

02
17.10.2023

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. No. 22990 of 2023

Rujira Banerjee
Vs.
Union of India & Ors.

Mr. Kishore Datta,
Mr. Jishnu Chowdhury,
Mr. Soumen Mohanty,
Mr. Ayan Poddar,
Mr. Piyush Kumar Ray,
Mr. Agnish Basu,
Ms. Riddhi Jain

.... for the petitioner

Mr. Billwadal Bhattacharyya,
Ms. Debjani Ghosal

.... for the Union of India

Mr. Dhiraj Trivedi,
Ms. Debjani Ray

....for the respondent no.4

Mr. Rajarshi Basu,
Mr. K.M. Hossain

.... for the State

Mr. Sandipan Ganguly,
Mr. Apalak Basu,
Ms. Manaswita Mukherjee,
Ms. Smita Mukherjee

.... for the respondent nos.10 to 12

Mr. Abhirup Chakraborty,
Mr. Tuhin Ganguly

....for the respondent nos.13 & 14

Mr. Sabyasachi Chatterjee,
Mr. Sayan Banerjee,
Mr. Pintu Karar,
Mr. Badrul Karim,
Mr. Kiron Sk.

....for the respondent nos.17 & 18

Mr. Chiranjib Sinha,
Mr. Dyutiman Banerjee,
Ms. Suchitra Chatterjee

....for the respondent no.21

- 1.** At the outset, an option was given to the parties whether the main writ petition would be taken up for hearing or the prayer for interim orders was to be heard. Most of the respondents chose to use affidavits and insisted that the latter option be resorted to. Hence, for the sake of fair trial, the matter is being heard on the question of interim orders, although the lengthy arguments advanced over several days and the numerous judgments cited necessitates a lengthy discourse.
- 2.** The writ petition has been filed by a lady who is the wife of a politician. The petitioner is an OCI (Overseas Citizenship of India) card-holder and not an Indian citizen. It is alleged by the petitioner that the media in general and the respondents in particular have been assassinating her character and maligning her family by regularly publishing information regarding an investigation being carried out by the central investigating agencies, including the Enforcement Directorate (for short, "the ED")

which is one of the respondents herein regarding financial and other scams of some magnitude.

- 3.** The present challenge is primarily on three grounds:
- 4.** First, the petitioner's right to privacy, which is a component of her fundamental right to live with dignity, is being assailed.
- 5.** Secondly, fair trial is being affected. A subsidiary ground of the same is that there is an element of criminal contempt of court, since the investigation will lead to a criminal trial which is being attempted to interfered with.
- 6.** Thirdly, the media trial which is going on is moulding public opinion by serving sensationalism in the garb of true news, thereby providing false information and opinions to the public.
- 7.** Learned senior counsel for the petitioner cites *Sidhartha Vashisht Alias Manu Sharma v. State (NCT of Delhi)*, reported at (2010) 6 SCC 1. In the said judgment, the Supreme Court observed that presumption of an innocence of an accused is a legal presumption and should not be destroyed at the very threshold through the

process of media trial and that too when the investigation is pending.

- 8.** Learned senior counsel also cites a judgment of the Privy Council delivered on April 7, 1914 in the case of *Channing Arnold Vs. The King Emperor*, where it was observed that they are appeared on the one side in the case the time-worn fallacy that some kind of privilege attaches to the profession of the Press as distinguished from the members of the public. The freedom of the journalists is an ordinary part of the freedom of the subject and to whatever lengths the subject in general may go so also may the journalists; but apart from the statute-law, his privilege is no other and no higher. The Privy Council further observed that the responsibilities which attach to his power in the dissemination of printed matter may and in the case of a conscientious journalist do make him more careful. The range of his assertions, criticisms or comments is as wide as and no wider than of any other subject and no privilege attaches to his position as a journalist.
- 9.** Learned senior counsel places further reliance on *Kartongen Kemi Och Forvaltning AB v. State*

through CBI, reported at (2004)72 DRJ 693, where the Delhi High Court observed that the said case was nefarious example which manifestly demonstrates how the trial and justice of media can cause irreparable, irreversible and incalculable harm to the reputation of a person and shunning of his family, relatives and friend by the society. It is common knowledge that such trials and investigative journalism and publicity of premature, half-baked or even presumptive facets of an investigation either by the media itself or at the instance of investigating agencies has become a daily occurrence whether by electronic media, radio or Press. They chase some wrong doers, publish material about him little realising the peril it may cause as it involves substantial risk to the fairness of the trial. The latest trend of Police or investigating agencies encouraging publicity by holding Press conferences and accompanying journalists and television crew during investigation of a crime, it was observed, needs to be stopped as it creates risk of prejudice to the accused. After hogging publicity and holding the person guilty in the eyes of public,

the Police and CBI go into soporific slumber and take years in filing charge-sheet and thereafter several years are taken in the trial.

- 10.** The said judgment is cited particularly to assert that the family members of the person against whom the media campaign is initiated are also to be protected.
- 11.** Learned senior counsel next cites *Jitesh and others Vs. The State of Kerala and others*, reported at *MANU/KE/2140/2020*, where a Division Bench of the Kerala High Court observed that the Bench had serious reservation about police officers conducting Press meetings in respect of criminal investigation which they and media consider to be sensational. In view of the Division Bench of the Kerala High Court, on many occasions holding Press meetings would spoil the quality of evidence collected during the investigation. No police officer conducting investigation into a crime, as per the court, shall be authorised to divulge the facts ascertained during investigation through media. Some pronouncements of the Supreme Court were also considered while passing the said judgment, which stressed on the fact that

the use of electronic media by the investigating arm of the State to influence public opinion during pendency of an investigation subverts the fairness of the investigation.

- 12.** Learned senior counsel for the petitioner next cites *Sahara India Real Estate Corpn. Ltd. and others v. Securities and Exchange Board of India and Another*, reported at (2012) 10 SCC 603, where the Supreme Court balanced the fact that the right of free speech under Article 19(1)(a) can be restricted in relation to contempt of court under Article 19(2). Contempt, it was observed, is an offence *sui generis* and one of the ways in which administration of justice is protected, preserved and furthered. Articles 129 and 215 of the Constitution of India save the pre-existing powers of the Courts as courts of record. The Court observed that the administration of justice should not be perverted, prejudiced, obstructed or interfered with, for which the court has the power to prohibit temporarily statements made in the media which would prejudice or obstruct or interfere with the administration of justice in a given case pending in the Supreme Court or the High

Court or even in the sub-ordinate Courts. Trial by newspaper, it was observed, comes in the categories of facts which interfered with the courts of justice or due administration of justice. The contempt law includes the power of courts to prevent such acts which interfere, impede or pervert administration of justice. Presumption of innocence and open justice were highlighted for which the Supreme Court held that the courts have evolved mechanism such as postponement of publicity to balance presumption of innocence vis-à-vis presumption of open justice. The principles of proportionality and test of necessity are to be kept in mind, however, in passing orders of postponement. The context of administration of justice as well as the rights of the individuals to be protected from prejudicial publicity or misinformation were also highlighted.

- 13.** Learned senior counsel also cites *Nilesh Navalakha and Others Vs. Union of India Through the Secretary/Joint Secretary and Others*, reported at 2021 SCC OnLine Bom 56, where a Division Bench of the Bombay High Court observed that any act done or publication made which presumed by the appropriate

court having power to punish for contempt to cause prejudice to mankind and affect a fair investigation of crime as well as a fair trial of the accused, being essential steps for administration of justice, could attract Section 2(c)(iii) of the Contempt of Courts Act, depending upon the circumstances and be dealt with in accordance with law.

- 14.** The Division Bench took into consideration the recommendations of the Nariman Committee. It was observed that specific self-regulatory mechanism under the NB Act and the NBF is applicable only to the members of the NBA or the NBF and not to those TV channels who have not subscribed to the membership of the self-regulatory bodies. In such context, the concept of fair trial and trial by media were considered and media trial was deprecated by the Division Bench.
- 15.** Learned senior counsel also cites *R.K. Anand v. Registrar, Delhi High Court*, reported at (2009) 8 SCC 106. In the said judgment, the Supreme Court elaborately dealt with trial by media and observed that the legal parameter within which a report or comment on a sub judice matter can be made is well defined and any action in

breach of the legal bounds would invite consequences. Trial by media was defined as the impact of television and newspaper coverage on a person's reputation by creating a widespread perception of guilt regardless of any verdict in a court of law. During high publicity court cases, the media are often accused of provoking an atmosphere of public hysteria akin to a lynch mob which not only makes a fair trial nearly impossible but means that, regardless of the result of the trial, in public perception the accused is already held guilty and would not be able to live the rest of their life without intense public scrutiny.

- 16.** Learned senior counsel then cites a Kerala High Court judgment reported at *2022 SCC OnLine Ker 621 [P. Gopalakrishnan and Others v. State of Kerala Represented by the Public Prosecutor and Another]*, where the learned Single Judge of the said High Court observed that mainstream television media and social media have commented upon the way the said court went upon its business in handling a particular case. It was observed that observations made in court during the course of hearing have been

dissected and made subject-matter of intense discussion. The existence of a vibrant, independent and free press is no doubt essential to democracy but cannot be a licence for persons armed with half-baked facts with little or no knowledge of how the judiciary functions and little or no knowledge of the fundamental legal principles that govern it, abuse the justice delivery system, it was observed.

- 17.** Lastly, the petitioner cited *Venkatesh and Others Vs. State of Karnataka*, reported at *MANU/SC/0549/2022* where the Supreme Court observed that all matters relating to a particular crime and whether a particular thing happens to be a conclusive piece of evidence must be dealt with a court of law and not through a TV channel. The public platform, it was observed, is not a place for such debate or proof of what otherwise is the exclusive domain and function of courts of law. Such debate or discussions touching upon matters which are in the domain of courts would amount to direct interference in the administration of criminal justice, the Supreme Court observed.

- 18.** Learned Deputy Solicitor General appearing for the Union of India/respondent no.1 submits that there are grievance redressal mechanisms and bodies incorporated for redressing grievances regarding broadcasting and the operation of the media and hands over a list of grievance redressal mechanism/bodies incorporated *vide* the amended Rules of 2021 on such score. It is highlighted that there are several levels of grievance redressal mechanism regarding broadcast. Self-regulation by media, it is submitted, is sufficient alternative remedy in such context.
- 19.** Learned DSG also refers to the Cable Television Network Rules, 1994 and the parent Act that is the Cable Television Network (Regulation) Act, 1995 to underscore such argument.
- 20.** It is submitted that the FIR lodged against the petitioner's husband are under various Sections of the Indian Penal Code. They stand on an independent footing and, as such, the petitioner cannot in the garb of this writ petition, seek any order regarding protection of her husband, who is the accused in such cases.
- 21.** Learned DSG also relies on the notification dated March 4, 2021 issued by the Ministry of

Home Affairs of the Government of India regarding Overseas Citizens of India (OCI) card holders. It is pointed out that in the explanation thereto, the OCI card holder is stipulated to be a foreign national holding passport of a foreign country and not a citizen of India. Thus, it is argued that the petitioner does not have the *locus standi* to seek a curtailment of the freedom of press under Article 19 of the Constitution of India, which is available only to citizens of India. It is argued that such curtailment can only be under the provisions of Article 19(2).

- 22.** Learned DSG also contends that this Court does not have determination and refers to a notification dated September 30, 2022 which provides, *inter alia*, that matters relating to CBI and Central Agencies in writ petitions under Article 226 of the Constitution of India are already included within the comprehensive reading of subject category 'Police' in the Appellate Side Rules, therefore, there is no need to mention CBI and Central Agencies separately.
- 23.** Learned senior counsel appearing for the respondent nos. 10 to 12 contends that nothing

has been produced to show that any derogatory remarks were carried by the said respondents in any news item against the petitioner. Hence, the blanket order sought by the petitioner is opposed.

- 24.** Learned Deputy Solicitor General appearing for the respondent no.4-ED, apart from adopting the submissions of his counter-part appearing for the UOI vehemently denies that the ED officials leak any information relating investigation. It is stressed that the ED only releases formal Press statements, most of which are also available on the website of the ED. The written instruction delineating the exact extent of dissemination of such information by the Ed is also handed over and kept on record.
- 25.** Learned counsel for the respondent nos. 17 and 18, placing reliance on the judgment of *Sheperd Vs. Maxwell* delivered on June 6, 1966 by the Supreme Court of the United States, argues that even if there is massive publicity regarding a particular trial, the court lacks power to control the publicity about the trial. The court can only insulate the witnesses up to an extent and control the release of leads, information and gossip to the Press by police officers,

witnesses and the counsel for both sides, if such information is inaccurate.

- 26.** It is submitted that the freedom of speech and expression of citizens cannot be gagged by blanket orders.
- 27.** Learned senior counsel also cites the judgment delivered in *Mohandas Karamchand Gandhi's* case reported at *AIR 1920 Bom 175* by a Full Bench of the Bombay High Court on March 12, 1920. Where the Full Bench observed that speaking generally, it is not permissible to publish comments on or extracts from any pending proceedings in the Court, unless the leave of the Court is first obtained.
- 28.** Discussing *Rex v. Parke*, the court observed that the reason why the publication of articles like those with which the court was dealing is treated as a contempt of Court is because of their tendency and sometimes object to deprive the Court of the power of doing that which is the end for which it exists, namely, to administer justice duly, impartially, and with reference solely to the facts judicially brought before it.
- 29.** The court observed that a contempt of court of a more serious nature is committed in

commenting in the particular manner of the letter produced therein which amounted the scandalising a District Judge. In the opinion of the court, contempt is committed if the comments tend to interfere with a fair trial and to prejudice public justice.

- 30.** It is argued that such high test has not been satisfied in the present case.
- 31.** Learned counsel appearing for the respondent no.21 places reliance on a judgment of a Division Bench of the Delhi High Court for the purpose of pointing out that the actual addresses of Google India were given therein. It is argued that the respondent no.21 has been incorrectly arrayed, since YouTube and Google India are separate entities. The parent company for both is Google LLC, which is situated outside India.
- 32.** The respondents, in general, adopt the arguments of each other and pray for the dismissal of the writ petition.
- 33.** The objections as to maintainability are taken up first. The Union of India and the ED have raised a question as to whether this Bench has determination to take up the matter, since there are allegations against central agencies.

- 34.** Such contention is misplaced. As per the roster determined by the Hon'ble the Chief Justice, who is the master of the roster, writ petitions pertaining to police inaction are assigned to another Bench. A sub-category of matters relating to 'Police', as per the circulations relating to determination, is writ petitions against the 'central agencies'. However, such matters must essentially pertain to inaction or overaction of the police or central agencies in exercise of their functions and authority. If any and every matter containing allegations against instrumentalities of the Union Government or 'central agencies' is classified under 'police inaction' category, the Bench taking up such matters would be the only Bench taking up *all writ petitions* against the Union of India or its instrumentalities and agencies, which would be an absurd proposition and an antithesis of the distribution of business among writ courts under all the other classifications.
- 35.** Police inaction is a sub-category under the Residuary Jurisdiction under Group IX of the writ matter classifications. This Bench has determination regarding all residuary writ matters apart from those pertaining to 'Police'.

The present matter does not pertain directly to the investigation or action/inaction of the central agencies but only to alleged press releases and media bytes given by the ED as well as information allegedly leaked by the ED officials to the public, thereby violating the fundamental rights of the petitioner, which is by no stretch of imagination a 'police inaction' matter. Thus, the matter is taken up by this court.

- 36.** The other objection regarding maintainability is that the petitioner, being a foreign national (Thai citizen) and OCI card holder, is not entitled to seek curtailment of the right of the respondents, which are Indian citizens or organizations run by Indian citizens, to freedom of speech and expression under Article 19 of the Constitution of India. However, the judgments cited on such count relate to the rights guaranteed under various clauses of Article 19 itself. It has been observed by the Supreme Court in the said reports that the right to freedom of speech and expression overrides the other freedoms given under Article 19. However, here the petitioner is asserting her right to privacy, which is an integral

component of her right to live with dignity as enshrined in Article 21 of the Constitution of India and her right to equality before the law as guaranteed by Article 14. Thus, the question is essentially of the interplay between different Articles in Part III of the Constitution and not Article 19 *inter se*.

37. It is to be noted in this context that whereas the language of Article 19 denotes that the said rights are given only to citizens of India, the rights guaranteed under Articles 21 and 14 are not restricted to citizens but are applicable to anybody and everybody. Several judgments cited by the petitioner hold as much. Thus, there cannot be any doubt that even if the petitioner is not an Indian 'citizen' but only an OCI card holder, she is equally entitled to seek protection of her fundamental rights sought in the present writ petition as any full-fledged citizen of India.

38. Another aspect is required to be kept in mind. The fundamental rights embodied in Articles 21 and 14 are not conferred by the Constitution as such, but are basic and implicit human rights guaranteed in any civilized society worth the name. The Constitution of India, like the

Constitutions and Charters of Rights of several other nations and international communities, merely recognizes such implicit human rights. Thus, the said rights have a universal air and cannot be restricted by any Legislature or Judiciary only to the citizens of a country. Hence, the objection as to maintainability on such score is turned down.

- 39.** As to other statutes, there is no statute governing all aspects of the media as such. Although there are certain self-regulatory Acts and Regulations in place here and there which provide forums for grievances and seek to control activities of the media, there is no comprehensive statute which stipulates the yardstick of such control, particularly when the larger issue of violation of fundamental rights by the media is alleged. Moreover, such statutes operate in pockets such as cable television, etc. but are not universally applicable to the internet and all other media.
- 40.** Hence, the writ petition is maintainable.
- 41.** The respondents claim their rights under Article 19 of the Constitution. It is argued that the said rights cannot be curtailed even by Article 21 of the Constitution. Such a blanket

norm, taken to its logical conclusion, would mean that freedom of speech and expression overrides the right to life. Dead men do not speak. Thus, the freedom of speech and expression cannot under normal circumstances curb the right to life of another.

42. The issue, however, comes under the scanner since by social and judicial evolution certain additional rights have been read into the right to life and personal liberty as its essential and implicit components. Right to privacy is one such right. The said evolution in itself is absolutely justified; the question arises as to how far the right to privacy would override the right to freedom of speech and expression. The mirroring component of the latter right is the right of the citizens of India to get accurate and relevant information, without which there cannot be an assurance of a dignified life and personal liberty. An informed view of society is essential for an individual to protect her or his life and its ancillaries.

43. The fast-paced, competitive modern day world leaves little scope of introspection. There is no opportunity to stop by woods in evenings, snowy or otherwise. Since Nature abhors a

vacuum, such void in our lives is sought to be filled by resorting to titillating gossip, 'revelations' and sensationalism, be it from the media gossip columns or otherwise.

- 44.** However, if mainstream journalism converts itself to yellow journalism, the dissemination of objective news is directly hampered. 'News', presented as news, has to be objective, shorn of opinionated barbs and jibes. The media has two-fold responsibility – to disseminate accurate information to the public at large and to stay afloat by weighing commercial viability. The latter cannot be entirely shunned, since commerce provides the funds for sustaining independent journalism.
- 45.** The petitioner's case, considered in such backdrop, has several facets. The first is the petitioner's right to privacy. The media has to be cautious to maintain bounds since its huge impact may make or break individual reputations as well. Every person, in Indian criminal jurisprudence, is innocent unless proved guilty. Although an investigation is not 'trial' in the strict sense of the term, it is the genesis of a trial.

46. ‘Media trial’ begins much before the actual trial in a competent court of law. In the present case, upon specific query of court as to whether the petitioner is an accused in any of the cases, learned Deputy Solicitor General appearing for the ED submitted that the petitioner, at this stage, is a suspect and is being interrogated. The ED disowns any unauthorised leakage of information regarding the investigation by any of its officers. It is contended that the said investigating agency sticks to the press releases and media bytes formally disseminated by the ED to the media and on its website. In fact, the written instruction of ED is filed in court, the relevant portion of which it reads as follows:

“To focus on the positive work done by the organization and to build confidence with the public, with due care information are put on the website of the ED only after actions are completed. Further, only those facts are shared with due caution which may not impede and jeopardize the interest of the ongoing investigation/action. No opinionated or judgmental statements are made by the ED generally against any person.”

47. During arguments, learned Deputy Solicitor General submits on instruction that the term “generally”, qualifying the sentence that no opinionated or judgmental statements are made by the ED, be deleted, as the same was

inadvertently incorporated. Since the ED binds itself to such submissions, the same has the force of an undertaking.

- 48.** Such undertaking by the ED is accepted. It takes ample care of the aspect of interference with the administration of justice and fair trial, insofar as the said agency is concerned. The aspect which remains, however, is the perspective of the suspect/accused/witness. Reiterating for the sake of coherence, a person in Indian criminal jurisprudence is innocent unless proved guilty. Hence, if the investigating agency, before filing a charge-sheet, divulges the name of the person interrogated or searched prior to conducting such interrogation or search, the media may have a field day, but the person's personal goodwill, credibility and respect in society goes for a toss. Either before or after the search or interrogation, if the investigating agency discloses to the public or the media the circumstances, reasons and/or the details of the interrogation or the search, the same definitely interdicts a fair trial and instigates his/her guilt to be assumed in the public mind.

- 49.** Moreover, the investigating agencies in general and the ED in particular should not involve or be accompanied by media persons during their raids/interrogations/search and seizure procedure, since such act on the part of the investigating agency compromises fair trial as well as privacy of the concerned individual, raising presumptions of guilt/involvement before being established in due process of law before the competent court.
- 50.** Just as courts are supposed to speak through their judgments and not go about expressing their opinions in public matters which are sub judice or which may potentially be the subject-matter of adjudication, investigating agencies speak through their charge sheets. The said agencies are not a part of the media nor courts of law. Their function is only to investigate. It is not for the investigating agencies to wear their success stories on their sleeves. Keeping in mind the huge responsibilities of the central investigating agencies, who are an indispensable and very important arm of the justice delivery system, they should be extremely careful in what information they disseminate, since such information may ruin a

suspect or even accused who after investigation may not even be named in the charge sheet or be ultimately acquitted after trial.

- 51.** Thus, the notion of the ED itself of whether the disclosure would impede and jeopardize the interest of the ongoing investigation/action cannot be the only consideration of its media releases. Fair trial is an important component of equal access to justice guaranteed under Article 14 of the Constitution of India and ought to be zealously guarded by all wings of the Executive and Judiciary associated with an investigation and trial.
- 52.** The job of the ED is not primarily to focus on the positive work done by the organization and to build confidence with the public, although confidence-building with the public may be necessary to the extent required to ensure smooth investigation. However, the investigating agencies must not flaunt their results during investigation but must maintain a low-key profile to justify the immense powers vested in them. The investigating agencies are in a category apart from other agencies and have to adhere to much higher standards than

the others. As the clichéd adage goes, with absolute power comes absolute responsibility.

- 53.** In some of the judgments cited by the petitioners particularly *Sidhartha Vashisht (supra)* and *Jitesh and others (supra)*, the Supreme Court has repeatedly highlighted the cons of media trial at the investigation stage.
- 54.** Coming back to media, as discussed in the judgment of the Privy Council cited by the petitioner, rendered in *Channing Arnold (supra)* categorically observed that the journalists have no extra privilege or right and have equal rights as a subject/citizen of the country would otherwise have. What was observed ages back still holds to even in the post-Article 19 era.
- 55.** Not only do the media not have any extra freedom of speech and expression, I would go one step further and say that in view of the immense impact of media on the society at large, they are bound by additional and higher standards of accuracy than an ordinary citizen.
- 56.** Cardinal pre-requisites of responsible journalism are accuracy in presenting facts and objectivity. When a news item is presented as a news item, in whatever medium – audio, visual or print – the same has to be utterly truthful

and be able to be corroborated by concrete materials and sources. The exact source may or may not be disclosed in the news item, but the Editor/Board of Editors/ Management of the particular media entity must be able to corroborate it, if so required by any court of law or investigating agency or other body authorised in law.

- 57.** Secondly, newspapers and other forms of media may, apart from strictly news items, also carry opinions and investigative articles or even 'juicy' pieces of literature, but the name of the author is to be clearly disclosed, so that the author cannot avoid responsibility for his or her own opinions. It is expected that a responsible media would do its homework and ascertain the facts before publishing them and it is not for courts of law to advise them in their own field. However, in order to enable the public to discriminate between the grain and the chaff, the media must clearly allocate separate spaces / time slots / sections for actual factual news and opinionated articles, critiques, advertisements and other type of literature and photo/video features and clearly place them under different heads/slots.

58. Thirdly, during investigation and before filing of charge sheet, no section of the media should publish photographs of any person linking him or her to the investigation in any manner. Even if photographs of persons who are involved in an investigation are published in a different context altogether, there shall not be any reference in the caption, article or news item associated with such photograph to the investigation, during the continuance of such investigation. Nothing above shall preclude the media from accurately reporting the press briefings or media bytes released by the investigating agencies. That apart, the media may also carry independent and verified information regarding the investigation, including the names of the persons interrogated/searched, if relevant in the context. However, no live video/audio/print footage of the search and seizure process or raid or interrogation will be published. Such publication violates all norms of fair trial, privacy and is utter sensationalism. The media, taking advantage of their special privileges of access to information, cannot resort to such sensationalism, thereby conducting media trial

and castigating a person before he/she is held guilty by a competent court of law.

- 59.** It has to be kept in mind that there are specific spheres of specialization of each branch of society. The investigating agencies are specialized in investigating and revealing valuable information for bringing culprits to justice. The courts are specially trained and experienced to adjudicate. Similarly, the media is specially trained to disclose and disseminate facts having vital bearing on social life of the polity. 'Investigative' journalism is definitely welcome to expose the wrong-doings and injustices in society and is an essential facet of a free press exercising the freedom of speech and expression. However, investigative journalism cannot be a substitute for investigation by a specialized agency authorized in law or trial conducted by a court of law.
- 60.** There are various aspects of the justice delivery system which may not be understood properly by laymen. Just as a doctor or a lawyer or a delivery person or a professional security guard watching court proceedings are all specialists in their respective spheres of work, the various aspects of which may not be understood or

performed by a judge or an investigator, similarly an investigation process or a court proceeding has different components and nuances which are not properly comprehended by others. For example, during live-streaming, which is an important technological advancement in transparency of court procedure, certain comments are made and view exchanged between the judge and the lawyers and litigants which are merely a part of the process of adjudication. Thesis, antithesis and synthesis are an ongoing part of adjudication. Passionate arguments and heated exchanges ultimately congeal into a judgment of court. It is only the final outcome which matters and is binding, and none of the components leading to it. Reportage in media and social platforms often mould public opinion and taint untrained minds with the impression that those exchanges in-between are final and is the ultimate verdict on the issue. Often, passionate arguments made by professionals in court are not so passionate as they seem and anti-views expressed by the judge are a mode of testing the exactly opposite view of the judge on the corner-stone of debate.

- 61.** Similarly, during investigation, many false leads and barking up the wrong trees precede the culmination of a proper investigation. If the media were to grill each of the leads and trees before any guilt is attributed to them in a fair trial, the trial will reach its culmination some day and the guilty would be brought to justice, but many an innocent will be crushed in public censure and unwarranted public focus in the process.
- 62.** Insofar as the petitioner is concerned, she is admittedly a suspect and is being interrogated. However, before being held guilty by a competent court of law, no guilt can be attributed to her either directly or by insinuation by the media. Conjuring up conjecture should be left to the public mind, which cannot be restrained, nor does the court have any intention to. But insofar as the media and the investigating agencies are concerned, they should be extremely careful not only to provide correct and accurate information to the public, but also protect the dignity of individuals, irrespective of their affiliations, gender, class, creed and opinions, as well as to ensure that the administration of justice, of

which investigation and trial are both important facets, is not interfered with or hampered in any manner.

- 63.** However, the petitioner's prayers for protective orders in respect of her family cannot be granted at this stage. In such context, the following judgments were cited by learned senior counsel for the petitioner:
- 64.** In some of the judgments, particularly the scathing judgment of the learned Single Judge in *Kartongen (supra)*, the need to protect the family of the aggrieved person are also highlighted, since they also suffered the burnt of media trial and unwarranted public attention, at the stage of investigation or trial.
- 65.** However, the focal point of the judgments was the concept of family vis-à-vis the protagonists therein. The publications allegedly made in respect of the petitioner's husband and family are not in the capacity of the said persons as family members of the petitioners. The husband of the petitioner is a well-known political figure. Other members of her family are also prominent functionaries in the State Executive. The publications against them are in their individual capacities and/or as political

propaganda. The media publications and propaganda against them is not in their capacity as members of the petitioner's family. Rather, it is the other way round, since part of the propaganda against the petitioner may be since she is a part of the family. Thus the protective umbrella sought by the petitioner cannot be extended to her family, since the media publications against the said family members are in their own capacities, which can always be assailed by them in their independent capacities.

- 66.** Learned Deputy Solicitor General appearing for the ED has cited The Union of India has placed reliance on a judgment which indicates that the matter of guidelines regarding Press releases and information dissemination by investigating agencies is at present sub judice before the Supreme Court and a learned Amicus Curiae has already been appointed, whose report is awaited.
- 67.** As such, it has been contended that the same exercise ought not to be undertaken by this Court.
- 68.** However, nothing in this order interferes with the said exercise being undertaken by the

Supreme Court in any manner or pre-judges the issues sub judice therein. The context of the present order is limited to the petitioner and is merely an interlocutory order pending final decision in the present writ petition.

69. In view of the above discussions, the respondents are directed to strictly adhere to the following guidelines insofar as the petitioner is concerned (if possible, for other similarly placed suspects, accused persons, associates or witnesses as well):

70. Re: Investigating Agencies

i) Before filing of a charge-sheet, the investigating agencies (in the present case, the ED) shall not disclose to the public or the media the circumstances, reasons and/or details of the interrogation, raids and search of any particular person, be he/she an accused, a suspect of a witness.

ii) The Investigating Agencies in general and the ED in particular shall not involve or be accompanied by media persons during any raid/interrogation, search and seizure procedure at any point of time and also shall not disclose prior information of such raids, interrogations, searches and seizures

before holding the same.

71. Re: Media.

i) All forms of media - print, visual, audio or otherwise - shall clearly delineate the slots/sections/print-space/web page which are designated specifically for news items and distinguish those from similar spaces which are designated for other articles, opinions and/or other literatures.

ii) The media, while reporting news items, shall ensure that the reporting an information disseminated is objective, accurate able to be corroborated by concrete materials and sources. The exact source may or may not be disclosed in the news item but the editors/board of editors/management of the particular media entity must be able to corroborate it by cogent material, if so required by any court of law or Investigating Agency or other body authorised to do so in law, including self-regulating authorities in respect of the media.

iii) Even if the media reports/articles contain opinions and investigative write-ups or other literature in the form of

entertainment, where particular persons are stigmatized or ridicule or aspersions/insinuations are mad in any manner, the names of the authors of such articles shall be clearly disclosed in/with the article/byte.

iv) The media, during investigation and before filing of charge-sheet, shall not publish photographs of any person linking him/her to the investigation, in news items reporting about the said investigation or any facet of it.

Even if photographs of persons who are involved in any manner or associated with the investigation are published otherwise and in different context during the course of such investigation, the said photograph or article carrying the photographs shall be placed not in exact proximity with the reporting of the investigation but separately.

v) The media shall not publish or broadcast or telecast live video, audio/print footage of the process of search and seizure, raid or interrogation at any point of time.

- 72.** The above guidelines shall be followed by the Investigating Agencies, in particular, the ED and all media houses, including the respondents herein, till January 15, 2024 or until further order, whichever is earlier. The matter shall be placed for hearing before the appropriate Bench having determination in the Monthly List of Cases for the Month of December, 2023.
- 73.** Nothing in this order shall preclude the petitioner from taking out appropriate proceedings against any individual for defamation and/or damages in the event the petitioner is otherwise entitled to do so in law.
- 74.** The respondents shall file their affidavits-in-opposition within November 24, 2023. Reply, if any, shall be filed by December 1, 2023.

(Sabyasachi Bhattacharyya, J.)