

(2008) 09 GUJ CK 0100
In the Gujarat High Court

Case No : Criminal Application No. 12420 of 2007 with Miscellaneous Cri. Appli. No"s. 13756, 13758, 13772, 13774, 13775, 13857 and 14091 of 2007

Nareshbhai Vishnubhai Chauhan

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 25-09-2008

Acts Referred:

Arms Act, 1959 — Section 25(1), 27
Bombay Police Act, 1951 — Section 13(1)
Criminal Procedure Code, 1973 (CrPC) — Section 173(8), 437, 437(1), 439, 439(1)
Evidence Act, 1872 — Section 10
Penal Code, 1860 (IPC) — Section 120B, 121, 121A, 122, 123

Citation : (2009) 1 GLR 734

Hon'ble Judges : M.R. Shah, J

Bench : Single Bench

Advocate : B.B. Naik, for Ajaykumar Choksi, in Misc. Cri. appli. Nos. 12420, 13756, 13758, 13774 and 13775 of 2007, S.V. Raju, for Jayprakash Umet, in Misc. Cri. appli. Nos. 13772 and 13857 of 2007, C.B. Upadhyaya, in Misc. Cri. appli. No. 13774 of 2007, Mukul Sinha, for Misc. Cri. appl. No. 13775 of 2007 and K.J. Shethna, in Misc. Cri. appli. No. 14091 of 2007, for the Appellant; R.C. Kodekar, Addl. P.P. in Misc. Cri. Appli. Nos. 12420, 13756, 13758, 13772, 13774, 13775 and 14091 of 2007, for the Respondent

Final Decision : Allowed

Judgement

M.R. Shah, J.—Rule. Mr. R.C. Kodekar, learned Additional Public Prosecutor waives service of Rule on behalf of the respondent-State in each of the applications. As all these applications are by the co-accused of complaint being C.R. No. I-5 of 2005 registered with A.T.S. Police Station, Ahmedabad and arise out of same offence, they are being disposed of by this common judgment and order.

2. Misc. Criminal Application No. 12420 of 2007 is filed by the applicant-Nareshbhai Vishnubhai Chauhan-original-accused No. 13, the then P.S.I. - Anti-Terrorist Squad (A.T.S.), Ahmedabad of complaint being C.R. No. I-5 of 2005

registered with A.T.S. Police Station, Ahmedabad u/s 439 of the Criminal Procedure Code for releasing him on bail in connection with aforesaid offence.

Misc. Criminal Application No. 13756 of 2007 is filed by the original-accused No. 11 - Santram Chandrabhan Sharma, Police Constable-S.R.P. Group - 12, Gandhinagar for releasing him on bail in connection with aforesaid complaint.

Misc. Criminal Application No. 13758 of 2007 is filed by the original-accused No. 10 - Ajaykumar Bhagwandas Parmar, Police Constable for releasing him on bail in connection with aforesaid complaint.

Misc. Criminal Application No. 13772 of 2007 is filed by the original-accused No. 2-Rajkumar Pandian, S.P. for releasing him on bail in connection with aforesaid complaint.

Misc. Criminal Application No. 13774 of 2007 is filed by the original-accused No. 6 - Balkishan Rajendraprasad Choubey, Police Inspector, S.R.P. Group - 9, Vadodara for releasing him on bail in connection with aforesaid complaint.

Misc. Criminal Application No. 13775 of 2007 is filed by the original-accused No. 1 - Dahyaji Gobarji Vanzara, D.I.G. (main conspirator) for releasing him on bail in connection with aforesaid complaint.

Misc. Criminal Application No. 13857 of 2007 is filed by the two co-accused original-accused Nos. 8 and 9 - Himanshusingh Mohansingh Rajawat and Shyamsingh Jaisingh Charan, both P.S.I., belonging to Rajasthan Police for releasing them on bail in connection with aforesaid complaint.

Misc. Criminal Application No. 14091 of 2007 is filed by the original-accused No. 5 - Naransinh Harisinh Dabhi, Police Inspector for releasing him on bail in connection with aforesaid complaint.

3. Heard Mr. K. J. Shethna, learned Advocate appearing for original-accused No. 5-Naransinh Harisinh Dabhi in Misc. Criminal Application No. 14091 of 2007; Mr. B. B. Naik, learned Advocate appearing for accused No. 13-Nareshbhai Vishubhai Chauhan, accused No. 1-Dahyaji Gobarji Vanzara, accused No. 6- Balkishan Rajendraprasad Choubey, accused No. 10-Ajaykumar Bhagwandas Parmar and accused No. 11-Santram Chandrabhan Sharma - applicants of Misc. Criminal Application Nos. 12420 of 2007; 13775 of 2007; 13774 of 2007; 13758 and 13756 of 2007, Mr. S.V. Raju, learned Advocate appearing for original-accused No. 2-Rajkumar Pandian, S.P., original-accused No. 8-Himanshusingh Mohansingh Rajawat and original-accused No. 9-Shyamsingh Jaisingh Charan, applicants of Misc. Criminal Application Nos. 13772 and 13857 of 2007 and Mr. R. C. Kodekar, learned Additional Public Prosecutor appearing on behalf of the respondent-State.

4. Background of the facts and chronological events which are very important for deciding bail applications are as under:

4.1. One Abdul Rahman, now accused No. 7-Police Inspector of Pratapnagar

Police Station, District - Udaipur, Rajasthan alleged to be member of Special Investigating Party formed at Udaipur, Rajasthan to investigate against various offences registered against Sorabuddin lodged complaint being C.R. No. 5 of 2005 with A.T.S. Police Station, Ahmedabad on 26-11-2005. As per above F.I.R., said Sohrabuddin son of Ahwaruddin Shaikh, resident of Zaraniya, Nagda, Madhya Pradesh, who was accused of offences punishable under Sections 120B, 121, 121A, 122, 123, 307, 186, 224 of the I.P.C.; u/s 25(1)(b) and Section 27 of the Arms Act and u/s 13(1) of the Bombay Police Act. It was further stated in the F.I.R. that above accused Sohrabuddin was acting at the behest of I.S.I. to spread terror and disturb the unity and integrity of the country and also entered into conspiracy by possessing arms and ammunition so as to kill big leaders of the State of Gujarat. Investigating team got secret information that said Sohrabuddin was to visit Ahmedabad and was to pass near Vishala Circle, Ahmedabad, and therefore, all of them were on duty near Vishala Circle and at that time, said Sohrabuddin came on motorcycle and when asked to surrender by the police party, fired from revolver and attempted to kill them and in return one Abdul Rehman, P.I., fired two rounds from service pistol; Shyam Singh, Sub-Inspector (also one of the accused now) fired one round; one Himanshu Singh, Sub-Inspector fired two rounds; Mr. Dabhi, P.I. fired one round from his service revolver on the body of the said Sohrabuddin, and thereafter, he was taken to Civil Hospital, Ahmedabad where he was declared as dead. It is required to be noted that even as per the said F.I.R., near Vishala Circle at the time of incident following Police Officers of A.T.S. and other Officers were present (1) D. G. Vanzara, (2) Rajkumar Pandian, (3) Dinesh M. N., (4) M. L. Parmar, (5) N. H. Dabhi, (6) B. R. Chaube, (7) Abdul Raheman, (8) Himanshu Singh, (9) Shyamsingh, (10) Ajay Parmar and (11) Santram Sharma.

4.2. One Rubabuddin Shaikh, brother of Sohrabuddin, addressed letter in December, 2005 to Hon''ble the Chief Justice of India, Supreme Court of India complaining about killing of his brother in fake encounter and disappearance of sister-in-law - Kausarbi at the hands of Anti-Terrorist Squad (A.T.S.) and Special Task Force (S.T.F.). It was alleged that while his brother and sister-in-law were travelling in a bus from Hyderabad to Sangli, squad comprising A.T.S. and S.T.F. team stopped the bus and picked them in the night of 21/ 22-11-2005 and four days later i.e. 26-11-2005 Sohrabuddin was killed in fake encounter and there was no trace of his sister-in-law. Said Rubabuddin prayed for registration of offence and investigation in the matter. It appears that taking note of the said letter, Hon''ble Supreme Court forwarded the letter to the D.G.P., Gujarat for further enquiry and action. Thereafter, enquiry was conducted by C.I.D. (Crimes) and statements of various witnesses came to be recorded. During said enquiry, one Tulsiram a close associate of his brother was killed in an encounter at Banaskantha on 28-12-2006. Later on, Rubabuddin Shaikh, brother of Sohrabuddin filed petition before the Hon''ble Supreme Court which was registered as Writ Petition (Criminal) No. 6 of 2007 for an appropriate order of registration of offence and investigation by the C.B.I. team into abduction and

fake encounter of his brother Sohrabuddin and disappearance of his wife Kausarbi. It was also prayed for an appropriate order to register the offence and investigation by the C.B.I. into the subsequent fake encounter of Tulsiram a close associate of Sohrabuddin. It was the case of Rubabuddin in the said petition that Tulsiram was used by A.T.S. to trace whereabouts of Sohrabuddin and Mr. D.G. Vanzara, who was heading the A.T.S., Gujarat at the time of killing of Sohrabuddin and disappearance of Ms. Kausarbi was transferred as D.I.G. Border Range, Kutch and Banaskantha District and he also played active role in killing of Tulsiram. One Vipul Agarwal, S.P. who was working under Mr. Vanzara was used to kill Tulsiram. As per Rubabuddin, one Rajkumar Pandian, S.P., A.T.S. also played active role in killing of Sohrabuddin, who was present at the relevant day. Therefore, said Rubabuddin prayed for C.B.I. investigation. Pursuant to the directions issued by the Hon''ble Supreme Court from time to time, Investigating Agency of the State of Gujarat carried investigation. During the course of investigation, Inquiry being Inquiry No. 66 of 2006 was instituted by the C.I.D. (Crimes), Gujarat State and role of various high ranking superior officers in Police Department i.e. A.T.S. and S.T.F. were surfaced in the statements of the witnesses. Considering material which had come on record, D.G.P. ordered further enquiry u/s 173(8) of the Code on 6-3-2007. Accordingly, learned Metropolitan Magistrate was informed. Statement of various witnesses came to be recorded during investigation, preliminary inquiry and further investigation. After conclusion of inquiry, it was found by the Investigating agency that death of Sohrabuddin and subsequent death of Kausarbi was a result of fake encounter carried out by the applicants herein and other accused the then Officers of A.T.S. and S.T.F. of Gujarat State, superior I.P.S. Officers of State of Gujarat and State of Rajasthan. During the course of proceedings before the Hon''ble Supreme Court and further investigation carried out by the Special Investigation Team constituted pursuant to the order passed by the Hon''ble Supreme Court subsequently it was found that Kausarbi wife of Sohrabuddin was killed and done to death and her dead body was disposed of at village - Illol, District Sabarkantha as she was eye-witness to the entire incident right from killing/ taking said Sohrabuddin from Hyderabad to Ahmedabad and killing him. All the aforesaid officers-applicants herein came to be arrested and they approached learned City Sessions Judge, Ahmedabad for releasing them on bail u/s 439 of the Criminal Procedure Code. All those Officers were arrested and applicant-original-accused No. 13 is one of the Police Officer belonging to State of Gujarat.

4.3. Name of one Dr. Narendra K. Amin came to be surfaced in the statement of some witnesses and his presence was established at the time of cremation of dead body of Kausarbi near village - Illol. He apprehended his arrest, and therefore, he approached learned trial Court for anticipatory bail which was granted by the learned City and Sessions Judge, Ahmedabad which came to be subsequently cancelled by the Hon''ble Supreme Court, and accordingly, said Dr. Amin, high-ranking Police Officer, State of Gujarat came to be arrested. One Dinesh M. N., (S.P.), Udaipur a high ranking Police Officer of State of Rajasthan

also came to be arrested in connection with the aforesaid case. He applied for regular bail before the learned trial Court and the learned City and Sessions Judge, enlarged him on bail which came to be cancelled by this Court, which further came to be confirmed by the Hon''ble Supreme Court. Similarly, after arrest, Dr. Amin also applied for regular bail and said City and Sessions Judge, enlarged him on bail which came to be subsequently cancelled by this Court, which was confirmed by the Hon''ble Supreme Court vide judgment and order dated 28-4-2008 reported in the case of Dinesh M.N. (S.P.) v. State of Gujarat 2008 (3) GLR 2310 (SC) : 2008 AIR SCW 3677 and in the case of Dr. Narendra K. Amin v. State of Gujarat and Anr. 2008 AIR SCW 3268.

4.4. It is to be noted that present applications were filed by the respective applicants somewhere in October, 2007, and thereafter, present applications came to be adjourned from time to time. The applications are filed in the month of October, 2007 and same is being adjourned from time to time, therefore, pointed question was asked to the learned Advocates appearing on behalf of the respective applicants that applications were being adjourned at the request of the learned Advocates appearing on behalf of the applicants and whether they were not interested to proceed with the applications and/or bail, to that the learned Advocate appearing on behalf of the applicants have submitted that they were waiting for decision of the Hon''ble Supreme Court in the case of Dr. Narendra K. Amin (supra) and Dinesh M. N. (supra). Now as Hon''ble Supreme Court has confirmed the orders passed by the learned single Judge of this Court cancelling bail granted in favour of Dr. Narendra K. Amin and Dinesh M. N. (other co-accused), the applicants have now turned around and they come out with a case that they are not claiming parity. Aforesaid aspect will be dealt with hereinafter. However, charge-sheet is already filed against the applicants and other co-accused.

5. Prosecution case as narrated in the charge-sheet against the applicants and other co-accused is as under:

Charge-sheet F.I.R. No. 5 of 2005 Date : 26-11-2005 Column No. 5.

The facts, in this case are that the Assistant Registrar (P.I.L. Cell), Supreme Court of India, New Delhi had vide his letter No. 277/4/SC/PIL/2006 dated 21-1-2006 written a letter to the Director General of Police and Chief Police Officer, Gujarat State Gandhinagar for sending a report after making investigation in the matter of application by Rubabuddin Shaikh. The application of Rubabuddin Shaikh residing at Zarnia, Taluka Nagda, District Ujjain was attached. In the said application, the allegations were made that A.T.S. Gujarat and S.T.F. Rajasthan have killed his brother Sohrabuddin in fake encounter and missing his bhabhi (brother's wife) Kausarbi. The application of Jaibunisha Anveruddin Shaikh residing at Zarnia, alleging aforesaid allegations, was also attached herewith. The Director General of Police and Chief Police Officer, Gujarat State, forwarded along with his order No. G-2/1927/M-A/39-05/1584/06 dated 7-6-2006, to the Additional Director General of Police, C.I.D. Crime & Railways,

Gujarat State, Gandhinagar for investigation. The said investigation being Preliminary Investigation No. 66 of 2006 was assigned to the Deputy Superintendent of Police C.I.D. Crime, Ahmedabad Zone by its letter No. T. 3A/PI/289/06 dated 27-6-2006. This investigation was carried out by Deputy Police Inspector Shri V.L. Solanki, Ahmedabad City unit, C.I.D. Crime. On finding truthfulness in the allegation made by the applicant Rubabuddin Shaikh in the application and in the meantime Rubabuddin Shaikh, resident of Zarnia, filed a Writ Petition (Cri.) No. 6 of 2007, on date 22-1-2007 and previously an offence being A.T.S. 5 of 2005 was registered on 26-11-2005 and further a Dy. Police Superintendent Shri M. L. Parmar, A.T.S. was investigating the matter, "A" category was given and the abetted summary was granted. The Director General of Police and Chief Police Officer, Gujarat State ordered, vide their letter No. PS/Investigation/13/07 dated 6-3-2007. The Additional Director General of Police, C.I.D. Crime and Railways to further investigation u/s 173(8) of Criminal Procedure Code. The Additional Director of Police, C.I.D. Crime assigned further investigation of the said offence to Shri Rajnishkumar Rai, D.I.G.P. C.I.D. Crime. So, an investigation was carried out after obtaining permission of the Hon'ble Court, and hence, the offences under Sections 302, 364, 365, 368, 193, 197, 201, 120B, 409, 471, 34 of Indian Penal Code and Sections 25(1)(a), (b) and 27 of the Arms Act are committed, that;

The accused mentioned in column No. 1 wherein No. (1) D. G. Vanzara, himself being D.I.G. A.T.S. Ahmedabad in association with No. (2) Rajkumar Pandian S.P. A.T.S. No. (3) Dinesh M. N., S.P. Udaipur brought Sohrabuddin Shaikh, who was wanted by for the offences registered with Navrangpura Police Station, Ahmedabad and Hathpol Police Station, Udaipur City, Rajasthan, to Ahmedabad and killed him under the pretext of encounter by conspiracy of Sohrabuddin's murder with common intent to receive promotion and publicity. No. (4) M. L. Parmar, Deputy Police Officer A.T.S., No. (5) N. H. Dabhi Police Inspector, A.T.S., No. (6) B. R. Chaube P.S.I. A.T.S. No. (7) P.I. Abdul Raheman, Pratapnagar Police Station, Udaipur, No. (8) Himanshusing, P.S.I. Kheroda Police Station, Udaipur, No. (9) Shyamsing P.S.I. Saira Police Station, Udaipur No. (10) Ajay Parmar, Police Constable A.T.S. No. (11) Santram Sharma Police Constable A.T.S. were involved in the conspiracy.

With an intent to proceed further with this conspiracy, No. (1) had specific information about Sohrabuddin being at Hyderabad. He sent, on date 20-11-2005, No. (2) and other team persons No. (5), (10) and (11) with the witness No. (163) driver Gurudayalsing A.T.S. And the witness No. (165) driver Nathubha Jadeja in a private Qualis Jeep No. GJ-25 - A-7007 of the witness No. (68) to Hyderabad and No. (2) was sent, on 21-11-2005, by aeroplane to Hyderabad.

No. (5), (10) and (11) with the witnesses No. (163) & (165) reached Hyderabad in the evening on dated 21-11-2005 and stayed at the mess for Senior Police Officer and C.R.P.F. at night. There being specific information about Sohrabudin

being in Hyderabad with Kausarbi and another male whose name might be Kalimuddin who, on information, were to sit on the Seat Nos. 29, 30, 31 of the bus KA-05-AF-5051 of M. J. Travels for going on date 22-11-2005 from Hyderabad to Sangli. In order to implement a plan to carry him to Ahmedabad, the seven Police Officers staff were kept in assistance from Hyderabad in two TATA Sumo Jeeps No. (2) ordered No. (10) to come to Ahmedabad from Hyderabad by air on his ticket and he with No. (5) and (11) sat in the Qualis car, by fixing false number plate, brought from Ahmedabad and also sent Andhra Pradesh Police, in evening on date 22-11-2005, in the two TATA Sumo cars and followed the luxury bus as per the information. Then the bus under target was encircled near tandole at a distance of about 180 Kms.. from Hyderabad at about 1-30 O'clock at midnight on date 23-11-2005. The traffic was stopped by both the TATA Sumo with loneliness in order to carry the three persons sitting in the bus. According to the plan, Sohrabuddin Shaikh, Kausarbi and the third male co-traveller were made to get down and to sit in the Qualis and started for Ahmedabad by abducting with a intent to kill. Kausarbi was transferred in Sumo car on the way and both the male persons were brought at Koba Circle near Ahmedabad with No. (2) and No. (5) on date 24-11-2005 in Qualis. No. (4) and No. (6) were present with Fronty car at Koba Circle from beginning who had managed to hide the abductors in "Disha Farm House" near Adalaj. The Qualis car were taken by piloting to the premises of Disha Farm House and both the abductors were hidden. Thereafter, the other male person was removed from the premises. Kausarbi, who was brought in Sumo Car, was hidden with Sohrabuddin in Disha Farm.

No. (10), who had air ticket in the name of No. (2) for date 24-11-2005 went to Hyderabad Airport on 23-11-2005 and paid necessary fee for air travelling to Ahmedabad on date 23-11-2005 in the declaration form in the name of "Rajkumar Pandian" as the ticket was in the name of No. (2), and made fabricated signature of No. (2) and prepared bogus certificate - declaration form and produced as real one before Hyderabad Airport Authority and returned to Ahmedabad by Air India flight in the night on date 23-11-2005.

As per pre-planned conspiracy, Sohrabuddin came in the custody of A.T.S. Nos. (3), (7), (8), (9) arrived from Udaipur Rajasthan in the evening on date 24-11-2005 at A.T.S., Ahmedabad and discussed with associates in the office of No. (1). Again the meetings were held on date 25-11-2005. At first plan for killing for Sohrabuddin was finalised. Nos. (1), (2), (3), (5), (7), (8) and (9) reached near Narol Circle, Ahmedabad in early morning on dated 26-11-2005. No. (5) telephoned to A.T.S. where No. (10) was present from beginning, who had kept one Hero Honda motor cycle well in advance at A.T.S. for showing the same in the incident as per plan, and was asked to come with motor cycle at Narol Circle, so No. (10) reached with motor cycle at Narol circle.

Then Nos. (1), (2), (3), (5), (7), (8), (9), (10) & (11) came near G.E.B. main feeder towards Vishala Circle on high way road. In the meantime, Nos. (4) and

(6) with the witness No. (165) brought Sohrabuddin who was hidden in Disha Farm House. At that time No. (10) started the Hero Honda motor cycle which was brought from A.T.S. and jumped after applying the brake and turned to lie down the motor cycle and No. (6) pulled out Sohrabuddin from the Fronty Car and at the same time No. (7) shot two fires, No. (8) shot two fires, No. (9) shot one fire and No. (5) shot three rounds of fire from their arms. Sohrabuddin was injured and fell down in bleeding condition and the motor cycle brought from A.T.S., one revolver-cartridge, a railway ticket from Surat to Ahmedabad and Rs. 46,000/- were placed in false evidences whereby fake evidences were concocted. No. (1) told to take Sohrabuddin to the Civil Hospital and No. (5) & (10) took him to the Civil Hospital where the Medical Officer witness No. (123) declared Sohrabuddin to be dead.

The culprits returned to A.T.S. office from the place of incident. According to the pre-planned conspiracy, a fabricated story was made out regarding murder of Sohrabuddin and No. (7) got registered a F.I.R. at 8 O'clock on date 26-11-2005 in A.T.S. Police Station. No. (1) called upon a press conference and appropriate publicity was made in newspaper and before electronic media.

In this offences No. (5), as per the instruction to him, got prepared fake number plates of Qualis Car on the way to Hyderabad and at Hyderabad and affixed on the Qualis Car and with No. (2) and others abducted Sohrabuddin, Kausarbi and a third male person from luxury bus and brought to Ahmedabad and hid solitarily in Disha Farm House, thereby committed an offence and No. (2) and No. (10) showed false reason of a visit to Hyderabad, and No. (5) and No. (11), though went to Hyderabad, did not make any valid note on record in this respect whereby have committed an act of concealing an offence under the conspiracy.

Thus, the accused have, with an intent to kill Sohrabuddin, abducted as detailed above and hid at a solitary place, and thereby, committed an act of Sohrabuddin's murder with common intention in conspiracy.

Thereafter, the abducted Kausarbi, resident of Zarnia was confined in Disha Farm House and the Court Commission was to visit on date 26-11-2005 at Disha Farm House. The A.T.S. Officers and other persons took Kausarbi, in Fronty Car, at about nine O'clock on that day from Disha Farm House and hid her at some other place. This Kausarbi, hidden at a solitary place, become an awful and big problem and all were under confusion as to what to do? If Kausarbi is relieved, the fact of fake encounter would be disclosed which might create much difficulties.

Nos. (1), (2), (4), (6) and (12) etc. planned second conspiracy, with common intention, to displace the third person during murder of Sohrabuddin and then to kill Kausarbi secretly and to set her dead body at fire at an awkward nighttime at a remote lonely place in the sim of village Ellol, the native of No. (1) so that no problem might arise.

Thereafter, the abducted Kausarbi was killed mysteriously where she was

confined. No. (1) instructed the witness No. (166), in presence of No. (2) at evening time on date 29-11-2005, to bring a tempo for destroying the dead body of her by setting fire. He along with No. (6) brought a TATA TEMPO No. GJ-2-V-5287 near Dafnala Three Roads to A.T.S.. The witness No. (96) Jahir Abbas is a driver of the tempo who was asked to sit at A.T.S. Police Station. No. (13) with the witness No. (165) took the tempo in the evening on date 29-11-2005 and 35 to 40 mound firewood were loaded in the tempo from timber-stores and sent. The tempo, being out of order due to entangled gear No. (1) called upon another tempo from the witness No. (166) who brought another tempo No. GJ-7-T-7025 from Dafnala Three roads and come to A.T.S. And its driver is the witness No. (95) Alpesh Vaghela. Under the order of No. (1), the witness No. (166) with driver of the tempo and the driver of previous tempo and with No. (10) went to Motera Stadium where the previous tempo was lying No. (113) and the witness No. (165) were present there. All of them transferred the firewoods from the previous tempo to the second tempo and started the previous tempo by giving push wherein No. (10) and the drivers of both the tempos were about to start for A.T.S. No. (2) telephoned on the mobile phone of No. (10). Under his instruction, No. (13) took the firewood loaded tempo and plied as per instructions. The tempo reached near Himmatnagar at about nine O'clock in the night where a Grey colour Maruti Zen was standing and No. (1) and No. (2) were therein. As per their instructions, the tempo followed the said Zen Car. Maruti Zen was followed by the A.T.S. Jeep No. GJ-1G-4359 and No. (6) was driving it. All these three vehicles passed through the river bed of Illol village sim at ten O'clock in the night. At that time, the rear wheel of the tempo was entangled in the sand and further entangled on trying to lift up. At that time, No. (1) and No. (2) got down from Zen car and No. (6) and No. (12) got down from the jeep wherein the dead body of Kausarbi was kept. All unloaded the firewood from the tempo and arranged. No. (6) brought the jeep near the heap of firewood. The dead body of Kausarbi was taken out and kept on the heap of firewood and additional firewoods were placed thereon. No. (1) set fire on the funeral pyre of Kausarbi's dead body. Nos. (1), (2), (6), (12) and (13) remained present at the place till Kausarbi's dead body burnt till four O'clock in early morning. The dead body of Kausarbi being completely burnt, No. (6) and No. (13) brought water and extinguished the fire. The remains of the dead body-entire ashes and bones were kept in a sack and placed in the jeep. No. (6) drove the jeep and No. (13) sat with him. Nos. (1), (2) and (12) sat in Maruti Zen car and started for returning to Ahmedabad. The jeep arrived at Himmatnagar and the witness No. (165) and No. (166) got down there. No. (6) and No. (13) with the sacks, wherein the ashes and bones of Kausarbi's dead body were kept, started for destroying the same. The witness No. (165) and No. (166) hired a crane from the witness No. (91) at Himmatnagar and took witness Nos. (92) and (93) to the sim of Illol where the tempo was entangled and both of them took out the tempo with the crane and returned to Ahmedabad and came to A.T.S. At 11-30 O'clock on date 30-11-2005. The driver of the tempo, who was detained at A.T.S. was handed over the tempo and relieved.

Thus, the accused mentioned in colum Nos. (1) and (2) have abducted, as above, Sohrabuddin and Kashurbi and committed an act of killing the abductors.

Nos. (1), (2) and (6) have committed act of killing Sohrabuddin and Kausarbi both, and thereby, have committed an offence under Sections 302, 364, 365, 368, 193, 197, 201, 120B, 420, 342, 34 of the Indian Penal Code and under Sections 25(1)BA and 27 of the Arms Act.

No. (4) confined secretly both Sohrabuddin and Kausarbi till murder and he himself took Sohrabuddin to the place for murder and then committed an act of getting him killed and investigating on the fabricated complaint as real in respect of the murder, and thereby, committed an offence under Sections 302, 364, 365, 368, 193, 197, 201, 120B, 471, 34 of the Indian Penal Code and Sections 25(1) (a), (b) and 27 of the Arms Act.

No. (5) abducted Sohrabuddin and Kausarbi and hid the abductors after bringing them at Ahmedabad and committed act of shooting three rounds for killing Sohrabuddin, and thereby, has committed an offence u/s 302, 364, 365, 368, 193, 197, 201, 120B, 34 of the Indian Penal Code and Section 25(1)(a), (b) and 27 of the Arms Act.

Nos. (3), (7), (8), (9) committed an act of killing Sohrabuddin, and thereby, have committed an offence under Sections 302, 364, 365, 368, 193, 197, 201, 120B, 34 of the Indian Penal Code and Section 25(1)(a), (b) and 27 of the Arms Act.

Nos. (10) and (11) abducted Sohrabuddin and Kausarbi and brought to Ahmedabad and hid the abductors secretly and assisted in the act of killing Sohrabudin, and thereby, have committed an offence under Sections 302, 364, 365, 368, 193, 197, 420, 201, 120B, 34 of the Indian Penal Code and Section 25(1)(a), (b) and 27 of the Arms Act.

No. (12) being a doctor (M.D.D.G.O.), is involved in the second conspiracy, though not appointed in A.T.S. The abducted Kausarbi was confined at a secret place and after killing her, Kausarbi being Muslim, if buried, the evidence would remain and so cremation of the dead body was performed so that the evidence would be destroyed permanently. Hence, her dead body was taken from Ahmedabad in a Jeep No. GJ-I-G 4359, to a lonely and remote place and set it on fire at an awkward time in the sim of village Illol and has committed an act of destroying the evidence, and thereby, has committed an offence under Sections 302, 193, 201, 120B, 34 of the Indian Penal Code.

No. (13) is involved in second conspiracy for destroying Kausarbi's dead body after setting it on fire and took a tempo loaded with firewoods at Illol and cremated the dead body and destroyed the evidence, and thereby, has committed an offence under Sections 201, 120B, 193, 34 of the Indian Penal Code.

[Above portion of charge-sheet is translated from Gujarati to English]

6. Misc. Criminal Application No. 12420 of 2007 - Nareshbhai Vishubhai Chauhan - original-accused No. 13. Mr. B. B. Naik, learned Advocate appearing on behalf of the applicant has made following submissions in support of his prayer to release the applicant of Misc. Criminal Application No. 12420 of 2007 on bail:

As per charge-sheet, case can be bifurcated into three parts (conspiracy). First conspiracy with regard to going to Hyderabad from Ahmedabad chasing luxury in which Sohrabuddin and his wife were alleged to have been travelling and abducting and/or taking Sohrabuddin and his wife and one another unknown person to Ahmedabad and keeping them in Disha Farm at Ahmedabad. Second conspiracy can be said to be killing of Sohrabuddin in encounter near Vishala Circle. Third conspiracy can be said to be killing of wife of Sohrabuddin i.e. Kausarbi and cremating her and removing her dead body. It is submitted that so far as the applicant is concerned, even as per the charge-sheet he can be said to be involved in third conspiracy only as he was found to be present at the time of cremation of dead body of Kausarbi. As per the charge-sheet, the applicant is charged for the offences punishable under Sections 201, 120(b), 193 and 34 of the I.P.C. The applicant was Police Sub-Inspector, the case of the prosecution as it is in the charge-sheet and role attributed to the applicant being P.S.I., the applicant has acted as per instructions of his higher officers and their command. He followed as disciplined Officers. There is no evidence and/or allegations that the applicant met Officers to hatch third conspiracy of killing Kausarbi. The statements of witnesses implicating the applicant are of statements of co-accused and/or conspirators, and therefore, same are not admissible in evidence and they cannot be relied upon. If those statements are taken away then there is no case against the applicant. There are different stories in different statements of witnesses, and therefore, those statements should not be believed as they are not reliable. The applicant is only charged for the offence under Sections 201, 120B, 193 and 34 of the I.P.C. and offences under Sections 193 and 201 are bailable and so far as the applicant is concerned, he is charged for the offence u/s 201 and conspiracy alleged against the applicant is u/s 201 of the I.P.C. only. Therefore, the applicant be released on bail. The case of Dr. Amin is different then that of the applicant. Dr. Amin is also charged for the offences u/s 201 of the I.P.C. also and that Dr. Amin is also high-ranking Officer and so far as the applicant is concerned, he is only P.S.I. who obeyed and acted as per the instructions of his superior as obedient officer in police force.

7. Mr. Naik, learned Advocate appearing on behalf of the applicant has relied upon various decisions of the Hon'ble Supreme Court in support of his submission with respect to statements of co-accused inadmissible in evidence. He has also relied upon decision of the Hon'ble Supreme Court in the case of Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab, in support of his prayer to release the applicant on bail.

8. The application is opposed by Mr. R. C. Kodekar, learned A.P.P. appearing on behalf of the State. It is submitted that the manner in which Sohrabudin came to

be killed in a fake encounter and subsequently his wife Kausarbi who was witness to the entire episode right from abducting Sohrabudin and herself came to be killed and cremated at Village - Illol and that too by high-ranking officers of A.T.S., State of Gujarat, I.P.S. Officers of State of Gujarat and State of Rajasthan and looking to the seriousness and gravity of the offence and accusations, the applicant may not be released on bail. It is submitted that it is continuing conspiracy, and therefore, it is not possible to bifurcate the case of each accused at this stage while considering bail application. He has further submitted that the contention on behalf of the applicant that statements of the witnesses implicating the applicant are that of co-accused, therefore, they are admissible in evidence is not correct. It is submitted that said persons whose statements implicating the applicant, are still witness, except Mr. Rathod who pursuant to the order passed by the learned Single Judge of this Court is arrayed as accused. Therefore, they are inadmissible in evidence, is not correct. It is submitted that even otherwise, statements of the co-accused can be considered at this stage while considering bail application and also can be considered to certain extent in light of Section 10 of the Evidence Act and other provisions. It is submitted that submission on behalf of the applicant with respect to different versions in different statements; credibility of the witnesses and/or to what extent there are contractions, are required to be considered at an appropriate stage and at the trial and they are not required to be considered while considering bail application. It is submitted that there are sufficient material available in the form of statements of various witnesses like Natubha; Gurudayal Sing and Bhailal in which name of the applicants-accused is surfaced and who had brought wood in tempo to village - Illol where wife of Sohrabuddin i.e. Kausarbi came to be cremated and all throughout the applicant was present. Thus, when the presence of the applicant is established at this stage then it is sufficient to keep the applicant behind bars and in custody. He has relied upon following decisions of the Hon''ble Supreme Court in support of his prayer to dismiss the application. Mr. Kodekar, learned A.P.P. has heavily relied upon the decision of the Hon''ble Supreme Court in the case of Dr. Narendra K. Amin (supra) and Dinesh M. N. (supra) who were the co-accused in the present case. It is submitted that right from the very beginning the applicant claimed parity with that of Dr. Narendra K. Amin and Dinesh M. N., and even before the learned trial Court, they relied upon decision of the learned City & Sessions Judge enlarging the aforesaid two accused on bail and now when their bails are cancelled and confirmed by the Hon''ble Supreme Court, it not open for the applicant now to say that he does not claim parity with that of Dr. Amin and Dinesh M. N. It is submitted that considering decision of the Hon''ble Supreme Court in the case of Dr. Amin and Dinesh M. N. (supra) present application deserves dismissal.

9. Dr. Mukul Sinha, learned Advocate appearing for Rubabudin, brother of Sohrabudin is also heard by this Court as intervener. It is submitted that the way in which his brother has been killed in fake encounter and subsequently his sister-in-law i.e. Kausarbi is killed, done to death and role attributed to the applicant

and that looking to the seriousness of the offence and accusations and material on record, the application deserves dismissal. It is submitted that only because of intervention of Hon"ble Supreme Court investigation has been carried out and State of Gujarat was compelled to investigate death of Sohrabuddin and subsequent death of Kausarbi was a result of fake encounter carried out by the then Officers of A.T.S.; I.P.S. Officers of State of Gujarat and State of Rajasthan. It is submitted that even today also brother of Sohrabuddin i.e. Rubabudin is apprehending that he will also be killed and that apprehension was placed before the Hon"ble Supreme Court and the Hon"ble Supreme Court has directed to provide security to him and looking to the aforesaid apprehension it is requested not to release the applicant on bail. It is submitted that even the bail is denied and/or cancelled in case of co-accused, same can be relevant consideration for refusing bail to another co-accused. For that purpose he has relied upon decision of the Hon"ble Supreme Court in the case Anwari Begum Vs. Sher Mohammad and Another, and in the case of Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and Another, By making above submissions, it is requested to dismiss the present application.

10. In reply Mr. Naik, learned Advocate appearing on behalf of the applicant has submitted that it is not the applicant who has bifurcated the case into three conspiracies and /or three parts, but it is borne out from the accusations in the charge-sheet, and therefore, looking to role attributed to the applicant, he can be said to be part of conspiracy in removing the dead body and he obeyed the directions of superior officers. It is requested to release the applicant on bail.

11. Misc. Criminal Application No. 13756 of 2007 - Santram Chandrabhan Sharma - original-accused No. 11 and Misc. Criminal Application No. 13758 of 2007 - Ajaykumar Bhagwandas Parmar- original-accused No. 10. Mr. B. B. Naik, learned Advocate appearing for original-accused Nos. 10 and 11 has submitted that so far as accused No. 11 is concerned, at the relevant time he was Commando to S.P. Rajkumar Pandian - original-accused No. 2 and the allegations against original-accused Nos. 10 and 11 who were constables/ commandos is that they went to Hyderabad along with Rajkumar Pandian and that they stayed with said Rajkumar Pandian till said Sohrabuddin was intercepted and brought to Ahmedabad, all throughout said accused were present. It is submitted that role attributed to them is narrated in column No. 5 of the charge-sheet. It is submitted that there is no evidence on record to show that there was any meeting between accused Nos. 10 and 11 with original-accused Nos. 1, 2 and 3. It is submitted that being commando to S.P. Rajkumar Pandian they were forced to go to Hyderabad along with S.P. Rajkumar Pandian. It is submitted that there is no overact alleged so far as original-accused Nos. 10 and 11 are concerned and allegations against them are that they were merely present at the time when Sohrabuddin was brought to Ahmedabad from Hyderabad and also at the time of encounter of said Sohrabuddin. It is submitted that there is no evidence that said accused entered bus and brought Sohrabuddin out from the luxury bus. It is submitted that main allegations against this two accused are of accomplice. It is

submitted that this two accused cannot be charged for the offences alleged against them and for that purpose he has relied upon decision of the Hon"ble Supreme Court in the case of Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Yousuf Miya, etc., It is further submitted that even allegations are that aforesaid both the accused were present at the time when actual encounter had taken place. However, there is no evidence that both the accused have actively participated in killing of Sohrabuddin. It is also further submitted that trial is likely to take time and even charge is not framed. It is submitted that both the accused are not going to run away. Under the circumstances, it is requested to release both the accused on bail.

12. Mr. Kodekar, learned A.P.P. appearing on behalf of the State has submitted that presence of both the accused persons are established and they are corroborated with the statements of the witnesses. It is submitted that it is not in dispute that both the accused had gone to Hyderabad and their presence is established all throughout till Sohrabuddin was abducted and brought to Ahmedabad. It is also submitted that presence of the said accused is also established at the time when actual encounter of Sohrabuddin had taken place and main allegations against both the accused are of accomplice and considering nature of allegations and the way in which offence has taken place and Sohrabuddin was abducted and brought from Hyderabad to Ahmedabad and killing in fake encounter, at this stage it is not proper to consider the role attributed by individual accused and fix their responsibility and liability. It is also further submitted that so far as accused No. 11 is concerned, from the very beginning he has participated and in fact allegations are that he has stayed with accused No. 2 S.P. Rajkumar Pandian in the same room and others stayed in separate guest house. It is submitted that it is established on record that Sohrabuddin and others were forced to sit in Qualis in which applicant was there with AK 56. Therefore, it is requested to dismiss both this applications looking to the nature of allegations and prima facie case established made out against this accused persons.

13. Misc. Criminal Application No. 13774 of 2007 - Balkishan Rajendraprasad Choubey - original-accused No. 6. Mr. B. B. Naik, learned Advocate appearing for accused No. 6 applicant of Cr.M.A. No. 13774 of 2007 has submitted that allegations against the said accused is that he went with Mr. M. L. Parmar original-accused who arrived for Disha Farm where Sohrabuddin was kept after abduction. It is submitted that there is no evidence that he managed for Disha Farm. It is submitted that he being lower rank P.S.I. was acting as per instructions of his superior. It is submitted that there is no evidence that there was meeting prior to alleged commission of offence. It is further submitted that so far as said Chobey is concerned, individually he has not turned anything but so far as on the establishment of conspiracy, it is submitted that he may have knowledge but he cannot be said to be conspirator. In support of his submission, he has relied upon decision in the case of State of Tamil Nadu through Superintendent of Police C.B.I./S.I.T. v. Nalini and Ors. reported in AIR 1999 SC

2640 (page No. 2819). It is further submitted that so far as the statements relied upon by the prosecution are concerned, either they have been recorded at the time when preliminary inquiry was conducted and/or they are the statements of accused and/or there are variances in the statements of those witnesses.

14. Misc. Criminal Application No. 13775 of 2007 - Dahyaji Gobarji Vanzara, D.I.G. - original-accused No. 1. So far as accused No. 1 - D. G. Vanzara is concerned, Mr. Naik, learned Advocate has submitted that nothing is on record to suggest when and where conspiracy was hatched. It is further submitted that nothing is on record and/or there is no evidence that when accused persons got information that Sohrabuddin is in Hyderabad. It is further submitted that there is no evidence that there was meeting who hatched conspiracy prior to 24 and 25th of November, 2005. It is submitted that allegations against him are totally baseless and without evidence. It is further submitted that so far as accused No. 1 is concerned, there is no evidence that how he came on the spot. It is further submitted that in absence of any evidence with respect to meeting of mess prior to date of offence, it cannot be said that allegations of conspiracy are proved. He has relied upon decision of the Hon''ble Supreme Court in the case of Damodar Vs. State of Rajasthan, and in the case of Esher Singh Vs. State of Andhra Pradesh, It is also further submitted by Mr. Naik, learned Advocate that so far as the decision of the Hon''ble Supreme Court in the case of Dr. Narendra Amin (supra) and Dinesh M. N. (supra) are concerned, they cannot be made applicable as same are only for cancellation of bail and for granting bail. It is submitted that in the said case, the learned Sessions Court granted bail and this Court as well as Hon''ble Supreme Court found that granting of bail by the learned Sessions Court was on irrelevant material and consideration, and therefore, the order of granting bail came to be set aside. Therefore, it is requested to release the accused on bail.

15. Misc. Criminal Application No. 14091 of 2007 - Naransinh Harisinh Dabhi - original-accused No. 5. Mr. K. J. Shethna, learned Advocate appearing on behalf of original-accused No. 5 - Naransinh Harisinh Dabhi, Police Inspector applicant of Cr.M.A. No. 14091 of 2007 has submitted that he does not challenge F.I.R. given by Adbul Rahman. It is submitted that in fact after investigation of said complaint A summary was submitted and the learned Magistrate has granted A summary and same has not been challenged. It is further submitted that so far as the statements of witness relied upon against the said accused are concerned, there are two different versions. It is submitted that first version in the F.I.R. with respect to allegations against Sohrabuddin and second version is that there was plan murder of Sohrabuddin. It is submitted that when there are two distinct versions, at this stage benefit should be given to the accused while considering grant of bail. He has relied upon the decision of the Hon''ble Supreme Court in the case of M.P. Lohia etc. Vs. State of West Bengal and Another, It is further submitted by him that statements of witnesses relied upon by the prosecution are to be discarded on following grounds : (1) delay in recording statements, (2) there are contradictions and variances in the statements of witnesses, (3) those

statements are of accused. It is submitted that when Gurudayal's confessional statement was recorded by J.M.F.C, Manavadar, he was not put to guard and statements can be used against him. It is also submitted when Gurudayal was serving at Gandhinagar there is no reason why confessional statement of said Gurudayal is recorded by J.M.F.C, Manavadar which is at a distance of 200 Kms. It is further submitted that extraordinary facts needs extraordinary care. It is further submitted by him that story with regard to kidnapping and abducting Sohrabuddin from luxury bus and bringing him to Ahmedabad is too fantastic to be true and same is improper story. It is submitted that their might be prima facie case, but it is not so strong prima facie case which disentitles grant of bail in favour of the accused. Mr. Shethna, learned Advocate has relied upon following decisions in support of his prayer to release the applicant on bail and consideration for grant of bail : (1) Vasanthi Vs. State of Andhra Pradesh, (2) Jayendra Saraswathi Swamigal Vs. State of Tamil Nadu, (3) Dattatray Krishnaji Ghule Vs. State of Maharashtra and Another,

16. Misc. Criminal Application No. 13772 of 2007 - Rajkumar Pandian (S.P.) - original-accused No. 2. Mr. S.V. Raju, learned Advocate appearing for accused No. 2 - Rajkumar Pandian, S.P.- applicant of Misc. Criminal Application No. 13772 of 2007 has submitted that said Officer is a responsible Senior Police Officer and during his entire career, he has served with highest level of devotion and dedication and during his entire career he has remarkably achieved goals of maintaining law and order; safety and security of the people; prevention and detention of criminals and effective control over anti-social and anti-national elements and control of terrorism in Gujarat. It is further submitted that deceased Sohrabuddin was known dreaded criminal involved in numerous terror related in heinous crime. It is submitted that when he was serving as S.P. (operations) A.T.S., Ahmedabad, he was sent to Hyderabad by his superior in connection with confidential inquiry regarding a suicide bombing which took place at that time in the office of S.T.F., Hyderabad city. Therefore, he was on his official duty at Hyderabad from 21st November, 2005 and met Senior Police Officers whose statements were recorded by the Investigating Officer which clearly reveals the purpose of visit of the applicant and about the allegation of seeking transport, accommodation, manpower. Therefore, it is submitted that allegations of killing Sohrabuddin and his alleged wife is baseless and contrary to the evidence on record. It is submitted that statement of Manager of A.P. Police Officers Mess clearly establishes the fact that the applicant was at Hyderabad upto 23rd November, 2005 on his official duty and in the afternoon he left for Ahmedabad on 23rd November, 2005 itself. Under these circumstance, the allegation of kidnapping Sohrabuddin and his alleged wife on 22nd late night and 23rd November, 2005 early morning and travelled with them upto Ahmedabad by road is totally false and contradictory. It is submitted that conspiracy has been hatched to fix accused No. 2 because of his dedicated service. It is further submitted that nature of the evidence so far reveals that there is gross delay in recording the statements; there are different statements/versions at different

stages and there are variances in all the statements. It is submitted that so far as two statements are concerned, there are no allegations against the applicant, however, third statement is concerned which is recorded after the Hon'ble Supreme Court's order, same makes out case against the applicant, however, so far as fourth statement is concerned there is retraction. Therefore, it is submitted that those statements cannot be relied upon against the applicant. It is submitted that even if those statements are believed, still they are statements of accused and considering Section 10 of the Evidence Act, they cannot be relied upon. It is further submitted that so far as the averments in the F.I.R. being C.R. No. 5 of 2005 is concerned, averments in the said F.I.R. cannot be relied upon as same was lodged by accused No. 7 - Abdul Rehman and it is statement of accused. It is further submitted that considering statements of A.P. Police Officers, there is no evidence that A.P. Police provided any police force as alleged. It is submitted that statements of Gurudayal, Natubha Jadeja; Bhailal Rathod and V.A. Rathod has no evidenciary value considering Section 10 of the Evidence Act as they are by the co-accused. It is submitted that even as per confessional statement of Gurudayal, said statement is required to be discarded on the ground of delay as incident has taken place in 2005 and first statement came to be recorded in January, 2007 and confessional statement came to be recorded on 10-5-2007. It is further submitted that only evidence is that the applicant had gone to Hyderabad, chased luxury bus, stopped luxury bus and took Sohrabuddin back to Ahmedabad from Hyderabad. It is further submitted that he is not witness to the killing of Sohrabuddin. It is further submitted that Bhailal Rathod's statement is concerned, he had gone to Hyderabad and so far as his third statement is concerned which involves the applicant, there is retraction by him. Therefore, it is submitted that those statements cannot be relied upon and those statements are discarded, when there is no allegations against the applicant.

17. Misc. Criminal Application No. 13857 of 2007 - Himanshusingh Mohansingh Rajawat - original-accused No. 8 and Shyamsingh Jaisingh Charan - original-accused No. 9.

So far as the applicants of Misc. Criminal Application No. 13857 of 2007 - original-accused Nos. 8 and 9 are concerned, it is submitted by Mr. Raju, learned Advocate that both the aforesaid Officers were serving as P.S.I. in Rajasthan Police and their only allegation against them is that they were present at the time of encounter, but there is evidence that they actually fired. It is submitted that their names are disclosed in F.I.R. lodged by accused No. 7 - Abdul Rahman and said F.I.R. cannot be considered at this stage as he is accused and independent to F.I.R. there is nothing to show that they actually fired.

18. Mr. Kodekar, learned A.P.P. has submitted that presence of accused Nos. 2 is established at every place and every stage right from going to Hyderabad and at the time of chasing luxury bus in which Sohrabuddin was travelling, kidnapping Sohrabuddin and his wife, bringing Sohrabuddin from Hyderabad to Ahmedabad

and also at the time of killing Sohrabuddin at Narol Circle. It is further submitted that so far as accused Nos. 8 and 9 are concerned, their presence is also established at the time of killing Sohrabuddin in fake encounter and even the fact that they have fired is also narrated in the F.I.R. lodged by Abdul Rahmen. It is also submitted that even in the Station House Diary at Pratapnagar Police Station, Udaipur on 26-11-2005, it is recorded with respect to F.I.R. lodged by Abdul Rahmen firing by the said two accused. It is further submitted that so far as the submissions made on behalf of the learned Advocate on behalf of the respective parties with respect to evidentiary value of the witnesses is concerned, all these are required to be considered at the time of trial and what is required to be considered is prima facie case against the accused, nature and gravity of the offence and likelihood of tampering with the evidence. It is submitted that at this stage, the Court is not required to consider and appreciate evidence in detail and give its findings on all points. It is submitted that at the time of considering grant of bail, the Court is not required to give detail reasoned order, appreciating evidence in detail and only prima facie case is required to be considered. Mr. R. C. Kodekar, learned A.P.P. has heavily relied upon the decision of the Hon''ble Supreme Court in the case of Dr. Narendra Amin (supra) and Dinesh M. N. (supra) as well as the decision of the learned single Judge of this Court in the case of aforesaid Officers cancelling bail granted in their favour by the learned trial Court. Mr. Kodekar, has also relied upon the decision of the Hon''ble Supreme Court in the case of Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and Another, and in the case of State Vs. Amarmani Tripathi, by submitting that while considering applications for bail Court is required to consider nature of accusations and severity of punishment in case of conviction and the nature of supporting evidence; reasonable apprehension of tampering of the witness or apprehension of threat to the complainant and prima facie satisfaction of the Court in support of the charge. He has further submitted that looking to and considering the position of the respective applicants, police department in the State of Gujarat and State of Rajasthan and the manner in which earlier bias investigation was carried out right from filing/registering complaint by Abdul Rahmen to divert the attention and investigation from fake encounter and there are all possibilities of tampering with the evidence and witness by the applicants-accused persons. It is further submitted that even the applications submitted by Rubabuddin brother of Sohrabuddin for further investigation with respect to killing of Kausarbi is pending, and therefore, it is requested to dismiss the present applications considering gravity of offence and the manner in which Sohrabuddin was killed in fake encounter and subsequently Kausarbi wife of Sohrabuddin was killed and her dead body was disposed of, it is requested discretion in favour of the applicants may not be exercised and may not be released on bail.

19. Heard the learned Advocates appearing on behalf of the respective parties at length. Perused relevant police papers, statements implicating the accused and other materials.

20. At the outset, it is required to be noted that the petitioners - original-accused before the learned trial Court heavily relied upon the order passed by the learned City and Sessions Judge, Ahmedabad dated 5-10-2007 granting bail to two co-accused Dr. Narendra Amin and Dinesh M. N. (S.P.) claiming parity and same is clearly noted by the learned trial Court in the impugned orders. Even as stated above though all these applications were filed as far as back on 19-10-2007 and or somewhere in October, November, 2007, all these applications came to be adjourned from time to time at the instance of respective applicants and at no point of time, they have insisted for hearing of the applications for releasing them on bail and when a pointed question was asked to the learned Advocate for the applicants that either they were not very much serious about their prayer for releasing them on bail and/or for some other reason, the learned Advocate appearing for some of the applicants have submitted that they were waiting for outcome of proceedings before the Hon''ble Supreme Court against the order and judgment passed by the learned single Judge of this Court cancelling bail of aforesaid two accused. All throughout, the applicants claimed parity with that of Dr. Narendra Amin and Dinesh M. N. (S.P) by submitting that they ought to have been released on bail as they were similarly situated. However, the order passed by the learned City and Sessions Judge, Ahmedabad granting bail to the aforesaid two accused came to quashed and set aside, their bail came to be cancelled and came to be confirmed by the Hon''ble Supreme Court in the decision reported in Dinesh M.N. (S.P.) v. State of Gujarat reported in 2008 AIR SCW 3677 : 2008 (3) GLR 2310 (SC) and in the case of Dr. Narendra Amin v. State of Gujarat reported in 2008 AIR SCW 3268. Now, the applicants have submitted that they do not claim parity with Dr. Narendra Amin and Dinesh M. N. (S.P) and their case are different from the case of the aforesaid two accused. It appears that judgment and order passed by the Hon''ble Supreme Court as well as the learned single Judge of this Court cancelling bail granted in favour of the aforesaid two accused Dr. Narendra Amin and Dinesh M. N. (S.P) are likely to come in their way as all throughout they have claimed parity, all the accused have now turned around and have submitted that their cases are different from the case of Dr. Narendra Amin and Dinesh M. N. (S.P) which is not permissible. The applicants cannot be permitted to change their stand which suits them. They cannot be permitted to play hot and cold and change their stand looking to the changed circumstances. Even on merits also none of the applicants deserve to be released on bail and same is dealt with herein after.

21. As per the prosecution case and as emerges from the record and evidences collected so far, one F.I.R. being C.R. No. I-5 of 2005 was filed by Abdul Rahman, - Police Inspector of Pratapnagar Police Station, District - Udaipur, Rajasthan who was member of Special Investigating Party formed at Udaipur, Rajasthan to investigate against various offences registered against Sorabuddin. As per above F.I.R., said Sohrabuddin son of Ahwaruddin Shaikh, resident of Zaraniya, Nagda, Madhya Pradesh, was accused of offences punishable under Sections 120B, 121, 121A, 122, 123, 307, 186, 224 of the I.P.C.; u/s 25(1)(b) and Section 27 of the

Arms Act and u/s 13(1) of the Bombay Police Act. It was further stated in the F.I.R. that above accused Sohrabuddin was acting at the behest of I.S.I. to spread terror and disturb the unity and integrity of the country and also entered into conspiracy by possessing arms and ammunition so as to kill big leaders of the State of Gujarat. When he was asked to surrender by the police party, he fired from revolver and attempted to kill them. Investigation was initiated with respect to the said complaint/F.I.R.

22. That Rubabuddin Shaikh, brother of Sohrabuddin wrote a letter in the month of December, 2005 to Hon''ble Chief Justice of India, Supreme Court of India complaining about killing of his brother in fake encounter and disappearance of sister-in-law - Kausarbi at the hands of Anti-Terrorist Squad (A.T.S.) and Special Task Force (S.T.F.). Taking note of said letter, Hon''ble Supreme Court forwarded the letter to the D.G.P., Gujarat for further enquiry and action. Thereafter, enquiry was conducted by C.I.D. (Crimes) and statements of various witnesses came to be recorded including that of Rubabuddin. It appears that said Rubabuddin came to know pursuant to the preliminary inquiry of C.I.D. and interim report about encounter of his brother and disappearance of his sister-in-law had been sent to the Court. Inquiry was conducted by team headed by Ms. Geeta Johri, I.G., C.I.D. (Crimes). Said Rubabuddin later on filed petition before the Hon''ble Supreme Court which was registered as Writ Petition (Criminal) No. 6 of 2007 submitting that concrete efforts to substantiate inquiry and destroying evidence had started resulting in fake encounter and subsequent fake encounter of Tulsiram a close associate of Sohrabuddin. It was the case of Rubabuddin in the said petition that Tulsiram was used by A.T.S. to trace whereabouts of Sohrabuddin. Said Writ petitioner apprehended safety of his brother, Nayudin one of the witness in the said case and named in the F.I.R. in which Tulsiram was arrested and Hon''ble Supreme Court took cognizance of the matter and considering serious allegations and the accusations and gravity of the charges, issued directions from time to time to the Investigating Agency and directed investigation to be carried out by Special Investigation Team and pursuant to the directions issued by the Hon''ble Supreme Court from time to time, Investigating Agency of the State of Gujarat carried investigation and it was found by the Investigating Agency that death of Sohrabuddin and subsequent death of Kausarbi wife of Sohrabuddin was a result of fake encounter carried by the then Officers of the A.T.S., State of Gujarat and Senior I.P.S. Officers of State of Gujarat and State of Rajasthan. Applicants are all those officers who came to be arrested and who are senior I.P.S. Officers belonging to State of Gujarat, State of Rajasthan and other police officials. During the course of investigation, inquiry being Inquiry No. 66 of 2006 was instituted by the C.I.D. (Crimes), Gujarat State and role of various high-ranking superior officers in Police Department i.e. A.T.S. and S.T.F. were surfaced in the statements of the witnesses. Considering material which had come on record, D.G.P. ordered further inquiry u/s 173(8) of the Code on 6-3-2007. Accordingly, learned Metropolitan Magistrate was informed and some of the accused were arraigned/arrested as accused. All of them came to be

arrested, remanded to custody, and thereafter, charge-sheet has been filed against all the accused inclusive of the applicants on 16-7-2007. Role played by each of the accused is narrated in the charge-sheet in Colm. No. 5 of the charge-sheet. Role attributed to each of the applicants is narrated hereinabove in Para 5, therefore, same is not repeated. Thus, having prima facie found case against all the accused they were charge-sheeted for the respective offences committed by them.

23. As emerges from the charge-sheet papers and evidences collected during the course of investigation entire case can be said to have been happened in three parts. First part is prior to 26-11-2005, second part is dated 26-11-2005 and post dated - 26-11-2005. First facet was about conspiracy part bringing Sohrabuddin from Hyderabad to Ahmedabad, second part is the date on which alleged encounter of Sohrabuddin took place i.e. 26-11-2005 and third part is post 26-11-2005 about death of Kausarbi and destroying evidence relating to her death. At this stage, it is required to be noted that prior to Hon''ble Supreme Court's intervention in the matter and directed further investigation by the Special Investigation Team whereabouts of Kausarbi wife of Sohrabuddin was not known and even after the matter was adjourned before the Hon''ble Supreme Court from time to time and when interim reports were submitted before the Hon''ble Supreme Court, it appears that after going through the interim report placed before the Hon''ble Supreme Court in Writ Petition Criminal No. 6 of 2007, the Hon''ble Supreme Court was of the view that prima facie case has been made out for rule-nisi calling upon the Union of India and order should not be granted and also why habeas corpus should not be issued for producing Kausarbi in the Court. Learned Senior Advocate on behalf of the State of Gujarat submitted before the Hon''ble Supreme Court that "body of Kausarbi was disposed of by burning in Village-Illol, Sabarkanta District" and said fact was brought on record in the Action Taken Report which was submitted on 30-4-2007 before the Hon''ble Supreme Court and investigation with respect to third part of the case i.e. about death of Kausarbi and destroying evidence relating to her death was initiated. A specific case attributed to each of the applicants is briefly narrated in column No. 5 of the charge-sheet which is reproduced hereinabove and presence of respective applicants is supported which are very much evident as per the statements of witnesses Mr. Natubha driver and Mr. Vijay Rathod, Police Inspector of A.T.S. Therefore, prima facie case has been made out against all the accused for the respective charges levelled against them and considering entire case as a whole right from bringing Sohrabuddin from Hyderabad to Ahmedabad; killing of Sohrabuddin in encounter on 26-11-2005 and subsequent killing of Kausarbi wife of Sohrabuddin who was eye-witness to bringing Sohrabuddin from Hyderabad to Ahmedabad, and thereafter, destroying evidence relating to her death are very grave and serious and that too by high-ranking police officials of the State of Gujarat and State of Rajasthan, and therefore, considering role played by each of the accused at different stages, none of the applicants deserve to be released on bail.

24. The question with respect to grant or refusal of bail in serious offence came to be considered by the Hon''ble Supreme Court in catena of decisions and one of such decision required to be referred to is in the case of Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and Another, and in Para 11, it is noted as follows:

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 of the witness or apprehension of threat to the complainant;
- (c) prima facie satisfaction of the Court in support of the charge.

25. In the case of Gurcharan Singh and Others Vs. State (Delhi Administration), while considering the scope of granting bail u/s 439(1) of the Cr.P.C, the Hon''ble Supreme Court has observed as under:

24. Section 439(1), Cr.P.C. of the new Code, on the other hand, confers special powers on the High Court or the Court of Session in respect of bail. Unlike u/s 437(1) there is no ban imposed u/s 439(1), Cr.P.C. against granting of bail by the High Court or the Court of Sessions to persons accused of an offence punishable with death or imprisonment for life. It is, however, legitimate to suppose that the High Court or the Court of Sessions will be approached by an accused only after he has failed before the Magistrate and after the investigation has progressed throwing light on the evidence and circumstances implicating the accused. Even so, the High Court or the Court of Sessions will have to exercise its judicial discretion in considering the question of granting of bail u/s 439(1), Cr.P.C. of the new Code. The overriding considerations in granting bail to which we adverted to earlier and which are common both in the case of Section 437(1) and Section 439(1) Cr.P.C. of the new Code are the nature and gravity of the circumstances in which the offence is committed; the position and the status of the accused with reference to the victim and the witnesses; the likelihood, of the accused fleeing from justice; of repeating the offence, of jeopardising his own life being faced with a grim prospect of possible conviction in the case; of tampering with witnesses; the history of the case as well as of its investigation and other relevant grounds which, in view of so many variable factors, cannot be

exhaustively set out.

It is also further observed in the said decision that where the truth lies will be determined at the trial. It is also further observed that whether evidence will ultimately be held to be trustworthy will be an issue at the stage of trial. In considering the question of bail of an accused in a non-bailable offence punishable with death or imprisonment for life, it is necessary for the Court to consider whether the evidence discloses a prima facie case to warrant his detention in jail besides the other relevant factors referred to above. In Para 29, the Hon''ble Supreme Court has observed as under:

29. We may repeat the two paramount considerations, viz. likelihood of the accused fleeing from justice and his tampering with prosecution evidence relate to ensuring a fair trial of the case in a Court of justice. It is essential that due and proper weight should be bestowed on these two factors apart from others. There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail.

26. In the case of Anwari Begum Vs. Sher Mohammad and Another, the Hon''ble Supreme Court has observed that "though detailed examination of the evidence and elaborate documentation of the merits of the case is to be avoided by the Court while passing orders on bail applications, yet a Court dealing with the bail application should be satisfied as to whether there is a prima facie case, but exhaustive exploration of the merits of the case is not necessary. The Court dealing with the application for bail is required to exercise its discretion in a judicious manner and not as a matter of course." It is also observed by the Hon''ble Supreme Court in the said decision that "it is necessary for the Courts dealing with application for bail to consider among other circumstances, the following factors also before granting bail, they are : 1. The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence; 2. Reasonable apprehension of tampering of the witness or apprehension of threat to the complainant : 3. Prima facie satisfaction of the Court in support of the charge." Aforesaid principle is again reiterated in the case of Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and Another, It is held by the Hon''ble Supreme Court in the said decision that merely because the accused has undergone certain period of custody by itself would not entitle the accused to being enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail. It is also further held by the Hon''ble Supreme Court in the said decision that the admissibility or otherwise of the confessional statement and the effect of the evidence already adduced by the prosecution and the merit of the evidence that may be adduced by the hereinafter are to be considered at the stage of trial and

same is not permissible at the stage of considering grant of bail.

27. In the case of State Vs. Amarmani Tripathi, considering factors to be considered while granting or refusal of the bail, the Hon"ble Supreme Court has held that following is to be considered in application for bail : (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 fleeing, if released on bail, (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. 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. It is also further observed by the Hon"ble Supreme Court in the said decision that detailed examination of the evidence is to be avoided but to ensure that there is no prejudging and no prejudice, a brief examination to be satisfied about the existence or otherwise of a prima facie case is necessary.

Considering above decisions and nature of accusations, gravity of offence alleged and severity of punishment against the accused and conviction and nature of supporting evidence, none of the applicants are required to be released on bail.

28. It is also required to be noted and as stated hereinabove that after said Sohrabuddin was brought from Hyderabad to Ahmedabad and was killed in fake encounter on 26-11-2005, F.I.R. being C.R. No. 1-5 of 2005 was registered by one Abdul Rahman, Police Inspector of Pratapnagar Police Station, District - Udaipur, Rajasthan, member of Special Investigating Party formed at Udaipur, Rajasthan to investigate against various offences registered against Sohrabuddin alleging inter alia that said Sohrabuddin was acting at the behest of I.S.I. to spread terror and disturb the unity and integrity of the country and also entered into conspiracy by possessing arms and ammunition so as to kill big leaders of the State of Gujarat and when asked to surrender, he fired from his revolver and attempted to kill them. At that time, said Sohrabuddin was killed. It appears from the statements of the witnesses and surrounding circumstances and evidence already on record and subsequent investigation that said F.I.R. was allegedly to divert attention from the fake encounter. Aforesaid aspect of filing complaint to divert attention from fake encounter also deserves to be considered while considering the case of the applicants for bail coupled with the fact that all the applicants - accused persons are high ranking police officials in the State of Gujarat and State of Rajasthan and A.T.S. They are part and parcel of conspiracy at various stages and their presence is established by the statements of respective witnesses whose names have been narrated hereinabove.

29. It is the contention on behalf of learned Advocates of the some of the

applicants that there are no allegations against them with respect to first two parts i.e. bringing Sohrabuddin from Hyderabad to Ahmedabad and killing him on 26-11-2005 and they are alleged to have been present and/or taking part in third party either killing wife of Sohrabuddin i.e. Kausarbi and destroying her dead body and they are not charged for the offence punishable u/s 302 of the I.P.C., and therefore, their case is different from that of other co-accused who are charged for the offence u/s 302 of the I.P.C. and they are alleged to be conspirators in bringing Sohrabuddin from Hyderabad to Ahmedabad and killing him on 26-11-2005. It is the contention on behalf of the learned Advocates of respective applicants that prosecution is heavily relying upon the statements of some of the witnesses, however, they themselves can be said to be accused, and therefore, their statements are inadmissible in evidence. It is also further submitted that even the statements of witnesses relied upon by the prosecution, there are contradictions and they were retracted from earlier statements. Therefore, those witnesses should not be believed and statements of those witnesses are taken out i.e. there is no evidence to prove presence of the accused, and therefore, they deserve to be released on bail. It is the contention on behalf of the some of the accused that they are not high-ranking officials and considering their position they have obeyed orders of their superiors and being subordinate officers they were supposed to carry out orders of the superiors, and therefore, said aspect be considered while considering their request for grant of bail. Number of submissions have also be made on merits on behalf of the main conspirators.

30. Now so far as the submission on behalf of the some of the applicants that there are no allegations against them with respect to first and second part and they were alleged to have been present in the third part i.e. destroying dead body of Kausarbi, and therefore, they should be released on bail is concerned, in the facts and circumstance of the case and considering entire case as a whole, at present it will not proper to bifurcate the case minutely as sought to be suggested by the learned Advocates appearing on behalf of the respective applicants. Even otherwise, considering role attributed to them even in the third part is concerned, same is with respect to killing innocent lady Kausarbi wife of Sohrabuddin and disposing of her dead body at Village - Illol, District Sabarkantha, it cannot be said to be not a serious offence. At present, while considering prayer of the applicant to release them on bail over all facts and circumstances and prima facie case is required to be considered. At this stage, it will not be proper to reappreciate the evidence and/or discuss merits of the case in detail. At this stage retractions of statements of witnesses and other aspects about conspiracy, veracity and truthfulness can be gone into at the stage of trial.

31. At this stage, following decisions of the Hon"ble Supreme Court are required to be referred to : (i) Dolat Ram and Others Vs. State of Haryana, (ii) State Vs. Amarmani Tripathi, (3) Ram Govind Upadhyay Vs. Sudarshan Singh and Others, (4) Puran Vs. Rambilas and Another etc. etc., (5) Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and Another, Therefore, the submission on behalf

of the applicants-accused that looking to the allegations against some of them alleging only taking part in third part of the case i.e. destroying dead body of Kausarbi only and no further allegations with regard to larger conspiracy of kidnapping of Sohrabuddin, and thereafter, killing him in fake encounter, and therefore, they should be released on bail is concerned, same cannot be accepted at this stage.

32. Now so far as the submission on behalf of some of accused with respect to contradictions in the statements of the eye-witnesses - Natubha; Gurudayal Sing and Bhailal and their subsequent retractions and/or veracity of statements of the witnesses, and therefore, they should be enlarged on bail is concerned, as stated above, all these aspects are required to be considered at the stage of trial. Even in the facts and circumstances of the case when initially F.I.R. was filed to divert attention from fake encounter and investigation was started on the basis of said F.I.R. and allegations in the said F.I.R. and investigation was carried out at the relevant time and statements were recorded, and thereafter, further investigation was carried out by the Special Investigation Team/C.I.D. (Crimes) pursuant to the various directions issued by the Hon''ble Supreme Court from time to time and Action Taken Report, so called retractions and veracities are required to be considered at appropriate stage.

33. It might be that when earlier statements of witnesses were recorded they might not have supported the prosecution, however it is found that earlier investigation was faulty and same was influenced by high-ranking police officials of State of Gujarat. It is also required to be noted at this stage that initially even whereabouts of Kausarbi was not known and/or disclosed and all throughout nobody disclosed that in fact Kausarbi was killed who was eye-witness of bringing Sohrabuddin from Hyderabad to Ahmedabad. However, after Supreme Court intervened and when Hon''ble Supreme Court directed Union of India and State of Gujarat to produce Kausarbi, Action Taken Report was submitted before the Hon''ble Supreme Court disclosing for first time that said Kausarbi has been killed at village - Illol, Sabarkantha District and her dead body has been destroyed. All these things are required to be considered along with so-called contradictions and/or variances in the statements of the witnesses either they were recorded prior to Hon''ble Supreme Court intervention and/or subsequently and/or under what circumstances and/or to what extent there are contradictions and variances, therefore, at this stage on that ground accused are not required to be released on bail.

34. So far as the submission made on behalf of the some of the accused that they are not high-ranking police officials and that they have obeyed directions of their superiors and they have no alternative but to obey directions, therefore, they be released on bail cannot be accepted. They are not supposed to obey illegal and/or unlawful orders of superiors. On the ground that they have obeyed directions of the superiors, and therefore, they be released on bail cannot be accepted. Entire conduct of the respective applicants is required to be considered

and till Hon''ble Supreme Court intervened and further investigation was carried out by C.I.D. (Crimes) and Special Investigation Team, nobody disclosed correct facts. Prima facie they are part and parcel of the conspiracy and their presence at different stages is proved by the aforesaid witnesses. Therefore, merely because they are officials lower in rank, gravity of offences alleged against them will not be decreased, and therefore, on that ground they cannot be released on bail.

35. It is also required to be noted at this stage that one Dr. Narendra Amin and Dinesh M. N. (S.P.) were released on bail by the learned City and Sessions Judge and orders passed by the learned City and Sessions Judge releasing them on bail came to be challenged before this Court and the learned single Judge vide judgment and order dated 25-1-2008 passed in Misc. Criminal Application No. 12646 of 2007 and Misc. Criminal Application No. 12644 of 2007 allowed both the applications and cancelled the bail granted to the aforesaid accused which also came to be confirmed by the Hon''ble Supreme Court in the decision of the Dr. Narendra Amin (supra) and Dinesh M. N. (supra). While cancelling bail granted to the aforesaid two accused, the learned single Judge relied upon following decisions of the Hon''ble Supreme Court:

- (i) 1995 SCC (Cri.) 237 : Daulatram v. State of Haryana
- (ii) State Vs. Amarmani Tripathi,
- (iii) Panchanan Mishra Vs. Digambar Mishra and Others,
- (iv) Ram Govind Upadhyay Vs. Sudarshan Singh and Others,
- (v) Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and Another,

Learned single Judge considered following aspects of the matter:

(a) There is a bar as per the law laid down by the Apex Court to enlarge the accused involved in serious offences and more particularly the accused involved in the offence u/s 302 read with Section 120B of the Indian Penal Code.

(b) Even perusal of Sections 439(1) and 439(2) and Section 437 of the Code, reveal special powers conferred upon High Court and Sessions Court with regard to grant and cancellation of bail. At the same time, what is provided u/s 437 of the Code will have to be kept in mind by the Court concerned while exercising power u/s 439(1) as well as 439(2) of the Code of Criminal Procedure.

(c) When the corpse of Kausarbi was cremated, presence of the respondent officer is established by the statement of witnesses.

(d) Retraction of the statement of Shri Natubha or any other statement by any other person is to be considered at the stage of trial as laid down by the Apex Court in case of State Vs. Amarmani Tripathi,

(e) Irrelevant comparison about lodgment of 25 F.I.Rs. for various serious offences against Sohrabuddin and meritorious service of the respondent-officer

by the learned Judge amounts to extraneous consideration.

(f) Likelihood of influencing the witnesses and tampering of the evidence at high-ranking officers like respondent herein and imposition of condition about restricting movement of the officer by keeping him out of Ahmedabad District only was not sufficient and arena of influencing witnesses by such high-ranking officer is possible by using different modes of communication.

(g) Submission of periodical reports before the Apex Court about status of investigation by the investigating agency and even subsequent event about murder of Kausarbi, wife of Sohrabuddin and investigation is at a very crucial stage, therefore, the respondent officer was not to be enlarged on bail.

The learned single Judge also observed in Paras 24 and 25 as under:

24. I am of the considered opinion that the respondent officer herein is charged with serious offence u/s 302 read with Section 120B of the Indian Penal Code and while enlarging the respondent officer on bail, the learned Judge ought to have kept in mind seriousness of offences, punishment prescribed for such offence and involvement of the accused of high-ranking officer against whom grave and serious allegations are made. It was not relevant or germane to the facts of the case to undertake exercise even for a prima facie case about characteristics of Sohrabuddin and his involvement in various offences of serious nature and lodgment of 25 F.I.Rs. and meritorious service of respondent officer while granting bail. The basic issue before the learned Judge was nature of allegations levelled against respondent accused, involvement in the serious offences and likelihood of influencing witnesses at the stage of trial and even free and fair investigation which is yet not over and material in the form of statements of the witnesses which prima facie establishes presence of respondent accused at the scene of offence etc.

25. Considering the above aspects of the matter, this Court is of the opinion that as per law laid down in the cases of Daulatram (supra), Amarmani Tripathi (supra), Panchanan Mishra (supra), Ram Govind (supra), K. C. Sarkar (supra) and retraction of statement of witnesses and other aspects about contradiction, veracity, truthfulness or otherwise can be gone into at the stage of trial and any reliance upon such statements for grant of bail is unwarranted coupled with the fact about comparison of characteristics of a person killed in a fake encounter and one of the accused whose presence is established at the place of offences and insufficiency of conditions imposed and likelihood of tampering with evidence or witnesses by misusing the liberty and any further discussion on evidence may prejudice the case of prosecution as well as the defence.

36. Aforesaid decision of the learned Single Judge cancelling bail granted in favour of the aforesaid two accused-Dr. Narendra Amin and Dinesh M. N. were challenged before the Hon''ble Supreme Court and Hon''ble Supreme Court in the aforesaid decisions reported in 2008 AIR SCW 3677 : 2008 (3) GLR 2310 and 2008 AIR SCW 3268 dismissed the criminal appeal submitted by the respective

applicants and confirmed the order passed by the learned single Judge cancelling bail. On considering aforesaid two decisions, it appears that the Hon''ble Supreme Court has considered following aspects : (i) Role played by the respective accused in the episode; (ii) Factors to be considered while granting bail in serious offences; (3) Nature of the case which ought to have been considered (4) F.I.R. being C.R. No. I-5 of 2005 alleged to have been to divert attention of the fake encounter; (5) Likelihood of tampering evidence as accused are occupying high-ranking position in the State of Gujarat and State of Rajasthan.

37. It is required to be noted that while deciding aforesaid two cases, the Hon''ble Supreme Court has considered three facets : (1) prior to 26-11-2005; (2) dated 26-11-2005 and (3) post 26-11-2005 i.e. bringing Sohrabuddin from Hyderabad to Ahmedabad; killing Sohrabuddin on 26-11-2005 in fake encounter and death of Kausarbi and destroying evidence relating to her death. It also appears that the Hon''ble Supreme Court has considered statements of witnesses more particularly Nathubha Jadeja and his so-called retractions. Thus, considering decision of the learned single Judge cancelling bail of the aforesaid two accused and decisions of the Hon''ble Supreme Court in the case of Dr. Narendra Amin (supra) and Dinesh M. N. (supra), none of the applicants are required to be released on bail. Seriousness of gravity of charge is very important factor while considering grant of bail and that too in a serious case. In the present case charges are of murder, killing, destruction of evidence including dead body of Kausarbi. Assuming that against some of the accused allegations are with respect to conspiracy to destroy evidence of dead body of Kausarbi only, in that case also even such is very serious and grave charge. However, as stated above, it is not possible at present to bifurcate minutely case against respective accused individually. Aforesaid charges are extremely grave, all these and same are more aggravated in as much as all the accused are police officers including high-ranking officers and gravity of charges will be extremely serious when allegations against high-ranking officials are kidnapping, killings in fake encounter and thereafter killing eye-witness and destroying dead body of the said eye-witness.

38. Even there are allegations of tampering evidence if applicants are released on bail, considering their high position in the police department. There seems to be substance in such apprehension. Such an apprehension is well founded. Initially, complaint being C.R. No. I-5 of 2005 was lodged by making out false case against Sohrabuddin to divert fake encounter. Thereafter, investigation was carried out on the basis of such allegations in the said complaint. Kausarbi was not found. Subsequently, brother of Sohrabuddin approached Hon''ble Supreme Court making allegations with respect to fake encounter and disappearance of his sister-in-law Kausarbi. Investigation was handed over to Special Investigation Team (C.I.D.) Crimes. Even initially, whereabouts of Kausarbi was not known. However, subsequently, it was brought to the notice of the Hon''ble Supreme Court by way of third Action Taken Report after investigation by Special team

that Kausarbi has been killed and her dead body has been destroyed and disposed of at Village - Illol. This is how investigation was carried out initially, and subsequently, after Hon"ble Supreme Court intervened. Under the circumstances, the applicants do not deserve to be released on bail. At this stage, it is also required to be noted that even Rubabuddin brother of Sohrabuddin is also not satisfied with the investigation with respect to killing of Kausarbi and his application for further investigation u/s 173(8) of the Cr.P.C. is pending before the learned trial Court. (after all these applications were heard and kept for orders and before even order is pronounced, it is reported that the learned trial Court has accepted the application submitted by said Rubabuddin for further investigation u/s 173(8) of the Cr.P.C. and has directed Investigating Agency to hold further inquiry/investigation). Therefore, also the applicants are not required to be released on bail as there are all possibilities of tampering with further investigation.

39. Learned Advocate appearing on behalf of the respective applicants have made lengthy submissions on merits also, however, while considering applications for bail such detailed investigation on the merits of the case and/or appreciation of evidences in detail and making observation on merits at this stage is not justified and/or will not be proper. As such, same is impermissible. What is required to be considered at this stage is nature of accusations, seriousness of gravity of offences alleged, prima facie nature of supporting evidence; reasonable apprehension of tampering with the witness and prima facie satisfaction of the Court in support of the charge.

40. As stated above and looking to the statements of the respective witnesses named hereinabove, presence of each of the accused at appropriate stages have been established and proved. This Court is prima facie satisfied with respect to the accusations against respective applicants, and therefore, looking to the seriousness and gravity of charges and entire case right from abducting Sohrabuddin; bringing him from Hyderabad to Ahmedabad; keeping him in one farm, thereafter killing him in fake encounter on 26-11-2005, and thereafter, killing innocent lady Kausarbi wife of Sohrabuddin who was eye-witness to everything and destroying her dead body, all these applications deserve to be dismissed, and accordingly, they are dismissed. Rule discharged.