

**IN THE COURT OF SH. RAKESH SYAL,
SPECIAL JUDGE (PC ACT) (CBI)-23,
(MPs/ MLAs CASES),
ROUSE AVENUE COURT COMPLEX; NEW DELHI.**

**CBI Case No. 96/2023
CNR No. DLCT11-000702-2023**

**Central Bureau of
Investigation**

vs.

Sh. Jagdish Tytler

ORDER ON CHARGE

1.1 Arguments on charge have already been heard and I have also perused the record.

Prosecution Case

2.1 The relevant facts of the prosecution case are that Ministry of Home Affairs, Government of India has, vide notification dated 08.05.2000, appointed a Commission of Inquiry headed by Mr. Justice G.T. Nanavati to inquire into the killings of Sikhs following the assassination of Smt. Indira Gandhi, Late Prime Minister of India on 31.10.1984. Justice Nanavati Commission of Inquiry submitted its Report (Extracts of the Report are part of D-11) to the Government of India on 09.02.2005. The report, *inter-alia*, found that there was credible evidence against accused Sh. Jagdish Tytler to the effect that very probably he had a hand in organizing attack on Sikhs and, therefore, recommended to the Government to look into this aspect and

take further action as may be found necessary. Accordingly, vide DO Letter No. U.13018/5/2005-Delhi-I dated 24.10.2005 (Part of D-10) of the Special Secretary, Ministry of Home Affairs, Government of India, the CBI was directed to conduct further/re-investigation of the cases against the accused. Thus, FIR No. 316/84 PS Bara Hindu Rao, Delhi (D1) was re-registered by the CBI as RC 23(S)/2005-SCU-I (D-12) on 22.11.2005.

2.2 As per FIR No. 316/84 dated 01.11.1984, PS Bara Hindu Rao, Delhi (D-1) on 01.11.1984, SI Ranveer Singh was on patrol duty along with PC Chandra Kishore and PC Nawab Singh at Azad Market, near Pul Mithai, when information was received by them that some people have gathered in front of Gurudwara, Azad Market and were setting it on fire. SI Ranveer Singh, along with the aforesaid police officials, reached Gurudwara, Azad Market, where ASI Swaran Singh and PC Raghunath Singh were present. He found that a mob of thousands of people were shouting slogans that Gurudwara, Azad Market will be completely burnt and that no Sikh person will be allowed to escape alive from there. Fire was raging inside and outside the Gurudwara. Some rioters were throwing tyres into the fire due to which the fire was getting worse. SI Ranveer Singh, along-with other police officials, tried to pacify the mob by stating that Section 144 of Cr.P.C. was in force and, thus, people cannot gather there. Some people left the spot while others continued to stay and got into heated exchange with the police officials. ASI Swaran Singh arrested 31 persons u/s 107/151 Cr.P.C. Later, when the crime scene was inspected, two human bodies, which had been burnt using tyres, were found. It

was also noticed that amongst other shops, one shop named Bedi Electricals, was looted by the mob. Accordingly, FIR No. 316/84, under Sections 147, 148, 149, 302, 457, 380, 436, 188 and 295 IPC, was registered at PS Bara Hindu Rao, Delhi.

2.3 During investigation, it was revealed that three persons, namely, Sh. Badal Singh, Sh. Thakur Singh and Sh. Gurcharan Singh, were killed by the accused persons on 01.11.1984 by burning them. However, only two burnt dead bodies could be recovered from the scene of crime. The third dead body was completely burnt and no remains of the same could be recovered. The two dead bodies were sent for postmortem examination. In the Post Mortem Report No. 2204 dated 03.11.1984, at 02:00 PM, on the body of an unknown male (part of D-5), it was opined, “*Burn injuries are ante-mortem, caused by fire. Death is due to shock from burn injuries. Time since death is about 2 days*”. Similarly, in the Post Mortem Report No. 2205 dated 03.11.1984, at 02:00 PM, on the body of an unknown male (part of D-5), it was opined, “*Burn injuries are ante-mortem, caused by fire. Death is due to shock from burn injuries. Time since death is about 2 days*”. After completion of investigation, Charge Sheet (D-8) was filed by Delhi Police against 32 accused persons under Sections 147, 148, 149, 302, 436, 188, 295, and 427 of IPC.

2.4 As earlier stated, pursuant to the recommendations of Justice Nanavati Commission of Inquiry, FIR No. 316/84, PS Bara Hindu Rao (D-1) was re-registered by the CBI as RC 23(S)/2005-SCU-I (D-11) on 22.11.2005. On completion of the investigation, Final

Report u/s 173 Cr.P.C., recommending no action against accused Sh. Jagdish Tytler and prosecution against Sh. Suresh Kumar @ Panewala under Sections 147, 149 and 109 r/w Sections 302, 295, 427 and 436 of IPC was filed by the CBI in the Court of Additional Chief Metropolitan Magistrate, Karkardooma Courts, Delhi on 28.09.2007. The Ld. ACMM, while hearing the application of witness Sh. Jasbir Singh, vide order dated 18.12.2007, observed that since the said witness has allegedly seen the incident, given affidavit before Justice Nanavati Commission of Inquiry and was willing to depose before the CBI in the investigation, the matter needs to be further investigated.

2.5 In compliance of the said order, further investigation was carried out and First Supplementary Final Report dated 27.03.2009 was filed by the CBI in the court of Ld. ACMM, Karkardooma Courts, Delhi. Vide this Report also, no action was recommended against accused Sh. Jagdish Tytler. This report was accepted by the Court of Ld. ACMM vide order dated 27.04.2010. Aggrieved by the said order, Smt. Lakhwinder Kaur @ Lokender Kaur W/o Late Sh. Badal Singh, who was killed in front of Gurudwara Pul Bangash on 01.11.1984, filed a Revision Petition dated 29.05.2010. In the revision petition, Ld. ASJ, vide order dated 10.04.2013, directed the CBI to conduct further investigation. After completion of further investigation, the CBI filed a Second Supplementary Final Report in the Court of Ld. ACMM, Karkardooma (East) on 24.12.2014, stating that the allegations levelled against the accused could not be corroborated. This was not accepted by the court of Ld. ACMM, Karkardooma (East) and, vide order dated 04.12.2015, the CBI was directed to conduct further investigation.

Accordingly, further investigation has been carried out.

2.6 It is stated that during further investigation, Sh. Chander Kishore S/o Sh. Ani Ram, R/o Post Rani Khet, District Almora, Uttaranchal was examined by the CBI and his statement was recorded u/s 161 Cr.P.C. He stated that in the year 1984, he was posted as Police Constable at PS Bara Hindu Rao, Delhi. On 01.11.1984, he was on patrol duty with SI Ranveer Singh and PC Nawab Singh, when they received information that some miscreants have put Gurudwara Pul Bangash on fire. When they reached Gurudwara Pul Bangash, they saw that thousands of people had assembled there. SI Ranveer Singh announced that Section 144 Cr.P.C. was in force in the area and he, accordingly, asked the mob to disperse. He also stated that two burnt bodies were found in front of Gurudwara Pul Bangash and the same were sent for postmortem. Gurudwara Pul Bangash was set on fire and the nearby shops were looted by the mob.

2.7 It is also stated that SI Ranveer Singh was examined by the CBI and his statement was recorded u/s 161 Cr.P.C. SI Ranveer Singh stated that on 01.11.1984, he, alongwith PC Chandra Kishore and PC Nawab Singh, was patrolling at Azad Market near Pul Mithai, when he received information that some people have gathered in front of Gurudwara, Azad Market and were setting it on fire. He along with the above police officials reached there. The mob present there was shouting slogans that Gurudwara Pul Bangash would be completely burnt and that no Sikh person would be allowed to escape alive. He also stated that two burnt dead bodies were recovered from the front of

the Gurudwara. He prepared Site Map (D-3), inquest of the dead bodies and sent the dead bodies for postmortem. He further stated that Gurudwara Pul Bangash was burnt and shops in the vicinity of the Gurudwara were looted by the mob.

2.8 It is further stated that ASI Swaran Singh S/o Late Sh. Sulah Singh, R/o 8-Kamlapur, PS Tappal, Aligarh was examined by the CBI and his statement u/s 161 Cr.P.C. was recorded. He stated that on 01.11.1984, he, along with PC Raghunath, was patrolling in Azad Market. In the morning, at around 09:10 AM, thousands of people gathered in front of Gurudwara Pul Bangash. They were shouting, *“kill Sikhs because they have killed our Prime Minister”*. He also stated that the mob burnt the shops located there and put Gurudwara Pul Bangash on fire.

2.9 It is also stated that Sh. Jagdish Singh S/o Sh. Jasram Singh, R/o Village Patupura, Dakkhana, Garhi Hasanpur, Tehsil Kairana, Distt. Muzzafurnagar, UP, was examined by the CBI. He stated that he was brother of Late Sh. Badal Singh, who used to work as *“Ragi”* in Gurudwara Pul Bangash. After the assassination of Smt. Indira Gandhi, when he reached Gurudwara Pul Bangash on 06.11.1984, he found that the said Gurudwara had been burnt. He also came to know that his brother Sh. Badal Singh was burnt to death by the mob on 01.11.1984.

2.10 It is further stated that Smt. Manmohan Kaur D/o Late Sh. Thakur Singh, R/o 25/502, Varun Society, Oshiwara, Andheri West, Mumbai was examined by the CBI and her statement u/s 161 Cr.P.C.

was recorded. She stated that in the morning of 01.11.1984, her father had left home for Gurudwara Sheeshganj but in the aftermath of the assassination of Smt. Indira Gandhi, when Delhi was engulfed in riots, her father, Late Sh. Thakur Singh did not return home. After normalcy was restored, she visited Sadar Police Station, where the SHO informed her that her father had been killed in front of Gurudwara Pul Bangash. She also stated that she later came to know that her father could not reach Gurudwara Sheeshganj because the mob did not allow buses to go beyond Azad Market and that is why her father took shelter in Gurudwara Pul Bangash.

2.11 It may be mentioned that as per the prosecution, with regard to role of accused Sh. Jagdish Tytler in the incident, there are three eye-witnesses in this case, namely, Smt. Harpal Kaur, Sh. Harvinderjit Singh and Sh. Abdul Wahid who were examined by the CBI and their statements u/s 161 Cr.P.C. were recorded. Statements of Smt. Harpal Kaur and Sh. Harvinderjit Singh have also been recorded u/s 164 Cr.P.C. It is pertinent to go through the complete statements of the above three eye witnesses.

2.12 In her statement dated 01.03.2016, Smt. Harpal Kaur has stated that in 1984, when the assassination of the then Prime Minister, Smt. Indira Gandhi took place, she used to be a house wife. The situation before the incident was normal as usual. She came to know about the said assassination through TV News. On 31.10.1984, their domestic servant Sh. Gurcharan Singh went outdoors in the morning for day to day work. In the evening, when he came back, she told him

to go back to his house as early as possible seeing the targeted public attack on Sikh people, but he insisted on staying with them at their home. The said attack and vandalism continued for the entire night. On 01.11.1984, she was much worried about the condition of their TV shop which was just in front of the Gurudwara. By that time, she knew that the mob was targeting only Sikh men while the ladies were being spared. She took the opportunity and gathered courage to visit their shop on her own. She saw people looting the shop in front of them and taking the TV sets which were stored there. She said nothing but decided to come back as early as possible. While on way back to her house, she saw a white Ambassador car coming from the side of the Gurudwara and accused Sh. Jagdish Tytler sitting inside the vehicle. The car was moving slowly and the accused, while sitting inside the car, made a gesture to the people engaged in violence. While gesturing, he said “*maro maro*” and swiftly moved out of the spot. She further stated that she saw the group of unknown people setting the premises of Gurudwara on fire. She heard the sound of gas-cylinder explosion from inside the Gurudwara. The people who were regular staff of the Gurudwara were not visible. She came back home as early as possible and narrated the entire incident to her husband Sh. Amarjeet Singh Bedi. Then she shifted to the house of one of their neighbours at 9-A, Hathikhana and stayed there for two days. While staying there, she found that few people were throwing the cut dead body of Sh. Badal Singh from the roof top of Sh. Shyamlal’s house. Later on, the dead body of Sh. Gurcharan Singh, their servant was also thrown from the house of Sh. Tilakraj. She further stated that though she never saw herself the people who had cut those dead bodies but she witnessed the

entire episode of throwing the corpses all around. The two dead bodies were carried by the goons in a wheel barrow with some tyres of vehicles. They were probably used to burn the dead bodies with the help of those tyres inside the Gurudwara campus, which were already on fire. Then she shifted to the house of Sh. O.P. Harjai and remained there for ten days. She stated that they came to know from their neighbours that Sh. Thakur Singh, who was a Sevdar in the Gurudwara, was also burnt to death during the vandalism.

2.13 She further stated that from 1984 to 2016, she had talked to local police including the CBI but never made a clean breast of everything. This was mainly due to her fear of counter violence and threats to their lives. Since she had a young son and a daughter, she was in constant fear of losing them as and when she divulged anything about the rioters, including accused Sh. Jagdish Tytler. When her son was alive, he even tried once to disclose the facts to some unknown person but was threatened in return. This prompted her and her family to remain silent throughout these years. But now, as her son has already expired and her daughter has been married, she was in no fear of disclosing the names of the guilty person.

2.14 Further, in her statement dated 17.03.2016, Smt. Harpal Kaur has stated that out of the people who used to work with her husband in the management of Gurudwara Pul Bangash in different posts during 1984, only Sh. Thakur Singh and Sh. Badal Singh died in the carnage in the anti-Sikh riots. Others like Bhai Ram Singh, Bhai Pratap Singh and Sardar Dayal Singh died a natural death. Some others

like Sh. Harvansh Singh and Sh. Trilok Singh pursued their own life and gradually settled somewhere else and their present whereabouts were not known to her. As on date, she or her husband have no common friend between the persons mentioned above and their families. As such, she did not know anyone who could give the address or the contact details of any of the above persons. She also stated that when they were at their previous house at 11-A Hathikhana, Azadpur, they used to share the apartment with their brother in-law. Her elder brother-in-law Sh. Surjeet Singh Bedi who is currently residing at Jail Road, Shiv Nagar, used to stay at the first floor while her family was on the second floor. She also stated that apart from her brother-in-law, she could recall the names of only a few of neighbours like Sh. Nanak Chand, Sh. Tilak Raj and Sh. Ali Liyakat, all of whom were residents of Hathikahana, Azad Market. In 2004, when they left Hathikhana, Azad Market, the said persons were still residing there. But their current addresses and contact numbers etc. were not known to them.

2.15 Smt. Harpal Kaur further stated that amongst the persons who were employed in their TV shop near Gurudwara Pul Bangash, at that time, they were not in contact with anyone except Sh. Narender Singh who happens to be residing nearby at New Mahavir Nagar. She also stated that on 01.11.1984, in the morning when she decided to pay a visit to their TV shop, she chose not to say anything to her husband as the distance was a stone's throw. She left her young son back home with her husband and moved out of the house. Outside, the life was not totally stagnated and threatened since the nearby market was still running. When she reached the TV Shop, she saw a group of hooligans

looting their shop in broad day light and taking away whatever they found. The locals who were mainly Muslims like Sh. Babu Khan and others tried their best to stop them but were soon cowed down. The goons carried on the looting unabated and took the T.V. Sets, VCRs, telephones and other items which were stocked at the shop. On her way back, she saw a white ambassador car taking U-turn in front of the Gurudwara and accused Sh. Jagdish Tytler coming out of the van. He called the persons engaged in violence and told them, showing his head (as if turban), "*pahle maro, phir luto*". When she witnessed this, there was no one with her or nearby. She witnessed all these things alone and came back home silently. But she never told her husband anything about the accused, nor did she mention anything about what she saw while coming back from T.V. shop. Right at the time when she was with her husband at home, they heard sounds of gas cylinder explosion and while looking from the balcony, they found the Gurudwara on fire.

2.16 Smt. Harpal Kaur further stated that being afraid for her life, she took shelter at the house of one of their neighbors who belonged to Sindhi Community. She cannot remember his name but they left their house at Hathikhana and shifted somewhere else before they moved in. She did not know their present whereabouts nor did she have their contact numbers. She also stated that she never mentioned the name of accused Sh. Jagdish Tytler to anyone else in her life, not even to her husband or any relative, or friend, or son, or any known person. When they lodged an FIR following the aftermath of anti-Sikh riots and, thereafter, when the CBI took their statements previously, she remained totally silent about the accused. As such this was the first

time and IO was the first person to whom she was divulging the name as well as the incident regarding the accused. She chose not to disclose the same throughout these years, but she could not give any reason for doing so and she simply did not say anything.

2.17 Further, in her statement dated 07.12.2022, Smt. Harpal Kaur has stated that probably in the month of February, 2008, her son Sh. Arvinder Singh was threatened by one Sh. Prem Wadhawan who told him that his mother was a witness to the attack on Gurdwara Pul Bangash on 01.11.1984. He threatened that he (Sh. Arvinder Singh) should tell her that she should give evidence to the CBI that in the attack on Gurdwara Pul Bangash, accused Sh. Jagdish Tytler was not present at the spot. Her son was scared and told her to give evidence before the CBI as above. For the sake of safety of her son and family, perforce she had to give evidence before the CBI that the accused was not present. On the day, when she gave this evidence, certain persons whom she cannot identify, took her to the CBI office, where they obtained her signature on a paper. She was directed to give that letter in the CBI office. She does not remember as to what was written in that letter. The evidence which she has given in February, 2008 was false and she had done so because of the threat to her family. Her son only knew about Sh. Prem Wadhawan and she had no knowledge about his present address.

2.18 Smt. Harpal Kaur further stated that the incident of 01.11.1984 was so horrible and terrible that she still shudders on remembering the same. On remembering the brutality with which she

had seen the Sikhs dying, she only thinks that it was a miracle of the almighty that her husband and son were saved in the massacre. Due to worry for the safety of her children, she did not tell the truth to anybody. It was only after the death of her son, Sh. Arvinder Singh and marriage of her daughter, that she had been able to give correct statement about the incident of 01.11.1984. After marriage, her daughter was living with her in-laws at Kanpur and on her going away from Delhi, she could gather courage for giving correct evidence.

2.19 Smt. Harpal Kaur further stated that the furious crowd which had killed Sh. Badal Singh and Sh. Gurcharan Singh on 01.11.1984, by cutting them and throwing them from the roof of their neighbour's house, were carrying iron rods, sharp edged weapons, hammers, and sticks etc. She was hiding at the third floor of the house of her neighbour from where the inside of the Gurudwara was visible. For burning the Gurudwara and dead bodies, the crowd had used kerosene oil. She had seen containers of kerosene oil in the hands of the members of the crowd. Since on the night of 31.10.1984, Sh. Gurcharan Singh had stayed back at their house, he was wearing the clothes of her husband. On 01.11.1984, when the crowd had cut him and thrown him from the roof of their neighbour's house, the members of the crowd started shouting that Amarjeet Bedi had been killed.

2.20 In her Statement dated 29.03.2023 u/s 164 Cr.P.C. (D-17), Smt. Harpal Kaur, *inter-alia*, stated that in the night of 31.10.1984, the ruckus had started. They made their servant stay back during the night at their shop in front of the Gurudwara. On 01.11.1984 also, the ruckus

started. They went to their neighbour's house. Later, at 11:00 A.M., she went to see her shop. She was standing under a tree. She saw that one white Ambassador car came after a U-turn and stopped in front of the Gurudwara at Azad Market. From that Ambassador car, accused Jagdish Tytler and three other persons got down. The accused said that they (the mob) could do whatever they could to the Gurudwara as they had killed their mother. Accused said that by word of mouth as well as by gestures. Then she went to her house. From the roof of her house, she saw that the Gurudwara had been set on fire. She also saw the flames of fire. Three persons i.e. Sh. Gurcharan Singh, servant at her shop, Sh. Badal Singh and Sh. Thakur Singh were hiding in the neighbour's house. Some people came with weapons and after breaking the door, they went inside and cut all three of them. They brought them out by dragging them and took them to roof. They threw the bodies of the above three persons and after keeping their bodies on a cart, they kept tyres on their bodies and threw the bodies inside the Gurudwara and burned the same. These people had looted their house and shop and put their shop on fire. They (Smt. Harpal Kaur and her family members) had hidden in the night. Sh. O.P. Harjai, friend of her husband, came there and took him to his house. She and her sister-in-law (*'Jaithaani'*) stayed in their house for eight to ten days.

2.21 It is also stated that a Site Map (D-14), was prepared on the pointing out of Smt. Harpal Kaur Bedi, in which she has identified her position and the position of accused Sh. Jagdish Tytler, where she saw him instigating the mob.

2.22 Sh. Harvinderjit Singh, who is stated to be another eye witness, has, in his statement dated 05.04.2023, stated that during the month of March, 2023, he came to know through newspaper that the CBI investigation was going on regarding killing of Sikhs at Gurudwara Pul Bangash on 01.11.1984. Since he had witnessed the assembly of the mob and accused Sh. Jagdish Tytler in front of Gurudwara Pul Bangash, he sent a letter dated 24.03.2023 to the CBI intimating about the same. He further stated that in the year 1984, he was studying in 11th Standard in Shri Guru Teg Bahadur Khalsa Boys School, Dev Nagar, Delhi. His age at that time was around 17 years. He was captain of the school band and used to participate in the ‘*Nagar Kirtan*’, which is held one day prior to the Gurburab of Guru Nanak. Gurburab of Guru Nanak occurs every year in the month of November, but the actual date varies according to the Indian Lunar Calender (*Panchang*). He further stated that in the morning of the next day, after the assassination of Late Prime Minister, Smt. Indira Gandhi i.e. on 01.11.1984, he was going from his home at Anand Parvat to Sadar Bazar for buying “*Kalangi*”, which he was to affix on his turban while leading the band in the ‘*Nagar Kirtan*’. He was travelling in a bus from his home at Anand Parvat to Sadar Bazaar. When the bus slowed and subsequently stopped at some distance from Gurudwara Pul Bangash, he saw a mob, carrying sticks, rods, swords, petrol canisters, creating ruckus in front of the Gurudwara. He also saw the accused, who was Member of Parliament at that time, leading the mob and with gestures of his hands instigating the mob to attack the Gurudwara. The mob was very violent and they were raising slogans of “*maro - maro*”. Seeing this, he became very afraid. His fellow passengers suggested him to

leave immediately. He removed his turban and with a borrowed cap covered his head. Then he got down from the bus and taking the cover of the bus so that the mob could not see him, began to run back in the direction of his house. Fortunately, he spotted an auto rickshaw, hopped in it and the auto rickshaw dropped him at his house.

2.23 Sh. Harvinderjit Singh further stated that at the time of the incident, he was only a teenager and was very afraid. He fortunately escaped. The violence with which Sikhs were massacred in the aftermath of assassination of Smt. Indira Gandhi had instilled such fear in his head and soul that he could never muster enough courage to reveal the truth witnessed by him. Also the person he saw i.e. accused Sh. Jagdish Tytler was an MP and a very prominent and powerful man. He was afraid that he could harm him and his family if he revealed to anyone about the events which he had witnessed on 01.11.1984. He also stated that he has been able to muster courage only now because the accused and the Congress party has been out of power and now with the influence of the accused having waned in their area, he was optimistic that he could not do anything to harm him and his family. He was feeling restless since a long time to tell this incident to police or any other organization. Now, when he came to know that investigation against the accused was being carried out by the CBI, he was able to muster courage to tell about this incident to CBI.

2.24 In his statement dated 17.04.2023 u/s 164 Cr.P.C. (D-19), Sh. Harvinderjit Singh has stated that on the day next to the death of Smt. Indira Gandhi in 1984, he was going to Sadar Bazaar for buying

pompom (‘*Kalangi*’) in a bus. He was captain of the band. There was heavy jam near Pul Bangash. There was a mob in front of the Gurudwara. He saw from the bus that the mob was carrying fire bottles in their hands and they were throwing the same in the Gurudwara. He also saw that the mob was being led by the accused Sh. Jagdish Tytler, who was making gestures with his hand that they should throw fire bottles at the Gurudwara. The mob was shouting ‘*maro maro*’. The fellow passenger in the bus asked him to run away. He got down from the rear gate of the bus and started running back. He hurriedly took an auto and went to Anand Parvat. It is also stated that on 19.04.2023, a Site Plan (D-18) was prepared at the instance of Sh. Harvinderjit Singh, wherein he identified his position and the position of the accused in the morning of 01.11.1984.

2.25 Sh. Abdul Wahid, who is also stated to be an eye witness has, in his statement dated 25.04.2023, stated that he was residing at 7151, Beriwalla Bagh, Azad Market, Delhi-06. His house is situated in front of Gurdwara Pul Bangash. Presently, his factory of thermowear was situated at Rama Road. The address of his shop named Classic Thermowear is Shop No. 7206, Beriwalla Bagh, Azad Market. His shop is situated right in front of Gurdwara Pul Bangash. He further stated that in the year 1984, he was 16 years old. On the day after killing of Smt. Indira Gandhi, i.e. on 01.11.1984, in the morning, some people gathered outside Gurdwara Pul Bangash. They were raising slogans of ‘*Indira Gandhi Zindabaad*’. After some time, accused Sh. Jagdish Tytler, who was MP from their area, came in a white Ambassador Car and reached in front of Gurdwara Pul Bangash. Since he was seeing it

from some distance, he could not hear as to what he (the accused) said but after a little while of his reaching there, the crowd became furious and started raising anti-Sikh slogans. The members of the crowd started throwing stones and fire-bottles on Gurdwara Pul Bangash. After some time, the accused went away. Since the crowd was very furious, he also went to his house. On that day, the crowd kept on creating mischief till evening. At that time, the crowd looted one TV shop of Sh. Amarjeet Singh Bedi, which was in front of Gurdwara Pul Bangash. When the crowd left from that place, he came to know that one Sikh, who was earlier working with the police, was cut and burnt in front of the Gurdwara. In the evening, after the crowd left, certain respectable/responsible persons of the society rescued the persons stuck in Gurdwara Pul Bangash with the help of ladders.

2.26 It is also stated that the statement of witness Sh. Amarjeet Singh Bedi S/o Late Sh. Ujagar Singh, R/o L-54, Gali No. 18, New Mahaveer Nagar, Delhi was recorded on 01.03.2016, in which he corroborated the statement of his wife Smt. Harpal Kaur Bedi, that she had gone out of her house in the morning of 01.11.1984 to check the condition of their television shop, which was looted by the mob. He also confirmed that on 01.11.1984, Gurudwara Pul Bangash was attacked and burnt and his employee Sh. Gurcharan Singh was killed by the mob.

2.27 It is also alleged that Sh. Jasbir Singh S/o Sh. Sattu Singh has filed an Affidavit dated 31.08.2000 (D-23) before Justice Nanavati Commission of Inquiry, wherein he has stated that on 03.11.1984, he noticed a group of men standing near gate of T.B. Hospital, Delhi and

then a car arrived from which accused Sh. Jagdish Tytler came out. The accused rebuked the persons forming the group that his instructions have not been faithfully carried out. The accused also said that his position has been greatly compromised and lowered in the eyes of central leaders. He further told the persons present there that only nominal killing of Sikhs has taken place in his constituency as compared to East Delhi, Outer Delhi, Cantt. etc. He also said that he had promised large-scale killing of Sikhs and sought full protection, but they (the person forming the group) have betrayed him and let him down.

2.28 It is also stated that statement of Smt. Kulwant Kaur W/o Late Sh. Jagjit Singh was recorded. She stated that Stamp Paper No. 50794, on which Sh. Jasbir Singh had submitted the aforesaid affidavit before Justice Nanavati Commission of Inquiry was sold by her to him on 31.08.2000. Sh. Tejinder Singh S/o Late Sh. Jagjit Singh and Sh. Avinash Kumar Tripathi S/o Sh. R. N. Tripathi, who were examined by the CBI had also stated that the stamp paper in question was sold by Smt. Kulwant Kaur.

2.29 It is further stated that Sh. Jasbir Singh, who had submitted his affidavit before Justice Nanavati Commission of Inquiry, was examined by CBI at San Francisco, USA on 25/26.12.2008. In his statement, he stated that on 01.11.1984, he was present at E-583, Jagjit Nagar, Delhi, where the families of his uncle Sh. Sheetal Singh and father Sh. Sattu Singh used to reside. When the mob began to attack the houses of Sikhs, he, his uncle Sh. Sohan Singh and his father Sh. Sattu Singh hid in the house of his neighbour. His other uncle Sh. Sheetal

Singh went to fight the mob but was killed. When he, his father Sh. Sattu Singh and his uncle Sh. Sohan Singh were hiding at the house of their neighbour, they cut their hair. In the evening, they left the house of their neighbour and thereafter separated. On 02.11.1984, he travelled through Yamuna Vihar, Khajuri, Gaabdi, and Manpur and reached the forest near the bank of Yamuna river and spent the night of 02.11.1984 there. On 03.11.1984, he went to Ludlow Castle School Delhi, where he met one Sh. Sucha Singh, a resident of Outram Line, who took him to his house. On the same evening, after having dinner, he went for a walk at around 10:00-11:00 PM and saw 40-50 people standing in front of the gate of T.B. Hospital. Then a white ambassador car came there and accused Sh. Jagdish Tytler came out of it and he rebuked the persons gathered there. He told them, *"I had completely assured you that nothing would affect you, you just kill the Sikhs"*. He further said that despite this, least number of Sikhs have been killed due to which he has been put to shame. He also said that there has been only nominal killings in his constituency compared to East Delhi, North Delhi and Cantt. Thereafter he left in a huff.

2.30 It is also stated that Sh. Dharamchand S/o Late Sh. Chanduram, R/o 869, East Park Road, Karol Bagh, Delhi was examined by the CBI. He stated that in the morning of 01.11.1984, he had picked up accused Sh. Jagdish Tytler from Palam Airport and dropped him at Teen Murti Bhawan at 08:30 AM. Thereafter, he went back to his house and dropped the car at the residence of the accused. He also stated that in the year 1984, the accused had two cars, a Fiat and an Ambassador and both these cars were of white colour. He also

stated that apart from him, the accused had two other drivers, namely, Sh. Kalicharan and Sh. Darshan Lal. It is further stated that Sh. Ravi Sharma S/o Late Sh. Darshan Lal, driver of accused Sh. Jagdish Tytler, was examined. He stated that his father Sh. Darshan Lal was driver of the accused and in the year 1984, his father used to drive white ambassador car for him.

2.31 It is further stated that Sh. Sudeep Mazumdar, a journalist and India representative of the USA based magazine Newsweek in the year 1984, was examined by CBI on 24.07.2013. In his statement u/s 161 Cr.P.C., he stated that on 06.11.1984, he and other journalists were present in the office of Commissioner of Police, Delhi, where Sh. S. C. Tandon, Commissioner of Police, Delhi was holding a press conference. During this press conference, accused Sh. Jagdish Tytler barged in the office of the Commissioner of Police, Delhi and began shouting at the Police Commissioner demanding that his men, who were being held, be released. Following this, Sh. S.C. Tandon hurriedly ended the press conference.

2.32 It is also stated that a certified copy of a news item dated 10.11.1984, published in the newspaper, "*Navbharat Times*" (D-27) was obtained on 12.04.2023 from Nehru Memorial Museum and Library, Teen Murti Bhawan, wherein it is mentioned that accused Sh. Jagdish Tytler barged in the Press Conference of Sh. S.C. Tandon and that despite being requested to wait outside by the Police Commissioner, the accused remained there. The aforementioned incident narrated by Sh. Sudeep Mazumdar has also been mentioned in the Report, "*Who are the Guilty*" (D-25), published by People's Union

For Democratic Rights/People's Union For Civil Liberties, of November, 1984. In this report, the following statement has been attributed to Sh. Sudeep Mazumdar :-

“The Police Commissioner, S. C Tandon was briefing the press (about 10 Indian reporters and five foreign journalists), in his office on November 6 at 5 PM. A reporter asked him to comment on the large number of complaints about local Congress MPs and light weights trying to pressure the police to get their men released. The Police Commissioner totally denied the allegation and when questioned further he categorically stated that he has never received any calls or visits by any Congress for that matter, any political leader trying to influence him or his force. Just as he finished uttering these words, Jagdish Tytler, Congress MP from Sadar constituency, barged of into the PC's office along with three other followers and on the top of his voice demanded from the PC “what is this Mr. Tandon? You still have not done what I asked you to do?”

The reporters were amused, Police Commissioner embarrassed. Tytler kept on shouting and a reporter asked the PC, to ask that ‘shouting man’ to wait outside since a press conference was on. Tytler shouted at the reporter: ‘this is more important’, However the reporter told the PC that if Tytler wanted to sit in the office he would be welcome, but a lot of questions regarding his involvement would also be asked and he was welcome to hear them. Tytler was fuming. Perhaps realizing the faux pas he sat down and said: By holding my men you are hampering relief work. Then he boasted to some foreign reporters that ‘There is not a single refugee in any camp in my constituency. I have made sure that they are given protection and sent back home’. However, the incident left the PC speechless and the reporters convinced about the Congress(I) interference in police work.”

2.33 It is also stated that a certified copy of the aforesaid Report of People's Union For Civil Liberties/People's Union For Democratic Rights, titled, “*Who are the Guilty*”, authored by Prof. Rajni Kothari and Prof. Arvind Mukhate was obtained during the investigation. It is also stated that a certified copy of a news item published in the newspaper, “*The Spokesman*” (D-29) on 26.11.1984

was obtained from Nehru Memorial Museum and Library, Teen Murti Bhawan, wherein the aforementioned Report titled “*Who Are The Guilty*”, has been mentioned.

2.34 It is also stated that Sh. Surinder Singh S/o Sh. Ajit Singh, R/o A-4 Staff Quarters, Gurudwara Rakab Ganj, Delhi, who was Head Granthi of Gurudwara Pul Bangash at the time of the incident on 01.11.1984, had filed an affidavit on 15.01.2002 before Justice Nanavati Commission of Inquiry, wherein he stated that on 01.11.1984, a big mob carrying ‘*laathis*’, iron rods, kerosene oil etc. led by accused Sh. Jagdish Tytler, the then MP of the area, attacked the Gurudwara and that on being incited by the accused, the mob burnt Gurudwara Pul Bangash and killed Sh. Thakur Singh and Sh. Badal Singh. Smt. Kulwant Kaur had also stated that Stamp Paper No. 85187, on which Sh. Surinder Singh had submitted the above affidavit before Justice Nanavati Commission of Inquiry, was sold by her to Sh. Surinder Singh on 15.01.2002. This has also been corroborated Sh. Tejinder Singh.

2.35 It is also stated that Sh. Surinder Singh, Granthi was examined by CBI on 17.04.2006, 21.02.2008, and 22.12.2008 and 23.12.2008. In his statement dated 17.04.2006, he had stated that accused Sh. Jagdish Tytler was not involved in the attack on Gurudwara Pul Bangash on 01.11.1984, but in his statements dated 21.02.2008, 22.12.2008 and 23.12.2008, he stated that he was under threat from the accused due to which he had to change his statement made before Justice Nanavati Commission of Inquiry.

2.36 It is further stated that Smt. Lakhwinder Kaur W/o Late Sh. Badal Singh, R/o C41-C, Tilak Vihar, Near Tilak Nagar, New Delhi was examined by CBI. In her statement u/s 161 Cr.P.C., she has stated that in April, 2008, she had gone to Karkardooma Courts where she met Sh. Surinder Singh, Granthi, who told her that on 01.11.1984, her husband Sh. Badal Singh was killed by the mob which had attacked Gurudwara Pul Bangash and that accused Sh. Jagdish Tytler was leading the said mob. It is also stated that a request under the Mutual Legal Assistance Treaty was sent to Canada to examine Sh. Narender Singh Khera S/o Sh. Surinder Singh, Granthi. In the reply received from Canada, it was informed that statement of Sh. Narender Singh Khera has been recorded by the Royal Canadian Mounted Police, wherein Sh. Narender Singh Khera has stated that his father Sh. Surinder Singh changed his statement because he wanted to protect his son (Sh. Narender Singh Khera) and that is why he had sent him outside India. He has also stated that his father Sh. Surinder Singh had given the statement that the accused was responsible for the killings of Sikhs.

2.37 It is also stated that Ms. Nidhi Bhardwaj, reporter for CNN/IBN was examined on 10.01.2008. She stated that she had met Sh. Surinder Singh, Granthi between 12.12.2017 to 15.12.2017. When she asked Sh. Surinder Singh, Granthi as to why, when examined by CBI, he had retracted from his statement, given before Justice Nanavati Commission of Inquiry, that accused Sh. Jagdish Tytler had incited the mob which had attacked the Gurudwara, Sh. Surinder Singh, Granthi told her, *“beta, main ek magarmachh ke samne tik nahin sakta, wo ek*

bahut badi power hain. Do tin bar mujhe utha ke uske log leke gaye aisi jagah ke main tujhe bata nahin sakta". She further stated that on 19.12.2007, she received a call from someone claiming to be from Gurudwara Majnu Ka Teela, Delhi. The caller told her that Sh. Surinder Singh might give an interview on camera. On 20.12.2007, she reached Gurudwara Majnu Ka Teela, Delhi for an interview with Sh. Surinder Singh. However, he again refused to give interview on camera but she recorded his interview in a hidden camera carried by her. In this interview, Sh. Surinder Singh disclosed that he had seen the killings of Sh. Badal Singh, 'Ragi', Sh. Thakur Singh and one employee of Sh. Amarjeet Singh Bedi, at Gurudawara Pul Bangash by the mob on 01.11.1984. Further, he also stated that the accused was present in the mob on that day and that he instigated the mob by saying, *"Kill them they have killed our mother"*. The said interview was also aired by CNN/IBN on 21.12.2007.

2.38 It is also stated that vide Production-cum-Seizure Memo dated 10.01.2008, one DVD containing raw recording of the interview of Sh. Surinder Singh, Granthi and one CD containing the story aired by CNN/IBN, with regard to interview of Sh. Surinder Singh, were obtained from Ms. Nidhi Bhardwaj. Subsequently, these articles were sent to Central Forensic Science Laboratory (hereinafter referred to as 'CFSL'), Delhi for examination. CFSL, Delhi, vide Video CD Examination Report No CFSL-2008/E-0086 dated 27.02.2009 (D-40), opined that it is beyond reasonable doubt that the CD in question does not contain any addition, deletion, edition in audio recording after the preparation of original unedited recording. CFSL, Delhi also opined

that there was no tampering/distortion of audio and video recordings in the CDs.

2.39 It is further stated that a Complaint dated 06.04.2018 (D-41) was sent by Sh. Manjit Singh G.K, S/o Late Sh. Jathedar Santokh Singh, R/o M-103, Greater Kailash-I, Delhi, with alleged sting videos of accused Sh. Jagdish Tytler. As per this complaint, in the sting video, a person named Sh. Ravinder Singh Chauhan is sitting in front of the accused, who clearly admitted his involvement in killing of 100 Sikhs. It is also alleged that the aforesaid sting video CD was sent to CFSL, Delhi vide letter dated 12.06.2018 for opinion about genuineness of the sting videos. According to Examination of Video Clips on CD Report No. CFSL-2018/E-649 dated 27.09.2022 of CFSL (D-43), Delhi, the video clips contained in Exhibit 'E', received vide complaint/letter of Sh. Manjit Singh G.K. dated 06.04.2018, were found to be genuine.

2.40 It is further stated that the voice sample of accused Sh. Jagdish Tytler was taken on 11.04.2023, vide Specimen Voice Memo (D-44). This voice sample was sent to CFSL Delhi, vide letter dated 20.04.2023, for comparison with the voice in the questioned sting videos of the accused contained in CD, Exhibit 'E', so as to ascertain whether the words spoken in the sting videos have been spoken by the accused or not. In Forensic Voice Examination Report No. CFSL-2018/E-649 dated 30.06.2023 of CFSL, Delhi, filed by the CBI vide their application dated 26.07.2023, it is stated that the questioned voice was the probable voice of the accused and that the audio recordings were continuous and no form of tampering was detected.

2.41 It is also stated that Sh. Manjit Singh GK has stated that in the year 2008, when he was member of Delhi Sikh Gurudwara Management Committee, Sh. Surinder Singh, Granthi, who was an eyewitness to the incident at Gurudwara Pul Bangash approached him, saying that he has been threatened by accused Sh. Jagdish Tytler. Sh. Manjit Singh GK also stated that Sh. Surinder Singh, Granthi had to change his statement before the CBI after he was threatened by the accused.

2.42 It is further stated that Sh. Ravinder Chauhan, S/o Late Sh. Virender Singh Chauhan, R/o D-38, 2nd Floor, South Extension, Part-II, New Delhi-110049, who is seen seated along with accused Sh. Jagdish Tytler in the aforementioned sting videos, was examined by the CBI. He has stated that on 08.12.2011, he went to farm house of the accused at No. 2 Church Road, Vasant Kunj Farm. He further stated that on that day, the accused had boasted about how he had killed 100 Sikhs.

2.43 It is, thus, alleged that sufficient evidence has come on record that accused Sh. Jagdish Tytler was part of the unlawful assembly, which had assembled near Gurudwara Pul Bangash on 01.11.1984, violating the prohibitory orders, and he instigated, incited and provoked the mob to kill the Sikhs which resulted in Gurudwara Pul Bangash being set on fire by the mob and killing of three persons belonging to the Sikh community and he also promoted enmity between different religious groups. He has thereby committed offences punishable under section 147, 148, 149, 153 A, 188, 109 r/w Sections 295/302/436 of IPC.

2.44 The CBI has, vide application dated 02.06.2023, filed Sanction Order dated 29.05.2023 u/s 196 Cr.P.C. of the Commissioner of Police for prosecution of the accused for commission of offence punishable u/s 153 A IPC. The Commissioner of Police has also filed Complaint dated 24.07.2023 u/s 195 Cr.P.C. for prosecution of the accused u/s 188 IPC.

Submissions on behalf of the Central Bureau of Investigation

3.1 Sh. Amit Jindal, Ld. PP for the CBI has argued that there is unimpeachable and categorical evidence of three eye witnesses, namely, Smt. Harpal Kaur, Sh. Harvinderjit Singh and Sh. Abdul Wahid, about their having seen the accused come to the place of incident in a white Ambassador Car on 01.11.1984, leading the mob and instigating the mob to destroy/burn Gurudwara Pul Bangash, kill the Sikhs, and loot their properties. PW Sh. Dharamchand and PW Sh. Ravi Sharma have corroborated the version of the above three eye witnesses that the accused was having a white Ambassador Car on the date of incident. He has also argued that Sh. Ravinder Chauhan has stated about the extra judicial confession made by the accused regarding killing of Sikhs. He has further submitted that Smt. Nidhi Bhardwaj has posted the sting operation, wherein Sh. Surinder Singh, Granthi, has stated about the role of the accused in the massacre of Sikhs. However, since Sh. Surinder Singh, Granthi has died, his statement may not be relevant u/s 32 of the Indian Evidence Act, 1872. He also submitted that postmortem on the bodies of only two deceased persons could be conducted. The body of the third deceased person was completely burnt and the remains of his body could not be recovered.

3.2 Ld. PP for the CBI has further contended that documents like Reports of Commission, Committees and Action Taken Report etc., are not part of the charge sheet. He has relied upon *State of Orissa vs. Debendra Nath Padhi, (2005) 1 SCC 568*, to argue that at the stage of charge, documents sought to be produced by the accused can not be considered and that only the documents filed alongwith the chargesheet can be looked into by the court. He has also contended that, after the matter was investigated, all the proceedings which had taken place before various commissions and committees had merged into the present FIR. The earlier closure reports filed by the CBI are only to show the complete investigation conducted by the CBI. The said reports were not accepted by the courts and further investigations were ordered. The orders, vide which further investigations were ordered, have become final and the same can not be reviewed now. He has relied upon *Sajjan Kumar Vs. CBI, 2013 SCC OnLine Del 2601* and *Sajjan Kumar vs. CBI, 2010 SCC OnLine Del 2398*, to contend that the circumstances in the aftermath of murder of Smt. Indira Gandhi were such that the family members of the victims and the eye witnesses of 1984 riots were so scared that they were not willing to depose against the accused, who was a Minister in the Central Government at that time. However, later on with the passage of time and the change in circumstances, the said witnesses had given truthful statements. He submitted that the only test required to be applied, at the stage of charge, is that if the testimonies of the said eye witnesses go un-rebuted, would it lead to conviction of the accused or not?

3.3 Ld. PP for the CBI has also argued that despite

imposition of curfew on 01.11.1984, due to a situation of confusion and turmoil, many people have violated the curfew order. He has also argued that even if there are contradictory statements of witnesses, it can only be tested during the trial as to which statement is true. He has also argued that, with regard to role of the accused, statement of Sh. Amarjeet Singh has not been relied upon by the prosecution, since he has not seen anything. However, there is no contradiction in his statement. He also contended that even if it is assumed that in the early morning of 01.11.1984, the accused was present at Teen Murti House, he would have easily come from there to the place of incident. Ld. PP has further argued that the plea of *alibi* taken by the accused is a rule of evidence and such plea is to be proved by the accused during the trial. He also contended that the order of Ld. ASJ in the Revision Petition has attained finality and, thus, all the contentions raised before the said court by the accused can not be raised again.

3.4 Ld. PP for the CBI has further contended that the fact as to how Sh. Narinder singh has gone to Canada is not relevant. Thus, the statement of Sh. Abhishek Verma is also not relevant. In support of his arguments, Ld. PP for the CBI has also relied upon *P. Ponnusamy vs. State of Tamil Nadu, 2022 SCC OnLine SC 1543, State of Madhya Pradesh Vs. S.B Johari and Others, (2000) 2 SCC 57, Supdt. & Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja and Others, (1979) 4 SCC 274, State of Delhi vs. Gyan Devi & Others, 2000 (8) SCC 239, State of Andhra Pradesh vs. Golconda Linga Swamy and Anr, (2004) 6 SCC 522, State of Bihar vs Ramesh Singh, (1977) 4 SCC 39* and *State through CBI vs. Sajjan Kumar, 2018 SCC*

OnLine Del 12930.

Submissions on behalf of the Victim

4.1 Sh. H. S. Phoolka, Ld. Senior Advocate/Counsel for victim Lakhwinder Kaur @ Lokender Kaur, W/o Late Sh. Badal Singh, who was killed in the incident on 01.11.1984, has submitted that an extra ordinary situation requires extra ordinary remedy. He has argued that the present case is to be seen in the light of the fact that after killing of Smt. Indira Gandhi, Late Prime Minister of India, there were wide spread riots, instigated and generated by the political leaders and there was mass massacre of Sikhs. In the then prevailing atmosphere of fear, the victims, their families members, and other eye witnesses were not willing to depose against the perpetrators of crime. It is only with the passage of time that the witnesses gained confidence and started coming out with the truth. Ld. Senior Advocate has argued that the name of the accused had surfaced immediately after riots in various inquiries, commissions and committees appointed by the Government. He has further contended that the plea of *alibi* taken by the accused can not be decided at this stage and it has to be proved by him in his defence during the trial. Earlier, such a plea, based on which second Supplementary Closure Report was filed by the CBI, was not accepted by the court. The court has directed further investigation. The said order dated 04.12.2015 of the Ld. ACMM, Karkardooma (East) has attained finality. He has submitted that the accused was a Minister at the time of incident and even at the time of inquiry being conducted by Justice Nanavati Commission of Inquiry. Thus, under his influence and because of the fear of the people in power, witnesses could not

depose truthfully and three times closure reports were filed by the CBI. However, the courts have not accepted the said closure reports. The evidence now collected has to be seen independently and it can not be discarded because of the earlier closure reports. The statement of witnesses, especially the eye witnesses, now recorded by the CBI have to be appreciated during the trial and opportunity has to be given to the witnesses to depose in the court, when their testimony would be tested by cross-examination. The delay in recording the statements of witnesses can not be a ground to reject the prosecution case at this stage. In support of his above contention, he has relied upon *Sajjan Kumar vs. CBI, (Supra), State through CBI vs. Sajjan Kumar (Supra), Soma Chakravarty vs. State, (2007) 5 SCC 403, Prithipal Singh and Ors. vs. State of Punjab and Anr., (2012) 1 SCC 10, State of Gujarat Vs. Dilipsinh Kishorsinh Rao, 2023 SCC OnLine SC 1294* and *Orders dated 16.08.2017 and 11.01.2018 of the Hon'ble Supreme Court of India in WP (Crl) No. 9/2016 , S. Gurlad Singh Kahlon vs. Union of India & Ors.* He has contended that the statements of the three eye witnesses, namely, Smt. Harpal Kaur, Sh. Harvinderjit Singh and Sh. Abdul Wahid are sufficient to frame charges against the accused.

4.2 Ld. Senior Advocate has also submitted that irrespective of the political party which was in power, the influence of accused was always there. He has contended that vide order dated 04.12.2015, on the Protest Petition filed by the complainant, the court has ordered monitoring of further investigation and filing of status report after every two months. He also argued that the onus to prosecute the accused is on the State and not on the victims. The victims, who had

suffered for such a long time, need to be given an opportunity to explain the extra-ordinary situation, because of which they could not freely give their statements. The question regarding delay in recording the statements of witnesses or contradictions are a matter of trial. It is also argued that the plea of *alibi* and various documents relied upon by the accused can not be considered at this stage and the same are required to be proved by the accused in his defence during the trial. In support of his contention, Ld. Senior Advocate has also relied upon *Stree Atyachar Virodhi Parishad vs. Dilip Nathumal Chordia, (1989) 1 SCC 715, Ghulam Hassan Beigh vs. Mohammad Maqbool Magrey & Ors., (2022) 12 SCC 657* and *Puneet Sabharwal vs. CBI, 2024 SCC OnLine SC 324*.

Submissions on behalf of the Accused

5.1 Sh. Manu Sharma, Ld. Counsel for the accused has argued that in FIR no. 316/84, P.S Bara Hindu Rao, Delhi, which pertains to the incident in question, 32 persons were tried. However, all the accused persons were acquitted, as eye witnesses could not identify the said accused persons during the trial. Later Supplementary Charge Sheet was filed against one more accused, who was also acquitted. He has further submitted that on the report of Justice Nanavati Commission of Inquiry, Action Taken Report was filed by the Ministry, in which no action was recommended against the accused. After registration of the case by the CBI, three closure reports were filed stating that no evidence against the accused could be collected. However, from the year 2016 to 2023, three persons, namely Smt. Harpal Kaur Bedi, Sh. Harvinderjit Singh and Sh. Abdul Wahid had

surfaced. Mr. Jasbir Singh was declared a proclaimed offender by a Delhi Court. Sh. Surinder Singh, Granthi had already died. He has further contended that an agenda driven exercise had started after the year 2005. The initial investigation by Delhi Police as well as CBI has not found any evidence against the accused. However, due to vested interests, after a long delay, certain witnesses have given statements against the accused, which are contradictory to their earlier statements and do not inspire any confidence.

5.2 Ld. Counsel for the accused has further argued that on 01.11.1984, curfew order had been imposed and people were supposed to stay indoors. However, PW Sh. Harvinderjit Singh had stated about going for shopping at the time when only rioters would be out of house. His statement has been made after a long delay of 38 years. The statements of Smt. Harpal Kaur and Sh. Amarjeet Singh Bedi reveal that she had not told her husband about having seen the accused at the time of incident. Ld. Counsel has also contended that Doordarshan recording of 01.11.1984 shows that the accused was present with Sh. Rajiv Gandhi, son of Mrs. Indira Gandhi, late Prime Minister of India, at Teen Murti House. Thus, he could not have been present at the site of incident near Gurudwara Pul Bangesh. It is further argued that Sh. Jasbir Singh has filed application through his attorney Sh. Gurpatwant Singh Pannu, whose antecedents are in question, as 22 cases are pending against him. He has made aspersion on CBI. Witnesses had been threatened and put up by him. The circumstances show that certain external forces were planting witnesses to keep the issue alive. Ld. Counsel has also argued that on 27.03.2009, first Supplementary

Final Report was filed by CBI, wherein no action was sought against the accused. The same was accepted by the court. A revision petition filed by Smt. Lakhwinder Kaur was accepted and further investigation was directed vide order dated 10.04.2023 of the Ld. ASJ. On 24.12.2014, second Supplementary Final Report was filed by the CBI. In the said report also, no action was sought against the accused. However, Ld. ACMM, vide order dated 04.12.2015, directed further investigation and it is in third Supplementary Charge Sheet dated 02.06.2023 filed by the CBI that action has been sought against the accused, in contradiction to the earlier reports filed by the CBI and Delhi Police.

5.3 Ld. Counsel has also argued that Smt. Lakhwinder Kaur w/o Late Sh. Badal Singh, did not name the accused for 25 years, after the date of incident. Sh. Abdul Wahid woke up to give statement after 38 years of the date of incident. Thus, there is an inordinate delay in recording the statement of witnesses, which is attributable to the conduct of the said witnesses and the IO. The said delay, unless explained, run counter to the creditability of the witnesses. He further contended that the only reason for such delay given by the prosecution is that the witnesses did not have faith in the system. However, the report of investigating agency can not be discarded on such insinuations.

5.4 Ld. Counsel has further argued that the prosecution is emphasizing that the influence and power exercised by the accused was instrumental in the witnesses not coming out with the truth and making statements against the accused as they were scared. However, the party

of the accused was not in power from 1989 to 1991, 1996 to 2004 and after 2014. Even when he was not in power, the witnesses, on whom the prosecution is relying, did not come forward to speak against the accused. Further, during investigation by the CBI, no observation has been made that Delhi Police fell short in its investigation.

5.5 Ld. Counsel has also argued that as per statement dated 23.02.2008 of Smt. Harpal Kaur, accused Sh. Jagdish Tytler was not present at the site of incident. Sh. Amarjeet Singh in his statement dated 07.03.2013 before the court, also stated that he did not remember the names of the persons involved in the incident of 01.11.1984. However, in her statement dated 01.03.2016, Smt. Harpal Kaur had named the accused and also stated that she told about the incident to her husband. No reason was given by her for not making the said statement earlier. Further, in her statement dated 17.03.2016, she stated that the accused came out from the car/van. However, she also stated that she has never told her husband about the accused. In her statement dated 07.12.2022, Smt. Harpal Kaur has stated that her statement dated 23.02.2008 was false, due to threat to her family by one Sh. Prem Wadhawan. Her statement dated 13.10.2006, u/s 164 Cr.P.C to the effect that Sh. Gurcharan Singh, Sh. Badal Singh and Sh. Thakur were hiding in neighbour's house, they were cut, thrown and burnt is also contradictory to her earlier statements. Thus, she can't be believed. It is also argued that statement dated 17.04.2006 of Sh. Surnder Singh, who has later died, is not relevant as per Section 32 of the Indian Evidence Act, 1872 and, thus, can not be considered. However, his statement, wherein he has stated that in the Gurudwara,

Sh. Thakur Singh was not stabbed but was burnt and that Sh. Badal Singh was stabbed in Amarjeet Singh's house falsifies the statement of Smt. Harpal Kaur.

5.6 It is also argued that in his affidavit dated 31.08.2000 submitted to Justice Nanavati Commission of Inquiry, Sh. Jasbir Singh has mentioned his address as E-583, Jagjit Nagar, Delhi. However, as per the First Supplementary Charge Sheet filed by the CBI, Sh. Palla Ram and Sh. Rajesh Ram were the residents of E-583, Jagjit Nagar, Delhi and that Sh. Jasbir Singh did not stay in their house. It shows that he has given wrong address in his affidavit. Ld. Counsel also submitted that Sh. Jasbir Singh was also convicted of threatening witnesses in anti-Sikh riots case pertaining to Sh H.K.L. Bhagat.

5.7 Ld. Counsel for the accused has further contended that in his statement dated 15.01.2002 before Justice Nanavati Commission of Inquiry, Sh. Surinder Singh, Granthi had stated about the mob being led by accused Sh. Jagdish Tytler on 01.11.1984 at 9:00 A.M. However, in his second affidavit dated 05.08.2002, he has stated that he did not know as to what was written in his previous affidavit and that he has not seen the accused on the date of incident. In his statement dated 07.04.2006 also, he has stated that he has not seen the accused. His statement was translated by Sh Santokh Singh and checked by Wing Cdr. P.S Chhatwal, Chairman, Sikh Carnage Committee. Thus, there is no reason to doubt the correct translation of the same. It is further contended that in his affidavit dated 31.05.2008, Sh. Narender Singh S/o Sh. Surinder Singh has stated that he was being pressurized by the Ld. Senior Advocate for the victim.

5.8 It is also argued that the other eye witnesses have not seen the accused. Further, as per statement of Sh. Abhishek Verma, Atlas Interactive India Private Limited has moved Sh. Narender Singh to Canada. However, there is no correspondence between Atlas Interactive India Private Limited and Canadian Government in support of the said fact. No witness from Atlas Interactive India Private Limited has been examined.

5.9 Ld. Counsel has also submitted that the antecedents of PW Abdul Wahid are questionable as three FIRs are pending against him. The prosecution witnesses have been repeatedly trashed by the CBI, Committees, Courts, etc. However, certain external elements have been keeping the issue alive. It is further contended that statement of Sh. Ravinder Singh Chauhan is hearsay and selective. Thus, the same can not be relied upon. The instrument by which the video was allegedly recorded at the farm house of the accused has not been brought on record and, thus, the same can not be relied upon. It is also argued that the statement of Sh. Manjit Singh G.K. regarding Sh. Surinder Singh, Granthi telling him about being threatened by the accused also can not be relied upon, being hearsay. Ld. Counsel has relied upon *State (Govt. of NCT of Delhi) vs. Nitin, 2019 SCC OnLine Del 7239*, *State Vs. Ashok Kumar Verma, 2023 SCC OnLine Del 1948*, *State Vs. Dr. Gajraj Singh, 2017 OnLine Del 6672* and *Ganesh Bhavan Patel and Anr. vs. State of Maharashtra, (1978) 4 SCC 371*, to contend that statement of witnesses recorded after long delay can not be relied upon. He has also relied upon *P. Vijayan vs. State of Kerala and Anr., 2010 (2) SCC 398*, *Yogesh vs. State of Maharashtra,*

2008 (10) SCC 394 and *CBI, Hyderabad vs. K. Narayana Rao, 2012 (9) SCC 512* to argue that if two views are possible in a case, the accused should be discharged and that the court is required to see that even if evidence proposed to be led by the prosecution is to be accepted, whether it will lead to conviction or not and that the court is not to act merely as a post office.

5.10 Ld. Counsel has also argued that the CD containing the alleged conversation between Sh. Ravinder Singh Chauhan and the accused is hearsay. Thus, the alleged confession being relied upon by the prosecution is not admissible in evidence. In this regard, Ld. Counsel has relied upon *L.K Advani vs. CBI, (1997) 41 DRJ 274, State (NCT of Delhi) vs. Navjot Sandhu, 2005 (11) SCC 600* and *Moorthy vs. State of Tamil Nadu, 2023 SCC OnLine SC 1027*. He has also relied upon *Vijender vs. State of Delhi, (1997) 6 SCC 171, Tomaso Bruno and Anr. vs. State of Uttar Pradesh, (2015) 7 SCC 178, Mohan Lal Shamji Soni vs. Union of India, (1991) Supp (1) SCC 271, Inderpal vs. State of Madhya Pradesh, 2001 (10) SCC 736* and *Kehar Singh and Ors. vs. State (Delhi Administration), (1988) 3 SCC 609*, to contend that the best available evidence ought to have been brought on record by the prosecution, but the same has not been done.

5.11 Ld. Counsel for the accused has also contended that till date there is no evidence as to who had stabbed/ burnt the three Sikh deceased persons, or burnt Gurudwara Pul Bangash or looted the shop of Sh. Amarjeet Singh Bedi. Therefore, the accused can not be alone tried u/s 149 IPC. In this regard, he has relied upon *Mahendra & Anr. vs. State of M.P. {Crl. Appeal No. 30 of 2022 (arising out of SLP (Crl.)*

No. 6530/2018), decided by the Hon'ble Supreme Court of India on 05.01.2022} Ld. Counsel for the accused has finally submitted that there is not sufficient ground for proceedings against the accused and, therefore, he may be discharged.

Consideration of the record of the case and documents submitted therewith under Section 173 Cr.P.C. and submissions made on behalf of the CBI, the Victim and the Accused

6.1 It is well settled that the main purpose of a court of justice is the discovery, vindication, and establishment of truth. All other factors are subservient to the same. In *Maria Margadia Sequeria ... vs. Erasmo Jack de Sequeria (D), (2012) 5 SCC 370*, the Hon'ble Supreme Court of India has held,

“32. Truth alone has to be the foundation of justice. The entire judicial system has been created only to discern and find out the real truth. Judges at all levels have to seriously engage themselves in the journey of discovering the truth. That is their mandate, obligation and bounden duty.”

In this regard, reference can also be made to *Ritesh Tewari and Another v. State of U.P. and Others (2010) 10 SCC 677* and *Shanmugam V Ariya Kshatriya Rajakula v/s Amsathu Madalaya Nandhavana Paripalanai Sangam Represented by its President etc., (Civil Appeal nos. 4012-4013 of 2012, decided by the Hon'ble Supreme Court of India on 27-4-12)*.

6.2 It is pertinent to refer to Sections 227 and 228 Cr.P.C. which provide as under:-

“227. Discharge

If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.”

“228. Framing of Charge

1. *If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—*

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

2. *Where the Judge frames any charge under clause (b) of Sub-Section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.”*

6.3 It can be seen that Sections 227 and 228 Cr.P.C., when read together, provide that if upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing. However, if, after such consideration and hearing as aforesaid, the judge is of opinion that there is ground for presuming that the accused has committed an offence which is exclusively triable by the

court, he shall frame in writing a charge against the accused.

6.4 It is well settled that at the stage of framing of charge, only the material produced by the prosecution has to be considered and the accused has no right to produce any document/material. The test to be applied by the court is whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. The truth, veracity and effect of evidence is not to be judged at the stage of charge. The standard of test regarding guilt or otherwise of the accused is not to be applied at the stage of charge. The test to be applied by the court at the stage of discharge or framing of charge is whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. At this stage, meticulous consideration of evidence and material by the court is not required. In this regard reference can be made to *State of Delhi vs. Gyan Devi and Ors., (Supra)*, *State of M.P. vs. S. B. Johari and Ors., (Supra)*, *Radhey Shyam vs. Kunj Behari and Ors., AIR 1990 SC 121*, *State of Bihar vs. Ramesh Singh, AIR 1977 SC 2018*, *State of Maharashtra vs. Som Nath Thapa and Ors., AIR 1996 SC 1744*, *Hem Chand vs. State of Jharkhand, (2008) 5 SCC 113*, *CBI vs. Sh. S. Bangarappa, 2001 (1) SCC 369* and *State of Orissa vs. Devender Nath Padhi (Supra)*.

6.5 In *Sajjan Kumar vs. Central Bureau of Investigation (Supra)*, which also pertain to anti-Sikh riots in Delhi, after the killing of Smt. Indira Gandhi, Late Prime Minister of India, vide order on charge dated 01.07.2010, Ld. Trial Court was of the opinion that in view of the statement of witnesses and documents relied upon by the

prosecution, there were sufficient grounds for presuming that incident dated 01.11.1984 resulted on account of provocative speeches made by petitioner Sajjan Kumar to the mob gathered in Sultanpuri area and he instigated the mob and other accused persons, who were members of the unlawful assembly, resulting into robbery, burning of properties and killing members of Sikh community including Sh. Surjeet Singh. The said order was challenged before the Hon'ble High Court of Delhi. The Hon'ble High Court of Delhi, while dismissing the Criminal Revision Petition, *inter-alia*, observed,

“161. The court is duty bound to accept and accord its approval only to a report which is a result of faithful and fruitful investigation. It is one of the basic principles of criminal jurisprudence that court should not look into and should decline to accept the report submitted by investigating officer which is glaringly unfair and offends the basic cannon of criminal jurisprudence.

162. It is settled law that at the initial stage if there is strong suspicion which leads the court to think that there is ground for presuming that the accused has committed the offence, a charge would be framed. The requirement at the stage of charge/framing of charge is a ‘mere presumption leading to a strong suspicion’, whereas the consideration at the stage of trial is the principle of ‘beyond reasonable doubt’. The scheme of the Code and the object with which Section 227 of Cr.P.C. was incorporated goes to show that at the stage of framing of charge, a roving and fishing inquiry is impermissible.

163. Law is also settled in case of Devinder Nath Padhi (supra) that at the stage of framing of charge, hearing the submissions of the accused has to be confined to the material produced by the investigating agency. Thus, there is no scope for the accused to produce any evidence in support of the submissions made on his behalf at the stage of framing of charge and only such materials as are indicated in Section 227 Cr.P.C. can be taken into consideration at that stage.”(emphasis supplied)

“167. The submissions of Mr. Phoolka, Id. Sr. Counsel appearing as an intervener and on behalf of the Revisionist Sheela Kaur in CrI. Rev. P. 113/2011 that the influence of the accused persons

and their ability to influence the witnesses and investigation is an important factor which this court should keep in mind while deciding this case.

168. Law is settled in Zahira Shekh (supra) that if the witness who deposed one way earlier comes before the appellate Court with a prayer that he is prepared to give evidence which is materially different from what he has given earlier at the trial with the reasons for the earlier lapse, the Court can consider the genuineness of the prayer in the context as to whether the party concerned had a fair opportunity to speak the truth earlier and in an appropriate case accept it. It is not that the power is to be exercised in a routine manner, but being an exception to the ordinary rule of disposal of appeal on the basis of records received in exceptional cases or extraordinary situation the Court can neither feel powerless nor abdicate its duty to arrive at the truth and satisfy the ends of justice.” (emphasis supplied).

6.6 It is also relevant to refer to Section 149 IPC, which provides as under:

“149. Every member of unlawful assembly guilty of offence committed in prosecution of common object.—If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.”

It is well settled that Section 149 IPC applies only if there is proximity of time and place both between members of an unlawful assembly and the criminal acts of individual members of that assembly. In this regard, reference can be made to *Tahsildar Singh vs. State, 1957 SCC OnLine All 406*.

6.7 It is also pertinent to refer to Section 109 IPC, which stipulates,

“109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.—Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation.—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

It can be seen that an abettor is liable u/s 109 IPC only if the act abetted is committed in consequences of the abetment. If the act abetted is committed but it is not done in consequences of the abetment, Section 109 IPC will not apply.

7.1 The record of the case and the submissions made on behalf of the CBI and accused persons have to be seen in the light of the above position of law. In this case, there appears to be no dispute about the fact that from about 09:00 A.M. onwards, on 01.11.1984, a mob had gathered in front of Gurudwara Pul Bangash, Azad Market, where they were shouting slogans that the Gurudwara will be completely burnt and no Sikh person will be allowed to escape from there, the said Gurudwara was set on fire, three Sikhs persons, namely, Sh. Badal Singh, Sh. Thakur Singh and Sh. Gurcharan Singh were killed and various properties of the Sikhs, including TV shop of Sh. Amarjeet Singh Bedi, were looted by the mob. However, the accused has disputed his involvement in the said incident.

7.2 It can be seen that in their statements, the three witnesses viz. Smt. Harpal Kaur, Sh. Harvinderjit singh and Sh. Abdul Wahid

have categorically stated about having seen accused Jagdish Tytler instigating and inciting the mob to destroy/burn Gurudwara Pul Bangash, kill Sikhs and loot their properties, on 01.11.1984. In her statement dated 01.03.2016, Smt. Harpal Kaur has stated that while on her way back to house, she saw a white Ambassador car coming from the side of the Gurudwara and accused Sh. Jagdish Tytler sitting inside the vehicle. The car was moving slowly and the accused, while sitting inside the car, made a gesture to the people engaged in violence. While gesturing, he said “*maro maro*” and swiftly moved out of the spot. Further, in her statement dated 17.03.2016, Smt. Harpal Kaur has stated that on her way back, she saw a white Ambassador car taking U-turn in front of the Gurudwara and accused Sh. Jagdish Tytler coming out of the van. He called the persons engaged in violence and told them, showing his head (as if turban), “*pahle maro, phir luto*”. Further, in her statement dated 29.03.2023 u/s 164 Cr.P.C., Smt. Harpal Kaur has stated that she saw that one white Ambassador car came after a U-turn and stopped in front of the Gurudwara at Azad Market. From that Ambassador car, accused Jagdish Tytler and three other persons got down. The accused said that they (the mob) could do whatever they could to the Gurudwara as they had killed their mother. Accused said that by word of mouth as well as by gestures. Smt. Harpal Kaur has also stated that due to fear and worry for the safety of his children, she did not earlier give correct statement about the accused.

7.3 Further, Sh. Harvinderjit Singh has, in his statement dated 05.04.2023, stated that he also saw the accused, who was Member of Parliament at that time, leading the mob and with gestures of his hands

instigating the mob to attack the Gurudwara. In his statement dated 17.04.2023 u/s 164 Cr.P.C., Sh. Harvinderjit Singh has stated that he also saw that the mob was being led by the accused Sh. Jagdish Tytler, who was making gestures with his hand that they should throw fire bottles at the Gurudwara. Sh. Harvinderjit Singh also stated that due to fear and the accused being a powerful person, he could not earlier muster courage to reveal the truth.

7.4 Sh. Abdul Wahid has, in his statement dated 25.04.2023, stated that accused Sh. Jagdish Tytler, who was MP from their area, came in a white Ambassador Car and reached in front of Gurudwara Pul Bangash. Since he was seeing it from some distance, he could not hear as to what he (the accused) said but after a little while of his reaching there, the crowd became furious and started raising anti-Sikh slogans.

7.5 PW-1 Ranveer Singh, PW-2 Chandar Kishore, PW-3 Swaran Singh, PW-4 Jagdish Singh, PW-7 Amarjeet Singh Bedi and PW-10 Jasbir Singh have also deposed about the violent anti-Sikh riots on 01.11.1984, in which Sikhs were killed and their properties were looted. PW-20 Sh. Ravinder Singh Chauhan has stated about the extra judicial confession made by the accused, regarding killings of hundreds of Sikhs. The material brought on record *prima-facie* show that the accused was member of the unlawful assembly of persons, which had gathered near Gurudwara Pul Bangash and he instigated and incited the mob to destroy/damage Gurudwara Pul Bangash, kill the Sikhs and loot their properties.

8.1 It has been contended on behalf of the accused that in view of the earlier closure reports filed in respect of the accused, it can be safely inferred that no evidence was found against the accused. While referring to the previous statement dated 23.02.2008 of Smt. Harpal Kaur and previous statement dated 13.10.2006 of Sh. Amarjeet Singh Bedi, it has also been argued that there are material *inter-se* and *intra-se* contradictions in the testimonies of various witnesses. The so-called eye witnesses have now made statements against the accused after an inordinate long delay and, thus, they cannot be relied upon. Therefore, the accused is entitled to be discharged. On the other hand, Ld. PP has contended that the earlier closure reports in respect of the accused were not accepted by the courts in view of the fact that the witnesses were not coming out to give truthful version of the incident against the accused, since they were scared due to large scale brutal massacre of the Sikhs, burning of their properties and the influence of the accused, who was then a Minister in the Central Government. It was only after passage of time and waning of the influence of the accused that they were able to muster courage and give a truthful account of the incident.

8.2 With regard to the above contentions, Smt. Harpal Kaur and Sh. Harvinderjit Singh have stated that due to fear, they could not give correct statement or reveal the truth for a long time. Smt. Harpal Kaur has also stated about specific threat given by one Sh. Prem Wadhawan to her son that she should not name the accused. There is sufficient material on record to show that in the violent anti-Sikh riots, after the assassination of Smt. Indira Gandhi, Late Prime Minister of

India, large scale targeted killing of Sikhs and burning and looting of their properties had taken place. The law enforcing agencies were not able to protect them. There are allegations that the accused, who was leading the mob was a Minister in the Central Government. Apparently, the killings were so violent and brutal so as to instill fear in the mind of the family members of the victims and witnesses to such incidents for a long time. There is force in the contention of Ld. PP that due to fear, the eye witnesses could not depose truthfully before various investigation agencies, committees or commissions. In view of the undisputed fact of violent anti-Sikh riots, the statements of Smt. Harpal Kaur and Sh. Harvinderjit Singh, in this regard, appear to be plausible. It also appears that the first priority of the family members of the victims and the witnesses to the incidents of killings and looting, was their own and their family's safety. There is also force in the contention of Ld. PP that under such atmosphere, when their minds were gripped with the fear of the consequences of naming the perpetrators of brutal violence, such witnesses could not have revealed the names of such perpetrators. As argued on behalf of the victim, discarding the statements of such witnesses, only on the ground of delay, will amount to compounding the injustice already done to them. In the peculiar facts and circumstances of this case, it is considered that the delay in naming the accused, as the person who instigated and incited the violent riots against Sikhs, cannot be a ground to discharge the accused.

8.3 It has also been contended on behalf of the accused that the very fact that earlier, three times the CBI had filed closure reports

show that there was no credible evidence against him and, thus, he needs to be discharged. On the other hand, Ld. PP has submitted that the orders vide which the earlier closure report were not accepted and further investigations were ordered were not challenged. Thus, the said closure reports have now no bearing on this case. With regard to this contention, a reference can be made to *Sajjan Kumar vs Central Bureau of Investigation, (Supra)*, another case pertaining to anti-Sikh riots, wherein the Hon'ble High Court of Delhi has held,

“161. The court is duty bound to accept and accord its approval only to a report which is a result of faithful and fruitful investigation. It is one of the basic principles of criminal jurisprudence that court should not look into and should decline to accept the report submitted by investigating officer which is glaringly unfair and offends the basic cannon of criminal jurisprudence.” (emphasis supplied).

On filing of the earlier closure reports, the courts have ordered further investigation. Thus, the mere fact that earlier closure reports were filed in respect of the accused does not, *per-se*, entitle him to discharge.

8.4 It is also well settled that contradictions, if any, in the statements of witnesses can be properly appreciated only after they are subjected to cross-examination during their testimonies in the court. At the stage of charge, the court is not required to meticulously examine and appreciate the veracity of their statements. Thus, the argument advanced by the Ld. Counsel for the accused that the eye witnesses can not be believed is not tenable at this stage.

8.5 It has also been contended on behalf of the accused that at the time of incident he was at Teen Murti House, New Delhi and was

not present at the site of incident and that it is evident from the video recording of Doordarshan, wherein the accused is seen at Teen Murti House. It can be seen that PW Smt. Harpal Kaur, PW Sh. Harvinderjit Singh and PW Sh. Abdul Wahid have categorically stated about the accused coming to the place of incident on 01.11.1984 and leading/instigating/inciting the mob to destroy/burn Gurudwara Pul Bangash, kill Sikhs and loot their properties. It is well settled, as also contended by Ld. PP and Ld. Senior Advocate for the victim, that the onus to prove a plea of *alibi* is upon the accused, which he can discharge only during the trial. Such plea also can not be decided at this stage.

8.6 Ld. Counsel for the accused has also argued that the witnesses have been set up by certain foreign agencies who want the issue of 1984 riots to be kept alive. Ld. PP has argued that the issue has been alive not because of any foreign agencies but due to the fact that earlier the witnesses to the incident were scared to name the accused and various closure reports filed with regard to the accused were not accepted by the courts. It is considered that in view of the material brought on record regarding the role of the accused, the above contention of the Ld. Defence Counsel does not hold any water.

8.7 Ld. Counsel for the accused has also argued that there is no evidence as to who had stabbed/burnt the three Sikh deceased persons or burnt Gurudwara Pul Bangash or looted the shop of Sh. Amarjeet Singh Bedi. Thus, the accused cannot be alone tried u/s 149 IPC. On the other hand, Ld. PP has contended that if some of the persons constituting the unlawful assembly of five or more persons

cannot be identified, those accused persons who are identified can still be charged u/s 149 IPC, even if their number is less than five.

8.8 It is well settled that if material brought before the court shows that the persons before the court, along with unidentified and un-named assailants or members composed an unlawful assembly, those before the court can be convicted under Section 149 though the un-named and un-identified persons are not traced and charged. In this regard reference can be made to *Mohan Singh vs. State of Punjab, 1962 SCC OnLine SC 82.*

8.9 In this case, from the material that has come on record, it appears that on 01.11.1984, a mob of thousands of persons, armed with “lathis”, iron rods, sharp edged weapons, hammers, sticks, petrol etc., had gathered at Gurudwara Pul Bangash, Azad Market with the common object to destroy/damage Gurudwara Pul Bangash, kill Sikh persons and loot their properties. Thus, they constituted an unlawful assembly. They had set Gurudwara Pul Bangash on fire, killed Sh. Badal Singh, Sh. Thakur Singh and Sh. Gurcharan Singh, criminally trespassed into the shops and house of Sikhs and also looted properties of Sikhs, including shop of Sh. Amarjit Singh Bedi. It has also come on record that the accused, who was a well known person, led the mob and instigated/incited the mob to kill Sikhs and loot their properties. In view of the above legal position, even if other accused persons are unknown or can not be traced, the accused can still be charged, along with such unknown persons u/s 149 IPC. The facts of *Mahendra & Another vs. State of M.P. (Supra)*, relied upon by the Ld. Counsel for

the accused are different from those of the present case.

9.1 It can be seen that there is nothing on record to show that during the incident in question, the accused was armed with deadly weapon or with anything which used as a weapon of offence was likely to cause death. It is well settled that Section 148 deals with direct responsibility and a rioter who does not carry a deadly weapon himself can not be made liable under that Section by virtue of Section 149 IPC. In this regard, reference can be made to *Nanda Kishore Mohanty vs. The State, 959 SCC OnLine Ori 56*, *Krishna Pillai Vasu Pillai and Others vs. The State, 1955 SCC OnLine Ker 10* and *In re, Vajja Seshu Reddy and Others, 1961 SCC OnLine AP 218*.

9.2 However, from the material brought on record, it appears that on 01.11.1984, at or about 11:00 A.M., Near Gurudwara Pul Bangash, falling within the jurisdiction of PS Bara Hindu Rao, accused Sh. Jagdish Tytler, alongwith other unknown persons, has intentionally joined and was a member of an assembly of thousands of persons and the common object of the persons comprising the said assembly was to cause destruction/damage to Gurudwara Pul Bangash, kill Sikh persons and loot their properties. Many persons constituting the said unlawful assembly were armed with deadly weapons like iron rods, sharp edged weapons, hammers, etc. Further, in the prosecution of the aforesaid common object of such assembly, force and violence was used by the members of the unlawful assembly and, thus, the said assembly committed the offence of rioting. Further, the accused knew that by Orders dated dated 31.10.1984 and 01.11.1984, (D-7), Sh. S.C. Tandon,

D.G. and Commissioner of Police, Delhi, a public servant lawfully empowered to promulgate such order, has prohibited the gathering of more than five persons, but he disobeyed such directions and such disobedience caused danger to human life, safety and riots. It also appears that while being a member of such unlawful assembly, accused Sh. Jagdish Tytler, by stating, “*maro maro*”, “*pahle maro phir luto*” and that the mob could do anything to the Gurudwara as they (Sikhs) had killed their mother (referring to Smt. Indira Gandhi, Late Prime Minister of India) and also by his gestures, promoted or attempted to promote, on the grounds of religion, disharmony or feelings of enmity, hatred or ill-will between different religious groups and instigated/organized rioting, intending that the participants of the unlawful assembly shall use criminal force or violence against Sikhs, a religious group and caused fear or alarm or feeling of insecurity amongst members of such religious group.

9.3 Further, from the statement of witnesses examined by the CBI, it also appears that on 01.11.1984, at around 09:00 A.M., thousands of people had gathered in front of Gurudwara Pul Bangash and they were shouting, “*kill Sikhs because they have killed our Prime Minister*”. They were looting the shop of Sh. Amarjeet Singh Bedi, creating ruckus in front of the Gurudwara and throwing fire bottles in the Gurudwara. Simultaneously, accused Sh. Jagdish Tytler also reached there and instigated the mob to attack the Gurudwara, kill Sikhs and loot their properties, by gestures and by saying, “*maro maro*”, “*pahle maro phir luto*” and that they could do anything to the Gurudwara as they (Sikhs) had killed their mother (referring to Smt.

Indira Gandhi, Late Prime Minister of India). Thus, when accused Sh. Jagdish Tytler, alongwith other unknown persons, was a member of an unlawful assembly, he instigated members of the assembly to attack Gurudwara Pul Bangash and some members of the assembly, destroyed/damaged/defiled Gurudwara Pul Bangash, a place of worship with the intention of thereby insulting the religion of Sikhs or with the knowledge that Sikhs are likely to consider such destruction/damage or defilement as an insult to their religion, in prosecution of the aforesaid common object of such assembly, or which the members of that assembly knew it likely to be committed in prosecution of such object. Further, some members of the aforesaid unlawful assembly, of which the accused was a member, committed mischief by setting Gurudwara Pul Bangash on fire intending to cause or knowing it to be likely that they will thereby cause the destruction of the said building, which was ordinarily used as a place of worship and/or as a human dwelling and/or as a place for custody of property, in prosecution of the aforesaid common object of that assembly or which the members of that assembly knew it likely to be committed in prosecution of such object. It has also come on record that some members of the aforesaid unlawful assembly, of which the accused was a member, committed house trespass in the shop of Sh. Amarjeet Singh Bedi, situated in front of Gurudwara Pul Bangash, in order to commit an offence of theft, which is punishable with imprisonment and also committed theft of TV sets, VCRs, telephones etc. in the said shop, a building used for the custody of property, in prosecution of the aforesaid common object of such assembly, or which the members of that assembly, knew it likely to be committed in the prosecution of

such object.

9.4 Further, the material on record reveal that when the members of unlawful assembly were attacking Gurudwara Pul Bangash and looting properties of the Sikhs, the accused instigated them to kill Sikhs by saying, “*maro maro*” and “*Pahle maro phir luto*”. Thereupon, some members of the aforesaid unlawful assembly had committed murders of Sh. Badal Singh, Sh. Thakur Singh and Sh. Gurcharan Singh, by stabbing/burning them. It is alleged that Smt. Harpal Kaur, after going back to her house, has seen their cut dead bodies being thrown. As per the prosecution case and the Site Plan (D-14), the accused was present near Gurudwara Pul Bangash and has left from there, whereas the dead bodies of the deceased persons were thrown from the house near the house of Smt. Harpal Kaur, which is situated on a road perpendicular to the road, where Gurudwara Pul Bangash and shop of Sh. Amarjeet Singh Bedi are located. The time when the aforesaid persons were killed has not been specified. Thus, there does not appear to be any proximity of time and place between the accused being a member of the unlawful assembly and the killing of the above three persons, as required under Section 149 IPC. However, as earlier stated, the accused has, by instigating the members of the unlawful assembly to kill Sikhs, abetted the murder of the aforesaid three persons.

9.5 In view of the aforesaid discussion, it is considered that there is not sufficient ground for proceeding against the accused under Section 148 IPC. However, there appears to be sufficient grounds to

presume that the accused has committed offences punishable under Sections 143, 147, 188 and 153 A IPC, Sections 295, 436, 451, 380 r/w Section 149 IPC, and Section 302 r/w Section 109 IPC. Let the charges be framed accordingly against the accused.

(Rakesh Syal)
Special Judge (PC Act) (CBI)-23
(MPs/MLAs Cases),
Rouse Avenue Court Complex,
New Delhi; 30.08.2024