

A PRAKASH KADAM AND ETC. ETC.
v.
RAMPRASAD VISHWANATH GUPTA AND ANR.
(Criminal Appeal Nos.1174-1178 of 2011)

MAY 13, 2011

B [MARKANDEY KATJU AND GYAN SUDHA MISRA, JJ.]

Code of Criminal procedure, 1973:

C s.439 – *Bail – Allegation against accused-policemen that they functioned as contract killers and killed the victim-deceased in fake encounter – Bail granted by Sessions court – Cancellation of bail by High Court – On appeal, held: The version of accused that the deceased was shot in a police encounter was found to be false during investigation – The prosecution material collected during investigation prima facie indicated that the deceased was abducted by accused during the day time and was taken to the police station and from there he was taken to some unknown place where he was shot dead – This was a very serious case wherein prima facie some police officers and staff were engaged by some private persons to kill their opponent i.e. the deceased and the police officers and the staff acted as contract killers for them – If such police officers and staff can be engaged as contract killers to finish some person, there may be very strong apprehension in the mind of the witnesses about their own safety – This aspect was completely ignored by the Sessions Judge while granting bail to accused – High Court was perfectly justified in canceling the bail to the accused.*

G s.439 – *Bail – Grant and cancellation – Considerations for – Held: It is not an absolute rule that the considerations for cancellation of bail is different from the consideration of grant of bail and it depends on the facts and circumstances of the case – In considering whether to cancel the bail, the*

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Court has to consider various factors such as the gravity and nature of the offence, prima facie case against the accused, the position and standing of the accused etc. – If there are very serious allegations against the accused his bail may be cancelled even if he has not misused the bail granted to him – The said principle applies when the same Court which granted bail is approached for canceling the bail – It will not apply when the order granting bail is appealed against before an appellate/revisional Court.

Police firing: *Fake encounter – Fake 'encounters' are nothing but cold blooded, brutal murder by persons who are supposed to uphold the law – In cases where a fake encounter is proved against policemen in a trial, they must be given harsh punishment – Sentence/Sentencing.*

Rule of law: *Collapse of – Effect – Held: When rule of law collapses, it is replaced by law of jungle – Idea of Matsyanyaya-state of affairs where the big fish devours the smaller one as dwelt upon in ancient Indian works (such as Mahabharata) and by ancient Indian thinkers (Kautilya) – Discussed.*

The accused-appellants were the policemen accused of a contract killing case pending before the Sessions Court. They were charge sheeted for offences punishable under Sections 302/34, 120-B, 364/34 IPC. The prosecution case was that the victim-deceased and accused no.14 were in common business and were close to each other. Some differences arose between them and it was alleged that accused no.14 decided to eliminate the deceased in a false police encounter. For the said purpose, he hired the services of other accused and abducted the deceased and his friend on 11.11.2006. The deceased and his friend were taken to the police station whereafter the deceased was killed and his dead body was thrown near Nana Nani park. The dead body, after sometime was collected from the said place by the police

A to create a false case of encounter. A case was registered on the same day i.e. on 11.11.2006 against the deceased on the complaint of accused no.9. In the said FIR, it was shown that accused no.9 and other police officers had gone to Nana Nani Park on the basis of certain information and the deceased was asked to surrender before the police and instead of surrendering, the deceased attempted to kill the police and in retaliation he was shot by them. It was also alleged that the deceased's friend was in custody of police for about a month.

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C The complainant was the brother of the deceased and was a practicing advocate. When he came to know about the incident of abduction of his brother, he started searching for his brother and in the meantime also sent telegrams to Police Commissioners indicating apprehension that his brother might be eliminated in a false police encounter. On the same day it was flashed on T.V. channels that the deceased was killed in police encounter. The complainant filed a writ petition to get directions from the High Court to the police to register a case in respect of death of his brother.

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F The High Court directed the magistrate to make an inquiry under Section 176(1A), Cr.P.C. The magistrate after holding the inquiry submitted the report that the deceased was shot by the police in police custody. The report also stated that the death had not taken place at the spot alleged by police and that the deceased had not disappeared from the police custody before he was done to death, but the deceased was abducted by the police. The report also held that a false FIR was lodged by accused no.9 to show that the deceased was killed in a police encounter at Nana Nani Park and the FIR was filed to cover up the murder of the deceased. After the inquiry report was submitted by the magistrate, the High Court constituted a special investigating team. During

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investigation, it was revealed that accused no.1 (who was described as an 'encounter specialist), accused no.9 and 14 had entered into a conspiracy to eliminate the deceased and other officers and some criminals were involved in the execution of the said conspiracy. Everywhere the accused had taken the plea that the deceased was shot dead in an encounter and that they were members of the Police team involved in that encounter and were also present at the time of the alleged encounter. The instant appeals were filed against the judgment of the High Court by which the High Court cancelled the bail granted to the appellants by the sessions court.

Dismissing the appeals, the Court

HELD: 1.1. It is not an absolute rule that the considerations for cancellation of bail is different from the consideration of grant of bail and it will depend on the facts and circumstances of the case. In considering whether to cancel the bail, the Court has also to consider the gravity and nature of the offence, *prima facie* case against the accused, the position and standing of the accused, etc. If there are very serious allegations against the accused his bail may be cancelled even if he has not misused the bail granted to him. Moreover, the said principle applies when the same Court which granted bail is approached for canceling the bail. It will not apply when the order granting bail is appealed against before an appellate/revisional Court. [Paras 16, 17] [813-F-H; 814-A-B]

Bhagirathsinh s/o Mahipat Singh Judeja vs. State of Gujarat (1984) 1 SCC 284 = (1984) 1 SCR 839; *Dolat Ram and others vs. State of Haryana* (1995) 1 SCC 349 = (1994) 6 Suppl SCR 69; *Ramcharan vs. State of M.P.* (2004) 13 SCC 617 = (2004) 13 SCC 617 – relied on.

A 1.2. There is no absolute rule that once bail is granted
to the accused then it can only be cancelled if there is
likelihood of misuse of the bail. That factor, though no
doubt important, is not the only factor. There are several
other factors also which may be seen while deciding to
B cancel the bail. [Para 18] [814-C]

C 1.3. This was a very serious case and could not be
treated like an ordinary case. The accused who were
policemen were supposed to uphold the law, but the
allegation against them was that they functioned as
contract killers. Their version that the deceased was shot
in a police encounter was found to be false during the
investigation. [Para 19] [814-D-E]

D 2.1. The examination of the material on record
showed that accused no. 11, 17 and 19 who were
attached to Versova Police Station, as per the station
diary entry 33 of Versova Police Station left Versova
Police Station to go to D.N.Nagar Police Station on a
special assignment. That entry No.33 was taken in the
E station diary of Versova Police Station at 18.05 hours.
Entry No.25 in the station diary of D.N.Nagar Police
Station at 18.55 hrs. showed that accused no.9, 11, 15,
17, 18, 9 and 22 left the Police Station to go near Nana
Nani Park to verify and to arrest a hardened criminal. The
F 3 police officers i.e. accused no.11, 17 and 19 were
specially called from the Versova Police Station and they
were in the team of the police officers and staff who
accompanied accused no.9. This team left the police
station at 18.55 hrs. as per the said entry and it appeared
G that at about 8 to 8.15 p.m. the deceased was shot dead.
At this stage, the defence of the accused is not required
to be taken into consideration, because during the
investigation, it was found that there was no encounter
and the deceased was shot dead in a fake encounter.
H This station diary No.25 of 18.55 hrs. would show that

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accused No.17, 18 and 19 were the members of the team which killed the deceased. Not only that, as per the record of D.N.Nagar Police station, on 11.11.2006, at 6 p.m. accused no.9, 11 and 18 had collected weapons and ammunition. Naturally, those weapons were collected by the said officers to go to some place for a mission. According to them, they went to Nana Nani Park where the deceased was killed. In view of this, the presence of accused no.18 in the team which executed the said plan and killed the deceased did not appear to be in doubt. Merely because accused No.18 himself did not fire is not sufficient. Accused Nos. 17 and 19 were also members of that team. These accused persons had consistently taken a stand that they were present at the time of the said encounter and this was clear from their stand taken before the High Court as well as before the Supreme Court in special leave petition filed by accused Nos. 13, 16, 19 and 21. In that SLP also they had stated that accused Nos. 17 and 18 were also in the encounter team. Therefore, there was a *prima facie* case against them. [Para 20] [814-F-H; 815-A-H]

2.2. As far as accused Nos. 16, 17, 18 and 19 were concerned, there was sufficient material to *prima facie* establish their role in this conspiracy and the alleged execution of the deceased. Accused No.13 was allegedly given duty of guarding the friend of the deceased at Hotel Mid Town where he was detained illegally. Accused No.13 was one of the petitioners before the Supreme Court and had claimed that he was a member of the encounter team along with accused no.9 and others, and this admission found corroboration from the contents of the FIR registered by accused no.9 himself. In fact, the prosecution material collected during the investigation *prima facie* indicated that the deceased was abducted during the day time and was taken to D.N.Nagar Police Station and from there he was taken to some unknown

A place where he was shot dead. At 9 p.m. some police officers came back to the police station and deposited their weapons and kept their blood stained clothes. [Paras 21, 22] [816-A-E]

B 3. This was a very serious case wherein *prima facie*
 some police officers and staff were engaged by some private persons to kill their opponent i.e. the deceased and the police officers and the staff acted as contract killers for them. If such police officers and staff can be engaged as contract killers to finish some person, there
 C may be very strong apprehension in the mind of the witnesses about their own safety. If the police officers and staff could kill a person at the behest of a third person, it cannot be ruled out that they may kill the important witnesses or their relatives or give threats to
 D them at the time of trial of the case to save themselves. This aspect was completely ignored by the Sessions Judge while granting bail to the accused persons. The High Court was perfectly justified in canceling the bail to the accused-appellants. The accused/appellants were
 E police personnel and it was their duty to uphold the law, but far from performing their duty, they appeared to have operated as criminals. Thus, the protectors have become the predators. [Paras 23, 24] [816-F-H; 817-A-B]

F *CBI vs. Kishore Singh* 2010 (14) SCR 95 - relied on.

4. In cases where a fake encounter is proved against policemen in a trial, they must be given death sentence, treating it as the rarest of rare cases. Fake 'encounters'
 G are nothing but cold blooded, brutal murder by persons who are supposed to uphold the law. If crimes are committed by ordinary people, ordinary punishment should be given, but if the offence is committed by policemen much harsher punishment should be given to them because they do an act totally contrary to their
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duties. It is imperative to mention that our ancient thinkers were of the view that the worst state of affairs possible in society is a state of lawlessness. When the rule of law collapses it is replaced by Matsyanyaya, which means the law of the jungle. In Sanskrit the word 'Matsya' means fish, and Matsyanyaya means a state of affairs where the big fish devours the smaller one. All our ancient thinkers have condemned Matsyanyaya vide 'History of Dharmashastra' by P.V. Kane Vol. III p. 21. A glimpse of the situation which will prevail if matsyanyaya comes into existence is provided by Mark Antony's speech in Shakespeare's 'Julius Caesar' quoted at the beginning of this judgment. This idea of matsyanyaya (the maxim of the larger fish devouring the smaller ones or the strong despoiling the weak) is frequently dwelt upon by Kautilya, the Mahabharata and other works. It can be traced back to the Shatapatha Brahmana XI 1.6.24 where it is said "whenever there is drought, then the stronger seizes upon the weaker, for the waters are the law," which means that when there is no rain the reign of law comes to an end and matsyanyaya begins to operate. [Paras 25, 28, 29] [817-C-D-H; 818-A-D]

Shanti Parva of Mahabharat Vo. 1 – referred to. Vo. 1; 'History of Dharmashastra' by P.V. Kane Vol. III p. 21 – referred to.

Case Law Reference:

- (1984) 1 SCR 839 relied on Para 16
- (1994) 6 Suppl SCR 69 relied on Para 16
- (2004) 13 SCC 617 relied on Para 16
- 2010 (14) SCR 95 relied on Para 24

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1174-1178 of 2011.

A From the Judgment & Order dated 21.1.2011 of the High Court of Judicature at Bombay in Criminal Application Nos. 5283-5285 & 5303-5304 of 2010.

B Vinay Navare, Keshav Ranjan (for Abha R. Sharma) for the Appellant.

The Judgment of the Court was delivered by

MARKANDEY KATJU, J.

C A curse shall light upon the limbs of men;
 Domestic fury and fierce civil strife
 Shall cumber all the parts of Italy;
 Blood and destruction shall be so in use
 And dreadful objects so familiar
 That mothers shall but smile when they behold
 D Their infants quarter'd with the hands of war;
 All pity choked with custom of fell deeds:
 And Caesar's spirit, ranging for revenge,
 With Ate by his side come hot from hell,
 Shall in these confines with a monarch's voice
 E Cry "Havoc!" and let slip the dogs of war;
 That this foul deed shall smell above the earth
 With carrion mean, groaning for burial.

— (Shakespeare: Julius Caesar Act 3 Scene 1)

F 1. Leave granted. Heard learned counsel for the appellants and perused the record.

2. This case reveals to what grisly depths our society has descended.

G 3. This appeal has been filed against the impugned judgment and order dated 21.1.2011 passed by the High Court of Judicature at Bombay in Criminal Application Nos. 5283-5285 and 5303-5304 of 2010 by which the High Court has cancelled the bail granted to the appellants by the Sessions
 H Court.

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4. The appellants are policemen accused of a contract killing in Sessions Case No. 317/2010 which is pending before the Sessions Judge, Greater Bombay. The appellants have been charge-sheeted for offences punishable under Sections 302/34, 120-B, 364/34 IPC and other minor offences. The victim of the offence is deceased Ramnaryan Gupta @ Lakhanbhaiyya. The prosecution case is that the appellants were engaged as contract killers by a private person to eliminate the deceased.

5. The case of the prosecution in brief is that the deceased Ramnarayan Gupta and the accused No. 14, Janardan Bhange were, once upon a time, very close to each other. Both of them had been working as estate agents and, mainly their business was to purchase land from the farmers whose land has been acquired by the Government under the Land Acquisition Act and to whom 12 percent of the land was given by the Government. This 12 percent of the land was being purchased at meager price by the deceased and accused No. 14, Janardan Bhange and was being sold on premium at later stage. During the course of that business, both of them had been exchanging the files pending with them for disposal pertaining to the said land.

6. There were some differences between the deceased Ramnarayan Gupta and accused No. 14, Janardan and hence it is alleged that the accused Janardan decided to eliminate the deceased in a false police encounter. Hence, he hired the services of the accused, and in pursuance of the said conspiracy the deceased Ramnarayan Gupta and his friend Anil Bheda were abducted on 11.11.2006 from near a shop named Trisha Collections at Vashi, New Bombay by 4 or 5 well-built persons who appeared to be policemen and were forcibly bundled into a Qualis car. The complainant, brother of the deceased, sent telegrams and fax messages to different authorities complaining that the said two persons had been

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A abducted by some persons who appeared to be policemen and were in danger of losing their lives.

B 7. It is alleged that at Bhandup Complex the deceased was shifted to an Innova vehicle. The deceased and witness Anil Bheda were taken to D.N. Nagar police station in two separate vehicles i.e. one Qualis and the other Innova. It is alleged that the deceased was killed and his dead body was thrown near Nana-Nani Park at Versova. The dead body, after some time, was collected from the said place by the police to create a false case of police encounter. A case vide C.R. No. 302/2006 was registered on 11.11.2006 at Versova Police Station against deceased Ramnarayan Gupta on the complaint made by accused No. 9. In the said FIR it was shown that accused No. 9 and other police officers had gone to Nana-Nani Park on the basis of certain information and that the deceased was asked to surrender before the police. Instead of surrendering before the police, the deceased had attempted to kill the police and in retaliation he was shot by them.

E 8. It is also alleged that witness Anil Bheda was initially detained at D.N. Nagar Police Station and thereafter he was taken to Kolhapur and he was further detained at Mid Town Hotel at Andheri. As such the witness Anil Bheda was in custody of the police for about one month from 11.11.2006. His wife had lodged a missing complaint at Vashi police station on the same day, but she was compelled to withdraw that complaint.

G 9. The complainant is the brother of the deceased and is a practicing advocate. He came to know within a few minutes of the incident of abduction of his brother. He, therefore, along with advocate Mr. Ganesh Ayyer, started searching for his brother and in the meantime he had also sent telegrams to Police Commissioner of Thane, Mumbai and New Bombay of the alleged abduction of his brother and indicated apprehension that his brother would be eliminated in a false police encounter.

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On the same day it was flashed on T.V. channels that the deceased had been killed in a police encounter. The complainant, therefore, approached the High Court on 15.11.2006 by filing a writ petition (WP 2473/2006) to get directions from the High Court to the police to register a case in respect of death of his brother.

10. On the aforesaid writ petition the High Court on 13.2.2008 passed an order that the offence of murder be registered against the accused. During the investigation the statement of Anil Bheda and other witnesses were recorded. So far, the police have charge-sheeted 19 accused.

11. After the High Court by its order dated 13.2.2008 had directed the Metropolitan Magistrate, Railway Mobile Court, Andheri to make an inquiry under Section 176(1A) Cr.P.C., the Metropolitan Magistrate after holding the inquiry submitted a report dated 11.8.2008 that Ramnarayan Gupta was shot by the police when he was in police custody. The report also stated that the death had not taken place at the spot alleged by the police, and that the deceased had not disappeared from the police custody before he was done to death, but that the deceased was abducted by the police. The report also held that a false FIR was lodged by accused No. 9 Police Inspector Pradip Suryavanshi of D.N. Nagar Police Sttion to show that Ramnarayan Gupta was killed in a police encounter at Nana-Nani Park, and this FIR was filed to cover up the murder of the deceased Ramnarayan Gupta.

12. After the inquiry report was submitted by the Metropolitan Magistrate, the Division Bench of the Bombay High Court by its order dated 13.8.2009 in the aforesaid criminal writ petition constituted a Special Investigation Team for investigation of this case. Mr. K.M.M. Prasanna, DCP, Mumbai City, was appointed as head of the investigation team, and he was directed to record the statement of the complainant and to treat that statement as the FIR. Copy of the order of the Bombay High Court dated 13.8.2009 is Annexure P-3 to this

- A appeal. Accordingly, the statement of the complainant was recorded on 20.8.2009 which was treated as the FIR (Annexure P4 to this appeal) and investigation was carried out. The statement and supplementary statement of Anil Bheda, which corroborates the prosecution case, is Annexure P5 to this
- B appeal.

13. During investigation, it was revealed that accused No.1 Police Inspector Pradip Sharma (who is described as an 'encounter specialist'), accused No.9 - PI Pradip Suryawanshi and accused No. 14 - Janardan Bhanage, had entered into a
- C conspiracy to eliminate Ramnarayan Gupta. It appears that accused No.14 Janardan Bhanage had some personal enmity with Ramnarayan Gupta. Thereafter other officers and some criminals were involved in the execution of the said conspiracy.
- D Accused No.4 – Shailendra Pande , accused No.5 - Hitesh Solanki, accused N0.6 - Akil Khan, accused No.8 - Manoj Mohan Raj, accused No.12 - Mond. Moiddin and accused No.21 – Suresh Shetty and accused No.7 police constable Vinayak Shinde had abducted Ramnarayan Gupta and Anil Bheda from Vashi, on 11.11.2006. Accused No.1 PI Pradip
- E Sharma, accused No.2 Police Constable Tanaji Desai, accused No.9 P.I. Pradip Suryavanshi, accused No.15 API - Dilip Palande were the persons who actually fired and shot dead the deceased. Accused No.11 API Nitin Satape and accused
- F no.22 PSI Arvind Sarvankar claimed to have fired during the encounter, though the bullets fired from their fire arms were not recovered. Accused Nos. 13,16, 17, 18 and 19, whose bail orders were cancelled by the High Court, are said to be the members of the team which shot him dead. Accused No.13
- G Devidas Sakpal had allegedly guarded Anil Bheda at Hotel Mid Town on certain occasions and accused No.16 Head Constable Prakash Kadam had joined the abductors at about 4.30 p.m. and since then he was with Anil Bheda. He was also with Anil Bheda when he was taken out from D.N.Nagar Police Station in the evening and also later on at Hotel Mid Town from time to
- H time.

14. On behalf of the prosecution, it is pointed out that in the FIR lodged by P.I. Pradip Suryavanshi showing the killing of Ramnarayan Gupta in an encounter at Nana-Nani Park, he had given names of police officers and police staff, who were in that team. The names of accused Nos.13,16, 17, 18 and 19 are shown in the said FIR. On that basis an entry was made in the station diary, where also the names of these persons were shown. It is also pointed out that in the magisterial enquiry, which was initially directed by the Police Commissioner, these persons had claimed to be members of the encounter team. When the complainant filed the Writ Petition against the State for taking action against the culprits, some of these persons had appeared to contest the writ petition. After the writ petition was allowed and this Court directed investigation, accused Nos. 13, 16, 19 and 20 filed Special Leave Petition challenging that order, which was dismissed. Everywhere they had taken the plea that Ramnarayan Gupta was shot dead in an encounter and that they were members of the Police team involved in that encounter and were also present at the time of the alleged encounter. The learned Counsel also pointed out that there is sufficient material to show that these persons were involved in the commission of the crime.

15. The Sessions Court granted bail to the appellants but that has been cancelled by the High Court by the impugned judgment.

16. It was contended by learned counsel for the appellants before us, and it was also contended before the High Court, that the considerations for cancellation of bail is different from the consideration of grant of bail vide *Bhagirathsinh s/o Mahipat Singh Judeja vs. State of Gujarat* (1984) 1 SCC 284, *Dolat Ram and others vs. State of Haryana* (1995) 1 SCC 349 and *Ramcharan vs. State of M.P.* (2004) 13 SCC 617.

17. However, we are of the opinion that that is not an absolute rule, and it will depend on the facts and circumstances of the case. In considering whether to cancel the bail the Court

A has also to consider the gravity and nature of the offence, prima
 facie case against the accused, the position and standing of
 the accused, etc. If there are very serious allegations against
 the accused his bail may be cancelled even if he has not
 misused the bail granted to him. Moreover, the above principle
 B applies when the same Court which granted bail is approached
 for canceling the bail. It will not apply when the order granting
 bail is appealed against before an appellate/revisional Court.

18. In our opinion, there is no absolute rule that once bail
 is granted to the accused then it can only be cancelled if there
 C is likelihood of misuse of the bail. That factor, though no doubt
 important, is not the only factor. There are several other factors
 also which may be seen while deciding to cancel the bail.

19. This is a very serious case and cannot be treated like
 D an ordinary case. The accused who are policemen are
 supposed to uphold the law, but the allegation against them is
 that they functioned as contract killers. Their version that
 Ramnarayan Gupta was shot in a police encounter has been
 found to be false during the investigation. It is true that we are
 E not deciding the case finally as that will be done by the trial court
 where the case is pending, but we can certainly examine the
 material on record in deciding whether there is a prima facie
 case against the accused which disentitles them to bail.

20. Accused No. 11 API Nitin Sartape, accused No.17 PSI
 F Ganesh Harpude, and accused No.19 PSI Pandurang Kokam,
 who were attached to Versova Police Station, as per the station
 diary entry 33 of Versova Police Station left Versova Police
 Station to go to D.N.Nagar Police Station on a special
 assignment. That entry No.33 was taken in the station diary of
 G Versova Police Station at 18.05 hours. Entry No.25 in the
 station diary of D.N.Nagar Police Station at 18.55 hrs. shows
 that Police Inspector Suryavanshi, API Dilip Palande (accused
 No.15), PSI Arvind Sarvankar (accused No.22), PSI Patade
 (accused No.18) and API Sartape (accused No.11), PSI
 H Harpude (accused No.17) and Police Constable Batch

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No.26645 i.e. Pandurang Kokam (accused No.19) left the Police Station to go near Nani Nani Park to verify and to arrest a hardened criminal. It appears that 3 police officers i.e. AP Sartape, PSI Harpude and Constable Pandurang Kokam were specially called from the Versova Police Station and they were in the team of the police officers and staff who accompanied PI Suryavanshi. This team left the police station at 18.55 hrs. as per the said entry and it appears that at about 8 to 8.15 p.m. Ramnarayan was shot dead. At this stage, the defence of the accused need not be taken into consideration, because during the investigation, it has been found that there was no encounter and Ramnarayan Gupta was shot dead in a fake encounter. This station diary No.25 of 18.55 hrs. goes to show that accused No.17 PSI Hapude, accused No.18 PSI Patade and accused No.19 Constable Pandurang Kokam were the members of the team which killed Ramnarayan. Not only this, as per the record of D.N.Nagar Police station, on 11.11.2006, at 6 p.m. Police Inspector Suryavanshi, API Sartape and PSI Anand Patade had collected weapons and ammunition. Naturally, those weapons were collected by the said officers to go to some place for a mission. According to them, they went to at Nana Nani Park where Ramnarayan Gupta was killed. In view of this, the presence of PSI Patade in the team which executed the said plan and killed Ramnarayan does not appear to be in doubt. Merely because accused No.18 PSI Patade himself did not fire is not sufficient. Accused Nos. 17 Ganesh Harpude and accused No.19 Pandurang Kokam, as pointed out above, were also members of that team. It is also material to note that these accused persons had consistently taken a stand that they were present at the time of the said encounter and this is clear from their stand taken before the High Court as well as before the Supreme Court in Special Leave Petition filed by the accused Nos. 13, 16, 19 and 21. In that SLP also they had stated that accused Nos. 17 and 18 were also in the encounter team. Hence there is a prima facie case against them.

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A 21. As far as accused Nos. 16, 17, 18 and 19 are
 concerned, there is sufficient material to prima facie establish
 their role in this conspiracy and the alleged execution of
 Ramnarayan Gupta. Accused No.13 was allegedly given duty
 of guarding Anil Bheda at Hotel Mid Town where he was being
 B detained illegally. It is contended by the learned Counsel for the
 accused that if any duty of guarding or surveillance is given to
 a Police Constable by his superiors, he is bound to discharge
 that duty and merely because he was given the guarding duty,
 it cannot be said that he was party to the conspiracy. However,
 C it cannot be forgotten that accused No.13 was one of the
 petitioners before the Supreme Court and had claimed that he
 was a member of the encounter team along with PI Suryavanshi
 and others, and this admission finds corroboration from the
 contents of the FIR registered by PI Suryavanshi himself.

D 22. In fact, the prosecution material collected during the
 investigation prima facie indicates that Ramnarayan Gupta was
 abducted during the day time and was taken to D.N.Nagar
 Police Station and from there he was taken to some unknown
 place where he was shot dead. At 9 p.m. some police officers
 E came back to the police station and deposited their weapons
 and kept their blood stained clothes.

F 23. In our opinion this is a very serious case wherein prima
 facie some police officers and staff were engaged by some
 private persons to kill their opponent i.e. Ramnarayan Gupta
 and the police officers and the staff acted as contract killers
 for them. If such police officers and staff can be engaged as
 contract killers to finish some person, there may be very strong
 apprehension in the mind of the witnesses about their own
 G safety. If the police officers and staff could kill a person at the
 behest of a third person, it cannot be ruled out that they may
 kill the important witnesses or their relatives or give threats to
 them at the time of trial of the case to save themselves. This
 aspect has been completely ignored by the learned Sessions
 H Judge while granting bail to the accused persons.

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24. In our opinion, the High Court was perfectly justified in canceling the bail to the accused-appellants. The accused/appellants are police personnel and it was their duty to uphold the law, but far from performing their duty, they appear to have operated as criminals. Thus, the protectors have become the predators. As the Bible says "If the salt has lost its flavour, wherewith shall it be salted?", or as the ancient Romans used to say, "Who will guard the Praetorian guards?" (see in this connection the judgment of this Court in *CBI vs. Kishore Singh*, Criminal Appeal Nos.2047-2049 decided on 25.10.2010).

25. We are of the view that in cases where a fake encounter is proved against policemen in a trial, they must be given death sentence, treating it as the rarest of rare cases. Fake 'encounters' are nothing but cold blooded, brutal murder by persons who are supposed to uphold the law. In our opinion if crimes are committed by ordinary people, ordinary punishment should be given, but if the offence is committed by policemen much harsher punishment should be given to them because they do an act totally contrary to their duties.

26. We warn policemen that they will not be excused for committing murder in the name of 'encounter' on the pretext that they were carrying out the orders of their superior officers or politicians, however high. In the Nuremburg trials the Nazi war criminals took the plea that 'orders are orders', nevertheless they were hanged. If a policeman is given an illegal order by any superior to do a fake 'encounter', it is his duty to refuse to carry out such illegal order, otherwise he will be charged for murder, and if found guilty sentenced to death. The 'encounter' philosophy is a criminal philosophy, and all policemen must know this. Trigger happy policemen who think they can kill people in the name of 'encounter' and get away with it should know that the gallows await them.

27. For the above reasons, these appeals are dismissed.

28. Before parting with this case, it is imperative in our

- A opinion to mention that our ancient thinkers were of the view that the worst state of affairs possible in society is a state of lawlessness. When the rule of law collapses it is replaced by Matsyanyaya, which means the law of the jungle. In Sanskrit the word 'Matsya' means fish, and Matsyanyaya means a state of
- B affairs where the big fish devours the smaller one. All our ancient thinkers have condemned Matsyanyaya vide 'History of Dharmashastra' by P.V. Kane Vol. III p. 21. A glimpse of the situation which will prevail if matsyanyaya comes into existence is provided by Mark Antony's speech in Shakespeare's 'Julius Caesar' quoted at the beginning of this judgment.
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29. This idea of matsyanyaya (the maxim of the larger fish devouring the smaller ones or the strong despoiling the weak) is frequently dwelt upon by Kautilya, the Mahabharata and other works. It can be traced back to the Shatapatha Brahmana XI

D 1.6.24 where it is said "whenever there is drought, then the stronger seizes upon the weaker, for the waters are the law," which means that when there is no rain the reign of law comes to an end and matsyanyaya begin to operate.

E 30. Kautilya says, 'if danda be not employed, it gives rise to the condition of matsyanyaya, since in the absence of a chastiser the strong devour the weak'. That in the absence of a king (arajaka) or when there is no fear of punishment, the condition of matsyanyaya follows is declared by several works

F such as the Ramayana II, CH. 67, Shantiparva of Mahabharat 15.30 and 67,16. Kamandaka II. 40, Matsyapurana 225.9, Manasollasa II. 20.1295 etc.

31. Thus in the Shanti Parva of Mahabharat Vol. 1 it is stated:-

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"Raja chen-na bhavellokey prithivyaam dandadharakah
Shuley matsyanivapakshyan durbalaan balvattaraah"

H 32. This shloka means that when the King carrying the rod

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of punishment does not protect the earth then the strong persons destroy the weaker ones, just like in water the big fish eat the small fish. In the Shantiparva of Mahabharata Bheesma Pitamah tells Yudhishtir that there is nothing worse in the world than lawlessness, for in a state of Matsyayaya, nobody, not even the evil doers are safe, because even the evil doers will sooner or later be swallowed up by other evil doers.

33. We have referred to this because behind the growing lawlessness in the country this Court can see the looming danger of matsyanyaya.

34. The appeals are dismissed, but it is made clear that the trial court will decide the criminal case against the appellants uninfluenced by any observations made in this judgment, or in the impugned judgment of the High Court.

D.G.

Appeals dismissed.