IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION No.99 OF 2014

State of Maharashtra (Forest Department),
through Assistant Conservator Officer
of Forests (Protection) and Wildlife Warden,
Civil Lines, Besides BSNL Office,
Nagpur. : APPLICANT

...**VERSUS**...

Shri Suraj Pal s/o. Jagmohan @ Chhacha,
Aged about 67 years,
Occupation Business,
R/o. B-539, Gali No.5, Majlis Park,
Adarsh Nagar, New Delhi. : NON-APPLICANT

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Mr. Kartik Shukul, Special Public Prosecutor for the Applicant.
Mr. R.J. Mirza, Advocate for the Non-applicant.
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CORAM : S.B. SHUKRE, J.

DATE : 12th DECEMBER, 2014.

J U D G M E N T :

1. Heard Mr. Kartik N. Shukul, learned Special Public Prosecutor for the Forest Department of State of Maharashtra and Mr. R.J. Mirza, learned counsel for the non-applicant.

2. This application filed under Section 439(2) of the

Criminal Procedure Code seeks cancellation of bail granted under Section 439(1) of the Criminal Procedure Code on 30.7.2014 in M.C.A. No.1332/2014 by Additional Sessions Judge, Nagpur.

3. The non-applicant came to be arrested by the State Forest Department in Preliminary Offence Report (hereinafter referred to as, "P.O.R.") No.32/2013, registered for an offence punishable under Section 51 read with Sections 9,39, 44, 49B and 52 of the Wild Life (Protection) Act, 1972 against several accused persons including the non-applicant. The main allegation against the non-applicant is that he is a trader, who deals in purchase and selling of endangered wild animals including critically endangered animal, the tiger, and is also a provider of funds and logistical support required by poachers for killing precious wild animals and extracting their skins and body parts for the purpose of their trading in India and abroad. It is also alleged that the non-applicant has links with international wild animal dealers and thus the offences registered against the non-applicant and other accused persons have transnational ramifications.

4. Learned Special Public Prosecutor submits that there is available on record overwhelming evidence indicating prima facie involvement of the applicant in the offences registered against him.

The material indicates that the applicant had financed the operation for poaching of tigers in Maharashtra including one tiger poached in Melghat forest situated in Amravati district, which is the subject matter of the present crime. He also submits that for this purpose, the present applicant had given an amount of Rs.20,00,000/- to one of the accused Sarju through other co-accused Naresh and that after Naresh and Sarju purchased the tigers skins, nails and bones from the poachers in Maharashtra, Naresh and Sarju handed them over to the present applicant, who personally collected the same by purchasing them. He further submits that the link between the poachers operating in the forest areas of Vidarbha region of Maharashtra, the middle men like Naresh and Sarju and the present applicant, came to be revealed when Naresh and Sarju were arrested at Delhi on 7.9.2013 while they were travelling in a car bearing registration No.HR-11-E-1001 and stated before Delhi Police about the involvement of the present applicant and role played by him in initiating poaching of endangered scheduled animal, the tiger in Maharashtra, providing necessary support for completing the poaching operation and rewarding the same by purchasing the skins and body parts of tiger killed in the operation. He further submits that there have been

confessional statements of not only Naresh and Sarju, but also present non-applicant which prima facie suggest that the non-applicant is the key accused without whose encouragement and support, killing of endangered species of wild animals, especially the tiger, would not take place. He further submits that the confessional statements have also revealed that the crime prima facie committed by the applicant has transnational ramifications.

5. Learned Special Public Prosecutor submits that in view of the material placed on record, one can see that the crime prima facie committed by the non-applicant is very serious and threatens very survival of the society as without tigers forests cannot survive and without forest, human society cannot sustain itself. He, therefore, submits that the learned Sessions Judge, while granting bail to the applicant ought to have considered the seriousness of the crime appropriately, but unfortunately, that is not the case. He also submits that the learned Sessions Judge has ignored other vital aspects of the whole issue and they relate to possibility of the non-applicant fleeing from justice and his tampering with the evidence and thus interfering with the course of justice. In support, he points out the statement of the co-accused Sarju dated 26.9.2013, wherein there is a mention about

the threat issued to him by the non-applicant. Learned Special Public Prosecutor, therefore, submits that bail granted to the non-applicant be cancelled. He places his reliance upon the case of **Kanwar Singh Meena vs. State of Rajasthan and another,** reported in **(2012)12 SCC 180**, in support of his said submissions.

6. Learned counsel for the non-applicant has vehemently opposed the application. He submits that although learned Sessions Judge has found presence of material prima facie indicating involvement of the applicant in the crime alleged against him, learned Sessions Judge has properly considered the necessity of keeping the applicant in jail particularly in a crime where maximum punishment provided is of 7 years of imprisonment. He submits that paramount considerations for grant of bail are seriousness of the crime, punishment provided for the alleged crime and necessity of keeping the accused behind the bars in the sense whether there is any possibility of the applicant not making himself available for trial if released on bail and whether there is likelihood of the applicant tampering with the prosecution evidence. He submits that the law requires the Courts to balance these considerations against the issue of personal liberty of the accused as afterall an accused facing a trial is presumed by law to

be innocent and provisions relating to grant of bail cannot be used by the Courts to inflict a pre-trial punishment even when there is a presumption of innocence of the accused till he is found guilty. He submits that these parameters have been thoughtfully considered by the learned Additional Sessions Judge in the light of the material available on record and imposing stringent conditions, the non-applicant has been appropriately granted bail in this crime. In support, he has placed his reliance upon the law laid down by the Hon'ble Apex Court in the cases of **Bhagirathsinh Judeja vs. State of Gujarat**, reported in **AIR 1984 Supreme Court 372(1)** and **Sanjay Chandra vs. Central Bureau of Investigation,** reported in **(2012) 1 SCC 40**.

7. In the case of *Sanjay Chandra*, the Hon'ble Apex Court has emphasized upon the need for balancing the valuable right of liberty of an individual and the interest of the society in general while holding that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution and observed thus :

> *"The provisions of CrPC confer discretionary jurisdiction on criminal courts to grant bail to the accused pending trial or in appeal against convictions; since the jurisdiction is discretionary, it has to be exercised with great care and caution by*

> *balancing the valuable right of liberty of an individual and the interest of the society in general.*"

8. In *Sanjay Chandra* Hon'ble Apex Court also considered it's various judgments laying down the basic parameters required to be considered for granting or refusing the bail. They can be stated in nutshell as, the nature of accusations, the nature of evidence in support thereof, the severity of punishment which conviction will entail, the character, behavior, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, larger interest of the public or the State and similar other considerations. Hon'ble Supreme Court also dealt with primary purposes of bail when it observed in paragraph 40 thus :

> "*The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the*

court and be in attendance thereon whenever his presence is required."

9. In the case of *Bhagirathsinh Judeja* (supra), it was held by Apex Court that even where a prima facie case is established, the only material consideration for cancelling the bail would be whether the accused is readily available for trial and whether he is likely to abuse the discretion granted in his favour by tampering with evidence, as approach of the Court in the matter of bail should not be that the accused is detained by way of punishment.

10. In the later cases, however, some modification of principles governing discretion of Courts in the matter of cancellation of bail has been seen.

11. In the recent case of *Kanwar Singh Meena* (supra) the Hon'ble Supreme Court laid-down principles for grant of bail as well as for cancellation of bail. While the principles for grant of bail were the same as in *Sanjay Chandra,* the principles for cancellation of bail were in addition to those in *Bhagirathsinh Judeja.* It held that while cancelling the bail under Section 439(2) of the Code, the primary considerations are whether the accused is likely to tamper with the evidence or attempt to interfere with due course of justice or evade the due course of justice, but that is not

all. It also held that if the Court granting bail ignores relevant materials indicating prima facie involvement of the accused or take into account irrelevant material, the High Court or the Sessions Court would be justified in cancelling the bail, as such orders are against the well-recognized principles underlying the power to grant bail. Such orders have been termed by the Hon'ble Apex Court as legally infirm, vulnerable and leading to miscarriage of justice. The Hon'ble Apex Court also held that the High Court or the Sessions Court is bound to cancel such orders particularly when they are passed releasing the accused prima facie involved in heinous crimes because ultimately they may result in weakening of the prosecution evidence and may have adverse impact on the society. The relevant observations appearing in paragraph 10 are reproduced thus :

> "*While cancelling the bail under Section 439(2) of the Code, the primary considerations which weigh with the court are whether the accused is likely to tamper with the evidence or interfere or attempt to interfere with the due course of justice or evade the due course of justice. But, that is not all. The High Court or the Sessions Court can cancel the bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the Court granting bail ignores relevant material indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of*

bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail. Such orders are against the well-recognised principles underlying the power to grant bail. Such orders are legally infirm and vulnerable leading to miscarriage of justice and absence of supervening circumstances such as the propensity of the accused to tamper with the evidence, to flee from justice, etc. would not deter the court from cancelling the bail. The High Court or the Sessions Court is bound to cancel such bail orders particularly when they are passed releasing the accused involved in heinous crimes because they ultimately result in weakening the prosecution case and have adverse impact on the society. Needless to say that though the powers of this Court are much wider, this Court is equally guided by the above principles in the matter of grant or cancellation of bail."

12. Similar is the law laid down by the Hon'ble Apex Court in the case of **Ranjit Singh vs. State of M.P. and others**, reported in **2013(12) SCALE 190**, wherein, after considering the essential parameters guiding the exercise of discretion of the Sessions Court or the High Court in the matters of bail, the Apex Court observed that these parameters must be considered appropriately before granting bail and if they have not been considered, the order of bail would be liable to be set aside and cancelled.

13. Now it would have to be seen whether or not the learned Additional Sessions Judge exercised his discretion in granting bail to the non-applicant by following the afore-stated

parameters applicable to exercise of discretion of granting or refusing bail.

14. So far as concerned the aspect of existence of reasonable grounds for believing that the accusations made against the non-applicant are true, as held in the case of **Prahlad Singh Bhati vs. NCT Delhi and another**, **(2001) 4 SCC 280,** I must say that perusal of the confessional statements of the applicant and his co-accused reveal that there is sufficient material to prima facie find that the allegations made against the non-applicant apparently constitute an offence punishable under Section 51 read with other relevant sections, such as Sections 9, 39, 44, 49-B and 52 of the Wild Life (Protection) Act, 1972. Confessional statements, in particular, of the co-accused Sarju and the non-applicant himself are sufficient to indicate that, prima facie the offence alleged against the applicant is made out. They prima facie show that the non-applicant was not only in constant touch with the other co-accused involved in connection with wild life offences, but the non-applicant also gave his active support by making available funds and also ensuring that the efforts of hunters do not go waste in the sense that hunters were sufficiently rewarded by purchasing the skins, bones and claws of tigers. Now, it is well settled law that

the confessional statements made by the accused in forest or wild life offences are not hit by Section 25 of the Evidence Act as a forest officer is not a Police Officer within the meaning of Section 25. This view taken by the learned Single Judge of this Court as early as the year 1994 in the case of **Emerico D'Souza vs. State, through the Deputy Conservator of Forests**, reported in **1995 Forest Law Times 72** has been reiterated with approval by the Division Bench of this Court in the year 2005 in the case of **Sardarkhan s/o. Khalilkhan Pathan vs. Range Forest Officer, Yavatmal and others**, reported in **2006 (1) Mh.L.J. 606**.

15. Of course, learned counsel for the non-applicant would question consideration of the confessional statements of the other co-accused on the ground that in criminal law confessional statements of the co-accused are irrelevant for reaching any conclusion about involvement of the other accused persons in the crime alleged against them. This may be true in case of other offences wherein confessional statements are made by the co-accused before a Police Officer investigating the case. But, once it is found by following a consistent view that the Range Forest Officer is not a Police Officer, a confession made before the Range Forest Officer would not be a confession under Section 25 of the

Evidence Act and would at best be akin to an admission or former statement of a witness suggesting an inference as to a fact in issue or relevant fact and, therefore, it can be read as a statement against the co-accused, as long as it discloses a relevant fact. Thus, even the confessional statements of the co-accused in a crime like the present can be considered and, therefore, I find no substance in the said argument of learned counsel for the non-applicant.

16. Learned Additional Sessions Judge in his order dated 30th July, 2014 has not specifically observed anything about the existence of any reasonable grounds for believing that the accusations made against the non-applicant are genuine. The learned Additional Sessions Judge appears to have considered only the severity of the punishment as forming a relevant backdrop to the two factors, namely, possibility of fleeing from justice and possibility of tampering with evidence, if released on bail, which he found must be taken into account for exercising discretion regarding bail. It appears that the learned Additional Sessions Judge did not think it fit to consider other important parameters such as seriousness of crime, larger public interests involved, impact of crime on the society and so on. Learned Additional Sessions Judge appears to have got an impression that maximum

punishment being of only 7 years of imprisonment, the offence has been alleged to be committed in respect of the tiger, a wild animal specified in schedule one and was committed in a national park, the offence was not so serious and, therefore, only two factors, namely, possibility of not being available for trial and thwarting the course of justice, if granted bail, were relevant and accordingly considered them and exercised discretion of bail in favour of non-applicant. I must say that the course adopted by the learned Additional Sessions Judge is not in consonance with the guiding principles laid down by the Hon'ble Apex Court in many of its judgments, which have been discussed in details in earlier paragraphs. That apart, some of the relevant factors such as behavior of the non-applicant and possibility of thwarting the course of justice if released on bail have been considered in ignorance of the material available on record, by the Additional Sessions Judge thereby making his order legally infirm, vulnerable and leading to miscarriage of justice. Therefore, it would be necessary for this Court to consider these relevant factors now.

17. One most important factor, which has not been considered at all by the Additional Sessions Judge is of seriousness of the crime alleged against the applicant. Seriousness of a crime is

not to be judged by referring to the punishment prescribed alone. It must be gauged also by its enormity, its ramifications, its extent and reach, its repercussions and impact on the society or larger public interest. Crime alleged against the non-applicant by all these parameters is very serious in nature. Prima facie, the non-applicant has shown proclivity to deal in body parts of tiger, the offence has transnational ramifications and above all has irreversible adverse impact on the larger public interests.

18. There is now available sufficient scientific knowledge of which judicial notice can be taken and it shows that tiger is of paramount importance for maintaining the pristine health of an ecosystem, so essential for the very survival of mankind. Tiger is considered to be a symbol of wilderness and well-being of an ecosystem. Tiger constitutes the top carnivore in an ecosystem and is at the apex of the food chain, which is having a pyramidical structure with plants and microbes, the food producers, forming it's base and other life forms such as insects, reptiles, birds, herbivores etc., the food consumers, forming upper layers, with tiger, the bigger food consumer, at the top. The removal of top carnivore from an ecosystem will lead to relative abundance of herbivores and other species within a guild. Tiger is not just a carnivore,

which feeds on smaller animals, but a large predator and its presence in a forest ecosystem keeps number of bigger herbivores such as deer, blue- bull, bison and so on within limits. If number of herbivores increases beyond the natural limits of an ecosystem, there would be overeating of plants and tree regeneration and seed dispersal will be affected thereby depleting green cover which will have cascading effect upon other species such as birds, reptiles, insects and so on leading to their removal which will halt plant-growth itself as these smaller species contribute to not only seed dispersal but also act as natural fertilizers and pest controllers for plants.

19. It is now well-known that abundance of trees in forests also serves such important functions as carbon sequestration i.e. capturing carbon from atmosphere and converting it into solid form such as trees and vegetation, maintaining hydrological balance, protecting human society from natural disasters, soil erosion, maintaining medicinal plant and genetic diversity, playing a pivotal role in maintaining water cycle and acting as rich sources of pure air and water for the mankind. Carbon sequestration is extremely important from the view point of reducing carbon footprint of a nation and is considered a major contribution towards lowering

down global warming brought about by green house or carbon dioxide emitting gases. It also helps in strengthening the economy of a nation, apart from increasing its world image by reducing its carbon footprint as it would show that the nation does not leave behind a big bad footprint created by burning fossil fuels like coal, oil and natural gas which emit huge amount of carbon dioxide and other toxic gases into the atmosphere.

20. In other words, a healthy forest ecosystem determines sustainability of life on earth itself and since tigers are so important a bench mark of a healthy forest ecosystem, the habitats where wild tigers abound, are considered to be extremely high value ecosystem.

21. Apart from the afore-stated reasons delineating the importance of tiger in a forest, the presence of tiger in Indian forest which has become almost extinct in its previous habitats situated in other parts of planet earth is a matter of national pride. The tigers also boost wild life tourism and are part of our rich cultural heritage. Therefore, their extinction would mean depriving future generations of Homo Sapiens the pleasures of seeking some change and some reprieve from the daily humdrum of life in forests and also the benefits of our folkways and mores.

22. From such a view point as stated above, which is so essential to take in the larger public interest and to ensure continuity of life, one can see the seriousness involved in hunting and killing tigers. However, the learned Additional Sessions Judge has not considered this aspect of the matter at all.

23. There are some factors which have been considered by the learned Additional Sessions Judge, but the consideration made is in completely ignorance of relevant material available on record and thus it has led to perverse prima facie findings being recorded by the learned Additional Sessions Judge.

24. The learned Additional Sessions Judge has found that since the non-applicant has four sons, the non-applicant could be said to be having deep roots in the society and, therefore, there was no likelihood of his fleeing away from justice. Learned Additional Sessions Judge has briefly mentioned about the economic pursuits of each of the four sons of the non-applicant and has found that they sufficiently indicate that the sons have the ability to keep the non-applicant rooted in society. This reasoning, I must say is flawed. When a person has sons who are financially independent, a person would have no responsibility to look after them and, therefore, may think to be more free to do what he likes

or wants to do. Such sons are less likely to act as anchors being independent from the non-applicant and that too for a person accused of committing serious crime not just once but several times over. Undoubtedly, wild life trade is a lucrative business across the world and has transnational ramifications. When stakes involved in the crime are very high, the lure of money and thrill of the act become too powerful to be reined in by moorings of sons, who are grown up and independent. Therefore, it cannot be said that there would be no possibility of the non-applicant fleeing from justice in the present case.

25. Another glaring infirmity in the order of the learned Additional Sessions Judge is that it has been remarked that apprehension expressed by the prosecution regarding tampering with the prosecution evidence, can be taken care of by imposing stringent conditions. In fact, in the instant case, the stage of nurturing of apprehension has already been crossed, as rightly submitted by learned Special Public Prosecutor. The supplementary statement dated 26.9.2013 of the co-accused Sarju alias Suraj Bhan prima facie shows that when Sarju as well as non-applicant were detained in jail at New Delhi in another crime registered against them at Delhi in respect of wild life offences,

which is likely to be having some linkage with the present crime, Sarju was threatened by the non-applicant that if he had not named non-applicant in the crime, non-applicant would have ensured his release and since Sarju was instrumental in getting non-applicant arrested, the non-applicant would see him. This would prima facie show that non-applicant has an inclination to influence the course of justice which may increase, if released on bail.

26. Of course, learned counsel for the non-applicant states that the supplementary statement is of doubtful nature as it is in a question answer form, and the question No.5 answer to which contains the alleged threat, was in a leading form thereby suggesting that the Forest Department was bent upon fabricating material against the non-applicant so as to deny him bail. He also states that even otherwise statement of co-accused cannot be used against the non-applicant. As regards, the second objection, I have already discussed the settled legal position in this regard and, therefore, it cannot be said that the statement of the co-accused disclosing a relevant fact could not be read against the non-applicant in a crime like the present. As regards the first objection, I find that the question does not appear to be really in a leading

form and appears to be framed in a manner so as to obtain relevant information from Sarju in continuation of the answers given by him earlier. In question No.5 there are words such as "क्या बोला ?" (what was said) and "और क्यों ?" (and why). These words, according to the learned counsel for the non-applicant suggest an attempt on the part of the Forest Department officials to get the non-applicant speak what they wanted him to speak and, therefore, there is a doubt about the alleged threat given by the non-applicant. I do not agree for the reasons given earlier. But even if it is presumed for a moment that the question worded in the afore stated term is suggestive of some answer, it may not be proper at this stage to draw any such inference, in the absence of detailed evidence, that the Forest Department had already tutored Sarju in making a statement about issuance of threat by non-applicant. It is quite likely that Sarju himself may have disclosed to the Forest Officials the threat given to him by the non-applicant and since his statement was being recorded in question answer form, the Forest Officer may have framed the said question the way it has been framed keeping in view what Sarju had already stated. Besides, at this stage there is no material to prima facie indicate that Sarju was coerced, lured or influenced into making said statement. He could

have very well replied the question by giving some negative answer. All these possibilities would emerge for their appropriate evaluation only when detailed evidence is available before the Court and till that happens, one would have to go by the prima facie impression of the statement and which is that non-applicant is not a person who can be, at this stage, believed to be the one who would not possibly thwart the course of justice. This threat also prima facie discloses such behavior of the non-applicant as is not conducive to hold a fair trial in the matter and, therefore, would have to be considered as a factor relevant for refusing bail to the non-applicant. As regards the old age of the non-applicant, there is no material available showing that it has made him weak or infirm and so, this ground would also not be available to the non-applicant.

27. Thus, it can be seen that the discretion exercised by the learned Additional Sessions Judge in granting bail to the non-applicant is not only in ignorance of the relevant material available on record, but also against the well settled principles of law. At the cost of repetition, I would say, most important parameters governing exercise of discretion in bail matters have either been not considered or considered in ignorance of relevant material

thereby leading to an arbitrary and legally infirm order and, therefore, I am obliged in law to cancel the bail granted to the non-applicant in exercise of power under Section 439(2) of the of the Criminal Procedure Code.

28. Learned Additional Sessions Judge has observed that the learned Magistrate who rejected bail twice to the non-applicant did not go through the observations of the Hon'ble Apex Court in the case of **Arnesh Kumar vs. State of Bihar and another**, reported in **2014(8) SCALE 250**, while rejecting the bail to the non-applicant as the offence involved in this P.O.R. is punishable upto 7 years of imprisonment only.

29. The case of *Arnesh Kumar* deals with restrictions and limitations on the powers of Police to make arrest without warrant as contained in Sections 41 and 41A of the Code of Criminal Procedure. It lays down that unless conditions prescribed in Section 41(1)(b) are satisfied, a Police Officer should not effect arrest and if he makes an arrest, further detention of a person should not be authorized by a Magistrate unless and until those conditions are fulfilled. This case, in my humble opinion, does not lay down a principle that where the offence involved in the matter is punishable upto 7 years of imprisonment and when custodial

interrogation is not required, the person accused of that offence should be released on bail without considering other relevant parameters. For exercising discretion regarding bail under Section 439 of the Criminal Procedure Code, the parameters as discussed at length in the earlier paragraphs would also have to be considered together with the observations made in the case of *Arnesh Kumar*.

30. In the circumstances, this application deserves to be allowed.

31. The application is allowed.

32. The order dated 30th July, 2014, passed by the learned District Judge-5 and Additional Sessions Judge, Nagpur, granting bail to the non-applicant is hereby set aside.

33. The bail granted to the non-applicant is hereby cancelled.

34. The bail bonds, if furnished, are cancelled and the applicant be taken in custody in the present crime as per law.

35. However, liberty is granted to the non-applicant to move fresh application for grant of regular bail at appropriate stage and, if filed, same shall be decided in accordance with law.

36. At this stage, learned counsel for the applicant has prayed for staying the order as the non-applicant intends to move

the Hon'ble Apex Court for challenging the order for a period of two weeks. The prayer has been opposed by the Applicant/State.

37. However, considering the fact that the applicant has been granted bail on 30 July 2014 and has been till today on bail. 10 days' time can be granted to the non-applicant for taking necessary steps in order to challenge this order. Accordingly, the effect and operation of the order is stayed till 22nd December, 2014.

JUDGE

वाडोदे