

Before Arun Kumar Tyagi, J.

SHOBHA—Petitioner

versus

STATE OF PUNJAB AND OTHERS—Respondents

CRWP No.7882 of 2021

August 19, 2021

A. Constitution of India, Art. 226— Habeas Corpus Alleged illegal Detention Material regarding arrest and detention of detenué already before the Court—Filing of detailed reply to the habeas corpus petition is not required particularly when the relevant facts are ascertainable from the material on record and detailed submissions have been made by learned Counsel representing the petitioner and respondents—Habeas corpus petition concerns serious issue of illegal detention of a person and grant of any adjournment for filing of any detailed reply may defeat the very purpose of filing of the habeas corpus petition— Final order can be passed without granting adjournment for filing of any such detailed reply.

Held that, the habeas corpus petition concerns serious issue of illegal detention of a person and grant of any adjournment for filing of any detailed reply may defeat the very purpose of filing of the habeas corpus petition and therefore, interim or final order on the basis of the same can be passed on the material produced before the Court unfolding all the relevant facts and circumstances of the case without granting adjournment for filing of any such detailed reply.

(Para 34)

B. Criminal Procedure Code, Section 438 Blanket Bail A direction should not be issued to the effect that the applicant shall be released on bail "whenever arrested for whichever offence whatsoever"—If special circumstances are shown and in extraordinary case and on ample materials being placed on record, the court to strike a balance between individual rights of personal freedom and the investigation right of the police, pass an appropriate order including the one directing the prosecution to give advance notice for a reasonable time.

Held that, "blanket order" of anticipatory bail should not be "generally" passed and "normally" a direction should not be issued to the effect that the applicant shall be released on bail "whenever arrested

for whichever offence whatsoever". It follows that even under Section 438 of the Cr.P.C. if special circumstance/circumstances are shown and in extraordinary case and on ample materials being placed on record, the court to strike a balance between individual rights of personal freedom and the investigation right of the police, pass an appropriate order including the one directing the prosecution to give advance notice for a reasonable time.

(Para 16)

A.P.S. Deol, Sr. Advocate with Harneet Singh Oberoi, Advocate and Jasdev Singh Mehndiratta, Advocate
for the applicant/petitioner.

Sidharth Luthra, Sr. Advocate assisted by S.S. Narula, Advocate, Anmol Kheta, Advocate, Sheezan Hasmi, Advocate with Anusha Nagraja, DAG, Punjab and Diya Sodhi, Asstt. A.G., Punjab and P.S. Walia, Asstt. A.G. Punjab
for respondents No.1 to 4.

ARUN KUMAR TYAGI, J (ORAL)

(The case has been taken up for hearing through video conferencing.)

(1) The petitioner has filed present criminal writ petition under Article 226 of the Constitution of India seeking the following reliefs:-

(i) Issuance of the writ in the nature of habeas corpus directing the respondents to produce the detainee- Sumedh Singh Saini who is under mala fide and illegal detention of Vigilance Bureau at Vigilance Bhawan, SAS Nagar (Mohali) without any cause of action inspite of protection vide orders dated 11.10.2018, 23.09.2020 and order dated 12.08.2021 (in case FIR No.13 dated 02.08.2021 under Sections 13(1)(b) read with Section 13(2) of the Prevention of Corruption Act, 1988 as amended by the Prevention of Corruption (Amendment) Act, 2018 and Sections 109 and 120-B of the IPC registered at Police Station Vigilance Bureau, Phase-1, SAS Nagar, Mohali passed by this Court;

(ii) Appointment of Warrant Officer to raid the Vigilance Bhawan, Sector 68, SAS Nagar (Mohali) to get the detainee released from unwanted, illegal and manipulated detention on account of political vendetta by the State Government and personal vendetta of respondent No.5;

(iii) To protect the detenué from torture, inhuman treatment, mental and physical and to provide emergency medical aids in view of chest and heart related ailments; or

(iv) Any other direction or orders which this Court may deem fit in the facts and circumstances of the case.

(2) Briefly stated the petition has been filed on the averments that detenué-Sumedh Singh Saini retired as DGP Punjab on 30.06.2018 and since then he has been target of State Government ruling in Punjab for implicating him in the following four criminal cases :-

(i) FIR No.77 dated 06.05.2020 registered under Section 364, 201, 344, 330, 219 and 120-B of the IPC at Police Station City Mataur, District SAS Nagar, Mohali to which Section 302 of the IPC was added lateron.

(ii) FIR No.129 dated 07.08.2018 registered under Sections 307, 326, 324, 323, 341, 201, 218, 120-B, 34, 148, 149 of the IPC and Sections 25 and 27 of the Arms Act, 1959 at Police Station City Kotkapura, District Faridkot (added as accused vide G.D. No.31 dated 09.10.2020).

(iii) FIR No.130 dated 21.10.2015 registered under Sections 302, 307, 341, 201, 218, 166-A, 120-B, 34, 194, 195 and 109 of the IPC and Sections 25 and 27 of the Arms Act, 1959 at Police Station Bajakhana, District Faridkot (added as accused vide G.D. No.16 dated 27.09.2020).

(iv) FIR No.13 dated 02.08.2021 registered under Section 13(1)(b) read with Section 13(2) of the Prevention of Corruption Act, 1988 as amended by Prevention of Corruption (Amendment) Act, 2018 and Sections 109 and 120-B of the IPC registered at Police Station Vigilance Bureau, Phase-1, Punjab at SAS Nagar (Mohali).

(2.1) In all the four cases the petitioner has been allowed concession of anticipatory bail under Section 438 of the Cr.P.C.

(2.2) In the first case FIR No.77 dated 06.05.2020 detenué-Sumedh Singh Saini was allowed anticipatory bail by learned Additional Sessions Judge, Mohali vide order dated 11.05.2020 prior to addition of Section 302 of the IPC and after addition thereof he was granted anticipatory bail by Hon'ble Supreme Court vide order dated 03.12.2020 passed in SLP (Criminal) 4366 of 2020.

(2.3) In the second case FIR No.129 dated 07.08.2018 this Court vide order dated 09.04.2021 passed in CWP No.17459 of 2019 quashed the investigation by making scathing observations against Mr. Kunwar Vijay Pratap Singh, the then I.G. and Chairman of the S.I.T. and directed the State Government to constitute S.I.T. of three senior IPS Officers which was not to include Mr. Kunwar Vijay Pratap Singh and was to submit final report without any internal or external influence expeditiously preferably within six months. In the said order detenue-Sumedh Singh Saini was given clean chit holding his role as D.G.P. to be his official person. Initially arrest of the detenue was stayed vide order dated 04.03.2021 and extended vide order dated 22.03.2021 but was finally disposed of vide order dated 03.08.2021 with direction to give clear seven days notice in case of his arrest.

(2.4) In the third case FIR No.130 dated 20.10.2015 the petitioner was allowed anticipatory bail by this Court vide order dated 01.03.2021 passed in CRM-M-8125-2021.

(2.5) In the fourth case FIR No.13 dated 02.08.2021 the petitioner was allowed anticipatory bail vide order dated 12.08.2021.

(2.6) The detenue filed CRM-25383-2021 in CRM-M-32417-2021 seeking direction to the Investigating Officer not to arrest him for any other additional offences without seeking prior permission of the Court in view of guidelines laid down by Hon'ble Supreme Court in *Pardeep Ram versus State of Jharkhand*¹. The petition was withdrawn as the Special Prosecutor appearing for the State made statement that State was bound to follow said guidelines and the petition was dismissed as withdrawn. On 18.08.2021 at about 7:30 p.m. the detenue along with his lawyer Ramandeep Singh appeared before Varinder Singh Brar, PPS, Joint Director (Crime), Vigilance Bureau, Punajb, SAS Nagar (Mohali) at Vigilance Bhawan, SAS Nagar (Mohali) for joining investigation in compliance with order dated 12.08.2021. After making him wait for about half an hour his application were endorsed by Amritpal Singh, A/MHC Vigilance Office at 08:08 p.m. but thereafter gates of the Vigilance Bhawan were closed and the detenue was illegally detained and his lawyer was pushed out of the Vigilance Bhawan. The detenue was illegally detained to show to the public that the statement made on the floor of the house by Cabinet Minister Punjab while tabling the report of Ranjit Singh Commission holding the detenue guilty and to harass him in some false case was fulfilled.

¹ 2019 (3) RCR (Cr.) 538

The act of the Vigilance Bureau is a blatant and flagrant abuse of the power vested in the police. The detenu is being subjected to torture both mental and physical on directions of respondent No.4-B.K. Uppal, Chief Director Vigilance who is a stooge of respondent No.5-Bharat Inder Singh Chahal. Earlier attempt was made to detain and humiliate the detenu in FIR No.13 of 02.08.2021. The police seized the house of the detenu from 02.08.2021 4:00 p.m. to 03.08.2021 2:00 p.m. and his wife and daughter were subjected to interrogation for disclosing his whereabouts as if he was a dreaded criminal. The entire house was searched by the police party without search warrant and two DVRs installed on the front gate and back gate were carried away. Although the detenu has been granted interim anticipatory bail in case FIR No.13 dated 02.08.2021 registered by the Vigilance pertaining to an agreement to sell with accused namely Surinderjit Singh Jaspal father of Nimratdeep Singh, Executive Engineer, PWD B&R against whom DA Inquiry No.3 dated 17.02.2020 was pending. It is feared that his detention is in some other DA case bearing FIR No.11 dated 17.09.2020 under Sections 409, 420, 467, 468, 471, 120-B of the IPC and Section 13(1)(a) read with Section 13(2) of the Prevention of Corruption Act Police Station Vigilance Bureau, Mohali in which Surinderjit Singh Jaspal, his son Nimratdeep Singh along with six others have been challaned by the police and are facing trial. H.No.3048, Section 20-D, Chandigarh has been declared to be proceeds of crime acquired by Nirmatdeep Singh and his father and has been provisionally attached under Section 3 of the Criminal Law (Amendment) Ordinance, 1944 as per Section 18(a) of the Prevention of Corruption Act vide order dated 16.07.2021 passed by learned Additional Sessions Judge, SAS Nagar (Mohali). The detenu was never made accused in the case as he was not having any financial transaction with them except that he was in occupation of H.No.3048, Section 20-D, Chandigarh as tenant w.e.f. 18.10.2018.

(2.7) After the change of government in Punjab in the year 2018, the Government has pronounced its decision to arrest the detenu. Fearing his arrest and humiliation by digging of some old case during his career during performance of his official duties, the detenu approached this Court by filing petition CRM-M-45242-2018 under Section 482 of the Cr.P.C. seeking direction to the State of Punjab to hand over the investigation of any case registered against the detenu to the CBI or some other independent agency and to keep any proposal for arresting him in any criminal matter in abeyance for giving him specific period of time so as to enable him to seek recourse to his legal

remedies. Protection was granted to the detenu vide order dated 11.10.2018 by directing that till the next date of hearing, in case the petitioner is sought to be arrested in Kotkapura sacrilege case or in case involving Aman Skoda of Moga or in any case pertaining to an incident of the period while the petitioner remained as State Vigilance Head or Inspector General of Police, Intelligence, Punjab or Director General of Police Punjab, then one week's advance notice shall be afforded to the petitioner before effecting his arrest so as to enable him to have recourse to remedies available to him.

(2.8) The protection was further extended vide order dated 23.09.2020 to any incident pertaining to entire service career of the petitioner.

(3) The petition filed by detenu-Sumedh Singh Saini bearing CRM-M-45242-2018 was listed before this Court today on application filed by detenu-Sumedh Singh Saini for pre-ponement of the date of hearing fixed as 24.11.2021 to some earlier date. At the time of hearing on the application for pre-ponement it was brought to the notice of the Court that the petitioner had been arrested on 18.08.2021 in circumvented violation of orders dated 11.10.2018 and 23.09.2020 passed by this Court. The application for pre-ponement of the case was allowed. On being asked, this Court was informed by Mr. Sidharath Luthra, learned Senior Counsel assisted by Mr. Sartej Singh Narula, Advocate that the petitioner has been arrested in case FIR No.11 dated 17.09.2020 registered under Sections 409, 420, 467, 468, 471 and 120-B of the IPC and Sections 13(1)(a) read with Section 13(2) of the Prevention of Corruption Act, 1988 as amended in 2018 at Police Station Vigilance Bureau Flying Squad-1, Punjab, Mohali. Vide order passed by this Court today i.e. 19.08.2021 respondent No.1-State was directed to file copies of the relevant documents including arrest memo prepared at the time of his arrest, document intimating him about the grounds of arrest, document intimating his family member/friend about his arrest and copy of the FIR through e-mail or through special messenger. Accordingly, copies of FIR No.11 dated 17.09.2020, letter adding offences, arrest memo, intimation of arrest, reasons of arrest, reasons for arrest (Report of DSP), interim application No.CRM-25383-2020 in CRM-M-32417-2021, order in CRM-25383-2021 and habeas corpus petition have been filed before this Court. Mr. A.P.S. Deol, Sr. Advocate for the petitioner has also filed copies of FIR No.11 dated 17.09.2020 and FIR No.13 dated 02.08.2021 along with its vernacular before this Court.

(4) The habeas corpus petition was listed for hearing before Hon'ble Mr. Justice Avneesh Jhingan who directed the same to be placed before other Bench after soliciting orders from Hon'ble The Chief Justice. The habeas corpus petition was thereafter listed before the Bench of Hon'ble Mr. Justice Vikas Bahl. Copies of the applications bearing No.CRM-25749-2021 and CRM-25750-2021 and copy of order dated 12.08.2021 were filed before the Bench of Hon'ble Mr. Justice Vikas Bahl and after considering the facts regarding pendency of CRM- M-45242-2018 before this Bench, Hon'ble Mr. Justice Vikas Bahl also directed that the present habeas corpus petition be listed before this Bench after obtaining the orders from the Hon'ble Chief Justice and the habeas corpus petition has been listed before this Bench under the orders of Hon'ble the Chief Justice.

(5) On listing of the present habeas corpus petition learned Counsel for respondents No.1 to 4 have appeared before the Coordinate Benches and have also appeared before this Court. Notice to respondent No.5-Bhart Inder Singh Chahal is considered unnecessary as no relief as such is claimed against him and he has been impleaded only because of the allegations as to respondent No.3-B.K. Uppal, IPS being his stooge and detenué Sumedh Singh Saini having been illegally detained and tortured on his instance.

(6) It may be mentioned here that in the course of hearing on both the petitions an e-mail was received on the official e-mail ID of this Court purporting to have been sent by Harvinder Pal Singh, PPS, Investigation Officer, FIR No.11 dated 17.09.2020, PS FSI, Vigilance Bureau, Punjab addressed to Hon'ble the Chief Justice, Punjab and Haryana High Court, Chandigarh regarding transfer of case bearing No.CRM-25750-2021 in CRM-M-45242-2018 as well as the main case i.e. CRM-M-45242 from this Bench to any other Coordinate Bench on account of the undue hurry being shown by the said Bench and the manner in which no opportunity is being given to the State to present its case. However, there was no communication regarding passing of any order for withdrawal of the case from this Court. No request for recusal was made by learned Counsel for the parties. Even said e-mail was not stated to have been sent on instructions of the respondents No.1 to 4. This Court reserves the right to take appropriate action in respect of the said e-mail casting aspersion regarding hurry in hearing of the matter without realizing that any habeas corpus petition raises serious issue of unlawful detention which has to be heard on urgent basis.

(7) I have heard arguments addressed by Mr. Vinod Ghai, Sr.

Advocate with Mr. A.P.S. Deol, Sr. Advocate with Mr. Jasdev Singh Mehndiratta, learned Counsel for the petitioner, Mr. Sidharth Luthra, Sr. Advocate assisted by Mr. S.S. Narula, Advocate, Mr. Anmol Kheta, Advocate, Mr. Sheezan Hasmi, Advocate with Ms Anusha Nagraja, DAG, Punjab and Ms Diya Sodhi, Asstt. A.G., Punjab and Mr. P.S. Walia, Asstt. A.G. Punjab for respondent Nos.1 to 4.

(8) Learned Senior Counsel for the petitioner has argued that detenu-Sumedh Singh Saini appeared before Varinder Singh Brar, PPS, Joint Director (Crime), Vigilance Bureau, Punjab, SAS Nagar (Mohali) at Vigilance Bhawan, SAS Nagar (Mohali) on 18.02.2021 at about 7:30 p.m. for joining investigation in case FIR No.13 dated 02.08.2021 and was illegally arrested in case FIR No.11 dated 17.09.2020 on allegations of having committed offences punishable under Sections 420, 467, 468, 471 and 120-B of the IPC due to mala fides, malice and ulterior motives as a result of political vendetta. Earlier, detenu-Sumedh Singh Saini was nominated as accused in four cases in which he has been granted anticipatory bail/protection order as mentioned in the habeas corpus petition. The offences alleged to have been committed by the detenu are not made out. The detenu was granted interim anticipatory bail in FIR No.13 dated 02.08.2021 vide order dated 12.08.2021 on the same allegations. Similarly placed co-accused Surinderjit Singh Jaspal has been granted anticipatory bail vide order dated 24.02.2021 passed in CRM-M-8839-2021. Co-accused Nimratdeep Singh was also not arrested before arrest of the detenu-Sumedh Singh Saini. Other co-accused have either been granted anticipatory bail or have not been arrested by the police. Arrest of the detenu in case FIR No.11 dated 17.09.2020 being in circumvented violation of protection orders dated 11.10.2018 and 23.09.2020 and interim anticipatory bail order dated 12.08.2021 is illegal. Therefore, the habeas corpus petition may be allowed and the detenu may be ordered to be set at liberty. In support of his arguments learned Counsel for the petitioner has placed reliance on observations made by Hon'ble Supreme Court in para No.57 to 60 of the judgment passed by Hon'ble Supreme Court in ***Criminal Appeal No.742 of 2020 titled as Arnab Manoranjan Goswami versus State of Maharashtra and others decided on 27.11.2020.***

(9) On the other hand learned Senior Counsel for respondents No.1 to 4 has argued that detenu-Sumedh Singh Saini has been arrested in accordance with law in case FIR No.11 dated 17.09.2020. This Court had passed blanket anticipatory bail orders dated 11.10.2018

and 23.09.2020 which orders were passed against the law laid down by Hon'ble Supreme Court in *Gurbaksh Singh Sibbia versus State of Punjab*² that blanket anticipatory bail orders cannot be passed. Arrest of the detenu was in respect of the case which did not have any connection to his entire service career and therefore, arrest was not violative of orders dated 11.10.2018 and 23.09.2020. The detenu claimed execution of rent agreement which purported to have been executed on 15.10.2018 but which was typed on stamp paper dated 07.09.2018 and notarized on 18.10.2018. The detenu executed agreement to sell dated 02.10.2019 to create a defence to attachment of the house which was purchased with bribe money given by Nimratdeep Singh to Surinderjit Singh Jaspal. Proceedings for attachment of the house were initiated on 22.01.2021 and attachment order was passed on 16.07.2021. Illustrations (d) and (e) to Section 464 of the IPC apply to the case and offences under Sections 420, 467, 468, 471 and 120-B of the IPC are made out against the detenu. The legality of detention has to be determined on the basis of the return to be filed by respondents No.1 to 4 and cannot be determined on the basis of any illegality in arrest of the detenu. The detenu has been produced before Judicial Magistrate First Class for passing of remand orders but the learned Counsel for the detenu misinformed the Court that there was stay of the remand proceedings due to which Judicial Magistrate First Class has not passed any remand order. Since the accused has been produced before Judicial Magistrate First Class, the legality of his arrest and question of his remand to police or judicial custody can be determined by Judicial Magistrate First Class. The detenu-Sumedh Singh Saini cannot be said to be in illegal detention. Therefore, the habeas corpus petition may be dismissed. In support of his arguments learned Senior Counsel assisted by Counsel representing respondents No.1 to 4 has placed reliance on on the judgments of Hon'ble Supreme Court in *Kanu Sanyal versus District Magistrate, Darjeeling and others*³ *Manubhai Ratilal Patel through Ushaben versus State of Gujarat and others*⁴. and *B. Ramachandra Rao, Col., Dr. versus State of Orissa*⁵.

(10) Detenu-Sumedh Singh Saini filed petition CRM-M-45242-2018 under Section 482 of the Cr.P.C. for issuance of directions to respondent No.1 to handover investigation in any matter, registered

² (1980) 2 SCC 565

³ 1973 (2) SCC 674

⁴ 2013(1) SCC 314

⁵ 1972 (3) SCC 314

against the petitioner to the Central Bureau of Investigation or any other independent agency outside the State of Punjab as the petitioner apprehends his false implication in criminal matters on account of malice, mala fides and ulterior motives on the part of the political party in power in the State of Punjab and for issuance of directions to respondent No.1 to keep any proposal for arresting the petitioner, in any criminal matter in abeyance for a specific period of time, so as to enable him to seek recourse to his legal remedies.

(11) In order dated 11.10.2018 the Coordinate Bench of this Court had observed as under:-

“By way of filing this petition, petitioner seeks issuance of a direction to respondent No.1 to hand-over investigation in any matter registered against the petitioner to Central Bureau of Investigation or to any other independent agency outside the State of Punjab. Another prayer has been made for issuance of a direction to respondent No.1 to keep any proposal for arresting the petitioner, in any criminal matter in abeyance for a specific period so as to enable the petitioner to seek his legal remedies.

The petitioner is a retired IPS Officer, who had remained Inspector General of Police, Intelligence, Punjab in the year 2002 and thereafter headed the State Vigilance Bureau, Punjab, from 2007 to 2012 and was Director General of Police, Punjab from the year 2012 to 2015 and ultimately superannuated on June 30, 2018.

Learned counsel for petitioner has submitted that during the period he headed the State Vigilance Bureau and remained Director General of Police, Punjab, he incurred the wrath of the present ruling party including the present Chief Minister as he unearthed various scams and scandals wherein the following FIRs had been lodged, in which present Chief Minister was also named as an accused:

(i) FIR No.5 dated 23.3.2007 under Sections 409, 420, 467, 468, 471, 120-B IPC and Sections 13(1)(c)(d) read with Section 7, 13(2), 14 of the Prevention of Corruption Act, 1988, Police Station Vigilance Bureau, Ludhiana.

(ii) FIR No.3 dated 11.9.2008, under Sections 420, 467, 468, 471, 193, 120-B IPC and Section 7, 8, 13(1)(c)(d) read with Section 13(2) of the Prevention of Corruption Act,

1988, Police Station Vigilance Bureau, Flying Squad-I, Mohali.

(iii) FIR No.28 dated 20.6.2008, under Sections 7, 8, 9 13(1)(d)(e), 14 read with Section 13(2) of the Prevention of Corruption Act, 1988 and 120-B IPC, Police Station Vigilance Bureau, Patiala.

(iv) FIR No.2 dated 11.2.2009, under Sections 406, 420, 421, 120-B IPC and Sections 7, 13(1)(c) (d) read with Section 13(2) of the Prevention of Corruption Act, 1988, Police Station Vigilance Bureau, Phase-I, Mohali.

The learned counsel has submitted that he did not succumb to the pressure mounted upon the petitioner to scuttle the investigation of the said cases in which the present Chief Minister and his coterie were arrayed as accused and as such the petitioner is being perceived as an enemy of the present ruling party and now in order to wreak vengeance, the ruling party is bent upon involving the petitioner in criminal cases including the Kotkapura sacrilege case and also in a case where one Aman Skoda was arrested in Moga and in other false cases including cases in which he had taken action as a part of his official duty.

Notice of motion to State of Punjab for 28.11.2018. At this stage Mr. Atul Nanda, Advocate General, Punjab assisted by Ms. DiyaSodhi, Assistant Advocate General, Punjab put in appearance and has submitted that he may be heard before passing any interim directions.

I have heard the learned Advocate General, Punjab.

Learned Advocate General, Punjab has submitted that since it is a case where the petitioner is seeking blanket bail, the same has not only been deprecated by the Hon'ble Supreme Court but cannot be granted under any circumstances. Learned State counsel in order to hammer forth his aforesaid submission places reliance upon a judgment of Hon'ble Supreme Court rendered in *State of Telangana versus Habib Abdullah Jeelani and others* (2017) 2 SCC 779 wherein it has been held that the High Court in exercise of powers under Section 482 Cr.P.C. cannot restrain an investigating agency from arresting the accused during course of investigation. Learned Advocate General, Punjab

also places reliance upon another judgment to a similar effect reported as *Nazma versus Javed @ Anjum (2013) 1 SCC 376*. The learned Advocate General, Punjab also presses into service *Gurbaksh Singh Sibbia and others versus State of Punjab (1980) 2 SCC 565* to contend that neither Section 438 Cr.P.C. nor any provision of the code authorizes grant of blanket bail for offence not yet committed or with regard to accusation not so far leveled. I have perused the above cited judgments.

There is certainly no dispute as regards the proposition of law laid down in the above cited judgments. This Court does not intend to grant absolute anticipatory bail to the petitioner, at this stage. Since it is a case which has a political colour also to it and instances of FIRs being lodged due to political vendetta are not unknown, therefore, in view of the special circumstances, this Court deems appropriate to direct that till the next date of hearing, in case the petitioner is sought to be arrested in Kotkapura sacrilege case or in case involving Aman Skoda of Moga or in any case pertaining to an incident of the period while the petitioner remained as State Vigilance Head or Inspector General of Police, Intelligence, Punjab or Director General of Police Punjab, then one week's advance notice shall be afforded to the petitioner before effecting his arrest so as to enable him to have recourse to remedies available to him.

A status report/reply be filed on or before the next date of hearing.”

(12) The detenu filed application bearing No.CRM-23578- 2020 for extending the protection granted by this Court vide order dated 11.10.2018 to any incident pertaining to the entire service career of the detenu on the ground that in order to circumvent the order passed by this Court, respondent No.1 implicated him as an accused in FIR No.77 dated 06.05.2020 registered under Sections 364, 201, 344, 330, 2019 and 120-B of the IPC in Police Station Mataur regarding the incident pertaining to year 1991 when the petitioner was posted as Senior Superintendent of Police, Chandigarh. The petitioner applied for grant of anticipatory bail which was allowed vide order dated 11.05.2020 passed by learned Additional Sessions Judge, SAS Nagar (Mohali). After order dated 11.05.2020 was passed, Section 302 of the IPC was added to the array of offences. The brazen attempt to falsely implicate

the petitioner was reported by newspapers. The functionaries of respondent No.1 are hell-bent upon falsely implicating the petitioner in criminal cases pertaining to the period when the petitioner was not posted as Director Vigilance or Inspector General of Police, Intelligence or Director General of Police, Punjab only with a view to circumventing the directions passed vide order dated 11.10.2018. The apprehension is well founded and substantiated by the aforementioned conduct and functionaries of respondent No.1. The petitioner accordingly prayed for extension of protection to any incident pertaining to entire service career of the petitioner.

(13) Vide order dated 23.09.2020 this Court extended the protection granted vide order dated 11.10.2018 to any incident pertaining to entire service career of the petitioner and relevant part of order dated 23.09.2020 reads as under:-

“Till then the protection of order dated 11.10.2018 passed by this Court is extended to any incident pertaining to the entire service career of the applicant/petitioner except the incident subject matter of case FIR No.77 dated 06.05.2020 registered under Sections 364, 201, 344, 330, 219, 120-B of the Indian Penal Code, 1860 at Police Station City Mataur, District S.A.S. Nagar (Mohali) to which Section 302 of the IPC was added later on regarding which SLP No.4336 of 2020 titled Sumedh Singh Saini Vs. State of Punjab is pending before Hon'ble Supreme Court. In case the applicant/petitioner is sought to be arrested in any case pertaining to any incident during entire service of the petitioner, other than the incident subject matter of abovesaid FIR No.77 dated 06.05.2020, then one week's advance notice shall be given to the petitioner before effecting his arrest so as to enable him to have recourse to remedies available to him in accordance with law.”

(14) So far as the challenge to grant of blanket anticipatory bail vide orders dated 11.10.2018 and 23.09.2020 is concerned it may be observed that in *Gurbaksh Singh Sibbia versus State of Punjab*⁶ in para No.36 Hon'ble Supreme Court observed as under:-

“36. We have said that there is one proposition formulated by the High Court with which we are inclined to agree. That is proposition No.(2). We agree that a '**blanket order**' of

⁶ (1980) 2 SCC 565

anticipatory bail should not generally be passed this flows from the very language of the section which, as discussed above, requires the applicant to show that he has "reason to believe" that he may be arrested. A belief can be said to be founded on reasonable grounds only if there is something tangible to go by on the basis of which it can be said that the applicant's apprehension that he may be arrested is genuine....." (emphasis supplied)

(15) In *Adri Dharan Das versus State of West Bengal*⁷ while referring to *Gurbaksh Singh Sibbia's case (supra)* Hon'ble Supreme Court observed that **normally** no directions should be issued to the effect that the applicant should be released whenever arrested for whichever offence whatsoever.

(16) From a careful reading of both the decisions it is clear that "blanket order" of anticipatory bail should not be "generally" passed and "normally" a direction should not be issued to the effect that the applicant shall be released on bail "whenever arrested for whichever offence whatsoever". It follows that even under Section 438 of the Cr.P.C. if special circumstance/circumstances are shown and in extraordinary case and on ample materials being placed on record, the court to strike a balance between individual rights of personal freedom and the investigation right of the police, pass an appropriate order including the one directing the prosecution to give advance notice for a reasonable time.

(17) It may also be added here that such relief was granted by this Court in *Ram Chander Madhia versus The State of Haryana*⁸ CRM-M-9987-1989 vide order dated 15.12.1989, CRM-M-2279-1989 vide order dated 23.03.1990, CRM-M-3149-1989 vide order dated 04.05.1989, *Bhajan Lal and others versus State of Haryana and others*⁹, CRM-M-45804-2007 vide order dated 10.11.2009 and CRM-M-46119-2018 vide order dated 17.10.2018. Even though in *State of Maharashtra versus Mohd. Rashid and another*¹⁰ *D.K. Ganesh Basu versus P.T. Manokaran and others*¹¹ and *Sunita Devi versus State of*

⁷ 2005(2) RCR(CrL.) 32

⁸ 1986 (2) RCR 561

⁹ 1990(2) RCR (CrL.) 515

¹⁰ 2005(7) SCC 56

¹¹ 2007(2) RCR(CrL.) 161 (SC)

*Bihar and another*¹² orders prohibiting arrest of granting relief of advance notice were set aside by Hon'ble Supreme Court but the above-said cases did not involve issue of mala fides, malice, political vendetta and the observations made by Hon'ble Supreme Court permitting, by due implication of use of the expression '**generally**' that in exceptional circumstances such blanket protection could be given were not overruled by expression of any absolute prohibition of the same.

(18) In **CRM-M-35545-2007** it was held by this Court that neither of the judgments in *Gurbax Singh Sibbia's case (supra)* and *Adri Dharan Das's case (supra)* had put an absolute restrictions and embargo on the exercise of powers of High Court under Section 438 in granting limited protection by way of an order of giving advance notice of his arrest.

(19) In *CWP No.10119 of 2007* the Court posed the questions to itself “should we allow the personal liberty of the petitioner to be violated first and then restore it or we should take notice of certain overt acts full of political overtones and vindictiveness ?” and “instead of granting some relief to the petitioners would it be proper course to tell the petitioners that Court cannot take any action towards preventive justice?” and observed that “we should be inclined to protect the personal liberty of citizens given to them by Article 21 of the Constitution”.

(20) In any case the above-said orders were not challenged by the respondents by filing any appeal before Hon'ble Supreme Court.

(21) It may be observed here that Sh. Parkash Singh Badal was the Chief Minister of Punjab from February, 1997 to February, 2002. Captain Amrinder Singh became the Chief Minister of Punjab from February, 2002 to February, 2007. After the election of State Legislative Assembly 2007 Sh. Parkash Singh Badal again became the Chief Minister of Punjab. There is political and personal rivalry between Sh. Parkash Singh Badal and Captain Amrinder Singh and their family which dates back to late 1990s and findings were recorded regarding this political vendetta in order dated 24.05.2007 passed in CRM-M- 33867-2007, order dated 30.07.2007 passed in CRM-M-21713-2007, order dated 01.10.2007 passed in CRM-M-32475-2007 and order dated 28.05.2008 passed in CWP-10119-2007 by this Court.

(22) FIR No.5 dated 23.03.2007 was registered under Sections

¹² 2005(1) R.C.R.(CrI.) 410

409, 420, 467, 468, 471 and 120-B of the IPC read with Section 13(1)(c)(d), 13(2) and 14 of the Prevention of Corruption Act, 1988 against Captain Amrinder Singh.

(23) FIR No.11 dated 16.05.2002 under Sections 420, 467, 471 and 120-B of the IPC and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and FIR No.13 dated 14.06.2002 under Sections 420, 467, 468 and 120-B of the IPC and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 in Police Station Vigilance Bureau, Flying Squad-I Mohali were registered against Sh. Parkash Singh Badal.

(24) Bhart Inder Singh Chahal approached this Court by filing CRM-M-35545-2007 and vide order dated 01.06.2007 this Court directed the Vigilance Bureau that he shall not be arrested in any case by the Punjab Vigilance Bureau without giving him 4 days advance notice so he could file bail before the competent Court but when he went to join the investigation, the Punjab Police arrested him from the office of Vigilance Bureau in case FIR No.105 dated 10.06.2007. FIR No.126 dated 12.06.2007 under Sections 384, 406, 420, 467, 468 and 471 of the IPC and FIR No.227 dated 13.06.2007 under Sections 406, 420 and 506 of the IPC at Police Station Kotwali Patiala were registered against him. Allegations of police torture were made by Bharat Inder Singh Chahal and on CWP No.9434-2007 direction was given for giving him 4 days notice in any case to be registered against him.

(25) Detenue-Sumedh Singh Saini filed application bearing CRM-8073-2021 for extending the protection granted by this Court vide order dated 11.10.2018 to any incident in which the applicant/petitioner is sought to arrayed as an accused by respondent No.1. In para 8 of the application detenue-Sumedh Singh Saini pleaded as under:-

“That respondent State is now making efforts to implicate petitioner in more cases. Sh. Surinderjit Singh Jaspal, who is landlord of the petitioner was arrayed as an accused by the respondent State in FIR No.11 dated 17.09.2020 registered u/ss 7-A, 7-B, 7-C, 13(1)(a) read with 13(2) of the Prevention of Corruption Act, 1988 and Sections 409, 420, 467, 468, 471 and 120-B of the Indian Penal Code, 1860. He was granted interim anticipatory bail by this Hon'ble Court in CRM-M-8839 of 2021 vide order dated 24.02.2021. A copy of the order is appended as *Annexure*

P-20. He was being threatened by the officers of respondent No.1 with false implication in other cases and he had to file a petition for protection in this Hon'ble Court, wherein he categorically stated that he was being threatened by officers of Punjab Police to give statements and provide material against the petitioner to the effect that the house owned by him has been purchased out of tainted money allegedly belonging to the petitioner. The said petition has been registered as CRM-M-10464 of 2021.”

(26) The relevant part of order dated 16.03.2021 passed by this Court reads as under:-

“The case has been taken up for hearing through video conferencing.

CRM-8073-2021

Prayer in the application filed under Section 482 of the Code of Criminal Procedure, 1973 is for extending the protection granted by this Court vide order dated 11.10.2018 to any incident in which the applicant- petitioner is sought to be arrayed as an accused by respondent No. 1.

Advance copy of the application was supplied to the respondents.

Learned Counsel for respondent No. 1-State seeks time to file reply to the application.

Adjourned to 06.04.2021.

CRM-M-45242-2018 (O & M)

The petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 seeking direction to respondent No. 1 for transfer of investigation of cases registered against the petitioner to CBI or any other independent agency outside the State of Punjab and giving notice of specified period before his arrest. The prayer for the above said reliefs is based on the grounds of mala fides on the part of Mr. Amrinder Singh, Chief Minister, Punjab and members of ruling party and apprehension of false implication and arrest of the petitioner on accusation of having committed non bailable offence by the Punjab Police on the basis of some tainted investigation.

In view of the facts and circumstances of the case, I consider it necessary for just and proper decision of the present petition that copies of the FIRs registered against Mr. Parkash Singh Badal, former Chief Minister, Punjab and Mr. Amrinder Singh, Chief Minister, Punjab and their associates, present status of the cases, copies of orders passed by this Court on petitions filed by the accused named in those cases seeking relief of directing respondent No. 1 to give advance notice prior to their arrest, orders passed by Hon'ble Supreme Court on SLPs filed against the same, brief statement of proceedings regarding arrest and bail and final orders passed in such cases be placed on record.

Accordingly, the respondent No. 1 is directed/the parties are given opportunity to place on record copies of the relevant documents as referred above.

Since the petitioner is seeking transfer of investigation of cases registered against him, respondent No. 1- State of Punjab is also directed to file an affidavit of the concerned officer giving details of the cases in which investigation regarding involvement of the petitioner is pending.

Case is adjourned to 06.04.2021. Interim order to continue.

To be shown in the **urgent list** on that date.”

(27) Detenue-Sumedh Singh Saini was granted interim anticipatory bail in FIR No.13 dated 02.08.2021 in which detenue-Sumedh Singh Saini was nominated as accused No.7. In the FIR it was mentioned that as per Surinderjit Singh Jaspal, Sh. Sumesh Singh Saini is residing in this house as tenant in this regard one rent agreement dated 15.10.2018 was executed. 1st floor of this house has been rented out on the rent of Rs.2,50,000/- per month to the tenant. The duration of this rent agreement dated 15.10.2018 was of 11 months, as per which total rent of 11 months comes to about Rs.27,50,000/-, but in this rent agreement dated 15.10.2018, the fact regarding payment of Rs.40,00,000/- as security and Rs.5,00,000/- as two months advance rent i.e. total Rs.45,00,000/- which is more than the total rent of 11 months by Sh.Sumedh Singh Saini to the land-lord before this agreement came into effect, is recorded. Along with this, from Aug.2018 to Aug.2020 through separate transactions, total Rs.6,40,000/- has been transferred by Sh. Sumedh Singh Saini in the bank account of Sh. Surinderjit Singh Jaspal. But receipt of this amount

is not as per the terms of rent agreement (Rs.2,50,000/- per month). Till 27-9-2019 total Rs.2,00,00,000/- has been transferred from the bank account of tenant to the bank account of land-lord. After these financial transactions came to light, Nimrat Deep Singh and his father in connivance with Sh. Sumedh Singh Saini had presented one agreement to sell dated 2-10-2019 during enquiry in order to justify this financial transaction. This agreement to sell is on plan paper and is unregistered and it does not bear signature of any witness and bears only the signatures of seller and purchaser. Whereas the rent agreement executed by both the above parties before this agreement to sell was on stamp paper and was attested by witnesses.

(28) The detenue filed petition for grant of anticipatory bail and he was granted interim anticipatory bail vide order dated 12.08.2021 relevant part of which reads as under:-

“24. Heard learned senior counsel(s) for the parties at length and perused the pleadings. It would not be appropriate at this stage to deal with the contentions raised by learned senior counsel for the petitioner of political vendetta and that the petitioner was granted protection in all other FIRs. The prayer for anticipatory bail is to be considered on the facts of each case. It is not a disputed fact that vigilance enquiry was initiated against A1 for having disproportionate assets to his known sources of income. During enquiry, the rent agreement and agreement to sell of House No. 3048, Sector 20-D, Chandigarh surfaced. The nomination of the petitioner in the FIR is on the basis of two agreements and transactions between the petitioner and A2. The transactions making foundation for naming the petitioner in the FIR are through banking channel. There is an attempt by the petitioner to explain the sources of payments made to A2. There is an explanation put forth for receiving back amount of Rs.75,00,000/- by the petitioner from the seller. At this stage, this court exercises restraint for going any further into the said factual aspect.

(i) Learned senior counsel for the State raised a doubt with regard to genuineness of the agreement to sell and that there was a violation of the provisions of Income Tax Act, 1961 by not deducting TDS while making payment of monthly rent. These issues including the factual aspect of exact amount received from the builder for the property at Delhi

would be subject-matter during the trial. The veracity of the explanation of the petitioner for making advance payment of security before the date of agreement to sell would be tested in trial.

(ii) Taking conceptuous of the facts and circumstances, antecedents of the petitioner and that he is having Z-plus protection meaning thereby remains in a security cover, there is no chance of his absconding. Though there is an apprehension raised that the petitioner was ploughing back the black money but the allegations are based upon documentary evidence and the banking transactions. For joining loose ends, if any with regard to the documentary evidence or banking transactions, this court is of the opinion that custodial interrogation of the petitioner is not required. The petitioner is granted interim bail subject to his joining investigation within one week from today. In the event of arrest, he shall be released on bail subject to his furnishing adequate bail bonds to the satisfaction of the Investigating Officer. He is directed to join the investigation as and when called for. He shall abide by the conditions as envisaged under Section 438(2) Cr.P.C. To ensure that the petitioner is not able to leave the country, he will surrender his passport if not already surrendered.

27. Put up on 7.10.2021.

28. Before the next date, the State shall file status report.”

(29) It may be observed here that detenue-Summedh Singh Saini filed application bearing No.CRM-25749-2021 for pre-ponement of the date from the date of hearing fixed 24.11.2021 to an early date and application bearing No.CRM-25750-2021 for directing respondent No.1 to comply with order dated 16.03.20221 passed by this Court. In para No.8 of the application bearing No.CRM-25750-2021 detenue-Summedh Singh Saini pleaded as under:-

“That the former private secretary of the petitioner was summoned through a notice under section 160 of the Cr.P.C. by the Deputy Superintendent of Police, Vigilance Bureau, SAS Nagar vide notice dated 841/VB/EOW dated 05.08.2021. A true copy of the said notice is annexed herewith as **Annexure P-2**. It appears that the officials of respondent No.1 are again attempting to implicate the

petitioner in some other criminal case, only with a view to circumventing the orders passed by this Hon'ble Court.”

(emphasis supplied)

(30) Advance copy of the above-said application was supplied to the respondents. Due to pandemic of Covid-19 the case was adjourned under the orders of Hon'ble the Chief Justice to 24.11.2021. When a case is adjourned under orders of Hon'ble the Chief Justice on the ground of restricted functioning of the Court due to restrictions imposed to prevent spread of infection of Covid-19 it is expected that parties will maintain status quo and will not disturb the same whether the case be on criminal side or civil side without approaching the Court for appropriate directions/orders.

(31) However, when in compliance with above referred order dated 12.08.2021, detinue-Sumedh Singh Saini along with his lawyer Ramandeep Singh appeared before Varinder Singh Brar, PPS, Joint Director (Crime), Vigilance Bureau, Punjab, SAS Nagar (Mohali) at Vigilance Bhawan, SAS Nagar (Mohali) on 18.02.2021 at about 7:30 p.m. for joining investigation, after making him to wait for about half an hour his application was endorsed by Amritpal Singh, A/MHC Vigilance Office at 08:08 p.m. and thereafter gates of the Vigilance Bhawan were closed and the detinue was detained and his lawyer was pushed out of the Vigilance Bhawan.

(32) On being asked, this Court was informed by Mr. Sidharath Luthra, learned Senior Counsel assisted by Mr. Sartej Singh Narula, Advocate that the petitioner has been arrested in case FIR No.11 dated 17.09.2020 registered under Sections 409, 420, 467, 468, 471 and 120-B of the IPC and Sections 13(1)(a) read with Section 13(2) of the Prevention of Corruption Act, 1988 as amended in 2018 at Police Station Vigilance Bureau Flying Squad-1, Punjab, Mohali. Vide order passed by this Court today i.e. 19.08.2021 respondent No.1-State was directed to file copies of the relevant documents including arrest memo prepared at the time of his arrest, document intimating him about the grounds of arrest, document intimating his family member/friend about his arrest and copy of the FIR through e-mail or through special messenger. Accordingly, copies of FIR No.11 dated 17.09.2020, letter adding offences, arrest memo, intimation of arrest, reasons of arrest, reasons for arrest (Report of DSP), interim application No.CRM-25383-2020 in CRM-M-32417-2021, order in CRM-25383-20212 and habeas corpus petition have been filed before this Court. Mr. A.P.S. Deol, Sr. Advocate for the petitioner has also filed copies of FIR No.11

dated 17.09.2020 and FIR No.13 dated 02.08.2021 along with its vernacular before this Court.

(33) It may be observed that case FIR No.11 dated 17.09.2020 was registered on the basis of disproportionate assets inquiry against Nimratdeep Singh and others. Initially the FIR was registered against four persons namely Ravinder Singh Sandhu, Nagender Rao, Ashok Kumar Sikka and Shakti Sagar Bhatia. Nimratdeep Singh, Sunderjit Singh Jaspal, Taranjit Singh and Mohit Puri were nominated during investigation. Detenue-Sumedh Singh Saini has been nominated as accused in the case vide report dated 02.08.2021. The allegations against detenue-Sumedh Singh Saini in the above-said case are not that he received any bribe money from anyone or possessed any disproportionate assets or had any other financial transaction with the above-said accused persons except the transactions made under the rent agreement dated 15.10.2018 and agreement to sell dated 02.10.2019. In the present case the petitioner is alleged to have committed offence under Section 467 of the IPC by ante-dating agreement to sell purporting to have been executed on 02.10.2019 which was on plain paper and not on any stamp paper to create a defence to attachment of the above-said house which was allegedly acquired with bribe money taken by Nimratdeep Singh and given to his father Surinderjit Singh Jaspal. It is doubtful as to whether the allegations as to execution of agreement to sell dated 02.10.2019 to create a defence to attachment of the house satisfy the ingredients of Section 464 of the IPC so as to constitute the offence punishable under Section 467 of the IPC. Further, the incidents of taking of bribe are alleged to have taken place in the year 2014. The above-said house was allegedly purchased in the year 2017. Application for attachment was filed on 22.01.2021 and order for attachment was passed on 16.07.2021. Allegations in respect of the said agreements were also part of FIR No.13 dated 02.08.2021 in respect of which detenue-Sumedh Singh Saini has been granted interim anticipatory bail by the Coordinate Bench vide order dated 12.08.2021 passed in CRM-M-32417-2021. In view of the observations made by Hon'ble Supreme Court in *T.T. Antony versus State of Kerala*¹³. Said allegations could not form part of another FIR and the petitioner could not be arrested in FIR No.11 dated 17.09.2020 for the same alleged criminal acts which were subject matter of FIR No.13 dated 02.08.2021 which were specifically referred to in order dated 12.08.2021 and for which the detenue was granted interim anticipatory bail and therefore

¹³ 2001 (3) RCR (Crl.) 436

arrest of the detenue on substantially the same allegations is patently illegal.

(34) Relevant material regarding arrest and detention of detenue-Sumedh Singh Saini is already before this Court and therefore, filing of any detailed reply to the habeas corpus petition is not required particularly when the relevant facts are ascertainable from the material on record and detailed submissions have been made by learned Counsel representing the petitioner and respondents No.1 to 4 before this Court. Further, the habeas corpus petition concerns serious issue of illegal detention of a person and grant of any adjournment for filing of any detailed reply may defeat the very purpose of filing of the habeas corpus petition and therefore, interim or final order on the basis of the same can be passed on the material produced before the Court unfolding all the relevant facts and circumstances of the case without granting adjournment for filing of any such detailed reply.

(35) In *Kanu Sanyal versus District Magistrate, Darjeeling and others*¹⁴ it was held by Hon'ble Supreme Court that production of the body of the person alleged to be unlawfully detained is not essential before an application or a writ of habeas corpus can be heard and decided by the Court.

(36) In *Manubhai Ratilal Patel through Ushaben versus State of Gujarat and others*¹⁵ Hon'ble Supreme Court concluded in para No.32 of its judgment as under :-

“.....It is well accepted principle that a writ of habeas corpus is not to be entertained when a person is committed to judicial custody or police custody by the competent court by an order which prima facie does not appear to be without jurisdiction or passed in an absolutely mechanical manner or wholly illegal. As has been stated in the cases of B.R. Rao (supra) and Kanu Sanyal (supra), the court is required to scrutinise the legality or otherwise of the order of detention which has been passed. Unless the court is satisfied that a person has been committed to jail custody by virtue of an order that suffers from the vice of lack of jurisdiction or absolute illegality, a writ of habeas corpus cannot be granted”

¹⁴ 1973 (2) SCC 674

¹⁵ 2013(1) SCC 314

(37) There is no dispute with the proposition of law laid down in *Manubhai Ratilal Patel's case (supra)* but in the present case this Court has been intimated that on being informed about pending of the proceedings before this Court and misinformed regarding stay of the proceedings of remand concerned Judicial Magistrate has not passed any remand order.

(38) In *Criminal Appeal No.742 of 2020 titled as 'Arnab Manoranjan Goswami versus State of Maharashtra and others' decided on 27.11.2020* it was held by Hon'ble Surpme Court that the High Court should not foreclose itself form the exercise of the power when the citizen is arbitrarily deprived of its personal liberty in an excess of State power. In that case Hon'ble Supreme Court observed in paras No.57 to 60 as under:-

“57 While considering an application for the grant of bail under Article 226 in a suitable case, the High Court must consider the settled factors which emerge from the precedents of this Court. These factors can be summarized as follows:

- (i) The nature of the alleged offence, the nature of the accusation and the severity of the punishment in the case of a conviction;
- (ii) Whether there exists a reasonable apprehension of the accused tampering with the witnesses or being a threat to the complainant or the witnesses;
- (iii) The possibility of securing the presence of the accused at the trial or the likelihood of the accused fleeing from justice;
- (iv) The antecedents of and circumstances which are peculiar to the accused;
- (v) Whether prima facie the ingredients of the offence are made out, on the basis of the allegations as they stand, in the FIR; and
- (vi) The significant interests of the public or the State and other similar considerations.

58 These principles have evolved over a period of time and emanate from the following (among other) decisions: *Prahlad Singh Bhati vs NCT, Delhi : 2001 (4) SCC 280;*

Ram Govind Upadhyay vs Sudarshan Singh 2002 (3) SCC 598; State of UP vs Amarmani Tripathi 2005 (8) SCC 21; Prasanta Kumar Sarkar vs Ashis Chatterjee 2010 (14) SCC 496; Sanjay Chandra vs CBI 2012 (1) SCC 40; and P. Chidambaram vs Central Bureau of Investigation Criminal Appeal No.1605 of 2019 decided on 22.10.2019 .

59 These principles are equally applicable to the exercise of jurisdiction under Article 226 of the Constitution when the court is called upon to secure the liberty of the accused. The High Court must exercise its power with caution and circumspection, cognizant of the fact that this jurisdiction is not a ready substitute for recourse to the remedy of bail under Section 439 of the Cr.P.C. In the backdrop of these principles, it has become necessary to scrutinize the contents of the FIR in the case at hand. In this batch of cases, a prima facie evaluation of the FIR does not establish the ingredients of the offence of abetment of suicide under Section 306 of the IPC. The appellants are residents of India and do not pose a flight risk during the investigation or the trial. There is no apprehension of tampering of evidence or witnesses. Taking these factors into consideration, the order dated 11 November 2020 envisaged the release of the appellants on bail J Human liberty and the role of Courts

60 Human liberty is a precious constitutional value, which is undoubtedly subject to regulation by validly enacted legislation. As such, the citizen is subject to the edicts of criminal law and procedure. Section 482 recognizes the inherent power of the High Court to make such orders as are necessary to give effect to the provisions of the CrPC —or prevent abuse of the process of any Court or otherwise to secure the ends of justice. Decisions of this court require the High Courts, in exercising the jurisdiction entrusted to them under Section 482, to act with circumspection. In emphasising that the High Court must exercise this power with a sense of restraint, the decisions of this Court are founded on the basic principle that the due enforcement of criminal law should not be obstructed by the accused taking recourse to artifices and strategies. The public interest in ensuring the due investigation of crime is protected by ensuring that the inherent power of the High Court is

exercised with caution. That indeed is one – and a significant - end of the spectrum. The other end of the spectrum is equally important: the recognition by Section 482 of the power inhering in the High Court to prevent the abuse of process or to secure the ends of justice is a valuable safeguard for protecting liberty. The Code of Criminal Procedure of 1898 was enacted by a legislature which was not subject to constitutional rights and limitations; yet it recognized the inherent power in Section 561A. Post Independence, the recognition by Parliament³⁷ of the inherent power of the High Court must be construed as an aid to preserve the constitutional value of liberty. The writ of liberty runs through the fabric of the Constitution. The need to ensure the fair investigation of crime is undoubtedly important in itself, because it protects at one level the rights of the victim and, at a more fundamental level, the societal interest in ensuring that crime is investigated and dealt with in accordance with law. On the other hand, the misuse of the criminal law is a matter of which the High Court and the lower Courts in this country must be alive. In the present case, the High Court could not but have been cognizant of the specific ground which was raised before it by the appellant that he was being made a target as a part of a series of occurrences which have been taking place since April 2020. The specific case of the appellant is that he has been targeted because his opinions on his television channel are unpalatable to authority. Whether the appellant has established a case for quashing the FIR is something on which the High Court will take a final view when the proceedings are listed before it but we are clearly of the view that in failing to make even a prima facie evaluation of the FIR, the High Court abdicated its constitutional duty and function as a protector of liberty. Courts must be alive to the need to safeguard the public interest in ensuring that the due enforcement of criminal law is not obstructed. The fair investigation of crime is an aid to it. **Equally it is the duty of courts across the spectrum – the district judiciary, the High Courts and the Supreme Court – to ensure that the criminal law does not become a weapon for the selective harassment of citizens. Courts should be alive to both ends of the spectrum – the need to ensure the proper**

enforcement of criminal law on the one hand and the need, on the other, of ensuring that the law does not become a ruse for targeted harassment. Liberty across human eras is as tenuous as tenuous can be. Liberty survives by the vigilance of her citizens, on the cacophony of the media and in the dusty corridors of courts alive to the rule of (and not by) law. Yet, much too often, liberty is a casualty when one of these components is found wanting.” (emphasis supplied)

(39) In view of the above referred judicial precedents and above discussed facts and circumstances of the case evidencing illegality of the arrest of the detenue, the habeas corpus petition is allowed and the detenue is held to have been illegally arrested in circumvented violation of protection orders dated 11.10.2018 and 23.09.2020 and interim anticipatory bail order dated 12.08.2021 passed by the Co-ordinate Bench of this Court. Therefore, the detenue is ordered to be released forthwith. However, the Investigating Officer of the case shall be at liberty to arrest the detenue after giving seven days notice in accordance with orders dated 11.10.2018 and 23.09.2020 and also seeking permission from the concerned Co-ordinate Bench of this Court hearing CRM-M-45242-2018 in which the detenue has been granted interim anticipatory bail on substantially the same allegations.

Shubreet Kaur