NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 444 of 2021

Order Reserved on : 20.07.2021

Order Delivered on : 23.07.2021

Gurjinder Pal Singh, S/o Paramjeet Singh Plaha, aged about 51 years, Occupation- Director State Police Academy, Chandkhuri, Raipur (C.G.)- 492101

---- Petitioner

Versus

State of Chhattisgarh, through: the Station House Office, PS- Kotwali, Raipur (C.G.)

---- Respondent

For Petitioner	:	Mr. Kishore Bhaduri, Sr. Adv. with Mr. Sabyasachi Bhaduri, Advocate.
For State	:	Mr. Amrito Das, Additional A.G.

Hon'ble Shri Justice Narendra Kumar Vyas

CAV Order

1. Heard on I.A. No. 01/2021, application for grant of interim relief.

2. Learned counsel for the petitioner submits that petitioner belongs to 1994 batch of IPS and was initially allocated to M.P. Cadre. On bifurcation of State of Madhya Pradesh, he was reallocated to State of Chhattisgarh. The petitioner has completed 25 years of dedicated service. He has been awarded by the Government for his efficient service to the police department. He has worked in extremely hard situation and continuously worked in naxalite infected area, he has also worked as naxal operation. In the year 2007 he was awarded with police medal for Gallantry. In the year 2011, he was awarded with President Police Medal for meritorious service. He has conferred with the prestigious “Digital India Award” from Government of India for launching of application, which is beneficial for public namely 'Citizen Cop Mobile App' while

working as Inspector General of Police, Raipur. He has awarded with various appreciations by his superior authority for professions contribution in VIP security, investigation, naxal operations. Considering his vast experience outstanding and unblemished service record, the petitioner was posted as Inspector General of Police, Anti Corruption Bureau and Economic Offences Wing (for short "ACB/EOW") from 28.02.2019 to 29.06.20219. Thereafter, he was promoted as Additional Director General of Police and working as Director, Anti-Corruption Bureau and Economic Offences Wing from 20.06.2019 to 01.06.2020.

3. The petitioner has filed present writ petition challenging the FIR dated 08.07.2021 bearing FIR No. 33341054210134 lodged at Police Station- Kotwali, Raipur (C.G.) for committing offence under Sections 124A & 153A of I.P.C., mainly contending that the registration of FIR is a continuation of the ill-motivated vendetta to rope the petitioner at the whims of State agency under the aegis of highest authority of the State on account of preelection propagations made by the party in power. It has been contended by learned Senior counsel that the FIR bearing registration No. 22/2021 has been registered against the petitioner by Anti Corruption Bureau, Raipur on 29.06.2021 under Sections 13(1)(b) and 13(2) of the Prevention of Corruption Act, 1988.

4. On 01.07.2021 the residence of the petitioner was raided by the police alleging found some pieces of papers in a drain behind the house of the petitioner which were later on reconstructed by them into some notes, criticize, statistics report against political party and against few representatives of the various wings of the State. The contents of the reconstructed documents are illicit vengeance and hatred against the State Government, as a result, the FIR for committing an offence under Sections 124A & 153A has been registered against the petitioner.

5. Learned senior counsel for the petitioner would submit that from bare perusal of FIR, it will be crystal clear that no offence under Sections 124A & 153A of IPC has been made out by the respondent. He would further highlight the bias attitude against him by referring to the NAN case and would submit that continuation of criminal proceeding against the petitioner is an abuse of process of law, therefore, the FIR should have been quashed by this Court.

6. He would further submit that the alleged conduct of the petitioner cannot be called as sedition as this has never been circulated the said content between the public and it has not prompted any enmity between different groups on the ground of religion, race, place of birth, residence language and his act does not prejudicial to maintenance of harmony, therefore, he would submit that FIR be quashed and till the respondents filed their reply, no coercive steps be taken against the petitioner. He would rely upon para 26 of judgment of Hon'ble the Supreme Court in case of **Kedar Nath Singh Vs. State of Bihar**, reported in **AIR 1962 SC 955**, which is reproduced as under:-

> "26. In view of the conflicting decisions of the Federal Court and of the Privy Council, referred to above, we have to determine whether and how far the provisions of Ss. 124A and 505 of the Indian Penal Code have to be struck down as unconstitutional. If we accept the interpretation of the Federal Court as to the gist of criminality in an alleged crime of sedition, namely, incitement to disorder or tendency or likelihood of public disorder or reasonable apprehension thereof, the section may lie within the ambit of permissible legislative restrictions on the fundamental right of freedom of speech and expression. There can be no doubt that apart from the provisions of (2) of Art. 19, Ss. 124A and 505 are clearly violative of Art. 19(1)(a) of the Constitution. But then we have to see how far the saving clause, namely, cl.(2) of Art. 19 protects the sections aforesaid. Now, as already pointed out, in terms of the amended cl. (2), quoted above, the expression "in the interest of ..... public order" are words of great amplitude and are much more

comprehensive than the expression "for the maintenance of", as observed by this Court in the case of Virendra v. State of Punjab, 1958 SCR 308 at p.317:((S) AIR 1957 SC 896 at p. 899). Any law which is enacted in the interest of public order may be saved from the vice of constitutional invalidity. If, on the other hand, we were to hold that even without any tendency to disorder or intention to create disturbance of law and order, by the use of words written or spoken which merely create disaffection or feelings of enmity against the Government, the offence of sedition is complete, then such an interpretation of the sections would make them unconstitutional in view of Art. 19(1)(a) read with cl. (2). It is well settled that if certain provisions of law construed in one way would make them consistent with the Constitution, and another interpretation would render them unconstitutional, the Court would lean in favour of the former construction. The provisions of the sections read as a whole, along with the explanations, make it reasonably clear that the sections aim at rendering penal only such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence. As already pointed out, the explanations appended to the main body of the section make it clear that criticism of public measures or comment on Government action, however strongly worded, would be within reasonable limits and would be consistent with the fundamental right of freedom of speech and expression. It is only when the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of public order. So construed, the section, in our opinion, strikes the correct balance between individual fundamental rights and the interest of public order. It is also well settled that in interpreting an enactment the Court should have regard not merely to the literal meaning of the words used, but also take into consideration the antecedent history of the legislation, its purpose and the mischief it seeks to suppress vide (1) Bengal Immunity Co. Ltd. v. State of Bihar, 1955-2 SCR 603: ((S) AIR 1955 SC 661) and (2) R.M.D. Chamarbaugwala v. Union of India, 1957 SCR 930 : ((S) AIR 1957 SC 628). Viewed in that light, we have no hesitation in so construing the provisions of the sections

impugned in these cases as to limit their application to acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence."

7. He would also rely upon para 8 & 9 of judgment of Hon'ble the Supreme Court in case of **Balwant Singh & another Vs. State of Punjab**, reported in **(1995) 3 SCC 214**, which read as under:-

"**8. Section 124A** IPC reads thus:

124A. Sedition - whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life, to which fate may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1 - The expression "disaffection" includes disloyalty and all feelings of enmity.

Explanation 2 - Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3 - Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence tinder this Section."

A plain reading of the above Section would show that its application would be attracted only when the accused brings or attempts to bring into hatred or contempt or excites or attempts to excite disaffection towards the Government established by law in India, by words either written or spoken or visible signs or representations etc. Keeping in view the prosecution evidence that the slogans as noticed above were raised a couple of times only by the appellant and that neither the slogans evoked a response from any other person of the Sikh community or reaction from people of other communities, we find it difficult to hold that upon the raising of such casual slogans, a couple of times without any other act whatsoever the

charge of sedition can be founded. It is not the prosecution case that the appellants were either leading a procession or were otherwise raising the slogans with the intention to incite people to create disorder or that the slogans in fact created any law and order problem. It does not appear to us that the police should have attached much significance to the casual slogans raised by two appellants, a couple of times and read to much into them. The prosecution has admitted that no disturbance, whatsoever, was caused by the raising of the slogans by the appellants and that inspite of the fact that the appellants raised the slogans a couple of times, the people, in general, were un-affected and carried on with their normal activities. The casual raising of the Slogans, once or twice by two individuals alone cannot be said to be aimed at exciting or attempt to excite hatred or disaffection towards the Government as established by law in India, Section 124A IPC, would in the facts and circumstances of the case have no application whatsoever and would not be attracted to the facts and circumstances of the case.

9. In so far as the offence under Section 153A IPC is concerned, it provides for punishment for promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever or brings about disharmony or feeling of hatred or ill-will between different religious, racial, language or regional groups or castes or communities. In our opinion only where the written or spoken words have the tendency or intention of creating public disorder or disturbance of law and order or effect public tranquility, that the law needs to step in to prevent such an activity. The facts and circumstances of this case unmistakably show that there was no disturbance or semblance of disturbance of law and order or of public order or peace and tranquility in the area from where the appellants were apprehended while raising slogans on account of the activities of the appellants. The intention to cause disorder or incite people to violence is the sine qua non of the offence under Section 153 A IPC and the prosecution has to prove the existence of mens rea in order to succeed. In this case, the prosecution has not been able to establish any mens rea on the part of the appellants, as envisaged by the provisions of Section 153A IPC, by their raising causally the

three slogans a couple of times. The offence under Section 153A IPC is, therefore, not made out."

8. Learned Additional Advocate General for the State would submit that in the back side of resident, some teared off papers were seized. They were kept in the polythene and after completion of proceeding of raid on 03.07.2021 the documents were arranged. The documents were hand written and some documents were typed in Hindi and English. From bare perusal of the documents, it has been found that the contents of the documents are tarnishing the image of Government. There was something objectionable, which has been written with regard to community. The documents would, prima facie, establishes that it has been written with intent to tarnish the reputation of the Government to destroy the peace and harmony of the State and to create hate between various communities. Thus, prima facie, the case is made out. He would refer to Sections 124A & 153A of I.P.C., which read as under:-

"**124A. Sedition**.—Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in' shall be punished with prisonment for life], to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

153A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony. — (1) Whoever—

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different reli-gious, racial, language or regional groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquility,

[(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,]

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

Offence committed in place of worship, etc. — (2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.]"

9. I have heard learned Senior counsel for the petitioner Mr. Kishore Bhaduri with Mr. Sabyasachi Bhaduri, Mr. Amrito Das, Additional Advocate General for the State/respondent and perused the documents annexed with the petition as well as the case diary submitted by the State with utmost satisfaction.

10. For considering the interim application, it is necessary to extract the contents of the FIR dated 08.07.2021 lodged against the petitioner, relevant para of the FIR is extracted below:-

> "..... प्रेषित किया गया है पत्र के साथ 48 पेज की छायाप्रति दस्तावेज संलग्न है। आवेदन पत्र की जांच में साक्षी निरीक्षक मंगेश देशपाण्डेय एवं उप पुलिस अधीक्षक सपन चौधरी के कथन दर्ज किये गये, प्रेषित पत्र में श्री गुरजिन्दर पाल सिंह के निवास स्थल की तलाशी के दौरान घर के पिछले हिस्से में

कागज के फटे हुए टुकड़ों का मिलना एवं इने रि–अरेंज करने पर दस्तावेजों में गंभीर एवं संवेदनशील बातों का लेख होना कहा गया है। इन दस्तावेजों में राजय के विभिन्न विधानसभा क्षेत्रों के प्रतिनिधियों/उम्मीदवारों के संबंध में गोपनीय विश्लेषण लेख किया गया है। विभिन्न शासकीय योजनाओं नीतियों एवं सामाजिक, धार्मिक मुद्दों पर गंभीर टिप्पणी किया जाना लेख है। दस्तावेजों में इस तरह पर गंभीर टिप्पणी किया जाना लेख है। दस्तावेजों में इस तरह भड़काउ बातें लेख की गयी है, जिनसे सरकार के प्रति घृणा असंतोष उत्पन्न हो सकें। इसके अतिरिक्त विभिन्न धर्म मूलवंशों के संबंध में भी अपत्तिजनक बातें लेख/टाईप होना पाया गया है। साक्षीगणों ने भी अपने कथन में इन दस्तावेजों में ऐसे ही तथ्यों का उल्लेख होने का कथन किया है। जांच पर इन दस्तावेजों में उल्लेखित शब्दावली में विधि द्वारा सीापित सरकार के प्रति घृणा पैदा करने का कृत्य घटित किया गया है। ऐसे कृत्य से धर्म मूलवंश के आधार पर विभिन्न समूहों के बीच शत्रुता का सम्पर्तन करने पर सौहाद्र बने रहने पर प्रतिकुल प्रभाव डालने वाला कार्य किया गया है..... ”

11. Learned senior counsel for the petitioner would submit that prima facie, no ingredient of offence under Sections 124A & 153A of IPC has been made out, therefore, the petitioner is entitled to get interim protection and he would submit that no coercive steps be taken against the petitioner till the petition is finally decided by this Court. He would further submit that the issue with regard to registration of FIR under Sections 124A, 153A & 505 of I.P.C. against the two Telugu News Channels is pending before the Hon’ble Supreme Court in WP (Crl.) No. 217/2021 and the Hon’ble Supreme Court vide its order dated 31.05.2021, granted stay to the respondents adopting any coercive proceeding in pursuance of FIR No. 12/2021 dated 14.05.2021 against two television channels, which are the petitioners before the Hon’ble Supreme Court and he would submit that the petitioner may also be granted the similar relief.

12. On the contrary, learned Additional Advocate General .for the State would submit that the FIR contains the ingredients of cognizable offence, therefore, no interim relief at this juncture can be considered as the investigation is in progress. He would further submit that there is sufficient material in the diary, which, prima facie, substantiates the allegation levelled

against the petitioner, therefore, the application for grant of interim relief be rejected. He would further submit that the judgment cited by learned senior counsel for the petitioner in **Kedar Nath Singh (Supra)** has been passed after considering the evidence, material placed on record during trial of the criminal case, whereas this is premature stage as investigation is in progress and no final report has been submitted by the police, therefore, the judgment of **Kedar Nath Singh (Supra)** cited by learned senior counsel is distinguishable from the facts of the present case. Learned Additional Advocate General would further submit that the interim protection granted by Hon'ble the Supreme Court was with regard to journalists and violation of their fundamental rights were examined by Hon'ble the Supreme Court with respect to offence under Section 124A, 153A & 505 of I.P.C., whereas in the present case, the petitioner is a senior police officer against whom, the allegations have been levelled and there is material against him in the diary, therefore, the petitioner is not entitled to get any interim relief and could not claim parity with the petitioners whose case are pending before Hon'ble the Supreme Court. So far as judgment cited by the learned senior counsel in case of **Balwant Singh (Supra)** is concerned, the same is distinguishable on the facts of the present case. He would further submit that anticipatory bail of the petitioner bearing No. 1128/2021 filed on 12.07.2021 before the learned Session Court, has been withdrawn on 13.07.2021, as such, the petitioner is not entitled to get the interim relief as prayed for and the application for grant of interim relief is liable to be rejected by this Court.

13. From bare perusal of the FIR, it is crystal clear that FIR has been registered on 08.07.2021 and present Writ Petition (Cr.) has been filed on 13.07.2021, as such, it is premature stage of filing of the petition. The investigation is in progress and petitioner can very well rebut the allegations made by

respondent while defending himself before the competent court of law. The apprehension of the petition with regard to bias and malafide, cannot be gathered or prima facie inference from the material placed on record. This can be ascertained only after the filing of return by the State, wherein the allegation made by the petitioner can have thread bearing examination by the Court. Even otherwise, the grant of interim relief "no coercive step" will amount to grant of final relief as the investigation will be stopped and truth will not see the light of the day. The interim order passed by Hon'ble the Supreme Court cannot be applied to the case of petitioner as he is a public servant and senior police officer to whom responsibility for maintaining law and order has been assigned, if such allegation is levelled against him it is serious conduct, therefore, he cannot be benefited from the order of Hon'ble Supreme Court.

14. So far as interim relief is concerned, the investigation is in progress and the Hon'ble Supreme Court in **Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra**[1], has issued certain guidelines for granting interim protection while hearing petition under Article 226 of the Constitution of India or Section 482 of Cr.P.C. The Hon'ble Supreme Court has held in para 15 to 18, which read as under:-

> "15. As observed hereinabove, there may be some cases where the initiation of criminal proceedings may be an abuse of process of law. In such cases, and only in exceptional cases and where it is found that non interference would result into miscarriage of justice, the High Court, in exercise of its inherent powers under Section 482 Cr.P.C. and/or Article 226 of the Constitution of India, may quash the FIR/complaint/criminal proceedings and even may stay the further investigation. However, the High Court should be slow in interfering the criminal proceedings at the initial stage, i.e., quashing petition filed immediately after lodging the FIR/complaint and no sufficient time is given to the police to investigate into the allegations of the

1 AIR 2021 SC 1918

FIR/complaint, which is the statutory right/duty of the police under the provisions of the Code of Criminal Procedure. There is no denial of the fact that power under Section 482 Cr.P.C. is very wide, but as observed by this Court in catena of decisions, referred to hereinabove, conferment of wide power requires the court to be more cautious and it casts an onerous and more diligent duty on the court. Therefore, in exceptional cases, when the High Court deems it fit, regard being had to the parameters of quashing and the self-restraint imposed by law, may pass appropriate interim orders, as thought apposite in law, however, the High Court has to give brief reasons which will reflect the application of mind by the court to the relevant facts.

16. We have come across many orders passed by the High Courts passing interim orders of stay of arrest and/or “no coercive steps to be taken against the accused” in the quashing proceedings under Section 482 Cr.P.C. and/or Article 226 of the Constitution of India with assigning any reasons. We have also come across number of orders passed by the High Courts, while dismissing the quashing petitions, of not to arrest the accused during the investigation or till the chargesheet/final report under Section 173 Cr.P.C is filed. As observed hereinabove, it is the statutory right and even the duty of the police to investigate into the cognizable offence and collect the evidence during the course of investigation. There may be requirement of a custodial investigation for which the accused is required to be in police custody (popularly known as remand). Therefore, passing such type of blanket interim orders without assigning reasons, of not to arrest and/or “no coercive steps” would hamper the investigation and may affect the statutory right/duty of the police to investigate the cognizable offence conferred under the provisions of the Cr.P.C. Therefore, such a blanket order is not justified at all. The order of the High Court must disclose reasons why it has passed an ad-interim direction during the pendency of the proceedings under Section 482 Cr.P.C. Such reasons, however brief must disclose an application of mind.

The aforesaid is required to be considered from another angle also. Granting of such blanket order would not only adversely affect the

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investigation but would have far reaching implications for maintaining the Rule of Law. Where the investigation is stayed for a long time, even if the stay is ultimately vacated, the subsequent investigation may not be very fruitful for the simple reason that the evidence may no longer be available. Therefore, in case, the accused named in the FIR/complaint apprehends his arrest, he has a remedy to apply for anticipatory bail under Section 438 Cr.P.C. and on the conditions of grant of anticipatory bail under Section 438 Cr.P.C being satisfied, he may be released on anticipatory bail by the competent court. Therefore, it cannot be said that the accused is remediless. It cannot be disputed that the anticipatory bail under Section 438 Cr.P.C. can be granted on the conditions prescribed under Section 438 Cr.P.C. are satisfied. At the same time, it is to be noted that arrest is not a must whenever an FIR of a cognizable offence is lodged. Still in case a person is apprehending his arrest in connection with an FIR disclosing cognizable offence, as observed hereinabove, he has a remedy to apply for anticipatory bail under Section 438 Cr.P.C. As observed by this Court in the case of Hema Mishra v. State of Uttar Pradesh, (2014) 4 SCC 453, though the High Courts have very wide powers under Article 226, the powers under Article 226 of the Constitution of India are to be exercised to prevent miscarriage of justice and to prevent abuse of process of law by the authorities indiscriminately making pre-arrest of the accused persons. It is further observed that in entertaining such a petition under Article 226, the High Court is supposed to balance the two interests. On the one hand, the Court is to ensure that such a power under Article 226 is not to be exercised liberally so as to convert it into Section 438 Cr.P.C. proceedings. It is further observed that on the other hand whenever the High Court finds that in a given case if the protection against pre-arrest is not given, it would amount to gross miscarriage of justice and no case, at all, is made for arrest pending trial, the High Court would be free to grant the relief in the nature of anticipatory bail in exercise of its powers under Article 226 of the Constitution of India, keeping in mind that this power has to be exercised sparingly in those cases where it is absolutely warranted and justified. However, such a blanket interim order of not to arrest or

"no coercive steps" cannot be passed mechanically and in a routine manner.

17. So far as the order of not to arrest and/or "no coercive steps" till the final report/chargesheet is filed and/or during the course of investigation or not to arrest till the investigation is completed, passed while dismissing the quashing petitions under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India and having opined that no case is made out to quash the FIR/complaint is concerned, the same is wholly impermissible.

18. This Court in the case of Habib Abdullah Jeelani (supra), as such, deprecated such practice/orders passed by the High Courts, directing police not to arrest, even while declining to interfere with the quashing petition in exercise of powers under Section 482 Cr.P.C. In the aforesaid case before this Court, the High Court dismissed the petition filed under Section 482 Cr.P.C. for quashing the FIR. However, while dismissing the quashing petition, the High Court directed the police not to arrest the petitioners during the pendency of the investigation. While setting aside such order, it is observed by this Court that such direction amounts to an order under Section 438 Cr.P.C., albeit without satisfaction of the conditions of the said provision and the same is legally unacceptable. In the aforesaid decision, it is specifically observed and held by this Court that "it is absolutely inconceivable and unthinkable to pass an order directing the police not to arrest till the investigation is completed while declining to interfere or expressing opinion that it is not appropriate to stay the investigation". It is further observed that this kind of order is really inappropriate and unseemly and it has no sanction in law. It is further observed that the courts should oust and obstruct unscrupulous litigants from invoking the inherent jurisdiction of the Court on the drop of a hat to file an application for quashing of launching an FIR or investigation and then seek relief by an interim order. It is further observed that it is the obligation of the court to keep such unprincipled and unethical litigants at bay.

In the aforesaid decision, this Court has further deprecated the orders passed by the High Courts, while dismissing the applications under Section 482 Cr.P.C. to the effect that if the petitioner-accused surrenders before the trial

Magistrate, he shall be admitted to bail on such terms and conditions as deemed fit and appropriate to be imposed by the Magistrate concerned. It is observed that such orders are de hors the powers conferred under Section 438 Cr.P.C. That thereafter, this Court in paragraph 25 has observed as under:

> 25. Having reminded the same, presently we can only say that the types of orders like the present one, are totally unsustainable, for it is contrary to the aforesaid settled principles and judicial precedents. It is intellectual truancy to avoid the precedents and issue directions which are not in consonance with law. It is the duty of a Judge to sustain the judicial balance and not to think of an order which can cause trauma to the process of adjudication. It should be borne in mid that the culture of adjudication is stabilised when intellectual discipline is maintained and further when such discipline constantly keeps guard on the mind."

15. It is pertinent to mention here that the petitioner has filed bail application under Section 438 of Cr.P.C. for grant of anticipatory bail, which was later on withdrawn on the pretext that on 13.07.2021, he has filed the writ petition before this Court, therefore, grant of any protection would override the provisions of Section 438 of Cr.P.C. as such, considering the overall material placed before this Court, diary of the case, I am of the considered opinion that the petitioner is not entitled to get any interim relief as prayed for by the petitioner and the interim application is liable to be dismissed. Accordingly, the same is dismissed.

16. It is made clear that this Court has considered the submissions made by the parties for the purpose of deciding application for grant interim relief and the same will not adversely affect the right of petitioner to defend himself, case of prosecution or at the time of final hearing of Writ petition or even during investigation of the case or even before trial court in case of submission of final report before Trial Judge.

17. All the contentions raised by the parties are left open that may be decided at the time of final hearing.

18. Learned counsel for the State is directed to file return within four weeks.

19. List this case **after five weeks**.

Sd/-
(Narendra Kumar Vyas)
Judge

Arun