Date of Order or Proceding	Order Sheet [Contd.] Order or Proceeding with signature of Presiding Officer	Signature of Parties or Pleaders where is necessary
21-02-2025	राज्य द्वारा श्री राजेन्द्र साहू लोक अभियोजक । अभियुक्तगण मनोज शर्मा, सुनील कुमार सिंह, वासन सेट्टी वेंकटेश, अनिरुद्ध तोमर एवं आलोक शर्मा अनुपस्थित द्वारा श्री अशोक तिवारी अधिवक्ता । अभियुक्तगण अनुप महापात्रे, विरल मेहता एवं दीपक नारंग अनुपस्थित द्वारा श्री राम नारायण राठौर अधिवक्ता । अभियुक्तगण वू० चुनान, लियु गैक्सन एवं वांग वेगिंग अनुपस्थित द्वारा श्री कमलेश साहू अधिवक्ता । अभियुक्तगण एम०एम० अली, राजेश कुमार गोस्वामी अनुपस्थित द्वारा सुश्री प्रियंका अग्रवाल अधिवक्ता । अभियुक्त उपेन्द्र मण्डल मृत (आदेश दिनांक 26-04-2011 अनुसार) । अभियुक्तगण शक्तिपाल, संजय देव एवं विकास भारती पूर्व से फरार घोषित । **01-** अनुपस्थित अभियुक्तगण मनोज शर्मा, सुनील कुमार सिंह, वासन सेट्टी वेंकटेश, अनिरुद्ध तोमर एवं आलोक शर्मा की तरफ से उनके अधिवक्ता द्वारा व्यक्तिगत हाजरी माफी हेतु आवेदन इस आधार पर पेश किया गया है कि ट्रेन में आरक्षण नहीं मिलने के कारण न्यायालय में उपस्थित होने में असमर्थ हैं । **02-** अनुपस्थित अभियुक्तगण एम०एम०अली एवं राजेश कुमार गोस्वामी की व्यक्तिगत हाजिरी माफी हेतु आवेदन इस आधार पर पेश किया गया है कि अभियुक्त एम०एम०अली की पुत्री का जन्म से ही दिव्यांग है जिसके देखभाल के अभियुक्त का उपस्थित रहना आवश्यक है एवं अभियुक्त राजेश गोस्वामी वल्लभगढ़ हरियाणा का निवासी है तथा ट्रेन में रिजर्वेशन नहीं मिलने के कारण न्यायालय में उपस्थित होने में असमर्थ हैं । **03-** अनुपस्थित अभियुक्तगण अनुप महापात्रे, विरल मेहता तथा दीपक नारंग की ओर से व्यक्तिगत हाजिरी माफी हेतु आवेदन इस आधार पर पेश किया गया है कि अनुप महापात्रे रायगढ़ में पदस्थ होने के कारण आने में असमर्थ है । विरल मेहता गुजरात में पदस्थ है तथा दीपक नारंग गुरुग्राम हरियाणा में निवासरत है एवं रेल आरक्षण नहीं मिलने के कारण उपस्थित होने में असमर्थ हैं ।	

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04- अनुपस्थित अभियुक्तगत वू चुनान, लियु गैक्सन एवं वांग वेगिंग द्वारा व्यक्तिगत हाजिरी माफी हेतु आवेदन इस आधार पर पेश किया गया है कि चीन के निवासी है एवं वू चूनान तथा वांग वेकिंग बीमार होने के कारण उपस्थित होने में असमर्थ हैं ।

05- अनुपस्थित अभियुक्तगण द्वारा प्रस्तुत उपयुक्त आवेदन न्यायहित में स्वीकार किए गए तथा उनकी अनुपस्थिति को क्षमा किया गया ।

06- प्रकरण आज आवेदन IA क्रमांक 01/2025 अंतर्गत धारा 319 दं०प्र०सं० एवं आवेदन IA क्रमांक 02/2025 पर आदेश हेतु नियत है ।

आवेदन IA क्रमांक 01/2025 अंतर्गत धारा 319 दं०प्र०सं० पर आदेश

07- अभियोजन द्वारा प्रस्तुत उक्त आवेदन अंतर्गत धारा 319 में यह निवेदन किया गया है कि इस प्रकरण में बालकों प्लांट निर्माणाधीन में चिमनी के गिरने से लगभग 40 लोगों की मृत्यु हुई एवं अन्य अनेक लोग घायल हुये हैं । प्रकरण की विवेचक द्वारा अभियोग पत्र अंतर्गत धारा 173 द0प्र0सं0 में स्पष्ट उल्लेख किया गया है कि इस दुर्घटना में निम्न कंपनियों के अधिकारियों की गलती थी-

1. Bharat Aluminium Company Limited (BALCO) Aluminium Sadan, Core 6, Scope Complex, 7 Lodhi Road, New Delhi, 110003, India.

2- SEPCO Electric Power Construction Corporation India (SEPCO) Shree Ram Bhavan, 2nd Floor, 772, Tilak Road, Opp. BEST Office, Dadar, Mumbai, Maharashtra – 400014.

3- Gannon Dunkerley and Company Limited (GDCL) New Excelsior Building, 3rd Floor, A.K. Nayak Marg, Fort, Mumbai – 400001,

4- Bureau Veritas India Private Limited (BVIL), 72, Business Park, Ground Floor, Marol Industrial Area, MIDC Cross Road 'C', Andheri (East), Mumbai, Maharashtra – 400093.

5- Development Consultants Private Limited (DCPL), 24 Park Street,

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Kolkata, West Bengal – 700016.

08- आवेदन में यह भी निवेदन किया गया है कि विवेचक द्वारा न्यायालय में मुख्य परीक्षण में ऐसे ही कथन किया गया है परन्तु विवेचक द्वारा अज्ञात कारण से उपरोक्त कारण से उक्त कंपनियों को अभियुक्त नहीं बनाया गया है । यदि कंपनी के अधिकारियों की गलती के कारण दुर्घटना होती है तो उस कंपनी की जिम्मेदारी होती है एवं वह कंपनी भी अभियुक्त होती है । अन्त में निवेदन किया गया है कि उपरोक्त कंपनियों को प्रकरण में अभियुक्त के रूप में जोड़ा बनाया जाये।

09- अभियुक्तगण विरल मेहता इत्यादि द्वारा प्रस्तुत जवाब में लेख किया गया है कि बालको कंपनी को चालान अंतर्गत धारा 173 द०प्र०सं० में अभियुक्त नहीं बनाया गया है । किसी भी अभियोजन साक्षी द्वारा बालको कंपनी के दोष के बारे में कथन नहीं किया गया है । बालको कंपनी के विरूद्ध प्रथम दृष्टया कोई प्रकरण नहीं बनता है । बालको कंपनी द्वारा चिमनी का निर्माण नहीं किया जा रहा था एवं उसके लिये उन्होंने सेपको कपंनी को ई०पी०सी० अनुबंध के अंतर्गत ठेका दिया था । उनके द्वारा आवेदन को निरस्त किये जाने का निवेदन किया गया ।

10- अभियुक्तगण मनोज शर्मा इत्यादि द्वारा प्रस्तुत जवाब में लेख किया गया है कि आवेदन आधारहीन एवं विधि विरूद्ध है । विविचेक द्वारा अत्यंत गैर जिम्मेदाराना एवं आधारहीन कथन किया गया है । अभियोजन द्वारा 14-15 वर्ष पश्चात दूर्भावनापूर्वक आवेदन प्रस्तुत किया गया है । उनके द्वारा आवेदन को निरस्त किये जाने का निवेदन किया गया ।

11- अभियुक्तगण यू-चुनान इत्यादि द्वारा अपने जवाब में लेख किया गया है कि दिनांक 23-9-2009 को अत्याधिक तेज हवा, बारिश एवं आकाशीय बिजली के कारण चिमनी ढह गई, उसमें किसी का दोष नहीं है । आवेदन आधारहीन है । उनके द्वारा आवेदन को निरस्त किये जाने का निवेदन किया गया ।

12- अभियोजन की ओर से विद्वान लोक अभियोजक द्वारा आवेदन के

अनुसार तर्क किया गया । उनका तर्क है कि औद्योगिक दुर्घटना में कंपनी अपनी जिम्मेदारी एवं जवाबदेही से नहीं बच सकती है । आवेदन में उल्लेखित चिमनी के निर्माण कार्य में संलग्न सभी कंपनियॉं दुर्घटना के लिये उत्तरदायी एवं दोषी है । उनके द्वारा माननीय उच्चतम न्यायलय द्वारा पारित न्याय दृष्टांत Standard Chartered Bank v. Directorate of Enforcement, (2005) 4 SCC 530 एवं Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609 एवं Sushil Ansal v. State, (2014) 6 SCC 173 एवं Bholu Ram v. State of Punjab, (2008) 9 SCC 140 एवं Sarojben Ashwinkumar Shah v. State of Gujarat, (2011) 13 SCC 316 एवं State of Haryana v. Ram Mehar, (2016) 8 SCC 762 का उद्धरण दिया ।

13- अभियुक्तगण के अधिवक्तागण द्वारा अपने-अपने जवाब के अनुसार तर्क किया गया कि आवेदन आधारहीन है । कंपनियों के विरूद्ध कोई प्रथम दृष्टया साक्ष्य नहीं है । विवेचक द्वारा उक्त कंपनियों को अभियुक्त नहीं बनाया गया है एवं न्यायालय में आधारहीन कथन किया गया है । अभियुक्तगण की ओर से श्री अभिषेक सिन्हा वरिष्ठ अधिवक्ता द्वारा माननीय उच्चतम न्यायलय द्वारा पारित न्याय दृष्टांत Juhru v. Karim, (2023) 5 SCC 406 एवं Sukhpal Singh Khaira v. State of Punjab, (2023) 1 SCC 289 एवं Babubhai Bhimabhai Bokhiria v. State of Gujarat, (2014) 5 SCC 568 एवं Saeeda Khatoon Arshi v. State of U.P. (2020) 2 SCC 323 एवं Shishupal Singh v. State of U.P., (2019) 8 SCC 682 का उद्धरण दिया गया ।

14- माननीय उच्चतम न्यायालय द्वारा न्यायदृष्टांत Standard Chartered Bank v. Directorate of Enforcement, (2005) 4 SCC 530 में निम्नानुसार अभिनिर्धारित किया गया है:-

> 6. There is no dispute that a company is liable to be prosecuted and punished for criminal offences . Although there are earlier authorities to the effect that corporations cannot commit a crime,

the generally accepted modern rule is that except for such crimes as a corporation is held incapable of committing by reason of the fact that they involve personal malicious intent, a corporation may be subject to indictment or other criminal process, although the criminal act is committed through its agents.

7. As in the case of torts, the general rule prevails that the corporation may be criminally liable for the acts of an officer or agent, assumed to be done by him when exercising authorised powers, and without proof that his act was expressly authorised or approved by the corporation. In the statutes defining crimes, the prohibition is frequently directed against any "person" who commits the prohibited act, and in many statutes the term "person" is defined. Even if the person is not specifically defined, it necessarily includes a corporation. It is usually construed to include a corporation so as to bring it within the prohibition of the statute and subject it to punishment. In most of the statutes, the word "person" is defined to include a corporation. In Section 11 of the Penal Code, 1860, "person" is defined thus:

"11. The word 'person' includes any company or association or body of persons, whether incorporated or not."

Therefore, as regards corporate criminal liability, there is no doubt that a corporation or company could be prosecuted for any offence punishable under law, whether it is coming under the strict liability or under absolute liability.

15- माननीय उच्चतम न्यायालय द्वारा न्यायादृष्टांत Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609 **में निम्नानुसार अभिनिर्धारित किया गया है:-**

38. First case which needs to be discussed is *Iridium India* [*Iridium India Telecom Ltd.* v. *Motorola Inc.*, (2011) 1 SCC 74 : (2010) 3 SCC (Cri) 1201] . Before we discuss the facts of this case, it would be relevant to point out that the question as to whether a company could be prosecuted for an offence which

requires mens rea had been earlier referred to in a Constitution Bench of five Judges in *Standard Chartered Bank* v. *Directorate of Enforcement* [(2005) 4 SCC 530 : 2005 SCC (Cri) 961] . The Constitution Bench had held that a company can be prosecuted and convicted for an offence which requires a minimum sentence of imprisonment. In para 8 of the judgment, the Constitution Bench clarified that the Bench is not expressing any opinion on the question whether a corporation could be attributed with requisite mens rea to prove the guilt. Para 8 reads as under : (SCC p. 542)

"*8*. ... It is only in a case requiring mens rea, a question arises whether a corporation could be attributed with requisite mens rea to prove the guilt. But as we are not concerned with this question in these proceedings, we do not express any opinion on that issue."

39. In *Iridium India* [*Iridium India Telecom Ltd.* v. *Motorola Inc.*, (2011) 1 SCC 74 : (2010) 3 SCC (Cri) 1201] , the aforesaid question fell directly for consideration, namely, whether a company could be prosecuted for an offence which requires mens rea and discussed this aspect at length, taking note of the law that prevails in America and England on this issue. For our benefit, we will reproduce paras 59-64 herein : (SCC pp. 98-100)

"*59*. The courts in England have emphatically rejected the notion that a body corporate could not commit a criminal offence which was an outcome of an act of will needing a particular state of mind. The aforesaid notion has been rejected by adopting the doctrine of attribution and imputation. In other words, the criminal intent of the **'alter ego'** of the company/body corporate i.e. the person or group of persons that guide the business of the company, would be imputed to the corporation.

60. It may be appropriate at this stage to notice the observations

made by MacNaghten, J. in *Director of Public Prosecutions* v. *Kent and Sussex Contractors Ltd.* [1944 KB 146 : (1944) 1 All ER 119 (DC)] : (KB p. 156)

A body corporate is a "person" to whom, amongst the various attributes it may have, there should be imputed the attribute of a mind capable of knowing and forming an intention—indeed it is much too late in the day to suggest the contrary. It can only know or form an intention through its human agents, but circumstances may be such that the knowledge of the agent must be imputed to the body corporate. Counsel for the respondents says that, although a body corporate may be capable of having an intention, it is not capable of having a criminal intention. In this particular case the intention was the intention to deceive. If, as in this case, the responsible agent of a body corporate puts forward a document knowing it to be false and intending that it should deceive, I apprehend, according to the authorities that Viscount Caldecote, L.C.J., has cited, his knowledge and intention must be imputed to the body corporate.

61. The principle has been reiterated by Lord Denning in *Bolton (H.L.)(Engg.) Co. Ltd.* v. *T.J. Graham & Sons Ltd.* [(1957) 1 QB 159 : (1956) 3 WLR 804 : (1956) 3 All ER 624 (CA)] in the following words : (QB p. 172)

A company may in many ways be likened to a human body. They have a brain and a nerve centre which controls what they do. They also have hands which hold the tools and act in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are Directors and managers who represent the directing mind and will of the company, and control what they do. The state of mind of these managers is the state of mind of the

company and is treated by the law as such. So you will find that in cases where the law requires personal fault as a condition of liability in tort, the fault of the manager will be the personal fault of the company. That is made clear in Lord Haldane's speech in *Lennard's Carrying Co. Ltd.* v. *Asiatic Petroleum Co. Ltd.* [1915 AC 705 : (1914-15) All ER Rep 280 (HL)] (AC at pp. 713 & 714). So also in the criminal law, in cases where the law requires a guilty mind as a condition of a criminal offence, the guilty mind of the Directors or the managers will render the company themselves guilty.

62. The aforesaid principle has been firmly established in England since the decision of the House of Lords in *Tesco Supermarkets Ltd.* v. *Nattrass* [1972 AC 153 : (1971) 2 WLR 1166 : (1971) 2 All ER 127 (HL)] . In stating the principle of corporate liability for criminal offences, Lord Reid made the following statement of law : (AC p. 170 E-G)

'I must start by considering the nature of the personality which by a fiction the law attributes to a corporation. A living person has a mind which can have knowledge or intention or be negligent and he has hands to carry out his intentions. A corporation has none of these : it must act through living persons, though not always one or the same person. Then the person who acts is not speaking or acting for the company. He is acting as the company and his mind which directs his acts is the mind of the company. There is no question of the company being vicariously liable. He is not acting as a servant, representative, agent or delegate. He is an embodiment of the company or, one could say, he hears and speaks through the persona of the company, within his appropriate sphere, and his mind is the mind of the company. If it is a guilty mind then that guilt is the guilt of the company. It must be a question of law whether, once the facts have been ascertained, a

person in doing particular things is to be regarded as the company or merely as the company's servant or agent. In that case any liability of the company can only be a statutory or vicarious liability.'

63. From the above it becomes evident that a corporation is virtually in the same position as any individual and may be convicted of common law as well as statutory offences including those requiring mens rea. The criminal liability of a corporation would arise when an offence is committed in relation to the business of the corporation by a person or body of persons in control of its affairs. In such circumstances, it would be necessary to ascertain that the degree and control of the person or body of persons is so intense that a corporation may be said to think and act through the person or the body of persons. The position of law on this issue in Canada is almost the same. Mens rea is attributed to corporations on the principle of 'alter ego' of the company.

64. So far as India is concerned, the legal position has been clearly stated by the Constitution Bench judgment of this Court in *Standard Chartered Bank* v. *Directorate of Enforcement* [(2005) 4 SCC 530 : 2005 SCC (Cri) 961] . On a detailed consideration of the entire body of case laws in this country as well as other jurisdictions, it has been observed as follows : (SCC p. 541, para 6)

'*6*. There is no dispute that a company is liable to be prosecuted and punished for criminal offences. Although there are earlier authorities to the effect that corporations cannot commit a crime, the generally accepted modern rule is that except for such crimes as a corporation is held incapable of committing by reason of the fact that they involve personal malicious intent, a corporation may be subject to indictment or other criminal process, although the

criminal act is committed through its agents.'"

40. It is abundantly clear from the above that the principle which is laid down is to the effect that the **criminal intent of the "alter ego" of the company,** that is the personal group of persons that guide the business of the company, would be imputed to the company/corporation. The legal proposition that is laid down in the aforesaid judgment in *Iridium India case* [*Iridium India Telecom Ltd.* v. *Motorola Inc.*, (2011) 1 SCC 74 : (2010) 3 SCC (Cri) 1201] is that if the person or group of persons who control the affairs of the company commit an offence with a criminal intent, their criminality can be imputed to the company as well as they are "alter ego" of the company.

50. Person who has not joined as accused in the charge-sheet can be summoned at the stage of taking cognizance under Section 190 of the Code. There is no question of applicability of Section 319 of the Code at this stage (see *SWIL Ltd.* v. *State of Delhi* [(2001) 6 SCC 670 : 2001 SCC (Cri) 1205]). It is also trite that even if a person is not named as an accused by the police in the final report submitted, the court would be justified in taking cognizance of the offence and to summon the accused if it feels that the evidence and material collected during investigation justifies prosecution of the accused (see *Union of India* v. *Prakash P. Hinduja* [(2003) 6 SCC 195 : 2003 SCC (Cri) 1314]). Thus, the Magistrate is empowered to issue process against some other person, who has not been charge-sheeted, but there has to be sufficient material in the police report showing his involvement. In that case, the Magistrate is empowered to ignore the conclusion arrived at by the investigating officer and apply his mind independently on the facts emerging from the investigation and take cognizance of the case. At the same time, it is not permissible at this stage to consider any material other than that

collected by the investigating officer.

16- माननीय उच्चतम न्यायालय द्वारा न्यायादृष्टांत, Sushil Ansal v. State, (2014) 6 SCC 173 **में निम्नानुसार अभिनिर्धारित किया गया है:-**

59. The expression "negligence" has also not been defined in the Penal Code, but, that has not deterred the courts from giving what has been widely acknowledged as a reasonably acceptable meaning to the term.

60. We may before referring to the judicial pronouncements on the subject refer to the dictionary meaning of the term "negligence". *Black's Law Dictionary* defines negligence as under:

"*(1)* The failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally, wantonly, or willfully disregardful of other's rights."

63.*Law of Torts by Rattanlal & Dhirajlal*, explains negligence in the following words:

"Negligence is the breach of a duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. Actionable negligence consists in the neglect of the use of ordinary care or skill towards a person to whom the defendant owes the duty of observing ordinary care and skill, by which neglect the plaintiff has suffered injury to his person or property. According to Winfield, "negligence as a tort is the breach of a legal duty to take care which results in damage, undesired by the defendant to the plaintiff".

The definition involves three constituents of negligence : *(1)* A legal duty to exercise due care on the part of the party complained of towards the party complaining the former's conduct

within the scope of the duty; (*2*) Breach of the said duty; and (*3*) Consequential damage. Cause of action for negligence arises only when damage occurs for damage is a necessary ingredient of this tort. But as damage may occur before it is discovered : it is the occurrence of damage which is the starting point of the cause of action."

The above was approved by this Court in *Jacob Mathew* v. *State of Punjab* [*Jacob Mathew* v. *State of Punjab*, (2005) 6 SCC 1 : 2005 SCC (Cri) 1369] .

64. The duty to care in cases whether civil or criminal including injury **arising out of use of buildings** is examined by courts, vis-à-vis occupiers of such buildings. In *Palsgraf* v. *Long Island Railroad Co.* [248 NY 339 : 162 NE 99 (1928)] , Cardozo, J. explained the orbit of the duty to care of an occupier as under:

"If no hazard was apparent to the eye of ordinary vigilance, an act innocent and harmless, at least to outward seeming with reference to her, did not take to itself the quality of a tort because it happened to be a wrong, though apparently not one involving the risk of bodily insecurity, with reference to someone else... Even then, the orbit of the danger as disclosed to the eye of reasonable vigilance would be the orbit of the duty."

65. To the same effect is the decision in *Hartwell* v. *Grayson, Rollo and Clover Docks Ltd.* [*Hartwell* v. *Grayson, Rollo and Clover Docks Ltd.*, 1947 KB 901 (CA)] where **the duty of an occupier who invites people to a premises, to take reasonable care that the place does not contain any danger** or to inform those coming to the premises of the hidden dangers, if any, was explained thus : (KB p. 913)

"... In my opinion the true view is that when a person invites another to a place where they both have business, the invitation creates a duty on the part of the inviter to take reasonable care

that the place does not contain or to give warning of hidden dangers, no matter whether the place belongs to the inviter or is in his exclusive occupation."

69. In **Dabwali Fire Tragedy Victims Assn. v. Union of India [ILR (2010) 1 P&H 368]** to which one of us (Thakur, J.) was a party, the High Court of Punjab and Haryana **held that both the School, as well as the owners of a premises on which the school function was held, were liable as occupiers for the tragic death of 406 persons**, most of them children, caused by a fire which broke out on the premises during the function. In dealing with the question whether the owners of the premises, Rajiv Marriage Palace, being agents of the School could be held accountable, the High Court held as follows:

"... The School ought to have known that in a function which is open to general public, a pandal with a capacity of 500 to 600 persons spread over no more than an area measuring 100′ × 70′, a gathering of 1200 to 1500 persons could result in a stampede and expose to harm everyone participating in the function especially the children who were otherwise incapable of taking care of their safety. The School ought to have known that the availability of only one exit gate from the Marriage Palace and one from the pandal would prove insufficient in the event of any untoward incident taking place in the course of function. The School ought to have taken care to restrict the number of invitees to what could be reasonably accommodated instead of allowing all and sundry to attend and in the process increase the chances of a stampede. The School ought to have seen that sufficient circulation space in and around the seating area was provided so that the people could quickly move out of the place in case the need so arose. Suffice it to say that a reasonably prudent school management organising an annual function could and indeed was

duty-bound to take care and ensure that no harm came to anyone who attended the function whether as an invitee or otherwise, by taking appropriate steps to provide for safety measures like fire-fighting arrangements, exit points, space for circulation, crowd control and the like. And that obligation remained unmitigated regardless whether the function was held within the school premises or at another place chosen by the management of the School, because the children continued to be under the care of the School and so did the obligation of the School to prevent any harm coming to them. The principle of proximity creating an obligation for the School qua its students and invitees to the function would make the School liable for any negligence in either the choice of the venue of the function or the degree of care that ought to have been taken to prevent any harm coming to those who had come to watch and/or participate in the event. Even the test of foreseeability of the harm must be held to have been satisfied from the point of view of an ordinary and reasonably prudent person. That is because a reasonably prudent person could foresee danger to those attending a function in a place big enough to accommodate only 500 to 600 people but stretched beyond its capacity to accommodate double that number. It could also be foreseen that there was hardly any space for circulation within the pandal. In the event of any mishap, a stampede was inevitable in which women and children who were attending in large numbers would be the worst sufferers as indeed they turned out to be. Loose electric connections, crude lighting arrangements and an electric load heavier than what the entire system was geared to take was a recipe for a human tragedy to occur. Absence of any fire-extinguishing arrangements within the pandal and a single exit from the pandal hardly enough for the people to run out in the event of fire could have put any prudent person

handling such an event to serious thought about the safety of those attending the functioning especially the small children who had been brought to the venue in large numbers...."

109. In *Bhalchandra* v. *State of Maharashtra* [*Bhalchandra* v. *State of Maharashtra*, AIR 1968 SC 1319 : (1968) 3 SCR 766 : 1968 Cri LJ 1501] , this Court was dealing with a case in which an explosion in a factory manufacturing crackers had caused the death of some of the workers and injured others. The findings recorded by the courts below was that the accused had in their possession unauthorised explosives in contravention of the Act and the Rules and had committed several breaches of those Rules and the conditions of the licence issued to them. Relying upon the decisions of this Court in *Kurban Hussein case* [*Kurban Hussein Mohamedalli Rangawalla* v. *State of Maharashtra*, AIR 1965 SC 1616 : (1965) 2 Cri LJ 550 : (1965) 2 SCR 622] and *Suleman Rahiman Mulani case* [*Suleman Rahiman Mulani* v. *State of Maharashtra*, AIR 1968 SC 829 : 1968 Cri LJ 1013] , it was contended that mere violation of the Rules or terms of a licence would not make the accused liable for any punitive action against them. The decisions of this Court in *Kurban Hussein* [*Kurban Hussein Mohamedalli Rangawalla* v. *State of Maharashtra*, AIR 1965 SC 1616 : (1965) 2 Cri LJ 550 : (1965) 2 SCR 622] and *Suleman Rahiman Mulani* [*Suleman Rahiman Mulani* v. *State of Maharashtra*, AIR 1968 SC 829 : 1968 Cri LJ 1013] cases were distinguished by this Court and the conviction of the accused under Section 304-A IPC upheld in the following words : (*Bhalchandra case* [*Bhalchandra* v. *State of Maharashtra*, AIR 1968 SC 1319 : (1968) 3 SCR 766 : 1968 Cri LJ 1501] , AIR pp. 1321-22, paras 6-8)

"*6.* The facts of the present case are somewhat different and distinguishable from those of the above two cases as will be clear

from a close examination of the material evidence relating to the substances which were being used in the manufacture of the fireworks, etc. in the factory of the appellants.

7. ... Although there was no direct evidence of the immediate cause of the explosion but indisputably the explosives the possession of which was prohibited under the notifications issued under the Act were found in the shops or the premises where the appellants carried on their business and the substances that have been mentioned which were of a highly hazardous and dangerous nature were apparently being used in the manufacture of the fireworks since they were found at the scene of the explosion (vide the evidence mentioned before and the finding of the trial court and the Additional Sessions Judge). As stated by Dindeshchandra PW 10 these explosives had sensitive compositions and even friction or percussion could cause explosion. It is further proved that in the factory itself where the explosion took place the persons who were employed were mostly women who brought their small children with them and young children below the age of 18 had been employed in the manufacture of the fireworks, etc. The factory was situate in close proximity to residential quarters. It became therefore all the more incumbent on the appellants to have completely avoided the use of highly sensitive compositions of the nature mentioned above.

17- माननीय उच्चतम न्यायालय द्वारा न्यायादृष्टांत, Bholu Ram v. State of Punjab, (2008) 9 SCC 140 **में निम्नानुसार अभिनिर्धारित किया गया है:-**

20. Section 319 of the Code empowers a court to proceed against any person not shown to be an accused if it appears from the *evidence* that such person has also committed an offence for which he can be tried together with the accused. Section 319 of the Code reads thus:

"319. *Power to proceed against other persons appearing to be guilty of offence*.—(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused had committed any offence for which such person could be tried together with the accused, the court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the court he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the court although not under arrest or upon a summons, may be detailed by such court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the court proceeds against any person under sub-section (1) then—

(*a*) the proceedings in respect of such person shall be commenced afresh, and witnesses reheard;

(*b*) subject to the provisions of clause (*a*), the case may proceed as if such person had been an accused person when the court took cognizance of the offence upon which the inquiry or trial was commenced."

22. It is also settled law that power under Section 319 can be exercised either on an application made to the court or by the court suo motu. It is in the discretion of the court to take an action under the said section and the court is expected to exercise the discretion judicially and judiciously having regard to the facts and circumstances of each case.

21. Sometimes a Magistrate while hearing a case against one or more accused finds from the *evidence* that some person other than the accused before him is also involved in that very offence.

It is only proper that a Magistrate should have power to summon by joining such person as an accused in the case. The primary object underlying Section 319 is that the whole case against all the accused should be tried and disposed of not only expeditiously but also simultaneously. Justice and convenience both require that cognizance against the newly added accused should be taken in the same case and in the same manner as against the original accused. The power must be regarded and conceded as incidental and ancillary to the main power to take cognizance as part of normal process in the administration of criminal justice.

18- माननीय उच्चतम न्यायालय द्वारा न्यायादृष्टांत Sarojben Ashwinkumar Shah v. State of Gujarat, **(2011) 13** SCC **316 में निम्नानुसार अभिनिर्धारित किया गया है:-**

16. The legal position that can be culled out from the material provisions of Section **319** of the Code and the decided cases of this Court is this:

(i) The court can exercise the power conferred on it under Section **319** of the Code suo motu or on an application by someone.

(ii) The power conferred under Section **319(1)** applies to all courts including the Sessions Court.

(iii) The phrase "any person not being the accused" occurring in Section **319** does not exclude from its operation an accused who has been released by the police under Section **169** of the Code and has been shown in Column **2** of the charge-sheet. In other words, the said expression covers any person who is not being tried already by the court and would include person or persons who have been dropped by the police during investigation but against whom evidence showing their involvement in the offence comes before the court.

(iv) The power to proceed against any person, not being the accused before the court, must be exercised only where there

appears during inquiry or trial sufficient evidence indicating his involvement in the offence as an accused and not otherwise. The word "evidence" in Section 319 contemplates the evidence of witnesses given in court in the inquiry or trial. The court cannot add persons as accused on the basis of materials available in the charge-sheet or the case diary but must be based on the evidence adduced before it. In other words, the court must be satisfied that a case for addition of persons as accused, not being the accused before it, has been made out on the additional evidence let in before it.

(v) The power conferred upon the court is although discretionary but is not to be exercised in a routine manner. In a sense, it is an extraordinary power which should be used very sparingly and only if evidence has come on record which sufficiently establishes that the other person has committed an offence. A mere doubt about involvement of the other person on the basis of the evidence let in before the court is not enough. The court must also be satisfied that circumstances justify and warrant that the other person be tried with the already arraigned accused.

(vi) The court while exercising its power under Section 319 of the Code must keep in view full conspectus of the case including the stage at which the trial has proceeded already and the quantum of evidence collected till then.

(vii) Regard must also be had by the court to the constraints imposed in Section 319(4) that proceedings in respect of newly added persons shall be commenced afresh from the beginning of the trial.

(viii) The court must, therefore, appropriately consider the above aspects and then exercise its judicial discretion.

19- माननीय उच्चतम न्यायालय द्वारा न्यायादृष्टांत, State of Haryana v. Ram Mehar, (2016) 8 SCC 762 में निम्नानुसार अभिनिर्धारित किया गया

Date of Order or Proceeding	Order Sheet [Contd.] Order or Proceeding with signature of Presiding Officer	Signature of Parties or Pleaders where is necessary

है:-

19. A three-Judge Bench speaking through Krishna Iyer, J. in *Maneka Sanjay Gandhi* v. *Rani Jethmalani* [*Maneka Sanjay Gandhi* v. *Rani Jethmalani*, (1979) 4 SCC 167 : 1979 SCC (Cri) 934] , though in a different context, observed : (SCC p. 169, para 2)

"*2*. Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperilling, from the point of view of public justice and its attendant environment, is necessitous if the court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the petitioner's grounds on this touchstone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate when the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances."

The aforesaid principle has been stated in the context of transfer of a case but the Court has laid emphasis on assurance of fair trial. It is worthy to note that in the said case, the Court declined to transfer the case and directed the Magistrate to take measures to enforce conditions where the court functions free and fair and agitational or muscle tactics yield no dividends. However, liberty was granted to the appellant therein to renew prayer under Section 406 CrPC. Stress was laid on tranquil court justice. It was also observed that when the said concept becomes a casualty there is collapse of our constitutional order.

20. In *Ram Chander* v. *State of Haryana* [*Ram Chander* v. *State of Haryana*, (1981) 3 SCC 191 : 1981 SCC (Cri) 683] , while speaking about the presiding Judge in a criminal trial, Chinnappa Reddy, J. observed that if a criminal court is to be an effective instrument in dispensing justice, the presiding Judge must cease to be a spectator and a mere recording machine. He must become a participant in the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth. The learned Judge reproduced a passage from *Sessions Judge, Nellore* v. *Insha Ramana Reddy* [*Sessions Judge, Nellore* v. *Insha Ramana Reddy*, 1972 Cri LJ 1485 : 1971 SCC OnLine AP 84] which reads as follows : (*Ram Chander case* [*Ram Chander* v. *State of Haryana*, (1981) 3 SCC 191 : 1981 SCC (Cri) 683] , SCC p. 193, para 2)

"*2*. ... '*2*. ... Every criminal trial is a voyage of discovery in which truth is the quest. It is the duty of a presiding Judge to explore every avenue open to him in order to discover the truth and to advance the cause of justice. For that purpose he is expressly invested by Section 165 of the Evidence Act with the right to put questions to witnesses. Indeed the right given to a Judge is so wide that he may ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact, relevant or irrelevant. Section 172(2) of the Code of Criminal Procedure enables the court to send for the police diaries in a case and use them to aid it in the trial. The record of the proceedings of the Committing Magistrate may also be perused by the Sessions Judge to further aid him in the trial.' (*Insha Ramana Reddy case* [*Sessions Judge, Nellore* v. *Insha Ramana Reddy*, 1972 Cri LJ 1485 : 1971 SCC OnLine AP 84] , SCC OnLine AP para 2)"

While saying so, it has been further held that the Court may actively participate in the trial to elicit the truth and to protect the

weak and the innocent and it must, of course, not assume the role of a prosecutor in putting questions.

21. In *Rattiram* v. *State of M.P.* [*Rattiram* v. *State of M.P.*, (2012) 4 SCC 516 : (2012) 2 SCC (Cri) 481] speaking on fair trial the Court opined that : (SCC p. 534, para 39)

"*39*. ... Fundamentally, a fair and impartial trial has a sacrosanct purpose. It has a demonstrable object that the accused should not be prejudiced. A fair trial is required to be conducted in such a manner which would totally ostracise injustice, prejudice, dishonesty and favouritism."

In the said case, it has further been held : (SCC pp. 541-42, paras 60-62 & 64)

"*60*. While delineating on the facets of speedy trial, it cannot be regarded as an exclusive right of the accused. **The right of a victim has been given recognition** in *Mangal Singh* v. *Kishan Singh* [*Mangal Singh* v. *Kishan Singh*, (2009) 17 SCC 303 : (2011) 1 SCC (Cri) 1019] wherein it has been observed thus : (SCC p. 307, para 14)

'*14*. ... Any inordinate delay in conclusion of a criminal trial undoubtedly has a highly deleterious effect on the society generally, and particularly on the two sides of the case. *But it will be a grave mistake to assume that delay in trial does not cause acute suffering and anguish to the victim of the offence.* **In many cases the victim may suffer even more than the accused. There is, therefore, no reason to give all the benefits on account of the delay in trial to the accused and to completely deny all justice to the victim of the offence.'**

61. It is worth noting that the Constitution Bench in *Iqbal Singh Marwah* v. *Meenakshi Marwah* [*Iqbal Singh Marwah* v. *Meenakshi Marwah*, (2005) 4 SCC 370 : 2005 SCC (Cri) 1101] (SCC p. 387, para 24) though in a different context, had also observed that

delay in the prosecution of a guilty person comes to his advantage as witnesses become reluctant to give evidence and the evidence gets lost.

62. We have referred to the aforesaid authorities to illumine and elucidate that the delay in conclusion of trial has a direct nexus with the collective cry of the society and the anguish and agony of an accused (*quaere* a victim). Decidedly, there has to be a fair trial and no miscarriage of justice and under no circumstances, prejudice should be caused to the accused but, a pregnant one, every procedural lapse or every interdict that has been acceded to and not objected at the appropriate stage would not get the trial dented or make it unfair. Treating it to be unfair would amount to an undesirable state of pink of perfection in procedure. An absolute apple-pie order in carrying out the adjective law, would only be sound and fury signifying nothing.

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64. Be it noted, one cannot afford to treat the victim as an alien or a total stranger to the criminal trial. The criminal jurisprudence, with the passage of time, has laid emphasis on victimology which fundamentally is a perception of a trial from the viewpoint of the criminal as well as the victim. Both are viewed in the social context. The view of the victim is given due regard and respect in certain countries. In respect of certain offences in our existing criminal jurisprudence, the testimony of the victim is given paramount importance. Sometimes it is perceived that it is the duty of the court to see that the victim's right is protected. A direction for retrial is to put the clock back and it would be a travesty of justice to so direct if the trial really has not been unfair and there has been no miscarriage of justice or failure of justice."

(emphasis in original)

22. In *J. Jayalalithaa* v. *State of Karnataka* [*J. Jayalalithaa* v. *State of Karnataka*, (2014) 2 SCC 401 : (2014) 1 SCC (Cri) 824] it has been ruled that : (SCC p. 414, para 28)

"*28*. Fair trial is the main object of criminal procedure and such fairness should not be hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society. Thus, fair trial must be accorded to every accused in the spirit of the right to life and personal liberty and the accused must get a free and fair, just and reasonable trial on the charge imputed in a criminal case. Any breach or violation of public rights and duties adversely affects the community as a whole and it becomes harmful to the society in general."

It has further been observed that : (SCC p. 414, para 28)

"*28*. ... In all circumstances, the courts have a duty to maintain public confidence in the administration of justice and such duty is to vindicate and uphold the "majesty of the law" and the courts cannot turn a blind eye to vexatious or oppressive conduct that occurs in relation to criminal proceedings."

Further, the Court has observed : (SCC pp. 414-15, para 29)

"*29*. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. It necessarily requires a trial before an impartial Judge, a fair prosecutor and an atmosphere of judicial calm. Since the object of the trial is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities and must be conducted under such rules as will protect the innocent and punish the guilty. Justice should not only be done but should be seem to have been done. Therefore, free and fair trial is a sine qua non of Article 21 of the Constitution. Right to get a fair trial is not only a basic fundamental right but a human right also. Therefore, any hindrance in a fair trial could be violative of Article

14 of the Constitution. "No trial can be allowed to prolong indefinitely due to the lethargy of the prosecuting agency or the State machinery and that is the raison d'être in prescribing the time-frame" for conclusion of the trial."

23. In *Bablu Kumar* v. *State of Bihar* [*Bablu Kumar* v. *State of Bihar*, (2015) 8 SCC 787 : (2015) 3 SCC (Cri) 862] the Court referred to the authorities in *Manu Sharma* v. *State (NCT of Delhi)* [*Manu Sharma* v. *State (NCT of Delhi)*, (2010) 6 SCC 1 : (2010) 2 SCC (Cri) 1385] , *Rattiram* [*Rattiram* v. *State of M.P.*, (2012) 4 SCC 516 : (2012) 2 SCC (Cri) 481] , *J. Jayalalithaa* [*J. Jayalalithaa* v. *State of Karnataka*, (2014) 2 SCC 401 : (2014) 1 SCC (Cri) 824] , *State of Karnataka* v. *K. Yarappa Reddy* [*State of Karnataka* v. *K. Yarappa Reddy*, (1999) 8 SCC 715 : 2000 SCC (Cri) 61] and other decisions and came to hold that : (*Bablu Kumar case* [*Bablu Kumar* v. *State of Bihar*, (2015) 8 SCC 787 : (2015) 3 SCC (Cri) 862] , SCC p. 798, para 22)

"*22.* Keeping in view the concept of fair trial, the obligation of the prosecution, the interest of the community and the duty of the court, it can irrefragably be stated that the court cannot be a silent spectator or a mute observer when it presides over a trial. It is the duty of the court to see that neither the prosecution nor the accused play truancy with the criminal trial or corrode the sanctity of the proceeding. They cannot expropriate or hijack the community interest by conducting themselves in such a manner as a consequence of which the trial becomes a farcical one."

It has been further stated that : (SCC p. 798, para 22)

"*22.* ... The law does not countenance a "mock trial". It is a serious concern of society. Every member of the collective has an inherent interest in such a trial. No one can be allowed to create a dent in the same. The court is duty-bound to see that neither the prosecution nor the defence takes unnecessary adjournments

and take the trial under their control."

We may note with profit though the context was different, yet the message is writ large. The message is—all kinds of individual notions of fair trial have no room.

24. The decisions of this Court when analysed appositely clearly convey that the concept of the fair trial is not in the realm of abstraction. It is not a vague idea. It is a concrete phenomenon. It is not rigid and there cannot be any straitjacket formula for applying the same. On occasions it has the necessary flexibility. Therefore, it cannot be attributed or clothed with any kind of rigidity or flexibility in its application. It is because fair trial in its ambit requires fairness to the accused, the victim and the collective at large. Neither the accused nor the prosecution nor the victim which is a part of the society can claim absolute predominance over the other. Once absolute predominance is recognised, it will have the effect potentiality to bring in an anarchical disorder in the conducting of trial defying established legal norm. There should be passion for doing justice but it must be commanded by reasons and not propelled by any kind of vague instigation. It would be dependent on the fact situation; established norms and recognised principles and eventual appreciation of the factual scenario in entirety. There may be cases which may command compartmentalisation but it cannot be stated to be an inflexible rule. Each and every irregularity cannot be imported to the arena of fair trial. There may be situations where injustice to the victim may play a pivotal role. The centripodal purpose is to see that injustice is avoided when the trial is conducted. Simultaneously the concept of fair trial cannot be allowed to such an extent so that the systemic order of conducting a trial in accordance with CrPC or other enactments get mortgaged to the whims and fancies of the defence or the prosecution. The

command of the Code cannot be thrown to winds. In such situation, as has been laid down in many an authority, the courts have significantly an eminent role. A plea of fairness cannot be utilised to build castles in Spain or permitted to perceive a bright moon in a sunny afternoon. It cannot be acquiesced to create an organic disorder in the system. It cannot be acceded to manure a fertile mind to usher in the nemesis of the concept of trial as such.

20- माननीय उच्चतम न्यायालय द्वारा न्यायादृष्टांत **Juhru v. Karim, (2023) 5 SCC 406** में निम्नानुसार अभिनिर्धारित किया गया है:-

16. It is, thus, manifested from a conjoint reading of the cited decisions that power of summoning under Section 319CrPC is not to be exercised routinely and the existence of more than a prima facie case is sine qua non to summon an additional accused. We may hasten to add that with a view to prevent the frequent misuse of power to summon additional accused under Section 319CrPC, and in conformity with the binding judicial dictums referred to above, the procedural safeguard can be that ordinarily the summoning of a person at the very threshold of the trial may be discouraged and the trial court must evaluate the evidence against the persons sought to be summoned and then adjudge whether such material, more or less, carry the same weightage and value as has been testified against those who are already facing trial. In the absence of any credible evidence, the power under Section 319CrPC ought not to be invoked.

21- माननीय उच्चतम न्यायालय द्वारा न्यायादृष्टांत **Babubhai Bhimabhai Bokhiria v. State of Gujarat, (2014) 5 SCC 568** में निम्नानुसार अभिनिर्धारित किया गया है:-

7. Before we proceed to deal with the evidence against the appellant and address whether in light of the evidence available, power under Section 319 of the Code was validly exercised, it would be expedient to understand the position of law in this regard. The issue regarding the scope and extent of powers of the court to arraign any person as an accused during the course of inquiry or trial in exercise of power under Section 319 of the Code has been set at rest by a Constitution Bench of this Court in *Hardeep Singh* v. *State of Punjab* [(2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86 : (2014) 1 Scale 241] . On a review of the authorities, this Court summarised the legal position in the following words: (SCC p. 138, paras 105-06)

"*105*. Power under Section 319 CrPC is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

106. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC."

8. Section 319 of the Code confers power on the trial court to find out whether a person who ought to have been added as an accused has erroneously been omitted or has deliberately been excluded by the investigating agency and that satisfaction has to be arrived at on the basis of the evidence so led during the trial. On the degree of satisfaction for invoking power under Section 319 of the Code, this Court observed that though the test of prima facie case being made out is same as that when the cognizance of the offence is taken and process issued, the degree of satisfaction under Section 319 of the Code is much higher.

22- माननीय उच्चतम न्यायालय द्वारा न्यायादृष्टांत ***Saeeda Khatoon Arshi v. State of U.P.***, (2020) 2 SCC 323 में निम्नानुसार अभिनिर्धारित किया गया है:-

18. The decision of the Constitution Bench of this Court in *Hardeep Singh* [*Hardeep Singh* v. *State of Punjab*, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] lays down the principles governing the exercise of the jurisdiction under Section 319. Observing that "it is the duty of the court to do justice by punishing the real culprit", the Court observed : (SCC p. 114, para 13)

"*13.* ... Where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial."

19. Expounding upon this duty, the Constitution Bench held : (*Hardeep Singh* [*Hardeep Singh* v. *State of Punjab*, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] , SCC pp. 115-16, paras 18-19)

"*18.* The legislature cannot be presumed to have imagined all the circumstances and, therefore, it is the duty of the court to give full effect to the words used by the legislature so as to encompass any situation which the court may have to tackle while proceeding to try an offence and not allow a person who deserves

to be tried to go scot-free by being not arraigned in the trial in spite of the possibility of his complicity which can be gathered from the documents presented by the prosecution.

19. The court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence."

20. As regards the satisfaction of the court before it exercises the power under Section 319, the Constitution Bench held : (*Hardeep Singh case* [*Hardeep Singh* v. *State of Punjab*, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] , SCC p. 138, paras 105-06)

"*105.* Power under Section 319 CrPC is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. *Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner*.

106. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, *it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of*

satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC. In Section 319 CrPC the purpose of providing if "it appears from the evidence that any person not being the accused has committed any offence" is clear from the words "*for which such person could be tried together with the accused*". The words used are not "for which such person could be convicted". *There is, therefore, no scope for the court acting under Section 319 CrPC to form any opinion as to the guilt of the accused*." (emphasis supplied)

23- माननीय उच्चतम न्यायालय द्वारा न्यायादृष्टांत ***Shishupal Singh v. State of U.P.*, (2019) 8 SCC 682** में निम्नानुसार अभिनिर्धारित किया गया है:-

7. On hearing the learned counsel for the parties, we are of the view that there is a non-appreciation of the legal principles by both the courts below despite the same being referred to. The legal principle on this behalf has been enunciated in the judgment of this Court in *Brijendra Singh* v. *State of Rajasthan* [*Brijendra Singh* v. *State of Rajasthan*, (2017) 7 SCC 706 : (2017) 4 SCC (Cri) 144] following the Constitution Bench judgment in *Hardeep Singh* v. *State of Punjab* [*Hardeep Singh* v. *State of Punjab*, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] . It would suffice to reproduce para 13 as under : (*Brijendra Singh case* [*Brijendra Singh* v. *State of Rajasthan*, (2017) 7 SCC 706 : (2017) 4 SCC (Cri) 144] , SCC pp. 714-15)

"*13*. In order to answer the question, some of the principles enunciated in *Hardeep Singh case* [*Hardeep Singh* v. *State of Punjab*, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] may be recapitulated : power under Section 319 CrPC can be exercised by

the trial court at any stage during the trial i.e. before the conclusion of trial, to summon any person as an accused and face the trial in the ongoing case, once the trial court finds that there is some "*evidence*" against such a person on the basis of which evidence it can be gathered that he appears to be guilty of the offence. The "*evidence*" herein means the material that is brought before the court during trial. Insofar as the material/evidence collected by the IO at the stage of inquiry is concerned, it can be utilised for corroboration and to support the evidence recorded by the court to invoke the power under Section 319 CrPC. No doubt, such evidence that has surfaced in examination-in-chief, without cross-examination of witnesses, can also be taken into consideration. However, since it is a discretionary power given to the court under Section 319 CrPC and is also an extraordinary one, same has to be exercised sparingly and only in those cases where the circumstances of the case so warrant. The degree of satisfaction is more than the degree which is warranted at the time of framing of the charges against others in respect of whom charge-sheet was filed. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised. It is not to be exercised in a casual or a cavalier manner. The *prima facie* opinion which is to be formed requires stronger evidence than mere probability of his complicity."

(emphasis in original)

24- माननीय उच्चतम न्यायालय द्वारा न्यायादृष्टांत ***Sukhpal Singh Khaira v. State of Punjab*, (2023) 1 SCC 289** में निम्नानुसार अभिनिर्धारित किया गया है:-

39.(I) Whether the trial court has the power under Section 319CrPC for summoning additional accused when the trial with

respect to other co-accused has ended and the judgment of conviction rendered on the same date before pronouncing the summoning order ?

The power under Section 319CrPC is to be invoked and exercised before the pronouncement of the order of sentence where there is a judgment of conviction of the accused. In the case of acquittal, the power should be exercised before the order of acquittal is pronounced. Hence, the summoning order has to precede the conclusion of trial by imposition of sentence in the case of conviction. If the order is passed on the same day, it will have to be examined on the facts and circumstances of each case and if such summoning order is passed either after the order of acquittal or imposing sentence in the case of conviction, the same will not be sustainable.

40.(II) Whether the trial court has the power under Section 319CrPC for summoning additional accused when the trial in respect of certain other absconding accused (whose presence is subsequently secured) is ongoing/pending, having been bifurcated from the main trial?

The trial court has the power to summon additional accused when the trial is proceeded in respect of the absconding accused after securing his presence, subject to the evidence recorded in the split-up (bifurcated) trial pointing to the involvement of the accused sought to be summoned. But the evidence recorded in the main concluded trial cannot be the basis of the summoning order if such power has not been exercised in the main trial till its conclusion.

41.(III) What are the guidelines that the competent court must follow while exercising power under Section 319CrPC?

41.1. If the competent court finds evidence or if application under Section 319CrPC is filed regarding involvement of any other person

in committing the offence based on evidence recorded at any stage in the trial before passing of the order on acquittal or sentence, it shall pause the trial at that stage.

41.2. The court shall thereupon first decide the need or otherwise to summon the additional accused and pass orders thereon.

41.3. If the decision of the court is to exercise the power under Section 319CrPC and summon the accused, such summoning order shall be passed before proceeding further with the trial in the main case.

41.4. If the summoning order of additional accused is passed, depending on the stage at which it is passed, the court shall also apply its mind to the fact as to whether such summoned accused is to be tried along with the other accused or separately.

41.5. If the decision is for joint trial, the fresh trial shall be commenced only after securing the presence of the summoned accused.

41.6. If the decision is that the summoned accused can be tried separately, on such order being made, there will be no impediment for the court to continue and conclude the trial against the accused who were being proceeded with.

41.7. If the proceeding paused as in para 41.1 above, is in a case where the accused who were tried are to be acquitted, and the decision is that the summoned accused can be tried afresh separately, there will be no impediment to pass the judgment of acquittal in the main case.

41.8. If the power is not invoked or exercised in the main trial till its conclusion and if there is a split-up (bifurcated) case, the power under Section 319CrPC can be invoked or exercised only if there is evidence to that effect, pointing to the involvement of the additional accused to be summoned in the split-up (bifurcated) trial.

41.9. If, after arguments are heard and the case is reserved for judgment the occasion arises for the Court to invoke and exercise the power under Section 319CrPC, the appropriate course for the court is to set it down for re-hearing.

41.10. On setting it down for re-hearing, the above laid down procedure to decide about summoning; holding of joint trial or otherwise shall be decided and proceeded with accordingly.

41.11. Even in such a case, at that stage, if the decision is to summon additional accused and hold a joint trial the trial shall be conducted afresh and *de novo* proceedings be held.

41.12. If, in that circumstance, the decision is to hold a separate trial in case of the summoned accused as indicated earlier:

(*a*) The main case may be decided by pronouncing the conviction and sentence and then proceed afresh against summoned accused.

(*b*) In the case of acquittal the order shall be passed to that effect in the main case and then proceed afresh against summoned accused.

25- माननीय उच्चतम न्यायालय द्वारा न्यायादृष्टांत Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 में निम्नानुसार अभिनिर्धारित किया गया है:-

12. Section 319 CrPC springs out of the doctrine *judex damnatur cum nocens absolvitur* (Judge is condemned when guilty is acquitted) and this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 CrPC.

13. It is the duty of the court to do justice by punishing the real culprit. Where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial. The question

remains under what circumstances and at what stage should the court exercise its power as contemplated in Section 319 CrPC?

17. Section 319 CrPC allows the court to proceed against any person who is not an accused in a case before it. Thus, the person against whom summons are issued in exercise of such powers, has to necessarily not be an accused already facing trial. He can either be a person named in Column 2 of the charge-sheet filed under Section 173 CrPC or a person whose name has been disclosed in any material before the court that is to be considered for the purpose of trying the offence, but not investigated. He has to be a person whose complicity may be indicated and connected with the commission of the offence.

19. The court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence.

57. Thus, the application of the provisions of Section 319 CrPC, at the stage of inquiry is to be understood in its correct perspective. The power under Section 319 CrPC can be exercised only on the basis of the evidence adduced before the court during a trial. So far as its application during the course of inquiry is concerned, it remains limited as referred to hereinabove, adding a person as an accused, whose name has been mentioned in Column 2 of the charge-sheet or any other person who might be an accomplice.

38. In view of the above, the law can be summarised to the effect that as "trial" means determination of issues adjudging the

guilt or the innocence of a person, the person has to be aware of what is the case against him and it is only at the stage of framing of the charges that the court informs him of the same, the "trial" commences only on charges being framed. Thus, we do not approve the view taken by the courts that in a criminal case, trial commences on cognizance being taken.

55. Accordingly, we hold that the court can exercise the power under Section 319 CrPC only after the trial proceeds and commences with the recording of the evidence and also in exceptional circumstances as explained hereinabove.

92. Thus, in view of the above, we hold that power under Section 319 CrPC can be exercised at the stage of completion of examination-in-chief and the court does not need to wait till the said evidence is tested on cross-examination for it is the satisfaction of the court which can be gathered from the reasons recorded by the court, in respect of complicity of some other person(s), not facing the trial in the offence.

26- माननीय उच्चतम न्यायालय द्वारा न्यायादृष्टांत **Yashodhan Singh v. State of U.P. (2023) 9 SCC 108** में निम्नानुसार अभिनिर्धारित किया गया है:-

40. Thus, the contention that a summoned person must be given an opportunity of being heard before being added as an accused to face the trial is clearly not contemplated under Section 319CrPC. It is also observed by this Court in *Hardeep Singh* [*Hardeep Singh* v. *State of Punjab*, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] that such a summoned person can assail a summoning order before a superior Court and will also have the right of cross-examining the witnesses as well as can let in his defence evidence, if any.

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41. Thus, the lateral entry of a person summoned in exercise of power under Section 319CrPC is only to face the trial along with other accused. This, being a salutary provision in order to meet the ends of justice, the same cannot be diluted by importing within the scope of Section 319CrPC principles of natural justice which in any case would be followed during the trial.

42. It is well settled that principles of natural justice cannot be applied in straitjacket formula and they would depend upon the facts of each case and the object and purpose to be achieved under a provision of law.

43. In view of the aforesaid discussion, we do not think that the judgment in *Jogendra Yadav* [*Jogendra Yadav* v. *State of Bihar*, (2015) 9 SCC 244 : (2015) 3 SCC (Cri) 756] calls for any re-consideration and the said observation in para 9 thereof as extracted supra is relatable only to the facts of the said case. Thus, the principle of hearing a person who is summoned cannot be read into Section 319CrPC. Such a procedure is not at all contemplated therein. In the circumstances, we do not accept the contentions of the appellants herein.

27- माननीय उच्चतम न्यायालय द्वारा न्याय दृष्टांत *Ram Chander* v. *State of Haryana*, (1981) 3 SCC 191 में यह अभिव्यक्त किया गया है कि आपराधिक विचारण का उददेश्य सत्य की खोज है । यदि कंपनियों के अधिकारीगण प्राथमिक अभियुक्तगण हैं तो माननीय उच्चतम न्यायालय द्वारा पारित न्याय दृष्टांत Standard Chartered Bank v. Directorate of Enforcement, (2005) 4 SCC 530 के अनुसार कि अपकृत्यों के मामले में, कंपनियॉं अपने अधिकारियों एवं कर्मचारियों के आपराधिक कार्यों के लिए आपराधिक रूप से उत्तरदायी हैं ।

28- इस प्रकरण में विवेचक द्वारा अंतिम प्रतिवेदन अंतर्गत धारा 173 दं०प्र०सं० दिनांक 03-01-2010 में स्पष्ट रुप से उल्लेख किया गया है कि

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चिमनी का निर्माण BALCO कंपनी के स्वामित्व वाले परिसर में हो रहा था जिसका ठेका बालको कंपनी द्वारा SEPCO कंपनी को दिया गया था तथा सेप्को कंपनी द्वारा चिमनी का उप ठेका GDCL कंपनी को दिया गया था । BALCO कंपनी द्वारा कार्य के प्रभावी सुपरविजन एवं गुणवत्ता, सुरक्षा कार्य पैरामीटर्स, ड्राइंग, डिजाईन, चेकिंग के लिए बालको ने BVIL कंपनी एवं DCPL कंपनी को ऑनर्स थर्ड पार्टी इस्पेक्शन एजेंसी एवं ऑनर्स इंजीनियर्स के रुप में नियुक्त किया । विवेचना के दौरान यह तथ्य पूर्ण रुपेण सामने आये कि चिमनी निर्माण के कार्य को पूर्णतः, गुणवत्ता नियंत्रण को दरकिनार कर सब स्टैड्ड क्वालिटी के मटेरियल का इस्तेमाल किया जाकर, किया जा रहा था, एवं तकनीक संबंधी पैरामीटर्स को ताक पर रख दिया गया था और यह सभी कार्य जीडीसीएल, सेपाको तथा बालको के जो लोग जो इस प्रोजेक्ट से जुड़े हुये थे एवं जिनके द्वारा यह घटिया निर्माण कार्य किया एवं कराया जा रहा था, यह तथ्य उनके पूरे ज्ञान में था कि इस तरह से कार्य एवं गुणवत्ता एवं तकनीकी खामी किया एवं कराया जा रहा था, यह तथ्य उनके पूरे ज्ञान में था कि इस तरह से कार्य गुणवत्ता एवं तकनीकी खामी किये जाने से यह बडा एवं भारी निर्माण कभी भी गिर सकता है और इसके कारण जानमाल की भारी क्षति हो सकती है, और अंततः जिसके गिरने से 40 निर्दोष लोग काल कलवित हो गये ।

29- प्रकरण का विवेचक निरीक्षक विवेक शर्मा अ०सा०-46 के रुप में न्यायालय में उपस्थित हुआ है । उसके द्वारा ऐसा ही कथन न्यायालय के समक्ष अपने मुख्य परीक्षण की कंडिका 169 से 173 में तथा तत्पश्चात् न्यायालय द्वारा पूछे गए पश्नों के उत्तर में दिया गया है ।

30- न्यायालय द्वारा पूछे गए प्रश्नों के उत्तर में विवेचक द्वारा यह कथन किया गया है कि निर्माणाधिन/दुर्घटनाग्रस्त चिमनी वाला बालको का परिसर नगर निगम कोरबा के क्षेत्राधिकार में आता था । चिमनी दिनांक 23-09-2009 को दुर्घटनाग्रस्त हुई थी एवं बालको कंपनी द्वारा लगभग 06 माह पहले इसका निर्माण कार्य शुरु किया गया था । दुर्घटना के समय चिमनी की

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ऊंचाई लगभग 250 मीटर पहुंच गई थी एवं चिमनी कई किलोमीटर से दिखाई देती थी । चिमनी का निर्माण प्रारंभ करने से पूर्व बालको कंपनी द्वारा कोरबा नगर निगम एवं Town & Country Planning Department से उक्त निर्माण की अप्रुवल/अनुमति नही ली गई थी । उसका यह भी कथन है कि उसको यह जानकारी नहीं है कि बालको कंपनी द्वारा चिमनी का निर्माण प्रारंभ करने से पूर्व छत्तीसगढ़ भूमि विकास नियम 1984 के नियम 14 के अंतर्गत जिला कलेक्टर की अध्यक्षता में गठित अनुमोदन समिति से 'HIGH RISE BUILDING' /ऊचें भवन के निर्माण हेतु अप्रुवल/अनुमति नहीं ली गई थी अथवा नहीं ।

31- न्यायालय द्वारा पूछे गए प्रश्नों के उत्तर में विवेचक द्वारा यह भी कथन किया गया है कि बालको कंपनी द्वारा उसके समक्ष किसी भी प्रकार के अप्रुवल/अनुमति के दस्तावेज पेश नहीं किये गये थे । बालको कंपनी, सेप्को कंपनी, GDCL कंपनी, BVIL कंपनी एवं DCPL द्वारा चिमनी के निर्माणकार्य में तय मानको का पालन नहीं किया गया । चिमनी के निर्माण में बालको कंपनी, सेप्को कंपनी एवं जी०डी०सी०एल० कंपनी द्वारा नियमों का उल्लंघन किया गया एवं लापरवाही की गई । न्यायालय द्वारा पूछे जाने पर उसके द्वारा कथन किया गया कि उसको नहीं पता है कि दुर्घटनाग्रस्त चिमनी के निर्माण कार्य की अवधि में बालको कंपनी, सेप्को कंपनी, GDCL कंपनी, BVIL कंपनी एवं DCPL कंपनी के चेयरमेन, मैनेजिंग डायरेक्टर, महाप्रबंधक एवं CEO कौन-कौन थे ।

32- यह निंविवादित है कि बालको कंपनी द्वारा अपने परिसर में चिमनी का निर्माण कार्य सेप्को कंपनी एवं GDCL कंपनी के माध्यम से करवाया जा रहा था एवं BALCO कंपनी द्वारा BVIL कंपनी एवं DCPL कंपनी को उक्त निर्माण कार्य के प्रभावी सुपरविजन एवं गुणवत्ता, सुरक्षा कार्य पैरामीटर्स, ड्राइंग, डिजाईन, चेकिंग के लिए नियुक्त किया गया था । इस प्रकार इस निर्माण कार्य में बालको कंपनी, सेप्को कंपनी, GDCL कंपनी, BVIL कंपनी एवं DCPL कंपनी एवं उनके अधिकारियों एवं कर्मचारियों की सक्रिय भागीदारी थी।

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33- विवेचक के कथनानुसार दुर्घटनाग्रस्त चिमनी का निर्माण कार्य लगभग छः माह से किया जा रहा था एवं दुर्घटना के समय चिमनी की उंचाई लगभग 250 मीटर अर्थात लगभग 65-70 मंजीला अवासीय बिल्डींग जितनी पहुंच गई थी, जिसके पश्चात चिमनी के ढहने से अनेक लोगों की मृत्यु हुई एवं अनेक लोग घायल हुए । विवेचक के कथनानुसार यह चिमनी कई किलोमीटर दूर से दिखाई दे रही थी ।

34- कोरबा नगर निगम, नगर एवं ग्राम नियोजन विभाग एवं छत्तीसगढ़ भूमि विकास नियम 1984 के नियम 14 के अंतर्गत जिला कलेक्टर की अध्यक्षता में गठित अनुमोदन समिति के अधिकारियों जैसे कि अग्निशमन विभाग, लोक निर्माण विभाग के अधिकारियों का भी यह कर्तव्य था कि अनुमति के बिना निर्माण नहीं होने दें । यदि कोई अवैध निर्माण किया जा रहा है तो उसे रोकने का कार्यवाही करें ।

35- यहॉं पर प्रश्न उठता है कि क्या कोरबा नगर निगम, नगर एवं ग्राम नियोजन विभाग कोरबा एवं छत्तीसगढ़ भूमि विकास नियम 1984 के नियम 14 के अंतर्गत गठित अनुमोदन समिति के तत्कालीन पदस्थ अधिकारियों यथा कलेक्टर कोरबा, पुलिस अधीक्षक कोरबा एवं नगर निगम कोरबा के कमिश्नर, जिला पंचायत कोरबा के कार्यपालक अधिकारी, लोक निर्माण के अभियंतओं, अग्निशमन विभाग कोरबा के अधिकारियों एवं अन्य अधिकारियों को यह निर्माण कार्य दिखाई नहीं दिया ? क्या चिमनी का निर्माण कार्य अवैध था ? क्या उक्त अधिकारियों द्वारा भारतीय दण्ड संहिता की धारा 32, 33 के अनुसार अपने राजकीय कर्तव्य का अवैध लोप किया गया ?

36- आश्चर्यजनक रूप से विवेचक द्वारा बालको कंपनी, सेप्को कंपनी, GDCL कंपनी, BVIL कंपनी एवं DCPL कंपनी को अभियुक्त नहीं बनाया गया है एवं उक्त कंपनियों के संचालन में सक्रिय रूप से कार्यरत वरिष्ठ अधिकारीगण जैसे कि चेयरमेन, मैनेजिंग डायरेक्टर, महाप्रबंधक एवं CEO इत्यादि के बारे में जानकारी एकत्रित नहीं की गई है एवं उनको अभियुक्त नहीं बनाया गया है ।

इसी प्रकार विवेचक द्वारा शासकीय अधिकारियों के विरूद्ध उनके अवैध लोप के संबंध में साक्ष्य संकलन नहीं किया गया है एवं उनको अभियुक्त नहीं बनाया गया है ।

37- आपराधिक न्याय का यह सिद्धांत है कि किसी निर्दोष को सजा नहीं होनी चाहिये एवं कोई भी दोषी व्यक्ति दण्ड से बचना नहीं चाहिये, जैसा कि पीडितो एवं समाज के अधिकारों के संबंध में माननीय उच्चतम न्यायालय द्वारा न्याय दृष्टांत State of Haryana v. Ram Mehar, (2016) 8 SCC 762 में अभिव्यक्त किया गया है । ऐसा प्रतीत होता है कि इस प्रकरण में गहन एवं सूक्ष्म जांच की आवश्यकता थी, क्योंकि यह एक ऐसी दुर्घटना है जिसने पूरे समाज एवं देश पर असर डाला है । इसके कारण पूरा समाज आहत हआ है । इसलिये मृतकों के आश्रितों एवं आहतों के अतिरिक्त पूरा समाज ही पीडित की श्रेणी में आता है । इसलिये न्यायालय का कर्तव्य है कि यदि विवेचना अधिकारी द्वारा सभी लोगों को अभियुक्त नहीं बनाया गया है तो जिन लोगों के विरूद्ध साक्ष्य उपलब्ध है उनको अतिरिक्त अभियुक्त बनाते हुये समाज के अधिकारो की रक्षा करें । <u>प्रकरण में अभी भी उपरोक्त कंडिका 35, 36 के संबंध में अतिरिक्त विवेचना की आवश्यकता है</u> । यह भी जांच का विषय है कि विवेचना अधिकारी द्वारा विवेचना में सभी आवश्यक अभियुक्तगण के विरूद्ध साक्ष्य संकलन क्यों नहीं किया गया एवं क्यों सभी को अभियुक्त नहीं बनाया। क्या विवेचना अधिकारी द्वारा विवेचना में लापरवाही की गई अथवा अज्ञानतावश कार्य किया गया अथवा उसके द्वारा भी अपने शासकीय कर्तव्य का अवैध लोप किया गया ।

38- यह एक औद्योगिक दुर्घटना थी । यहाँ पर Res Ipsa Loquitur का सिद्धांत लागू होता है जिसके अनुसार परिस्थितियाँ स्वयं बोलती हैं । यह सिद्धांत लापरवाही को अप्रत्यक्ष रूप से साबित करने की अनुमति देता है।

39- बालको कंपनी द्वारा चिमनी का निर्माण प्रारंभ करने से पूर्व कोरबा नगर निगम, Town & Country Planning Department से निर्माण हेतु अप्रुवल/अनुमति नहीं लिये जाने के कारण तथा विवेचक के समक्ष किसी भी

प्रकार की अप्रुवल/अनुमति से संबंधित दस्तावेज प्रस्तुत नहीं किये जाने के कारण प्रकरण में मजबूत साक्ष्य उपस्थित हैं कि चिमनी का निर्माण कार्य अवैध कृत्य था । प्रकरण में इस तथ्य के भी मजबूत साक्ष्य उपस्थित हैं कि चिमनी का निर्माण कार्य तय मानकों के उल्लंघन में एवं नियमों के विरूद्ध किया जा रहा था ।

40- इसलिये मेरे विचार में वतर्मान अभियुक्तगण के अतिरिक्त चिमनी के निर्माण कार्य में संलग्न BALCO कंपनी, SEPCO कंपनी, GDCL कंपनी, BVIL कंपनी एवं DCPL कंपनी एवं उक्त कंपनियों के संचालन में सक्रिय रूप से कार्यरत वरिष्ठ अधिकारीगण जैसे कि चेयरमेन, मैनेजिंग डायरेक्टर, महाप्रबंधक एवं CEO इत्यादि भी इस आपराधिक कृत्य के लिये उत्तरदायी हैं तथा विचारण के लिये आवश्यक अभियुक्त हैं ।

41- अतः इस प्रकरण के तथ्यों के एवं माननीय उच्चतम न्यायालय द्वारा पारित उपरोक्त न्यायदृष्टांतो के परिप्रेक्ष्य में अभियोजन द्वारा प्रस्तुत यह **आवेदन** IA **क्रमांक 01/2025 अंतर्गत धारा 319 दं०प्र०सं० स्वीकार किया जाता है तथा आदेशित किया जाता है कि** BALCO **कंपनी,** SEPCO **कंपनी,** GDCL **कंपनी,** BVIL **कंपनी एवं** DCPL **कंपनी को अभियुक्त के रूप में जोड़ा जाता है ।** उक्त कंपनियों के संचालन में सक्रिय रूप से कार्यरत वरिष्ठ अधिकारीगण जैसे कि चेयरमेन, मैनेजिंग डायरेक्टर, महाप्रबंधक एवं CEO इत्यादि के नाम पते की जानकारी नहीं होने के कारण उनको वर्तमान में अभियुक्त के रूप में नहीं जोड़ा जा रहा है ।

42- उक्त BALCO, SEPCO, GDCL, BVIL एवं DCPL कंपनियों की उनके अधिकृत अधिकारी के माध्यम से उपस्थिति हेतु समंस जारी किये जाये ।

<u>आवेदन IA क्रमांक 02/2025 अंतर्गत धारा 311 दं०प्र०सं० पर आदेश</u>

43- अभियोजन द्वारा प्रस्तुत उक्त आवेदन अंतर्गत धारा 311 में यह निवेदन किया गया है कि इस प्रकरण में बालकों प्लांट निर्माणाधीन में चिमनी के गिरने से लगभग 40 लोगों की मृत्यु हुई एवं अन्य अनेक लोग घायल हुये हैं।

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छ0ग0 राज्य द्वारा घटना की जॉच हेतु माननीय श्री संदीप बक्सी, जिला एवं सत्र न्यायाधीश रायपुर की अध्यक्षता में न्यायिक जॉच कमीशन संस्थित किया गया था। उक्त जॉच कमीशन द्वारा अपनी जॉच प्रतिवेदन दिनांक 09-08-2012 राज्य सरकार के समक्ष प्रस्तुत किया गया है । यह कि न्यायिक जॉच रिपोर्ट इस प्रकरण के फेयर ट्रायल के लिए अत्यंत उपयोगी साबित सिद्ध होगी । यह कि फेयर ट्रायल के लिये किसी ऐसे साक्षी को आहूत कर सकती है कि जिसके नाम पहले से साक्ष्य सूची में शामिल नहीं हो । आवेदन में उच्चतम न्यायालय द्वारा न्यायादृष्टांत, **Manju Devi v. State of Rajasthan, (2019) 6 SCC 203** का उद्धरण दिया गया है । अंत में निवेदन किया गया है कि छत्तीसगढ़ राज्य विधि विधायी विभाग से बक्सी कमीशन की रिपोर्ट एवं उसकी एक सत्यापित प्रति आहुत की जाये तथा उक्त रिपोर्ट को प्रमाणित करने के लिये माननीय श्री संदीप बक्षी रिटायर्ड जिला एवं सत्र न्यायाधीश को साक्ष्य हेतु आहूत किया जाये ।

44- अभियुक्तगण विरल मेहता इत्यादि की ओर से अपने जवाब में लेख किया गया है कि न्यायिक जॉच रिपोर्ट राज्य शासन के विचारण हेतु अनुशंसा है । वह आयोग का अभिमत है । उस जॉच रिपोर्ट का कोई साक्ष्यत्मक मूल्य नहीं है । जवाब में उच्चतम न्यायालय द्वारा पारित न्याय दृष्टांत- Kehar Singh v. State (Delhi Admn.), (1988) 3 SCC 609 का उद्धरण दिया गया है । जवाब में आवेदन को निरस्त किये जाने का निवेदन किया गया है । इसी प्रकार अन्य अभियुक्तगण द्वारा प्रस्तुत अपने अपने जवाब में आवेदन को निरस्त किये जाने का निवेदन किया गया है ।

45- उभय पक्ष के अधिवक्तागण द्वारा प्रस्तुत तर्क सुने गये । उनके द्वारा अपने आवेदन एवं अपने अपने जवाब के अनुसार तर्क प्रस्तुत किये गये ।

46- माननीय उच्चतम न्यायालय द्वारा न्यायादृष्टांत, **Manju Devi v. State of Rajasthan, (2019) 6 SCC 203** में निम्नानुसार अभिनिर्धारित किया गया है:-

10. It needs hardly any emphasis that the discretionary powers

like those under Section 311 CrPC are essentially intended to ensure that every necessary and appropriate measure is taken by the Court to keep the record straight and to clear any ambiguity insofar as the evidence is concerned as also to ensure that no prejudice is caused to anyone. The principles underlying Section 311 CrPC and amplitude of the powers of the court thereunder have been explained by this Court in several decisions [Vide *Mohanlal Shamji Soni* v. *Union of India*, 1991 Supp (1) SCC 271 : 1991 SCC (Cri) 595; *Zahira Habibulla H. Sheikh* v. *State of Gujarat*, (2004) 4 SCC 158 : 2004 SCC (Cri) 999; *Mina Lalita Baruwa* v. *State of Orissa*, (2013) 16 SCC 173 : (2014) 6 SCC (Cri) 218; *Rajaram Prasad Yadav* v. *State of Bihar*, (2013) 14 SCC 461 : (2014) 4 SCC (Cri) 256 and *Natasha Singh* v. *CBI*, (2013) 5 SCC 741 : (2013) 4 SCC (Cri) 828] . In *Natasha Singh* v. *CBI* [*Natasha Singh* v. *CBI*, (2013) 5 SCC 741 : (2013) 4 SCC (Cri) 828] , though the application for examination of witnesses was filed by the accused but, on the principles relating to the exercise of powers under Section 311, this Court observed, inter alia, as under: (SCC pp. 746 & 748-49, paras 8 &15)

"*8*. Section 311 CrPC empowers the court to summon a material witness, or to examine a person present at "any stage" of "any enquiry", or "trial", or "any other proceedings" under CrPC, or to summon any person as a witness, or to recall and re-examine any person who has already been examined *if his evidence appears to it, to be essential to the arrival of a just decision of the case*. Undoubtedly, CrPC has conferred a very wide discretionary power upon the court in this respect, but such a discretion is to be exercised judiciously and not arbitrarily. The power of the court in this context is very wide, and in exercise of the same, it may summon any person as a witness at any stage of the trial, or other proceedings. The court is competent to exercise such power

even suo motu if no such application has been filed by either of the parties. However, the court must satisfy itself, that it was in fact essential to examine such a witness, or to recall him for further examination in order to arrive at a just decision of the case.

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15. The scope and object of the provision is to enable the court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under Section 311 CrPC must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to *cause serious prejudice* to the defence of the accused, or to give an *unfair advantage to the opposite party*. Further, the additional evidence must not be received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal however, must be given to the other party. The power conferred under Section 311 CrPC must therefore, be invoked by the court only in order to meet the ends of justice, for strong and valid reasons, and the same must be exercised with great caution and circumspection. The very use of words such as "any court", "at any stage", or "or any enquiry, trial or other proceedings", "any person" and "any such person" clearly spells out that the provisions of this section have been expressed in the widest possible terms, and do not limit the discretion of the court in any way. There is thus no escape if the fresh evidence to be

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obtained is essential to the just decision of the case. The determinative factor should therefore be, whether the summoning/recalling of the said witness is in fact, essential to the just decision of the case."

(emphasis in original)

47- माननीय उच्चतम न्यायालय द्वारा पारित न्यायादृष्टांत Kehar Singh v. State (Delhi Admn.), (1988) 3 SCC 609 में निम्नानुसार अभिनिर्धारित किया गया है:-

44- The report of the Commission was also prayed for although learned Counsel not clearly suggest as to what use report of the Thakkar Commission could be to the accused in his defence. The report is a recommendation of the Commission for consideration of the government. It is the opinion of the Commission based on the statements of witnesses and other material. It has no evidentiary value in the trial of the criminal case. The courts below were also justified in not summoning the reports.

48- अतः इस प्रकरण के तथ्यों के एवं माननीय उच्चतम न्यायालय द्वारा पारित उपरोक्त न्यायदृष्टांत Kehar Singh के परिप्रेक्ष्य में अभियोजन द्वारा प्रस्तुत यह **आवेदन IA क्रमांक 02/2025 अंतर्गत धारा 311 दं०प्र०सं० निरस्त किया जाता है ।**

49- यह प्रकरण वर्ष 2009 की घटना से संबंधित है। इस प्रकार 15 वर्ष हो चुके हैं । माननीय छ०ग० उच्च न्यायालय द्वारा CRMP No. 2593/2024 में पारित आदेश दिनांक 25.09.2024 द्वारा छः माह में निराकृत करने का आदेश दिया गया है ।

50- प्रकरण BALCO, SEPCO, GDCL, BVIL एवं DCPL कंपनियों की उनके

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अधिकृत अधिकारी के माध्यम से उपस्थिति हेतु दिनांक 13-03-2025 के लिये नियत किया जाता है ।

JAIDEEP GARG Digitally signed by JAIDEEP GARG

(जयदीप गर्ग)

विशेष न्यायाधीश एस०सी०&एस०टी०

(पी०ए०)एक्ट जिला-कोरबा(छ०ग०)