

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on : May 9th, 2018

Date of decision : May 18th, 2018

+ CRL.M.C. 2208/2015
ASEEM KAPOOR

..... Petitioner

Through: Mr. Manoj Kr. Ohri, Sr. Adv.
with Mr. Indresh Kr., Adv., Mr.
Vaibhav Gaggar, Adv., Mr.
Pramod Kr. Dubey, Adv.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Ashish Dutta, APP for
State with SI Harbir Singh,
P.S. R.K.Puram.

Mr. Ankur Chawla, Mr.
Sangram Singh & Ms. Srishti
Juneja, Advocate for the sister
of the injured.

+ CRL.M.C. 2209/2015
SHIV KUMAR JATIA

..... Petitioner

Through: Mr. Sidharth Luthra, Sr. Adv
with Mr. Vaibhav Gaggar, Mr.
Gautam Khazanchi, Ms.
Sumedha Dang, Advocates.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Ashish Dutta, APP for
State with SI Harbir Singh, P.S.
R.K.Puram.

Mr. Ankur Chawla, Mr. Sangram Singh & Ms. Srishti Juneja, Advocate for the sister of the injured.

+ CRL.M.C. 3480/2015

KARAN LAL

..... Petitioner

Through: Mr.Ajay Burman, Sr. Advocate with Mr.Harsit Khurana, Ms.Tanya Harnal and Mr.Sahil Verma, Advocates.

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Ashish Dutta, APP for State with SI Harbir Singh, P.S. R.K.Puram.

Mr. Ankur Chawla, Mr. Sangram Singh & Ms. Srishti Juneja, Advocate for the sister of the injured.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. Vide this common judgment all the three petitions are taken up for consideration in as much as they all impugn the summoning order dated 16.5.2015 of the learned Metropolitan Magistrate, Patiala House Court, New Delhi in FIR No.390/13, Police Station R.K.Puram, whereby the petitioners, *namely*,

(i) Aseem Kapoor in Crl.M.C. No.2208/2015;

(ii) Shiv Kumar Jatia in Crl.M.C. No. 2209/2015 and ;

(iii) Karan Lal in Crl. M. C. No. 3480/2015,

have been summoned for the alleged commission of the offences punishable under Sections 336/338 read with Section 32 of the Indian Penal Code, 1860, and Section 4 of the Cigarettes and Other Tobacco Products Act—2003, hereinafter referred to as COTPA 2003, and proceedings therein. The three petitions also seek the quashing of the charge-sheet dated 16.3.2015 filed in relation to the alleged commission of offences with the FIR No.390/13, Police Station R.K.Puram, having initially been registered on 19.10.2013 for the alleged commission of offences punishable under Section 308 of the Indian Penal Code, 1860 and all consequential proceedings emanating therefrom.

2. The FIR registered on 19.10.2013 relates to an incident of the date 16.10.2013 which is stated to have taken place at 11:45 p.m. in the Hyatt Regency Hotel, Bhikaji Cama Place, whereby the visitor/guest of the said hotel, *namely*, Gaurav Rishi S/o Sushma Rishi, R/o B-18, Greater Kailash, Second Floor, New Delhi, aged 29 years is stated to have fallen down from the 6th floor of the said hotel to the 4th floor and is indicated to have been injured on his head thereupon and has been unfit for statement since the date of the incident, i.e., 16.10.2013 till date. The police of the PS R.K.Puram were informed of the incident at 6:20 a.m. on 17.10.2013 by Head Constable Sukhbir No.1233/SE, Police Station C. R. Park telephonically to the effect that the said Mr.Gaurav Rishi had fallen down from the stairs of the Hyatt Regency Hotel and had been admitted to the Fortis Hospital with

MLC No.2240/13 and that an Investigating Officer be sent whereupon the information was recorded vide DD No.8A dated 17.10.2013 by the police of Police Station R.K.Puram, and ASI Prem Singh was informed telephonically of the same by HC Bharat Bhushan No.1889/SD, the Duty Officer, posted at the Police Station R.K.Puram.

3. ASI Prem Singh on receipt of this information vide DD No. 8A along with Ct. Rajbir Singh 2015/SD reached the Fortis Hospital at Vasant Kunj, New Delhi and obtained the MLC No. 2240/13 of the injured Gaurav Rishi who had fallen down from the stairs in the Hyatt Regency Hotel and the doctor declared him unfit for statement and also mentioned on the MLC that on local examination the injured was found bleeding from the left side with a head injury and one lacerated wound on left tempora parietal region 4 cm X .05 cm. hematoma and swelling around the wound, periodontal hematoma and swelling on left side. The Investigating Officer is indicated to have detailed the contents of the injuries mentioned in the MLC in the *rukka* prepared by him. On reaching the Fortis Hospital, Ms. Gauri Rishi, the sister of the injured was present at the hospital and stated that she herself was unable to make a statement at that time till Gaurav Rishi gained consciousness and the Investigating Officer met no other eyewitness at the spot whereafter the Investigating Officer along with an accompanying constable reached the spot, i.e., the Hyatt Regency Hotel where he met Vishal Rana, the Assistant Security Manager, who informed the Investigating Officer on inquiry, that the injured Gaurav Rishi had fallen from the stairs of the 6th Floor on to the terrace of the

4th Floor but stated that he (Vishal) himself was not an eyewitness of the occurrence. The Investigating Officer on reaching the terrace of the 4th Floor found dried blood and the Crime Team of the South District was called by the Investigating Officer to the spot which conducted an inspection, took photographs and a portion of the dried blood with the aid of a hammer was picked up along with the earth control and put both, the dried blood and the earth control, into small plastic bottles and both the bottles were sealed with the seal of PSC and were seized. The Investigating Officer prepared the *rukka* stating that the injured being unfit for statement and taking into account the injuries caused to him and the circumstances at the spot, it appeared that an offence punishable under Section 308 Indian Penal Code, 1860, had been committed and the *rukka* was thus sent to the Police Station R.K.Puram for registration of the FIR under Section 308 of the Indian Penal Code, 1860, which FIR was got so registered and the copy of the FIR was handed over to the Investigating Officer.

4. Along with the charge-sheet filed before the learned Trial Court is also a site plan prepared by the Investigating Officer on 19.10.2013. The investigation is thereafter indicated to have been conducted.

FILING OF CHARGE-SHEET

5. The Trial Court Record requisitioned indicates that the charge-sheet dated 16.03.2015 under Sections 336/338 read with Section 32 Indian Penal Code, 1860, and Section 4 of the COTPA, 2003 was filed by the Inspector Vishudhanand Jha, SHO, Police Station SDA on 17.3.2015 and it was stated by the Investigating Officer that he had already verified the addresses of the accused persons as well as the

witnesses and submitted that the FSL result had not yet been received and the injured had also not been examined due to his unfit state of mind. The learned Trial Court bound the Investigating Officer for the date of hearing 15.4.2015 and the matter was taken up for consideration for the said date. Vide order dated 15.4.2015, it is indicated that the sister of the injured was present and sought the presence of her counsel to assist the learned APP for the State to make submissions and the matter was re-listed for 16.5.2015.

SUMMONING OF ACCUSED

6. On 16.5.2015, the Investigating Officer Inspector V.N. Jha was present and so was the Additional Public Prosecutor for the State, and the sister of the victim and the counsel for the victim. Detailed submissions are indicated to have been made by the State qua the role and responsibility of the alleged accused persons and it was observed vide order dated 16.5.2015 by the learned Metropolitan Magistrate-05, Patiala House Courts, New Delhi that the Investigating Officer had filed the charge-sheet against the accused persons for the offences punishable under Sections 336/338 read with Section 32 Indian Penal Code, 1860, and 4 of COTPA, 2003 and that the Trial Court observed to the effect that the material on record *prima facie* indicated that the accused persons mentioned in the charge-sheet were responsible for commission of the alleged offences. Thus, the cognizance was taken by the learned Metropolitan Magistrate and all the eight accused persons arrayed in the charge-sheet were directed to be summoned through the Investigating Officer for supply of documents/bail/ further proceedings for the date 29.5.2015.

7. On 29.5.2015, all the accused persons i.e., 6 of 8 accused persons arrayed in the chargesheet were present except for the petitioners of the present three petitions, i.e., Aseem Kapoor, Shiv Kumar Jatia and Karan Lal, whose presence before the learned Trial Court was exempted vide orders dated 27.8.2015 in CrI. M.C. Nos. 2208/2015, 2209/2015 and vide order dated 26.8.2015 in CrI.M.C. No. 3480/2015 respectively through the counsel representing them before the learned Trial Court which order of exemption from appearance is in existence till date. After the said police report was filed by the Investigating Officer, vide order dated 23.5.2015, the Investigating Officer submitted that the injured who had been discharged from the Fortis Hospital on 27.12.2013 was under follow up treatment at the Fortis Hospital and was not fit for statement neither on 21.7.2014 nor on 16.5.2015 and Ms.Gauri Rishi, the sister of the injured also stated that her brother was then at her residence.

FURTHER INVESTIGATION PERMITTED

8. The Investigating Officer sought to further conduct the investigation of this case and vide order dated 23.5.2015, the learned Magistrate concerned observed to the effect that:

“Heard. Perused. Let the I.O. be permitted to conduct the further investigation of case strictly according to the provisions of law.

MM”

PROCEEDINGS IN THE CRIMINAL MCS IN THIS COURT

9. In view of the said order dated **23.5.2015** on the record, vide order dated **23.4.2018** during the course of the hearing on the present petitions, it was considered essential that the status report in relation to

the further investigation, if any, conducted in relation to the FIR No.390/2013, PS R.K.Puram be submitted on the record by the State pursuant to the proceedings dated 23.5.2015 and the case diaries were also directed to be produced.

10. A status report dated 24.4.2018 under the signatures of Inspector B.M.Bahuguna, SHO, Police Station R.K.Puram, was submitted by the State on 25.4.2018. The status report dated 24.4.2018 stated that during the investigation Gaurav Rishi, the injured was found unfit for statement and that the statements of witnesses were recorded when the Investigating Officer visited the residence of the injured and a notice was issued for production of treatment papers of the injured with details of the concerned doctor. As per this status report, the Investigating Officer found that the injured was still then unable to talk and walk. The status report dated 24.4.2018 further indicated that the further investigation of the case has been transferred to Police Station R.K.Puram, South-West and that the police file had been received on 7.4.2018 for further investigation and it was found that the previous Investigating Officers had visited the residence of the injured Gaurav Rishi many times but the injured was not fit for statement. It was also stated through the status report that on **23.4.2018**, Ms.Gauri Rishi, the sister of the injured was contacted and she stated that Gaurav Rishi was still under treatment and unable to talk and walk and that she was directed to supply the recent treatment documents of the injured and the details of the hospital and the concerned doctors.

11. On **25.4.2018** a further fresh status report was submitted by the State stating that through the intervening period, i.e., from the submission of the charge-sheet till the transfer of the investigation to Police Station R.K.Puram on 7.4.2018, till the date of his report i.e., 25.4.2018, the SHO Police Station R.K. Puram, the Investigating Officer reported that the investigation conducted by the Investigating Officer indicated that certain documents/information were supplied by Ms.Gauri Rishi and other stake holders pursuant to the notices issued to them and a supplementary charge-sheet would be filed.

12. During the course of hearing of the three petitions presently under consideration on 25.4.2018, a submission was made on behalf of the petitioners that the case diaries be retained. It had been submitted on behalf of the State that the investigation was still in progress, and though the case diaries were not retained they were directed to be produced on each date of hearing and further more a list of documents collected by the Investigating Agency from the date 23.05.2015 onwards was directed to be submitted by the State on the next date with the status of further investigation conducted.

13. This status report dated 1.5.2018 states that during the investigation, the Investigating Officer also visited the injured Gaurav Rishi to ascertain his physical health but he was found unable to talk and walk and unable to undertake his normal/daily routine courses/works and he required a personal attendant.

14. On **1.5.2018**, the State submitted its status report and list of documents collected from 23.5.2015 onwards under the signatures of the SHO Police Station R.K.Puram who stated that during the course

of investigation, the FSL report was collected and the notices were issued by the Investigating Officers, Inspector V.N.Jha and Inspector Arun Dev Nehra, to the sister of the injured Ms.Gauri Rishi, the Hyatt Hotel Management and the Doctor attending the injured Gaurav Rishi. The documents received during the investigation and pursuant to the notices issued by the Investigating Officers were detailed by the State as being:

“1- FSL Report No. FSL/2014/B-4941 of Bio-Division, Forensic Science Laboratory-Rohini, Delhi.

2- Copy of medical certificate of Gaurav Rishi along with copy of Brain and spine MRI Report. (By the complainant i.e. Ms Gauri Rishi)

3- Copy of letter dated 02.01.2015 issued from Licensing unit Delhi Police indicating that Regency Club Lounge operating on 6th Floor was without license. (By the complainant i.e. Ms.Gauri Rishi)

4- Copy of comments provided by the DCP, South District to the Delhi Police Licensing Department vide communication dated 17th March 2015 regarding confirmation of violation of licensing conditions by the Hotel on the eve of 16th October 2013. (By the complainant i.e. Ms.Gauri Rishi)

5- Copy of the Joint Inspection Report dated 25th June 2015 prepared by Delhi Police Licensing Department to show subsequent rectification of violations of license conditions by the Hotel. (By the complainant, i.e., Ms.Gauri Rishi)

6- Reply given by the Director of Human Resources, Hyatt Hotel Management indicating job title and responsibilities of its officials. (By the Hotel Management)

7-List of staff deployed on duty on the intervening night of 16/17.10.2013 in Regency Club Lounge.(By the Hotel Management)

8- Job description of Sh. Ravi Shankar, Team Leader, outlet.(By the Hotel Management)

9- Job description of Sh. Karan Lal, Assistant Front Office Manager. (By the Hotel management)

10- Similar information mentioned at Sr.No.6 to 8 with signature of Director, Human Resources, Hotel Management. (By the Hotel management)

11- Letter by Hyatt Regency to SDMC dated 25.02.2015 seeking new Health Trade License for running Regency Lounge at the 6th Floor.(By complainant i.e. Ms.Gauri Rishi)

12- Sanction letter provided by SDMC to Hotel for carrying out renovation/alteration in the existing building structure of Hyatt Regency.(By Ms.Gauri Rishi).

13- Documents bearing File No.101/CC/B/SZ/13/1 dated 29.11.2013 regarding issuance of Completion/Occupancy Certificate in r/o Hotel Hyatt Regency, Bhikaji Cama Place, new Delhi after notice of completion dated 29.11.13.(By Ms.Gauri Rishi).

14- Document regarding issuance of Completion/occupancy Certificate by SDMC to Hotel Hyatt Regency, Bhikaji Cama Place, New Delhi dated 29/5/14.(By the complainant i.e. Ms.Gauri Rishi)

15- Documents regarding Training Guide and Manual of duties for the Front Desk Manager. (By Ms.Gauri Rishi).

16- Copy of Annual paid Membership card as held by injured, Sh. Gaurav Rishi which was valid on the date of

accident i.e. 16.10.2013 upto 30.09.2014. (By Ms.Gauri Rishi).”

15. The petitions Crl.M.C. No.2208/2015 and Crl.M.C. No.2209/2015 were filed on **22.5.2015** and the petition Crl.M.C. No.3480/2015 was filed on **26.8.2015**.

16. Vide order dated **1.9.2015**, the Hon’ble Supreme Court disposed of a Special Leave Petition No.6287/2015 filed by Ms.Gauri Rishi, the sister of the injured, against the order dated 22.5.2015 in Crl.M.C. **No.2209/2015** seeking to file additional documents *vide which the notice of the said petition filed by Shiv Kumar Jatia had been directed to be issued to the respondent and the presence of the petitioner was exempted through counsel before the learned Trial Court with a direction that he would not dispute his identity*, with the observation that the Hon’ble Apex Court deemed it appropriate to request the High Court, i.e., this Court, to dispose of the said Criminal M.C.No.2209/2015 expeditiously, preferably, within a period of six weeks.

17. During the course of hearing of the three petitions, in Crl.M.C. No. 2208/2015 on behalf of the petitioner Aseem Kapoor, Crl.M.A. No.5959/2018 was filed on 3.4.2018 supported with an affidavit of the petitioner Aseem Kapoor dated 20.3.2018 seeking a stay of the proceedings/ trial and all consequential proceedings emanating therefrom qua FIR No.390/13, under Section 308 Indian Penal Code, 1860, dated 19.10.2013 pending before the Court of Learned Metropolitan Magistrate-05, Patiala House Courts till the disposal of

the petitions filed by the petitioners, seeking quashing thereof, i.e., FIR No.390/13, PS R.K.Puram.

18. CrI.M.A. No. 5960/2018 and CrI.M.A. No. 7461/2018 was filed on 21.4.2018 by the said petitioner seeking to place on record the additional documents to bring forth facts and events which were stated to have transpired during the pendency of the petition. It was submitted through this application that the sister of the injured had filed an application before the Hon'ble Supreme Court CrI.M.A. No.1054/2018 in SLP CrI. No. 6287/15 titled ***Gauri Rishi v. State & Another***. A copy of the said application filed by Gauri Rishi was submitted by the petitioner of the present petition which sought an expeditious trial of the Criminal M.C. No.2208/2015 titled ***Aseem Kapoor v. State of Delhi & Anr.*** at the earliest and if possible on the next date of hearing fixed before this Court which was then fixed on 10.4.2018 with further directions to the Magistrate to dispose of the proceedings in relation to the FIR No.390/13, Police Station R.K.Puram, expeditiously. Vide CrI.M.A. No. 7461/18 it was submitted that the said application CrI.M.A No.1054/18 in **SLP No.6287/15** filed by Ms.Gauri Rishi, the sister of the complainant was mentioned on 9.4.2018 to be listed for 13.4.2018 and that the petitioner had filed a short reply thereto on 13.4.2018 and the matter was adjourned to 27.4.2018.

19. Vide the application CrI.M.A. No. 5959/18 filed in this petition, the petitioner in CrI. M.C. No. 2209/2015 submitted that the Investigating Officer and the sister of the injured had not apprised the Hon'ble Apex Court of further investigation being pending in terms of

protection granted for further investigation vide order dated 23.5.2015 of the learned Metropolitan Magistrate concerned. The petitioners through the said CrI.M.A. No. 5959/2018 submitted that the stay of the proceedings in FIR No.390/13, Police Station R.K.Puram be stayed from the date 23.5.2015 further investigation was issued till the furnishing of the status report. **On 23.5.2015**, several hearings had taken place before this Court and the sister of the injured/applicant had challenged the arguments putting up the maintainability of the quashing and petition submitted to the effect that the charge-sheet, the summoning order and the FIR could not be quashed during the pendency of the further investigation. It was submitted on behalf of the petitioner that the present case is a summons trial case and a great prejudice would be caused to the petitioner if the trial was permitted to proceed as through the supplementary charge-sheet the State would seek to prove the innocence of the accused and that the sister of the injured had not opposed the quashing filed seeking discharge in relation to FIR No.390/13, Police Station R.K.Puram on the ground that the charge-sheet and further investigation was pending before the learned Trial Court. The sister of the injured had also insisted the framing of the charge submitting that there was no order of stay and that grave prejudice was being caused to the rights of the petitioners.

20. In view of the totality of the circumstances of the pendency of the proceedings before this Court and the pendency of the proceedings before the Apex Court and the application filed by the petitioner in CrI.M.C. No.2208/15 seeking stay of the proceedings before the learned Trial Court with the further submission made on behalf of the

State, qua investigation being in progress in relation to FIR No.390/13, Police Station R.K.Puram pursuant to order dated 23.5.2015 of the learned Trial Court, these three writ petitions since the date 23.4.2018 are being taken up virtually on a day-to-day basis before this Court i.e. on 23.4.2018, 24.4.2018, 25.4.2018, 1.5.2018, 2.5.2018, 3.5.2018, 4.5.2018, 7.5.2018, 8.5.2018 and 9.5.2018 on which date the arguments in *toto* had been concluded, i.e. on behalf of the petitioners, the State and on behalf of the sister of the injured and on behalf of the petitioners in rebuttal.

21. Vide order dated 9.5.2018 of the Court, a brief synopsis not exceeding five pages were directed to be submitted by either side by the date 14.5.2018.

22. Vide order dated 8.5.2018 of the Apex Court in the SLP No.6287/15 and 6288/15, the Hon'ble Apex Court disposed of the said petitions in view of the submissions made that the arguments of the petitioners of the present SLP petition No. 6287/15 had been concluded and that arguments of the State had been concluded and that the arguments of the petitioners were being addressed and were to be responded and arguments of the petitioner to the present petition in rebuttal were requested to be addressed in a day also.

23. The Trial Court Record indicates that on 21.8.2017, a status report was submitted by the SHO, PS Safdarjung Enclave the then Investigating Officer who, as per the said status report, had made several visits to ascertain the condition of the victim Gaurav Rishi, that the investigation was still in progress and as and when further evidence came on record, the supplementary charge-sheet would be

filed. The proceedings before the learned Trial Court indicated that vide order dated 21.2.2018 it had been observed by the learned Trial Court that there being no stay of the proceedings before the Trial Court the matter was fixed for arguments on charge with it further having been submitted on behalf of the petitioners herein that a quashing petition was pending in this Court, i.e., the present petitions and on the other hand, the sister of the injured submitted that the investigation was going on and the charge-sheet was incomplete, the learned Trial Court had listed the matter for arguments on charge.

CONTENTIONS

24. During the course of arguments that were addressed, a submission was made on behalf of Karan Lal, i.e., the petitioner in CrI.M.C. No.3480/2015, that in the instant case the offences punishable under Sections 336/338 Indian Penal Code, 1860 are punishable with imprisonment for a period of two years and a fine and are disjunctive and that the offence punishable under Section 4 of the COTPA 2003 would be punishable with a fine of Rs.200/- and is to be tried as per the procedure provided in the Code of Criminal Procedure, 1973 and that thus in terms of Section 167(5) of the Code of Criminal Procedure, 1973, the proceedings had essentially to be stopped and the accused persons discharged inasmuch as the offences alleged against the petitioners were in relation to a summons trial case and that the investigation having not been concluded within a period of six months in terms of Section 167(5) Code of Criminal Procedure, 1973, unless the officer conducting investigation satisfies the Magistrate and states

the reasons in the interest of justice for continuation of the investigation beyond the period of six months.

25. On behalf of the State, the said submission has been vehemently opposed submitting to the effect that Section 167 (5) of the Code of Criminal Procedure, 1973 would apply only in the event of the arrest of the accused persons whereas in the instant case there has been no arrest made of the petitioners.

26. Section 167(5) of the Code of Criminal Procedure, 1973 reads to the effect:

“167. Procedure when investigation cannot be completed in twenty four hours.— (1)

(2).....

(3).....

(4).....

(5) If in any case triable by a Magistrate as a summons-case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary.”

27. Undoubtedly, in the instant case there has been no arrest made of the three petitioners by the Investigating Agency and, further more, in terms of order dated 23.5.2015 permission for further investigation to be conducted has already been granted by the Magistrate concerned. The status reports that have been submitted repeatedly by the State, including the last status report dated 1.5.2018 ,stated to the effect that further investigation is in progress and that the statement of the

injured is yet to be recorded. The embargo of Section 169(5) of the Code of Criminal Procedure, 1973 is not applicable in the instant case as no arrest has been made of the petitioners in terms of the provisions of Section 41(1)(b) of the Code of Criminal Procedure, 1973.

28. Apparently, the status report dated 1.5.2018 states that the investigation is in progress and so does the status report dated 23.4.2018 stating categorically to the effect that the statement of the injured has not yet been recorded due to his unfit state of health inasmuch as on 24.4.2018 it was so stated by the Investigating Officer in reply to a specific court query. The medical certificate dated 3.9.2015 issued by Dr.Sonia Kohli, MD(Internal Medicine) indicates that the injured was unable to talk and walk and was not fit to make any statement.

29. On 25.4.2018, through the status report it was submitted to the effect that the investigation of the case was still continuing and that the investigation has been transferred to the police station R.K.Puram. Records had been received for further investigation on 24.4.2018 and certain documents were yet to be verified and that the Investigating Officer had visited the residence of Gaurav Rishi, the injured, many times but he was not found fit to make any statement. The investigation conducted pursuant to order dated 23.5.2015 of the Magistrate permitting further investigation as brought forth through the list of documents and the supporting documents filed on behalf of the State pursuant to the order dated 25.4.2018 of this Court . The documents submitted by the State pursuant to order dated 25.4.2018 which are stated to have been collected during the course of

investigation conducted after order dated 23.5.2015 of the Magistrate concerned are:

- (i) Letter dated 2.9.2015 signed by the Investigating Officer Inspector V.N.Jha, then SHO PS Safdarjung Development Area to the Chief Executive Officer, Hyatt Regency Hotel, Delhi dated.2.9.2015 calling upon him to submit the

1. list of staff that were on duty on the intervening night of 16/17.10.2013 in the Lounge Regency Club, at 6th floor along with 2.

2. What were the duties & responsibility of following officer on 16/17.10.13

- (1) Mr.Aseem Kapoor
- (2) Mr.Sanjay Sethi
- (3) Mr.Somnath Dey
- (4) Ms.Sonali Chauhan
- (5) Ms.Anuradha Kumar
- (7) Mr.Anil Virmani
- (8) Mr.Narottam Sharma
- (9) Ms.Namrata Menon
- (10) Mr.Marin Leuthard
- (11) Mr.Gaurav Chopra
- (12) Ms.Ivana

3. what were the duty & responsibility of Mr.Ravi Shankar and Mr.Karan Lal on the date 16/17.10.2013, Karan Lal, being the petitioner of Crl.M.C. 3480/2015

4. Details of duty & responsibility of Mr.Karan lal s/oSh. Vijay Lal (Asstt. Front Office Manager, Hyatt Regency) on 16/17.10.13 and

5. whether the said staff had made their entry/reporting time & departing time before and after furnishing their duties.

(ii) letter dated 3.9.2015 by the Investigating Officer to Dr. Sonia Kohli, MD (Internal Medicine) asking her to provide the medical treatment papers of the patient Gaurav Rishi undergoing treatment under her and also a certificate as to whether Gaurav Rishi was fit for statement or not.

(iii) Response of Dr.Sonia *inter alia* stating to the effect that Gaurav Rishi the injured was unable to talk, walk and is not fit to make any statement;

(iv) Letter dated 2.9.2015 of Ms.Gauri Rishi, the sister of the injured , to the Investigating officer, providing the details of the medical treatment being undergone by the injured and;

(v) copy of comments provided by the DCP, South District, to the Delhi Police Licensing Department vide communication dated 17.3.2015, a copy of the joint Inspection report dated 25.6.2015 as prepared by the Delhi Police Licensing Department after conducting a joint inspection along with the local police within the premises of the hotel on 25.6.2015 submitting to the effect that the hotel had subsequently and at this belated stage, rectified all the violations of licensing conditions, as confirmed by the DCP, South District, to have been committed by the Hotel on the eve of 16th October, 2013 thereby leading to the near fatal accident of the victim.

(vi) Certificate dated 2.6.2015 of Dr.Sonia Kohli in relation to the treatment that the injured is undergoing treatment inclusive of daily medication and daily rehabilitation with alternative form of medication and supportive care in daily activities;

(vii) The joint inspection report of the inspection conducted on 25.6.2015 at 11 a.m. by the team of the Licensing Branch comprising of Rajesh Kumar Naithani, ACP/H&R; 2) Inspector Khushal Singh and; 3) SI Upender Singh of hotel section along with

- Inspector Vijay Pal Singh, PS R.K.Puram,
- Sub Inspector Hari Ram, P.S R.K.Puram;
- Head Constable Hans Raj, 278/Cr.(Video/Photographer),

- Aseem Kapoor, General Manager, Hotel Hyatt Regency,
- Sushil Thomas, Chief Security Officer, Hotel Hyatt Regency
- Narottam Sharma, Director (Material), Licensee/Hotel Hyatt Regency.

(viii) A response dated 3.9.2015 by Hyatt Regency Hotel to the SHO, Police Station Safdarjung Development Area, qua notice under Section 91 Cr.P.C./160 Cr.P.C. dated 2.9.2015 detailing the job title and responsibilities of 12 employees of M/s Hyatt Regency Hotel along with the list of staff present on the intervening night of 16/17.10.2013 at the Regency Club Lounge with details of job/duties of Ravi Shankar, Karan Lal (one of the petitioners in Crl.M.C. No. 3480/2015);

(ix) Notice dated 25.8.2017 under Section 91 of the Criminal Procedure Code issued by Inspector A.D.Nehra, PS SJ Enclave to Ms.Gauri Rishi apprising her that further investigation had been done under Sections 336/338 r/w Sec. 32 Indian Penal Code, 1860, Police Station R.K.Puram and she was called upon to produce evidence if she had at the earliest to which Ms.Gauri Rishi is indicated to have responded vide letter dated 8.8.2017 comprising of:

- Annual Paid Membership Card of Hyatt Regency, as held by the injured Gaurav Rishi which was duly valid on the date of incident and was valid till 30.9.2014 to submit that Gaurav Rishi, the injured, was a contractual guest of the Hotel on the date of the incident and was provided access to the 6th Floor lounge in view of being a paid member of the Hotel;
- Documents obtained from the South Delhi Municipal Corporation under the RTI Act, 2005 to submit that the Regency Club Lounge on the 6th Floor on the date of incident 16.10.2013 was operating without the requisite authorization/Health Trade License from MCD, thus being in patent contravention of Section 347 of the DMC Act 1957;

- Sanction letter dated 6.3.2013 as provided by SDMC for carrying out renovation/alteration on the existing building structure of Hyatt Regency Hotel;
- Document bearing File No.101/CC/B/SZ/13/1 Dt. 29.11.2013 regarding issuance of completion/occupancy Certificate in respect of Hotel Hyatt Regency, Bhikaji Cama Place, New Delhi to contend that the Hyatt Regency Hotel through Mr.P.R.Subramanian, General Manager Corporate Affairs provided notice of completion of renovation and applied for the completion/occupancy certificate after completion of its renovation/alterations in the existing structure of the Hotel only vide application dated 29.11.2013, and there on the date of the accident, the hotel was under renovation condition pursuant to sanction of proposed plan by SDMC and did not possess the requisite completion/occupancy certificate for carrying out its operations in terms of Section 346 of the DMC Act, 1957;
- Issuance of completion/occupancy certificate in respect of Hotel Hyatt Regency, Bhikaji Cama Place by SDMC on 21.05.2014 indicating thus that there was no completion certificate available with the Hotel as on the date of the incident;
- Training Guide and Manual of duties for the Front Desk Manager making reference to a reply dated 12.3.2015 of Aseem Kapoor, the petitioner in CrI.M.C. No.2208/2015 to the notice sent by the Investigating Officer dated 11.3.2015 annexing Security Department-Policy and Procedure to contend that the hotel was guided by the procedures and rules laid down by Hyatt International Corporation and that the said training guide applied to Karan Lal, the petitioner of CrI.M.C. No. 3480/2015, who

was the Assistant Front Office Manager on 16.10.2013 at the time of the incident;

- Copy of comments sent by Ms.Gauri Rishi, the sister of the injured, to the DCP, South District to be sent to the Delhi Police Licencing Department dated 17.3.2015, Medical certificate of Mr.Gaurav Rishi dated 2.6.2015 along with copy of the Brain and Spine MRI Reports; copy of the letter dated 2.1.2015 received from the Delhi Police Licensing Department under RTI Act, 2005 along with the conditions for Registration certificates issued under the “Delhi Eating Houses Registration Regulations, 1980.”

30. The Charge-sheet placed before the learned Trial Court, i.e., prior to order dated 23.5.2015 when further investigation was ordered arrays the following 8 persons as accused:

“(i) M/s Asian Hotels (North) through its Managing Director Mr.Shiv Jatia;

(ii) Mr.Shiv Jatia, Managing Director, Hyatt Hotel

(iii) Mr.P.R. Subramanian, Licensee Hyatt Hotel

(iv) Sh.Aseem Kapoor, General Manager, Hyatt Hotel, R.K.Puram

(v) Lt. Col. Deepak Khanijou (Retd.) , Director of Security

(vi) Mr.Karan lal s/o Sh. Vijay Lal, Asstt. Front Office Manager, Hyatt Regency on the particular shift

(vii) Pawan Kumar Singh (Asstt. Manager Food & Beverage) Hyatt Regency, Delhi Bikaji Cama Place, and

(viii) Amit Ghildiyal s/o Sh. M.D. Ghildiyal, Food & Beverage Trainee, Hyatt Hotel, and

all of them were kept in column No.11 of the charge-sheet.

31. The charge-sheet as already submitted cites thirty witnesses and 132 documents collected during the course of investigation. During the course of investigation Ms. Gauri Rishi (sister of the injured) was present in the said hospital and she further gave a written statement stating that “we would not be in a position to give any statement till the patient, Mr.Gaurav Rishi gains consciousness”. It is indicated through the charge-sheet that during the course of investigation, the Investigating Officer inspected the spot at the instance of Ms.Margarita and prepared the site plan and got the spot videographed, the spot being situated on the 6th Floor of the Hotel on which floor there the Regency Club and the guests using the club have an access on the terrace adjacent to this club through a gate. As per the charge-sheet, the terrace is about 1085 St. Ft and has a parapet wall of 2.8 feet high. This parapet wall further has an iron railing of 1.8.ft height, there is a stair case leading down to the 4th floor which was under minor maintenance/renovation. There is roof (platform) on half portion of the said stair case which has an iron railing of 1.8 ft height on the outer edge. The statement of the two witnesses-Ms Rebecca and Ms.Margarita who were present with Gaurav Rishi on the terrace of the 6th floor of the hotel were recorded by the Investigating Officer ASI Prem Singh, PS R.K.Puram on 19.10.2013 and that in her statement under Section 161 Code of Criminal Procedure, 1973 Ms.Rebecca T Hawkins stated that:

"I arrived in the Hyatt Lounge at approximately 6.30 P.M., October 16 to meet my coworker for some food and wine. Margarita, whom I met earlier in the week here at Hyatt, joined the two of us at approximately 7 PM - 7.30 AM, Gaurav whom I also met preciously in the week joined approximately 20-30 minutes late. I do not recall the exact time. We were having wine and chatting and playing with Margarita's daughter who was watching TV, we were going outside have a Cigarette every now and then. Around 9.30 or 10 (I cannot recall exactly as I was not wearing a watch), Elizabeth (My co-worker) lefty to go to bed in our room we are sharing room No. 601. Some time close after Margarita took her daughter downstairs to go to sleep (around 10 PM) she came back to meet us and we continued taking having some wine, watching TV and Margarita ordered dinner. A TV show ended (that I was not watching) so I think it must have been around 11.30 PM (approximately) that all 3 of us walked out to the terrace to have a smoke. We were outside talking/laughing everything was happy and fine. Margarta and I were standing by the staircase (continued) that we actually did not know was a staircase at that time. She and I were lighting our cigarettes together and I did not notice he had gotten I up on the platform/lodge area by the staircase and was walking around. I only noticed because he was higher up then us but I did not take much notice to him or what he was doing because I was engaged in a conversation with margarita and we were lighting our cigarettes with matches. Margrita did say at some point something like "You are making me nervous up high like that or "Get down from there you are making me nervous" I do not know the exact words she said. At that time I was not really paying attention because I had no idea something like this would happen. Moments later we noticed he was not there. Margarita started calling his name and he did not respond. She thought may be he was playing a prank on her. She called his name for 30 seconds of so and then got worried so she ran inside and asked how you got down to the below. They said there was a staircase

and she ran down. I stayed on the terrace but heard her scream, so I ran down. When I saw him and all of the blood I ran back stairs to help inside the club. At coming and a women from Hyatt continued calling an ambulance. Everyone from Hyatt was doing all that they could but the ambulance was taking a very long time it seemed. It was at least 15 minutes time. I took Margartas key and went to her room to stay the night with her daughter. While she went to the hospital with Gaurav.”

32. In her statement under Section 161 Code of Criminal Procedure, 1973 Ms. Margarita P Malhotra stated that:

“I was in contact with Gaurav Rishi, during the day we were in touch by SMS and Phone call. He said he had meeting in evening nearby the Hyatt and we coordinated to meet at the 6th floor lounge. At approximately 19:30, I arrived at the lounge with my 2 year old daughter. I saw Rebecca and Elizaveth at a travel an (sic) asked to join them. I met Rebecca Saturday prior. At approximately 19:45, Gaurav Rishi arrived and joined us. From 20:00 to approximately 20:30, I brought my daughter back to my room 463 and put her to bed. I returned to the lounge. At approximately 21:45, Elizabeth retired to bed. The remaining evening and throughout, we spent the time eating, drinking, watching TV and taking occasional smoke breaks and having good conversation. At approximately 23:15, we went for a smoke, Gaurav, Rebbeca and myself. The terrace was dark. We stood nearby the staircase. I did move around the terrace from time to time to check through the windows at our belongings. At on point, I noticed Gaurav by the inner ledge as I was standing and talking with Rebecca. Gaurav Rishi had climbed upto on the platform/ledge of the roof of the staircase and was walking around. I asked him to came down as it was making me very nervous. I recall Rebecca and I lighting our cigarettes. I took a puff or two perhaps just a minute late and noticed Gaurav missing. We called out to him with no response. I

thought he was pranking we did not hear any scream of fall. After another minute or less, I went inside the lounge and asked how to get on the 4th floor deck. The boy instructed me there was staircase. I fled down on a pool of blood we immediately contacted Hyatt staff and asked them to get a doctor and ambulance immediately. This took approximately 20-30 minutes, may be more, while waiting for the doctor, the staff wanted to reposition Gaurav because he was gasping for air. I asked them to wait for the doctor, but they made the call to move his body and a boy held up his head.”

33. As per the charge-sheet during the course of investigation a letter dated 14.11.2013 addressed to Commissioner of Police & others written by Ms.Gauri Rishi, the sister of the injured, was received in police Station R.K.Puram, and the investigation of the case was handed over to Inspector Surinder Sandhu. It is submitted through the charge-sheet that on 22.11.2013, with same content Ms.Gauri Rishi, sister of the injured, also handed over her typed complaint to the Investigating Officer Police Station R.K.Puram alleging/raising certain points, which are summarized as under:-

“1. On (the terrace outside lounge, there was a temporary structure that provided access to the fourth floor terrace. There is a permanent Structure approximately 2 ft in height, 4 feet in width, which is immediately inside the terrace boundary wall in one corner and is approximately the same height as the boundary wall. The overall staircase structure was incomplete, unfinished and uneven on the night of incident.

2. There was no signage or caution board in front of the staircase or anywhere on the terrace which mentioned "temporary" or "work in / under progress". The said terrace

was open to guests to access and use for the purposes of smoking and other activities. The terrace where Mr. Gaurav Rishi was standing before the incident was extremely flimsy and inadequate to stop his fall or safeguard in any manner whatsoever.

3. The manner in which Mr. Gaurav Rishi was attended to reflected complete negligence and callousness on behalf of the Hotel Management and Staff. He was lifted and put on a stretcher by the ordinary hotel staff, who were not medically trained or equipped to deal with a contingency like this. This had enhanced the damage to his body and health.

4. Despite her repeated request to take Mr. Gaurav Rishi to the nearest Trauma Centre or emergency which could immediately assist in controlling the bleeding and injuries. That it took approximately 30 to 40 minutes for the second ambulance to reach and only thereafter they admitted injured Mr Gaurav Rishi at Fortis Hospital, Vasant Kunj.

5. Further she requested to register a case (i) u/s 190 & Section 191 of the Indian Penal Code, 1860 for giving false evidence and fabricating false evidence (ii) Section 199, Section 201, Section 202 and Section 203 for giving false statements, causing disappearance of evidence, intentional omission to give information and giving false evidence with regard to commission of an offence, (iii) Section 288 of the Indian Penal Code 1860, for negligence in repairing or maintaining a building and thereby causing danger to human life, (iv) Section 308 of the Indian Penal Code, 1860 for attempt to commit culpable homicide, (v) Section 321 of Indian Penal Code, 1860 for voluntary causing grievous hurt. (vi) Section 511 of the Indian penal Code, 1860 attempting to commit offences punishable with imprisonment for life of other imprisonment. (vii) Any other offence punishable under any other provision of Law and rules and Regulations.”

34. As per the charge-sheet, Ms.Gauri Rishi arrived at the spot after fall of Gaurav Rishi at the hotel and thereafter remained with him at the the hotel till he was shifted to the hospital and the investigation was done to collect the evidence on all aspects mentioned in the complaint. The hotel employees, doctor on call Dr. Pawan Khanna and the staff of the ambulance van who reached at the spot were examined and the relevant record was also collected from them.

35. As per the charge-sheet in reply to the notice served to Hyatt Regency, Lt. Col. Deepak Khanijo (Retd.), Director of Security, Hyatt Regency, Delhi on behalf of Hyatt Regency, submitted his reply to the effect that Mr.Gaurav Rishi, non-resident guest came to the hotel on 16.10.13 at 19:30 hours approximately and went up to the 6th floor Regency Club Lounge at 19:35 hrs approximately Mr. Gaurav Rishi met and joined Mrs. Margarita Malhotra, Ms.Rebecca Hawkins and Ms.Foley, who were resident guests at the Hotel. One of the Guests namely Mrs. Margarita Malhotra requested the server to open the 6th Floor terrace/balcony area, which further leads to the fire exit staircase, as she along with Ms.Hawkins wanted to have a cigarette which by law is not permitted inside the lounge. Upon the specific request/insistence of the guests, the 6th floor terrace access was given to them. As per the charge-sheet during investigation the CCTV footage of Gaurav Rishi's movements in the hotel along with relevant documents were obtained from the Hyatt Hotel and from the CCTV footage of the entry and movements of Mr.Gaurav Rishi (injured) in hotel Hyatt on the day of incident i.e., 16.10.2013 and the allegation

about delay in providing medical assistance to the injured was also investigated.

36. Through the charge-sheet has been submitted, a chart showing the events in chronological order as under:

SNo.	Details of movements of Gaurav Rishi (Injured), ambulance etc. on 16/10/2013 —	Camera Time
	Reached DFMD Gate	07:16:45 PM
	Entry of Shri Gaurav Rishi in Hotel Hyatt	07:16:10 PM
	Reached Lobby	07:17:13 PM
	Reached Regency Club 6 th Floor	07:17:45 PM
	Margarita with her Daughter reached Regency Club 6 th floor	07:24:00 PM
	Approximate Time of incident	11:45:00 PM
	Dr.Pawan Khanna received call from the Hotel regarding the incident	00:05:00 AM
	Injured take to 6 th Floor from 4 th floor by stairs as the stretcher was not being adjusted in the lift	00:11:00 AM
	Reached 6 th Floor C-Wing lift by Stairs	00:14:00 AM
	Reached 5 th floor by Stairs	00:23:00 AM
	Reached 4 th floor by Stairs	00:15:00 AM
	Reached 3 rd floor by Stairs	00:13:00 AM
	Reached 2 th floor by Stairs	00:15:00 AM
	Reached 1 st floor by Stairs	00:16:00 AM
	Reached O level Service lift by Stairs	00:16:00 AM
	Reached P level (Last Level) Lift by Stairs	00:18:00 AM
	Injured in main kitchen	00:19:00 AM
	Doctor reached the Hotel	00:19:00 AM
	Sister of the injured reached receiving Corridor in the hotel	00:25:00 AM

	Injured at receiving area	00:37:00 AM
	Presence of Ms.Gauri & Ms.Margarita at receiving area	00:39 AM
	First ambulance reached the Hotel (102, without oxygen)	00:35 AM
	Second Ambulance reached (102, without oxygen)	00:35 AM
	Injured shifted to the 1 st Ambulance by the Hotel staff	00:37 AM
	Third Ambulance reached (CATS)	00:39 AM
	4 th Ambulance (Fortis Hospital) reached the Hotel	00:57 AM
	Fortis Hospital Ambulance started from the Hotel with the doctor and sister of the injured	01:02 AM
	Injured reached at Fortis hospital as per MLC	01:08 AM

37. The charge-sheet further states that the further investigation was marked to Inspector Neeraj Chaudhary, SHO, Police Station R.K. Puram, who got prepared the scaled site plan of the place of incidence, i.e., the terrace of the 6th Floor, Hyatt Regency Hotel on his directions. It has further been stated in the charge-sheet that Inspector Neeraj Chaudhary also got recorded the statement of witnesses who informed the police about the admission of the injured in Fortis Hospital and the E.O. of P.S. C.R.Park, who reached the Fortis Hospital and thereafter, informed the PS R.K.Puram about the incident.

38. It has been stated in the charge-sheet that further investigation of the case was handed over to Inspector Ram Singh, SHO/Safdarjung Enclave. On 7.5.2014, the witness of the incident Ms.Margarita

P.Malhotra was examined again in the case upon her arrival in India and in her supplementary statement u/s 161 Code of Criminal Procedure, 1973 the witness stated to the effect that

“me and my husband met Mr. Gaurav Rishi in the year July, 2011. Gaurav represented us as a realtor and since then we become close family friend. On 16.01.2013, Gaurav came to hotel for a social visit to meet me. I, Rebecca and Gaurav were sitting in the executive lounge situated at 6th floor of the hotel. There is terrace adjacent to the lodge to which hotel permitted its guests for smoking. The terrace was dark and there was no light on the terrace for 10 times. About two weeks earlier to incident, the terrace was closed due to some incident as told by the staff. They told that some incident took place but they did not elaborate the incident. But after one week of the incident they allowed the visitor to use the terrace. When we all went to the terrace on the day of incident, we never thought that terrace was unsafe, as no hotel staff stopped us from going there, I and Rebecca were busy talking to each other and Gaurav was standing on a broad structure. After 2-3 minutes, as no hotel staff stopped us from going there. I and Rebecca were busy talking to each other and Gaurav was standing on a broad structure. After 2-3 minutes, we observed that Gaurav was not there on the structure. We tried to look down at fourth floor but due to darkness, we could not see anything. There was some light on the 6th floor terrace from the lounge and found that the broad inner structure where Gaurav was standing was unfinished with an uneven and cemented surface with some loose cement slabs lying and there is only one foot railing around it which appeared weak and non sturdy. I do not recall whether the joints of the railing were connected properly since it appears to be unstable. I and Rebecca called Gaurav's name but he did not respond. Then, I ran into lounge and asked for the help from hotel staff. They took me to the 4th floor through one stair case with one broad inner structure which we earlier thought

not to be there. The staircase was also in bad shape with huge cracks and it was extremely dark there. I reached at the 4th floor balcony and found that Gaurav was lying in a pool of blood. I thought that Gaurav fell due to uneven surface of the broad inner structure and/or due to weakness on railing. I asked for the doctor and ambulance but there was no doctor/ambulance. I called Gaurav's family. I and Rebecca repeatedly asked for the medical help but it was taking too long. The hotel staff was also not medically trained. They put Gaurav on a stretcher and tried to bring him to the ground through lift but the same could not be done. And later they brought him through staircases. It took about 40/50 minutes to bring him to the ground floor. Till that time no doctor had arrived. Even the family of Gaurav reached there. Later on doctor arrived there. Doctor and Gauri were discussing some matter in Hindi and one ambulance was there. Then Gauri told me that we are waiting for another ambulance as per doctor's recommendation as that ambulance did not have life support system. Thereafter, another ambulance came and they took Gaurav to Fortis Hospital, vasant Kunj instead of nearby hospital AIIMS or Trauma Centre as I have been told next day. On next day, I saw the signage on the terrace which was not there on the night of incident and they put large stand-up sign blocking the staircase and they also removed the blood from 4th floor and put furniture on it. I have been also told by my colleagues that this was not the first incident as such type of incident occurred earlier also. Gaurav fell from the roof as there were no proper safe guards on the terrace. The platform did not have fence or well of adequate height. There was no signage to warn of the risk. Instead the hotel gave access to the terrace to its guests giving false impression of safety. And there was poor lighting also.”

39. It has been submitted through the charge-sheet that during the investigation on 12.5.2014, Ms.Gauri Rishi also produced a copy of

the RTI reply received from the office of the Deputy Health Officer, South Delhi Municipal Corporation regarding Hyatt Regency that neither sale nor preparation of food & beverage was allowed in the lounge. There was no health trade licence granted to the hotel for the terrace area adjoining 6th floor. The Deputy Health officer, South Delhi Municipal Corporation had confirmed the contents of the RTI reply given to Ms.Gauri Rishi vide letter dated 16.5.2014.

40. It has further been submitted through the charge-sheet that during the investigation, the Licensing Branch, Delhi Police had provided vide their letter No.11850/Joint CP/Lic.(H) dt.5.89.2014 that License no.HTL/ADDL.CP/Lic.(H)/2002/214 renewed upto 31.3.2015 was issued in the name of Sh.P.R. Subramanian s/o Sh.P.M.Ramaswamy and authorized him to keep a place of Public Entertainment known as Hyatt Regency.

41. The charge-sheet submitted also states that during the investigation the **Licensing Branch, Delhi Police provided the list of conditions of licence for 4-star and above category hotels (in accordance with Regulation 19 of the “Regulations for keeping places of public entertainment in Delhi-1980)”, the terms and conditions of which license are stated to have not been adhered to by the Hotel Hyatt Regency on the date of the incident as reflected in the charge-sheet are as follows:**

“1. The licensee had not installed CCTV cameras at all strategic locations like terrace. Had a CCTV camera been installed in the terrace, the movements of a guest in unsafe area could have been found and the guest would be asked to remove from there.

2. The Licensee did not take steps to ensure that the guests / visitors were allowed to go only to the floors where they were supposed to go, and not loiter around.

3. The licensee had not positioned any guard in the terrace area.

4. The licensee did not ensure that the exit gates were properly manned and are used solely for the said purpose.

5. Emergency lighting and self luminescent markings were not provided in strategic areas like terrace, emergency exit/route/staircase. Emergency exit/route was not properly maintained.

7. Public address system was not used to give messages in multi languages about the incident.

8. The licensee had not put in place an emergency evacuation plan to minimize any damage or danger to the life and property and did not give intimation to the local police and the police control room about the incident immediate after the incidents.”

42. As per the charge-sheet, the fourth floor was got inspected by the Director CFSL-cum-the CBI Sh. Rajender Singh for forensic observations who opined that in view of the physical evidences on record on the basis of the inspection at the scene of crime, the possibility of an accidental fall could not be ruled out.

43. As per the charge-sheet itself on 10.1.2015, the investigation of the case was handed over to Inspector V.N.Jha, Police Station R.K.Puram for further investigation and on 5.3.2014 as per the charge-

sheet, he along with the SHO, Police Station R.K.Puram and the ACP, S.J. Enclave inspected the place of incident, i.e., the 4th and 6th floor of the hotel and made certain queries to the then Director of Security and Assistant Security Manager and it was stated that the reply received under the signatures of the General Manager, Aseem Kapoor, the petitioner of CrI.M.C. No.2208/2015, on 11.3.2015 did not serve the purpose of the query nor he had annexed any contingency and evacuation plan and thus notice under Section 161 Code of Criminal Procedure, 1973 was served upon him to provide an appropriate reply which was then submitted by the Assistant Security Manager, Vijay Kumar, duly authenticated by the GM, Aseem Kapoor, the petitioner of CrI.M.C. 2208/2015.

44. It was further stated through the charge-sheet that the two important witnesses who were present with Gaurav Rishi at the time of the incident on the terrace of the 6th floor of the Hotel were Ms.Margarita and Ms.Rebecca and others were witnesses who associated later on in the case. The charge-sheet further indicated to the effect that during the investigation conducted so far (till the date of the charge-sheet i.e., 16.3.2015) it had been found that on 16.10.2013 injured Gaurav Rishi, Ms.Margarita and Ms.Rebecca were allowed to go onto the terrace of the 6th floor, adjacent to the Regency Club Lounge, for smoking by the staff of Hyatt Hotel although the terrace not a designated smoking area and certain conditions were required for the safety and security of the visitors/guests were found not complied with. It was further submitted through the charge-sheet that as per the provisions of Prohibition of Smoking in Public Places Rules, 2008

under Sec. 4 of Cigarette and Other Tobacco Products Act—2003 (COTPA 2003), the hotel should have proper smoking area and if hotel had proper and safe smoking area then the guests should not have gone to the terrace of the 6th Floor for smoking. It has further been stated through the charge-sheet that as per the investigation till the date of the charge-sheet dated 16.3.2015, on the inspection of the terrace it was found that the roof (platform) on the stair case had an iron railing of 1.8 ft only. The platform of size 3X6 ft was not provided with a fence of appropriate height and strength though it was accessible from the terrace. The existing fence of 1.8 ft height was quite insufficient to prevent a fall from the platform area particularly if its surface were uneven and not adequately lit during the night time. It is further submitted through the charge-sheet that to avoid any person from accessing this platform, the iron railing should have been installed on the inner side of this platform and the witnesses had stated that it was under repairs and unsafe for movement.

45. It has been further submitted through the charge-sheet that the hotel failed to place any staff in the terrace area that could have prevented the guests to move onto the unsafe area particularly onto the platform and the fire emergency exit stairs which were under repairs nor was there any warning signage placed in front of the unsafe area and the fact that the work was going on at the fire exit staircase but no signage board were placed there at the time of incident as was stated by the witnesses and that this place was under renovation/repairs and needed warning signage is established from putting on of two signages by the hotel authorities on 17.10.2013 which raised suspicion on the

part of the hotel authority and had they put the warning signages at proper place, this incident could have been avoided. It has further been stated through the investigation conducted till the said date that there was no sufficient lighting on the terrace of the 6th floor on the day of the incident due to which the injured and the witnesses could not see what was next to the platform. If there had been proper lighting in the area then this incident could have been avoided and the injured could have noticed the uneven surface and inadequate light of the railing and he could have avoided getting into the platform.

46. As per the charge-sheet through the investigation conducted, it was found that there was an inordinate delay in shifting the injured to a nearby hospital as per the CCTV footage. The approximate time of the incident was 2345 hrs, but he was brought to the receiving area at ground floor at 0037 hrs and was taken to hospital in the ambulance at 0102 hrs which shows that the hotel staff took 52 minutes to bring the injured to the ground floor and took 25 minutes to remove the injured to the hospital and it took approximately 1 hour 17 minutes to the hotel authorities to take the injured to the hospital. It has further been submitted through the charge-sheet that in case of any emergency there ought to have been some action plan/protocol to evacuate/remove injured person within quickest possible time but in the instant case there was no such action plan to deal with a grave situation as found from the perusal of CCTV footage, from the statements of the witnesses and other recorded facts. **It has been submitted through the charge-sheet that the fact that the injured was not removed to a hospital for more than an hour indicates**

criminal negligence on the part of the hotel authorities. As per the charge-sheet even the structural problems of the building were the sole responsibility of the hotel management and that there was no system for quick removal of the injured in case of any eventuality and it is an established fact from the statement of employees of hotel that they could not bring the injured through the lift as the stretcher could not fit in the lift. It has been submitted further in the charge-sheet that in the reply given by the hotel authorities it was stated that it was only because of Ms.Gauri Rishi and Dr.Khanna who decided that the injured be shifted in the ambulance sent by the Fortis Hospital whereas as per the letter dated 10.3.2010, provided by the hotel, it was mentioned that the Hyatt Hotel had a corporate tie-up with Fortis Healthcare Ltd. for treatment of their employees.

47. As per the charge-sheet, the hotel staff also failed to inform the PCR and the local police which factum remained unexplained and had the information been given to the PCR timely, they would have reached the spot within 5 minutes as the base of one PCR vans is close to the Hyatt Hotel and they would have timely taken the injured to the nearest and medically well equipped hospital. It has further been sated through the charge-sheet that the PCR would have definitely removed the injured to the nearest Trauma Centre, i.e., AIIMS, S.J.Enclave which is situated at a distance of less than 1 kilometer from the hotel Hyatt. It has further been submitted through the charge-sheet that as per the PCR record, one PCR van is deployed near the Hyatt Hotel and its base is Bhikaji Kama Place (Ring Road) and on 16/17.10.2013, the PCR van was deployed at its base point.

48. The Investigating Officer through the charge-sheet stated that through the investigation conducted so far in this case though the FIR was initially registered u/S 308 of the Indian Penal Code, 1860, because it was not clear as to under what circumstances Gaurav Rishi fell on to the 4th floor from the terrace of 6th floor, at the time of his fall two persons were present, i.e., Ms.Margarita and Ms.Rebecca; that the injured from the date of incident till the date of the charge-sheet, i.e., 16.3.2015 was unconscious and that to ascertain the involvement of any person in the present case Section 308 Indian Penal Code, 1860 was mentioned in the FIR but after conducting the investigation in depth, no involvement of any person in fall of Gaurav Rishi from the terrace of 6th floor could come on record and thus Section 308 Indian Penal Code, 1860, was deleted from the investigation.

49. The charge-sheet also states that the investigating agency had reached the conclusion that the fall of Gaurav Rishi from the terrace of the 6th floor of the hotel was because of negligence and illegal omission on the part of hotel management. Hyatt hotel is a public place and when the hotel management had allowed the entrance of the guest/public person in the hotel, it was their sole responsibility to take care of them against any mischief which a man of common prudence can foresee.

50. It has further been stated that that before the incident, Ms.Margarita and Ms.Rebecca and Gaurav Rishi were in the restaurant Regency Club at the 6th Floor and that the smoking was not completely prohibited and was allowed by the hotel management but no proper place was earmarked for the purpose which is in derogation

of the prohibition of Smoking in Public Places Rules, 2008, under Section 4 of Cigarette and other Tobacco Products Act- 2003 (COTPA). As per the charge-sheet no health trade license was granted to the hotel for the terrace area adjoining the 6th floor which was just outside the open gate of the restaurant, Hyatt Regency Hotel. The charge-sheet indicates that it had also come on record that in the restaurant, liquor was also served to the guest and that in the circumstances the hotel management ought to have had the foresight that the guests could come on the terrace for smoking and ought to have taken care for lapses in relation thereto.

51. As per the investigation conducted till then, i.e., 16.3.2015 no guard was deployed to prevent any such exits, there was no sign board showing “no entry zone”, the lighting was wholly inadequate. It is further submitted through the charge-sheet that in a reply given by the hotel authorities, they admitted that there was some very minor work being carried out in one part of the terrace approximately 170 sq. ft as seen in the photographs taken after the incident and that some loose slabs were also lying on the ledge/mummtty/platform. The charge-sheet states that the witness, i.e., Ms.Margarita P. Malhotra, had also stated that on the night of 16/17.10.2013 when the incident had happened, no sign boards were there, however, on the next day she found two sign boards were there and during the inspection by the crime team, the sign boards were found at the spot and some furniture was also lying along with blood on the terrace of the 4th floor. That from the side of stairs, it was at a height of 2.8 ft without railing or any signage to prevent access to the platform and there was no sitting

space on the terrace and thus it ought to have been foreseen by the management that the guests coming on to terrace for smoking may use it as a sitting place.

52. It has further been submitted through the charge-sheet that the statements of all the witnesses, in the light of spot inspection and violation of licensing conditions, i.e., Regulation of 19 of the “Regulations for keeping places of public entertainment in Delhi-1980”) it was brought forth that the hotel management had failed in its duty to take care against any probable danger to the guest and that the hotel management by allowing the guest to enter such a type of a space and thereafter having been negligent in providing the medical help in a prompt manner constituted grave negligence on the part of Hotel management.

53. It has further been submitted through the charge-sheet that during the investigation, in reply to a notice sent to the Fortis Hospital to ascertain the medical condition of the injured Gaurav Rishi, the doctor stated that the patient Gaurav Rishi was not in a state to give a statement as he had sustained a grievous type of injury and it was difficult to comment whether the patient sustained only the primary head injury or there was also a component of hypoxic injury and it was also difficult to comment whether delay in shifting had added a major effect.

54. The investigating agency thus submitted that there was sufficient evidence of criminal negligence by the illegal omission on the part of the hotel management. As per the charge-sheet, a list of the

eight accused persons/employees of the hotel Hyatt Regency was submitted with roles attributed to them to the effect:

“(1) M/S Asian Hotels(North) through its Managing Director Mr Shiv Jatia- It is a company which look after the Hyatt Regency Hotel. And, is responsible for every criminal act done in the hotel.

(2) Shiv Jatia, Managing Director Hyatt Hotel- He is the only no independent and Executive Director of the company. He is present in all the board memeting as the chairperson and all decisions of the company/Hotel are taken under his signature. He further authorized Mr. P.R. Subramanian to apply for lodging licencse of the company. Therefore, he is overall responsible for all omission and commission of its officials, violation of lodging license/health trade license with regards to safety of its guests,

(3) Sh. P.R. Subramanian- The lodging license of the Hyatt hotel has been granted in his name and he is responsible for violation of lodging license/health trade license with regards to safety of its guests due to which the incident occurs,

(4) Sh Aseem Kapoor s/o Sh Rajlnder Pal Kapoor General Manager, Hyatt Hotel, R.K. Puram - He is general manager of the Hyatt Regency and has overall responsibility for looking after the day to day affair of the hotel and also for omission and commission of its officials with regards to safety of its guests,

(5) Lt. Col. Deepak Khanijou (Retd.), Director of Security - He is the Director of Security. He is responsible for overall security of the hotel/Guests, access to prohibited areas, lightning in the hotel, warning sign boards, installation of CCTV and deployment of staff for safety and security of guests,

(6) Mr Karan Lai S/o Shri Vijay lal, Asstt. Front office Manager, Hyatt Regency-His role is to supervise the running of the front office during his shift hours. On the day of incident he was the shift Incharge and lounge manager Informed him about the incident but he failed to provide the timely rescue of the injured to the hospital,

(7) Pawan Kumar Singh (Asst manager Food & Beverage) Hyatt Regency Delhi, Bikaji Cama Place, ND - He was the incharge of the lounge situated at 6 floor. During his duty the terrace was opened to the guests, despite knowing that the terrace area was not a proper smoking area and was not properly lit and safe.

(8) Amit Ghildiyal S/o Sh. M.D. Ghildiyal. Food and Beverage Trainee, Hyatt Hotel - He was the incharge of the lounge situated at 6th floor. During his duty the terrace was opened to the guests despite knowing that the terrace area was not a proper smoking area and was not properly lit and safe, whose names are kept in the column No. 11 (without arrest) of the challan for the offences u/s 336, 338 read with 32 IPC and 4 COTPA.”

55. It has further been submitted through the charge-sheet that the charge-sheet under Sections 336/338 r/w Section 32 Indian Penal Code, 1860, & 4 of the COTPA 2003 had been prepared and submitted before the learned Trial Court. It was further submitted through the charge-sheet that the FSL result of the case had not been received at PS R.K.Puram and the injured Gaurav Rishi had not been examined so far and if there was any relevant evidence came to the file, the same would also be filed through supplementary charge-sheet and that the accused persons were on recognizance and not arrested in the case as per the provisions of Sec.41.1.(b) Cr.P.C.

CONTENTIONS OF THE STATE

56. Reliance was placed on behalf of the State on the verdict of the Hon'ble Supreme Court in Crl. Appeal Nos. 423-424/2018 in the case of *State of Tamil Nadu Vs. S. Martin Etc.* to contend that where the investigation was still incomplete, the High Court ought not to interfere in the matter leaving all questions to be adjudicated at the appropriate stage in the proceedings. Reliance was placed on behalf of the State on the observations in para-7 of this verdict to the effect that

“in a view the assessment made by High Court at a stage, when the investigation was yet to be completed, is completely incorrect and uncalled for. Presence of two crucial facts was enough to let the investigation go on, namely, recovery of huge amount of cash of Rs.7.2 crores from the house of one of the accused and that such recovery was accepted by the accused. The explanation given by them about the alleged transaction of agreement of sale and receipt of cash in pursuance thereof does not prima facie appear to be correct. The agreement is stated to have been entered on 02.03.2012 while the stamp paper in question was issued by the relevant department on 09.03.2012 to the vendor which was later sold to lady named Vimla on 13.3.2012. Whether the possession of huge cash amounting to Rs. 7.2 crores can be explained by the accused and whether such explanation be accepted or not, are all matters which will be gone into at the relevant stage in the proceedings. The investigation in any case ought not to have been set at naught but it ought to have been permitted to be taken to its logical conclusion. We are not expressing any opinion on merits or demerits of either the case of the prosecution or the defence of the accused but we are of the firm opinion that while the investigation was still incomplete, the High Court ought not to have interfered in the present case. Leaving all questions open to be agitated at appropriate stages in the proceeding, we set aside the

view taken by the High Court and allow these appeals. Consequently Crime No.304 of 2012 stands restored to its file and the appellant is free to conduct investigation and take the matter to its logical conclusion”.

57. Reliance was also placed on behalf of the State on the verdict of the Hon'ble Supreme Court in the case of ***State of Orissa & Anr. Vs. Saroj Kumar Sahoo*** (2005) 13 SCC 540 to contend that the High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Reliance was also placed on behalf of the State on the observations in para-14 of the said verdict to the effect that :

“It is to be noted that the investigation was not complete and at that stage it was impermissible for the High Court to look into materials, the acceptability of which is essentially a matter for trial. While exercising jurisdiction under [Section 482](#) of the Cr.P.C., it is not permissible for the Court to act as if it was a trial Court. Even when charge is framed at that stage, the Court has to only prima facie be satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate material and documents on records but it cannot appreciate evidence. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused. [In Chand Dhawan \(Smt.\) v. Jawahar Lal and Ors.](#), [1992] 3 SCC 317, it was observed that when the materials relied upon by a party are required to be proved, no inference can

be drawn on the basis of those materials to conclude the complaint to be unacceptable. The Court should not act on annexures to the petitions under [Section 482](#) of the Cr.P.C., which cannot be termed as evidence without being tested and proved”.

58. Reliance was also placed on behalf of the State on the verdict of the Supreme Court in ***Alister Anthony Pareira Vs. State of Maharashtra*** (2012) 2 SCC 648 on the observations to the effect that:

“Para 40” Like [Section 304A](#), [Sections 279, 336, 337](#) and [338](#) IPC are attracted for only the negligent or rash act. The scheme of [Sections 279, 304A, 336, 337](#) and [338](#) leaves no manner of doubt that these offences are punished because of the inherent danger of the acts specified therein irrespective of knowledge or intention to produce the result and irrespective of the result. These sections make punishable the acts themselves which are likely to cause death or injury to human life_ _ _ _ _ .

*“Para 42” A person, responsible for a reckless or rash or negligent act that causes death which he had knowledge as a reasonable man that such act was dangerous enough to lead to some untoward thing and the death was likely to be caused, **may be attributed with the knowledge of the consequence and may be fastened with culpability of homicide not amounting to murder and punishable under [Section 304](#) Part II IPC.***

(emphasis supplied)

“There is no incongruity, if simultaneously with the offence under Section 304 Part II, a person who has done an act so rashly or negligently endangering human life or the personal safety of the others and causes grievous hurt to any person is tried for the offence under [Section 338](#) IPC.

“Para 43” In view of the above, in our opinion there is no impediment in law for an offender being charged for the offence under [Section 304](#) Part II IPC and also

under [Sections 337](#) and [338](#) IPC. The two charges under [Section 304](#) Part II IPC and [Section 338](#) IPC can legally co-exist in a case of single rash or negligent act where a rash or negligent act is done with the knowledge of likelihood of its dangerous consequences”.

59. It was thus sought to be contended on behalf of the State that in the instant case too, the several laxities and gross negligence of the hotel authorities in its duty to take care and preventive measures for the safety of its ‘guests’ made the petitioners responsible for running the hotel, wholly culpable for criminal negligence. Reliance is also placed on behalf of the State on the verdict of the Apex Court in ***Savelife Foundation & Anr. Vs. Union of India & Anr.*** in Writ Petition (C) No.235/2012 a verdict dated 30.03.2016 to place reliance on the observations in Para-3 of the said verdict to contend that the public often refrains from coming forth to help the victim in a motor accident and it is due to the apparent fear of being involved in police cases and to contend that accident cases require fastest care and rescue which could be provided by those closest to the scene of the accident and bystanders support is essential to enhance the chances of survival of the victim in the ‘Golden Hour’ i.e. the first hour of the injury. As per the WHO India Recommendations, 50% of the victims die in the first 15 minutes due to serious cardiovascular or nervous system injuries and the rest can be saved through by providing basic life support during the ‘Golden Hour’. Right to life is enshrined under [Article 21](#) which includes right to safety of persons and the immediate medical assistance as a necessary corollary is required to be

provided and also adequate legal protection and prevention from harassment to good Samaritans and to contend that the requisite degree of care and precaution and also providing for the medical assistance during the ‘Golden Hour’ had not been complied with by the Hyatt Hotel.

60. Reliance was placed on behalf of the State and on behalf of the sister of the injured on the verdict of the Hon’ble Apex Court in ***Kurban Hussein Mohamedalli Rangawalla Vs. State of Maharashtra*** (1965) 2 SCR 622 to contend that the Hotel having allowed Gaurav Rishi to go to the terrace of the 6th floor despite there being work in progress, despite there being no sufficient lighting, were all acts which made each of the petitioners liable for the injuries caused to Gaurav Rishi in the facts and circumstances of the case and reliance was also placed on para-4 of the said verdict in this case on observations of the Hon’ble Apex Court to the effect that:

“
.....
.....*his action in allowing burners to be lighted in the room without any safeguard did in our opinion amount to omission to take such order with fire and combustible matter as would be sufficient to guard against probable danger to human life. We can only say that it was lucky that fire had not broken out earlier. But there can be no doubt that the omission of the appellant to take proper care with burners in particular when such combustible matter as turpentine in large quantity was stored at a distance of 8 to 10 feet from the burners was such omission as amounted to insufficient guard against probable danger to human life. Finally when we remember that all this was done in breach of the general and special conditions of the licence given to the appellant for storage of turpentine, varnish and paints,*

we have no doubt that the appellant knowingly, or at least negligently, failed to take such order with fire and the combustible matter as would be sufficient to guard against any probable danger to human life. In the circumstances we are of opinion that the appellant has been rightly convicted under [s. 285](#) of the Indian Penal Code. Considering that seven lives have been lost on account of the negligence of the appellant in this connection, the sentence of six months' rigorous imprisonment which is the maximum provided under [s. 285](#), cannot be said to be harsh”.

**CONTENTIONS ON BEHALF OF THE
SISTER OF INJURED AND STATE**

61. Reliance was placed on behalf of the Ms. Gauri Rishi, sister of the injured and on behalf of the State on the verdict of the Apex Court in **Sushil Ansal Vs. State through CBI** 25 2014(3) Scale 174 to dislodge the plea raised on behalf of the petitioners that they could not be vicariously liable of criminal negligence and reliance was also placed on this verdict to the effect that:

“6. The prosecution alleges that repairs conducted on the transformer in the earlier part of the day were unsatisfactory and resulted in loose connections that caused sparking on the B-Phase of the transformer where such repairs were carried out. This resulted in the loosening of one of the cables of the transformer which eventually came off and started dangling loose along the radiator and burnt a hole in the radiator fin. Through this hole the transformer oil started leaking out which, on account of the heat generated by the loose cable touching against the radiator, ignited the oil at about 4.55 p.m. on 13th June, 1997. Since the transformer did not have an oil soak pit as required under the regulations and the standard practice, the oil that spread out of the enclosure continued leaking and spreading the fire to the adjacent parking lot where cars were parked at a distance of no more than a metre from the door of the transformer. The result was that all the cars parked in the parking area on the ground floor of the cinema hall were ablaze. Smoke started billowing in the northern and southward directions in the parking lot of the cinema complex. The northern bound smoke encountered a gate which was adjacent to a

staircase leading to the cinema auditorium on the first floor. Due to chimney effect, the smoke gushed into the stairwell and eventually entered the cinema auditorium through a door and through the air conditioning ducts. The southward bound smoke similarly travelled aerially through another staircase and into the lower portion of the balcony of the auditorium from the left side. All this happened while a large number of people were seated in the auditorium enjoying the matinee show of 'BORDER', a popular Hindi movie with a patriotic theme. Because of smoke and carbon monoxide released by the burning oil and other combustible material, the people in the auditorium started suffocating.

7. The Shift In-charge of the Green Park Complaint Centre of DVB received a telephonic message from K.L. Malhotra (A-4), since deceased, who was the Deputy General Manager of Uphaar Cinema at the relevant point of time, regarding the fire. It was only then that the AIIMS grid to which the transformer in question was connected was switched off and the flow of energy to the cinema complex stopped. According to the prosecution the supply of the 11 KV outgoing Green Park Feeder tripped off at 5.05 p.m. thereby discontinuing the supply of energy to the cinema.

8. Inside the auditorium and balcony there was complete pandemonium. The people in the balcony are said to have rushed towards the exits in pitch darkness as there were neither emergency lights nor any cinema staff to help or guide them. The prosecution alleged that no public announcement regarding the fire was made to those inside the auditorium or the balcony, nor were any fire alarms set off, no matter the management and the employees of the Uphaar Cinema were aware of the fact that a fire had broken out. Even the Projector Operator was not given instructions to stop the film while the fire was raging nor was any patron informed about the situation outside. On the contrary, the doors to the middle entrance of the balcony were found to be bolted by the gatekeeper-Manmohan Uniyal (A-8) who had left his duty without handing over charge to his reliever. More importantly, the prosecution case is that the addition of a private 8- seater box had completely closed off the exit on the right side of the balcony, while the addition of a total of 52 extra seats over the years had completely blocked the gangway on the right side of the balcony. Similarly, the gangway on the right of the middle entrance was significantly narrower than required under the regulations. It was alleged that Sushil Ansal (A-1) and Gopal Ansal (A-2), the owners of the cinema hall, had knowledge of these deviations from fire safety norms despite which they had continued exhibiting films, thereby endangering the lives of all those who patronized the theatre. All these

obstructions, deviations, violations and deficiencies had, according to the prosecution, resulted in the victims getting trapped in the balcony for at least 10-15 minutes exposing them to lethal carbon monoxide, to which as many as 59 persons eventually succumbed.

(emphasis supplied)

9. Rescue operations attempted by the fire tenders from the Bhikaji Cama Place and Safdarjung Fire Stations were undertaken after the Delhi Fire Service received a complaint from K.L. Malhotra (A-4), since deceased, at 5.10 p.m. The fire tenders took nearly forty five minutes to one hour to extinguish the fire and to rescue the persons trapped in the balcony by opening the bolted doors and taking those who had collapsed and those injured to the hospitals. No one from the staff or management of the theatre was, according to the prosecution, present at the spot to lend a helping hand in the rescue operations.

16. Statements of a large number of witnesses relevant to the fire incident, its causes and effects were also recorded by the investigating agencies from time to time culminating in the filing of a common charge-sheet against 16 persons accusing them of commission of several offences punishable both under [the Indian Penal Code](#), 1860 as also under the provisions of the [Cinematograph Act](#), 1952. What is important is that while accused A-1, A-2, A-12, A-13 and A-14 were charged with commission of offences punishable under [Sections 304A, 337, 338](#) read with [Section 36, IPC](#) and [Section 14](#) of the Cinematograph Act, 1952, accused A-3 to A-8 comprising the management and gatekeeper of the Cinema were charged with commission of offences punishable under [Sections 304, 337, 338](#) read with [Section 36, IPC](#) and [Section 14](#) of the Cinematograph Act, 1952. The employees of DVB namely Inspectors B.M. Satija (A-9), A.K. Gera (A-10) and Senior Fitter, Bir Singh (A-11) were also charged with the commission of offences punishable under [Sections 304, 337](#) and [338](#) read with [Section 36](#) of the IPC. As regards the remaining three accused namely, N.D. Tiwari (A-14), H.S. Panwar (A-15) and Surender Dutt (A-16), they were charged with commission of offences punishable under [Sections 304A, 337, 338](#) read with [Section 36](#) of IPC.

91. It was contended by Mr. Jethmalani that the offence if any having been committed by the company, officers of the company could not be vicariously held guilty of criminal negligence. Reliance, in support of that submission was placed by Mr. Jethmalani upon the

provisions of [Section 141](#) of the Negotiable Instruments Act and the decisions of the Court in [S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla](#) (2005) 8 SCC 89, *JK Industries and others v. Chief Inspector of Factories and Boilers* (1996) 6 SCC 685. ***It was urged that in the absence of any provisions in the [IPC](#) rendering the officers of the company vicariously liable for prosecution for the offences committed by the company, there was no question of the appellant Ansal brothers being held guilty that too for an offence committed long after they had ceased to hold any position in the company. We regret our inability to accept that submission. We say so because the appellants have not been prosecuted as officers of a company accused of committing an offence, nor is it the case of the prosecution that the appellants are vicariously liable as in the case of those falling under [Section 141](#) of the Negotiable Instruments Act. The prosecution case on the other hand is that in their capacity as occupiers the appellant Ansal brothers had a duty to care for the safety of the patrons which duty they grossly neglected. The entire substratum of the case is, therefore, different from the assumption on which Mr. Jethmalani has built his argument. The assumption being misplaced, the argument can be no different .***

(emphasis supplied)

(vii) Degree and nature of care expected of an occupier of a cinema building:

94. To the common law duty of care is at times added a further obligation which too the occupier must discharge in order that his duty to care can be said to have been fully discharged. Such duties are often cast under statutes enacted by the legislature or in Rules & Regulations framed in exercise of powers delegated under such enactments. These additional safeguards against injury to life and limb of innocent parties who are working in the premises or who visit such premises, in large numbers, are in public interest and imply that even the 'State' in all its manifestations is concerned about the safety of those visiting such public places, be it a cinema hall as in the case at hand or any other place of entertainment or a place where people go for any other purpose whether as contractual visitors or otherwise. The existence of such a statutory duty especially

one that concerns safety of the visitors adds another dimension to the duty to care to which we shall presently advert. But before we do so we need to examine whether any such statutory duty was cast upon the occupier of the cinema and if so what was the nature of that duty”.

62. Reliance was also placed on behalf of the State on the verdict of the Apex Court in ***Klaus Mittelbachert & Ors. Vs. East India Hotels Ltd. & Ors.*** 1999 ACJ 287 to contend that the facts of the present case are in pari materia with in the said case ***Klaus Mittelbachert & Ors. Vs. East India Hotels Ltd. & Ors.*** in which a guest, staying in a five star hotel while diving hit his head on the bottom of the swimming pool and he suffered from tetraplegia and that the swimming pool of the hotel was a trap, a hazardous premises and liability of the hotel for adverse consequences flowing from the use of the swimming pool was absolute and that the facts of the said case attracted the applicability of the doctrine of res ipsa loquitur and inference is drawable that the accident took place for want of care on the part of the hotel management and that there was no contributory negligence on the part of the injured. The State thus adverted to the observations in paras of the said verdict to the effect that:

*“(33) Having discussed the oral evidence in the light of the pleadings and having arrived at the finding that it was not the plaintiff who was in any manner negligent or careless, I would now proceed to deal with the case from another angle. **What is the concept of duty to take care expected of a hotel? What is the standard applicable ? How the issue as to negligence deserves to be dealt with in the context of a hotel, offering swimming pool to its guests as part of its services available?**”*

(emphasis supplied)

(34) Degree of care is not a phrase with static connotation. Its meaning would depend on given fact situation- the person who owes a duty to take care, the person whose care is to be taken and the subject matter by reference to which degree of care is to be determined. A person, who enters or walks into any premises, if the premises be open to accept entry, and there be nothing warning against his entry, has a right to assume that he is walking into a safe premises.

(35) The person entering into premises may be an intruder or a person invited or a person entering subject to payment or price charged for the entry. In the commercialised world degree of care would also be determined by reference to the price which is being charged. Few illustrations may assist expounding of the principle.

35.1) One who purchases a glass of water from a trolley in the street for 10 or 25 paise is entitled to safe drinking water which should not ordinarily infect him. But if person purchases a mineral water bottle for Rs. 10/ or 15.00 then he can justifiably demand a higher degree of purity. The manufacturer of water bottle cannot be heard to say so long as he has made it equivalent to the trolley man's water he has done his duty and he needs to do nothing more. Such a proposition would be untenable both in law and equity.

(36) A person received in a hotel as a guest enjoys an implied assurance from the hotel that the proprietor by himself and through his servants, agents would take proper care of the safety of the customer. Not only the building structure but the services offered thereat have to be safe and immune from any danger inherent or otherwise. A hotel owner holds himself out as willing and also as capable to accommodate and entertain the guests. The quality and safety of the services offered increases with the quantum of the price paid for being guest at the hotel. Higher the charges, higher the degree to take care.

(emphasis supplied)

(37) To my mind, there is no difference between a five star hotel owner and insurer so far as the safety of the guest is concerned. In the hotel culture the stars assigned to a hotel are suggestive of the professional expertise, achievement and quality of the services available at the hotel and professed and projected by it to the public at large, holding out invitation to the prospective guests to stay at the hotel--an assurance as to quality, safety and hazardlessness of the services offered and available at the hotel. Such a higher degree of care cannot be permitted to be got rid of by merely putting a signboard or caution notice that the guest staying at the hotel does so at his own risk or a guest consuming or availing any of the services offered by the hotel does so at his own risk. The validity of an invitation to avail and enjoy a service and legal consequences including duty to take care and its degree flowing therefrom cannot be permitted to be softened by a general notice - at your own risk- which is hardly a deterrent. One who extends an invitation, tempting the invitee to accept the same cannot be heard to say that the invitee did so at his own risk.

(38) A swimming pool in a hotel is an open invitation to the guests to swim in the pool either subject to payment of extra charges or if it be without any charges then an impliedly announcement that the charges were included in the overall charges for staying in the hotel. Presence of a diving board at the head of the swimming pool is an invitation for the guests to use it and dive in the swimming pool. In a hotel, the swimming pool filled with water carries an implied warranty as to safety- that the swimming pool is structurally and from architectural point of view so designed as to be safe, that the water is free from infection, that the depth of the water is safe for swimming. In the absence of a specific warning to the contrary, the swimming pool is an invitation not only to those who have learnt the art of swimming but also to amateurs who may like to take a plunge into water just for the pleasure of that. Availability of a diving board over the swimming pool is an invitation to the guests to take dives into the swimming pool with an implied warranty that the height and protrusion of the diving board or the spring board (as the case may be) are safe; and that the

depth of water at the plummet point has been so maintained that any one taking a plunge into the water is not likely to suffer an injury.

(39) The variation in the degree of care making it heavier co-relating the same with the charges fixed and realised in consideration of offering a service assumes significance in law for two purposes, Firstly, it has a bearing on the degree of care expected, either express or implied. Secondly, it has a bearing on the amount of compensation that would become payable in the event of failure to discharge the expected degree of care. Higher the degree of care, higher the quantum of compensation, both flowing from rise in charges realised for rendering the services. To illustrate, on breach of duty to take care, the five star hotel would not be heard offering the same quantum of compensation as would have been offered by a charitable organisation running a dharamshala where a guest was staying on payment of nominal charges.

63. It has been submitted on behalf of Ms. Gauri Rishi, sister of the injured in relation to the allegations against the petitioners to contend that the petitioners had a duty in common law of taking care apart from the duty cast under the Regulations for keeping the place of public entertainment in the Union Territory of Delhi, 1980 and reference was made to para-98 of the verdict of the Apex Court in **Sushil Ansal Vs. State through CBI (supra)** to contend that:

“98. A conspectus of the provisions of the Act and the rules referred to above shows that the duty to “ensure safety” of those entering a cinema hall for watching the exhibition of a film, is cast upon the occupier of the hall. The use of words “taking all necessary measures before a cinematograph exhibition is commenced to ensure safety of the public and his employees against fire and other accidents” leaves no manner of doubt that apart from the common law duty to care, the statutory provisions too cast such an obligation upon the licence/occupier of the cinema hall”.

64. *Inter alia* on behalf of Ms. Gauri Rishi and the State it was contended by Sr. counsel Mr. Kirti Uppal for Gaurav Rishi and by the learned Addl. PP for State Mr. Ashish Dutta that the hotel was operating without requisite permissions i.e. without the requisite compliance of:

- License by Licensing Department
- Food and beverage were being served on the 6th Floor Lounge without a valid license by the licensing Department. Also, the petitioners had obtained no Registration under the Delhi Eating House Registration Regulations, 1980, which clearly specifies that eating House means “any place to which the public are admitted and whereby any kind of food or drink is supplied for consumption on the premises by any person owning or having any interest in or managing such place”
- No Health trade license provided by MCD
- No permission to operate by MCD-no Completion Certificate/occupancy Certificate
- The petitioner applied for renovation with MCD for various parts of the Hotel including 6th Floor,
- Applied for Completion Certificate/occupancy Certificate only on 29.11.2013 which was approved only on 23.05.2014, thereby meaning that the 6th Floor was operating without authority.”

and that the requisite **‘Regulations For Keeping Places of Public entertainment in the Union Territory, 1980** had been violated by the Hotel for which the petitioners are vicariously responsible for violations to the effect that:

1. *Licensee had not installed CCTV camera. (violation of Regulation 8(iii))*
2. *The Licensee did not take steps to ensure that the guests/visitors were allowed to go only to the floors where*

they were supposed to go and not loiter around. (violation of Regulation 8(iii))

- 3. The licensee had not positioned any guard in the terrace area (violation of Regulation 8(iv))*
- 4. The licensee did not ensure that the exit gates were properly manned and are used solely for the said purpose. (violation of Regulation 8(iv))*
- 5. Emergency lighting and self luminescent markings were not provided in strategic areas like terrace, emergency exit/route/staircase. (violation of Regulation 8(iv))*
- 6. Emergency exit/route were not properly maintained. (violation of Regulation 15)*
- 7. Public address system was not used to give messages in multi languages about the incident. (violation of Regulation 8(iii))*
- 8. The licensee had not put in place an emergency evacuation plan to minimize any damage or danger to the life and property and did not give intimation to the local police and police control room about the incident immediately after the incident. (violation of Regulation 16)*

65. It was also submitted on behalf of the sister of the injured that there have been violations of the provision of the **Delhi Municipal Act, 1957 of Section 347 thereof**, which provides to the effect that:

“Section 347, Restrictions on user of buildings- No person shall, without the written permission of the Commissioner, or otherwise than in conformity with the conditions, if any, of such permission— (a) use or permit to be used for human habitation any part of a building not originally erected or authorised to be used for that purpose or not used for that purpose before any alteration has been made therein by any work executed in accordance with the provisions of this Act and of the bye-laws made thereunder; (b) change or allow the change of the use of any land or building; (c) convert or allow the conversion of one kind of tenement into another kind”.

66. *Inter alia* it was submitted on behalf of the sister of the injured and also on behalf of the State that the terrace was dark and under construction and that there was no sign or caution boards and there was no sufficient fencing, there was no guards as brought forth through the status report of the DCP, South bringing forth the violation of licensing condition and the charge-sheet itself was an indicator to this effect that:

*“the platform of size 3*6 feet was not provided with a fence of appropriate height and strength while it was easily accessible from the terrace. The existing fence of 1.8 feet height is quite insufficient to prevent a fall from the platform area particularly if its surface were uneven and not adequately lit during the night time. And further to avoid any person from accessing this platform the iron railing should have been installed on the inner side of this platform. The witnesses have also stated that it was under repair and unsafe for movement. Moreover, the hotel failed to place any staff in the terrace area that could have prevented the guests to move onto the unsafe area, particularly onto the platforms and the fire emergency exit stairs which were under repair nor was there any warning signage placed in front of the unsafe area. The fact that this place was under renovation/repairs and needed warning signage’s is established from putting on of two signage’s by the hotel authorities on 17.10.2013. This also raised the suspicion on the part of the hotel authority. Had they put the warning signage’s at proper place, this incident could have been avoided.*

From the investigation conducted so far in the case, it has been found that there was no sufficient lighting on the terrace of the 6th Floor on the day of the incident. Due to which the injured and the witness could not see what is next to the platform. If there was lighting in the area then this

incident could have been avoided, the injured could have noticed the uneven surface and the inadequate light of the railing and he could have avoided getting into the platform”.

and that the factum that the hotel placed two “work under progress” boards the following day, as per the report of the DCP, South brought forth the gross negligence of the petitioners and the violation of its license conditions. It was submitted on behalf of sister of the injured that all these above factors were in relation to precautions which had necessarily to have been taken by the hotel and the authorities and personnel managing it i.e. the petitioners **prior to the fall of Mr. Gaurav Rishi** in the instant case.

67. *Inter alia* it was submitted on behalf of the sister of the injured and the State **that even after the injured had fallen down**, the hotel, its personnel including the petitioners were all liable for the failures in relation to the following aspects i.e.

- 1. Petitioner no.1 not moved after his fall for almost one hour, continues lying on 4th floor terrace in a growing pool of blood/gasping for life.*
- 2. No facilities to provide immediate first aid/ medical care to the victim. No Doctor/ Medically trained personnel available in the hospital.*
- 3. No fully equipped ambulance available upon the expiry of over one hour of the fall.*
- 4. Failure to inform the PCR Van station outside the Hotel gate, who could have immediately moved the victim to AIIMS.*
- 5. Failure to take the victim to AIIMS which is in the Hotels neighbourhood, in order to reduce the chances of further damage.*

which make them grossly liable.

68. Written submissions were filed on behalf of the each of the petitioners on 14.05.2018.

69. **The petitioner Aseem Kapoor, petitioner of CrI.M.C. 2208/2015.**

70. As per the charge-sheet filed by the State, the allegations against him relate to his being the General manager of the Hyatt Hotel, RK Puram with it having been contended on behalf of the State that he had the overall responsibility for looking after the day to day affairs of the Hotel and also for omission or commission of its officials with regard to safety of its guests.

71. It was contended on behalf of the said petitioner through the written submissions submitted to the effect that the petitioner had filed the petition under Section 482 Cr.PC, 1973 to invoke the inherent power of this Court

“to prevent abuse of the process of the court as well as to secure the ends of justice by seeking quashing of the summoning order dated 16.05.2015 (Page No. 44) passed by Ld. Metropolitan Magistrate in FIR No. 390 of 2013 (Page No. 46) registered under section 308 of Indian Penal Code, the charge-sheet dated 16.03.2015 (Page No. 57) filed by the investigating agency under section 336, 338 read with section 32 of the Indian Penal Code and section 4 of Cigarettes and other Tobacco products Act, 2003 and the proceedings emanating therefrom qua the Petitioner”

72. Further the said petitioner sought to put forth the facts as per the prosecution case to the effect that:

“2(a). Mr. Gaurav Rishi (Injured) allegedly fell off a mummy (roof of fire exit which is at a height of 2.8 feet and further surrounded by a railing of 1.8 feet) which was in one

comer of the terrace (1085 sq ft) adjoining the regency Club on the 6th floor of the Hyatt Hotel on 16th /17 October, 2013. As per the statements of the two alleged eye witnesses who were with the injured, viz; Mrs. Margarita P. Malhotra and Rebecca T.Hawkins, they had been frequenting the terrace on a number of occasions that evening to have cigarettes. As per their statements the injured instead of remaining on the terrace chose to climb on top of the mumty and walk around which made them nervous and they even asked him to come down. Further, as per their version suddenly they did not see the injured standing there and heard no sound of him falling or stumbling when he fell from the 6th to the 4th floor and they realised that he must have fallen since they couldn't see him all of a sudden. Mr. Rishi was brought to Fortis Hospital with the alleged history of slipping and falling from the 6th Floor and landing on the 4th Floor”.

73. *Inter alia* it was submitted by the said petitioner that:

“2(b). on 17.10.2013, prior to the registration of FIR, the statements of Margarita P. Malhotra and Rebecca T. Hawkins were taken in their own handwriting and have been listed at S. No. 1 and 2 of the List of Witnesses attached to the Charge-sheet. (Statements handed over by the Ld. Public Prosecutor during the course of hearing on 03.05.2017). The statements have not been made part of the charge-sheet neither there is any reference of the same.

2(c). Thereafter they gave further statements on 19th October, 2013 reiterating the said facts wherein Margarita P. Malhotra even asked him to get down as he was making her nervous Ms. Malhotra having said the same. Ms. Malhotra seems to have given a third statement after a delay of almost 7 Months dated 07.05.2014 where she while confirming the previous two statements made by her on 17.10.13 and 19.10.13 has sought to add to her version on certain aspects as a

clear afterthought. It is pertinent to note that this statement is hit under 162 Cr.P.C. as per the dictum of the Hon'ble Supreme Court in Husna & others Vs. State of Punjab reported at 1996(7) SCC 382.

2(d) at the outset it is important to note that there is not a single whisper or allegation against the present petitioner and the only time his name has been roped into the present matter is at the stage of the charge-sheet only and only on the premise that he is liable for the alleged offences under Sections 336/338 Indian Penal Code, 1860 as he was the General Manager of the hotel. It is submitted that the said allegations are unsustainable under law since there is no concept of vicarious liability known to the Indian Penal Code. Ref; Sunil Bharti Mittal V/s Central Bureau of Investigation 2015 (4) SCC 609 (Para 40-46, 54 and 55) ; Sharad Kumar Sanghi V. Sangita Rane 2015 (3) SCALE 126 (Paras 9-100 ; Pooja Ravinder Devidasani V. State of Maharashtra AIR 2015 SC 675 (Para 29-30). It is all the more important considering that admittedly the Petitioner was not even at the Hotel on the night of the incident. Affidavit of the petitioner along with the copy of the pass port showing that said fact are at (Page No. 358-363) and the status report filed by the investigating agency after verifying the same is at Page No. 673-675. Ref: Kurban Husein Mohamedalli Rangawala Vs. State of Maharashtra AIR 1965 SC 1616(Para 1 and 2); Guljeet Singh Kochar & Ors. Vs. State (121) 2005 DLT 561(Para 10); Baldev Raj Kapur Vs. State 2009 (108) DRJ 520 (Para 6 and 25).

2(e) Quite apart from the fact that the Petitioner could not have been arraigned as an accused since there is no role whatsoever that has been attributed to him qua the alleged incident, it is very important to note that even if the case of the prosecution was taken at its highest no case under Sections 336/338 and 32 IPC

read with section 4 COTPA is made out qua the Petitioner herein.

2(f) The case of the prosecution is that the injured himself voluntarily climbed the Parapet and was walking on the same which even made the two ladies nervous. The statements further proved that they were familiar with the terrace, that the accident did not occur from the terrace but rather the Parapet/ Mumty, that the two ladies were prudent enough not to have climbed on top of the Parapet and found the act of Mr. Rishi in doing so risky and that they had been going in and out of the Regency club and onto the terrace on quite a few occasions as there was sufficient light and nothing to worry about.

2(g) In fact even this Court in a case where a student fell from a railing in a school held in the case entitled as W.P. (Civil) No. 11802 of 2015 titled as "Sanjay Jain & Anr. Vs. Dy. Director of Education , was pleased to hold that. There is much merit in the petitioners' contentions that an added effort must be made to make every school building safe and it would be necessary to anticipate the actions of the children. "Children will be children" and what is safe for adults may not be safe for children. However, in the present case, this Court is not persuaded to accept that this is a case where the School has been grossly negligent. Undeniably, there is always a scope for making a building safer, however that cannot lead to the conclusion that the School in question has been negligent."

2(h) The underlying concept under S.336/338 IPG is rash and negligent act. As per settled law, the alleged action of accused has to be the CAUSA CAUSANS and not CAUSA SINE QUA NON. The term CAUSA CAUSANS has been defined in various judgments of Apex court as well as this Court. Various tests have

been devised to judge whether the act of accused falls in the category of rash and negligent act.

74. *Inter alia* the said petitioner contended that:

(i) *The alleged act should be "Cause causans" and not "Cause Sine Qua Non". (Kurban Husein Mohamedalli Rangawala Vs. State of Maharashtra AIR1965 SC 1616. paragraph 2).*

(ii) *The alleged act should be the be direct and proximate cause of the injury. (Kurban Husein Mohamedalli Rangawala Vs. State of Maharashtra AIR 1965 SC 1616. paragraph 2).*

(iii) *The act should not be an "indirect factor". (Kurban Husein Mohamedalli Rangawala Vs. State of Maharashtra AIR1965 SC 1616. paragraph 2)*

(iv) *The rash or negligent act should be the immediate cause of death and not any act or omission which at best can be said to be a **remote cause of death** (Emperor vs Akbar Ali).*

(v) *The alleged injury should not have been caused by any intervening act or negligence of the injured himself. (Kurban Husein Mohamedalli Rangawala Vs. State of Maharashtra AIR1965 SC 1616. paragraph 2 paragraph 3 relying upon case of **Emperor vs Omkar Rampratap**).*

(vi) *For establishing criminal negligence, it has to be determined whether the act of accused is cause causans or has there been a cause interveniens which has broken the chain of causation so as to make his act, though a negligent one, not the immediate cause or whether it amounts to an act of gross negligence or recklessly negligent conduct. (Refer para 11 in case of **Ambalal D. Bhatt Vs. the State of Gujarat** (1972) 3 SCC 525 and para 45 in case of*

***Girishbhai Maganlal Pandey and Vs. State of Gujarat Crl.
Misc Application 2942 of 2014 DOD -23.03.2015).***

*(vii) The essential ingredient of "mens rea" cannot be excluded from consideration when the charge in a criminal court consists of criminal negligence, (refer para 12 in case of **Jacob Mathew Vs. State of Punjab and Anr.** (2005)6 SCC 1 and para 43,45,46 in case of **P. B. Desai Vs. State of Maharashtra & Anr.** AIR 2014 SC 795)*

(viii) For negligence to amount to an offence, the element of mens rea must be shown to exist. The expression "rash or negligent act" as occurring in section 304-A has to be read as qualified by the word "grossly". (Jacob Mathew Para 48)

(ix) A clear distinction exists between "simple lack of care" incurring civil liability and "very high degree of negligence" which is required in criminal cases(Para 14 Jacob Mathew)

(x) Liability for an omission requires a legal duty to act; a moral duty is not enough. (Para 32 of P.B.Desai.).

(xi) The factor of grossness or degree does assume significance while drawing distinction between negligence actionable in tort and negligence punishable as crime. To be later, the negligence has to be gross or of a very high degree.(Para 17 in case of Jacob Mathew).

(xii) The negligence to be established by prosecution must be culpable or gross and not the negligence merely based upon an error of iudement. (refer para 15 in case of Jacob Mathews).

(xiii) An error of judgment which comes to light only on post accident reflection, but could not be foreseen by the accused before the accident, is not a sure index of negligence. The negligence to be established by prosecution must be culpable or gross and not the negligence merely based upon an error

of judgment. (Para 34 Syad Akbar Vs. State of Karnataka 19801 SCC 30).

(xiv) The circumstances must "pin" the negligence on the alleged accused (Refer para 30 in case of Syad Akbar).

(xv) The test to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person. (Para 12 in case of Jacob Mathews).

(xvi) The special requirement for omission liability are legal duty and physical capacity to perform the act. (Refer para 30 in case of P.B. Desai).

(xvii) "A failure to act, by itself, does nothing to screen out fantasies. It is the actor's failure to act in the light of his capacity to do so that suggests the actor's willingness to go beyond mere fantasizing and to have the harm or evil of the offence occur. Even then, however the screening effect becomes weak ; "letting something happen" simply does not carry the same implication of resolute intention that is shown in causing something to happen by affirmative action Inaction often carries no implication of intention unless it is shown that the actor knows of his or her duty to act and the opportunity to do so." (Refer para 31 in case of P.B.Desai).

(xviii) There can be no presumption against the owner in criminal law. {Guljeet Singh Kochar & Ors. Vs. State (121) 2005 DLT561 (at para 8)}

(xix) In a prosecution for an offence under section 304-A, the mere fact that an accused contravenes certain rules or regulations in the doing of an act which causes death of another, does not establish that the death was the result of a rash or negligent act or that any such act was the proximate and efficient cause of the death. (refer para 10 in case of

Ambalal D. Bhatt and para 6 in the case of I.B. Bhalla And Ors. Vs. The State 1989 SCC Online CAL 278).

(xx) The alleged act should have been done with the knowledge and consent of the accused. No presumption in favour of prosecution that accidental death is caused by the rash and negligent act. (Refer para 25 in case of Baldev Raj Kapur Vs. State 2009(108) DRJ520).

75. *Inter alia* the said petitioner submitted that he was not even present at the spot at the time of the incident and the allegations of negligence by the hotel staff in getting the injured to the hospital cannot be attributed to him and even otherwise the facts put forth by the prosecution themselves prove that there was in fact no negligence whatsoever and it was further contended that:

“3. The prosecution has sought to further allege that there was negligence by the hotel staff in getting the Injured to the hospital. At the outset It Is submitted that since the Petitioner was not even present that time the said allegation can have no bearing qua him. Be that as it may, even otherwise the facts of the prosecution themselves prove that there was in fact no negligence whatsoever in this regard as.

(i) almost 4 ambulances had been called by the hotel staff and the Petitioner who was not even in the country cannot be faulted that the first three ambulances did not have life support system.

(ii) Ms. Gauri Rishi herself and the doctor at site had in their wisdom decided not to put Mr. Rishi in an ambulance without life support system. (Page No. 77).

(iii) As per the report of the Neuro Surgeon of Fortis Hospital, it was difficult to comment that whether delay in shifting had an added major effect (Page No. 78 and 93 of the TCR).

(iv) Moreover as per Rebecca T. Hawkins, "everyone from Hyatt was doing all they could...". (Page No. 67)
(v) The doctor on call had reached the site within 15 minutes and during that period persons trained in first aid had been doing everything possible to help out Mr. Rishi as stated by Ms. Rebecca Hawkins in her statement (Page No. 67)".

76. *Inter alia* it has been submitted on behalf of the said petitioner that the investigation had been conducted malafidely and as though the FIR was initially registered under Section 308 Indian Penal Code, 1860, it was at some stage converted into one under Section 336/338 Indian Penal Code, 1860 without any reason and that it was quite inconceivable through the facts alleged to contend that despite two eye witnesses present right next to the injured, they did not even hear the sound of Gaurav Rishi having tripped or slipped and having fallen down from the 6th floor to the 4th floor and it was submitted that the investigation was initially transferred from PS RK Puram to PS Safdarjung and even thereafter it seems to have been transferred to three Investigation Officers. *Inter alia* it was submitted on behalf of the petitioner that there had been total non-application of mind by the learned Metropolitan Magistrate while issuing the impugned order dated 16.05.2015 summoning the petitioner in a pedantic manner without any reasoning. It was further submitted on behalf of the petitioner that:

***"6. During the course of arguments the prosecution and sister of the injured have sought to argue —
(i) Further investigation was pending and hence the present petition should be dismissed:***

• *That the Prosecution took specific permission from the Ld. MM vide order dated 23-05.2015 to further investigate the matter as the injured had till date not been examined. It is submitted that between 23.05.2015 the prosecution has not been able to examine the injured. Further the prosecution has not placed on record any shred of evidence to show that the injured is not medically fit to give a statement Documents submitted under the garb of -Further Investigation' includes doctors' prescription and certificate which dates as far back as 2015 which only goes to show that the Investigating Agency has been dragging its feet and has not proceeded to further investigate the matter. The prosecution is now trying to use the alleged pendency of the further investigation as a ruse to derail the present petition which cannot be permitted as clearly no progress has been made qua the same for over 3 years and the entire purpose of seeking the further investigation was only to get a statement from Mr. Gaurav Rishi which they have totally failed to do.*

• *Further, even the order permitting further investigation dated 23.05.2015 was for the limited purpose of obtaining the statement of the injured which has admittedly not been done .*

• *The judgments cited by the prosecution are totally inapplicable on the factual situation since inter alia even a charge sheet had not been filed on those cases.*

• *Further the law is well settled that malafide and delayed investigation itself is a ground for the High Court to exercise its inherent powers.*

Suffice to state in view of the above, the railing of the terrace of the 6th floor was sufficient in order to prevent a prudent man from causing injury to himself. The act of the injured to have voluntarily climbed the parapet/Parapet and in fact despite having been cautioned by his friends/purported eye-witnesses, the injured took upon himself to walk on the Parapet, clearly shows that he had willingly put himself at risk and the same cannot be

attributed to the petitioner and therefore the petitioner is in no manner liable for any alleged criminal negligence”.

77. The petitioner further submitted that there was no statutory violation by the Asian Hotels of which the Hyatt was one of them and contended that the sister of the injured Ms. Gauri Rishi had been alleging in various foras of the same but

“till date the Single bench of the Delhi High Court (Order dated 27.10.2017 in WP No. 2187/2014 Page No. 169-171), the Hon’ble Division Bench (Order dated 22.04.2015 in LPA No. 132/2015, Page No. 172-184) the Hon’ble Supreme Court of India (Order dated 03.07.2015 in SLP Np. 14740/2015, Page No. 75-76 Conv Vol-II) also did not find any violations as alleged by her. In fact, the Hon’ble Supreme Court had directed the JT CP Licensing to examine the allegations of Ms. Rishi and even the JT CP Licensing did not find any merit in the allegations made by Ms. Rishi (Order dated 21.08.2015 By JT CP Licensing Page No. 366-383 Relevant at 375-376).

(ii). It is further pertinent to note that the Accused No.1 Company had given its response to the show cause notices qua the alleged violations on 22.09.2015 where they have clearly shown and explained how the allegations are totally unfounded, (handed over during the arguments on 9th May, 2018) Even the Single Judge of the Delhi High Court had recorded in order dated 04.09.2014 in W.P. No 2187/2014. Also the status report dated 09.05.2015 (Conv. Vol- II Page No. 36-44) filed by the Dy Commissioner of Police which clearly recorded that at the time of inspection of the scene of occurrence the foot lights were found installed along the parapet wall and were in working condition.

(iii). Even otherwise, suffice to state that the alleged violations have no direct or indirect connection with the alleged incident. It is no ones' case and cannot be in fact

that Mr. Rishi climbed on top of the Parapet and was walking around the same because of any of the alleged violations. Even assuming while denying the alleged violations, it would be an incredible stretch to imagine that because there were not enough loud speakers or there was work going on at the staircase below which had nothing to do with the Parapet, or there were not guards on the terrace etc that Mr. Rishi was justified in climbing on top of the Parapet and walk on the same and risk his life.

(iv). Since clearly there was no nexus or direct and proximate cause between the alleged statutory violations and Mr. Rishi's fall it is inconceivable how the same are being pressed into service by the prosecution. Be that as it may, even assuming whilst denying at there was any relation between the alleged violations and Mr. Rishi's fall the same cannot under any circumstance be attributed to the Petitioner who was not even in the country at the relevant time. Further, it is reiterated that it is not anyones' case that the Petitioner was responsible or in the know of the alleged violations or that he was in any way responsible for any act or omission whatsoever”.

78. *Inter alia* it was submitted by the said petitioner that the provisions of Section 4 of the COTPA, 2003 had no application whatsoever to the petitioner and that the same had been invoked without any application of mind by the investigating agency and the Magistrate it was contended on behalf of the petitioner through his written submissions that:

“Section 4 does not make the hotel where a person is smoking liable but the other way around, Further, even as per the Trial Court Record it is clear that the accused No.1 Hotel did in act have a smoking room at the lobby floor as per requirements. (Pg 160). The charge-sheet as well as the impugned order having been passed without application of

judicial mind and is a gross abuse of the process of law and is liable to be quashed on this ground alone”.

79. *Inter alia* the petitioner Aseem Kapoor contended that the contention of the prosecution that the hotel was negligent in not calling the PCR was not in accordance with law inasmuch as the petitioner was not liable under Section 39 Cr.PC, 1973 to inform the police of the incident. It was further submitted on behalf of the petitioner that the reliance placed by the State on the verdict of the Apex Court in **Sushil Ansal Vs. State through CBI** 25 2014(3) Scale 174 is wholly misplaced inasmuch as

“The prosecution has sought to rely upon the judgment of Sushil Ansal Vs. State through CBI (2014) 6 see 173 to try and argue that the Petitioner herein is liable for the alleged offences since he is the Managing Director of the Company and thus the occupier. It is submitted that -

(i). The Petitioner is neither the occupier nor the owner nor the licensee with respect to the hotel. It is submitted that the licenses are in the name of Accused No. 3 namely P.R. Subramanian (Conv. Vol-II Page No. 24-28) and the owner of the premises is Asian Hotels Ltd which is a public listed company (Accused no.i).

(ii). The prosecution has tried to pull in the Petitioner into the definition of occupier based on the definition given in section 2 (34) of the Delhi Municipal Corporation Act. It is submitted that the law is well settled that it is hazardous to interpret a statute in accordance with a definition in another statute and more so when such statute is not dealing with any cognate subject or the statutes are not in pari materia. ("Maheshwari Fish Seed Farm Vs. T.N Electricity Board and Anr." (2004) 4 SCC 704 Para 16) (b). Even for the sake of argument if the definition of Occupier as given under the DMC Act is taken it is clear that the petitioner is not an occupier as he is neither the owner nor the licensee.

(iii). Further, the judgment of Ansals is totally inapplicable to the present case in the manner the prosecution is seeking to rely upon the same since -

(a). The Ansals were found to be guilty in the said case not by virtue of their position in the Company but rather by virtue of 8 specific instances of acts committed by them which were thoroughly negligent (para 90 and 91). In the present case it is not even the prosecutions case that there has been any act or omission directly committed by the Petitioner whatsoever.

(b). Further, in the said judgment the Ansals had been informed and warned time and again about the violations and dangers of their actions however they had chosen not to pay any heed to the same, in the present case there is neither any allegation in that regard nor even a possibility or nexus qua the same.

(c). In the Ansals case the Ansals themselves were found to be occupiers, there were gross statutory violations which had a direct nexus and which in fact brought about the death of the victims and there were overt acts committed at the directions of the Ansals themselves which had been the causa causans leading to the accident. In the present case all the factors are totally missing and reference was made to paras 89-92,105-112,155-158 of the said verdict.

CONTENTIONS OF MR. SHIV KUMAR JATIA IN
CRL.M.C.2209/2015

80. Mr. Shiv Kumar Jatia, petitioner in Crl.M.C. 2209/2015 is the Managing Director of the Hyatt Hotel against whom the charge-sheet alleges that he had overall responsibility for self and of all omissions or commissions of the officials of the Hyatt Hotel with regard to safety of its guests. Through the written synopsis of arguments submitted on his behalf, it has been contended that there is no applicability of the

principle of vicarious liability to the said petitioner and it is submitted as under:-

“5. There is no justification to prosecute or summon the Petitioner namely Mr. Shiv Kumar Jatia based on his purported status in the company (Accused No. 1) in the absence of any act or role in the commission of the alleged offences.

6. The Penal Code does not contain any provision for attaching vicarious liability to a person on behalf of status as Managing Director or the Director of a Company when the offence is attributed to the Company. They cannot be said to have committed an offence only because they are holders of offices and only because some allegations were made against the Company.

7. There being no concept of vicarious liability in the Penal Code, the Petitioner cannot be prosecuted by virtue of his position alone, which has been settled in the following decisions:

1. Sunil Bharti Mittal V/s Central Bureau of Investigation 2015 (4) see 609 (Para 40-46, 54 and 55)

2. Sharad Kumar Sanghi V. Sangita Rane 2015 (3) SCALE 126 (Paras 9-10)

3. Pooja Ravindera Devidasani V. State of Maharashtra AIR 2015 Se 675 (Para 29-30)”.

81. *Inter alia* the said petitioner has submitted that he was not even present in India at the time of the alleged incidents. It has thus been contended on his behalf to the effect that:

“8. The Petitioner who was not even present on the spot at the time nor in India at the time of the alleged incident cannot be prosecuted under Sections 336/338 read with Section 32 IPC. The Petitioner has also placed on record an Affidavit dated 07.11.2015 (Page No. 350) along with a copy of his passport (Page No. 353-355) showing his absence from India on the date of the incident i.e. on

16.10.2013. This has been confirmed by the State in its status report/affidavit dated 15.11.2016 (Page No. 668 unnumbered Para 2).

9. Even otherwise such an unimpeachable record can be seen and relied upon under S.482 CrPC. The Hon'ble Supreme Court in **State of Orissa v. Debendra Nath Padhi** (2005) 1 SCC 658 in Para 29 has held as under "Regarding the argument of accused having to face the trial despite being in a position to produce material of unimpeachable character of sterling quality, the width of the powers of the High Court under Section 482 of the Code and Article 226 of Constitution of India is unlimited whereunder in the interests of justice the High Court can make such orders as may be necessary to prevent abuse of the process of any Court or otherwise to secure the ends of justice within the parameters laid down In Bhajan Lai's case.

10. This proposition has since been followed in **Rajiv Thapar v. Madan Lai Kapoor**, (2013) 3 SCC 330 (Para 29 and 30) and hence the passport of the Petitioner disclosing the fact of his not being in India at the time of the incident ought to be considered since it will render the present prosecution as an abuse of process of law.

11. In the following cases, a person who was not present at the spot was found not to be guilty of offence u/s 304A IPC which has the same ingredients of rash or negligent act as S.336/338 IPC:

1. **Kurban Husein Mohamedalli Rangawala Vs. State of Maharashtra** AIR1965 SC 1616. Para 1 and 2.

2. **Guljeet Singh Kochar & Ors. Vs. State** (121) 2005 DLT 561. Para 10.

3. **Baldev Raj Kapur Vs. State** 2009 (108) DRJ 520. Para 6 and 25.

4. **State Vs. Chinubhai Haridas Sheth** 1959 SCC Online Mad 9168. Para 2,5,6 and 7.

5. **S. Sugarmar And Ors. Vs. State** 2016 SCC Online Mad. 9168 Para 10".

82. The petitioner further submitted that the provisions of Section 4 of the COTPA, 2003 are not applicable in the facts and circumstances of the instant case and submitted as under:

“12. As regards the offence under S. 4 COTPA, it is submitted that it reads as "no person shall smoke in any Public Place - Provided that in a hotel having 30 rooms or a restaurant having seating capacity of thirty persons or more and in the airports, a separate provision for smoking area or space may be made.

13. The proviso to S.4 is an exception to the principal part of S.4 permits smoking in a designated area and cannot be made a basis for prosecution.

14. The aforementioned provision has no application whatsoever to the Petitioner. The same has been invoked without any application of mind either by the investigating agency or by the court below.

15. The charge-sheet has been framed and the impugned order having been passed without application of judicial mind and in a predetermined manner is a gross abuse of process of law and is liable to be quashed on this ground itself”

83. Furthermore, the said petitioner submitted that the charge-sheet and the statements of witnesses taken at their face value bring forth no offence against him and submitted as under:

“16. The following are the admitted facts of the prosecution case as set up in the Chargesheet and witness statements:

- Gaurav Rishi was brought to Fortis Hospital with alleged history of slipping and falling from the 6th Floor and landing on the 4th Floor. (MLC of Gaurav Rishi at Page 252).

- On 17.10.2013, prior to registration of FIR, the statements of Margarita P. Malhotra and Rebecca T. Hawkins were taken in their own handwriting, who were the alleged eyewitnesses of the incident, that took place on the night of 16.10.2013, and have been listed at S.No. 1 and 2 of the List of Witnesses attached to the Chargesheet. (Statements handed over by the Ld. Public Prosecutor during the course of hearing on 03.05.2017).
- On 17.10.2013 sister of Gaurav Rishi gave a written statement to the I.e. stating that she is not in a position to give any statement till Gaurav Rishi gains consciousness. (Page 65).
- Pursuant to registration of FIR on 19.10.2013, these statements were again reduced into writing by the Investigating Officer (Page No. 135 and 138). According to both these witnesses, they along with Gaurav Rishi were consuming wine and going for a cigarette now and then.
- They confirm that Gaurav Rishi had gotten up on the platform / ledge area and was walking around which made Margarita P. Malhotra "**nervous**" as he was "up high like that" and she told him "get down from there". Moreover as per Rebecca T. Hawkins, "everyone from Hyatt was doing all they could."
- The Chargesheet itself indicates that the terrace had a parapet wall of 2.8 feet which further had an iron railing of 1.8 feet height which means Gaurav Rishi climbed up to a height of at least 4.5 feet. (Page 65).
- The wait, if any, was attributable to the ambulance at number 102, which is run by the Government. There is no requirement under any law/license to have an ambulance at the hotel.
- The Chargesheet categorically states that it is difficult to comment whether delay in shifting had an added major effect, i.e., aggravated the situation in any manner due to the nature of injury caused by the fall. (Page 77 and Page No. 93 of the TCR).

- The fact that Gaurav Rishi had consumed alcohol is further corroborated from the Statement of the Doctor at the spot. (Statement of Dr. Pawan Khanna u/s 161 CrPC handed over in Court by Counsel for the Petitioner on 03.05.2017).
- On 14.11.2013, i.e., 28 days after the incident, for the first time allegations are made against the Petitioner herein by Ms. Gauri Rishi vide her Complaint to the Commissioner of Police. Pertinently only general allegations of negligence are made against management and staff of Hyatt and no specific overt act is attributed to the Petitioner herein. Admittedly, Ms. Gauri Rishi is not an eyewitness and only reached the spot subsequently and as stated earlier did not want to give any statement until Gaurav Rishi gained consciousness. (Complaint of Ms. Gauri Rishi dated 14.11.2013).
- On 07.05.2014, i.e., almost 7 months after the incident, a third statement of Margarita P. Malhotra is recorded whereby she affirms her earlier statements but however goes on to make various new claims regarding the layout of where the incident took place trying to attribute / indicate negligence to Hyatt which were not made by her at any point in time earlier. (Statement of Margarita P. Malhotra dated 07.05.2014).

17. From the above facts, it is clear that Petitioner, who was admittedly not in India on the date of the incident was sought to be implicated only by virtue of his status in the company at the behest of Ms Gauri Rishi, almost a month after the date of the incident .

*18. The delayed recording of witness statements under Section 161 Cr.PC, 1973 is considered as indicative of a mala fide investigative process. In **Dilawar Balu Kurane v. State of Maharashtra** reported in (2002) 2 SCC 135 it was noted that:*

"14. We have perused the records and we agree with the above views expressed by the High Court. We find that in

the alleged trap no police agency was involved; the FIR was lodged after seven days; no incriminating articles were found in the possession of the accused and statements of witnesses were recorded by the police after ten months of the occurrence. We are, therefore, of the opinion that not to speak of grave suspicion against the accused, in fact the prosecution has not been able to throw any suspicion. We, therefore, hold that no prima facie case was made against the appellant."

19. In the present case, it is evident from the face of the record that no material existed indicating culpability on part of the present Petitioner during investigation. It is only vide a subsequent and delayed statement recorded under Section 161 CrPC of allegations qua Hyatt Hotel are sought to be introduced as an afterthought. The subsequent statement of Margarita P. Malhotra dated 07.05.2014 has to be discarded and in any event there remains no material on record against the present Petitioner.

20. The present petition arises from challenge to the chargesheet and order of cognizance. While the Supreme Court in Debendra Nath Padhi's case permitted use of unimpeachable material at the stage of quashing, the sister of the injured is seeking to introduce material which is not part of the report Under Section 173(2) CrPC which is not tenable in law.

21. It is further submitted that Ms. Gauri Rishi has suppressed material information from this Hon'ble Court including the fact that she had filed petitions before the Single Bench (Order dated 27.10.2017 in WP No. 2187/2014), Division Bench of the Delhi High Court (Order dated 22.04.2015 in LPA No. 132/2015, Page No. 172-184) and even an SLP before the Supreme Court for alleged violations of licensing terms by the Hotel which were dismissed/ disposed off without finding any violations by the hotel (Order dated 03.07.2015 in SLP No. 14740/2015).

22. It was further not disclosed that even her representation to the JT Commissioner of Police, Licensing was dismissed

vide Order dated 21.08.2015 since the Jt CP had found there to be no merit to the allegations of breach of licensing terms by the hotel. (Order dated 21.08.2015 By JT CP Licensing).

23. The aforementioned orders reaffirm the fact that Ms. Rishi is seeking to misuse the criminal law machinery which is causing grave and irreparable injury to the Petitioner and is leading to a complete abuse of the process of law.

24. Even otherwise insofar as the offences under Sections 336 and 338 Indian Penal Code, 1860 are concerned, it is submitted that for the same to be invoked, there must be an act of negligence or rashness. The reason for the injury to Mr. Gaurav Rishi can only be attributed to his own act of rashness in climbing on top off and walking on the roof of a fire exit, which no reasonable person can be expected to do. The causa causans for the incident was clearly his act of climbing the mumty and walking and nothing else. Reference may be made to.:

- 1. Ambalal D. Bhatt vs The State Of Gujarat AIR 1972 SC 1972 (Para 10-11)*
- 2. **Jacob Mathew vs State Of Punjab &Anr**, 2009 (6) SCC 1 (Para 12-17,38, 48)*
- 3. Kurban Hussein Mohammed All vs State Of Maharashtra*
- 4. AIR 1965 SC 1616*
- 5. Suleman Rehimani Mulani vs State of Maharashtra 2009 (6) SCC 1*
- 6. Guljeet Singh Kochhar & Ors. vs State (121) 2005 DLT 516 (Para 7,9)*
- 7. **Rajneesh Kler & Ors. V. State** (2009) ILR 5 Delhi 125 (Para 11,15,17,19-22)*
- 8. Rakesh Ranjan Gupta V. State of U.P. and Anr. (1999) 1 SC 188. (Para 3,4)*
- 9. **Baldev Raj Kapoor V. State** 2009 (108) DRJ 250 (Para 6,7,11,12,14,15,16,27):.*

84. *Inter alia* it was submitted by the petitioner that the reliance placed on behalf of the State and on behalf of the sister of the injured on the verdict of the Apex Court in **Sushil Ansal Vs. State through CBI** 25 2014(3) Scale 174 was wholly misplaced inasmuch as:

“25. The Petitioner is neither the occupier nor the owner nor the licensee with respect to the hotel. It is submitted that the licenses are in the name of accused No. 3 namely P.R. Subramanian and the owner of the premises is Asian Hotels Ltd which is a public listed company (Accused no.1).

26. The judgment of the Ansals is totally inapplicable to the present case in the manner the prosecution is seeking to rely upon the same since:

(a) The Ansals were found to be guilty in the said case not by virtue of their position in the Company but rather by virtue of 8 specific instances of acts overtly committed by them which were thoroughly negligent (Para 90 and 91 - Ansals Judgment). In the present case it is not even the prosecutions case that there has been any act or omission directly committed by the Petitioner whatsoever.

(b) Further, in the said judgment the Ansals had been informed and warned time and again about the violations and dangers of their actions however they had chosen not to pay any heed to the same. (Para 90 - Ansals Judgment) In the present case there is neither any allegation in that regard nor even a possibility or nexus qua the same.

(c) The Ansals themselves were found to be occupiers, there were gross statutory violations which had a direct nexus and which in fact brought about the death of the victims and there were overt acts committed at the directions of the Ansals themselves which had been the causa causans leading to the accident. In the present case all the factors are totally missing. (Para 93 - Ansals Judgment)”.

85. The said petitioner further submitted that the prosecution had tried to rope in the petitioner erroneously and submitted that:

“27. The prosecution has tried to rope in the Petitioner into the definition of occupier based on the definition given in Section 2 (34) of the Delhi Municipal Corporation Act. It is submitted that:

(a) As held in Maheshwari Fish Seed Farm Vs. T.N Electricity Board and Anr. (2004) 4 SCC 704 (Para 16) “Secondly, it is common knowledge that the definition coined by the Legislature for the purpose of a particular enactment is often an extended or artificial meaning so assigned as to fulfill the object of that enactment. Such definitions given in other enactments cannot be freely used for finding out meaning to be assigned to a term of common parlance used in an altogether different setting”.

(b). Even for the sake of argument if the definition of Occupier as given under the DMC Act is taken it is clear that the petitioner is not an occupier as he is neither the owner nor the licensee.

86. *Inter alia* it has been submitted on behalf of the petitioner that the contention raised on behalf of the State and the sister of the injured that the petition was not maintainable is devoid of all merits inasmuch as:

“28. The offences in question are relatable to a summon case, it is not tenable to submit arguments at the stage under Section 251 CrPC and the only remedy available to the Petitioner is under Section 482 CrPC. Reference may be made to Adalat Prasad v Roop Lai Jindal (2004) 7 SCC 338 and Subramaniam Sethuraman v State of Maharashtra (2004) 13 SCC 324.

29. The prosecution has further sought to argue that since there is an order of further investigation therefore the

present petition is not maintainable. It is submitted that the said principle would be in the teeth of the judgment of the Hon'ble Supreme Court in the Bhajan Lal's case AIR 1992 SC 604 Para 107-109 and every case where the Inherent powers of the High Court under Section 482 CrPC are invoked since the police always has the power to conduct further investigation and by that measure no case could be liable to be quashed.

30. In the present case the investigation had infact concluded with the submission of the chargesheet and further investigation was sought by the Investigating Officer only for the purpose of examining the injured and permitted as such by the Magistrate to be conducted strictly in accordance with law vide order dated 23.05.2015 (Page No. 69-70 of the CrI M.A. No 5961/2018).

*31. Despite a lapse of 3 years, clearly no attempt was made by the investigating officer to examine the injured and it was only on 24.04.2018 / that the I.O. in the status report filed before this Hon'ble Court claimed that Mr. Gaurav Rishi had been visited but he was not in a position to talk, without disclosing about capability of non-verbal communication which has been accepted in the Nirbhaya case namely "**Mukesh Kumar & Ann v State of NCT Delhi**" (2017) 6 SCC 1 para no. 148-164 and 186-192 and 311.8 to 311.11. Assuming that Mr. Gaurav Rishi is still not able to provide a statement despite a lapse of 5 years from the incident, the prosecution cannot be permitted to argue pendency of his statement as being a ground for treating the present petition as non-maintainable.*

*32. The Prosecution seeks to rely upon **State of Orissa and Anr. Vs. Saroj Kumar Sahoo** (2005) 13 SCC 540 which is inapplicable in the present case in so far as the said case two appeals were decided by the Hon'ble Supreme Court out of which one Appeal was filed against only FIR and the other against Chargehseet. In the Appeal the Hon'ble*

*Supreme Court was pleased to set aside the order of the High Court as the proceedings were quashed against a person who was not even a party in the matter which was patently illegal as observed by the Supreme Court. In **State of Tamil Nadu Vs. S. Martin etc.** 2018 5 SCALE 240 which is also being relied upon by the Prosecution is also not applicable since the accused had approached the Hon'ble High Court under section 482 of the Cr.P.C. seeking quashing of FIR and the chargesheet had not been filed. It is submitted that both the cases as being relied upon are factually on a different footing and thus cannot be relied upon in the present case”.*

CONTENTIONS OF MR. KARAN LAL,
CRL.M.C. 3480/2015

87. The petitioner Karan Lal is petitioner in Crl.M.C. 3480/2015 against whom the charge-sheet has been filed with allegations against him to the effect that he was the Assistant Front Officer Manager of the Hyatt Regency on the particular shift and that his role is to supervise the running of the front office during his shift hours and that on the date of incident he was the Shift Manager and that the Lounge Manager informed him about the incident. It was contended by this petitioner that there was no cognizable offence disclosed in the FIR apart from which has been registered without conducting any preliminary inquiry and that the FIR was thus bad and illegal. The petitioner further submitted that he had been unnecessarily arrayed as an accused in the present case and submitted as under:

“3. That at the time of incident, various persons were employed with Hyatt Regency, including staff members, supervisors, managers etc. Approximately, as many as 80 and 150 employees facilitate the smooth functioning of

Hyatt Regency, during the night shift and day shift, respectively. The Petitioner, being one of such employees, was also working with Hyatt Regency as an Assistant Front Office manager, whose job responsibilities were merely confined to the lobby level and managing the check-ins and check-outs of the in-house guests. However, it is pertinent to note that the rest of the employees, other than the present petitioner, were neither arraigned as accused persons nor even listed as witnesses in the present case. Thus, it is anomalous as to why the name of the Petitioner has been unnecessarily arraigned as an accused person in the preset case.

4. That the Petitioner had no connection or control over the Regency club Lounge, over the keys to the terrace door of the 6th floor, or over the 4th floor, in view of his limited job responsibilities, which were confined to the lobby level only. Moreover, it is the admitted case of the Prosecution that the Petitioner was merely informed by the lounge manager regarding the incident, in view of such averment in the chargesheet itself. Thus, it is apparent that the Petitioner was not present at the time of the occurrence of the incident, either at the 4th floor or the 6th floor, i.e., the floor from where the Regency club Lounge was operated. Thus, the Petitioner had no connection or control over the unfortunate incident.

5. That apparently, the charge-sheet can be bifurcated into two sections, i.e., "pre" incident and "post" incident. The name of the Petitioner does not appear in the entire charge-sheet, except to the limited extent that, in the column regarding the role attributed to the Petitioner, it is specifically mentioned that on the day of incident the Petitioner was the shift in charge and the lounge manager informed him about the incident. That means, the Petitioner was not present at the scene and the acts, if any, are attributable "post" incident, in which the injured received injuries. As such, no criminal negligence has been

attributed to the Petitioner at the time "prior" to or "at" the time of the incident inasmuch as there is no material or connection of the Petitioner with the causation of injuries to the injured.

6. That there is no positive averment in the charge-sheet attributing a specific role to the Petitioner, except a bald allegation to the effect that the Petitioner was merely informed by the lounge manager regarding the Incident. However, there is no material worth evidence on record to prove that the Petitioner committed any active role or illegal omission or caused delay in providing medical help inasmuch as the lounge manager, who allegedly informed the Petitioner regarding the incident, is neither an accused nor a witness in the present case. Further, such a bald allegation against the Petitioner is merely hearsay in nature. Even otherwise, delay on the part of the Petitioner (though there is no material to support) to get medical help could at the worse be a case of civil negligence and not one of culpable negligence.'

7. That in the present case, the offences in the charge-sheet are Section 336/338 of the IPC, which are of the same species i.e. rash and negligent act are applicable in the present case as under Section 304-A of the IPC. As per the various judicial pronouncements on Section 304-A of the IPC, it is settled law that to impose criminal liability under Section 304-A of the Indian Penal Code, it is necessary that the death should have been the direct result of a rash and negligent act of the accused, and that act must be the proximate and efficient cause without the intervention of another's negligence. It must be the causa causans; it is not enough that it may have been the causa sine qua non. Applying the said test to the facts of the present case, it is apparent that the Petitioner cannot be held criminally responsible for the incident as his alleged acts had no proximate or direct connection with causation of the incident. Such concept of "causa causans" has also been

recognized by the Apex Court in the judgment of "Sushil Ansal Vs. State, 2014) 6 SCC173" (Paragraph 179).

8. That a case under section 304-A of the IPC, cannot be decided solely by applying rule of Res ipsa loquitur. There is a difference in civil and criminal law on the concept of negligence. The factor of grossness or degree does assume great significance while drawing a distinction in negligence actionable in tort and negligence punishable as a crime. To be latter, the negligence has to be gross or of a very high degree. The word "gross" has not been used in Section 304-A of the IPC, yet it is settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be "gross". The expression "rash or negligent act" as occurring in Section 304- A of the IPC, has to be read as qualified by the word "grossly". However, in the present case, the Petitioner has not committed any such act which is sufficient to attract the penal provisions of Section 336/338 of the IPC.

9. That in so far as the argument of the Respondent regarding the omission on the part of the Petitioner to prevent the violation of the licensing norms and ensure compliance with the rules, licensing, bylaws and regulations is concerned, the same is meaningless. Such ancillary responsibilities of ensuring compliance are general in nature and are secondary to the specific job roles/duties assigned to the employees at Hyatt Regency. There are 7 floors in the Hyatt Regency, comprising many restaurants, kitchens, various public areas with banquets, bars, lounges, etc. Thus, a diverse range of functions are being carried out in a Hyatt Regency (5 star Hotel) and different departments have been assigned separate and distinct sphere of responsibilities, which are independent of each other. The role of the Petitioner was merely confined to a specific department, i.e., "rooms division" and he had no connection or specific duty/responsibility of ensuring the compliance of the licensing norms. Even otherwise, mere violation of

licensing norms, bylaws, rules and regulations does not attract the penal provisions of criminal negligence and cannot be said to have a direct nexus or proximate cause of the incident.

10. That the Petitioner used to report to the Director of Rooms, Ms. Sonali Chauhan (left the organization) and had no connection, whatsoever, with the operation and management of the Regency Club Lounge (6th Floor). It is not the case of the prosecution and there is not even a whisper in the entire charge-sheet/documents/statements that the Petitioner was reporting to the Director, Security/Director, Food & Beverages/Director, Engineering or that the employees of the aforesaid departments were reporting to the Petitioner. Thus, the Petitioner had no knowledge regarding the affairs conducted at the 6th floor or regarding the fact that the guests were being allowed to enter the terrace area on the 6th floor for smoking purpose.

11. That the Regency Club Lounge was being operated by the Director, Food and Beverage Division. All the managers, waiters and other staff employed at the Regency Club Lounge, situated at the 6th Floor, used to report to Mr. Somnath Dev, the Director, Food and Beverage Division. The Petitioner had no connection with the operation of the Regency Club Lounge and did not report to Mr. Somnath Dev, the Director, Food and Beverage Division. It is pertinent to note that Mr. Somnath Dev is neither an accused person in the present case nor even listed as a witness”.

88. It was further submitted by the petitioner that in response to the notice issued by the Investigating Agency under Section 91 Cr.PC, 1973 and replies issued thereto, the following list of staff was found to be on the duty on the night of 16/17.10.2013 in the lounge:

1. Mr. Ravi Shankar (Team Leader) 0615hrs to 2116 hrs (16th)

2. Ms.Ngathingw (Team Leader) 0942hrs to 2132 hrs (16th)
3. Mr. Suresh Joshi (Waiter) 0814hrs to 2112 hrs (16th)
4. Mr.Mukesh Kumar (Waiter) 0736hrs to 2107 hrs (16th)
5. Mr. Amit Ghildiyal (Waiter) 2036hrs to 1049 hrs (16th /17th)
6. Mr.Pawan Kumar (Assistant Manager) 0620hrs to 2116 hrs (16th)
7. Mr.Yaduraj (Waiter) 0644hrs to 2110 hrs (16th)

and that the name of the Petitioner is conspicuously absent in the abovementioned list which has been made by the prosecution itself. Moreover, certain persons, including Mr. Ravi Shankar and Ms. Ngathingw, who were the Lounge managers, were neither arrayed as accused persons nor even listed as witnesses in the present case, despite the fact that their job responsibilities had a close nexus with the safety and security of the terrace on the 6th floor.

89. It was further submitted by the petitioner that he had no connection with the Regency Club lounge or the Engineering Department, which was primarily responsible for supervising the repair work. It was further contended on behalf of the said petitioner that even if as per the reply to the Notice under Section 91 of the CrPC, 1973 minor repair work was carried out by the hotels engineering department and there was no work being carried out whatsoever on the terrace whatsoever and very minor day to day work was undertaken on the mid landing of the staircase which was at a completely different level from the terrace. It was submitted that the persons responsible for the day to day functioning were:

General Manager --Mr.Aseem Kapoor

Director of Human Resources -- Mr.Sanjeev Sethi

Director of Food and Beverage —Mr.Somnath Dev(Not arrayed as an accused person)

Director of Rooms --Ms.Sonali Chauhan

Director of Sales and mktg —Ms. Anuradha Kumar

Director of Engineering —Mr. Suman Majumdar (Not arrayed as an accused person)

Director of Finance -Mr. Anil Virmani

Director of Materials -Mr. Narottam Sharma

Director of Housekeeper -Ms. Namrata Menon

Director of Chef -Mr. Marin Leuthard

Director of Revenue -Mr. Gaurav Chopra

Director of Events -Ms. Ivana

90. The petitioner submitted that the person responsible for the deployment of staff for safety and security of guests was Lt. Col. Deepak Khanijou and that the petitioner himself had no connection with the Director of Security or with any person who was employed for the safety and security of the guests at the Hyatt Regency and the omission to deploy guards at the exit gate which was opened to the terrace on the 6th floor and to place warning sign boards near the place of incident, was solely on the part of the Director of Security and not on the part of petitioner and even otherwise his duties were confined to the front office and he could not have had any knowledge of deployment of any guards or warning sign boards near the place of incident.

91. *Inter alia* the petitioner submitted that the staff who could authorize access to the guest at the terrace at the 6th floor was Mr. Pawan Kumar & Mr. Amit Gdiyal.

92. The petitioner further submitted that he had no role whatsoever as per the entire material collected by the investigating agency with

respect to the incident and the nature of employment of the Petitioner was restricted and confined to a particular and distinct set of responsibilities and that the complete job description of the Petitioner has also been mentioned in the additional documents filed by the prosecution to the effect that:

MAIN DUTIES

93. To improve processes, nurture employee bonding, encourage multitasking and prove the overall guest experience at Hyatt Regency Delhi.

Administration

- Assists in the preparation and updates of the Front Office Departmental Operations Manual.
- Assists the Front Office Manager to conduct regular communications meets and ensures that departmental briefings and meetings are effective
- Represents the Rooms function on the hotel's Executive Committee in the absence of the EAM - Rooms and Front Office Manager.

Customer Service.

- Handles all guest and internal customer complaints and inquiries in a courteous and efficient manner, following through to make sure problems are resolved satisfactorily
- Maintains positive guest and colleague interactions with good working relationships.

- Ensures all employees provide a courteous and professional service at all times.
- Ensures that all Front Office employees deliver the brand promise and provide exceptional guest service at all times.
- Ensures that Front Office employees provide excellent service to internal customers as appropriate.
- Assists in greeting and checking-in VIP and Long Stay guests.
- Ensures that all Front Office employees are familiar with the hotel's products and services.
- Personally and frequently verifies that guests are receiving the best possible service during check-in and check-out. '
- Spends time in Front Office areas during peak periods to ensure that the area is managed well by the respective team and delivers the brand promise.
- Establishes a rapport with guests and maintains good customer relationship.

Financial

- Maximises employee productivity through the use of multi-skilling, multi-tasking and flexible scheduling to meet the financial goals of the business as well as the expectations of the guests.

- Ensures that the Front Office operates with the lowest possible cost structure while also delivering on the brand promise to the guest, proactively managing costs based on key performance indicators.
- Maximises rooms' sales and revenues for the hotel through appropriate yield management, upselling and inventory management initiatives, working closely with the relevant Heads of Department and Front Office employees.
- Ensures new technology and equipment are embraced, improving productivity whilst taking work out of the system.
- Assists in monthly reforecast, as appropriate.
- Assists in the preparation of the Annual Business Plan
- Ensures that all hotel, company and local rules, policies and regulations relating to financial record keeping, money handling and licensing are adhered to, including the timely and accurate reporting of financial information.

Marketing

- Assists in weekly yield and revenue management meetings, as necessary.
- Assists in the preparation, utilization and update of an annual Marketing Plan.

Operational

- Monitor rooms' standards in general, working through the respective Head of Department to take corrective action where necessary.
- Conducts frequent and thorough inspections of guest rooms and Rooms areas in general together with the Housekeeping Manager and other Assistant Managers - Front Office.
- Ensures the strict control of room keys.
- Assists in securing external guest accommodation in overbooking situations.
- Ensures that public areas are clean and up to standard.
- Ensures that all daily arrival V.I.P. rooms, special request rooms and long stay guest rooms are pre-blocked in advance, that Housekeeping is notified and that each room is prepared with the appropriate welcome amenities.
- Ensures that all V.I.P. and long stay guests are met on arrival by an Assistant Manager.
- Works closely with the Housekeeping and Engineering Departments to block rooms as necessary for maintenance.
- Ensures that all company minimum brand standards have been implemented, and that optional brand standards have been implemented where appropriate.

Operational (continued)

- Assists in making sure that all Touches of Hyatt and the Rooms Top 20 have been implemented.
- Responds to the results of the Consumer Audit and ensures that the relevant changes are implemented.
- Works closely with other management personnel in a supportive and flexible manner, focusing on the overall success of the hotel and the satisfaction of hotel guests.
- Ensures that the Front Office employees work in a supportive and flexible manner with other departments, in a spirit of "We work through Teams".
- Ensures that all guest details are entered correctly in accordance with the principles of clean data.

Personnel

- Assists in the recruitment and selection of all Front Office employees. Follows hotel guidelines when recruiting and use a competency-based approach to selecting employees.
- Oversees the punctuality and appearance of all Front Office employees, making sure that they wear the correct uniform and maintain a high standard of personal appearance and hygiene, according to the hotel and department's grooming standards.

- Conducts annual Performance Development Discussions with Front Office employees, supports them in their professional development goals.
- Plans and implements effective training programmes for all Front Office employees in coordination with the Training Manager and Departmental Trainers.
- Supports Departmental Trainers through ongoing feedback and assistance at monthly meetings.
- Develops the skills and effectiveness of all Front Office employees through the appropriate training, coaching, and/or mentoring.
- Prepares and posts weekly work schedules, making sure that they reflect business needs and other key performance indicators.
- Encourages employees to be creative and innovative, challenging and recognising them for their contribution to the success of the operation.
- Supports the implementation of The People Philosophy, demonstrating and reinforcing Hyatt's Values and Culture Characteristics.
- Ensures that employees have a complete understanding of and adhere to employee rules and regulations.
- Ensures that employees follow all hotel, company and local rules, policies and regulations relating to fire and hazard safety, and security.

- Feedback the results of the Employee Opinion Survey and ensure that the relevant changes are implemented.

Other Duties

- Is knowledgeable in statutory legislation in employee and industrial relations.
- Ensures high standards of personal presentation and grooming.
- Maintains strong, professional relationships with the relevant representatives from competitor hotels and other organisations, including tour operators and local travel agents.
- Exercises responsible management and behaviour at all times and positively representing the hotel management team and Hyatt International.
- Responds to changes in the Rooms function as dictated by the industry, company and hotel.
- Reads the hotel's Employee Handbook and have an understanding of and adhere to the hotel's rules and regulations and in particular, the policies and procedures relating to fire, hygiene, health and safety.
- Attends training sessions and meetings as and when required.
- Carries out any other reasonable duties and responsibilities as assigned.

94. It has been submitted further on behalf of the petitioner that the liability if any, for the alleged criminal acts of the Engineering Department which carries out all the repair work, the Security Department which was responsible for deployment of staff for safety and security of guests, Mr. Neeraj Kumar (Fire and Safety Officer in Hyatt Regency) whose role was to ensure safety of the entire hotel from fire, the Food and Beverage Division which was managed and controlled by the Food and Beverages Division could not, by any stretch of imagination, be vicariously extended to the petitioner and that the presence of the petitioner and his direct nexus with the act of causing injuries to the injured was required to be shown and that the concept of vicarious liability cannot be invoked in criminal jurisprudence unless the statute specifically provides for it. Reliance was *inter alia* placed on behalf of the petitioner on the verdict of the Apex Court in ***Virender Singh V. State of Madhya Pradesh***, (2010) 8 SCC 407 to contend that no criminal liability under the Indian Penal Code, 1860 can be fastened on the petitioner. *Inter alia* on behalf of the petitioner it was submitted that there had been complete violation of the provision of Section 167(5) Cr.PC, 1973 in continuing with the investigation beyond a period of six months and no supplementary charge-sheet has also been filed despite the lapse of a period of three years. *Inter alia* it was submitted on behalf of the petitioner that nothing prevents this Court from exercise of powers under Section 482 Cr.PC for the purpose of quashing the summoning order and reliance was placed in relation thereto on the verdict of this Court in ***“Guljeet Singh Kochar & Anr. Vs. State (Delhi)”*** 2005 (3) JCC 1691

& “*Sunil Bharti Mittal Vs. CBI*, AIR 2015 SC 923. The petitioner further submitted that:

“18. The incident, happened on account of the own act of the injured of climbing the mummy and falling from the terrace on the 6th Floor to the 4th floor of the Hyatt Regency, itself was not scheduled, the question of the Petitioner making advance preparations to prevent the incident or take precaution did not arise. The mere presence of the Petitioner at Hyatt Regency. 6 floors below, cannot straightaway attract the criminal offences under the IPC. Further, on a perusal of the charge-sheet, there is absolutely no material to even prima facie show that the incident which occurred was a result of any rash and negligent act on behalf of the petitioner or that it was the direct or proximate result of any rash and negligent act.”

19. That no liability can be fastened to the Petitioner for the act of the injured of going to the terrace on the 6th floor and climbing the raised platform (mummy) inasmuch as the said act was suicidal in nature and only the injured can be held responsible for the same. On every terrace, there exist overhead structures, water tanks, elevations, planters, generators, parapet walls, staircases, mummies, ledges, boundary walls, etc. A reasonable man is not expected to endanger his life by climbing on these structures on the terrace. Moreover, it is pertinent to note that the persons accompanying the injured, i.e., Margrita and Rebecca, who also went to the terrace at the 6th floor many times, did not sustain any such injuries as the injured.

95. It was further submitted on behalf of the petitioner that reliance placed by the State and by the sister of the injured on the verdict of the Apex Court in **Sushil Ansal Vs. State through CBI** 25 2014(3) Scale 174 was wholly misplaced inasmuch as

“In Sushil Ansal's case, in the charge-sheet itself, there were allegations of illegal omissions on the part of the

managers/assistant managers of safely escaping the premises where the incident was taking place, without cautioning the patrons seated inside the auditorium about the fire and heavy smoke on the ground floor of the building. Despite becoming aware about the incident, they ran away from the spot without ensuring the rescue of all the persons. It was on account of such active role and illegal omissions attributed to the managers/assistant managers in the charge-sheet, that the accused persons were charged and tried. However, the Delhi High Court in its decision in the case of Sushil Ansal, held that "the hierarchy within the cinema hall, crucial in this case, to show whether Uniyal the gatekeeper had to report to both or either of them, has not been proved"¹² Mere proof that these accused were assistant managers, and manager, as on the date of the accident, and that one of them had reported earlier, during the day, is not adequate to prove that they caused death by criminally negligent, or rash act. There was failure on the part of the trial court to notice that the two vital aspects, i.e. duty and breach of that duty of such scale, as to amount to an offence."¹³ Some of the relevant paragraphs relating to the managers/assistant managers in the Judgment of the Delhi High Court in Sushil Ansals case are as follows:

"However, insofar as the present case is concerned, it is the case of the prosecution itself that the petitioner was merely informed about the incident after it had occurred. Thus, it cannot be said that there was any illegal omission or active role on behalf of the Petitioner or that the Petitioner committed any rash and negligent act which had a direct nexus with the occurrence of the incident. The penal provisions of Section 336/338 of the IPC are not attracted in the present case since the prosecution has failed to show any breach of duty on the part of the Petitioner of such scale as to amounting an offence and which is sufficient to summon him in the present case and to face trial. Mere proof that the Petitioner was Assistant Front Office manager, as on the date of incident is not adequate to prove

that Petitioner caused the incident by committing any criminally negligent or rash act. At the most, the Petitioner maybe held responsible for civil negligence.

Further, in Sushil Ansal's case, Manmohan Uniyal, the gatekeeper, was convicted for the offence punishable under Section 304-A of the IPC, inasmuch as he was duty bound to be present at the place of incident at all times by virtue of his employment and his absence from the balcony was a rash and negligent act which had a direct nexus with the occurrence of the incident. The Petitioner had no connection or control over the gate which opened to the terrace on the 6th floor and cannot be held vicariously liable for the commission of the offence of criminal negligence.

21. That apparently, the Petitioner cannot be held liable either for the occurrence of the incident or for the commission of any alleged illegal acts/omission post the occurrence of the incident, in view of the fact that the doctors and the sister of the injured had already taken charge of the situation and the subsequent events were beyond the control of the Petitioner”.

96. It was thus submitted on behalf of the petitioner that the proceedings against the petitioner are liable to be quashed.

CASE DIARY OF INVESTIGATION

97. During the course of submissions that were made on behalf of the petitioners, it was repeatedly contended that the case diary be directed to be produced and be retained on the record.

98. Vide order dated 23.4.2018, the case diaries were directed to be produced and though not directed to be retained were vide order dated 9.5.2018 when the petitions were reserved for orders, were directed to be kept available for the perusal of the Court as and when were required.

99. The case diary of the case has been produced by the State and has been perused by the Court. The last case diary is of the date 30.4.2018 which indicates that an attempt was made by the Investigating Officer for the examination of the injured at his residence, but he was found to be not in a position to move himself and that the Investigating Officer Inspector B.M.Bahuguna of Police Station R.K.Puram asked the injured about his health but he could not answer/respond properly and his voice was not clear and was thus observed by the Investigating Officer to be unable to give statement regarding the incident and that his mother and sister also informed that the injured was under treatment. The Investigating Officer through the case diary, dated 30.4.2018 stated that he contacted Dr.Sonia Kohli, who responded that Gaurav Rishi was under her treatment but was not fit to give his statement. The case diary after the date 23.5.2015 when permission was granted for further investigation by the Magistrate concerned indicates that repeated attempts were made for recording of the statement of the injured but the injured was found to be not fit for statement. The case diary also indicates that as thereon 23.4.2018 the sister of the injured also provided the copy of a notice received by her from the previous Investigating Officer and copy of the reply supplied by her and she also provided the information regarding the completion certificate issued to Hyatt Regency Hotel by the SDMC etc and the case diary indicates that the said documents/informations were to be verified from the concerned department. Apparently the notice had been issued during the course

of investigation and the reply had been received from the sister of the injured by the IOs previously.

ANALYSIS

100. As regards the contentions that have been raised on behalf of the State thus on behalf of the State in relation to pendency of investigation, the case diary of the case indicates that what is pending investigation in the recording of the statement of the injured who present is not in a condition fit to make a statement. During the course of submission that were made on 9.5.20.18 in response to a specific court query it was stated by Ms.Gauri Rishi that the injured Gaurav Rishi was conscious and his eyes were open and he could communicate through his eyes. The case diary dated 30.4.2018 indicates that the Investigating Officer made an attempt to talk to him but the voice of the injured was not clear and thus he could give no statement. The documents that are stated to have been supplied to the Investigating agency on 30.4.18 by Ms.Gauri Rishi are those which had been submitted by her even previously to previous Investigating Officer as per the case diary dated 30.4.18. Taking the totality of the circumstances of the case into account, inasmuch as the injured from the date of the incident, i.e., the night intervening 16/17.10.2013 is not in a condition fit to make a statement, the petitions cannot be termed to be not maintainable on the premise that further investigation is in progress, which further investigation apparently qua the examination of the injured atleast is now not in progress till an unforeseen date as the injured is not in a condition fit to make a statement.

**CONTENTIONS QUA SECTION 482 OF THE CODE OF
CRIMINAL PROCEDURE, 1973**

101. The petitions have been filed under Section 482 of the Code of Criminal Procedure, 1973 which provides as follows:

482. Saving of inherent power of High Court.— *Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.*

102. This provision confers a separate and independent power on the High Court alone to pass orders *ex debitojustitiae* in cases where grave and substantial injustice has been done or where the process of the Court has been seriously abused. As laid down by the Hon'ble Supreme Court in ***Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Ors., Criminal Appeal No. 701 of 1980 decided on 01.12.1982.***

“10. It is, therefore, manifestly clear that proceedings against an accused in the initial stages can be quashed only if on the face of the complaint or the papers accompanying the same, no offence is constituted. In other words, the test is that taking the allegations and the complaint as they are, without adding or subtracting anything, if no offence is made out then the High Court will be justified in quashing the proceedings in exercise of its powers under Section 482 of the present Code.”

103. To similar effect are the observations of the Hon'ble Apex Court in the verdict of State of A.P. Vs. Gourishetty Mahesh and Ors.

Criminal Appeal No. 1252 of 2010 (arising out of the SLP (Crl.) No. 3061 of 2008) decided on 15.07.2010 to the effect : -

“12) While exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge/Court. It is true that Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, otherwise, it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time, Section 482 is not an instrument handed over to an accused to short-circuit a prosecution and brings about its closure without full-fledged enquiry. Though High Court may exercise its power relating to cognizable offences to prevent abuse of process of any Court or otherwise to secure the ends of justice, the power should be exercised sparingly. For example, where the allegations made in the FIR or complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused or allegations in the FIR do not disclose a cognizable offence or do not disclose commission of any offence and make out a case against the accused or where there is express legal bar provided in any of the provisions of the Code or in any other enactment under which a criminal proceeding is initiated or sufficient material to show that the criminal proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused due to private and personal grudge, the High Court may step in. Though the powers possessed by the High Court under Section 482 are wide, however, such power requires care/caution in its exercise. The interference must be on sound principles and the inherent power should not be exercised to stifle a

legitimate prosecution. We make it clear that if the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of inherent powers under Section 482.”

104. Vide the guidelines laid down by the Hon’ble Apex Court in *Som Mittal Vs. Government of Karnataka, Criminal Appeal No. 206 of 2008 decided on 21.02.2008*, a consideration of the scope and ambit of the power under Section 482 of the Criminal Procedure Code, 1973 as has been explained by the Hon’ble Apex Court in a series of decisions in *R.P. Kapur v. State of Punjab* MANU/SC/0086/1960 : 1960CriLJ1239 , *State of Uttar Pradesh v. R.K. Srivastava* MANU/SC/0526/1989 : 1989CriLJ2301 ; *State of Haryana v. Bhajan Lal* MANU/SC/0115/1992 : 1992CriLJ527 , *Mrs. Rupan Deol Bajaj v. Kanwar Pal Singh Gill* MANU/SC/0080/1996 : 1996CriLJ381 ; *Pepsi Foods Ltd. v. Special Judicial Magistrate* MANU/SC/1090/1998 : 1998CriLJ1 ; *Zandu Pharmaceutical Works v. Mohd. Sharaful Haque* MANU/SC/0932/2004 : 2005CriLJ92 ; *Indian Oil Corporation v. NEPC India Ltd.* MANU/SC/3152/2006 : AIR2006SC2780 , and *Sonapareddy Maheedhar v. State of Andhra Pradesh* MANU/SC/0068/2008 : 2008CriLJ1375, the Hon’ble Apex Court reiterated the observations in ; *State of Haryana v. Bhajan Lal* MANU/SC/0115/1992 : 1992CriLJ527 enclosing the following categories of cases where power under Section 482 of the Code of

Criminal Procedure, 1973 could be exercised to prevent the abuse of the process of any Court or otherwise to secure the ends of justice : -

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order or a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously

instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

105. It was also made clear that it was not possible to lay down precise inflexible guidelines or give any rigid formula or give an exhaustive list of the circumstances in which such power could be exercised, and it was further observed vide para 9 of the said verdict to the effect : -

“9. When the words 'rarest of rare cases' are used after the words 'sparingly and with circumspection' while describing the scope of Section 482, those words merely emphasize and reiterate what is intended to be conveyed by the words 'sparingly and with circumspection'. They mean that the power under Section 482 to quash proceedings should not be used mechanically or routinely, but with care and caution, only when a clear case for quashing is made out and failure to interfere would lead to a miscarriage of justice. The expression "rarest of rare cases" is not used in the sense in which it is used with reference to punishment for offences under Section 302 IPC, but to emphasize that the power under Section 482 Cr.P.C. to quash the FIR or criminal proceedings should be used sparingly and with circumspection.”

106. The verdict of the Hon’ble Apex Court in Dhanlakshmi Vs. R. Prasanna Kumar and Ors. Criminal Appeal No. 672 of 1989 (arising out of Special Leave Petition (Crl.) No. 1968 of 1988 decided on 15.11.1989 vide para 3 thereof observes that in exercising its inherent powers under Section 482 of the Code of Criminal Procedure, 1973, it is not necessary that there should be a meticulous analysis of the case

before the trial to find out whether the case would end in conviction or not.

107. The verdict of the Hon'ble Apex Court in ***Dr. Monica Kumar and Anr. Vs. State of U.P. and Ors.*** is to similar effect wherein the scope of exercise of powers under Section 482 of the Code of Criminal Procedure, 1973 and categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent the abuse of the process of Court or otherwise to secure the ends of justice as detailed in ***State of Haryana Vs. Ch. Bhajan Lal*** were reiterated to the effect : -

“It may be mentioned that in exercise of the proceedings under Section 482 of the Code, this Court has to prima facie ascertain about the existence of the sufficient ground for proceeding against the accused. For limited purpose the court can evaluate the material and documents on record but it cannot appreciate the evidence so as to access the credibility of the statement of the witnesses recorded in the course of investigation. Further it is not required to appreciate the evidence to find out whether the materials produced are sufficient or not for convicting the accused. In the case of Chand Dhawan v. Jawahar Lal MANU/SC/0254/1992 : 1992CriLJ1956 it was observed by the Apex Court that when the material relied upon by a party are required to be proved, no inference can be drawn on the basis of materials to conclude the FIR/complaint version to be unacceptable.”

108. It was further observed in this verdict by the Hon'ble Apex Court to the effect : -

“30. We may reiterate and emphasise that the powers possessed by the High Court under Section 482 Cr.P.C. are very wide and the very plenitude of the power requires

great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its jurisdiction of quashing the proceeding at any stage. [See Janata Dal v. H.S. Chowdhury MANU/SC/0532/1992 : 1993CriLJ600 ; Raghubir Saran Dr. v. State of Bihar MANU/SC/0061/1963 : 1964CriLJ1 ; Kurukshetra University v. State of Haryana MANU/SC/0102/1977 : 1977CriLJ1900 ; and Zhandu Pharmaceuticals Works Limited and Ors. v. Mohd. Sharaful Haque and Anr. MANU/SC/0932/2004 : 2005CriLJ92]”

109. The verdict of Hon’ble Apex Court in *Chirag M. Pathak and Ors. Vs. Dollyben Kantilal and Ors.* in para nos. 24 & 26 lays down to similar effect : -

“24. The High Court, in exercise of its powers Under Section 482 of the Code, cannot undertake a detailed examination of the facts contained in the FIRs by acting as an Appellate Court and draws its own conclusion. It is more so when investigation in other Societies is not yet complete.

25. In our considered opinion, it is only when on reading the FIR, a sheer absurdity in the allegations is noticed and when no prima facie cognizable case is made out on its mere reading due to absurdity in the allegations or when facts disclose prima facie cognizable case and also disclose

remarkable identity between the two FIRs as if the first FIR is filed second time with no change in allegations then the Court may, in appropriate case, consider it proper to quash the second FIR. Such is not the case here.”

110. The verdict of Hon’ble Apex Court in ***State of Tamil Nadu Vs. S. Martin and Ors. (supra)*** observed to the effect : -

“where the investigation was still incomplete, the High Court ought not to have interfered in the present case and should leave all the questions open to be agitated at appropriate stages in the proceedings.”

111. In the verdict of ***Munshiram Vs. State of Rajasthan and Ors. 2018(2) Crimes 58 (SC)*** also it has been observed by the Hon’ble Supreme Court that the FIR ought not to be quashed at the threshold itself without allowing the investigation to proceed.

APPLICABILITY OF SECTION 258 OF THE CODE OF CRIMINAL PROCEDURE, 1973

112. A submission was raised on behalf of the petitioners that in view of the verdict of the Hon’ble Apex Court in ***Adalat Prasad Vs. Rooplal Jindal and Ors. 2004 (4) RCR (Criminal)1*** as reiterated in ***Subramaniam Sethuraman Vs. State of Maharashtra and Anr. 2004 IXAD (SC) 219***, it was sought to be contended that when a process is issued under Section 204 of the Criminal Procedure Code, 1973, the only remedy available to an aggrieved accused is to challenge the interlocutory order through the extra ordinary remedy under Section 482 of the Criminal Procedure Code, 1973 and not by way of an application to recall the summons or to seek discharge, which is not contemplated in the trial or summons case.

113. It is essential to observe in relation to this submission made on behalf of all three petitioners, that the verdicts in K.M. Mathew Vs. State of Kerala, 1992 Cri.L.J. 3779, Adalat Prasad Vs. Rooplal Jindal and Ors. 2004 (4) RCR (Criminal)1 and Subramaniam Sethuraman Vs. State of Maharashtra and Anr. 2004 IXAD (SC) 219, all relate to complaint cases filed under Section 138 of the Negotiable Instruments Act, 1881. It cannot be overlooked however that Section 258 of the Criminal Procedure Code, 1973 provides for the power to the Magistrate to stop proceedings in certain cases i.e. in summons cases instituted otherwise than upon a complain and provides as follows : -

“258. Power to stop proceedings in certain cases. In any summons- case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case, release the accused, and such release shall have the effect of discharge.”

114. In the instant case, the allegations levelled against the three petitioners in relation to FIR No. 390/15, PS R.K. Puram are based on allegations made in a police report under section 173 of the Criminal Procedure Code, 1973 qua alleged commission of offences punishable under Section 336, 338 r.w.s. 32 of the Indian Penal Code, 1860 and section 4 of the COTPA, 2003. The offences punishable under Sections 336, 338 r.w.s. 32 of the Indian Penal Code, 1860 and Section 4 of the COTPA, 2003 are all offences which are triable as

summon cases and thus as laid down by the Hon'ble Apex Court in *John Thomsas Vs. Dr. K. Jagadeesan, AIR 2001 SC 2651*, the provisions of Section 258 of the Criminal Procedure Code, 1973 squarely apply to the offences in relation to which the police report in relation to allegations in FIR No. 390/13, PS R.K. Puram in relation to alleged commission of offences punishable under Sections 336, 338 r.w.s. 32 of the Indian Penal Code, 1860 and Section 4 of the COTPA, 2003 has been filed. The observations in paragraphs 6 to 8 of the said verdict reproduced herein below categorically make it apparent that the provisions of section 258 of the Criminal Procedure Code, 1973 can be invoked by the petitioners in the instant case and that the embargo in Adalat Prasad and Sethu Raman which relate to complaint cases would not apply are as follows : -

“6. The appellant questioned the aforesaid view of the learned single Judge on the strength of Section 258 of the Code of Criminal Procedure (for short 'the Code'). It must be pointed out that the offence under Section 500 of the IPC is triable as a summons case in accordance with the provisions contained in Chapter XX of the Code. Sections 251 to 257 of that Chapter deal with the steps to be adopted from the commencement upto culmination of the proceedings in summons cases. One of the normal rules in summons cases is that once trial started, it should reach its normal culmination. But Section 258 is included in that chapter in the form of an exception to the aforesaid normal progress chart of the trial in summons cases. It is useful to extract the section here:

"258. Power to stop proceedings in certain cases.- In any summons case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial

Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witness has been recorded, pronounce a judgment of acquittal, and in any other case, release the accused, and such release shall have the effect of discharge."

7. Summons cases are generally of two categories. Those instituted upon complaints and those instituted otherwise than upon complaints. The latter category would include cases based on police reports. Section 258 of the Code is intended to cover those cases belonging to one category alone i.e. "summons cases instituted otherwise than upon complaints". The segment separated at the last part of the section by the words "and in any other case" is only a sub-category or division consisting of "summons cases instituted otherwise than upon complaints". That sub-category is not intended to cover all summons cases other than those instituted on police report. In fact, Section 258 vivisects only "summons cases instituted otherwise than on complaints" into two divisions. One division consists of cases in which no evidence of material witness was recorded. The section permits the court to acquit the accused prematurely only in those summons cases instituted otherwise than on complaints wherein the evidence of material witnesses was recorded. But the power of court to discharge an accused at midway stage is restricted to those cases instituted otherwise than on complaints wherein no martial witness was examined at all.

8. The upshot of the above is that Section 258 of the Code has no application to cases instituted upon complaints. The present is a case which was instituted on complaint. Hence the endeavour made by the accused to find help from Section 258 of the Code is of no avail.

115. The verdict of the Hon'ble Apex Court in *State of Rajasthan Vs. Iqbal Hussien* 2004 12 SCC 499 which adverts to the verdict of the Hon'ble seven judge Bench of the Hon'ble Supreme Court in *P. Ramachandra Rao Vs. State of Karnataka*, 2002 CriLJ 2547 observes to the effect : -

“Para. 3.....

“(5) The Criminal Courts should exercise their available powers, such as those under Sections 309, 311 and 258 of Code of Criminal Procedure to effectuate the right to speedy trial. A watchful and diligent trial Judge can prove to be better protector of such right than any guidelines. In appropriate cases jurisdiction of High Court under Section 482 of Cr.P.C. and Articles 226 and 227 of Constitution can be invoked seeking appropriate relief or suitable directions.”

116. However it cannot be overlooked that the power u/s 258 of the Criminal Procedure Code, 1973 can also be only exercised by the Magistrate in the special facts and circumstances of each case to ascertain whether the proceedings are to be stopped thereunder or the applicant would need.

117. The catena of verdicts relied upon on behalf of the petitioners to contend that powers under Section 482 of the Criminal Procedure Code, 1973 can be invoked presently against the order dated 16.05.2015 whereby the petitioners have been summoned for the alleged commission of offences punishable under Sections 336, 338 r.w.s. 32 of the Indian Penal Code, 1860 and Section 4 of the COTPA, 2003, assist the petitioners only to the extent that such inherent powers exists and can be exercised by the High Court, but as observed herein

above the said exercise of powers is limited by the guiding parameters in *Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Ors.*, Criminal Appeal No. 701 of 1980 decided on 01.12.1982, *State of A.P. Vs. Gourishetty Mahesh and Ors.* Criminal Appeal No. 1252 of 2010 (arising out of the SLP (Crl.) No. 3061 of 2008) decided on 15.07.2010, *R.P. Kapur v. State of Punjab* MANU/SC/0086/1960 : 1960CriLJ1239 , *State of Uttar Pradesh v. R.K. Srivastava* MANU/SC/0526/1989 : 1989CriLJ2301 ; *State of Haryana v. Bhajan Lal* MANU/SC/0115/1992 : 1992CriLJ527 , *Mrs. Rupan Deol Bajaj v. Kanwar Pal Singh Gill* MANU/SC/0080/1996 : 1996CriLJ381 ; *Pepsi Foods Ltd. v. Special Judicial Magistrate* MANU/SC/1090/1998 : 1998CriLJ1 ; *Zandu Pharmaceutical Works v. Mohd. Sharaful Haque* MANU/SC/0932/2004 : 2005CriLJ92 ; *Indian Oil Corporation v. NEPC India Ltd.* MANU/SC/3152/2006 : AIR2006SC2780 , and *Sonapareddy Maheedhar v. State of Andhra Pradesh* MANU/SC/0068/2008 : 2008CriLJ1375, reiterated the observations in ; *State of Haryana v. Bhajan Lal* MANU/SC/0115/1992 : 1992CriLJ527, *Dhanlakshmi Vs. R. Prasanna Kumar and Ors.* Criminal Appeal No. 672 of 1989 (arising out of Special Leave Petition (Crl.) No. 1968 of 1988 decided on 15.11.1989, *Dr. Monica Kumar and Anr. Vs. State of U.P. and Ors.*, *Chirag M. Pathak and Ors. Vs. Dollyben Kantilal and Ors.* and *Munshiram Vs. State of Rajasthan and Ors.* wherein it has been categorically made clear that proceedings against accused persons in initial stages can be quashed only if on the face of averments in the complaint or police report

under Section 173 of the Criminal Procedure Code, 1973, no offence is constituted and the test is taking the allegations made on the face value without adding or subtracting or anything if no offence is made out only then the High Court would be justifying in quashing the proceedings under 482 of the Criminal Procedure Code, 1973.

118. It is essential to observe that even in the verdict of this Court in *Urrshila Kerkar Vs. Make My Trip (India) Private Ltd., Crl. M.C. 298/2012*, the matter related to a complaint that had been filed. As observed herein above as laid down in *John Thomsas Vs. Dr. K. Jagadeesan, AIR 2001 SC 2651*, the provisions of Section 258 apply to **summon cases instituted on the basis of the police report and not those those have been filed on a complaint** but invocation of the power in relation to summon trial cases instituted on police reports, cannot be held to have been abridged. Thus the contention raised on behalf of the petitioners in relation to the remedy under Section 482 of the Criminal Procedure Code, 1973 having been resorted to as they have no other mode of seeking redressal in relation to the allegations as alleged in FIR No. 390/13, PS R.K. Puram in relation to the alleged commission of offences punishable under Sections 336, 338 r.w.s. 32 of the Indian Penal Code, 1860 and Section 4 of the COTPA, 2003 were not made out;- cannot be accepted.

119. To similar effect is the underlying ethos in *Amit Sibal Vs. Arvind Kejriwal and Ors. in Crl. A. No. 1101/2016* decided on 17.11.2016 by the Hon'ble Apex Court wherein vide para 3 thereof, it has been categorically observed to the effect that the verdict of the High Court of Delhi permitting the petitioner to raise such contentions

before the Magistrate at the time of the framing of notice u/s 251 of the Criminal Procedure Code, 1973 was set aside in view of the factum that the said order of this Court in Crl. M.C. 5245/13 dated 16.01.2014 was in a **complaint case** where the summoning order had been issued.

120. The instant case relates to the fall of a 'guest' in the Hyatt Regency Hotel at R.K. Puram, which is a public place from the 6th floor terrace outside the Regency Club Lounge from the roof through the 4th floor resulting into bleeding from the left side of head injury and one lacerated wound on the left temporo parietal region 4 cm. X .05 cm. with hematoma and swelling around the wound present with periodontal hematoma and swelling on the left side of the injured. The injured having fallen down at 11.45 p.m. on 16.10.2013 being unfit for statement till date and unable to walk unable to talk also as per the status report dated 01.05.2018 put forth by the State and also indicated by the case diary dated 30.04.2018. The charge-sheet *inter alia* alleges on the basis of the statements made by eye witness Ms. Margarita, P. Malhotra and Rebecca T. Hawkins that the said two guests along with the injured Gaurav Rishi who were using the Regency Club on the 6th Floor of the Hotel were given access to the terrace adjacent to the club through a gate, and that the terrace is about 1085 sq. feet and has a parapet wall of 2.8 feet height which parapet wall further had an iron railing of 1.8 feet height and that there was a staircase down to the 4th floor and the staircase was under renovation and there was a roof on the half portion of the said staircase which had an iron railing of 1.8 feet height on the outer edge and that whilst Ms. Margrita, and

Rebecca T. Hawkins were talking, the terrace was dark and Ms. Margrita noticed Gaurav Rishi by the inner edge and she saw that Gaurav Rishi climbed onto the platform of the roof of the staircase and was walking around and the injured fell down onto the 4th floor. The guests are indicated to have come to the 6th floor terrace on their insistence and specific request for a smoke, which access was given to them and despite the factum that the terrace area was not a designated smoking area. The charge-sheet dated 16.03.2015 was filed in the instant case.

121. As already observed herein above, permission for further investigation was granted by the learned Trial Court vide order dated 23.05.2015 strictly in accordance with the provisions of law. In terms of the directions dated 25.04.2018 during the course of the present petition the State was directed to submit a list of all documents collected by the Investigating Agency from the date 23.05.2015 onwards which was so submitted on 01.05.2018. With the said documents has been submitted a joint inspection report dated 25.06.2015 prepared under signatures of Mr. Rajesh Kumar Naithiani ACP Licensing which is a joint inspection report of Inspection carried out by a team of the Licensing Branch comprising of Sh. Rajesh Kumar Niathani, ACP/H&R, Inspector Khushal Singh and Si Upender Singh of Hotel Section / Licensing on 25.06.2015 alongwith Officer Insp. Vijay Pal Singh, PS R.K. Puram, HC Hansraj (video photography), Sh. Aseem Kapoor, General Manager, Hotel Hyatt Regency, Sh. Sushil Thomas, Chief Security Officer, Hotel Hyatt

Regency and Sh. Narottam Sharma, Director (Material), Licensee/Hotel Hyatt Regency, which report states as follows : -

INSPECTION REPORT IN RESPECT OF HOTEL HYATT REGENCY. BHIKAJI CAMA PLACE. R.K. PURAM. NEW DELHI CONDUCTED ON 25/06/2015 AT 1100 HRS.

In pursuance of orders of Joint C.P./Licensing, Delhi dated 24/06/2015, the joint Inspection of Hotel Hyatt Regency situated at Bhikaji Cama Place, R.K. Puram, New Delhi has been carried out by a team of Licensing Branch comprising 1.) Shri Rajesh Kumar Naithani, ACP/H&R, 2.) Inspector Khushai Singh and 3.) Simple Imprisonment Upender Singh of Hotel Section/Licensing on 25/06/2015 at 1100 Hrs. alongwith following officers : -

- 1. Inspector (Investigation) Vijay Pal Singh, P.S. R.K. Puram*
- 2. Sub Inspector Hari Ram, P.S. R.K. Puram*
- 3. Head Constable Hans Raj, 278/Cr. (Video/Photographer)*
- 4. Shri Aseem Kapoor, General Manager, Hotel Hyatt Regency*
- 5. Shri Sushil Thomas, Chief Security Officer, Hotel Hyatt Regency*
- 6. Shri Narottam Sharma, Director (Material), Licensee/Hotel Hyatt Regency*

In this regard the shortcomings and violations noticed by the Local Police in connection with incident of falling of one Shri Gaurav Rishi from the terrace of 6th Floor to terrace of 4th Floor of Hotel Hyatt Regency, were examined to observe the present status. A case RR No. 390/2013 U/s 308 IPG P.S. R. K. Puram, New Delhi was registered and investigated by the local police. Accordingly, a show cause notice

was issued to the Licensee, Hotel Hyatt Regency on 12/09/2014. In the reply of SCN, the licensee claimed and contended that they have enhanced the security measures and covered all area of the hotel by installing CCVTV at all strategic positions and deployment of security guards. On receipt of reply of show cause notice from Licensee/Hotel Hyatt Regency, the comments from local police of South District were sought. The comments of DCP/South District were received vide letter dated 17/03/2015. After examining the reply of Licensee as well as comments of DCP/South District, the competent authority decided and ordered to conduct a site inspection of Hotel Hyatt Regency jointly with the local police and Hotel Authorities.

122. Accordingly, a joint inspection by Licensing Unit alongwith Local Police and Hotel Authorities was carried out and the point-wise observations noticed are as follows : -

1. The terrace adjacent to 6th Floor Lounge is a strategic location since fire emergency exit passes also through it. The terrace has approx. 4' height parapet wall around it with approx. 2' height strong iron grill. The parapet wall of the terrace has signage as "KEEP AWAY FROM RAILING" (In Hindi also) can be seen in the Video/Photograph). At parapet wall there are around 10 to 15 lights at the height of appx. 1.5' which delivers sufficient light to the terrace. There is Mumty/piatform (6x3).5' approx.) again with the height of 4' approx. with 2' height of iron grili. Thus, ail around terrace parapet wall including mumty/piatform has total height of 6' to bar/restrict a person to climb or cross by accident. Further, a CCTV has also been installed at the corner of Mumty/Platform within the terrace of 6th Floor to have a close surveillance on all activities .

2. To enhance the security at present a guard has been deployed round the clock at the gate of 6th Floor Lounge leading to terrace area. Further, Hotel authorities have told that the total area of the hotel is No Smoking Zone including terrace of 6th Floor as they have designated smoking room for the convenience of the guests. They have further provided a Guest room service button on telephone for assistance in this regard. Thus, they don't have any signage of No Smoking Zone / Smoking Zone in the terrace of 8th floor.

3. The Hotel Authorities informed that the Lounge of 6th Floor has a regular Bar

valid upto 31/03/2015 and for renovation they have already applied and submitted required fee. They further informed that 6th Floor Lounge was never used as an Eating House but now they are going to open/start the Regency Lounge (6th Floor) as an eating house (70 Seats) and for the same they have already deposited a processing fee in South Delhi Municipal Corporation on dated 11/05/2015.

4. There was a signage as "Fire Exit" with arrow along with light at the initial point of emergency staircase leading from 6th floor terrace to 4th floor terrace. The stairs have ample space for the movement of people in case of any exigency. They have mounted flood lights/halogen lights affixed at the height of around 9'-10' which gives ample light in and around terrace area of 6th Floor. Further they have fire exigency plan affixed at the back of every room of the hotel. The Hotel Authorities told that on every six months time, they undergo a mock drill along with Fire Department.

5. The Hotel has PA System and was in working order. Further, they have evacuation plan to face any situation, if arises.

During inspection, the photographs and video recording of the inspected area was done by the official Photographer/Videographer of Delhi Police Headquarter. The DVD of photographs/videography is attached herewith.

Submitted please.

Sd/-

(Rajesh Kumar Naithani)
ACP/H&R, Licensing.
Joint CP/Licensing

CONTENTIONS OF THE STATE

123. It is essential to advert to the written submissions that have been submitted on behalf of the State submitted on 16.05.2018, which details the alleged infirmities and consequential omissions in the care taken by the petitioners of its guests at the Hyatt Regency Hotel to whom they owed a duty under common law in terms of the verdict of the Hon'ble Apex Court in *Sushil Ansal Vs. State (2014 6 SCC 173)* specially qua the petitioners Mr. Shiv Kumar Jatia Managing Director and Mr. Aseem Kapoor General Manager of the Hyatt of their continuous duty of care towards the guest to their hotel irrespective of their presence in the hotel.

124. It has been contended by the State that the petitioner of Crl. M.C. 3480/2015 Mr. Karan Lal, Assistant Front Office Manager was the Shift Manager, who had to manage the same during his shift hours and on the date of the incident, he was the Shift In-Charge and the Lounge Manager had informed him about the incident but he allegedly failed to provide timely rescue for the injured to be taken to the hospital and as per the job description assigned to him it was his duty to ensure that all hotel local rules, policies and regulations including licensing fire safety and security were adhered to. *Inter alia*, reliance was placed on behalf of the State on the statement u/s 161 of Mr. Devesh Arora Team Leader Front Office to contend that it indicated that the presence of the petitioner in the hotel at the time of the

occurrence and of the petitioner being in contact with the doctor for the treatment of the injured in relation to which it has been submitted on behalf of the State that though there were four ambulances that came in toto it was only the 4th ambulance that the petitioner could be taken in and it was submitted on behalf of the State that that the said petitioner Mr. Karan Lal ought to have made arrangements right at the outset for the proper ambulance for taking the injured to the hospital in as much as two ambulances reached the hotel one at point 3.00 a.m. one at 3.05 a.m. both without oxygen and the 3rd ambulance reached at .39 a.m. and the 4th ambulance from Fortis Hospital at .57 a.m. on the morning of 17.10.2013 despite there being a contract between Hyatt Hotel and the Fortis Health Care dated 10.03.2010 whereby the hotel had been tied up for treatment of its employees and it has been submitted through the charge-sheet as well that the injured was not got removed by the petitioner Mr. Karan Lal the Front Office Assistant Manager in due time expeditiously for treatment despite knowledge of the injury. The State has also contended that the hotel authorities did not have an action plan or protocol to remove the injured persons expeditiously to the hospital which has apparently aggravated his medical ailments.

125. Through the written submissions submitted by the State it is sought to be contended that there was no ground for challenging the summoning order and/or setting aside the FIR or charge-sheet as sufficient material exists on record to proceed against the petitioners and that Section 482 is to be only exercised if there is gross abuse of process of law.

126. Reliance was placed on behalf of the State on the verdict of the Apex Court in ***“Asian Resurfacing of Road Agency Pvt Ltd Vs Central Bureau of Investigation”*** in 2018 (5) SCALE 269 whereby it was held that even at the stage of considering a petition challenging an order directing framing of charge, it does not require meticulous examination of voluminous material which may be in the nature of mini trial.

127. It was further contended on behalf of the State that:

“ the Chargesheet was filed before the Ld. Metropolitan Magistrate by considering the statement of eye witness, in light of spot inspection and violation of licensing conditions (License granted under Regulation 19 of the "Regulations for keeping places of public entertainment in Delhi, 1980") and that During investigation, it has come on record that the hotel management has completely failed in its duty to take care against any probable danger to the guest, and in such type of unsafe space and thereafter showed their negligence in not providing the medical help in a prompt manner which constituted grave negligence on the part of the hotel management.

128. It is was further contended that

“ During investigation, it was found that on 16.10.2013, injured Gaurav Rishi along with Ms Margarita Malhotra and Ms Rebecca Hawkins were at the Regency club lounge on the 6th floor of the Hotel, where they consumed food and beverages and food bills were found. Later they were allowed by the hotel staff to go onto the terrace adjacent to the Regency Club lounge for smoking, although the terrace was not a designated smoking area and was unfit for usage, as it was under construction, and did not have the necessary health trade license from MCD for its usage and conditions required for safety and

security of visitors/guests under the license granted to hotel were found not complied with.

During investigation and on inspection of the terrace on the 6th floor, it came on record that the broad structure / platform / mumty where injured Gaurav Rishi was standing was of size 3 X 6 feet which was not provided with a fence of appropriate height and strength while it was easily accessible with no railing installed to prevent a person from accessing it. The existing fence was only 1.8 feet height and quite insufficient to prevent a fall from the platform area particularly if its surface was uneven and the terrace area was not adequately lit during the night time. Moreover, it came on record that on the night of 16.10.2013, the terrace area was dark and under repairs but no signage board was placed on the terrace as stated by witnesses. There were no signboards showing "no entry zone" placed there. There was no sitting space on the terrace. In these circumstances, it was well within the foresightedness of the management that the guest coming on terrace for smoking may use it as a sitting place."

129. The State further submitted that the Petitioners had been prosecuted for the admitted patent violations of statutory provisions inter-alia as laid down under the Regulations, provisions of the Delhi Municipal Corporation Act, 1957 in addition to violating the duty owed towards every visitor under common law, in the capacity of being an "Occupier", as detailed in ***Sushil Ansal V. State through CBI*** in (2014) 6 SCC 17.

II. It was contended by the State that two status reports dated 09.05.2014 and 13.05.2014 thereby revealing numerous violations of lodging license were filed by DCP, South District before this High Court in W.P(C) No. 2187 of 2014.

III. A joint inspection report dated 25.06.2015 was prepared by Licensing Department thereby stating that the Hotel had subsequently rectified and enhanced its security measures pursuant to violations pointed out by the DCP, South District.

Further contentions of the State were:

“ Illegal and unauthorized operation of Regency Club situated on the 6th floor as well as the adjoining terrace on 6th floor;

i). Whereas guests were provided access on the Terrace by the Hotel staff as admitted by official of Hotel in its statement under Section 161 of Cr.P.C. by stating that key of terrace were placed with the F&B Department to open the door on the request of the Guests.

ii) Terrace was dark with no lighting, unsafe for access and was under construction

iii) Terrace was under renovation and no warning signage for "no entry zone" or caution provided on date of incident

iv) However on next day i.e. 17.10.2013, two work in progress signages was put by the Subject Hotel as evident from Photograph at P.249/TCR.

v) Investigation revealed that platform from where injured fell down was "easily accessible" from terrace which of size 3X6 feet, height 2.8 feet with fence of 1.8 ft height was insufficient to prevent a fall while no iron railing was installed on the inner side of the platform to prevent access.

vi) As per statement of Hotels staff, "Guest is permitted to stand/walk on the Mummy".

vii) It is seen from the photo taken after the incident that construction material, cement and loose slabs were lying on the mummy/platform, which led to the fall of the injured from the said Platform on losing balance.”

It was thus submitted on behalf of the State that:

“ i) ASEEM KAPOOR is the "General Manager" of the Hyatt Regency and has overall responsibility day to day affair of the hotel and also for omission and commission of its officials with regard to safety of its guests;

ii) SHIV KUMAR JATIA is the "Managing Director" and the only Non - Independent and Executive Director of the Company/Hotel. He is present in all the Board Meetings as the chairperson and all decisions of the company/ Hotel are taken under his signature. Therefore, he is overall responsible for all omissions and commission of its officials, violation of lodging license/ health trade license with regard to safety of its guests.”

The State further contended that in terms of Section 2(34b) of the Delhi Municipal Corporation Act, 1957 and the ratio of ***Sushil Ansal V. State through CBI*** in (2014) 6 SCC 173 the petitioners are "OCCUPIERS" of the Hotel and therefore liable for the illegal statutory violations and omission in terms of the violations made by them of Regulations and further they were liable in view of the violation of their statutory duty of care towards all visitors and guests under the common law in terms of the verdict in ***SUSHIL ANSAL V STATE*** in (2014) 6 SCC 173.

It was submitted on behalf of the State that the duty imposed upon the Petitioners as Managing Director / General Manager is a continuous duty of care irrespective of their presence in the Hotel, which has further been upheld by this Hon'ble Court in *Sushil Ansal v State*, by holding that the presence of the occupiers was of no relevance to impute criminality.

Qua the petitioner Karan Lal in CrI.M.C.No.3480/15, the Assistant Front Office Manager"of the Hotel, it was contended that his role is to supervise the running of the front office during his shift hours. On the day of the incident, he was the shift incharge and lounge manager informed him about the incident but he failed to provide the timely rescue of the injuries to the hospital, and further the job description as provided by the Subject Hotel to the IO during investigation indicates that his responsibility as a front office manager is to conduct regular communications meetings and to ensure that the departmental briefing and meetings are effective and conducted as necessary and to ensure that all hotel, local rules, policies and regulations including licensing, fire, safety and security are adhered to, upkeep of all public areas/rooms under maintenance are blocked.

Reliance was also placed on behalf of the State on the statement u/s 161 of CrPC dated 30/11/2013 DeveshArora, Team Leader, Front Office

“Within few seconds the lobby manager Mr. Sachit Bhatia came along with security. Thereafter, Mr. Karan Lai had also arrived and took over the situation”

The State thus submitted that the said petitioner failed in his duty on the night of the incident by deliberately omitting to perform his following responsibilities:

By the victim having been not moved after his fall for almost one hour and continued lying on 4th floor terrace in a growing pool of blood / gasping for life for 52 minutes after his fall, and no facilities were provided immediate first aid / medical care to the victim, and that the hotel failed to call a life support ambulance immediately, which finally came after 1 hour and 12 minutes, and that there was a failure to inform the Police or PCR van which was stationed outside the Hotel gate, who could have immediately moved the victim to AIIMS.

It was also submitted that there was a failure to take the victim to AIIMS/best trauma centre, which is in the Hotel's neighborhood, in order to reduce the chances of further damage, as is imperative in view of settled law w.r.t importance of 1st hour after accident i.e. "GOLDEN HOUR", in *Save Life Foundation vs Union of India* (2016) 7 SCC 194 .

The State further contended that the Hotel is governed by the rules of Hyatt International Corporation and as per "Front Office Training Manual" available from the website of the Hyatt International Corporation, the charter of duties have been listed vide a "Front Desk Manual" wherein it has been stated it is the duty of the Front Office Manager to call the hotel's emergency extension, which routes directly to the PBX department and that the said manual further casts a duty upon the Petitioner to respond immediately in case he is the acting Manager on Duty (MOD).

It was further contended on behalf of the State that as per the "First Responder Training Program" a list of qualified first aid persons present on shift/duty in the hotel on 16/17.10.13 has been enlisted who should have been present at the spot after the fall of the Victim, however the charge-sheet indicates that none of them were present, which it is submitted is further corroborated from the statement of eye-witnesses, who state that no first aid/medically trained personnel was available.

It was further submitted by the State that all Petitioners i.e. Aseem Kapoor, Shiv Kumar Jatia and Karan Lai had grossly failed in their statutory duty of care towards the victim by failing to ensure his safety by providing access to an unsafe, under construction and unauthorized area, which was not illegal but also under construction and therefore was required to be BLOCKED as per charter of duties, and further after the fall of the victim, there was an inordinate delay in providing medical attention to the victim by intimating the medical staff about the incident or provide prompt medical assistance after the fall of the victim, with no medical staff available, doctor first informed only after 20 minutes who reached after 40 minutes and that the victim too was brought down after 52 minutes of his fall and after his sister reached and that the proper life support ambulance was called only after 1 hr 12 mins and no information provided by Hotel to Police/PCR.

It was further submitted on behalf of the State that the Hyatt Hotel is a public place and when the Hotel management allowed the entrance of the guest / public person in the hotel, it was their sole responsibility

/duty to take care of them against any mischief which a man of common prudence can foresee.

CONTENTIONS OF THE SISTER OF THE INJURED

130. The written submissions submitted on behalf of Ms. Gouri Rishi, the sister of the injured are being taken into account as the injured victim is not in a position to put up his submissions and it is considered appropriate in the interest of justice to grant the benefit of the extended definition of the victim in terms of Section 2(wa) provided in the Criminal Procedure Code, 1973 w.e.f. 31.12.2009 which defines victim to be a person who has suffered any loss or injury caused by reason or act for omission for which the accused persons has been charged and the expression victim includes his or her guardian or legal heir. Furthermore, the sister of the injured Ms. Gauri Rishi has been the petitioner before the Hon'ble Apex Court in SLP No. 6287/15 pursuant to which the orders dated 01.09.2015, 13.04.2018, 27.04.2018 and 09.05.2018 have been made. The written submissions of the sister of the injured also seek to contend :-

That there is no ground for challenging the summoning order and or setting aside the FIR or Charge-sheet as sufficient material exists on record to proceed against the petitioners and that the petitions are a gross abuse of the due process of law and the grounds raised in the Petitions do not make out any case for the interference by this Court in exercise of the inherent jurisdiction under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.), which is very limited and the same may only be exercised if there is gross abuse of process of law or that the same is barred by law.

Further the sister of the injured, reiterated that there had been violation of the Conditions & Regulations of the Lodging Licence.

131. The contentions thus raised on behalf of the petitioners that the FIR No. 390/15, PS R.K. Puram Qua which the charge-sheet has been filed under Section 336, 338 r.w.s. 32 of the Indian Penal Code, 1860 and section 4 of the COTPA, 2003 be quashed cannot be accepted in view of averments made in the charge-sheet and the accompanying documents during the course of the hearings of the present petitions qua investigation conducted after 23.05.2015 in as much as it would be improper for this Court to analyse the investigation conducted at this stage to determine whether a conviction would be sustainable or not and the evidence collected and issues involved are of such of magnitude that it is not considered appropriate to exercise the inherent power of this Court to stifle a legitimate prosecution.

132. As regards the contentions raised on behalf of the petitioners Mr. Shiv Kumar Jatia, Managing Director of Hyatt Hotel Regency, petitioner of CRL.M.C. 2209/2015 and who is also the Managing Director of M/s. Asian Hotels (North) who has been arrayed as accused no. 1, having been arrayed as accused no. 2 in the charge-sheet with allegations that he being the Managing Director of Hyatt Regency for all omissions and commission of its officials, he was responsible with regard to safety of its guests and also the contentions raised on behalf of Shri Aseem Kapoor, General Manager, Hotel Hyatt Regency arrayed as accused no.4 in the charge-sheet qua whom the allegations are that he is the General Manager of the Hyatt Regency and has overall responsibility for looking after the day to day affairs of

the hotels and also for omission and commission of its officials with regard to safety of its guests as also the contention of Mr. Karan Lal Assistant Front Office Manager Hyatt Regency on the particular shift i.e. petitioner of CRL.M.C. 3480/2015 with allegations against Mr. Karan Lal that he was to supervise and run the front office during his shift hours and that on the date of the incident he was the shift in-charge and the lounge manager informed him about the incident;- to the effect that the petitioners could not in any manner be held reliable for any criminal act or for the commission of any criminal offence of negligence coupled with the submission that Mr. Shiv Kumar Jatia and Aseem Kapoor were not even present at the spot admittedly with contentions to the effect that Mr. Karan Lal was six floors below at the lobby from the spot of the occurrence on the date of the incident, with reliance having been placed on behalf of the petitioners, on behalf of the Mr. Aseem Kapoor on the **verdicts in Sunil Bharti Mittal Vs. Central Bureau of Investigation 2015 (4) SCC 609, Sharad Kumar Sanghi Vs. Sangita Rane 2015 (3) SCALE 126; Pooja Ravindera Devidasani Vs. State of Maharashtra AIR 2015 SC 675. The Affidavit of the petitioner along with the copy of the pass port showing that said fact and with the status report filed by the investigating agency after verification bring on the record. Reliance was thus placed on behalf of the petitioner said petitioner on the verfdict in Kurban Husein Mohamedalli Rangawala Vs. State of Maharashtra AIR1965 SC 1616 (Para 1 and 2); Guljeet Singh Kochar & Ors. Vs. State (121) 2005 DLT 561(Para 10); Baldev Raj Kapur Vs. State 2009 (108) DRJ 520** in support of the

said contention. On behalf of the petitioner Mr. Shiv Kumar Jatia was also placed on the said verdicts and on the verdict in *State Vs. Chinubhai Haridas Sheth 1959 SCC Online Mad 9168* and in *S. Sugarmar And Ors. Vs. State 2016 SCC Online Mad. 9168 Para 10, COTPA, 2003*

133. The provisions of the COTPA, 2003 provide through Section 4 thereof to the effect : -

“Sec 4: Prohibition of Smoking in Public Places Section 4: “No person shall smoke in any public place: Provided that in a hotel having thirty rooms or a restaurant having seating capacity of thirty persons or more and in the airports, a separate provision for smoking area or space may be made.”

134. The Section 26 of the said enactment provides to the effect : -

“26. Offences by companies – (1) where an offence under this Act has been committed by a company, every person, who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly;

Provided that nothing contained in this sub-section (1), where any person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance or, or is attributable to any neglect on the part of, any director,

manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be proceeded against and punished accordingly”

135. The Section 21 of the said enactment makes contravention of Section 4 of COTPA, 2003 to be punishable.

Implicit in Section 4 of COTPA, 2003 is the necessity of a Hotel having 30 rooms or a restaurant with sitting capacity of 30 persons or more of making a separate provision for smoking area or a space to be made which in the instant case on the night intervening 16.10.2013 and 17.10.2013 had not been so made as per the averments in the charge-sheet by the Hyatt Hotel of whom the Sh. Shiv Kumar Jatia, Managing Director of Hyatt Hotel Regency, Sh. Aseem Kapoor, General Manager and Sh. Karan Lal, the Assistant Front Office Manager (on duty on the date of the accident).

136. Section 32 of the Indian Penal Code, 1860 defines words referring to acts to include illegal omissions where acts are culpable. Section 32 of the Indian Penal Code, 1860 reads to the effect : -

“32. Words referring to acts include illegal omissions.—In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.”

CONCLUSION

137. Pursuant to the verdict of the Hon’ble Apex Court in SLP (C) No.14740/15 in ***Gauri Rishi & Ors. v. Union of India & Ors.***, which arose out of the judgment dated 22.4.2015 of the Hon’ble Division Bench of this Court in LPA No.132/15, vide which it was directed that the only relief that can be granted to the petitioners was to give them

the right to make a representation (against the renewal of the licence of Hyatt Hotel which had been granted) within a period of two weeks from the said date and all the contentions raised in the SLP were to be considered objectively and speaking orders were directed to be passed by the Licencing Authority within two weeks thereafter with a personal hearing being afforded to the parties.

138. The representation submitted by Ms.Gauri Rishi pursuant to order dated 3.7.2015 of the Apex Court in SLP No.14740/15 was disposed of on 21.8.2015 by the Joint Commissioner Police, Licensing Branch, whereby it was observed to the effect that there was no merit in the contentions of the petitioner therein, i.e., Ms.Gauri Rishi, the sister of the injured Gaurav, in her representation dated 15.7.2015 relating to the revocation of licence of the hotel and that the representation was devoid of substance and merit much reliance was sought to be placed on behalf of the petitioners on the disposal of this representation submitting to the effect that the same clearly brought forth that there was no violation of any kind made by the Hyatt Hotel of the terms of its licence. Without any observation on the merits or demerits of the said contention, it is essential to observe that vide para 26 of the said finding of the Joint Commissioner Police, Licensing Branch, it had been observed to the effect that the “ **licence of the hotel was renewed on 2.7.15 for the year 2015-16 after giving careful consideration to its reply and after conducting the inspection of the hotel and that after being satisfied with the curing of the deficiencies as mentioned in the directions of the Hon’ble High Court in the W.P.(C) No.2187/2014 had been**

carried out.” Further more, vide paragraph 27 of this finding of the Joint Commissioner of Police qua the representation of Ms.Gauri Rishi, submitted pursuant to the directions in SLP© No.1470/15 it was observed vide paragraph 27 thereafter to the effect:

“As regards the charge sheet being filed in the case FIR No.390/13, PS R.K.Puram, which case has to be legally adjudicated which is the function of the Trial Court however pendency of this case in trial cannot be a ground for revocation of licence.” Thus the aspect of alleged criminal negligence against the petitioners being apparently still pending adjudication qua which it has already been observed herein above that it has not been considered appropriate to quash the FIR No.390/13, PS R.K.Puram under Sections 336/338 read with Section 32 of the Indian Penal Code, 1860, and Section 4 of the Cigarettes and Other Tobacco Products Act—2003 (COTPA 2003) in as much as it has not been considered appropriate to stifle a legitimate prosecution, the declining of the representation of the petitioner by the Joint Commissioner Police, Licensing Branch, of Ms.Gauri Rishi, sister of the injured on 21.8.2015 which has apparently taken into account also the curing of the deficiencies in the hotel in terms of directions of this Court in W.P.(C) no. 2187/2014 cannot be a ground for allowing the prayer made by the petitioners.

139. In view of the verdict of the Apex Court in **Sushil Ansal Vs. State through CBI** and the duties and job description assigned to Mr.Karan Lal, presently the contention raised on behalf of the petitioners that they could not have been summoned for any vicarious liability attributed to them cannot be accepted.

140. Taking the totality of the averments in the charge-sheet into account, the investigation conducted pursuant to the proceeding 25.5.2013 of the trial court whereby further permission was granted for investigation, the factum of the injured being still in a state unfit to talk and walk and whose statement is yet to be recorded and investigation in relation to that aspect atleast being pending, coupled with the averments in the charge-sheet against the petitioners in relation to their alleged gross culpabilities in taking due care of guests to their public place of which Sh. Shiv Kumar Jatia, Managing Director of Hyatt Hotel Regency, Sh. Aseem Kapoor, General Manager and Sh. Karan Lal, the Assistant Front Office Manager, responsible for looking after for providing are and security, in the facts and circumstances of the instant case, as already observed herein it is not considered appropriate to quash the FIR No. 390/13, PS R.K. Puram in relation to alleged commission of offences punishable under Sections 336, 338 r.w.s. 32 of the Indian Penal Code, 1860 and Section 4 of the COTPA, 2003. In view thereof, it is not considered appropriate to exercise the power conferred under Section 482 of the Criminal Procedure Code, 1973 to stifle the litigation. In view thereof, the petitions, CrI.M.C. 2208/15, CrI.M.C. 2209/15 and CrI.M.C. 3480/15 seeking quashing of the FIR No. 390/13, PS R.K. Puram in relation to alleged commission of offences punishable under Sections 336, 338 r.w.s. 32 of the Indian Penal Code, 1860 and Section 4 of the COTPA, 2003 are consequentially dismissed. The Trial Court Records be returned.

141. Nothing stating herein above shall however amount to an expression on the merits or demerits of the adjudication qua FIR No.390/13, PS R.K. Puram in relation to alleged commission of offences punishable under Sections 336, 338 r.w.s. 32 of the Indian Penal Code, 1860 and Section 4 of the COTPA, 2003 .

142. CrI.M.A. No. 5959/2015 in CrI.M.c. No.2208/2015 and CrI.M.A. No.5961/2018 in CrI.M.C.No.2209/2015 are accordingly declined.

143. The three petitioners are allowed to appear before the Trial Court through an advocate whose vakalatnama should be on record subject to the petitioners not disputing their identity and subject to the petitioners putting in appearance before the Trial Court as and when specifically so directed by the Trial Court to put in appearance before the Trial Court.

144. Intimation be sent by the Registrar General of this Court to the Secretary General, Supreme Court of India of compliance of directions dated 1.9.2015 and 8.5.2018 in SLP No.6287/2015 of the Hon'ble Supreme Court.

न्यायमेव जयते

ANU MALHOTRA, J

MAY 18th, 2018/sv/vm/mk