different does not make them repugnant so as to attract the provisions of Article 254 of the Constitution. In this view of the matter, we need not refer to the case law cited on behalf of the writ petitioner as we find that the same is not relevant to the facts of the present case.

(10) Lastly, it was urged that Regulation-3 framed by the University requiring at least 45 per cent of the aggregate marks in the Bachelor's degree is arbitrary and violative of the Article 14 of the Constitution inasmuch as it classifies the candidates in two categories-those possessing 45 per cent marks or more in the aggregate and others with less than 45 per cent marks. The classification, according to the counsel for the petitioner, is impermissible as it has no nexus with the object sought to be achieved. This argument has only to be noticed to be rejected. In our opinion, the Regulation is not arbitrary and it is open to the University for the purpose of maintaining its academic standards to prescribe any qualification for admission to its course which may be higher than the minimum prescribed. No meaningful argument, indeed, could be urged in this regard.

(11) For the reasons recorded above, we find no merit in the writ petition and the same stands dismissed with no order as to costs.

*J.S.T.*

*Before Hon'ble R. P. Sethi & H. S. Bedi, JJ.*

MASTER HARI SINGH,—*Petitioner.*

*versus*

STATE OF HARYANA AND ANOTHER,—*Respondents.*

*Civil Writ Petition No.* 6223 *of* 1992.

December 23, 1993.

*Constitution of India,* 1950—*Art.* 226/227—*Terrorist and Disruptive Activities (Prevention) Act,* 1987—*S.* 19—*F.I.R. under TADA Act registered—Writ petition filed for quashing the F.I.R.—F.I.R. at investigation stage—Maintainability of the writ petition.*

*Held* that TADA Act cannot be taken to mean that constitutional powers of the Court under Articles 226 and 227 have been excluded. The Act itself "being product of the Constitution does

not and cannot take away the power of this Court under the Constitution. Section 19 of the Act only speaks about right to prefer appeal from any judgment, sentence or order of the Designated Court to the Supreme Court both on facts and on law and provides that no appeal or revision shall lie to any other court from the aforesaid judgment, sentence or order of Designated Court. Though the right of appeal or revision to approach the High Court has been taken away, yet the Act does not refer to taking away the power of the High Court under Articles 226 and 227 of the Constitution. Once it is found on facts that there was imminent threat to the liberty of an individual as guranteed by Part III of the Constitution, the provisions of the TADA act would not come in the way of the High Court to exercise its constitutional powers under Articles 226 or 227 of the Constitution. It has been conceded at the Bar that no provision has been made in terms of Article 323-A of the Constitution excluding the jurisdiction of this Court and in the absence of such a provision in the Constitution itself, the power of the High Court under Article 226 of the Constitution remains unfettered.

(Para 8)

*Held*, further that the power of the Court under Articles 226 or 227 of the Constitution for the purposes of quashing the criminal prosecution are circumscribed and can be exercised only in proper cases for the enforcement of fundamental or legal rights or where it manifestly appears that there was a legal bar against the institution of the alleged offence where the allegations in the F.I.R. or complaint, even if they are taken at their face value are accepted in their entirety. Similarly, the powers in the exercise of the writ jurisdiction cannot be invoked or permitted to be invoked or utilised by a litigant which may ultimately result in holding of parallel investigation by the Court and preventing the investigating agency to discharge its duties and functions as entrusted under the Criminal Procedure Code. F.I.R. cannot be permitted to be quashed without affording the investigating agency an opportunity to collect evidence in support thereof.

(Para 9)

S. C. Mohunta, R. S. Cheema, Senior Advocate with Ajay Lamba and S. S. Narula, Advocates and Navin Mahajan, Advocate, *for the Petitioners.*

J. K. Sibal, Senior Advocate with Ms. Sawarnjit Kohli, Advocate, *for the Respondents.*

JUDGMENT

*R. P. Sethi, J.*

(1) F.I.R. No. 152, Police Station Sadar Hissar, for offences under Sections 3, 4 and 6 of the Terrorist and Discruptive Activities (Prevention) Act, 1987 (hereinafter to be referred to as 'TADA Act')

and Section 25 of the Arms Act is alleged to be illegtimately conceived child of the political rivalry between the petitioner and respondent No. 2. By means of Civil Writ Petition Nos. 6223 of 1992, 9975 of 1992, 8321 of 1993 and 7130 of 1993 a prayer has been made for quashing the aforesaid F.I.R. and the issuance of appropriate directions restraining the respondents from harassing the petitioners in violation of Articles 14, 16, 19 and 21 of the Constitution of India. It is prayed that independent enquiry be directed to be held into the alleged illegal arrest and harassement of the petitioner and his family members. Alternatively, it is prayed that F.I.R. be got investigated by an independent agency and that the respondents be restrained from arresting the petitioners in the aforesaid F.I.R., Annexure P/4.

(2) Petitioner Master Hari Singh has contended that he is a Political activist and ally of Shri Devi Lal former Deputy Prime Minister of India and his son Shri Om Parkash Chautala, former Chief Minister of the State of Haryana. He claims to have unsuccessfully contested the election from Adampur Vidhan Sabha Constituency against respondent No. 2 in the elections held in May, 1991. Respondent No. 2 is stated to be the leader of the Congress Party who allegedly prevented all his political rivals from participating in the democratic process of election to the Vidhan Sabha. He is stated to have conceived hostility and hatred against the petitioner and his political party namely Samajwadi Janta Party. It is contended that F.I.R. No. 251 dated 20th May, 1991 was got registered against one Balwant Singh, an independent candidate, contesting from Adampur constitutency on the allegation that he was found in possession of illicit arms. In the course of investigation of the aforesaid F.I.R. two close relations of Master Hari Singh namely Sher Singh and Suresh were arrested. Several attempts are stated to have been made to arrest the petitioner without any ground and ultimately F.I.R. No. 152 was registered against him and his other Political associates on 11th March, 1992. The petitioners claim to have approached the Designated Court and this Court for protection of their fundamental rights as enshrined under Articles 14, 19 and 21 of the Constitution. It is submitted that respondent No. 2 indiscriminately used his political position and got his opponents involved in various offences. Case of Shri O. P. Jindal of Vikas Party has been cited by the petitioner in support of his claim and the rule of political vendetta allegedly let loose by Bhajan Lal, the present Chief Minister of Haryana. It is submitted that the purpose of involving the petitioner, his associates and other political opponents in criminal cases is to create a terror with

the object that no one dared to contest the election against respondent No. 2 in future. Registration of the F.I.R. is also claimed to be the result of the *mala fides* reported to have been conceived by respondent No. 2. It is submitted that even on admitted facts no offence is made out against the petitioners herein. The vires of the notification issued under Section 5 of the TADA Act is termed to have been issued mechanically and without application of mind which is required to be quashed. It is submitted that no terrorist crime worth the name has been committed in the State of Haryana in general and district Hissar in particular. The whole of the investigation is alleged to be violate of Articles 19 and 21 of the Constitution of India requiring immediate action.

(3) In the reply filed on behalf of respondent No. 1, it is submitted that the Government of Haryana had not committed any act of political persecution against the petitioners. It is, however, admitted that Master Hari Singh and contested the Vidhan Sabha election from Adampur Constituency against Shri Bhajan Lal and had infact polled the highest number of votes from amongst the defeated candidates. Registration of F.I.R. No. 251 of 1991 is admitted but it is denied that the said F.I.R. was registered on account of political rivalry or at the instance of respondent No. 2. F.I.R. No. 152, which is sought to be quashed in this petition, is admitted to have been registered in 11th March, 1992 after about nine months from the date of the alleged commission of the offence on the basis of some secret information received. The F.I.R. was initially registered against the petitioner Hari Singh and his nine other accomplices but later on during investigation several other persons had been involved in the crime. Eleven persons had been arrested and number of weapons, as detailed in the written statement, recovered from their possession. Non bailable warrants of arrest in respect of seven more accused are stated to have been issued by the Illaqa Magistrate of Hissar. It is submitted that the petitioners could not be arrested as they had obtained interim anticipatory bail from this Court. During investigation several accused persons made voluntary statements leading to recoveries and that challans against some of them has already been produced under Section 173 of the Code of Criminal Procedure in the Designated Court. A reference is made to the various statements recorded by the investigating agency during investigation of F.I.R. No. 152 to show that the allegations made by the petitioners were without any basis and that the respondent-State was justified to register the case and investigate it. It is submitted that notification under Section 5 of the TADA Act was issued by the respon-

dents after fully applying their mind and seeing the growing menace of terrorist activities in the entire state of Haryana including Hissar district. It is submitted that Hissar being border district of Punjab State, the terrorists have been striking time and again here and incidents like Dargapur Bus Massacre and Tohana killings are the instances justifying the issuance of notification under Section 5 of the TADA Act. It is submitted that no legal or fundamental right of the petitioners have been violated.

(4) In his affidavit Shri Bhajan Lal has admitted that the petitioner alongwith several other candidates had unsuccessfully contested the last assembly election to the Adampur Vidhan Sabha Constitutency against him wherefrom he was declared elected. It is denied that respondent No. 2 had ever desired to finish the petitioner politically or economically on account of political hostility or hatred as alleged. Respondent No. 2 has claimed to be a staunch believer of democratic values and denied the allegations made against him so far as the instances of enemity towards the petitioner was concerned. It is declared that respondent No. 2 had never entertained any *mala fide* against the petitioner or attempted to falsely implicate him or his associates on that account. The registration of the case allegedly on account of *mala fides* has been denied. It is stated that a deep rooted conspiracy was hatched by the petitioner and his other co-accused to terrorise the voters and capture booths and to eleminate respondent No. 2 during the last assembly elections which has been coroborated during the course of investigation of F.I.R. No. 125 of 1992. Making of press statement (Annexure P/8) with the purpose as alleged by the petitioner has been denied. The allegations of the petitioner Master Hari Singh that he or his family members were subjected to any kind of oppression or persecution have been specifically denied and it has been contended that such allegations have been made only to malign the answering respondent. The use of the TADA by the police indiscriminately against political opponents at the behest of the deponent have also vehementally been denied. The concerned police authorities are reported to have exercised their statutory functions under law with which the said respondent had nothing to do with. The petitioner is alleged to have unnecessarily dragged the answering respondent in the petition in order to malign his image and thereby achieve political ends. The allegations about Shri Jindal and his associates have been termed to be totally irrelevant so far as the decision of the present petition is concerned. The allegations are stated to have been made at the instance of Shri O. P. Jindal and the police is stated to have taken action under law.

(5) During the course of the proceedings the learned counsel for the parties agreed that this petition be disposed of on merits at the motion stage.

(6) The important questions of law requiring adjudication in this case is as to whether the High Court in exercise of its powers under Articles 226 and 227 of the Constitution of India can quash the proceedings of F.I.R. or not. If the Court has the jurisdiction to grant the relief as prayed for, what are the grounds upon which the relief can be granted and the limitations circumscribed for the exercise of such jurisdiction. It has further to be seen as to whether any ancillary directions connected with the main investigation can be given or not. Constitutionality of the notification under Section 5 of the TADA Act is further required to be examined and determined.

(7) There is no denial of the fact that prerogative writs are extraordinary remedies intended to apply in exceptional cases in which ordinary legal remedies are not adequate. In appropriate cases the High Court can issue writs as contemplated by Article 226 of the Constitution which has widened the scope than the power of issuance of prerogative writs as in England. Under this Article High Court besides issuing prerogative writs can also issue directions and orders other than prerogative writs and mould the relief to meet the peculiar and complicated requirement of the case. It was held in *Calcutta Gas Co.* v. *State of West Bengal* (1), that this article is widely worded and does not place any restraint or restriction on the High Court in the exercise of its jurisdiction for the purposes of the enforcement of the fundamental or legal rights and for any other purpose. However, the power of the High Court is always guided by the board and fundamental principle which regulate the grant of prerogative writs. In *Usmanbhai Dawoodbhai Memon and others* v. *State of Gujarat* (2), wherein the petitioners were accused of offences under the TADA Act, the Supreme Court took note of the powers of the High Court under the Constitution and held as under :—

> ".....the provisions of the Act do not take away the constitutional remedies available to a citizen to approach the High Court under Article 226 or Article 227 or move this Court by a petition under Article 32 for the grant of an

(1) A.I.R. 1962 S.C. 1044.
(2) A.I.R. 1988 S.C. 922.

appropriate writ, direction or order. It must necessarily follow that a citizen can always move the High Court under Article 226 or Article 227, or this Court under Article 32 challenging the constitutional validity of the Act or its provisions on the ground that they offend against Articles 14, 21 and 22 or on the ground that a notification issued by the Central Government or the State Government under Section 9(1) of the Act constituting a Designated Court for any area or areas or for such case or class or group of cases as specified in the notification was a fraud on powers and thus constitutionally invalid.

(8) "TADA Act cannot be taken utilized to urge that constitutional powers of the Court under Articles 226 and 227 have been excluded. The Act itself being product of the Constitution does not and cannot take away the power of this Court under the Constitution. Section 19 of the Act only speaks about right to prefer appeal from any judgment, sentence or order of the Designated Court to the Supreme Court both on facts and on law and provides that no appeal or revision shall lie to any other Court from the aforesaid judgment, sentence or order of a Designated Court. Though the right of appeal or revision to approach the High Court has been taken away, yet the Act does not refer to taking away the power of the High Court under Articles 226 and 227 of the Constitution. Once it is found on facts that there was imminent threat to the liberty of an individual as guaranteed by Part III of the Constitution, the provisions of the TADA Act would not come in the way of the High Court to exercise its constitutional powers under Articles 226 or 227 of the Constitution. It has been conceded at the Bar that no provision has been made in terms of Article 323-A of the Constitution excluding the jurisdiction of this Court and in the absence of such a provision in the Constitution itself, the power of the High Court under Article 226 of the Constitution remains unfettered. Mr. J. K. Sibal, learned counsel has also been very fair to concede that this Court under Article 226 of the Constitution has the power to examine the constitutionality of any enactment, rule or order issued under the Act and action of the executive in appropriate cases. In *S.M.D. Kiran Pasha* v. *Government of Andhra Pradesh* (3), the Supreme Court held that Article 326 of the Constitution notwithstanding anything in Article 32, empowers the High Court to issue to any person or authority, including in appropriate

(3) (1989) 4 J.T. 366

cases any Government directions, orders or writs for the enforcement of any of the rights conferred by Part III or for any other purpose besides making interim order whether by way of injunction or stay or in any other manner in such a proceedings. The Supreme Court also dealt with the point as to at what stage the jurisdiction of the Court can be invoked and held :—

> ".....The question is at what stage the right can be enforced? Does a citizen have to wait till the right is infringed ? Is there no way of enforcement of the right before it is actually infringed ? Can the obligation of compulsion on the part of the State to observe the right be made effective only after the right is violated or in other words can there be enforcement of a right to life and personal liberty before it is actually infringed ? What remedy will be left to a person when his right to life is violated ? When a right is yet to be violated, but is threatened with violation can the citizen move the Court for protection of the right. The protection of the right is to be distinguished from its restoration or remedy after violation. When right to personal liberty is guaranteed and the rest of the society, including the State, is compelled or obligated not to violate that right, and if someone has threatened to violate it or its violation is imminent and the person whose right is so threatened or its violation so imminent resorts to Article 226 of the Constitution, could not the court protect observance of his right by restraining those who threatened to violate it until the Court examines the legality of the action. Post-violation resort to Article 226 is for remedy against violation and for restoration of the right, while pre-violation protection is by compelling observance of the obligation or compulsion under law not to infringe the right by all those who are so obligated for compelled.....Law surely can act only after over acts. If overt acts towards violation have already been done and the same has come to the knowledge of the person threatened with that violation and he approaches the Court under Article 226 giving sufficient particulars of proximate actions as would imminently lead to violation of right, should not the court call upon those alleged to have taken those steps to appear and show cause why they should not be restrained from violating that right ? Instead of doing so would it be the proper course to be

adopted to tell the petitioner that the court cannot take any action towards preventive justice until his right is actually violated whereafter alone he could petition for a writ of habeas corpus ? .....If a threatened invasion of a right is removed by restraining the potential violator from taking any steps towards violation, the rights remain protected and the compulsion against its violation is enforced. If the right has already been violated, what is left is the remedy against such violation and for restoration of the right....."

(9) It is, therefore, held that the Court has the power to exercise its jurisdiction under Articles 226 or 227 of the Constitution of India to determine the constitutionality and legality of any provision of the Act or any rule made, notification or order issued under the said Act. It has also the power to examine the legality and constitutionality of any action of the executive for the purposes of enforcement of the fundamental rights of a citizen as enshrined in Part III of the Constitution. The exercise of such a power is, however, subject to recognised limitations and is required to be sparingly used only in exceptional cases. However, the power of the Court under Articles 226 or 227 of the Constitution of the purposes of quashing the criminal prosecution are circumscribed and can be exercised only in proper cases for the enforcement of fundamental or legal rights or where it manifestly appears that there was a legal bar against the institution or continuance of the criminal proceedings in respect of the alleged offence where the allegations in the F.I.R. or complaint, even if they are taken at their face value are accepted in their entirety. The High Court is not required to embark upon an enquiry as to whether the evidence in question was reliable or not which is the function of the trial Court or the Magistrate. Similarly, the powers in the exercise of the writ jurisdiction cannot be invoked or permitted to be invoked or utilized by a litigant which may ultimately result in holding of parallel investigation by the Court and preventing the investigating agency to discharge its duties and functions as entrusted under the Criminal Procedure Code. It would not be a healthy practice if a person accused of an offence is permitted in all cases to come to the High Court at the stage of investigation with the prayer of quashing the proceedings on the ground that no offence was made out despite the fact that the investigation had not yet commenced or was pending. The High Court should be reluctant to interfere at the stage of pendency of investigation. No case can be decided on the basis of the allegations made in the F.I.R. only

which is intended to set in motion the process of criminal investigation. The investigating agency when directed is called upon to investigate the allegations and find out as to what case was made out against the accused on the basis of the evidence collected during investigation. F.I.R. cannot be permitted to be quashed without affording the investigating agency an opportunity to collect evidence in support thereof. The scheme of the Code of Criminal Procedure indicates that upon registration of the F.I.R., the Officer Incharge of the Police Station has the power to investigate and enquire into the allegations if he has reason to suspect the commission of offence for which he is empowered under Section 156 to investigate after sending a copy of the report to the Magistrate empowered to take cognizance of such an offence. The Police Officer making investigation is allowed to examine the witnesses under Section 161 of the Cr. P.C., make a search under Sections 165 and 166, release the accused when evidence is deficient under Section 169 and submit a report on completion of the investigation under Section 173 of the Cr. P.C. No accused can be permitted to deprive the investigating agency of taking action under Chapter XII as authorised by law. In *Jahan Singh* v. *Delhi Administration* (4), the Supreme Court held that where on the date of approaching the High Court no charge sheet or complaint had been laid down in the Court and the matter was only at the stage of investigation by the police, the Court cannot, in exercise of its inherent powers, interfere with the statutory powers of the police of investigation into the alleged offence or quash the proceedings. In that case the report was lodged in Police Station, Tilak Marg, New Delhi, by one Munshi Ram alleging that he was employed as driver of a bus belonging to Indraj Singh and Sukh Lal. On June 13, 1969, he stopped the bus at Mathura Road to talk to one Devi Singh who invited him and his companions to soft drinks at a nearby shop. Leaving the bus unattended they proceeded to that shop and in the meantime the accused persons got into the vehicle and drove away the bus despite the protest made by the first informant and his companion. Munshi Ram lodged a complaint whereafter the police started investigation and arrested the accused person who filed a petition under Section 561-A of the Cr. P.C. challenging the police proceedings in pursuance of the report. The Supreme Court in that case enquired from the accused whether the proceedings sought to be quashed were pending in the Court or before the police. The Court was told that on the date of filing of the petition, the matter

(4) A.I.R. 1974 S.C. 1146.

was still at the stage of investigation by the Police. After considering various judgments cited on the subject, the Supreme Court in that case held :—

"The principle enunciated in Mazir Ahmed's case 71 Ind. App. 203-(A.I.R. 1945 P.C. 18—46 Cr. L.J. 113) (supra) was applied by this Court in S. N. Basak's case (1963)2 S.C.R. 52 = (A.I.R. 1963 S.C. 447) 1963 (1) Cr. L.J. 341) (supra). Therein a First Information Report was registered at the police station to the effect, that S. N. Basak alongwith three others had committed offences under sections 420, 120-B read with Section 420, Penal Code. The police started investigations on the basis of that report. Basak accused surrendered before the Judicial Magistrate and was enlarged on bail. Subsequently, he moved the High Court by a petition under Sections 439 and 561-A of the Code of Criminal Procedure praying that the proceedings pending against him be quashed. At the time he filed the petition, there was no case pending before any court. The High Court quashed the police investigation holding that "the statutory power of investigation given to the police under Chapter XIV is not available in respect of an offence triable under the West Bengal Criminal Law Amendment (Special Courts) Act, 1949 and that being so, the investigation concerned is without jurisdiction." Against that order, the State came in appeal before this Court on a certificate granted by the High Court under Article 134 (1) (c). Allowing the appeal, this Court speaking through J. L. Kapur, J., observed :

"The powers of investigation into cognizable offences are contained in Chapter XIV of the Code of Criminal Procedure. Section 154 which is in that Chapter deals with information in cognizable offences and Section 156 with invetigations into such offences and under these sections the police has the statutory right to investigate into the circumstances of any alleged cognizable offence without authority from a Magistrate and this statutory power of the police to investigate cannot be interfered with by the exercise of power under Section 439 or under the inherent power of the Court under Section 561-A of the Criminal Procedure Code."

The basic facts in the instant case are similar. Here also, no police challan or charge-sheet against the accused had been laid in Court, when the petitions under Section 561-A were filed. The impugned proceedings were those which were being conducted in the course of police investigation. *Prima facie,* therefore, the rule in Basak's case would be attracted."

Referring to R. P. Kapoor's case (supra), the Supreme Court futher held :—

"It was held that since the allegations made in the First Information Report against the appellant therein did not constitute the offences alleged, there was no legal bar to the institution or continuance of the proceedings against him. It was further laid down that in exercise of its jurisdiction under Section 561-A, the High Court cannot embark upon an enquiry as to whether the evidence in the case is reliable or not."

(10) Rival contentions have been raised at the Bar regarding the continuance or quashing of the investigation still pending against the petitioners with the police. In order to appreciate the submissions of the learned counsel for the parties, it is necessary to have a glance of the F.I.R. sought to be quashed. F.I.R. No. 152, Annexure P/4, is reproduced below :—

"At this time a special informer has furnished this information in the police station, that Master Hari Singh S/o Ballu Ram Jat, resident of Chaudhriwas, who was a candidate for the Legislative Assembly from Adampur Constituency had managed to bring 200 illicit pistols in village Chaudhriwas through Surjit Singh S/o Ram Singh Jat R/o Rawalwas Kalan, Jiwan Singh S/o Jagiit Singh Jat R/o Prem Nagar Hissar. Sher Singh S/o Jagram Jat, R/o Chaudhriwas, Satbir @ Jawan R/o Nahla presently car dealer at Hissar, from Meerut, with the object of creating terror at the time of election and to indulge in booth capturing.

These pistols were subsequently distributed to people in Adampur Constituency. Risala S/o Ramji Lal Jat R/o Telanwali, Sewak S/o Jawan Singh Jat, Ramesh S/o Mansha Ram Jat r/o Salemgarh, Umed Singh

S/o Surat Singh Jat r/o Juglan, Dalip S/o Mohabat Jat R/o Bheria, P. S. Sadar Hissar, were among those persons who distributed these pistols. Even now the illicit pistols supplied in the above stated manner are in possession of some of these persons and whenever they get a chance, they will create terror and vitiate the climate with these illicit weapons. If raids are conducted upon these persons and they are interrogated, illicit weapons can be recovered in great quantity and the area can be saved from breach of peace. As the information is reliable and the same discloses commission of offences under Sections 25/44/59 Arms Act and 3/4/6 of TADA Act, hence this case is registered and I inspector SHO alongwith HC Sube Singh 461, HC Punjab Singh, 914, C. Dalbir Singh 1219, proceed to villages Rawalwas Kalan, Telanwali and Chaudhriwas in Government jeep No. HNH 3886 driven by Satish Kumar C. 1244, ASI Dilbagh Singh and ASI Jagdip Singh are being sent to village Salemgarh and Juglan with other officials....."

(11) From the written statement in appears that though the case was registered after about nine months from the date of the occurrence yet 11 persons had been arrested and various arms recovered from them for which separate cases under Section 25 of the Arms Act and Section 5 of the TADA Act have been registered. It is further submitted that challans against some of the accused persons named in the F.I.R. No. 152 have already been filed in the Designated Court. Keeping in view the facts and circumstances of the case, we are not in a position to comment upon the rival contentions of the parties so far as the merits of the case are concerned, lest it may prejudice the case for one of the parties. We, however, find that the petitioners have not been in a position to make it a rare case for the exercise of our powers under Articles 226 and 227 of the Constitution so far as the quashing of F.I.R. is concerned. The allegations of *mala fide* are not so strong which could persuade us for quashing of whole of the investigation at this stage. The recovery of some of the weapons from the persons alleged to be co-accused with the petitioners in these petitions is one of the circumstances which has made us hesitant to exercise our power for quashing of the F.I.R. at this stage. Applying the tests noted herein above, we do not find it a fit case to exercise our powers under Articles 226 and 227 of the Constitution for the purposes of quashing of the investigation in F.I.R. No. 152. The alleged weakness of the

allegations and the inherent defects of the case have to be investigated and the police have sufficient powers to drop the proceedings against all or any of the petitioners herein.

(12) So far as the issuance of notification under Section 2(f) for the purposes of Section 5 of the TADA Act is concerned no material has been placed before us to hold that the said notification was unconstitutional or contrary to the provisions of the Act. The State under this Section has the power to declare a particular area to be a disturbed area or for the purposes of the Act or within the meaning of this Section may include whole of the area of the State or any part thereof. The Court cannot substitute its opinion for the satisfaction of the authorities empowered under the Act to declare a particular area as a disturbed area.

(13) Though we have opted not to quash the F.I.R. yet we are of the opinion that it is a fit and appropriate case in which directions are required to be issued for the purposes of protecting the fundamental rights of the petitioners particularly the rights conferred under Article 21 of the Constitution. Without imputing any motive to any person or authority but to prevent the liklihood of the abuse of the process of the Court and to uphold the dignity and magesty of the law, we find the present case as a fit case where the respondents be directed not to subject the petitioners to humilation of arrest or curtailment of their personal liberties when it is not disputed that the petitioners belong to a political party in opposition and that the petitioner Master Hari Singh had unsuccessfully contested the election against respondent No. 2 from Adampur Vidhan Sabha Constitutency. The basic principle of the criminal jurisprudence is that a fair opportunity should be afforded to a party for defence and the apprehension of minimising the liklihood of the breach of his fundamental rights is eliminated. It may also be in the interest of the respondents for holding proper investigation in the case without leaving any suspicion or doubt regarding the genuineness or *bona fide*. It is not denied that bail cannot be withheld as a measure of punishment but is granted mainly with the object of seeking that the accused stands trial and does not hamper either the investigation or the enquiry. The accused persons can be restrained by imposition of restrictions for the smooth conduct of the investigation of an enquiry. It is true that granting of bail cannot be resorted to under Articles 226/227 of the Constitution but where the apprehension of the violation of the fundamental rights is writ large, as in this case, this Court is under a constitu-

tional obligation to perform its duties by giving appropriate directions to safeguard the rights of the citizens. For exercising such a power and not creating a precedent we have further been persuaded to come to such conclusion on the basis of the judgment of the Supreme Court reported as '*State of Maharashtra* v. *Abdul Hamid Haji Mohammed* (5). It is also admitted that most of the accused have already been arrested, interrogated and challenged in the Designated Court. No useful purpose would be served at this belated stage to subject the petitioners to the alleged harassment of investigation after more than two and a half years of the alleged date of occurrence and about two years from the date of the registration of the F.I.R. against them.

(14) Under the circumstances the writ petitions are disposed of by holding that no case at this stage has been made out for quashing of F.I.R. No. 152 dated 11th March, 1992 registered at Police Station Sadar, Hissar, for offences under Sections 3, 4 and 6 of the TADA Act and under Section 25 of the Arms Act. It is, however, directed that in case the petitioners are required to be arrested in connection with the F.I.R. No. 152 dated 11th March, 1992 for offences under the TADA and Arms Acts they shall be set at liberty on furnishing bail bonds in the amount of Rs. 50,000 each alongwith their personal bonds to the satisfaction of the investigating or arresting officer. All the petitioners or any one of them as may be directed, shall remain present during the investigation of the F.I.R. Their presence if required shall be secured only during working hours, that is, from 10.00 A.M. to 4.00 P.M. No petitioner shall approach any prosecution witness or try to influence the investigation. None of the petitioners shall leave the country without prior permission of the Designated Court. Recoveries, if any, made consequent upon the disclosure statement of any of the accused, petitioners shall not be hit by the provisions of Section 27 of the Evidence Act. No costs.

S.C.K.

*Before* : *Hon'ble A. S. Nehra, J.*

CHARAN SINGH AND OTHERS,—*Petitioners.*

*versus*

STATE OF HARYANA AND ANOTHER,—*Respondents.*

*Criminal Misc. A. No.* 8965 *of* 1992

October 22, 1993

*Code of Criminal Procedure (II of* 1974)—*S.* 482 *and* 156—*Complaint filed—Magistrate sent it for investigation under section* 156(3)—

(5) 1993 (6) J.T. (S.C.) 589.