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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Order pronounced on 19.07.2022*

\+ BAIL APPLN. 1349/2022

YOGESH @ YOGI ..... Petitioner
Through: Mr. Abhimanyu Kampani, Advocate.
versus

STATE (NCT OF DELHI) ..... Respondent
Through: Ms. Meenakshi Chauhan, APP.

\+ BAIL APPLN. 746/2022

HONEY ..... Petitioner
Through: Mr. Abhimanyu Kampani, Advocate.
versus

STATE ..... Respondent
Through: Ms. Meenakshi Chauhan, APP.

\+ BAIL APPLN. 747/2022

SACHIN MANCHANDA ..... Petitioner
Through: Mr. Abhimanyu Kampani, Advocate.
versus

STATE ..... Respondent
Through: Ms. Meenakshi Chauhan, APP.

CORAM:
HON'BLE MR. JUSTICE TALWANT SINGH

Talwant Singh, J.:

1. These three matters are connected as three different accused persons have applied for anticipatory bail by filing three separate petitions. However, the said anticipatory bail applications are taken together as there is common FIR and common incident.

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2. The applications have been filed in FIR No. 912/2021, registered under Section 302/147/148/149, read with Section 34 of IPC, dated 02.11.2021. It has been submitted that a charge sheet has been already filed before the Court on 28.01.2022 against the accused already arrested.

3. In BAIL APPLN. No. 1349/2022 of the petitioner Yogesh @ Yogi, it has been mentioned that he is aged about 28 years and is a businessman by profession and father of a two-year old child.

3.1 In brief, it has been mentioned that on 01.11.2021 at around 8:45 p.m., the petitioner along with certain other persons was present at the construction site of his brother-in-law, namely, Sachin Manchanda *alias* Bunty (who is also an applicant in bail application No. 747/2022) at B-108, Sidh Peeth Hanuman Mandir, Raghubir Nagar, New Delhi.

3.2 In the meantime, 4-5 attackers came to the said location on one motorcycle and one scooter and they were carrying pistols/desi kattas. They started firing at Sachin Manchanda *alias* Bunty. The petitioner along with other persons tried to save Sachin Manchanda *alias* Bunty. Sachin Manchanda *alias* Bunty was hit on his thigh; one Fateh Kumar was hit on his abdomen. Another bullet fired by the deceased Jaskaran Singh *alias* Little got deflected and injured one of the attackers, namely, Firoz. FIR bearing No. 911/2021 was registered under Section 307/34 IPC and Section 25/27/54/59 of the Arms Act at PS Khyala on the basis of the MLC conducted on Sachin Manchanda *alias* Bunty.

3.3 After firing certain shots, all the attackers started fled from the spot. They managed to escape, except the deceased, who was overpowered by Fateh Kumar and other accused persons in the present case, and thereafter, a crowd gathered at the spot and the attacker, namely Jaskaran *alias* Little was

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thrashed by them. The petitioner is alleged to be a part of the said crowd. The deceased was taken to DDU Hospital and the present FIR was registered.

3.4 On 02.11.2021, the deceased expired and the FIR was converted to one under Section 302/147/148/149/34 IPC. As per the post mortem report, the death was caused due to shock as a result of multiple bruises and fractured bones associated with head injury. As per the petitioner, there is nothing on record to show that the petitioner had hit the deceased on his head. The aggressors had come with a pre-determined mind to shoot and kill Sachin Manchanda *alias* Bunty as there was a history of enmity with one of the aggressors.

3.5 The CCTV footage would show that the petitioner tried to save the deceased from the co-accused. The deceased was beaten up by the persons present at the spot.

3.6 The anticipatory bail application moved by the present petitioner was dismissed on 03.03.2022 by the learned ASJ. The second anticipatory bail application was also dismissed on 28.03.2022.

3.7 The grounds on which the bail has been prayed are that the petitioner does not have any role to play in the incident which occurred on 01.11.2021; the deceased along the with aggressors attacked the brother-in-law of the petitioner with pistols and desi kattas; none of the offence can be made out against the present petitioner; the petitioner cannot be charged under Section 302 IPC even if he is treated as part of the mob as he had no intention to cause death of the deceased and he had no knowledge that the beating would result in causing the death of the deceased; the beating of the deceased occurred due to grave and sudden provocation of certain members of the

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group and this case falls under Section 304 IPC as being culpable homicide not amounting to a murder; there was no pre-meditation on the part of the petitioner to cause death of the deceased; offence under Section 302 IPC is not made out against any of the accused persons as originally the FIR was registered under Section 308/34 IPC; the offences under Section 147/148 IPC cannot be sustained against the petitioner in any manner; the petitioner did not have the common intention of causing death of the deceased.

3.8 A group of persons who had beaten the deceased cannot be attributed to the common intention of causing death and the accused can only be charged under Section 320 IPC.

3.9 The learned ASJ has erroneously concluded on the basis of CCTV footage that the petitioner had common intention of causing death of the deceased; the petitioner is being connected to the present case being brother-in-law of the main accused, namely, Sachin Manchanda *alias* Bunty and he is entitled to bail, being person with clean antecedents, deep roots in the society and belonging to a reputed family.

4. Notice was issued.

5. Status report has been filed, in which it is mentioned that on 02.11.2021, information was received that a patient, namely, Jaskaran Singh *alias* Little was admitted by PCR in injured condition in hospital. When SI Sunil reached the hospital, he found that Jaskaran Singh *alias* Little was admitted in DDU Hospital.

5.1 On MLC, it was mentioned that it was a case of gun shot injury and physical assault and there were in total about 20 injuries. The statement of the injured could not be obtained, eye witnesses could not be found in the Hospital, ASI visited the spot, collected certain exibits, spot was inspected

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through Mobile Crime Team and FSL Team and a case under Secion 308/34 IPC was registered.

5.2 A cross case was also registered on the same date on the statement of Sachin Manchanda *alias* Bunty, who also got injured in the incident.

5.3 Later on, Jaskaran Singh *alias* Little expired in the hospital. Section 308 IPC was amended to Section 304 IPC.

5.4 The accused Aatif Khan *alias* Ajju was arrested in the present case and on his instance, other accused Ramesh *alias* Mama was arrested.

5.5 Statements of the eyewitnesses were recorded and on the basis of these statements, one more accused, namely, Vijay Manchanda *alias* Shunty was arrested on 03.11.2021.

5.6 On 04.11.2021, CCTV footage of the whole incident was provided by the brother of the deceased, in which a large number of persons were seen beating the deceased very brutally. On the basis of the CCTV footage, multiple injuries being caused, MLC details and circumstances, Section 304 IPC was amended by Section 302 IPC. On the basis of the CCTV footage and statement of the eyewitnesses, 4 more accused persons, namely, Bablu *alias* Bale, Fateh Kumar, Rohit and Shubham Grover were also arrested and 5 co-accused persons, namely, Sachin Manchanda *alias* Bunty, Prem Chand *alias* Billi, Nikhil *alias* Ballu, Yogesh *alias* Yogi and Honey also got identified.

5.7 The petitioner was also present at the spot when Heera Singh and Jaskaran Singh *alias* Little came on the scooty. Sachin Manchanda *alias* Bunty was also present at the spot. Heera Singh was caught hold by Sachin Manchanda *alias* Bunty, meanwhile, Fateh Kumar jumped over Jaskaran Singh *alias* Little and held him. Somehow, Heera Singh and his associates

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escaped from there but Jaskaran Singh *alias* Little was captured by Sachin Manchanda *alias* Bunty, his brother Vijay *alias* Shunty, Fateh Kumar and their associates. The present petitioner also came at the spot and started beating Jaskaran Singh *alias* Little with iron rod, who was also beaten with wooden sticks, iron rods, a heavy cement block and stones, due to which he got multiple injuries.

5.8 Jaskaran Singh *alias* Little was in the custody of the present petitioner and his associates and he was not able to run away from there. Even after that, they removed his clothes and continuously kept beating him. Jaskaran Singh *alias* Little was seen crying to stop the beating by the assailants but his beating went unstopped for about 15 minutes and later on he succumbed to his injuries. Non-bailable warrants were issued against the persons who could not be found. Proceeding under Section 82 Cr.P.C. were initiated against these accused persons and they have been already declared Proclaimed Offenders by the concerned Court.

5.9 NBWs had been issued against all the accused persons and they have been already declared Proclaimed Offenders. In the case of the present petitioner, the proceeding under Section 82 Cr.P.C. were initiated against him and the matter was stated to be pending for declaring him as a Proclaimed Offnder. Under these circumstances, the prosecution has prayed for dismissal of the present anticipatory bail application.

6. BAIL APPLN. 746/2022, has been filed by Honey. His anticipatory bail application was dismissed by the learned ASJ on 28.02.2022.

6.1 It has been submitted that the FIR registered against him is completely false and fabricated; the applicant has clean antecedents. He has also given the details of the circumstances under which the present FIR was

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registered and initially, the accused persons were booked under Section 308/34 IPC, later on converted to 304/34 IPC and eventually to Section 147/148/302/34 IPC.

6.2 The grounds on which accused Honey has prayed for bail are that he has been falsely implicated; the accused is stated to be present at the spot when Heera Singh and Jaskaran Singh *alias* Little came along with other gang members with intention to kill Sachin Manchanda *alias* Bunty, who was shot on his thigh by Heera Singh. The assailants were heavily armed with dangerous weapons and they attacked upon the co-accused, his friends. The applicant/accused and his associates retaliated the attack with bare hands to diminish the impact of the attack and neutralise the assailants with a view to save their lives and reasonable force was used to dislodge the possibility of any grave harm to them.

6.3 Even the CCTV footage shows that the accused/applicant and his friends were not carrying any arms. The prosecution is alleging that the accused/applicant is liable for murder of the deceased by giving beatings to him but it has not been established on the basis of any evidence on record.

6.4 Accused Sachin Manchanda *alias* Bunty was immediately removed from the spot by his family members and he was admitted to hospital. There is a cross-FIR regarding the same incident showing that Sachin Manchanda *alias* Bunty and co-accused Fateh were shot by the assailants at the spot. The applicant/accused had left the spot of the incident after Sachin Manchanda *alias* Bunty was removed to hospital and only co-accused Aatif Khan *alias* Ajju was present at the spot when police had apprehended him. The entire incident is of a scuffle where the applicant/accused and other co-accused persons tried to retaliate and save themselves from being shot.

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6.5 The prosecution is relying upon the disclosure statement of the co-accused, which are not admissible. The same are not substantive pieces of evidence.

6.6 NBWs have been issued against the present petitioner and proceeding under Section 82 Cr.P.C. is stated to be pending. The applicant has submitted that there is no risk of him fleeing from the interest of justice, if he is granted bail.

7. In the Status Report filed, the details of the incident have been given as noted herein above. In response to the bail application of co-accused, it has been submitted that the present petitioner Honey was present at the time of the incident at the spot. The petitioner along with his associates had brutally beaten Jaskaran Singh *alias* Little with wooden sticks, iron rods, heavy cement blocks and stones, resulting in multiple injuries. The petitioner was seen in CCTV footage beating the deceased with iron rod mercilessly and removing the clothes of the deceased.

7.1 The deceased was not able to run away from there. Thereafter, his clothes were removed and he was continuously beaten for about 15 minutes, which resulted in deep wounds and finally he succumbed to his injuries. Efforts were made to trace out the accused Honey and other co-accused.

7.2 On 08.11.2021, NBWs were issued against the co-accused persons. The present accused along with his co-accused have been declared Proclaimed Offenders by the concerned Court as they have deliberately avoiding the arrest. The petitioner is stated to be involved in two other cases of PS Khyala. Offences committed by the petitioner are heinous in nature and bail has been strongly opposed.

8. The Bail Application No. 747/2022 has been moved by the accused

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Sachin Manchanda *alias* Bunty in FIR No. 912/2021. His earlier bail application was dismissed by the learned ASJ on 28.02.2022. It has been submitted that the FIR registered against the petitioner is false and fabricated. Thereafter, the incident as detailed above, has been repeated and the bail has been prayed on the grounds that the applicant/accused was present when Heera Singh and Jaskaran Singh *alias* Little along with other gang members arrived with the intention to kill him and his friends.

8.1 Heera Singh shot the applicant on his thigh. The assailants were heavily armed with dangerous weapons. The applicant/accused and his friends retaliated the attack with bare hands in good faith to save their lives with use of reasonable force. The allegations of the prosecution that the petitioner had given beatings to the deceased and he had provoked his co-accused persons to kill him are false. The prosecution has not been able to establish these facts by bringing any evidence on record.

8.2 The accused/applicant was immediately removed from the spot by his family members and was taken to the nursing home. An FIR was registered at the behest of the applicant bearing No. 911/2021. A PCR call was made by the wife of the applicant/accused at 9:30 p.m., which is indicative of the fact that the present accused and the co-accused Fateh had been shot by the assailants.

8.3 It is further submitted that the story of the prosecution is doubtful. The applicant/accused was not present at the spot when the deceased was beaten up by the co-accused persons. There is no evidence on record that the applicant/accused had provoked any of the co-accused persons to kill the deceased. Only one co-accused, Aatif Khan was arrested from the spot. Mere statements of the co-accused persons are not sufficient to charge the

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present petitioner with the offence and the applicant is ready to abide by the conditions to be put for his release on anticipatory bail.

9. The State has filed the Status Report giving details of the incident and registration of 2 FIRs regarding the same incident. It has been submitted that the applicant Sachin Manchanda *alias* Bunty was also seen in the CCTV footage beating Jaskaran Singh *alias* Little mercilessly after he was captured by the applicant, his brother Vijay *alias* Shunty, Fateh Kumar and his associates.

9.1 Jaskaran Singh *alias* Little was in custody of the applicant Sachin Manchanda *alias* Bunty and his associates. His clothes were removed and he was continuously beaten for about 15 minutes. Sachin Manchanda *alias* Bunty also got injured in this incident and he was admitted to Khetra Pal Hospital. When he came to know that his brother has been arrested by police, he ran away from the hospital and since then, he is still at large. Efforts were made to trace the pesent accused and his associates but they could not be traced out.

9.2 NBWs were issued but could not be executed and the absconders have been already declared Proclaimed Offenders under Section 82 Cr.P.C. The petitioner Sachin Manchanda *alias* Bunty is stated to a hardcore criminal, who is involved in 16 other cases of PS Khyala, Geeta Colony, Anand Vihar, Hari Nagar, Jagatpuri and Rajouri Garden and these details have been given in para 11 of the Status Report. On these grounds, the bail has been strongly opposed.

10. Learned counsel for the petitioner has relied upon the following judgements:

(i) *'Ashish v. CBI'* in Bail Application No. 143/2022

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(ii) *'Abul Kalam Azad v. State of Madhya Pradesh'* in MCRC No. 6917/2020

(iii) *'Nitin Chandrrakant v. State of Maharashtra'* in Anticipatory Bail Application No. 1880/2016

(iv) *'Sri Kalyan Bandyopadhyay'* CRM No. 2898/2015

(v) Order dated 05.03.2022 passed by the Ld. MM, Tis Hazari Court, New Delhi in FIR No. 912/2021 registered at PS Khyala.

11. I have heard the learned counsel for the petitioners as well as APP for the State in detail.

12. The incident, which is more or less detailed by the petitioners as well as the State, is that the present petitioners were present at the spot when Heera Singh, Jaskaran Singh *alias* Little and other assailants came there and they attacked Sachin Manchanda *alias* Bunty, one of the petitioners here, causing gun shot injury on his thigh and one of his co-accused was also injured. All the persons present at the spot from the present petitioners' side retaliated. Heera Singh and few of his associates were caught and beaten.

12.1 After some time, Heera Singh and his other associates were able to free themselves from the clutches of the present petitioners and their associates and they ran away. However, the petitioners and their associates were able to catch hold of Jaskaran Singh *alias* Little and the CCTV footage shows that he alone was beaten up for about 15 months after disrobing him and he was attacked with iron rods, wooden sticks, cement blocks, causing multiple injuries on him, which have been detailed in the post mortem report as under:

"**EXTERNAL EXAMINATION**

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External Injuries

1. Multiple bruised lacerated wounds, present in an area of size 20 cm x 12 cm, over head, situated 15 cm above eyebrow, involving bilateral parietal, right temporal and occipital region, with size ranging from 3 cm x 1 cm x bone deep to 16 cm x 1 cm x bone deep. On exploration, effusion of blood present throughout the scalp.
2. Incised wound, vertically placed, of size 7 cm x 0.2 cm x bone deep, present over right ear.
3. Multiple abrasions, reddish brown present in an area of size 6cm x 3cm over left side of forehead.
4. Abrasion reddish brown of size 3cm x 2cm present over right side of forehead.
5. Abrasion reddish brown of size 1cm x 1cm present over root of nose with fracture of underlying nasal bone with effusion of blood along the fracture.
6. Contusion reddish brown of size 8cm x 6cm present over right side of face situated just below right eye and 2cm outer to mid line. Multiple abrasions reddish brown of vaiious sizes present within the contused area.
7. Contusion reddish brown of size 4cm x 3cm present over chin.
8. Multiple scattered bruises, reddish brown, having various dimensions (shape and size) present over back of abdomen and chest, covering an area of about 30%. On dissection each bruising contained effusion of blood.
9. Multiple scattered bruises and abrasions, reddish brown in colour having various dimensions (shape and sizes) present on the lateral aspect and frontal aspect of left side of chest. On dissection each bruising contained effusion of blood.
10. One oval penetrating injury of dimension 1.4 cm x 1.2 cm x bone deep present on the4 posterior aspect of left elbow. On exploration the underlying bone i.e. lower end of humerus fractured with clotted blood collection into the vicinity of fracture site and wound.
11. Left elbow remarkably swollen and distorted with extensive bruising on the covering skin. On dissection the underlying bone i.e. upper part of shaft of ulna fractured and relatively displaced

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with massive clotted blood collection into the upper part of forearm, elbow and lower end of arm. Puncture wound, of size 1 cm x 0.5 cm present over back of left forearm situated 8 cm below elbow joint with bony chip of ulna protruding out.

12. Multiple contusions and abrasions, reddish brown in colour, of various sizes, present in an area of size 10 cm x 5 cm over back of left hand and wrist.

13. Multiple contusions and abrasions, reddish brown in colour, of various sizes, present in an area of size 25 cm x 8 cm over outer aspect and back of right arm.

14. Contusion reddish brown of size 10 cm x 8 CRL.M.A. present over outer aspect and back of right forearm situated just below elbow joint.

15. Multiple contusions and abrasions reddish brown of various sizes, present in an area of size 12 cm x 6 cm over back of right hand and wrist.

16. Multiple bruises, reddish brown, (6 in number on right leg) and multiple bruises on the anterior aspect of both legs apart from one linear bruise on the right thigh and one linear bruise on the left knee.

17. Multiple linear (rail track pattern) bruises, reddish brown, present over the both thighs.

18. One oval penetrating wound having dimension of 1.5 cm x 1.5 cm with ragged margins present on the anterior aspect of right knee which extended into the substance of underlying bone i.e. upper part of condoyle of tibia with fracture with absence of abrasion collar, blackening, tattooing or singeing.

19. Multiple abrasions, reddish brown, of various sizes, present over both legs and feet.

INTERNAL EXAMINATION

HEAD:

A- Scalp: Sub scalp contused at multiple areas especially adjacent to lacerations site on the upper mid part of head.

B- Skull: Intact; NAD.

C- Meninges and Brain: Subdural thin layered haematoma present on the occipital lobes of cerebrum with generalised

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subarachnoid hemorrhage and brain oedema.
D- Base of Skull: Fractured middle cranial fossa at its floor extended on both sides with containing adequate amount of clotted blood.

NECK:

a. Hyoid Bone/Thyroid Carrtilage/Cricoid Cartilage/Tracheal Rings & Mucosa: NAD.

CHEST (THORAX):

1. Ribs and Chest Wall: Multiple bruises present on the different part of chest as mentioned above. Multiple ribs fractured on both sides.
2. Oesophagus: NAD
3. Pleural Cavities: NAD
4. Lungs: Pale
5. Heart: NAD

ABDOMEN:

1. Abdominal wall : NAD
2. Peritoneal Cavity : NAD
3. Stomach:
   b. Contents: Brownish paste like material about 200 ml.
   c. Mucosa : NAD
4. Small intestine : Filled with fluid and gases; walls: NAD
5. Large intestine : Filled with faecal matter & gases; walls: NAD
6. Liver : Pale
7. Spleen : Pale
8. Kidneys : Pale

GENITAL ORGAN:

1. Urinary Bladder : Empty
2. Rectum : Empty
3. Genital organs : NAD

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SPINAL COLUMN : Intact; NAD

Preserved items:
1. Blood on gauze dried.
2. Clothes (one grey underwear).

All exhibits sealed with seal of "PM DDUH" and handed over to concerned IO.

OPINION
1. Cause of Death: Shock as a result of multiple extensive bruises and fractured bones associated with head injury. The injuries sustained on the body of deceased could be inflicted by different kind of means and weapons like punching, slapping, kicking, stone pelting, sticks, rods and sharp heavy pointed object. The involvement of multiple persons and multiple weapons of offence cannot be ruled out.
2. Manner of death: Homicidal.
3. Videography and photography done.
4. Total no. of inquest papers: Twelve (12) Papers and three X-ray films enclosed with signature."

12.2 There were as many as 19 external injuries, consisting of multiple bruised lacerated wounds, multiple bruises and multiple abrasions, scattered bruises, penetrating injuries, multiple linear bruises, etc. on different parts of the body of the deceased. The sub-scalp was contused at multiple areas and the base of the skull was fractured in the middle. There were multiple fractures of the ribs on both the sides. The cause of death has been given as a shock as a result of multiple extensive bruises and fractured bones associated with head injury. It has been also opined that the injuries could be inflicted by different kinds of means and weapons like punching, slapping, kicking, stone pelting, sticks, rods and sharp heavy pointed objects.

12.3 The presence of the accused persons has not been denied at the spot. The CCTV footage has supported the version of the prosecution. The ground

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of self defence, *prima facie* is not available at this stage to the petitioners as they have extensively acceded the right of self defence. There is no possible or plausible reason as to why the deceased was mercilessly beaten after all his other associates had run away from the spot and for the next 15 months or so, he was the lone victim of the fury of the present accused persons along with their associates. There is no ground as to why his cries for leaving him alone were not heeded to and his clothes were removed and he was beaten up in naked condition.

12.4 It will be the prosecution's effort to prove during trial as to who had caused which injuries. The plea of the petitioners that they had no knowledge that death can be the ultimate result, cannot be appreciated at this stage only on the ground that there were large number of persons who were part of a crowd, which attacked the deceased and caused grievous injuries on this person, resulting in his ultimate death within few hours. The injuries on the deceased as detailed above cannot be caused only in the case of self defence and the plea of the self defence, *prima facie* at this stage, is found to be not available to the accused persons.

12.5 This is a case of heinous offence. The applicants have been charged under Section 302 IPC apart from other Sections of IPC. They have to be interrogated in custody and there are no grounds available to them on the basis which they can be enlarged on anticipatory bail.

12.6 The applications for anticipatory bail are without any reasonable grounds and all the three applications moved by accused, being bail application No. 746/2022 of Honey, bail application No. 1349/2022 of Yogesh and bail application No. 747/2022 of Sachin Manchanda are hereby dismissed.

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13. It is needless to mention that any observations made herein above are only for the purpose of deciding these applications. The main cause will be decided on merit by the learned Trial Court without getting influenced by any such observations made in the present order.

TALWANT SINGH, J

JULY 19, 2022
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Click here to check corrigendum, if any

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