

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Reserved on: 02nd June, 2021
Pronounced on: 10th June, 2021*

+ **CS(COMM) 187/2021**

KRISHNA KISHORE SINGH Plaintiff
Through: Mr. Vikas Singh, Senior Advocate
with Mr. Varun Singh, Ms. Deepika
Kalia, Mr. Akshay Dev and Ms.
Sammridhi Bendbhar, Advocates.

versus

SARLA A. SARAOGI & ORS. Defendants
Through: Mr. Hiren Kamod, Mr. Bhushan M.
Oza, Mr. Anand Mishra and Mr.
Anees Patel, Advocates for D-1 & 2.
Mr. Chander M. Lall, Senior
Advocate with Mr. Vedanta Varma
and Ms. Nancy Roy, Advocates for
D-3.
Mr. Vibhor Kush, Advocate for D-4.
Dr. A. P. Singh, Ms. Geeta Chauhan
and Ms. Richa Singh, Advocates for
D-7.

**CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA**

JUDGMENT

SANJEEV NARULA, J.

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I.A. 5697/2021 (u/Order XXXIX Rule 1 and 2 R/W Section 151 of the Code of Civil Procedure, 1908)

1. By way of this application, the Plaintiff – who is the father of late actor Sh. Sushant Singh Rajput [*hereinafter referred to as ‘SSR’*] – seeks ad-interim *ex-parte* injunction against the named and unnamed Defendants from using his son’s name, caricature, lifestyle or likeness in forthcoming films and other ventures, contending that any such publication, production, or depiction would be an infringement of personality rights, right to privacy which includes right to publicity, cannot be undertaken without the prior approval of his legal heir; and a violation of right of fair trial – under Article 21 of the Constitution of India.

BRIEF FACTS

2. The Plaintiff asserts to be the Category-I of Class-II legal heir of SSR and absolute legal heir under Section 16 of Hindu Succession Act, 1956, entitled to bring the present suit for protecting the reputation, privacy and rights of his deceased son. SSR was a renowned actor from the entertainment industry, who worked in several blockbuster movies and television series, bagged multiple awards, and had attained the status of a public figure and celebrity. He passed away under suspicious circumstances on 14th June, 2020. The Plaintiff lodged an FIR on account of his unnatural death. The matter is being investigated by the CBI, and there is no conclusive report submitted as yet. As SSR commanded a huge fan-following, people of the country were deeply moved by his unfortunate and untimely demise, and it attracted widespread news coverage on electronic, social, and print media. The Plaintiff believes that the Defendants are trying to exploit this media frenzy and public curiosity surrounding SSR's life and the circumstances surrounding his death, for their commercial gain.

3. In September, 2020, the Plaintiff's counsel had made a widely circulated statement that no movie(s), book(s) or series based on the Plaintiff's son should be made without obtaining the prior consent of his family. Despite that, without approaching the family, Defendants No. 1 to 4 are making a movie which is a self-proclaimed "tribute to Sushant Singh Rajput", titled '*Nyay: The Justice*' slated to be released on 11th June, 2021 [produced by Defendant No. 1 (Sarla A Saraogi) and Defendant No. 2 (Rahul Sharma), directed by Defendant No. 3 (Dilip Gulati), and outlined by Defendant No. 4 (Ashok Saraogi)]. It is pointed out that Ashok Saraogi is

the lawyer of one Ms. Shruti Modi, who was the former manager of the Plaintiff's son, and is being investigated as one of the accused persons in the CBI case. Similarly, Defendant No. 5 & 6 (M/S VSG Binge and Vijay Shekhar Gupta) are making a movie titled '*Suicide or Murder: A star was lost*', Defendants No. 7 (Sanoj Mishra) is making a movie titled '*Shashank*' and Defendant No. 8 (Nikhil Anand) is making a crowd-funded movie which as yet is untitled. Defendant No. 9 is a John Doe / Ashok Kumar impleadment of unknown person(s), against whom a relief of the same nature is sought, by way of a pre-emptive measure. In this background, Plaintiff has filed the present suit seeking enforcement of John Doe orders against known Defendants No. 1 to 8, and other unknown Defendants, on the ground that their actions are violative of the right to publicity, the right to privacy and the right to free and fair trial.

CONTENTIONS OF THE PLAINTIFF

4. During the course of argument, Mr. Vikas Singh, learned Senior Counsel for the Plaintiff, made the following submissions:

4.1. VIOLATION OF CELEBRITY RIGHTS / THE RIGHT TO PUBLICITY

(i) Celebrity rights have been acknowledged for the benefit of those who have worked hard to be known as distinguished personalities. It gives them the right to publicity, which allows them to control the commercial use of their identity and entitles them to the money that arises from their fame. Such celebrity rights are assignable and licensable for commercial benefits. They also offer posthumous protection to the legal heirs of the celebrities, and cannot be used by

third parties for commercial advantage without the consent of their legal heir. In the present case, the public perception of the Plaintiff's son is of tremendous value. After their death, the public at large cannot be permitted to make windfall gain through commercially exploiting the persona of the deceased.

- (ii) There is no strict proof required for identifiability of a 'celebrity'. It should be enough if there is a resemblance of name, likeness, or reputation of a celebrity. In this regard, reliance is placed upon *Titan Industries Ltd. v. M/s. Ramkumar Jewellers*,¹ and *Mr. Shivaji Rao Gaikwad v. M/s. Varsha Productions*.² It is an undisputed position that the Plaintiff's son was a celebrity. It is also admitted by the Defendants that the Plaintiff is the only legal heir. Further, the documents placed on record show that Defendants are looking to make a movie which is inspired by the life of Plaintiff's son.
- (iii) The law in this regard is well-settled and courts have, in the past, granted injunctive relief prior to release of a movie on this ground, in the cases of *Shivaji Rao (supra)* and in *Kirtibhai Raval & Ors v. Raghuram Jaisukhram Chandrani*.³ In the latter case, the Gujarat High Court upheld that the right to publicity of a celebrity is transferred to their direct descendant after their death. It was also pointed out that this right has been upheld in the United States of America in *Martin Luther King Jr. Center for Social Change, Inc. v.*

¹ 2012 SCC OnLine Del 2382.

² 2015 SCC OnLine Mad 158.

³ Appeal from Order No. 262 of 2007, dated 20th January, 2010 by the Gujarat High Court.

American Heritage Products, Inc.,⁴ *Martin Luther King v. Am. Heritage Prod.*,⁵ *Price v. Hal Roach Studios Inc.*,⁶ and *Reeves v. United Artists.*⁷

4.2. VIOLATION OF THE RIGHT TO PRIVACY

- (i) Right to life under Article 21 of the Constitution of India includes the right to privacy, of not just ones' own but of one's family as well. It is the case of the Plaintiff that any depiction of his own or his son's life is violative of the Plaintiff's right to privacy. Any depiction of Plaintiff's son's life or his own life is directly violating right to privacy. The only exception to right to privacy is if the information is mentioned in public record documents, recorded in the manner specifically prescribed under the Public Records Act, 1993 [hereinafter referred to as the '**Public Records Act**'] and the Indian Evidence Act, 1872 [hereinafter referred to as the '**Evidence Act**']. However, no such public records exist in the present case. In this regard, reliance is placed on *Kirtibhai* (*supra*) and *R. Rajgopal v. State of T.N. & Ors.*⁸
- (ii) The right to privacy of the late actor and his family have already been recognized and enforced by a Division Bench of the Bombay High Court.⁹ Therein, the misreporting and titillating media coverage of the

⁴ Decided on 28 October 1982 by the Supreme Court of Georgia, 296 S. E. 2d 697.

⁵ Decided on 3 January 1983 by the United States Court of Appeals, Eleventh Circuit, 694 F. 2d 674 (11th Circuit 1983).

⁶ (71 Civ 413)

⁷ 572 F. Supp. 1231 (N.D. Ohio 1983).

⁸ (1994) 6 SCC 632.

⁹ *Nilesh Navalakha and Ors. v. UOI*, 2021 SCC OnLine Bom 56.

incident had led to the filing of a batch of Public Interest Litigations [*hereinafter referred to as 'PIL'*] in the Bombay High Court, seeking action against news broadcasters that were conducting parallel media trial, on the ground of it being an overreach of the right to freedom of expression under Article 19(1)(a) of the Constitution of India, as well as an impediment on right of fair trial. The Court, therein, directed the media to exercise restraint and refrain from publishing news, debates or interviews which would intrude on the privacy of the deceased or cause prejudice to an ongoing inquiry or investigation.

4.3. VIOLATION OF THE RIGHT TO FREE AND FAIR TRIAL

- (i) As a CBI investigation into the demise of the Plaintiff's son is presently underway, the fictitious portrayal of the circumstances surrounding his death will prejudice the case of the Plaintiff. In this regard, reliance is placed upon *AV Bellaramin and Ors. v. V. Santhakumaran Nair*.¹⁰
- (ii) Ashok Saraogi (Defendant No. 4) has been quoted in the media as saying that, "*Since I was involved in this case, ... definitely I know the internal things ... so I had to take the lead and I asked my wife to produce this film*". He goes on to say that his movie will give fresh information in the case, and "*It's like pushing the investigative agencies to move further on the basis of the hints given by us.*" This amounts to blatantly interfering with the process of justice and creating prejudice in the minds of the public.

¹⁰ 2015 4 L.W. 443.

- (iii) The right to fair trial trumps the right to free speech. In this regard, reliance is placed on the decision of the Bombay High Court in *Nilesh Navalakha* (*supra*) that was rendered in a Public Interest Litigation, stemming from the present facts.

CONTENTIONS OF DEFENDANT NO. 3

5. Mr. Chander M. Lall, learned Senior Counsel for Defendant No. 3, controverted the arguments of the Plaintiff on the following grounds:

5.1. NO VIOLATION OF CELEBRITY RIGHTS / THE RIGHT TO PUBLICITY

- (i) While accepting the celebrity status of the Plaintiff's deceased son, Mr. Lall stated that the right of a celebrity is infringed only in case they are identifiable as a part of an artistic work. He denies the use of the deceased's name, image, caricature or style of delivering dialogues in Defendant No. 3's film.
- (ii) Section 306 of the Indian Succession Act, 1925 clearly enlists certain rights that cease to exist after the demise of a person. The cause of action of defamation as defined in the Indian Penal Code, 1860, shall cease to exist upon the demise of a celebrity. Reliance is placed on *A. Balakrishnan v. R. Kanagavel Kamaraj and Anr.*¹¹
- (iii) Public persons, thus, are different from a private citizen. Celebrities or

¹¹ 1999 CTC 247.

public figures must not be too thin-skinned in respect of reference made upon them. Their shoulders should be broad enough to shrug off the comments made upon them. The persons in public life and public gaze have to have a thick-skin when they are exposed to comments and criticisms, including in respect of their private life. Thus, the right of privacy, the protection of which would be available to private citizens would not be the same for public figures who cannot brush their private life under the carpet.

5.2. NO VIOLATION OF THE RIGHT TO PRIVACY

- (i) There is plethora of material available in the public domain on the life and death of the Plaintiff's son. The life of the deceased has thus, already become public, which has also been admitted by the Plaintiff. He also states that, as the mysterious demise of the deceased and the consequent investigation has already been discussed extensively in the news. Hence, there can be no question of privacy over that which is already in the public realm. Reliance is placed on *Ram Gopal Verma v. Amrutha Perumalla*.¹²
- (ii) Plaintiff has not raised any objections against author or publishers of widely available news coverage which is already available in the public domain. He is thus estopped from claiming violation of the right to privacy, since the Defendants are only fictionalizing such information available in the public domain into a movie inspired by such events. Reference is made towards *Khushwant Singh v. Maneka*

¹² MANU/TL/0352/2020.

Gandhi,¹³ to assert that the celebrity who uses publicity for their own cause cannot restrict another's freedom of speech on their public persona.

- (iii) Moreover, the right to privacy of a celebrity extinguishes upon his demise. Such a right lives and dies with the deceased, and thus the Plaintiff cannot attempt to exercise a right which has ceased to exist a year ago. In this regard, reliance is placed on *Justice K. S. Puttaswamy v. Union of India*,¹⁴ and *Managing Director, Makka Tholai Thodarpu Ltd. v. Mrs. V. Muthulakshmi*,¹⁵ and *Deepa Jayakumar v. AL Vijay*.¹⁶

5.3. VIOLATION OF FREEDOM OF SPEECH AND EXPRESSION

- (i) The Plaintiff, under the guise of the present interim application, seeks to assert a gag order on all movies, web-series, books, interviews or other material may be published about the deceased, which is in violation of the freedoms granted under Article 19(1)(a) of the Constitution of India.
- (ii) The film is neither a biopic nor a biography of the Plaintiff's son, it is not even based on or concerned with his life, but instead is a fictional rendition with creative dramatization of true events generally surrounding the lives of film or TV celebrities who have reportedly passed away due to unnatural causes, details whereof are widely

¹³ AIR 2002 Delhi 58.

¹⁴ (2017) 10 SCC 1.

¹⁵ 2007(6) MLJ 1152.

available in the public domain made with creative liberties.

- (iii) The film carries a disclaimer which denounces any resemblance to a real person. Once the disclaimer is included at the beginning of the cinematograph film, any apprehension that it is a biopic of any character, is put to rest. Reliance is placed on *Deepa Jayakumar (supra)*, *Ram Gopal Verma (supra)*, *Vadlapatla Naga (supra)*, *Dr. Reddy's Laboratories Limited v. Eros International Media Ltd.*,¹⁷ *Sahara One Media v. Sampat Pal*,¹⁸ and *Ravi Mallesh Bohra v. State of Maharashtra*.¹⁹
- (iv) There is no obligation on these Defendants to take prior consent from Plaintiff. The Defendants' rights under Article 19 are not restricted on the premise that film makers must only portray one particular version of facts or only make fictional depictions. Defendants are entitled to allude to incidents which have taken place and to present a version of those incidents which, according to them, represent a balanced portrayal of social reality. Moreover, the restrictions provided in Article 19(2) of the Constitution are not applicable in the present case.
- (v) The rights of the Defendants under Article 19(1)(a) have to be balanced against the right to privacy of the Plaintiff under Article 21, and the court is to consider this aspect at the stage of the claim of damages, rather than a preventive action for injunction against the

¹⁶ MANU/TN/3107/2021.

¹⁷ Decision dated 23rd March 2021 in CS (COMM) 126/2021 of the Delhi High Court.

¹⁸ Decision dated 06th March 2014 in FAO(OS) 125/2014 of the Delhi High Court.

publication. A public figure is expected to be more thick-skinned than the common man, as their right to privacy is weakened or diluted by the public's right to know, whereby their life becomes a part of public discourse. Reliance placed in this regard on *Khushwant Singh (supra)* and *DM Entertainment v. Baby Gift House*.²⁰

5.4. NO VIOLATION OF RIGHT TO FAIR TRIAL

- (i) The allegation of violation of right to fair trial is entirely misconceived, as the Plaintiff is not under trial in any proceedings.
- (ii) The investigative agencies and the judicial system do not rely on cinematographic films for the purpose of investigation or criminal trial. Even in cases where unsavoury remarks were made against living persons when inquiry was ongoing, the court has upheld the freedom of speech to make such remarks. Reliance is placed on *Adarsh Cooperative Housing Society Limited v. UOI & Ors.*²¹ *Dr. Shashi Tharoor v. Arnab Goswami & Anr.*,²² and *Reliance Petrochemicals Ltd. v. Proprietor of Indian Express News Papers Bombay*.²³

5.5. INJUNCTIVE RELIEF SHOULD NOT BE GRANTED

- (i) The present case is determinable by the Censor Board under the Cinematography Act, 1952, and the application is liable to be

¹⁹ Decision dated 18th March 2021 in W.P. (Stamp) No. 7743 of 21.

²⁰ MANU/DE/2043/2010.

²¹ (2018) 17 SCC 516.

²² 2017 SCC OnLine Del 12049].

²³ [(1988) 4 SCC 592].

dismissed on this ground alone.

- (ii) The Plaintiff was aware of the production of the film since August, 2020 and chose to wait till 2021 to seek relief, which shows delay and laches on the part of the Plaintiff in approaching this Court, at this belated stage. The Plaintiff has deliberately filed the present suit close to the release of the said film; after substantial time, money and effort have been expended on production and promotion. Thus, the balance of convenience lies entirely in favour of the Defendants. In this regard, reliance is placed upon *Dr. Reddy's Laboratories (supra)*.
- (iii) The application as well as the entire suit is filed on the basis of assumptions and presumptions of the Plaintiff, as he has not even seen the contents of the movie. A preventive injunction based merely on speculation cannot be granted. In this regard, reliance is placed upon *Deepa Jayakumar (supra)*, and *Vadlapatla (supra)*.

CONTENTIONS OF DEFENDANTS NO. 1-2

6. Mr. Hiren Kamod, learned Counsel for Defendants No. 1 and 2, co-opts the arguments for Defendant No. 3, and presents the following additional arguments:

- (i) Goodwill and reputation earned by Plaintiff's son during his lifetime cannot be inherited by Plaintiff like a movable or immovable property. Plaintiff has failed to make out the *prima facie* ingredients of passing off or misappropriation of the personality of Plaintiff's son.

- (ii) Plaintiff's cause of action for defamation of his son does not survive the death of Plaintiff's son. Reliance is placed on the *Melepurath Sankunni Ezhuthassan v. Thekittil Geopalankutty Nair*.²⁴
- (iii) Plaintiff has filed the present suit in respect of four distinct causes of action against four different sets of parties (barring Defendant No. 9) and as such, all those causes of action ought not have been amalgamated by way of a single suit. The causes of action do not arise from the same acts or transactions for the Plaintiff to file a composite suit. These Defendants and Defendant No. 3 are only concerned with the said film. Defendant No. 4 has been mis-joined as a Defendant.
- (iv) The balance of convenience is in favour of the Defendants. If an interim order is granted, it would be difficult to compensate these Defendants, in case the Plaintiff ultimately does not succeed in the suit, whereas, the Plaintiff can always re-apply at a later juncture for an injunction if there is a change in circumstances after the release of the said film.
- (v) Bollywood is replete with films which have been inspired by true events surrounding the lives of personalities whose lives/stories have been widely reported and such publications are available in the public domain. Reliance is placed on *Deepa Jayakumar (supra)*, *Ram Gopal Verma (supra)* and *Vadlapatla Naga (supra)*.

²⁴ AIR 1986 SC 411.

- (vi) News coverage pertaining to the events surrounding the death of Plaintiff's son are already in the public domain, and the same stands admitted by the Plaintiff. Since the Plaintiff has not raised any objections against publishers of such information, the Plaintiff cannot plead violation of the right to privacy if a fictional movie inspired by such events is made, especially when such movie does not use any photos, images, caricature or name of the Plaintiff's son. The question is not of the documents being public documents, but the subject matter being in the ambit of public domain, in terms of there being prior reportage of the matter in controversy and comments on the same. It is for this reason that even under the Copyright Act, 1957, no one can claim copyright in actual facts or historical events, as anyone is entitled to make movies on events which have actually occurred.
- (vii) In India, the right to publicity is derived from the right to privacy – the two are not independent of each other and cannot exist without the other. In the context of what has been held in *Puttaswamy (supra)*, if the right to privacy extinguishes with the human being, the only necessary corollary is that right to publicity would also extinguish and would not survive after the death of the person.
- (viii) Defendants are not selling celebrity merchandise such as t-shirts, toys, etc. with the image, caricature, signature etc. of the Plaintiff's son, or which seeks to evoke the Plaintiff's son's persona or likeness. The question of these Defendants endorsing the Plaintiff's persona, let alone false endorsement, does not arise.

CONTENTIONS OF DEFENDANT NO. 4

7. Mr. Vibhor Kush, learned Counsel for Mr. Ashok Saraogi (Defendant No. 4), made the following submissions:

- (i) The plaint does not disclose any cause of action against Ashok Saraogi. He has thus been mis-joined as a party, which is an attempt by the Plaintiff to keeping him from representing the Defendants No. 1 to 3. He has also filed an application under Order VII Rule 11 of Code of Civil Procedure Code, 1908.
- (ii) Mr. Saraogi is an advocate practicing at the bar since 1982. He acted as the legal advisor to the producers of the film, and is the husband of Defendant No. 1, however, is not otherwise connected or involved with the production of the said film.
- (iii) Further, any statements made by him to the media were in his professional capacity as an advocate of his client and were made with utmost responsibility based upon facts and information provided to him by his Client.
- (iv) The entire cause of action in the plaint is based upon newspaper articles and press reports. It is well-known that in the process of passing and editing information for news, facts may get defiled. It is also settled law that statements of facts contained in newspapers and press reports are merely hearsay, and are secondary evidence at best,

and cannot be equated to documentary evidence against a party. Thus, there is no cogent evidence against Ashok Saraogi. Reliance is placed on *Ravinder Kumar v. State of Assam*,²⁵ and *Vadlapatla Naga v. Chairperson*.²⁶

CONTENTIONS OF DEFENDANT NO. 7

8. Dr. A. P. Singh, learned Counsel for Defendant No. 7, in addition to the above arguments advanced by the co-defendants, presented the following arguments to support his stance that Defendant No. 7 is wrongly implicated in the matter:

- (i) The territorial jurisdiction to file the present suit lies in Patna or Mumbai, but not in New Delhi.
- (ii) The Defendant No. 7 has directed various movies in his career spanning 20 years. He is making a movie titled 'Shashank', which is a common Indian name and bears no resemblance to 'Sushant'. The movie is based on the struggle of first-generation actors / 'outsiders' in the Hindi film industry. The Plaintiff's son is not the only actor to struggle as an 'outsider', and moreover, there are four male protagonists in the movie. Thus, the Plaintiff's argument that, the film is based on the life of his son, has no legs to stand on.
- (iii) On the issue of right to fair trial, he submitted that Defendant No. 7's

²⁵ AIR 1999 SC 357.

movie does not cover the on-going investigation into the demise of the Plaintiff's son, and thus the Plaintiff's rights, if any, would not be infringed.

REJOINDER ARGUMENTS BY PLAINTIFF

9. In rejoinder thereto, Mr. Vikas Singh urged that under Article 19(1)(a), the right to make a movie for commercial gain is separate from journalistic freedom to report an event. He submitted that the FIR was filed by the Plaintiff, who is the complainant therein, and thus his right to fair trial is subsisting and on-going. The Plaintiff also enjoys the right to privacy, as the press's portrayal of the Plaintiff in a villainous manner is untrue. The commercial gain of filmmakers has to bow down to the Plaintiff's right under Article 21. Defendant No. 4 has made brazen statements to the media and also admits representing an accused in the investigation; hence the audience can be misled into believing that the film is fact-based. Right to celebrity is distinguishable from right to privacy. The right to remain informed about public figures such as politicians or officials holding public office could be traced to Right to Information, which in turn finds its origin in freedom of free speech under Article 19 of the Constitution of India. The actual information reported in the news about public figures arises from the moral duty of journalists to keep the public informed, and cannot be equated with the commercial exploitation one sets out to cause by copying the likeness of a person. That the likeness and brand value of a celebrity must only be used with the consent of the celebrity is a settled principle of law,

²⁶ AIR 2012 AP 78.

however, the Defendants have sought to create confusion without any legal basis. *DM Entertainment* (*supra*) categorically delineates that an unauthorized usage of a persona must be enjoined. The articles which are surrounding the death of the Plaintiff are not verified and cannot be construed as public record in terms of Section 2(e) of the Public Records Act and Section 74 of the Evidence Act. This Court, in *Phoolan Devi v. Shekhar Kapoor*,²⁷ has extensively dealt with the meaning of ‘public record’ and barred the usage of newspaper articles and reports to be construed as ‘public record’. The Defendants have failed to understand that the right of complainant as well as the victim to have a free and fair trial is equally important and protected under the Constitution of India, as recognized by Madras High Court in *A. V. Bellaramin and Ors v. Mr. V. Santhakumaran Nair*.²⁸ Lastly, a news channel now wants to start a new segment on the investigation into the death of the Plaintiff’s son, hence the need for John Doe /Ashok Kumar orders is felt. Mr. Singh also pointed out that the Plaintiff does not seek relief under the law of defamation.

ANALYSIS

10. Before proceeding with the analysis of the arguments put forth by the parties, let us first briefly examine the works which are sought to be enjoined. The movie titled ‘*Nyay: The Justice*’ [*hereinafter referred to as ‘the said film’*] produced by Defendant No. 1 & 2 and directed by Defendant No. 3, has not been released for public viewing as yet. These Defendants have argued that the said film is inspired by true events

²⁷ (1995) 15 PTC 46.

surrounding the lives of film or TV celebrities including the Plaintiff's son who purportedly passed away due to unnatural causes, details whereof are widely available in the public domain, and that the said film is a fictional rendition with creative dramatization of such true events. The said film merely draws inspiration from information already available in the public domain, such as news reports and articles, which form a part of the public record. These Defendants have argued that the said film is neither a biopic of the Plaintiff's son, nor will portray the name, image, caricature, photographs etc., of either SSR or the Plaintiff himself or his family. They have also inserted a disclaimer in to the movie to that effect. Defendant No. 7, who is making other films such as '*Shashank*', similarly claims that their film is a work of fiction, portraying the struggle of young actors in Bollywood, and is inspired by real events.

11. The contents of the films are being speculated by the Plaintiff on the basis of publicity materials, such as the teasers available on the internet and statements made in the media by persons who are associated with it. Despite the fact that the films are yet to be released for public viewing, the Plaintiff seeks restraint orders against their exhibition, not just against named persons, but also attempts to invoke John Doe jurisdiction of the court against unknown persons. Keeping in mind this factual scenario, we now proceed to examine whether the Plaintiff satisfies the requirement of law for the injunction, as prayed for. It is to be remembered that the law on pre-publication injunctions is quite well-settled. Courts grant pre-publication injunctions only in exceptional circumstances. This reluctance is rooted in

²⁸ (2015) 4 LW 443.

the importance attached to the right of free speech. Blanket injunctions or gag orders should be avoided, unless extremely imperative.

12. First and foremost, it is apposite to understand the framework of the suit and the rights sought to be enforced. The present application seeks a limited prayer restraining the use of SSR's name, caricature, lifestyle or likeness in their forthcoming projects/films. Relief is sought regarding, *inter alia*, (i) "passing off"; (ii) "infiltration of personality rights by such unauthorized use"; (iii) "misrepresentation and causing deception in minds of public leading to passing off"; (iv) "violation of right to fair trial of Plaintiff under Article 21 of Indian Constitution" and other ancillary reliefs. Besides, in the body of the application as well as the plaint, Plaintiff has also referred to the film being "defamatory in nature and in violation of the privacy rights", however, no relief has been sought for defamation. Now, let us delve into the multitude of rights which have been pressed by the Plaintiff to seek such restraint orders.

CELEBRITY / PERSONALITY RIGHTS

A. What are 'celebrity' or 'publicity' rights?

13. The suit is centred around the celebrity rights of SSR, and the plaint and interim application refer to the terms 'publicity right', 'celebrity right' and 'personality right' interchangeably. There is no express statutory recognition of publicity, personality or celebrity rights in India, although there are limited provisions, whereunder, some of these rights can be claimed as intellectual property rights, such as under the Trade Marks Act,

1999, but that is not the case canvassed here. Nevertheless, on the basis of rights asserted, the Copyright Act, 1957, becomes relevant, but again, it does not define the term ‘celebrity’ and the most relevant definition found thereunder, is of the terms ‘author’ [Section 2(d)] and ‘performer’ [Section 2(qq)] and their associated rights, who may not necessarily be celebrities. While the term ‘Performer’ includes an actor within its ambit, the rights ascribed to an actor, under this Act, are neither relevant nor asserted in the instant case. In the absence of a statutory definition of a ‘celebrity’, we turn to refer to its common parlance meaning. The Collins Online Dictionary defines a ‘celebrity’ as “someone who is famous, especially in areas of entertainment such as films, music, writing, or sport.” SSR’s status as a celebrity is not in dispute, as the Defendants accept the same. The Court is thus, not concerned with the aspect of who/what constitutes as a ‘celebrity’.

14. One could say that the law on the subject of celebrity rights is still in its nascent stage, and it has been developing predominately through judicial precedents which have given recognition and protection of such rights, as and when the Courts have been approached in diverse situations. The common law, as discussed hereinafter at length, recognizes the commercial value ascribed to the fame or popularity of a celebrity, due to which various rights are attained and enjoyed by them. Indeed, many such precedents have been cited by both the parties, some of which we have examined hereinbelow:

- (i) In *Titan Industries Ltd.* (*supra*), the Plaintiff, who owned the brand ‘Tanishq’, filed a suit against the Defendant for putting up hoardings,

depicting Mr. Amitabh Bachchan and Ms. Jaya Bachchan endorsing Defendant's jewellery, which were exact copies of the Plaintiff's hoardings put all over the country. The Plaintiff also had an exclusive license agreement with the actors for endorsement of its jewelry and owned the copyright in all the work produced pursuant to the said agreement. This court, while discussing publicity right of a celebrity noted:

"A celebrity is defined as a famous or a well-known person. A "celebrity" is merely a person who "many" people talk about or know about. When the identity of a famous personality is used in advertising without their permission, the complaint is not that no one should not commercialize their identity but that the right to control when, where and how their identity is used should vest with the famous personality. The right to control commercial use of human identity is the right to publicity."

- (ii) In the case of ***ICC Development (International) Ltd. v. Arvee Enterprises and Ors***,²⁹ the Plaintiff, as the organizer and marketer of the ICC World Cup, sued for injunction, pleading that the ICC events have acquired a 'persona' or 'identity' of their own which vests entirely and exclusively with the Plaintiff company which owned and controlled all commercial rights including media, sponsorship and other intellectual property rights relating to the ICC events, and the Defendant was unlawfully deriving commercial benefit of association with the Plaintiff and the World Cup by issuing advertisements in media, including newspapers, television, internet by passing off the indicia, mark and identity of the Plaintiff. In the said case, the court while going into the concept of publicity rights, held that:

"14. The right of publicity has evolved from the right of privacy and can inhere only in an individual or in any indicia of an individual's

²⁹ 2003 (26) PTC 245.

personality like his name, personality trait, signature, voice, etc. An individual may acquire the right of publicity by virtue of his association with an event, sport, movie, etc. However, that right does not inhere in the event in question, that made the individual famous, nor in the corporation that has brought about the organization of the event. Any effort to take away the right of publicity from the individuals, to the organiser {non-human entity} of the event would be violative of Articles 19 and 21 of the Constitution of India. No persona can be monopolised. The right of Publicity vests in an individual and he alone is entitled to profit from it. For example if any entity, was to use Kapil Dev or Sachin Tendulkar's name/persona/indicia in connection with the 'World Cup' without their authorisation, they would have a valid and enforceable cause of action."

- (iii) In ***DM Entertainment*** (*supra*), Mr. Daler Mehndi had assigned all his rights, title, and interest in his personality, inherent in his rights of publicity, along with the registered trade mark 'DALER MEHNDI' as well as goodwill vested therein, in favour of the Plaintiff company, which then brought an action against the Defendants who were involved in the sale of dolls in the image and likeness of Mr. Daler Mehndi. In this context, injunction was granted, and this Court observed:

"14. The right of publicity can, in a jurisprudential sense, be located with the individual's right and autonomy to permit or not permit the commercial exploitation of his likeness or some attributes of his personality. However, a word of caution has to be expressed here. In a free and democratic society, where every individual's right to free speech is assured, the over emphasis on a famous person's publicity rights can tend to chill the exercise of such invaluable democratic right. Thus, for instance, caricature, lampooning, parodies and the like, which may tend to highlight some aspects of the individual's personality traits, may not constitute infringement of such individual's right to publicity. If it were held otherwise, an entire genre of expression would be unavailable to the general public. Such caricature, lampooning or parody may be expressed in a variety of ways, i.e. cartoons in newspapers, mime, theatre, even films, songs, etc. Such forms of expression cannot be held to amount to commercial exploitation, per se; if the individual is of the view that the form of expression defames or disparages him, the remedy of damages for libel, or slander, as the case may be, would then, is available to him."

- (iv) In *Shivaji Rao Gaikwad* (*supra*), the Madras High Court was dealing with a suit filed by the actor Mr. Shivaji Rao Gaikwad (who goes by the screen-name Rajinikanth) against the release of a film titled ‘*Main Hoon Rajinikanth*’ on the ground that his name in the title would cause gross damage to his goodwill, infringe his personality rights, and cause deception in the minds of public, leading to passing off. The Court granted the injunction in favour of the Plaintiff against the release of the film, and made the following observations:

“21. (...) From a reading of the above said judgments [*ICC Development* (*supra*) and *Titan* (*supra*)], I am of the opinion that the personality right vests on those persons, who have attained the status of celebrity. In fact, in the present case, it has been categorically admitted by the defendant himself in the counter affidavit that the Plaintiff is a well acclaimed actor with high reputation and he is a doyen of the film industry in India. Therefore, the defendant now cannot say that the name ‘Rajinikanth’ is a common name and as such it does not refer to the Plaintiff alone. A celebrity must be identifiable from defendant’s unauthorized use. Infringement of right of publicity requires no proof of falsity, confusion, or deception, especially when the celebrity is identifiable.”

- (v) On this aspect, we must also note that in *Puttaswamy* (*supra*), wherein the right to privacy was declared to be a fundamental right on the anvil of Article 21 of the Constitution of India, the Supreme Court has reflected upon personality rights also, and observed that:

“58. Every individual should have a right to be able to exercise control over his/her own life and image as portrayed to the world and to control commercial use of his/her identity. This also means that an individual may be permitted to prevent others from using his image, name and other aspects of his/her personal life and identity for commercial purposes without his/her consent.”

15. The above-noted cases, and many others on the subject, clearly recognize the concept of celebrity rights. It can, therefore, be fairly said that ‘celebrity rights’ is essentially a compendium of the other rights accrued by

a person upon attaining the status of a ‘celebrity’, comprising of a bundle of rights which include certain intellectual properties rights, publicity, personality and privacy rights.

16. Plaintiff emphasises on the brand value of a celebrity and contends that it is a settled principle of law that the likeness and brand value of a celebrity must only be used with the consent of the celebrity. It is also argued that that the judgements relied upon it, and also those cited by the Defendants such as *DM Entertainment Pvt. Ltd. (supra)*, categorically recognize that an unauthorized usage of a persona must be enjoined.

17. Undoubtedly, there are several such cases which recognize this common law right of celebrities to control the commercial use their image and personality, and in situations where a third party, without consent, has given an impression that a merchandise, product or service has been endorsed or associated with the celebrity, the courts have granted injunctions as well. However, as can be seen from *DM Entertainment (supra)*, *ICC (supra)*, and *Titan (supra)*, these rights rest in the concept that a celebrity, who earns a living on the basis of the monetization of their recognition by the public, must be entitled to the tangible, economic benefit arising from the utilization and assignment of their image or likeness, be it through advertisements, merchandise, etc.

B. Can ‘celebrity rights’ be enforced posthumously?

18. In the instant case, the celebrity is unfortunately no longer between us, which gives rise to a legal quandary in relation to his posthumous rights.

Plaintiff claims that such rights are inheritable by the legal heirs of a celebrity. He has relied upon the judgment of the Gujarat High Court *Kirtibhai Raval (supra)* to contend that celebrity rights can be transferred to a direct descendant. The case law has thus been examined by this Court at length. Therein, the Plaintiff, claiming to be direct descendant of late Shri Jalaram Bapa of Virpur, set up a case based on the right to privacy and right of publicity. He sought injunction against publishing any film or artistic work on the life of late Jalaram Bapa, without his consent. Defendants claimed that they had based their film on a pre-published book on the deceased's life. While the court upheld the injunction granted by the trial court, on the consideration that irreparable harm will be caused by violation of right to publicity or privacy which cannot be compensated monetarily, but it also took the view that the contentions raised by the parties required detailed consideration upon leading appropriate evidence. The Court thus did not delve into rival contentions, noting that the right of privacy and publicity urged therein was a triable issue. It felt that the questions of whether the documentary evidence on record as relied upon by the defendants can be considered 'public record', and whether any authentic record was available on the life or incidents as mentioned in the book, would be required to be considered in detail upon leading evidence at the appropriate stage. Thus, in the eyes of this Court, this judgment does not say much on posthumous rights of a celebrity, and does not advance the proposition canvassed by the Plaintiff.

19. Next, the Plaintiff has relied upon a judgment of the Supreme Court of Georgia, USA, in *Martin Luther King Jr. Center for Social Change*, (1982) (*supra*) to argue that celebrity rights are assignable and licensable for

commercial benefit and survive beyond the life of a celebrity. Therein, the Court of Appeals, Eleventh Circuit, certified to the Supreme Court of Georgia the questions of whether the ‘right to publicity’ as recognized in Georgia was distinct from the ‘right of privacy’, and if so, whether such right survived the death of its owner. The Supreme Court instructed that the right to publicity was distinct from the right to privacy, and further opined that it is an inheritable and devisable right, concluding that “*while private citizens have the right of privacy, public figures have a similar right of publicity, and that the measure of damages to a public figure for violation of his or her right of publicity is the value of the appropriation to the user*”. In the opinion of this Court, this judgment cannot assist the cause of the Plaintiff as it is based on State-specific law and not federal law of USA. Moreover it would not be entirely relevant in view of the legal position in India, especially in view of the observations in the landmark judgment of the Supreme Court in *Puttaswamy* (*supra*), which we will come to shortly.

20. At this juncture it is noted that, curiously, the Plaintiff has sought to distinguish ‘celebrity rights’ from the ‘right to privacy’. Celebrity rights, as noted earlier, are a bundle of rights, including publicity, personality, and privacy and in some cases, intellectual properties rights, and in the opinion of this Court, any assertion of such rights (except those claimed through Intellectual Property Rights for which special statutory protection is provided), cannot be appreciated, divorced of the concept of right to privacy. In the absence of statutory acknowledgement of such rights, the fountainhead of such rights would be the right to privacy emanating from Article 21.

21. There can also be no doubt that a limited class of celebrity rights which are protected as intellectual property rights under applicable laws, and are assignable and licensable under such statutes, could survive the death of the celebrity. However, the Plaintiff claims that the deceased celebrity has a posthumous publicity right. Since it is inextricably interlinked to and birthed from the right of privacy, the Court *prima facie* finds merit in the submission of the Defendants that the posthumous privacy right is not permissible. The Supreme Court in the case of **Puttaswamy** (*supra*, at para 557), has also held that:

“557. Right to privacy of any individual is essentially a natural right, which inheres in every human being by birth. Such right remains with the human being till he/she breathes last. It is indeed inseparable and inalienable from human being. In other words, it is born with the human being and extinguishes with human being.” (Emphasis supplied)

22. Apart from above-noted view expressed by the Supreme Court, there are other authoritative decisions holding that the right of privacy would not survive after death. It would be worthwhile to take note of the Madras High Court’s view in the case of **Managing Director, Makka Tholai Thodarpur Ltd.** (*supra*, at paras 17 & 18) wherein it has been held that right of privacy of the late forest brigand Veerappan, did not subsist after this death. Then, again in the recent judgment of **Deepa Jayakumar** (*supra*), the Madras High Court framed a specific question regarding posthumous enforceability of privacy right, and after considering the law on the subject, held that the right of privacy of an individual cannot be inherited after his death by his legal heirs and that personality right, reputation or privacy enjoyed by a person during his lifetime, come to an end after his lifetime.³⁰

³⁰ See: Paras 13, 30, 33, 34, 35, and 37.

23. Moreover, even if one were to assume that the Plaintiff has inherited the persona of SSR and has the right of publicity as a posthumous right, it would be essential to understand what this right is. In *Titan Industries Ltd.* (*supra*), this Court while defining the building blocks of the right of publicity held that:

“The basic elements comprising the liability for infringement of the right of publicity:

Validity: The Plaintiff owns an enforceable right in the identity or persona of a human being.

Identifiability: The Celebrity must be identifiable from defendant’s unauthorized use.”

24. In the present context, the enforceable right being claimed is in the persona of SSR, on the basis of the events that occurred in his life. The Plaintiff specifically contends that *“no picture/show or any other related document of Sushant Singh Rajput could be created without the consent of Plaintiff”*. To put it differently, the Plaintiff claims to have inherited the exclusive right over the life story of SSR as an intangible or commercial property. In another sense, the Plaintiff claims a copyright over the life of SSR. However, under the Copyright Act, 1957, facts which are historical, biographical, or news of the day cannot be copyrighted as they are a part of the public domain, available to every person, and involve no ‘originality’ and ‘creation’ which lies at the heart of a copyright protection. The necessary corollary, therefore, is that anyone is entitled to make movies on events which have actually occurred.

25. The Defendants have, in fact, pitched their case much higher and have argued that personality rights are recognized through the right to privacy and publicity, which are considered to be the mirror rights of each other. Right to

publicity / celebrity deals with the commercial utilization of the celebrity's name, photograph, voice, image, signature, etc. whereas the right to privacy is a personal right basically saying, "let me be". They have argued that in India, the 'right to publicity' is derived from the 'right to privacy' and the two are not completely independent of each other, as the former cannot exist without the latter. It has then been argued that, in the context of the reasoning in *Puttaswamy* (*supra*), as noted above, if the right to privacy extinguishes with the human being, the only necessary corollary is that right to publicity would also extinguish and would not survive after the death of the person.

26. Having said that, in the opinion of this Court, whether commercial celebrity rights, such as personality or publicity rights, would survive or extinguish after the death of the celebrity, requires a deeper probe. In the absence of codified laws protecting such rights, the common law which governs such rights has to be analysed. Moreover, additional questions emerge, such as whether personality/publicity right is a property, being part of the estate/assets of the deceased, as a concept detached from the theory of dignity, or can it only be harmonised with the right of privacy, from where it originated. Such enquiries would first require evidence to be led by the Plaintiff to prove that the persona of SSR is still surviving as a commercial property, which is alleged to be exploited by the Defendants for profit. The foundational facts have to be established and proved and mere status of a celebrity is not enough. Even in a passing off action - a remedy available under common law - the Plaintiff is required to satisfy the Classical Trinity

test.³¹ Therefore, this debate should be kept for another day and would not detain this Court in deciding the present application, keeping in view the specific nature of the case put forth by the Plaintiff, the rights asserted, and the reliefs sought at this stage.

27. At this juncture the Court may also deal with the Plaintiff's claim of passing off. A passing off action is initiated to safeguard the Plaintiff's goodwill from another who is designedly trying to mislead the public that his goods or services are that of the Plaintiff. In view of the facts noted above, and specific disclaimer of the Defendants, the Court *prima facie* does not find any element to hold that the film would lead the public to believe that it is a true story or a biopic that has been authorised or endorsed by the Plaintiff. Pertinently, once the disclaimer is included at the beginning of the cinematograph film, any apprehension that the Plaintiff has about passing off that the film is a biopic of SSR, will be put to rest. A more detailed enquiry into the same, as stated earlier, should be kept for another day when appropriate evidence to this effect can be appreciated.

28. Furthermore, in the case at hand, the name, caricature, lifestyle, and/or likeness of SSR is not being exploited by applying to any merchandise as t-shirts, toys, posters, mugs, etc. so as to evoke his persona. The Defendants are not making any misrepresentation or claiming a false endorsement for their respective films. They represent their work to be

³¹ Reckitt and Colman Products Limited, [1990] 1 All ER 873. The Classical Trinity test postulates that in order to prove passing off, the plaintiff must prove: (1) goodwill or reputation attached to his goods or service; (2) existence of misrepresentation by defendant to the public which is likely to lead the public to believe that the goods and services offered by defendant are that of the plaintiff; and (3) existence of loss or the likelihood of damage to plaintiff's goodwill.

fictional, i.e., neither a biopic nor based on true events. For such reasons as detailed in the foregoing discussion, the Plaintiff is unable to convince the Court on the point of infringement of celebrity rights.

RIGHT TO FAIR TRIAL

29. The Court does not find merit in the contention of the Plaintiff seeking restraint on the strength of his right to fair trial. Plaintiff asserts that since he is the complainant in the FIR, he is entitled to a fair trial relating to the unnatural death of his son. He has relied upon the order of High Court of Bombay in the PIL in *Nilesh Navalakha* (*supra*), to contend that it is the duty of all media houses to protect the right to fair trial, and in case of competing interest between right to fair trial and right to free speech, the former should be given importance.

30. The directions issued by the High Court of Bombay are already in force. Here, the right to fair trial is being claimed by the Petitioner, being the informant/complainant, but no foundation is set up to demonstrate as to how the films would impair the fairness in investigation or trial. In fact, the accused persons who are named in the FIR or are being investigated have not come forward claiming prejudice. While it needs no emphasis that the right to fair trial is a valuable right, however, it must be remembered that the investigative agencies and judicial system do not rely on cinematographic films for the purpose of investigation or judicial pronouncements. They have to proceed to decide the issues before them by drawing their own inferences and conclusions based on the materials placed before them, in accordance with the law. The films in question are not documentaries, but work of

fiction. The Court does not find any reasonable ground to believe that the danger apprehended by the Plaintiff is real or imminent. The two-pronged test of necessity and proportionality, as recognised and applied by the court in the case of *Dr. Shashi Tharoor (supra)*, has not been satisfied.

31. On this issue, the views of the Supreme Court in *Adarsh Cooperative Housing Society Limited (supra)*, are also relevant and must be taken note of. In the said case, the Court *inter alia* held that, “*the doctrine of sub judice may not be elevated to such an extent that some kind of reference or allusion to a member of society would warrant the negation of the right to freedom of speech and expression which is extremely cherished right enshrined under the Constitution.*” In *Nachiketa Walhekar v. Central Board of Film Certification & Anr.*,³² the Supreme Court held that a film, drama, novel or a book is a creation of art, and that an artist has his own freedom to express himself in a manner which is not prohibited in law. The Court also held that prohibitions should not, by implication, crucify the rights of expressive minds.

32. Thus, a newspaper report pertaining to Defendant No. 4 cannot be the sole basis to conclude interference in the administration of justice or investigation. The cause of action for asserting right of fair trial herein seems to be based on unreasonable apprehension and vague possibilities. Keeping in view the parameters applied in such cases, the Defendants’ right to present their fictional stories, in the opinion of this Court, cannot be curbed purely on an unsubstantiated hypothesis, and no gag order can be

³² 2018 (1) SCALE 382.

issued.

PLAINTIFF'S CAUSE OF ACTION FOR DEFAMATION

33. Although, Mr. Vikas Singh has not pressed the allegations of defamation, and rightly so, as the movie has neither been released, nor seen by the Plaintiff as yet, but it must be noted that, in the suit, the Plaintiff has also briefly alluded to the content of the film being defamatory, by contending that having SSR associated with the Defendants' forthcoming feature film of immoral and promiscuous nature, the Plaintiff and his son would be subject to defamation and slander, and gross damage would be caused to his vast reputation/goodwill amongst the public across the world and the Hindi film industry, which has been built over the hard work of several years by the SSR. The Court finds this plea to be misconceived and the allegation to be entirely speculative, based on assumptions and presumptions. Without knowing the contents of the said film and only by relying on some news articles, the Plaintiff cannot argue that the depiction in the films is intended to be tarnished by the Defendants. The Court finds no *prima facie* case in favour of the Plaintiff's tort action for defamation and is impelled to reject the prayer for injunction, in light of the law laid down in *Melepurath* (*supra*, at paras 6-8), that the civil wrong or the tort action based on defamation is *in personam* and would not survive the death of the complainant.

34. The Plaintiff also claims injury to his personal image, and damage to his reputation as well. The reasons discussed above would apply equally to the Plaintiff's personal tort action, for which, without viewing the content of

the films and on the mere basis of the material placed on record, there is no compelling reason to grant an injunction.

PLAINTIFF'S RIGHT TO PRIVACY VERSUS DEFENDANTS' RIGHT TO FREEDOM OF SPEECH AND EXPRESSION

35. This brings us to the intersection where competing rights of the parties takes us to the much debatable issue which recurrently arises whenever a Plaintiff's rights under Article 21 are pitted against a defendant's rights under Article 19(1)(a) of the Constitution of India. In such cases, the courts have to strike a balance and align the rights and interests of the parties. Mr. Vikas Singh has fleetingly argued that the right of free speech, in matters of news reporting, does not enjoy the same protection when it comes to matters of commercial exploitation. The argument is misconceived, and one cannot read this classification of core and non-core rights under Article 19(1) (a) of the Constitution of India. The protection and guarantee provided by the Constitution would apply with equal rigour, even if the publication leads to commercial gain.

36. On this issue, firstly, as discussed above, we must not lose sight that the Defendants claim of the film being a fictional rendition of true events surrounding the lives of film/TV personalities, including Plaintiff's son, who has reportedly passed away due to unnatural causes. They have firmly stated that nowhere has the Plaintiff or his family or SSR's name, image, persona, likeness etc. been used by them. The only resemblance to SSR, as Defendants have asserted, would be an imaginary dramatization of some of the events occurred in his life. The artistic freedom to create fictional works

cannot be controlled, limited, or confined within set boundaries. An artist's inspiration can come from any source, and the court cannot filter real-life events. This Court finds merit in the submission of the Defendants that details of the demise of SSR received widespread and protracted news coverage in all media, which are available in the public domain, and form a part of the public record. The Court also finds merit in the contention of Defendant No. 3 that if information of events which have occurred is already in the public domain, one cannot plead any violation of right to privacy if a movie is inspired from such events. Admittedly, there are several news reports, articles, write-ups, features, videos, etc. on this topic which are widely available in public domain. This fact is admitted by the Plaintiff in the suit. The Defendants are also quick to point out that the Plaintiff has not raised any objections against author/publishers of such information, and therefore now cannot plead violation of privacy, particularly when such movie does not use any photos, images, caricature or name of the Plaintiff's son. If the events that form the subject matter of the film are in the public sphere, in terms of there being prior reporting of the matter in controversy, the Court does not find any justification to restrain publication of work that is claimed to be fictional and only draws inspiration from such events. On this issue, it also pertinent to note the following extract from ***R. Rajagopal v. State of Tamil Nadu*** (*supra*):

"28. We may now summarise the broad principles flowing from the above discussion:

(1) The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a "right to be let alone". A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters. None can publish anything concerning the above matters without his consent - whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for

damages. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.

(2) The rule aforesaid is subject to the exception, that any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public records including court records. This is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others. We are, however, of the opinion that in the interest of decency [Article 19(2)] an exception must be carved out to this rule, viz., a female who is the victim of a sexual assault, kidnap, abduction or a like offence should not further be subjected to the indignity of her name and the incident being publicised in press/media.

(3) There is yet another exception to the Rule in (1) above - indeed, this is not an exception but an independent rule. In the case of public officials, it is obvious, right to privacy, or for that matter, the remedy of action for damages is simply not available with respect to their acts and conduct relevant to the discharge of their official duties. This is so even where the publication is based upon facts and statements which are not true, unless the official establishes that the publication was made (by the defendant) with reckless disregard for truth. In such a case, it would be enough for the defendant (member of the press or media) to prove that he acted after a reasonable verification of the facts; it is not necessary for him to prove that what he has written is true. Of course, where the publication is proved to be false and actuated by malice or personal animosity, the defendant would have no defence and would be liable for damages. It is equally obvious that in matters not relevant to the discharge of his duties, the public official enjoys the same protection as any other citizen, as explained in (1) and (2) above. It needs no reiteration that judiciary, which is protected by the power to punish for contempt of court and the Parliament and Legislatures protected as their privileges are by Articles 105 and 104 respectively of the Constitution of India, represent exceptions to this rule.

(4) So far as the government, local authority and other organs and institutions exercising governmental power are concerned, they cannot maintain a suit for damages for defaming them.

(5) Rules 3 and 4 do not, however, mean that Official Secrets Act, 1923, or any similar enactment or provision having the force of law does not bind the press or media.

(6) There is no law empowering the State or its officials to prohibit, or to impose a prior restraint upon the press/media.” (Emphasis supplied)

37. The Plaintiff has argued that the news articles covering the death of the Plaintiff are not verified and cannot be construed as ‘public record’ in

terms of Section 2(e) of the Public Records Act and Section 74 of the Evidence Act and further relies upon *Phoolan Devi (supra)*, to argue that the usage of newspaper articles and reports is not to be construed as ‘public record’. However, this argument cannot discern the fact that the events relating to the life and demise of SSR are in public domain. Even in the case of *R. Rajagopal (supra)*, it was held that the Petitioners in the said case had right to publish what they alleged to be a life-story/autobiography, insofar as it appears from the public records, even without the consent or authorisation of said person. Further it was held that if they go beyond that and publish his life story, that may be evading the right of privacy, they will be liable for consequences in accordance with law. Here, the fictional rendition for dramatic presentation based on certain events falls within the scope of artistic freedom of expression and speech. Similarly, in the case of *Ram Gopal Verma (supra)*, the Madras High Court set aside an injunctive order against a movie made by the Appellant therein, on the ground that violation of right of privacy cannot be pleaded by the Respondent when events which occurred in her life are already in the public domain and covered widely by the news. The court held that as long as the Respondent’s name was not used and a disclaimer was published along with the movie, the appellants cannot be disallowed from making a movie based on such events.

38. Accordingly, since the Defendants’ films are neither portrayed as a biopic, nor a factual narration of what transpired in the life of the SSR, and are depicted to be complete fictional and inspired from certain events which have occurred in the past and have been widely discussed and are available in public domain, the Court finds no to reason to grant a restraining order. Moreover, Defendants No. 1-3 have inserted the following disclaimer to

their film:

“Disclaimer: all characters, names, locations, buildings, properties, assigned are all fictitious, if there is any resemblance to any location, person, property, etc. it is purely coincidental and not intentional. Any mention of a community, language or region in this film is not intended to inflict contempt at any point. The film must therefore be viewed as purely a non-commenting source of harmless entertainment not designed to hurt or disdain any individual or a community.”

39. Lastly, breach of privacy is not being asserted on the ground of defamation. It is founded primarily on the commercial exploitation of the personality of the celebrity, which, as elaborated hereinafter, can be adequately remedied by award of damages/compensation.

40. Before moving on to the other issues, we must note that the right to privacy has also been invoked not just of the deceased but also in respect of the right of the family of SSR. The submissions on this aspect are unspecific and vague. No definite instance has been presented by the Plaintiff to show how this right is infringed and therefore, the plea is devoid of merit. Nevertheless, the views noted above, expressed with respect to SSR's privacy, which is alleged to be infringed, would be equally applicable to the Plaintiff's personal cause of action emanating from Article 21 of the Constitution of India, as well.

PRINCIPLES RELATING TO GRANT OF INJUNCTION

41. In view of the above, this Court opines that the Plaintiff has failed to establish a *prima facie* case.

42. The Court finds merit in the contention of the Defendants that

Plaintiff's action is belated. SSR passed away on 14th June, 2020. News on his death was widely circulated in the media. Production of the said film was publicly announced in August 2020. Admittedly, in September, 2020, Plaintiff's counsel made a public statement that, "*no film, serial etc. shall be allowed on Plaintiff's son without Plaintiff's consent*". Defendant No. 1-3 have filed numerous documents to show that the said film was being publicized and promoted since August, 2020. Therefore, Plaintiff ought to have been aware that these Defendants were in the process of producing the said film as early as September, 2020. Plaintiff has filed the present suit close to the release of the said film, after substantial time, money and effort have been expended by Defendant No. 1-3 on production and promotion. For this reason, the balance of convenience lies entirely in favour of the Defendants.

43. On the aspect of irreparable loss, we may note that the suit is not premised as a tortious action for defamation. It is founded on the basis of breach of celebrity/publicity rights inhering to the Plaintiff. It is thus opined that if an interim order is granted, it would be difficult to compensate the Defendants in the event Plaintiff ultimately does not succeed in the suit. Whereas, the Plaintiff can always re-apply at a later juncture for injunction, if there is a change in circumstances after the release of the said film, and has an adequate remedy of being compensated by award of damages, if the Plaintiff proves in trial that the celebrity/publicity rights were inheritable and inured to him exclusively. To ensure that, the Defendants are directed to render complete and true accounts of the revenue earned from the films by way of sale/licensing of all rights relating to the films.

44. In view of the above, the Plaintiff has failed to satisfy the three-pronged test for grant of pre-emptory injunction to restrain exhibition of the films.

45. Accordingly, with the above directions, the present application is dismissed.

JUNE 10, 2021

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SANJEEV NARULA, J

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