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WP-27476-2025

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

&

HON'BLE SHRI JUSTICE RATNESH CHANDRA SINGH BISEN

ON THE 18th OF MAY, 2026WRIT PETITION No. 27476 of 2025*SHRI HAJI ABDUL RAJJAK**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

Shri Mohd. Ali, learned Senior Advocate assisted by Shri Sharik Akeel Farooqui and Ahmad Shahid Hushain, Advocate for the petitioner.

Shri Prashant Singh, learned Advocate General assisted by Shri Bramhadatt Singh, Additional Advocate General for respondents No.1 to 7-State.

Shri Sanjay K. Agrawal, learned Senior Advocate assisted by Shri Mihir Agrawal, Advocate for the respondent No.8.

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ORDER

Per. Justice Vivek Agarwal

This writ petition under Article 226 of the Constitution of India is filed by the petitioner-Haji Abdul Razzak S/o Late Shri Abdul Wahid, being aggrieved of the action of respondents in imposing provisions of National Security Act, 1980 (hereinafter referred to as the 'NSA' for short) on the petitioner and, thereafter, successive criminal cases are being registered against the petitioner while he is in prison so to curtail his freedom and keep him perpetually imprisoned for political reasons best known to the authorities. In this backdrop, petitioner has prayed for following reliefs :-

"Therefore, it is most humbly prayed that this Hon'ble Court



may kindly be pleased to issue a writ/writs, order/orders, direction/directions in the nature of habeas corpus, certiorari, mandamus and prohibition:

(i) To call for the entire record of the criminal cases described in the "FIRST SERIES OF ATROCITIES (False Criminal Cases)" of Para 5.4(Supra),

(ii) To direct the respondents and jail authorities to produce petitioner before this Hon'ble Court and to release him from the court itself with direction to prevent respondents from arresting the petitioner in the pending criminal cases until and unless he exhausts all of the remedies of anticipatory bail from Session Court to the Apex Court of the Country,

(iii) To direct the respondents to protect the life of the petitioner after his release from jail.

(iv) To direct the respondents to disclose the petitioner and his family all of the pending criminal cases where in his arrest is required by police so that the petitioner may take legal steps for securing his personal liberty,

(v) To direct the respondents to inform the petitioner the details of the newly registered crime, if any, within 24 hours of the registration of the crime in any police station of the State of Madhya Pradesh,

(vi) To award compensation against the illegal detention/atrocities by the State.



(vi-a) To quash all of the arrest of petitioner in connection of the crimes registered against the petitioner,

(vii) To grant any other relief, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case including cost of the litigation in favor of the petitioner."

2. Petitioner's contention is that earlier his wife Smt. Subena Begum had filed Writ Petition No.36218/2024, which was withdrawn reserving the rights of the detenu to initiate appropriate proceedings in accordance with law. It is submitted that liberty was granted to the petitioner vide order dated 08.07.2025 to take recourse as per law.

3. Learned Senior Advocate for the petitioner submits that on 27.08.2021, at about mid-night, petitioner was arrested from his house which amounts to violation of his fundamental rights. Reliance is placed on the judgment of Supreme Court in *Kharak Singh Vs. State of U.P. and others (AIR 1963 SC1295)*, *Vihaan Kumar Vs. The State of Haryana and another (2025 SCC Online SC 269)* and *K.S. Puttaswamy Vs. Union of India [(2017) 10 SCC 1]*.

4. In *Kharak Singh* (supra), the Hon'ble Supreme held that the word "life" in Article 21 means not merely the right to the continuance of a person's animal existence, but a right to the possession of each of his organs- his arms and legs etc. It is held that right of personal liberty in Article 21 may be defined as right of an individual to be free from restrictions or encroachments on his person whether those restrictions or encroachments are



directly imposed or indirectly brought about by calculated measures.

5. Similarly, it is submitted that in *Vihaan Kumar (supra)*, Hon'ble Supreme Court in paras 13, 14, 16 and 24, stated that the grounds of detention have to be served on the detenu in the language which is understood by the detenu. They are required to be explained in the language which is understood by the detenu. It is held that mere explaining the grounds of detention in the language understood by the detenu is not a sufficient compliance of the mandate of Article 22(5) of the Constitution of India which requires that the grounds of detention must be "communicated" to the detenu. "Communicate" is a strong word. It means that sufficient knowledge of the basic facts constituted "grounds" should be imparted effectively and fully to the detenu in writing in a language which he understands. The whole purpose of communicating "grounds" to the detenu is to enable him to make a purposeful and effective representation. If the grounds are only verbally explained to the detenu and nothing in writing is left with him in a language which he understands, then that purpose is not served and the Constitutional mandate in Article 22 (5) of the Constitution is infringed. Reference is made to the judgment of Hon'ble Supreme Court in *Hari Kisan Vs. State of Maharashtra (AIR 1962 SC 911)* and also to the judgment of Hon'ble Supreme Court in *Hadibandhidas Vs. District Magistrate (AIR 1969 SC 43)*, has held as under:-

"Thus, the requirement of informing the person arrested of the grounds of arrest is not a formality, but a mandatory Constitutional requirement."



Thus, it is held that information about arrest is completely different from information about the grounds of arrest. Mere information of arrest will not amount to furnishing grounds of arrest. "

6. Similarly in *K.S. Puttaswamy* (supra), reference is made to paras 316, 317, 318 and 319, the Hon'ble Supreme Court held that :-

"Ratio of law laid down in *M.P. Sharma Vs. Satish Chandra* (AIR 1954 SC 300), does not specifically adjudicate on whether a right to privacy would arise from any of the other provisions of the rights guaranteed by Part-III including Article 19 & 21 of the Constitution of India. The observation that privacy is not a right guaranteed by the Indian Constitution is not reflective of the correct position and to this extent Hon'ble Supreme Court overruled M.P. Sharma's case (supra). It noted that Kharak Singh (supra) has correctly held that content of the expression "life" under Article 21, means not merely the right to a person's "animal existence" and that the expression "personal liberty" is a guarantee against invasion into the sanctity of a person's home or an inclusion into personal security. Kharak Singh (supra) correctly laid down that the dignity of an individual must lend content to the meaning of "personal liberty."

It is further held that "life" and "personal liberty" are



inalienable rights. These are rights which are inseparable from a dignified human existence. The dignity of an individual equality before human beings and the quest for liberty are the foundational pillars of the Indian Constitution. The "life" and "liberty" are not creations of the Constitution. These rights are recognized by the Constitution as inherent in each individual as an intrinsic and inseparable part of the human element which dwells with it."

7. Shri Mohd. Ali, learned Senior advocate for the petitioner submits that petitioner is aggrieved of successive actions of the respondents/State in keeping him under the illegal detention. In the intervening night of 26.08.2021 and 27.08.2021, he was approached at his house and apprehended for a case registered at Police Station Vijay Nagar, Jabalpur, for offence under Section 307 of the Indian Penal Code. Thereafter, District Administration invoked NSA on 27.08.2021, which was revoked on 06.10.2021 as its imposition was not approved by the State Level Advisory Board. Second NSA was imposed on 22.04.2022, which was revoked on 12.08.2022. Thereafter, third NSA was imposed on 17.01.2023, which was revoked on 03.03.2023. All these three impositions of NSA were not approved by the State Legal Advisory Board as constituted under Section 10 of the NSA, 1980.

8. Thus, it is submitted by Shri Mohd. Ali, learned Senior Advocate for the petitioner that intention of the State Government is apparent that after Advisory Board had not approved imposition of first detention order under



NSA, then after few months of its revocation, second detention order was passed and when it was revoked, then within a short span, third detention order was passed.

9 . It is also submitted that when petitioner exercised his legal right and obtains bail from the competent Court, then in order to not to allow him to come out of prison, NSA was imposed as a tool to keep him in the prison, as there was no justification to otherwise keep him confined in the prison.

10. It is also submitted that petitioner was never communicated grounds for arrest, reasons for arrest and successive registration of criminal cases despite the fact that petitioner was in prison. Though successive arrests have been so designed to frame the petitioner so that he remains in custody in perpetuity, inasmuch as, all these cases have been registered subsequently are pertaining to the period prior to his arrest on 26/27.08.2021.

11. It is also submitted that mining leases were allotted in favour of the petitioner, but they were cancelled at the behest of certain private individuals. Arm's licenses in the name of petitioner's wife were cancelled and bank accounts not only of the petitioner, but of his kith and kin were seized. They were released as per the directives of the Court. Thus, it is pointed out that all the acts of the respondents are violative of Article 19(1) (d), so also Article 14, 21, 22 and 322 of the Constitution of India.

12 . Reliance is placed on the judgment of Supreme Court in *Madhu Limaye and others [(1969) 1 SCC 292]*, on para 11 and 14. The Hon'ble Supreme Court held that no proper cause was shown in the return in declining the prayer of *Madhua Limaye* and other arrested persons for



releasing them on the ground that there was non-compliance with the provisions of Article 22(1) of the Constitution. In *Ramnarayan Singh's case (AIR 1953 SC 277)*, it is laid down that the Court must have regard to the legality or otherwise of detention at the time of the return.

13. Similarly, it is held that that vide proposition No.3 in *Christie and another Vs. Leachinsky (1947 1 All ELR 567)*, wherein it is held that authority must demonstrate that the arrested person had knowledge of the general nature of the alleged offences for which they had been arrested. Thus, it is pointed out that these requirements are not fulfilled, then arrest of the petitioner is uncalled for.

14. It is also submitted that Hon'ble Supreme Court has deprecated oral communication of grounds and has held that to be no communication.

15. Reliance is placed on the judgment of Supreme Court in *Writ Petition (Cr.) No.55/2026 (Binay Kumar Singh and another Vs. State of Jharkhand)*, wherein Hon'ble Supreme Court in para 12, held that "successive registration of FIRs were to initiate to keep petitioner No.1 within the custody and we are also fortified by the fact that on grant of bail by this Court on 17.12.2025, petitioner No.1 has been remanded to custodial interrogation by order dated 19.12.2025 passed by the jurisdictional Magistrate. These continued acts and conduct of the prosecution would clearly establish that the respondents have consciously ensure that the petitioner No.1 is kept in custody.

16. Learned Senior Advocate for the petitioner also places reliance on the judgment of *Manoj Vs. State of M.P. [(1999) 3 SCC 715]* and referring to para 12, where it is held that the condition that a person arrested and detained



in custody shall be produced before the nearest Magistrate within 24 hours of such arrest is concerned as per Article 22 of the Constitution, only that time can be excluded from the said period of 24 hours as was necessary for going from the place of arrest to the Court of the nearest Magistrate. Apart from that other two contingencies can be arrest of "enemy alien" and in case of preventive detention.

17. Similarly, reliance is placed on the Division Bench judgment of M.P. High Court in *Chanda Ajmera Vs. State of M.P. (Writ Petition No.7399/2020)*, to point out that a person is required to be produced before the Magistrate even when arrest is made while a person is in custody. Thus, it is pointed out that in *Chanda Ajmera (supra)*, Division Bench of this High Court noted that even in case of an arrest of a person in custody, Article 22 is required to be observed.

18. Reliance is also placed on the judgment of Hon'ble Supreme Court in *Wajid and others Vs. State of Uttar Pradesh and others, decided on 22.08.2025, in Writ Petition (Cri.) No.450/2024*, to point out that Hon'ble Supreme Court released the petitioner on bail.

19. As far as respondent No.8, is concerned, learned Senior counsel for the petitioner admits on suggestion being given by Shri Sanjay K. Agrawal, learned Senior Advocate, appearing for respondent No.8, that he is not making any allegation against respondent No.8 and further has not raised any arguments against him and further that he is not seeking any relief against the respondent No.8.

20. Shri Ali, learned Sr. Advocate for the petitioner places reliance on the



judgment of Hon'ble Supreme Court in the case of A.K. Gopalan Vs. Government of India AIR 1966 SC 816 on the aspect of Habeas Corpus petition and legality of detention, wherein Hon'ble Supreme Court has held that Habeas Corpus petitions made to the jail authorities reaching Supreme Court after four weeks was not proper and the delay was inordinate. Supreme Court held that petitions should be sent directly and at once to Supreme Court and to High Courts where they are addressed to them.

21. Reliance is also placed on the judgment of Hon'ble Supreme Court in the case of *Niranjan Singh Vs. State of Madhya Pradesh (1972)2 SCC 542*, wherein Hon'ble Supreme court held that in Article 22(5) of the Constitution of India there is no bar of *res judicata* to a petition under Article 32 in a case where earlier the High Court had dismissed the petition under Article 226 of the Constitution of India. It is also held that the representation should be considered by the appropriate authority as expeditiously as possible and such consideration is independent of any action by the Advisory Board. There should be no delay in the matter of consideration. The appropriate Government is to exercise its opinion and judgment on the representation before sending the case alongwith the detenu's representation to the Advisory Board.

22. Reliance is also placed on the judgment of Hon'ble Supreme Court in the case of *Mrs. Maneka Gandhi Vs. Union of India & Ors. (1978)1 SCC 248*, wherein it is held that Fundamental Rights are not distinct and mutually exclusive rights. Each freedom has different dimensions and merely because the limits of interference with one freedom are satisfied, the law is not freed



from a necessity to meet the challenge of another guaranteed freedom. Thus, it is pointed out that since there is violation of Article 22(5) of the Constitution of India that is to be considered by this Court.

23. Reliance is placed on the judgment of Supreme Court in the case of *Smt. Icchu Devi Choraria Vs. Union of India & Ors. (1980) 4 SCC 531*, wherein it is held that in order to enable the detinue to make an effective representation against his detention, detaining authority must keep ready all copies of documents, statements and other materials relied upon or referred to in the grounds of detention and supply the same to the detinue on demand within the time stipulated in the concerned statute.

24. Reliance is also placed on the judgment of Hon'ble Supreme Court in the case of *Naga People's Movement of Human Rights Vs. Union of India (1998)2 SCC 109*, referring to para-49 Hon'ble Supreme court has held that the power conferred under Clause (c) of Section 4 of the Armed Forces (Special Powers) Act, 1958 read with Section 5 of the said Act has to be exercised in consonance with the overriding requirements of clauses (1) and (2) of Article 22 of the Constitution, which means that the person who is arrested by an officer specified in Section 4 has to be made over to the Officer-in-Charge of the nearest police station together with a report of the circumstances occasioning the arrest with the least possible delay so that the person arrested can be produced before the nearest Magistrate within a period of 24 hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate and no such person can be detained in custody beyond said period without the authority of a



Magistrate.

25. Reliance is also placed on the judgment of Hon'ble Supreme Court in the case of *M.C. Abraham & Another Vs. State of Maharashtra & Ors. (2003)2 SCC 649*, wherein Hon'ble Supreme Court has held that in the matter of power of arrest under Section 41 of the Criminal Procedure Code, 1973 discretionary power of investigating agency should not be exercised mechanically but should be exercised cautiously and with circumspection having regard to the nature of the offence alleged and the type of person accused of having committed a cognizable offence.

26. Reliance is placed on the judgment of Supreme Court in the case of *Union of India Vs. Paul Manickam & another (2003)8 SCC 342*. Placing reliance on the para 7 of the judgment it is pointed out that "*the writ of Habeas Corpus called by Blackstone as the great and efficacious writ in all manner of illegal confinement, really represents another aspect of due process of law. As early as 1839 it was proclaimed by Lord Denman that it had for ages been effectual to an extent never known in any other country. Lord Halsbury, L.C. Stated in Cox v. Hakes, (1890) 15 AC 506, that the right to an instant determination as to the lawfulness of an existing imprisonment is the substantial right made available by this writ. Article 22 of the Constitution confers four fundamental rights on every person, except in two cases mentioned in Clause (3), as essential requirements and safeguards to be followed when it is necessary to deprive any person, for any cause whatsoever and for, however brief a period of his personal liberty by placing him under arrest or keeping him in detention. Those are (i) to be informed,*



as soon as may be, of grounds of such arrest; (ii) not to be denied the right to consult and to be defended by a legal practitioner of his choice; (iii) to be produced before the nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate, (iv) not to be detained in custody beyond the said period of twenty-four hours without the authority of a Magistrate, Clauses (1) and (2) contain the guarantee of the four fundamental rights enumerated above, Clause (3) contains two exceptions and provides that the constitutional guarantees do not apply to (a) enemy aliens, and (b) persons arrested or detained under any law providing for preventive detention. Clauses (4) and (7) are devoted to laying down certain fundamental principles as to preventive detention and guaranteeing certain fundamental rights to persons who are arrested under any law for preventive detention. The fundamental rights guaranteed by Clauses (4) to (7) to persons detained under any law for preventive detention relate to the maximum period of detention, the provision of an Advisory Board to consider and report on the sufficiency of the cause for detention and the right to have the earliest opportunity of making a representation against the order of detention. Preventive detention is an anticipatory measure and does not relate to an offence while the criminal proceedings are to punish a person for an offence committed by him. They are not parallel proceedings. The object of the law of preventive detention is not punitive but only preventive. It is resorted to when the Executive is convinced on the materials available and placed before it that such detention is necessary in order to prevent the



person detained from acting in a matter prejudicial to certain objects which are specified by the law. The action of Executive in detaining a person being only precautionary, the matter has necessarily to be left to the discretion of the Executive Authority. It is not practicable to lay down objective rules of conduct, the failure to conform to which alone should lead to detention. In case of preventive detention of a citizen, Article 22(5) of the Constitution enjoins the obligation on the appropriate Government of the Detaining Authority to accord the detenu the earliest opportunity to make a representation and to consider that representation speedily. The right to make a representation implies right of making an effective representation. It is the constitutional right of the detenu to get all the ground on which the order has been made. As has been said by Benjamin Cardozo, "A Constitution states or ought to state not rules for the passing hour but the principles for an expanding future". The concept of grounds used in the context of detention in Article 22(5) has to receive an interpretation which will keep it meaningful in tune with contemporary notions of the realities of the society, and the purposes of the Act in the light of concepts of liberty; and fundamental freedoms. While the expression "grounds" for that matter includes not only conclusions of fact but also all the basic facts on which those conclusions were founded; they are different from subsidiary facts or further particulars of the basic facts. The detenu is entitled to obtain particulars as to the grounds which will enable him to make an effective representation against the order of detention".

27. Reliance is also placed on the judgment of Hon'ble Supreme Court in



the case of *Lalita Kumar Vs. Government of Uttar Pradesh & Ors. (2014)2 SCC 1*, to point out that if there are doubts in regard to commission of cognizable offence then preliminary inquiry is permissible but in the present case, no preliminary inquiry was ever conducted before registering successive FIR against the petitioner.

28. Reliance is also placed on the judgment of Hon'ble Supreme Court in the case of *Arnesh Kumar Vs. State of Bihar & another (2014)8 SCC 273*, wherein it is held that while exercising power of arrest without warrant balance between individual liberty and societal order is to be maintained.

29. Reliance is also placed on the judgment of Hon'ble Supreme Court in the case of *Arnab Manoranjan Goswami Vs. State of Maharashtra & Ors. 2021(2) SCC 427*, wherein it is held that "Rule is Bail and not Jail".

30. Reliance is also placed on the judgment of Hon'ble Supreme Court in the case of *Satender Kumar Antil Vs. Central Bureau of Investigation & another (2022)10 SCC 51* on the aspect of bail and arrest in cognizable offence.

31. Reliance is also placed on the judgment of Hon'ble Supreme Court in the case of *Pankaj Bansal Vs. Union of India (2024)7 SCC 576*, wherein in para 29 and 38, Hon'ble Supreme Court has noted referring to its earlier judgment in the case of *Ravi Yashwant Bhoir Vs. Collector (2012)4 SCC 407*, that when *malafide* power is exercised for the "purposes foreign to those for which it is in law intended", then passing of an order for unauthorize purpose constitutes malice in law.

32. Reliance is also placed on the judgment of Hon'ble Supreme Court in



the case of *Bhim Singh, MLA Vs. State of J & K & Ors. (1985)4 SCC 677*, wherein it is held that Articles 21 & 22 (2) gets violated with the *malafide* conduct of Police Officers and casual and irresponsible attitude of Magistrate and Sub-Judge or their collusion with Police in passing orders of Police remand. It is also held that the Police Officers should have greatest regard for personal liberty of citizens. Their *malafide*, high-handed and authoritarian conduct in depriving the personal liberty of a person strongly condemned.

33. Reliance is also placed on the judgment of Hon'ble Supreme Court in the case of *D.K. Basu Vs. State of West Bengal (1997) 1 SCC 416*, where Hon'ble Supreme Court has dealt with the aspect of transparency of action and accountability as two safeguards against abuse of power in the matter of custodial violence and in case of his death in custody and has held that in such eventuality, family members of the affected person are entitled to compensation.

34. Reliance is also placed on the judgment of Hon'ble Supreme Court in the case of *Prabir Purkayastha Vs. State (NCT of Delhi) (2024)8 SCC 254* on the aspect of Article 22(1) that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest.

35. Thus, in the aforesaid backdrop, on one of the occasions, when this Court specifically asked the learned Senior Advocate for the petitioner on an issue being raised by the learned Advocate General as to the maintainability of this petition seeking relief in the nature of issuance of Habeas Corpus,



Shri Mohd. Ali, learned Senior Advocate, admitted that through this Writ Petition, he is in fact seeking a writ of Habeas Corpus. Therefore on an objection being raised by learned Advocate General, matter was placed before Hon'ble the Chief Justice i.e. Division Bench-I, which vide order dated 06.04.2026, on the ground that this Bench had heard the matter and spent substantial time on this matter placed this matter before this Court itself despite the fact that roster for issuance of writ of Habeas Corpus was with the Division Bench-I at the relevant time.

36. The arguments advanced on behalf of the learned Advocate General is that writ of Habeas Corpus is not maintainable as held by the Hon'ble Supreme Court in *State of Madhya Pradesh and others Vs. Kusum Sahu in Cr.A.No.4710 of 2025, decided on November, 3, 2025*, wherein it is held that:-

"Learned counsel for the petitioners submitted that the impugned order passed by the High Court in exercise of its habeas corpus, jurisdiction is totally erroneous. The bail applications filed by the respondents were dismissed by the High Court. It was thereafter that a writ petition of habeas corpus was filed by the respondents even having grievance against rejection of the bail orders.

A perusal of the impugned order, prima facie, shocks our conscience seeing the manner in which jurisdiction has been exercised by the High Court.

Issue notice to the respondent returnable on 18th August, 2025.



In the meantime, operation of the impugned order shall remain stayed."

Thereafter, Hon'ble Supreme Court has held as under :-

"15. A perusal of the impugned order passed by the High Court shows that the factum of rejection of four bail applications filed on behalf of accused/Jibrakhan Lal Sahu, father of the respondent, has been noticed. The argument raised by the learned counsel for the respondent/Kusum Sahu before the High Court was that the orders rejecting bail application of her father are no less than illegal orders of continuing detention. Though the rejection of bail by the High Court can be challenged before this Court, yet a *habeas corpus* petition was filed. Despite objection of the maintainability of the petition raised by the State, the High Court allowed the same. It is specifically noticed by the High Court that the orders passed by the High Court rejecting bail of the accused can be challenged before the higher court only. The facts of the case on merits were notice and examined by the High Court and after going through the same and recording that the parties before the Court had no finances to approach the Supreme Court and are facing mental agony, the High Court found that it was a fit case for exercise of jurisdiction under Article 226 of the Constitution of India. Finally, the Authorities were directed to release Jibrakhan Lal Sahu.

16. The facts of the case, as noticed above, in brief, indicate



that the manner in which the case has been dealt with really shocks the conscience of this Court. It is a case where accused was arrested and filed four bail applications before the High Court, which were rejected. Despite this, in a habeas corpus petition filed by his daughter, his custody has been held to be unlawful and he was directed to be released while examining the case on merits as if the Court was hearing appeal against the order rejecting the bail application. The process followed is totally unknown to law. Lest the High Court starts following the impugned order as a precedent to scuttle the due process of law, to nip the evil in the bud, we hold that custody of an accused in a criminal case registered against him cannot be held to be unlawful especially when his bail applications have been dismissed. In the case at hand, it is not disputed that Jibrakhan Lal Sahu, father of the respondent herein, is an accused in a criminal case registered against him in which charge sheet has also been filed.

17. For the reasons mentioned above, the appeal is allowed. The accused/Jibrakhan Lal Sahu is already in custody. The impugned order passed by the High Court is set aside.

18. We make it clear that whenever bail application is filed by the accused/Jibrakhan Lal Sahu, the same may be considered on its own merits by the court concerned."

37. Thus, it is pointed out that this writ petition in the form and nature of



relief seeking writ of habeas corpus is not maintainable under the facts and circumstances of the case.

38. It is also pointed out that in SLP (Cri) No(s). 271/2026, arising out of M.Cr.C.No.21878/2025, the Hon'ble Supreme Court observed that the prosecution shall complete its evidence within two months before the learned trial Court with the cooperation of the petitioner and then listed the matter on 28.02.2026.

39. Learned Advocate General also places reliance on order dated 19.11.2025, passed in *Writ Petition No.15906/2025 (Ramnivas Vs. State of M.P. and others)*, to point out that in paras 3 to 9, it is held as under :-

"3. As per the petitioner, before arresting petitioner's brother, arresting officer did not follow the procedure and did not inform the petitioner's brother regarding his rights and thereafter he was remanded to judicial custody and his bail application was originally dismissed by Sessions Court, and thereafter, by High Court thrice as withdrawn by order dated 22.11.2024 passed in M.Cr.C. no. 40688/2024, 10.02.2025 in M.Cr.C. no. 662/2025 and 08.04.2025 in M.Cr.C. no. 8179/2025 and the freedom of his brother guaranteed by Constitution of India has been infringed as he possesses an inalienable right to oversee his legal defence and present his case effectively and by repeated denial of bail applications, resulting in his prolonged incarceration, fundamentally undermines this crucial legal entitlement.

4. Reliance was placed on the judgment dated 03.10.2024 of a



Division Bench of this Court in W.P. No. 24337 of 2024 (Kusum Sahu vs. State of MP and ors.) whereby the coordinate Bench exercising powers under Article 226 of the Constitution of India had ordered release of the detenu on bail, holding as under :

“This petition under Article 226 of the Constitution of India seeking Writ of Habeas Corpus has been filed by the petitioner aggrieved by the Order dated 23.01.2024 passed in M.Cr.C.No.58100/2023; Order dated 05.04.2024 passed in M.Cr.C.No.9299/2024; Order dated 14.03.2024 passed in M.Cr.C. No. 10613/2024 and Order dated 29.05.2024 passed in M.Cr.C.No.19661/2024.

2. The petitioner is daughter of Jibrakhan Lal Sahu, who is accused in Crime No.157/2021, registered at Police Station Bagsewania, for the offences punishable under Sections 420 and 409 of I.P.C. The said FIR is unnamed and has been registered against petitioner's father on false allegations, as stated in the present petition, of having committed Cheating and Criminal Breach of Trust and thus, misappropriation of Rs.1,98,000/- of various investors while acting as Director of the Company, namely, Suvidha Land Developers India Pvt. Ltd.

3. The case of the petitioner herein is that the father of the petitioner is neither a Director in the aforesaid Company nor Managing Director nor has collected any money from any of the complainants.



4. Shri Amitabh Gupta, learned counsel appearing on behalf of the petitioner submits that the father of the Petitioner is in custody since the date of his arrest i.e. 12.12.2023. The successive bail applications have been filed and rejected by recording incorrect facts which are absolutely de-hors the record filed by the police in the form of charge sheet as well as the records of the erring company filed in support of the bail applications. It is averred that the father of petitioner had filed four bail applications seeking his release from illegal detention under Section 439 of Cr.P.C. which have been dismissed. The Order rejecting the bail applications of father of the petitioners are no less than illegal Orders of continuing detention. Hence, the present petition deserves to be allowed.

11. Thereafter, pursuant to filing of the charge sheet, second application for grant of regular bail was filed before the learned single Judge of this Court vide M.Cr.C.No.9299/2024 by disputing the submission of learned Public Prosecutor that the petitioner was working as Managing Director of the Company and by quoting the scheme of doubling of the money deposited within a period of five years, cheated Rupees Two Crore Fifteen Lacs and Sixty Five Thousand from the innocent investors. However, the petitioner and her mother, being confounded by the contents of the Order, filed third application for bail vide M.Cr.C.No.10613/2024. But, this



application also met the same fate as earlier, with the same observation recorded by the learned Single Judge. The fourth application also met the same fate.

12. Thus, the father of the petitioner had two options, one to file the present petition and the second to challenge the rejection of the bail Orders before the Hon'ble Supreme Court.

13. It is not in dispute that the respondent/State failed to satisfy this Court on what grounds they made statement before the learned Single Judge that father of the Petitioner was Director/Managing Director.

14. Learned counsel for the respondent/State has drawn the attention of this Court to page 124 of the petition, wherein Para-34 of the Order passed by Securities and Exchange Board of India (SEBI) mentions the names of four Directors, namely, Shri Rajendra Karn Rajpoot, Shri Vinod Kumar Shankhwar, Shri Pardeshi Ram and Shri Jagdish Biswas. But the fact remains that the father of the petitioner is neither Director nor the Managing Director.

18. No doubt, against a bail Order, the higher Court can be approached. In the present case also, the petitioner could have approached the Supreme Court but a person who is having equity share of Rs. 6,250/- only and belongs to a lower strata of the society, has no courage/finances to approach the Supreme Court



by engaging a private counsel; and is facing mental agony of rejection of multiple bail applications on the false averments/allegations, as apparent on the fact of the record by the concerned Police Station. Therefore, we find that since the father of the petitioner is in illegal detention, it is a fit case to exercise power under Article 226 of the Constitution of India to entertain this petition and pass orders.

19. Accordingly, in the peculiar facts of the present case, we hereby allow the present petition directing the concerned jail authorities to release the father of the petitioner forthwith subject to his furnishing a personal bond of Rs.5,000/- with one surety of the like amount to the satisfaction of the trial Court."

5. The stand of the State was that since the corpus had been incarcerated by following due process of law, therefore, a petition seeking a writ of Habeas Corpus would not be maintainable. Submission was made on 07.05.2025 that the Division Bench of this Court in Kusum Sahu (supra) had not correctly appreciated the scope and extent of powers of a Writ Court under Article 226 of the Constitution of India while entertaining a petition seeking a Writ of Habeas Corpus particularly, in a case where the detenu had been remanded to judicial custody and repeated bail applications had been considered and dismissed by the trial court as also the High Court.

6. Division Bench of this Court on 19.05.2025 noticing the law



laid down by the Supreme Court in Col. Dr. B. Ramachandra Rao vs. State of Orissa and others (1972) 3 SCC 256, Talib Hussain vs. State Of Jammu And Kashmir (1971) 3 SCC 118, Kanu Sanyal vs Distt. Magistrate, Darjeeling & Ors (1974) 4 SCC 141 and Central Bureau of Investigation vs Motilal and ors. (2010) 15 SCC 782 respectfully with the view taken by the other Division Bench of this Court in Kusum Sahu (Supra) that if successive bail applications were dismissed and/or the detenue did not have the means to engage a private counsel for approaching the higher court the detention could be treated as illegal and Habeas Corpus petition could be entertained. The Division Bench while disagreeing with the judgment in Kusum Sahu (Supra) framed the following questions :

“(a) Whether the judgment of the coordinate bench dated 03.10.2024 in Kusum Sahu vs. State of M.P. (W.P. No.24337 of 2024) is per incuriam having been passed in ignorance of the judgments of the Supreme Court ?

(b) Whether a writ of habeas corpus can be issued merely because repeated bail applications are dismissed and/or the detenue does not have the means to approach the higher court ?”

7. Learned Amicus Curiae submits that a Special Leave Petition was also filed by the State before the Supreme Court challenging the decision in Kusum Sahu (supra) being Criminal Appeal No.4710 of 2025 (State of Madhya Pradesh vs. Kusum Sahu).



Supreme Court in the said Criminal Appeal by judgment dated 03.11.2025 has set aside the judgment in Kusum Sahu holding as under :-

"15. A perusal of the impugned order passed by the High Court shows that the factum of rejection of four bail applications filed on behalf of accused/Jibrakhan Lal Sahu, father of the respondent, has been noticed. The argument raised by the learned counsel for the respondent/Kusum Sahu before the High Court was that the orders rejecting bail application of her father are no less than illegal orders of continuing detention. Though the rejection of bail by the High Court can be challenged before this Court, yet a habeas corpus petition was filed. Despite objection of the maintainability of the petition raised by the State, the High Court allowed the same. It is specifically noticed by the High Court that the orders passed by the High Court rejecting bail of the accused can be challenged before the higher court only. The facts of the case on merits were noticed and examined by the High Court and after going through the same and recording that the parties before the Court had no finances to approach the Supreme court and are facing mental agony, the High Court found that it was a fit case for exercise of jurisdiction under Article 226 of the Constitution of India. Finally, the Authorities were directed to release Jibrakhan Lal Sahu.

16. The facts of the case, as noticed above, in brief, indicate



that the manner in which the case has been dealt with really shocks the conscience of this Court. It is a case where accused was arrested and filed four bail applications before the High Court, which were rejected. Despite this, in a habeas corpus petition filed by his daughter, his custody has been held to be unlawful and he was directed to be released while examining the case on merits as if the Court was hearing appeal against the order rejecting the bail application. The process followed is totally unknown to law. Lest the High Court starts following the impugned order as a precedent to scuttle the due process of law, to nip the evil in the bud, we hold that custody of an accused in a criminal case registered against him cannot be held to be unlawful especially when his bail applications have been dismissed. In the case at hand, it is not disputed that Jibrakhan Lal Sahu, father of the respondent herein, is an accused in a criminal case registered against him in which chargesheet has also been filed."

8. *Supreme Court in the said Criminal Appeal specifically held that the custody of an accused in a criminal case registered against him cannot be held to be unlawful, especially when his bail applications have been dismissed. Supreme Court has specifically held that the judgment of the Division Bench of this Court in Kusum Sahu cannot be treated as a precedent.*

9. *In view of the above and also the factum of setting aside of the judgement in Kusum Sahu and the observation of the Supreme*



Court that said judgment cannot be treated as a precedent, the questions referred are answered in terms of the judgment of the Supreme Court."

40 . Therefore, it is submitted that Full Bench of this High Court has categorically held that Division Bench decision of this High Court in *Kusum Sahu* (supra), cannot be treated as a precedent. It is pointed out that since orders of preventive detention have already been revoked, petitioner is in custody in relation to other criminal matters registered against him, his remedy is to file bail applications rather filing a writ petition seeking writ of habeas corpus.

41. Therefore, when these aspects are considered then except the cases of *Prabir Purkayastha* (supra), *Pankaj Bansal* (supra), *Satender Kumar Anitil* (supra) *Arnab Manoranjan Goswami* (supra), *Arnesh Kumar* (supra), *Lalita Kumari* (supra) and *Bhim Singh* (supra), they all deal with preventive detention and various aspects of individual freedom.

42. We are conscious that in the present petition all the three orders of detention have not been approved by the Advisory Board. No order of preventive detention subsists as on today, therefore, we will be embarking upon a theoretical exercise, which is not required now and we leave this aspect open to dealt at an appropriate stage, where such order may be in subsistence. Therefore, in the present context reference to these judgements namely *Kharak Singh* (supra), *Vihaan Kumar* (Supra), *K.S. Puttaswamy* (Supra), *Hari Kishan* (Supra), *Hadibandhidas* (Supra), *Madhu*



Limaye (Supra), Ramnarayan Singh (Supra), Christie (Supra), Binay Kumar Singh (Supra), Chanda Ajmera (Supra), Wajid (Supra), Niranjan Singh (Supra), Mrs. Maneka Gandhi (Supra), Smt. Icchu Devi Choraria (Supra), Naga People's Movement of Human Rights (Supra), M.C. Abraham (Supra), Paul Manickam (Supra), Ravi yashwant Bhoir (Supra), D.K. Basu (Supra), Kusum Sahu (Supra) is not germane to the controversy which now largely hinges around registration of successive FIRs for a period prior to the date when the petitioner was taken in preventive detention without following the law laid down in the case of *Lalita Kumari (supra) and Satender Anitl (supra)* etc. Therefore, reference to these judgments being not germane to the controversy are not being dealt with separately for two reasons firstly, that the orders of detention have already been withdrawn and secondly, petitioner admits that present is a petition wherein he has sought besides other reliefs a relief of writ in the nature of *Habeas Corpus* which in our opinion in the light of judgement of Supreme Court in the case of *Kusum Sahu (supra)* is not maintainable. This mistake was committed by a coordinate Bench but we are not being persuaded to commit same mistake entertaining the relief in the nature of issuance of writ in the nature of *Habeas Corpus* knowing fully well that detention of the petitioner is now in pursuance of registration of statutory cases and he is not under preventive detention.

43. As far as judgment of Supreme Court in the case of *Bhim Singh, MLA (Supra)* is concerned, Bhim Singh was an MLA and he was deliberately prevented from attending sessions of Legislative Assembly by arresting and



illegally detaining him in police custody. In that back ground, it is held that Articles 21 & 22(2) are violated.

44. Article 22 (2) deals with production of the arrested and detained person before the nearest Magistrate within a period of 24 hours, there is no such material on record to commend us that petitioner was not produced before the concerned Magistrate in terms of the dictum of Constitutional Guarantee envisaged in Article 22(2) of the Constitution of India.

45. As far as law laid down in the case of *Lalita Kumari (supra)* is concerned, once it is held that registration of FIR is mandatory on disclosure of commission of a cognizable offence and no preliminary enquiry is permissible in such a situation. Hon'ble Supreme Court has handed a general rule which is required to be strictly complied with. There is little or no room for exercise of discretion to conduct preliminary enquiry.

46. Similarly, in the case of *Arnesh Kumar (supra)*, Hon'ble Supreme Court has dealt with the power of police to arrest without warrant and has held that police should balance individual liberty with societal order while exercising power of arrest. Matter *of Arnesh Kumar (supra)* originated from Section 498-A of IPC read with Section 4 of Dowry Prohibition Act, 1961, Hon'ble Supreme Court noted rampant misuse of these provisions and held that it would be prudent and wise for a police officer, that no arrest is made without reasonable satisfaction reached after some investigation as to the genuineness of the allegation. But in the present case, no such material is available on record that there is rampant misuse of the provisions under which petitioner has been arrested.



47. In the case of *Arnab Manoranjan Goswami (supra)*, Hon'ble Supreme Court stated that spirit of Article 21, 32 and 226 of the Constitution of India is bail and not jail, but it is also true that this aspect is to be raised before the Court where petitioner has a statutory remedy of seeking anticipatory or regular bail as per the provisions contained in Cr.P.C./BNSS.

48. Therefore, petitioner being not remediless in the matter of bail, any indulgence in the writ jurisdiction will amount to encroachment on the statutory function of the Court which has been assigned bail jurisdiction.

49. As far as the case of *Satender Kumar Antil (supra)* is concerned, in the matter of arrest without warrant directions have been issued to the police officers to not to arrest the accused unnecessarily and to the Magistrates to not to authorize detention casually and mechanically. This aspect can be taken into consideration by the concerned Court having jurisdiction to grant or refuse bail.

50. As far as the law laid down in the case of *Pankaj Bansal Vs. Union of India (supra)* and *Prabir Purkayastha Vs. State (NCT of Delhi) (supra)* are concerned they are in the realm of economic offences and not in the domain of penal offences under the Indian Penal Code and therefore, they too are distinguishable on their facts.

51. As far as aspect of information in regard to ground of arrest, the methodology of informing such ground etc. is concerned in the case of *Mihir Rajesh Saha Vs. State of Maharashtra & another (2026)1 SCC 500*, it has been held that the procedure of written communication of ground of arrest will be prospective and shall not be retrospective. This has been



categorically held in paragraph 06, 57, 58 and 68 of the 52. Thus, we are of the opinion that since reasons were communicated and there is mention of this fact in the respective arrest memo, it will not hamper the case of the prosecution merely because, they were not communicated in writing. This requirement being prospective and will be applicable from the date of judgement i.e. 06.11.2025, in the light of this law, petitioner is not going to gain any benefit.

53. Thus, when over all fact situation is taken into consideration, grounds and law referred to by the petitioner is taken into consideration then no prima facie case is made out that petitioner is subjected to registration of false criminal cases. If that being the case, petitioner is always at liberty to challenge those orders seeking quashing of FIR/Charge-sheet.

54. Second relief in regard to production of the petitioner and is in the nature of writ of Habeas Corpus as admitted by Shri Mohammad Ali, learned Sr. Advocate for the petitioner and therefore, we are of the opinion that since petitioner is under statutory arrest on account of registration of different FIRs, disclosing cognizable offence, such relief cannot be granted by this Court in the form and nature of writ of Habeas Corpus, especially in view of judgment of Supreme Court in *Kusum Sahu (supra)*.

55. In *Haradhan Saha Vs. The State of West Bengal and others and Madan Lal Agarwala Vs. The State of West Bengal and others [(1975) 3 SCC 198]*, has noted that preventive detention and prosecution are not synonymous, therefore, Article 14 is inapplicable. The purposes are different. The authorities are different. The nature of proceedings is different. In a



prosecution, an accused is sought to be punished for a past act. In preventive detention, the past act is merely the material for inference about the future course of probable conduct on the part of the detenu. In para 34, the Hon'ble Apex Court has held as under :-

"34. The recent decisions of this Court on this subject are many. The decisions in Borjahan Gorey V. The State of W.B. [(1972) 2 SCC 550], Ashim Kumar Ray V. State of W.B. [(1973) 4 SCC 76], Abdul Aziz V. The District Magistrate, Burdwan and Debu Mahto V. State of W.B. [(1973) 1 SCC 301], correctly lay down the principles to be followed as to whether a detention order is valid or not. The decision in Biram Chand V. State of U.P. [(1974) 4 SCC 135], which is a Division Bench decision of two learned Judges is contrary to the other Bench decisions consisting in each case of three learned Judges. the principles which can be broadly stated are these. First, merely because a detenu is liable to be tried in a criminal court for the commission of a criminal offence or to be proceeded against for preventing him from committing offences dealt with in Chapter VIII of the Code of Criminal Procedure would not by itself debar the Government from taking action for his detention under the Act. Second, the fact that the Police arrests a person and later on enlarges him on bail and initiates steps to prosecute him under the Code of Criminal Procedure and even lodges a first information report may be no bar against the District Magistrate issuing an order under the



preventive detention. Third, where the concerned person is actually in jail custody at the time when an order of detention is passed against him and is not likely to be released for a fair length of time, it may be possible to contend that there could be no satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in activities which would jeopardise the security of the State or the public order. Fourth, the mere circumstance that a detention order is passed during the pendency of the prosecution will not violate the order. Fifth, the order of detention is a precautionary measure. it is based on a reasonable prognosis of the future behaviour of a person based on his past conduct in the light of the surrounding circumstances."

56. As far as the issue of production of arrested person within 24 hours from the time of formal arrest in terms of the provisions contained in Article 22(2) of the Constitution, is not applicable in case of a formal arrest of a person who is already in jail. This ratio of law is culled out from the decision of Division Bench of this High Court in *Chanda Ajmera Vs. State of Madhya Pradesh and others (supra)*, wherein in para 16, division Bench of this High Court has held as under :-

"16. The Division Bench of Madras High Court has taken into account the judgment delivered by the Hon. Supreme Court in the case of Manoj Vs. State of MP reported in 1999 (3) SCC 715; T. Mohan Vs. State reported in 1993 MPJ (Crl); Madhu Limaye



reported in 1969 (1) SCC 292; A. K. Gopalan Vs. Government of India reported in 1966 (2) SCR 427; Saptawna Vs. The State of Assam reported in AIR 1971 SC 813; Sadhwi Pragya Singh Thakur Vs. State of Maharashtra reported in SC 1101/2011 as well as other cases relating to life and personal liberty and the Division Bench has arrived at a conclusion that in case a person who is already in Jail, the Investigating Officer, in a later case decides to arrest the accused, he can go to the prison where the accused is already in judicial custody and when such a formal arrest is effected in person, the accused does not come into the physical custody of the police at all and, therefore, there is no legal compulsion for production of the accused before the Magistrate within 24 hours from the said formal arrest. However, for production of the accused before the Court, after such formal arrest, the Police Officer shall make an application before the jurisdictional Magistrate for issuance of PT Warrant without delay."

57 . After having said that we are conscious and we have discussed at length certain facets of conduct of the police personnel and the State Administration. Therefore, without commenting on it and elaborating it further so to prevent any prejudice to the petitioner, we are of the opinion that relief in regard to disclosure of all pending criminal cases where petitioner or his family members arrest is required can be directed to be



given to the petitioner and the respective family members in regard to all the cases which have been registered till date.

58. Another relief in regard to intimation of newly registered crime, if any, within 24 hours of the registration of the crime in any police station of the State of Madhya Pradesh, too can be granted as now Crime and Criminal Tracking Network and Systems (CCTNS) is in place and that being the Fundamental Right of the petitioner to know as to on what pretext and under which provisions of law case has been registered against him that relief too can be granted.

59. However, as far as other reliefs are concerned, and reference to law in the case of *Kharak Singh (supra)* is concerned that has been considered by Hon'ble Supreme Court in the case of Mihir Rajesh Shah (supra).

60. Petitioner will also be supplied grounds for registration of the cases and the material which may be produced for registration of the cases alongwith all the material that may come out during investigation against the petitioner or his family members in the light of the case of *Mihir Rajesh Saha Vs. State of Maharashtra (supra)*.

61. Accordingly, we hold that, since the relief of issuance a writ in the nature of *Habeas Corpus* cannot be issued under the facts and circumstances of the present case, especially when we hold that, there is no illegal detention and petitioner has a statutory remedy of obtaining bail from the competent Court. Other relief being not admissible they are declined and to that extent, this writ petition is dismissed.

62. Therefore, this writ petition to the extent of furnishing information in



regard to the disclosure of all pending criminal cases and prompt intimation of newly registered crimes is **allowed in part and for other reliefs, this writ petition is dismissed.**

63. Before we part, we would like to bring on record, none of the observations made by this Court shall come in the way of the petitioner while applying for bail before the competent Court.

(VIVEK AGARWAL)
V. JUDGE

(RATNESH CHANDRA SINGH BISEN)
V. JUDGE

A.Praj/AR