

Arnab Manoranjan Goswami vs The State Of Maharashtra on 27 November, 2020

Equivalent citations: AIR 2021 SUPREME COURT 1, AIRONLINE 2020 SC 845

Author: D.Y. Chandrachud

Bench: D.Y. Chandrachud, Indu Malhotra, Indira Banerjee

Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 742 of 2020
(Arising out of SLP (Crl) No. 5598 of 2020)

Arnab Manoranjan Goswami

....Appellant

Versus

The State of Maharashtra & Ors.

....Respondents

With

Criminal Appeal No. 743 of 2020
(Arising out of SLP (Crl) No. 5599 of 2020)

And With

Criminal Appeal No. 744 of 2020
(Arising out of SLP (Crl) No. 5600 of 2020)

Signature Not Verified

Digitally signed by
Sanjay Kumar
Date: 2020.11.27
11:03:49 IST
Reason:

1

JUDGMENT

Dr Dhananjaya Y Chandrachud, J

This judgment has been divided into sections to facilitate analysis. They are:

- A The appeal
- B The parties, the FIR and 'A' Summary
- C Previous proceedings against the appellant
- D Re-opening of investigation and arrest of the appellant
- E Submissions of Counsel
- F Criminal Appeal No. 743 of 2020 (Arising out of SLP (Crl) No. 5599 of 2020)
- G Criminal Appeal No. 744 of 2020 (Arising out of SLP (Crl) No. 5600 of 2020)
- H Jurisdiction of the High Court under Article 226 and Section 482 CrPC
- I Prima Facie evaluation of the FIR and the grant of bail
- J Human liberty and the role of courts
- K Conclusion

2

- A The appeal

1 While invoking the jurisdiction of the High Court of Judicature at Bombay under Articles 226 and 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973 (–CrPC), the appellant sought three substantive reliefs:

- (i) A writ of Habeas Corpus, claiming that he had been illegally arrested and wrongfully detained by the Station House Officer (–SHO) at Alibaug Police Station in the district of Raigad in Maharashtra in relation to a First Information Report¹ (–FIR) registered on 5 May 2018 under Sections 306 and 34 of the Indian Penal Code, 1860 (–IPC) in spite of an earlier closure report which was accepted by the Magistrate;
- (ii) The quashing of the above-mentioned FIR; and
- (iii) The quashing of the arrest memo on the basis of which the appellant had been arrested.

These three reliefs² are reflected in prayers (a), (b) and (c) of the petition before the High Court.

1
CR No. 0059 of 2018

2

- (a) Issue a writ of habeas corpus and/or any other similar writ, order and direction to the Respondents to produce the Petitioner who has been illegally arrested and the Respondent No. 2 in relation to FIR, being C.R. No. 0059 of 2018 dated 5 May 2018, registered at Alibaug Police Station, Raigad, under Sections 306 and 34 of the Indian Penal Code, 1860, closure report being filed;
- (b) Issue a writ of mandamus and/or any other similar writ, order and direction to the Respondents to quash the FIR, being C.R. No. 0059 of 2018, dated 5 May 2018, registered at Alibaug Police Station, Raigad, under Sections 306 and 34 of the Indian Penal Code, 1860;
- (c) Issue a writ of certiorari and/or any other similar writ, order and direction to the Respondents to set aside the arrest memo, if any, on the basis of which the Respondents have illegally arrested the Petitioner;

2 Pending the disposal of the petition, by an interim application in the proceedings³, the appellant sought his release from custody and a stay of all further proceedings including the investigation in pursuance of the FIR.

3 A Division Bench of the High Court, by its order dated 9 November 2020, noted that prayer (a) by which a writ of habeas corpus was sought was not pressed. The High Court posted the hearing of the petition for considering the prayer for quashing of the FIR on 10 December 2020. It declined to accede to the prayer for the grant of bail, placing reliance on a decision of this Court in *State of Telangana vs Habib Abdullah Jeelani*⁴ (–Habib Jeelani). The High Court was of the view that the prayers for interim relief proceeded on the premise that the appellant had been illegally detained and since he was in judicial custody, it would not entertain the request for bail or for stay of the investigation in the exercise of its extra-ordinary jurisdiction. The High Court held that since the appellant was in judicial custody, it was open to him to avail of the remedy of bail under Section 439 of the CrPC. The High Court declined *prima facie* to consider the submission of the appellant that the allegations in the FIR, read as they stand, do not disclose the commission of an offence under Section 306 of the IPC. That is how the case has come to this Court. The appellant is aggrieved by the denial of his interim prayer for the grant of bail.

3

- (a) Pending final hearing and disposal of the captioned writ petition, this Hon'ble bail to the Petitioner in FIR No. 59 of 2018 and direct the Respondents and/or immediately release the Petitioner from illegal detention and wrongful custody Respondents in view of detailed submissions made herein above, to meet the ends
- (b) Pending the final hearing and disposal of the captioned writ petition, this Hon stay all further proceedings, including the investigation in FIR No. 59 of 2018 Petitioner.

4

(2017) 2 SCC 779

B The parties, the FIR and 'A' Summary

4 The appellant is the Editor-in-Chief of an English television news channel, Republic TV. He is also the Managing Director of ARG Outlier Media Asianet News Private Limited which owns and operates a Hindi television news channel by the name of R Bharat. The appellant anchors shows on both channels.

5 The appellant was arrested on 4 November 2020 in connection with FIR 59 of 2018 which was registered at Alibaug Police Station under Sections 306 and 34 of the IPC.

6 The genesis of the FIR can be traced back to December 2016, when a company by the name of ARG Outlier Media Private Limited (–ARG) awarded a contract for civil and interior work to another company, Concorde Design Private Limited (–CDPL) which was owned substantially by Anvay Naik (the –deceased).

7 The FIR was registered on 5 May 2018 on the complaint of Akshyata Anvay Naik (the –informant), the spouse of the deceased who is alleged to have committed suicide. The contents of the FIR read thus:

–12. First Information contents:

Facts : I Smt. Akshata Anvay Naik Age 48 years, occupation

housewife, residing at 901, Rishabh Tower, Senapati Bapat Marg, Elphinstone West, Mumbai -25 personally remain present and state in writing that my mobile No. 8169947073, I am residing at the abovementioned address with my deceased Anvay Madhukar Naik, daughter Adnya Naik together. My husband is having company owned under name and dstyle as Concorde Design and we were having our livelihood by doing business of architecture interior designing and engineering consultancy,. My husband Anvay Madhukar PART B Naik is having his native place at Village Kavir, Tai. Alibaug and at the said place my mother in law Kumud Madhukar Naik is residing . therefore

my husband used to visit in between to my mother in law at Village Kavir Tai. Alibag . As also my husband used to bring my mother in law Kumud Naik in between with us at Mumbai. My husband for last two years was having pressure as he did not received the money of work carried out by him and he continuously used to inform me and therefore I also called in the office of Amav Gosmani and asked his accountant for payment of money of work done by us. As also contacted to other businessman also and informed that my husband is in great difficulty and as the money is not received he is under great mental pressure. Yesterday on 04.05.2018 at 3.45 pm in afternoon my husband Anvay Madhukar Naik and my mother in law Kumud Madhukar Naik left from our house at Mumbai and came at Alibag Kavir. At evening 7.30 I called on the mobile No. 9763437648 of my mother in law and when enquired as to whether they have reached at our farm house at Kavir Alibag or otherwise when my mother in law informed me that she and my husband reached and as care taker aaji gone out she will required to carry out all the work in the house. Today on 05.05.2018 at morning 9.30 am when I and my daughter Adnya were at our house at Mumbai Shri Aruni Patil residing at Dadar Hindu Colony, Mumbai called my daughter Adnya on her mobile that my mother in law Kumud Naik expired. Therefore I and my daughter Adnya sister Mrs. Manjusha Durgesh Vaingankar, and her daughter Shreya Vaingankar started coming to Alibag through our own vehicle. After we reached at Wadkhal I called on mobile of friend of my husband Shri Akshit Lakhani and enquired about my husband when he informed that my husband Anvay Madhukar Naik has also committed suicide . When we reached at our farm house at Kavir at around 2.15 pm in afternoon there was huge crowd of public and police were gathered. Therefore when we went inside and saw that my mother in law Kumud Naik was lying on bed near dining room. Thereafter from stair case when we went on upper floor saw that my husband Anvay Madhukar Naik was lying and one thread was hanged on iron pipe of house. Thereafter police enquired with us and informed us about the said incident. Thereafter only informed that they were taking my husband Anvay Madhukar Naik and mother in law Kumud Madhukar Naik to Civil Hospital Alibag. When we were present in the said house police shown us note written by my husband Anvay Madhukar Naik in his own handwriting in English(suicide note). The handwriting in the said note is his handwriting and the signature on it is also of his only and I identify the same. In the said note he has written in English as 3) Suicide Note, 4) we are committing suicide due to following 5) our (Concorde designs Pvt Ltd) 6) PART B We both directors I) Mr. Anvay M. Naik 2) Kumud M. Naik, 7) Money is stuck and following owners of respected companies are not paying our legitimate dues 8) Mr. Amab Goswami ARG Outlier of Republic TV, not paid 83 lacs for Bombay Dyeing Studio project, 9) Feroz Shaikh Icaswt X / Skimedia not paid our 400 lacs in Laxmi, 3rd and 4th floor idea Square project in Andheri 10) Mr. Nitesh Sardar owner of smart works Magarpattaq and Baner Project (55 Lacs pending) 11) kindly collect money from them and held them responsible for our death and pay to creditors 12) I and my mother are directors in Concorde India company and following persons have till now not paid me money of work done by me. In which it is written as Arnab Goswami ARV Outlife Of Republic TV having Rs.83 Lac of work done, 2) Firoz Khan having 4 crores of work done, 3) Nitesh Sardar 55 lacs of work done should be deposited and should be held responsible for my death and getting the same deposited and pay the dues of public. With regard to the contents written in the said note my husband Anvay Madhukar Naik had continuously informed me for last one or two years. While he used to tell me he was under

immense pressure. Therefore I am having lawful complaint against. Arnab Goswami, 2. Firoz Khan, 3. Nilesh Sarda the persons whose names written in said suicide note by my husband Anvay Madhukar Naik that the abovementioned amount was due from them and even after continuously demanding the said amount have not paid the said amount and therefore my husband was under great pressure therefore my husband Anvay Naik Age 53 years and my mother in law Kumud Madhukar Naik died and the information of such contents was registered and PI Shri Warade is investigating the said offence. The FIR records thus:

(i) The appellant (who owns the company ARG) had not paid an amount of Rs. 83 lacs for the Bombay Dyeing Studio project. In addition, there was an outstanding amount of Rs. 4 crores from Feroz Shaikh and Rs. 55 lacs from Nitesh Sarda (who are the appellants in the connected Criminal Appeals);

PART B

(ii) The spouse of the informant had not received payment for the work which was carried out by him, as a result of which he was under mental pressure and that he committed suicide by hanging on 5 May 2018;

(iii) There is a 'suicide note' holding the above three individuals responsible;

and

(iv) The informant was informed on 5 May 2018, when she and her daughter were at their residence at Mumbai, that her mother-in-law Kumud Naik had died at their Alibaug residence. On the way to Alibaug, she was informed that her husband had committed suicide. On reaching the house at Alibaug, she found the body of her mother-in-law lying on a bed and that her spouse had committed suicide by hanging.

8 On 6 May 2018, officers from the Alibaug Police Station visited ARG's office in Mumbai and served three notices under Section 91 of the CrPC. On 7 and 8 May 2018, two representatives of ARG visited Alibaug Police Station where they claim to have handed over the information which was sought by the police in their notices under Section 91. On 22 May 2018, the appellant submitted a representation to the notice under Section 91 following which on 30 May 2018 and 28 June 2018, the statements of the Chief Financial Officer and Company Secretary of ARG were recorded.

9 On 16 April 2019, the SHO at Alibaug Police Station filed a report in the Court of the Chief Judicial Magistrate (CJM) for an 'A' summary. The CJM passed an order accepting the report and granted an 'A' summary. The meaning and import of an 'A' summary is reflected in Para 219 (3) of the Bombay Police Manual, 1959. An 'A' Summary indicates a case where an offence has been PART B committed but it is undetected, in that there is no clue about the culprits or the property, or where the accused is known but there is no evidence to justify their being sent up to the Magistrate for trial. Para 219 (3) of the Bombay Police Manual reads thus:

"RULE 219 (3) OF BOMBAY POLICE MANUAL (3) The final report should be written up carefully by the officers incharge of the Police Station personally and should be accompanied by all the case papers numbered and indexed methodically. If the accused has been released on bail, the Magistrate should be requested to cancel the bail bond. He should also be requested to pass orders regarding the disposal of property attached, unless any of the articles, e.g., blood stained clothes, are required for further use in true but undetected cases. A request should also be made to the Magistrate to classify the case and to issue an appropriate summary of his order, viz:-

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

"B" Maliciously false.

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

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

10 Following the □A' summary, there was an exchange of correspondence between ARG and the informant. ARG by their letter dated 11 June 2019, addressed to CDPL, the informant and her daughter, indicated that several meetings had been held in the past between them during the course of which ARG had sought indemnities from CDPL against any future claims. In its letter, ARG stated that it would be transferring a sum of Rs. 39.01 lacs into CDPL's last known bank account against an indemnity for future claims by the creditors or lenders of CDPL. In response, on 15 June 2019, the informant addressed a PART C communication to ARG stating that out of a total billed amount of Rs. 6.45 crores, an amount of Rs. 5.75 crores had been received from ARG, and after adjustment of an amount of Rs. 70.39 lacs towards deductions made from the bill, an amount of Rs. 88.02 lacs was due and payable. On 6 November 2019, ARG addressed another letter to the informant recording the closure of the police investigation and reiterating its readiness to pay an amount of Rs.39.01 lacs subject to due authorisation. The matter appears to have rested there until a flurry of developments took place in the month of April 2020.

C Previous proceedings against the appellant

11 During the course of the present proceedings, the appellant has adverted

to proceedings initiated against him previously by the State of Maharashtra, in order to support his case that the arrest is vitiated by malice in fact. 12 On 16 April 2020, a broadcast took place on Republic TV, followed by a broadcast on Republic Bharat on 21 April 2020 in relation to an incident which took place in Gadchinchle village of Palghar district in Maharashtra. During the course of this

incident on 16 April 2020, three persons, including two Sadhus, were brutally killed by a mob, allegedly in the presence of the police and forest guard personnel. According to the appellant, on his news show titled □Poochta hai Bharat□ on 21 April 2020, he had raised issues in relation to the allegedly tardy investigation of the incident by the police.

13 As this Court noticed in a judgment dated 19 May 2020, the broadcasts led to the lodging of multiple FIRs and criminal complaints against the appellant in PART C the States of Maharashtra, Chhattisgarh, Rajasthan, Madhya Pradesh, Telangana and Jharkhand as well as in the Union Territories of Jammu and Kashmir. The content of the FIRs was similar, almost identical. In the State of Maharashtra, an FIR was lodged at Police Station Sadar, District Nagpur City, details of which were as follows:

"Maharashtra FIR No. 238 of 2020, dated 22 April 2020, registered at Police Station Sadar, District Nagpur City, Maharashtra, under Sections 153, 153-A, 153-B, 295-A, 298, 500, 504(2), 506, 120-B and 117 of the Indian Penal Code 1860."

Apart from the above FIR, fourteen other FIRs and complaints were lodged against the appellant in relation to his broadcasts. 14 The appellant moved this Court in proceedings under Article 32 of the Constitution⁵ challenging the registration of these FIRs. By an interim order dated 24 April 2020, the FIR which had been lodged at Police Station Sadar, District Nagpur City was transferred to NM Joshi Marg Police Station, Mumbai and was renumbered as FIR 164 of 2020. Another FIR, FIR 137 of 2020, was registered against the appellant on 2 May 2020 at the Pydhonie Police Station, Mumbai. FIR 137 of 2020 was filed against the appellant due to a telecast which took place on 29 April 2020 on the appellant's new channels, in which the appellant referred to a gathering of migrant workers at the Bandra Railway station during the Covid-19 pandemic, and attempted to connect a place of religious worship with this Writ Petition (Crl.) No. 130 of 2020 PART C gathering. The appellant filed another petition under Article 32 of the Constitution⁶, challenging the registration of FIR 137 of 2020. 15 By its judgment dated 19 May 2020, this Court quashed all the FIRs, except for the FIR which was transferred from Nagpur to Mumbai, on the ground that successive FIRs/complaints in respect of the same cause could not be maintained. The court granted liberty to the appellant to pursue such remedies as were available in law before the competent forum for quashing FIR 164 of 2020. 16 By an order dated 30 June 2020, a Division Bench of the Bombay High Court, while entertaining a petition under Articles 226/227 of the Constitution and Section 482 of the CrPC, suspended all further proceedings in FIR 164 of 2020 before the NM Joshi Marg Police Station and FIR 137 of 2020 before the Pydhonie Police Station and confirmed its interim order dated 6 June 2020 restraining the State from taking coercive steps against the appellant in relation to the two FIRs, pending the disposal of the petition.

17 Aside from this incident, the appellant has relied on certain other developments which have taken place thereafter. These are:

(i) The arrest on 9 September 2020 by the Maharashtra Police of two employees of the appellant's news channel alleged to be pursuing an investigative lead in Raigad, Maharashtra and the registration of FIR 142 of 2020 at Khalapur Police Station,

Raigad under Sections 452, 448, 323, 504 and 506 read with Section 34 of the IPC;

Writ Petition (Crl.) Diary No. 1189 of 2020 PART C

(ii) The issuance of a letter by the Shiv Cable Sena to cable operators across Maharashtra asking them to ban the telecast of the appellant's news channel;

(iii) An order of the Bombay High Court dated 11 September 2020 in a Writ Petition under Article 226 holding that the letter of the Shiv Cable Sena did not have the force of law and the appellant would be at liberty to pursue the remedies available in law;

(iv) On 16 September 2020, a notice to show cause was issued to the appellant for breach of privilege of the legislative assembly, which is the subject of proceedings instituted in this court;

(v) A notice to show cause was issued under Section 108(1) of the CrPC to the appellant by the Special Executive Magistrate, in spite of the order of the Bombay High Court;

(vi) The registration of FIR 843 of 2020 on 6 October 2020 at Kandivali Police Station (later transferred to the Crime Intelligence Unit, Mumbai) on a complaint by an employee of Hansa Research Group Private Limited in relation to the TRP scam;

(vii) A press conference by the Commissioner of Police Mumbai on 8 October 2020 mentioning the name of the appellant as being allegedly involved in the TRP scam;

(viii) The appellant instituted a Writ Petition under Article 32 of the Constitution⁷ before this Court seeking reliefs in respect of FIR 843 of 2020. By an order Writ Petition (Crl.) 312 of 2020 PART D dated 15 October 2020, the Writ Petition was dismissed as withdrawn with liberty to the appellant to approach the Bombay High Court; and

(ix) The appellant filed Writ Petition (Crl.) Stamp No. 3143 of 2020 before the Bombay High Court, in which on 19 October 2020 an order was passed calling upon the Investigating Officer to submit the investigation paper in a sealed envelope on 4 November 2020. The High Court noted that the appellant had as on date not been arrayed as an accused in the FIR and if the investigating officer proposed to make an enquiry, a summons shall be issued to him. The appellant agreed to cooperate in the enquiry. D Re-opening of investigation and arrest of the appellant 18 On 26 May 2020, the Home Department of the State of Maharashtra addressed a communication to Deputy Inspector General of Police stating that the FIR registered as Crime No. 59 of 2020, at Alibaug Police Station under Sections 306/34 of the IPC, was being transferred to the crime investigation department for the purpose of reinvestigation. The letter, insofar as is material, reads thus:

On respect of the above mentioned subject, you are hereby informed that crime no. 59/2020 registered at Alibaug Police Station under Section 306/34 and Crime no. 114 of 2018 registered at Alibaug Police Station under Section 302 are being transferred to Crime Investigation Department for the purposes of reinvestigation.

Hence, you are requested to undertake the necessary steps for handing over the case for reinvestigation and report in respect of investigation already been made be submitted to the Government. PART D

19 On 15 October 2020, the Local Crime Investigation Branch, Raigad addressed a communication to the CJM, Alibaug recording the commencement of further investigation under Section 173(8) of the CrPC in respect of Crime No. 59 of 2018 under Section 306 read with Section 34 of the IPC. 20 On 4 November 2020, the appellant was arrested at about 7:45 am in connection with FIR 59 of 2018 dated 5 May 2018. At 2:37 pm, the appellant filed a Writ Petition before the Bombay High Court, invoking the provisions of Articles 226/227 of the Constitution and Section 482 of the CrPC. 21 After the appellant's arrest, a remand application was filed before the CJM, Raigad. By an order dated 4 November 2020, the CJM declined to grant police custody. Noting that there had been an 'A' summary previously, the CJM while rejecting the plea of police custody, remanded the appellant to judicial custody till 18 November 2020. The State has challenged the order of the CJM declining police custody in a revision before the Additional Sessions Judge, Raigad. 22 The writ petition filed by the appellant before the Bombay High Court was heard on 5, 6 and 7 November 2020. On 7 November 2020, the High Court reserved orders and granted liberty to the appellant to file an application for regular bail under Section 439 of the CrPC with a direction that it should be heard expeditiously within four days of the date of filing. Following the above direction, the appellant moved the Sessions Court, Raigad for bail under Section 439 of the CrPC. By its impugned judgment and order dated 9 November 2020, the High Court posted the hearing of the petition filed by the appellant in regard to the prayer of quashing of the FIR on 10 December 2020. While doing so, the High PART E Court denied bail to the appellant on the ground that no case has been made out for the exercise of the extra-ordinary jurisdiction and that the appellant had an alternate and efficacious remedy under Section 439 of the CrPC.

E Submissions of counsel

23 Assailing the order of the High Court denying bail to the appellant, Mr

Harish N Salve, learned Senior Counsel, submitted that:

(i) The arrest of the appellant is rooted in malice in fact, which is evident from the manner in which the appellant as the Editor-in-Chief of Republic TV and R Bharat has been targeted for his news broadcasts criticizing the Maharashtra government and the Maharashtra police;

(ii) Following the acceptance of the police report and the issuance of an 'A' summary on 16 April 2019, the reinvestigation which has been ordered at the behest of the Home Minister of the State of Maharashtra is ultra vires.

Further, in the absence of the specific permission of the CJM, it was not open to the State to conduct a reinvestigation; and

(iii) The allegations contained in the FIR, read as they stand, do not establish an offence under Section 306 read with Section 34 of the IPC. To constitute the offence of abetment there must exist:

- i. A direct or indirect incitement to the commission of a crime;
- ii. An active role of the accused in instigating or doing an act facilitating the commission of the crime; and iii. The existence of a proximate relationship in time.

PART E In the present case, it was submitted that even if the allegations in the FIR are accepted as they stand, no case of abetment is established. It has been submitted that the company of the appellant (ARG) had entrusted a contract for interior work to the deceased's company (CDPL). Further, it is not in dispute that while an amount of Rs 5.45 crores has been paid, there was a commercial dispute pending in regard to the remaining payment between the two companies.

The contents of the FIR also reveal that the deceased was suffering from mental pressure. Furthermore, there is absolutely no allegation that the appellant had either instigated or committed any act to facilitate the commission of the crime.

24 Mr Salve further submitted that the judgment of this Court in Habib Jeelani (supra) has been wrongly interpreted by the High Court. It has been submitted that it was in pursuance of the liberty that was granted by the High Court, that an application for bail under Section 439 of the CrPC was filed. However, even on 9 November 2020, the Public Prosecutor has filed a note before the Sessions Judge that the revision application filed by the State against the order of the CJM should be heard first and it is only thereafter that the application for bail should be taken up. On the basis of the above submissions, it has been urged that the appellant has been made a target of the vendetta of the State government, which emerges from the successive events adverted to above which have taken place since April 2020. Hence, it has been urged that there is absolutely no ground to continue the arrest of the appellant and absent any reasonable basis for depriving him of his liberty, an order for the grant of bail should have been passed by the High Court. Mr. Salve finally submitted that the interest in preserving the procedural hierarchy of courts must give way to the need to PART E protect the appellant's personal liberty given the well settled legal position that the default rule is 'bail, not jail'.

25 Opposing the above submissions, Mr Amit Desai, learned Senior Counsel appearing on behalf of the second respondent submits that:

(i) The High Court has advisably not enquired into whether:

- i. The investigation is tainted by mala fides; and ii. The contents of the FIR as they stand make out an offence within the meaning of Section 306 read with Section 34 of the IPC;

(ii) The High Court declined to express a prima facie view on the issue of mala fides since an opportunity was being granted to the State to file its counter.

Similarly, the issue as to whether the FIR is liable to be quashed would be taken up at the final hearing on 10 December 2020 and hence the High Court has correctly refrained from expressing a prima facie view;

(iii) Between 15 October 2020 and 4 November 2020, a further investigation has been carried out and statements have been recorded under Section 164 of the CrPC;

(iv) In accordance with this Court's judgment in the case of Praveen Pradhan vs State of Uttaranchal and Ors.8 (□Praveen Pradhan), instigation to commit suicide has to be gathered from the circumstances of a particular case. Hence, while there may not be direct evidence in regard to instigation which may have direct nexus to suicide, an inference has to be drawn from the circumstances to determine whether they were of a nature which created a situation in which a person felt totally frustrated and ended (2012) 9 SCC 734 PART E up committing suicide. Further, while making a determination as to the quashing of proceedings, the Court has to form only a tentative opinion and not a firm view;

(v) A hierarchy of courts is provided for to consider an application for bail under Section 439 of the CrPC. In the present case, there is no valid basis to by-pass that hierarchy in order to grant relief to the appellant;

(vi) An application for bail was initially filed on behalf of the appellant which was withdrawn after the order for judicial custody was passed. An application for bail has been filed after the High Court while reserving judgment granted liberty to do so with a direction for its disposal within four days. Hence, it is appropriate that the appellant is relegated to pursue the remedies under Section 439;

(vii) Prayer (a) in the Writ Petition for the grant of a writ of Habeas Corpus was not maintainable in view of the fact that the appellant had been arrested and committed to judicial custody, and the interim application for his release on bail was only in the context of the prayer for Habeas Corpus;

(viii) During the course of the hearing of the proceedings before the Bombay High Court, the Division Bench indicated that if the appellant were to file an application under Section 439, appropriate administrative directions of the Chief Justice could be obtained for listing it before the Division Bench since applications for bail are placed for hearing before a Single Judge (while the petition was before a Division Bench) and the appellant had only filed an interim application in the pending Writ Petition for being released on bail;

PART E

(ix) Both the issue of whether the appellant has made out a case for quashing the FIR and whether a reinvestigation could have been ordered at the Home Department of the State would be considered by the High Court on 10 December 2020;

(x) The High Court has drawn a balance between the rights of the accused and the family of the deceased victim. A substantive Writ Petition has been filed by the informant, stating that it was only through a tweet on the social media that she had learned of the □A' summary and that she had not been heard before the order was passed by the Magistrate accepting the police report;

(xi) Even when □A' Summary has been accepted in terms of Para 219(3) of the Bombay Police Manual, there is no restraint on a further investigation being carried out by the Investigating Officer under Section 173(8) of the CrPC. An □A' summary postulates that there was no completed investigation. Hence, requiring prior judicial sanction as a precondition for conducting further investigation after the filing of an □A' summary will impede the ability of investigating authorities to effectively perform their role. Such a course of action is also permissible in view of the decision of this Court in Vinubhai Haribhai Malaviya vs State of Gujarat⁹; and

(xii) The High Court was justified in coming to the conclusion that there was nothing extraordinary in the facts of the present case to shock the conscience of the Court so as to take recourse to its extraordinary jurisdiction under Article 226 to direct the release of the appellant on 2019 SCC OnLine SC 1346 PART E interim bail. Any other view would lead to the jurisdiction of the High Court under Article 226 being extended to grant the remedy of an application for bail, which is already available under Section 439 of the CrPC. ²⁶ In the same vein as the submissions which have been urged on behalf of the second respondent by Mr Amit Desai, Mr Kapil Sibal, learned Senior Counsel appearing on behalf of the first respondent, has submitted that the High Court has been justified in coming to the conclusion that there was no warrant to interfere in the course of the investigation in the present case. Mr Sibal also argued that Mr Salve has wrongly focused on other cases implicating the appellant in the course of his arguments. Learned Senior Counsel has urged that the appellant must pursue his remedy in accordance with law under Section 439 of the CrPC for which the liberty has been granted by the High Court. Further, Mr Sibal submitted that an □A' summary is in fact not a closure report and investigation does not stand concluded. Hence, he submitted that the Investigating Officer was within jurisdiction in carrying out further investigation. Finally, Mr Sibal argued that while he is alive to the fact that the personal liberty of the appellant is at stake in the present case, this Court does refuse to interfere in many cases exhibiting similar features. Therefore, he argued that this Court should stay its hand in the present case.

27 Mr CU Singh, learned Senior Counsel appearing on behalf of the fifth respondent, the informant, has joined the submissions of the first and second respondents in opposing these appeals. It was submitted that:

PART E

(i) After the order of judicial remand on 4 November 2020, an application for bail was filed on behalf of the appellant and withdrawn;

(ii) On 7 November 2020, the Sessions Court issued a notice on the revision application filed by the State against the order declining to grant remand to police custody;

(iii) On 7 November 2020, the High Court posted the proceedings for pronouncement of judgment on 9 November 2020 and granted liberty to the appellant to file an application for bail. Thereafter, an application for bail was filed on 8 November 2020 by the appellant. A Special Leave Petition was filed in this Court thereafter. The High Court has correctly declined to enquire into the plea for quashing the FIR and the alleged mala fides on the ground that counters are still to be filed; and

(iv) On 15 October 2020, the Crime Detection Unit intimated the CJM that it was commencing further investigation on which the CJM has made an endorsement that it had been noted and filed. Statements were recorded under Section 164 of the CrPC. Section 173(8) of the CrPC confers a broad power of further investigation on the Investigating Officer. Having regard to the context of an 'A' summary, this power has been legitimately exercised in the present case. The exercise of the power of further investigation under Section 173(8) of the CrPC would not require judicial sanction.

28 Together with the present Civil Appeal, this Court has also heard submissions in two companion Civil Appeals. In the two companion appeals, PART F submissions have been made before this Court by Mr Gopal Sankaranarayanan and Mr Mukul Rohatgi, learned Senior Counsel.

F Criminal Appeal No. 743 of 2020 (Arising out of SLP (Crl) No. 5599 of 2020) 29 Mr Gopal Sankaranarayanan, learned Senior Counsel, submitted that the appeal has been filed by the sister of Mr Feroz Shaikh who has been named as an accused.

30 Mr Feroz Shaikh is a Director in iCastX Technologies Private Limited. In 2016, iCastX Technologies hired the services of M/s Atos India Private Limited for the work of construction, renovation and refurbishing of their office premises at Andheri East, Mumbai. Atos India Private Limited in turn sub-contracted the work to CDPL. Hence, it has been submitted that there was privity of relationship between iCastX Technologies and CDPL. Mr Sankaranarayanan submitted that the three appellants represent the interest of three distinct individuals connected with three different companies.

31 Mr Sankaranarayanan has supported the submissions on the essential requirements of Section 107 of the IPC by relying on the decisions in Madan Mohan Singh vs State of Gujarat¹⁰, Sunil Bharti Mittal vs Central Bureau of Investigation¹¹ and Common Cause vs Union of India¹² (Common Cause). Mr. Sankaranarayanan further argued that there was no reference about his client in the FIR filed on 5 May 2018 at the behest of the informant. Finally, he relied on this Court's judgment in Vineet Narain and Ors. vs Union of India and (2010) 8 SCC 628 (2015) 4 SCC 609 (2018) 5 SCC 1 PART G Ors.¹³ to urge that executive interference in the course of an investigation or prosecution is impermissible.

G Criminal Appeal No. 744 of 2020 (Arising out of SLP (Crl) No. 5600 of 2020) 32 Mr Mukul Rohatgi, learned Senior Counsel appearing on behalf of the appellant, submitted that admittedly all

the three accused named in the FIR are unconnected. The appellant is a Director in a private limited company by the name of SmartWork Business Centre Private Limited with less than one per cent of the shareholding standing in his own name.

33 The company which has offices in New Delhi and Kolkata had engaged the services of several vendors/contractors in order to furnish their business centre at Pune, one of whom was CDPL and a purchase order of Rs 4.17 crores was issued. Thereafter, there were substantial delays and discrepancies in the execution of the work by CDPL which led to an exchange of mails. Furthermore, an invoice of over Rs 5 crores was raised including an amount of Rs 83.02 lacs towards GST. Pursuant to this, a payment of Rs 4.40 crores was made but there was a genuine commercial dispute between the two companies in relation to the remaining amount.

34 It has been submitted that on the face of it, there is no basis in the FIR to even remotely implicate the appellant in the alleged offences under Section 306 read with Section 34 of the IPC. There is not even an indication of a personal (1998) 1 SCC 226 PART G interaction or connection between the appellant and the deceased. Furthermore, a civil suit regarding the disputed debt between their companies is pending. 35 The invocation of the jurisdiction of the High Court under Articles 226/227 of the Constitution and Section 482 of the CrPC is in support of two distinct reliefs. The first relief is for a writ of habeas corpus. This relief has been claimed on the basis that the arrest and consequent detention of the appellant was due to a reinvestigation which was commenced after placing reliance on the letter dated 26 May 2020 of the Home Department of the Government of Maharashtra to the Director General of Police. The submission is that once the CJM accepted the report submitted by the Investigating Officer and issued an 'A' summary on 16 April 2019, it was not open to the Investigating Officer to commence a reinvestigation without judicial sanction.

36 Joining issue with this submission is the argument of the State that the power of the investigating officer to order a further investigation under Section 173(8) of the CrPC is independent of the jurisdiction of the Magistrate. In the view of the State, Section 4 of the Bombay Police Act, 1951 entrusts the superintendence of the police force to it and in the exercise of that power, it was legitimately open to the Home Department to direct a further investigation (though the letter uses the expression 're-investigation') to be conducted based on the complaint of the victim that the offence had not been properly investigated. Moreover, the State has relied on the provisions of Section 36 of the CrPC under which police officers superior in rank to an officer in charge of a police station are entitled to exercise the same powers throughout the local area to which they are appointed.

PART G 37 According to the appellant, when proceedings before the High Court came to be instituted, an order of remand had not been passed and it was only subsequently on the night of 4 November 2020 that an order granting judicial custody was passed by the CJM. Be that as it may, the High Court has recorded that prayer (a) for the issuance of a writ of Habeas Corpus was not pressed on behalf of the appellant. Once the prayer for a writ of habeas corpus was not pressed (as the High Court records), it was unnecessary for the High Court to devote several pages in the impugned judgment on discussing the issue. 38 The remaining prayer before the High Court was for quashing the FIR. Mr Rohatgi submitted that the order of arrest is illegal and the appellant is

entitled to have it so declared by invoking the jurisdiction under Article 226 of the Constitution and Section 482 of the CrPC. It was urged that the power under Section 173(8) is to cause a "further investigation" and no power has been vested to either reinvestigate or cause a fresh investigation to be made. The power to reinvestigate or to cause fresh investigation, it was urged, is vested only in the constitutional courts. Contrary to the provisions of Section 173(8), it was urged, the Home Department in its letter to the deputy Inspector General has directed a reinvestigation. In the present case, the communication of the Home Department makes it abundantly clear that a reinvestigation was ordered under the authority of the State Home Minister which, according to the submission, is ultra vires the provisions of law. Mr Rohatgi has emphasised that the application for remand makes it clear that what is ordered was a reinvestigation, since the application has repeatedly used the expression "comprehensive reinvestigation" and the fact that "reinvestigation has become necessary".

PART H 39 Finally, it was urged that the order of the Home Minister in the State was issued on 26 May 2020 whereas the investigation commenced on 15 October 2020 and the arrest was made on 4 November 2020 in respect of an FIR lodged in May 2018 on which an "A" summary had been accepted on 16 April 2019. In sum and substance, it has been submitted that after the order of closure on 16 April 2019, a reinvestigation could not have been ordered in the case. The arrest has been termed unlawful.

H Jurisdiction of the High Court under Article 226 and Section 482 CrPC 40 While considering the rival submissions, it is essential for the purpose of the present appeals to elucidate on the nature of the jurisdiction that is vested in the High Court under Article 226 of the Constitution and Section 482 of the CrPC. This issue must be analysed from the perspective of the position that the proceeding before the High Court, after the prayer for the grant of a writ of Habeas Corpus was given up, is for quashing the FIR being CR No. 0059 of 2018 lodged on 5 May 2018.

41 The High Court has dwelt at length on the decision of this Court in *Habib Jeelani* (supra). The High Court observed that the powers to quash "are to be exercised sparingly and that too, in rare and appropriate cases and in extreme circumstances to prevent abuse of process of law". Applying this principle, the High Court opined:

"45. The principle stated therein will equally apply to the exercise of this Court's power under Article 226 of the Constitution of India and section 482 of the Code of Criminal Procedure while considering the applications for bail since the PART H petitioner is already in Judicial custody. The legislature has provided specific remedy under Section 439 Cr.P.C. for applying for regular bail. Having regard to the alternate and efficacious remedy available to the petitioner under section 439 of the Code of Criminal Procedure, this Court has to exercise judicial restraint while entertaining application in the nature of seeking regular bail in a petition filed under Article 226 of the Constitution of India read with section 482 of Code of Criminal Procedure. On the basis of the above foundation, the High Court has declined to even prima facie enquire into whether the allegations contained in the FIR, read as they stand, attract the provisions of Section 306 read with Section 34 of the IPC. In its view, since the

petition was being posted for hearing on 10 December 2020, it was not inclined to enquire into this aspect of the case and the appellant would be at liberty to apply for regular bail under Section 439.

42 Now, it is in this background that it becomes necessary for this Court to evaluate what, as a matter of principle, is the true import of the decision of this Court in *Habib Jeelani* (supra). This was a case where, on the basis of a report under Section 154 off the CrPC, an FIR was registered for offences punishable under Sections 147, 148, 149 and 307 of the IPC. Challenging the initiation of the criminal action, the inherent jurisdiction of the High Court to quash an FIR was invoked. The High Court (as paragraph 2 of the judgment of this Court in *Habib Jeelani* (supra) indicates) expressed its disinclination to interfere on the ground that it was not appropriate to stay the investigation of the case. It was in this background that the following issue was formulated in the first paragraph of the judgment of this Court, speaking through Justice Dipak Misra (as he then was), for consideration:

PART H □. The seminal issue that arises for consideration in this appeal, by special leave, is whether the High Court while refusing to exercise inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) to interfere in an application for quashment of the investigation, can restrain the investigating agency not to arrest the accused persons during the course of investigation. Between paragraphs 11 and 15, this Court then evaluated the nature of the jurisdiction under Section 482 of the CrPC or under Article 226 of the Constitution for quashing an FIR and observed:

□1. Once an FIR is registered, the accused persons can always approach the High Court under Section 482 CrPC or under Article 226 of the Constitution for quashing of the FIR. In *Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : AIR 1992 SC 604]* the two- Judge Bench after referring to *Hazari Lal Gupta v. Rameshwar Prasad [Hazari Lal Gupta v. Rameshwar Prasad, (1972) 1 SCC 452 : 1972 SCC (Cri) 208]*, *Jehan Singh v. Delhi Admn. [Jehan Singh v. Delhi Admn., (1974) 4 SCC 522 : 1974 SCC (Cri) 558 : AIR 1974 SC 1146]*, *Amar Nath v. State of Haryana [Amar Nath v. State of Haryana, (1977) 4 SCC 137 : 1977 SCC (Cri) 585]*, *Kurukshetra University v. State of Haryana [Kurukshetra University v. State of Haryana, (1977) 4 SCC 451 : 1977 SCC (Cri) 613]*, *State of Bihar v. J.A.C. Saldanha [State of Bihar v. J.A.C. Saldanha, (1980) 1 SCC 554 : 1980 SCC (Cri) 272 : AIR 1980 SC 326]*, *State of W.B. v. Swapan Kumar Guha [State of W.B. v. Swapan Kumar Guha, (1982) 1 SCC 561 : 1982 SCC (Cri) 283 : AIR 1982 SC 949]*, *Nagawwa v. Veeranna Shivalingappa Konjalgi [Nagawwa v. Veeranna Shivalingappa Konjalgi, (1976) 3 SCC 736 : 1976 SCC (Cri) 507 : AIR 1976 SC 1947]*, *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692 : 1988 SCC (Cri) 234]*, *State of Bihar v. Murad Ali Khan [State of Bihar v. Murad Ali Khan, (1988) 4 SCC 655 : 1989 SCC (Cri) 27 : AIR 1989 SC 1]* and some other authorities that had dealt with the contours of exercise of inherent powers of the High Court, thought it appropriate to mention certain category of cases by way of illustration wherein the extraordinary

power under Article 226 of the Constitution or inherent power under Section 482 CrPC could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice. The Court PART H also observed that it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad cases wherein such power should be exercised.

12. The illustrations given by the Court need to be recapitulated: (Bhajan Lal case [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : AIR 1992 SC 604] , SCC pp. 378-79, para 102) □(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party. (7) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. It is worthy to note that the Court has clarified that the said parameters or guidelines are not exhaustive but only illustrative. Nevertheless, it throws light on the circumstances and situations where the Court's inherent power can be exercised.

PART H

13. There can be no dispute over the proposition that inherent power in a matter of quashment of FIR has to be exercised sparingly and with caution and when and only when such exercise is justified by the test specifically laid down in the provision itself. There is no denial of the fact that

the power under Section 482 CrPC is very wide but it needs no special emphasis to state that conferment of wide power requires the Court to be more cautious. It casts an onerous and more diligent duty on the Court.

14. In this regard, it would be seemly to reproduce a passage from Kurukshetra University [Kurukshetra University v. State of Haryana, (1977) 4 SCC 451 : 1977 SCC (Cri) 613] wherein Chandrachud, J. (as his Lordship then was) opined thus: (SCC p. 451, para 2) ☐2. It surprises us in the extreme that the High Court thought that in the exercise of its inherent powers under Section 482 of the Code of Criminal Procedure, it could quash a first information report. The police had not even commenced investigation into the complaint filed by the Warden of the University and no proceeding at all was pending in any court in pursuance of the FIR. It ought to be realised that inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases.

15. We have referred to the said decisions only to stress upon the issue, how the exercise of jurisdiction by the High Court in a proceeding relating to quashment of FIR can be justified. We repeat even at the cost of repetition that the said power has to be exercised in a very sparing manner and is not to be used to choke or smother the prosecution that is legitimate. The surprise that was expressed almost four decades ago in Kurukshetra University case [Kurukshetra University v. State of Haryana, (1977) 4 SCC 451 : 1977 SCC (Cri) 613] compels us to observe that we are also surprised by the impugned order. 43 Thereafter, this Court noted that ☐the High Court has not referred to allegations made in the FIR or what has come out in the investigation . While on the one hand, the High Court declined in exercising its jurisdiction under Section 482 to quash the proceedings, it nonetheless directed the police not to arrest the appellants during the pendency of the investigation. It was in this context that this PART H Court observed that the High Court had, while dismissing the applications under Section 482, passed orders that if the accused surrenders before the trial Magistrate, he shall be admitted to bail on such terms and conditions as it was deemed fit and appropriate. After advertng to the earlier decision in Hema Mishra vs State of UP¹⁴, this Court observed:

☐23. We have referred to the authority in Hema Mishra [Hema Mishra v. State of U.P., (2014) 4 SCC 453 : (2014) 2 SCC (Cri) 363] as that specifically deals with the case that came from the State of Uttar Pradesh where Section 438 CrPC has been deleted. It has concurred with the view expressed in Lal Kamendra Pratap Singh [Lal Kamendra Pratap Singh v. State of U.P., (2009) 4 SCC 437 : (2009) 2 SCC (Cri) 330] . The said decision, needless to say, has to be read in the context of the State of Uttar Pradesh. We do not intend to elaborate the said principle as that is not necessary in this case. What needs to be stated here is that the States where Section 438 CrPC has not been deleted and kept on the statute book, the High Court should be well advised that while entertaining petitions under Article 226 of the Constitution or Section 482 CrPC, it exercises judicial restraint. We may hasten to clarify that the Court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, has the jurisdiction to quash the investigation and may pass

appropriate interim orders as thought apposite in law, but it is absolutely inconceivable and unthinkable to pass an order of the present nature while declining to interfere or expressing opinion that it is not appropriate to stay the investigation. This kind of order is really inappropriate and unseemly. It has no sanction in law. The courts should oust and obstruct unscrupulous litigants from invoking the inherent jurisdiction of the Court on the drop of a hat to file an application for quashing of launching an FIR or investigation and then seek relief by an interim order. It is the obligation of the Court to keep such unprincipled and unethical litigants at bay. 44 The above decision thus arose in a situation where the High Court had declined to entertain a petition for quashing an FIR under Section 482 of the (2014) 4 SCC 453 PART I CrPC. However, it nonetheless directed the investigating agency not to arrest the accused during the pendency of the investigation. This was held to be impermissible by this Court. On the other hand, this Court clarified that the High Court if it thinks fit, having regard to the parameters for quashing and the self-

restraint imposed by law, has the jurisdiction to quash the investigation and may pass appropriate interim orders as thought apposite in law. Clearly therefore, the High Court in the present case has misdirected itself in declining to enquire prima facie on a petition for quashing whether the parameters in the exercise of that jurisdiction have been duly established and if so whether a case for the grant of interim bail has been made out. The settled principles which have been consistently reiterated since the judgment of this Court in State of Haryana vs Bhajan Lal¹⁵ (Bhajan Lal) include a situation where the allegations made in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused. This legal position was recently reiterated in a decision by a two-judge Bench of this Court in Kamal Shivaji Pokarnekar vs State of Maharashtra¹⁶.

I Prima Facie evaluation of the FIR and the grant of bail 45 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 1992 Supp. 1 SCC 335 (2019) 14 SCC 350 PART I fundamental issue which needed to be considered while dealing with a petition for quashing under Article 226 of the Constitution or Section 482 of the CrPC. The High Court, by its judgment dated 9 November 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 of the 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 of the IPC, this Court is now called upon to perform the task.

46 Before we evaluate the contents of the FIR, a reference to Section 306 of the IPC is necessary. Section 306 stipulates that if a person commits suicide whoever abets the commission of such suicide shall be punished with imprisonment extending up to 10 years¹⁷. Section 107 is comprised within Chapter V of the IPC, which is titled Of Abetment. Section 107 provides:

107. Abetment of a thing.—A person abets the doing of a thing, who—
First.—Instigates any person to do that thing; or Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to

306. Abetment of suicide.—If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

PART I cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration A, a public officer, is authorised by a warrant from a Court of Justice to apprehend Z, B, knowing that fact and also that C is not Z, willfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.
Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act. 47 The first segment of Section 107 defines abetment as the instigation of a person to do a particular thing. The second segment defines it with reference to engaging in a conspiracy with one or more other persons for the doing of a thing, and an act or illegal omission in pursuance of the conspiracy. Under the third segment, abetment is founded on intentionally aiding the doing of a thing either by an act or omission. These provisions have been construed specifically in the context of Section 306 to which a reference is necessary in order to furnish the legal foundation for assessing the contents of the FIR. These provisions have been construed in the earlier judgements of this Court in *State of West Bengal vs Orilal Jaiswal*¹⁸, *Randhir Singh vs State of Punjab*¹⁹, *Kishori Lal vs State of MP*²⁰ (Kishori Lal) and *Kishangiri Mangalgiri Goswami vs State of Gujarat*²¹. In *Amalendu Pal vs State of West Bengal*²², Justice Mukundakam Sharma, speaking for a two judge Bench of this Court and having adverted to the earlier decisions, observed:

(1994) 1 SCC 73 (2004) 13 SCC 129 (2007) 10 SCC 797 (2009) 4 SCC 52 (2010) 1 SCC 707 PART I 2...It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable. The Court noted that before a person may be said to have abetted the commission of suicide, they must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide .

Instigation, as this Court held in Kishori Lal (supra), literally means to provoke, incite, urge on or bring about by persuasion to do anything. In S S Chheena vs Vijay Kumar Mahajan²³, a two judge Bench of this Court, speaking through Justice Dalveer Bhandari, observed:

¶25. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.

48 Madan Mohan Singh vs State of Gujarat²⁴ was specifically a case which arose in the context of a petition under Section 482 of the CrPC where the High Court had dismissed the petition for quashing an FIR registered for offences under Sections 306 and 294(B) of the IPC. In that case, the FIR was registered on a complaint of the spouse of the deceased who was working as a driver with (2010) 12 SCC 190 (2010) 8 SCC 628 PART I the accused. The driver had been rebuked by the employer and was later found to be dead on having committed suicide. A suicide note was relied upon in the FIR, the contents of which indicated that the driver had not been given a fixed vehicle unlike other drivers besides which he had other complaints including the deduction of 15 days' wages from his salary. The suicide note named the accused–appellant. In the decision of a two judge Bench of this Court, delivered by Justice V S Sirpurkar, the test laid down in Bhajan Lal (supra) was applied and the Court held:

¶10. We are convinced that there is absolutely nothing in this suicide note or the FIR which would even distantly be viewed as an offence much less under Section 306 IPC. We could not find anything in the FIR or in the so-called suicide note which could be suggested as abetment to commit suicide. In such matters there must be an allegation that the accused had instigated the deceased to commit suicide or secondly, had engaged with some other person in a conspiracy and lastly, that the accused had in any way aided any act or illegal omission to bring about the suicide.

11. In spite of our best efforts and microscopic examination of the suicide note and the FIR, all that we find is that the suicide note is a rhetoric document in the nature of a departmental complaint. It also suggests some mental imbalance on the part of the deceased which he himself describes as depression. In the so-called suicide note, it cannot be said that the accused ever intended that the driver under him should commit suicide or should end his life and did anything in that behalf. Even if it is accepted that the accused changed the duty of the driver or that the accused asked him not to take the keys of the car and to keep the keys of the car in the office itself, it does not mean that the accused intended or knew that the driver should commit suicide because of this. Dealing with the provisions of Section 306 of the IPC and the meaning of abetment within the meaning of Section 107, the Court observed:

PART I ¶2. In order to bring out an offence under Section 306 IPC specific abetment as contemplated by Section 107 IPC on the part of the accused with an intention to bring about the suicide of the person concerned as a result of that abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for this particular offence under Section 306 IPC. We are of the clear opinion that there is no question of there being any material for offence under Section 306 IPC either in the FIR or in the so-called suicide note. The Court noted that the suicide note expressed a state of anguish of the deceased and ¶ cannot be depicted as expressing anything intentional on the part of the accused that the deceased might commit suicide . Reversing the judgement of the High Court, the petition under Section 482 was allowed and the FIR was quashed.

49 In a concurring judgment delivered by one of us (Dhananjaya Y Chandrachud J) in the decision of the Constitution Bench in Common Cause (supra), the provisions of Section 107 were explained with the following observations:

¶458. For abetting an offence, the person abetting must have intentionally aided the commission of the crime. Abetment requires an instigation to commit or intentionally aiding the commission of a crime. It presupposes a course of conduct or action which (in the context of the present discussion) facilitates another to end life. Hence abetment of suicide is an offence expressly punishable under Sections 305 and 306 IPC.

50 More recently in *M Arjunan vs State (represented by its Inspector of Police)*²⁵, a two judge Bench of this Court, speaking through Justice R. (2019) 3 SCC 315 PART I Banumathi, elucidated the essential ingredients of the offence under Section 306 of the IPC in the following observations:

¶7. The essential ingredients of the offence under Section 306 IPC are: (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied the accused cannot be convicted under Section 306 IPC.

51 Similarly, in another recent judgment of this Court in *Ude Singh and Ors. vs State of Haryana*²⁶, a two judge Bench of this Court, speaking through Justice Dinesh Maheshwari, expounded on the ingredients of Section 306 of the IPC, and the factors to be considered in determining whether a case falls within the ken of the aforesaid provision, in the following terms:

¶38. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act/s of incitement to the commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of

abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behaviour and responses/reactions. In the case of accusation for abetment of suicide, the Court would be looking for cogent and convincing proof of the act/s of incitement to the commission of suicide. In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case.

39. For the purpose of finding out if a person has abetted commission of suicide by another, the consideration would be Criminal Appeal No. 233 of 2010 decided on 25 July 2019 PART I if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above-referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased. Similarly, in *Rajesh vs State of Haryana*²⁷, a two judge Bench of this Court, speaking through Justice L. Nageswara Rao, held as follows:

¶9. Conviction under Section 306 IPC is not sustainable on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused, which led or compelled the person to commit suicide. In order to bring a case within the purview of Section 306 IPC, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must Criminal

Appeal No. 93 of 2019 decided on 18 January 2019 PART I be proved and established by the prosecution before he could be convicted under Section 306 IPC. In a recent decision of this Court in Gurcharan Singh vs State of Punjab²⁸, a three judge Bench of this Court, speaking through Justice Hrishikesh Roy, held thus:

□5. As in all crimes, mens rea has to be established. To prove the offence of abetment, as specified under Sec 107 of the IPC, the state of mind to commit a particular crime must be visible, to determine the culpability. In order to prove mens rea, there has to be something on record to establish or show that the appellant herein had a guilty mind and in furtherance of that state of mind, abetted the suicide of the deceased.

52 In *Vaijnath Kondiba Khandke vs State of Maharashtra and Ors.*²⁹, a two judge Bench of this Court, speaking through Justice U.U. Lalit, dealt with an appeal against the rejection of an application under Section 482 of the CrPC, for quashing an FIR registered under Sections 306 and 506 read with Section 34 of the IPC. A person serving in the office of the Deputy Director of Education Aurangabad had committed suicide on 8 August 2017. His wife made a complaint to the police that her husband was suffering from mental torture as his superiors were getting heavy work done from her husband. This resulted in him having to work from 10 AM to 10 PM and even at odd hours and on holidays. The specific allegation against the appellant was that he had stopped the deceased's salary for one month and was threatening the deceased that his increment would be stopped. This Court noted that there was no suicide note, and the only material on record was in the form of assertions made by the deceased's wife in her report Criminal Appeal No. 40 of 2011 decided on 1 October 2020 (2018) 7 SCC 781 PART I to the police. The Court went on to hold that the facts on record were inadequate and insufficient to bring home the charge of abetment of suicide under Section 306 of the IPC. The mere factum of work being assigned by the appellant to the deceased, or the stoppage of salary for a month, was not enough to prove criminal intent or guilty mind. Consequently, proceedings against the appellant were quashed.

53 On the other hand, we must also notice the decision in *Praveen Pradhan* (supra) where a two judge Bench of this Court, speaking through Justice B.S. Chauhan, dismissed an appeal against the rejection of an application under Section 482 of the CrPC by the High Court for quashing a criminal proceeding, implicating an offence under Section 306 of the IPC. The suicide note which was left behind by the deceased showed, as this Court observed, that □the appellant perpetually humiliated, exploited and demoralised the deceased, who was compelled to indulge in wrongful practices at the workplace, which hurt his self- respect tremendously. The Court noted that the appellant always scolded the deceased and tried to always force the deceased to resign. Resultantly, the Court observed:

□9. Thus, the case is required to be considered in the light of the aforesaid settled legal propositions. In the instant case, alleged harassment had not been a casual feature, rather remained a matter of persistent harassment. It is not a case of a driver; or a man having an illicit relationship with a married woman, knowing that she also had another paramour; and therefore, cannot be compared to the situation

of the deceased in the instant case, who was a qualified graduate engineer and still suffered persistent harassment and humiliation and additionally, also had to endure continuous illegal demands made by the appellant, upon non- fulfilment of which, he would be mercilessly harassed by the appellant for a prolonged period of time. He had also been PART I forced to work continuously for long durations in the factory, vis-à-vis other employees which often even entered to 16-17 hours at a stretch. Such harassment, coupled with the utterance of words to the effect, that, "had there been any other person in his place, he would have certainly committed suicide" is what makes the present case distinct from the aforementioned cases. Considering the facts and circumstances of the present case, we do not think it is a case which requires any interference by this Court as regards the impugned judgment and order [Criminal Miscellaneous Application No. 420 of 2006, decided on 5-1-2012 (Utt)] of the High Court. The appeal is, therefore, dismissed accordingly. The contents of the FIR therefore indicated that the deceased had been subjected to harassment persistently and continuously and this was coupled by words used by the accused which led to the commission of suicide.

54 In Narayan Malhari Thorat vs Vinayak Deorao Bhagat³⁰, this Court, speaking through Justice U.U. Lalit, reversed the judgment of a Division Bench of the High Court which had quashed criminal proceedings in exercise of the jurisdiction under Section 482. This was a case where the FIR was registered pursuant to the information received from the appellant. The FIR stated that the son and daughter-in-law of the appellant were teachers in Zila Parishad School. The respondent used to call the daughter-in-law of the appellant on the phone and used to harass her. Moreover, despite the efforts of the son of the appellant, the respondent did not desist from doing so. This Court noted:

"2. We now consider the facts of the present case. There are definite allegations that the first respondent would keep on calling the wife of the victim on her mobile and keep harassing her which allegations are supported by the statements of the mother and the wife of the victim recorded during investigation. The record shows that 3-4 days prior to the suicide there was an altercation between the victim and (2019) 13 SCC 598 PART I the first respondent. In the light of these facts, coupled with the fact that the suicide note made definite allegation against first respondent, the High Court was not justified in entering into question whether the first respondent had the requisite intention to aid or instigate or abet the commission of suicide.

At this juncture when the investigation was yet to be completed and charge-sheet, if any, was yet to be filed, the High Court ought not to have gone into the aspect whether there was requisite mental element or intention on part of the respondent. The above observations of the Court clearly indicated that there was a specific allegation in the FIR bearing on the imputation that the respondent had actively facilitated the commission of suicide by continuously harassing the spouse of the victim and in failing to rectify his conduct despite the efforts of the victim. 55 Now in this backdrop, it becomes necessary to advert briefly to the contents of the FIR in the present case. The FIR recites that the spouse of the informant had a company carrying on the business of architecture, interior design and engineering consultancy. According to the informant, her husband was over the

previous two years □having pressure as he did not receive the money of work carried out by him . The FIR recites that the deceased had called at the office of the appellant and spoken to his accountant for the payment of money. Apart from the above statements, it has been stated that the deceased left behind a suicide note stating that his □money is stuck and following owners of respective companies are not paying our legitimate dues . Prima facie, on the application of the test which has been laid down by this Court in a consistent line of authority which has been noted above, it cannot be said that the appellant was guilty of having abetted the suicide within the meaning of Section 306 of the IPC. These observations, we must note, are prima facie at this stage since the High Court is PART I still to take up the petition for quashing. Clearly however, the High Court in failing to notice the contents of the FIR and to make a prima facie evaluation abdicated its role, functions and jurisdiction when seized of a petition under Section 482 of the CrPC. The High Court recited the legal position that the jurisdiction to quash under Section 482 has to be exercised sparingly. These words, however, are not meaningless incantations, but have to be assessed with reference to the contents of the particular FIR before the High Court. If the High Court were to carry out a prima facie evaluation, it would have been impossible for it not to notice the disconnect between the FIR and the provisions of Section 306 of the IPC. The failure of the High Court to do so has led it to adopting a position where it left the appellant to pursue his remedies for regular bail under Section 439. The High Court was clearly in error in failing to perform a duty which is entrusted to it while evaluating a petition under Section 482 albeit at the interim stage. 56 The petition before the High Court was instituted under Article 226 of the Constitution and Section 482 of the 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. PART I 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.

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

- (i) The nature of the alleged offence, the nature of the accusation and the severity of the punishment in the case of a conviction;
- (ii) Whether there exists a reasonable apprehension of the accused tampering with the witnesses or being a threat to the complainant or the witnesses;
- (iii) The possibility of securing the presence of the accused at the trial or the likelihood of the accused fleeing from justice;

(iv) The antecedents of and circumstances which are peculiar to the accused;

(v) Whether prima facie the ingredients of the offence are made out, on the basis of the allegations as they stand, in the FIR; and

(vi) The significant interests of the public or the State and other similar considerations.

58 These principles have evolved over a period of time and emanate from the following (among other) decisions: Prahlad Singh Bhati vs NCT, Delhi³¹; Ram Govind Upadhyay vs Sudarshan Singh³²; State of UP vs Amarmani (2001) 4 SCC 280 (2002) 3 SCC 598 PART J Tripathi³³; Prasanta Kumar Sarkar vs Ashis Chatterjee³⁴; Sanjay Chandra vs CBI³⁵; and P. Chidambaram vs Central Bureau of Investigation³⁶. 59 These principles are equally applicable to the exercise of jurisdiction under Article 226 of the Constitution when the court is called upon to secure the liberty of the accused. The High Court must exercise its power with caution and circumspection, cognizant of the fact that this jurisdiction is not a ready substitute for recourse to the remedy of bail under Section 439 of the CrPC. In the backdrop of these principles, it has become necessary to scrutinize the contents of the FIR in the case at hand. In this batch of cases, a prima facie evaluation of the FIR does not establish the ingredients of the offence of abetment of suicide under Section 306 of the IPC. The appellants are residents of India and do not pose a flight risk during the investigation or the trial. There is no apprehension of tampering of evidence or witnesses. Taking these factors into consideration, the order dated 11 November 2020 envisaged the release of the appellants on bail.

J Human liberty and the role of Courts

60 Human liberty is a precious constitutional value, which is undoubtedly

subject to regulation by validly enacted legislation. As such, the citizen is subject to the edicts of criminal law and procedure. Section 482 recognizes the inherent power of the High Court to make such orders as are necessary to give effect to the provisions of the CrPC or prevent abuse of the process of any Court or otherwise to secure the ends of justice. Decisions of this court require the High (2005) 8 SCC 21 (2010) 14 SCC 496 (2012) 1 SCC 40 Criminal Appeal No. 1605 of 2019 decided on 22 October 2019 PART J Courts, in exercising the jurisdiction entrusted to them under Section 482, to act with circumspection. In emphasising that the High Court must exercise this power with a sense of restraint, the decisions of this Court are founded on the basic principle that the due enforcement of criminal law should not be obstructed by the accused taking recourse to artifices and strategies. The public interest in ensuring the due investigation of crime is protected by ensuring that the inherent power of the High Court is exercised with caution. That indeed is one – and a significant – end of the spectrum. The other end of the spectrum is equally important: the recognition by Section 482 of the power inhering in the High Court to prevent the abuse of process or to secure the ends of justice is a valuable safeguard for protecting liberty. The Code of Criminal Procedure of 1898 was enacted by a legislature which was not subject to constitutional rights and limitations; yet it recognized the inherent power in Section 561A. Post- Independence, the recognition by Parliament³⁷ of the inherent power of the High Court must be construed as an aid to

preserve the constitutional value of liberty. The writ of liberty runs through the fabric of the Constitution. The need to ensure the fair investigation of crime is undoubtedly important in itself, because it protects at one level the rights of the victim and, at a more fundamental level, the societal interest in ensuring that crime is investigated and dealt with in accordance with law. On the other hand, the misuse of the criminal law is a matter of which the High Court and the lower Courts in this country must be alive. In the present case, the High Court could not but have been cognizant of the specific ground which was raised before it by the appellant that he was being Section 482 of the CrPC 1973 PART J 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.

61 Mr Kapil Sibal, Mr Amit Desai and Mr Chander Uday Singh are undoubtedly right in submitting that the procedural hierarchy of courts in matters concerning the grant of bail needs to be respected. However, there was a failure of the High Court to discharge its adjudicatory function at two levels – first in PART J declining to evaluate prima facie at the interim stage in a petition for quashing the FIR as to whether an arguable case has been made out, and secondly, in declining interim bail, as a consequence of its failure to render a prima facie opinion on the first. The High Court did have the power to protect the citizen by an interim order in a petition invoking Article 226. Where the High Court has failed to do so, this Court would be abdicating its role and functions as a constitutional court if it refuses to interfere, despite the parameters for such interference being met. The doors of this Court cannot be closed to a citizen who is able to establish prima facie that the instrumentality of the State is being weaponized for using the force of criminal law. Our courts must ensure that they continue to remain the first line of defense against the deprivation of the liberty of citizens. Deprivation of liberty even for a single day is one day too many. We must always be mindful of the deeper systemic implications of our decisions. 62 It would be apposite to extract the observations made, albeit in a dissenting opinion, by one of us (Dhananjaya Y Chandrachud, J.) in a decision of a three judge bench in *Romila Thapar vs Union of India*³⁸:

□[T]he basic entitlement of every citizen who is faced with allegations of criminal wrongdoing, is that the investigative process should be fair. This is an integral component of the guarantee against arbitrariness under Article 14 and of the right to

life and personal liberty under Article 21. If this Court were not to stand by the principles which we have formulated, we may witness a soulful requiem to liberty. (2018) 10 SCC 753 PART J The decision was a dissent in the facts of the case. The view of the leading majority judgment is undoubtedly the view of the court, which binds us. However, the principle quoted above is in line with the precedents of this court.

63 More than four decades ago, in a celebrated judgment in State of Rajasthan, Jaipur vs Balchand³⁹, Justice Krishna Iyer pithily reminded us that the basic rule of our criminal justice system is ‘bail, not jail’⁴⁰. 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 (1977) 4 SCC 308 These words of Justice Krishna Iyer are not isolated silos in our jurisprudence, but have been consistently followed in judgments of this Court for decades. Some of these judgments are: State of U.P. vs Amarmani Tripathi, (2005) 8 SCC 21 and Sanjay Chandra vs CBI, (2012) 1 SCC 40. PART J eloquent expression. The remedy of bail is the ‘solemn expression of the humaneness of the justice system’⁴¹. 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. 64 We would also like to take this opportunity to place on record data sourced from the National Judicial Data Grid (NJDG) on the number of bail applications currently pending in High Courts and District Courts across India:

Pendency before the High Courts Bail Applications 91,56,842 Criminal Matters (Writ Petitions, Case/Petitions, Appeals, 12,66,133 Revisions and Applications) Pendency before the District Courts Bail Applications 1,96,861

65 The data on the NJDG is available in the public realm. The NJDG is a valuable resource for all High Courts to monitor the pendency and disposal of Arghya Sengupta and Ritvika Sharma, ‘Saharashri and the Supremes’, (The Wire, 23 June 2015) available at <<https://thewire.in/economy/saharashri-and-the-supremes>> For nine High Courts, no separate data is available in relation to pending bail applications, which are quantified as pending

applications simpliciter. Further, for two High Courts, the data is only available for their principal bench and not their circuit benches. More granulated data can be accessed at the website of the NJDG, available at <www.njdg.ecourts.gov.in>.

PART J cases, including criminal cases. For Chief Justices of the High Courts, the information which is available is capable of being utilized as a valuable instrument to promote access to justice, particularly in matters concerning liberty. The Chief Justices of every High Court should in their administrative capacities utilize the ICT tools which are placed at their disposal in ensuring that access to justice is democratized and equitably allocated. Liberty is not a gift for the few. Administrative judges in charge of districts must also use the facility to engage with the District judiciary and monitor pendency. As the data on the NJDG makes clear, there is a pressing need for courts across the judicial hierarchy in India to remedy the institutional problem of bail applications not being heard and disposed of with expedition. Every court in our country would do well to remember Lord Denning's powerful invocation in the first Hamlyn Lecture, titled 'Freedom under the Law' 43:

□Whenever one of the judges takes seat, there is one application which by long tradition has priority over all others. The counsel has but to say, □My Lord, I have an application which concerns the liberty of the subject', and forthwith the judge will put all other matters aside and hear it. ... It is our earnest hope that our courts will exhibit acute awareness to the need to expand the footprint of liberty and use our approach as a decision-making yardstick for future cases involving the grant of bail.

Sir Alfred Denning, Freedom under the Law, the Hamlyn Lectures, First Series, available at <https://socialsciences.exeter.ac.uk/media/universityofexeter/schoolofhumanitiesandsocialsciences/law/pdfs/Freedom_Under_the_Law_1.pdf>.

PART K

66 Since the proceedings are pending before the High Court, we clarify that the observations on the facts contained in the present judgment are confined to a determination whether a case for grant of interim protection was made out. Equally, the observations which are contained in the impugned order of the High Court were also at the interim stage and will not affect the final resolution of the issues which arise and have been raised before the High Court.

K Conclusion

67 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 November 2020:

9 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.

10 The concerned jail authorities and the Superintendent of Police, Raigad are directed to ensure that this order is complied with forthwith.

11 A certified copy of this order shall be issued during the course of the day PART K
68 The interim protection which has been granted to the above accused by the order dated 11 November 2020 shall continue to remain in operation pending the disposal of the proceedings before the High Court and thereafter for a period of four weeks from the date of the judgment of the High Court, should it become necessary for all or any of them to take further recourse to their remedies in accordance with law.

69 The appeals are accordingly disposed of.

70 Pending application(s), if any, stand disposed of.

.....J. [Dr Dhananjaya Y Chandrachud]
.....J. [Indira Banerjee] New Delhi;

November 27, 2020.