RESERVED

A.F.R.

Court No. - 1

Case :- CRIMINAL REVISION No. - 113 of 2021

Revisionist :- Khushi
Opposite Party :- State Of U.P. And Another
Counsel for Revisionist :- Prabha Shanker Mishra
Counsel for Opposite Party :- G.A.

Hon'ble J.J. Munir,J.

This Criminal Revision is directed against a judgment and order of Mr. Ranjeet Kumar, the Additional District and Sessions Judge, Court No. 13/Special Judge (POCSO Act), Kanpur Dehat dated 24.11.2020, dismissing Criminal Appeal No. 40 of 2020 and affirming orders dated 15.09.2020 and 13.10.2020 passed by the Juvenile Justice Board, Kanpur Dehat refusing bail to the revisionist pending trial, in the case arising out of Case Crime No. 192 of 2020, under Sections 147, 148, 149, 302, 307, 396, 332, 333, 412, 353, 504, 506, 34, 120B of the Indian Penal Code, 1860[1] and Section 7 of The Criminal Law (Amendment) Act, 1961 and Section 3/4 of The Explosive Substances Act, 1908, Police Station - Chaubeypur, District - Kanpur Nagar.

2. It appears that the nuptials were hardly over for the revisionist, Khushi and her husband Amar Dubey, on July the 3rd, 2020, when the infamous incident at Village Bikru, Kanpur Nagar took place. It all happened at the house of one Vikas Dubey, whom the Police, in strong numbers, had gone to arrest. It is the prosecution case that Vikas Dubey, who was a dreaded gangster, somehow, laid in wait, along with his henchmen, for the Police to arrive. Vikas's associates, that included his relatives, had positioned themselves at strategic points, atop the roof of his house and those abutting it. They opened indiscriminate fire on the incoming police force, which led to eight police personnel being shot

1 **for short "IPC"**

dead and another six sustaining grievous gunshot injuries. A private driver of the then Station House Officer of the local police station also sustained injuries. It is the prosecution case, much of which figures in the eye-witness account of the surviving police personnel, recorded in their statements under Section 161 of the Code of Criminal Procedure, 1973[2] that while the menfolk pumped bullets into the police personnel, the wives of all the accused were aiding and instigating their husbands. The revisionist is also credited with the role of instigating the menfolk to do the policemen to death. She is stated to have been atop a house adjoining Vikas Dubey's, during entire course of the brutal assault.

3. The revisionist applied to be declared a juvenile to the Juvenile Justice Board, Kanpur Dehat[3]. She was found to be 16 years, 10 months and 12 days old on the date of occurrence. She was, thus, well below 18 years of age. She was declared a juvenile by the Board, *vide* order dated 01.09.2020. The revisionist then made an application for bail to the Board, which came up for determination on 15.09.2020. It was rejected by the Board. She then preferred a second application for bail to the Board, that came to be rejected again by an order dated 13.10.2020.

4. Aggrieved by the orders dated 15.09.2020 and 13.10.2020, declining bail, the revisionist carried an appeal to the learned Sessions Judge, Kanpur Dehat, under Section 101 of the Juvenile Justice (Care and Protection of Children) Act, 2015[4]. The appeal came up for determination before the learned Additional District and Sessions Judge, Court No. 13/ Special Judge (POCSO Act) Kanpur Dehat, on 24.11.2020. The learned Judge dismissed the appeal and affirmed the Board.

5. Disillusioned by concurrent refusal of bail pending trial by the two courts below, this revision has been instituted.

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2 **for short "Code"**
3 **for short "the Board"**
4 **for short "the Act of 2005"**

6. Heard Mr. Prabha Shanker Mishra, learned Counsel for the revisionist in support of this revision and Mr. Manish Goyal, the learned Additional Advocate General assisted by Mr. Rajesh Mishra, learned Additional Government Advocate on behalf of the State.

7. The submission of Mr. Prabha Shanker Mishra, learned Counsel for the revisionist, made very persuasively, is that the revisionist has been implicated in this crime, because she had the misfortune of marrying Amar Dubey, a few days before the occurrence. It is urged by Mr. Mishra that the revisionist is a minor and a young girl, a month and some days shy of 17 years. She or her family, that is to say, her parents and siblings, have no criminal antecedents. In her own right, she was neither an associate of the principal accused, Vikas Dubey, or a member of his gang. She was no more than an innocent person in the wrong place, at the wrong time. Mr. Mishra says that she had reasons perfectly compatible with her innocence, to be at or about Vikas Dubey's house, as her husband, Amar Dubey, was a relative of Vikas's. It was that, that she was there with her husband when this skirmish took place. She had not the slightest role in the entire episode. All that has been said about her is utter concoction by the Police, who have gone after every family member, relative and associate of Vikas Dubey, after the occurrence, with a vindictiveness that does not behove a state law enforcement agency. Quite apart, it is argued by Mr. Mishra that Khushi, being a child in conflict with law, is entitled to bail by dint of Section 12(1) of the Act of 2015 and placed in the care of her father, who has applied for bail on her behalf. He says that Khushi's father is a respectable man and can keep her insulated from all kind of moral, physical and psychological danger. Her father can well ensure that she does not come into association with any known criminal, while on the liberty of bail. He submits that Khushi being not at all *particeps criminis*, it is not a case where extending her the liberty of bail would lead to ends of justice being defeated.

8. Mr. Manish Goyal, the learned Additional Advocate General, on the other hand, submits that Khushi was no silent spectator to the gruesome crime committed by Vikas Dubey and his gang, that included her deceased husband Amar Dubey. He has drawn the Court's attention to the statements of more than one policemen, who were part of the beleaguered police party, eight of whose members fell in action, and six others sustained grievous gunshot injuries. He emphasized with reference to the statements of the survivors of that ghastly episode, that Khushi was an active participant throughout the assault. She was aiding and instigating the men not to spare any policeman. Mr. Goyal then submits that Khushi, though a child in conflict with law and adjudged to be so by the Board, is nevertheless above the age of 16 years, though less than 18. She has been subjected by the Board to an inquiry under Section 15 of the Act of 2015. Considering that she is above 16 years of age, and the offence involved is heinous in nature, it is pointed out that the Board have opined, on a preliminary assessment, that the revisionist has the requisite mental and physical capacity to commit the offence, as also the ability to understand the consequences. The Board have also considered the circumstances in which she committed the dereliction and doing all this, opined, in exercise of powers under Section 18(3) of the Act of 2015, that it is fit case where the revisionist deserves to be tried as an adult. In consequence, by the order dated 17.12.2020, the Board have transferred the revisionist's case for trial to the Children's Court of competent jurisdiction. Mr. Goyal has drawn the Court's attention to the last mentioned order, annexed as Annexure SCA-1 to the supplementary counter affidavit dated 24.06.2021.

9. Mr. Goyal has further drawn the Court's attention to the conduct of the revisionist, while interned in the Government Observation Center (Girls) at Barabanki. In this connection, he has placed before this Court a copy of the memo dated 23.10.2020 addressed by the Assistant Superintendent of the Observation Home at Barabanki to the Board. The

Assistant Superintendent has drawn the Board's attention to the fact that the Center have two rooms at their disposal, where 48 girls are interned. The revisionist has been reported to be wayward. It is said that she tells the other inmates that she has contacts with persons of great influence. She also repeatedly threatens other inmates that she can get anyone abducted from the Center any time, and that no one in the Observation Center can hold her to account. A copy of the said letter has been annexed as Annexure SCA-2 to the supplementary counter affidavit dated 24.06.2021 filed on behalf of the State. In the circumstances in which the gruesome crime has been committed and the apparent participation of the revisionist there, Mr. Goyal submits that it is a case where enlarging the revisionist on bail pending trial would defeat the ends of justice. In support of his contention, Mr. Goyal has placed reliance on a decision of this Court in **Raju *alias* Ashish v. State of U.P. & Another**[5] and counted on another decision of this Court in **Raju (Minor) v. State of U.P. and Another**[6].

10. This Court has given a thoughtful consideration to the submissions made on both sides and perused the record. It is true that bail to a child in conflict with law has to be granted as a matter of right *dehors* the merits of the case against him/her. The aforesaid rule of universal bail is subject only to the three disentitling grounds, envisaged under the proviso to Section 12(1) of the Act of 2015. Section 12(1) reads :

> **12. Bail of juvenile.—**
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> (1) When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety 1[or placed under the supervision of a Probation Officer or under the care of any fit institution of fit person] but he shall not be

5 **2018 SCC OnLine All 3100**
6 **2020 (6) All. LJ 451**

> so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

11. The case here is one where the association between the revisionist and her deceased husband might have been short; it was not sweet. This Court has carefully looked into the submissions of Sub-Inspector Vishwanath Mishra, Constable Rajiv Kumar, Sub-Inspector Azhar Ishrat, Sub-Inspector Kunwar Pal Singh and Constable Sudhakar Pandey, besides Constable Nem Singh. These statements are recorded in C.D. No. 1 dated 03.07.2020, C.D. No. 4 dated 06.07.2020, C.D. No. 72 dated 10.09.2020, C.D. No. 74 dated 12.09.2020 and C.D. No. 86 dated 25.09.2020. Sub-Inspector Vishwanath Mishra, in his statement under Section 161 of the Code, has stated that there were women atop the house, who were exhorting that no police personnel should go back alive, and were instigating the men to do so. The Sub-Inspector has stated that he inquired about the identity of the women and came to know that they were – Smt. Bhavna, wife of Samir Dubey *alias* Sanju, Smt. Khushi, wife of Amar Dubey (the revisionist), Smt. Rekha Agnihotri, wife of Daya Shanker *alias* Kallu. All the officers and men, whose statements have been recorded, have credited the revisionist with the role of instigating and exhorting the men to do every man in the police party to death. Constable Rajiv Kumar, who was in the thick of action, has stated that Vikas Dubey and his men looked around the entire place, searching out police officers and men to shoot them. He has said that he saw Smt. Rekha Agnihotri, wife of Daya Shankar standing atop the rooftop of Vikas Dubey's house, exhorting men to shoot down the police personnel, and his companions present on the spot told him that Khushi, along with Bhavna Dubey and Shanti Devi were giving out locations of the policemen, who had concealed themselves to save their lives and exhorting Vikas Dubey's men to do the policemen to death. Likewise, in the statement of Sub-Inspector

Azhar Ishrat recorded under Section 161 of the Code, it is said that there were a few women atop the other houses located around Vikas Dubey's house, who were exhorting Dubey's associates to eliminate all policemen. He has further stated that he inquired about the identity of those women, and came to know that they were Smt. Bhavna, wife of Samir Dubey *alias* Sanju, Smt. Khushi, wife of Amar Dubey (the revisionist), Smt. Rekha Agnihotri, wife of Daya Shanker *alias* Kallu. There are, thus, accounts of various policemen about the very overt participation of the revisionist in the gruesome murder of as many as eight policemen in uniform, who were about their duty. She is credited with the role of exhorting men in Vikas Dubey's gang to eliminate every one of the policemen. The officers and men, whose statements have been recorded under Section 161, were all part of the police party that was in the thick of action, when they came under heavy fire from Vikas Dubey and his men, on the fateful night. Their statements on account of the occurrence at this stage, therefore, cannot be ignored.

12. It may be true, as already said, that the revisionist was married to Amar Dubey a few days before the occurrence, but from the account of all the eye-witnesses, she was certainly not one who was an idle spectator. She played a decisive role *prima facie* in the gruesome crime. The question now is that the revisionist, being a child in conflict with law, does her case fall into any of the exceptions to the universal rule of bail, postulated under the proviso to Section 12(1) of the Act of 2015? This Court does not know under what circumstances and by what origins of association she was married to Amar Dubey, who was, apparently, a faithful associate of Vikas Dubey. It is quite possible that the marriage was short-lived, but the association was long, on account of which, a newly-wed bride was seen moving around with men wielding guns, directing their fire to hidden policemen, and exhorting them to shoot each policemen to death. If the witnesses, who were all policemen and members of the party, many of whom fell in action, are to be believed, the

revisionist's act in standing atop the roof of a house close to Vikas Dubey's, in the thick of gunfire and exhorting Dubey's men to eliminate all members of the police party, is conduct not even remotely compatible with the picture of a newly-wed bride, who was caught unawares, that Mr. Mishra wants this Court to believe.

13. This Court also cannot ignore the conduct of the revisionist reported by the Assistant Superintendent of the Observation Home, where she is interned. There is no reason why the Assistant Superintendent would come forward with complaints of that kind against an inmate, contents whereof we have noticed above. Whatever has been reported by the Assistant Superintendent, shows the revisionist's continuing close association with hardened criminals, inasmuch as she has threatened other inmates of her resources to get anyone abducted from the Observation Home. This Court is of considered opinion that the short-lived association of the revisionist's with Amar Dubey, a close associate of Vikas Dubey's, followed by her participation in the gruesome crime, and her subsequent conduct in the observation home, firmly place her case in the category where, if released on bail, she would come into association with known criminals. That, in turn, would cause moral, physical and psychological danger to her. Quite apart, the submission advanced by Mr. Mishra, that the merits of the charge is irrelevant to the bail plea of a juvenile, in view of the provision under Section 12(1) of the Act of 2015, is not well founded. The merits of the prosecution case *ipso facto* may not be relevant to judge a juvenile's bail plea, but is certainly one of the factors to be taken into account while assessing whether grant of bail to the juvenile would lead to ends of justice being defeated. I have extensively dealt with this issue in **Mangesh Rajbhar v. State of U.P.**[7] where I have held :

> **24.** This court from what appears on a furter (sic further) reading of the judgment in Raja (minor)

7 **(2018) 6 ADJ 60**

(supra) did not construe the last of the three grounds for the refusal of bail to a juvenile in the proviso to Section 12(1) of the Act ejusdem generis; rather, this court in that case referred to the merits of the case and related the ground for denying bail to the juvenile being released on bail "would defeat the ends of justice" with the merits of the prosecution case. In other words, this Court found in the expression "defeat the ends of justice" a repose for the society to defend itself from the onslaught of a minor in conflict with law by certainly making relevant though not decisive, the inherent character of the offence committed by the minor. In this connection paragraph nos. 11, 12 and 13 of the judgment in Raja (minor) (supra) may be gainfully quoted.

"11. The report of the medical examination of the victim clearly shows that the revisionist had forced himself upon the victim, who was seven years old child and in the statements under sections 161 Cr.P.C. and 164 Cr.P.C., the child had clearly deposed about how she was taken away by the revisionist and later on caught on the spot by the public and he pretended to be taking a bath. In the orders impugned, there is specific mention about the fact that the revisionist was accused by name by the victim, who was studying in class II and the release on bail of the revisionist would defeat the ends of justice.

12. Having gone through the record of the case including statement under section 161 Cr.P.C. and the statement under section 164 Cr.P.C. given by the victim and also the report of the medical examination of the victim, which shows penetration by force and resultant injury, I am of the opinion that there is no legal infirmity in the orders impugned as the release on bail of the revisionist would indeed defeat the ends of justice.

13. No doubt, the Juvenile Justice Act is a beneficial legislation intended for reform of the juvenile/child in conflict with the law, but the law also demands that justice should be done not only to the accused, but also to the accuser."

25. It is not that this aspect of the gravity of the offence has been considered irrelevant to the issue of grant or refusal of bail to a minor in the past and before the present Act of 2015 came into force. In a decision of this Court under the Juvenile Justice Act, 2000 where the interest of the society were placed seemingly not on a level of playing field with the juvenile, this Court in construing the provisions of Section 12 in that Act

that were pari materia to Section 12 of the Act in the matter of grant of bail to a minor held in the case of Monu @ Moni @ Rahul @ Rohit v. State of U.P., 2011 (74) ACC 353 in paragraph Nos. 14 and 15 of the report as under:

"14. Aforesaid section no where ordains that bail to a juvenile is a must in all cases as it can be denied for the reasons".....if there appears reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice."

15. In the light of above statutory provision bail prayer of the juvenile revisionist has to be considered on the surrounding facts and circumstances. Merely by declaration of being a juvenile does not entitle a juvenile in conflict with law to be released on bail as a matter of right. The Act has a solemn purpose to achieve betterment of juvenile offenders but it is not a shelter home for those juvenile offenders who have got criminal proclivities and a criminal psychology. It has a reformative approach but does not completely shun retributive theory. Legislature has preserved larger interest of society even in cases of bail to a juvenile. The Act seeks to achieve moral physical and psychological betterment of juvenile offender and therefore if, it is found that the ends of justice will be defeated or that goal desired by the legislature can be achieved by detaining a juvenile offender in a juvenile home, bail can be denied to him. This is perceptible from phraseology of section 12 itself. Legislature in its wisdom has therefore carved out exceptions to the rule of bail to a juvenile."

26. The Hon'ble Supreme Court in the case of Om Prakash vs. State of Rajasthan and another, (2012) 5 SCC 201: 2012 (2) ACR 1825 (SC) has brought in due concern in matters relating to juveniles where the offences are heinous like rape, murder, gang-rape and the like etc., and, has indicated that in such matters, the nature and gravity of the offence would be relevant; the minor cannot get away by shielding himself behind veil of minority. It has been held in Om Prakash (supra) by their Lordships thus:

"3. Juvenile Justice Act was enacted with a laudable object of providing a separate forum or a special court for holding trial of children/juvenile by the juvenile court as it was felt that children become delinquent by force of

circumstance and not by choice and hence they need to be treated with care and sensitivity while dealing and trying cases involving criminal offence. But when an accused is alleged to have committed a heinous offence like rape and murder or any other grave offence when he ceased to be a child on attaining the age of 18 years, but seeks protection of the Juvenile Justice Act under the ostensible plea of being a minor, should such an accused be allowed to be tried by a juvenile court or should he be referred to a competent court of criminal jurisdiction where the trial of other adult persons are held.

23. ..... Similarly, if the conduct of an accused or the method and manner of commission of the offence indicates an evil and a well planned design of the accused committing the offence which indicates more towards the matured skill of an accused than that of an innocent child, then in the absence of reliable documentary evidence in support of the age of the accused, medical evidence indicating that the accused was a major cannot be allowed to be ignored taking shelter of the principle of benevolent legislation like the Juvenile Justice Act, subverting the course of justice as statutory protection of the Juvenile Justice Act is meant for minors who are innocent law breakers and not accused of matured mind who uses the plea of minority as a ploy or shield to protect himself from the sentence of the offence committed by him."

27. It seems thus that the suggestion of the learned counsel for the revisionist that bail to a juvenile or more properly called a child in conflict with law can be denied under the last ground of the proviso to Section 12 ejusdem generis with the first two and not with reference to the gravity of the offence, does not appear to be tenable. The gravity of the offence is certainly relevant though not decisive. It is this relevance amongst other factors where gravity of the offence committed works and serves as a guide to grant or refuse bail in conjunction with other relevant factors to refuse bail on the last ground mentioned in the proviso to Section 12 (1) of the Act, that is to say, on ground that release would "defeat the ends of justice".

28. Under the Act, as it now stands there is further guidance much more than what was available under the Act, 2000 carried in the provisions of Section 15 and 18 above extracted and the definition of certain terms used in those sections.

A reading of Section 18 of the Act shows that the case of a child below the age of 16 years, who has committed a heinous crime as defined in the Act is made a class apart from cases of petty offence or the serious offence committed by a child in conflict with the law/juvenile of any age, and, it is further provided that various orders that may be made by the Board as spelt out under clause (g) of Section 15 depending on nature of the offences, specifically the need for supervision or intervention based on circumstances as brought out in the social investigation report and past conduct of the child. Though orders under Section 18 are concerned with final orders to be made while dealing with the case of a juvenile, the same certainly can serve as a guide to the exercise of power to grant bail to a juvenile under Section 12(1) of the Act which is to be exercised by the Board in the first instance.

29. Read in the context of the fine classification of juveniles based on age vis-a-vis the nature of the offence committed by them and reference to a specifically needed supervision or intervention, the circumstances brought out in the social investigation report and past conduct of the child which the Board may take into consideration, while passing final orders under Section 18 of the Act it is, in the opinion of this court, a good guide for the Board while exercising powers to grant bail to go by the same principles though embodied in Section 18 of the Act, when dealing with a case under the last part of the proviso to Section 12 (1) that authorizes the Board to deny bail on ground that release of the juvenile would "defeat the ends of justice."

30. Thus, it is no ultimate rule that a juvenile below the age of 16 years has to be granted bail and can be denied the privilege only on the first two of the grounds mentioned in the proviso, that is to say, likelihood of the juvenile on release being likely to be brought in association with any known criminal or in consequence of being released exposure of the juvenile to moral, physical or psychological danger. It can be equally refused on the ground that releasing a juvenile, that includes a juvenile below 16 years would "defeat the ends of justice." In the opinion of this Court the words "defeat the ends of justice" employed in the proviso to Section 12 of the Act postulate as one of the relevant consideration, the nature and gravity of the offence though not the only consideration in applying the aforesaid part of the disentitling legislative edict. Other factors such

> as the specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child would also be relevant that are spoken of under Section 18 of the Act.
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> **31.** In this context Section 12 and 18 and also Section15 (Section 15 not relevant in the case of a child below 16 years) and other relevant provisions all of which find place in Chapter IV of the Act are part of an integrated scheme. The power to grant bail to a juvenile under Section 12(1) cannot be exercised divorced from the other provisions or as the learned counsel for the revisionist argues on the other specific disentitling provisions in the grounds mentioned in the proviso to Section 12(1) of the Act. The submission made based on the rule of ejusdem generis urged by the learned counsel for the revisionist is misplaced, in the opinion of this Court."

14. In the context of the aforesaid decision in **Mangesh Rajbhar** *(supra)* I have held in **Raju *alias* Ashish** *(supra)* :

> **11.** Going by the aforesaid principle it cannot be said that bail to a juvenile can be denied on the first two grounds mentioned in the proviso alone or that the 3rdground that speaks about the result of release being to defeat the ends of justice would have no reference to the nature and gravity of the offence. Its impact on the society certainly deserves some consideration of the prosecution case prima facie. Of course, other facts such as specific need for supervision or intervention or circumstances brought out in the social investigation report and past conduct of the child would also be relevant that find mention in Section 18 of the Act.
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> **12.** The facts of the case in hand show that it is a case where the revisionist along with co-accused to begin with indulged in an act of eve teasing followed by molestation of one of the victims who was a minor girl, and, when her brother came to her rescue they engaged in an altercation with him, and then, pushed both the brother and the sister into a well. The entire act in itself about which there is prima facie good evidence and a deeper finding not warranted, is an act that shakes the conscience of the society. The offence is heinous. It is a double murder preceded by molestation of a young girl. It precisely falls, in the opinion of the court, into that category of cases where if, release on

bail were to be ordered, it would defeat the ends of justice.

15. An overall look on the circumstances of the case brings to mind the fact that the occurrence, in which the revisionist was involved, was not of an ordinary kind. Not only the spontaneous elimination of eight policemen in action and six others left injured, is a horrendous crime that shocks the conscience of the society, but also an act that strikes at the roots of the State's authority in its territory. It speaks about the unfathomable extent of the lack of fear of the State in the minds of those who conceived and executed the dastardly act. *Prima facie*, if not at the center stage of this diabolical act, certainly as an important player, the revisionist seems to have actively participated. In the circumstances, permitting the revisionist to walk out free on bail would shake the law abiding citizens' faith in the rule of law and the State's authority. If that were to be done, it would certainly defeat the ends of justice.

16. This Court, therefore, finds the revisionist disentitled to bail under all the three exceptions to the rule, envisaged under the proviso to Section 12(1) of the Act of 2015.

17. It is, however, clarified that the remarks here are confined to judging the revisionist's bail plea and should, in no way, be understood or construed as comments on the merits of the case, that is to be judged at the trial.

18. In the result, this criminal revisions **fails** and stands ***dismissed***.

19. Let this order be communicated to the Children's Court, Kanpur Dehat concerned as well as the Juvenile Justice Board, Kanpur Dehat, through the learned Sessions Judge, Kanpur Dehat, by the Registrar (Compliance).

Order Date :- July the 16th, 2021
I. Batabyal