SUPREME COURT OF INDIA

Km. Hema Mishra

Vs.

State of U.P.

Crl.A.No.146 of 2014

(K. S. Radhakrishnan and A.K. Sikri JJ.)

16.01.2014

JUDGMENT

K. S. RADHAKRISHNAN, J.

1. Leave granted.

2. Appellant herein had invoked the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India seeking the following reliefs:

> i) Issue a writ, order or direction in the nature of Certiorari thereby quashing the impugned FIR dated 21.12.2011, contained in Annexure No. 1 to this writ petition, lodged at crime No. 797/11 under Sections 419/420 IPC, at Police Station Zaidpur, District Barabanki;
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> ii) Issue a writ, order or direction in the nature of Mandamus thereby directing the Superintendant of Police, Barabanki, the opposite Party No. 2, and the Investigating Officer, Case Crime No. 797/11, under Sections 419/420 IPC, Police Station, Zaidpur, District Barabanki, the opposite party No. 3, to defer the arrest of the petitioner until collection of the credible evidence sufficient for filing the charge-sheet by following the amended proviso to Sections 41(1)(b) read with Section 41A CrPC;
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> iii) Issue a writ, order or direction in the nature of Mandamus thereby directing the Superintendent of Police, Barabanki, the opposite party No. 2, for compliance of the provision of Sections 41(1)(b) and 41A CrPC in the

investigation of the impugned FIR dated 21.12.2011 contained in Annexure No. 1 to this writ petition, lodged in crime No. 797/11, under Sections 419/420 IPC, Zaidpur, District Barabanki; and

iv) Allow this writ petition with costs.

3. The High Court, after hearing the parties as well as the State, dismissed the writ petition on 9.1.2012 and passed the following order:

> "Heard learned counsel for the petitioner and learned Additional Government Advocate. Under challenge in the instant writ petition is FIR relating to Case Crime No. 797 of 2011, under Sections 419 & 420 IPC, police station Zaidpur, district Barabanki. We have gone through the FIR, which discloses commission of cognizable offence, as such, the same cannot be quashed. The writ petition lacks merit and is accordingly dismissed.
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> However, the petitioner being lady, it is provided that if she surrenders and moves application for bail the same shall be considered and decided by the courts below expeditiously."

4. The appellant, complaining that she was falsely implicated in the case, has approached this Court contending that the High Court had failed to exercise its certiorari jurisdiction under Article 226 of the Constitution of India in not quashing the FIR dated 21.12.2011 and in refusing to grant anticipatory bail to the appellant. Appellant submitted that the High Court ought to have issued a writ of mandamus directing the Superintendent of Police, Barabanki to defer the arrest of the appellant until the collection of credible evidence sufficient for filing the charge-sheet, following the amended proviso to Section 41(1)(b) read with Section 41A Cr.P.C.

5. The Secretary, U.P. Secondary Education Board, Allahabad and the District School Inspector vide their letter dated 8.12.2011 registered a complaint alleging that the appellant had committed fraud and forgery in the matter of preparation of documents of Government Office regarding selection for the post of Assistant Teacher and, consequently, got appointment as the Assistant Teacher in Janpad Inter- College at Harakh, District Barabanki, with payment of salary amounting to Rs.1,10,000/- from the Government exchequer. On the basis of the FIR, Case Crime No. 797 of 2011 was registered under Sections 419/420 IPC before the Police Station, Jaizpur, District Barabanki. After having come to know of the

registration of the crime, the appellant filed a representation on 27.12.2011 before the Superintendent of Police, District Barabanki and the Investigating Officer making the following prayer:

> "As such through this application/representation the applicant prays that keeping in view the willingness of the applicant for cooperating in investigation and to appear before the investigating officer upon being called in case crime no. 797/11 u/Ss 419/420 IPC, PS Jaipdur, District Barabanki, order for staying the arrest of applicant be passed so that compliance to the provision 41(1)(B) Section 41(A) amended to CrPC 1973 be made."

6. Since the appellant did not get any reply to the said representation, she invoked the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India by filing Writ Petition Misc. Bench No. 171 of 2012 which was dismissed, as already indicated, on 9.1.2012.

7. When the matter came up for hearing before this Court, it passed an interim order on 1.3.2013, the operative portion of which reads as under:

> "Considering the facts and circumstances of the case, we are inclined to direct that in the event of arrest of the petitioner, she shall be released on bail on furnishing personal bond of Rs.50,000/- (Fifty Thousand only) with two solvent sureties for the like amount to the satisfaction of the Trial Court, subject to the condition that she will join investigation as and when required and shall abide by the provisions of Section 438(2) of the Code of Criminal Procedure."

8. Shri Aseem Chandra, learned counsel appearing for the appellant, submitted that the High Court has committed an error in not quashing the FIR, since the registration of the crime was with mala fide intention to harass the appellant and in clear violation of the fundamental rights guaranteed to the appellant under Articles 14, 19 and 21 of the Constitution of India. Learned counsel submitted that the appellant was falsely implicated and that the ingredients of the offence under Sections 419/420 IPC were not prima facie made out for registering the crime. Learned counsel also pointed out that the High Court has not properly appreciated the scope of Sections 41(1)(b) and 41A CrPC, 1973 and that no attempt has been made to follow those statutory provisions by the State and its officials.

9. Shri Gaurav Bhatia, learned AAG, appearing for the State, submitted that the investigation was properly conducted and the crime was registered. Further, it was also pointed out that the President has also withheld the assent of the Code of Criminal Procedure (Uttar Pradesh Amendment) Bill, 2010, since the provisions of the Bill were found to be in contravention to Section 438 of the Cr.P.C. and hence the High Court rightly declined the stay sought for under Article 226 of the Constitution of India.

10. Shri Siddharth Luthra, Additional Solicitor General, who appeared on our request, submitted that the High Court can in only rarest of rare cases grant pre-arrest bail while exercising powers under Article 226 of the Constitution of India, since the provision for the grant of anticipatory bail under Section 438 Cr.P.C. was consciously omitted by the State Legislature. The legislative intention is, therefore, not to seek or provide pre-arrest bail when the FIR discloses a cognizable offence. Shri Luthra submitted that since there is a conscious withdrawal/deletion of Section 438 CrPC by the Legislature from the Code of Criminal Procedure, by Section 9 of the Criminal Procedure (Uttar Pradesh) Amendment Act, 1976, the relief which otherwise the appellant could not have obtained under the Code, is sought to be obtained indirectly by invoking the writ jurisdiction of the High Court, which is impermissible in law.

11. Shri Luthra also submitted that since the appellant has no legal right to move for anticipatory bail and that practice is not an integral part of Article 21 of the Constitution of India, the contention that the High Court has failed to examine the charges levelled against the appellant, was mala fide or violative of Articles 14 and 21 of the Constitution of India, does not arise. Shri Luthra also submitted that the High Court was not correct in granting further reliefs after having dismissed the writ petition and that, only in extraordinary cases, the High Court could exercise its jurisdiction under Article 226 of the Constitution of India and the case in hand does not fall in that category.

12. I may indicate that the legal issues raised in this case are no more res integra. All the same, it calls for a relook on certain aspects which I may deal with during the course of the judgment.

13. I am conscious of the fact that since the provisions similar to Section 438 Cr.P.C. being absent in the State of Uttar Pradesh, the High Court is burdened with large number of writ petitions filed under Article 226 of the Constitution of India seeking pre-arrest bail. Section 438 was added to the Code of Criminal Procedure

in the year 1973, in pursuance to the recommendation made by the 41st Law Commission, but in the State of Uttar Pradesh by Section 9 Criminal Procedure (Uttar Pradesh) Amendment Act, 1976, Section 438 was specifically omitted, the legality of which came up for consideration before the Constitution Bench of this Court in Kartar Singh v. State of Punjab(1994) 3 SCC 569 and the Court held that the deletion of the application of Section 438 in the State of Uttar Pradesh by Section 9 of the above mentioned Amendment Act does not offend either Article 14, Article 19 or Article 21 of the Constitution of India and the State Legislature is competent to delete that section, which is one of the matters enumerated in the concurrent list, and such a deletion is valid under Article 254(2) of the Constitution of India.

14. I notice, therefore, as per the Constitution Bench, a claim for pre-arrest protection is neither a statutory nor a right guaranteed under Article 14, Article 19 or Article 21 of the Constitution of India. All the same, in Karatar Singh's case (supra), this Court in sub-para (17) of Para 368, has also stated as follows:

> "368 xxx xxx xxx
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> (17) Though it cannot be said that the High Court has no jurisdiction to entertain an application for bail under Article 226 of the Constitution and pass orders either way, relating to the cases under the Act 1987, that power should be exercised sparingly, that too only in rare and appropriate cases in extreme circumstances. But the judicial discipline and comity of courts require that the High Courts should refrain from exercising the extraordinary jurisdiction in such matters;
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> xxx xxx xxx"

15. The High Court of Allahabad has also taken the same view in several judgments. Reference may be made to the judgments in Satya Pal v. State of U.P. (2000 Cri.L.J. 569), Ajeet Singh v. State of U.P. (2007 Cri.L.J. 170), Lalji Yadav & Others v. State of U.P. & Another (1998 Cri.L.J. 2366), Kamlesh Singh v. State of U.P. & Another (1997 Cri.L.J. 2705) and Natho Mal v. State of U.P. (1994 Cri.L.J. 1919).

16. We have, therefore, no concept of "anticipatory bail" as understood in Section 438 of the Code in the State of Uttar Pradesh. In Balchand Jain v. State of M.P. (1976) 4 SCC 572, this Court observed that "anticipatory bail" is a misnomer. Bail,

by itself, cannot be claimed as a matter of right under the Code of Criminal Procedure, 1973, except for bailable offences (Section 436 Cr.P.C., 1973). For non-bailable offences, conditions are prescribed under Sections 437 and 439 Cr.P.C. The discretion to grant bail in non- bailable offences remains with the Court and hence, it cannot be claimed as a matter of right, but the aggrieved party can only seek a remedy and it is on the discretion of the Court to grant it or not. In this connection reference may also be made to the Judgment of the seven-Judge Bench of the Allahabad High Court in Smt. Amarawati and Ors. V. State of U.P. (2005) Cri.L.J. 755, wherein the Court, while interpreting the provisions of Sections 41, 2(c) and 157(1) CrPC as well as the scope of Sections 437 and 439, held as follows:

> "47. In view of the above we answer the questions referred to the Full Bench as follows:
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> (1) Even if cognizable offence is disclosed, in the FIR or complaint the arrest of the accused is not a must, rather the police officer should be guided by the decision of the Supreme Court in Joginder Kumar v. State of U.P., 1994 Cr LJ 1981 before deciding whether to make an arrest or not.
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> (2) The High Court should ordinarily not direct any Subordinate Court to decide the bail application the same day, as that would be interfering with the judicial discretion of the Court hearing the bail application. However, as stated above, when the bail application is under Section 437 Cr.P.C. ordinarily the Magistrate should himself decide the bail application the same day, and if he decides in a rare and exceptional case not to decide it on the same day, he must record his reasons in writing. As regards the application under Section 439 Cr.P.C. it is in the discretion of the learned Sessions Judge considering the facts and circumstances whether to decide the bail application the same day or not, and it is also in his discretion to grant interim bail the same day subject to the final decision on the bail application later.
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> (3) The decision in Dr. Vinod Narain v. State of UP is incorrect and is substituted accordingly by this judgment."

17. This Court in Lal Kamlendra Pratap Singh v. State of Uttar Pradesh and Others (2009) 4 SCC 437, while affirming the judgment in Amarawati (supra), held as follows:

> "6. Learned counsel for the appellant apprehends that the appellant will be arrested as there is no provision for anticipatory bail in the State of U.P. He placed reliance on a decision of the Allahabad High Court in Amarawati v. State of U.P. in which a seven-Judge Full Bench of the Allahabad High Court held that the court, if it deems fit in the facts and circumstances of the case, may grant interim bail pending final disposal of the bail application. The Full Bench also observed that arrest is not a must whenever an FIR of a cognizable offence is lodged. The Full Bench placed reliance on the decision of this Court in Joginder Kumar v. State of U.P. (1994) 4 SCC 260.
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> 7. We fully agree with the view of the High Court in Amarawati case and we direct that the said decision be followed by all courts in U.P. in letter and spirit, particularly since the provision for anticipatory bail does not exist in U.P.
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> 8. In appropriate cases interim bail should be granted pending disposal of the final bail application, since arrest and detention of a person can cause irreparable loss to a person's reputation, as held by this Court in Joginder Kumar case. Also, arrest is not a must in all cases of cognizable offences, and in deciding whether to arrest or not the police officer must be guided and act according to the principles laid down in Joginder Kumar case."

18. Later, a two-Judge Bench of this Court in Som Mittal v. State of Karnataka (2008) 3 SCC 753, while dealing with an order of the Karnataka High Court under Section 482 CrPC, one of the Judges made some strong observations as well as recommendations to restore Section 438 in the State of U.P. Learned Judges constituting the Bench also expressed contrary views on certain legal issues, hence, the matter was later placed before a three-Judge Bench, the judgment of which is reported in same caption (2008) 3 SCC 574, wherein this Court opined that insofar as the observations, recommendations and directions in paras 17 to 39 of the concurrent judgment is concerned, they did not relate to the subject matter of the criminal appeal and the directions given were held to be obiter and were set aside.

19. I notice in this case FIR was lodged for offences, under Sections 419 and 420 IPC which carry a sentence of maximum of three years and seven years respectively with or without fine. Benefit of Section 41(a) Cr.P.C. must be available in a given case, which provides that an investigating officer shall not

arrest the accused of such offences in a routine manner and the arrest be made, only after following the restrictions imposed under Section 41(b). The relevant provisions, as it stands now reads as follow:

> "41. When police may arrest without warrant.-
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> (1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person –
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> a) who commits, in the presence of a police officer, a cognizable offence;
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> 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:-
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> 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;
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> ii) the police officer is satisfied that such arrest is necessary –
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> a) to prevent such person from committing any further offence; or
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> b) for proper investigation of the offence; or
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> c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner, or
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> 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
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> 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."

20. Amended provisions make it compulsory for the police to record the reasons for making arrest as well as for not making an arrest in respect of a cognizable offence for which the maximum sentence is upto seven years. Reference in this connection may also be made to Section 41A inserted vide Act 5 of 2009 w.e.f. 01.11.2010, which reads as follows:

"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."

21. Above mentioned provisions make it compulsory for the police to issue a notice in all such cases where arrest is not required to be made under Clause (b) of sub-section (1) of the amended Section 41. But, all the same, unwillingness of a person who has not been arrested to identify himself and to whom a notice has been issued under Section 41A, could be a ground for his arrest. Legislation has laid down various parameters, warranting arrest of a person, which itself is a check

on arbitrary or unwarranted arrest and the right to personal liberty guaranteed under Article 21 of the Constitution of India.

22. I may, however, point out that there is unanimity in the view that in spite of the fact that Section 438 has been specifically omitted and made inapplicable in the State of Uttar Pradesh, still a party aggrieved can invoke the jurisdiction of the High Court under Article 226 of the Constitution of India, being extraordinary jurisdiction and the vastness of the powers naturally impose considerable responsibility in its application. All the same, the High Court has got the power and sometimes duty in appropriate cases to grant reliefs, though it is not possible to pin-point what are the appropriate cases, which have to be left to the wisdom of the Court exercising powers under Article 226 of the Constitution of India.

23. I am also faced with the situation that on dismissal of the writ by the High Court under Article 226 of the Constitution of India, while examining the challenge for quashing the FIR or a charge-sheet, whether the High Court could grant further relief against arrest for a specific period or till the completion of the trial. This Court in State of Orissa v. Madan Gopal Rungta reported in AIR 1952 SC 12, while dealing with the scope of Article 226 of the Constitution, held as follows :-

> "Article 226 cannot be used for the purpose of giving interim relief as the only and final relief on the application. The directions had been given here only to circumvent the provisions of Section 80 of the Civil Procedure Code, and that was not within the scope of Article 226. An interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in a suit or proceeding. If the Court was of opinion that there was no other convenient or adequate remedy open to the petitioners, it might have proceeded to investigate the case on its merits and come to a decision as to whether the petitioners succeeded in establishing that there was an infringement of any of their legal rights which entitled them to a writ of mandamus or any other directions of a like nature; and pending such determination it might have made a suitable interim order for maintaining the status quo ante. But when the Court declined to decide on the rights of the parties and expressly held that they should be investigated more properly in a civil suit, it could not, for the purpose of facilitating the institution of such suit, issue directions in the nature of temporary injunctions, under Article 226 of the Constitution. The language of Article 226 does not permit such an action."

24. The language of Article 226 does not permit such an action and once the Court finds no merits in the challenge, writ petition will have to be dismissed and the question of granting further relief after dismissal of the writ, does not arise. Consequently, once a writ is dismissed, all the interim reliefs granted would also go.

25. This Court has already passed an interim order on 1.3.2013 granting bail to the appellant on certain conditions. The said order will continue till the completion of the trial. However, if the appellant is not co-operating with the investigation, the State can always move for vacating the order. The appeal is accordingly dismissed as above.

JUDGMENT

A.K.SIKRI,J.

26. I have carefully gone through the judgment authored by my esteemed brother, Justice Radhakrishnan. I entirely agree with the conclusions arrived at by my learned brother in the said judgment. At the same time, I would also like to make some observations pertaining to the powers of High Court under Article 226 of the Constitution of India to grant relief against pre-arrest (commonly called as anticipatory bail), even when Section 438,Cr.P.C. authorizing the Court to grant such a relief is specifically omitted and made inapplicable in so far as State of Uttar Pradesh is concerned. I would like to start with reproducing the following observations in the opinion of my brother, on this aspect which are contained in paragraph 21 of the judgment. It reads as under:

> "We may, however, point out that there is unanimity in the view that in spite of the fact that Section 438 has been specifically omitted and made inapplicable in the State of Uttar Pradesh, still a party aggrieved can invoke the jurisdiction of the High Court under Article 226 of the Constitution of India, being extraordinary jurisdiction and the vastness of the powers naturally impose considerable responsibility in its application. All the same, the High Court has got the power and sometimes duty in appropriate cases to grant reliefs, though it is not possible to pin-point what are the appropriate cases, which we have to leave to the wisdom of the Court exercising powers under Article 226 of the Constitution of India."

27. Another aspect which is highlighted in the judgment rendered by Justice Radhakrishnan is that many times in the Writ Petition filed under Article 226 of the Constitution of India seeking quashing of the FIR or the charge-sheet, the petitioners pray for interim relief against arrest. While entertaining the Writ Petition the High Court invariably grants such an interim relief. It is rightly pointed out that once the Writ Petition claiming main relief for quashing of FIR or the charge-sheet itself is dismissed, the question of granting further relief after dismissal of the Writ Petition, does not arise. It is so explained in para 22 and 23 of the judgment of my learned brother.

28. I would like to remark that in the absence of any provisions like Section 438 of Cr.P.C. applicable in the State of Uttar Pradesh, there is a tendency on the part of the accused persons, against whom FIR is lodged and/or charge-sheet is filed in the Court to file Writ Petition for quashing of those proceedings so that they are able to get protection against the arrest in the interregnum which is the primary motive for filing such petitions. It is for this reason that invariably after the lodging of FIR, Writ Petition under Article 226 is filed with main prayer to quash those proceedings and to claim interim relief against pre-arrest in the meantime or till the completion of the trial. However, the considerations which have to weigh with the High Court to decide as to whether such proceedings are to be quashed or not are entirely different than that of granting interim protection against the arrest. Since the grounds on which such an FIR or charge sheet can be quashed are limited, once the Writ Petition challenging the validity of FIR or charge-sheet is dismissed, the grant of relief, incidental in nature, against arrest would obviously not arise, even when a justifiable case for grant of anticipatory bail is made out .

29. It is for this reason, we are of the opinion that in appropriate cases the High Court is empowered to entertain the petition under Article 226 of the Constitution of India where the main relief itself is against arrest. Obviously, when provisions of Section 438 of Cr.P.C. are not available to the accused persons in the State of Uttar Pradesh, under the normal circumstances such an accused persons would not be entitled to claim such a relief under Art. 226 of the Constitution. It cannot be converted into a second window for the relief which is consciously denied statutorily making it a case of casus omissus. At the same time, as rightly observed in para 21 extracted above, the High Court cannot be completely denuded of its powers under Article 226 of the Constitution, to grant such a relief in appropriate and deserving cases; albeit this power is to be exercised with extreme caution and sparingly in those cases where arrest of a person would lead to total miscarriage of justice. There may be cases where pre-arrest may be entirely unwarranted and lead

to disastrous consequences. Whenever the High Court is convinced of such a situation, it would be appropriate to grant the relief against pre-arrest in such cases. What would be those cases will have to be left to the wisdom of the High Court. What is emphasized is that the High Court is not bereft of its powers to grant this relief under Art. 226 of the Constitution.

> A Bench of this Court, headed by the then Chief Justice Y.V.Chandrachud, laid down first principles of granting anticipatory bail in the Gurbaksh Singh v. State of Punjab 1980 Crl.L.J. 417 (P&H), reemphasizing that liberty… - 'A person who has yet to lose his freedom by being arrested asks for freedom in the event of arrest. That is the stage at which it is imperative to protect his freedom, in so far as one may, and to give full play to the presumption that he is innocent.

30. In Joginder Kumar v. State of U.P. and Others, 1994 Cr L.J. 1981, the Supreme Court observed:

> "No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest."

31. It is pertinent to explain there may be imminent need to grant protection against pre-arrest. The object of this provision is to relieve a person from being disgraced by trumped up charges so that liberty of the subject is not put in jeopardy on frivolous grounds at the instance of the unscrupulous or irresponsible persons who may be in charge of the prosecution. An order of anticipatory bail does not in any way, directly or indirectly; take away for the police their right to investigate into charges made or to be made against the person released on bail.

32. The purposes for which the provisions of anticipatory bail are made are quite obvious. One of the purposes of the arrest is that the accused should be available to the investigating machinery for further investigation and questioning whenever he is required. Another purpose is that the trial should not be jeopardized and for this purpose the restrictions on the movements of the accused are necessary. The genuineness of the alleged need for police custody has to be examined and it must be balanced against the duty of courts to uphold the dignity of every man and to vigilantly guard the right to liberty without jeopardizing the state objective of maintenance of law and order.

33. I would also like to reproduce certain paragraphs from Kartar Singh and Ors. V. State of Punjab(1994) 3 SCC 569, wherein Justice K.Ramaswamy, speaking for the Court, discussed the importance of life and liberty in the following words.

> "The foundation of Indian political and social democracy, as envisioned in the preamble of the Constitution, rests on justice, equality, liberty and fraternity in secular and socialist republic in which every individual has equal opportunity to strive towards excellence and of his dignity of person in an integrated egalitarian Bharat. Right to justice and equality and stated liberties which include freedom of expression, belief and movement are the means for excellence. The right to life with human dignity of person is a fundamental right of every citizen for pursuit of happiness and excellence. Personal freedom is a basic condition for full development of human personality. Art.21 of the Constitution protects right to life which is the most precious right in a civilized society. The trinity i.e. liberty, equality and fraternity always blossoms and enlivens the flower of human dignity. One of the gifts of democracy to mankind is the right to personal liberty. Life and personal freedom are the prized jewels under Art.19 conjointly assured by Art.20(3), 21 and 22 of the Constitution and Art.19 ensures freedom of movement. Liberty aims at freedom not only from arbitrary restraint but also to secure such conditions which are essential for the full development of human personality. Liberty is the essential concomitant for other rights without which a man cannot be at his best. The essence of all civil liberties is to keep alive the freedom of the individual subject to the limitations of social control envisaged in diverse articles in the chapter of Fundamental Rights Part III in harmony with social good envisaged in the Directive Principles in Part IV of the Constitution. Freedom cannot last long unless it is coupled with order. Freedom can never exist without order. Freedom and order may coexist. It is essential that freedom should be exercised under

authority and order should be enforced by authority which is vested solely in the executive. Fundamental rights are the means and directive principles are essential ends in a welfare State. The evolution of the State from police State to a welfare State is the ultimate measure and accepted standard of democratic society which is an avowed constitutional mandate. Though one of the main functions of the democratic Government is to safeguard liberty of the individual, unless its exercise is subject to social control, it becomes anti-social or undermines the security of the State. The Indian democracy wedded to rule of law aims not only to protect the fundamental rights of its citizens but also to establish an egalitarian social order. The individual has to grow within the social confines preventing his unsocial or unbridled growth which could be done by reconciling individual liberty with social control. Liberty must be controlled in the interest of the society but the social interest must never be overbearing to justify total deprivation of individual liberty. Liberty cannot stand alone but must be paired with a companion virtue; liberty and morality; liberty and law; liberty and justice; liberty and common good; liberty and responsibility which are concomitants for orderly progress and social stability. Man being a rational individual has to life in harmony with equal rights of others and more differently for the attainment of antithetic desires. This intertwined network is difficult to delineate within defined spheres of conduct within which freedom of action may be confined. Therefore, liberty would not always be an absolute license but must arm itself within the confines of law. In other words, here can be no liberty without social restraint. Liberty, therefore, as a social conception is a right to be assured to all members of a society. Unless restraint is enforced on and accepted by all members of the society, the liberty of some must involve the oppression of others. If liberty be regarded a social order, the problem of establishing liberty must be a problem of organizing restraint which society controls over the individual. Therefore, liberty of each citizen is borne of and must be subordinated to the liberty of the greatest number, in other words common happiness as an end of the society, lest lawlessness and anarchy will tamper social weal and harmony and powerful courses or forces would be at work to undermine social welfare and order. Thus the essence of civil liberty is to keep alive the freedom of the individual subject to the limitation of social control which could be adjusted according to the needs of the dynamic social evolution.

The modem social evolution is the growing need to keep individual to be as free as possible, consistent with his correlative obligation to the society.

> According to Dr. Ambedkar in his closing speech in the Constituent Assembly, the principles of liberty, equality and fraternity are not to be treated as separate entities but in a trinity. They form the union or trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality. Equality cannot be divorced from liberty. Nor can equality and liberty be divorced from fraternity. Without equality, liberty would produce supremacy of law. Equality without liberty would kill individual initiative. Without fraternity, liberty and equality would not become a natural course of things. Courts, as sentinel on the qui vive, therefore, must strike a balance between the changing needs of the society for peaceful transformation with orders and protection of the rights of the citizen.(Para 374)

34. It was also held in that judgment that the High Courts under Art.226 had the right to entertain writ petitions for quashing of FIR and granting of interim protection from arrest. This position, in the context of contours of Art.226, is stated as follows in the same judgment:

> "From this scenario, the question emerges whether the High Court under Art.226 would be right in entertaining proceedings to quash the charge-sheet or to grant bail to a person accused of an offence under the Act or other offences committed during the course of the same transaction exclusively triable by the Designated Court. Nothing is more striking than the failure of law to evolve a consistent jurisdictional doctrine or even elementary principles, if it is subject to conflicting or inconceivable or inconsistent result which lead to uncertainty, incongruity and disbelief in the efficacy of law. The jurisdiction and power of the High Court under Art.226 of the Constitution is undoubtedly constituent power and the High Court has untrammeled powers and jurisdiction to issue any writ or order or direction to any person or authority within its territorial jurisdiction for enforcement of any of the fundamental rights or for any other purpose. The legislature has no power to divest the court of the constituent power engrafted under Art.226. A superior court is deemed to have general jurisdiction and the law presumes that the court has acted within its jurisdiction. This presumption is denied to the inferior courts. The judgment of a superior court unreservedly is conclusive as to all relevant matters thereby decided, while the judgment of the inferior court involving a question of jurisdiction is not final. The superior court, therefore, has jurisdiction to determine its own jurisdiction, may be rightly or wrongly. Therefore, the court in an appropriate proceeding

may erroneously exercise jurisdiction. It does not constitute want of jurisdiction, but it impinges upon its propriety in the exercise of the jurisdiction. Want of jurisdiction can be established solely by a superior court and that in practice no decision can be impeached collaterally by an inferior court. However, acts done by a superior court are always deemed valid wherever they are relied upon. The exclusion thereof from the rule of validity is indispensable in its finality. The superior courts, therefore, are the final arbiters of the validity of the acts done not only by other inferior courts or authorities, but also their own decisions. Though they are immune from collateral attack, but to avoid confusion the superior court's decisions lay down the rules of validity; are not governed by those rules. The valid decision is not only conclusive, it may affect, but it is also conclusive in proceedings where it is sought to be collaterally impeached. However, the term conclusiveness may acquire other specific meanings. It may mean that the finding upon which the decision is founded as distinct or it is the operative part or has to be conclusive or these findings bind only parties on litigated disputes or that the organ which has made the decision is itself precluded from revoking, rescinding or otherwise altering it."

35. It would be pertinent to mention here that in light of above mentioned statements and cases, the High Court would not be incorrect or acting out of jurisdiction if it exercises its power under Art.226 to issue appropriate writ or direction or order in exceptional cases at the behest of a person accused of an offence triable under the Act or offence jointly triable with the offences under the Act.

36. It is pertinent to mention that though the High Courts have very wide powers under Art.226, the very vastness of the powers imposes on it the responsibility to use them with circumspection and in accordance with the judicial consideration and well established principles, so much so that while entertaining writ petitions for granting interim protection from arrest, the Court would not go on to the extent of including the provision of anticipatory bail as a blanket provision.

37. Thus, such a power has to be exercised very cautiously keeping in view, at the same time, that the provisions of Article 226 are a devise to advance justice and not to frustrate it. The powers are, therefore, to be exercised to prevent miscarriage of justice and to prevent abuse of process of law by authorities indiscriminately making pre-arrest of the accused persons. In entertaining such a petition under Art.226, the High Court is supposed to balance the two interests. On the one hand,

the Court is to ensure that such a power under Art.226 is not to be exercised liberally so as to convert it into Section 438,Cr.P.C. proceedings, keeping in mind that when this provision is specifically omitted in the State of Uttar Pradesh, it cannot be resorted to as to back door entry via Art.226. On the other hand, wherever the High Court finds that in a given case if the protection against pre-arrest is not given, it would amount to gross miscarriage of justice and no case, at all, is made for arrest pending trial, the High Court would be free to grant the relief in the nature of anticipatory bail in exercise of its power under Art. 226 of the Constitution. It is again clarified that this power has to be exercised sparingly in those cases where it is absolutely warranted and justified.