IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

111 **CRM-M-47455-2023**
Date of decision: 21.11.2023

SARABJEET SINGH KALSI ...Petitioner

Versus

STATE OF PUNJAB AND OTHERS ...Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Navkiran Singh, Advocate and
Ms. Harpreet Kaur, Advocate,
for the petitioner.

Mr. Aman Pal, Addl. Advocate General, Punjab and
Mr. Sandeep, Addl. Advocate General, Punjab with
Dr. Riputapan Singh Sandhu, DSP, Amritsar.

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RAJBIR SEHRAWAT, J.

1. Freedom; and absolute freedom; has been cherished desire of every human being since the human beings sensed the instinct of 'possession'. However, absolute freedom for one can have huge adverse consequences qua the freedom of another person. Therefore, as a principle of civilized social organization, a new idea was born; which is called liberty. Liberty is the freedom as regulated by law laid down by the sovereign. Therefore, in all legal systems prevalent under various types of sovereigns, the liberty of individual has been ensured to some extent and has been curbed qua certain aspects and under certain circumstances. Article 21 of the Constitution of Bharat contains one of the most important fundamental rights guaranteed to all in India. This Article guarantees right to life and liberty for all. Therefore, this Article can be aptly called as the

brightest shining star in the constitutional constellation of Bharat. However, all brightest shining stars are cursed to undergo an eclipse as well. Article 21 of the Constitution is no exception to this. The Article 22 of the Constitution puts curbs on the liberty of citizen to some extent in certain situations; and to a greater extent for certain reasons. Article 22 of the Constitution though framed as protection, however, it also deals with the permissible curbs; and to some extent permits limiting the liberty of an individual to a great extent; for some time period. The present case represents the classic friction between Article 21 of the Constitution and the Article 22, as contained in the Constitution of Bharat.

2. The present petition has been filed under Section 482 of the Code of Criminal Procedure (for short, 'the Code'), for issuance of directions to respondents No.3 and 4 to effect arrest and to join the petitioner in the investigation in case FIR No.39 dated 24.02.2023, registered under Sections 307, 353, 186, 332, 333, 506, 120-B, 427, 148 and 149 IPC, at Police Station Ajnala, District Amrtisar Rural, and to conclude the investigation in the said FIR at the earliest, so as not to infringe his right to speedy trial; which includes speedy investigation, as enshrined under Article 21 of the Constitution of Bharat as he alongwith nine others has been detained under the National Security Act, 1980, at Dibrugarh Central Jail, Assam, in March, 2023 and no arrest has been effected in the criminal case registered against them; for the last six months, with certain other prayers made in the present petition.

3. The facts of this case, in brief, are that a large number of persons carried out a protests in the State of Punjab under leadership of one

Amritpal Singh, who claimed to be head of an organization, named, 'Waris Punjab De'. In the process, on 23.02.2023, they, allegedly, ransacked Police Station Ajnala, attacked police persons and had destroyed the record of the police station, besides creating an adverse situation for the public order. Accordingly, FIR No.39 dated 24.02.2023, under Sections 307, 353, 186, 332, 333, 506, 120-B, 427, 148 and 149 IPC, at Police Station Ajnala, District Amrtisar Rural, was registered against 19 persons, who are named in the FIR, and against 200-250 unknown persons. The name of the petitioner does not find mentioned in the said FIR. However, challan has already been filed in the said FIR against some of the accused. Name of the petitioner is mentioned in column No.2 in the final report filed against the other accused. Beside this, the competent authority had passed the order dated 18.03.2023 regarding the preventive detention of 09 persons under the National Security Act. The petitioner is one of these 09 persons. The validity of the said detention order passed against the petitioner has been approved by the Advisory Board and thereafter, the petitioner has challenged the validity of the same by filing a writ petition before this Court, which is pending for adjudication separately. All these 09 detained persons have been kept in Dibrugarh Central Jail, Assam. The petitioner is one of these 09 persons, who has been detained under the National Security Act, and has been kept in Dibrugarh Central Jail, Assam. In the above-said factual perspective, the petitioner has filed the present petition.

4. Since the validity of the order of detention passed against the petitioner is already a subject matter of adjudication in a separate petition pending before the another Bench of this Court, therefore, this Court does

not consider it appropriate to delve into any aspect relating to the validity of the detention of the petitioner, as such. This Court shall restrict only qua the prayer made by the petitioner in the present petition.

5. It is submitted by counsel for the petitioner that the petitioner is having a right to speedy trial. The speedy trial involves speedy action at all stages of trial, including the investigation. Since in the challan filed against some of the accused in the abovesaid FIR, the name of the petitioner has been kept in column No.2, therefore, it shows that the petitioner is being treated as an accused in the FIR case. Since the petitioner is already in the custody of the State and the State is intending to prosecute the petitioner as well, for the offences as mentioned in the FIR, therefore, the State should be directed to arrest the petitioner in the FIR case and to complete the investigation with due promptitude, so as to decide the aspect whether the petitioner is to be prosecuted for the offences mentioned the abovesaid FIR or not. The petitioner cannot be made to incarcerate twice, once for the preventive detention and another time for prosecution in the criminal case. The object of preventive detention is to prevent the adverse consequences of actions of a person and not to prolong his incarceration. Therefore, the State deserves a direction to carry out the investigation qua the involvement of the petitioner in criminal case and thereafter, to proceed in the matter. Counsel for the petitioner has relied upon the judgments rendered by the Hon'ble Supreme Court in ***Kartar Singh Vs. State of Punjab 1994(2) R.C.R. (Criminal) 168, Hussain and another Vs. Union of India 2017 (2) R.C.R. (Criminal) 312, Justice K.S.Puttaswamy (Retd.) and another Vs. Union of India and others, 2017***

AIR (Supreme Court) 4161, A.K.Roy Vs. Union of India and another 1982 AIR (Supreme Court) 710, Yumman Ongbi Lembi Leima Vs. State of Manipur and others, 2012 (1) RCR (Criminal) 514, and ***Smt. Icchu Devi Choraria Vs. Union of India and others 1980 AIR (Supreme Court) 1983,*** to buttress his arguments qua the right to speedy trial. Counsel has also submitted that the police should show the arrest of the petitioner and then, the petitioner can be interrogated either by bringing him to Punjab or through video conferencing.

6. Since counsels for the State had come present even prior to the issuance of notice, therefore, counsels for the State were also heard to some extent, limited to the aspect of the prayer made by the petitioner in the present petition.

7. Counsel for the State has submitted that the State has sufficient material to justify the detention of the petitioner under the National Security Act. However, for the purpose of the present petition, it would be sufficient to apprise this Court that considering the material available with the State, the submissions on the part of the State are that it is in the interest of the State to keep the petitioner away from the State of Punjab for the time being. Hence, the petitioner cannot be brought to Punjab. He has been sent to Dibrugarh Central Jail, Assam, for certain reasons only. So far as the investigation of the case is concerned, so far the State has not even decided to initiate investigation against the petitioner, though the material has come up to show his involvement in the crime, as well. The interrogation of the petitioner to unearth his involvement in the alleged crime, if any, is not possible either while keeping him at Dibrugarh Central

Jail, Assam, or through the video conferencing. The investigation and interrogation of the petitioner, if any, would require his personal presence in Punjab, particularly, in the area in and around the place where the said offence was committed. Therefore, the police would carry out the investigation qua the participation of the petitioner in the alleged crime, if any, at an opportune time. As and when the police decide to investigate the case from the perspective of the involvement of the petitioner, all the relevant provisions of law, including the provisions relating to arrest and the speedy trial, shall be duly complied with. But, at this stage, there is no ground to direct the State to arrest the petitioner in the FIR and to investigate the case qua him, as well. Hence, the present petition deserves to be dismissed.

8. Since the present case involves the friction between the right to life and liberty as guaranteed by Article 21 of the Constitution and the permissible restrictions as enshrined in Article 22 of the Constitution, therefore, it is appropriate to have a reference to both the above-said Articles, at this stage, which are reproduced herein below:

> ***"21. Protection of life and personal liberty. -*** *No person shall be deprived of his life or personal liberty except according to procedure established by law.*
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> ***22. Protection against arrest and detention in certain cases. -*** *(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.*
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> *(2) Every person who is arrested and detained in custody*

shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply—

(a) to any person who for the time being is an enemy alien; or

(b) to any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorize the detention of a person for a longer period than three months unless -

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention.

Provided that nothing in this sub-clause shall authorize the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause(b) of clause(7); or

(b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6) Nothing in clause (5) shall require the authority

making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7) Parliament may by law prescribe—

(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);

(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and

(c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4)].

9. Still further, the provisions having relations to the above-said Articles and the right to speedy investigation; are also as contained in the sections of the Code mentioned hereinbelow. Sections 41, 41-A, 167 and 173 of the Code are reproduced as under:

41. When police may arrest without warrant.—*(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person—*

(a) who commits, in the presence of a police officer, a cognizable offence;

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:—

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence; (ii) the police officer is satisfied that such arrest is necessary—

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing:

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest.;

(ba) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence;

(c) who has been proclaimed as an offender either under this Code or by order of the State Government; or

(d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(e) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(f) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

(g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(h) who, being a released convict, commits a breach of any rule made under sub-section (5) of section 356; or

(i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(2) Subject to the provisions of section 42, no person concerned in a non-cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate.

41A. Notice of appearance before police officer.- *(1) The police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of*

section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.

167. Procedure when investigation cannot be completed in twenty-four hours.—*(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.*

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the

detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that—

(a) the Magistrate may authorise the detention of the accused person, otherwise than in custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding—

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) no Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

Explanation I.—For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail.

Explanation II.—If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be.

Provided further that in case of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution.

(2A) Notwithstanding anything contained in sub-section (1) or sub-section (2), the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of a sub-inspector, may, where a Judicial Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred, a copy of the entry in the diary hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon such Executive Magistrate, may, for reasons to be recorded in writing, authorise the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate; and, on the expiry of the period of detention so authorised, the accused person shall be released on bail

except where an order for further detention of the accused person has been made by a Magistrate competent to make such order; and, where an order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this sub-section, shall be taken into account in computing the period specified in paragraph (a) of the proviso to sub-section (2):

Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial Magistrate the records of the case together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer in charge of the police station or the police officer making the investigation, as the case may be.

(3) A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.

(4) Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate.

(5) If in any case triable by a Magistrate as a summons-case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary.

(6) Where any order stopping further investigation into an offence has been made under sub-section (5), the Sessions Judge may, if he is satisfied, on an application made to him or otherwise, that further investigation into the offence ought to

be made, vacate the order made under sub-section (5) and direct further investigation to be made into the offence subject to such directions with regard to bail and other matters as he may specify.

173. Report of police officer on completion of investigation.

(1) Every investigation under this Chapter shall be completed without unnecessary delay.

(1A) The investigation in relation to an offence under sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or 376E from the date on which the information was recorded by the officer in charge of the police station.

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating—

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under section 170.

(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under 2 [sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB] or section 376E of the Indian Penal Code (45 of 1860).

(ii) The officer shall also communicate, in such manner

as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

(3) Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report—

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds

it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5).

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).”

10. Although Article 21 of the Constitution uses a simplistic language that a person shall not be deprived of his life and liberty except in accordance with the procedure established by law, however, the Hon'ble Supreme Court has extended the scope of protection granted by this Article by holding in ***Maneka Gandhi Vs. Union of India (1978) 1 SCC 248*** that the procedure which can be used to curtail the liberty of a person has to be not only as established by law, rather, the same has to be reasonable as well. Hence; the concept of 'due process of law' has been held to be an integral part of Article 21 of the Constitution. Therefore, liberty of a person cannot be infringed upon merely on whims or merely by taking shelter under a procedure only on the ground that the said procedure is having the sanction of law behind it. The procedure has to be fair and reasonable qualifying to be a 'due process of law'. Therefore, considered in itself and as a stand-alone aspect; right to life and liberty, and thus, the Article 21 of

the Constitution can be held to be the brightest shining star in the zenith of the fundamental rights guaranteed under the Constitution of Bharat.

11. On the other hand, a perusal of Article 22 of the Constitution shows that it contains, broadly, two parts. The first part of Article 22 of the Constitution comprised in sub-Articles (1) and (2), though is in the nature of protection of liberty of a person, yet it inherently permits the infringement of liberty of a person, though for a very brief period. It provides inbuilt safeguard by prescribing that if a person is arrested by the State on the charge of a criminal offence, then he shall be provided the grounds for arrest and shall be produced before a Court of law within the time frame of 24 hours of his arrest. Hence, the arrest of a person under this part cannot exceed more than 24 hours and continuation of the same requires approval from the Court of law; for a period as deemed it appropriate by the court, subject to the maximum limit prescribed under law. The second part of Article 22 of the Constitution comprised in sub-Articles (3) to (7) permits a direct attack upon the right to liberty as granted by Article 21 of the Constitution. It permits the State to keep a person in preventive custody for a definite time period. Though there are safeguards of the outer time limit and of an assessment by independent Advisory Board, however, the fact remains that this Article permits denial of right to liberty, which otherwise was guaranteed by Article 21 of the Constitution. Not only that, Article 22(6) of the Constitution even makes a provision that in certain circumstances, the State may not even provide the facts to the detenue leading to his detention. Such is the scope of curtailment of liberty of a person by Article 22 of the Constitution that Article 22 of the

Constitution is rendered as an eclipse on the right to life and liberty guaranteed by Article 21 of the Constitution. Although there have been several judgments of the Supreme Court highlighting and expanding the amplitude of right to life and liberty to various facets of the human life and impressing upon giving strict interpretation to Article 22, however, adumbrated in howsoever exalted language, and decorated with whatever adjectives; the right guaranteed by Article 21 of the Constitution cannot surpass the rigour of limitation permitted to the State by Article 22 of the Constitution. Demonising Article 22 of the Constitution is also not going to remove the eclipse which this Article casts over the right guaranteed by Article 21 of the Constitution. Therefore, even if Article 22 of the Constitution is considered to be an evil, it happens to be a necessary evil to ensure that the liberty of every citizen is maintained at an optimal level, by not permitting the liberty of one individual to the absurd heights, which may try to harm the liberty of another citizen; directly or indirectly, by creating adverse situations of public order. Therefore, mere demonizing or avoiding Article 22 of the Constitution is not going to take away its efficacy or effect. The rigour of this Article is here to stay, for all times to come; being the essential, integral and unavoidable part of the original Constitution of Bharat. In fact, Article 22 of the Constitution is a necessary instrument of effective and protective statecraft.

12. The next question is whether the prayer of the petitioner can be granted, thereby taking away the effect of second part of Article 22 and by emphasizing only Article 21 of the Constitution. In that regard, as mentioned above, Article 22(1) and (2) of the Constitution prescribes a

limited protection to the liberty of a person-accused of a criminal offence, that if such a person is arrested by the police, then he shall be provided the grounds for arrest and that he cannot be kept in police custody for more than 24 hours without being produced before a Magistrate. Beyond that, Article 21, in itself, cannot acquire any greater significance vis a vis the second part of Article 22 of the Constitution. Regarding involvement in a criminal offence and the arrest by the police, once the provisions of Article 22(1) and (2) of the Constitution are complied with, then the deprivation of liberty to such a person becomes subject mater of the ordinary legal provisions, as contained in the criminal law. Then liberty of such a person becomes subject matter of various provisions as contained in the Criminal Procedure Code or other relevant provisions dealing with arrest, bail and anticipatory bail, and/or as contained in the special statutes. If a particular provision of such law has not been held to be *ultra vires* being unreasonable, the liberty of such a person can very well be curtailed by complying with the provisions of the Code, or of such special laws. But if the person is deprived of his liberty by putting him under preventive detention, then the right under Article 21 of the Constitution is partly eclipsed, to re-surface only after passing through the rigour and the sieve test of Articles 22(3) to (7). Though, these provisions are to be strictly construed to favour removal of the eclipse on Article 21 of the Constitution, however, any degree of emphasizing the scope of Article 21 of the Constitution in itself is not going to take away the effect of provisions of Article 22(3) to (7) of the Constitution, permitting curtailment of liberty of an individual.

13. Viewed in this legal perspective, the prayer of the petitioner, in the first place, is to direct the police to arrest the petitioner in a criminal case and thereafter, to conduct the investigation in the offences alleged in the above-said FIR. In effect the petitioner's prayers is to transport his case to the first part of the Article 22 as contained in sub-Articles (1) and (2) by discounting the second part of the Article 22 of the Constitution as contained in sub-Articles (3) to (7). However as per the language of Article 22 of the Constitution, it is the second part contained in sub-Articles (3) to (7), which is in the nature of non-obstante clauses, that can discount and supercede the first part contained in sub-Articles(1) and (2), and not the vice-versa. Hence, if a person is detained in preventive detention, he does not even have a right to claim that he be arrested in the criminal case, may be, even if the criminal offence arises from the same factual gamut. Otherwise also, in the considered opinion of this Court, it would not be appropriate for any Court, much less the Constitutional Court to direct arrest of a person, when the State/Police itself is not intending to arrest such a person in any crime, as such. This would be, rather, a constitutional absurdity and a perversion directly impinging upon and destroying the right of the petitioner guaranteed under Article 21 of the Constitution and which may bring huge adverse consequence for him. Even if a person so desires, he cannot waive of his fundamental rights. The fundamental rights are so fundamental and inalienable part of human life that no constitutional jurisprudence would countenance a person giving away his fundamental rights. Constitutionalism does not permit Constitutional suicide. Therefore, the prayer made by the petitioner, *per se*, is not only sustainable, rather, is

against the provisions of the Constitution itself. So far as the arrest is concerned, the Code of Criminal Procedure has provided a particular mechanism for effecting arrest of a person suspected to be involved in a criminal offence. There are certain safeguards to restrain the police from arresting a person unless it frames an opinion qua desirability of arrest of an accused; keeping in view the restrictions imposed upon its powers by Sections 41 and 41-A of the Code. In view of this situation as well, it would not be appropriate for this Court to absolve the police from the requirement of the above-said sections of the Code, and to, directly effect the arrest of the petitioner in the criminal case. Needless to say that the petitioner is not named as an accused in the FIR. Although he is stated to be put in column No.2 of the challan filed against other accused, however, the police have not even applied its mind from the perspective of the definite involvement of the petitioner in the crime or qua the compulsory arrest of the petitioner in the said crime. It would be purely for the State/police to arrest the petitioner, if at all, it considers so necessary, but by complying with all the relevant provisions of law before effecting such arrest. The Court cannot interject on the said aspect at this stage. Although the counsel for the petitioner has laid much emphasis on the observations made by the Hon'ble Supreme Court in the last para of judgment rendered in ***Smt. Icchu Devi Choraria's case (supra),*** however, that case has no parallel with the present case. In that case, the Hon'ble Supreme Court had ordered release of detenue after finding the detention order to be vitiated and thereafter, the police was directed to complete investigation in the case where she was already named as accused. In the present case, validity of

detention order is yet to be determined by the Court. Moreover, in that case, the inter-relationship between the Articles 21 and 22 and between the first part and second part of Article 22 of the Constitution was not even under consideration.

14. Though counsel for the petitioner has relied upon the judgments rendered in ***Kartar Singh's case(supra), Hussain's case(supra), Justice K.S.Puttaswamy (Retd.)'s case(supra), A.K.Roy's case(supra),*** and ***Yumman Ongbi Lembi Leima's case(supra),*** to buttress his argument that the speedy trial is a fundamental right of an accused and this right is available at all the stages, including the investigation, and the trial, however, this Court is of the opinion that the stage of availability of this right to the petitioner has not even arrived so far. As mentioned above, the name of the petitioner is not even mentioned in the FIR. Though the petitioner claims to have been made an accused in the case only on the basis of mention of his name in the challan filed against other accused, however, it is totally premature for this Court to delve into the matter only on the basis of that fact. Right to speedy investigation and speedy trial would become operational only in case the investigation is started against the petitioner. Moreover, even the above-said judgments of the Hon'ble Supreme Court have clarified enough that right to speedy trial is only a relative right dependent upon attending circumstances. It can never be laid down, and thus has not been laid down so far; as to how much speed is the requisite speed which confers upon an accused the right to seek his absolvement of the crime, if it is violated. Rather, the speed in this context, has been used as a 'due promptitude' and avoidance of unnecessary and

uncalled for delays on the part of the police at the stage of investigation and on the part of the prosecution after the court frames the charge(s) against such an accused. The issue of speedy trial is not worth defining in absolute terms; either qua its initiation or qua its effect, rather, it is a relativity dependent upon the circumstances attending to the matter where such right is to be claimed. In the above mentioned circumstances, right of the petitioner to claim speedy trial has not even come into play. Therefore, this Court is not required to interfere in the matter on the pretext of right to speedy trial; being claimed by the petitioner.

15. As mentioned above, the right to speedy trial is a relativity, and the Code of Criminal Procedure also ensures its protection, therefore, this shall have to be assessed with reference to the legal provisions contained in the Code. The Code also contains provisions that even if the legal machinery finds some justification to eclipse the right to life and liberty of a person, still the legal mandate of due speed to minimise its effect has to be followed. It is in this context only that the power of the Court to grant custody to the police or to keep the accused in judicial custody have been restricted to specified time periods. Not only that, even if a person is in custody and the police is not conducting the investigation with due promptitude, then the provisions as contained in Section 167(2) of the Code mandate that such person has to be released on bail; without asking any questions. Hence, it cannot be denied that the safeguards to materialize the right to speedy investigation and trial of an accused has been made part of the statutory provisions; as well. The petitioner shall be duly entitled to all these safeguards, as and when his liberty is impinged

upon by the State or its machinery on the ground of his involvement in the crime mentioned in the above-said FIR. *Dehors* any attempt on the part of the State to attack the right of the petitioner to the life and liberty in the name of his alleged involvement in the criminal offence, the Court is neither required nor would be justified to interfere in the matter, much less for the purpose of directing the State to arrest the petitioner in connection with an alleged crime. Hence, a petition for that purpose would not even be maintainable before the High Court.

16. Although it has been much emphasized by the counsel for the petitioner that the State can investigate by either visiting Assam and asking the petitioner whatever the police so desire or through the online questioning, however, this Court finds substance in the argument of the counsel for the State that such a course of action is neither possible nor desirable in the matter. Otherwise, since the State claims to have some inputs justifying keeping the petitioner away from the State of Punjab; and the existence or sufficiency of such inputs is yet to be determined by this Court, in a different petition, therefore, the State cannot even be forced to bring the petitioner to the State of Punjab.

17. In view of the above, finding no merit in the present petition, the same is dismissed.

21.11.2023 **(RAJBIR SEHRAWAT)**
parveen kumar **JUDGE**

Whether reasoned/speaking? Yes/No
Whether reportable? Yes/No