OF IPC AND SEC.103 OF THE KARNATAKA POLICE ACT BY THE RESPONDENT NO.1 HIGH GROUNDS POLICE VIDE CR.NO.54/2022 AND ETC.,

THESE CRIMINAL PETITIONS AND WRIT PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

All these Petitions seek quashment of proceedings in CC No.12763/2023 pending on the file of learned 42nd ACMM (Special Court for trial of cases against MPs/MLAs in the State). These proceedings arose from Crime No.54/2022 registered by the High Grounds Police, Bengaluru City, against as many as 36 Accused persons for the offences punishable u/s.143 of IPC 1860 and u/s. 103 of the Karnataka Police Act, 1963.

II. BRIEF FACTS OF THE CASE:

a) On 14.04.2022 at about 8 of the clock (morning), the Complainant namely Kum.Jahida, a Woman Police Sub-Inspector whilst on usual rounds received information that a particular Political Party was going to organize a protest in public by surrounding the official residence of the Chief Minister, at Bengaluru. At around 11.30 of the

clock, the Accused persons entered the public road shouting slogans against a then Minister of the Government to coerce his resignation.

b) The group abruptly walked on the public road from Madhavanagar to the point of Race View Hotel at around 12.30 of the clock (afternoon) obstructing the traffic and disturbing the law & order. Therefore, all they were taken to preventive custody, and later enlarged on Police Bail. The said Sub-Inspector lodged the FIR at around 2.30 of the clock (afternoon) and accordingly Crime No.54/2022 came to be registered on the very day.

c) The Respondent – Police having investigated into the matter, filed the Charge Sheet for the offences punishable u/S.143 of IPC & u/s.103 of KP Act. Learned Judge of the Special Court below having perused the Charge Sheet material, has taken cognizance of the said offences and directed registration of CC No. 12673/2023 vide order dated 13.06.2023. These Petitioners being a

few of the accused seek quashment of the said proceedings.

III. SUBMISSIONS MADE ON BEHALF OF PETITIONERS:

a) The ingredients of the offence punishable u/s 143 of IPC and the offence punishable u/s 103 of KP Act are militantly lacking and the same is demonstrable from the very Charge Sheet material. This aspect has not been adverted to by the learned Trial Judge while taking cognizance of the offences.

b) The allegation that the protest march organized by the Political Party in question *inter alia* with the participation of Accused persons had obstructed the free flow of traffic on the public road, and disturbed the *law & order*, is absolutely false; the said allegation is politically motivated and that the things are done at the instance of the rival Political Party that was then holding reigns of the State.

c) Ours being a constitutionally ordained Democratic Republic, people and their elected representatives are entitled to seek removal of Minister(s) on fault grounds and therefore, resorting to public agitation for that purpose does not amount to a culpable act, much less any offence.

d) Right to free speech & expression constitutionally guaranteed under Article 19(1)(a) includes right to go on strike even in the public, unless that is regulated by law; there was no such regulation as on the eventful day; even going by the Charge Sheet, all the Accused persons were peaceably launching the protest aimed at generating public opinion against the then Minister(s) of the Government; and

(e) The evidentiary material on which Charge Sheet has been structured by the police does not *prima facie* vouch the allegations made against them; in all probability, even taken at its face value, the proceeding would not result into conviction for the offences for which they are sought to be charged.

IV. CONTENTION ON BEHALF OF STATE/POLICE:

(a) On the eventful day, all the Accused along with others, had organized the protest march on the public road despite warning by the Police; a mammoth march on a public road that too during the day time had obstructed the traffic; the protestors raising slogans in high pitch had disturbed the law & order. All this happened in disobedience of police direction.

(b) The provisions of Government Order dated 29.12.2021 promulgated under Section 31 of the KP Act

have been violated. Any right though constitutionally guaranteed being not absolute, admits reasonable restrictions imposed by law. The said Government Order itself is 'law' within the meaning of Article 13(3) of the Constitution and the police had tapped the power thereunder.

(c) Sub-section 4 of Section 155 of Cr.P.C. makes it clear that the police do not need permission to investigate a non-cognizable offence while investigating a cognizable one, arising from the same facts. Therefore, respondent-police having investigated into the matter have filed the Charge Sheet for the offences punishable u/s.143 of IPC and u/s.103 of the K.P. Act on their own.

(d) There is abundant Charge Sheet material *prima facie* vouching the commission of offences alleged against the accused and therefore, they should face the trial and come out scathe free. This Court although has power, the same need not be exercised in these cases since it is open to the accused to seek their discharge before the trial Court itself; and,

(e) The arraignment of the police official concerned as a respondent in all these petitions, lacks *bona fide* and is calculated to affect the morale of public servants. There is absolutely nothing to drag the concerned police

official personally in the challenge laid to proceedings of the court below.

V. I have heard the learned advocates representing the petitioners and the learned Addl. SPP appearing for the Respondent- State and the police official. I have perused the Petition papers; the pleadings & the submissions made at the Bar show that all they involve same fact matrix and legal matrix. I have also adverted to relevant of the rulings cited at the Bar. These petitions, in my considered opinion, do not merit interference for the following reasons:

1. AS TO RIGHT OF AGITATION BEING A FUNDAMENTAL RIGHT:

(a) Our Constitution vide Article 19(1) guarantees to all citizens the freedom of free speech, free movement and of freely associating with each other. The right to agitate in group, partakes the character of amalgam of these rights. The Chief Architect of our Constitution, Dr. B.R.Ambedkar used to exhort masses to '*educate, agitate & organise'*, as *mool-mantra* for the transformation of

society. However, none of these rights is and can be absolute. There are similar rights of others, which too need to be protected in equal measure, cannot be disputed. Any *civilized jurisdiction* as of necessity recognizes power of the State to regulate the exercise of these rights by imposing reasonable restrictions. Some 'balancing' of these competing rights, thus needs to be done, keeping in view a host of factors so that the societal life smoothly sails, without much friction & turmoil. Therefore, the Makers of our Constitution have enacted Article 19(2) providing for this enablement. State can regulate *inter alia* these rights, by law.

(b) In **MAZDOOR KISAN SHAKTI SANGATHAN vs. UNION OF INDIA, (2018) 17 SCC 324** at para 61, the following observation appears:

> *"Undoubtedly, right of people to hold peaceful protests and demonstrations etc. is a fundamental right guaranteed under Articles 19(1)(a) and 19(1)(b) of the Constitution. The question is as to whether disturbances etc. caused by it to the residents, as mentioned in detail by the NGT, is a larger public interest which outweighs the rights of protestors to hold*

> *demonstrations at Jantar Mantar road and, therefore, amounts to reasonable restriction in curbing such demonstrations. … holding of demonstrations in the way it has been happening is causing serious discomfort and harassment to the residents. At the same time, it is also to be kept in mind that for quite some time Jantar Mantar has been chosen as a place for holding demonstrations and was earmarked by the authorities as well. …principle of primacy cannot be given to one right whereby the right of the other gets totally extinguished. Total extinction is not balancing. Balancing would mean curtailing one right of one class to some extent so that the right of the other class is also protected".*

What is notable in the above is: protests & demonstrations were held in the place which the authorities had earmarked for that purpose, and not on public roads. No research is needed to show that cities at least during day time, do have thick movement of people; traffic jams are a matter of regular scenes.

(c) Public roads, streets & parks do exist primarily for the benefit of people at large; they are there for being used for the purpose for which they are ordained. Certainly, they are not ordained for agitation, as a matter

of course. At the same time, strikes & agitations do take place on public places such as streets & parks, is also a hard truth, their object *inter alia* being the creation of public opinion or demonstration of detest. In a democracy, strikes & agitations, if are to be held "*Far From* The *Maddening Crowd'*, (to use the title of Thomas Hardy's book) that is to say only on hilltops, in the middle of forests or on the sea-shores, their purpose would largely remain unachieved. It would be more like a great business *sans* advertisement. In **ANITA THAKUR vs. STATE OF J&K (2016) 15 SCC 525**, at para 8 the following passage appears:

> "*We can appreciate that holding peaceful demonstration in order to air their grievances and to see that their voice is heard in the relevant quarters is the right of the people. … that the petitioners could raise slogan, albeit in a peaceful and orderly manner, without using offensive language. … The 'right to assemble' is beautifully captured in an eloquent statement that "an unarmed, peaceful protest procession in the land of 'salt satyagraha', fast-unto-death and 'do or die' is no jural anathema". It hardly needs elaboration that a distinguishing feature of any democracy is the space offered for legitimate dissent. One cherished and valuable aspect of political life in India is a tradition to*

express grievances through direct action or peaceful protest…".

(d) The American Supreme Court in **STROMBERG vs. CALIFORNIA 283 US 359, 369 (1931)** had said: "*Democracy depends upon the opportunity for free political discussion"*. For achieving free trade of ideas and plurality of opinions, agitative rights assume importance. *Our constitutional command of free speech and assembly is basic and fundamental and encompasses peaceful social protest, so important to the preservation of the freedoms treasured in a democratic society*. This is one view. However, there is another too, which is in bit variance. The proponents of agitational rights claim right to political protest as a right to freedom of expression and assembly. However, exercising such a form of freedom can prove costly for the society. Agitations hinder the regular movement of ordinary people. Their wide range effects are succinctly stated by Abu S. Shonchoy & Kenmei Tsubota of Institute of Developing Economies-JETRO and New York University in their paper 'Economic Impact of

Political Protests (Strikes) on Manufacturing Firms: Evidence from Bangladesh':

> "*…firms lose valuable working hours; factories miss labor days; poor people lose days' worth of income; students miss classes; patients miss doctors' appointments; shipments get delayed; meetings get postponed, and overall the economy misses its desierd target. Though political parties often call hartals in the name of people, in reality, hartals directly and indirectly impinge upon ordinary citizens, specially those belonging to the lower and lower-middle income brackets of the economy...*"

(e) In **AMIT SAHANI vs. COMMISSIONER OF POLICE, (2020) 10 SCC 439**, what the Apex Court observed at para 17 lends credence to the other view which justifies regulating/restricting of so called "*agitational rights*". It runs:

> *"However, while appreciating the existence of the right to peaceful protest against a legislation (keeping in mind the words of Pulitzer Prize winner, Walter Lippmann, who said "In a democracy, the opposition is not only tolerated as constitutional, but must be maintained because it is indispensable"), we have to make it unequivocally clear that public ways and public spaces cannot be occupied in such a manner and that too indefinitely. Democracy and dissent go hand in hand, but then the demonstrations expressing dissent have to be in designated places alone. The present case was*

> *not even one of protests taking place in an undesignated area, but was a blockage of a public way which caused grave inconvenience to commuters. We cannot accept the plea of the applicants that an indeterminable number of people can assemble whenever they choose to protest…".*

Therefore, the jurisprudential support avails in justification of curtailment of agitational rights and as a result, the contention of the petitioners to the contrary does not merit countenance.

2. AS TO CONTENTION OF PROCEEDINGS BEING POLITICALLY MOTIVATED:

(a) The petitioner-accused hold high positions: one of them happens to be the Chief Minister of the State; other two are Cabinet Ministers; one is a sitting Member of Parliament and the other a sitting Member of Legislative Assembly of the State. The learned Advocates appearing for the petitioners submitted that the proceedings against their clients are politically motivated inasmuch as before May 2023 Assembly Elections, four of them were in the Opposition; one of the petitioner's i.e., a Member of Parliament elected from the Opposition Party. However,

this assertion even if true *per se* does not *prima facie* substantiate the allegations of political vendetta. To draw such an inference, there needs to be some material on record, and there is none at this stage. Allegation of the kind is easily pleaded and seldom established. Apparently these involve disputed questions of fact, that can be adjudged by the court below, if at all the case against them travels to the stage of trial.

(b) The complaint was lodged by none other than a Police official of the jurisdictional area; this she did after collecting the intelligence from sources, whilst hovering in due course, there on duty. The said police official namely 'Kum.Jahida' is arrayed as Respondent No.2 in her personal capacity in all these petitions *sans* any justification. Had she been made a party in her official capacity, arguably that could not have been faltered. This court deprecates the practice of arraying officials in their personal capacity as party-respondents. One cannot ignore the legislative protection that are justifiably conferred on

the public servants u/s.196 of Cr.P.C. in general and u/s.169 of K.P. Act on the police officials, in particular. Permitting their arraignment as such will have a demoralizing effect on the administration of law & order. Public servants should be allowed to discharge their duty without fear or favour. Apparently, what she has done is in due discharge of her official duty. She lodged the complaint in her *'best judgment assessment'* of the events. She might have erred arguably. But that is no ground for arraying her as a Respondent in the personal capacity. That cannot go with impunity. Costs need to be levied for this unjustifiable act of Petitioners.

3. AS TO SUBJECT OFFENCES BEING NON-COGNIZABLE AND COMPETENCE OF THE POLICE TO INVESTIGATE:

a) The Police after investigation have filed the Charge Sheet/Final Report before the jurisdictional Magistrate, invoking the provisions of Section 143 of IPC and Section 103 of KP Act. The former prescribes a punishment of imprisonment for a term which may extend to six months or fine or with both. This offence figures in Schedule I to

the Code as a cognizable offence though bailable at the hands of Magistrate. Therefore, the Police have power & duty to investigate the same. This they have done by filing the Charge Sheet. In view of this, the action of the police cannot be faltered in these proceedings. For the same reason, the case pending before the court below cannot be interdicted.

b) True it is, that the provisions of Section 103 of the KP Act are also invoked in the Charge Sheet. This Section penalizes the contravention of any order made under Section 31 of the Act, only with fine which may extend to Rs.200/- or Rs.500/- as the case may be. The contention that the Police could not have taken cognizance of the same since it is a non-cognizable offence, would have merited countenance, had there been no companion offence which is cognizable. As already discussed above, the Petitioners are charged with the commission of offence punishable u/s 141 of IPC which is statutorily made cognizable, although learned Magistrate is yet to frame

charge. Learned Addl. SPP is more than justified in vehemently invoking the provisions of Section 155(4) of Cr.P.C., which has the following text:

> *"Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable."*

This provision makes it clear that the Police do not need permission to investigate a non-cognizable offence while investigating a cognizable one. The FIR was registered for the offences punishable u/Ss. 143 & 341 of IPC and Section 103 of KP Act. The former are cognizable offences. Of course, Section 341 does not factor in the Charge Sheet; but that makes no difference, admittedly Section 143 being still retained there.

4. AS TO GOVERNMENT ORDER DT. 29.12.2021:

(a) Sec.31 of K.P.Act delegates power for promulgating *'orders for regulation of traffic and for preservation of order inter alia in places'.* Accordingly the subject order has been issued, and that partakes the character of 'law' as inclusively defined under Article 13(3)

of the Constitution. Its provisions *inter alia* regulate the conduct of congregation of persons, assemblies and processions on the public streets. It is the case of respondent-police that instructions were issued to the congregating persons including the accused that they should not assemble on the public road in question. However, according to police, these instructions were disobeyed and that the accused in an unlawful assembly had prevented the flow of traffic on the said road and had created law & order problem, too. This, if proved, would amount to an offence punishable u/s.103 of K.P.Act, of course, only with fine. Though this is a non-cognizable offence, why police having investigated the same filed the Charge Sheet, is already discussed above. Whether these allegations are true, is a disputed question of facts which cannot be readily examined by this court.

(b) Learned Addl. SPP is justified in drawing the attention of court to the following observations in **STATE OF ORISSA vs. SAROJ KUMAR SAHOO, (2005) 13 SCC**

340. They recognize the limitations on power which these petitions have tapped. Part of para 8 reads thus:

> *" …While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist …".*

He is right in telling that the power to quash the criminal proceedings be it under Articles 226/227 of the Constitution or u/s.482 of Cr.P.C. should not be permitted to be resorted to as a matter of course. One has to show that the initiation or continuance of the impugned proceedings amounts to abuse of the process of court and that their quashment would otherwise meet the ends of justice. The contents of the Charge Sheet coupled with evidentiary material collected during the investigation lend *prima facie* credence to the case of the police that the matter at the hands of the court below could travel to the precincts of Sec.239 of Cr.P.C. Merely because the offence

is punishable with imprisonment of a short duration or only with fine or with both, the proceedings cannot be readily quashed for an askance. A contra view runs counter to the '*quashment jurisprudence*' built by the Apex Court over decades.

(c) What has been observed in a recent case i.e., **IQBAL vs. STATE OF U.P., (2023) 8 SCC 734** assumes greater significance. Para 7 of the judgment runs:

> *"7. It is relevant to note that the victim has not furnished any information in regard to the date and time of the commission of the alleged offence. At the same time, we also take notice of the fact that the investigation has been completed and charge-sheet is ready to be filed. Although the allegations levelled in the FIR do not inspire any confidence more particularly in the absence of any specific date, time, etc. of the alleged offences, yet we are of the view that the appellants should prefer discharge application before the trial court under Section 227 of the Code of Criminal Procedure (CrPC). We say so because even according to the State, the investigation is over and charge-sheet is ready to be filed before the competent court. In such circumstances, the trial court should be allowed to look into the materials which the investigating officer might have collected forming part of the charge-sheet. If any such discharge application is filed, the trial court shall look into the materials and take a call whether any case for discharge is made out or not".*

5. AS TO LIBERTY OF THE ACCUSED TO SEEK DISCHARGE AT THE HANDS OF MAGISTRATE:

(a) As already stated above, the police after investigation have filed the Charge Sheet for offences punishable u/s.141 of IPC & u/s.103 of the K.P. Act. The charges are yet to be framed by the jurisdictional Magistrate. Sec.239 r/w Sec.240 of Cr.P.C. empowers the Magistrate to frame or not, the charge against the accused after considering the police report referred to u/s.173 of the Code and the documents sent with it. The accused persons have a right to be heard and the Magistrate can also examine them, if he finds it necessary vide **MINAKASHI BALA vs. SUDHIR KUMAR, 1994 SCC (Cri) 1181.** If there is no ground for presuming that the accused has committed an offence, the charge must be considered to be groundless, which is the same thing as saying that there is no ground for framing the charge u/s.240. The Magistrate is duty bound to consider the entire material referred to in Sec.239 prior to his coming to a decision either way. It is also relevant to note that

the accused at the stage of framing charge can apply for the summoning of documents which might totally affect even the very sustainability of the case vide **OM PRAKASH SHARMA vs. CBI, AIR 2000 SC 2335.**

(b) Learned Addl. SPP in the light of the law discussed above, is right in contending that merely because the petitioners happen to be Ministers/Elected Representatives of the People, they should not be permitted to land in this court by invoking constitutional jurisdiction or inherent jurisdiction u/s.482 of the Code. This court in more or less similar matters relegated the accused to the Trial Courts reserving liberty to seek discharge u/ss. 226 & 227 or u/ss. 239 & 240 of the Code, if grounds do exist therefore. There is no extraordinary circumstance that warrants this court leaving the beaten track. It is open to them to appear before the Magistrate and seek discharge. '*Howsoever high thou art be, law is above you'*, goes the saying. Rt. Hon. Lord Justice Sedley in his book FREEDOM,

LAW AND JUSTICE [50th Hamlyn Lectures Series-Sweet and Maxwell] writes at page 37:

> *"…The historic decision of the House of Lords in M v. Home Office, [1994] 1 AC 377 that ministers of the Crown are answerable to the courts for breach of their orders has restored constitutional law to a principled course from which it had been deviating for over a century… By a fine irony of history, Dicey's well-known view that we had no need of a system of administrative law because everyone from the* ***postman to the prime minister*** *was governed by the ordinary law, is more nearly true now than it was when he wrote it..."*

(c) It is told at the Bar that none of the Petitioners has marked his maiden appearance before the learned trial Judge all these days. This Court assumes that there might be some justification for this. Now, the Petitioners being relegated to the Court below, their petitions deserving dismissal, they should in all fairness go and stand before the Special Court and seek discharge from the proceedings that *pend* there.

In the above circumstances, I make the following:

ORDER

(1) These Petitions being devoid of merits are liable to be dismissed and accordingly they are; all & any interim orders granted therein, stand dissolved;

(2) Each of the Petitioners shall remit to the Registry of the Court below within two weeks a cost of Rs.10,000/- (Ten Thousand Rupees) only, payable to the Chief Minister's Fund, after such deposit is made;

(3) Should any of the Petitioners fail to remit costs as directed above, the Special Court shall not grant exemption to such of them, from personal appearance on any ground whatsoever;

(4) Petitioners shall mark their maiden appearance personally before the Special Court on the following split dates, so that the security arrangements that are ordinarily made because of their positions, do not pose difficulty to anyone:

(a) In Crl.P.No.7533/2023, Petitioner-
Sri Siddaramaiah to appear on 26.02.2024;

(b) In W.P.No.29380/2023, Petitioner-Sri Randeep Singh Surjewala to appear on 07.03.2024;

(c) In W.P.No.430/2024, Petitioner No.1-
Sri M.B.Patil and Petitioner No.2- Sri Salim Ahmed to appear on 11.03.2024;

(d) In Crl.P.No.12650/2023, Petitioner-
Sri Ramalingareddy to appear on 15.03.2024.

It is open to the Special Court to alter the above dates in its discretion should special circumstances such as Legislative House Session or the like being convened, if the Petitioners make a request for that purpose.

Nothing observed hereinabove shall influence the hearing of Discharge Applications if made and that the Special Court is requested to decide such applications as expeditiously as possible, subject to what is stipulated above.

Registry to mark a copy of this judgment to the 2nd Respondent-Kum. Jahida by Speed Post forthwith.

Sd/-
JUDGE

Snb/bsv/cbc