and others (supra),** I find that main issue in that case before the Hon'ble Supreme Court was *"as to whether the proceedings of the FIR under the provisions of the Gangsters Act and the prosecution of the accused can be continued in spite of exoneration in the predicate offences covered by Section 2(b)(i) of Gangsters Act."*

98- The Hon'ble Apex Court after wholesome treatment decided the said issue holding that since the very foundation for continuing the prosecution of the appellants under the provisions of the Gangsters Act stands struck off and as a consequence, the continued prosecution of the appellant for the said offence is unjustified and tantamounts to abuse of the process of Court. In

paragraph Nos. 12 to 17, it was held as follows:

> ***12.*** *From a bare perusal of Section 2(b)(i) of the Gangsters Act, it would become apparent that the person alleged to be the member of the gang should be found indulging in anti-social activities which would be covered under the offences punishable under Chapters XVI, or XVII or XXII IPC. There is no dispute that the case set up by the prosecution against the appellants insofar as the offences under the Gangsters Act are concerned, is limited to Section 2(b)(i) reproduced supra and none of the other clauses of the provision have been pressed into service for the proposed prosecution.*
>
> ***13.*** *Needless to say that for framing a charge for the offence under the Gangsters Act and for continuing the prosecution of the accused under the above provisions, the prosecution would be required to clearly state that the appellants are being prosecuted for any one or more offences covered by anti-social activities as defined under Section 2(b).*
>
> ***14.*** *There being no dispute that in the proceedings of the sole FIR registered against the appellants for the offences under Chapter XVII PC being Crime Case No. 173 of 2019, the appellants stand exonerated with the quashing of the said FIR by the High Court of Judicature at Allahabad by exercising the powers under Section 482 of Criminal Procedure Code, 1973, vide order dated 3rd March, 2023 passed in Application No. 7228 of 2023.*
>
> ***15.*** *Hence, the very foundation for continuing the prosecution of the appellants under the provisions of the Gangsters Act stands struck off and as a consequence, the continued prosecution of the appellants for the said offence is unjustified and tantamounts to abuse of the process of*

Court.

16. *As a consequence of the discussion made herein above, the impugned orders dated 14th November, 2022 and 6th December, 2022 passed by the High Court of Judicature at Allahabad are quashed and set aside. Resultantly, the impugned FIR being Crime Case No. 424 of 2022 for offence punishable under Section 3(1) of the Gangsters Act, registered at Police Station-Bhognipur, District-Kanpur Dehat and all the proceedings sought to be taken thereunder against the appellants are hereby quashed.*

17. *The appeals are allowed accordingly.*

Retrospective effect of the case of Farhana (supra)

99- In the present case, it is admitted fact that appellant had been acquitted in base case crime No. 589 of 2005 on 03.07.2019 much before framing of charge under Section 3(1) of the Gangsters Act against him on 23.09.2022 and thereafter an Application under Section 482 Cr.P.C. No. 38478 of 2022 filed by the appellant against the order of framing of charge on the ground of his acquittal in base case was dismissed by the High Court vide order dated 06.01.2003. Thereafter he has been convicted under Section 3(1) of the Gangsters Act by the impugned judgment and order dated 29.04.2023. Since the case of **Farhana (supra)** was decided by the Hon'ble Supreme Court on 19.02.2024 subsequent to the conviction of the appellant, therefore another issue arises before this Court as to whether the judgement in the case of **Farhana (supra)** will have retrospective effect or not. In this regard in order to sort out this controversy, it would be useful to take support of the judgement of the Apex Court in the matter **P.V.George Versus**

State of Kerala (2007) 3 SCC 557, wherein it has been held that the law declared by a court will have retrospective effect, if not otherwise stated to be so specifically. The said judgment has been further relied upon by the Hon'ble Apex Court in the case of **Manoj Parihar & Others versus State of Jammu & Kashmir & Others** 2022 Live Law (SC) 560 and reiterated the same view. Hence, this Court has no hesitation to hold that judgment of the Hon'ble Apex Court in the case of **Farhana (supra)** will be applicable with retrospective effect. Accordingly, in order to maintain the hierarchy and judicial discipline, this Court is bound to follow the ratio of law settled by the Hon'ble Supreme Court in the matter of Farhana (supra) and as such appellant is also entitled to get benefit of principles laid down by the Hon'ble Supreme Court in the case of Farhana (supra).

General principles of conviction or acquittal

100- Here it would also be relevant to mention that making allegations against any person and to lead evidence admissible under the law in the concerned courts to prove the allegations, both are entirely different. No person can be convicted on the basis of allegations only, unless the prosecuting agency prove its case in accordance with law beyond reasonable doubt. Hence a high responsibility lies upon the prosecution and on the investigating agencies to be more careful in collecting evidence in order to ensure fair investigation, because without fair investigation, fair trial is not possible. It must be impartial, conscious and uninfluenced by external influences, which is one of the essentials of criminal justice system and integral facet of rule of law. The procedure for setting the criminal law in motion,

investigation should also be free from objectionable feature or legal infirmities because the just, fair and transparent investigation is right of the accused as well as victim. The conviction or acquittal of any accused is based on the material evidences led by the prosecution before the trial Court not on the allegations of the prosecution and it is prosecution who has to prove it's case not the accused.

Conclusion

101- In the above backdrop of facts and legal position, the conclusions based on the evidence on record, this Court is of the view that the prosecution could not prove its case and charges under Section 3(1) of the Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986, against the appellant beyond reasonable doubt. Since appellant Afjal Ansari has been acquitted in base Case Crime No. 589 of 2005 by the trial Court at Delhi vide judgment and order dated 03.07.2019, therefore on this ground also he is liable to be acquitted in the light of judgment dated 19.02.2024 of the Hon'ble Supreme Court in the matter of **Farhana (supra),** which has retrospective effect.

Result

Criminal Appeal No. 5295 of 2023

102- As a fallout and consequence of above discussion, the impugned judgement and order dated 29.04.2023 passed by the learned Additional Sessions Judge/Special Judge, M.P./M.L.A Court, Ghazipur in Special Session Trial No. 980 of 2012 arising out of Case Crime No. 1052 of 2007, under Section 3(1) of the Uttar Pradesh Gangsters and Anti Social Activities (Prevention)

Act, 1986, PS Mohammadabad, district Ghazipur convicting and sentencing the appellant is hereby set-aside. Consequently, Criminal Appeal No. 5295 of 2023 succeeds and is allowed. The appellant is acquitted of all the charges levelled against him.

103- The appellant is on bail. His bail bond is cancelled and sureties are discharged from their liability. He need not surrender before the trial court. However, he is directed to execute bail bond and sureties within two weeks to the satisfaction of trial Court concerned in terms of Section 437-A Cr.P.C. to appear before the Hon'ble Supreme Court on issuance of notice in respect of any appeal or petition filed against this judgement. The said bail bond shall be in force for six months.

2- Government Appeal No. 198 of 2024 and Criminal Revision No. 3535 of 2023

104- So far as above Government Appeal filed by the state and Criminal Revision filed by the victim for enhancement of sentence awarded to accused Afjal Ansari is concerned, this Court is of the view that there is no dispute about the propositions of law laid down by the Hon'ble Supreme Court in the case of **Sumer Singh (supra)** and **Suryakant Baburao Alias Ramrao Phad (supra)**, but for enhancement of sentence every case turns on its own facts and evidence. Even one additional or different fact may make a big difference between the conclusion in two cases, because even a single significant detail may alter the entire aspect.

105- Since Criminal Appeal No. 5295 of 2023 of Afjal Ansari has been allowed and impugned judgment and order of conviction dated 29.04.2023 of the appellant-Afjal Ansari has been set-

aside as noted above, therefore, afore-captioned connected Government Appeal and Criminal Revision are liable to be dismissed.

106- Accordingly, Government Appeal No. 198 of 2024 and Criminal Revision No. 3535 of 2023 are hereby dismissed.

107- Let a copy of this judgement along with Trial Court's record be transmitted to the court concerned for compliance.

Order Date : 29.07.2024
Ishrat

[Sanjay Kumar Singh, J.]