

**(2018) 01 SHI CK 0027**  
**In the High Court Of Himachal Pradesh**  
**Case No : 1519 of 2017**

Zahur Haidar Zaidi

APPELLANT

Vs

Central Bureau of Investigation

RESPONDENT

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**Date of Decision :** 19-01-2018

**Acts Referred:**

[Code of Criminal Procedure, 1973](#), [Section 173](#), [Section 439](#), [Section 161](#), [Section 154](#), [Section 176\(2\)](#) -  
Report of police officer o

**Citation :** (2018) 1 ILR 247 (HP)

**Hon'ble Judges :** Sandeep Sharma

**Bench :** Single Bench

**Advocate :** R.S. Cheema, Arshdeep Cheema, Dheeraj K. Vashisht, Nikhil Goel, Anshul Bansal

**Final Decision :** Dismissed

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## Judgement

1. Bail petitioner, Zahur Haidar Zaidi, who is at present in custody, has approached this Court by way of instant criminal miscellaneous petition

under Section 439 of the Code of Criminal Procedure, praying therein for grant of bail in FIR No. RC.9(S)/2017-SC.I/CBI/New Delhi dated

22.7.2017 under Sections 120B, 302, 330, 331, 348, 323, 326, 218, 195, 196 and 201 of the Indian Penal Code (hereinafter, "IPC") registered

at New Delhi by the Central Bureau of Investigation (hereinafter, "CBI").

2. Sequel to order dated 19.12.2017, CBI has filed a status report/reply, opposing therein prayer for grant of bail made on behalf of the bail

petitioner. Perusal of reply /status report suggests that FIR detailed hereinabove came to be registered against the bail petitioner as well as other

co-accused on the directions issued by Division Bench of this Court in CWPII No.

88 of 2017. Division Bench of this Court, while transferring investigation in FIR No. 97 of 2017 under Sections 302 and 376 IPC and Section 4 of Protection of Children from Sexual Offences Act (hereinafter, "POCSO Act"), also directed CBI to conduct investigation in FIR No. 101 of 2017 registered at Police Station, Kotkhai, District Shimla, Himachal Pradesh, relating to custodial death of one of the accused namely Suraj Singh arrested by police in connection with FIR No. 97 of 2017, relating to rape and murder of a minor girl in Halaila forests in District Shimla on 4.7.2017. The minor girl (given name of "Gudiya") after having attended her school at Government Senior Secondary School, Mahasu, left for her home at about 4.30 pm. Unfortunately, on the way to her home, she was allegedly raped and murdered by some unknown persons. Her body was found lying in Halaila forests near Mahasu at around 7.40 am on 6.7.2017. FIR No. 97 of 2017 came to be registered under Sections 302 and 376 IPC and Section 4 of POCSO Act at Police Station Kotkhai, District Shimla, Himachal Pradesh, against unknown persons. Since there was huge public outcry against aforesaid brutal act committed by unknown persons, and accused could not be arrested even after four days of the alleged incident, Director-General of Police, Himachal Pradesh vide letter dated 10.7.2017 constituted a Special Investigation Team (in short, "SIT") headed by the bail petitioner, who was the then Inspector-General of Police (Southern Range). Additional Superintendent of Police (Rural), Shimla Bhajan Dev Negi Deputy Superintendent of Police Manoj Joshi and SI/SHO Rajinder Singh were also the members of the aforesaid SIT, whereas D.W. Negi, the then Superintendent of Police, Shimla, was entrusted with responsibility of timely and sustained investigation of the case, same being in his jurisdiction. After formation of SIT, bail petitioner, D.W. Negi and Manoj Joshi alongwith other co-accused conducted investigation of the case and in this regard, made inquiries from several people in and around Halaila forests. As per case of the prosecution, bail petitioner, Manoj Joshi and other accused entered into criminal conspiracy to falsely implicate deceased Suraj Singh, who subsequently died in custody and others, in FIR No. 97 of 2017, relating to rape and murder of minor girl on 4.7.2017 in Halaila forests. In pursuance to aforesaid criminal conspiracy, SIT arrested Suraj

Singh and four others on 13.7.2017. In pursuance to said criminal conspiracy, a team of police officers/officials consisting of Deputy

Superintendent of Police Manoj Joshi, SI Rajinder Singh, ASI Deep Chand Sharma, HC Rafee Mohammed, HHC Mohan Lal, HHC Surat Singh

and Constable Ranjeet Sateta, tortured Suraj in order to extract confession of the crime and in this process, caused bodily injuries intentionally on

the person of Suraj in the police custody continuously from 13.7.2017 till his death in the intervening night of 18th and 19th July 2017, which

injuries were sufficient in the ordinary course of nature to cause his death. On 13.7.2017, bail petitioner left Police Station Kotkhai and

participated in a press conference held by Director-General of Police, Himachal Pradesh at Shimla. In the press conference, Director-General of

Police claimed that the police had solved the case and arrested five accused in connection with the case relating to rape and murder of the minor

girl on 4.7.2017. Since public at large was not satisfied and convinced with the story put forth by the police in the press conference held on

13.7.2017, Director-General of Police, Himachal Pradesh sent a communication to the Secretary (Home) to the Government of Himachal Pradesh

to get the matter investigated from CBI. On 14.7.2017, Secretary (Home) to the Government of Himachal Pradesh sent a communication to the

Secretary Personnel to the Government of India, requesting therein to issue direction to CBI to take over the investigation of the case relating to

rape and murder of minor girl on 4.7.2017.

3. On the intervening night of 18th and 19th July, 2017, members of SIT in pursuance to criminal conspiracy tortured accused Suraj in custody to

extract confession of crime and in this process caused bodily injuries to him. During the intervening night of 18th and 19th July, 2017, accused

Suraj died in custody due to torture by the police officials namely Deputy Superintendent of Police Manoj Joshi, SI Rajinder Singh, ASI Deep

Chand Sharma, HC Rafee Mohammed, HHC Mohan Lal, HHC Surat Singh and Constable Ranjeet Sateta, tortured Suraj. Immediately after

death of Suraj, Dy.SP Manoj Joshi after issuing necessary directions to other police personnel present in the Police Station Kotkhai, left for

Shimla. While leaving Police Station, Manoj Joshi told SHO Rajinder Singh that incident will be given colour of fight between accused Suraj and

other accused Rajinder alias Raju. As per prosecution, Dy.SP Manoj Joshi, at the first instance met D.W. Negi, the then Superintendent of Police, Shimla and discussed the matter with regard to custodial death of Suraj and thereafter both of them went to the residence of bail petitioner, the then Inspector-General of Police, who was heading SIT, in late night hours of 18.7.2017, where they further conspired to lodge FIR on account of death of Suraj, knowing fully well that Suraj died due to custodial torture. In furtherance to criminal conspiracy hatched by aforesaid members of SIT, Dy.SP Manoj Joshi made a call to Station House Officer Rajinder Singh from the residence of the bail petitioner to lodge an FIR (later registered as FIR No. 101 of 2017) against arrested person namely Rajinder alias Raju, under Section 302 IPC, stating wrong facts of alleged killing of Suraj in police lockup of Police Station, Kotkhai. As per investigation conducted by the prosecution, Dy.SP Manoj Joshi after having met bail petitioner and Superintendent of Police, Shimla, returned back to Police Station Kotkhai early in the morning of 19.7.2017 and conducted inspection of police lockup before visit of Illaqua Magistrate, who was supposed to conduct magisterial inquiry into the matter under Section 176(2) of the Code of Criminal Procedure (hereinafter, "CrPC"). Above named police officers also pressurized Constable Dinesh (Sentry Duty) to tow the line of seniors and forced him to sign the complaint containing false/concocted story so as to make it part of FIR No. 101 of 2017 but the fact remains that Constable Dinesh did not sign said complaint at that time. Subsequently, bail petitioner, pursuant to orders issued by Director-General of Police, visited Police Station Kotkhai to conduct a fact-finding inquiry into the death of Suraj in police custody. During said inquiry, bail petitioner examined Sentry Duty Constable Dinesh, who disclosed the truth by giving entire sequence of events relating to death of Suraj during custodial torture. Allegedly, the bail petitioner recorded the statement of Sentry Duty Constable Dinesh on his mobile phone but did not report the same to the Director-General of Police in his report and despite having knowledge with regard to the real facts, supported the version of false/concocted FIR that Suraj was killed in police lockup by Rajinder alias Raju. As per prosecution, on the direction of bail petitioner, a complaint under Section 154 CrPC was got signed from Sentry Duty Constable Dinesh by MHC Vipin Kumar and Constable Mukesh Kumar.

Bail petitioner after having conducted inspection submitted his report vide letter dated 20.7.2017, annexed with charge sheet as D-73, disclosing

therein that in the matter of custodial death, FIR No. 101 of 2017 under Section 302 IPC has been registered at Police Station Kotkhai on the

statement of Constable Dinesh. In his aforesaid communication, bail petitioner also stated that he questioned MHC Vipan Kumar No. 952,

Constable Sudhir Rangta No. 1556 and Constable Dinesh Kumar No. 608 (Sentry Duty between 9 am to 12 midnight). He further stated that

inquiry was disrupted due to law and order breakdown that followed at Police Station Kotkhai.

4. On 19.7.2017, Division Bench of this Court, acceding to the request made on behalf of the State and taking note of the fact that one of the

accused died in custody and Police Station Kotkhai was ransacked by mob, entrusted investigation of FIR No. 97 of 2017 dated 6.7.2017,

relating to rape and murder of minor girl and FIR No. 101 of 2017 dated 19.7.2017 registered against accused namely Rajinder alias Raju, under

Section 302 IPC, to the CBI. Pursuant to aforesaid direction issued by Division Bench of this Court, CBI registered fresh FIR RC No.

9(S)/2017-SC.I/CBI/New Delhi dated 22.7.2017 in connection with custodial death of Suraj. CBI arrested bail petitioner as well as other police

personnel namely Manoj Joshi, Rajinder Singh, Deep Chand Sharma, Mohan Lal, Rafee Mohammed, Surat Singh and Ranjeet Singh Steta. Other

accused namely D.W. Negi was arrested on 16.11.2017 and at present they are in judicial custody. After completion of investigation, CBI has

presented Challan /charge sheet under Section 173 CrPC against the bail petitioner and other police personnel named herein above. Bail petitioner

has been challaned under Section 120B read with Sections 302, 330, 331, 348, 323, 326, 218, 195, 196 and 201 IPC.

5. By way of bail application No. 23-S/22 of 2017, bail petitioner approached learned Special Judge (CBI) under Section 439 CrPC, seeking

therein bail during pendency of the trial, which came to be rejected vide order dated 28.10.2017.

6. Mr. R.S. Cheema, learned senior counsel duly assisted by Mr. Arshdeep Cheema and Mr. Dheeraj K. Vashisht, Advocates, while praying for

grant of bail in favour of bail petitioner, strenuously argued that bare perusal of charge sheet, copy whereof is also made available to the Court,

suggests that no case, if any, is made out against bail petitioner under Sections 120B, 302, 330, 331, 348, 323 and 326 IPC, as such, there is no

occasion to keep the bail petitioner in custody for indefinite period. Learned Senior counsel further contended that the bail petitioner has been

falsely implicated in the case and he has no role to play, if any, in the custodial death of Suraj, who allegedly died in the police custody. While

inviting attention of this Court to order dated 10.7.2017 issued by Director-General of Police constituting Special Investigation Team to investigate

FIR No. 97 of 2017 registered under Sections 302 and 376 IPC and Section 4 of POCSO Act, dated 6.7.2017, learned senior counsel

contended that SIT consisting of three officers namely Bhajan Dev Negi, Additional Superintendent of Police (Rural), Shimla, Manoj Joshi, Sub

Divisional Police Officer (SDPO), Theog, District Shimla and SI Rajender Singh, SHO Police Station Kotkhai, District Shimla was constituted,

and as such, it can not be said that bail petitioner was part of SIT constituted by Director-General to investigate FIR detailed herein above.

Learned Senior counsel while inviting attention of this Court to statements of various prosecution witnesses recorded under Section 161 CrPC,

contended that at no point of time, bail petitioner was directly involved in the investigation conducted by the members of SIT. While referring to the

statements of accused, who came to be arrested at first instance by State police in connection with FIR No. 97 of 2017, learned senior counsel

made an endeavour to persuade this Court to agree with his contention that torture, if any, of aforesaid accused was done by other members of

SIT, especially Additional Superintendent of Police, Bhajan Dev Negi, PW-9, who has been made prosecution witness. Learned Senior counsel

further contended that none of the prosecution witnesses named in charge sheet filed under Section 173 CrPC has stated anything specific with

regard to torture, if any, done by the bail petitioner, who had no direct control, if any, over the SIT constituted by Director-General of Police.

7. Learned Senior counsel further contended that it is a matter of record that on 13.7.2017, a press conference was held by Director-General of

Police and not by the bail petitioner as is being projected by the CBI. Learned Senior counsel further contended that it is also a matter of record

that with effect from 14.7.2017 till 17.7.2017, bail petitioner was on leave, which was sanctioned by the then Director-General of Police, HP.

Learned Senior counsel, while making this Court to peruse charge sheet, contended that unfortunate incident, wherein person namely Suraj died

due to torture allegedly done by other police officers, occurred/happened during the intervening night of 18th and 19th July 2017 at Police Station

Kotkhai. Bail petitioner was not present at the time of death of Suraj, as is evident from chargesheet submitted by CBI, as such, it is not

understood how he could be charged under Section 120B read with Section 302 IPC, for criminal conspiracy and murder of Suraj. Learned

Senior counsel further contended that as per the story of prosecution itself, bail petitioner went to Kotkhai on 19.7.2017 i.e. after death of Suraj.

He further submitted that record itself reveals that bail petitioner after reaching Police Station Kotkhai conducted necessary investigation and also

recorded statement of Constable Dinesh Kumar, who was on Sentry Duty at the relevant time, on his mobile phone but since the mob Gheraoed

the Police Station, inquiry could not be completed.

8. Learned Senior counsel further contended that it is also apparent from the record that FIR No. 101 of 2017 had already come into existence

prior to visit of bail petitioner as such, by no stretch of imagination, it can be said /concluded that bail petitioner entered into criminal conspiracy to

register false FIR against accused Rajinder alias Raju. Learned Senior counsel further contended that there is no evidence on record to substantiate

the charge of CBI that in furtherance of criminal conspiracy, bail petitioner alongwith other SIT members, dishonestly and fraudulently fabricated

evidence and registered FIR No. 101 of 2017 at Police Station, Kotkhai on false/concocted facts against Rajinder alias Raju under Section 302

IPC and as such, no case, if any, is made out against bail petitioner under Sections 120B and 302 IPC. Lastly Mr. Cheema, learned senior

counsel, contended that though there is no evidence at all against bail petitioner, suggestive of the fact that he was involved in the crime alleged to

have been committed by him but even if for the sake of arguments, it is admitted that he was also involved in the case, offence under Sections 201

and 218 IPC is made out against him, which is a bailable offence.

9. Learned Senior counsel, while placing reliance upon judgments of Hon''ble Apex Court in Gurbaksh Singh Sibbia vs. State of Punjab, (1980) 2

SCC 565 (Paras 4 and 27), Bhadresh Bipinbhai Sheth vs. State of Gujarat,

(2016) 1 SCC 152 (paras 21 and 22), Sanjay Chandra v. CBI, (2012) 1 SCC 40 (paras 14, 25 and 26), Sidhharam S. Mhetre v. State of Maharashtra, (2011) 1 SCC 694, forcibly contended that it is well settled by now that gravity alone can not be a decisive ground to deny bail, rather, competing factors are required to be balanced by Court while exercising its discretion. Learned Senior counsel further argued that it has been repeatedly held by Hon''ble Apex Court that object of bail is to secure appearance of accused at the time of trial by reasonable amount of bail and object of bail is neither punitive nor preventive. While specifically inviting attention of this Court to judgment rendered by Constitutional Bench in Gurbaksh Singh Sibbia's case (supra), learned senior counsel contended that object of bail is to secure attendance of accused in trial and in this regard proper test to be applied in solution of question whether bail should be granted or refused is whether it is probable whether a party will appear to take its trial. He further contended that it has been repeatedly held in judgments/pronouncements by Hon''ble Apex Court that normal rule is bail and not jail. Learned Senior counsel also contended that bail petitioner is a reputed police officer belonging to IPS cadre, who prior to lodging of case, had been rendering services to State as Inspector-General of Police (Southern Range) and he has an unblemished service career to his credit.

10. Learned Senior counsel further contended that no material is placed on record by CBI, suggestive of the fact that in the event of petitioner being enlarged on bail, he may flee from justice and it shall be difficult for the investigating agency to secure his presence during trial. Learned Senior counsel also placed reliance upon Esher Singh vs State of AP, (2004) 11 SCC 585, State of Kerala vs. P. Sugathan, (2000) 8 SCC 203 and Kehar Singh vs. State, (1988) 3 SCC 609, to suggest that as in all other criminal offences, prosecution is required to discharge its onus to prove its case against accused beyond all reasonable doubt as far as criminal conspiracy is concerned. Learned Senior counsel further contended that offence of criminal conspiracy has its foundation in an agreement to commit an offence. A conspiracy consists not merely in the intention of two or more minds, but in the agreement of two or more to do a lawful act by unlawful means. While making this Court to travel through aforesaid

judgments, learned senior counsel made an endeavour to persuade this Court to agree with his contention that the "essence" of a conspiracy "is an agreement to commit an unlawful act" and such agreement can be proved by direct evidence or circumstantial evidence or by both and such circumstances prevailing before, during and after the occurrence have to be considered to decide about complicity of accused. While applying ratio as laid down in aforesaid cases to the case at hand, learned senior counsel made a serious effort to demonstrate that there is no evidence at all adduced on record by prosecution suggestive of the fact that there was prior meeting of minds between the alleged conspirators for the intended object of committing an illegal act or an act which is not legal by illegal means.

11. Mr. R.S. Cheema, Learned Senior counsel further contended that there is not even an iota of evidence suggestive of the fact that bail petitioner

at any point of time gave beatings or tortured Suraj, who died in police custody at Police Station Kotkhai and as such, it cannot be adduced that

he conspired with the other police officials to lodge false case against accused named in FIR No. 97/2017. Lastly, learned senior counsel

contended that irreparable loss would be caused to the bail petitioner in case he is allowed to incarcerate in jail for indefinite period. While

specifically referring to the judgment rendered by Hon"ble Apex Court in Sanjay Chandra vs. CBI, learned senior counsel contended that right to

bail is not to be denied merely because sentiments of the community are against the accused. The primary purposes of bail in a criminal case are to

relieve the accused of imprisonment, to relieve the State of the burden of keeping him pending the trial, and at the same time, to keep the accused

constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in

attendance thereon whenever his presence is required. While concluding his arguments, learned senior counsel contended that there are more than

seventy (70) prosecution witnesses intended to be examined by prosecution and as such, considerable time would be consumed in conclusion of

trial and during this period, freedom of bail petitioner can not be allowed to be curtailed as such, bail petitioner is entitled to be released on bail.

12. Though, Mr. R.S. Cheema, learned senior counsel, while placing reliance upon Satyajit B. Desai vs. State of Gujarat, (2014)14 SCC 434,

Manubhai Ratilal Patel v. State of Gujarat, 2013 (1) SCC 314 and Surinder Kumar vs. State of Punjab? (1999) SCC (Cri) 33, made an

endeavour to advance his arguments qua the order of remand repeatedly issued / passed by Court below but this Court is not inclined to look into

that aspect of the matter because remand orders issued by Special Judge, CBI were neither laid challenge nor are these subject matter of the

present petition, as such, this Court sees no occasion to deal with the aforesaid aspect of the matter raised by the learned senior counsel.

13. While refuting aforesaid submissions having been made by the learned senior counsel and opposing the prayer made on behalf of the bail

petitioner for grant of bail, Mr. Nikhil Goel learned Advocate duly assisted by Mr. Anshul Bansal, learned Standing Counsel for CBI, contended

that keeping in view the gravity of offence allegedly committed by the bail petitioner, he is not entitled to be released /enlarged on bail, rather he

needs to be dealt with severely. Mr. Nikhil Goel strenuously argued that bare perusal of material adduced on record by prosecution in support of

charge sheet, discloses prima facie case against bail petitioner as such, he does not deserve to be shown any leniency as is being prayed by the

learned senior counsel representing the bail petitioner. Mr. Nikhil Goel, learned counsel representing CBI, further contended that seriousness of

offence allegedly committed by bail petitioner and possible punishment, which may be awarded to him on the basis of evidence collected on record

by investigating agency, is clearly made out from the prima facie case set up by the prosecution. He further contended that conduct of accused,

which is quite apparent and evident from his continuous participation in the investigation entrusted to SIT constituted under his leadership clearly

suggests that in the event of bail petitioner being enlarged on bail, he shall influence and tamper with the prosecution witness so as to dissuade them

from deposing against him.

14. Learned counsel representing CBI further contended that the investigation in another case of rape and murder is still underway and in view of

repeated attempts having been made by bail petitioner and other members of SIT to falsely implicate five accused in rape and murder case, CBI

has already sought permission from Special Judge (CBI) to investigate bail petitioner in that case also as such releasing of bail petitioner at this

stage may not be in the interest of justice. Learned counsel while referring to the reasons cited by the prosecution for letting off persons cited as

accused by SIT headed by bail petitioner in rape and murder case of "Gudiya", further contended that role played by bail petitioner in the

investigation of FIR No. 97 of 2017 into the rape and murder of "Gudiya", needs to be investigated and bail petitioner on being enlarged on bail,

may make efforts to destroy the evidence, which may have been collected against him in another case i.e. FIR No. 97 of 2017.

15. Learned counsel for CBI while referring to oral and documentary evidence forming part of charge sheet further contended that the bail

petitioner solely with a view to earn a name for himself, concocted false story in connivance with other members of SIT and falsely implicated five

innocent persons including Suraj, who subsequently died in police custody. Learned counsel while referring to the documents available on record

contended that SIT was constituted by Director-General of Police on 10.7.2017 comprising of three officers but it was categorically mentioned in

the order that the team will be closely monitored and investigation shall be supervised by bail petitioner, the then Inspector-General of Police

(Southern Range), Shimla. He further contended that as per aforesaid communication, bail petitioner was under obligation to intimate daily

progress of case to the Director-General of Police. While referring to another communication available on record, dated 12.7.2017, learned

counsel appearing for CBI contended that at the behest/order of bail petitioner, subsequently three officers namely Rattan Singh Negi, Dy.SP

(Traffic), SI Dharam Sen Negi, SHO PS West and ASI Rajiv Kumar came to be associated with the SIT constituted by the Director-General of

Police, Himachal Pradesh.

16. While referring to the statements of PW-7 Ashish Chauhan, PW-8 SI/SHO Babu Ram and PW-9 ASP Bhajan Dev Negi, learned counsel

contended that the bail petitioner physically tortured persons falsely implicated in the case and he repeatedly issued directions to the police

officials/members of SIT to extract confession from the accused. Learned counsel further contended that on 13.7.2017, SIT headed by bail

petitioner, who without making any formal arrest of persons named in FIR No. 97 of 2017 held a press conference alongwith Director-General of

Police and claimed that SIT has solved the case and arrested five persons in connection with rape and murder of the girl named "Gudiya", whereas

in fact till 13.7.2017, there was no evidence available on record against accused named in FIR No. 97 of 2017. While referring to the material

forming part of Challan filed under Section 173 CrPC, learned counsel contended that even after 13.7.2017, whereafter bail petitioner proceeded

on leave till 18.7.2017, he kept on directing members of SIT to extract confession from the accused. While referring to statement of PW-14, the

then Director-General of Police, learned counsel for CBI, contended that on 14.7.2017 intimation was sent to State by Director- General of Police

to get the investigation done from CBI, whereafter on 14.7.2017, Principal Secretary (Home) sent a communication to the Government of India,

requesting therein to direct CBI to take up the investigation of the matter, but despite that, bail petitioner on 18.7.2017 directed members of SIT,

as has been categorically stated by PW-9, Bhajan Dev Negi, Additional Superintendent of Police, to extract confession from the accused.

17. While referring to the statement of PW-70, Sentry Duty Constable Dinesh, learned counsel representing CBI contended that the bail petitioner

despite having acquired knowledge with regard to the fact that Suraj was not killed by co-accused Rajinder alias Raju but he was killed by police

officials during interrogation, compelled Sentry Constable, who was on duty at the relevant time, to sign on Rukka so that false FIR is registered

against Rajinder alias Raju. He further stated that as per statement of PW-70, his statement was recorded by bail petitioner in his mobile phone,

which fact came to be later substantiated by the report procured by CBI after confiscation of mobile phone of the bail petitioner. Mr. Nikhil Goel,

learned counsel representing CBI, further contended that the communication/ report sent to Director-General of Police by bail petitioner nowhere

suggests that factum with regard to statement given by Dinesh (PW-70) was ever made known to the Director-General of Police, rather, the bail

petitioner recommended his suspension for dereliction of duty. While referring to the statement of PW-14, Director-General of Police, learned

counsel appearing for CBI contended that the bail petitioner met Director-General of Police on 20.7.2017 but did not inform him with regard to

version put forth by Sentry Dinesh. While referring to the statement of PW-5 Atul Verma, ADG (Law and Order), Himachal Pradesh, it is

contended on behalf of CBI that one week prior to death of Suraj, who died during the intervening night of 18th and 19th July, 2017, there was

discussion in the Department about transfer of investigation of "Gudiya" case to CBI, as such, there was no occasion at all for SIT headed by bail

petitioner to interrogate Suraj on the intervening night of 18th and 19th July, 2017. Similarly, PW-8 Babu Ram, a police official, also stated that on

16.7.2017, he was stopped from further investigating "Gudiya" case on the pretext that matter has been transferred to CBI.

18. Learned counsel representing CBI, invited attention of this Court to the statement of PW-59, Soumya Sambasivan, the then Superintendent of

Police, Shimla, who categorically stated that petitioner was pressurizing her for early disposal of dead body of Suraj, however, she did not do so

because she was instructed to the contrary by CBI officials. While referring to the medical evidence adduced on record by investigating agency,

learned counsel contended that person namely Suraj was given merciless beatings solely with a view to extract confession and he died due to the

atrocities inflicted by the members of SIT, on the directions of bail petitioner, who repeatedly asked members of SIT to extract confession from the

accused named in FIR No. 97 of 2017.

19. Lastly learned counsel for CBI invited attention of this Court to the scientific evidence adduced on record by CBI, wherein all the accused

named in FIR No. 97 of 2017 were found to be innocent. While referring to the reports referred to herein above, learned counsel for CBI

contended that it is apparent from the reports that accused named in FIR were falsely implicated and they were tortured repeatedly by SIT

including bail petitioner. He further contended that even in the present case of custodial death, CBI has carried out further investigation and a

supplementary Challan is expected to be filed shortly. While praying before this Court for rejection of the present bail application, learned counsel

appearing for CBI contended that bail petitioner is an influential person and in the past and after transfer of investigation has attempted to influence

the then Superintendent of Police, Shimla for destruction of evidence. He further contended that since most of the material witnesses are from the

Police Department, release of bail petitioner has a greater possibility of influencing trial of the case. Mr. Nikhil Goel, learned counsel while placing

reliance upon judgment passed by Hon''ble Apex Court in titled Virupakshappa Gouda and another vs The State Of Karnataka and another,

(2017) 5 SCC 406, contended that Hon''ble Apex Court has specifically dealt with the parameters laid down by it in Sanjay Chandra's case, and

has laid down new parameters for grant of bail. While placing reliance upon aforesaid judgment, learned counsel contended that this court can not

lose sight of the fact that the present case is that of custodial death, which occurred pursuant to conspiracy hatched by highest placed police

officers, who otherwise are expected to protect life and liberty of its citizens and as such, case at hand needs to be dealt with carefully by this

Court, while considering prayer for grant of bail having been made on behalf of the bail petitioner.

20. I have heard the learned counsel for the parties and gone through the record carefully.

21. Before examining and evaluating correctness of the submission having been made by the learned counsel representing the parties in light of the

pronouncements of Hon''ble Apex Court occupying the field, it may be noticed that since Division Bench of this Court, in which undersigned is one

of the members, after having noticed request made on behalf of the State and taking note of the fact that one of the accused died in police custody,

had ordered handing over of the investigation in FIR No. 97 of 2017 relating to rape and murder of "Gudiya" and FIR No. 101 of 2017 relating to

custodial death of accused, Suraj, this Court specifically asked the learned counsel representing the parties, whether they have any reservations

regarding hearing of the present bail petition by this Bench, to which Mr. R.S. Cheema, learned senior counsel representing the bail petitioner

categorically stated before this Court that the bail petitioner has no objection to the hearing of the present bail application by this Bench, as such,

this Court proceeded to hear the present bail application preferred on behalf of bail petitioner, who subsequently came to be named as an accused

in FIR lodged by CBI pursuant to the directions issued by this Court.

22. Though, perusal of communication dated 10.7.2017, suggests that the then Director-General of Police, constituted a SIT of three police

officers namely Bhajan Dev Negi, Additional Superintendent of Police, Manoj Joshi, SDPO and SI Rajender Singh, SHO, Police Station,

Kotkhai, to investigate FIR No. 97 of 2017, dated 6.7.2017 registered under Sections 302 and 376 IPC and Section 4 of POCSO Act involving

rape and murder of minor girl, but it was categorically mentioned in the letter referred to herein above that the team named herein above, shall be

closely monitored and its investigation shall be supervised by the bail petitioner, the then Inspector-General of Police (Southern Range), Shimla.

Communication further suggests that Superintendent of Police, Shimla was also made responsible for timely and sustained investigation of the case

being in his jurisdiction. Most importantly, there is specific mention in the letter that Inspector-General of Police (Southern Range)(bail

petitioner)/Superintendent of Police, Shimla shall intimate the daily progress of the case to the Director-General of Police. This court after having

perused aforesaid communication finds no force in the arguments of learned senior counsel representing bail petitioner that the bail petitioner was

not associated with the SIT constituted by Director-General of Police to investigate FIR as mentioned herein above, rather, more onerous

responsibility was cast upon the bail petitioner to monitor and supervise the investigation conducted by the SIT as referred to herein above.

23. Similarly, communication dated 12.7.2017, signed by bail petitioner, clearly suggests that three other officers as named in the communication

were ordered to be associated with the SIT by bail petitioner in his capacity as its head.

24. Another contention having been put forth by the learned senior counsel that at no point of time, bail petitioner was directly involved in the

investigation conducted by SIT is also bound to be rejected for the reason that apart from aforesaid communication taken into consideration by this

Court herein above, number of official witnesses, who remained associated with the SIT have categorically stated in their statements recorded by

CBI that the bail petitioner remained closely associated with the investigation of rape and murder case (Gudiya case). Material adduced on record

by the prosecution further suggests that the bail petitioner after having received order dated 10.7.2017, from the Director- General of Police, not

only monitored investigation, rather participated in day-to-day investigation of rape and murder case (FIR No. 97 of 2017). It is clearly borne out

from record that on 18.7.2017, bail petitioner directly came from Police Station Kotkhai to participate in the press conference held by Director-

General of Police, who on the instructions of bail petitioner claimed before the media that they have solved the case (Gudiya case) and have

arrested five persons. As such, this Court is not persuaded at all to agree with the contention of learned senior counsel that at no point of time, bail

petitioner participated in the interrogation of accused arrested in connection with FIR No. 97 of 2017. Though, during arguments, learned senior

counsel with a view to persuade this Court to agree with his contention that at no point of time, bail petitioner tortured accused arrested in

connection with FIR No. 97 of 2017, made specific reference to the statements made by certain prosecution witnesses but this Court, after having

perused statements made by prosecution witnesses, is not inclined to accept aforesaid submission of learned senior counsel. It has specifically

come in the statements of accused arrested in connection with FIR No. 97 of 2017 as well as other official witnesses, who at the relevant time

remained associated with the investigation of the case that bail petitioner not only tortured accused during investigation rather he repeatedly

instructed/directed members of SIT to extract confession from the accused named in FIR No. 97 of 2017. One of the prosecution witnesses, who

was member of SIT i.e. PW-9 Bhajan Dev Negi has categorically stated that the bail petitioner after having resumed duties on 18.7.2017, directed

Manoj Joshi, Deputy Superintendent of Police in his presence to extract confession from the accused. As per the case set up by the bail petitioner

himself in his bail application, he proceeded on leave on 14.7.2017 for four days and he thereafter returned to Shimla on 18.7.2017. It has

specifically come in the statement of PW-9, as has been taken note herein above that on 18.7.2017, bail petitioner directed Manoj Joshi, Deputy

Superintendent of Police, member of SIT to extract confession from the accused lodged in police lockup at Police Station Kotkhai.

25. At this stage, it is important to take note of the fact that the Director-General of Police vide communication dated 14.7.2017 had already

recommended for CBI probe and State after having received communication from Director-General of Police had further sent a communication

dated 14.7.2017 to Secretary Personnel, Government of India, requesting therein for issuing direction to CBI to take over investigation in FIR No.

97 of 2017. There is ample evidence adduced on record of prosecution, suggestive of the fact that it was very much in the knowledge of bail

petitioner that efforts are being made by State to hand over investigation to CBI. PW-5, Atul Verma, who at the relevant point in time was serving

as ADG (Law & Order), HP has categorically stated that one week prior to death of Suraj, there was discussion in the Department qua transfer of

investigation of Gudiya case to CBI. Similarly, PW-8 Babu Ram also stated that on 16.7.2017, he was stopped from further investigation of

Gudiya case on the pretext that matter has already been transferred to CBI.

26. There is yet another aspect of the matter, which clearly suggests that at the time of holding of press conference by Director-General of Police

on 18.7.2017, no formal arrest was made by SIT and in a hot haste, press conference was arranged at Shimla making therein claim that police has

solved Gudiya case but the evidence adduced on record by the CBI at this stage suggests that by that time, accused arrested in FIR No. 97 of

2017 had not confessed their guilt, rather one of the accused Rajinder alias Raju, who was subsequently named in FIR No. 101 of 2017, lodged

at Police Station, in connection with custodial death of Suraj, categorically stated that he had told bail petitioner during interrogation that he has

consented to every kind of scientific tests and only after that he should be subjected to custodial interrogation but despite that bail petitioner

instructed his officers to extract confession from him. Though this Court, after having perused evidence adduced on record by prosecution is not

inclined to agree with the contention of learned senior counsel that no torture of the deceased Suraj was done in police custody by the bail

petitioner but, even if for the sake of arguments, proposition as put forth by learned senior counsel is accepted, it is difficult to accept that bail

petitioner had no role to play in the custodial death of Suraj. It is quite apparent / evident from the record that person namely Suraj, who was in

police lockup was taken upstairs by the police officials namely Manoj Joshi and others for interrogation. During interrogation, Suraj became

unconscious and unfortunately he was declared dead by the doctors at CHC Kotkhai. Immediately after alleged incident, Manoj Joshi, Deputy

Superintendent of Police rushed to Shimla and contacted D.W. Negi, the then Superintendent of Police, Shimla and thereafter they both went to

the official residence of bail petitioner at 1.30 am on the intervening night of 18th and 19th July, 2017. Material available on record further suggests

that from the residence of bail petitioner, Deputy Superintendent of Police Manoj Joshi made a call to Rajender Singh, Station House Officer, Police Station, Kotkhai to lodge FIR with regard to death of Suraj in police lock up by stating that he was killed by co-accused Rajinder alias Raju in the police lockup. On 20.7.2017, bail petitioner visited Police Station, Kotkhai to inquire into custodial death of accused namely Suraj. During investigation, Constable Dinesh, who was on sentry duty at the relevant time categorically informed him that accused Suraj died during interrogation by the members of SIT. Aforesaid conversation was recorded by bail petitioner in his mobile phone, as has been also stated by learned senior counsel representing bail petitioner. It has specifically come in the statement of PW-70, Constable Dinesh that he had disclosed true facts to the bail petitioner and he had recorded his statement in his mobile phone. It has also come in the statement of PW-70 Constable Dinesh, that though he was repeatedly pressurized by staff present in the Police Station Kotkhai to sign Rukka under Section 154 CrPC but he refused to do so however, later, on the askance of bail petitioner, MHC Mukesh got his signatures on Rukka, on the basis of which FIR was already registered by Station House Officer, Rajender Singh at the instance of Deputy Superintendent of Police Manoj Joshi, who had told everybody present in the Police Station Kotkhai that he has discussed the matter with the bail petitioner and Superintendent of Police Shimla. Mr. R.S. Cheema, learned senior counsel, while inviting attention of this Court to the conversation recorded by bail petitioner during his interrogation, contended that bare reading of the transcription of the phone recording made available to this Court, suggests that every effort was put in by the bail petitioner to extract truth but inquiry could not be completed by bail petitioner on account of protest/ agitation by mob gathered outside Police Station, Kotkhai, which subsequently also made an attempt to set the Police Station on fire. This Court is not convinced with the aforesaid argument of learned senior counsel because bail petitioner even after having recorded version put forth by PW-70 Constable Dinesh Kumar, who had categorically stated that accused Suraj was not killed by co-accused Rajinder alias Raju, rather he died during interrogation by police officials, failed to report to Director-General of Police with regard to the statement having been made by PW-70. Perusal of document, D-73, clearly

suggests that there is no mention with regard to the statement having been made by Constable Dinesh Kumar, which was also recorded by bail

petitioner in his mobile phone, rather, bail petitioner reported to the Director-General of Police that in the matter of custodial death FIR No. 101 of

2017 under Section 302 IPC has been registered at Police Station Kotkhai on the statement of PW-70 Constable Dinesh. He further stated that

he also questioned MHC Vipan No. 952, Sudhir Rangta No. 1556 and Constable Dinesh Kumar No. 608 (Sentry Duty between 9 am to 12 mid

night). Bail petitioner also stated in the report referred to herein above that inquiry was disrupted due to law and order breakdown that followed at

Police Station, Kotkhai. Interestingly, bail petitioner in his communication addressed to Director-General of Police stated that for the above lapse,

SI Rajinder Singh, Head Constable Vipan Kumar and Constable Dinesh Kumar No. 608, of Police Station Kotkhai have been placed under

suspension by Superintendent of Police, Shimla and shifted to Police Lines, Kaithu. Even if it is presumed and concluded that at no point of time,

bail petitioner tortured accused arrested in connection with FIR No. 97 of 2017 and at no point of time, he had directed other members of SIT to

extract confession from accused, there is no explanation on behalf of bail petitioner that what prevented him from taking corrective measures to get

FIR No. 101 of 2017 cancelled from competent court of law after having recorded version put forth by PW-70, who in no uncertain terms

disclosed/ stated before him that accused Suraj died during interrogation by police officials. Even if arguments advanced by learned senior counsel

that since inquiry was disrupted by mob gathered outside the Police Station Kotkhai, is accepted, there appears to be no attempt on the part of

bail petitioner to apprise Director- General of Police with regard to disclosure made by PW-70, Constable Dinesh Kumar, rather, in his report, as

has been taken note above, he categorically stated to Director-General of Police that FIR No. 101 of 2017 has been registered with regard to

custodial death on the complaint of Constable Dinesh Kumar, who had actually reported to the bail petitioner that Suraj has not died due to fight, if

any, between co-accused Rajinder alias Raju and deceased, rather he died during interrogation conducted on the first floor of Police Station

Kotkhai by investigating team. It has categorically come in the statement of Director-General of Police, PW-14 that at no point of time, bail

petitioner brought to his notice the fact with regard to statement, if any, made by PW-70 rather despite repeated communications, bail petitioner

failed to furnish report with regard to custodial death. After having carefully noticed aforesaid contention of bail petitioner, there appears to be

considerable force in the case of prosecution that there was prior meeting of minds between bail petitioner, Deputy Superintendent of Police

Manoj Joshi and D.W. Negi, the then Superintendent of Police, Shimla, who at 1.30 am, on the intervening night of 18th and 19th July, 2017,

directed Station House Officer, Police Station Kotkhai Rajender Singh to lodge FIR, naming therein Rajinder alias Raju as accused. During

arguments having been made by learned senior counsel representing the petitioner, it was argued that bail petitioner made serious efforts to extract

truth from the police personnel present in the Police Station on 20.7.2017 and statement made by PW-70 Constable Dinesh Kumar was recorded

in his mobile phone but, as has been noticed above, no effort even after 20.7.2017 was made by bail petitioner to get matter reinvestigated in light

of disclosure made by PW-70 Constable Dinesh Kumar and as such, at this stage, it is difficult to agree with the contention of learned senior

counsel representing the bail petitioner that bail petitioner can not be charged with the offence of criminal conspiracy under Section 120B IPC.

Though this aspect of the matter is to be considered and decided by the learned trial Court on the basis of evidence adduced on record by

prosecution but this Court sees no reason to disbelieve the version put forth by CBI at this stage, especially after seeing the conduct of the bail

petitioner, who, solely with a view to shield erring police officials, completely brushed aside the version put forth by Constable Dinesh Kumar, who

was actually an eye witness to the alleged custodial death of accused Suraj. Otherwise also, it is well settled that while deciding bail petition,

Courts are not required to sift entire evidence rather, court needs to see whether prima facie case exists against accused or not?

27. This Court after having carefully perused the evidence available on record does not see any reason to agree with the aforesaid

contentions/submissions made by learned senior counsel representing the bail petitioner. This Court also deems it necessary to take note of certain

facts which adversely reflect upon the conduct of the bail petitioner, as has been taken note above. Division Bench of this Court, after having

handed over investigation to CBI is constantly monitoring the progress made by CBI in "Gudiya" rape and murder case. Interestingly, on

24.8.2017, police officers named in subsequent FIR registered by CBI, filed their affidavits pursuant to direction issued by this Court detailing

therein sequence of events or facts that came to their notice during investigation of FIR No. 97 of 2017. Mr. R.S. Cheema, learned senior counsel

representing the bail petitioner, while arguing his case specifically referred to the affidavit submitted by bail petitioner before Division Bench to

demonstrate that factum with regard to recording of statement of Constable Dinesh made by bail petitioner during investigation on 20.7.2017 was

also disclosed to this Court. This Court specifically called for the affidavit filed by bail petitioner in the case pending before Division Bench, perusal

whereof nowhere suggests that disclosure, if any, was made by the bail petitioner with regard to contents of statement made by Constable Dinesh

Kumar during his interrogation by bail petitioner on 20.7.2017. In his affidavit, bail petitioner has stated that he visited Police Station Kotkhai on

20.7.2017 and recorded statement of police officials including Constable Dinesh Kumar (PW-70) but inquiry could not be completed since mob

had gathered outside Police Station Kotkhai. Similarly, affidavit filed by Director-General of Police in the proceedings pending before Division

Bench further suggests that he was informed by bail petitioner on 19.7.2017 that FIR No. 101 of 2017 under Section 302 IPC has been

registered at Police Station Kotkhai meaning thereby that bail petitioner made an endeavour to justify FIR lodged by SHO Rajender Singh (FIR

No. 101 of 2017), which, as per record of prosecution was registered on wrong facts falsely implicating Rajinder alias Raju, who was arrested in

FIR No. 97 of 2017.

28. Though this Court finds from the material adduced on record alongwith charge sheet by the prosecution that the accused named in FIR No. 97

of 2017 had never confessed their guilt and they were wrongly mentioned in FIR and a false claim was made before media by the SIT, controlled

and monitored by bail petitioner, that too without formal arrest of five accused, who were subsequently investigated by CBI. Scientific evidence

adduced on record by CBI further suggests that the persons named in FIR No. 97 of 2017 were not actual culprits, rather they were tortured by

SIT to confess their guilt. There is another fact, which casts aspersions on the conduct of bail petitioner and compels this Court to believe the

version put forth by prosecution, once it was decided by the police on 14.7.2017 to hand over investigation to CBI, where was the occasion for

the members of SIT to interrogate accused named in FIR No. 97 of 2017 on 18/19.7.2017. As has been noticed herein above, it has specifically

come on the record of investigating agency that a communication was sent by Director-General of Police to hand over investigation to CBI on

14.7.2017 and pursuant to aforesaid request of Director-General of Police, Secretary (Home) to the Government of Himachal Pradesh had further

sent a communication to the Government of India, seeking therein direction to CBI to take over the investigation. In this background, this Court

sees no reason for the bail petitioner or other members of SIT to investigate further the accused named in FIR No. 97 of 2017. In the case at

hand, as has been categorically stated by PW-9 Bhajan Dev Negi, Additional Superintendent of Police that on 18.7.2017, bail petitioner ordered

Dy.SP Manoj Joshi to extract confession from accused, which certainly suggests that everything was not in order and SIT solely with a view to

make its record straight made an attempt to extract confession from accused including deceased Suraj, who unfortunately died during interrogation.

There is overwhelming medical evidence adduced on record by prosecution suggestive of the fact that deceased Suraj was given merciless

beatings before his death and he died due to injuries allegedly inflicted on his body during investigation.

29. After having carefully perused material available on record, this Court is in respectful disagreement with the learned senior counsel representing

the bail petitioner that no role whatsoever was played by bail petitioner as far as custodial death of accused namely Suraj is concerned, rather as

has been discussed herein above, bail petitioner throughout remained associated with the SIT and thereafter he purposely withheld information

passed to him by PW-70 Constable Dinesh Kumar so that erring police officials, who gave merciless beatings to Suraj in custody, are saved.

Apart from above, bail petitioner also conspired with the police officials named in FIR registered by CBI, who falsely implicated Rajinder alias

Raju in the case relating to custodial death of Suraj. Aforesaid aspect of the matter though is to be considered and decided by the learned trial

Court on the basis of evidence adduced on record by respective parties but this Court can not shut its eyes and order enlargement of petitioner on

bail. Admittedly a person has died in custody of police and there is considerable force in the arguments of learned counsel representing CBI that in

the event of petitioner being enlarged on bail, there is every likelihood of his influencing witnesses or tampering with evidence, which is or may be

adduced on record by prosecution to prove its case against bail petitioner and other co-accused. Otherwise also, as has been taken note above,

CBI has already obtained order from concerned magistrate for examination of bail petitioner as well as other accused in connection with FIR No.

97 of 2017 relating to rape and murder of "Gudiya". It is quite apparent from the statement of Constable Dinesh that he was repeatedly asked/

harassed by the police officials to give his statement in favour of Department and as such, enlargement of bail petitioner on bail at this stage may not

be in the interest of justice.

30. True it is, that it has been repeatedly held by Hon"ble Apex Court that freedom of an individual can not be curtailed and gravity alone can not

be a decisive ground to deny bail but at the same time, it has been held by Hon"ble Apex Court in judgments relied upon by the learned senior

counsel for the bail petitioner, as has been taken note above that competing factors are required to be balanced by the Courts while exercising its

discretion. There can not be any quarrel with regard to proposition of law expounded by Hon"ble Apex Court that object of bail is neither punitive

nor preventive but at the same time, nature and gravity of the accusations and exact role of accused needs to be taken into consideration by the

court while considering prayer made on his behalf for grant of bail. Similarly, Hon"ble Apex Court in the judgments relied upon by the learned

senior counsel has held that court while considering prayer for grant of bail needs to consider the reasonable apprehension of tampering with

witnesses or reasonable apprehension of threat to the complainant.

31. In the case at hand, there is overwhelming evidence adduced on record by prosecution at this stage to demonstrate that constant effort has

been made by bail petitioner and other police officers named in the FIR to dissuade PW-70 Constable Dinesh Kumar from disclosing true facts,

rather FIR No. 101 of 2017 was lodged on the complaint of PW-70, who at the

time of lodging of FIR had not signed on Rukka and subsequently, MHC Vipan Kumar on the instructions of bail petitioner forcibly got the signatures of bail petitioner on Rukka. Bail petitioner is an influential person and after the transfer of investigation to CBI, attempted to influence investigation as is evident from statement of PW-5, the then Superintendent of Police, Shimla Somya Sambahivan. As is evident from the statement of PW-59, Superintendent of Police, Shimla, who categorically stated that bail petitioner was pressuring her for early disposal of body of Suraj but she did not do so because she was instructed to the contrary by CBI officials. This Court can not lose sight of the fact that since several material witnesses are from the Department of bail petitioner, petitioner's release on bail at stage may not be in the interest of fair trial as there is greater possibility of petitioner influencing trial as he has been doing during investigation as is quite evident from the material collected on record by the prosecution.

32. Since, the Hon'ble Apex Court in its latest judgment reported in Virupakshappa Gouda and another vs the State of Karnataka and another, (2017) 5 SCC 406, has dealt with all the judgments relied upon by the learned senior counsel appearing for the bail petitioner, laying therein guidelines to consider grant of bail, this Court deems it not necessary to reproduce those judgments herein. Hon'ble Apex Court in the aforesaid judgment, while dealing with the parameters laid in Sanjay Chandra's case has categorically stated that though passages from Sanjay Chandra's case have relevance but the same can not be made applicable in each and every case for grant of bail. Hon'ble Apex Court has further held that it depends upon nature of crime and manner in which it is committed and bail application is not to be entertained on the basis of certain observations made in different context, rather there has to be application of mind and appreciation of factual score and understanding of pronouncements in the field.

33. Hon'ble Apex Court in the aforesaid judgment, taking note of the observations made by it in Chaman Lal versus State of UP, held that nature of accusation and severity of conviction, reasonable apprehension of tampering with witnesses or apprehension of threat to complainant, prima facie satisfaction of court in support of charge are of paramount consideration

while considering request for grant of bail. In the judgment referred

herein above, Hon''ble Apex Court while taking note of its earlier judgment in Prasanta Kumar Sarkar versus Ashis Chatterjee and another (2010)

14 SCC 496, reiterated that while exercising power of grant of bail, court has to keep in mind certain circumstances /factors, which are as under:

- (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 accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail.

34. At this stage, it would be apt to take note of judgment passed by Hon''ble Apex Court in Virupakshappa Gouda and another vs the State of

Karnataka and another, (2017) 5 SCC 406, wherein it has been held that:

11. It is submitted by Mr. Patil, learned senior counsel for the appellants that the High Court has erred in cancelling the order of bail

as the appellants, after being enlarged on bail, had neither abused the freedom nor have they violated the terms and conditions of the

bail order. It is urged by him that there is no allegation of tampering with the evidence or influencing any witnesses and therefore, there

was no justification for cancellation of the order of granting bail. Learned Senior counsel would further contend that the analysis made

by the learned trial Judge for the purpose of grant of bail cannot be regarded as perverse and he has correctly relied upon the

pronouncements as is noticeable from his order. It is put forth by Mr. Patil that at such distance of time not to admit the appellants on

bail and give the stamp of approval to the order cancelling the bail by the High Court, would not sub-serve the cause of justice.

12. Mr. Raghupathy, learned counsel appearing for the State, per contra, would submit that the learned trial Judge should not have

entertained the prayer for bail after this Court has special leave petition for the

same relief. It is his submission that the High Court has correctly opined that there is perversity in the approach by the learned trial Judge while dealing with the application under Section 439 Cr.P.C. and hence, it deserved to be set aside.

13. On a perusal of the order passed by the learned trial Judge, we find that he has been swayed by the factum that when a charge-

sheet is filed it amounts to change of circumstance. Needless to say, filing of the charge-sheet does not in any manner lessen the

allegations made by the prosecution. On the contrary, filing of the charge-sheet establishes that after due investigation the investigating

agency, having found materials, has placed the charge-sheet for trial of the accused persons. As is further demonstrable, the learned

trial Judge has remained absolutely oblivious of the fact that the appellants had moved the special leave petition before this Court for

grant of bail and the same was not entertained. Be it noted, the second bail application was filed before the Principal Sessions Judge

after filing of the charge-sheet which was challenged in the High Court and that had travelled to this Court. These facts, unfortunately,

have not been taken note of by the learned trial Judge. He has been swayed by the observations made in *Siddharam Satlingappa*

*Mhetre* (supra), especially in paragraph 86, the relevant part of which reads thus:-

The courts considering the bail application should try to maintain fine balance between the societal interest vis-a-vis

personal liberty while adhering to the fundamental principle of criminal jurisprudence that the accused is presumed to be

innocent till he is found guilty by the competent court.

14. The proposition expounded above, has to be accepted, but that has to be applied appositely to the facts of each case. A bail

application cannot be allowed solely or exclusively on the ground that the fundamental principle of criminal jurisprudence is that the

accused is presumed to be innocent till he is found guilty by the competent court. The learned trial Judge has also referred to the

decision in *Sanjay Chandra* (supra), wherein a two-Judge Bench while dealing with bail applications, observed thus:- ""21. In bail

applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused

person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be

considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts

owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent

until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of

great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody

pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it

would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be

punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be

deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most

extraordinary circumstances.

23. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any

imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail

as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an

unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.

15. Be it noted, though the aforesaid passages have their relevance but the same cannot be made applicable in each and every case

for grant of bail. In the said case, the accused-appellant was facing trial for the offences under Sections 420- B, 468, 471 and 109 of

the IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of

Corruption Act, 1988. Thus, the factual matrix was quite

different. That apart, it depends upon the nature of the crime and the manner in which it is committed. A bail application is not to be

entertained on the basis of certain observations made in a different context. There has to be application of mind and appreciation of

the factual score and understanding of the pronouncements in the field.

16. The court has to keep in mind what has been stated in Chaman Lal vs. State of U.P. and another[3]. The requisite factors are: (i)

the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence; (ii) reasonable

apprehension of tampering with the witness or apprehension of threat to the complainant; and (iii) prima facie satisfaction of the court

in support of the charge. In Prasanta Kumar Sarkar vs. Ashis Chatterjee and another[4], it has been opined that while exercising the

power for grant of bail, the court has to keep in mind certain circumstances and factors. We may usefully reproduce the said

passage:-

9....among other circumstances, the factors which are to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to be believed that the accused had committed the offence.

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail.

17. In Central Bureau of Investigation vs. V. Vijay Sai Reddy[5], the Court had reiterated the principle by observing thus:- ""While

granting bail, the court has to keep in mind the nature of accusation, the nature of evidence in support thereof, the severity of the

punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable

possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the legislature has used the words reasonable grounds for believing instead of the evidence which means the court dealing with the grant of bail can only satisfy itself as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.

18. From the aforesaid principles, it is quite clear that an order of bail cannot be granted in an arbitrary or fanciful manner. In this context, we may, with profit, reproduce a passage from *Neeru Yadav vs. State of Uttar Pradesh* and another[6], wherein the Court setting aside an order granting bail observed:-

The issue that is presented before us is whether this Court can annul the order passed by the High Court and curtail the liberty of the 2nd respondent. We are not oblivious of the fact that the liberty is a priceless treasure for a human being. It is founded on the bed rock of constitutional right and accentuated further on human rights principle. It is basically a natural right. In fact, some regard it as the grammar of life. No one would like to lose his liberty or barter it for all the wealth of the world. People from centuries have fought for liberty, for absence of liberty causes sense of emptiness. The sanctity of liberty is the fulcrum of any civilized society. It is a cardinal value on which the civilisation rests. It cannot be allowed to be paralysed and immobilized. Deprivation of liberty of a person has enormous impact on his mind as well as body. A democratic body polity which is wedded to rule of law, anxiously guards liberty. But, a pregnant and significant one, the liberty of an individual is not absolute. The society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual

becomes a danger to the collective and to the societal order. Accent on individual liberty cannot be pyramided to that extent which would bring chaos and anarchy to a society. A society expects responsibility and accountability from the member, and it desires that the citizens should obey the law, respecting it as a cherished social norm. No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At that stage, the Court has a duty. It cannot abandon its sacrosanct obligation and pass an order at its own whim or caprice. It has to be guided by the established parameters of law.

19. In this context what has been stated by a three- Judge bench in Dinesh M.N. (S.P.) v. State of Gujarat[7] is quite instructive. In the said case, the Court has held that where the Court admits the accused to bail by taking into consideration irrelevant materials and keeping out of consideration the relevant materials the order becomes vulnerable and such vulnerability warrants annulment of the order.

20. In the instant case, as is demonstrable, the learned trial Judge has not been guided by the established parameters for grant of bail.

He has not kept himself alive to the fact that twice the bail applications had been rejected and the matter had travelled to this Court.

Once this Court has declined to enlarge the appellants on bail, endeavours to project same factual score should not have been

allowed. It is absolute impropriety and that impropriety call for axing of the order.

21. That apart, as we find from the narration of allegations from the order of the High Court, it is not a case where the trial court

could have entertained a bail application by elaborate dissection of facts and appreciation of statements recorded under Section 161

Cr.P.C. The gravity of the crime should have been taken note of by the learned trial Judge. The deceased and his wife (the daughter

of the accused-appellant No.1) were staying in peace away from the acrimonious

community, but due to some kind of "misconceived class honour", the vengeance reigned and awe for law went on a holiday. They thought that their perception mattered and as alleged, they put an end to the life spark of the young man. The choice of the daughter was allowed no space. Her identity was crushed and her thinking was crucified by parental dominance which has roots in an unfathomable sense of community honour. Though the lovers became fugitive, the anger founded on anachronistic values prompted the accused persons to annihilate the life of a young man. In such a situation, the factors that have been highlighted by this Court from time to time were required to be adverted to and the accused persons should not have been granted liberty on the grounds that have been thought appropriate by the learned trial Judge.

The perversity of approach by the learned Additional Sessions Judge, who has enlarged the appellants on bail, is totally unacceptable.

It is reflective of sanctuary of errors. In such a situation, we are obligated to say that the High Court has performed its legal duty by lancinating the order passed by the learned trial Judge.

35. Careful perusal of aforesaid law laid down by Hon"ble Apex Court clearly suggests that liberty is priceless treasure for a human being and its foundation is on the bedrock of Constitutional right and accentuated to human right principle. Hon"ble Apex Court in aforesaid judgment has further observed that liberty of an individual can not be allowed to be paralyzed and immobilized because deprivation of liberty of a person has enormous impact on his mind as well as body but liberty of an individual is not absolute. The society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the collective and societal order. No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At that stage, the court has a duty. It cannot abandon its sacrosanct obligation and pass an order at its own whim or caprice. It has to be guided by the established parameters of law.

36. This court can not lose sight of the fact that present is a case of custodial death, which occurred due to highhandedness of the police officials

who are otherwise expected to protect life and liberty of its citizens. Though, it is yet to be proved in accordance with law but it emerges from the

material adduced on record by investigating agency that police officials including bail petitioner, while investigating rape and murder case of minor

girl and in an attempt to show an early disposal of case, wrongly arrested and tortured six persons, one of whom unfortunately died in police

custody at Police Station Kotkhai, Shimla

37. In Sanjay Chandra vs. CBI, (2012) 1 SCC 40, which has been also taken note by Hon"ble Apex Court in judgment referred above, it has

been categorically held that while granting bail, court has to keep in mind nature of accusation and the severity of punishment in case of conviction

and the nature of supporting evidence, reasonable apprehension of tampering with the witness or apprehension of threat to the complainant; and

prima facie satisfaction of the court in support of the charge.

38. Otherwise also bare perusal of provisions providing for grant of bail suggests that courts are required to keep in mind purpose of grant of bail.

Legislature has carefully used words, ""reasonable grounds of belief" in respect of offence, which reasonably casts a duty upon court while granting

bail to satisfy itself as to whether there is genuine case against accused and that prosecution will be able to prove prima facie evidence in support of

charge.

39. At this stage, court can not expect the prosecution to have evidence establishing guilt of the accused beyond reasonable doubt, as such,

contention of the learned senior counsel, Mr. R.S. Cheema, who while placing reliance upon judgments in Esher Singh vs State of A.P., (2004) 11

SCC 585, State of Kerala vs. P. Sugathan, (2000) 8 SCC 203, and Kehar Singh vs. State (1988) 3 SCC 609, contended that as in all other

criminal offences, prosecution is required to discharge its onus to prove its case against accused beyond all reasonable doubt as far as criminal

conspiracy is concerned, is not required to be considered at this stage, rather, same shall be considered and decided by learned trial Court on the

basis of evidence adduced on record by prosecution. At this stage, this Court, after having perused material available on record of the case is

satisfied that bail petitioner has not only failed to discharge his lawful duty, rather, he turned a blind eye to the heinous offence allegedly committed

by police officers probing the case entrusted to them under the supervision of bail petitioner.

40. Needless to add, custodial death is a heinous crime and person involved in crime how highly placed he may be, needs to be dealt with

severely. As such, present being a case of custodial death, same needs to be viewed more seriously than a murder case. Hon"ble Apex Court in a

catena of judgments especially has termed ""custodial deaths to be worst kind of crime in a civil society governed by rule of law.

41. Apart from above, investigation in FIR No. 97 of 2017 relating to rape and murder of "Gudiya" is still underway and permission has been

already granted by magistrate concerned to investigate bail petitioner and other police officials in that FIR. There is every possibility of bail

petitioner tampering with evidence already adduced on record or sought to be adduced on record by investigating agency and as such, he can not

be ordered to be released on bail at this stage.

42. Consequently, in view of detailed discussion as well as law laid down by Hon"ble Apex Court in Virupakshappa Gouda and another vs the

State of Karnataka and another, (2017) 5 SCC 406 this Court is not inclined to grant bail to the bail petitioner at this stage.

43. Accordingly, the bail application is dismissed at this stage. However, it is made clear that the observations made hereinabove shall not be

construed to be a reflection on the merits of main case and shall remain confined to the disposal of the present application only.