

---

**(2020) 09 DEL CK 0165**

**In the Delhi High Court**

**Case No :** First Appeal From Order No. 168 Of 2020, Civil Miscellaneous  
Application No. 21973 Of 2020

Harper Collins Publishers India Pvt. Ltd

APPELLANT

Vs

Sanchita Gupta @ Shilpi & Ors

RESPONDENT

---

**Date of Decision :** 22-09-2020

**Acts Referred:**

Constitution Of India, 1950 — Article 19, 19(1)(a), 19(2), 21, 129, 142(2), 215  
Code Of Civil Procedure, 1908 — Order 39 Rule 1, Order 39 Rule 2  
Indian Penal Code, 1860 — Section 120B, 342, 370(4), 376D, 376(2)(f), 509  
Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 23  
Protection of Children from Sexual Offences (POCSO) Act, 2012 — Section 5(g), 17

**Citation :** (2020) 09 DEL CK 0165

**Hon'ble Judges :** Najmi Waziri, J

**Bench :** Single Bench

**Advocate :** Kapil Sibbal, Swathi Sukumar, Ashima Obhan, Naveen Nagarjuna, Akanksha Dua, Adit Subramaniam Pujari, Essenese Obhan, Raghav Tankha, Devadutt Kamat, Naman Joshi, Karan Khanuja

**Final Decision :** Disposed Of

---

**Judgement**

Najmi Waziri, J

1. The appellant impugns an order dated 04.09.2020 passed by the learned Additional District Judge-02, Patiala House Courts, New Delhi, in CS No.275 of 2020, granting an ex parte injunction to respondent No.1 - Sanchita Gupta @ Shilpi (plaintiff Shilpi) apropos what she considers defamatory material, supposed to be published in a book called "Gunning for the Godman: The Story Behind Asaram Babu's Conviction" (hereinafter referred to as "the Book"). The substratum of her grievance apropos the Book is in para 14 of the plaint, which is reproduced hereunder:

"....14. The defamatory statements and imputations from the Book published by Defendant No. 1 in the Article after permission from Defendant Nos. 3, 4 and 5 are quoted hereinbelow for ready reference along with a brief submission on the

defamatory nature thereof:

"The SHO paused for a moment to compose herself and recounted to me what the girl had told her, as she had told her. She began:

"When I asked the girl to narrate the entire story to me, careful that she leave out no detail, this is what she told me in her own words...

"I belong to Shahjahanpur, Uttar Pradesh. My father has a transport business there with about eleven trucks. For years, my entire family has been a devotee of Asaram Bapu. My father even took loans to get a small ashram built there for guru ji. My brother and I were sent by my parents to Bapu's gurukul [residential school] to study. We stay at the ashram-cum-hostel there.

"On the 2nd and the 3rd of August, I started feeling sick. Since I had not been well for two days, I felt weak and feeble. My classmates somehow managed to take me to the room that I shared with other girls and laid me down on my bed. Then, they informed the warden of the hostel. Shilpi ma'am, about my condition. When the warden came to my room she asked the other girls what had happened. When they told her that I had not been feeling well for the last few days and had fallen down perhaps due to weakness she asked me to lie down and take rest.

"I slept, but the warden did not take me to any doctor for the next two days. Then, on the third day, she called me down to the office of the director of the ashram. When I reached his office, the mother girl was already present there. They told me that she was possessed by demons and was under the influence of evil spirits.

"As I stood in front of the director, he looked at me for a long time and then told me flatly that I too, was under the influence of evil spirits. He told me that I needed to pray, chant mantras and perform rituals to ward off the evil spirits that had gained control over me and were making me sick.

"I was told by both the warden and the director to become satvik (virtuous) and spend more time in doing sadhana (concentrate/study religion). The very next day, I experienced an acute pain in my stomach, but still they asked me to sit and continue to perform religious rituals. I was made to sit through the chanting of the Mahamrityunjaya mantra to please Lord Shiva, and even asked to chant them. They did not even allow me to sleep.

"The next day, as I lay in my room, Shilpi ma'am came in and said to me that I was under the influence of evil spirits and the matter had been conveyed to Bapu. She asked me to tell my brother about it and also for my parents Saharanpur.

"On the 7th of August, she telephoned my elder brother and made me tell him what she had asked me to say. Upon her instructions I told my brother that my condition was very serious and that they should arrange to send me for treatment.

"On hearing about my condition, my parents rushed to the ashram. They reached on the 8th of August but were prevented from meeting me. It was only on the 9th of August that they were finally allowed to meet me, but warden Shilpi was with us throughout our meeting. She told my parents that I was under the influence of evil spirits that Bapu had already been informed of my condition and we would have to go wherever he currently was to meet him".

At this point, Mukta stepped und and said to me. "Sir, that warden. Shilpi scared the little girl about her possessed by evil spirits and she did not realise the vortex that she was being pulled into. She did exactly as Shilpi said."

I nodded and asked her to resume the story of the girl. "Sir, next, the girl said...

"My parents were asked to locate Asaram Bapu, and meet him. My father, owing to his long association with Bapu's ashrams, knew Bapu's attendant, Shiva, as he has been with Asaram Bapu for a long time. He sought him out and asked him where we would be able to find Bapu. Shiva told us to go to Delhi as Bapu was there.

"Then, my parents and I decided to go to Delhi: to meet Bapu, as advised by warden Shilpi, to seek treatment for my condition. We reached Delhi on the 12th of August, but when we failed to locate him there, we were told that Bapu was in Jodhpur.

"We left Delhi and reached Jodhpur on the 14th of August. Once we reached Jodhpur, Shiva called us to the kutiya at Manai.

"When we reached Manai, I realized that it was not a kutiya but a proper house. We saw Bapu there, he was doing satsang, singing devotional songs, with about a hundred and fifty of his followers. After the satsang got over he called us over and spoke to us.

"Hari om, Hari om..." he said, looking directly at me.

"We all folded our hands and bowed our heads in front of him.

"Where have you come from?" he asked us.

"Bapu, we were told that we are to meet you..." my father told him politely.

"Achha, achha... okay, you are the girl who is under evil influence and has been possessed by demons. All right, let's look at this demon of yours. And let's get rid of him too," he said, looking directly at me.

"Then, he got up from his chair, took some water in his palm from a copper vessel and sprinkled it on my face after reciting some mantras. At once, I retreated a step backwards as the water hit my face with great force. Then, he looked at me closely, again, and placed his hand over my head. He had a benign smile on his face.

"Hmm...How are your studies?" he asked me gently.

""Ji it is fine, told him softly.

""Okay, now, go and rest in Vishnu's house," he told us Then around 10 pm, we were summoned by Bapu to the same garden. When we reached there, he started showing us his kutiya and then later, while strolling in the garden, he began chatting with us. ""He sat down on a garden swing and gently swinging, he asked me directly, "What do you want to become after you complete your education?

""CA." I told him.

""He gave a short laugh and told me, "What will you do by becoming a CA? They are all sitting at my feet. Become a teacher."

""Then, after a pause, he told me, "You stay on here and perform religious rituals for eleven days. You can go to Ahmedabad. As for your parents, they can go back home."

""I nodded, and asked him, "But, Bapu, what about my studies?"

"He thought for a moment, and then said, "We will send you back to the gurukul with someone after you have been cured"

"After this, we all retired for the night in the room on the first floor of Vishnu Dawada's house. The next day, Bapu arrived a little late for the satsang. The satsang over, we were about to leave, alongside the other followers when Bapu summoned us. It was around 10 o'clock then.

"When we reached his kutiya, he met us in the garden. Then, he sat on a chair and started explaining to us the rituals, etc. After some time, he asked my father and mother to go sit near the main gate - about five hundred yards from the kutiya - and chant mantras. He also asked his cook to bring us some milk after which he went into his room and we saw the lights inside the room go off. The room was now in darkness.

"After some time, the cook who had given us the milk, asked me to come and sit near the stairs behind Baby's room and asked my parents to leave. My father left immediately and, as directed by Bapu, went and sat on the other side of the main gate while my mother continued to sit same distance away in the garden itself.

""I sat behind Baby's room as directed after some time, Bapu opened the rear door of his room and gestured at me to come inside. I hesitated but entered his room which was in complete darkness. The only little illumination inside the dark room was from the light filtering from the outside.

"When I adjusted my eyes to the darkness, I saw that Bapu was lying on his bed. As he saw me, he asked me to come and sit next to him on the bed As I sat on the bed near him, he grabbed my hand and started massaging it gently. I tried to pull my hand away but Bapu held it firmly. Holding my hand, he tried to draw me

close to him When I resisted, he loosened his grip and released me. Then in a gentle voice, he started telling me that I would have to perform some rituals with him to get rid of the evil power that had possessed me I kept quiet. After all, hadn't we all travelled from Chhindwara to Delhi and again to Jodhpur for Bapu to cure me?

"Then, Bapu planted a kiss on my forehead and hugged me close to him. He kept kissing me for some time all over my face. He released me after a while and started removing his clothes. I was quite shocked at this, because I had never been in this kind of a situation before. I had never been in a room alone with a man But I told myself that this was our god, the man my entire family had been worshipping for so many years is our god and our messiah I was scared to upset or defy him. I was also scared that my parents would scold me if I did not do as Bapu asked me or failed to comply with his wishes. This man was a saint... a god intimate, wasn't he? I kept telling myself that his removing his clothes and getting stark naked in front of me must be a part of some ritual that he wanted to perform in to help rid me of my demons.

"I kept sitting on the bed with my eyes lowered as I was ashamed to look at Bapu who did not have any clothes on."

Mukta stopped suddenly, her eyes lowered. I asked her what made her stop in the middle of recounting the story she had narrated to her, although a little embarrassed by the turn the story had taken. I realised that Mukta too, was embarrassed and uncomfortable telling me about it. In response, Mukta apologised.

a. The contents of the aforesaid Paragraphs which were excerpted from the Book and published in the Article by Defendant No. 1 are a direct allegation, and in the alternative, an imputation that Plaintiff used to conspire and do such ill acts including lying to the prosecutrix, convincing her parents also that she was allegedly possessed by demons, and then as part of a larger conspiracy involving others, sent her to be sexually assaulted The matter is sub-judice before the Hon'ble High Court of Rajasthan at Jodhpur and any publication from an author (who initially participated in the investigation) portraying the so-called true story of conviction should not be permitted and circulated as it's defamatory and may prejudice the ongoing judicial proceedings. It is pertinent to mention here that the Ld. Special Judge (POCSO Jodhpur in its judgment dated 25.04.2018 has stated at Paragraph 458 that there is no direct evidence which suggests that the Plaintiff sent the prosecutrix to the co-accused, so that he could sexually assault her rather it is based completely on circumstantial evidence. The Hon'ble High Court in its order dated 29.09.2018 while granting Suspension of Sentence to the Plaintiff has stated the following:

"The trial court in para No 458 of the impugned judgment has also observed that there is no direct evidence available on record, which suggests that the applicant appellant sent the prosecutrix to co-accused, so that he could sexually

assault her but has held that on the basis of ocular and the circumstantial evidence, it can be inferred that the applicant-appellant had sent the prosecutrix to Ashram, so that he could assist her sexually. However, the ocular and circumstantial evidence, on which the trial court has placed reliance require consideration in detail."

2. There is no other portion of the Book to which any objection has been raised in the plaint. The impugned injunction order was passed without notice to and in the absence of the appellant -- the publisher. According to plaintiff Shilpi, the aforesaid portions containing references to her are defamatory and are not founded on facts; its publication would lead to irreparable injury to her reputation.

#### FACTUAL BACKGROUND

3. On 25.04.2018, the Special Court (POCSO Act) at Jodhpur, convicted Asumal Harpalani, also known as Asaram Bapu, for offences punishable u/s 342, 370(4), 120-B, 376-D, 376(2)(F), 509 of the Indian Penal Code ("IPC") and section 23 of the Juvenile Justice (Care and Protection of Children) Act, 2000 apropos sexual assault on a minor. Plaintiff Shilpi, was the warden of an ashram run by Asaram. She was convicted by the same order for offences punishable under sections 370(4), 376D read with Section 120-B IPC. In her appeal (S.B.Criminal Appeal No.622/2018) against the conviction the Rajasthan High Court vide its order dated 29.09.2018 suspended her sentence till the final disposal of the appeal. A book titled "Gunning for the Godman: The True Story Behind Asaram Bapu's Conviction" published by the present appellant - Harper Collins Publishers India Pvt. Ltd., was proposed to be launched on 5th September 2020. Shilpi's application under Order 39 Rule 1&2 CPC in the suit sought ex-parte injunction against publishing/distribution of the book, on the ground that it is defamatory, casts baseless imputations against her; she sought to protect her reputation and right to fair name beyond the conviction. The impugned ex-parte injunction was passed on 04.09.2020 restraining the appellant from publishing/distributing the Book till the next date of hearing.

#### APPELLANT'S CONTENTIONS

4. Mr Kapil Sibal, the learned Senior Advocate for the appellant submits that plaintiff Shilpi did not approach the learned Trial Court with clean hands -

(i) she did not disclose to the trial court that everything contained in para 14 of the suit, which had been excerpted from the book, and which she considers defamatory, is based upon the evidence discussed in the judgment convicting her of the crimes charged, therefore the proven facts are a matter of public record;

(ii) the story told by the author -- the Investigating Officer of the case, is based upon the evidence recorded during the trial, upon which Shilpi and Asaram was ultimately convicted by the Special Judge (POCSO Act), Jodhpur vide order dated 25.04.2018

5. The learned Senior Advocate further submits that each of the "objectionable" sentences and paragraphs, forming part of the Book, have been juxtaposed with the records and the judgment of the learned Trial Court as under:

1.

Then, they informed the warden of the hostel, Shilpi ma'am, about my condition. When the warden came to my room, she asked the other girls what had happened. When they told her that I had not been feeling well for the last few

days and had fallen down perhaps due to weakness,

she asked me to lie down

and take rest.

Narrated by the Victim herself and recorded at Paragraph 437 on Page 417 of the Judgement.

2.

I slept, but the warden did not take me to any doctor for the next two days. Then, on the third day, she called me down to the office of the director of the ashram. When I reached his office, I saw that another girl was already present there. They told me that she was possessed by demons and was under the influence of

evil spirits.

Narrated by the Victim herself and recorded at Paragraph 437 on Page 417 of the Judgement.

3.

I was told by both the warden and the director to become satvik (virtuous) and spend more time in doing sadhana (concentrate

/study/ religion). The very next day, I experienced an acute pain in my stomach, but still, they asked me to it and continue to perform religious rituals. I was made to sit through the chanting of the Mahamrityunjaya mantra to please Lord Shiva, and even

asked to chant them. They did not even allow me to

sleep.

Narrated by the Victim herself and recorded at Paragraph 24 on Page 37 of the Judgment. Also recorded at Paragraph 447 of the Judgement.

4.

The next day, as I lay in my room, Shilpi ma'am came

in and said to me that I was

under the influence of evil spirits and the matter had been conveyed to Bapu. She asked me to tell my brother about it and also inform my parents in Shahjahanpur.

Rajasthan HC judgment dated

29.09.18. (Page no. 2 of 11). Also at:

[https://www.indiatoday.in/india/st o](https://www.indiatoday.in/india/story/asaram-rape-case-shilpi-hewoman-who-sent-16-year-old-victim-to-the-ashram-where-she-was-raped-1219744-2018-04-25)

[ry/asaram-rape-case-shilpi- hewoman-](https://www.indiatoday.in/india/story/asaram-rape-case-shilpi-hewoman-who-sent-16-year-old-victim-to-the-ashram-where-she-was-raped-1219744-2018-04-25)

[who-sent-16-year-old-victim- to-the-ashram-where-she-was-](https://www.indiatoday.in/india/story/asaram-rape-case-shilpi-hewoman-who-sent-16-year-old-victim-to-the-ashram-where-she-was-raped-1219744-2018-04-25)

[raped-1219744-2018-04-25](https://www.indiatoday.in/india/story/asaram-rape-case-shilpi-hewoman-who-sent-16-year-old-victim-to-the-ashram-where-she-was-raped-1219744-2018-04-25)

5.

On the 7th of August, she telephoned my elder brother and made me tell him what she had asked me to say. Upon her instructions, I told my brother that my condition was very serious and that they should arrange to send me for treatment.

Narrated by the Victim herself and recorded at Paragraph 437 on Page 417 of the Judgement.

Rajasthan HC judgment dated

29.09.18. (Page no. 2 of 11).

<https://Books.google.co.in/Books>

[?i d=sTfFDgAAQBAJ&printsec=fr o ntcover#v=onepage&q&f=false https://caravanmagazine.in/vant age](https://Books.google.co.in/Books?i d=sTfFDgAAQBAJ&printsec=fr o ntcover#v=onepage&q&f=false https://caravanmagazine.in/vant age)

[/asaram-verdict-father-](https://Books.google.co.in/Books?i d=sTfFDgAAQBAJ&printsec=fr o ntcover#v=onepage&q&f=false https://caravanmagazine.in/vant age)

[recounts challenges- jodhpur-case](https://Books.google.co.in/Books?i d=sTfFDgAAQBAJ&printsec=fr o ntcover#v=onepage&q&f=false https://caravanmagazine.in/vant age)

6.

They reached on the 8th of August, but were prevented from meeting me. It was only on the 9th of August that they were finally allowed to meet me, but warden Shilpi was with us throughout our meeting. She told my parents that I was under the influence of evil spirits, that Bapu had

already been informed of my condition and we would

have to go wherever he currently was to meet him.

Narrated by the Victim herself and recorded at Paragraph 437 on Page 418 of the Judgement. Also at Paragraph 450 of the Judgement where the Ld. Judge states that this was proven.

Rajasthan HC judgment dated

29.09.18. (Page no. 2 of 11).

[https://www.thehindu.com/news/n](https://www.thehindu.com/news/national/other-states/coaccused-in-asaram-casesurrenders/article5168410.ece)

[ational/other-states/coaccused- inasaram-](https://www.thehindu.com/news/national/other-states/coaccused-in-asaram-casesurrenders/article5168410.ece)

[casesurrenders/article5168410.e ce https://www.dnaindia.com/india/ re](https://www.dnaindia.com/india/report-asaram-bapu-s-aide-shilpi-surrenders-in-jodhpur-finally-1894211)

[port-asaram-bapu-s-aide- shilpi-surrenders-](https://www.dnaindia.com/india/report-asaram-bapu-s-aide-shilpi-surrenders-in-jodhpur-finally-1894211)

[in-jodhpur-finally- 1894211](https://www.dnaindia.com/india/report-asaram-bapu-s-aide-shilpi-surrenders-in-jodhpur-finally-1894211)

[https://www.deccanherald.com/c on](https://www.deccanherald.com/content/359400/another-asaram-aides-surrenders.html)

[tent/359400/another-asaram-](https://www.deccanherald.com/content/359400/another-asaram-aides-surrenders.html)

[aidesurrenders.html](https://www.deccanherald.com/content/359400/another-asaram-aides-surrenders.html)

[https://](https://www.deccanherald.com/content/359400/another-asaram-aides-surrenders.html)

[www.indialegallive.com/ co](https://www.deccanherald.com/content/359400/another-asaram-aides-surrenders.html)

[nstitutional-law- news/courtsnews/asaram-bapus- sentencegodless-](https://www.deccanherald.com/content/359400/another-asaram-aides-surrenders.html)

[godman/ http://archive.indianexpress.com](https://www.deccanherald.com/content/359400/another-asaram-aides-surrenders.html)

[/n](https://www.deccanherald.com/content/359400/another-asaram-aides-surrenders.html)

[ews/asaram-case-ashram- wardensurrenders-](https://www.deccanherald.com/content/359400/another-asaram-aides-surrenders.html)

[before-jodhpurcourt/1174162/](https://www.deccanherald.com/content/359400/another-asaram-aides-surrenders.html)

7.

At this point, Mukta stopped and said to me, "Sir, that warden, Shilpi, scared the little girl about being possessed by evil spirits and she did not realise the vortex that she was being pulled into. She did exactly as Shilpi said.

Statement of the Ld. Judge at Paragraphs 456 and 458 of the Judgement where he states that it is proven that the Plaintiff scared the victim about being possessed which led to the victim going to Asaram.

[https://www.indiangorkhas.in/20 13](https://www.indiangorkhas.in/2013/09/asaram-bapus-video-clip-withgirl.html?m=1)

[/09/asaram-bapus-video-clip- withgirl.html?m=1](https://www.indiangorkhas.in/2013/09/asaram-bapus-video-clip-withgirl.html?m=1)

8.

Then, my parents and I

decided to go to Delhi to

meet Babu, as advised by warden Shilpi, to seek treatment for my condition.

Narrated by the Victim herself

and

recorded at Paragraph 437 on Page 418 of the Judgement.

<https://www.oneindia.com/india/as>

aram-aide-shilpi-gives- surrenders-

after-a-month- 1312627.html

[https://www.business-standard.com/article/pti-stories/asaram-aide-shilpi-sent-to-eight-day-judicial-custody-113100300737\\_1.html](https://www.business-standard.com/article/pti-stories/asaram-aide-shilpi-sent-to-eight-day-judicial-custody-113100300737_1.html)

<https://english.newsnationtv.com>

/cities/jaipur/asarams-associate-shilpi-sent-to-4-day-judicial-custody-19491.html <https://Books.google.co.in/Books>

?id=sTfFDgAAQBAJ&printsec=frontcover#v=onepage&q&f=false <https://caravanmagazine.in/vantage/asaram-verdict-father-recounts-challenges-jodhpur-case> <https://economictimes.indiatimes>

.com/news/politics-and-nation/asaram-case-ashram-warden-shilpi-sent-to-police-custody/articleshow/23115525.cms <https://www.indiangorkhas.in/2013/09/asaram-bapus-video-clip-with-girl.html?m=1>

with-girl.html?m=1

<https://www.indiangorkhas.in/2013/09/asaram-bapus-video-clip-with-girl.html?m=1>

6. He contends that had plaintiff Shilpi, at the least annexed a copy of the judgment on her conviction, the learned Trial Court would have had an opportunity to assess, whether the alleged objectionable references apropos her had any factual basis or proven records. However, the plaintiff chose not supply such essential information. She has been less than fair to the learned Trial Court. The appellant emphasizes that on this ground alone, the impugned order ought to be set aside.

7. The learned Senior Advocate further states that in the grant of that rare pre-publication injunction, courts have exercised extreme caution, lest it curtail the freedom of speech guaranteed under Article 19(1)(a) of the Constitution of India. He refers and relies upon the dicta of this Court in Pushp Sharma v. D.B. Corp. Ltd. & Ors. 2018 SCC OnLine Del. 11537, which held, inter alia, as under:

"...

23. We feel that adding further would not be appropriate except to say that whenever interlocutory or ex parte injunctive relief of the kind which this Court is now concerned with, is sought, the threshold for considering the prima facie strength has to necessarily be of a very high order. The consequence of not following established rules and principles would be that the Courts unwittingly would, through their orders, stifle public debate. The Members of the public and citizens of this country expect news and fair comment as to whether a public institution - including a media house or journal (which cannot claim any

exemption from being public institutions as they are the medium through which information is disseminated, and are one of the pillars of democracy) functions properly. In case there are allegations which result in controversies as to the reliability of the news which one or the other disseminates to the public, that too is a matter of public debate. Unless it is demonstrated at the threshold that the offending content is malicious or palpably false, an injunction and that too an ex-parte one, without recording any reasons should not be given. Democracy presupposes robustness in debates, which often turns the spotlight on public figures and public institutions - like media houses, journals and editors. If courts are to routinely stifle debate, what cannot be done by law by the State can be achieved indirectly without satisfying exacting constitutional standards that permit infractions on the valuable right to freedom of speech..."

8. He also places reliance upon the dicta of the Supreme Court in *Morgan Stanley Mutual Fund v Kartick Das* (1994) 4 SCC 225, wherein the Supreme Court listed the factors which should be considered before grant of ex parte injunction. It held, inter alia:

"36. As a principle, ex parte injunction could be granted only under exceptional circumstances. The factors which should weigh with the court in the grant of ex parte injunction are-

- (a) whether irreparable or serious mischief will ensue to the plaintiff;
- (b) whether the refusal of ex parte injunction would involve greater injustice than the grant of it would involve;
- (c) the court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented;
- (d) the court will consider whether the plaintiff had acquiesced for sometime and in such circumstances it will not grant ex parte injunction;
- (e) the court would expect a party applying for ex parte injunction to show utmost good faith in making the application.
- (f) even if granted, the ex parte injunction would be for a limited period of time.
- (g) General principles like prima facie case balance of convenience and irreparable loss would also be considered by the court..."

9. The appellant submits that on 22.07.2020, there was wide publication in the electronic media that the Book would be launched on /available for sale from 05.09.2020. Indeed, the sequence of discussions regarding the Book on various online publications, has been mentioned in the suit, as under:

"36 The cause of action to institute the present suit arose on 11.8.2020 when Defendant No 1 published the Book excerpt on scroll in/all 968978usarant-bapu-this-Book-is-a-police-officer-first-hand-account-of-his-arrest-and-conviction

written by Defendant no. 4 and 5 through Defendant No. 3. The office of Defendant No. 1 is within the jurisdiction of this Hon'ble Court. The Book is available on the platform of Defendant No.6 and 7 for pre-orders and will be available from 5.9.2020 in India including within the jurisdiction of this Hon'ble Court at [https:// www.amazon.in humingi minchind-Asian. Conviction Dy9353578086](https://www.amazon.in/humingi-minchind-Asian-Conviction-Dy9353578086); and [https// www.flipkart.com gtnnint-godman-trus- story-behind-asaram-bapu-s-entretienet29 97893535789844 takt BASSETT MP no b 62](https://www.flipkart.com/gtnnint-godman-trus-story-behind-asaram-bapu-s-entretienet29-97893535789844-takt-BASSETT-MP-no-b-62). The Book can be pre-ordered now and will be available online from 5.9.2020. The cause of action further arose when on 1.9.2020, the Plaintiffs first read the Book excerpts on the website of defendant no.1 at [https scrollinvariantolc \(95897 asaram-bapuh-tus-Book-is-a-police officers-first- hand-account-of-his-arrest-and-conviction](https://scrollinvariantolc.com/95897-asaram-bapuh-tus-Book-is-a-police-officers-first-hand-account-of-his-arrest-and-conviction) after receiving a call from Mr. Vijay Sahani. After reading the Article which was published by Defendant No. 1, Plaintiff became aware of the Book and its defamatory contents. Thereafter, various individuals, friends and family approached the Plaintiff with questions and for clarifications in tones that are accusatory and reflect the negative impact of the Book. Such calls were continuously received from different persons. One such individual as stated above was Mr. Vijay Sahani, who read the article while he was waiting to meet a person in Basant Lok Market. The said market is within the jurisdiction of this Hon'ble Court, he confronted Plaintiff on 01.09.2020 after having read the Article within the jurisdiction of this Hon'ble Court, with various questions. Mr. Vijay Sahani said he was shocked to hear about the disgraceful and unethical practice of the Plaintiff. Apart from confronting the Plaintiff, Mr. Vijay Sahani also confirmed that several others had also read the Article which was published by Defendant No. 1 and the Plaintiff should read as well and answer the allegations raised therein in view of the seriousness of such allegations. Mr. Vijay Sahani expressed his lowered opinion of the Plaintiff on account of having read the Article. The cause of action has also arisen on various dates since 11.8.2020 when the Defendant Nos. 3, 4 and 5 have promoted and publicized the Book on 26.08.2020 [https / www.hindustantimes.com india-news officer-who arrested-asaram-has-wntten-a-Book-with-an-importart-msageistory ISBANGPrO91e2 SZEM&C html](https://www.hindustantimes.com/india-news/officer-who-arrested-asaram-has-written-a-book-with-an-important-message/story-127649981.html) On 25.08.2020 at [https www.bhaskar.com local rajasthan news/ the-story-of the fall of the self proclaimed-lord-asarum-gurming-for-the-goduan-police-received-threats-to-bomb-witnesses-were-also-in-danger- 127649981 html](https://www.bhaskar.com/local/rajasthan/news/the-story-of-the-fall-of-the-self-proclaimed-lord-asarum-gurming-for-the-goduan-police-received-threats-to-bomb-witnesses-were-also-in-danger-127649981.html) and on 24.08.2020 at [https twitter.com The Desh Bhakt status/1297950807728545792=19](https://twitter.com/TheDeshBhakt/status/1297950807728545792) amongst various others. The Defendant No. 3 as a publisher of the Book has been an accomplice in this exercise for commercial gain and is actively pushing the Book at [https://harpercollins.co.in/ gunning for the godman-extract](https://harpercollins.co.in/gunning-for-the-godman-extract) as well as stands to profit from its success. The Defendant No. 3 will make the Book available within the jurisdiction of this Hon'ble Court as well as nationwide. The cause of action again arose when Defendant No. 3 promoted the Book to countless people on FaceBook with their open profile at [https://www.faceBook.com. 2021206500635videos/770055066037763](https://www.facebook.com/2021206500635videos/770055066037763) 30.8.2020. 25.8.2020: and 15.8.2020 The causes of action having already accrued to the Plaintiff are continuous ones

and each day that the Article is available online the Book can be pre-ordered on the platform of Defendant Nos. 6 and 7 within the jurisdiction of this Hon'ble Court, the causes of action recur and the Plaintiff will continue to be defamed.

Copy of the Printout from the Defendant No. 3's FaceBook accounts are enclosed as documents alongwith the Plaintiff. Copy of the articles publicizing the Book published in [www.hindustantimes.Com](http://www.hindustantimes.Com); [www.Bhaskar.com](http://www.Bhaskar.com) and [www.twitter.com](http://www.twitter.com) by Akash Gupta (Twitter Handle @TheDeshBhakt) are enclosed as documents along with the said plaintiff.

Copy of the promotion done by Defendant no. 3 on their website is enclosed as documents along with the said plaintiff.

10. It is argued that plaintiff Shilpi would surely have had knowledge of the online discussion regarding the publishing of the Book, which had started nearly 45 days prior to the filing of the suit seeking injunction. The excerpts from the Book were available in the public domain. Yet, for reasons best known to her, she chose to approach the Court on the very eve of the Book being launched, and that too without the relevant/necessary information. The appellant refers to the extensive coverage given to Shilpi, over the years. Indeed, in many such debates, discussion and interviews, both to the print media and to the electronic media, she herself participated extensively and actively. The coverage by various news agencies/news portals/TV channels is (pp. 1091 to 1145 of the paper Book: Annexures A-4 and A-5) A table from Annexure A-4 is reproduced hereunder:

S.No.

Links to news articles in relation to Respondent No. 1/Plaintiff

already in the public domain

1.

<https://www.thehindubusinessline.com/news/asaram-bapu-to-facearrest-if-he-fails-to-turn-up-for-questioning/article20653213.ece1>

2.

<https://www.firstpost.com/india/asaram-bapu-sexual-assault-casegurukul-warden-moves-anticipatory-bail-plea-1102383.html?sz=s&rfh=1>

3.<https://economictimes.indiatimes>

3.

<https://economictimes.indiatimes.com/news/politics-and-nation/asaramcase-ashram-warden-shilpi-sent-to-policecustody/articleshow/23115525.cms>

4.

4. <https://caravanmagazine.in/vantage/asaram-verdict-father->

recountschallenges-

jodhpur-case

5.

5. <https://www.dnaindia.com/india/report-asaram-bapu-s-aide-shilpisurrenders-in-jodhpur-finally-1894211>

6.

6. <https://www.deccanherald.com/content/359400/another-asaram-aidesurrenders>.

Html

7.

7. <https://www.indialegallive.com/constitutional-law-news/courtsnews/asaram-bapus-sentence-godless-godman/>

8.

8. <http://archive.indianexpress.com/news/asaram-case-ashram-wardensurrenders-before-jodhpur-court/1174162/>

9.

<https://www.indiangorkhas.in/2013/09/asaram-bapus-video-clip-withgirl.html?m=1>

10.

10. <https://www.oneindia.com/india/asaram-aide-shilpi-gives-in-surrendersafter-a-month-1312627.html>

11.

11. [https://www.business-standard.com/article/pti-stories/asaram-aideshilpi-sent-to-eight-day-judicial-custody-113100300737\\_1.html](https://www.business-standard.com/article/pti-stories/asaram-aideshilpi-sent-to-eight-day-judicial-custody-113100300737_1.html)

12.

12. <https://english.newsnationtv.com/cities/jaipur/asarams-associate-shilpi-sent-to-4-day-judicial-custody-19491.html>

13.

13. <https://www.firstpost.com/india/sexual-assault-case-asaram-bapus-aidesent-to-police-custody-1136153.html>

14.

14. <https://www.indiatoday.in/india/story/asaram-rape-case-shilpi-the-woman-who-sent-16-year-old-victim-to-the-ashram-where-she-was-raped-1219744-2018-04-25>

15.

<https://www.outlookindia.com/newswire/story/asarams-aide-shilpi-sent-to-eight-day-judicial-custody/812363>

16.

<https://www.thehindu.com/news/national/asaram-aide-shilpi-sent-to-eight-day-judicial-custody/article5196883.ece>

11. The appellant submits that these publications from 2013 and continuing till 2018, have discussed the involvement of plaintiff Shilpi in the criminal case, who was then an undertrial. It is, therefore, argued that the impugned order be set aside, as Shilpi has failed to disclose all material facts before the learned Trial Court.

12. Furthermore, the appellant contends that the Book bears a disclaimer to the effect that it has been authored on the narration of investigation by the Investigating Officer and is based on the evidence recorded in the trial and relied upon in the judgement.

#### RESPONDENT'S CONTENTIONS

13. Refuting the aforesaid arguments, Mr Devdutt Kamat, the learned Senior Advocate for R-1/Plaintiff Shilpi, submits that the plaintiff's criminal appeal is pending consideration before the Rajasthan High Court, her sentence has been suspended till the final disposal of the appeal, thus there is no finality yet apropos her conviction as it is under judicial review. Therefore, if the Book comes into the public domain and the plaintiff is subsequently acquitted, it would have caused her injury of a nature which cannot be undone.

14. He further contends that an individual's right to reputation guaranteed under Article 21 of the Constitution is paramount and has sway over the right to freedom of expression under Article 19. The inherent right to one's reputation will always prevail over any claim for commercial rights, which the appellant is seeking to exercise by way of publication of the "offending" Book. He relies upon the following judgments:

i. Sahara India Real Estate Corporation Ltd. & Ors vs Securities and Exchange Board of India & Anr. (2012) 10 SCC 603 which held, inter alia, as under:

"...

34. The above discussion shows that in most jurisdictions there is power in the courts to postpone reporting of judicial proceedings in the interest of administration of justice. Under Article 19(2) of the Constitution, law in relation to contempt of court, is a reasonable restriction. It also satisfies the test laid down in the judgment of this Court in *R. Rajagopal v. State of T.N.* [(1994) 6 SCC 632] As stated, in most common law jurisdictions, discretion is given to the courts to evolve neutralising devices under contempt jurisdiction such as postponement of the trial, retrials, change of venue and in appropriate cases even to grant acquittals in cases of excessive media prejudicial publicity. The very object behind empowering the courts to devise such methods is to see that the administration of justice is not perverted, prejudiced, obstructed or interfered with. At the same time, there is a presumption of open justice under the common law. Therefore, courts have evolved mechanisms such as postponement of publicity to balance presumption of innocence, which is now recognised as a human right in *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra* [(2005) 5 SCC 294 : 2005 SCC (Cri) 1057] vis-à-vis presumption of open justice. Such an order of postponement has to be passed only when other alternative measures such as change of venue or postponement of trial are not available. In passing such orders of postponement, the courts have to keep in mind the principle of proportionality and the test of necessity. The applicant who seeks order of postponement of publicity must displace the presumption of open justice and only in such cases the higher courts shall pass the orders of postponement under Article 129/Article 215 of the Constitution. Such orders of postponement of publicity shall be passed for a limited period and subject to the courts evaluating in each case the necessity to pass such orders not only in the context of administration of justice but also in the context of the rights of the individuals to be protected from prejudicial publicity or misinformation, in other words, where the court is satisfied that Article 21 rights of a person are offended. There is no general law for courts to postpone publicity, either prior to adjudication or during adjudication as it would depend on facts of each case. The necessity for any such order would depend on the extent of prejudice, the effect on individuals involved in the case, the overriding necessity to curb the right to report judicial proceedings conferred on the media under Article 19(1)(a) and the right of the media to challenge the order of postponement.

...

43. Further, we must also keep in mind the words of Article 19(2) "in relation to contempt of court". At the outset, it may be stated that like other freedoms, clause (1)(a) of Article 19 refers to the common law right of freedom of expression and does not apply to any right created by the statute (see p. 275 of Constitution of India by D.D. Basu, 14th Edn.). The above words "in relation to" in Article 19(2) are words of widest amplitude. When the said words are read in relation to contempt of court, it follows that the law of contempt is treated as reasonable restriction as it seeks to prevent administration of justice from getting perverted or prejudiced or interfered with. Secondly, these words show

that the expression "contempt of court" in Article 19(2) indicates that the object behind putting these words in Article 19(2) is to regulate and control administration of justice. Thirdly, if one reads Article 19(2) with the second part of Article 129 or Article 215, it is clear that the contempt action does not exhaust the powers of the court of record. The reason being that contempt is an offence sui generis. Common law defines what is the scope of contempt or limits of contempt. Article 142(2) operates only in a limited field. It permits a law to be made restricted to investigations and punishment and does not touch the inherent powers of the court of record. Fourthly, in case of criminal contempt, the offending act must constitute interference with administration of justice. Contempt jurisdiction of courts of record forms part of their inherent jurisdiction under Article 129/Article 215. Superior courts of record have inter alia inherent superintendent jurisdiction to punish contempt committed in connection with proceedings before inferior courts. The test is that the publication (actual and not planned publication) must create a real and substantial risk of prejudice to the proper administration of justice or to the fairness of trial. It is important to bear in mind that sometimes even fair and accurate reporting of the trial (say murder trial) could nonetheless give rise to the "real and substantial risk of serious prejudice" to the connected trials. In such cases, though rare, there is no other practical means short of postponement orders that is capable of avoiding the real and substantial risk of prejudice to the connected trials. Thus, postponement orders safeguard fairness of the connected trials. The principle underlying postponement orders is that it prevents possible contempt. Of course, before passing postponement orders, the courts should look at the content of the offending publication (as alleged) and its effect. Such postponement orders operate on actual publication. Such orders direct postponement of the publication for a limited period. Thus, if one reads Article 19(2), Article 129/Article 215 and Article 142(2), it is clear that courts of record "have all the powers including power to punish" which means that courts of record have the power to postpone publicity in appropriate cases as a preventive measure without disturbing its content. Such measures protect the media from getting prosecuted or punished for committing contempt and at the same time such neutralising devices or techniques evolved by the courts effectuate a balance between conflicting public interests.

..."

ii. In *Sidhartha Vashisht @ Manu Sharma vs State (NCT of Delhi)* (2010) 6 SCC, it was held inter alia as under:

"...

"297. There is danger of serious risk of prejudice if the media exercises an unrestricted and unregulated freedom such that it publishes photographs of the suspects or the accused before the identification parades are constituted or if the media publishes statements which outrightly hold the suspect or the accused guilty even before such an order has been passed by the court.

298. Despite the significance of the print and electronic media in the present day, it is not only desirable but the least that is expected of the persons at the helm of affairs in the field, to ensure that trial by media does not hamper fair investigation by the investigating agency and more importantly does not prejudice the right of defence of the accused in any manner whatsoever. It will amount to travesty of justice if either of this causes impediments in the accepted judicious and fair investigation and trial.

299. In the present case, certain articles and news items appearing in the newspapers immediately after the date of occurrence, did cause certain confusion in the mind of public as to the description and number of the actual assailants/suspects. It is unfortunate that trial by media did, though to a very limited extent, affect the accused, but not tantamount to a prejudice which should weigh with the court in taking any different view. The freedom of speech protected under Article 19(1)(a) of the Constitution has to be carefully and cautiously used, so as to avoid interference with the administration of justice and leading to undesirable results in the matters sub judice before the courts.

...

301. Presumption of innocence of an accused is a legal presumption and should not be destroyed at the very threshold through the process of media trial and that too when the investigation is pending. In that event, it will be opposed to the very basic rule of law and would impinge upon the protection granted to an accused under Article 21 of the Constitution. [Anukul Chandra Pradhan v. Union of India [(1996) 6 SCC 354 : 1996 SCC (Cri) 1338] .] It is essential for the maintenance of dignity of the courts and is one of the cardinal principles of the rule of law in a free democratic country, that the criticism or even the reporting particularly, in sub judice matters must be subjected to check and balances so as not to interfere with the administration of justice.

...

303(11) Every effort should be made by the print and electronic media to ensure that the distinction between trial by media and informative media should always be maintained. Trial by media should be avoided particularly, at a stage when the suspect is entitled to the constitutional protections. Invasion of his rights is bound to be held as impermissible.

..."

iii. Dr. Shashi Tharoor vs. Arnab Goswami & Anr. 2017 SCC OnLine Del 12049, held, inter alia, as under:

"41. This Court is of the opinion that it is the function and right of the media to gather and convey information to the public and to comment on the administration of justice, including cases before, during and after trial, without violating the presumption of innocence. In fact, presumption of innocence and a fair trial are at the heart of criminal jurisprudence and in a way important facets

of a democratic polity that is governed by rule of law. Journalists are free to investigate but they cannot pronounce anyone guilty and/or pre judge the issue and/or prejudice the trial. The grant of the fairest of the opportunity to the accused to prove his innocence is the object of every fair trial. Conducting a fair trial is beneficial both to the accused as well as to the society. A conviction resulting from unfair trial is contrary to the concept of justice.

...

63. In India, the Courts have the power to pass pre-publication or pre-broadcasting injunction or prior restraint orders in sub-judice matters if a Court is satisfied that the interest of justice so requires.

...

97. This Court is of the view that it is important that when criminal investigation has commenced, media reporting should be sensitive to the indeterminacy of the questions raised in the proceedings. Press cannot "convict anyone" or insinuate that he/she is guilty or make any other unsubstantiated claims. Press has to exercise care and caution while reporting about matters under investigation or pending trial.

..."

iv. Naveen Jindal vs. M/s. Zee Media Corporation Ltd. & Anr. 2015 SCC OnLine Del 7810 held, inter alia, as under:

"...

27. Reference may next be had to the judgment of this Court in the case of Kartongem Kemi Och Forvaltning AB v. State through CBI, 2004 (72) DRJ 693. In that case the public servants were charged for entering into criminal conspiracy to cheat the Government of India and cause wrongful loss to the tune of Rs. 64 crores for the award of contract for supply of guns. The Court observed that after thirteen long years of investigation by the CBI no evidence has been collected against the public servants. The Court while observing the result of trial by media held as follows:

"7. This case is a nefarious example which manifestly demonstrates how the trial and justice by media can cause irreparable, irreversible and incalculable harm to the reputation of a person and shunning of his family, relatives and friends by the society. He is ostracised, humiliated and convicted without trial. All this puts at grave risk due administration of justice.

8. It is common knowledge that such trials and investigative journalism and publicity of pre-mature, half baked or even presumptive facets of investigation either by the media itself or at the instance of Investigating Agency has almost become a daily occurrence whether by electronic media, radio or press. They chase some wrong doer, publish material about him little realizing the peril it may cause as it involves substantial risk to the fairness of the trial. Unfortunately

we are getting used to it. ....

13. This is one of such cases where public servants who are no more have met somewhat similar fate being victim of trial by media. They have already been condemned and convicted in the eyes of public. Recent instance of such a trial is of Daler Mehandi whose discharge is being sought few days after his humiliation and pseudo trial through media as they have not been able to find the evidence sufficient even for filing the chargesheet. Does such trials amount to public service is a question to be introspected by the media itself.

...

49. In these facts would the plaintiff be entitled to an injunction to restrain the defendants from publishing reports or airing reports pertaining to the allegations which are pending before the police by Mrs. ABC. Legal position as explained above is quite clear. Any publication which gives excessive adverse publicity to an accused or which is likely to hamper fair trial and constitutes an interference with the course of justice could be a ground for grant of injunction. The court has ample inherent power to restrain publication in media in the event it arrives at a finding that the said publication may result in interference with the administration of justice or would be against the principle of fair trial or open justice..."

15. Mr Kamat further submits that the plaintiff's appeal against the conviction is listed for further proceedings before the Rajasthan High Court on 14.09.2020. The publication of the Book could well influence the appeal. He submits that no amount of disclaimer in the publication will ever repair the damage which may have been caused to the plaintiff, should she be ultimately acquitted. He refers to the order suspending the plaintiff's sentence, which inter alia, has observed as under:

"...The prosecution has not disputed this fact that the applicant- appellant was appointed as Warden of Ashram Gurukul Hostel on 01.04.2013 vide Ex. P/67. It is not the case of the prosecution that the applicant-appellant was present at Jodhpur when accused- Ashram allegedly sexually assaulted the prosecutrix.

The prosecution has also not come out with a case that the prosecutrix or her parents were in contact with the applicant- appellant after 09.08.2013 when they left Ashram Gurukul Hostel, Chhindwara. P.W.5-prosecutrix, P.W.12 Sumitra Singh and P.W.21 Karamveer Singh have also not stated in their statements that after 09.08.2013 the applicant- appellant made any contact with them by whatsoever means.

The prosecution story is that the applicant-appellant was in regular contact with accused - Ashram through mobile phones possessed by accused - Shiva and Prakash, however, the trial court acquitted both the above mentioned accused while concluding that the prosecution has failed to establish their link with the commission of crime on the basis of mobile phones possessed by them.

The trial court in para no.458 of the impugned judgment has also observed that there is no direct evidence available on record, which suggests that the applicant- appellant sent the prosecutrix to Ashram, so that he could sexually assault her but has held that on the basis of ocular and the circumstantial evidence, it can be inferred that the applicant- appellant had sent the prosecutrix to Asharam, so that he could assault her sexually. However, the ocular and circumstantial evidence, on which the trial court has placed reliance require consideration in detail.

Taking into consideration the above facts and circumstances of the case, this Court feels that the challenge of the applicant- appellant to her conviction for the offence punishable under Section 376D IPC, Section 5(g) and 17 of the POCSO Act and under Section 370(4)/ 120 IPC is based on strong grounds.

Having regard to the fact and circumstances of the case and the fact that the applicant- appellant is a young lady, she was granted bail during trial and it is not reported that she misused the conditions of the bail, I consider it just and proper to suspend the substantive sentence awarded to the applicant- appellant..."

16. He further contends that her conviction has not attain finality because of the pendency of the appeal. In support he relies upon the dicta of the Supreme Court in *Akhtari Bi vs State of M.P.*, (2001) 4 SCC 355, which held

"5. To have speedy justice is a fundamental right which flows from Article 21 of the Constitution. Prolonged delay in disposal of the trials and thereafter appeals in criminal cases, for no fault of the accused, confers a right upon him to apply for bail. This Court has, time and again, reminded the executive of their obligation to appoint requisite number of Judges to cope with the ever-increasing pressure on the existing judicial apparatus. Appeal being a statutory right, the trial court's verdict does not attain finality during pendency of the appeal and for that purpose his trial is deemed to be continuing despite conviction. It is unfortunate that even from the existing strength of the High Courts huge vacancies are not being filled up with the result that the accused in criminal cases are languishing in the jails for no fault of theirs. In the absence of prompt action under the Constitution to fill up the vacancies, it is incumbent upon the High Courts to find ways and means by taking steps to ensure the disposal of criminal appeals, particularly such appeals where the accused are in jails, that the matters are disposed of within the specified period not exceeding 5 years in any case. Regular Benches to deal with the criminal cases can be set up where such appeals be listed for final disposal. We feel that if an appeal is not disposed of within the aforesaid period of 5 years, for no fault of the convicts, such convicts may be released on bail on such conditions as may be deemed fit and proper by the court. In computing the period of 5 years, the delay for any period, which is requisite in preparation of the record and the delay attributable to the convict or his counsel can be deducted. There may be cases where even after the lapse of 5 years the convicts may, under the special circumstances of the case, be held not entitled to bail pending the disposal of the appeals filed by them. We

request the Chief Justices of the High Courts, where the criminal cases are pending for more than 5 years to take immediate effective steps for their disposal by constituting regular and special Benches for that purpose.

6. However, in the instant case without commenting on the merits of the case but keeping in view the allegations made against the appellant coupled with the fact that she is old and infirm, we feel it appropriate to direct her release on bail by keeping the sentence awarded to her in suspension. We have further been persuaded to take such a course in view of the fact that during the pendency of the trial the wife of Hasru, son of the appellant and the co-accused with her, has died while giving birth to a male child, who under the compulsion of circumstances was also kept in jail to be looked after by the appellant till he attained the age of three years. Now the said child has been sent out as the jail authorities did not permit the child to remain with the appellant after attaining the age of three years. Keeping the appellant further in jail is likely to deprive the said child of the parental love, affection and care which he needs at this stage. There is no law by which such a child can also be directed to be kept with the appellant in jail. Depriving the appellant from looking after the child would not only be against the interests of the child but against the interests of the society as well.

7. In the circumstances of the case we allow this appeal by setting aside the order impugned with a direction that the order of conviction and sentence passed against her shall be kept in abeyance and she be released on bail on furnishing personal bond with two sureties in the amount and to the satisfaction of the trial court."

17. Referring to *Mushtaq Moosa Tarani vs Government of India & Ors.*, 2005 SCC OnLine Bom 385 decided on 31st March "2005, he submits that during the pendency of the criminal trial the High Court of Bombay had stayed the depiction of the film "BLACK FRIDAY" based upon a book by the same title. The film depicted the under-trial as a terrorist and as having planted certain bombs. The High Court's injunction order held as under:

"...

50. The aforesaid observation of the Apex Court is undoubtedly to be respected as an expression of opinion with respect to the expectations from the judges. However, what is to be noted is that the telefilm was to be shown on television on a day and undoubtedly large number of people would see the same. However, could the effect thereof be compared with that of a cinema of over 3 hours running over a number of days in different cinema houses throughout the country? A judge undoubtedly is not expected to be influenced. At the same time, we must also note the observation of the Single Judge of the Calcutta High Court in *Re: P.C. Sen (supra)*, viz. that the extreme proposition that the judges are never influenced or impressed by the extraneous publication is difficult to be accepted. It is true that the film does not tell the judge as to how he should

decide the matter. At the same time, the fact remains that it shows a large number of persons who are accused in the case as criminals. Will this depiction of the accused, discussion on the film thereafter and the comments of the public at large have no influence at all? In spite of this depiction if the Petitioner and other accused are acquitted, will it not lead to comments on the judge and will it not be a factor which may weigh on his mind? Does this not amount to prejudicing the mankind against the persons concerned before the cause is heard as observed in *St. James's Evening case* (supra)? Again, as observed in the same case, by quoting Lawrence CJ. in *People v. Wilson* - (1872) 16 Am Rep. 528 that a court will, of course, endeavour to remain wholly uninfluenced by publications like that under consideration; but will the community believe that it is able to do so? A disturbing element has been thrown into the determination, which it would be the wise policy of the law to exclude.

...

52. As far as the second objection of the Petitioner, namely that it defames him, is concerned, there is no difficulty in noting that he has been shown in the film as planting the bomb in a suitcase at Hotel Centaur. he has been shown as driving the vehicle wherein various alleged criminals involved in the case were travelling and then throwing the detonator at Prabhadevi. He has been shown as going to Dubai and then to Pakistan in the proposed conspiracy. He along with other accused are called terrorists, jehadis and ISI agents. Although the evidence has been completed in the trial, the judgment is yet awaited. Mr. Sebastian submitted that the case of the Petitioner is that he is innocent and has been involved and framed in this case. It is his further case that there is no direct evidence of his involvement and most of the case of the prosecution is on circumstantial evidence. Is he, therefore, not entitled to submit that he is being defamed by his depiction in the film? The film is not a fictional one. It is based on the Book which is written after good amount of research and on the basis of the information made available by the prosecution. Undoubtedly, the disclaimer at the beginning of the film does declare that the film is based on this Book, it is true to the Book and is constructed from the case of the prosecution though certain creative license has been taken. The disclaimer undoubtedly says that the narration should not be construed to mean an opinion on the innocence or guilt of the persons depicted. As noted earlier, Dr. Dhawan has offered to print one more disclaimer in the film that the accused deny their involvement in the crime and so also the police and that they are innocent until proven guilty.

53. In this connection, it is material to observe that the film is made in Hindi and will be seen in several cinema houses all over the country. The disclaimer is printed in English and not many people will read it nor will they be impressed by it after seeing the film. It is a strong and a heavy film. It undoubtedly creates an impact on the viewers. Is it not likely that in spite of these disclaimers the impression that the viewers will carry will be that the Petitioner and all the persons concerned are the perpetrators of the crime? Does it, therefore, not

amount to their defamation? Mr. Sebastian, therefore, rightly submitted that one has to look at all this depiction in the film from the point of view of the accused who is in jail for last over 12 years. No amount of disclaimer will wash away the impression that will be created with respect to his involvement as shown in the film though, in his submission, he is totally innocent.

...

55. As noted earlier, the trial which is pending its decision, has more than 189 accused. Out of them, 145 are in custody for last over 12 years. More than 250 people were killed in the bomb blasts and more than 700 got injured. It is a major episode in the history of the city. Release of the film based on such an episode is bound to have an impact of its own. We are presently concerned with the prejudicial impact feared by the Petitioner visa vis a fair trial and his reputation. It was submitted by Dr. Dhawan that most of the happenings have been reported in the press right from the arrest of the first accused, i.e. Asgar Mukadam. At the same time, what is to be noted is that 12 long years have gone after the blasts and by now most of the people merely remember that such blasts did take place and a large number of persons died. Apart from the relatives of the deceased or injured in the bomb blasts or of the accused, not many people would remember that one Asgar Mukadam was the first person to be arrested or the present Petitioner was one who planted the bomb at Hotel Centaur as claimed. All these depictions will bring back the memories of those blasts once again to the people. By now, as stated above, most of the people, in all probability, remember at the most that these blasts were engineered by one Tiger Memon in association with Dawood Ibrahim as claimed. Hardly anybody would know that one Mushtaq Tarani was involved in these blasts. Now this film will inform the viewers once again about the involvement of the Petitioner and so many others in these operations. In our view, any amount of disclaimer cannot take away the damaging effect and the defamation that would be caused particularly if the Petitioner and a number of accused in the trial are ultimately released either as totally innocent persons or even by getting a benefit of doubt.

...

58. In this petition, the real issue is whether the citizen's right of free speech and expression will prevail over the right of an accused like petitioner of a fair and impartial trial. Fair and impartial trial is not just part and parcel of right to Life and Liberty but goes to the root of administration of justice and Rule of law. It is well settled and been included in the European Convention of Protection of Human Rights and Fundamental Freedom that exercise of right of free speech and expression carries with it duties and responsibilities and one such duty and responsibility is that exercise of such right must not take away the protection of reputation or rights of others. Similarly when it comes to maintaining authority and impartiality of judiciary, necessary curbs and restraints will have to be placed on the exercise of an individual's right to freedom of speech and expression.

...

60. In the present case, however, we have not gone into the validity and legality of the grant of certificate by the Censor Board, since that is not the relief sought by the Petitioner. While considering the prayer for restraint, however, it is necessary that the above principles are borne in mind. Once the guidelines and directions are clear, then, even without seeking the relief of quashing the certificate, the Petitioner can pray for suspension of the screening and exhibition of this film if he makes out a case of breach thereof. In judicial review, it is open for us to consider such a request. This aspect is not disputed. Once the dignity of an individual and the Petitioner's right to fair trial and the impartiality of administration of justice are the issues involved, then wording of the prayer becomes less material. One more disclaimer by way of a further balancing act, as suggested by Dr. Dhawan, will not change the scenario. It is clear that vital issues of fair trial and dignity of an individual are ignored by the Authorities. Hence, the relief can be granted as sought. The petitioner-accused standing trial before the Special Court has challenged the decision to permit exhibition of the film in question. The petitioner accused submits that the matter is reserved for judgement before the Designated Court and till such time as the verdict is not pronounced, exhibition of this film would have an adverse impact on the ongoing trial. He states that nobody has a right to pronounce a verdict much less verdict of guilt or otherwise upon an accused and that is the sole prerogative of a Criminal Court. Trial by media and press is strictly prohibited. The film in question has taken upon itself the task of bringing to the viewers' notice the conspiracy in details. It is authentic as we are informed that it is based on indepth study and research. The film is based upon prosecution story. There is obviously an other side to the whole episode. Whether that other version should be accepted or not is something which the Designated Court has to decide. Therefore, under the garb of making a film based on prosecution story and furnishing all details therein, it is not open for the respondents concerned to present a picture which would virtually pronounce the petitioner and others guilty. The details as set out are bound to create an impression against the accused in the minds of viewing public as cinema is a powerful and effective medium of expression. It reaches a large section of public. Presently, films are not only exhibited in theatres but are also transmitted and relayed through satellite to T.V. sets installed at virtually every home. Therefore, petitioner apprehends that people at large would definitely form an opinion about his guilt. The verdict having yet to be pronounced by the Designated Court, permission to exhibit the film at this stage would definitely affect the course of justice. It is irrelevant and immaterial whether the Judge is actually prejudiced or influenced by the film.

61. The above legal position is well settled. The decision of the Supreme Court in the case of *Re: P.C. Sen* followed by learned Single Judges of the Allahabad High Court is eloquent enough in this context. The Allahabad High Court in *Lakhan Singh v. Balbir Singh* - AIR 1953 Allahabad 342 (D.B.) has observed thus:-

7. Administration of justice by an impartial judiciary is the basis of our system of jurisprudence and indeed of the jurisprudence of any civilised State. It is the concern not merely of immediate litigants. Its assurance is every one's concern. The method of administering justice prevalent in our courts is that a conclusion to be reached in a case will be induced only by evidence and argument in open court and not by outside influence whether of private talk or public print. To quote the words of Frankfurter J, and the other dissenting Judges in *Bridges v. California* (1941) 86 LAW Ed. 192 at p.214,

"A trial is not a free trade in ideas, nor is the best test of truth in a courtroom "the power of the thought to get itself accepted in the competition of the market" Comment, however, forthright, is one thing. Identification with respect to specific matters still in judicial suspense is quite another.

9. Holmes, J. laid down in *Patterson v. Colorado* (1907) 205 U.S. 454 at P.463: 51 Law Ed. 879, that:-

When a case is finished, Courts are subject to the criticism as other people, but the propriety and necessity of preventing interference with the course of justice by premature statement, argument or intimidation hardly can be denied."

...

65. Grant of injunction or restraint order is not a gagging writ in the facts of this case. The Petitioner has made out a strong prima-facie case inasmuch as fair trial, which is part of Rule of Law and Administration of Justice, is an aspect which must prevail over individual's right of free speech and expression. People's right to know cannot be stretched to such an extent as would make mockery of Rule of Law. Petitioner's right to fair and impartial trial must outweigh all such privileges and expectations. The balance of convenience is definitely in favour of an injunction inasmuch as the restraint against exhibition is for limited duration and the Petitioner's right as above as well as public interest is in favour of such restraint. The Respondents have a commercial and business interest which is secondary. The loss to the Petitioner's dignity and reputation is enormous. It would be irreparable as the viewers may form an opinion about his guilt.

66. Before we conclude, we cannot but observe that this trial is one of those important trials even in terms of history and in terms of reconciliation of people. If the people have to have a belief in truth and justice as abiding values having a primacy over force and violence, it is just and necessary that justice must not merely be done but must also appear to have been done. If a society wants to do justice and thereby have peace and stability, then the stream of justice has got to be maintained clean to the extent possible. It is equally essential that the dignity of any individual, even though he may be an accused, has to be maintained as far as it could be. Looking at it from this point of view as well, we cannot but hold that the release of the film will have a prejudicial effect on fair administration of justice as well as on the image of the accused. We, therefore, hold that the Petitioner has made out a case for the injunction that he has sought

on the ground that the release of the film would constitute contempt of court and his defamation.

..."

18. The Court was alive to the fact that cinema and audio-visual medium are far more powerful than a book. That however, is not a comment on the "power of the written word". The impression cinema or television leaves on a viewer would be indelible and such depiction would be unfair, especially when the trial was still underway.

19. The learned Senior Advocate for plaintiff Shilpi emphasizes that protection of the reputation of the individual would be the foremost factor to be considered in a motion seeking injunction against a publication of the present nature.

#### REBUTTAL

20. The appellant contends, that Mushtaq Moosa supra is not applicable to the facts of the present case because it was in the context of a trial that was still underway. Whereas in the present case, the plaintiff has already been convicted. It is only her sentence which has been suspended, her conviction has not been set aside. Furthermore, the injunction in Mushtaq Moosa was only till the judgement was rendered in the trial:

"67. In the circumstances, we allow this petition to the extent as prayed in the petition, namely that the film shall not be released, screened and exhibited until the judgment in TADA Case BBC 1 of 1993 is delivered. Rule is accordingly made absolute though without any order as to costs."

21. Interestingly, there was no injunction apropos the book that had already been published and was available in the public domain, even while the trial was going on. It is argued that in the present case, the appellant has demonstrated that each referral to plaintiff Shilpi is based upon evidence discussed in the judgement. It is based on established facts and there can be no bar to discussions based on the judgement. The appellant contends that if despite the above, the Plaintiff feels that she is being defamed, then in a book based upon court records, truth will always be a defense.

22. The facts as discussed hereinabove show that the launch of the Book was widely reported on 22.07.2020 in different online publications. There was information in the public domain that the Book could be ordered online from 05.09.2020. It claimed to be the Investigating Officer's (IO) first-hand account of arrest and conviction of Asaram Bapu. The Book was scheduled to be released 45 days later, this is a fair time for a person to know about the ongoing discussions. According to the appellant, this information was available in the electronic media and on different web portals like [www.scroll.in](http://www.scroll.in), [www.harpercollins.com](http://www.harpercollins.com), [www.flipkart.com](http://www.flipkart.com), [www.amazon.in](http://www.amazon.in) etc. and on Facebook, Twitter, LinkedIn, Telegram, WhatsApp. Therefore, it would be fair to assume that the information would to have reached the plaintiff earlier than the first week of September. Still,

plaintiff seems to have gotten to know only through one Mr. Vijay Sahani and that too on 01.09.2020.

23. The court is informed that the plaintiff is not in judicial custody. There was no restraint of any kind on her to freely access electronic data/news or to keep herself acquainted with the affairs of the world. Therefore, upon her first information of the Book, she could have written to the publisher about her concerns. She did not do so. The pre-launch write-up and the discussion, it is mentioned that the Book a first-hand account of the Investigating Officer, therefore -- for the prospective reader, lending some credence to the story. Not only that, in the course of hearing, the appellant has stated that wherever plaintiff Shilpi has been discussed in the Book, it is on the basis of the judgment convicting her, as has been juxtaposed in the table hereinabove. Thus, there are no embellishments in it, except for a writer's style of narration of the events.

24. During the course of hearing, the appellants referred to and shared on the computer screen a disclaimer at page xxiii in the Preface/Introduction of the Book, that the Book is based upon the evidence recorded during the trial. The judgement is in the public domain, therefore discussion or writing about it cannot be a cause for grant of ex parte injunction.

25. The principles of Morgan Stanley (supra), inter alia, require it to be borne in mind before granting an ex parte injunction is, whether irreparable or serious mischief or injustice would be caused to the plaintiff if the ex parte injunction would not be granted; whether the plaintiff had notice of the act complained of and time before seeking the injunction from the time of the knowledge; whether the plaintiff had acquiesced for sometime, which would disfavour the grant of an ex parte injunction; whether the plaintiff had good faith in making the application; time would be of the essence as to when the plaintiff had claimed to have gotten to know of the mischief, which is espoused for the grant of the injunction. Lastly, the fundamental principles like prima facie case, balance of convenience and irreparable loss also be borne in mind before granting an ex parte injunction.

26. In the present case, of the 45 days' period, R-1/Plaintiff had approached the court on the penultimate day, that is on the 44th day, while the discussions about the Book on the electronic media and on various web portals, were going on unhindered. Plaintiff Shilpi had not disclosed to the learned Trial Court apropos the disclaimer that has been made. As noted hereinabove that the events attributed to her are said to be based upon the judgment convicting her, in which the evidence against her was discussed. The afore-referred chart shows reference to her by chapter, line and verse. If the appellants had even a day's notice, they surely would have been able to present their case before the learned Trial Court, which did not have the benefit of the relevant information (judgement), the preceding discussions and the disclaimer in the Book. The appellant also submitted that there was extensive coverage of the criminal case and of plaintiff Shilpi. Indeed, she had herself participated extensively in various interviews,

including the electronic media. Some of which have been listed in the preceding paragraphs. By withholding from the learned trial court the important information, like the judgment on her conviction, she has been less than fair to the court. Had the information been available, it would have accorded the learned trial court to at least glance at the same to ascertain if there was any basis for mentioning her in the manner it did, which was objected to in the suit. In the circumstances, no case was made out and there was no justification for grant of the ex parte injunction on the eve of launch of the Book. Therefore, the injunction is set aside.

27. However, no convict is the sum total of her/his conviction. Crimes are of various degrees and of diverse kinds. Convictions range from pick-pocketing to high value economic crimes; from stalking a school-going girl to the most heinous multiple murders. Convictions are also set aside in appeals but that happens many years later. By which time, discussion on public platforms or publications, which may not be based to the proven facts of a case, would have irreparably damaged the reputation of the convict/person. A convict has a right to reputation, it is an inalienable right of the person. While conviction leads to punishment as per law, the convict would have a cause of action against wanton vilification. Any public discussion beyond the proven facts would likely fall in the realm of loose- talk and could lend to malicious vilification. Such discussions would have caused irreparable injury to the reputation of the convict, if ultimately the conviction is set aside or there is an alteration in the punishment.

28. Jurisprudence in other jurisdictions too is akin to the Indian jurisprudence apropos the right to protect one's reputation. In the United Kingdom *Reynolds v. Times Newspapers Ltd.*, (2001) 2 AC 127 : (1999) 3 WLR 1010 (HL)] : (AC p. 201 A-C) held:

"Reputation is an integral and important part of the dignity of the individual. It also forms the basis of many decisions in a democratic society which are fundamental to its well-being: whom to employ or work for, whom to promote, whom to do business with or to vote for. Once besmirched by an unfounded allegation in a national newspaper, a reputation can be damaged forever, especially if there is no opportunity to vindicate one's reputation. When this happens, society as well as the individual is the loser. For it should not be supposed that protection of reputation is a matter of importance only to the affected individual and his family. Protection of reputation is conducive to the public good. It is in the public interest that the reputation of public figures should not be debased falsely. In the political field, in order to make an informed, choice, the electorate needs to be able to identify the good as well as the bad. Consistently with these considerations, human rights conventions recognise that freedom of expression is not an absolute right. Its exercise may be subject to such restrictions as are prescribed by law and are necessary in a democratic society for the protection of the reputations of others."

29. In the USA in *Rosenblatt v. Baer* [*Rosenblatt v. Baer*, 383 US 75 (1966) :

1966 SCC OnLine US SC 22 : 15 L Ed 2d 597], Mr Stewart, J. observed:

"33. The right of a man to the protection of his own reputation from unjustified invasion and wrongful hurt reflects no more than our basic concept of the essential dignity and worth of every human being-a concept at the root of any decent system of ordered liberty."

30. In *Karakó v. Hungary* (2011) 52 EHRR 36] the European Court of Human Rights has opined:

"24. The Court reiterates that Para 2 of Article 10 recognises that freedom of speech may be restricted in order to protect reputation (see Para 16 above). In other words, the Convention itself announces that restrictions on freedom of expression are to be determined within the framework of Article 10 enshrining freedom of speech.

25. The Court is therefore satisfied that the inherent logic of Article 10, that is to say, the special rule contained in its second paragraph, precludes the possibility of conflict with Article 8. In the Court's view, the expression "the rights of others" in the latter provision encompasses the right to personal integrity and serves as a ground for limitation of freedom of expression insofar as the interference designed to protect private life is proportionate."

31. Clearly, every individual has a right to protect one's reputation. Any discussion, which results in vilification of the individual beyond the proven facts of conviction could well be considered as wanton and defamatory. In a civilized society governed by the Rule of Law, it is expected that while discussing convicts on public platforms/in publications, the same should be informed and rooted in facts. The moment it goes into the realm of speculation or baseless imputation, it gives a right to the vilified person to seek an injunction to protect her/his reputation.

32. It would be against the principles of free speech to debar all discussion on a subject, especially regarding a court verdict which is available in the public domain. However, the right to reputation comes before the right to discuss an issue. If there is fair discussion, which is based on established facts and which ex facie is not malicious, there can be no bar on the discussion/publication.

33. Although the author and the publisher have incorporated a disclaimer at page xxiii of the Book that the story was based upon the judgment convicting the accused, as well as on the first-hand experience of the author - the Investigating Officer, it would have been fair to the prospective purchaser of the Book if there was some prominent indication in this regard, either on the back-cover or its inside or the inside of the front-cover. Such information would have acquainted the prospective buyer/reader specifically of the context in which plaintiff Shilpi was mentioned in the Book alongwith the other dramatis personae, and enabled an informed decision-making apropos purchase of the Book.

34. In the circumstances, the Court is of the view that the said disclaimer made

at page xxiii of the Book should be printed separately on a flier and stuck either on the inside of the front cover or the inside of the back cover of the Book or a note to the effect that "the appeal of Sanchita Gupta @ Shilpi is pending adjudication before the Rajasthan High Court and her sentence has been suspended till disposal of the appeal" be so pasted, so that the discussion apropos her is appreciated in the factual context, while simultaneously enabling the prospective buyer to make an informed decision regarding purchase of the Book. The court is informed that the current print run is only 5000 copies. However, for online sales this information need be provided only electronically, whenever the book is accessed for likely purchase.

35. The appeal, alongwith pending applications, stands disposed-off in the above terms.