

**THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL REVISION APPLICATION NO.640 OF 2016
WITH
CRIMINAL APPLICATION NO.129 OF 2018
IN
CRIMINAL REVISION APPLICATION NO.640 OF 2016**

CENTRAL BUREAU OF INVESTIGATION)...APPLICANT

V/s.

NARENDRA K. AMIN AND ANR.)...RESPONDENTS

Shri Anil Singh, Additional Solicitor General, a/w. Mr.Sandesh D.Patil, Ms.Indrayani Deshmukh, Ms.Geetika Gandhi and Ms.Carina Xavier, Advocate for the Petitioner/CBI.

Mr.Mahesh Jethmalani, Senior Counsel a/w. Mr.Pranav Badheka i/b. Ms.Gunjan Mangla, Advocate for Respondent No.1.

Mr.Gautam Tiwari i/b. Probus Legal, Advocate for the First Informant.

Mrs.Anamika Malhotra, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

**DATE : RESERVED ON : 16th July 2018
PRONOUNCED ON : 10th September 2018**

JUDGMENT :

1 By this revision petition, petitioner/Central Bureau of Investigation (CBI) is challenging the order dated 18th August

2016 passed by the learned Special Judge for the CBI, Greater Mumbai, below Exhibit 606, thereby discharging respondent/accused no.12 Narendra K. Amin, the then Deputy Superintendent of Police, City Crime Branch, Ahmedabad, for want of evidence and absence of material under Section 227 of the Code of Criminal Procedure. The claim for discharge was for offences punishable under Sections 120B, 364, 365, 368, 341, 342, 384, 302 read with 201 of the Indian Penal Code as well as under Section 25 of the Indian Arms Act.

2 In order to have a better understanding of the subject matter, it is necessary to state case of the prosecution against the accused persons in brief. The prosecution case is to the following effect :

(a) Sohrabuddin Shaikh (since deceased) was a dreaded criminal, against whom offences of murder, abduction and extortion etc. were registered in the States of Gujarat and Rajasthan. He was an absconding accused in Crime No.214 of 2004 regarding murder of Hamid Lala committed in

jurisdiction of Hathipole Police Station of Udaipur in Rajasthan and in Crime No.1124 of 2004 registered at Navrangpura Police Station, Ahmedabad, Gujarat, in respect of firing at the office of the Popular Builder. He was having link with the terrorists. In the year 1994/95 upon his arrest, Gujarat Police seized 24 AK 56 rifles, large number of hand grenades and a large cache of ammunitions from the well of his farm house, which was supposedly sent to him by Dawood Ibrahim at the instance of ISI for spreading terror in India. According to the intelligence input, he was going to help Pakistani Intelligence Agency ISI and Terrorist Organization Lashkar-e-Toiba in assassinating some big leader of Gujarat. Police from States of Gujarat, Rajasthan and Madhya Pradesh were desperately searching for his whereabouts. Kausarbi (since deceased) was wife of deceased Sohrabuddin Shaikh. Tulsiram Prajapati (since deceased) was an aide of deceased Sohrabuddin Shaikh and they both were undertaking criminal activities jointly. Award of Rs.25,000/- and Rs.20,000/- was already declared

on Sohrabuddin Shaikh and Tulsiram Prajapati respectively. According to the prosecution case, in the year 2004, gang of Sohrabuddin Shaikh became very active in Rajsamand, Nathdwara, Sukher and Udaipur districts of Rajasthan i.e. the areas which are known for marble mining and trade including export of the marble. Hamid Lala gang was protecting the marble traders for consideration. Gang of Sohrabuddin Shaikh and Tulsiram Prajapati wanted to take control over the area for financial gains by getting rid of Hamid Lala gang. Accordingly, Hamid Lala was murdered by Sohrabuddin Shaikh and his gang. Sohrabuddin Shaikh also started extorting large sum of money from A.K.Marbles and M/s.Sangam Textiles. In view of criminal background and nuisance of Sohrabuddin Shaikh and Tulsiram Prajapati, the accused persons from Gujarat and Rajasthan Police force entered into criminal conspiracy to eliminate Sohrabuddin Shaikh and then acted in connivance in abduction and killing of Sohrabuddin Shaikh. Acting in furtherance of the conspiracy, they also killed Kausarbi and Tulsiram Prajapati.

- (b) According to the prosecution case, senior police officers from the States of Gujarat and Rajasthan entered into a criminal conspiracy to eliminate Sohrabuddin Shaikh. For this purpose, they sought help from his associate Tulsiram Prajapati for nabbing Sohrabuddin Shaikh by misleading Tulsiram Prajapati that due to political pressure, they need to arrest Sohrabuddin Shaikh for few months, and subsequently, he will be released on bail. Criminal conspiracy to eliminate Sohrabuddin Shaikh came to be hatched by senior officers including the respondent/discharged accused, by being in constant touch with each other. For that purpose, discharged accused D.G.Vanzara, Rajkumar Pandiyan and Dinesh M.N. as well as others were in constant touch and were visiting various places in other States, there was meeting of minds between them. Everyone had interest in nabbing Sohrabuddin Shaikh. For achieving this ultimate aim of the criminal conspiracy hatched by the accused persons, teams of police officers from States of Gujarat and Rajasthan were formed. Police

came to know that Sohrabuddin Shaikh along with his wife Kausarbi had gone to Hyderabad for celebrating the festival of Eid with his friend Kalimuddin of Hyderabad. Police received the tip that on 22nd November 2005, Sohrabuddin Shaikh along with his wife Kausarbi was to go from Hyderabad to Sangli for gynecological treatment of Kausarbi, and they were to undertake this journey by luxury bus of Sangita Travels, Ahmedabad, in company of Tulsiram Prajapati. It is alleged that Police therefore, decided to abduct Sohrabuddin Shaikh during this journey.

- (c) According to prosecution case, in pursuant to conspiracy hatched, discharged accused no.3 Dinesh M.N. visited Anti Terrorist Squad, Ahmedabad, about two months prior to fake encounter of Sohrabuddin Shaikh. He also visited Ujjain in Madhya Pradesh. Discharged accused no.3 Dinesh M.N. was at Ahmedabad from 24th November 2005 to 26th November 2005 when Sohrabuddin Shaikh died in fake encounter by teams of Gujarat and Rajasthan Police. Infact,

he was present on the spot of encounter of Sohrabuddin Shaikh.

- (d) How abduction took place is reflected from CBI statement of Nathuba Jadeja (PW105) and Gurudayal Singh (PW106), recorded by the Investigating Agency i.e. Central Bureau of Investigation (CBI) on 11th May 2010 and 4th March 2010 respectively. These two witnesses at the relevant time i.e. in November 2005, were working with the Anti Terrorist Squad, Ahmedabad, as drivers. The learned counsel for the First Informant has accepted the fact that both these witnesses are accomplice, having role in commission of the crime in question. They are star witnesses of the prosecution. Further part of the prosecution case is therefore, extracted from the CBI statement of PW105 Nathuba Jadeja.

- (e) As reflected from police statement of PW105 Nathuba Jadeja recorded by the CBI, at about 6.00 p.m. of 20th November

2005, discharged accused no.2 Rajkumar Pandiyan, Superintendent of Police with the Anti Terrorist Squad, Ahmedabad, called him and directed him to accompany Police Inspector named N.H.Dhabi on a tour. Accordingly, along with Police Officials named Ajay Parmar, Santaram Sharma and co-driver Gurudayal Singh (PW106), Nathuba Jadeja (PW105) travelled by Qualis vehicle from Ahmedabad to Hyderabad. They reached Hyderabad at about 8.00 – 8.30 p.m. of 21st November 2005 and went to the campus of Central Industrial Security Force, Hyderabad. By that time, discharged accused no.2 Rajkumar Pandiyan had already reached Hyderabad by taking a morning flight. Police Inspector N.H.Dhabi and Santaram Sharma went to meet discharged accused no.2 Rajkumar Pandiyan at a bungalow in the campus of the Central Industrial Security Force, at Hyderabad. Police Official Santaram Sharma stayed at that bungalow. Thereafter, Police Officials N. H. Dhabi and Parmar stayed in one room, whereas PW105 Nathuba Jadeja and PW106 Gurudayal Singh stayed in the

another room of the guest house in the campus of the Central Industrial Security Force at Hyderabad, for the night halt.

- (f) Statement of PW105 Nathuba Jadeja recorded by the CBI further reflects that on 22nd November 2005, at about 8.30 – 9.00 a.m., Police Officials N.H.Dhabi, Parmar as well as drivers PW105 Nathuba Jadeja and PW106 Gurudayal Singh left the Central Industrial Security Force campus and went to IPS Officers mess, where N.H.Dhabi and Parmar met discharged accused no.2 Rajkumar Pandiyan. Thereafter, Police Officials Parmar and Santaram Sharma, along with PW105 Nathuba Jadeja and PW106 Gurudayal Singh went to Airport for purchasing air ticket for the return journey of discharged accused no.2 Rajkumar Pandiyan. Ajay Parmar went inside the Airport for purchasing the ticket. Then, they returned to the Officers Mess. Santaram Sharma and Ajay Parmar then bought two number plates. Subsequently, number plates of Qualis came to be changed by substituting it with the number plate having registration number of

Andhra Pradesh by PW105 Nathuba Jadeja and PW106 Gurudayal Singh, on instructions of Police Officer Parmar.

- (g) CBI statement of PW105 Nathuba Jadeja shows that at about 7.00 p.m of 22nd November 2005, discharged accused no.2 Rajkumar Pandiyan accompanied by seven to eight other persons left for intercepting the luxury bus in which Sohrabuddin Shaikh was travelling, by two Tata Sumo vehicles. PW105 Nathuba Jadeja was following them by driving the Qualis vehicle. One of the Tata Sumo vehicles was driven by PW106 Gurudayal Singh. During the course of chasing the luxury bus, after a brief halt at the hotel, discharged accused no.2 Rajkumar Pandiyan, Police Officers named N.H.Dhabi and Santaram Sharma along with two others sat in the Qualis driven by PW105 Nathuba Jadeja. The luxury bus was further chased by those two Tata Sumo vehicles as well as the Qualis vehicle driven by PW105 Nathuba Jadeja. After midnight, discharged accused no.2 Rajkumar Pandiyan directed PW105 Nathuba Jadeja to

intercept the luxury bus by overtaking it by the Qualis vehicle. Accordingly, on intercepting it near Zahirabad, the luxury bus stopped. Discharged accused no.2 Rajkumar Pandiyan, Police Inspector N.H.Dhabi and others approached the bus. Then Sohrabuddin Shaikh, his wife Kausarbi as well as Tulsiram Prajapati were made to alight from the said bus. Sohrabuddin Shaikh and Tulsiram Prajapati were then made to sit in the Qualis vehicle driven by PW105 Nathuba Jadeja, whereas Kausarbi was made to sit in the Tata Sumo vehicle driven by PW106 Gurudayal Singh. During return journey towards Ahmedabad, 2 kilometers after Bharuch, Kausarbi was also shifted to the Qualis vehicle driven by PW105 Nathuba Jadeja. Tulsiram Prajapati was shifted to another vehicle by Rajasthan Police. He was taken to Udaipur where he was kept in illegal custody for five days. Thereafter, he was shown to be arrested by a team led by PW22 Bhawarsingh Hada, Station House Officer, Hathipole Police Station, Udaipur. Tulsiram Prajapati was then allowed to go by setting him free. He

came to be apprehended on 26th November 2005 from the house of Chandan Kumar Jha at Bhilwara by PW38 Sudhir Joshi, Deputy Superintendent of Police, Udaipur, Rajasthan.

- (h) As seen from the CBI statement of PW105 Nathuba Jadeja, after reaching Ahmedabad, on instructions of Police Officials named Parmar and Chaubey, the Qualis vehicle was driven to the farm house at Adluj Road and Sohrabuddin Shaikh along with his wife Kausarbi were kept in the said “Disha Farm House” in night hours of 23rd November 2005. Police Officials named N.H.Dhabi, Parmar and Chaubey stayed at the said farm house. Discharged accused no.2 Rajkumar Pandiyan was dropped at his house. On his instructions, the Qualis vehicle was driven towards the police chowki near Judges bungalow. It was parked in one of the bungalows by PW105 Nathuba Jadeja. This is how, according to the prosecution case, Sohrabuddin Shaikh, Kausarbi and Tulsiram Prajapati were abducted from the luxury bus near Zahirabad, while they were undertaking journey from Hyderabad to Sangli and subsequently

Sohrabuddin Shaikh and Kausarbi were dumped in the “Disha Farm House” near Ahmedabad.

- (i) According to the prosecution case reflected from the statement of PW105 Nathuba Jadeja, fake encounter of Sohrabuddin Shaikh was done by the accused persons in the night intervening 25th November 2005 and 26th November 2005. At about 1.30 a.m. to 2.00 a.m. of 26th November 2005, PW105 Nathuba Jadeja drove Maruti car which was occupied by Police Officers from Rajasthan Police as well as accused Police Officer N.H.Dhabi. PW105 Nathuba Jadeja was made to stop that Maruti car in between Narol circle and Vishala circle. At about 2.00 a.m. of 26th November 2005, another Maruti car driven by Bhailal (PW107) came from Narol and stopped there. N.H.Dhabi and Police Personnel from Rajasthan Police alighted from the car. After sometime, PW105 Nathuba Jadeja heard sound of shots being fired. On instructions, he and co-driver Bhailal (PW107) reversed the Maruti car. PW105 Nathuba Jadeja

then saw Sohrabuddin Shaikh lying there in injured condition. Discharged accused no.2 Rajkumar Pandiyan, Superintendent of Police, Anti Terrorist Squad, discharged accused no.1 D.G.Vanzara, Deputy Inspector General, Anti Terrorist Squad, Ahmedabad, and discharged accused no.3 Dinesh M.N. (who is referred as the Superintendent of Police Udaipur by PW105 Nathuba Jadeja) along with other Police personnels namely Chaubey, Santaram Sharma etc. were found to be present there. One motorcycle was also found lying there. Police Officials N.H.Dhabi and Ajay Parmar took Soharabuddin Shaikh to the hospital in Maruti car driven by Bhailal (PW107). In this way, fake encounter of Sohrabuddin Shaikh came to be effected in between Narol circle and Vishala circle, in the night intervening 25th November 2005 and 26th November 2005, by the accused persons.

- (j) According to the prosecution case reflected from the CBI statement of PW105 Nathuba Jadeja, thereafter, Kausarbi

also came to be murdered by the accused persons and her dead body came to be disposed off by burning it at the bed of the river at Village Ellol. PW105 Nathuba Jadeja was asked by discharged accused no.1 D.G.Vanzara, Deputy Inspector General, to accompany the tempo along with Police Official Chauhan. Firewood came to be loaded in that tempo and during the journey to Village Ellol, that tempo faced problem of malfunctioning of gear. Another tempo was summoned and firewood came to be shifted in that tempo. Further journey started thereafter and at about 10.00 to 11.00 p.m. of 28th November 2005, that tempo also got stuck in the sand in the bed of the river at Village Ellol. Then, discharged accused no.1 D.G.Vanzara, discharged accused no.2 Rajkumar Pandiyan and respondent/discharged accused no.12 N.K.Amin came there. Firewood from the tempo came to be stacked near the river bed. Dead body of Kausarbi was brought there by a jeep. As stated by PW105 Nathuba Jadeja, it was kept on the funeral pyre by him as well as by Chauhan, Chaubey and Rathod.

Accused no.1 D.G.Vanzara, Deputy Inspector General, burnt it by setting the pyre on fire. Thereafter, ashes and bones came to be collected in a bag and by the jeep, that bag was carried away by Police Officials named Chaubey and Chauhan.

- (k) Prosecution case, as reflected from the statement dated 4th March 2010 of PW106 Gurudayal Singh recorded by the CBI is to the effect that on instructions of N.H.Dhabi, Police Inspector, Anti Terrorist Squad, at 7.30 p.m. of 20th November 2005, he, alongwith N.H.Dhabi, Santaram Sharma and Ajay Parmar started their journey in the Qualis vehicle driven by PW105 Nathuba Jadeja and then after 2.00 a.m., he drove that vehicle. They reached Hyderabad and stayed in the rooms at the campus of Central Industrial Security Force for the night halt on 21st November 2005. On 22nd November 2005, they went to the IPS Mess where discharged accused no.2 Rajkumar Pandiyan was camping. In the afternoon, he along with Parmar, Nathuba Jadeja

(PW105) and Santaram Sharma went to the Airport for purchasing Air tickets for discharged accused no.2 Rajkumar Pandiyan. Parmar went inside the Airport for purchasing the Air ticket. Thereafter, on instructions from N.H.Dhabi, he and PW105 Nathuba Jadeja changed the number plates of the Qualis vehicle by affixing number plates starting with "AP-11". In the evening of 22nd November 2005, he sat in the Tata Sumo vehicle along with three officers and followed the luxury bus. He has then spoken about intercepting the luxury bus by the Qualis and abduction of three persons including a lady from that bus by discharged accused no.2 Rajkumar Pandiyan and others. As per his version, abducted lady and Santaram Sharma sat in the Tata Sumo in which he was travelling. Thereafter, two kilometer after Bharuch, that burkha clad lady and Santaram Sharma sat in the Qualis vehicle. This witness further stated that on reaching Ahmedabad, he went to his room in the Anti Terrorist Squad campus, and thereafter, proceeded on leave due to sickness of his

nephew. Thus, statement of this witness PW106 Gurudayal Singh shows that while leaving Ahmedabad by the Qualis vehicle, he was not driving it but it was being driven by PW105 Nathuba Jadeja, whereas PW105 Nathuba Jadeja is stating that PW106 Gurudayal Singh was driving it. He has stated that he was one of the member of the police team which travelled from Hyderabad in three vehicles and abducted Sohrabuddin Shaikh and two others, but he was not driving the vehicle during that period.

- (1) After murdering Sohrabuddin Shaikh in the fake encounter, accused no.7 Police Inspector Abdul Rehman from Rajasthan Police filed First Information Report (FIR) with Crime Investigation Department, Crimes, (CID Crimes), Gujarat, alleging that absconding accused Sohrabuddin Shaikh was coming by highway from Surat and upon being asked to surrender he opened fire, and therefore, in retaliation the police also opened fire, due to which Sohrabuddin Shaikh came to be killed. Accordingly Crime No.05 of 2005 came

to be registered. Accused no.4 Parmar, Police Officer, investigated the FIR and reported the encounter to be genuine and submitted Abate Summary. According to the prosecution case, discharged accused no.2 Rajkumar Pandiyan, on 27th December 2006, intercepted the cell phone of Tulsiram Prajapati by alleging that said Tushiram Prajapati has escaped from custody of police. This fact is reflected from statement of Arun Kumar Sharma, Deputy Inspector General, Gandhi Nagar.

- (m) According to the prosecution case though Sohrabuddin Shaikh and others were already nabbed by Gujarat Police in the night intervening 22nd November 2005 and 23rd November 2005, discharged accused no.3 Dinesh M.N. travelled to Ahmedabad on 24th November 2005 on the false pretext that he has secret information and he wants to arrest Sohrabuddin Shaikh. Investigating Officer of Hamid Lala murder case was not taken by him to Ahmedabad. Even case diary of that case was also not taken to Ahmedabad.

(n) According to the prosecution case apart from active role in eliminating Sohrabuddin Shaikh, discharged accused no.3 Dinesh M.N. has played vital role in encountering Tulsiram Prajapati. He had directed PW38 Sudhir Joshi, Deputy Superintendent of Police, Udaipur, for nabbing Tulsiram Prajapati on 26th November 2005 by contacting him through accused Abdul Rehman, Police Inspector. After Tulsiram Prajapati was nabbed by the team of Police Officers including PW61 Ranvijay Singh, Police Inspector and PW22 Bhawarsingh Hada, Police Inspector, from house of PW Chandankumar Jha, Bhilwara, discharged accused no.3 Dinesh M.N. told them not to show his arrest for 2 to 3 days. Thereafter on 29th November 2005, Tulsiram Prajapati was shown to have been arrested in Crime No.214 of 2004 registered with Hathipole Police Station, Udaipur, due to murder of Hamid Lala. After completion of his police custody, he was kept at the central jail at Udaipur, where he was threatened by Abdul Rehman, Police Inspector. In

conspiracy to eliminate Tulsiram Prajapati, discharged accused no.3 Dinesh M.N. has caused arrest of PW3 Kundan Prajapati – nephew of Tulsiram Prajapati as well as PW4 Vimal Shrivastava – friend of PW3 Kundan Prajapati when they wanted to meet Tulsiram Prajapati. They were implicated in false cases in order to prevent their meeting with Tulsiram Prajapati. When Tulsiram Prajapati was to be produced in the concerned court at Ahmedabad, co-accused Mohd.Azam came to be tactfully separated by implicating him in old closed case of scooter theft. In this way, according to the prosecution case, Tulsiram Prajapati was sent all alone to Ahmedabad from Udaipur with selected police guards.

- (o) According to the prosecution case, Tulsiram Prajapati used to disclose his apprehension of killing in fake encounter by police to inmates of jail at Udaipur, including his nephew PW3 Kundan Prajapati and PW4 Vimal Shrivastava, PW42 Rafique @ Bunty, PW Mohd.Azam and PW37 Sharafat Ali. He had expressed same apprehension of killing in fake

encounter to his Advocate PW35 Salim Khan. Tulsiram Prajapati had submitted several applications before the concerned court as well as National Human Rights Commission, New Delhi, expressing apprehension of killing by police in fake encounter. Thus, according to the prosecution case, under the conspiracy hatched by accused persons, Tulsiram Prajapati was systematically eliminated by sending him to Ahmedabad from Udaipur in custody of four selected guards of choice of discharged accused no.3 Dinesh M.N.

- (p) According to the prosecution case on 25th December 2006 Tulsiram Prajapati was given in custody of specially formed escort team of Udaipur Police headed by Assistant Sub-Inspector Narayan Singh and comprising of Police Constables Dalpat Singh, Kartar Singh and Yaduveer Singh on instructions of discharged accused no.3 Dinesh M.N. Tulsiram Prajapati was produced before the court at Ahmedabad in Popular Builder Firing case on 26th

December 2006. The prosecution case indicates that during return journey undertaken on 26th December 2006 from Ahmedabad to Udaipur by Udaipur Express, Tulsiram Prajapati was infact not with the escort team headed by Assistant Sub-Inspector Narayan Singh. At about 3.00 a.m. of 27th December 2006, show of escape of Tulsiram Prajapati from the custody of the police guards was made. When the train became slow because of turning near Shamalji Railway Station, Tulsiram Prajapati was shown to have escaped from custody of the police guards. It is alleged that two criminals threw chilli powder in eyes of police guards Yaduveer Singh and Kartar Singh when they accompanied Tulsiram Prajapati towards urinal and then along with those two criminals, Tulsiram Prajapati was shown to have escaped from the custody of the Police Guards. Farce of trying to nab him by chasing him and firing bullets was made. According to prosecution, he was not in the custody of those guards. Thereafter, he was infact killed in fake encounter at about 5.00 a.m. of 28th December 2006 by one of the accused

named Ashish Kumar Pandya, Police Sub-Inspector of Gujarat Police.

- (q) Version of other side in respect of encounter of Tulsiram Prajapati reflected from the charge-sheet also needs to be put on record. The FIR of encounter of Tulsiram Prajapati came to be lodged by Police Sub-Inspector Ashish Kumar Pandya (co-accused) on 28th December 2006 while at the Cottage Hospital at Ambaji. He reported that at about 11.00 p.m. of 27th December 2006, information was received from the police control room about escape of Tulsiram Prajapati from custody of Udaipur police. Hence, he along with his staff as well as Assistant Sub-Inspector Narayan Singh, Police Constables Kartar Singh and Yaduveer Singh of the escort team of Udaipur Police from Rajasthan reached Ambaji and searched absconding accused Tulsiram Prajapati by checking various places including guest houses. Then, after 4.30 a.m. of 28th December 2006, they started patrolling on the road leading towards Sarhad Chapri. At

about 5.00 a.m., they saw three persons on the road who were trying to stop the Matador pick up vehicle. That Matador vehicle did not stop. When the police jeep following the Matador vehicle reached at that spot, those three persons tried to stop that jeep. At that time, Assistant Sub-Inspector Narayan Singh of Udaipur Police identified one from those three persons as Tulsiram Prajapati. Then, according to the FIR lodged by Police Sub-Inspector Ashish Kumar Pandya, Tulsiram Prajapati took out a firearm and fired a bullet which hit on left side of mudguard of the police jeep. Thereafter, Tulsiram Prajapati along with those two persons started running away. Police Sub-Inspector Ashish Kumar Pandya further reported that he got down from the jeep and asked those three persons to surrender. At that time, Tulsiram Prajapati turned back and fired one round from the firearm. That bullet hit left upper arm of Police Sub-Inspector Ashish Kumar Pandya (co-accused), and therefore, he fired two rounds from his service revolver. Apart from him, Assistant Sub-Inspector Narayan Singh and

Police Constable Yaduveer Singh also fired from their service weapons causing fall of Tulsiram Prajapati. He was, then, taken to Simji Hospital. Tulsiram Prajapati was declared dead at that hospital. Accordingly, Crime No.115 of 2006 came to be registered at Police Station Ambaji on the basis of this report lodged by Police Sub-Inspector Ashish Kumar Pandya.

- (r) The charge-sheet in the instant case reveals that Police Sub-Inspector Ashish Kumar Pandya (co-accused) was admitted to the Government hospital Palanpur on 28th December 2006 with the history of fire arm injury caused at about 5.00 a.m. of that day. Initially, he had taken treatment at Shri Arasuri Ambaji Mata Devasthan Trust Hospital, Ambaji, on 28th December 2006 itself. Certificate of that hospital shows that Police Sub-Inspector Ashish Kumar Pandya had sustained a circle wound (2.5 x 2.5 cm) on upper part of left arm with active bleeding and blackness of skin. Small carbon particles were found near that wound. He had also

sustained an irregular wound (3 x 1 cm) vertical 1 cm, posterior to wound no.1. Bleeding was found present apart from sand particles in that wound. Similar are the findings of the Government hospital Palanpur. Medical Officer had opined that the injury was a fire arm injury. Medical Officer of Palanpur had informed police that entry wound was having inverted margin and blackening of skin in wound and tissues were present. Thus, Ashish Kumar Pandya (co-accused), Police Sub-Inspector of Gujarat Police, had also suffered gunshot injuries in alleged fake encounter of Tulsiram Prajapati.

- (s) Spot of the incident of alleged encounter of Tulsiram Prajapati was inspected. It was found that the shot from the firearm had damaged left side signal light of the jeep of the police party. Its glass was found broken. One cartridge was found lying near the edge of the road. One gun was also found lying on the spot of the incident. It was having wooden grip and the same was of 0.314 bore having body made up of steel. One cartridge was also found loaded in

the barrel of that gun. This was the situation prevalent on the spot of the incident which was on the main road leading from Ambaji to Sarhad Chapri, where according to the prosecution case, Tulsiram Prajapati was eliminated in the fake encounter. During inquest proceedings, the Executive Magistrate recovered a mobile phone, three bullets and sundry items from dead body of Tulsiram Prajapati.

- (t) It is alleged that fake encounter of Tulsiram Prajapati was done as Tulsiram Prajapati was disclosing to all and sundry as to how he was used by Gujarat Police for nabbing Sohrabuddin Shaikh and as he was an eye witness to abduction of Sohrabuddin Shaikh and his wife Kausarbi.

3 I have heard Shri Anil Singh, the learned Additional Solicitor General of India (ASGI), appearing for the revision petitioner/ prosecuting agency CBI. He vehemently argued that respondent/discharged accused no.12 Narendra K. Amin was not posted at the Anti Terrorist Squad. He was serving as Deputy Superintendent of Police of City Crime Branch, Ahmedabad. As

such, he had no reason to remain present at the spot where the dead body of Kausarbi came to be disposed off by setting it on fire. In submission of the learned ASGI, PW105 Nathuba Jadeja has spoken about presence of respondent/discharged accused no.12 Narendra K. Amin at the bed of the river at Village Ellol, at the time of disposal of the dead body of Kausarbi. In this view of the matter, the learned trial court ought not to have discharged respondent/discharged accused no.12 Narendra K. Amin as he was one of the conspirator in the subject crime.

4 I have also heard Shri Tiwari, the learned counsel appearing for the First Informant Rubabuddin. He argued that role of respondent/discharged accused no.12 Narendra K. Amin is reflected from the fact that in the night intervening 28th November 2005 and 29th November 2005, cell phones of all concerned accused persons were switched off. Cell phone of respondent/discharged accused no.12 Narendra K. Amin was also switched off during that period. This shows his role in the crime in question. Shri Tiwari, the learned counsel, further argued that

V.A.Rathod is accused no.14 and CDRs filed with the charge-sheet show that his location during the night intervening 28th November 2005 and 29th November 2005 was at Village Ellol. Therefore, the learned trial court ought not to have discharged respondent/discharged accused no.12 Narendra K. Amin.

5 Shri Tiwari, the learned counsel appearing for the First Informant Rubabuddin, placed reliance on judgments in **Sitaram Sao @ Mungeri vs. State of Jharkhand**¹, **Mathuradas vs. State**², **Haroon Haji Abdulla vs. State of Maharashtra**³ and **State vs. S. Selvi and Others**⁴ so also judgment of the learned Single Judge of Delhi High Court in **Aruna Chadha vs. State of Delhi**⁵.

6 Shri Jethmalani, the learned counsel appearing for respondent/discharged accused no.12 Narendra K. Amin argued that presence of this respondent at the bed of the river at Village Ellol is coming on record only through evidence of accomplice

1 AIR 2008 SC 391

2 104 (2003) DLT 147

3 AIR 1968 SC 832

4 AIR 2018 SC 81

5 Criminal Revision No.305 of 2013 decided on 25th July 2013

PW105 Nathuba Jadeja and his mere presence, and that too, reflected from the version of accomplice is not sufficient to frame the Charge. Evidence of the accomplice is not corroborated by any other independent evidence on record.

7 As the claim of the respondent/discharged accused No.12 for his discharge from the sessions case is accepted by the learned Additional Sessions Judge and the said Order is the subject matter of challenge before this Court, it is apposite to quote provisions of Sections 227 and 228 of Code of Criminal Procedure, 1973 (Cr.P.C. for the sake of brevity). Section 227 and relevant portion of section 228 of the Cr.P.C. reads thus:

“Section 227 : Discharge - If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.”

“Section 228 : Framing of charge - (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which –

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant - cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

8 Bare perusal of provisions of these sections of the Cr.P.C. goes to show that when the judge considers that there is no ground for proceeding against the accused, he is required to

discharge the accused by recording his reasons. However, if the Judge is of the opinion that there are grounds for presuming that the accused has committed the offence, then he is required to frame charge. By now it is well settled that at this stage detailed scrutiny of material gathered by the prosecution in order to examine whether the same is sufficient for recording the conviction or not is absolutely not essential. What is required is examination of the material from the angle whether the same constitutes sufficient ground for proceeding against the accused. Some prima facie material raising strong suspicion regarding commission of the alleged offence by the accused is sufficient for framing charge against him.

9 It is necessary to quote a decision of the Hon'ble Apex Court in the matter of **State of Maharashtra v. Priya Sharan Maharaj and Ors.**⁶. After referring to Section 227 of the Cr.P.C. and power of the Sessions Court to discharge the accused, this is what is observed by the Hon'ble Supreme Court:-

6 AIR 1997 SC 2041

“8. The law on the subject is now well-settled, as pointed out in **Niranjan Singh Punjabi v. Jitendra Bijaya**, (1990) 4 SCC 76 : (AIR 1990 SC 1962), that at Sections 227 and 228 stage the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may, for this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case. Therefore, at the stage of framing of the charge the Court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the offence or that there is not sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.”

10 In a later decision reported in the matter of **Dilawar Babu Kurane v. State of Maharashtra**⁷, the Hon'ble Supreme

⁷ AIR 2002 SC 564

Court observes thus:

“12. Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the

documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

Similar is the ratio of judgment in the matter of **S.Selvi & Others (supra)** and **Arun Chadha (supra)**.

11 Case of the prosecution against respondent/discharged accused no.12 Narendra K. Amin, as far as it relates to alleged disposal of dead body of Kausarbi at Village Ellol, to a large extent, is based on statement of PW105 Nathuba Jadeja. PW105 Nathuba Jadeja, at the relevant time, was a driver working with Anti Terrorist Squad Ahmedabad and had taken active part in the abduction of Sohrabuddin Shaikh, his wife Kausarbi and his aide Tulsiram Prajapati, who were subsequently killed allegedly in the fake encounter. According to the prosecution case, PW105 Nathuba Jadeja drove the Qualis vehicle which was a private vehicle from Ahmedabad to Hyderabad for the purpose of taking police personnels for effecting abduction. He did not disclose this

visit to Hyderabad on record. PW105 Nathuba Jadeja, in fact, intercepted the luxury bus in which the trio were travelling. This witnesses had, according to the prosecution case, carried abducted persons to Ahmedabad and then Tulsiram Prajapati was taken to Rajasthan. PW105 Nathuba Jadeja had participated in the alleged event of disposal of dead body of Kausarbi apart from his act of aiding accused persons in killing Sohrabuddin Shaikh. As per his CBI statement dated 11th May 2010, PW105 Nathuba Jadeja with the help of others had kept the body of Kausarbi on the funeral pyre for destroying it by burning. He had fetched firewood for burning the dead body. This witness is guilty associate of accused persons in the crime in question. In that sense, being accomplice, he is an infamous witness. It is well settled that at the stage of framing of the charge, attention of the Court is required to be confined to only that material collected during investigation, which can be legally translated into evidence. Similarly, at the stage of framing of the charge, even if two views are possible then the view favourable to the prosecution has to be accepted for the purpose of framing charge. On this aspect, the learned Counsel

for First Informant Rubabuddin has rightly relied on Judgment of the Delhi High Court in the case of **Mathura Das & Ors. (supra)**. At the stage of framing of the charge against accused persons, when case of the prosecution is also based on confessional statement of the accomplice, then the proper way is to consider the other evidence of the accused and if the Judge is not prepared to act solely on such evidence, then he can take aid of the confession and use it to seek assurance to other evidence adduced by the prosecution. In other words, even at the stage of framing charge, statement of accomplice in the form of confession requires corroboration. Valuable assistance can be had to this proposition from the Judgment of the Honourable Apex Court in the matter of **Suresh Budharmal Kalani @ Pappu Kalani (supra)** relied by Shri Jethmalani, the learned Senior Counsel. Paragraph 7 of that Judgment reads thus :

“ So far as the confession of Jayawant Suryarao is concerned, the same (if voluntary and true) can undoubtedly be brought on record under Section 30 of the Evidence Act to use it also against Kalani but then the question is what would be its

evidentiary value against the latter. The question was succinctly answered by this Court in **Kashmira Singh V. State of Madhya Pradesh (1952 SCR 526)** with the following words :

"The proper way to approach a case of this kind is first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the judge is not prepared to act on the other evidence as it stands even though if believed, it would be sufficient to sustain a conviction. In such an event Judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept."

The view so expressed has been consistently followed by this Court. Judged in the light of the above principle the confession of Suryarao cannot called in aid to frame charges against Kalani in absence of any other evidence to do so."

Thus at the stage of framing Charge, the court is required to confine its attention to only those material collected during investigation which can be legally translated into evidence. (Refer **Arun Gawli vs. State of Maharashtra**⁸ and **Laxmi Koli vs. State of Maharashtra**⁹

12 Similarly, it is apposite to keep in mind the law regarding appreciation of evidence of accomplice. By not arraigning him as an accused in the subject crime, the prosecution is relying on evidence of PW105 Nathuba Jadeja by treating him as prosecution witness. In the matter of **Haroom Haji Abdulla (supra)**, the Honourable Apex Court has considered this aspect and held thus in paragraph Nos.8 and 12 of its judgment, relevant portion of which is reproduced thus :

“8.....The law as to accomplice evidence is well settled. The Evidence Act in Section 133 provides that an accomplice is a competent witness against an accused person and that a conviction is not illegal merely because it proceeds upon the

8 2007 ALL MR(Cri) 2562

9 2005 ALL MR(Cri) 571

uncorroborated testimony of an accomplice. The effect of this provision is that the court trying an accused may legally convict him on the single evidence, of an accomplice. To this there is a rider in illustration (b) to Section 114 of the Act which provides that the Court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars. This cautionary provision incorporates a rule of prudence because an accomplice, who betrays his associates, is not a fair witness and it is possible that he may, to please the prosecution, weave false details into those which are true and his whole story appearing true, there may be no means at hand to sever the false from that which is true. It is for this reason that courts, before they act on accomplice evidence, insist on corroboration in material respects as to the offence itself and also implicating in some satisfactory way, however small, each accused named by the accomplice. In this way the commission of the offence is confirmed by some competent evidence other than the single or unconfirmed testimony of the accomplice and the inclusion by the accomplice of an innocent person is defeated. This rule of caution or prudence

has become so ingrained in the consideration of accomplice evidence as to have almost the standing of a rule of law.

“12 In **Rameshwar v. State of Rajasthan (1952 SCR 377=(AIR 1952 SC 54)** this Court laid down certain general rules about the nature of corroboration needed before accomplice evidence may be accepted. It is there pointed out that every detail of the story of the accomplice need not be confirmed by independent evidence although some additional independent evidence must be looked for to see whether the approver is speaking the truth and there must be some evidence, direct or circumstantial which connects the co-accused with the crime independently of the accomplice. One such circumstance may be the making of a number of confessions without a chance for prior consultation between the confessing co-accused. But before even a number of such confessions can be used each such confession must inspire confidence both in its content and in the manner and circumstances of its making. If there be any suspicion of false implication the confession must be discarded as of no probative value. This may

result from a variety of circumstances of which a few alone may be mentioned, such as why the, accused confessed whether he expected again for himself by implicating his co-accused, the part he assigns to himself and that to his co-accused, the opportunity for being coached up to narrate a false story or a story false in certain details. Where there is a single retracted confession corroborating other accomplice evidence, the caution must necessarily be still greater and the probative value smaller. Even if there are more than one such confession and they are proved to be given independently and without an opportunity for a prior concert, the probative value may increase but the need for caution remains because a number of suspects may be prompted by the same or different motives to embroil a particular individual. It is only when false implication is excluded after close scrutiny that confession of a co-accused can be used to lend assurance to other evidence. This was so stated by Sir Lawrence Jenkins in Emperor v. Lalit Mohan Chuckerburty [(1911) ILR 38 Cal. 559 p.588] and accepted by this Court, and a retracted confession cannot obviously go further or have higher value.”

13 Similar is the ratio of Judgment of the Honourable Supreme Court in the matter of Sitaram Sao @ Mungeri (supra) relied by the learned Counsel for the First Informant.

14 As the accomplice is also one of the perpetrator of the crime, his evidence needs to pass two tests before acting upon by the Court. The first is that of reliability and second is that of corroboration in material part. This aspect has been considered by the Honourable Apex Court in the matter of Sarwan Singh Rattan Singh vs.State of Punjab¹⁰, paragraph 7 of which reads thus :

“7.7. On behalf of Harbans Singh, it has been urged before us by Mr. Kohli that the judgment of the High Court of Punjab suffers from a serious infirmity in that, in dealing with the evidence of the approver, the learned Judges do not appear to have addressed themselves to the preliminary question as to whether the approver is reliable witness or not. The problem posed by the evidence given by an approver has been considered by the Privy Council and Courts in India on several occasions.

¹⁰ AIR 1957 SC 637

It is hardly necessary to deal at length with the true legal position in this matter. An accomplice is undoubtedly a competent witness under the Indian Evidence Act. There can be, however, no doubt that the very fact that he has participated in the commission of the offence introduces a serious stain in his evidence and Courts are naturally reluctant to act on such tainted evidence unless it is corroborated in material particulars by other independent evidence. It would not be right to expect that such independent corroboration should cover the whole of the prosecution story or even all the material particulars. If such a view is adopted it would render the evidence of the accomplice wholly superfluous. On the other hand, it would not be safe to act upon such evidence merely because it is corroborated in minor particulars or incidental details because, in such a case, corroboration does not afford the necessary assurance that the main story disclosed by the approver can be reasonably and safely accepted as true. But it must never be forgotten that before the Court reaches the stage of considering the question of corroboration and its adequacy or otherwise, the first initial and essential question to consider is

whether even as an accomplice the approver is a reliable witness. If the answer to this question is against the approver then there is an end of the matter and no question as to whether his evidence is corroborated or not falls to be considered. In other words, the appreciation of an approver's evidence has to satisfy a double test. His evidence must show that he is a reliable witness and that is a test which is common to all witnesses. If this test is satisfied the second test which still remains to be applied is that the approver's evidence must receive sufficient corroboration. This test is special to the cases of weak or tainted evidence like that of the approver.”

15 This revision petition is filed by the prosecuting agency CBI for assailing order passed by the learned Special Judge for the CBI, Mumbai, allowing application for discharge filed by the respondent no.1/accused no.12 Narendra K. Amin. Revisional jurisdiction of this Court is invoked for impugning the said order of discharge. The learned trial court has discharged the respondent/accused for want of evidence and absence of material to show prima facie case against him. For limited purpose of

appreciating the wordings of Section 227 of Code of Criminal Procedure.....“there is not sufficient ground for proceeding” this discharge order is comparable to order of acquittal. It is well settled that normally the revisional jurisdiction of this Court is to be exercised sparingly when it is shown that there is glaring defect of procedure or manifest error on the point of law, which has resulted in miscarriage of justice. Finding of fact cannot be upset in the revisional jurisdiction, unless and until it is shown to be perverse. Sufficiency of evidence for recording a finding of fact cannot be reassessed in the revisional jurisdiction. However, if it is pointed out that a particular finding is arrived at by the learned Court below without there being any evidence to support such finding, the revisional Court is required to interfere in upsetting such perverse finding. Keeping in mind these parameters of the revisional jurisdiction of this Court, let us consider the case in hand and examine whether the impugned Order of discharge suffers from perversity or error of law requiring interference at the hands of this Court.

16 It is apposite to note that the crime in question was initially investigated by Gujarat Police. Later on, under orders of the Honourable Supreme Court, further investigation came to be entrusted to the CBI. There is no order of reinvestigation. Therefore, statement of witnesses initially recorded by Gujarat Police, so also the charge-sheet filed by it are not redundant and cannot be kept out of consideration. They continue to be relevant and cannot be termed as tainted or unreliable. This point is clear from the judgment of the Honourable Apex Court in the very same matter. (Refer **Vipul Shital Prasad Agarwal vs. State of Gujarat and Others**¹¹)

17 This revision petition has come up for hearing after about 1 year from discharge of respondent/accused. It is reported by the parties that in between the Charge against rest of the accused persons has been framed and explained to them. They pleaded not guilty and claimed trial. It is also reported that the trial thereafter began and by now more than 150 witnesses

11 AIR 2013 SC 73

are already examined by the prosecuting agency in support of the Charge. Therefore, it is necessary to put on record, at this stage itself, that only because of discharge order in his favour, the respondent/discharged accused cannot claim immunity from the trial at subsequent stage. Person discharged can also be arraigned again as an accused by following due process of law and this option is always available with the trial court during the course of the trial. Paragraphs 104 to 108 from the judgment of the Honourable Apex Court in the matter of **Hardeep Singh vs. State of Punjab**¹² need reproduction and they read thus :

“104 However, there is a great difference with regard to a person who has been discharged. A person who has been discharged stands on a different footing than a person who was never subjected to investigation or if subjected to, but not charge-sheeted. Such a person has stood the stage of inquiry before the court and upon judicial examination of the material collected during investigation; the court had come to the conclusion that there is not even a prima facie case to proceed against such

¹² AIR 2014 SC 1400

person. Generally, the stage of evidence in trial is merely proving the material collected during investigation and therefore, there is not much change as regards the material existing against the person so discharged. Therefore, there must exist compelling circumstances to exercise such power. The Court should keep in mind that the witness when giving evidence against the person so discharged, is not doing so merely to seek revenge or is naming him at the behest of someone or for such other extraneous considerations. The court has to be circumspect in treating such evidence and try to separate the chaff from the grain. If after such careful examination of the evidence, the court is of the opinion that there does exist evidence to proceed against the person so discharged, it may take steps but only in accordance with [Section 398 Cr.P.C.](#) without resorting to the provision of [Section 319 Cr.P.C.](#) directly.”

“105 [In Sohan Lal & Ors. v. State of Rajasthan](#), (1990) 4 SCC 580, a two-Judge Bench of this Court held that once an accused has been discharged, the procedure for enquiry

envisaged under [Section 398](#) Cr.P.C. cannot be circumvented by prescribing to procedure under [Section 319](#) Cr.P.C.”

“106 In [Municipal Corporation of Delhi v. Ram Kishan Rohtagi & Ors.](#), AIR 1983 SC 67, this Court held that if the prosecution can at any stage produce evidence which satisfies the court that those who have not been arraigned as accused or against whom proceedings have been quashed, have also committed the offence, the Court can take cognizance against them under [Section 319](#) Cr.P.C. and try them along with the other accused.”

“107 Power under [Section 398](#) Cr.P.C. is in the nature of revisional power which can be exercised only by the High Court or the Sessions Judge, as the case may be. According to [Section 300 \(5\) Cr.P.C.](#), a person discharged under [Section 258](#) Cr.P.C. shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first-mentioned Court is subordinate. Further, [Section 398](#) Cr.P.C.

provides that the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrate subordinate to him to make an inquiry into the case against any person who has already been discharged.”

“108 Both these provisions contemplate an inquiry to be conducted before any person, who has already been discharged, is asked to again face trial if some evidence appears against him. As held earlier, [Section 319](#) Cr.P.C. can also be invoked at the stage of inquiry. We do not see any reason why inquiry as contemplated by [Section 300\(5\)](#) Cr.P.C. and [Section 398](#) Cr.P.C. cannot be an inquiry under [Section 319](#) Cr.P.C. Accordingly, a person discharged can also be arraigned again as an accused but only after an inquiry as contemplated by [Sections 300\(5\)](#) and [398](#) Cr.P.C. If during or after such inquiry, there appears to be an evidence against such person, power under [Section 319](#) Cr.P.C. can be exercised. We may clarify that the word ‘trial’ under [Section 319](#) Cr.P.C. would be eclipsed by virtue of above provisions and the same cannot

be invoked so far as a person discharged is concerned, but no more.”

Thus, if at trial, after careful examination of evidence, the court is of the opinion that there exists evidence to proceed against the discharged accused, it can take steps as provided by law and such discharged accused can also be made to face the trial. Keeping in mind this aspect, let us test the impugned order within the limited scope and parameter of the revisional jurisdiction of this court.

18 Now let us, therefore, consider whether the impugned Order of discharging respondent/discharged accused no.12 Narendra K. Amin suffers from perversity or error of law resulting in flagrant miscarriage of justice. It will be required to be seen *dehorse* the confessional statement of accomplice viz. PW105 Nathuba Jadeja as to whether there is any material which is sufficient to make out a *prima facie* case for framing the charge against respondent/discharged accused no.12 Narendra K. Amin by considering his alleged presence on the spot where dead body of Kausarbi came to be disposed off by burning. One will also have to consider whether confessional statements of PW105

Nathuba Jadeja can be called in aid to frame the charge against respondent/discharged accused no.12 Narendra K. Amin and whether along with other material collected by the prosecution, his statements recorded by the CBI so also his other confessional statements recorded by the CID Crimes, Gujarat, constitute *prima facie* material or ground for presuming that this discharged accused had committed the alleged offence. Considering the importance of the matter, I propose to examine the entire charge-sheet minutely in order to cull out all incriminating material found therein against the concerned accused in order to ascertain and judge as to whether the same forms the ground for presuming that this accused has committed the offence alleged against him by the prosecuting agency.

19 Let us now examine what is the nature and quality of evidence given by PW105 Nathuba Jadeja – a partner in the subject crime. On 6th December 2005, his statement came to be recorded during the investigation of Crime No.5 of 2005 registered on the basis of FIR lodged by Abdul Rehman. His

version, in his statement dated 6th December 2005 is to the effect that, in the night intervening 25th November 2005 and 26th November 2005, he accompanied by Police Inspector Abdul Rehman, Police Sub-Inspector H.Singh and Police Inspector Shyam Singh went to the place between Narol circle and Vishala circle. Officers of the Anti Terrorist Squad were also with them. At about 5.00 a.m. of 26th November 2005, one motorcyclist came from Narol circle. Police Inspector N.H.Dhabi signaled him to stop and alerted others by shouting that the motorcyclist is Sohrabuddin Shaikh. The motorcyclist did not stop and opened fire on the policemen. Hence, police returned fire and Sohrabuddin Shaikh was injured, and ultimately died. There is no mention of visit to Hyderabad for abduction in this statement.

20 Statements of PW105 Nathuba Jadeja were again recorded on 14th February 2007 and 15th February 2007, during inquiry of P.E.No.66 of 2006 by the CID. On 14th February 2007, he stated that he is not mentally fit to give statement. On 15th February 2007 he stated that in the night intervening 25th

November 2005 and 26th November 2005, he along with Police Inspector Abdul Rehman and Police Officers Himanshusing and Sham Singh, went to Narol circle in the Maruti car driven by him. Police Inspector N.H.Dhabi along with the other staff was in other Maruti car. Thereafter, at 5.00 a.m., Sohrabuddin Shaikh came from Narol circle on the motorcycle and he was asked to stop by Police Inspector N.H.Dhabi. He, thereafter, repeated what he had stated in his earlier statement dated 6th December 2005, reflecting genuine return of fire by police causing death of Sohrabuddin Shaikh. In these statements also, PW105 Nathuba Jadeja has not whispered about visiting Hyderabad and abducting Sohrabuddin Shaikh and two others.

21 Thereafter, on 26th April 2007, statement of PW105 Nathuba Jadeja came to be recorded by one T.K.Patel, CID Crimes, Gujarat, at Thaltej, wherein this witness has spoken about his journey in detail with PW106 Gurudayal Singh and other accused persons to Hyderabad, abduction of Sohrabuddin Shaikh and two others from the luxury bus and their subsequent return to

Ahmedabad. He also stated about encounter of Sohrabuddin Shaikh in the night intervening 25th November 2005 and 26th November 2005 and the presence of discharged accused Rajkumar Pandiyan along with other discharged accused persons including D.G.Vanzara, Deputy Inspector General, and discharged accused no.3 Dinesh M.N., Superintendent of Police, Udaipur, on the spot of encounter i.e. between Narol circle and Vishala circle. This witness has further stated about disposal of dead body of Kausarbi in the night of 28th November 2005 in presence of discharged accused Rajkumar Pandiyan, D.G.Vanzara, Deputy Inspector General, and respondent/discharged accused no.12 Narendra K. Amin. At the end of this statement dated 26th April 2007, PW105 Nathuba Jadeja has allegedly stated that he did not inform anybody about this incident till date because he is a small employee and has to work under the higher officers so also because there is danger to his life from higher officers as a result of which he is living under constant coercion and fear etc.

22 Next statement of this witness is in the form of his sworn affidavit dated 22nd May 2007 in the nature of an application under Section 437 of the Code of Criminal Procedure filed before the learned Chief Metropolitan Magistrate, Ahmedabad. In that application, this witness has stated that his earlier statement dated 26th April 2007 is recorded under duress and temptation against his wish, and as per wish of Officer named Rajnish Rai. His so called statement dated 26th April 2007 does not contain the facts narrated by him. He expressed his apprehension that his statement under Section 164 of the Code of Criminal Procedure would be recorded by extending threats, and therefore, prayed that his surrender may be accepted. On 24th May 2007, the learned Chief Metropolitan Magistrate passed the order to file the said application in view of the fact that the Investigating Officer informed to the court that PW105 Nathuba Jadeja shall be considered as witness.

23 Further statement of PW105 Nathuba Jadeja is found in his affidavit dated 25th May 2007 presented before the learned

Chief Metropolitan Magistrate, Ahmedabad. In his duly sworn affidavit, he has stated that he was not aware about the contents of his statement dated 14th February 2006 and 15th February 2006 and without actually reading those statements, his signature was obtained thereon. This witness further stated that on 26th April 2007, he was sent in the government vehicle along with Anti Terrorist Squad personnel to CID Office at Gandhi Nagar, where senior officers started giving threat to him that he should sign the pre-prepared written note, and that, only after doing so he could be tendered pardon. Thereafter, he was taken to Thaltej and making a farce of videography by turning video cameras on and off, his statement is shown to have been recorded. The said statement (dated 26th April 2007) is under duress and temptation. He had not seen any incident.

24 Further statement of PW105 Nathuba Jadeja is reflected in his duly sworn application for anticipatory bail under Section 438 of the Code of Criminal Procedure filed before the CBI court at Ahmedabad on 25th February 2010. Prior to this, on 12th

January 2010, under orders of the Honourable Supreme Court, the case was transferred to the CBI and on 1st February 2010, the FIR came to be registered by the CBI. In the wake of this development, PW105 Nathuba Jadeja preferred an application for anticipatory bail. He has, on affidavit, stated in the said application that on 26th April 2007, Police Inspector Rajnish Rai threatened him to give the purported statement as per his wish, with a threat that else he (PW105 Nathuba Jadeja) would be arrested. His false and concocted statement was created on 26th April 2007. That statement is forcibly extracted under threat of putting him in jail for the rest of his life. He apprehended that the CBI may try to extract forcible confessional statement from him again. Averment in this application under Section 438 of the Code of Criminal Procedure to the effect that he disclosed to the CBI that his earlier version dated 15th February 2007 was correct version, but his statement dated 26th April 2007 was forcibly extracted, came to be replied as “No comments” in the reply tendered by the CBI.

25 Thereafter, statement dated 11th May 2010 of PW105 Nathuba Jadeja is shown to have been recorded by the CBI. This statement dated 11th May 2010 of PW105 Nathuba Jadeja is *ad verbatim* same as per his statement dated 26th April 2007, allegedly recorded at Thaltej by T.K.Patel from CID Crimes, Gujarat. Perusal of the concluding paragraph of this statement dated 11th May 2010 recorded by the CBI makes this aspect clear. It is again written in the statement dated 11th May 2010 of PW105 Nathuba Jadeja that he had not informed about this incident to anybody till date because he is a small employee and has to work under the higher officers and there is danger to his life from higher officers, and he lives in fear and danger. These averments are, infact, there in the alleged statement dated 26th April 2007, in which the incident was informed to T.K.Patel of the CID Crimes.

26 Lastly, on 1st July 2015, PW105 Nathuba Jadeja has made his last statement in the matter, which is in the form of an affidavit placed before the learned Additional Sessions Judge, Mumbai. In this last statement, PW105 Nathuba Jadeja has

reiterated that he witnessed arrival of Sohrabuddin Shaikh at about 5.00 a.m. of 26th November 2005 on motorcycle from Narol circle and that when the team of police officers tried to nab him. Soharabuddin Shaikh opened fire from the firearm and in retaliation the police team opened fire, in which he was injured and subsequently died. PW105 Nathuba Jadeja stated that he had disclosed these facts in his subsequent statement recorded on 14th February 2007. He was, then, initially taken to Gandhi Nagar on 26th April 2007 and then to Thaltej, where he was confined. His false statement was drawn by T.K.Patel from CID Crimes, Gujarat, by repeatedly threatening and intimidating him. He has further stated on affidavit before the court that even in the year 2010, he was threatened repeatedly with the prospect of his arrest and loss of his job, if he fails to stick to his version of 26th April 2007 drawn by T.K.Patel of the CID Crimes, Gujarat. In his affidavit PW105 Nathuba Jadeja has further stated that his statement dated 11th May 2010, allegedly recorded by the CBI, is paragraph wise translation of his previously recorded statement dated 26th April 2007 fabricated by T.K.Patel of the CID Crimes, Gujarat. PW105

Nathuba Jadeja further stated on affidavit that he is neither a witness nor an accomplice to the alleged prosecution story of visiting Hyderabad and abducting Sohrabuddin Shaikh with two others in the night intervening 22nd November 2005 and 23rd November 2005. He never visited Hyderabad nor was he part of the team which allegedly killed Kausarbi and disposed off her dead body at Village Ellol. He was driver of the Anti Terrorist Squad Maruti car, in which members of Rajasthan Police travelled up to Narol circle in morning hours of 26th November 2005, where encounter of Sohrabuddin Shaikh took place.

27 Thus, these several statements reflect initial as well as last stand of PW105 Nathuba Jadeja, to the effect that, he never visited Hyderabad nor was he a part of the team, which allegedly abducted Sohrabuddin Shaikh and two others. He drove the official car in the night intervening 25th November 2005 and 26th November 2005, when in the return fire by police, Sohrabuddin Shaikh was injured and ultimately died. In between first and last stand of this witness it is shown that, he has made statements that

he was one of the members of the police team which went to Hyderabad, abducted Sohrabuddin Shaikh and two others, brought them towards Ahmedabad and subsequently in fake encounter, Sohrabuddin Shaikh was killed and later on his wife was also killed.

28 It is worthwhile to note that the learned Additional Sessions Judge, Mumbai, on presentation of affidavit by PW105 Nathuba Jadeja had verified the contents thereof from this witness and has made a note to that effect on that affidavit.

29 Undisputedly, this witness PW105 Nathuba Jadeja has turned hostile to the prosecution during the course of the trial and reported to have not supported the prosecution in any manner. This position is undisputed. This is the nature and quality of statements of PW105 Nathuba Jadeja, allegedly recorded during the course of investigation by various Investigating Officers. His statement recorded by the CBI undisputedly show that PW105 Nathuba Jadeja was guilty associate in the crime in question, and

therefore, even at the time of framing of Charge, the court is bound to search for necessary corroboration by looking into other evidence sans statement of such accomplice.

30 The next circumstance relied by the prosecution and urged by the revision petitioner to make out a prima facie case for framing Charge against respondent/discharged accused no.12 Narendra K. Amin is to the effect that he was found present at the spot where Kausarbi's dead body was disposed off by burning. The learned counsel for the revision petitioner argued that spot was at Village Ellol which is native place of discharged accused no.1 D.G.Vanzara. Heavy reliance is placed on confessional statement of accomplice PW105 Nathuba Jadeja in order to demonstrate that his version forms sufficient ground for proceeding against discharged accused no.1 D.G.Vanzara, discharged accused no.2 Rajkumar Pandiyan and respondent/discharged accused no.12 Narendar K. Amin. This witness in his statement given to the CBI on 11th May 2010 has stated that on 28th November 2005 he was called by discharged accused no.1

D.G.Vanzara and he was directed to go with the tempo with one Chauhan. Therefore, he along with Police Sub-Inspector Chauhan, proceeded on the tempo. That tempo was then loaded with 700 to 800 kilograms of firewood. PW105 Nathuba Jadeja further stated that on the way, the tempo faced problem of malfunctioning of gear and stopped moving. Hence, another tempo was summoned and Police Inspector Rathod brought that another tempo. The firewood was then transferred to the another tempo and then they proceeded further by another tempo and reached Village Ellol at about 10.00 to 11.00 p.m. of 28th November 2005. PW105 Nathuba Jadeja further stated that at the bed of the river, that tempo got stuck in the sand. Therefore, firewood came to be unloaded at that place only. Then, discharged accused no.1 D.G.Vanzara, discharged accused no.2 Rajkumar Pandiyan and respondent/discharged accused no.12 Deputy Superintendent of Police N.K.Amin arrived. In the jeep brought by Police Official Chaubey, there was one dead body. PW105 Nathuba Jadeja further stated that he himself alongwith Police Officials Chaubey, Chauhan and Rathod kept the dead body

on the stacked firewood. Then that dead body was burnt by discharged accused no.1 D.G.Vanzara. Discharged accused no.2 Rajkumar Pandiyan and respondent/discharged accused no.12 N.K.Amin apart from others were present there up to 4.00/5.00 a.m in the morning.

31 This confessional statement of PW105 Nathuba Jadeja can be acted upon provided some independent evidence is available in that regard. Except confessional statement of PW105 Nathuba Jadeja, there is no other evidence to point out that respondent/discharged accused no.12 Narendra Amin was present at the bank of the river at Village Ellol where allegedly the dead body of Kausarbi came to be cremated. PW188 Jahir Abbas was the driver of the first tempo and his version shows that it was on 29th November 2005, at about 5.15 p.m., his tempo was stopped by two plain clothed policemen. He was then taken to the Anti Terrorist Squad Office. His tempo was then taken by Rathod on the pretext of RTO checking and he was made to sit at the Anti Terrorist Squad Office. Subsequently, Rathod came and told him

that his tempo went out of order. This witness accompanied Rathod and found that firewood from his tempo was being shifted to the another tempo. What is stated by this witness is in respect of events which took place on 29th November 2005 and not on 28th November 2005, as stated by PW105 Nathuba Jadeja. This witness has not named respondent/discharged accused no.12 Narendra K. Amin. The another tempo owner PW156 Kalpesh Waghela has also stated to the CBI that it was on 29th November 2005 after 7.00 p.m., his tempo was taken by the Anti Terrorist Squad Officers and then he stayed in the Anti Terrorist Squad Office on that night. His tempo was given to him on 30th November 2005. PW156 Kalpesh Waghela has also not named respondent/discharged accused no.12 Narendra K. Amin and he has spoken about taking of his tempo not on 28th November 2005 but on 29th November 2005. PW154 Kantiji is the crane operator and PW155 Allah Rakkha is the person who accompanied PW154 Kantiji. They had gone to the river bed at Village Ellol and by means of the crane removed the tempo stuck in the river bed. Both these witnesses have not spoken about witnessing the funeral

pyre, burning of the dead body of a female or about presence of respondent/discharged accused no.12 Narendra K. Amin on the spot, i.e. the river bed at Village Ellol. It is, thus, seen that even statements of other witnesses are not corroborating and supporting version of accomplice PW105 Nathuba Jadeja in respect of presence of respondent/discharged accused no.12 Narendra K. Amin at the spot where the dead body of Kausarbi was allegedly disposed off. Thus, in order to act upon the incriminating statement of accomplice PW105 Nathuba Jadeja, there is no independent evidence on this aspect.

32 Even according to the prosecution case, respondent/discharged accused no.12 Narendra K. Amin was not concerned with the Anti Terrorist Squad of Gujarat State. He was working as the Deputy Superintendent of Police with City Crimes Branch of Ahmedabad. He had no reason to be at the place where dead body of Kausarbi was being allegedly burnt by other accused persons. Except statement of accomplice PW105 Nathuba Jadeja, there is no iota of evidence to infer presence of

respondent/discharged accused no.12 Narendra K. Amin on the spot where allegedly dead body of Kausarbi came to be burnt. Except this circumstance, no other circumstance against respondent/discharged accused no.12 Narendra K. Amin is pointed out by the learned ASGI to infer sufficient ground for proceeding against respondent/discharged accused no.12 Narendra K. Amin. As pointed out in foregoing paragraphs, accomplice PW105 Nathuba Jadeja has changed his version from time to time in order to suit his convenience. Without there being any other material constituting sufficient ground for framing the Charge, the Charge against respondent/discharged accused no.12 Narendra K. Amin cannot be framed solely on the basis of statement of accomplice. At the stage of framing Charge, statement of accomplice requires corroboration. As held by the Honourable Apex Court in the matter of **Suresh Budharmal Kalani @ Pappu Kalani (supra)**, it cannot be presumed that what the prosecution states on this aspect, and that too, merely on the basis of the statement of the accomplice is a gospel truth. The statement of accomplice PW105 Nathuba Jadeja, as such, is not

sufficient to frame the Charge against respondent/discharged accused no.12 Narendra K. Amin in such a serious offence and even otherwise, that statement does not indicate that respondent/discharged accused no.12 Narendra K. Amin had conspired with other accused persons in the subject crime of enormous magnitude.

33 The learned counsel for the First Informant submitted that there were no incoming and outgoing calls from the cell phone of respondent/discharged accused no.12 Narendra K. Amin during the night intervening 28th November 2005 and 29th November 2005. This fact, even if taken on its face value, does not constitute material disclosing prima facie the existence of all the ingredients constituting the alleged offence and prima facie complicity of respondent/discharged accused no.12 Narendra K. Amin in that offence. No incoming and outgoing calls during the night hours on the cell phone of respondent/discharged accused no.12 Narendra K. Amin is, as such, of no use to the prosecution for demonstrating sufficient ground for prosecuting against him.

34 Except this material, nothing could be found in the charge-sheet which can be used as ground in order to frame Charge against respondent/discharged accused no.12 Narendra K. Amin. No prima facie material raising strong suspicion regarding commission of alleged offence by respondent/discharged accused no.12 Narendra K. Amin can be found in the entire charge-sheet. Allegations against respondent/discharged accused no.12 Narendra K. Amin are principally of entering into conspiracy with others for eliminating Sohrabuddin Shaikh and Tulsiram Prajapati and attending the spot at Village Ellol for destroying the dead body of Kausarbi by burning. There is no iota of evidence to infer meeting of minds of respondent/discharged accused no.12 Narendra K. Amin and other accused persons for doing illegal act of abducting Sohrabuddin Shaikh, Kausarbi and Tulsiram Prajapati, and subsequently killing them. It is not prima facie seen that respondent/discharged accused no.12 Narendra K. Amin was having an object to accomplish, and hence, a plan or scheme was framed by him along with others for committing the alleged crime.

35 Section 120A of the IPC defines the offence of criminal conspiracy and it reads thus :

“120A. Definition of criminal conspiracy - When two or more persons agree to do, or cause to be done -

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy :

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.”

Bare perusal of this definition of criminal conspiracy makes it clear that if circumstances in a case when taken together on their face value are indicating meeting of minds between the conspirators for the intended object of committing an illegal act or

an act which is not illegal committed by illegal means, then, the offence of criminal conspiracy punishable under Section 120B of the IPC is made out. In the matter of **John Pandian vs. State**¹³ the Hon'ble Apex Court has held that a few bits here and a few bits there on which prosecution relies, cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. It is necessary to quote observations of the Hon'ble Apex Court in the matter of **Keharsingh vs. State (Delhi Administration)**¹⁴. Ingredients of the offence of criminal conspiracy are explained by the Apex Court in the following manner in paragraphs 271 and 272 which read thus :

“271 It will be thus seen that the most important ingredient of the offence of conspiracy is the agreement between two or more persons to do an illegal act. The illegal act may or may not be done in pursuance of agreement, but the very agreement is an offence and is punishable. Reference to Ss. 120-A and 120-B, IPC would make these aspects clear beyond doubt. Entering into an agreement by two or more persons to do illegal act or legal act by illegal means is the very quintessence of the offence of conspiracy.”

13 JT 2010 (130) SC 284

14 AIR 1978 SC 1883

“272 Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence direct or circumstantial. But the Court must enquire whether the two persons are independently pursuing the same end or they have come together to the pursuit of the unlawful object. The former does not render them conspirators, but the latter does. It is, however, essential that the offence of conspiracy required some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of two persons is necessary. Nor it is necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient. Gerald Orchard of University of Canterbury, New Zealand (Criminal Law Review 1974, 297 at 299) explains the limited nature of this proposition :

“Although it is not in doubt that the offence requires some physical manifestation of agreement, it is important to note the limited nature of this proposition. The law does not require that the act of agreement take any particular form and the fact of agreement may be communicated by words or conduct. Thus, it has been said that it is unnecessary to prove that the parties “actually came together and agreed in terms” to pursue the unlawful object; there need never have been an express verbal agreement,

it being sufficient that there was “a tacit understanding between conspirators as to what should be done.””

36 What constitutes an offence of criminal conspiracy is further explained by the Hon'ble Apex Court in the matter of State of Tamil Nadu Vs. Nalini¹⁵ and the relevant observations read thus :-

“The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances, especially declarations, acts and conduct of conspirators. The agreement need not be entered into by all the parties to it at the same time, but may be reached by successive action evidencing their joining of conspiracy. It has been said that a criminal conspiracy is a partnership in crime and there is in each conspiracy a joint or mutual agency for the prosecution of a common plan. Thus, if two or more persons enter into a conspiracy any act done by any of them pursuant to the agreement is in contemplation of law, the act of each of them and they are jointly responsible therefor. This means that everything said, written or done by any of the

15 1999 Cri.L.J.124

conspirators in execution of furtherance of the common purpose is deemed to have been said, done or written by each of them. And this joint responsibility extends not only to what is done by any of the conspirators pursuant to the original agreement but also to collateral acts incidental to and growing out of the original purpose.”

37 In the matter of Nalini (supra), according to prosecution case, the former Prime Minister Late Shri Rajiv Gandhi was killed in a bomb blast as a result of conspiracy to eliminate him. While allowing the appeal partly, the Hon'ble Supreme Court has considered important points relating to conspiracy which was allegedly hatched by accused persons. It is apposite to cull out those points in order to appreciate as to how the offence of criminal conspiracy can be made out.

(a) Association of accused with one of main accused or even his knowledge about conspiracy would not make him conspirator as agreement is sine quo non of agreement.

(b) Accused harbouring main accused persons knowing fully well their involvement in the

commission of offence is itself not sufficient to infer that he was member of conspiracy.

(c) If accused had no knowledge of conspiracy as per evidence produced then his mere association with main conspirator would not make him member of the conspiracy.

(d) If main conspirator is looking after the welfare of the accused who has lost his leg and meeting his medical expenses, then in the absence of any evidence to the contrary, that would not import accused with the knowledge of conspiracy.

(e) Wireless message showed that only main accused conspirators knew the object of conspiracy. So if accused said that he had strong suspicion that targetted person was Rajiv Gandhi, but it would certainly not make him member of conspiracy without something more.

(f) It is not necessary for the conspirator to be present at the scene of crime. If evidence showed that the accused was in thick of conspiracy then his plea that he derived the knowledge of incident after the

explosion is not tenable specially when he himself had purchased the battery which he knew will be used for explosion of human bomb.

(g) Mere association with LTTE hard core militant or the fact that those militants turned out to be the persons responsible for the killing of Rajiv Gandhi, would not make them member of any conspiracy to kill the targetted person.

38 For suggesting even prima facie material to infer criminal conspiracy, it is necessary for the prosecution to point out as to how it was hatched. That can be inferred from the circumstances specially declaration, acts and conduct of conspirators. Need of meeting of minds of conspirators for doing illegal act is sine-qua-non. What is prima facie required to show is the respondent/discharged accused was having object to accomplish and hence a plan or scheme was framed by accused persons including the respondent/discharged accused for accomplishing that object and that there was agreement or understanding between them for accomplishment of the object by executing the same in the manner decided by them. There is no

iota of evidence or material in that regard against respondent/discharged accused no.12 Narendra K. Amin. At this juncture, observations of the Hon'ble Apex Court in the matter of **State of Uttar Pradesh vs. Sanjay Singh**¹⁶ can be quoted with advantage. Paragraphs 18 and 20 of that judgment read thus :

“18 At the highest, the prosecution can only suggest from the circumstances what is or may be the motive for any particular act. However, motive is not a sine qua non for bringing the offence of murder or of any crime home to the accused. At the same time the absence of ascertainable motive comes to nothing, if the crime is proved to have been committed by a sane person but to eke out a case by proof of a motive alone that too suspicion of motive apparently tending towards any possible crime, is not only a very unsatisfactory but also a dangerous process, because circumstances do not always lead to particular and definite inferences and the inferences themselves may sometimes be erroneous.”

“20 This Court in **Century Spinning & Manufacturing Co. Ltd. v. State of Maharashtra**

¹⁶ 1994 SCC (Supp) (2) 707

while examining the scope of Section 251(A) sub-sections (2) and (3) of the old Code corresponding to Sections 239 and 240 of the new Code has made the following observation: (SCC p. 291, para 17: AIR p. 552, para 16) "... If on this material, the Court comes to the conclusion that there is no ground for presuming that the accused has committed an offence, then it can appropriately consider the charge to be groundless and discharge the accused. The argument that the Court at the stage of framing the charges has not to apply its judicial mind for considering whether or not there is a ground for presuming the commission of the offence by the accused is not supportable either on the State Of U. P vs Dr. Sanjay Singh on 27 January, 1994 plain language of the section or on its judicial interpretation or on any other recognised principle of law. The order framing the charges does substantially affect the person's liberty and it is not possible to countenance the view that the Court must automatically frame the charge merely because the prosecution authorities, by relying on the documents referred to in Section 173, consider it proper to institute the case. The responsibility of framing the charges is that of the

Court and it has to judicially consider the question of doing so. Without fully advertent to the material on the record it must not blindly adopt the decision of the prosecution."

Evidence and material collected by the prosecution and discussed in foregoing paragraphs do not remotely indicate that respondent/discharged accused no.12 Narendra K. Amin conspired with other accused persons by sharing thoughts for achieving common goal jointly. To conclude, there is no sufficient ground for framing the Charge against respondent/discharged accused no.12 Narendra K. Amin. No fault, therefore, can be found in the impugned order of discharge.

39 In the result, as the impugned order does not suffer either from perversity or from error of law, resulting flagrant miscarriage of justice, the revision petition is devoid of merit. As such, the order :

ORDER

- i) The revision petition is dismissed
- ii) In view of disposal of petition, Criminal Application No.129 of 2018 stands disposed off.

**Arti Vilas
Khatate**

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(A. M. BADAR, J.)