(2017) 05 AHC CK 0103

ALLAHABAD HIGH COURT

Case No: 1648 and 2739 of 2017

Ram Kishan Singh and another		APPELLANT
	Vs	
State of U.P. Thru Prin. Secy. and Others		RESPONDENT

Date of Decision: May 19, 2017

Acts Referred:

- Code of Criminal Procedure, 1973, Section 41, Section 439(2), Section 173(2), Section 41(1)(b) - When police may arrest without warrant - Special powers of High Court or Court of Session regarding bail - Report of police officer on completion of Investigation - When police may arrest without warrant
- Indian Penal Code, 1860, Section 147, Section 323, Section 148, Section 506, Section 149, Section 395, Section 504 - Punishment for rioting - Punishment for voluntarily causing hurt - Rioting, armed with deadly weapon - Punishment for criminal ,intimidation - Every member of unlawful assembly guilty of offence committed in prosecution of common object - Punishment for dacoity - Intentional insult with intent to provoke breach of the peace
- Criminal Law Amendment Act, 1932, Section 7 -
- Uttar Pradesh Gangster and Prevention of Anti Social Activities Act, 1986, Section 19(4)

Hon'ble Judges: Dilip B. Bhosale, Yashwant Varma

Bench: Division Bench

Advocate: Udai Chandani, G. A., Ravindra Sharma, Pankaj Kumar Shukla, G.S. Chaturvedi, Swetashwa Agarwal

Judgement

1. These two writ petitions which came before us in quick succession raised extremely disturbing issues. The writ petitions were based on allegations of a brazen and blatant abuse of power and scant regard to the rule of law. More fundamentally, both these petitions alleged deliberate inaction on the part of the

investigating and police agencies and went to the extent of asserting that since the accused wielded immense influence and power, the petitioners not just felt a threat to life but were also convinced that the investigation would be derailed and grave injustice perpetuated.

2. The petitioner in Criminal Misc. Writ Petition No. 1648 of 2017 is a Security Officer/Proctor in the Sam Higginbottom Institute of Agriculture, Technology and Sciences Allahabad [hereinafter referred to as "the Institution"]. It was asserted in the writ petition that the main accused [now impleaded as the sixth respondent] along with several armed men and miscreants ransacked the offices of the Institution and caused grievous and serious injuries to its officers and employees. This incident came to be reported and registered by the police naming as many as five accused persons including the sixth respondent and against 5060 unknown antisocial elements. The First Information Report which came to be registered as Case Crime No. 1117/2016 alleged the commission of offences under Sections 147, 148, 149, 395, 323, 504, 506 I.P.C. and Section 7 of the Criminal Law Amendment Act. The petition alleged that despite the barbaric attack inside the premiCriminal Law Amendment Act, 1932ses of a renowned educational Institution and which incident stood duly recorded by the CCTV cameras of the Institution, the accused were permitted to walk freely and were also alleged to be openly threatening the prosecution witnesses with dire consequences. It becomes relevant to note here that although a First Information Report was lodged on 14 December 2016 no arrests had been made by the police authorities of the named accused, at least, till the matter was taken up before this Court on 10 February 2017. The writ petition further asserted that on account of the influence and power wielded by the accused, the Investigating Officer was not showing any interest in the investigation of the offence and that the petitioner as well as his family members were facing a high level of threat and apprehended danger to their life and property.

3. The petitioner in Criminal Misc. Writ Petition No. 2739 of 2017 is stated to be an eye witness to the daylight murder of his son which occurred on 8 February 2017 in an area falling under the jurisdiction of P.S. Sahpau, District Hathras. This petition again referred to the fact that although the respondents 4 to 8 had been named and were the alleged perpetrators of the crime which led to the murder of the son of the petitioner, they on account of the power and position wielded by them were not only influencing the investigation but also holding out blatant threats to the petitioner and other witnesses. Disturbingly, the petitioner also brought on record copies of newspaper reports and video clips of a news channel which evidenced that the named accused or at least the fourth respondent who was a sitting M.L.A. was sharing the dais in a political rally which was attended by the then executive head of the State. Here too, the allegations were that the police and investigating agencies far from taking effective steps to investigate the crime and apprehend the accused, were, in fact, trying the shield the accused persons and also exerting pressure upon

the petitioner and his family members and other injured witnesses to withdraw the case and retract from their statements.

4. Both the petitioners, as is evident, from the above narration of the allegations made in the writ petitions were constrained to invoke the jurisdiction of the Court under Article 226 of the Constitution upon finding that the investigating agencies had not only failed to perform their statutory functions but were in fact, proceeding as if the accused persons were not only immune to the rule of law but far beyond its reach. The writ petitions evidenced the apprehension of the petitioners that justice would be subverted and the accused permitted to go unscathed by the crimes which had been duly reported.

5. In Criminal Misc. Writ Petition No. 1648 of 2017, we noted the statement of the learned Additional Advocate General that the police authorities would be making all efforts to arrest all the accused persons. On the records were placed various communications sent by the Registrar of the Institution to high officials in the State Government as well as to the Ministry of Home in the Union Government, which related that the accused persons had brutally assaulted the officers and employees of the Institution , the atmosphere of fear which came to be created in the Institution by the accused and their armed accomplices and the repeated threats being held out by the accused seeking to pressurise the witnesses to retract from their statements. These communications asserted that even after the registration of the First Information Report, the officers and employees of the Institution were being threatened with dire consequences. During the course of hearing, the learned counsel for the petitioner apprised us that all the named accused were history sheeters and that the police authorities were deliberately not acting against them on account of the power and influence wielded by them. It was in this light and in order to ascertain whether these allegations were correct, that we had called upon the learned A.G.A. to place before the Court, a list of cases pending against each of the accused involved in the case. The aforesaid details were placed before the Court by way of an affidavit dated 17 February 2017 which evidenced as many as forty four cases against the respondent No. 6 registered in the District of Allahabad and six cases registered against him in the District of Lucknow. The details of cases as brought on record reveals the following:

A. Cases under Sections 323, 504 and 506 IPC 10 previous cases

B. Cases under Section 307 IPC7 previous cases

C. Cases under Section 302 IPC7 previous cases

D. Cases under Sections 364, 365 and 368 IPC4 previous cases

E. Cases under the Gangsters Act-3 previous cases

6. The Affidavit further brought on record an order passed by the Senior Superintendent of Police transferring the investigation of the cases to the senior most officer of the Crime Branch in the district. Another Affidavit dated 17 February 2017 also came to be filed wherein an order of the Senior Superintendent of Police dated 16 February 2017 was brought on record asserting therein that the sixth respondent was while being enlarged on bail creating an atmosphere of terror in the public and continuing to commit crimes. He accordingly directed the concerned authorities to take steps for moving applications for cancellation of bail. This action of the State respondents came about pursuant to a statement made by the learned A.G.A. who had sought instructions to apprise the Court of the steps that were proposed to be taken if it were found that the accused had misused the liberty accorded to him. Upon these Affidavits being filed, we, by a detailed order dated 20 February 2017, noted the progress made till then in the investigation and passed directions for the State-respondents to place on record copies of the bail cancellation applications, if any, that may be moved. This aspect stood raised in light of the principles enunciated by the Supreme Court in its various judgments on the principles that must govern the grant or cancellation of bail, of balancing the right of an individual''s liberty and the need to preserve the rule of law and order in society. We shall advert to these principles as propounded in various judgments of the Supreme Court at an appropriate stage of this judgment.

7. It also becomes relevant to note here that in the order of 20 February 2017, we also noted the fact that the learned counsel for the petitioner had made an oral

submission that immense pressure was being wielded upon him and his client to ensure that the writ petition is withdrawn. This apprehension was addressed to us orally on 13 February 2017 where after an application was also filed seeking leave to withdraw the writ petition. Significantly, in paragraph 4 of the Affidavit filed in support of the application for withdrawal, the petitioner asserted that he was a peaceful and law abiding citizen, heads a family consisting of a daughter aged about three years, a widowed mother, one younger brother and a wife and he was only concerned with the security of his family members and a proper investigation. Noting the contents of the said application coupled with the background in which it came to be made, we denied the prayer for withdrawal at that stage and kept the application for further consideration to a later date. To complete the narration of facts, we also note that the sixth respondent preferred three Special Leave Petitions before the Supreme Court challenging the orders dated 15 February 2017, 20 February 2017, 1 March 2017. All the three special leave petitions were dismissed on 9 March 2017 in the following terms:

"UPON hearing the counsel the Court made the following

ORDER

Heard Mr. Kapil Sibal, Dr. A.M. Singhvi and Mr. K.T.S. Tulsi, learned Senior counsel appearing for the petitioner in all the three Special Leave Petitions.

Permission to file the Special Leave Petitions is granted.

We find no reason to interfere with the impugned order passed by the High Court of Judicature at Allahabad.

Accordingly, the Special Leave Petitions stand dismissed.

However, having regard to the facts and circumstances of these matters, we request the High Court to dispose of the matter pending before it, within a period of four weeks from today, after giving a chance of hearing to the petitioner - herein.

Liberty is granted to the petitioner to file written arguments in the matters before the High Court.

Before parting with these matters, we make it very clear that we have not expressed any opinion on the merits of the case."

8. After the dismissal of the said SLPs, the sixth respondent filed as many as three applications for recall (Civil Misc. Recall Application Nos. 87496, 87477 and 87478 of 2017). We also note that an application for impleadment dated 13 February 2017 was made by the sixth respondent which was actually filed in the registry of the Court on 20 February 2017. However, the same was not pressed before us. In fact, we were constrained to note in our order dated 8 March 2017 that although an application for withdrawal of the writ petition had been made as also an application for impleadment, no counsel had come forward to press the same as on earlier occasions. When the writ petition was taken up on 21 March 2017, the application for impleadment was pressed for the first time and was allowed. Insofar as the recall applications are concerned, Civil Misc. Recall Application No. 87496 of 2016 was got dismissed as not pressed. The prayers made in the said application were in the following terms:

"7. That in the light of the above mentioned circumstances, it is, most respectfully, prayed that:

a) the orders/directions passed by this Hon''ble Court in the Criminal Misc. Writ Petition No. 1648 of 2017 on dated 8.02.2017, 10.02.2017, 13.02.2017, 15.02.2017, 20.02.2017, 28.02.2017, 01.03.2017 and 08.03.2017 be recalled/reviewed and/or set aside, the same being contrary to the law and passed by a Bench of this Hon''ble Court which is Corrum non Judice; and

b) after recall of the aforesaid orders/directions passed by this Hon''ble Court in Criminal Misc. Writ Petition No. 1648 of 2017 on dated 8.02.2017, 10.02.2017, 13.02.2017, 15.02.2017, 20.02.2017, 28.02.2017, 01.03.2017 and 08.03.2017, pass appropriate consequential directions for constitution of appropriate Bench of this Hon''ble Court to hear the present petition."

9. The orders passed by the Court on the said application on 21 March 2017 reads thus:

"Order on Civil Misc. Application (For Recall) No. 87496 of 2017 Mr. Manoj Goel, learned counsel appearing for the applicant submits that he has instructions not to press this application. Application is dismissed, as not pressed."

10. On the said date the learned counsel appearing for the sixth respondent sought time to file a Counter Affidavit to the main writ petition, as a consequence of which and on his prayer disposal of the remaining applications was adjourned

to 7 April 2017. A Counter Affidavit was filed and served upon the State-respondents in Court on the subsequent date. The learned A.G.A. consequently sought time which was granted and the matter posted for disposal thereafter. We thereafter heard all parties on the various applications as well as the writ petition on merits in terms of the order of the Supreme Court dated 9 March 2017.

11. Insofar as Criminal Misc. Writ Petition No. 2739 of 2017 is concerned, we may only note that when the writ petition initially came before us on 27 February 2017, we only called upon the third respondent therein to file a short counter affidavit and issued notices to the remaining respondents. We further clarified that the third respondent shall take all steps for carrying out the investigation of the case in question and apprise us of the status of investigation. The writ petition it becomes relevant to note was based on the following averments :

"9. That after commit the aforesaid mentioned occurrence, accused are freely moving in the society and police is fully cooperate to them and tried to tempering the evidence. Even no such any steps of arrest were taken. Next very day i.e. 09.02.2017 Hon''ble Chief Minister Mr. Akhilesh Yadav was addressing to the public from the stage at Sadabad where all the named accused were sitting on the stage with the Hon''ble Chief Minister Mr. Akhilesh Yadav which was directly telecasting on the T.V. channels and entire administration of District Hathras was quite mum and functioning as a servant of the named accused Devendra Agrawal. Photographs and news items as published are being filed herewith and marked as Annexure No. 4 to this writ petition.

10. That the petitioner respectfully submitted here that not only administration of District Hathras was quite mum. The Hon''ble Chief Minister also protecting to the named accused and indirectly interfering and threatening to the administration of District Hathras by given the statements that no such any occurrence has been committed by the named accused without any substance and disbelieving the whole contention as registered by the petitioner who is the father of deceased and eye witness of day light murder and alarming from the stage that the false case has been registered.

11. That the named accused are blue eye boys of the Samajwadi Party and having long criminal history and without any fear of the law, committed the day light murder in the presence of the father of deceased and number of the witnesses of the society and in this incident injured witnesses are their even though the police protecting him and not tried to take any steps for arrest to the named accused.

12. That the Police Administration also putting pressure to withdrawal the case and giving different obligations and threatening to implicate in the series of case and said that the Government is repeating, you cannot success to convict the accused and entire government is supporting and stand back of the accused.

13. That the petitioner''s family in shock of the murder of his young son and helpless to get justice from the act of the respondents who are acting under the political leaders and they taken law in hands and playing.

14. That the named accused continuously threatening to the petitioner and injured witnesses and said that either you hostile or you face serious consequence. Police is also not helping in the day light murder case and trying to tempering the evidence."

12. On 9 March 2017, we noted the submission of the learned A.G.A. that all steps would be taken in furtherance of the investigation including the arrest of all the accused. He further stated that the S.P. (Crime), Aligarh would be monitoring the investigation. We further directed the Investigating Officer to proceed to the concerned village in order to record the statement of all the injured witnesses. On 21 March 2017, we were apprised by the learned Senior Counsel appearing

for the private respondents that a special leave petition had been preferred against the order dated 9 March 2017. In view thereof, we adjourned the hearing of the writ petition to 28 March 2017. We were subsequently informed that the special leave petitions have been dismissed. We also noted the statements made on behalf of the private respondent that except for the fifth respondent all the other named accused had surrendered and that the fifth respondent was likely to surrender shortly. We, in light of the statement so made, adjourned the proceedings to subsequent dates and ultimately concluded hearing on the writ petition on 18 April 2017. By this time we were apprised that all the accused had surrendered.

13. The applications for recall made in Criminal Misc. Writ Petition No. 1648 of 2017 made by and on behalf of the sixth respondent were pressed at the outset by the learned counsel by submitting that the various orders passed by this Court had caused grave prejudice to the sixth respondent and were therefore liable to be recalled. In his submission, all the orders passed on the writ petition had been entered at a time when the sixth respondent was not a party to the proceedings nor had he been granted an opportunity to place his version of the facts.

14. Before we proceed to deal with the contentions urged on merits, we may only note that the prayers made in Civil Misc. Recall Application No. 87496 of 2017 insofar as they sought recall of the orders passed were identical to the prayers sought in Civil Misc. Recall Application Nos. 87477 and 87478 of 2017. As noted earlier, Civil Misc. Recall Application No. 87496 of 2017 was got dismissed as not pressed without any reservation. Strictly speaking the prayer made before us for recall of our orders dated 8 February 2017, 10 February 2017, 13 February 2017, 15 February 2017, 20 February 2017, 28 February 2017, 1 March 2017 and 8 March 2017, stood lost to the applicant when Civil Misc. Recall Application No. 87496 of 2017 was got dismissed on the statement of the learned counsel for the sixth respondent. The same was dismissed unequivocally without any reservation or liberty being sought. The effect of a withdrawal or abandonment of a claim was dealt with and explained by the Supreme Court in Sarguja Transport Service v. S.T.A.T, (1987) 1 SCC 5 in the following terms:-

"9. The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under Article 226 of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that article. On this point the decision in Daryao case [AIR 1961 SC 1457 : (1962) 1 SCR 574] is of no assistance. But we are of the view that the principle underlying Rule 1 Order 23 of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public

policy as explained above. It would also discourage the litigant from indulging in benchhunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution once again. While the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution of India since such withdrawal does not amount to res judicata, the remedy under Article 226 of the Constitution of India should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission. In the instant case the High Court was right in holding that a fresh writ petition was not maintainable before it in respect of the same subject-matter since the earlier writ petition had been withdrawn without permission to file a fresh petition. We, however, make it clear that whatever we have stated in this order may not be considered as being applicable to a writ petition involving the personal liberty of an individual in which the petitioner prays for the issue of a writ in the nature of habeas corpus or seeks to enforce the fundamental right guaranteed under Article 21 of the Constitution since such a case stands on a different footing altogether. We, however leave this question open."

15. We, however, do not intend to non suit the sixth respondent on this score alone and with a view to afford him an opportunity of hearing permitted the learned counsel to advance submissions on the remaining two applications on merits. Reverting to the submissions advanced, the contention urged before us was that the orders passed by the Court were widely reported in the local media and in some of these reports various statements were attributed to have been made. We also note that various such allegations and insinuations have been urged and made not only in various paragraphs of the recall applications but were also reiterated in written submissions dated 18 April 2017 filed by the learned counsel appearing for the sixth respondent. Upon it being pointed out to him that none of the alleged statements attributed to the Bench stood reflected or recorded in the orders and it being pointed out that the statements in the written submissions were not only unsavoury but also incorrect and irresponsible, the learned counsel for the sixth respondent made a statement before us that he chose to withdraw the same and file fresh written submissions. The subsequent submissions titled "Outlines of Arguments", were permitted to be filed and both have been retained by us on record. The tone and tenor of the applications for recall as well as the oral arguments, insofar as the issue of prejudice to the sixth respondent is concerned, however continued to rest and

proceed only upon certain perceptions of the sixth respondent, based upon statements attributed to the Court and the manner in which the orders of the Court came to be reported in the media. Despite repeated queries the learned counsel for the sixth respondent could not point out to any recital made in an order of the Court which may have prejudiced the case of the sixth respondent. During the course of hearing, the learned counsel was invited by us to go through all the orders in detail and to point out even one recital in an order made or direction issued which could be said to be prejudicial to the respondent No. 6. We are constrained to note that the learned counsel appearing for the sixth respondent woefully failed to draw our attention to any direction or statement of fact recorded in our orders which may be said to have caused prejudice to the sixth respondent. As the orders in question would reveal, all of them primarily took on record the statements made by the learned Additional Advocate General or the learned Additional Government Advocate in respect of the progress made in the investigation and the further steps which the State proposed to take in the course of investigation. Since these order only recorded the submissions and statements made by the counsels appearing for the State and the action proposed to be taken by them, it cannot be said that the case of the sixth respondent suffered any prejudice. The contention that the said orders having been passed without an opportunity of hearing being provided to the sixth respondent must also necessarily fail and fall in the absence of any prejudice having been caused.

16. Even otherwise we find that the orders did not cause any prejudice to the sixth respondent. The orders primarily noted the progress of the investigation and the further steps, which the police authorities were intending to take. If the State respondents decide to arrest the accused, record their statements, carry out investigation or decide to oppose an application for bail, surely the said action is not liable to be taken with notice to the sixth respondent. If the State respondents take a decision , as they did on 16 February 2017, to move applications for cancellation of bail, this decision also is not liable to be preceded by an opportunity of hearing or notice to the sixth respondent. All such actions would necessarily entail the sixth respondent being put to notice either by the police or the concerned court at an appropriate stage. For the aforesaid reasons, we find no merit in the submission of the learned counsel that any prejudice stood caused to the sixth respondent. The scrutiny and limited monitoring which this Court undertook was primarily on account of the fact that till the time that the instant writ petition was taken up for hearing, no effective steps whatsoever had been taken by the Investigating Officer. We are compelled to note that the Investigating Officer appears to have awoken from deep slumber and inaction only after this Court took notice of the allegations made in the writ petition. We are also constrained to note that although the incident in question had been duly witnessed by various officers and employee of the

Institution and also stood captured in the CCTV footage, no effective steps were taken by the Investigating Officer to identify and apprehend the accused. Insofar as the details of earlier crimes having been committed by the named accused is concerned, the query itself came to be made upon a submission made before this Court that the accused persons had a history sheet. It was in light of the said submission that the Court had called upon the learned Additional Government Advocate to place on record a list of cases pending against each of the accused. It becomes relevant to note here that the sixth respondent does not deny the pendency of the various criminal cases against him. He seeks to explain them away as being the outcome of political rivalry and vendetta. However these proceedings are not intended to be a forum for consideration of the aforesaid plea urged on his behalf.

17. Coming to the issue of the filing of applications for cancellation of bail, this Court on 15 February 2017 had only noted that the learned Additional Advocate General had sought two days'' time to make a statement whether the State proposed to file applications for cancellation of bail on the ground that the accused were misusing the liberty granted to them after being enlarged on bail. The decision to move applications for cancellation was made by the Senior Superintendent of Police, Allahabad and stands duly recorded in his order dated 16 February 2017. This is evident from the following extract of the order passed by the Senior Superintendent of Police dated 16 February 2017 which reads thus:

"VERNACULAR MATTER OMITTED"

"VERNACULAR MATTER OMITTED"

18. This Court in its orders had not passed any peremptory directions compelling or requiring the State-respondents to move applications for cancellation of bail. In view of the aforesaid narration of facts, we find that the submission advanced on behalf of the sixth respondent of violation of principles of natural justice and prejudice is misconceived and untenable.

19. Addressing on the merits of the writ petition itself, the learned counsel contented that bearing in mind the nature of reliefs sought in the writ petition, it was not open for this Court to issue directions in respect of the remaining cases pending against the sixth respondent. This submission is clearly misconceived for we have not passed any orders in respect of the other pending cases. We have only taken on record and noticed the stand of the State that they proposed to file applications for cancellation of bail and that in some cases such applications had in fact been filed.

20. Since submissions have been advanced questioning the jurisdiction of the Court to pass the various orders in this writ petition from time to time it is imperative for us to observe as under.

21. These two writ petitions were not ordinary causes laid before a constitutional court seeking resolution of a dispute inter se. They raised fundamental issues relating to matters of governance, the preservation of the rule of law, the liberty and security of an individual. The investigating and police agencies of a State wedded to the Constitution are obliged to act with promptitude and come to the aid of an individual in distress or a victim of crime. A crime it is well recognised is not one committed against an individual alone but one perpetrated against society as a whole. It is in this sense that the citizenry expects the guardians of the law to act without fear or favour, unbiased and uninfluenced by the position or standing of a perpetrator. A court of law is constrained to intervene only in situations where it finds that the agencies entrusted with the task of ensuring the preservation of peace and orderly conduct have failed to perform their statutory functions or where it finds that they are deliberately turning a blind eye or where their inaction is an indication of an attempt to subvert and sully the streams of justice and preservation of the rule of law. An individual is constrained to approach the Court and invoke its extraordinary jurisdiction in a situation where he feels and perceives that injustice is being perpetuated, where he finds that the agencies are swayed by extraneous considerations or where he harbours the impression on account of their conduct that the ends of justice are likely to be sabotaged. It is this situation of a loss or crisis of faith which compels him to knock the doors of a court of law.

22. Before us were placed two instances where in one a group of individuals were alleged to have assaulted officers and employees of an educational institution, ransacked its offices with impunity all while the investigating agencies remained no more than mute spectators. Despite ample evidence in the shape of statements of witnesses, CCTV footage, no attempts whatsoever were made to apprehend the named accused or to identify the persons openly seen brandishing weapons. Repeated entreaties by victims of being pressurised, threats being held out, witnesses being influenced by threats of dire consequences were neither attended to nor investigated. No satisfaction was recorded as to why the arrest and detention of the named accused was not found expedient or necessary. At least no such material was referred to or placed before us. The details placed before us evidence the involvement of the sixth respondent in as many as 44 cases in the District of Allahabad alone. There could be no greater proof of a violation of conditions of bail while the State appears to have stood by as a mute spectator. All this occurred even while the conduct of the sixth respondent appeared to have become more brazen and blatant. The manner in which evidence was tampered and witnesses intimidated stands chronicled in great detail by the Supreme Court itself in Pooja Pal v. Union of India, [(2016) 3 SCC 135

23. In the second writ petition, the perpetrators charged in a First Information Report of having committed a crime punishable under section 302 IPC were shown to be moving around unhindered and sharing the stage with the executive head of the State. The investigating agencies far from making efforts to record statements

and take prompt action, had not even contacted the injured witnesses. It was in this backdrop that the Court was constrained take notice of the allegations levelled and call upon the State to explain their inaction. This Court therefore holds that in a situation where the orderly structure of society is threatened, the victim apprehends that the course of justice is likely to be derailed, it is the duty of a constitutional court to uphold the rule of law and ensure that the investigating agencies proceed in the matter in accordance with law. This action is necessitated to ensure that the faith of the people in the rule of law is not shaken or brought under cloud. Moreover the limited monitoring which the Court undertakes in such a situation [and as was done in the present case] is only to ensure that the investigation is carried out in a fair and impartial manner. This jurisdiction vesting in the Court cannot be doubted.

24. The law relating to the grant of bail, the factors which must be considered were duly noted by the Supreme Court in State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21. We may only reproduce the following observations appearing therein:

> "18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail [see Prahlad Singh Bhati v. NCT, Delhi [(2001) 4 SCC 280 : 2001 SCC (Cri) 674] and Gurcharan Singh v. State (Delhi Admn.) [(1978) 1 SCC 118 : 1978 SCC (Cri) 41 : AIR 1978 SC 179]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in Kalyan Chandra Sarkar v. Rajesh Ranjan [(2004) 7 SCC 528 : 2004 SCC (Cri) 1977] : (SCC pp. 53536, para 11)

> "11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie

concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See Ram Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598 : 2002 SCC (Cri) 688] and Puran v. Rambilas [(2001) 6 SCC 338 : 2001 SCC (Cri) 1124].)"

25. On the issue of competing interests of the accused and the informant, we had in our order dated 20 February 2017 noticed as under:

"While we are conscious of the fundamental duty of a court of law to zealously uphold the personal liberty of an individual, we are also conscious of the fact that individual liberty is not an inviolable right and cannot be viewed in absolute terms. This right of personal liberty is subject to just and reasonable restrictions and must be weighed in balance with the interest of society at large. We deem it apposite to note the following observations of the Supreme Court in Chandrakeshwar Prasad v. State of Bihar and Another, 2016 (9) SCC 443 as also in

Neeru Yadav v. State of Uttar Pradesh and Another, 2014 (16) SCC 508. Although made in the context of grant of/cancellation of bail, the observations made in the aforementioned judgments ring true and deserve being highlighted in the facts of the present case also. In both the judgment the Supreme Court underlined the importance of deliberating upon and balancing the rights of an individual and the interests of society. Their Lordships further reiterated the importance of a Court considering the grant of bail weighing the totality of the circumstances and also taking into consideration the criminal antecedents of an accused. In Chandrakeshwar Prasad their Lordships after reviewing the earlier precedents on the subject, in Paragraph 13 of the report, observed:

"13. On a careful perusal of the records of the case and considering all the aspects of the matter in question and having regard to the proved charges in the cases concerned, and the charges pending adjudication against the respondent-accused and further balancing the considerations of individual liberty and societal interest as well as the prescriptions and the perception of law regarding bail, it appears to us that the High Court has erred in grating bail to the respondent-accused without taking into consideration the overall facts otherwise having a bearing on the exercise of its discretion on the issue."

26. Similarly, in Neeru Yadav it was observed that an individual who conducts himself in a manner which brings about disharmony in the collective social order must necessarily face the legal consequences. On this aspect, the Supreme Court ruled:

"16. The issue that is presented before us is whether this Court can annul the order passed by the High Court and curtail the liberty of the second respondent? We are not oblivious of the fact that the liberty is a priceless treasure for a human being. It is founded on the bedrock of constitutional right and accentuated further on human rights principle. It is basically a natural right. In fact, some regard it as the grammar of life. No one would like to lose his liberty or barter it for all the wealth of the world. People from centuries have fought for liberty, for absence of liberty causes sense of emptiness. The sanctity of liberty is the fulcrum of any civilized society. It is a cardinal value on which the civilisation

rests. It cannot be allowed to be paralysed and immobilised. Deprivation of liberty of a person has enormous impact on his mind as well as body. A democratic body polity which is wedded to rule of law, anxiously guards liberty. But, a pregnant and significant one, the liberty of an individual is not absolute. Society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the collective and to the societal order. Accent on individual liberty cannot be pyramided to that extent which would bring chaos and anarchy to a society. A society expects responsibility and accountability from the members, and it desires that the citizens should obey the law, respecting it as a cherished social norm. No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At that stage, the Court has a duty. It cannot abandon its sacrosanct obligation and pass an order at its own whim or caprice. It has to be guided by the established parameters of law."

27. In Neeru Yadav v. State of U.P. And Another, AIR 2015 SC 3703, Criminal Appeal No. 1272 of 2015 (@ SLP (Crl) No. 1596 of 2015 decided on 29 September 2015, the Supreme Court observed:

"13. We will be failing in our duty if we do not take note of the concept of liberty and its curtailment by law. It is an established fact that a crime though committed against an individual, in all cases it does not retain an individual character. It, on occasions and in certain offences, accentuates and causes harm to the society. The victim may be an individual, but in the ultimate eventuate, it is the society which is the victim. A crime, as is understood, creates a dent in the law and order situation. In a civilised society, a crime disturbs orderliness. It affects the peaceful life of the society. An individual can enjoy his liberty which is definitely of paramount value but he cannot be a law unto himself. He cannot cause harm to others. He cannot be a nuisance to the collective. He cannot be a terror to the society; and that is why Edmund Burke, the great English thinker, almost two centuries and a decade back eloquently spoke thus:

"Men are qualified for civil liberty, in exact proportion to their disposition to put moral chains upon their own appetites; in proportion as their love to justice is above their rapacity; in proportion as their soundness and sobriety of understanding is above their vanity and presumption; in proportion as they are more disposed to listen to the counsel of the wise and good, in preference to the flattery of knaves. Society cannot exist unless a controlling power upon will and appetite be placed somewhere and the less of it there is within, the more there must be without. It is ordained in the eternal constitution of things that men of intemperate minds cannot be free. Their passions forge their fetters[9].

15. This being the position of law, it is clear as cloudless sky that the High Court has totally ignored the criminal antecedents of the accused. What has weighed with the High Court is the doctrine of parity. A history-sheeter involved in the nature of crimes which we have reproduced herein above, are not minor offences so that he is not to be retained in custody, but the crimes are of heinous nature and such crimes, by no stretch of imagination, can be regarded as jejune. Such cases do create a thunder and lightening having the effect potentiality of torrential rain in an analytical mind. The law expects the judiciary to be alert while admitting these kind of accused persons to be at large and, therefore, the emphasis is on exercise of discretion judiciously and not in a whimsical manner."

28. We then proceeded to notice the following passage from Asha Ranjan v. State of Bihar & Others, (2017) 4 SCC 397 when while dealing with the right to transfer an under trial from a jail in one State to another, the imperative necessity of a constitutional court upholding the rule of law and order in society was reiterated in the following terms:

"69. Presently, we shall advert to the facts which we have stated in the beginning. The third respondent has already been declared as a history-sheeter type ""'A", that is, who is beyond reform. Till today, he has been booked in 75 cases, out of which he had been convicted in 10 cases and presently facing trial in 45 cases. There is no dispute that he has been acquitted in 20 cases. Out of 45 cases, 21 cases are those where maximum sentence is 7 years or more. He has been booked in 15 cases where he has been in custody and one such case relates to

the murder of the third son of the petitioner and other two cases are of attempt to murder. He is an influential person of the locality, for he has been a representative to the Legislative Assembly on two occasions and elected as a Member of Parliament four times. This is not a normal and usual case. It has to be dealt with in the aforesaid factual matrix. A history-sheeter has criminal antecedents and sometimes becomes a terror in society. In Neeru Yadav v. State of U.P. and Anr., this Court, while cancelling bail granted to a history-sheeter, was compelled to observe:

"16. ....A democratic body polity which is wedded to the rule of law, anxiously guards liberty. But, a pregnant and significant one, the liberty of an individual is not absolute. Society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the collective and to the societal order. Accent on individual liberty cannot be pyramided to that extent which would bring chaos and anarchy to a society. A society expects responsibility and accountability from its members, and it desires that the citizens should obey the law, respecting it as a cherished social norm. No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At that stage, the court has a duty. It cannot abandon its sacrosanct obligation and pass an order at its own whim or caprice. It has to be guided by the established parameters of law."

We have referred to the aforesaid authority to highlight how the Court has taken into consideration the paramountcy of peaceful social order while cancelling the order of bail, for the order granting bail was passed without proper consideration of criminal antecedents of the accused whose acts created a concavity in the social stream."

29. These precedents spell out the various factors, which must be weighed into consideration while granting or considering an application for cancellation or grant of bail. These judgments underline the importance of factors such as the misuse of liberty granted, actions aimed at influencing witnesses or tampering with the evidence, criminal antecedents and the likelihood of crimes being committed again. These are of course not intended to be read as an exhaustive enunciation of factors but are only in the nature of exemplars. We were and are constrained to notice and record all of the above for the investigating agencies appeared to have, in the facts of the case before us, completely lost sight of the need to preserve orderly conduct, insulate society from a sense of chaos and anarchy and ensure that liberty granted to an individual is not abused or misused to commit further crimes. In fact the last of the factors enumerated above is one of the seminal considerations for exercise of power under Section 439 (2) CrPC. When the investigating authorities come across a case where they find that a person is continually indulging in crime, intimidating witnesses, subverting the course of justice, abusing the liberty accorded to him, misusing the same to commit further crimes, they would clearly be failing in their duty in not acting in accordance with the provisions aforementioned. The statute mandates them, their duty to preserve the rule of law commands them. In case they fail to act in accordance with the statutory mandate and the very structure of an orderly society is threatened by brazen acts and impudent conduct, it is the duty of the Court to remind them of the functions that must be performed. In the case before us, the SSP took stock of the situation and issued directions on 16 February 2017 to all the subordinate officers to initiate action to seek cancellation of bail. In the second writ petition before us, the police moved to contact and record the statements of injured witnesses only after cognizance was taken by this Court. A vigilant investigating and policing arm of the State is obliged to maintain the peace and secure the citizenry. Its actions must not convey that persons in position or power are beyond the reach of the law. It must therefore not only formulate an adequate and responsive policy towards prosecution of cases but also for opposition of bail applications and also move towards cancellation of bail where the facts and circumstances so warrant. These steps have to be necessarily undertaken by the State to preserve public order, deter the commission of offences and give life and meaning to the adage "Be you ever so high, the law is above you." If the circumstances and facts warrant the taking of such action, the authorities would be clearly failing in their duty in not initiating such steps. We may only observe that a review of all such cases needs to be undertaken by the respondents themselves. Such an internal mechanism must be formulated and put in place by the respondents so as to not just deter the commission of further crimes but also reinvigorate and restore the faith and trust of the people in the police. We deem this to be an appropriate case in which to issue certain general directions in this regard. The above observations would also serve as a reminder to the courts of justice of the overwhelming need to

remind ourselves of the principles so enunciated by the Supreme Court.

30. Having dealt with the submission advance on behalf of the sixth respondent, we may also note that the learned counsel had placed reliance on various judgments of the Supreme Court in support of his submissions. However, for the purposes of disposal of these proceedings, we propose to deal with only the following judgments cited before us specifically by the learned counsel.

31. Reliance at the outset was placed upon the judgment of the Supreme Court in A.R. Antulay v. R. S. Nayak and Another, 1988 (2) SCC 602. Inviting our attention to paragraphs 81 and 98 of the report, learned counsel contended that the action of Court should not injure any of the suitors and that a Court cannot take away the basic rights conferred by law upon an accused. It was his submission that the orders made by this Court from time to time, were not only violative of the principles of natural justice, they had also denied the sixth respondent the right to a trial in accordance with law and the procedure established by law. We find no ground to accept the above submission. As already noticed herein above, most of the orders which were passed by this Court, were primarily a record of the stand taken by the State respondent in the matter and the action that was proposed to be taken by them. The arrest of the accused and the move to seek cancellation of bail were decisions taken by the respondents themselves. Surely the sixth respondent cannot have any grievance against the police authorities expediting investigation. Insofar as their decision to seek cancellation of bail is concerned, it is always open to the sixth respondent to oppose any such prayer that may be made before the appropriate forum and at the appropriate stage. The arrest of accused person was made in light of the various allegations which were made in the writ petition. The writ petition alleged intimidation of witnesses, threatening of witnesses and the atmosphere of fear which was generated by the conduct of the respondents. In the second writ petition the charge levelled against the respondents 4 to 8 was of murder under Section 302 I.P.C. The material and evidence which was laid before us seemed to indicate that the accused were moving about freely and with immunity. Reverting to the first writ petition, we note that despite the presence of various eyewitnesses and evidence in the shape of CCTV footage, a majority of the accused had not even been identified. The arrest of the accused persons in the aforesaid background cannot be said to have been unjustified or illegal. We may also note that A.R. Antulay was essentially a judgment dealing with the issue of whether an accused could be subjected to undergo a trial otherwise than in accordance with a procedure established by law. This issue does not arise for our consideration in the present case.

32. Reliance was then placed upon the judgment of the Supreme Court in Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra and Another, (2005) 5 SCC 294 to submit that presumption of innocence is a human right and that the liberty of a

person should not be interfered with unless their exists cogent grounds. There can be no quarrel with this broad proposition. The various orders of this Court have not entered a finding of guilt against any person. However the presumption of innocence and the liberty of an individual cannot be viewed in isolation or in disregard of the need to maintain and preserve a civil and just societal order. Where the courts find that the liberty accorded to an individual is being abused, they would surely be failing to discharge their constitutional duty in not intervening in such a situation.

33. Learned counsel then pressed into aid the principles enunciated in Joginder Kumar v. State of U.P. And Others, (1994) 4 SCC 260 to submit that the arrest of a person must not ordinarily be made. We may, in this connection, refer to para 20 of the report which reads as follows:

> "20. In India, Third Report of the National Police Commission at p. 32 also suggested:
>
> "An arrest during the investigation of a cognisable case may be considered justified in one or other of the following circumstances:
>
> (i) The case involves a grave offence like murder, dacoity, robbery, rape etc., and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terror stricken victims.
>
> (ii) The accused is likely to abscond and evade the processes of law.

(iii) The accused is given to violent behaviour and is likely to commit further offences unless his movements are brought under restraint.

(iv) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again.

(emphasis supplied)

It would be desirable to insist through departmental instructions that a police officer making an arrest should also record in the case diary the reasons for making the arrest, thereby clarifying his conformity to the specified guidelines....."

The above guidelines are merely the incidents of personal liberty guaranteed under the Constitution of India. No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lockup of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person''s complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if

a police officer issues notice to person to attend the Station House and not to leave the Station without permission would do."

34. We have already referred to the circumstances in which the arrest of the accused person was effected by the authorities. We also note that in light of the amended Section 41 of the Criminal Procedure Code, 1973, the investigating officer is obliged to record reasons not just in respect of why the arrest of an accused is warranted but also where he decides not to effect arrest in respect of crimes which are referable to and fall within the ambit of Section 41(1)(b).

35. In the present case, our attention was neither invited to any satisfaction recorded by the respondents why arrest was not warranted nor was any material placed on record to evidence such satisfaction having been recorded.

36. Reliance was then placed upon paragraphs 38 and 39 of the judgment in Manohar Lal Sharma v. Principal Secretary and Others, (2014) 2 SCC 532:

"The monitoring of investigations/inquiries by the Court is intended to ensure that proper progress takes place without directing or channelling the mode or manner of investigation. The whole idea is to retain public confidence in the impartial inquiry/investigation into the alleged crime; that inquiry/investigation into every accusation is made on a reasonable basis irrespective of the position and status of that person and the inquiry/investigation is taken to the logical conclusion in accordance with law. The monitoring by the Court aims to lend credence to the inquiry/investigation being conducted by the CBI as premier investigating agency and to eliminate any impression of bias, lack of fairness and objectivity therein.

[para 38]

37. However, the investigation/inquiry monitored by the court does not mean that the court supervises such investigation/inquiry. To supervise would mean to observe and direct the execution of a task whereas to monitor would only mean to maintain surveillance. The concern and interest of the court in such ''court directed'' or ''court monitored'' cases is that there is no undue delay in the investigation, and the investigation is conducted in a free and fair manner with no external

interference. In such a process, the people acquainted with facts and circumstances of the case would also have a sense of security and they would cooperate with the investigation given that the superior courts are seized of the matter. In some cases, the expression ''Court monitored'' has been interchangeably used erroneously with ''court supervised investigation''. Once the court supervises an investigation, there is hardly anything left in the trial. Under the CrPC, the investigating officer is only to form an opinion and it is for the court to ultimately try the case based on the opinion formed by the investigating officer and see whether any offence has been made out. If a superior court supervises the investigation and thus facilitates the formulation of such opinion in the form of a report under Section 173(2) CrPC, it will be difficult if not impossible for the trial court to not be influenced or bound by such opinion. Then trial becomes a farce. Therefore, supervision of investigation by any court is a contradiction in terms. The CrPC does not envisage such a procedure, and it cannot either. In the rare and compelling circumstances referred to above, the superior courts i.e. the Supreme Court and High Court may monitor an investigation to ensure that the investigating agency conducts the investigation in a free, fair and time-bound manner without any external interference."

[para 39]

38. A reading of paragraphs 38 and 39 of the report and the principles highlighted by us far from aiding the submissions advanced by the sixth respondent clearly show that the procedure adopted by this Court was not only justified in the facts of the case to retain public confidence and to ensure an impartial enquiry but was also in accord with the law as declared and propounded therein.

39. We lastly note the reliance place upon the judgment of the Supreme Court in Sushila Devi v. State of Rajasthan And Others, (2014) 1 SCC 269, on the basis of which it was contended that the monitoring by a Court is in respect of an investigation and that the same comes to an end once a charge sheet has been filed. We may only note in this context that a charge-sheet was submitted only at the fag end of the proceedings and the Court was apprised of the same only when the writ petitions were called for final arguments. However this aspect need not detain us for we propose to dispose of the writ petitions themselves by this order.

40. Coming to the prayer for withdrawal of the writ petition it is relevant to note that in our order dated 20 February 2017 we noted as follows:

> "It becomes pertinent to note here that when these proceedings were taken up for consideration on 13 February 2017, Sri Udai Chandani, learned counsel appearing for the petitioner, had submitted that immense pressure was being exerted upon the petitioner to withdraw the present writ petition. The petitioner has thereafter, as the record would reveal, filed an application for withdrawal of the writ petition itself which came up before us on 16 February 2017 when it was

directed to be called along with the record. In the Affidavit filed in support of this application the petitioner has contended that he was only concerned with his security and proper investigation and that since the police authorities are doing their best the petitioner desires to have the instant writ petition dismissed as not pressed. In paragraph 5 of the Affidavit a prayer is made that the writ petition be dismissed as withdrawn. From the narration of facts, as noticed above, prima facie, it appears that the views expressed by the fourth respondent in his communication dated 16 February 2017 to the effect that the primary accused and members of his gang are spreading terror and instilling fear and a sense of insecurity in society cannot be lightly brushed aside. At this stage, bearing in mind the nature of facts revealed and the backdrop in which the application is made, we find sufficient material to deny the prayer of the petitioner for dismissal of the writ petition as withdrawn. The issue as to whether we shall, regardless of the application of the petitioner and in exercise of powers conferred by Article 226 of the Constitution, proceed to take suo moto cognizance of the entire matter is left for further deliberation on the next date. We do so primarily so as to not prejudice the rights of respective parties at this stage as also to ensure a fair hearing to all concerned. However the state of the record as it exists today does constrain us to make the following observations."

41. Before we deal with this aspect further it would also be relevant to note the allegations on which the writ petition itself was based. The following averments would indicate the backdrop in which the matter came before this Court:

"12. That the accused persons have been stating and telling that no one can harm him and Investigating Officer has been approached/ asked for not arresting him and other accused persons.

13. That they have warned the Investigating Officer for not making any investigation and to cause delay in the investigation and they instructed the Investigating Officer for not arresting the accused persons.

14. That the Investigating Officer has failed to discharge its statutory obligations by Investigating the case in a fair and impartial manner.

15. That the Investigating Officer/ Police Officials prima facie appear to have turned the case in a manner where the hunter himself became the hunted.

16. That it appears that due to the influence and pressures of the aforesaid persons the Investigating Officer is not taking interest in the investigation of instant criminal offence in fair, just, proper and in speedy manner.

17. That under the influence of the aforesaid persons the prosecution witnesses are being threatened by the accused persons and the accused persons are trying to tampering the material evidence yet to be collected by the Investigating Officer so that the prosecution case may be adversely and badly affected.

18. That under the influence of the aforesaid persons the petitioner as well as his family are facing a high level threat/ danger upon their life and property."

42. We have already noticed the averments made in the affidavit filed in support of the application seeking withdrawal of the writ petition. The averments are clearly suggestive of some latent and inscrutable factor which has weighed with the petitioner to move the application. We also cannot completely ignore the

backdrop and the events surrounding the moving of the instant application. The reference in the application to the station occupied by the petitioner, the composition of his family are eloquent in their silence. The application for withdrawal though made as far back as on 16 February 2017 was never pressed before us till the date when we closed the hearing and reserved orders. In fact, the learned counsel for the petitioner for reasons unknown had absented himself on all dates post 16 February 2017 and appeared in the proceedings only upon our directions. Be that as it may since we are presently proceeding to dispose of the writ petition itself noting that a charge sheet has already been filed and that the investigation is continuing, no orders need be passed on this application at this stage.

43. However, we consider the causes laid before us and represented by way of these two writ petitions as a befitting opportunity to recollect and reiterate the observations in Jennison v. Backer, 1972 (1) All ER 997 cited with approval in Zahira Habibullah H. Sheikh v. State of Gujarat, (2004) 4 SCC 158

"The law should not be seen to sit limply, while those who defy it go free and, those who seek its protection lose hope".

44. The principles articulated by the Supreme Court in Amarmani Tripathi, Neeru Yadav and Asha Ranjan referred to above remind us to be ever vigilant against any attempt to subvert the rule of law and to insulate society as a whole against chaos and anarchy. The respondents as well as the courts would be well advised to bear in mind the principles which must govern the grant or cancellation of bail. As has been highlighted herein above, there must be a balancing between the rights of individual liberty and the rights of society as a whole to be free from crime. The grant or refusal of bail must be preceded by the consideration of factors enumerated in the precedents aforementioned with stricter scrutiny being applied in the case of perpetration of repeat offences. In fact we note that the statutory regime in U.P. itself highlights these aspects when we consider the provision of Section 19 (4) of the U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986 [which too stood invoked in one of the writ petitions against the accused] which enumerates the factors to be taken into consideration and describes them as limitations placed in addition to those provided under the Criminal Procedure Code. The courts must be ever vigilant and ascertain and ensure that these provisions which already exist do not remain

mere dead letter and are strictly enforced in appropriate cases.

44. It is in this backdrop that we, in exercise of our extraordinary powers conferred by Article 226 of the Constitution, proceed to dispose of these two writ petitions with the following directions:

A) The concerned Senior Superintendents of Police shall ensure that the petitioners and other witnesses of the crimes referred to in the two writ petitions are accorded adequate security in aid of a free, fair and impartial investigation.

B) Complaints in respect of threat or intimidation of witnesses, if received, shall be attended to with promptitude, thoroughly investigated and such further steps taken as may be warranted in the facts and circumstances.

C) The courts in which the charge sheets have been submitted shall proceed in the matter in accordance with law.

D) The investigation officers shall proceed with the ongoing investigation with expedition. It shall be open for them to present such supplementary charge sheets as may be warranted in the facts and circumstances of the case.

E) The Respondents are granted the liberty to proceed with the applications for cancellation of bail in accordance with law.

F) The Director General of Police along with the Home Secretary Government of U.P. shall issue appropriate advisories and circulars encapsulating the principles governing the grant, opposition and cancellation of bail referred to in the body of this judgment.

G) The authorities referred to above shall also formulate appropriate directives in respect of investigation in sensitive cases emphasising upon the need for a prompt, fair and impartial investigation and the imperatives to sustain the faith of the people and victims in the investigation of crimes.

H) They shall also consider the formulation of procedures for oversight and review of investigations in sensitive cases by the concerned senior officer to be duly documented by way of reports.

I) The copies of the circulars, directives and instructions to be issued shall be presented before the Registrar General of this Court within a period of two months from today to be placed on the records of these two writ petitions.