IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (Cr.) No. 323 of 2022

Baby Chatterjee, aged about 49 years, Wife of Arup Chatterjee, at present working as Director, Media 11, Resident of Flat No.303/304, Mudgul Apartment, Chandni Chowk, Kanke Road, P.O. Kanke, P.S. Gonda, District- Ranchi, Jharkhand **... Petitioner**

-Versus-

1. The State of Jharkhand through the Chief Secretary, Government of Jharkhand, Project Bhawan, P.O. & P.S. Dhurwa, Ranchi, Jharkhand
2. The Secretary, Home, Jail & Disaster Management, Government of Jharkhand, Project Bhawan, P.O. & P.S. Dhurwa, Ranchi, Jharkhand
3. The Director General of Police, Government of Jharkhand, Police Headquarter, P.O. & P.S. Dhurwa, Ranchi, Jharkhand
4. Sanjiv Kumar, Senior Superintendent of Police, Dhanbad, P.O., P.S. & District- Dhanbad
5. Amar Kumar Pandey, Deputy Superintendent of Police, Dhanbad, P.O., P.S. & District- Dhanbad
6. Dipak Kumar, Sub Inspector-cum-Investigating Officer of present case at Govindpur Police Station, P.O. & P.S. Govindpur, District- Dhanbad, Jharkhand
7. Rakesh Kumar, S/o Lalan Ji Ojha, R/o Chanchani Colony, Dhaiya, P.O., P.S. & District- Dhanbad **... Respondents**

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner : Mr. Ajit Kumar, Sr. Advocate
Mr. Navin Kumar, Advocate
Ms. Aprajita Bhardwaj, Advocate

For the State : Mr. Sachin Kumar, A.A.G.-II
Mr. Deepak Kumar Dubey, AC to A.A.G.-II
Ms. Surabhi, AC to A.A.G.-II
Mr. Ravi Prakash Mishra, AC to A.A.G.-II

For Respondent No.7 : Mrs. Ritu Kumar, Advocate
Mr. Sumeet Gadodia, Advocate
Mr. Samavesh Bhanj Deo, Advocate
Ms. Shatakshi, Advocate

02/19.07.2022. Heard Mr. Ajit Kumar, learned senior counsel assisted by Mr. Navin Kumar, learned counsel for the petitioner, Mr. Sachin Kumar, learned A.A.G.-II appearing for the State and Mrs. Ritu Kumar assisted by Mr. Sumeet Gadodia, learned counsel who appeared *suo motu* on behalf of the informant-respondent no.7.

2. This petition has been filed for release of one Sri Arup Chatterjee,

who happens to be a journalist of news channel namely News 11 Bharat, by the wife of the said journalist on the ground that without following the due process of law in terms of the provisions made under the Cr.P.C., the husband of the petitioner has been arrested by the police in the midnight of 16.07.2022/17.07.2022 at 12:20 a.m. from the apartment where he was residing at Ranchi.

3. Mr. Ajit Kumar, the learned senior counsel appearing for the petitioner submits that the petitioner who happens to be wife of the said journalist namely Arup Chatterjee has filed this petition as nobody has been allowed to meet with Arup Chatterjee who is in custody. He submits that even the lawyers tried to contact Arup Chatterjee, but they have not been allowed and that is why this petition has been filed by the petitioner, who happens to be the wife of the said journalist. He further submits that the procedure prescribed under Sections 80 and 81 Cr.P.C has not been followed and Dhanbad police came to Ranchi without intimation to the local police and without following the due procedure prescribed under Sections 80 and 81 of the Cr.P.C. and arrested the husband of the petitioner from the bedroom in midnight. He also submits that in such a way the liberty of a citizen of the country cannot be allowed to be taken even by the police. According to him, the police has not issued any notice under Section 41-A Cr.P.C and straightway on the petition filed by the Investigating Officer, the learned court has issued a warrant of arrest and that has been executed in such a way that liberty of the husband of this petitioner has been taken away. To buttress his argument, he relied in the case of ***Satender Kumar Antil v. Central Bureau of Investigation***, reported in ***2020 2 SCC OnLine 825***.

4. Paragraphs 11, 20, 21 to 30, 32, 67 to 73 of the said judgment are

quoted herein below:

> "***11.*** *The principle that bail is the rule and jail is the exception has been well recognised through the repetitive pronouncements of this Court. This again is on the touchstone of Article 21 of the Constitution of India. This court in Nikesh Tarachand Shah v. Union of India, (2018) 11 SCC 1, held that:*
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> > *"19. In Gurbaksh Singh Sibbia v. State of Punjab [Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 : 1980 SCC (Cri) 465], the purpose of granting bail is set out with great felicity as follows : (SCC pp. 586-88, paras 27-30)*
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> > > *"27. It is not necessary to refer to decisions which deal with the right to ordinary bail because that right does not furnish an exact parallel to the right to anticipatory bail. It is, however, interesting that as long back as in 1924 it was held by the High Court of Calcutta in Nagendra Nath Chakravarti, In re [Nagendra Nath Chakravarti, In re, 1923 SCC OnLine Cal 318 : AIR 1924 Cal 476 : 1924 Cri LJ 732], AIR pp. 479-80 that the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be withheld as a punishment. In two other cases which, significantly, are the "Meerut Conspiracy cases" observations are to be found regarding the right to bail which deserve a special mention. In K.N. Joglekar v. Emperor [K.N.*
> > > *Joglekar v. Emperor, 1931 SCC OnLine All 60 : AIR 1931 All 504 : 1932 Cri LJ 94] it was observed, while dealing with Section 498 which corresponds to the present Section 439 of the Code, that it conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding Section 497 which corresponds to the present Section 437. It was observed by the Court that there was no hard-and-fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was established was that the discretion should be exercised judiciously. In Emperor v. H.L. Hutchinson [Emperor v. H.L. Hutchinson, 1931 SCC OnLine All 14 : AIR 1931 All 356 : 1931 Cri LJ 1271], AIR p. 358 it was said that it was very unwise to make an attempt to lay down any particular rules which will bind the High Court, having regard to the fact that the legislature itself left the discretion of the court unfettered.*

> *According to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes. It was observed that the principle to be deduced from the various sections in the Criminal Procedure Code was that grant of bail is the rule and refusal is the exception. An accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. As a presumably innocent person he is therefore entitled to freedom and every opportunity to look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence.*
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> *28. Coming nearer home, it was observed by Krishna Iyer, J., in Gudikanti Narasimhulu v. State [Gudikanti Narasimhulu v. State, (1978) 1 SCC 240 : 1978 SCC (Cri) 115] that : (SCC p. 242, para 1)*
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> *'1. … the issue [of bail] is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitised judicial process. … After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of "procedure established by law". The last four words of Article 21 are the life of that human right.'*
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> *29. In Gurcharan Singh v. State (UT of Delhi) [Gurcharan Singh v. State (UT of Delhi), (1978) 1 SCC 118 : 1978 SCC (Cri) 41] it was observed by Goswami, J., who spoke for the Court, that : (SCC p. 129, para 29)*

'29. … There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail.'

30. In AMERICAN JURISPRUDENCE (2nd, Vol. 8, p. 806, para 39), it is stated:

> *'Where the granting of bail lies within the discretion of the court, the granting or denial is regulated, to a large extent, by the facts and circumstances of each particular case. Since the object of the detention or imprisonment of the accused is to secure his appearance and submission to the jurisdiction and the judgment of the court, the primary inquiry is whether a recognizance or bond would effect that end.'*

It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single

circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail."

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24. Article 21 is the Ark of the Covenant so far as the Fundamental Rights Chapter of the Constitution is concerned. It deals with nothing less sacrosanct than the rights of life and personal liberty of the citizens of India and other persons. It is the only article in the Fundamental Rights Chapter (along with Article 20) that cannot be suspended even in an emergency [see Article 359(1) of the Constitution]. At present, Article 21 is the repository of a vast number of substantive and procedural rights post Maneka Gandhi v. Union of India [Maneka Gandhi v. Union of India, (1978) 1 SCC 248]."

20.*Though the word 'bail' has not been defined as aforesaid, Section 2A defines a bailable and non-bailable offense. A non-bailable offense is a cognizable offense enabling the police officer to arrest without a warrant. To exercise the said power, the Code introduces certain embargoes by way of restrictions.*

Section 41, 41A and 60A of the Code

CHAPTER V

ARREST OF PERSONS

41. When police may arrest without warrant.—*(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person—*

(a) who commits, in the presence of a police officer, a cognizable offence;

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:—

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) the police officer is satisfied that such arrest is necessary—

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing:

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest.

(ba) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence;

(c) who has been proclaimed as an offender either under this Code or by order of the State Government; or

(d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(e) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(f) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

(g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(h) who, being a released convict, commits a breach of any rule made under sub-section (5) of section 356; or

(i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(2) Subject to the provisions of section 42, no person concerned in a noncognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate.

41A. Notice of appearance before police officer.—(1) *[The police officer shall], in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear*

before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.

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***60A. Arrest to be made strictly according to the Code**.— No arrest shall be made except in accordance with the provisions of this Code or any other law for the time being in force providing for arrest."*

***21.** Section 41 under Chapter V of the Code deals with the arrest of persons. Even for a cognizable offense, an arrest is not mandatory as can be seen from the mandate of this provision. If the officer is satisfied that a person has committed a cognizable offense, punishable with imprisonment for a term which may be less than seven years, or which may extend to the said period, with or without fine, an arrest could only follow when he is satisfied that there is a reason to believe or suspect, that the said person has committed an offense, and there is a necessity for an arrest. Such necessity is drawn to prevent the committing of any further offense, for a proper investigation, and to prevent him/her from either disappearing or tampering with the evidence. He/she can also be arrested to prevent such person from making any inducement, threat, or promise to any person according to the facts, so as to dissuade him from disclosing said facts either to the court or to the police officer. One more ground on which an arrest may be necessary is when his/her presence is required after arrest for production before the Court and the same cannot be assured.*

***22.** This provision mandates the police officer to record his reasons in writing while making the arrest. Thus, a police officer is duty-bound to record the reasons for arrest in writing. Similarly, the police officer shall record reasons when he/she chooses not to arrest. There is no requirement of the aforesaid procedure when the offense alleged is more than seven years, among other reasons.*

***23.** The consequence of non-compliance with Section 41 shall certainly inure to the benefit of the person suspected of the offense. Resultantly, while considering the application for enlargement on bail, courts will have to satisfy themselves on the due compliance of this provision. Any non-compliance would entitle the accused to a grant of bail.*

***24.** Section 41A deals with the procedure for appearance before the police officer who is required to issue a notice to the person against whom a reasonable complaint has been*

made, or credible information has been received or a reasonable suspicion exists that he has committed a cognizable offence, and arrest is not required under Section 41(1). Section 41B deals with the procedure of arrest along with mandatory duty on the part of the officer.

25. *On the scope and objective of Section 41 and 41A, it is obvious that they are facets of Article 21 of the Constitution. We need not elaborate any further, in light of the judgment of this Court in Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273:*

> *"7.1. From a plain reading of the aforesaid provision, it is evident that a person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. A police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts.*
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> *7.2. The law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. The law further requires the police officers to record the reasons in writing for not making the arrest.*
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> *7.3. In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 CrPC.*
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> *8. An accused arrested without warrant by the police has the constitutional right under Article 22(2) of the Constitution of India and Section 57 CrPC to be produced before the Magistrate without unnecessary delay and in no circumstances beyond 24 hours excluding the time necessary for the journey:*

8.1. During the course of investigation of a case, an accused can be kept in detention beyond a period of 24 hours only when it is authorised by the Magistrate in exercise of power under Section 167 CrPC. The power to authorise detention is a very solemn function. It affects the liberty and freedom of citizens and needs to be exercised with great care and caution. Our experience tells us that it is not exercised with the seriousness it deserves. In many of the cases, detention is authorised in a routine, casual and cavalier manner.

8.2. Before a Magistrate authorises detention under Section 167 CrPC, he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested are satisfied. If the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty-bound not to authorise his further detention and release the accused. In other words, when an accused is produced before the Magistrate, the police officer effecting the arrest is required to furnish to the Magistrate, the facts, reasons and its conclusions for arrest and the Magistrate in turn is to be satisfied that the condition precedent for arrest under Section 41 CrPC has been satisfied and it is only thereafter that he will authorise the detention of an accused.

8.3. The Magistrate before authorising detention will record his own satisfaction, may be in brief but the said satisfaction must reflect from his order. It shall never be based upon the ipse dixit of the police officer, for example, in case the police officer considers the arrest necessary to prevent such person from committing any further offence or for proper investigation of the case or for preventing an accused from tampering with evidence or making inducement, etc. the police officer shall furnish to the Magistrate the facts, the reasons and materials on the basis of which the police officer had reached its conclusion. Those shall be perused by the Magistrate while authorising the detention and only after recording his satisfaction in writing that the Magistrate will authorise the detention of the accused.

8.4. In fine, when a suspect is arrested and produced before a Magistrate for authorising detention, the Magistrate has to address the question whether specific reasons have been recorded for arrest and if so, prima facie those reasons are relevant, and secondly, a reasonable conclusion could at all be reached by the police officer that one or the other conditions stated above are attracted. To this limited extent the Magistrate will make judicial scrutiny.

9. …The aforesaid provision makes it clear that in all cases where the arrest of a person is not required under Section 41(1) CrPC, the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it

further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police officer is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under Section 41 CrPC has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid.

10. We are of the opinion that if the provisions of Section 41 CrPC which authorises the police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by the police officers intentionally or unwittingly would be reversed and the number of cases which come to the Court for grant of anticipatory bail will substantially reduce. We would like to emphasise that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 CrPC for effecting arrest be discouraged and discontinued.

11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:

11.1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;

11.2. All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);

11.3. The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

11.4. The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

11.5. The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.6. Notice of appearance in terms of Section 41-A CrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable

to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction.

11.8. Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

12. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A IPC or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, whether with or without fine."

26. *We only reiterate that the directions aforesaid ought to be complied with in letter and spirit by the investigating and prosecuting agencies, while the view expressed by us on the non-compliance of Section 41 and the consequences that flow from it has to be kept in mind by the Court, which is expected to be reflected in the orders.*

27. *Despite the dictum of this Court in Arnesh Kumar (supra), no concrete step has been taken to comply with the mandate of Section 41A of the Code. This Court has clearly interpreted Section 41(1)(b)(i) and (ii) inter alia holding that notwithstanding the existence of a reason to believe qua a police officer, the satisfaction for the need to arrest shall also be present. Thus, sub-clause (1)(b)(i) of Section 41 has to be read along with sub-clause (ii) and therefore both the elements of 'reason to believe' and 'satisfaction qua an arrest' are mandated and accordingly are to be recorded by the police officer.*

28. *It is also brought to our notice that there are no specific guidelines with respect to the mandatory compliance of Section 41A of the Code. An endeavour was made by the Delhi High Court while deciding Writ Petition (C) No. 7608 of 2017 vide order dated 07.02.2018, followed by order dated 28.10.2021 in Contempt Case (C) No. 480 of 2020 & CM Application No. 25054 of 2020, wherein not only the need for guidelines but also the effect of non-compliance towards taking action against the officers concerned was discussed. We also take note of the fact that a standing order has been passed by the Delhi Police viz., Standing Order No. 109 of 2020, which provides for a set of guidelines in the form of procedure for issuance of notices or orders by the police officers. Considering the aforesaid action taken, in due compliance with the order passed by the Delhi High Court in Writ Petition (C) No. 7608 of 2017 dated 07.02.2018, this Court has also passed an order in Writ Petition (Crl.) 420 of 2021 dated 10.05.2021 directing the State of Bihar to look into the said aspect of an appropriate modification to give effect to the mandate of Section 41A. A recent judgment has also been rendered on the same lines by the High Court of Jharkhand in Cr.M.P. No. 1291 of 2021 dated 16.06.2022.*

29. *Thus, we deem it appropriate to direct all the State Governments and the Union Territories to facilitate standing orders while taking note of the standing order issued by the*

Delhi Police i.e., Standing Order No. 109 of 2020, to comply with the mandate of Section 41A. We do feel that this would certainly take care of not only the unwarranted arrests, but also the clogging of bail applications before various Courts as they may not even be required for the offences up to seven years.

30. *We also expect the courts to come down heavily on the officers effecting arrest without due compliance of Section 41 and Section 41A. We express our hope that the Investigating Agencies would keep in mind the law laid down in Arnesh Kumar (Supra), the discretion to be exercised on the touchstone of presumption of innocence, and the safeguards provided under Section 41, since an arrest is not mandatory. If discretion is exercised to effect such an arrest, there shall be procedural compliance. Our view is also reflected by the interpretation of the specific provision under Section 60A of the Code which warrants the officer concerned to make the arrest strictly in accordance with the Code.*

Section 87 and 88 of the Code

> *"**87. Issue of warrant in lieu of, or in addition to, summons**.—A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person, issue, after recording its reasons in writing, a warrant for his arrest—*
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> > *(a) if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or*
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> > *`(b) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure*
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> ***88. Power to take bond for appearance.**—When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant, is present in such Court, such officer may require such person to execute a bond, with or without sureties, for his appearance in such Court, or any other Court to which the case may be transferred for trial."*

32. *Considering the aforesaid two provisions, courts will have to adopt the procedure in issuing summons first, thereafter a bailable warrant, and then a non-bailable warrant may be issued, if so warranted, as held by this Court in Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1. Despite the aforesaid clear dictum, we notice that non-bailable warrants are issued as a matter of course without due application of mind and against the tenor of the provision, which merely facilitates a discretion, which is obviously to be exercised in favour of the person whose attendance is sought for, particularly in the light of liberty enshrined under Article 21 of the Constitution. Therefore, valid reasons have to be given for not exercising discretion in favour of the said person. This*

Court in Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1, has held that:

> *"50. Civilised countries have recognised that liberty is the most precious of all the human rights. The American Declaration of Independence, 1776, French Declaration of the Rights of Men and the Citizen, 1789, Universal Declaration of Human Rights and the International Covenant of Civil and Political Rights, 1966 all speak with one voice—liberty is the natural and inalienable right of every human being. Similarly, Article 21 of our Constitution proclaims that no one shall be deprived of his liberty except in accordance with procedure prescribed by law.*
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> *51. The issuance of non-bailable warrants involves interference with personal liberty. Arrest and imprisonment means deprivation of the most precious right of an individual. Therefore, the courts have to be extremely careful before issuing non-bailable warrants.*
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> *52. Just as liberty is precious for an individual so is the interest of the society in maintaining law and order. Both are extremely important for the survival of a civilised society. Sometimes in the larger interest of the public and the State it becomes absolutely imperative to curtail freedom of an individual for a certain period, only then the non-bailable warrants should be issued.*
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> ***When non-bailable warrants should be issued***
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> *53. Non-bailable warrant should be issued to bring a person to court when summons or bailable warrants would be unlikely to have the desired result. This could be when:*
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> - *it is reasonable to believe that the person will not voluntarily appear in court; or*
> - *the police authorities are unable to find the person to serve him with a summon; or*
> - *it is considered that the person could harm someone if not placed into custody immediately.*
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> *54. As far as possible, if the court is of the opinion that a summon will suffice in getting the appearance of the accused in the court, the summon or the bailable warrants should be preferred. The warrants either bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The court must very carefully examine whether the criminal complaint or FIR has not been filed with an oblique motive.*
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> *55. In complaint cases, at the first instance, the court should direct serving of the summons along with the copy of the complaint. If the accused seem to be avoiding the summons, the court, in the second instance should issue bailable warrant. In the third instance, when the court is fully satisfied that the accused is avoiding the court's proceeding intentionally, the process of issuance of the non-bailable warrant*

should be resorted to. Personal liberty is paramount, therefore, we caution courts at the first and second instance to refrain from issuing non-bailable warrants.

56. The power being discretionary must be exercised judiciously with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straitjacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided.

57. The court should try to maintain proper balance between individual liberty and the interest of the public and the State while issuing nonbailable warrant."

67. *The rate of conviction in criminal cases in India is abysmally low. It appears to us that this factor weighs on the mind of the Court while deciding the bail applications in a negative sense. Courts tend to think that the possibility of a conviction being nearer to rarity, bail applications will have to be decided strictly, contrary to legal principles. We cannot mix up consideration of a bail application, which is not punitive in nature with that of a possible adjudication by way of trial. On the contrary, an ultimate acquittal with continued custody would be a case of grave injustice.*

68. *Criminal courts in general with the trial court in particular are the guardian angels of liberty. Liberty, as embedded in the Code, has to be preserved, protected, and enforced by the Criminal Courts. Any conscious failure by the Criminal Courts would constitute an affront to liberty. It is the pious duty of the Criminal Court to zealously guard and keep a consistent vision in safeguarding the constitutional values and ethos. A criminal court must uphold the constitutional thrust with responsibility mandated on them by acting akin to a high priest. This Court in Arnab Manoranjan Goswami v. State of Maharashtra, (2021) 2 SCC 427, has observed that:*

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

inherent power of the High Court is exercised with caution. That indeed is one—and a significant—end of the spectrum. The other end of the spectrum is equally important : the recognition by Section 482 of the power inhering in the High Court to prevent the abuse of process or to secure the ends of justice is a valuable safeguard for protecting liberty. The Code of Criminal Procedure, 1898 was enacted by a legislature which was not subject to constitutional rights and limitations; yet it recognised the inherent power in Section 561-A. Post-Independence, the recognition by Parliament [Section 482 CrPC, 1973] of the inherent power of the High Court must be construed as an aid to preserve the constitutional value of liberty. The writ of liberty runs through the fabric of the Constitution. The need to ensure the fair investigation of crime is undoubtedly important in itself, because it protects at one level the rights of the victim and, at a more fundamental level, the societal interest in ensuring that crime is investigated and dealt with in accordance with law. On the other hand, the misuse of the criminal law is a matter of which the High Court and the lower courts in this country must be alive. In the present case, the High Court could not but have been cognizant of the specific ground which was raised before it by the appellant that he was being made a target as a part of a series of occurrences which have been taking place since April 2020. The specific case of the appellant is that he has been targeted because his opinions on his television channel are unpalatable to authority. Whether the appellant has established a case for quashing the FIR is something on which the High Court will take a final view when the proceedings are listed before it but we are clearly of the view that in failing to make even a prima facie evaluation of the FIR, the High Court abdicated its constitutional duty and function as a protector of liberty. Courts must be alive to the need to safeguard the public interest in ensuring that the due enforcement of criminal law is not obstructed. The fair investigation of crime is an aid to it. Equally it is the duty of courts across the spectrum—the district judiciary, the High Courts and the Supreme Court—to ensure that the criminal law does not become a weapon for the selective harassment of citizens. Courts should be alive to both ends of the spectrum—the need to ensure the proper enforcement of criminal law on the one hand and the need, on the other, of ensuring that the law does not become a ruse for targeted harassment. Liberty across human eras is as tenuous as tenuous can be. Liberty survives by the vigilance of her citizens, on the cacophony of the media and in the dusty corridors of courts alive to the rule of (and not by) law. Yet, much too often, liberty is a casualty when one of these components is found wanting."

(emphasis supplied)

69. *We wish to note the existence of exclusive Acts in the form of Bail Acts prevailing in the United Kingdom and various States of USA. These Acts prescribe adequate guidelines both for investigating agencies and the courts. We shall now take note of Section 4(1) of the Bail Act of 1976 pertaining to United Kingdom:*

*"**General right to bail of accused persons and others**.*

4.-(l) A person to whom this section applies shall be granted bail except as provided in Schedule 1 to this Act."

70. *Even other than the aforesaid provision, the enactment does take into consideration of the principles of law which we have discussed on the presumption of innocence and the grant of bail being a matter of right.*

71. *Uniformity and certainty in the decisions of the court are the foundations of judicial dispensation. Persons accused with same offense shall never be treated differently either by the same court or by the same or different courts. Such an action though by an exercise of discretion despite being a judicial one would be a grave affront to Articles 14 and 15 of the Constitution of India.*

72. *The Bail Act of United Kingdom takes into consideration various factors. It is an attempt to have a comprehensive law dealing with bails by following a simple procedure. The Act takes into consideration clogging of the prisons with the undertrial prisoners, cases involving the issuance of warrants, granting of bail both before and after conviction, exercise of the power by the investigating agency and the court, violation of the bail conditions, execution of bond and sureties on the unassailable principle of presumption and right to get bail. Exceptions have been carved out as mentioned in Schedule I dealing with different contingencies and factors including the nature and continuity of offence. They also include Special Acts as well. We believe there is a pressing need for a similar enactment in our country. We do not wish to say anything beyond the observation made, except to call on the Government of India to consider the introduction of an Act specifically meant for granting of bail as done in various other countries like the United Kingdom. Our belief is also for the reason that the Code as it exists today is a continuation of the pre-independence one with its modifications. We hope and trust that the Government of India would look into the suggestion made in right earnest.*

SUMMARY/CONCLUSION

73. *In conclusion, we would like to issue certain directions. These directions are meant for the investigating agencies and also for the courts. Accordingly, we deem it appropriate to issue the following directions, which may be subject to State amendments.:*

a) *The Government of India may consider the introduction of a separate enactment in the nature of a Bail Act so as to streamline the grant of bails.*

b) *The investigating agencies and their officers are duty-bound to comply with the mandate of Section 41 and 41A of the Code and the directions issued by this*

Court in Arnesh Kumar (supra). Any dereliction on their part has to be brought to the notice of the higher authorities by the court followed by appropriate action.

c) *The courts will have to satisfy themselves on the compliance of Section 41 and 41A of the Code. Any non-compliance would entitle the accused for grant of bail.*

d) *All the State Governments and the Union Territories are directed to facilitate standing orders for the procedure to be followed under Section 41 and 41A of the Code while taking note of the order of the High Court of Delhi dated 07.02.2018 in Writ Petition (C) No. 7608 of 2018 and the standing order issued by the Delhi Police i.e. Standing Order No. 109 of 2020, to comply with the mandate of Section 41A of the Code.*

e) *There need not be any insistence of a bail application while considering the application under Section 88, 170, 204 and 209 of the Code.*

f) *There needs to be a strict compliance of the mandate laid down in the judgment of this court in Siddharth (supra).*

g) *The State and Central Governments will have to comply with the directions issued by this Court from time to time with respect to constitution of special courts. The High Court in consultation with the State Governments will have to undertake an exercise on the need for the special courts. The vacancies in the position of Presiding Officers of the special courts will have to be filled up expeditiously.*

h) *The High Courts are directed to undertake the exercise of finding out the undertrial prisoners who are not able to comply with the bail conditions. After doing so, appropriate action will have to be taken in light of Section 440 of the Code, facilitating the release.*

i) *While insisting upon sureties the mandate of Section 440 of the Code has to be kept in mind.*

j) *An exercise will have to be done in a similar manner to comply with the mandate of Section 436A of the Code both at the district judiciary level and the High Court as earlier directed by this Court in Bhim Singh (supra), followed by appropriate orders.*

k) *Bail applications ought to be disposed of within a period of two weeks except if the provisions mandate otherwise, with the exception being an intervening application. Applications for anticipatory bail are expected to be disposed of within a period of six weeks with the exception of any intervening application.*

l) *All State Governments, Union Territories and High Courts are directed to file affidavits/status reports within a period of four months."*

5. Mr. Ajit Kumar, the learned Senior counsel appearing for the petitioner further submits that the husband of the petitioner has broadcast the story

of corruption and pursuant thereto competent authority has lodged the FIR against the informant of the present case and the Deputy Commissioner has also directed for investigation which has been brought on the record by way of filing the supplementary affidavit. He submits that only due to this, the informant has falsely implicated the husband of the petitioner, who happens to be a journalist and in this way Dhanbad police at the behest of highers shut the mouth of one of the pillars of the democracy.

6. On this ground, he submits that the petitioner having no alternative as liberty of her husband has been taken which is in violation of Article 21 of the Constitution of India and, hence, the petitioner has filed this petition.

7. Per contra, Mr. Sachin Kumar, the learned A.A.G.-II appearing on behalf of the respondent State vehemently opposed the petition on the ground that this petition is not maintainable on behalf of this petitioner who is not an aggrieved person. He submits that only the aggrieved person can file a petition under section 482 Cr.P.C. and under Article 226 of the Constitution of India. To buttress his argument, he relied in the case of ***Harsh Mandar v. Amit Anilchandra Shah & others***, reported in ***(2017) 13 SCC 420***.

8. Paragraphs 36 to 38 of the said judgment are quoted herein below:

> ***"36.*** *The present case does not involve the issue of locus standi of a third party/stranger for setting the criminal law in motion. The issue in the present case is whether the applicant, who is a total stranger to the proceedings can invoke the powers under Section 482 CrPC to challenge the discharge order. Hence, the decision in Antulay is not strictly applicable to the facts of the present case.*
>
> ***37.*** *The observations in SheonandanPaswan on the question of locus standi were restricted to the interpretation and scope of Section 321 CrPC. The judgment does not lay down that a stranger to the proceeding can invoke the inherent powers of the court under Section 482 CrPC for challenging the order of discharge particularly when the order of discharge is revisable.*
>
> ***38.*** *At this stage it would be advantageous to refer to the*

> *decision of the Apex Court in Subramanian Swamy wherein the petitioner, in a public interest litigation had sought an authoritative pronouncement of the true purport and effect of the different provisions of the Juvenile Justice Act so as to take a juvenile out of the purview of the said Act. The High Court had declined to answer the question raised on the ground that the petitioners had an alternative remedy under the Juvenile Justice Act against the order as may have been passed by the Board. In the SLP filed before the Apex Court, an objection was raised as regards its maintainability on the ground that it suffers from the vice of absence of locus on the part of the petitioner. While considering this objection the Apex Court has observed thus: (SCC p. 469, para 8)*
>
> > *"8. The administration of criminal justice in India can be divided into two broad stages at which the machinery operates. The first is the investigation of an alleged offence leading to prosecution and the second is the actual prosecution of the offender in a court of law. The jurisprudence that has evolved over the decades has assigned the primary role and responsibility at both stages to the State though we must hasten to add that in certain exceptional situations there is a recognition of a limited right in a victim or his family members to take part in the process, particularly, at the stage of the trial. The law, however, frowns upon and prohibits any abdication by the State of its role in the matter at each of the stages and, in fact, does not recognise the right of a third party/stranger to participate or even to come to the aid of the State at any of the stages.""*

9. On the same point, Mr. Sachin Kumar, learned counsel for the State further relied in the case of ***Hukum Chand Garg & another v. The State of Uttar Pradesh & others*** in Special Leave to Appeal (Criminal) No.762/2020. He further refers to Sections 76 and 79 of the Cr.P.C. and submits that in view of these sections, if warrant was there, the police has rightly executed the warrant and arrested the husband of the petitioner. He further submits that the arrest was rightly done and there was no illegality. To buttress his argument, he relied in the case of ***Subhashree Das @ Milli v. State of Orissa & others***, reported in ***(2012) 9 SCC 729***.

10. Paragraph 6 of the said judgment is quoted herein below:

> ***"6.*** *A perusal of the pleadings filed by the appellant before this Court, as also the factual position depicted in the impugned order passed by the High Court of Orissa dated 24-11-2011 reveals, that*

the contention of the appellant was that she was detained at 3.00 a.m. on 15-1-2010 whereas, the assertion of the functionaries of the Police Department was that her arrest had been made at 3.00 p.m. on the said date. The instant aspect of the matter was gone into by the High Court. The High Court examined the matter in the following manner:

> *"So far as the date and time of arrest is concerned, undisputedly, the date of arrest has been mentioned as 15-1-2010 in the arrest memo but time has been reflected as 3 a.m. On verification of the case diary produced before us, we find that time of arrest as indicated in the case diary has been corrected from 3 a.m. to 3 p.m. Therefore, the question as to whether the petitioner was arrested on 15-1-2010 at 3 a.m. or 3 p.m. is a disputed question of fact. On further scrutiny of the case diary, we find that the petitioner was examined by the investigating officer on 15-1-2010 in between 8.15 a.m. to 2.45 p.m. Thereafter, the petitioner appears to have been arrested at 3 p.m. The subsequent entry also reflects that at 3.15 p.m. on 15-1-2010 the petitioner was shifted to BhubaneshwarMahila Police Station and the rest of the entries made in the case diary bear the time 3.50 p.m., 5.45 p.m., etc. Therefore, the entry before the time of arrest and entry made after the arrest prime facie indicate that the petitioner had been arrested at 3 p.m. on 15-1-2010. Therefore, entry in the memo of arrest indicating the time of arrest to be 3 a.m. prima facie appears to be an error and not supported by the entries made in the case diary."*
>
> *It is apparent from the conclusion drawn by the High Court that the arrest of the appellant at 3.00 a.m. was erroneously recorded, whereas, actually she had been arrested at 3.00 p.m. on 15-1-2010. This conclusion drawn by the High Court is the subject-matter of challenge at the hands of the appellant."*

11. Mr. Sachin Kumar, learned counsel for the State further submits that there are serious allegations against the husband of the petitioner of extortion and considering all these aspects, the warrant of arrest has been rightly executed. He also submits that the judgment rendered in the case of ***Arnesh Kumar v. State of Bihar***, reported in ***(2014) 8 SCC 273*** is not applicable in the facts and circumstances of the present case.

12. By way of reply Mr. Ajit Kumar, learned senior counsel appearing for the petitioner submits that in the facts and circumstances of the case, now the Hon'ble Supreme Court has diluted the concept of *locus standi*. To buttress this argument, he relied upon the judgment rendered by the

Hon'ble Supreme Court in the case of ***Ayaaubkhan Noorkhan Pathan v. State of Maharashtra & others***, reported in ***(2013) 4 SCC 465***.

13. Paragraphs 9, 12, 16 and 21 of the said judgment are quoted herein below:

> ***"9.*** *It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the authority/court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order, etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can, of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that the relief prayed for must be one to enforce a legal right. In fact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. [Vide State of Orissa v. MadanGopalRungta, Saghir Ahmad v. State of U.P., Calcutta Gas Co. (Proprietary) Ltd. v. State of W.B., Rajendra Singh v. State of M.P.and Tamilnad Mercantile Bank Shareholders Welfare Assn. (2) v. S.C. Sekar].*
>
> ***12.*** *In A. SubashBabu v. State of A.P., this Court held: (SCC pp. 628-29, para 25)*
>
> > *"25. … The expression 'aggrieved person' denotes an elastic and an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which the contravention is alleged, the specific circumstances of the case, the nature and extent of the complainant's interest and the nature and the extent of the prejudice or injury suffered by the complainant."*
>
> ***16.*** *In GhulamQadir v. Special Tribunal26, this Court considered a similar issue and observed as under: (SCC p. 54, para 38)*
>
> > *"38. There is no dispute regarding the legal proposition that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person*

> *except in the case where the writ prayed for is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest. The existence of the legal right of the petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under the aforesaid article. The orthodox rule of interpretation regarding the locus standi of a person to reach the court has undergone a sea change with the development of constitutional law in our country and the constitutional courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hypertechnical grounds. … In other words, if the person is found to be not merely a stranger having no right whatsoever to any post or property, he cannot be non-suited on the ground of his not having the locus standi."*
>
> *(emphasis added)*
>
> ***21.*** *In Balbir Kaur v. U.P. Secondary Education Services Selection Board, it has been held that a violation of the equality clauses enshrined in Articles 14 and 16 of the Constitution, or discrimination in any form, can be alleged, provided that, the writ petitioner demonstrates a certain appreciable disadvantage qua other similarly situated persons. While dealing with the similar issue, this Court in RajuRamsingVasave v. Mahesh Deorao Bhivapurkar held:*
>
> > *"45. We must now deal with the question of locus standi. A special leave petition ordinarily would not have been entertained at the instance of the appellant. Validity of appointment or otherwise on the basis of a caste certificate granted by a committee is ordinarily a matter between the employer and the employee. This Court, however, when a question is raised, can take cognizance of a matter of such grave importance suomotu. It may not treat the special leave petition as a public interest litigation, but, as a public law litigation. It is, in a proceeding of that nature, permissible for the court to make a detailed enquiry with regard to the broader aspects of the matter although it was initiated at the instance of a person having a private interest. A deeper scrutiny can be made so as to enable the court to find out as to whether a party to a lis is guilty of commission of fraud on the Constitution. If such an enquiry subserves the greater public interest and has a far-reaching effect on the society, in our opinion, this Court will not shirk its responsibilities from doing so."*

14. Mrs. Ritu Kumar, the learned counsel along with Mr. Sumeet Gadodia, the learned counsel appearing for the informant also supported the argument of Mr. Sachin Kumar, the learned counsel appearing on behalf of the respondent State with regard to maintainability of the writ petition and

she supported the contents of the F.I.R.

15. On these grounds, the learned counsels appearing for the respondent State as well as the informant submit that this petition is fit to be dismissed.

16. Looking into the entire documents, which are on the record, *prima facie* it appears that prior to obtaining the warrant of arrest from the concerned court, no notice under Section 41-A Cr.P.C. has been issued against the husband of the petitioner to cooperate in the investigation. It is an admitted fact that the husband of the petitioner is a journalist and he is running a news channel in the name of News 11 Bharat. It has been disclosed in the petition that none of the friend or lawyer or near relative of the husband of the petitioner was allowed to meet him. If such is the situation that after arrest, the friend or near relative or lawyer are not allowed to meet in spite of the several directions of the Hon'ble Supreme Court as well as the High Court, the Court is required to consider as to whether at the instance of the petitioner in such circumstance, merely on the ground of *locus standi,* as has been vehemently argued by the learned counsel for the State and informant, this petition can be dismissed or not at the threshold.

17. It has been disclosed in the petition that the petitioner is one of the Director of News 11 Bharat and she is the wife of Arup Chatterjee, who has been taken into custody. There is no doubt that in criminal proceeding, only aggrieved person can file a petition before the appropriate court, as has been relied by Mr. Sachin Kumar, learned counsel for the State in the case of *Harsh Mandar and Hukum Chand Garg (supra)* but the facts of the present case is otherwise. The liberty of the husband of the petitioner has been taken by the police by way of arresting him in the midnight from the

bedroom. One of the photograph is annexed with this petition which also suggests that the arrest was not done, in accordance with law. In the judgment relied by Mr. Sachin Kumar, learned counsel for the State in the case of *Harsh Mandar (supra)*, the petitioner of that case was a complete stranger and has challenged the discharge petition of one of the accused. In the judgment relied by Mr. Sachin Kumar, learned counsel for the State in the case of *Hukum Chand Garg (supra)*, the petitioner of that case has challenged the FIR for quashing and in that view of the matter, the Hon'ble Supreme Court held that the petitioner of that case was not having *locus standi*. Thus, the judgments are on different facts and not helping the respondent-State. In the case in hand, admittedly the petitioner is one of the Director of News 11 Bharat and Arup Chatterjee is the husband of this petitioner and liberty/privacy of both have been snatched by the police as arrest was made in the midnight from the bedroom where both were present. Thus, the judgments relied by Mr. Sachin Kumar, learned counsel for the State are not helping the State.

18. How the arrest is required to be made was the subject matter before the Hon'ble Supreme Court on several occasions and in the case of ***Arnesh Kumar v. State of Bihar***, reported in ***(2014) 8 SCC 273*** and the Hon'ble Supreme Court held in paragraphs 9, 10, 11 and 12 which are quoted herein below:

> ***"9.*** *Another provision i.e. Section 41-A CrPC aimed to avoid unnecessary arrest or threat of arrest looming large on the accused requires to be vitalised. Section 41-A as inserted by Section 6 of the Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009), which is relevant in the context reads as follows:*
>
> > *"**41-A. Notice of appearance before police officer**. —(1) The police officer shall, in all cases where the arrest of a person is not required under the provisions*

of sub-section (1) of Section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent court in this behalf, arrest him for the offence mentioned in the notice."

The aforesaid provision makes it clear that in all cases where the arrest of a person is not required under Section 41(1) CrPC, the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police officer is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under Section 41 CrPC has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid.

10. *We are of the opinion that if the provisions of Section 41 CrPC which authorises the police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by the police officers intentionally or unwittingly would be reversed and the number of cases which come to the Court for grant of anticipatory bail will substantially reduce. We would like to emphasise that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 CrPC for effecting arrest be discouraged and discontinued.*

11. *Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:*

11.1. *All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;*

11.2. *All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);*

> ***11.3.*** *The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;*
>
> ***11.4.*** *The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;*
>
> ***11.5.*** *The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;*
>
> ***11.6.*** *Notice of appearance in terms of Section 41-A CrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;*
>
> ***11.7.*** *Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction.*
>
> ***11.8.*** *Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.*
>
> ***12.*** *We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A IPC or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, whether with or without fine."*

19. The further procedure has been prescribed and held by the Hon'ble Supreme Court in the case of ***D.K. Basu v. State of W.B.***, reported in ***(1997) 1 SCC 416***. Paragraphs 35 and 36 of the said judgment are quoted herein below:

> ***"35.*** *We, therefore, consider it appropriate to issue the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures:*
>
> *(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.*
>
> *(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one*

witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing

> *the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.*
>
> ***36.*** *Failure to comply with the requirements hereinabove mentioned shall apart from rendering the official concerned liable for departmental action, also render him liable to be punished for contempt of court and the proceedings for contempt of court may be instituted in any High Court of the country, having territorial jurisdiction over the matter."*

20. Prima facie, it appears that the procedure prescribed under Sections 80 and 81 Cr.P.C. has not been followed in the case in hand. These two provisions provide that once the arrest is made beyond 30 Kms. of the concerned court, the local Magistrate and the police are required to be informed, which has not been done in the case in hand. Moreover, the arrest has been made after the sunset and that too from the bedroom of Arup Chatterjee, who is accused. This is again in violation of the guidelines of the judgment. The judgment relied by Mr. Sachin Kumar, learned counsel for the State in the case of *Subhashree Das @ Milli (supra)* and in that case the arrest was made before sunset and the Hon'ble Supreme Court held that the arrest was made, in accordance with law. These are the prima facie materials on the record which suggest that the arrest was not done in accordance with law and that will be the subject to further affidavit filed by the State as well as the informant.

21. In this scenario, the High Court is required to apply its mind to fundamental issue which is required to be dealt with in such a case where a journalist has been arrested in the midnight from his bedroom. There is no doubt that hierarchy of the court is provided to consider the application for bail under Section 439 Cr.P.C. However if such a case in which liberty has been taken away by the police, brought before the High Court under Article 226 of the Constitution of India whether the High Court can shut its eyes by

way of rejecting the petition. Prima facie, it appears that the direction of the Hon'ble Supreme Court in the case of *Arnesh Kumar* and *D.K. Basu (supra)* has not been followed and in those cases, the Hon'ble Supreme Court has gone to the extent that if the directions are not followed by the police officials, contempt proceeding can be initiated against the erring officer(s) in the High Court having territorial jurisdiction. The petitioner has been arrested that too without following the procedure prescribed under Sections 80 and 81 Cr.P.C. and not produced before the court of any Magistrate at Ranchi. It appears that the procedure prescribed under Cr.P.C. has been violated. The documents on the record suggest that the informant has been called upon to face enquiry by the concerned officer including the Deputy Commissioner. The police is having power of arrest and whether that power can be utilized arbitrarily that too in a case of person, who is a journalist, shall be considered later on after filing of the affidavit of other side.

22. On the ground of interim release from custody under Article 226 of the Constitution of India, the Hon'ble Supreme Court has held in paragraphs 48, 63, 70 and 74 of the judgment rendered in the case of ***Arnab Manoranjan Goswami v. State of Maharashtra and others***, reported in ***(2021) 2 SCC 427***, which are quoted herein below:

> ***"48.*** *The striking aspect of the impugned judgment of the High Court spanning over fifty-six pages is the absence of any evaluation even prima facie of the most basic issue. The High Court, in other words, failed to apply its mind to a fundamental issue which needed to be considered while dealing with a petition for quashing under Article 226 of the Constitution or Section 482 CrPC. The High Court, by its judgment dated 9-11-2020, has instead allowed the petition for quashing to stand over for hearing a month later, and therefore declined to allow the appellant's prayer for interim bail and relegated him to the remedy under Section 439 CrPC. In the meantime,*

liberty has been the casualty. The High Court having failed to evaluate prima facie whether the allegations in the FIR, taken as they stand, bring the case within the fold of Section 306 read with Section 34 IPC, this Court is now called upon to perform the task.

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63. *The petition before the High Court was instituted under Article 226 of the Constitution and Section 482 CrPC. While dealing with the petition under Section 482 for quashing the FIR, the High Court has not considered whether prima facie the ingredients of the offence have been made out in the FIR. If the High Court were to have carried out this exercise, it would (as we have held in this judgment) have been apparent that the ingredients of the offence have not prima facie been established. As a consequence of its failure to perform its function under Section 482, the High Court has disabled itself from exercising its jurisdiction under Article 226 to consider the appellant's application for bail. In considering such an application under Article 226, the High Court must be circumspect in exercising its powers on the basis of the facts of each case. However, the High Court should not foreclose itself from the exercise of the power when a citizen has been arbitrarily deprived of their personal liberty in an excess of State power.*

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70. *More than four decades ago, in a celebrated judgment in State of Rajasthan v. Balchand, Krishna Iyer, J. pithily reminded us that the basic rule of our criminal justice system is "bail, not jail". The High Courts and courts in the district judiciary of India must enforce this principle in practice, and not forego that duty, leaving this Court to intervene at all times. We must in particular also emphasise the role of the district judiciary, which provides the first point of interface to the citizen. Our district judiciary is wrongly referred to as the "subordinate judiciary". It may be subordinate in hierarchy but it is not subordinate in terms of its importance in the lives of citizens or in terms of the duty to render justice to them. High Courts get burdened when courts of first instance decline to grant anticipatory bail or bail in deserving cases. This continues in the Supreme Court as well, when High Courts do not grant bail or anticipatory bail in cases falling within the parameters of the law. The consequence for those who suffer incarceration are serious. Common citizens without the means or resources to move the High Courts or this Court languish as undertrials. Courts must be alive to the situation as it prevails on the ground—in the jails and police stations where human dignity has no protector. As Judges, we would do well to remind ourselves that it is through the instrumentality of bail that our criminal justice system's primordial interest in preserving the presumption of innocence finds its most eloquent expression. The remedy of bail is the "solemn expression of the humaneness of the justice system".*

> *Tasked as we are with the primary responsibility of preserving the liberty of all citizens, we cannot countenance an approach that has the consequence of applying this basic rule in an inverted form. We have given expression to our anguish in a case where a citizen has approached this Court. We have done so in order to reiterate principles which must govern countless other faces whose voices should not go unheard.*
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> *xxx xxx xxx*
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> ***74.*** *While reserving the judgment at the conclusion of arguments, this Court had directed the release of all the three appellants on bail pending the disposal of the proceedings before the High Court. The following operative directions were issued on 11-11-2020: (Arnab Manoranjan Goswami case, SCC p. 803, paras 6-8)*
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> > *"6. We are of the considered view that the High Court was in error in rejecting the applications for the grant of interim bail. We accordingly order and direct that Arnab Manoranjan Goswami, Feroz Mohammad Shaikh and Neetish Sarda shall be released on interim bail, subject to each of them executing a personal bond in the amount of Rs 50,000 to be executed before the Jail Superintendent. They are, however, directed to cooperate in the investigation and shall not make any attempt to interfere with the ongoing investigation or with the witnesses.*
> >
> > *7. The jail authorities concerned and the Superintendent of Police, Raigad are directed to ensure that this order is complied with forthwith.*
> >
> > *8. A certified copy of this order shall be issued during the course of the day."*

23. In view of the above facts, following directions are being issued:

(i) The respondent-State shall file counter affidavit to the main petition as well as I.A. No.6421 of 2022 and supplementary affidavit filed by the petitioner, within three weeks. It is open to the informant also to file counter affidavit to the main petition as well as I.A. No.6421 of 2022 and supplementary affidavit filed by the petitioner.

(ii) The Principal District and Sessions Judge, Dhanbad shall transmit entire order-sheet of Govindpur (Dhanbad) P.S. Case No.233/2022 to this Court.

(iii) This Court orders and directs that Arup Chatterjee shall be released on interim bail on executing personal bail bond of Rs.50,000/- in connection with Govindpur (Dhanbad) P.S. Case No.233/2022, pending in the court of learned Judicial Magistrate, 1st Class, Dhanbad, to be executed before the Jail Superintendent, Dhanbad. The petitioner is, however, directed to cooperate in the investigation.

(iv) The jail authority concerned and the Superintendent of Police, Dhanbad are directed that this order shall be complied forthwith.

(v) After coming out from the jail, Arup Chatterjee shall file a petition for confirmation of bail.

24. After considering the affidavit of the State, this Court will consider as to whether respondent nos. 4, 5 and 6 are required to be noticed for contempt of Court in light of the observation of the Hon'ble Supreme Court in the case of *Arnesh Kumar* and *D.K. Basu (supra)*.

25. The certified copy of this order shall be issued forthwith.

26. Let this matter appear on 22.08.2022.

27. The defects, pointed out by the office, shall be removed in the meantime.

(Sanjay Kumar Dwivedi, J.)

Ajay/