IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION STAMP NO. 4278 OF 2020
IN
CRIMINAL WRIT PETITION STAMP NO. 4132 OF 2020

Arnab Manoranjan Goswami ...Applicant

Versus

The State of Maharashtra & Ors. ...Respondents

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Mr. Harish Salve, Senior Advocate a/w. Mr. Aabad Ponda, Senior Advocate, Ms. Malvika Trivedi, Mr. Saket Shukla, Mr. Mrinal Ojha, Mr. Vasanth Rajesekaran, Mr. Debarshi Dutta, Mr. Rajat Pradhan, Mr. Biswadeep Chakravarty, Mr. Vikram Kamat, Ms. Madhavi Doshi, Mr. Sanjeev Sambasivam, Mr. Siddhant Kumar, Ms. Kajri Roy, Ms. Sheena Iype, Advocates i/b. Phoneix Legal for Applicant.

Mr. Amit Desai, Senior Advocate a/w. Mr. Deepak Thakare, Public Prosecutor, for State in IAST No. 4278 of 2020.

Mr. Shirish Gupte, Senior Advocate a/w. Mr. Vaibhav Karnik, Mr. Karansingh Rajput, Advocates for Respondent No. 5. in IAST No. 4278 of 2020.

Mr. Devdatta Kamat, Senior Advocate a/w. Mr. Rahul Chitnis, Mr. Rajesh Inamdar & Mr. Hemant Shah, Advocates for Respondent No. 3 in IAST No. 4278 of 2020.

Mr. D.P. Singh for Respondent No. 4-Union of India.

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CORAM : S. S. SHINDE &
M.S. KARNIK, JJ.

RESERVED ON: NOVEMBER 07, 2020.
PRONOUNCED ON: NOVEMBER 09, 2020.

ORDER:

1. The present application is filed for interim protection/bail in the Criminal Writ Petition Stamp No. 4132 of 2020 filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short) praying for a writ of Habeas Corpus to produce the Petitioner, who has been illegally arrested and wrongfully detained by the Station House Officer, Alibaug Police Station, Raigad, in relation to First Information Report ('FIR' for short) being C.R.No.0059/2018 dated 5/5/2018 registered at Alibaug Police Station, Raigad, under Sections 306 and 34 of the Indian Penal Code ('said IPC' for short) despite a closure report being filed. The Petitioner also prays for quashing of the said FIR.

2. So far as the main Writ Petition is concerned, the petitioner is alleging gross abuse of State's power by the respondents in effecting his arrest on 04.11.2020 and consequent alleged illegal detention. As there are allegations of malafides, an opportunity needs to be given to the respondents to file a counter and accordingly with the consent of learned counsel appearing for the parties, the petition is posted for hearing on 10.12.2020.

3. Mr. Harish Salve, learned Senior Advocate for Petitioner, Mr. Amit Desai, learned Senior Advocate for State and Mr. Shirish Gupte, learned Senior Advocate appearing for the victim have confined their

arguments limited to the relief claimed in the Interim Application. Therefore, we confine our adjudication restricted to the reliefs claimed in the Interim Application.

4. Learned Senior Advocate Mr. Harish Salve would contend that not only the arrest of the Petitioner is a malafide action and abuse of the State's power, but the arrest is ex-facie illegal in view of the closure report filed before the Learned Magistrate. According to the learned Senior Advocate, the re-investigation commenced by the Respondents is without seeking permission of the Magistrate under Section 173 (8) of the Cr.P.C. He would urge that this is a fit case where this Court should exercise its extraordinary powers under Article 226 of the Constitution of India and inherent jurisdiction under Section 482 of the Cr.P.C. protecting the petitioner in the interregnum by granting him bail. We have therefore considered the pleadings and grounds taken in the Writ Petition and also perused the documents relied by the Petitioner for the limited purpose of deciding the present application.

5. In the petition there is reference to the FIR dated 5/5/2018. It is in relation to the alleged suicide committed by deceased Anvay Naik and his mother Kumud Naik, who were Directors of an interior design company 'Concorde Design Pvt. Ltd.' ('CDPL' for short). It is alleged that the deceased

left behind a note, wherein it was stated that the deceased was committing suicide on account of the non-payment of CDPL's dues. The officers of the Alibaug Police Station visited the petitioner's 'ARG Outlier Media Private Limited' ('ARG' for short) office informing him about the unfortunate incident and the note left behind by the deceased which had the name of the petitioner.

6. It is pleaded by the Petitioner that he was questioned regarding the transaction between 'ARG' and 'CDPL'. The petitioner provided all necessary and available details to the police officers and also assured them of his full co-operation during the course of the investigation. On 7th May 2018, Mr. S. Sukharam and Mr. Vikas Khanchandani of ARG along with their Advocate went to the Alibaug police station with all the required documents asked from them. The petitioner co-operated with the investigation in every possible way. Even the statement of the petitioner came to be recorded.

7. Our attention is invited to the report filed by the Station House Officer, Alibaugh Police Station, Raigad, dated 16/4/2019 in the Court of the Chief Judicial Magistrate for 'A' Summary. The Dy.S.P., Alibaug, accordingly submitted a report and prayed for grant of 'A' Summary.

8. The Chief Judicial Magistrate, Raigad, vide order dated 16/4/2019 accepted the report and granted 'A' Summary as prayed for.

9. Learned Senior Advocate Mr. Salve would submit that in blatant violation of the fundamental rights to life and personal liberty of the petitioner and his dignity guaranteed under Article 21 of the Constitution of India, the petitioner was arrested. The petitioner was forced out from his residence with around 20 officials of Mumbai Police barging into his house. The petitioner was dragged into the police vehicle in the process of causing his arrest. His son was assaulted in the process. The Petitioner's wife was informed that he was being arrested in connection with the said FIR.

10. Learned Senior Advocate would urge that once the case was decisively closed by the Mumbai Police in 2019, which report was accepted by the Chief Judicial Magistrate, the same is reinvestigated with the sole purpose of misusing power, concocting facts and forcefully arresting the petitioner in a prima facie act of revenge and vengeance for his news coverage which questioned those in power in the State of Maharashtra. Mr. Salve would submit that this is another attempt of the State machinery to implicate the petitioner. This is nothing but a brazen attempt of vendetta politics against the petitioner and his channel.

11. Mr. Salve then took us through the averments made in the Petition and the discussions in the debate before the State Assembly particularly those of Mr. Sunil Prabhu, Dr. Nitin Raut and Mr. Chagan Bhujbal, which are at pages 94 to 121 of the Petition. He would contend that there is a desperation on the part of the political dispensation to falsely implicate the petitioner in the said case and to reopen the matter. Mr. Anil Deshmukh (Hon'ble Home Minister in the Ruling coalition) readily obliged.

12. Mr. Salve, learned Senior Advocate, then invited our attention to the details set out in the Petition to show that there was purely a commercial relationship between ARG and CDPL. CDPL was unable to meet the dates for completion of works on several occasions. Several defects in the works were also discovered. The ARG in fact made a total payment of Rs.5,21,54,383/- under the work orders. A balance of only Rs.74,23,014/- is outstanding under the work orders which was legitimately withheld by the ARG with the intention to pay such amounts upon rectification of defects and completion of works in accordance with the terms of the work orders. There was exchange of correspondence between the wife of deceased and ARG. In or around 2020, the wife of deceased, having failed to extract money from ARG, approached the political dispensation and upon immense pressure from certain Cabinet Ministers in the Maharashtra Government, there was a

demand to re-open and re-investigate the matter in connection with the said FIR so that the petitioner could be falsely implicated. Our attention is invited to the news reports at Exhibits H, I, J and K.

13. Mr. Salve would submit that the petitioner did not have direct interaction with the deceased regarding the works or regarding payment as is the case with large organizations. The deceased was one of the vendors and the matter regarding payments was handled by the Finance Department. Mr. Salve would urge that in these circumstances, the ingredients to attract the offence of abetment is absent i.e. the intention of the accused to aid, abet or instigate the deceased to commit suicide. Moreover, there is no direct involvement of the petitioner with the deceased.

14. Learned Senior Advocate would submit that there are no allegations in the FIR to establish that the suicide by the deceased was directly linked to the instigation or abetment by the Petitioner. In support of his submissions, learned Senior Advocate relied upon the following decisions of Hon'ble Supreme Court:-M. Arjunan Vs. State[1], M. Mohan Vs. State[2], SS Cheena Vs. Bijay Kumar Mahajan & Anr[3], Amlendu Pal Vs. State of West Bengal[4], Gurcharan Singh Vs. State of Punjab[5], Rajesh Vs. State of Haryana[6].

1 (2019) 3 SCC 315
2 (2011) 3 SCC 626
3 (2010) 12 SCC 190
4 (2010) 1 SCC 707
5 Supreme Court of India Criminal Appeal No. 40 of 2011
6 2019 SCC Online SC 44

15. Learned Senior Advocate then invited our attention to the order dated 16.04.2019 passed by the Chief Judicial Magistrate, Raigad, granting 'A' summary as prayed by the Dy.S.P., Alibaug in terms of his report. He would submit that once a case is closed by the Chief Judicial Magistrate, then the Investigating Officer has no power to re-investigate the matter unless the order granting 'A' summary by Chief Judicial Magistrate is set aside. According to the learned Senior Advocate, the Investigating Officer did not even approach the Magistrate seeking permission to re-investigate the matter. He would submit that the action on the part of the police amounts to revising the order of the Magistrate on their own. In support of his submissions, learned Senior Advocate would rely upon the following decisions of Hon'ble Supreme Court – Bhagwant Singh Vs. Commissioner of Police & Another[7], Vinubhai Haribhai Malaviya and Others Vs. State of Gujarat & Anr[8], Inderjit Singh Gerwal Vs. State of Punjab and another[9], Gangadhar Janardan Mhatre Vs. State of Maharashtra & Others[10], Kishore Kumar Gyanchandani Vs. G.D. Mehrotra and Another[11], Vishnu Kumar Tiwari Vs.

7 (1985) 2 SCC 537
8 2019 SCC Online 1346
9 (2011) 12 SCC 588
10 (2004) 7 SCC 768
11 (2011) 15 SCC 513

State of Uttar Pradesh Through Secretary Home, Civil Secretariat, Lucknow and Another.[12]

16. Learned Senior Advocate placed reliance on the decision in the case of Vinubhai (supra), more particularly Para 34, to contend that only Magistrate in exercise of powers under Section 173 (8) of Cr.P.C., can direct further investigation. According to learned Senior Advocate, either the police should have challenged the decision or invoked Section 156 (3) Cr.P.C. Relying on the decision of Inderjit Singh Gerwal (supra), learned Senior Advocate would submit that even if the closure is without hearing or notice to the first informant, still then, even if such order is void, the same has to be set aside by approaching the appropriate forum. Till such time, the order would continue to remain in force.

17. Mr. Salve, learned Senior Advocate, placed reliance on the observations made in the order dated 04.11.2020 passed by the Chief Judicial Magistrate on the remand report pursuant to the arrest of the Petitioner. He would contend that in the said order, the Magistrate observed that, before re-investigating the matter, it appears that no permission of the Court has been obtained. It is, therefore, his submission that if re-investigation itself is on an illegal premise, the detention of the petitioner has to be declared as illegal.

12 (2019) 8 SCC 27

Mr. Salve then submitted that as the re-investigation is nothing but an abuse of powers of the State and as circumstances would demonstrate that the State is acting with malice (in fact) against the Petitioner, this is a fit case for staying the investigation. He relied upon the decisions of Hon'ble Supreme Court in the following cases - Asian Resurfacing of Road Agency Private Limited and Anr. Vs. Central Bureau of Investigation[13], Imtiyaz Ahmad Vs. State of Uttar Pradesh and others[14],Joginder Kumar Vs. State of UP & Others[15].

Drawing support from the decision of the Hon'ble Supreme Court in the case of Asian Resurfacing of Road Agency Pvt. Ltd.(supra), Mr.Salve would contend that it is the duty of the Court to protect the fundamental rights of citizens under article 226 of the Constitution of India, the inherent power to do justice in cases involving the liberty of the citizens would also sound under article 21 of the Constitution of India. Mr. Salve would contend that the manner in which false cases are being registered against the Petitioner and his channel and the apparent desperation of the political dispensation to implicate the Petitioner in false cases, would justify an exercise of power of this Court to stay the investigation and prevent the abuse of process and promote the ends of justice.

13 (2018) 16 SCC 299
14 (2012) 2 SCC 688
15 (1994) 4 SCC 260

18. Mr. Salve would then submit that merely because the Petitioner has remedy under Section 439 of Cr.P.C. to approach the Sessions Court for regular bail, would not preclude the Petitioner from invoking writ jurisdiction in an appropriate case where the extraordinary circumstances so warrant. In support of aforesaid submission he placed reliance on the decision in Kartar Singh Vs. State of Punjab[16] to contend that even in a case under TADA, it has been held that there is no reason why the High Court should not exercise its jurisdiction and grant of bail to the accused in those cases where one or the other exceptional ground is made out.

19. He would further invite our attention to the observations in Para 459 in Kartar Singh (supra) to point out the observations of their Lordships that "since the High Court under the Constitution is a forum for enforcement of fundamental right of a citizen it cannot be denuded of the power to entertain a petition by a citizen claiming that the State machinery was abusing its power and was acting in violation of the constitutional guarantee. Rather it has a constitutional duty and responsibility to ensure that the State machinery was acting fairly and not on extraneous considerations." Learned Senior Advocate would, therefore, urge that the Petitioner be released on bail.

16 (1994) 3 SCC 569

20. On the other hand, Mr. Desai, learned Senior Advocate appearing on behalf of Respondent No.1 – State would submit that the present petition seeking Writ of Habeas Corpus is not maintainable. According to him, the Petitioner was in judicial custody on the date of filing of the petition. He invited our attention to the decision of the Hon'ble Supreme Court in the case of State of Maharashtra Vs. Tasneem Rizwan Siddique[17], Saurabh Kumar Vs. Jailor Koneila Jail[18], Col B. Ramchandra Rao (Dr) Vs. State of Orissa[19] and Ankit Mutha Vs. UOI[20] to submit that if the Petitioner is in custody pursuant to the remand order by the jurisdictional Magistrate in connection with the offences under investigation, the Writ of Habeas Corpus is not maintainable. Mr. Desai would then submit that the Petitioner has alternate efficacious remedy of approaching the Sessions Court for bail under Section 439 of Cr.P.C. and, therefore, the prayer for grant of bail ought not to be entertained. Mr. Desai relying upon the decision of the Hon'ble Supreme Court in the case of State of Telangana Vs. Habib Abdullah Jeelani[21] would contend that the power under Section 482 Cr.P.C. or under article 226 of the Constitution of India should be exercised sparingly with judicial restraint. He would further submit that in fact the Petitioner had applied for bail before Chief Judicial Magistrate but chose to withdraw the

17 (2018) 9 SCC 745
18 (2014) 13 SCC 436
19 (1972) 3 SCC 256
20 2020 SCC Onlilne Bom 121
21 (2017) 2 SCC 779

said application. There is no challenge by the Petitioner to the remand order of the jurisdictional Magistrate.

21. Mr. Desai then dealt with the contention as regards the power of police to further investigate in the said offences after grant of 'A' summary. He would submit that there is an illegality on the part of the Investigating Officer in his approach while submitting the “A” summary. Relying on Rule 219 of the Police Manual, Mr. Desai would submit that ‘A’ summary is filed in the circumstances where though offence was committed, the same remained undetected where there is no clue whatsoever about the culprits or property or where the accused is known but there is no evidence to justify him being sent up to the Magistrate (for trial). According to Mr. Desai, ‘A’ summary was granted by the Magistrate without following mandatory requirement of hearing the informant. This, according to him, would go to the root of the matter.

22. He would further submit that nonetheless, the Investigating officer had intimated the jurisdictional Magistrate on 15th October 2020 that orders were received from his superiors for conducting further investigation of the said offences and that the same would be further investigated under section 173 (8) of Cr.P.C. On the said application, the Chief Judicial Magistrate, Alibaug had noted ‘seen and filed’. Mr. Desai further pointed out

that thereafter during the course of investigation, even the statements are recorded by the Magistrate under Section 164 Cr.P.C. He would, therefore, submit that merely because 'A' summary is filed, would not preclude the Investigating Officer from conducting further investigation of said offence on receipt of fresh materials as the rights of victim too have to be considered.

23. Learned Senior Advocate would submit that the first informant-victim had made representation to the superior officer seeking redressal of grievance. He would further submit that the Magistrate was yet to take the cognizance of the case and therefore, the Investigating Officer is well within his rights under Section 173 (8) to conduct the further investigation. In any case, having intimated the Magistrate, the said intimation is sufficient compliance of Section 173 (8) of Cr.P.C. Mr. Desai would rely upon the decision of Hon'ble Supreme Court in the case of Nirmal Singh Kahlon Vs. State of Punjab[22] to submit that the victim of a crime is equally entitled to fair investigation. Relying upon the decision of Hon'ble Supreme Court in the case of Rama Chaudhary Vs. State of Bihar[23] learned Senior Advocate would submit that under Section 173 (8) Cr.P.C., the law does not mandate taking prior permission from Magistrate for further investigation, even where a charge sheet is filed, as carrying out further investigation is a statutory right

22 (2009) 1 SCC 441
23 (2009) 6 SCC 346

of the police. He would submit that granting of 'A' summary does not mean that the case is closed, it only means that the offence is committed but the same remains undetected as the accused is known but there is no evidence to justify him being sent up to the Magistrate (for trial). Learned Senior Advocate would invite our attention to Section 36 of Cr.P.C. to contend that the police officer superior in rank to an officer in charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station. In his submission nothing precludes an Investigating Officer from conducting further investigation upon receiving orders from the superiors following a representation made by the victim. He would further rely on the provision of Section 4 of Bombay Police Act, 1951, which says that superintendence of police force throughout the State of Maharashtra vests in and is exercisable by the State Government and any control, direction or supervision exercisable by any officer over any member of the Police force shall be exercisable subject to such superintendence. Mr. Desai would submit that the Hon'ble Supreme Court in State of Bihar Vs. J.A.C. Saldhana[24] case has further expanded the meaning of term 'superintendence'.

24. Mr. Desai would further submit that decision of Hon'ble Supreme Court relied upon by learned Senior Advocate Mr. Salve for the

24 1980 AIR 326,

Petitioner on the interpretation of Section 306 of the Indian Penal Code, 1860 are post trial and conviction on the basis of evidence adduced. According to him, at the stage of quashing FIR, the said decisions would not have any application, more so, when the matter is still under investigation.

25. Relying upon the decision of Hon'ble Supreme Court in the case of Praveen Pradhan Vs. State of Uttaranchal[25], Mr. Desai pointed out that on the basis of FIR in 'Praveen Pradhan', criminal proceedings were initiated. During investigation, the investigating officer found the suicide note which had been written by the deceased. It was alleged that the appellant was responsible for his death. The Hon'ble Supreme Court in the facts of that case refused to interfere with the order passed by the High Court declining to quash the proceedings in exercise of power under Section 482 of Cr.P.C.

26. Mr. Desai would also rely upon the decision in the case of State of Andhra Pradesh Vs. A.S. Peter[26] to contend that the law does not mandate taking prior permission of Magistrate for further investigation and Magistrate has discretion to direct further investigation. In the present case having intimated to the Magistrate that a further investigation is necessary to be carried out, this would amount to sufficient compliance of Section 173 (8) of Cr.P.C.

25 (2012) 9 SCC 734
26 Appeal (Crl) No. 1119 of 2004

27. Mr. Gupte, learned Senior Advocate appeared on behalf of the first informant-victim would submit that the deceased left behind a note holding the petitioner responsible for his death. He submits that as a result of non-payment of dues by the Petitioner, the informant lost two close family members. Mr. Gupte would submit that grant of 'A' summary by Chief Judicial Magistrate, Alibaug is *per se* illegal as informants were not heard as is the mandatory requirement of law. This illegality, according to him, goes to the root of the matter. Mr. Gupte would submit that the informant was not aware of the grant of 'A' summary as she was not given notice nor heard. It is through tweets that she came to know about the same.

28. He invited our attention to the Criminal Writ Petition No. 1543 of 2020 (Adnya Anvay Naik vs. State of Maharashtra) filed by the daughter of the deceased which is on board today. He further submitted that the informant was not intimated about filing of "A" summary or acceptance of said report and after a few months from filing such "A" summary and acceptance of it by the Magistrate. All this she came to know from some tweets. Thereafter, the informant approached the State Government and its officials for redressal of her grievance. Mr. Gupte pointed out that the informant approached the superior authorities seeking redressal. Criminal Writ Petition-ASDB-LDVC No. 33 of 2020 filed by the informant/daughter came to be

disposed of as withdrawn on 2nd June 2020 in view of fresh developments in the matter. Representation was made by the informant on 13th June 2020 to the Additional Director General of Police, Maharashtra State, CID, Pune seeking justice.

29. Mr. Gupte would rely on the decision of the Hon'ble Supreme Court in the case of Bhagwant Singh (supra) to contend that if the Magistrate is not inclined to take cognizance of offence and issue process, the informant must be given opportunity of being heard so that he can make his submission to persuade the Magistrate to take cognizance of the offence and issue process. According to him in Ajay Kumar Parmar Vs. State of Rajasthan[27] the Hon'ble Supreme Court has held that when the Magistrate decided not to take cognizance of the case and to drop the proceeding against accused it is mandatory to hear complainant or informant by issuing him notice. Mr. Gupte would submit that before granting 'A' summary, neither was the informant given any notice or was heard and thus the impugned order is in violation of mandatory requirement of law. Mr. Gupte would urge that the fundamental rights which the Petitioner claims has to be balanced with the corresponding right of the victim to claim justice. According to him in a case where 'A' summary is granted without even issuing notice to the applicant, the Petitioner would not be justified in seeking relief on the premise that

27 (2012) 12 SCC 406

further investigation is being carried out without permission from the Magistrate. Mr. Gupte would hasten to add that in the present case the Magistrate has been intimated by the Investigating Officer and thereafter further investigation is commenced and that itself is sufficient compliance of section 173 (8) of Cr.P.C. He would submit that the informant and her daughter have received threats on many occasions and for which complaint was filed which is registered as N.C.

30. Heard the learned Counsel for the parties.

31. Though we are considering prayer in the Interim Application for grant of bail and not hearing the main petition, for deciding this application it may be necessary to reproduce the prayer clause (a) of the petition, seeking a Writ of Habeas Corpus, which reads as under:

> "(a) Issue a writ of habeas corpus and/or any other similar writ, order and direction of like nature, directing the Respondents to produce the Petitioner who has been illegally arrested and wrongfully detained by the Respondent No. 2 in relation to FIR, being C.R. No. 0059 of 2018, dated 5 May 2018, registered at Alibaug Police Station, Raigad, under Sections 306 and 34 of the Indian Penal Code, 1860 despite a closure report being filed."

32. The averments made in the petition are in the context of illegal detention of the petitioner which according to the Petitioner is without any

authority of law. The petitioner was arrested in the early hours of 4th November, 2020. There is no dispute that as on the date of filing of the petition, there was already an order of the jurisdictional Magistrate for remand of the petitioner in custody. In the light of the law laid down by the Hon'ble Supreme Court in the case of State of Maharashtra and others vs. Tasneem Rizwan Siddiquee (supra), the question as to whether a Writ of Habeas Corpus could be maintained in respect of a person, who is in police custody pursuant to the remand order passed by the jurisdictional Magistrate in connection with the offence under investigation, is no more *res integra.* A profitable reference could also be made to the decisions in Saurabh Kumar (supra); Col. B. Ramchandra Rao (supra); Ankit Mutha vs. Union of India (supra).

33. Mr.Harish Salve, the learned Senior Advocate, submits that the very same argument, that the petition for a Writ of Habeas Corpus was not maintainable, was advanced in the case of Jagisha Arora vs. The State of Uttar Pradesh & another[28]. However, the Supreme Court in the said case, directed the petitioner's husband therein to be immediately released on bail on such conditions to the satisfaction of the jurisdictional Chief Judicial Magistrate. Therefore, the learned Senior Advocate submits that in the present case also, though the prayer for issuance of Writ of Habeas Corpus is not

28 (2019) 6 SCC 619

maintainable, the concerned Magistrate may be directed to release the petitioner forthwith.

34. It is true that the Hon'ble Supreme Court directed an immediate release of the husband of the petitioner therein. However, the said direction was issued in exercise of power under Article 142 of the Constitution of India; such power is not available with this Court. Therefore, the prayer of the petitioner to be forthwith released, cannot be acceded to. In the facts of Jagisha Arora (supra), it appears that the husband of the petitioner therein was arrested pursuant to the initiation of proceedings under sections 500 and 505 of the Indian Penal Code read with section 67 of the Information Technology Act, 2000. It appears that the proceedings were initiated for the posts/tweets made by the husband of the petitioner therein. However, in the present case, the petitioner is arraigned as an accused in Crime No.59 of 2018 for the offences under section 306 of the Indian Penal Code, wherein the maximum sentence provided, is 10 years imprisonment and shall also be liable to fine. The offence is cognisable, non-bailable, triable by Court of Sessions and not compoundable.

35. In the recent judgment in the case of Serious Fraud Investigation Office vs. Rahul Modi[29], the Hon'ble Supreme Court in paragraphs 16 to 22 held thus:

29 (2019) 5 SCC 266

16. The basic facts in the present matter can be summed up:-

16.1. The investigation was assigned to SFIO vide Order dated 20.6.2018. This Order did stipulate in para 6 that the Inspectors should complete their investigation and submit their report to the Central Government within three months.

16.2) The period of three months expired on 19.09.2018.

16.3) The proposal to arrest three accused persons was placed before the Director, SFIO and after being satisfied in terms of requirements of Section 212(8) of 2013 Act approval was granted by Director, SFIO on 10.12.2018.

16.4) After they were arrested on 10.12.2018, the accused were produced before the Judicial Magistrate, who by his order dated 11.12.2018 remanded them to custody till 14.12.2018 and also directed that they be produced before the Special Court on 14.12.2018.

16.5) On 13.12.2018 a proposal seeking extension of time for completing investigation in respect of 57 cases including the present case was preferred by SFIO.

16.6) On 14.12.2018 the Special Court, Gurugram remanded the accused to custody till 18.12.2018.

16.7) On the same date i.e. on 14.12.2018 the proposal for extension was accepted by the Central Government in respect of the Group and extension was granted upto 30.06.2019.

16.8) On 17.12.2018 the present Writ Petitions were preferred which came up for the first time before the High Court on 18.12.2018.

16.9) On 18.12.2018 itself the accused were further remanded to police custody till 21.12.2018.

16.10) On 20.12.2018 Writ Petitions were entertained and the order which is presently under appeal was passed.

16.11) Pursuant to said order, the original Writ Petitioners were released on bail.

16.12) In the backdrop of these facts, the High Court found that a case for interim relief was made out. The principal issues which arise in the matter are whether the High Court was right and justified in entertaining the petition and in passing the Order under appeal?

17. For considering whether the writ petitioners were entitled to any interim relief, two questions were framed by the High Court in paragraph 15 of its Order. Before considering the matter from the perspective of said two questions, an issue which was stressed by the learned Solicitor General may be addressed first. It was submitted by him that the date with reference to which the legality of detention can be challenged in a Habeas Corpus proceeding is the date on which the return is filed in such proceedings and not with reference to the initiation of the proceedings. He relied upon the decision of the Federal Court in Basanta Chandra Ghose vs. King Emperor, which had concluded:

"… …If at any time before the Court directs the release of the detenue, a valid order directing his detention is produced, the Court cannot direct his release merely on the ground that at some prior stage there was no valid cause for detention…. …" Similar questions arose for consideration in Naranjan Singh nathawan vs. State of Punjab, Ram Narayan Singh vs. State of Delhi, A.K. Gopalan vs. Union of India, Pranab Chatterjee vs. State of Bihar, Talib Hussain vs. State of J & K., B.Ramchandra Rao vs. State of Orissa & others. These decisions were considered in Kanu Sanyal vs. District Magistrate, Darjeeling & others, as under:

Re: Grounds A and B.

4. These two grounds relate exclusively to the legality of the initial detention of the petitioner in the District Jail, Darjeeling. We think it unnecessary to decide them. It is now well settled that the earliest date with reference to which the legality of detention challenged in a habeas corpus proceeding may be examined is the date on which the

application for habeas corpus is made to the Court. This Court speaking through Wanchoo, J., (as he then was) said in A.K. Gopalan vs. Union of India :

5. "It is well settled that in dealing with the petition for habeas corpus the Court is to see whether the detention on the date on which the application is made to the Court is legal, if nothing more has intervened between the date of the application and the date of the hearing." In two early decisions of this Court, however, namely, Naranjan Singh v. State of Punjab and Ram Narayan Singh v. State of Delhi a slightly different view was expressed and that view was reiterated by this Court in B.R. Rao v. State of Orissa where it was said (at p. 259, para 7):

"in habeas corpus proceedings the Court is to have regard to the legality or otherwise of the detention at the time of the return and not with reference to the institution of the proceedings".

and yet in another decision of this Court in Talib Hussain v. State of Jammu & Kashmir6 Mr Justice Dua, sitting as a Single Judge, presumably in the vacation, observed that (at p. 121, para 6):

"6. … in habeas corpus proceedings the Court has to consider the legality of the detention on the date of the hearing."

Of these three views taken by the Court at different times, the second appears to be more in consonance with the law and practice in England and may be taken as having received the largest measure of approval in India, though the third view also cannot be discarded as incorrect, because an inquiry whether the detention is legal or not at the date of hearing of the application for habeas corpus would be quite relevant, for the simple reason that if on that date the detention is legal, the Court cannot order release of the person detained by issuing a writ of habeas corpus. But, for the purpose of the present case, it is immaterial which of these three views is accepted as correct, for it is clear that, whichever be the correct view, the earliest date with reference to which the legality of

detention may be examined is the date of filing of the application for habeas corpus and the Court is not, to quote the words of Mr Justice Dua in B.R. Rao v. State of Orissa "concerned with a date prior to the initiation of the proceedings for a writ of habeas corpus". Now the writ petition in the present case was filed on January 6, 1973 and on that date the petitioner was in detention in the Central Jail, Visakhapatnam. The initial detention of the petitioner in the District Jail, Darjeeling had come to an end long before the date of the filing of the writ petition. It is, therefore, unnecessary to examine the legality or otherwise of the detention of the petitioner in the District Jail, Darjeeling. The only question that calls for consideration is whether the detention of the petitioner in the Central Jail, Visakhapatnam is legal or not. Even if we assume that grounds A and B are well founded and there was infirmity in the detention of the petitioner in the District Jail, Darjeeling, that cannot invalidate the subsequent detention of the petitioner in the Central Jail, Visakhapatnam. See para 7 of the judgment of this Court in B.R. Rao v. State of Orissa. The legality of the detention of the petitioner in the Central Jail, Visakhapatnam would have to be judged on its own merits. We, therefore, consider it unnecessary to embark on a discussion of grounds A and B and decline to decide them."

19. The law is thus clear that "in Habeas Corpus proceedings a Court is to have regard to the legality or otherwise of the detention at the time of the return and not with reference to the institution of the proceedings". In Kanu Sanyal the validity of the detention of the petitioner in District Jail, Darjeeling was therefore not considered by this Court and it was observed that the infirmity in the detention of the petitioner therein in the District Jail, Darjeeling could not invalidate subsequent detention of the petitioner in the Central Jail, Vishakhapatnam.

20. At this stage we may also deal with three recent cases decided by this Court:-

20.1) In Manubhai Ratilal Patel through Ushaben vs. State of Gujarat and others 9 a Division bench of this Court extensively considered earlier decisions in the point including cases referred to above. It also dealt with an issue whether

Habeas Corpus petition could be entertained against an order of remand passed by a Judicial Magistrate. The observations of this Court in paragraphs 20 to 24 and para 31 were as under:

"20. After so stating, the Bench in Kanu Sanyal case opined that for adjudication in the said case, it was immaterial which of the three views was accepted as correct but eventually referred to para 7 in B. Ramachandra Rao wherein the Court had expressed the view in the following manner: (SCC p. 259)

"7. … in habeas corpus proceedings the court is to have regard to the legality or otherwise of the detention at the time of the return and not with reference to the institution of the proceedings."

Eventually, the Bench ruled thus: (Kanu Sanyal case, SCC p. 148, para 5)

"5. … The production of the petitioner before the Special Judge, Visakhapatnam, could not, therefore, be said to be illegal and his subsequent detention in the Central Jail, Visakhapatnam, pursuant to the orders made by the Special Judge, Visakhapatnam, pending trial must be held to be valid. This Court pointed out in Col. B. Ramachandra Rao v. State of Orissa (SCC p. 258, para 5) that a writ of habeas corpus cannot be granted

'5....where a person is committed to jail custody by a competent court by an order which prima facie does not appear to be without jurisdiction or wholly illegal'."

21. The principle laid down in Kanu Sanyal, thus, is that any infirmity in the detention of the petitioner at the initial stage cannot invalidate the subsequent detention and the same has to be judged on its own merits.

22. At this juncture, we may profitably refer to the Constitution Bench decision in Sanjay Dutt v. State through CBI, Bombay (II) 10 wherein it has been opined thus: (SCC p. 442, para 48)

"48. … It is settled by Constitution Bench decisions that a petition seeking the writ of habeas corpus on the ground of absence of a valid order of remand or detention of the

accused, has to be dismissed, if on the date of return of the rule, the custody or detention is on the basis of a valid order."

23. Keeping in view the aforesaid concepts with regard to the writ of habeas corpus, especially pertaining to an order passed by the learned Magistrate at the time of production of the accused, it is necessary to advert to the schematic postulates under the Code relating to remand. There are two provisions in the Code which provide for remand i.e. Sections 167 and 309. The Magistrate has the authority under Sections 167 (2) of the Code to direct for detention of 10 (1994) 5 SCC 410 : 1994 SCC (Cri) 1433 the accused in such custody i.e. police or judicial, if he thinks that further detention is necessary.

24. The act of directing remand of an accused is fundamentally a judicial function. The Magistrate does not act in executive capacity while ordering the detention of an accused. While exercising this judicial act, it is obligatory on the part of the Magistrate to satisfy himself whether the materials placed before him justify such a remand or, to put it differently, whether there exist reasonable grounds to commit the accused to custody and extend his remand. The purpose of remand as postulated under Section 167 is that investigation cannot be completed within 24 hours. It enables the Magistrate to see that the remand is really necessary. This requires the investigating agency to send the case diary along with the remand report so that the Magistrate can appreciate the factual scenario and apply his mind whether there is a warrant for police remand or justification for judicial remand or there is no need for any remand at all. It is obligatory on the part of the Magistrate to apply his mind and not to pass an order of remand automatically or in a mechanical manner.

31. Coming to the case at hand, it is evincible that the arrest had taken place a day prior to the passing of the order of stay. It is also manifest that the order of remand was passed by the learned Magistrate after considering the allegations in the FIR but not in a routine or mechanical manner. It has to be borne in mind that the effect of the order of the High Court regarding stay of investigation

could only have a bearing on the action of the investigating agency. The order of remand which is a judicial act, as we perceive, does not suffer from any infirmity. The only ground that was highlighted before the High Court as well as before this Court is that once there is stay of investigation, the order of remand is sensitively susceptible and, therefore, as a logical corollary, the detention is unsustainable. It is worthy to note that the investigation had already commenced and as a resultant consequence, the accused was arrested. Thus, we are disposed to think that the order of remand cannot be regarded as untenable in law. 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 B. Ramachandra Rao and Kanu Sanyal, 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. It is apposite to note that the investigation, as has been dealt with in various authorities of this Court, is neither an inquiry nor trial. It is within the exclusive domain of the police to investigate and is independent of any control by the Magistrate. The sphere of activity is clear cut and well demarcated. Thus viewed, we do not perceive any error in the order passed by the High Court refusing to grant a writ of habeas corpus as the detention by virtue of the judicial order passed by the Magistrate remanding the accused to custody is valid in law."

20.2) Saurabh Kumar vs. Jailor, Koneila Jail and another the issue was dealt with in para 13 of the leading Judgment as under:-

13. It is clear from the said narration of facts that the petitioner is in judicial custody by virtue of an order passed by the Judicial Magistrate. The same is further ensured from the original record which this Court has, by

order dated 9-4-2014, called for from the Court of the Additional Chief Judicial Magistrate, Dalsingsarai, District Samastipur, Bihar. Hence, the contention of the learned counsel for the petitioner that there was illegal detention without any case is incorrect. Therefore, the relief sought for by the petitioner cannot be granted. Even though there are several other issues raised in the writ petition, in view 11 (2014) 13 SCC 436 of the facts narrated above, there is no need for us to go into those issues. However, the petitioner is at liberty to make an application for his release in Criminal Case No. 129 of 2013 pending before the Court of the learned Additional Chief Judicial Magistrate, Dalsingsarai." Thakur, J. (as the learned Chief Justice then was) who agreed with the leading Judgment authored by Ramana, J., also dealt with the matter in paragraph 22 of his concurring opinion as under:

"22. The only question with which we are concerned within the above backdrop is whether the petitioner can be said to be in the unlawful custody. Our answer to that question is in the negative. The record which we have carefully perused shows that the petitioner is an accused facing prosecution for the offences, cognizance whereof has already been taken by the competent court. He is presently in custody pursuant to the order of remand made by the said Court. A writ of habeas corpus is, in the circumstances, totally misplaced. Having said that, we are of the view that the petitioner could and indeed ought to have filed an application for grant of bail which prayer could be allowed by the court below, having regard to the nature of the offences allegedly committed by the petitioner and the attendant circumstances. The petitioner has for whatever reasons chosen not to do so. He, instead, has been advised to file the present petition in this Court which is no substitute for his enlargement from custody."

20.3) A Bench of three learned Judges of this Court in State of Maharashtra and Others vs. Tasneem Rizwan Siddiquee concluded as under:-

"10. The question as to whether a writ of habeas corpus could be maintained in respect of a person who is in police

12 (2018) 9 SCC 745 custody pursuant to a remand order passed by the jurisdictional Magistrate in connection with the offence under investigation, this issue has been considered in Saurabh Kumar v. Jailor Koneila Jail and Manubhai Ratilal Patel v. State of Gujarat. It is no more res integra. In the present case, admittedly, when the writ petition for issuance of a writ of habeas corpus was filed by the respondent on 18-3-2018/19-3-2018 and decided by the High Court on 21-3-2018 her husband Rizwan Alam Siddiquee was in police custody pursuant to an order passed by the Magistrate granting his police custody in connection with FIR No. I-31 vide order dated 17-3-2018 and which police remand was to enure till 23-3-2018. Further, without challenging the stated order of the Magistrate, a writ petition was filed limited to the relief of habeas corpus. In that view of the matter, it was not a case of continued illegal detention but the incumbent was in judicial custody by virtue of an order passed by the jurisdictional Magistrate, which was in force, granting police remand during investigation of a criminal case. Resultantly, no writ of habeas corpus could be issued.

11. Reverting to the prayer for expunging the scathing observations made in the impugned judgment, in particular paras 4-6, reproduced earlier, it is submitted that the said observations were wholly unwarranted as the Deputy Commissioner of Police concerned who was present in Court, could not have given concession to release Rizwan Alam Siddiquee in the teeth of a judicial order passed by the Magistrate directing police remand until 23-3-2018.Moreover, it is evident that the High Court proceeded to make observations without giving any opportunity, whatsoever, to the police officials concerned to explain the factual position on affidavit. The writ petition was filed on 18-3-2018/19-3-2018 and was moved on 20-3-20182 when the Court called upon the advocate for the appellants to produce the record on the next day i.e. 21-3-2018. The impugned order came to be passed on 21-3-20181, notwithstanding the judicial order of remand operating till 23-3-2018. The High Court, in our opinion, should not have taken umbrage to the submission made on behalf of the Deputy Commissioner of Police that the respondent's

husband could be released if so directed by the Court. As aforesaid, the DCP has had no other option but to make such a submission. For, he could not have voluntarily released the accused who was in police custody pursuant to a judicial order in force. The High Court ought not to have made scathing observations even against the investigating officer without giving him an opportunity to offer his explanation on affidavit.

12. Suffice it to observe that since no writ of habeas corpus could be issued in the fact situation of the present case, the High Court should have been loath to enter upon the merits of the arrest in the absence of any challenge to the judicial order passed by the Magistrate granting police custody till 23-3-2018 and more particularly for reasons mentioned in that order of the Magistrate. In a somewhat similar situation, this Court in State represented by Inspector of Police and others v. N.M.T. Joy Immaculate 13 deprecated passing of disparaging and strong remarks by the High Court against the investigating officer and about the investigation done by them. Accordingly, we have no hesitation in expunging the observations made in paras 4 to 6 of the impugned judgment against the police officials concerned in the facts of the present case."

21) The act of directing remand of an accused is thus held to be a judicial function and the challenge to the order of remand is not to be entertained in a habeas corpus petition. The first question posed by the High Court, thus, stands answered. In the present case, as on the date when the matter was considered by the High Court and the Order was passed by it, not only were there orders of remand passed by the Judicial Magistrate 13 (2004) 5 SCC 729 as well as the Special Court, Gurugram but there was also an order of extension passed by the Central Government on 14.12.2018. The legality, validity and correctness of the order or remand could have been challenged by the original Writ Petitioners by filing appropriate proceedings. However, they did not raise such challenge before the competent Appellate or Revisional Forum. The orders of remand passed by the Judicial Magistrate and the Special Court, Gurugram had dealt with merits of the matter and whether continued detention of the accused was justified or not. After going

into the relevant issues on merits, the accused were remanded to further police custody. These orders were not put in challenge before the High Court. It was, therefore, not open to the High Court to entertain challenge with regard to correctness of those orders. The High Court, however, considered the matter from the standpoint whether the initial Order of arrest itself was valid or not and found that such legality could not be sanctified by subsequent Order of remand. Principally, the issue which was raised before the High Court was whether the arrest could be effected after period of investigation, as stipulated in said order dated 20.06.2018 had come to an end. The supplementary issue was the effect of extension of time as granted on 14.12.2018. It is true that the arrest was effected when the period had expired but by the time the High Court entertained the petition, there was as order of extension passed by the Central Government on 14.12.2018. Additionally, there were judicial orders passed by the Judicial Magistrate as well as the Special Court, Gurugram, remanding the accused to custody. If we go purely by the law laid down by this Court with regard to exercise of jurisdiction in respect of Habeas Corpus petition, the High Court was not justified in entertaining the petition and passing the Order.

22. We must, however, deal with the submission advanced on behalf of the original Writ Petitioners that the relief as regards Habeas Corpus was a secondary prayer while the principal submissions were with regard to the first three prayers in the petition. It was submitted that with the expiry of period, the entire mandate came to an end and as such, there could be no arrest and that illegality in that behalf would continue regardless whether there was a subsequent order of extension. In the submission of the learned counsel for the Writ Petitioner such an extension could not cure the inherent defect and as such, the High Court was justified in entertaining the petition. We may deal with this issue after considering the second question posed by the High Court in said paragraph 15.

36. In the facts of Serious Fraud Investigation Office case (supra), the High Court released the original petitioners on bail while exercising writ jurisdiction. The hon'ble Supreme Court allowed the appeal filed by the appellant therein i.e., Serious Fraud Investigation Office and original writ petitioners were directed to surrender before the Special Court.

37. Be that as it may, the learned Senior Advocate for the petitioner would submit that he would not be pressing prayer clause (a).

38. Prayer clause (b) of the petition reads thus:

> (b) Issue a writ of mandamus and/or any other writ, order and direction of like nature, quashing the FIR, being C.R. No. 0059 of 2018, dated 5 May 2018, registered at Alibaug Police Station, Raigad, under Sections 306 and 34 of the Indian Penal Code, 1860.

In relation to relief claimed in terms of prayer clause (b), there is consensus amongst the learned Senior Advocate appearing for all the parties that the main petition can be heard on the next date after pleadings are completed and thus said prayer can be considered. We have posted the writ petition for hearing on 10.12.2020.

39. The petitioner by filing the present application i.e., Interim Application (Stamp) No.4278 of 2020, has prayed for the following reliefs pending decision in the Writ Petition:

> "(a) Pending the hearing and disposal of the captioned writ petition, this Hon'ble Court be pleased to grant bail to the Petitioner in FIR No. 59 of 2018 and direct the Respondents and/or each of them to immediately release the Petitioner from illegal detention and wrongful custody and/or arrest by the Respondents in view of detailed submissions made herein above, to meet the ends of justice.
>
> (b) Pending the hearing and disposal of the captioned writ petition, this Hon'ble Court be pleased to stay all further proceedings, including the investigation in FIR No. 59 of 2018, with respect to the Petitioner."

40. The learned Senior Advocate for the petitioner has prayed that the petitioner be released on bail during the pendency of the present petition seeking quashing of the First Information Report No.59 of 2018.

41. The issue as to the exercise of jurisdiction by the High Court in a proceeding relating to quashing of First Information Report has been authoritatively dealt with in the case of State of Telangana vs. Habib Abdullah Jeelani & others[30]. Their Lordships in paragraph 12 clarified the parameters as to the circumstances and situations where the Court's inherent power can be exercised. In paragraphs 13 and 14 which have a bearing on the controversy reads thus:

> **"13**. There can be no dispute over the proposition that

30 (2017) 2 SCC 779

> inherent power in a matter of quashment of FIR has to be exercised sparingly and with caution and when and only when such exercise is justified by the test specifically laid down in the provision itself. There is no denial of the fact that the power under Section 482 CrPC is very wide but it needs no special emphasis to state that conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the Court.
>
> 14. In this regard, it would be seemly to reproduce a passage from Kurukshetra University (supra) wherein Chandrachud, J. (as His Lordship then was) opined thus:-
>
> "2. It surprises us in the extreme that the High Court thought that in the exercise of its inherent powers under Section 482 of the Code of Criminal Procedure, it could quash a first information report. The police had not even commenced investigation into the complaint filed by the Warden of the University and no proceeding at all was pending in any court in pursuance of the FIR. It ought to be realised that inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. <u>That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases."</u>
>
> (emphasis supplied)

42. Further in para 20, the Hon'ble Supreme Court referred to the decision in Hema Mishra Vs. State of U.P.[31] and in paragraphs 23 to 25 of the said decision, their Lordships have held thus:

> "23. We have referred to the authority in Hema Mishra (supra) as that specifically deals with the case that came from the State of Uttar Pradesh where Section 482 CrPC has been deleted. It has concurred with the view expressed in Lal Kamlendra Pratap Singh (supra). The said decision, needless to say, has to be read in the context of State of Uttar Pradesh. We do not intend to elaborate the said principle as that is not necessary in this case. What needs to be stated here is that

31 (2014) 4 SCC 453

the States where Section 482 CrPC has not been deleted and kept on the statute book, the High Court should be well advised that while entertaining petitions under Article 226 of the Constitution or Section 482 CrPC, exercise judicial restraint. We may hasten to clarify that the Court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, has the jurisdiction to quash the investigation and may pass appropriate interim orders as thought apposite in law, but it is absolutely inconceivable and unthinkable to pass an order of the present nature while declining to interfere or expressing opinion that it is not appropriate to stay the investigation. This kind of order is really inappropriate and unseemly. It has no sanction in law. The Courts should oust and obstruct unscrupulous litigants from invoking the inherent jurisdiction of the Court on the drop of a hat to file an application for quashing of launching an FIR or investigation and then seek relief by an interim order. It is the obligation of the court to keep such unprincipled and unethical litigants at bay.

24. It has come to the notice of the Court that in certain cases, the High Courts, while dismissing the application under Section 482 CrPC are passing orders that if the accused-petitioner surrenders before the trial magistrate, he shall be admitted to bail on such terms and conditions as deemed fit and appropriate to be imposed by the concerned Magistrate. Sometimes it is noticed that in a case where sessions trial is warranted, directions are issued that on surrendering before the concerned trial judge, the accused shall be enlarged on bail. Such directions would not commend acceptance in light of the ratio in Rashmi Rekha Thatoi (supra), Gurbaksh Singh Sibbia (supra), etc., for they neither come within the sweep of Article 226 of the Constitution of India nor Section 482 CrPC nor Section 438 CrPC. This Court in Ranjit Singh (supra) had observed that the sagacious saying “a stitch in time saves nine” may be an apposite reminder and this Court also painfully so stated.

25. Having reminded the same, presently we can only say that the types of orders like the present one, are totally unsustainable, for it is contrary to the aforesaid settled principles and judicial precedents. It is intellectual truancy to avoid the precedents and issue directions which are not in

> consonance with law. It is the duty of a Judge to sustain the judicial balance and not to think of an order which can cause trauma to the process of adjudication. It should be borne in mind that the culture of adjudication is stabilized when intellectual discipline is maintained and further when such discipline constantly keeps guard on the mind."

43. No doubt, regard being had to the parameters of quashing and the self-restraint imposed by law, this court has jurisdiction to quash the investigation and pass appropriate interim orders as thought apposite in law. However, the powers are to be exercised sparingly and that too, in rare and appropriate cases and in extreme circumstances to prevent abuse of process of law.

44. In State of Telangana vs. Habib Abdullah Jeelani & others (supra), their Lordships have observed that the Courts have to ensure such a power under Article 226 of the Constitution of India is not to be exercised liberally so as to convert it into section 438 of Cr.P.C. proceedings.

45. The principle stated therein will equally apply to the exercise of this Court's power under Article 226 of the Constitution of India and section 482 of the Code of Criminal Procedure while considering the applications for bail since the petitioner is already in Judicial custody. The legislature has provided specific remedy under Section 439 Cr.P.C. for applying for regular bail. Having regard to the alternate and efficacious remedy available to the

petitioner under section 439 of the Code of Criminal Procedure, this Court has to exercise judicial restraint while entertaining application in the nature of seeking regular bail in a petition filed under Article 226 of the Constitution of India read with section 482 of Code of Criminal Procedure.

46. Mr. Amit Desai, learned Senior Advocate appearing for the State, submitted that an application for bail was filed before the learned Magistrate which the petitioner chose to withdraw. However, he submitted that in the event an application is filed before the appropriate Court under section 439 of Code of Criminal Procedure for regular bail, the State would not delay the hearing of the application and would cooperate in the expeditious disposal of the same.

47. It is brought to our notice that the order of Remand passed by the Chief Judicial Magistrate is challenged in Revision before the Sessions Court by the State and the same is pending. Though the Senior Advocate for the Petitioner made submissions in the context of the remand order, however, as the issue is subjudiced before the Revisional Court, we think it appropriate not to refer to the said order.

48. Let us now consider the submissions of the learned Senior Advocate for the petitioner that the Investigating Officer is not justified in

reinvestigating the offence in which the jurisdictional Magistrate has already accepted the "A" summary.

49. Reference to some of the provisions of the Code would be necessary in the context of the contention of the learned Senior Advocate appearing for the petitioner. Before we deal with the relevant provisions, at the cost of repetition, it would be necessary to mention that "A" summary was granted by the jurisdictional Magistrate on 16.4.2019. The said order reads thus:

:ORDER:

1. The report submitted by DYSP is accepted.
2. "A" Summary as prayed for is granted."

50. The Hon'ble Supreme Court in Bhagwant Singh (supra) and Gangadhar (supra) and in the case of State of Andhra Pradesh vs. A.S. Peter[32], has held that when the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. In the facts of the case in hand, admittedly, the informant was neither given any notice nor heard when the "A" summary was granted. Even the aforesaid order was not communicated to the first informant. The victim i.e. first informant, when became aware about the

32 (2008) 2 SCC 383

"A" summary, though some tweets as submitted by learned Senior Advocate Mr. Gupte, requested the State Government and Superior officer of police that the case should be properly and thoroughly investigated. Criminal Writ Petition-ASDB-LDVC No.33 of 2020 was filed in this Court by the daughter of the deceased – Adnya Anvay Naik (First Informant). The said petition was allowed to be withdrawn with liberty as there were fresh developments in the matter.

51. A detailed representation was made to the Additional Director General of Police, Maharashtra State CID on 13th June, 2020 by Smt.Akshata Naik, widow of the deceased. The issue was raised in the State Assembly. On the instructions of superior officers of the Investigating Officer, the local Crime Investigation Branch, Alibaug filed a report before the jurisdictional Magistrate for conducting further investigation of the said offence and accordingly, intimated to the jurisdictional Magistrate that further investigation of the offence under section 173(8) of the Code is being carried out. The jurisdictional Magistrate recorded the endorsement as "seen and filed". In this context, it would be relevant to refer to section 173(8) of the Code of Criminal Procedure, which reads thus:

> "SECTION 173 (8) CRPC
>
> (8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a

> report under sub- section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub- sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub- section (2)."

52. We may also refer to sections 3 and 4 of the Bombay Police Act, 1951, which reads thus:

> "3. One Police Force for the whole of the State of Maharashtra.
>
> There shall be one Police Force for the whole of the State of Maharashtra and such Police Force shall include every Police officer referred to in clause (6) of section 2:
>
> Provided that, the members of the Police Forces constituted under any of the Acts mentioned in Schedule I, immediately before the coming into force of this Act in the relevant part of the State shall be deemed to be the members of the said Police Force .
>
> **4**. Superintendence of Police Force to vest in the State Government. The Superintendence of the Police Force throughout the State of Maharashtra vests in and is exercisable by the State Government and any control, direction or supervision exercisable by any officer over any member of the Police Force shall be exercisable subject to such superintendence. (emphasis supplied)

53. Section 36 of the Code of Criminal Procedure to which Mr. Desai refers to provides as under:

> "36. Powers of superior officers of police. Police officers superior in rank to an officer in charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station."

54. From the above provisions, it would thus be seen that exercise of supervisory powers of superintendence of the police force throughout the State of Maharashtra vests and is exercisable by the State Government and any control, direction exercisable by any officer or any member of the police force shall be subject to such superintendence. The State Government, therefore, in exercise of its powers directed the local Crime Investigation Branch, Raigad – Alibag to conduct further investigation of the said offence. Though the learned Senior Advocate for the petitioner has pointed out that the State Government has issued directions for reinvestigating the matter, which, according to him, is not permissible, however, we find that when report was submitted before the jurisdictional Magistrate, the concerned Investigating Officer has correctly understood it to mean a further investigation and accordingly made the submission. The power of superintendence has been explained by the hon'ble Supreme Court in the case of State of Bihar vs. J.A.C. Saldanha. Paragraph 17 of the said case, which is relevant, reads thus:

“17. The High Court construed the expression 'superintendence' in s. 3 of the Act to mean 'general supervision of the management of the police department and does not vest the State Government with authority to decide what the police alone is authorised to decide'. There is nothing in the Act to indicate such a narrow construction of the word 'superintendence'. Nothing was pointed out to us to put a narrow construction on this general power of superintendence conferred under the Act on the State Government and there is no justification for limiting the broad spectrum of power comprehended in power of superintendence. Accordingly superintendence would comprehend the power to direct further investigation if the circumstances so warrant and there is nothing in the Code providing to the contrary so as to limit or fetter this power. Sub-s. (8) of s. 173 was pressed into service to show that the power of further investigation after the submission of a report under s. 173(2) would be with the officer in charge of a police station. Sub-s. (8) of s. 173 is not the source of power of the State Government to direct further investigation. Section 173(8) enables an officer in charge of a police station to carry on further investigation even after a report under s. 173(2) is submitted to Court. But if State Government has otherwise power to direct further investigation it is neither curtailed, limited nor denied by s. 173(8), more so, when the State Government directs an officer superior in rank to an officer in charge of police station thereby enjoying all powers of an officer in charge of a police station to further investigate the case. Such a situation would be covered by the combined reading of s. 173(8) with s. 36 of the Code. Such power is claimed as flowing from the power of superintendence over police to direct a police officer to do or not to do a certain thing because at the stage of investigation the power is enjoyed as executive power untrammeled by the judiciary. It was incidentally submitted that it is an undisputed dictum of law that when a statute requires a thing to be done in a certain manner it shall be done in that manner alone and the Court would not expect its being done in some other manner (see State of Gujarat v. Shantilal Mangaldas & Ors. Expounding the submission it was stated that sub-s. (8) of s. 173 clearly indicates the power of further investigation after

> submission of a report and that power is conferred on the officer in charge of a police station only and, therefore, the State Government was incompetent to direct further investigation. It was further contended that in view of the provision contained in s. 173(8) it would not be open to the Court to so interpret the word 'superintendence' in s. 3 of the Police Act as to empower the State Government to direct investigation being done by some one other than the statutory authority envisaged by s. 173(8) because such an interpretation would derogate from the principle that where a thing is required by a statute to be done in a particular way it shall be deemed to have prohibited that thing being done in any other way. In Ex-parte Stephen's, the principle is stated that if a statute directs a thing to be done in a certain way that thing shall not, even if there be no negative words, be done in any other way. Subba Rao, J. in Patna Improvement Trust v. Smt. Lakshmi Devi & Ors., spelt out the combined effect of the aforementioned principles thus:
>
> "A general Act must yield to a special Act dealing with a specific subject-matter and that if an Act directs a thing to be done in a particular way, it shall be deemed to have prohibited the doing of that thing in any other way".

55. Thus, there is no manner of doubt in our minds that the State Government can always direct a further investigation to the concerned police officers, as done in the present case.

56. Insofar as the provision regarding grant of “A” summary is concerned, the procedure thereof is mentioned under Rule 219 of the Bombay Police Manual, 1959. Rule 219, dealing with final reports, more particularly, clause (3) reads thus:

"RULE 219 (3) OF BOMBAY POLICE MANUAL

(3) The final report should be written up carefully by the officers in-charge of the Police Station personally and should be accompanied by all the case papers numbered and indexed methodically. If the accused has been released on bail, the Magistrate should be requested to cancel the bail bond. He should also be requested to pass orders regarding the disposal of property attached, unless any of the articles, e.g., blood stained clothes, are required for further use in true but undetected cases. A request should also be made to the Magistrate to classify the case and to issue an appropriate summary of his order, viz:-

"A' True, undetected (where there is no clue whatsoever about the culprits or property or where the accused in known but there is no evidence to justify his being sent up to the Magistrate (for trial).

"B" Maliciously false.

"C" Neither true nor false, e.g., due to mistake ot fact or being of a civil nature.

"Non-cognizable" Police investigation reveals commission of only non-cognizable offence."

(emphasis supplied)

57. Reading of clause (3) would indicate that "A" summary is granted in a case where the offence is committed but the same is undetected, in that, where there is no clue whatsoever about the culprits or property or where the accused is known but there is no evidence to justify the same for being sent to the Magistrate (trial). The jurisdictional Magistrate has classified the case and issued "A" summary in this case. Consequent upon receiving instructions pursuant to the complaint made by the victim to the superiors, the local Crime Branch intimated the jurisdictional Magistrate that they want to the carry out further investigation in the offence.

58. The intimation thereon was given to the Magistrate who had made an endorsement of “seen and file”. Not only that but even when the application was made by the Investigating Officer for recording the statements under section 164 of the Code of Criminal Procedure, the same was recorded by the Magistrate. Their Lordships in the case of State of Andhra Pradesh vs. A.S. Peter (supra) have in the context of section 173 of Code of Criminal Procedure held that the law does not mandate taking prior permission of Magistrate for further investigation. Their Lordships further held that carrying out further investigation even after filing of chargesheet, is a statutory right of the police. A distinction also exists between further investigation and reinvestigation. It is observed that whereas reinvestigation without prior permission is necessarily forbidden, further investigation is not.

59. We find that before carrying out the said investigation, the Magistrate was intimated about the further investigation. Thereafter, even the statements are recorded under section 164 of the Code of Criminal Procedure after obtaining permission from Chief Judicial Magistrate. In our opinion, the further investigation cannot be termed as illegal and without seeking permission of the Magistrate. The same is in consonance with the power conferred by section 173 (8) of Code of Criminal Procedure, which is extracted hereinabove. In the facts of the present case two family members of

the informant died. Allegations are made in the FIR against three accused involving present petitioner. She filed the representation to the State Government and police officers for redressal of her grievance.

60. At this juncture, it would be pertinent to consider the decision of the Hon'ble Supreme Court in the case of Vinubhai Haribhai Malaviya & another vs. State of Gujarat (supra). In paragraph 49 of the said judgement, their Lordships have observed thus:

> "49. There is no good reason given by the Court in these decisions as to why a Magistrate's powers to order further investigation would suddenly cease upon process being issued, and an accused appearing before the Magistrate, while concomitantly, the power of the police to further investigate the offence continues right till the stage the trial commences. Such a view would not accord with the earlier judgments of this Court, in particular, Sakiri (supra), Samaj Parivartan Samudaya (supra), Vinay Tyagi (supra), and Hardeep Singh (supra); Hardeep Singh (supra) having clearly held that a criminal trial does not begin after cognizance is taken, but only after charges are framed. What is not given any importance at all in the recent judgments of this Court is Article 21 of the Constitution and the fact that the Article demands no less than a fair and just investigation. To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod under Section 173(8) to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases mid-way through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a prima facie guilty person is not so left out. There is no warrant for such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156(1),

> Section 2(h), and Section 173(8) of the CrPC, as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised suo motu by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law. If, for example, fresh facts come to light which would lead to inculpating or exculpating certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay being caused in concluding the criminal proceeding, as was held in Hasanbhai Valibhai Qureshi (supra). Therefore, to the extent that the judgments in Amrutbhai Shambubhai Patel (supra), Athul Rao (supra) and Bikash Ranjan Rout (supra) have held to the contrary, they stand overruled. Needless to add, Randhir Singh Rana v. State (Delhi Administration) (1997) 1 SCC 361 and Reeta Nag v. State of West Bengal and Ors. (2009) 9 SCC 129 also stand overruled."

61. In Vinubhai Haribhai Malaviya (supra), their Lordships were considering the fact situation as to whether post-cognisance, the Magistrate is denuded of his powers of further investigation. In the present case, post filing of "A" summary, an intimation was given to the Magistrate by the Investigating Officer that they are carrying out further investigation whereafter, even the statements under section 164 of the Code of Criminal Procedure are recorded by the concerned Magistrate pursuant to the directions issued by the Chief Judicial Magistrate.

62. It is rightly submitted by Mr.Desai that the judgments cited by the petitioner deal with the power of the Court to order further investigation,

which is different from the State's power to order further investigation, depending upon the nature of summary i.e., "A", "B" or "C".

63. Merely because the Magistrate has accepted the "A" summary submitted by the Investigating Officer, that would not mean and preclude the concerned Investigating Officer to invoke the provisions of section 173(8) of Code of Criminal Procedure to commence further investigation after giving intimation to the jurisdictional Magistrate.

64. The fact that the Magistrate did not give notice and opportunity to the first informant to file a protest petition before accepting the report, goes to the root of the matter. Therefore, the continuous persuasion of the State Government by the informant for redressal of her grievance since her two family members had committed suicide, and in the aforesaid background, the concerned Investigating Officer, after intimating the Magistrate, commences the further investigation, cannot be said to be irregular or illegal by any stretch of imagination. The victim's rights are equally important like the rights of the accused. We cannot accept the contention of the petitioner that there cannot be further investigation when the order passed by the Magistrate accepting the "A" summary was without notice and without giving an opportunity to the informant for filing the protest petition.

65. It is relevant to mention that the informant has also filed a petition making serious allegations against the Investigating Officer, who investigated in Crime No.59 of 2018 at the relevant time and filed "A" summary before the jurisdictional Magistrate without informing and notice to the informant. In the said petition, this Court has issued notice to the respondents. It is alleged by the informant that the first time she came to know about it from 'Twitter' about filing "A" summary report by the concerned police officer before the concerned jurisdictional Magistrate and thereafter, she approached various State authorities for redressal of her grievance. As already observed, the informant's prayer for further investigation could not have been brushed aside by the respondent State and its officials, when as per the allegations in the FIR, two of her family members committed suicide due to the alleged acts of the accused. As rightly submitted by Mr.Gupte, the learned Senior Counsel appearing for the first informant, relying upon the exposition of law in the case of Bhagwant Singh (supra) and Gangadhar (supra) that the notice to the victim and opportunity for filing the protest petition was necessary before accepting "A" summary report by the jurisdictional Magistrate. It would be gainful to reproduce hereinbelow paragraphs 4 and 5 of the judgment in the case of Bhagwant Singh (supra):

> "4. Now, when the report forwarded by the officer-in charge of a police station to the Magistrate under sub-section (2)(i) of

Section 173 comes up for consideration by the Magistrate, one of two different situations may arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may do one of three things: (1) he may accept the report and take cognizance of the offence and issue process or (2) he may disagree with the report and drop the proceeding or (3) he may direct further investigation under sub-section (3) of Section 156 and require the police to make a further report. The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses: (1) he may accept the report and drop the proceeding or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process or (3) he may direct further investigation to be made by the police under sub-section (3) of Section 156. Where, in either of these two situations, the Magistrate decides to take cognizance of the offence and to issue process, the informant is not prejudicially affected nor is the injured or in case of death, any relative of the deceased aggrieved, because cognizance of the offence is taken by the Magistrate and it is decided by the Magistrate that the case shall proceed. But if the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceeding or takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the First Information Report, the informant would certainly be prejudiced because the First Information Report lodged by him would have failed of its purpose, wholly or in part. Moreover, when the interest of the informant in prompt and effective action being taken on the First Information Report lodged by him is clearly recognised by the provisions contained in sub-section (2) of Section 154, sub- section (2) of Section 157 and sub-section (2)(ii) of Section 173, it must be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be culmination of the First Information Report lodged by him. There can, therefore, be no doubt that when, on a consideration of the report made by the officer in charge of a police station under sub-section (2)(i) of Section

173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. We are accordingly of the view that in a case where the magistrate to whom a report is forwarded under sub-section (2)(i) of Section 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report. It was urged before us on behalf of the respondents that if in such a case notice is required to be given to the informant, it might result in unnecessary delay on account of the difficulty of effecting service of the notice on the informant. But we do not think this can be regarded as a valid objection against the view we are taking, because in any case the action taken by the police on the First Information Report has to be communicated to the informant and a copy of the report has to be supplied to him under sub-section (2) (i) of Section 173 if that be so, we do not see any reason why it should be difficult to serve notice of the consideration of the report on the informant. Moreover, in any event, the difficulty of service of notice on the informant cannot possibly provide any justification for depriving the informant of the opportunity of being heard at the time when the report is considered by the Magistrate.

5. The position may however, be a little different when we consider the question whether the injured person or a relative of the deceased, who is not the informant, is entitled to notice when the report comes up for consideration by the Magistrate. We cannot spell out either from the provisions of the Code of Criminal procedure, 1973 or from the principles of natural justice, any obligation on the Magistrate to issue notice lo the injured person or to a relative of the deceased for providing such person an opportunity to be heard at the time of consideration of the report, unless such person is the informant who has lodged the First Information Report. But even if such person is not entitled to notice from the Magistrate, he can appear before the Magistrate and make his submissions when the report is considered by the Magistrate for the purpose of

> deciding what action he should take on the report. The injured person or any relative of the deceased, though not entitled to notice from the Magistrate, has locus to appear before the Magistrate at that time of consideration of the report, if he otherwise comes to know that the report is going to be considered by the Magistrate and if he wants to make his submissions in regard to the report, the Magistrate is bound to hear him. We may also observe that even though the Magistrate is not bound to give notice of the hearing fixed for consideration of the report to the injured person or to any relative of the deceased, he may, in the exercise of his discretion, if he so thinks fit, give such notice to the injured person or to any particular relative of or relatives the deceased, but not giving of such notice will not have any invalidating effect on the order which may be made by the Magistrate on a consideration of the report."

66. Another prayer of the petitioner is to stay the investigation. In the case of State of Haryana vs. Bajan Lal & others[33], it was held that the core of the Sections 156, 157 and 159 of the Code of Criminal Procedure is that if a police officer has reason to suspect the commission of a cognizable offence, he must either proceed with the investigation or cause an investiga- tion to be proceeded with by his subordinate; that in a case where the police officer sees no sufficient ground for investigation, he can dispense with the investigation altogether that the field of investigation of any cognizable offence is exclusively within the domain of the investigation agencies over which the Courts cannot have control and have no power to stiffle or impinge upon the proceedings in the investigation so long as the investigation proceeds in

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compliance with the provisions relating to investigation and that it is only in a case wherein a police officer decides not to investigate an offence, the concerned Magistrate can intervene and either direct an investigation or in the alternative, if he thinks fit, he himself can, at once proceed or depute any Magistrate sub-ordinate to him to proceed to hold a preliminary inquiry into or otherwise to dispose of the case in the manner provided in the Code.

(emphasis supplied)

67. In that view of the matter and since we have posted the Writ Petitions for hearing on 10th December, 2020, wherein the prayer of the petitioner for quashing the First Information Report would be considered, we are not inclined to accede to the prayer of the petitioner to stay the investigation.

68. The petition and application for interim protection proceeds on the premise that the petitioner is illegally detained. However, on the date of filing the petition and the application, the applicant – petitioner was in judicial custody as it is averred by the petitioner himself in the application. The prayers in the interim application are keeping in view the relief claimed in terms of prayer clause (a) of the main petition.

69. Mr.Harish Salve, the learned Senior Advocate appearing for the Petitioner, vehemently argued that the allegations in the First Information Report, read in its entirety, do not disclose the alleged offence against the petitioner. The said submission deserves no consideration at this stage when the investigation is in progress and the alleged suicide note recovered by the Investigating Officer mentions the name of the petitioner. Since the petitions are posted for hearing for consideration of prayer of the petitioners for quashing of the First Information Report, we refrain ourselves from expressing opinion on merits at this stage. In the facts of the present case, no case is made out for release of the applicant – petitioner under extra-ordinary writ jurisdiction.

70. In our opinion, the petitioner has an alternate and efficacious remedy under section 439 of the Code of Criminal Procedure to apply for regular bail. At the time of concluding the hearing of Applications, we had made it clear that if the petitioner, if so advised, to apply for regular bail under section 439 of the Code of Criminal Procedure before the concerned Court, then, in that case, we have directed the concerned Court to decide the said application within four days from filing of the same.

71. In the light of discussion in the foregoing paragraphs, the Interim Application stands rejected.

72. The observations made hereinabove are prima facie in nature and confined to the adjudication of the present Interim Application only.

73. The remedy of the petitioner to apply for bail under section 439 of the Cr.PC shall remain unaffected and rejection of Interim Application shall not be construed as an impediment to the applicant – petitioner to avail the said remedy.

74. Needless to observe that in case such an application is filed, the concerned Court shall decided the same on its own merits without being influenced by observations made by us in this order in the time limit specified in paragraph 70 of this order.

(M. S. KARNIK, J.) **(S. S. SHINDE, J.)**

Vishwanath
S. Sherla

Digitally signed by
Vishwanath S.
Sherla
Date: 2020.11.09
15:52:21 +0530