

**A.F.R.**  
**Judgement Reserved on 31.05.2022**  
**Judgement Delivered on 13.06.2022**

**In Chamber**

**Case:-** CRIMINAL MISC. BAIL APPLICATION No. 46494 of 2021.

**Applicant :-** Mokhtar Ansari.

**Opposite Party:-** State of U.P.

**Counsel for the Applicant:-** Upendra Upadhayay

**Counsel for Opposite Party:-** Ratnendu Kumar Singh, AGA.

**Hon'ble Rahul Chaturvedi J.**

1. Heard Shri Upendra Upadhayay, counsel for the applicant, Shri Ratnendu Kumar Singh, learned A.G.A. for State and perused the records of the present bail application.
2. Bail application on behalf of applicant and its counter affidavit as well as rejoinder affidavit have been exchanged between the parties and matter is ripe-up for final submissions.
3. Applicant, Mokhtar Ansari is facing prosecution in Case Crime No. 185/2021 U/s 419, 420, 467, 468, 471, 120B I.P.C. Police Station-Sarai Lakhansi, District Mau during pendency of trial. Though the applicant is behind the bars since 25.10.2005 in other cases and in the present case B-Warrant has been served on 16.06.2021.
4. The applicant deserves no introduction in the State of U.P. on account of his alleged 'Robin Hood' image in Hindi speaking States of India. He is the harden and habitual offender, who is in sphere of crime since 1986 but surprisingly, he has managed not a single conviction against him. It is indeed

astounding and more amusing angle of the issue, that a person having more than 50+ criminal cases to his credit of various varieties, has managed his affairs in such a way that he has not received a single conviction order against him. Infact it is slur and challenge to the judicial system that such a dreaded and 'White Collored' criminal in the field of crime undefeated and unabatted.

#### **FACTS OF THE CASE:-**

5. On 24.04.2021 one Ram Singh lodged a present FIR at police station Sarai Lakhansi, District Mau under Sections 419, 420, 467, 468, 471 and 120B IPC against five named accused persons including the applicant who was at relevant point of time was a sitting MLA though in jail.

6. The gravamen of the FIR is, that relying upon the inquiry report by a Circle Officer, Mau that on Anand Yadav son of Baijnath Yadav, his father Baijnath Yadav son of Khuddi Yadav, Sanjay Sagar and the present applicant were named in the FIR. It was surfaced during investigation, that at Arazi No. 1109 having area 0.064 Hect. and Arazi No. 1449 having area 0.196 Hect. at village Sarwan, District Mau, a proposal was floated to construct a brand new school for the young of that area. Baijnath Yadav and his son as per the allegation of the FIR, approached interstate Mafia No. 191 Mokhtar Anasari and his associate Sanjay Sagar son of Chandra Dev Ram to release Rs. 25 lakhs from his "*Vidhayak Nidhi*". Accordingly, this amount was disbursed for constructing the alleged school namely, 'Guru Jagdish

Singh Baijnath Pahalwan Uchhatar Madhyamik Vidyalaya, Sarwan' in three installments during 2012-2015. These named accused persons conspired in sending a forged proposal and get an agricultural plot allotted in the name of wife of Baijnath Yadav, over which the proposed school to be constructed. In the said inquiry report, it was surfaced that, there was no school was found over above Arazis' and Arazi No. 1109 having area of 0.032 Hect. was encircled by boundary wall whereas in the remaining part there was a banana grove over it. Similarly, at Arazi No. 1449 having area of 0.196 Hect. standing crops of wheat was found and as such the entire sum of public money to the tune of Rs. 25 Lakhs were swindled and digested by the named accused persons.

7. Thus it was requested to lodge and FIR under the appropriate sections of IPC against the named accused persons.

8. Under these factual backdrop of the case, Shri Upendra Upadhyay, learned counsel for the applicant, before addressing the court on merits, have tried to glorify the character of applicant-Mokhtar Ansari sky-high by making a mention, that the applicant was born in year 1964, now he is 58 years of age and a popular and dashing political figure of Eastern U.P.. From March 1996 to 2022, he was elected as M.L.A. for six consecutive times on the tickets of different political parties. In fact, Sri Upadhaya tried to impress upon the Court, that he was an indispensable political personality in the State of Uttar Pradesh. But unfortunately, he is in jail since 25.10.2005 in connection with different cases to his credit. This by itself is

dichotomous situation that a popular political personality is in jail since October, 2005. One can easily gauge his nature and character, whether he is a popular political personality or he is a biggest nuisance to the society, who is in jail since 2005 and despite of this he is winning the elections one after the other.

9. It is contended by the counsel for the applicant that, a politically motivated FIR has been lodged at the instance of changed political set-up in the State of U.P. and for the offence allegedly have committed by him in year 2015. The present FIR was got registered on 24.04.2021 i.e. say about seven years of its occurrence. Thus, there is an apparent, inordinate delay delay of almost 7 years in lodging the present FIR without any cogent explanation for the same.

10. Sri Upadhyay, learned counsel for the applicant further urged that the only sin committed by the applicant that he wants to spread the light of education in the area among the youth, thus he has released Rs. 10.00 lakhs during FY; 2012-2013, Rs. 10.00 lacs during F.Y.- 2013-14 and Rs. 5.00 lakhs during F.Y. 2014-15 from his "*Vidhayak Nidhi*". The most interesting feature of this release of amount is that, when he has made these recommendations of aforesaid funds from his "*Vidhayak Nidhi*", he was remain behind the bars. On this Sri Upadhyaya, learned counsel for the applicant has floated very innocent & innocuous argument that at relevant point of time i.e. during 2012-2015, the applicant was serving his incarceration and as such he is not in position to physically verify the

construction in the school in question and check the working of State Officials, namely, C.D.O, Tehsildar etc.. In fact, he as relying upon the report given by these officials to him and factually speaking these officials were his eyes and ears. In the entire prosecution, there is not a single iota of evidence, which could be termed as hatching the criminal conspiracy with other co-accused persons. The allegations that the applicant was in hand in gloves with the co-accused persons, is presumptive in nature that he has conspired with the co-accused persons in siphoning Rs. 25 lakhs of public money from his '*Vidhayak Nidhi*'.

11. It was further argued that Sri Anand Yadav and Sri Baij Nath, the co-accused persons were already enlarged on bail and thus applying the **principles of parity**, the applicant too deserves to be bailed out.

12. It is further contended by the counsel for the applicant that the innocent applicant has only recommended the aforesaid amount of Rs. 25 lakhs to be released in favour of co-accused persons for constructing school in his political constituency, so as to spread the education amongst the young ones. This is a work of public interest, which could be released from "*Vidhayak Nidhi*".

13. It is further urged that the charge sheet has been submitted in the matter and nothing more to be investigated into the matter and thus in the fitness of circumstances, the applicant may be released on bail. And lastly it is argued by learned counsel for the applicant that all the sections fasten upon the

applicant are triable by the Magistrate and trivial in nature and thus he should be released.

14. Sri Upendra Upadhyay, learned counsel for the applicant was aware of the fact that criminal credential of the applicant would come in his way, thus applicant has relied upon the judgement of Hon'ble Apex Court in the case of ***MOLANA MOHAMMAD AMID RASHADI VS. STATE OF U.P. AND OTHERS, Criminal Appeal No. 159/2012 decided on 16.01.2012 and reported in 2012 AIR SC(Crl.) 469*** in which THE Hon'ble Apex Court has opined;

*“It is not disputed and highlighted that the 2<sup>nd</sup> respondent is sitting Member of Parliament, facing several criminal cases. It is not disputed that none of cases ended into acquittal for want of proper witnesses for pending trial. As opined by the High Court, merely on the basis of criminal antecedents, claim of 2<sup>nd</sup> respondent cannot be rejected. In other hands it is duty of the court to find out the role of accused in case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the court etc.”*

Shri Upadhyay further relied upon another judgment of Hon'ble Apex Court in ***ASHWANI OBEROI VS. STATE OF HARYANA, SLP (Crl.) No. 8695/2021 decided on 02.03.2022*** in which it has been held that:-

*“Dr. Monika Gusain, learned counsel appearing for the state submitted that the petitioner is the master mind. Innocent people were cheated. He was absconding for some time. There is a likelihood that he might abscond if he is released on bail and would tamper with the evidence.*

*We are of the considered view that the petitioner is entitled to be released on bail as charges have been framed and there is no likelihood of the trial being completed soon. Also there is no dispute that the other accused have been released on bail. The apprehension of the prosecution about the petitioner fleeing from*

*justice or making himself scarce during the course of trial, can be taken care of by imposing conditions”.*

Lastly, Shri Upadhayay relied upon the judgment of Coordinate Bench of this Court in Criminal Misc. Bail Application No. 23138/2010 decided on 28.08.2010 and Hon’ble Shri Shrikant Tripathi.J., (as the then Judge of this Court) opined that:-

*“Learned AGA, on the other hand, submitted that the applicant has a criminal history of 31 cases, out of which 3 cases are under Section 302 I.P.C.*

*The learned counsel for the applicant, in reply, submitted that bail prayer cannot be refused only on the ground of criminal history specially when there is no evidence regarding involvement of the applicant in entering into the alleged criminal conspiracy and he was in jail on the date of occurrence.*

*Keeping in view the nature of offence and evidence, complicity of the accused, the severity of punishment and submissions of the learned counsel for the applicant and the learned AGA, I am of the view that the applicant has made out a case for bail”.*

15. Per-contra, Shri Ratnendu Kumar Singh, learned A.G.A. has filed a detailed counter affidavit with a primary thrust of his arguments, that the criminal antecedents of the applicant in which it has been stated that the applicant has got criminal antecedents of number of cases lodged in different District viz, Ghazipur, Varanasi, Lucknow, Agra, Mau, Azamgarh, Barabanki as well as in the State of Punjab, attaching plethora of criminal cases of different texture and gravity.

16. It was candidly come out during inquiry that the school in question was not constructed over plot no. 1109 or 1449 over which, it was proposed to be

constructed. It is also come out that the said amount from “*Vidhayak Nidhi*” was used for different purposes or expansion/renovation/extension of some other pre-existing school. This fact has find force when the Coordinate Bench of this Court while granting bail to **Baij Nath Yadav/co-accused**, having Bail Application No. 9866/2022 in which Shri Upendra Upadhayay was counsel, succeeded in getting bail by making submission/contentions as follows: -

*“It is submitted that the applicant remain as Village Pradhan for 3 terms, he established 3 schools on his land and the name of the school were recorded in the revenue entries. At the relevant point of time extension/expansion of the school building was required therefore, the request was made to the then local M.L.A. for sanction of certain amount for raising construction/expansion of the school building. The amount was disbursed in 3 installments from the local M.L.A. funding during year 2013-2015. The applicant has got no relation with co-accused Sanjay Sagar and the then M.L.A.”*

From this, it is abundantly clear that no new construction was ever raised for any school for which the amount of Rs. 25 lakhs were taken, but was utilized for pre-existing structure in the name of new school.

17. It is worthwhile to mention here that Baij Nath Yadav is father of Anand Yadav (another co-accused). Sri Anand Yadav is the District President of “***Qaumi Ekta Dal***” and the applicant Mokhtar Ansari is its Founder Figure of this political entity, therefore, he urged that the circle is complete, when the applicant Mokhtar Ansari obliged his own District President of the political group, Anand Yadav, co-accused who in order to

expand the pre-existing school, utilized the public fund from “*Vidhayak Nidhi*”.

18. It is clear-cut case of conflict of interest, whereby the applicant in the capacity of sitting M.L.A. have utilized the public property in the shape of “*Vidhayak Nidhi*” to his own worker/President of which the applicant is the Founding Figure for expanding/extending the school in question and not for establishing the new school for which the amount was disbursed.

19. The Court during arguments on 13.05.2022 has sought a report from District Magistrate, Mau to have a physical verification of school and to give his report after giving number of questionnaire to the District Magistrate, Mau. The Court is in receipt of reply of District Magistrate, Mau and have perused the same. From the report, it is clear that the school in question i.e. “Guru Jagdish Singh Baij Nath Pahalwan, Uchchatar Madhyamik Vidyalaya, Inter College, Sarwan,” Tehsil Sadar, District Mau as per the khatauni of Fasli Year 1429 - 1434, situates at Khata No. 60 and 190 and Gata No. 797 (Minjumla), having total area 0.173 hectares, as against Arazi No. 1109 and 1449 for which the alleged school was proposed and the amount from “*Vidhayak Nidhi*” was disbursed by the applicant during the FY 2012-2013. Smt. Sarita Singh is Principal of the college, whereas Baij Nath Yadav is Manager of the school. From the entire report, it is not clear that (1) As to whether any new school was proposed over Arazi No. 1109 and 1449 (?) and if it is not so, then how this public money was used in expanding in pre-existing school, which was not at all proposed.

20. On these submissions, Shri Ratnendu Kumar Singh, learned AGA submits that it is clear cut case of siphoning of the public amount by a reckless M.L.A. just to oblige his own worker, Anand Yadav, for the reasons best known to the applicant. It was argued that it seems to be more of domestic affair between the applicant and Anand Yadav while utilizing the said amount of Rs. 25 lakhs.

21. After hearing the rival submissions, it seems that though the applicant was in jail during relevant point of time, but co-accused Anand Yadav has acted as his personal worker, came to him and the applicant being sitting M.L.A. in order to swindle the public money without any verification in a most casual and callous way, have directed the concerned to release the sum in favour of Bajj Nath Yadav and his son Anand Yadav. Ostensibly they used for constructing a new school, which in fact has never seen the light of the day.

There are particular guidelines for utilization of “*Vidhayak Nidhi*” dated 10<sup>th</sup> April, 2002. This court has seen these guidelines and the Court in the firm opinion that the covenants of these guidelines were thrashed and squeezed by the applicant with impunity.

22. *The “Vidhayak Nidhi” is not a private fiefdom of any M.L.A. or his personal property. It is an hard earned money of the tax payers and cannot be permitted to utilize or drain in a casual and capricious way. Recently the State Government has enhanced the alleged “Vidhayak Nidhi” to the tune of*

*Rs. 5.00 Crores. The M.L.A.s are the public representative and the amount entrusted to them that they would utilized their “Vidhayak Nidhi” discretely with utmost care and only for the purpose and objective for which it was released. The M.L.A. are not monarch or king of that area, who can throw away or whimsically distribute the “Vidhayak Nidhi” as larges. The Court has got no objection in raising the amount but expects from the Government to at-least have a double check volve in its disbursement and utilization only for “public good”. The State Government must create an ‘in-house mechanism’ to have a close vigil, that this “Vidhayak Nidhi” should be used only for ‘public purpose’ and there shall not be any siphoning or seepage to subserve anybody’s personal or vested interest. The member of the in-house mechanism the modalities mentioned in paragraph 36 of the judgment may be taken care of.*

23. The way and manner in which Rs. 25.00 lacs were handed over to his own alleged District President- Anand Yadav, speaks volumes about the applicant, which need not be elaboration. Interestingly, the counsel for the applicant has pleaded innocence, that at a relevant point of time, the applicant was serving out his incarceration and thus he was not in position to physically verify the departmental work. This argument per-se is very innocent but unfortunately do not contain any leg to stand over it. Million dollar question remain unanswered, that if a sitting MLA is releasing the sum from his “Vidhayak Nidhi” to his own party President, it is the MLA concerned should be accountable for any misfeasance.

Extending the amount to his own Party President, Anand Yadav “**Qaumi Ekta Dal**”, who utilized the amount in expending the pre-existing school. This by itself is sufficient to question the intention, motive and its expected outcome.

24. Now coming to yet another aspect of the issue i.e. criminal antecedent of the applicant. As mentioned in the opening paragraphs of this order that the applicant in this world of crime since 1986 and as per his own admission mentioned in the Rejoinder Affidavit (Annexure No. RA-1) that at present he is under trial in as many as in 21 criminal cases in the various Sessions Division at Mau, Ghazipur, Varanasi, Azamgarh, Lucknow, Barabanki, Agra and Mataur, Roop Nagar (Punjab). Thus, it is clear that he is the blooded, harden, habitual offender against whom number of criminal cases are pending. The cases in tabular form is given herein below:-

Sl. No.	Police Station & District	Crime No. & Court Case No.	Sections	State of case and Court
1.	South tola Mau	399/2010, S.T. No. 130 of 2010	302, 307, 120B & 34 IPC, 25/27 Arms Act & & CLA	*Final Argument * MPMLA Court, Alld.
2.	South tola Mau	04/2020, Sessions Case No. is yet to be marked	419, 420, 467, 368, 471, 120B IPC and 30 Arms Act	* Bail out * Charge sheeted case * File Transferred to MPMLA Court, Mau for trail
3.	Sarai lakhansi, Mau	0185/2021 Sessions Case No. is yet to be marked	419, 420, 467, 468, 471, 120B, 427 IPC and 7 CLA Act & 136(2) Representation of Peoples Act 1950	* Bail rejected by Sessions Court, pending in High Court Allahabad * Charge sheeted case * File Transferred to MPMLA Court, Mau for trail
4.	Sarai lakhansi, Mau	0008/2022	3(1) U.P.Gangster Act	*New FIR registered on 05.01.2022
5.	South tola Mau	055/2021 Sessions Case No. is yet to be marked	3(1) U.P.Gangster Act	*Bail rejected by Sessions court * Charge sheeted case *File Transferred to MPMLA Court, Mau for

				trail
6.	South tola Mau	891/2010, S.T. No. 62000/2012	3(1) U.P.Gangster Act	*Framing of charges. *MPMLA Court Mau for trial
7.	Mohammadabad Ghazipu	1182/2009, S.T. No. 10 of 2010	307, 506, 120B IPC	* Evidence *Bail out *MPMLA court Ghazipur for trial
8.	Kotwali Ghazipur	192/1996, S.T. No. 620007/2012	3(1) U.P.Gangster Act	*Bail out *Evidece *MPMLA Court Ghazipur for trial
9.	Mohamadabad Ghazipur	0121/1021, Session case no is yet to be marked	21/25 Amrs Act	*Pending bail application in CJM court * Charge sheeted case * File transferred to MPMLA court Ghazipur for trial
10.	Mohamadabad Ghazipur	1051/2007, S.T. No. 6200090/2012	3(1) U.P.Gangster Act	* Evidence *Bail out *MPMLA court Ghazipur for trial
11.	Karanda Ghazipur	482/2010, S.T. No. 557/2012	3(1) U.P.Gangster Act	* Evidence *Bail out *MPMLA court Ghazipur for trial
12.	Mohamadabad Ghazipur & Varanasi	263/1990, S.T. NO. 22/2005	420, 467,468, 120B IPC and 7/13 Prevention of Corruption Act	*Bail out. *Evidence *MPMLA court Varanasi
13.	Bhelupur Varanasi	377/1997 S.T. No. 3541/2011	506 IPC	*Bail out. *Evidence *MPMLA court Varanasi
14.	Chetganj Varanasi	229/1991, S.T. No. 265/2007	147, 148, 149, 302 IPC	*Bail out. *Evidence *MPMLA court Varanasi
15.	Tarwa Azamgarh	20/2014, S.T. No. 6200195/2018	302,307, 147, 148, 149, 120B, 506 IPC and 7 CLA	*Bail out. *Evidence *MPMLA court Azamgarh
16.	Tarwa Azamgarh	0160/2020, Sessions case no. is yet to be marked	3(1) U.P.Gangster Act	*Pending bail * Charge sheeted * Case/Trial in Special court Gangster Act, Azamgarh.
17.	Hazratganj, Lucknow	236/2020	120B, 419, 420, 467, 468, 471 IPC and Section 3 of Prevention from Damage to Public Property Act	* Charge sheeted case * CJM court Lucknow for copies
18.	Alambagh, Lucknow	66/2000, S.T. No. 167/2019	147, 336, 353, 506 IPC	*Bail out * Evidence *MPMLA court Lucknow
19.	Kotwali Barabanki	0369/2021, CrI. Case No. 02/2021	419,420,467, 468, 471, 120B, 177, 506	* Bail pending in High Court Lucknow.

			IPC and 7 CLA	* Framing of charges * MPMLA Court Barabanki
20.	Jagdishpura, Agra	60/1999, S.T. No. 1604/2006	420, 419, 109, 120B IPC	* Bail out * Framing of charges * MPMLA court Agra
21.	Mataur Rupnagar, Punjab State	05/2019	386, 506 IPC	* Police Station * CJM, Mohali

25. Thus, it is clear that as per own admission by the applicant there are as many as 21 cases are pending against the applicant in which the applicant is facing a trial. The trial court are directed to take up the aforesaid Sessions Trials on the top most priority and decide without consuming further time.

26. The above mentioned is a rich criminal horoscope of the applicant on which the applicant can boast and claim himself to be a popular public figure, who was elected as MLA for the six consecutive time. As mentioned above, this is a most unfortunate and ugly face of our democracy where a person on one hand facing almost two dozen Sessions Trials and on the other hand the public is electing him as their representative for six consecutive times. It is really uphill task to adjudicate, as to whether he is really a popular public figure? Or his nuisance value, which are giving dividends to him?

27. At thus juncture Sri Shri Ratnendu Singh, learned A.G.A. has cited number of decisions of Hon'ble Apex Court whereby the Hon'ble Apex Court has come out heavily upon such type of spotted public figures.

28. In the recent judgment in the case of ***HARJEET SINGH VS. INDERPREET SINGH @ INDER AND ANOTHER, Criminal Appeal No. 883/2021 decided on 24<sup>th</sup> August, 2021***, has cancelled the bail order of

Inderpreet Singh granted by High Court holding therein that High Court has committed a grave error in releasing Inderpreet Singh on bail. Hon'ble Apex Court in paragraph no. 12 of the judgment "antecedent of respondent no.1 herein the threat perception to the applicant and his family members were not considered by the High Court and the High Court kept his eyes shut in releasing the applicant/appellant when he was in jail, he has committed yet another offence and as soon as he came out, he again got involved in yet another murder case.

29. The concerned applicant/appellant was having criminal history of only 4 criminal cases, even then no mercy was shown to him and he was sent back to jail. But in the instant case, the applicant is a decorated criminal of 21 criminal cases tried by different Sessions Division in different districts, is expecting bail.

30. While canceling the bail to such type of graded offenders, the court has relied upon the judgment of ***GUDIKANTI NARASIMHULU VS. PUBLIC PROSECUTOR, High Court of A.P., (1978)1 SCC Page 240***, the court observed and held that:-

*"The deprivation of freedom by refusal of bail is not for a punitive purpose, but for bifocal interests of justice. The nature of charge is a vital factor and nature of evidence is also pertinent. The severity of the punishment to which the accused may be liable if convicted also bears upon the issue. Another relevant factor is whether the course of justice would be thwarted by him who seeks the benignant jurisdiction of the Court to be freed for the time being. The Court has also to consider the likelihood of the applicant interfering with the witnesses for the prosecution or otherwise polluting the process of justice. It is further observed that it is rational to enquire into the*

*antecedents of the man who is applying for bail to find out whether he has a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail”.*

In yet another case of **ASH MOHAMMAD VS.L SHIV RAJ SINGH (2012)9 SCC 446**, the Hon’ble Apex Court has evaluated this issue from different angle and have opined in paragraphs 18 and 19 observed and held as under:-

*18. It is also to be kept in mind that individual liberty cannot be accentuated to such an extent or elevated to such a high pedestal which would bring in anarchy or disorder in the society. The prospect of greater justice requires that law and order should prevail in a civilized milieu. True it is, there can be no arithmetical formula for fixing the parameters in precise exactitude but the adjudication should express not only application of mind but also exercise of jurisdiction on accepted and established norms. Law and order in a society protect the established precepts and see to it that contagious crimes do not become epidemic. In an organized society the concept of liberty basically requires citizens to be responsible and not to disturb the tranquility and safety which every well-meaning person desires. Not for nothing J. Oerter stated:*

*“Personal liberty is the right to act without interference within a limits of the law.”*

*19. Thus analyzed, it is clear that though liberty is a greatly cherished value in the life of an individual, it is a controlled and restricted one and no element in the society can act in a manner by consequence of which the life or liberty of others is jeopardized, for the rational collective does not countenance an anti-social or anti-collective act.”*

In the case of **MAHIPAL VS. RAJESH KUMAR (2020)2 SCC 118**, where the Court in its paragraph no.12 observed that:-

*“12. The determination of whether a case is fit for grant of bail involves the balancing of numerous factors, among which the nature of the offence, the severity of the punishment and prima facie view of the involvement of the accused are important. No straitjacket formula exists for courts to assess an application for the grant or rejection of bail. At the stage of assessing whether case is fit for the grant of bail, the court is not required to enter into a detailed analysis of the evidence on record to establish beyond*

*reasonable doubt the commission of the crime by the accused. That is a matter for trial. However, the Court is required to examine whether there is a prima facie or reasonable ground to believe that the accused had committed the offence and on a balance of the considerations involved, the continued custody of the accused sub serves the purpose of the criminal justice system. Where bail has been granted by a lower court, an appellate court must be slow to interfere and ought to be guided by the principles set out for the exercise of the power to set aside bail.*

In the recent judgment in the case of **SUDHA SINGH VS. THE STATE OF UTTAR PRADESH AND ANOTHER, Criminal Appeal No. 448/2021 decided on 23<sup>rd</sup> April, 2021**, its paragraph nos. 7,8 and 12 are quoted herein below: -

*7. It is also contended by the appellant that the grant of bail in a routine manner to gangsters, has had an adverse effect in the past, upon the law and order situation. The appellant cites the example of a person who was prosecuted in connection with 64 criminal cases which included cases of murders, offences of dacoity, criminal intimidation, extortion and offences under the U.P. Gangster case, allegedly 8 policemen were killed and many grievously injured. Therefore, the appellant contends that courts must be extremely careful in releasing of history sheeters who have been charged with serious offences like murder, rape or other kinds of bodily harms several times.*

*8. We find in this case that the High Court has overlooked several aspects, such as the potential threat to witnesses, forcing the trial court to grant protection. It is needless to point out that in cases of this nature, it is important that courts do not enlarge an accused on bail with a blinkered vision by just taking into account only the parties before them and the incident in question. It is necessary for courts to consider the impact that release of such persons on bail will have on the witnesses yet to be examined and the innocent members of the family of the victim who might be the next victims.*

*12. There is no doubt that liberty is important, even that of a person charged with crime but it is important for the courts to recognize the potential threat to the life and liberty of victims/witnesses, if such accused is released on bail.*

31. At this juncture Sri Ratendru Kuma Singh, learned AGA drawn the attention of the Court to paragraph 6 to the counter affidavit in which, as per the Government Dossier as many as 54 criminal cases to his credit, the district and State wise breakup of the criminal case are given herein below:-

DISTRICT- GHAZIPUR			
Sl. No.	Case Crime NO.	Under Sections	Police Station/District
1.	493/05	302, 506, 120B IPC	Mohammadabad
2.	589/05	302, 504, 506, 120B IPC	Bhanwar Col
3.	169/86	302 IPC	Mohammadabad
4.	266/90	467, 468, 420, 120B IPC	
5.	172/91	147, 323, 504, 506 IPC	Mohammadabad
6.	237/96	136(2), 130, 135, 136(1) Public Property Act & 384, 506 IPC	Mohammadabad
7.	1182/09	307, 506, 120B IPC	Mohammadabad
8.	1051/07	3(1) U.P.Gangster Act	Mohammadabad
9.	482/10	3(1) U.P.Gangster Act	Karanda
10.	361/09	302, 120 IPC & 7 C.L.Act	Karanda
11.	NCR No. 219/78	506 IPC	Saidpur
12.	NCR No. 19/97	506 IPC	Saidpur
13.	106/88	302 IPC	Kotwali
14.	682/90	143, 506 IPC	Kotwali
15.	399/90	147, 148, 149, 307 IPC	Kotwali
16.	44/91	302, 506 IPC	Kotwali
17.	165/96	147, 148, 149, 307, 332, 353, 506, 504 IPC & 7C.Lact	Kotwali
18.	834/95	353, 504, 506 IPC	Kotwali
19.	284/96	3(2) NSA Act	Kotwali
20.	33/99	3(2) NSA Act	Kotwali
21.	192/96	3(1) U.P.Ganster Act	Kotwali
22.	121/21	21/25 Arms Act	Mohammadabad
DISTRICT- VARANASI			
1.	58/98	3 NSA Act	Bhelupur
2.	17/99	506 IPC	Bhelupur
<b>Note : In above mentioned case crime number in question, First Information Report has been lodged by Naveen Rungata son of Nand Kishore R3.ungata.</b>			
3.	285/17	302 IPC	Bhelupur
4.	19/97	364A, 365 IPC	Bhelupur
<b>Note:- In above mentioned case crime number in question is related with abduction for ransom and in this case one Sri Nand Kishore Rungata has been abducted, ransom was given but he has not been recovered dead or alive till date.</b>			

5.	229/91	147, 148, 149, 302 IPC	Chetganj
6.	410/88	147, 148, 149, 302, 307 IPC	Cantt.
<b>DISTRICT- LUCKNOW</b>			
1.	209/02	3/7/25 Arms Act	Hazratganj
<b>Note:- In aforesaid case crime number in question is related to recovery of ‘Katar’ made in Switzerland, one vernacular, telescope, 139 live cartridges of 375 bore, 20 live cartridges of 7.57 bore, 21 cartridges of 0.22 bore, 2 cartridges of 12 bore.</b>			
2.	106/99	307, 302, 120B IPC	Hazratganj
<b>Note:- In aforesaid case crime number in question is regarding the murder of Jail Superintendent, Sri Ramkant Tiwari and attempting to murder driver Sri Rakesh Kumar Singh.</b>			
3.	91-A/04	147, 148, 149, 307, 427 IPC	Cantt.
<b>Note:- In aforesaid case crime number lodged by Sri Krishan Nand Rai on 13.01.2004 and ultimately Sri Krishna Nand Rai was eliminated.</b>			
4.	428/99	2/3 Gangster Act	Hazratganj
5.	126/99	506 IPC	Krishna Nagar
6.	66/2000	147, 336, 353, 506 IPC	Alambagh
7.	236/20	468, 471, 120B IPC & Section 3 of Damages of Public Property Act	Hazratganj
<b>DISTRICT-CHANDAU LI</b>			
1.	294/91	302, 307 IPC	Mughalsarai/Chandauli
<b>DISTRICT-AGRA</b>			
1.	60/99	419, 420, 109, 120B IPC	Jagdishpura
<b>Note:- In the above noted case the accused applicant was caught red handed while he was using the mobile hand set within the premises of jail.</b>			
<b>DISTRICT-SONEBHADRA</b>			
1.	121/97	364A	Anpara
<b>Note:- In this case Sri Deepak Kumar Varshney son of Sri Dinesh Chandra (General Manager) U.P. Electricity Board, Obra has been abducted for ransom and till date he has not been recovered dead or alive.</b>			
<b>DISTRICT-MAU</b>			
1.	808/04	147, 148, 149, 393, 307, 504, 506, 342 IPC	Kotwali
2.	1580/05	147, 148, 149,302, 435, 436, 427, 153A IPC	Kotwali
3.	1866/09	147, 148, 149,302, 307, 120B, 404, 325/34 IPC & 7 CLAct	Kotwali
4.	399/10	302, 307, 120B, 34 IPC & 7 CL Act & 25/27 Arms Act	Dakshin Tola
5.	891/10	3(1) Gangster Act	Dakshin Tola
6.	185/21	419, 420, 467, 468, 471, 120B IPC	Sarai Lakhansi (present one)
7.	55/21	3(1) of U.P.Gangster Act	Dakshin Tola
8.	4/20	30 Arms Act and Sections 419, 420, 467, 468, 471, 120 B IPC	Dakshin Tola
<b>NEW DELHI</b>			
1.	456/93	364A, 365, 387 IPC	Tilak Marg
2.	508/93	24/54/59 Arms Act & S. Tada	K.G. Marg

STATE OF PUNJAB			
1.	5/19	386/506 IPC	Mathaur, Mohali
<b>Note:- present accused applicant was confined in Banda Jail as a prisoner, during the period of confinement in jail, the present accused applicant demanded Rs. 10 Crores as Gunda Tax from on Umang Jindal, CEO of Home Land Group.</b>			
DISTRICT -AZAMGARH			
1.	20/14	147, 148, 149, 302, 307, 506, 120B IPC & 7 CrL. Law Amendment Act	Tarwa
2.	160/20	3(1) U.P.Gangster Act	Tarwa
DISTRICT – BARABANKI			
1.	369/21	419, 420, 467, 468, 471, 120B, 506, 177 IPC & 7 CrL. Law Amendment Act	Kotwali

32. Thus, it is clear that there are total 54 cases to the credit of the applicant and he is born in 1964, thus at present he is aged about 58 years. One can easily fathom that a man of 58 years is having 54 cases to his credit speaks bundle of volume about his checkered past and criminal antecedent. He is a interstate Mafia having no. 191, all these things if taken cumulatively goes to show that he is a simply canker to the society.

33. As mentioned above, Sri Upadhyay, learned counsel for the applicant has repeatedly hammered that applying the doctrine of parity, the applicant too deserves to be bailed out. Apparently the argument advanced seems to be lucrative and tempting but the Court could have lay his hand to the recent judgment of the Hon’ble Apex Court in the case of **NEERU YADAV VS. STATE OF U.P. Criminal Appeal No. 1272/2015 decided on 29<sup>th</sup> September, 2015** , which squarely meet out the aforesaid submissions advanced by Sri Upadhyay, learned counsel for the applicant i.e. Principles of Parity.

34. In the case of **Neeru Yadav (supra)** too, this was a bail cancellation appeal whereby the accused was granted bail by the High Court on the basis of parity, though he was enjoying criminal cases of 7 cases. The Hon'ble Apex Court has opined..... "that the respondent no.2 is still in jail despite of the order of bail as he is involved in so many cases. Sri Yadav, counsel for the appellant has urged that despite of the factum of criminal history pointed out by the High Court, it has given it a glorious ignore, which law does not countenance. It is quite vivid that the respondent no. 2 is a history-sheeter and involved in a heinous offences. Having stated that facts and noting the nature of involvement of the accused in the crimes in question, there can be no scintilla of doubt to name him a "history-sheeter". The question, therefore, arises whether in these circumstances, should the High Court have enlarged him on bail on the foundation of parity.

*"13. A crime , as is understood, creates a dent in the law and order situation. In a civilised society, a crime disturbs orderliness. It affects the peaceful life of the society. An individual can enjoy his liberty which is definitely of paramount value but he cannot be a law unto himself. He cannot cause harm to others. He cannot be a nuisance to the collective. He cannot be a terror to the society; and that is why Edmund Burke, the great English thinker, almost two centuries and a decade back eloquently spoke thus:-*

*" Men are qualified for civil liberty, in exact proportion  
to their disposition to put moral chains upon their own*

*appetites; in proportion as their love to justice is above their rapacity; in proportion as their soundness and sobriety of understanding is above their vanity and presumption; in proportion as they are more disposed to listen to the counsel of the wise and good, in preference to the flattery of knaves. Society cannot exist unless a controlling power upon will and appetite be placed somewhere and the less of it there is within, the more there must be without. It is ordained in the eternal constitution of things that men of intemperate minds cannot be free. Their passions forge their fetters.”*

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

*17. That apart, it has to be remembered that justice in its conceptual eventuality and connotative expanse engulfs the magnanimity of the sun, the sternness of mountain, the complexity of creation, the simplicity and humility of a saint and the austerity of a Spartan, but it always remains wedded to rule of law absolutely unshaken, unterrified, unperturbed and loyal.*

35. Thus, weighing the facts and circumstances of the present case and the argument advanced by Sri Upendra Upadhaya, learned counsel for the applicant in the light of the above pronouncement by the Hon'ble Apex Court, I have got no hesitation that the applicant is prima facie, a culprit of swindling the public money entrusted to him by way of "*Vidhayak Nidhi*" and has distributed to his own near and dear ones in the name of alleged construction of new educational institution. On making inquiry, a banana grow and wheat crop were standing over the plot in question and Sri Upadhyay, at one stage canvassed that the money was used for expanding and extension of pre-existing school and obtain the bail order of co-accused Bail Nath Yadav, but in the instant case a new theory was propounded by him that the applicant was in jail and the amount from "*Vidhayak Nidhi*" was given to co-accused person for raising a new school but as mentioned above there was no school over the plot in question and pre-existing school was found over Khata No. 60 and 190 and Gata No. 797 (Minjumla). This public money and its indiscreet utilization goes unaccounted. The

prosecution has got every right to inquire as to where this huge amount of Rs. 25 lakhs has been used or rather misutilized.

36. As mentioned above, the “*Vidhayak Nidhi*” is a hard earned money of a tax payers and no body is authorized for having moral or legal guts to misutilize the amount for his own use or for any other clandestine purpose. The applicant has to take this responsibility of misfeasance of public sum.

The Court is requesting to Govt. of Uttar Pradesh to constitute a committee under the leadership of Speaker of Assembly with three senior bureaucrats to audit the “*Vidhayak Nidhi*” of individual MLA and its utilization as mentioned in paragraph 22 of the instant order. Reckless distribution of “*Vidhayak Nidhi*” by unscrupulous MLA are causing more harm to the society and subject matter resentment among the masses.

37. So far as the parity is concerned, I am afraid to extend the benefit of parity to the present applicant in the light of Judgement of Hon’ble Apex Court in the case of **Neeru Yadav (supra)** and thus assessing the totality of circumstances, I do not find any good reason to release the applicant on bail and consequently, the bail application of the applicant Mokhtar Anasri is hereby **turned down and rejected.**

The records of the case is consigned to records.

Order Date:13/06/2022

Abhsihek Sri