

From

Abhinitam Upadhyay
Additional District and Sessions Judge
Farrukhabad

To

The Registrar General
Hon'ble Allahabad High Court
Prayagraj (Allahabad).

Through: the District Judge, Farrukhabad.

Sub: Representation against Annual Confidential Remarks recorded by Sh. Anil Kumar Jha,
District Judge, Balrampur for Year 2023-24.

Sir,

Presenting my utmost request it is most respectfully submitted that preliminary and point-wise representation against Annual Confidential Remarks recorded by Sh. Anil Kumar Jha, District Judge, Balrampur for Year 2023-24 is as follows:-

PRILIMINARY SUBMISSIONS

1. I was posted as Additional District and Sessions Judge Balrampur with effect from 14.04.2021. Sh. Anil Kumar Jha had taken charge as District Judge, Balrampur on 10.05.2023. Soon after taking charge Sh. Anil Kumar Jha, District Judge, Balrampur started making illegal and improper demands by pressurizing the officers and staff of Balrampur Judgeship through various means and modes. Sh. Jha had exerted pressures on me also to fulfill his illegal, improper, extraneous and totally unjustified demands. In such circumstances, after facing intolerable harassment and torture inflicted by the District Judge Sh. Anil Kumar Jha who had crossed all thresholds of dignity and decorum of his office, I was constrained to make official written complaint dated 23.12.2023 supported with my affidavit dated 08.02.2024 (**Annexure - 1**) against him to Hon'ble Court. It has been specifically mentioned by me in my complaint dated 23.12.2023 that respected District Judge Sir Sh. Anil Kumar Jha had threatened me specially to write adverse entry in my Annual Confidential Remarks if his illegal improper, extraneous and totally unjustified demands would not be fulfilled. No oral or written complaint against me by any person/advocate/authority on any point (i.e. judicial work/administrative work/personal behaviour and conduct) has been made and/or communicated by respected District Judge Sir during entire period of evaluation (i.e. 01.04.2023 to 31.03.2024) to me or to Hon'ble Court. Hence, the following mentioned adverse entries in my Annual Confidential Remarks are clear reflection of totally arbitrary, improper and unjustified use of personal vendetta against me by District Judge Sir purely as counterblast to my complaint against him because there is absolutely no valid basis or ground available to District Judge Sir for recording the adverse remarks in any column against me. This is to further submit that no adverse remark regarding my work and conduct had been recorded earlier by any District Judge against me.

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POINT-WISE REPRESENTATION

- 2. (I) Column 01(a). Integrity of the Officer- whether beyond doubt, doubtful or positively lacking. [Note- If the officer's integrity is doubtful or positively lacking, it may be so stated with all relevant fact, reason(s) & supporting material.]**

Remarks by District Judge: Doubtful

Representation: My entire representation may kindly be perused and sympathetically be considered in this regard. There is absolutely no basis for this remarks. No relevant fact, reason or supporting material has been stated by respected District Judge Sir. The remarks recorded in the "Other Remarks" column also are absolutely unfounded and purely based on alleged oral complaints which had been mentioned by District Judge Sir only as counter-blast to my complaint against him. No such alleged oral complaint had been received by me or has been communicated to me in this regard by any person or District Judge Sir. Further, no such alleged oral complaint has been communicated by District Judge Sir to Hon'ble Court. My integrity had always been certified as "Beyond Doubt" in my entire judicial service by all the other respected District Judges as well as Hon'ble Court which could be verified from the records.

- 2. (II) Column 01(b). If she/he is fair and impartial in dealing with the public and Bar?**

Remarks by District Judge: Not impartial in dealing with members of bar. (pls see other remark column).

Representation: I had been fully fair, transparent and impartial in dealing with members of bar. No complaint had been received by me or communicated to me in this regard. The reasons mentioned in my detailed representation at "Column No. 04 - Other Remarks" also may kindly be perused and be sympathetically considered.

- 2. (III) Column 01 (c). If she/he is cool minded and does not lose temper in court.**

Remarks by District Judge: He is very aggressive.

Representation: It is submitted that I am fully calm and composed in my behaviour at work place/court. No complaint had ever been received by me or communicated to me in this regard.

- 2. (IV) Column 01 (d). Her/His private character is such as to lower her/him in the estimation of the public and adversely affects the discharge of her/his official duties?**

Remarks by District Judge: Many oral complaints received from members of bar about his objectionable private character.

Representation: No complaint has ever been received by me or communicated to me by District Judge Sir or any other authority in this regard. My entire representation may kindly be considered for this purpose. No member of bar has made any complaint against me in this regard. The alleged oral complaints against me from members of bar are totally non-est and had been mentioned purely as counter-blast to my complaint (**Annexure - 1**) against District Judge

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Sir. My private character had always been found to be sound and not objectionable by my all previous District Judges in my entire judicial service carrier.

PRAYER: My Integrity may be Certified as "Beyond Doubt" category and all other adverse remarks may be expunged.

3. Column 01(e)(iv). Progress and disposal of execution cases:

Remarks by District Judge: Execution not decided whereas pendency of SCC Execution is shown.

Representation: Pendency of only 01 SCC Execution case has been shown in the Court of ADJ, Court No. 1, Balrampur which I had presided over from 01.04.2023 to 28.04.2023. (i.e. only for 28 days in the entire year). There was no Execution Case pending in my Court from 29.04.2023 to 31.03.2024. There was no sufficient time to dispose the sole SCC Execution Case in those 28 days when I had worked as ADJ, Court No. 1, Balrampur.

PRAYER: The remark may be expunged.

4. (I) Column 01(f). Whether Judgment on facts and on law are on the whole sound, well-reasoned and expressed in good language?

Remarks by District Judge: No proper appreciation of evidence in session trial and civil appeal.

Representation: the reasons mentioned in the detailed representation at "Column No. 04 - Other Remarks" may kindly be perused and be sympathetically considered.

4. (II) Column 01(f)(i). Marshalling of facts;

Remarks by District Judge: not proper

Representation: the reasons mentioned in the detailed representation at "Column No. 04 - Other Remarks" may kindly be perused and be sympathetically considered.

4. (III) Column 01(f)(ii). Appreciation of evidences;

Remarks by District Judge: No proper appreciation of evidences. (pls see other remark column)

Representation: the reasons mentioned in the detailed representation at "Column No. 04 - Other Remarks" may kindly be perused and be sympathetically considered.

4. (IV) Column 01(f)(iii). Application of law.

Remarks by District Judge: Not applied properly

Representation: the reasons mentioned in the detailed representation at "Column No. 04 - Other Remarks" may kindly be perused and be sympathetically considered.

4. (V) Column 01(f)(iv). Judgment/order writing capability: (Please comment on the quality of the passing writing Judgment/Order) (Category in which the Judgments are to

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be placed, viz. A - Outstanding, A - Very Good, B - Good, B - Average/satisfactory, C - Below Average)

Remarks by District Judge: B

Representation: the reasons mentioned in the detailed representation at "Column No. 04 - Other Remarks" may kindly be perused and be sympathetically considered.

PRAYER: The adverse remarks regarding language, marshalling of facts, appreciation of evidence and application of law may be expunged and the quality of passing writing judgment/order category may be converted to category "A".

5. **Column 01(j). Behavior in relation to sister/brother Officers**
(mention incidents, if any).

Remarks by District Judge: Not good with brother officers as reported by brother officer.

Representation: It is submitted that my relationship with all the sister/brother officers had always been cordial. Further submitted that no specific incident had been mentioned by District Judge Sir in support of such remarks neither name of any brother Officer had been mentioned who has reported any such incident to District Judge Sir. Also, no complaint had ever been made against me by any sister/brother Officer in this regard to any authority or to District Judge Sir or to Hon'ble Court.

PRAYER: The adverse remarks may be expunged.

6. **Column 01(l). Her/His punctuality and regularity in sitting on the dais in court during court hours?**

Remarks by District Judge: Not found punctual in sitting on dais found in surprise inspection. The reason shown is unacceptable. copy of surprise inspection and his reply is annexed as annexure A-2.

Representation: District Judge Sir had taken many surprise inspections during entire period of assessment (at least once per month). But, there was only one occasion when I was not found sitting on dais during dais timing. It was the time at about 11.00 AM on 16.08.2023. At that time, I and Sh. Jahendra Pal Singh, ADJ were sitting in my chamber and were together disposing some urgent administrative work assigned to us by District Judge Sir on account of impending visit of Hon'ble Administrative Judge. After quickly disposing the work, both of us went to dais at about 11.30 AM. When explanation was called by District Judge Sir then both of us (me and Sh. Jahendra Pal Singh, ADJ) had replied to same effect. Although mentioned in the remarks that my reply had been attached as annexure A-2 but no such annexure has been attached. Hence, surprise inspection note dated 16.08.2023 along with my reply dated 18.08.2023 are hereby being attached as **Annexure - 2**. This fact was later communicated by District Judge Sir to Hon'ble Court on which nothing has been communicated till date to me by Hon'ble Court. Apart from that I had always been punctual in sitting on dais and in conduct of

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my other judicial and administrative work. Other similarly situated Officers (not found on dais) had not been recorded such remarks which shows the biasness of District Judge Sir against me.

PRAYER: The adverse remarks may be expunged.

7. Column 01(m). Whether amenable to the advice of the District Judge and other superior officers?

Remarks by District Judge: Not amenable. Commits indiscipline as it is obvious from attachments.

Representation: There is no basis for such remarks. I had never adhered to indiscipline practices and had always been amenable to the rightful advice of District Judge Sir. My representation regarding "Other Remarks - Column No 4" may also kindly be considered. It is also significant to mention here that I had always been rated to be amenable to the advice of the District Judge and other superior officers in all my previous Annual Confidential Remarks.

PRAYER: The adverse remarks may be expunged.

8. Column 2. Over all assessment of the merit of the officer (Outstanding, Very Good, Good, Average, Poor)

Remarks by District Judge: Average

Representation: There is no valid basis for the overall assessment recorded by District Judge Sir for me. For this purpose, my entire representation may kindly be perused and considered. I had disposed off all the cases (NDPS - 27, Session Trial - 11 and Civil Appeal - 8) identified under Action Plan 2023-24. My achieved Units are 194.74 % which is more than adequate.

PRAYER: My overall assessment of merit may be converted to "Outstanding" or "Very Good".

9. Column 4. Other remarks, if any:

Remarks by District Judge: 1. On many occasion several Advocates, higher officials of Balrampur district administration made oral complaint to me about his corrupt practice in disposal of Bail Applications in cases related to MPs / MLAs.

Representation: As mentioned here of oral complaints, it is most respectfully submitted that no such complaint by any advocate or district administration had ever been communicated by respected District Judge Sir to me. All the bail applications had been disposed by me in absolutely fair, legal and proper manner without even an iota of any corrupt practice. It is also emphasised here that no bail order passed by me had been complained of or set aside by any superior court.

Remarks by District Judge: 2 Even several Advocates complained on many occasion about his personal immoral character.

Representation: Remarks by District Judge Sir regarding my personal immoral character is totally baseless and completely unfounded. No such complaint had ever been made to Hon'ble

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Court or any other authority. It is apparent that making such wild comments without any basis and without mentioning any specific incident is not only totally unwarranted and but highly deprecated also.

Remarks by District Judge: 3 He is not amenable to the advice of the District Judge. When he was advised several times by me not to resort to corrupt practice in judicial work then he threatened me in the chamber that you should mind your own business, otherwise I will make complaint against you.

Representation: It is most respectfully submitted that the allegations are totally denied and that I had always been fully amenable to the rightful advice of my all the District Judges. However, I had countered with my full potential all the illegal, improper and unjustified demands of Sh. Anil Kumar Jha, District Judge, Balrampur. As explained earlier, I had made written complaint against him to Hon'ble Court on 23.12.2023. It is fully established that no communication had ever been made earlier by District Judge Sir to Hon'ble Court regarding my alleged corrupt practices in judicial work. Such wild allegations had been leveled by District Judge Sir in my Annual Confidential Remarks as gross abuse of powers and as counterblast which is without any basis and without support of any material.

Remarks by District Judge: 4. When report was called from him as O/C Infra structure subcommittee about the utilization of budget allotted for maintenance and repair of residences of old campus then also he similarly threatened me to ruin my career.

Representation: I had never threatened District Judge Sir in any manner whatsoever. I had only tried to avoid and resist his illegal demands by politely refusing to accede them. Regarding utilization of budget allotted for maintenance and repair of residences of old campus, I had specifically mentioned in my written complaint dated 23.12.2023 [para 2 (vi) and (viii)] attached herewith as **Annexure - 1** that District Judge Sir made endorsement order dated 05.09.2023 in his own handwriting on the minutes (recommendations) of the Infrastructure Sub-Committee dated 01.09.2023 (headed by me wherein he approved recommendations at point nos. 1, 2 and 3 (related to other infrastructure works) but purposefully left recommendations in respect of point no. 4 (which was related to ongoing repair work in Type - IV and Type - II residences). The District Judge Sir asked me to go slow with the monitoring of the maintenance and repair work as it had potential to extract money and other benefits from the concerned agency. Due to non approval of the recommendations at point no. 4 by District Judge Sir, no communication could be sent to the concerned agency for compliance of the recommendations of the Infrastructure Sub-Committee. The identical recommendations were again made by the Sub-Committee headed by me on 07.11.2023 (attached in **Annexure - 1**) but District Judge Sir again avoided approval on that by passing endorsement order dated 15.11.2023 to the effect that Sub-Committee should take action at its end. When the consequential minutes dated 18.11.2023 (attached in **Annexure - 1**) of the Sub-Committee headed by me was submitted to District Judge Sir seeking his approval of minutes dated

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07.11.2023 then he removed me as Chairman, Infrastructure Sub-Committee vide order dated 23.11.2023. Details in regard may be perused from my complaint dated 23.12.2023 against him attached as **Annexure - 1**. Thus, I had always tried to perform my duty as per rules and norms but on the contrary the District Judge Sir had extended clear threats and undue pressures upon me (also in presence of other Officers and staff) to fulfill his illegal demands.

Remarks by District Judge: 5. He did not cooperate in Administrative work and always tried to create impediment by delaying in sending the report specially as Chairman of Medical Reimbursement matters of class III and class IV employees. D. O. was issued to him in this connection and is annexed herewith as Annexure-B.

Representation: I had fully cooperated with District Judge Sir in execution of all his legal and proper directions as per rules. During the entire period of 10.05.2023 to 31.03.2024 only one DO Letter dated 23.01.2024 regarding disposal of medical reimbursements claims was issued to me by District Judge Sir which was properly replied by me on 02.02.2024. The DO has not been annexed by him (although mentioned to be attached as Annexure B) but is now being attached by me along with my reply dated 02.02.2024 as **Annexure - 3** for kind perusal and sympathetic consideration by Hon'ble Court.

Remarks by District Judge: 6. He also said in indisciplined manner in the month of November 2023 with objectionable demeanor that he does not care about any disciplinary action or proceedings as he has become hardened by facing departmental enquiry and many complaints and he has also fought his case up to Supreme Court. He is ready to face it again. He again threatened me to ruin my career.

Representation: All the allegations made herein are totally false and completely denied. I had never extended any threat to respected District Judge Sir or any other person. On the other hand, it was District Judge Sir himself who had threatened me as explained by me in my complaint dated 23.12.2023 against him. It is much significant to note that District Judge Sir had never made any communication to Hon'ble Court in this regard. If I would have used such demeanour or extended such threat to him in November 2023, then there was no reason that why my such alleged conduct had not been reported by him to Hon'ble Court at that time. This clearly shows that District Judge Sir had used blatant falsehood to retaliate against me. Resort to judicial proceedings for legal remedy is everyone's constitutional right and there is nothing wrong in it. However, this fact has been twisted by District Judge Sir like professional litigant to put forward such falsehood which is inherently incredible and therefore totally untrustworthy.

Remarks by District Judge: The officer has allowed bail application of accused Mukesh Chauhan u/s-376 IPC-please see annexure bail-1, but rejected the bail application of Khem Chand u/s 376 IPC please see annexure bail-2. In both the cases facts are almost similar but the advocates are different and therefore results are different.

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Representation: Reasons for allowing bail application of Mukesh while rejecting bail application of Khem Chand had been clearly mentioned in both the bail orders. As per evidence available on record, victim had herself called accused Mukesh, both went together, they first got married and then made physical relationship. Age of victim was more than 16 years at that time. Accused Mukesh had already spent considerable time in jail. There was no other criminal antecedent of the accused. Thus, his bail application was allowed. On the other hand, in Khem Chand's case, victim had been enticed away by accused to have physical relationship when age of victim was only 14 years. Moreover, victim had been subjected to physical relationship with accused without performing marriage ceremony. Hence, his bail application was rejected. Moreover, no complaint had been ever made against me by any litigant or member of bar regarding unfair or impartial treatment.

Bail - 1 order for accused Mukesh Chauhan is dated 16.07.2021 and Bail - 2 order for accused Khem Chand is dated 19.10.2022. The District Judge Sir had been authorised to make remarks regarding my work for period from 01.04.2023 to 31.03.2024. This clearly established that he had conducted full digging of my all the orders/judgments passed even in previous years in order to find anything against me to satisfy his vengeance. However, in spite of that he could not find anything substantial against me and therefore resorted to make such remarks against me without even carefully perusing the bail orders.

Remarks by District Judge: In following bail applications relating to former M.L.A. Arif Anwar Hashmi and his family members, the officer has granted bail to one particular Advocate. Few of them are annexed as annexure bail-3, annexure bail-4, annexure bail-5, annexure bail-6. Details of few more bail applications related to former M.L.A. Arif Anwar Hashmi are given below. It can be verified from the records. The List below is only tip of the iceberg and many more are available where the officer has not shown impartial judicial conduct towards members of the Bar.

crime no_08 of 2021_A.B.A. 1210 of 2023 Md Akaleem and Arshad Abbasi vs State of U.P
 crime no_08 of 2021_B.A. 493 of 2023 abid Anwar Hashmi vs State
 crime no_08 of 2021_B.A. 832 of 2023 Mohd Saleem and Sher Ali and Mahboob Ali vs State
 crime no_100 of 2021_B.A. 594 of 2023 Farid Anwar Hashmi vs State of UP -1
 crime no-09 of 2021_B.A. 570 of 2023 Abid Anwar Hashmi and other Vs State of U.P.Arid
 crime no-09 of 2021_B.A. 898 of 2023 Kailash Bharti Vs State of U.P.
 crime no-09 of 2021_B.A. 986 of 2023 Mohd Nasir Hashami vs state, Kasim Anwar Hashmi Vs State, Pravej Ahmad vs State and many more.

Representation: The bail orders passed by me in all the matters are self-explanatory and open to any scrutiny by Hon'ble Court. No complaint has come to my light by any person/party in respect of any of the aforesaid bail orders passed by me. The annexures Bail-3, Bail-4, Bail-5 and Bail-6 uploaded by District Judge Sir may kindly be perused by Hon'ble Court to assess their legality and justifiability. It is submitted that all the aforesaid bail orders are perfectly legal, proper and justified. To the best of my knowledge, no bail order passed by me had been set aside by any superior court. The current legal regime regarding bail specially the legal pronouncements in the matter of **Satendra Kumar Antil Vs CBI** by **Hon'ble Apex Court** had

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been followed by me while passing the bail orders. The bail orders had been passed in similar matters wherein accused persons had engaged same counsel. There is not an iota of complaint against me regarding impartial judicial conduct towards members of Bar. The comments of District Judge Sir are totally baseless and had been leveled as figment of his imagination to counter-score against me because I had made written complaint against him. Further, this remark recorded against me is self-contradictory by his another remark that I am known as very popular amongst members of Bar [Remarks on Column 1 (i)]. If this remark is true then there is no question of any unfair or impartial judicial conduct by me towards members of Bar.

Remarks by District Judge: Civil Appeal No.- 21/2012 (CNR No.-UPBP010003142012) Bhagvan Prasad Gupta vs Nanbacha and others judgment annexed with this self assessment finds no judgment. The Judgment part is missing. It clearly shows that the officer has passed cryptic judgment and order. Thus his legal knowledge on marshaling of facts and appreciation of evidence is totally missing.

Representation: It is respectfully submitted that due to technical error in uploading, only operative order portion of the judgment was uploaded and the full body of the judgment could not be uploaded. The same is now being uploaded as **Annexure - 4**. The respected District Judge Sir had not made any objection to it and had not directed me to upload the whole judgment. It is clear that absolutely unfounded comments had been made against me for this trivial technical error in uploading the judgment. The comments regarding my legal knowledge on marshaling of facts and appreciation of evidence without even having the opportunity to go through the judgment clearly shows the malafide and biasness of the District Judge Sir against me. The quality of the judgment may be assessed by Hon'ble Court by its perusal.

Remarks by District Judge: In S.T. no 45/2009, State Vs. Ghanshyam & Ors attached with self assessment is written in poor language (para 8). The evidence of prosecutrix clearly proves gang rape by accused persons but neither charge framed/alterd for gang rape nor appreciated the evidence properly by applying established principles of law. The accused persons are inadequately sentenced just for 8 yrs u/ s- 376 IPC. The appreciation of law is poor.

Representation: The language, application of law and appreciation of evidence of this judgment is self explanatory which may be evaluated by Hon'ble Court and may be compared to the judgments of other similarly ranked Judicial Officers. Para 8 of the judgment is contents of FIR. It is most humbly submitted that the language is excellent and application of law as well as appreciation of evidence is absolutely proper. Judgment of conviction as well as order of sentence for the accused persons had been passed by reasoned and speaking orders keeping in mind the penal provisions present at the time of commission of the offense. There was no application by prosecution for alteration of charge during entire trial. Criminal Appeal of convicts against the judgment is sub-juice before Hon'ble High Court on judicial side.

Remarks by District Judge: In S.T. No 50/2011 State of U.P. Vs. Jagdish Prasad Tiwari & Ors attached with self assessment is written in poor language. The evidence of prosecution

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clearly proves it a case of murder under section 302 IPC. The officer has not appreciated the evidence properly by applying established principles of law. The accused persons are inadequately sentenced just for 8 yrs u/s- 304 part II IPC. The appreciation of law is poor. The evidence discussed proves old enmity and repeated blow given by 4 accused persons with lathi, stick and brick on head and other body part then how only knowledge can be attributed and thereby sentencing inadequately. In both the above sessions cases the judgment and order stinks with extraneous consideration to give benefit to accused persons.

Representation: The language of the judgment along with appreciation of evidence and application of law is self-explanatory and may be evaluated by Hon'ble Court. Also, the judgments uploaded by other Judicial Officers of ADJ rank who had been awarded "Very Good" entry by respected District Judge Sir as well as the judgments passed by the respected District Judge Sir himself may be compared to the judgments uploaded by me in order to test their quality, language, application of law and appreciation of evidence. Conviction of the accused persons u/s 304 -II IPC has been specifically discussed by me in para 44 of the judgment which is supported by Case-Law. Reasons for the conclusion had been elaborately discussed in the judgment (kindly see para 31, 34, 41, 42 and 43 also). Speaking order on sentence had also been passed. Further, Criminal Appeal of the convict persons against the judgment is sub-judice before Hon'ble High Court on judicial side. Moreover, it is most humbly submitted that respected District and Session Judge Sir had no power of appeal or revision against judgments/orders passed by Additional District and Session Judge in the scheme of the existing legal regime. The power given to District Judge to comment on the quality of the judgment passed by Additional District Judge while recording the Annual Confidential Remarks is only with reference to the general overall assessment which can not be understood to mean that appellate/revisional power will be exercised by respected District Judge Sir in such a manner. There was no complaint by any one/any party till date in respect of the aforesaid two judgments. There is absolutely no question of any extraneous considerations or giving benefit to accused persons. It is clear that when respected District Judge Sir could not find anything against me then he had resorted to this level in making totally unfounded comments against me for taking revenge with me.

PRAYER: All adverse remarks may be expunged.

It is, therefore, most humbly prayed that my representation with prayers as mentioned above may be allowed and for this purpose this representation may be placed before Hon'ble Court for kind and sympathetic consideration.

Encl: As above

Dated: 13.07.2024.

With profound regards,

Abhinav Upadhyay
13/07/2024

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(JO CODE - UP06192)

Additional District and Sessions Judge,
Farrukhabad.