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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ BAIL APPLN. 3089/2024, CRL.M.A. 25964/2024, CRL.M.A. 27750/2024, CRL.M.A. 27751/2024

PARVINDER SINGH

.....Petitioner

Through: Mr. Mohit Mathur, Sr. Adv. with
Mr. Amit Chadha, Mr. Kaushal Jeet
Kait, Mr. Daksh Gupta, Mr. Jatin
Yadav, Mr. Gaurav Dua, Mr. Harjas
Singh, Mr. Harsh Gautam, Mr.
Vignesh, Advs.

versus

CENTRAL BUREAU OF INVESTIGATION

.....Respondent

Through: Mr. Rajesh Kumar, SPP for the CBI
with Ms.Mishika Pandita with ASP
R.S. Solanki
Mr. Abhijit Anand, Mr.Rochak
Singla, Mr. Sahil Rejakhn, Advs.
for deceased victim father of Nevin
Dalvin.

+ BAIL APPLN. 3197/2024, CRL.M.A. 26700/2024

SARABJIT SINGH

.....Petitioner

Through: Mr. Mohit Mathur, Sr. Adv. with
Mr. Amit Chadha, Mr. Kaushal Jeet
Kait, Mr. Daksh Gupta, Mr. Jatin
Yadav, Mr. Gaurav Dua, Mr. Harjas
Singh, Mr. Harsh Gautam, Mr.
Vignesh, Advs.

versus

CENTRAL BUREAU OF INVESTIGATION

.....Respondent

Through: Mr. Rajesh Kumar, SPP for the CBI
with Ms.Mishika Pandita with ASP
R.S. Solanki



Mr. Abhijit Anand, Mr.Rochak Singla, Mr. Sahil Rejakhan, Advs.. for deceased victim father of Nevin Dalvin.

+ BAIL APPLN. 3198/2024, CRL.M.A. 26701/2024

TAJINDER SINGH AJMANI

.....Petitioner

Through: Mr. Mohit Mathur, Sr. Adv. with Mr. Amit Chadha, Mr. Kaushal Jeet Kait, Mr. Daksh Gupta, Mr. Jatin Yadav, Mr. Gaurav Dua, Mr. Harjas Singh, Mr. Harsh Gautam, Mr. Vignesh, Advs.

versus

CENTRAL BUREAU OF INVESTIGATION

.....Respondent

Through: Mr. Rajesh Kumar, SPP for the CBI Mr. Abhijit Anand, Mr.Rochak Singla, Mr. Sahil Rejakhan, Advs. for deceased victim father of Nevin Dalvin.

+ BAIL APPLN. 3201/2024, CRL.M.A. 26701/2024

HARVINDER SINGH

.....Petitioner

Through: Mr. Mohit Mathur, Sr. Adv. with Mr. Amit Chadha, Mr. Kaushal Jeet Kait, Mr. Daksh Gupta, Mr. Jatin Yadav, Mr. Gaurav Dua, Mr. Harjas Singh, Mr. Harsh Gautam, Mr. Vignesh, Advs.

versus

CENTRAL BUREAU OF INVESTIGATION

.....Respondent

Through: Mr. Rajesh Kumar, SPP for the CBI with Ms.Mishika Pandita with ASP R.S. Solanki



Mr. Abhijit Anand, Mr. Rochak Singla, Mr. Sahil Rejakhn, Advs. for deceased victim father of Nevin Dalvin.

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

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ORDER

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13.09.2024

CRL.M.A. 25964/2024 & CRL.M.A. 27750/2024 in BAIL APPLN. 3089/2024

CRL.M.A. 26700/2024 in BAIL APPLN. 3197/2024

CRL.M.A. 26701/2024 in BAIL APPLN. 3198/2024

CRL.M.A. 26701/2024 in BAIL APPLN. 3201/2024 (exemption)

Exemptions are allowed, subject to all just exceptions.

Applications stand disposed of.

BAIL APPLN. 3089/2024 with CRL.M.A. 27751/2024,



BAIL APPLN. 3197/2024,
BAIL APPLN. 3198/2024 &
BAIL APPLN. 3201/2024

A. FACTS

1. The present bail applications have been filed by the petitioners in case RC-8(S)/2024/CBI/SC.1/New Delhi registered under section 105/106(1)/115(2)/290/3(5) of Bharatiya Nyaya Sanhita, 2023 (BNSS) at PS Rajinder Nagar.
2. The facts in brief are that the present case RC-8(S)/2024/CBI/SC.1/New Delhi has been registered on 06.08.2024 under section 105, 106(1), 115(2), 290, 3(5) of BNS, 2023, against accused Abhishek Gupta by re-registering FIR No 151/2024 dated 28.07.2024 of PS Rajinder Nagar, New Delhi. This court in WP(C)10550/2024 and WP(C)13308/2023 vide order dated 02.08.2024 transferred the investigation of the case from Delhi Police to CBI to probe the incident of flooding in the basement of a coaching centre in Old Rajinder Nagar wherein three students lost their lives. This court also directed to probe the potential involvement of corruption or negligence/inaction by public servants or by any other persons punishable under Prevention of Corruption Act, 1988 or under other applicable laws and offences.
3. The investigation conducted by Delhi Police revealed that the coaching institute running by the name of RAU's IAS Study Circle is being run in a building which has basement, ground floor, first floor, second floor and third floor. RAU's IAS Study Circle was using all the floors for running the coaching institute. Pertinently the basement was being used



- for the purpose of library where students used to sit throughout the day for study as well as for giving the tests conducted by coaching institute.
4. On 27.07.2024 at about 6.30 p.m., whilst several students were studying in the library located in the basement of said Coaching Institute heavy rain fall was taking place outside. The rain water suddenly entered in the ground floor due to sudden fall of sliding gates of main building and subsequently entered into the basement resulting in flooding of the same. In the unfortunate incident event, though certain students survived but three students Shreya Yadav D/o Shri Rajendra Yadav , aged 22 yrs , Tanya Soni D/o Shri Vijay Kumar aged 21 yrs and Nevin Dalvin S/o Mr Dalvin Suresh aged 29 yrs lost their lives. The post mortem report revealed that cause of death was asphyxia due to ante mortem drowning.
 5. The petitioners had rented the basement floor to Shri Abhishek Kumar Gupta vide a Lease deed dated 05.01.2022 for 9 years at monthly rent of Rs. 4 Lakh. Allegedly, on 09.8.2021 MCD issued Completion Cum Occupancy certificate to the owners of the building wherein basement floor was shown as staircase, for parking use, household storage and car lift etc. The lease deed dated 05.01.2022 indicated the lessee intends to use the said property for the commercial purpose/for coaching institute only.
 6. The investigation revealed that Shri Kishore Singh Kushwah had addressed a complaint dated 26.06.2024 on CPGRAMS portal regarding classes being conducted illegally in the basement of Rau's IAS Study Circle without appropriate permits. It was pointed that it may cause major accident. However, no action was taken till



17.07.2024. In the meanwhile, the coaching centre along with basement was inspected on 01.07.2024 and fire clearance certificate was issued on 09.07.2024 wherein it was mentioned that building comprised of Basement (Storage), Stilt Ground + 3 upper floors have complied with the fire prevention and fire safety requirements and building is fit for Educational Coaching Centre.

7. The investigation also revealed that on 04.08.2023 Deputy Commissioner, MCD, Karol Bagh Zone issued a show-cause notice under Section 345 (A) read with Section 347 of DMC Act 1957 to owner / occupier of RAU's IAS Study Circle, property no. 11-B, Basement, FG, FF, SF, TF, Old Rajinder Nagar, New Delhi, for the premises being used to the contrary to the sanctioned use/ contrary to the provision of the MPD -2021. The role of the Delhi Fire Service and MCD officials are still being probed by the CBI. The CBI after taking over the investigation has conducted inspection of scene of Crime with the help of experts from CFSL, New Delhi. The investigation has revealed criminal negligence/ role of officials of various departments for violation/deviation from approved site/building plan and quid pro-quo among them are yet to be investigated.
8. The Division Bench headed by the Hon'ble Acting Chief Justice in a detailed order in W.P.(C) Nos.10550/2024 and 13308/2023 after taking into account the response of all the civic authorities, transferred the investigation to the CBI and also directed the Chief Central Vigilance Commissioner to nominate a senior officer to oversee the progress of the investigation being conducted by the CBI on regular basis to ensure that it is completed at the earliest. The court also took cognizance of



bad drainage system, unauthorised encroachment, illegal and unauthorised constructions and noted the fundamental problems in the city of Delhi. The Division Bench expected all the local authorities to co-operate with the aforesaid investigation as three young lives were snuffed out apparently due to greed and/or negligence and/or failure to discharge duty.

9. The petitioners in the present case are seeking bail on the ground that they are in custody since 28.07.2024. The petitioners have submitted that they themselves went to the police station and subjected them to the custody of the investigating officer. It has been submitted that there is no concept of vicarious liability in criminal jurisprudence. The petitioners have submitted that the learned trial court has wrongly dismissed the bail application without taking into account the settled proposition of the law. It has further been submitted that the petitioners had merely given the basement and third floor on lease for running the coaching centre, which is an activity permissible by the norms of MCD. It has further been submitted that section 105 of the BNS Act is not attracted as neither 'intention' nor the 'knowledge' can be attributed to the petitioners. It has also been submitted that the '*mens rea*' also cannot be attributed to the petitioners. It has been submitted that the petitioners are the owners of the premises and neither the 'intention' nor the 'knowledge' can be attributed to them. The petitioners have also submitted that the fire department has duly given the clearance. It has also been submitted that vide lease deed dated 05.01.2024, the lessee was responsible to obtain necessary permission from the local authorities like DDA, MCD and other local authorities.



It has also been submitted that as per clause 5.7.4, the lessee was required to carry out necessary modifications and improvements as per their requirements. It has been submitted that the unfortunate incident occurred due to the flooding of the basement on account of heavy rain fall on which petitioners have no control. It has further been submitted that the investigation in the present case is still continuing against the various authorities, agencies and public servants and it may take a long time to complete. The petitioners have submitted that as of now the only allegation against the petitioner are that they being owner of the basement in which the unfortunate incident had happened let out the same to RAU's IAS Study Circle.

B. SUBMISSIONS OF C.B.I.

10. Sh. Rajesh Kumar, learned SPP for the CBI in its written submission has submitted that all the floors including the basement were used by the RAU's IAS Study Circle and in particular the basement where the unfortunate incident took place was being used for the purpose of library/exam hall. Learned SPP submits that on the fateful day, while several students were studying in the library located in the basement, the rain water suddenly entered in the ground floor due to sudden fall of sliding gates of the main building and subsequently entered into the basement resulting into flooding of the same. It has been further submitted that, while most of the students managed to escape, three students died. Learned SPP submitted that the petitioners let out the premises in contravention of the approved usage of the basement and the lessor and the lessee knowingly agreed to use the basement for the commercial purpose of running the coaching institute. Learned SPP



submitted that the basement was specifically used for the purpose of running their Library cum Exam Hall having seating capacity of around 80-90 students at a time and students used to sit in the basement for long hours for self study and taking exams there. It has also been submitted that the investigation has also revealed that the locality used to get flooded even in moderate rains as it is a low lying area and flood rain water used to enter the premises. Learned SPP submits that the testimony of Sh. Kishore Singh Kushwaha, SH. Rohil Khan, Sh. Kailash Singh and Sh. Satish Kumar Raja etc. reveals that there is sufficient evidence to show that there is a prima facie case against the petitioners qua offences alleged in the FIR i.e. 105,106(1), 115(2), 290, 3(5) of BNS.

C. SUBMISSIONS OF COMPLAINANT

11. Mr. Abhijit Anand, learned counsel for the complainant has vehemently opposed the bail applications. Learned counsel for the complainant has submitted that the Fire Clearance Certificate dated 09.07.2024 has been procured/obtained by the petitioners from the Fire Department by inappropriate means. Learned counsel for the complainant has also invited the attention of the court to the complaint made by Shri Kishore Singh Kushwah on 26.06.2024. Learned counsel has submitted that the MCD did not take any action on this complaint. Learned counsel also invited the attention of the court to the observations made by this court in W.P.(C) Nos.10550/2024 and 13308/2023 wherein it was mentioned that there is widespread corruption in the system. Learned counsel submits that in the unfortunate incident three students have died and around 70 have



injured. It has been submitted that it is an offence against society. Learned counsel submits that one of the deceased Nevin Dalvin was a scholar from JNU and had cleared IAS (Mains) and due to the criminal act of the petitioners the bright student of the country has been lost. It has further been submitted that the occupancy certificate issued by MCD is totally contrary to the Unified Building Bye Laws for Delhi, 2016.

12. Learned counsel has submitted that in catena of cases it has been inter alia held that in corruption cases the court should have different parameters for granting the bail. Learned counsel has cited *N. Ramkumar vs. The State Rep. By Inspector of Police* Criminal Appeal No.2006 of 2023 in which *Basdev vs. State of Pepsu* 1956 SC 488 was cited with approval. Learned counsel has submitted that in *Basdev* (supra) it was inter alia held that the court has to distinguish between motive, intention and knowledge. Learned counsel submits that it was inter alia held that in many cases intention and knowledge merge into each other and mean the same thing more or less and intention can be presumed from knowledge. Learned counsel submits that in the present case also the knowledge on the part of the petitioners as alleged by the prosecution reveals the intention. Learned counsel for the complainant has also relied upon *Mahesh Motiram Kumbhar vs. The State of Maharashtra*, Anticipatory Bail Application No.2432 of 2024 wherein in the identical case, the Bombay High Court has dismissed the anticipatory bail application of the accused. Learned counsel for the complainant has submitted that as per the lease deed the property has been let for commercial purpose/coaching institute.



13. It has further been submitted that even the completion certificate on 09.08.2021 has been issued without fire clearance which itself indicates of the corruption. Learned counsel submits that even Section 105 part I of BNS is attributed as there was an intention on the part of the petitioners. Learned counsel submits that there was no drainage system in the basement. It has further been submitted that the basement was let out for commercial purpose in contravention of law. It has also been submitted that petitioners after the incident did not go to the site for rescuing. Learned counsel submits that all this indicates that there was an intention on the part of the petitioners.

D. SUBMISSIONS OF PETITIONERS

14. Sh. Mohit Mathur, learned senior counsel with Sh.Amit Chadha, Sh. Kaushal Kait and Sh. Daksh Gupta learned counsels for the petitioners submitted that in fact the main cause of incident has been heavy rains, failure of drainage system and apathy of civic authorities. It has been submitted that even the Deputy Commissioner, MCD in his statement before this Court has admitted that stormwater drain on the side of the road where RAU's IAS Study Circle is located was dysfunctional. It has been submitted that the act of leasing out the basement has no direct nexus with the unfortunate incident. It has further been submitted that in fact Section 105 BNS is not attributed and the petitioners can at best be prosecuted under Section 106 (1) BNS.
15. Sh. Mohit Mathur, learned senior counsel with Sh.Amit Chadha, Sh. Kaushal Kait and Sh. Daksh Gupta learned counsels for the petitioners submit that there has to be direct nexus between the death of the person and the act of the accused to attract the provision of Section 105



of BNS. It has further been submitted that the consequences even if grave would not determine the degree of the criminality of the accused persons. Learned counsels for the petitioners submit that “knowledge” contemplated by the offence of culpable homicide not amounting to murder, imports a certainty and not merely a probability, which is distinguishable from mere awareness of the risk involved in the culpable act. It was further submitted that even if the act of the accused persons was aimed for profit making it would not attract the penal provisions of Section 105 of BNS. During the course of submissions, the learned Senior counsel has candidly submitted that the petitioners are ready and willing to contribute to the cause of ensuring the safety and smooth running of such coaching centres.

E. FINDINGS AND ANALYSIS

16. The present incident in which three young bright students lost their lives is very unfortunate and is an alarm bell. This court earlier also has flagged the issue of running of unauthorised coaching centres, but unfortunately the civic authorities have failed to take any action. In *Sanjay Singhal vs. State of NCT of Delhi & Ors.* W.P.(C) 12182/2016 and other connected matters the issue of coaching centres was flagged by this court and it was *inter alia* held as under:

"8. In the considered opinion of this Court, if a coaching centre is not conforming to the norms as per the MPD, 2021, it has to be shut down and there is no other alternative. Resultantly, the Respondents are directed to close down all the coaching centres which are running in contravention of the MPD, 2021. The MCD will take appropriate action within 60 days and shall also be free to cancel their registration as done under Clause 15.9 of the MPD, 2021 in case they are not fulfilling the requisite conditions



provided under the MPD, 2021.

9. The MCD as well as the other Respondents are directed to ensure compliance of the aforesaid order positively within 60 days. The Police Department, the Fire Department as well as the Electricity Department shall provide all logistical support to the MCD for complying with the order passed.

10. It is needless to mention that in respect of other commercial activities also which are presently going on in Mukherjee Nagar where registration has been granted by the MCD keeping in view the mixed use premises under Clause 15.9 of the MPD, 2021, the MCD shall scrutinize all such registrations and shall also ensure compliance of the provisions as contained under the MPD, 2021. In case other commercial activities are going on in the premises and not having a fire NOC as required under the law and are not conforming to the norms as per the MPD, 2021, the MCD shall take appropriate action in accordance with law in respect of such other commercial activities also within a period of 60 days from today."

17. Further, in ***South Patel Nagar 9 Block and Ranjit Nagar Residents Welfare Association v. Union of India & Ors.***, W.P. (C) 6602/2024, the learned Single Judge of this court directed the MCD to carry out survey of properties and unauthorised activities and take appropriate action in case there is any deviation from the sanctioned plan or non-compliance of fire related regulations or bye-laws or unauthorised activities. The Division Bench of this court in W.P.(C) Nos.10550/2024 and 13308/2023 noted that despite several directions no action has been taken by the respondent till date.
18. These incidents keep on happening in the city and innocent people lose their lives on account of the callous attitude of the administration and the mischievous people, whose only object is to earn money. It is so unfortunate that the owners of these coaching centres, who claim



themselves to educate the students have no care for the lives of such innocent people. Parents of such students send their children to the coaching institute shelling out substantial money from their hard earned income with an aspiration that their children will become something in their lives. It is unimaginable that the parents get back the dead bodies of their children on account of such an unfortunate incident. The court considers that the time has come that now the administration has to awake from the deep slumber and has to take appropriate steps. It is being noticed by this court as mentioned in *Sanjay Singhal* (supra) and *Patel Nagar 9 Block and Ranjit Nagar Residents Welfare Association* (supra) that such coaching centres are being illegally run in the cramped area with no civic facility and drainage system. The coaching centres may also do not have the permissions and compliance to the norms. The students from all parts of the country come to this capital city for education/coaching. They have no option but to adjust to these unhygienic and bad conditions. Though no steps are being taken despite several directions but it does not mean that court will stop giving such directions. The courts will ensure that concrete steps are taken for the redressal of the system.

(i) **Appointment of Committee**

19. Taking all this into account, this court considers that the Hon'ble Lieutenant Governor of Delhi may appoint a Committee within two weeks headed preferably by the Former Judge of this Court to conduct the audit/inspection of all the coaching centres in Delhi and to give concrete suggestion to ensure that such coaching centres do not run in the unsafe buildings or unsafe conditions. The committee, may also



include along with other responsible officers, vice-chairman of DDA so as to explore the possibility that all such coaching institutions may be placed in one newly developed institutional area with all the modern amenities and civic facilities so as to ensure that no further such incident take place and thereafter, license may be given to only such coaching centre which operate in such specified area. The Committee is requested to submit its report to the court within three months. The remuneration of the Chairman of the Committee shall be fixed by the Hon'ble Lieutenant Governor.

(ii) **Interim bail**

20. Now, coming to the bail of the petitioners, the allegations against the petitioners are that they being the owner of the basement let out the same to the RAU's IAS Study Circle for running the coaching centre. The CBI in its additional status report dated 12.09.2024 has indicated that there was moderate rainfall of 58.00 mm in the locality in the evening of 27.07.2024. The other readings provided by the Regional Meteorological Centre, New Delhi for the period from 01.06.2024 to 28.07.2024 indicates that on from 0830 hours IST of 23.07.2024 to 0830 hours of 24.07.2024 there was 063.5 mm of rain. As per the Rainfall Categorisation (Terminology for intensity of 24 hour accumulated rainfall) 58 mm is considered to be moderate rainfall. In its additional status report, the CBI has stated that the drains of the Bara Bazaar Road were not functional and their repair/renovation work has been started by the MCD only in the month of August, 2024. The CBI in its additional status report has also stated that IIT Delhi is to provide the data regarding the water pressure on the gates of the building where



the water was logged.

21. The present case is a very serious case. The CBI is alleging knowledge on the part of the petitioners to attribute Section 105 part II. The complainant is alleging 105 part I saying there was also intention on the part of petitioners. These are the matters which are required to be appreciated during the trial. The wholesome investigation is required to be conducted regarding the role of the petitioners, owners of the RAU's IAS Study Circle and other public officials. The court considers that the completion of investigation by CBI is required to be conducted expeditiously.
22. While considering the plea for bail in such a case, the court is required to balance the right of individuals and rights of the citizen. On one hand the person in custody whose liberty is curtailed has a right to be released on bail unless exceptional circumstances are there which are provided in law. On the other hand, the society also has a right to agitate that the wrongdoer should be dealt with strictly. The court is conscious of the fact that detention during trial cannot be a punitive measure. However, the court is also conscious of the fact that society looks at the court for appropriate orders in such grave cases. The court cannot be mute spectator.
23. The courts while granting bail has to take an objective view. In the present case, there are allegations of corruption, which is under probe. At this stage at least one thing is on record that the petitioners let out the basement for commercial purpose and the unfortunate incident, in which three young persons lost their lives, took place on account of flooding in the basement. *Prima facie*, the petitioners cannot be deemed



to not have the knowledge that such activity may be dangerous. Such an inappropriate act should never be allowed to be profitable business. The petitioners are in custody since 28.07.2024. The investigation may take some time. The bail plea on merits may only be considered after the completion of investigation by the C.B.I. on all aspects. Therefore, the petitioners may be considered for admitting to interim bail.

24. Thus, at the moment taking into account the period of detention on one hand and other attendant circumstances on the other hand, and also the fact that the investigation is yet to be conducted, this court considers that the petitioners may be admitted to interim bail till 30.11.2024.
25. Accordingly, the petitioners are admitted to interim bail till 30.11.2024 on furnishing personal bond in the sum of Rs. 1 lakh with two sureties of the like amount to the satisfaction of Ld. Trial Court subject to the following conditions:
 - a. The petitioners shall join the investigation as and when directed the court;
 - b. the petitioners shall not leave the country with prior permission of the learned trial court;
 - c. the petitioners shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;
 - d. the petitioners shall provide their mobile number(s) to the Investigating Officer and keep them operational at all times; and



- e. in case of change of residential address(es) and/or mobile number(s), the petitioners shall intimate the same to the Investigating Officer/ Court concerned by way of an affidavit.

(iii) Creation of Corpus

26. Before parting, in order to ensure that there is “balancing of interest” and there is ‘good administration of justice’ some order/arrangement is required to be made for streamlining of the system and creation of corpus for providing compensation to such victims. The allegations are that the petitioners let out the basement for commercial gain. In such cases the message should go loud and clear that courts are sensitive to respond to such situations. Hence, in such cases where commercial ventures in violation of norms/law the accused persons may be asked to contribute for the cause of creation of corpus to meet such situations. The order directing depositing sum of money in court will not yield any result. Thus, if an order is made for deposit of money, it should be put to good use for public benefit. At this stage, the court also cannot adopt any formula for determining the amount. Hence, some guess work is required. Thus, the court considers that an amount of Rs.5 Crore will be just and proper. The petitioners are directed to deposit Rs.5 Crore in one go or in instalments till 30.11.2024 with Red Cross Society. The C.B.I. shall facilitate the deposit of such amount. The Hon’ble Lieutenant Governor of Delhi shall ensure that the funds so deposited shall be used for the student welfare and for the purpose of streamlining the functioning of coaching centres in Delhi. Hon’ble Lieutenant Governor may also take decision for providing compensation to the families of the deceased students.



27. It is clarified that the release of the petitioners is not subject to the prior deposit of money as such can be deposited till 30.11.2024.
28. List on 09.12.2024.
29. Copy of the order be sent to the concerned Jail Superintendent for information and compliance.

DINESH KUMAR SHARMA, J

SEPTEMBER 13, 2024

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