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Date:- 20th June,2019

Case No Before Hon'ble President of India:- PRSEC/E/2019/12104

Case No Before Hon'ble Governer of Mahrashtra:- Dist/PLMC/2019/2281

To,

1. **Hon. Governor, Maharashtra, Rajbharan, Mumbai**
2. **Hon'ble Chief Justice, Bombay High Court, Mumbai**
3. **Hon'ble Chief Minister, Maharashtra,Mantralaya, Mumbai-32**
4. **Addl. Chief Secretary, Home Department, Mantralaya, Mumbai-32**

Subject:- **A.** Taking action under Section 211, 220, 167, 469 r/w 120 (B) and 34 of IPC and under Section 145 (2), 146, 147 of Police Act against Shri. D.P. Sonawane, Sr. P.I, Oshiwara Police Station and Ors in view evidence available on record and conclusion drawn by Hon'ble Bombay High Court in B.A. No. 1518 pf 2019 vide order dated 7th June, 2019 it is ex-facie proved that the registration of FIR and arrest of accused was illegal and actuated with ulterior motive and malafide intention.

B. Taking action against Metropolitan Magistrate Shri. Imran R. Marchiya for not granting Bail and sending accused to custody without considering the material on record and acting against the law laid down by Hon'ble Supreme Court in **Sanjay Chandra Vs C.B.I. (2012) 1 SCC 40, Nikesh Shah(2018) 11 SCC 1, Siddharam Mhetre Vs State AIR 2011 SC 312 and thereby violating the fundamental rights of the accused.**

C. Action against Shri. S.U.Baghele, Addl.

Sessions Judge, Borivali Division, Dindoshi, Mumbai for unlawful rejection of bail of accused on 7th May, 2019 on surmises and conjectures and failure to perform the duty as mandated by the Hon'ble Supreme Court in **Sanjay Chandra Vs C.B.I. (2012) 1 SCC 40, (2018) SCC, Khemlo Sakharam Sawant Vs. State 2002 BCR (1) 689** where it was ruled that the accused should be presumed innocent till proved guilty and bail is rule and sending jail is exception. Accused should be released in all cases and committed to custody in exceptional cases.

D. Action under Contempt of Court Act as per law and ratio laid down in **Re: M.P Dwivedi AIR 1996 SC 2299, M/s Prominent Hotels Limited 2015 SCC Online Del 11910, Farooq Abdul Gani Surve Vs. State of Maharashtra 2012 Bom CR (Cri.) 85** against:

1.Shri D.P Sonawane, Sr. Police Inspector 2) Shri. Imran R. Marchiya, Metropolitan Magistrate 3) Shri. S.U Baghlele, Addl. Sessions Judge, Borivali Division, Dindoshi for their willful disregards and defiance of law laid down in **1)Antonio S. Mervyn Vs. State 2008 ALL MR (CRI) 2432 2) Dinkarrao R. Pole Vs. State of Maharashtra 2004 (1) Crimes 1 (Bom) (DB) 3) Joginder Kumar vs. State of U.P. &Ors. (1994) 4 SCC 260 (Full Bench) 5) Siddharam Mhetre Vs. State AIR 2011 SC 312 6) Jairajsinh Temubha Jadeja Vs. State of Gujarat 7) Sanjay Chandra Vs C.B.I. (2012) 1 SCC 40 8) Harsh Sawhney AIR 1978 SC 1016 9) Ravindra Saxena Vs. State Of Rajasthan 2010 (I) SCC (Cri) 884. 10) S. Nambi Narayanan Vs. Siby Mathews (2018) 10 SCC 804**

E) Direction for action under section **167, 192, 220, 466, 474, 469 r/w 120 (B) and 34 etc.**

of IPC against Senior Police Inspector,Oshiwara Police Station for filing false and misleading say on **06.06.2019** before Hon'ble High Court being **"O.W No. 5139 of 2019"** with ulterior motive to keep Karan Oberoi in jail in a false case.

F) Departmental action against Shri. S.U. Baghele, Addl. Sessions Judge & Shri. Imran R. Marchiya, Metropolitan Magistrate and immediate dismissal of said Judges as per law laid down in **R.R. Parekh Vs. High Court of Gujrat (2016) 14 SCC 1**, **Umesh Chandra Vs. State 2006 (5) AWC 4519 ALL**, **Union of India Vs. K. K. Dhawan (1993) 2 SCC 56 (Full Bench)**, **Bharat Devdan Salvi Vs. State 2016 ALL MR (Cri) 1239,**

Hon'ble Sir,

1. Hon'ble Bombay High Court on **7th June, 2019 in B.A No. 1518 of 2019** granted bail to the Karan Oberoi who was arrested under false charges of rape, cheating, extortion etc.

2. Hon'ble High Court in its order dated 7th June 2019 made following observation in para 13 against the Sr. P.I (I.O), Oshiwara Police Station, Mumbai

> ***"13.*** *What is particularly disturbing in the facts,* ***is that the Senior Inspector, Oshiwara Police Station, Mumbai, was well aware of all the 3 complaints made by the applicant in October 2018 itself. He was also aware of the WhatsApp chats submitted by the applicant to him, with one of the complaints. The officer was also aware of the N.C lodged by the complainant, in 2018, against the applicant, where there was no mention of rape etc. With all this material before him, the officer ought to have examined the complainant's instant FIR fairly and impartially, before mechanically effecting the applicant's arrest. In cases such as these, police must be circumspect and cautious, as arrest of a person is a serious matter. Learned APP on instructions***

assures that the Investigating Officer will conduct a free-fair and impartial investigation and take the case to its logical end. He also states that all the messages exchanged between the parties will also be investigated thoroughly.*"*

3. That, due to malafides of Investigation Officer (I.O) and the incapacity of the Metropolitian Magistrate & Sessions Judge, the accused Mr. Karan Oberoi has to live behind bar for around 40 days causing irrepairable loss of reputation, agony, mental torture etc.

4. From the materials available on record and observations of Hon'ble Supreme Court the concerned Police Officers, Metropolitan Magistrate, Public Prosecutor (P.P.) and Addl. Sessions Judge are guilty of serious offences as explained below.

5. That, as per law laid down by Constitution Bench of Hon'ble Supreme Court in **Lalita Kumari Vs. Govt. of U.P. and Ors. AIR 2014 SC 187 it is mandatory for the Police to conduct a preliminary enquiry into any complaint given after an inordinate unexplained delay of 3 months.**

But, no such preliminary enquiry was conducted by the concerned Police Officers.

6. That, while registering the FIR it was the duty of the concerned Police Officer to interrogate the Complainant first.

In **"Investigation Manual"** for Police it is mandated for every police investigating officer as under;

"Delay In Giving Information: When An Offence Is Committed Against A Person The Natural Reaction To The Wrong Suffered By Him Is To Seek Redress By Approaching The Authorities By Giving Information. ***If The Information Is Delayed And No Explanation For The Time Lag Is Forthcoming There Is A Natural Suspicion Attached To The Information. The Question Which Arises Is: Why Was The Information Not Given Promptly ? The Defence, In Cases Where There Is Unexplained Delay In Lodging The F.I.R., Can Successfully Suggest That The Delay Was Deliberate As The Police Station. Hence The Delay Should Be Got Explained At The Outset As A Part Of The F.I.R.***

*(**Note:** for that purpose column no. 8 is inserted)*

Contents Of The Report: (1) The Report Recorded Should Be As Complete As Possible. This Will Depend On The Circumstances Of Each Case. The Questions To Be Asked Are:-

(a) (I) Is The Informant The Aggrieved Party?

(Ii) Considering The Nature Of The Offence, Was He Present When The Offence Was Committed? If So, Was He Present Throughout?

(b) Is The Informant Merely A Messenger Sent By The Aggrieved Party To Give Information Of The Offence? Or

(c)Is He One Wh0 Has Seen The Consequences Of An Offence And Has Gone To The Police Station To Narrate What He Observed?

(2) It May Be Remembered That On The Contents Of The First Information The Investigating Officer Has To Conduct Future Investigation: It Is Therefore, Very Necessary That The First Information Contains Names Of All Possible Witnesses And Full Details Of The Occurrence Of The Offence Within The Knowledge Of The Complainant.

Fractional Aspects Of Recording F.I.R.:

(4) Once The Story Is Got Out Of The Informant He May Be Asked To Repeat It In Its Natural Sequence And Then Only It Should Be Reduced In Writing. ***If There Is Delay In Giving Information The Delay Has To Be Got Explained. The Explanation Should Be Recorded In The F.I.R. Similarly If There Are Obvious Discrepancies In The Story Narrated By The Informant It Is The Duty Of The Police Officer To Question Him On Those Points Minutely And Get A Satisfactory Explanation.*** *In Offences Relating To Property, The Informant May Not Be Able To Give An Exhaustive List Of The Articles Involved—He May Have Rushed To The Police Station To Lodge The Complaint. It Would Therefore, Be Advisable To Bring On Record A Clarification Such As-*

"I Have Already Given A List Of The Already Given A List Of The Articles Stolen. If After A Check Of The Whole Property I Find Any Other Articles Have Been Stolen, I Shall Furnish A Supplementary List."

When A Supplementary List Is Given In Pursuance Of This Statement Before The Commencement Of The Investigation It Would Not Attract Section 162 Cr. P.C.

(5) The Police Station Officer Who Receives The First Information Should Himself Record The Complaint In His Own Handwriting And In No Circumstances Should The Writer Constable Or Any Other Person Be Asked To Write The First Information.

14. Legal Responsibility Of Informant May Be Explained To Him:

(1) *Information Of A Cognizable Offence When Given To The Officer-In-Charge Of A Police Station Has To Be Recorded. But If From The Demeanour Of The Informant Or From Any Other Cause* ***The Officer Has Reason To Believe That The Informant Is Either Exaggerating The Incident Of Giving It A Different Colouring, He May Be Told That He Would Make Himself To Prosecution If The Information Turns Out To Be False Either In Respect Of The Occurrence Or In Respect Of Accused Persons.***

During The Spot Inspection The Investigating Officer Should Have One Or Two Respectable Inhabitants Of The Locality, But Should Not Have A Crowd With Him. Investigating Cases Of Murder Or Accidental Death, A Very Important Aid Would Be A Medical Officer Accompanying The Police To The Scene Of Crime To Inspect The Body And Its Surroundings Before They Are Disturbed. The Inspection Should Not Be Mechanical It Should Be Thorough Any Systematic. In An Enclosed Space It Is Desirable To Imagine The Face Of A Clockwise Over It Covering Every Inch Of The Place. In An Open Place The Same System Could Be Used: Only A Large Enough Surrounding Area Should Also Be Inspected For Footprints Or Tracks Made By A Vehicle Towards Or Away From the place. It is to be remembered that in many cases the object discovered may not necessarily be at the spot where the offence or incident occurred-it may hve been placed there to mislead the Investigating Officer.

*(9) **During his inspection the Investigating Officer should collect and secure all articles left by the criminal and secure all objects belonging either to the complainant or witnesses**, e.g., bloodstained clothes. Even the insignificant looking objects may be of use in the investigation. The places where these objects are found should be carefully noted. The Investigating Officer should prepare a statement which will be an accurate record describing the scene of crime, of the particulars, and the objects secured with exact details of positions where the objects were found. This statement should be got signed by the person accompanying him during the spot inspection. A panchnama of the scene or place of occurrence should be drawn in the form given in Appendix (j).”*

*46. **Interrogation of witnesses should be done early:** Witnesses should be interrogated at the earliest opportunity. No time should be lost between the inspection of the scene of offence and the interrogation of witnesses. Women and children under the age of fifteen must under the provision of law be examined at their places of residence. There is an advantage in interrogating witnesses in surroundings make any man withdraw into himself and then he becomes reticent. Early interrogation is necessary because delay may result in the witnesses forgetting many of the details of an incident. Besides persons interested in the accused many approach and influence them not to disclose the truth or embellish the story to lead the investigation officer astray.*

*47. **Successful interrogation of witnesses:** Interrogation is an art. Every investigator has to have a fair knowledge of practical psychology. No investigator can succeed simply simply by blustering and brow-beating. Such methods make a witness dislike the Investigator Officer and this results in witness reluctance to co-operate with him. Ordinarily witnesses interested in the successful prosecution of the case such as friends and relations of the aggrieved persons do not call for a particular approach. They are anxious to tell all they know so that the prosecution may succeed and the wrongdoer may be punished. The only danger is that they are apt to exaggerate things in the belief that they are*

helping the cause of justice. The Investigating Officer has carefully to eschew the exaggerated portion while reducing the statement to writing. He should not hesitate to tell the witness the harm he would cause to the result of the case by exaggerating things.

(1) Some planning or preparation is necessary for interrogating the witnesses. Such preparation comprises of:

i. Thorough study of facts of the case, the physical evidence and their relation to witness to be examined.

ii. Study of background of the witness.

iii. Favourble physical conditions conductive to create proper atmosphere for obtaining informaions. Such favourable conditions can be expected in the following conditions:-

(a) Place of interview must be quite and free from interruptions from any causes and must be conductive to relaxationand inspiring confidence.

(b) Furniture: arrangements of furniture should be such as to eliminate barriers between the subject and the interviewer barriers that create social distance and prevent free flow of information and consequently retard the growth of the confidence.

iv. Aid to memory:

(a) By placing the witness in the same surroundings in which he saw the occurrence.

(b) By associating the occurrence with some other interesting and important event which the witness easily remembers.

But this procedure was not followed and the **API Sameera Sayyad** recorded the FIR with due deliberation by omissions of important facts like Whatsapp messages date of first meeting,date of break up etc. and also the reason for delay in F.I.R is not explained. It is a serious lapse on the part of Police Officers.

7. The Maharashtra Police Act,1951 **Section 145 (2)** reads as under;

145. (2) <u>any Police officer who-</u>

..... (c) is guilty of any wilful breach or neglect of any provision of law or of any rule or order which as such Police officer, it is his duty to observe or obey, or (d) is guilty of any violation of duty for which no punishment is expressly provided by any other law in force, shall, on conviction, be punished with imprisonment for a term which may extend to three months or with fine which may extend to one hundred rupees or with both.

8. The Sr. P.I, A.P.I and I.O of the above said case attached to Oshiwara Police Station are also liable for action under Section 167, 211 r/w 120 (B), 34 of IPC.

9. That, whenever F.I.R is registarted then even in murder case the Police are bound to do investigations by issuing notice to the accused and they have to avoid the arrest. If any Police Officer arrests any accused by violating the said law then such Police Officer is bound to pay compensation to accused. Also action under Section 220 of IPC.

9.1. Hon'ble Supreme Court of India in **<u>Siddharam Satlingappa Mhetre Vs State AIR 2011 SC 312</u>** it is ruled as under;

Sec. 320 of IPC – Police custody should be avoided –

<u>"A. Accused is presumed to be innocent unless proved guilty by the court - The rate of conviction is less than 10% then Police should be slow in arresting the accused. - The National Police commission's Report suggest that nearly 60% of the arrest are unjustified - The power of arrest is one of the chief sources of corruption of police - Therefore it is suggested that the accused be directed to join the investigation and only when the accused does not co-operate with the investigating agency then only the accused be arrested - When court is of the opinion that the accused had joined the investigation and not likely to abscond then custodial interrogation (PCR) should be avoided - The accused should be granted anticipatory bail.</u>

<u>B. Anticipatory Bail - Code of Criminal Procedure S. 438 - General guidelines including Murder case - I.P.C. S. 302 - Frivolity in prosecution should always be considered - If</u>

there is some doubt, then accused is entitled to order of bail - It has to be examined that whether the complainant has filed a false or frivolous complaint on earlier occasion - Whether there is family dispute between them - If connivance between the complainant and investigating officer is established then action be taken against investigating officer

C. The gravity of charge and the exact role of the accused must be properly comprehended. - The I.O. Must record the valid reasons which led to the arrest - These remark and observations of the arresting officer has to be properly evaluated by the court while dealing with the bail applications - Power of police regarding arrest is another thing but its justification is altogether a different thing.

G. The arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case.

D. Proper course of action to be adopted by court - After evaluating records of the case if anticipatory bail is to be granted - at first interim bail should be granted and notice should be issued to Public Prosecutor - After hearing both the parties court my grant Anticipatory bail or reject it.

E. Anticipatory Bail - Duration of - Anticipatory bail granted should ordinarily be continued till end of trial of the case-

F. Cr. P.C. & 438 & 437 - The plentitude of S. 438 must be given its full play - There is no requirement that accused must make out a 'Special case' for exercise of power to grant anticipatory bail-

H. Anticipatory Bail – Judges with good track record only to be entrusted with such work – Both individual and society have vital interest in such orders.

I. Guidelines to the Police/ Investigation Officer – Personal libety is a very precious fundamental right which can not be disturbed by the police in routine manner. The investigation can be done by following the guidelines below

In case, the State consider the following suggestions in proper perspective then perhaps it may not be necessary to curtail the personal liberty of the accused in a routine

manner. These suggestions are only illustrative and not exhaustive.

1) Direct the accused to join investigation and only when the accused does not cooperate with the investigating agency, then only the accused be arrested.

2) Seize either the passport or such other related documents, such as, the title deeds of properties or the Fixed Deposit Receipts/Share Certificates of the accused.

3) Direct the accused to execute bonds; 4) The accused may be directed to furnish sureties of number of persons which according to the prosecution are necessary in view of the facts of the particular case.

5) The accused be directed to furnish undertaking that he would not visit the place where the witnesses reside so that the possibility of tampering of evidence or otherwise influencing the course of justice can be avoided.

6) Bank accounts be frozen for small duration during investigation."

9.2 .Dinkarrao R. Pole Vs. State of Maharashtra 2004 (1) Crimes 1 (Bom) (DB) *where it is ruled as under;*

*"**A] Wrongful arrest & detention in police custody –** IPC Ss. 420, 468 & 471 Cr.P.C. S.41- Police Officer is not expected to act in a mechanical manner and in all cases to arrest accused as soon as report of cognizable offence is lodged – Existence of power to arrest is another thing & justification for exercise of it is another thing there must be some reasonable justification in opinion of officer effecting arrest that it was necessary and justified – Except in heinous offences arrest should be avoided – If Police Officer issue notice to a person to attend the Police Station and not leave the station without permission would do – offence u.s. 420, 471, 468 of IPC are not herious offences – Arrest illegal.*

***B] Compensation- Petitioner was arrested by respondent Police Officer in case registered U/s 420, 468, 471. If IPC –** Offences are not heinous offences - Arrest found malafide and mischievous & not protected by element of good faith – Infringement*

of fundamental right of a citizen cannot stop by giving a mere declaration – Compensatory relief is to be provided under – Cost of Rs. 25,000/- imposed on Police Officer who arrested the petitioner. "

1) **Antonio S. Mervyn Vs. State 2008 ALL MR (CRI) 2432** it is ruled as under;

"I.P.C. section 186, 353, 356, 379 – Constitution of India, - Arts 226, 21 – Cri. P.C., (1973), S. 46 – Arrest – Power of Police to arrest the accused – Held, the investigation has to be made without touching the offender – The question of touching the offender would arise only while submitting a charge-sheet – Compensation of Rs. 25,000/- granted to accused – State directed to take action against police officer responsible for violation of fundamental rights of accused."

2) **Joginder Kumar Vs. State (1994) 4 SCC 260 (Full Bench)**

3) Hon'ble Supreme Court in the case of **S. Nambi Narayanan Vs. Siby Mathews (2018) 10 SCC 804** it is ruled as under;

40. *If the obtaining factual matrix is adjudged on the aforesaid principles and parameters, there can be no scintilla of doubt that the Appellant, a successful scientist having national reputation, has been compelled to undergo immense humiliation.* ***The lackadaisical attitude of the State police to arrest anyone and put him in police custody has made the Appellant to suffer the ignominy. The dignity of a person gets shocked when psycho-pathological treatment is meted out to him. A human being cries for justice when he feels that the insensible act has crucified his self-respect. That warrants grant of compensation under the public law remedy. We are absolutely conscious that a civil suit has been filed for grant of compensation. That will not debar the constitutional court to grant compensation taking recourse to public law. The Court cannot***

lose sight of the wrongful imprisonment, malicious prosecution, the humiliation and the defamation faced by the Appellant. *In Sube Singh v. State of Haryana and Ors. MANU/SC/0821/2006 : (2006) 3 SCC 178, the three-Judge Bench, after referring to the earlier decisions, has opined:*

38. It is thus now well settled that the award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right Under Article 21, by a public servant. *The quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation (by way of public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in the enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation Under Section 357 of the Code of Criminal Procedure.*

44. *Mr. Giri, learned senior Counsel for the Appellant and the Appellant who also appeared in person on certain occasions have submitted that the grant of compensation is not the solution in a case of the present nature. It is urged by them that* ***the authorities who have been responsible to cause such kind of harrowing effect on the mind of the Appellant should face the legal consequences. It is suggested that a Committee should be constituted to take appropriate steps against the erring officials. Though the suggestion has been strenuously opposed, yet we really remain unimpressed by the said oppugnation. We think that the obtaining factual scenario calls for constitution of a Committee to find out ways and means to take appropriate steps against the erring officials. For the said purpose, we constitute a Committee which shall be headed by Justice D.K. Jain, a former Judge of this Court. The Central Government and the State Government are directed to nominate one officer***

each so that apposite action can be taken. *The Committee shall meet at Delhi and function from Delhi. However, it has option to hold meetings at appropriate place in the State of Kerala. Justice D.K. Jain shall be the Chairman of the Committee and the Central Government is directed to bear the costs and provide perquisites as provided to a retired Judge when he heads a committee. The Committee shall be provided with all logistical facilities for the conduct of its business including the secretarial staff by the Central Government.*

4) Dr. Mehmood Nayyar Azam Vs. State of Chattisgarh (2012) 8 SCC 1.

"***Article 21*** ***of the Constitution - RIGHT TO LIFE*** *includes the right to live with human dignity and all that goes along with it – If reputation is injured by unjustified acts of Public servants then Writ Court can grant compensation- Rs.5.00 lacs (Rupees five lacs only) should be granted towards compensation to the appellant - law cannot become a silent spectator - The law should not be seen to sit by limply, while those who defy if go free, and those who seek its protection lose hope - When citizenry rights are sometimes dashed against and pushed back by the members of City Halls, there has to be a rebound and when the rebound takes place, Article 21 of the Constitution springs up to action as a protector- The action of the State, must be "right, just and fair". Using any form of torture would neither be 'right nor just nor fair' and, therefore, would be impermissible, being offensive to Article 21 -* ***Any psychological torture inflicts immense mental pain. A mental suffering at any age in life can carry the brunt and may have nightmarish effect on the victim. The hurt develops a sense of insecurity, helplessness and his self-respect gets gradually atrophied- the authorities possibly have some kind of sadistic pleasure or to "please someone" meted out the appellant with this kind of treatment. It is not to be forgotten that when dignity is lost, the***

breath of life gets into oblivion. *In a society governed by rule of law where humanity has to be a laser beam, as our compassionate constitution has so emphasized, the police authorities cannot show the power or prowess to vivisect and dismember the same. When they pave such path, law cannot become a silent spectator - The law should not be seen to sit by limply, while those who defy if go free, and those who seek its protection lose hope.*

B] The High Court, despite no factual dispute, has required him to submit a representation to the State Government for adequate relief pertaining to grant of compensation after expiry of 19 years with a further stipulation that if he is aggrieved by it, he can take recourse to requisite proceedings available to him under law. We are pained to say that this is not only asking a man to prefer an appeal from Caesar to Caesar's wife but it also compels him like a cursed Sisyphus to carry the stone to the top of the mountain wherefrom the stone rolls down and he is obliged to repeatedly perform that futile exercise.".

10. Hence the concerned Police Officers who arrested Mr. Karan Oberoi are guilty of offences under section 220 of IPC & section 147 of Police Act.

> ***"220. Commitment for trial or confinement by person having authority who knows that he is acting contrary to law.—****Whoever, being in any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement,* ***corruptly or maliciously commits any person for trial or to confinement, or keeps any person in confinement, in the exercise of that authority knowing that in so doing he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.****"*

"147.Vexatious entry, search, arrest, etc., by Police office *-* ***Any Police officer who*** *- 1 Section 143-B was inserted by Bom 35 of 1959, Sec. 31. 65 (a) without lawful authority or reasonable cause enters or searches or causes to be entered or searched, any building, vessel, tent or place;* ***(b) vexatiously and unnecessarily seizes the property of any person****;* ***(c) vexatiously and unnecessarily detains, searches or arrests any person;*** *(d) offers any unnecessary personal violence to any person in his custody; or (e) holds out any threat or promise not warranted by law; shall for every such offence, on conviction,* ***be punished with imprisonment for a term which may extend to six months or with fine which may extend to five hundred ,rupees, or wit h both."***

In **Sita Ram Chandu Lall Vs. Malkit Singh MANU/PH/0113/1955,** it is ruled as under;

"Section 220 of IPC against Police Officer: *It is correct that the actual words of the section "corruptly or maliciously" have not been used, but, on a consideration of all the facts of the case, the learned trial Magistrate did express his view that the action of Malkiat Singh Respondent in going to the mandi,* ***arresting Sita Ram there and taking him hand-cuffed through the bazar was simply to put pressure upon him to come to terms with one Bhagwati Prasad. It has also been found that the offence for which Sita Ram was arrested was a bailable one.***

The bail, though offered, was not accepted. The learned Sessions Judge concurred with these findings. Bhagwati Prashad was complainant in the case in which Sita Ram was arrested and Malkiat Singh was a tenant of Bhagwati Par-shad. The unlawful commitment to confinement was willful, without any excuse and with a view to put pressure on Sita Ram to come to terms with Bhagwati Parshad, in whom Malkiat Singh was interested. In the circumstances,

Malkiat Singh can safely be said to have acted "maliciously". The contention is consequently rejected.

Malkiat Singh was deputed to investigate. On 14-5-53 he arrested Sita Ram and Bhagwan Dass, the two accused mentioned in the report. The offence was bail able and ball was actually offered. It was not accepted. Sita Ram and Bhagwan Das were hand-cuffed and paraded in that condition to the police-station through the "mandi. There, they were not released on bail for about an hour.

To maintain law and order is the principal function of a police Officer. It is simply reprehensible if he himself takes the role of a lawbreaker and acts in flagrant disregard of his duties as a public servant. Malkiat Singh Respondent did no less. He was actuated by youthful spirit and false notions of his newly gained authority. The high-handed manner in which he acted, leaves no doubt that he did not deserve to be given the benefit of Section 562 (1), Code of Criminal Procedure and the discretion was improperly exercised."

Similar law is laid down in the case of **Afzalur Rahman Vs. Emperor AIR 1943 FC 18**, where it is rules as under;

"Apart from the legality of the arrest, the keeping in confinement even by a person who had legal authority to do so would be an offence under section 220, Penal Code, if in the exercise of that authority a person kept another in confinement knowing that in so doing he was acting contrary to law.

Achhey Lal was nevertheless placed under arrest and under the instructions of the Excise Sub-Inspector, he was tied up with ropes by some excise peons. The officers had to proceed to another village Sakhua, to make a raid there and it appears that during the interval Achhey Lal was given to understand that if he paid Rs. 50 or Rs. 60, he would be let off. Achhey Lal's brother Phagu, who had been sent for, met the

party at Sakhua and after some bargaining, a sum of Rs. 25 was paid. On this payment being made, the ropes were untied but Achhey Lal was not allowed to go away. He was informed that he must accompany the party to the police thana at P to get something written. It is said that they did go to P and Achhey Lal signed some paper which he thought was a bail bond; but as no such paper is forthcoming and as the appellants deny that any such signature was taken, it is not possible to say what paper, if any, the complainant signed. When, after reaching P, Achhey Lal asked for permission to go away, the police officers informed him that it was thereafter a matter between him and the Excise Sub-Inspector and the Excise Sub-Inspector told him that some further payment should be made to himself, as the Rs. 25 already paid had been appropriated by the police officers. After some higgling, a further sum of Rs. 12 was paid to the Excise Sub-Inspector and the complainant was allowed to go away. Admittedly, proceedings under the Excise Act were taken only against Jeswa Amat and not against Achhey Lal, and even Jeswa Amat was ultimately acquitted.

The main argument on their behalf however was that in respect of excise offences, the police officers were under no official duty to send up an arrested man for trial, when the arrest had been made by the Excise Sub-Inspector and that therefore the alleged receipt of gratification by them cannot be said to have been as a motive or reward for doing or forbearing to do any official act or for showing favour in the exercise of official functions.

When the police officers became aware of the intention of the excise officer to act unlawfully, it was their duty as police officers to prevent it and to bring the excise officer to justice.

The fact that the Excise Sub-Inspector was also present on the spot did not take away the official character of the connexion of the police officers with

the incident. It is unnecessary to decide specifically whose duty it was in such circumstances, whether of the excise officer or of the police officers or of both, to send up an offender for trial. We are not prepared to lay undue stress upon the words of the charge and hold that unless it could be said that it was the duty of the police officers in such a case to send up an offender for trial, the charge Under Section 161 must fail as against them. The expression "send up" was after all a non-technical expression and when the three officers were acting in concert and the charge was framed as a common charge against all the three, it seems to us sufficient, in order to sustain the charge, if it is established that all the three were at the time acting in their official capacity, that they jointly bargained for and received the illegal gratification and that as a result of such payment, all further action against Achhey Lal was dropped.

When the three officers were acting together, the mere fact that the direction to tie up Achhey Lal with a rope was given only by the Excise Sub-Inspector and that the actual tying up was done by the excise peons cannot materially affect the legal position, above stated. There could be little doubt that except with the concurrence of the police officers, the excise officer would not have released Achhey Lal from custody.

Learned Judge rightly observes that Achhey Lal was so little suspected that he was not even searched. The assumption on which this line of argument has been urged, namely, that the arrest was lawful, accordingly fails. In the Bombay case above referred to, the learned Judges have pointed out that on the terms of the provision which they had to interpret, it was sufficient that the accused had "credible information" to entitle him to make the arrest. We may add that, apart from the legality of the arrest, the keeping of. Achhey Lal in confinement even by a person who had legal authority to do so would be an offence Under Section 220, Penal Code, if in the exercise of that

authority a person kept another in confinement knowing that in so doing he was acting contrary to law. Between the time when the excise officer arrested Achhey Lal at village C and the time he released him, he had no further information about his innocence beyond what was stated by him at the time of the arrest itself to the effect that he (Achhey Lal) had nothing to do with the ganja found in Jeswa Amat's house. He nevertheless seeks to justify the detention on the ground that, as he had no time to think over the matter at C itself, in view of the preoccupation of his mind with the further raid to be made in village S, he could not immediately decide whether Achhey Lal's statement as to his innocence was to be accepted or not. This is no doubt a possibility and the explanation might have been accepted, if the story of the illegal gratification had not complicated the situation. When, however, it was found that the release was obtained by payment of illegal gratification, the Court was entitled to infer that the explanation put forward by the Excise Sub-Inspector was not true, that he must have known from the beginning that there was no justification in law or fact for arresting or for detaining Achhey Lal and that he must have done so only with a view to make a pecuniary profit out of the transaction."

11. Hon'ble Supreme Court in the case of **Arvinder Singh Bagga Vs. State of Uttar Pradesh (1994)6 SCC 565** where it is ruled as under;

A] Police Torture – *Torture is not merely* ***physical, there may be mental torture and psychological torture calculated to create fright and submission to the demands or commands - When the threat proceeds from a police officer the mental torture caused by it is even more grave.***

B] Physical and mental torture by Police – Supreme Court observed that – *We are really pained to note that such things should happen in a country which is still governed by the rule of law – State directed to launch criminal prosecution against*

all the Police officers involved in this sordid affairs – The state shall pay a compensation of Rs. 10.000/- to Nidhi, Rs. 10,000/- to Charanjit Singh and Rs, 5,000/- to each of the other persons who were illegally detained and humiliated by police – It will be open for state to recover the amount from guilty Police Officer.

12. Hon'ble Supreme Court of India in **Mohd. Zahid Vs. Govt. of NCT of Delhi AIR 1998 SC 2023** where it is ruled as under

Cr.P.C. Sec. 340 – False entries in case diary by the Police Officer – Police Officials interpolated the entries in the case diary to create false story to falsely implicate the accused – Accused detained for possessing illegal arms – Evidence of official making arrest not supported by independent witnesses – Time of arrest interpolated – Order of conviction liable to be set aside – Show cause notice issued to Police Officer for Prosecution under section 193, 195, 211 of I.P.C. – Commissioner of police directed to keep the Daily Diary Book in sealed cover until further orders - we direct the Delhi Government to pay him a sum of Rs. 50,000/- as compensation. The payment should be made within two months from the date of receipt of the order. The State Government will, however, be at liberty to recover the said amount from the erring police officers.

We, therefore, allow this appeal and set aside the conviction and sentence of the appellant and acquit him. The appellant who is in jail be released forthwith. Since the appellant has been made a victim of prolonged illegal incarceration due to machination of P.Ws. 5 and 6 and other police personnel of I.S.B.T. police post we direct the Delhi Government to pay him a sum of Rs. 50,000/- as compensation. The payment should be made within two months from the date of receipt of the order. The State Government will, however, be at liberty to recover the said amount from the erring police officers.

From the materials on record, discussed above, we are also of the opinion that it is expedient in the interest of justice that an enquiry should be made in accordance with sub-section (1) of Section 340, Cr.P.C. into commission of offences under Sections 193, 195 and 211, I.P.C. by Sub-Inspector Gopi Chand (P.W. 6), and under Sections 193 and 195, I.P.C. by Assistant Sub-Inspector Chander Bhan (P.W. 5) and Head Constable Premvir Singh (P.W. 4). We, therefore, in exercise of the powers conferred by sub-section (2) of Section 340, Cr.P.C., call upon the above three persons to show cause, on or before July 17, 1998, why a complaint should not be made against them for the aforesaid offences. Let a copy of the judgment along with this order be served upon them through the Commissioner of Police, Delhi. Registry is directed to keep the Daily Diary Book in a sealed cover until further orders of this Court.

13. Hon'ble Supreme Court in the case of **Perumal Vs. Janaki (2014) 5 SCC 377** where it is ruled as under;

False charge – I.P.C. 211 against IO, Sub-Inspector in an All-Women Police Station – Duty and obligation of High Court to order enquiry under sec. 340 of Cr.P.C.. -when the appellant alleges that he had been prosecuted on the basis of a palpably false statement coupled with the further allegation in his complaint that the respondent did so for extraneous considerations, it is an appropriate case where the High Court ought to exercise the jurisdiction under Section 195 Cr.P.C. - The High Courts not only have the authority to exercise such jurisdiction but also an obligation to exercise such power - the Appellant / accused alleged enticed the de-facto complainant of marrying her and had sexual interaction several times in the nearby jungle and on account of which the complainant became pregnant - The appellant was tried for the offences - The Magistrate acquitted the appellant of both the charges - the

said judgment has become final - In spite of the definite medical opinion that Nagal was not pregnant, the respondent chose to file a charge-sheet with an allegation that Nagal became pregnant. Therefore, according to the appellant, the charge-sheet was filed with a deliberate false statement - The appellant, therefore, prayed in his complaint to, try the accused U/s. 193 I.P.C. - The learned Magistrate dismissed the complaint on the ground that section 195 of the Cr.P.C. bars criminal courts to take cognizance of an offence under section 193 of the I.P.C. except on the complaint in writing of that Court - The High Court declined to interfere with the matter in exercise of its revisional jurisdiction, by observing that the respondent had not in any manner tampered with the medical record so as to mulct the petitioner with criminal liability. The wording in the final report informing of the de facto complainant having been pregnant can in the facts and circumstances of the case, be seen only as a mistake.

Passing strictures against High Court and allowing appeal, Supreme Court observed as under;

Held, we regret to place on record that at every stage of this matter the inquiry was misdirected- . The abovementioned indisputable facts, in our opinion, prima facie may not constitute an offence under section 193 I.P.C. but may constitute an offence under section 211 I.P.C. We say prima facie only for the reason this aspect has not been examined at any stage in the case - section 211 of the I.P.C. deals with an offence of instituting or causing to be instituted any criminal proceeding or falsely charging any person of having committed an offence even when there is no just or lawful ground for such proceeding to the knowledge of the person instituting or causing the institution

of the criminal proceedings- the High Court, in our view, is not justified in confining itself to the examination of the correctness of the order of the magistrate dismissing the said private complaint. Both Section 195 (1) and Section 340 (2) Cr.P.C. authorize the exercise of the power conferred under Section 195(1) by any other court to which the court in respect of which the offence is committed is subordinate to - High Courts may exercise such power either on an application made to it or suomoto whenever the interests of justice demand.

The High Courts not only have the authority to exercise such jurisdiction but also an obligation to exercise such power in appropriate cases. - any interpretation which leads to a situation where a victim of crime is rendered remediless, has to be discarded. The power of superintendence like any other power impliedly carries an obligation to exercise powers in an appropriate case to maintain the majesty of the judicial process and the purity of the legal system. Such an obligation becomes more profound when these allegations of commission of offences pertain to public justice.

28. In the case on hand, when the appellant alleges that he had been prosecuted on the basis of a palpably false statement coupled with the further allegation in his complaint that the respondent did so for extraneous considerations, we are of the opinion that it is an appropriate case where the High Court ought to have exercised the jurisdiction under Section 195 Cr.P.C. The allegation such as the one made by the complainant against the respondent is not uncommon. As was pointed earlier by this Court in a different context "there is no rule of law that common sense should be put in cold storage". Our Constitution is designed on the theory of checks and balances. A theory which is the product of the belief that all power corrupts

- such belief is based on experience.

14. <u>DUTY OF THE INVESTIGATING OFFICER (I.O.) TO DO IMPARTIAL INVESTIGATION AND TO CONSIDER DEFENCE OF THE ACCUSED AND THEN SEND ALL MATERIALS TO COURT EVEN IF THEY ARE AGAINST COMPLAINANT AND CASE OF PROCECUTION :-</u>

Hon'ble the Supreme Court of India in the case of **<u>Babubhai Vs. State 2011 (1) SCC (Cri) 336</u>** it is ruled as under:-

> *A) **Cr. P.C. – S. 482** – Tainted investigation – Quashing of investigation which is tainted and baised, suffers from irregualtities and conducted in malafide exercise of power by police causing serios prejudice and harassment to any party then such investigation is vitiated and any other order passed by investigating agency on basis of such vititated investigation is laible to be quashed – charge sheet is quashed.*
>
> *B) Article 20, 21 of the constitution – Fair investigation – Investigation must be fiar, transparent and judicious – Police cannot be permitted to harass any party on basis of tainted investigation – Such tainted investigation has to be quashed- fresh investigation may be ordered from other investigation agencies.*

Hon'ble High Court in **<u>Jugal Kishore Vs . State of M.P. 1990 Cri.L.J. 2257</u>** it is ruled as under:

> *A] One sided Investigation – Police is bound to investigate the plea of accused also – A dishonest, unfair or one sided investigation violate the constitutional guarantee and justify interference by Court of Law – Such proceeding has be quashed*
>
> *B] To put an accused person to long lasting trial on an incomplete and one sided investigation and promise to consider full facts only when they are brought before the court at defence stage amounts to ignoring default of the I.O. and clothe him with the authority to harass accused. It may even amount to judicial sanction of substitution of rule of law by the*

Police Raj, and subversion of our constitutional ideals. These consequences deserve notice of the Session Judge while interpreting his own authority and jurisdiction in the matter.

Hon'ble High Court in the case of **Harvinder Sing Vs. State 2015 III AD (Delhi) 210** it is ruled as under;

"A] Quashing of Charge Sheet- Section 406,409,420,201,r/w120 (B) of IPC- Absence of legal evidence- In criminal law there is no vicarious liability – Malafides of the I.O. to falsely implicate the accused –The I.O. deliberately did not investigated the complaints of accused and did not placed those complaints on record alongwith the Charge-Sheet – Investigation is not done honestly– The Charge Sheet does not contain any legally admissible evidence to make any case against the accused. It appears that falling short of legally convertible evidence to sustain implication of the petitioner, investigating agency seems to be bent on implicating the petitioner and has gone to the extent of making feeble attempt to rely upon the changed version. *Investigating agency has taken shelter of mere suspicion to conclude the cheating. The Law does not authorise the trial court to issue summoning of a person as an accused on mere suspicion of the investigating agency.* ***The conclusion of I.O. is belied from the material on record. Charge- Sheet quashed – Action directed against I.O. A criminal trial cannot be allowed to assume the character of fishing and roving enquiry. It would not be permissible in law to permit a prosecution to linger, limp and continue on the basis of a mere hope and expectation that in the trial some material may be found to implicate the accused. Such a course of action is not contemplated in the system of criminal jurisprudence that has been evolved by the courts over the years. A criminal trial, on the***

contrary, is contemplated only on definite allegations, prima facie, establishing the commission of an offence by the accused which fact has to be proved by leading unimpeachable and acceptable evidence in the course of the trial against the accused.

This Court can't refuse to invoke its powers to quash criminal case if the material on record is not sufficient enough to put the criminal law into motion.

B] Section 204 of Criminal Procedure Code - Duty of Magistrate while issuing process-

It is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusation made and a case where there is legal evidence, which on appreciation, may or may not support the accusation. The judicial process should not be an instrument of oppression, or needless harassment. The Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to needlessly harass any person*.*

It is astonishing to take note of the fact that despite thorough investigation into the matter for three years and by three different investigating officers of Inspector rank as well as deployment of the Chartered Accountant instead of coming up with formidable evidences in this regard, investigating agency has taken shelter of mere suspicion to conclude that property has been purchased from the cheated funds. In the absence of any enabling provision for presumption against accused, the Law does not authorise the trial court to issue summoning of a

person as an accused on mere suspicion of the investigating agency.

Hon'ble Apex Court in ***'State of Kerala Vs. P. Sugathan & Anr.' MANU/SC/0601/2000 : (2000) 8 SCC 203****:-*

"12. ..... A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied for the purposes of drawing an inference should be prior in time than the actual commission of the offence in furtherance of the alleged conspiracy."

Applying the aforesaid legal principles, it is observed that there is no evidence collected by the prosecution even to prima facie infer that the petitioner was part of any agreement with other accused persons either to do any illegal act or legal act through illegal means, to sustain his summoning as co-accused. Surprisingly, with such intricate factual matrix, the learned trial Court has passed a single line summoning order, which even does not convince this Court that the learned trial Court has applied its mind to the facts to convince itself about existence of prima facie evidence about complicity of the petitioner. *It is apparent that while summoning the petitioner as an accused, trial Court has completely ignored the parameters set out by the Hon'ble Apex Court for summoning of an accused as enunciated in the judgment of 'Pepsi Foods Ltd. and Anr. v. Special Judicial Magistrate and Ors.' MANU/SC/1090/1998 : (1998) 5 SCC 749, wherein the law regarding summoning of an accused was considered and it was held:*

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion

as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

It does not sound to the prudence that a person would be managing affairs of a company without even being a functionary, authorised signatory, authorised representative or a participant in the Board of Directors of a Company. Had there been a semblance of truth in the conclusion of the investigating agency regarding the petitioner being incharge of the accused company, he would have at least procured authorization to represent the accused company which is also completely missing in the present case.

As per the charge sheets Ms. Madhu Singh (Managing Director of accused company) along with others induced innocent investors for investment in aforementioned residential project of the accused company, in defiance of rules and regulations embedded in their agreement.

Mr. Kohli has further contended that the conclusion of the investigating agency that the property in question

was sold at less than the prevailing market price itself is belied from the prevailing circle rates of the area.

I find substance in submissions of Mr. Kohli that reliance on the valuation report to assert that the property in question was sold at a cheaper price is completely ill founded.

[C] *Hon'ble Apex Court in the matter of 'Satish Mehra v. State of N.C.T. of Delhi and Anr.' (2012) 13 Supreme Court Cases 614 can be safely placed for invoking inherent powers of this Court for quashing proceedings qua the petitioner. Relevant para of the judgment is reproduced herein below:-*

"19. The view expressed by this Court in Century Spg. case and in L. Muniswamy's case to the effect that the framing of a charge against an accused substantially affects the person's liberty would require a reiteration at this stage. ***The apparent and close proximity between the framing of a charge in a criminal proceeding and the paramount rights of a person arrayed as an accused under Article 21 of the Constitution can be ignored only with peril. Any examination of the validity of a criminal charge framed against an accused cannot overlook the fundamental requirement laid down in the decisions rendered in Century Spg. and Muniswamy.*** *It is from the aforesaid perspective that we must proceed in the matter bearing in mind the cardinal principles of law that have developed over the years as fundamental to any examination of the issue as to whether the charges framed are justified or not.*

20. *In such a situation to hold either of the appellant-accused to be, even prima facie, liable for any of the alleged wrongful acts would be a matter of conjecture as no such conclusion can be reasonably and justifiably drawn from the materials available on record.*

(Emphasis supplied)

[D] Malafides of I.O:-

58. During the course of hearing, ***lot of details have surfaced showing deliberate attempt on the part of investigating officer to implicate the present petitioner.*** *Under normal circumstances this court would have expressed its displeasure on the conduct with a warning to the erring official's but when the abuse is of a wider magnitude, I deem it appropriate to take serious note of the same.* ***When the power is given to the investigating agency, it carries inbuilt responsibility on the officials of the Police force to use the power diligently for detection of crime and not for victimisation of a person for extraneous considerations. It is apparent from record that since the deployment of Inspector Ajay Kumar as an investigating officer, the petitioner has been deliberately targeted. Despite knowing about the frivolity in the claim of Mr. Harjit Singh regarding his being strategic buyer, investigating officer kept on shielding him and eventually facilitated accused Ms. Madhu Singh and others to misappropriate proceeds due to the accused company in terms of the Agreement dated 05.02.2011. Had the intent of the investigating officer been fair, he would have acted on the complaints of the petitioner as well and would have placed all relevant material on the record for perusal of the learned Magistrate for imparting fair opportunity to the court to examine the entire matter independently. Whereas, in the present matter there exist sufficient evidence, records and documents pointing towards innocence of the petitioner, which have been deliberately concealed to implicate and procure summoning of the petitioner.***

45. In Maksud Saiyed's case (supra) the Apex Court observed as under:

"13. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. ***The Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company.*** *The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities....."*

(Emphasis supplied)

In Thermax Ltd. & ors. v. K.M. Jony & ors.' 2011 X AD (S.C.) 189, Hon'ble Supreme Court reiterated the principles laid down in the aforesaid judgment of Maksud Saiyed.

Sight of the fact can also not be lost that the version of Mr. Harjit Singh has come as a counter blast to the complaint of the petitioner, who has exposed fraudulent acts of Mr. Harjit Singh in concealing 'Agreement' while stepping in as a 'Strategic Buyer' for the same project under a different name and style with an intention to mislead the court.

Perusal of statements of the informants under section 161 Cr.P.C. does not make out any specific act attributable to the petitioner, which could justify implication of the petitioner as an accused.

There is no presumption in favour of existence of conspiracy. The prosecution cannot be absolved of the responsibility of bringing sufficient circumstances

pointing towards existence of an agreement amongst the conspirator to do an 'illegal act' or 'a legal act through illegal means'. Apart from commission of 'Acts,' prosecution is also casted with a responsibility to bring evidence on record suggesting that the same has been committed in pursuance of 'an agreement' made between the accused persons who were parties to the alleged conspiracy. It is a well settled proposition of law that an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inferences which are not supported by cogent and acceptable evidence.

52. The aforementioned principles were followed by the Supreme Court in ***'GHCL Employees Stock Option Trust v. India Infoline Ltd' MANU/SC/0271/2013 : (2013) 4 Supreme Court Cases 505.*** *Relevant observations of the Hon'ble Apex Court in the matter of GHCL Employees Stock Option Trust (Supra) are extracted herein below:-*

"14. Be that as it may, as held by this Court, summoning of accused in a criminal case is a serious matter. Hence, criminal law cannot be set into motion as a matter of course. ***The order of Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto.*** *The* ***Magistrate has to record his satisfaction*** *with regard to the* ***existence of a prima facie case*** *on the basis of* ***specific allegations*** *made in the complaint* ***supported by satisfactory evidence and other material on record.***

19. *.....*

'38. .....

*It is surprising to see the haste shown by the Investigating Officer in by-passing objections of prosecution branch and targeting the petitioner****.***

I am at pain to see the misconduct of the Investigating Officer. It appears that instead of putting genuine efforts for taking action against the real culprits and trailing the cheated funds for making the same available with the trial Court to enable it to pass appropriate orders for compensating the bona fide purchasers who had invested their life savings to accomplish their dream home, investigating officer has completely defied his obligations. Unbridled powers provided to the police also carry inbuilt bounden responsibility of using the same for detection of crime and this Court cannot permit misuse/abuse of the power by any officer of the police force for benefiting accused persons or to the detriment of the poor investors/complainants. Despite specific queries, learned APP for State could not offer any justification for the conduct of the investigating officer, which compels me to direct the Commissioner of Police to probe the role of the I.O. and the erring officials/persons responsible and involved with him. It is anticipated that the Commissioner of Police would expeditiously conclude the inquiry addressing concern of this court uninfluenced by the observations of this court.

In light of the aforesaid discussion, all the petitions are allowed. The summoning order dated 03.06.2014 passed by the learned ACMM-II, Patiala House Courts, New Delhi is set aside and all the charge sheets are hereby quashed qua the petitioner only."

15. DUTY OF THE MAGISTRATE BEFORE WHOM THE ACCUSED IS PRODUCED:-

Hon'ble Madras High Court (Full Bench) in the case of **Selvanathan alias Raghavan Vs. State by Inspector of Police LAWS(MAD)-1988-11-20** it is ruled as under;

A) ***Every person subjected to arrest is entitled to a copy of FIR free of cost at the time of arrest -*** *No doubt, it is true that if a duty is cast on the arresting officer to comply with certain statutory formalities, there is a corresponding duty cast on the Magistrate who is called upon to pass remand orders to satisfy himself whether the statutory formalities have been strictly complied with or not. In case the Magistrate is not satisfied that the requirements of Sec.50 of the Code have not been complied with, he can limit the remand in the first instance to such period as would be necessary, thereby affording an opportunity to the police officer to communicate in writing the full particulars of the offence for which the accused is arrested or the other grounds of such arrest .*

B) ***The Magistrates shall not grant remands to the police custody unless they are satisfied that there is good ground for doing so and shall not accept a general statement made by the investigating or other Police Officer to the effect that the accused may be liable to give further information, that a request for remand to police custody shall be accompanied by an affidavit by setting out briefly the prior history of the investigation and the likelihood of further clues which the police expect to derive by having the accused in custody, sworn by the investigating or other police officer****, not below the rank of a Sub Inspector of Police and that the Magistrate after perusing the affidavit and satisfying himself about the request of the police officer, shall entrust the accused to police custody and at the end of the police custody, the Magistrate shall question the accused whether he had in any way been interfered with during the period of custody.*

16. DUTY OF THE MAGISRTARE TO REJECT THE POLICE CUSTODY REMAND AND SAFEGUARD THE RIGHTS OF ACCUSED:-

Hon'ble High Court of Gujarat in **Jairajsinh Temubha Jadeja Vs. State of Gujarat** it is rule as under;

> ***"Police custody rejected –*** *Magistrate must satisfy himself upon the material collected that without the police custody, it would be impossible for Police Authorities to go further in the investigation and in those cases only remand to the police custody is justified by the law. The Apex Court observed that "the proviso to Section 167 is explicit on this aspect. The detention in police custody is generally disfavoured by law, the provisions of law lay down that such detention can be allowed only in special circumstances and that can be only by a remand granted by a Magistrate for reasons judicially scrutinised and for such limited purpose as the necessities of the case may require. It was observed by this Court in the above said decision that the Courts have to strike balance between the propositions above. Meaning thereby that Courts will have to see that is there a case made out by Investigating Agency to hand over the accused on remand or on the pretext of remand, the liberty of a citizen is likely to be affected. Therefore, the remand under Section 167(2) of the Criminal Procedure Code is an exception and not the rule. The law does not fasten judicial duty on Magistrate to record reasons for not granting remand to police custody, but it is imperative that Magistrate must record reasons for granting remand to the police custody; Section 167 of the Criminal Procedure Code makes its obligatory on Police Authority to transmit a copy of the entries in the diaries relating to case along with the forwarding of the accused. Passing of the mechanical orders of remand by the Magistrate has been deprecated by law, because Section 167(3) of the Code casts duty on the Magistrate to apply judicial mind to the issue. At this juncture. Magistrate is bound to satisfy himself firstly that the accusation is whether well founded. The Magistrate will have to satisfy himself that the presence of the accused in police custody is whether*

absolutely necessary. The Magistrate shall look into the evidence and material collected by the Investigating Agency, and therefore, it is imperative for the Police Officer to transmit case diary to the Magistrate. Remand to police custody should not be granted to collect the material and evidence, when there is no prima facie or at least sufficient material collected by the investigating Officer. That is exactly making out a case by the Investigating Agency and at that crucial point of time the Magistrate must satisfy himself upon the material collected that without the police custody, it would be impossible for Police Authorities to go further in the investigation and in those cases only remand to the police custody is justified by the law.

It is again useful to refer to the observations of the Apex Court in the matter of C.B.I., Special Investigation Cell-I, New Delhi v. Anupam J. Kulkarni, reported in AIR 1992 SC 1978. This decision is relied upon by the respondent-State. In Para 10, the Apex Court observed that "the proviso to Section 167 is explicit on this aspect. The detention in police custody is generally disfavoured by law, the provisions of law lay down that such detention can be allowed only in special circumstances and that can be only by a remand granted by a Magistrate for reasons judicially scrutinised and for such limited purpose as the necessities of the case may require. The scheme of Section 167 is obvious and is intended to protect the accused from the methods which may be adopted by some overzealous and unscrupulous police officers. Article 22(2) of the Constitution of India and Section 57 of Criminal Procedure Code, give a mandate that every person who is arrested and detained in police custody shall be produced before the neares Magistrate within a period of 24 hours of such arrest". The Apex Court further observed that "these two provisions clearly manifest the intention of the law in this regard, and therefore, it is the Magistrate who has to judicially scrutinise circumstances and if

satisfied can order the detention of the accused in police custody. Section 167(3) requires that the Magistrate should give reasons for authorising the detention in the custody of the police. It can be thus seen that the whole scheme underlying the Section is intended to limit the period of police custody." From the above, it is clear that the granting of the remand is an exception and not the rule and for that the Investigating Agency is required to make out a case.

So far as the facts of this case is concerned, learned Addl. Sessions Judge came to the conclusion of granting remand because learned Addl. Sessions Judge came to the conclusion that the case was of a serious nature and there was a prima facie evidence showing the involvement of the present petitioners in crime and looking to that i.e. involvement of the present petitioners in the crime, the investigation was required to be taken to the logical end, and therefore, the remand was necessary. Learned Addl. Sessions Judge as a ground of granting remand further observed that the photograph of accused Hanif who acaially assaulted Govindbhai was identified by injured Govindbhai Desai, and therefore, learned Addl. Sessions Judge came to the conclusion that accused Hanif and Iqbal were active participants in the crime. Learned Addl. Sessions Judge came to the conclusion that there was a prima facie evidence to show that one of the assailants Iqbal had connection with petitioner No. 1 who was M.L.A. of Gondai. Learned Addl. Sessions Judge also came to the conclusion that there was also prima fade evidence to show that all the accused including the present petitioners had hatched a criminal conspiracy at the field of presen petitioner No. 5, just one day before of the incident and after considering this factor, learned Addl. Sessions Judge came to the conclusion that there was a prima facie involvement of the present petitioners in the crime, and therefore, he granted remand of the present petitioners to the police custody.

I have gone through the entire papers of the investigation. The learned Addl. Sessions Judge and the State herein have placed reliance on statements of four witnesses. Since [he investigation is in progress, it is not required for the Court to disclose the names of these persons, but on facts, it will have to be considered that from the material collected by the Investigating Agency specially through these four witnesses, whether a prima facie involvement of any of the petitioners is established at this juncture as has been observed by learned Addl. Sessions Judge. In other words, whether Police Authorities have made out the case for remand to the police custody.

Learned Addl. Chief Judicial Magistrate has dealt with each ground mentioned in the application of remand. Learned Addl. Chief Judicial Magistrate has rightly come to the conclusion that for that 11 grounds, the petitioners cannot be handed over to the police custody. While learned Addl. Sessions Judge considered the prima fade case against the present petitioners relying on some statements of the witnesses and fell into error to set aside the order of the learned Addl. Chief Judicial Magistrate. In this view of the matter, this Revision Application is required to be allowed and the same is allowed and the order impugned passed by learned Addl. Sessions Judge on 6th October, 2001 which is impugned in this Revision is set aside and the order of learned Addl.

17. <u>BAIL IS RULE JAIL IS EXCEPTION, AS, EVERY ACCUSED HAS A PRESUMPTION OF INNOCENCE TILL PROVED GUILTY.</u>

Hon'ble Supreme Court in **<u>Sanjay Chandra Vs. C.B.I. (2012) 1 SCC 40</u>** case it is ruled as under;

"A) Cri. P.c. 439, 437, Bail – Bail is the Rule and Jail an exception – Accused entitled for presumption of innocence till he is convicted – constitutionally protected liberty of accused must be respected unless detention becomes necessary – If any accused is detained before conviction then it will put unnecessary burden

on state to keep a person who is not proved guilty – Normally bail should be granted to accused – Apprehension of tampering of evidence without sound proof could not be accepted and this ground could not be considered in each case to deny the bail.

B) Discretion while granting bail – The Jurisdiction to grant bail has to be exercised on the basis of well settled principles and not in arbitrary manner- The law in regard to grant or refusal of bail is very well settled. The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. At the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken.

C) DISCRETION : Any order devoid of reasons would suffer from non-application of mind. In the case of Gudikatil Narasimhulu V. Public Prosecutor, (1978) 1 SCC 240, V.R. Krishna Iyer, J., sitting as Chamber Judge, Enunciated the principles of bail thus:

"3. What, then, is "judicial discretion" in this bail context ? In the elegant words of Benjamin Cardozo : "The Judge, even when he is free, is still not wholly free. He is not to innovate at Pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to "the primordial necessity of order in the social life". Wide enough in all conscience is the field of discretion that remain.

D) Criminal Procedure Code, 1973 – Ss. 437 and 439 – Prejudices which may be avoided in deciding bail matters – Public Scams, scandal

and heinous offences – Public sentiments and disapproval of alleged misconduct – Bail, held, ought not be denied to teach lesson to a person whose offence is yet to be proved – Conditional bail, is a solution in such types of cases.

E) The approach adopted by the trial court and affirmed by the High Court, is a denial of the whole basis of the Indian system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognized, then it may lead to chaotic situation and would jeopardize the personal liberty of an individual. Bail is the rule and committal to jail an exception. Refuse of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the constitution. When there is a delay in trail, bail should be granted to the accused.

F) Cr. P.C. Sec. 437, 439 – Change in circumstances – Pre-Charge and post – charge stages – SLP before supreme court dismissed before farming of charges – Bail application filed after framing charges – Held, is change in circumstances – Earlier order is no bar in granting bail to the appellant."

Hon'ble Supreme Court in the case of **Nikesh Shah Vs. UOI (2018) 11 SCC 1** it is ruled as under;

"Constitution of India – Article 21 & 14 – Right to bail – origin of, traced – Right to pre-trial bail can be traced back to cl.39, Magna Carta – A Presumably innocent person is entitled to freedom and evey opportunity to look after his own case – Bail enbles such person to properly defend himself than if he were in custody – Therefore, grant of bail is rule and refusal is an exception, and the judicial verdict regarding this depends upon the cumulative effect of various circumstances specific to each case – Criminal Procedure Code, 1973, Ss. 436 to 439."

The Hon'ble High Court in the case Of **Khemlo Sakharam Sawant Vs. State 2002 BCR (1) 689** it is ruled as under;

> ***"A) Cr. P.C. S. 437 – Bail – Bail is rule jail is exception – In case of offences not punishable in alternative with death, grant of bail is rule, and jail an exception- Observation made by sessions Judge that offence in question was serious one and therefore, applicant ought not to be released on bail – Held, while rejecting bail application the sessions Judge was more influenced by morality than the Principles of law – Accused directed to be released on bail – Court should not get swayed by perception of morality but should confine its decision to the requirement of law – In case of offences not punishable with death or imprison ment for life grant of bail is rule and jail is an exception.***
>
> ***B) Arrest of accused by police – Allegations of abaterment of offence having punishment up to 5 years – No arrest can be made in a routine manner – A person is not liable to arrest merely on the suspicion of complicity in an offence .***
>
> ***C) Unless principle offender is proceeded and arrested – The action against abater is illegal.***
>
> ***D) Bail –Adjournment – Held When accused is in jail , it would be wholly inaproperiate to again and again adjourn matter to another date."***

18. But Metropolitian Magistrate & Addl. Sessions Judge acted against abovesaid laws and failed to protect the fundamental rights of the accused and the accused has remained in the jail and therefore both the Judges are liable for action under section 220 of IPC and they are also liable for action under Contempt of Courts Act.

The Hon'ble Supreme Court of India in **M.P. Dwivedi and Ors. 1996 AIR 1996 SC 2299** it is ruled as under ;

> ***A) VIOLATION OF GUIDELINES LAID DOWN BY***

<u>SUPREME COURT BY POLICE AND JUDGE OF SUBORDINATE COURTS – THEY ARE GUILTY OF CONTEMPT</u>.

Held, Contemner No.1, M.P. Dwivedi, was Superintendent of Police of District Jhabwa at the relevant time. notice was being issued to him for the reason that, being over all in charge of the police administration in the distinct, he was responsible to ensure strict compliance with the directions given by this Court .

Contemner No.2, DharmendraChoudhary, was posted as SDO (Police) at Aliraipur at the relevant time.Contemners Nos. 1 and 2, even though not directly involved in the said incidents since they were not present, must be held responsible for having not taken adequate steps to prevent such actions and even after the said actions came to their knowledge, they condoned the illegality by not taking stern action against persons found responsible for this illegality. We, therefore, record our disapproval of the conduct of all the five contemners Nos. 1 to 5 in this regard and direct that a note regarding the disapproval of their conduct by this Court be placed in the personal file of all of them.

Contemner No.7, B. K. Nigam, was posted as Judicial Magistrate First Class - contemner was completely insensitive about the serious violations of the human rights of accused and defiance of guidelines by Police - This is a serious lapse on the part of the contemner in the discharge of his duties as a judicial officer who is expected to ensure that the basic human rights of the citizens are not violated - Keeping in view that the contemner is a young Judicial Officer, we refrain from imposing punishment on him. We, however, record our strong disapproval of his conduct and direct that a note

of this disapproval by this Court shall be kept in the personal file of the contemner.

Held, Thecontemner Judicial Magistrate has tendered his unconditional and unqualified apology for the lapse on his part - The contemner has submitted that he is a young Judicial Officer and that the lapse was not intentional. But the contemner, being a judicial officer is expected to be aware of law laid down by this Court - It appears that the contemner was completely insensitive about the serious violations of the human rights of the undertrial prisoners in the matter of their handcuffing in as much as when the prisoners were produced before him in Court in handcuffs, he did not think it necessary to take any action for the removal of handcuffs or against the escort party for bringing them to the Court in handcuffs and taking them away in the handcuffs without his authorisation. This is a serious lapse on the part of the contemner in the discharge of his duties as a judicial officer who is expected to ensure that the basic human rights of the citizens are not violated. Keeping in view that the contemner is a young Judicial Officer, we refrain from imposing punishment on him. We, however, record our strong disapproval of his conduct and direct that a note of this disapproval by this Court shall be kept in the personal file of the contemner.

We also feel that judicial officers should be made aware from time to time of the law laid down by this Court and the High Court, more especially in connection with protection of basic human rights of the people and, for that purpose, short refresher courses may be conducted at regular intervals so that judicial officers are made aware about the developments in the law in the field.

In **Bharat Devdan Salvi Vs. State 2016 ALL MR (Cri)1239** it ruled as under ;

> *"34.* ***It is indeed a matter of great concern that despite the offence being bailable, the Investigating agency, the Judicial Magistrate as well as the Sessions Court were responsible for detaining the aforesaid petitioners in custody from 7.6.2015 to 24.6.2015 in total contravention of the directions of the Apex Court in Arnesh Kumar (supra) and in violation of the fundamental rights of the petitioner nos.3 and 4.***
>
> *35.* ***Hence we deem it fit to direct an enquiry against the errant police officers, as well as the concerned judicial officers, in accordance with the directions of the Apex Court in Arnesh Kumar (para 11.7 and 11.8. supra). The petitioner nos.3 and 4 are at liberty to file appropriate proceedings for compensation, if they so desire.***
>
> ***The learned Judge was directed to dispose of the application on 19.06.2015 itself. The learned Judge did not dispose of the application and adjourned the same to 22.6.2015. On 24.06.2015 the learned counsel for the petitioners made a statement that on 19.6.2015 the counsel for the petitioners and the learned APP were present in the court and despite the request to hear the bail application, the learned Judge was reluctant to hear the application and had adjourned the hearing to 22.06.2015. - In view of the above statement, this court by order dated 24.6.2015 ordered to release the petitioners on bail. The Principal District Sessions Judge, Pune was directed to submit the report to this court.***
>
> *33.* ***We have perused the report and the explanation tendered by the learned Judge, and the same in our view is not satisfactory. The bail application was filed on 09.06.2015 and was***

opposed on the same grounds as stated in the remand application. The learned Judge failed to consider that there were no allegations of rape against these petitioners and the only allegation were of offence punishable under Section 417 IPC. The learned Judge had adjourned the hearing on 19.6.2015, merely on the statement of the APP that the offence was of serious nature.

Despite the direction to dispose of the bail application on 19.06.2015, and despite the offence being bailable offence, the failure of the learned Judge to dispose of the application expeditiously has also resulted in illegal detention of the petitioners in custody from 7th June, 2015 to 24th June, 2015.

36. Under the circumstances and in view of discussion supra, we pass the following order:-

(i) The petition is partly allowed, with costs of Rs. 50,000/- to be paid to the petitioner nos.3 and 4.

(ii) The C.R. No.46 of 2015 registered at Bhosari Police Station, Pune, is quashed qua the Petitioner Nos. 2 to 7 and quashed qua the petitioner no.1 only in respect of the offence under section 417 r/w 34 of the IPC.

(iii) The registry is directed to forward copy of this order to the Commissioner of Police, Pune. The Commissioner of Police, Pune to enquire into the matter of illegal detention and to fix the responsibility and to take disciplinary action against the erring police officers.

(iv) The respondent no.1 shall recover the costs of Rs. 50,000/- from the erring police officers.

(vi The inquiry and action taken report be filed before this court within four months from the date of receipt of this order.

(vi) A copy of this order be forwarded to the Registrar General, High Court, to be placed before the Honourable The Chief Justice, Bombay High Court."

In **Walmik s/o Deorao Bobde Vs. State 2001 ALL MR (Cri.) 1731,** it is ruled that;

"Arrest and detention on the order of Judge - Arrest found to be illegal - compensation granted:- In our opinion a reckless arrest of a citizen and detention ***even under a warrant of arrest by a competent Court without first satisfying itself of such necessity and fullfilment of the requirement of law is actionable as it violates not only his fundamental rights but such action deserves to be condemned being taken in utter disregard to human rights of an individual citizen.***

Compensation granted

"11. *We have ascertained the status of the petitioner so as to work out his entitlement for compensation. We are informed that the petitioner works as Production Manager in a reputed firm M/s. Haldiram Bhujiwala, and draws salary of more than Rs.7000/- p.m. He has, wife, two marriageable daughters and a son in his family. After giving our anxious thought to the matter we award a sum of Rs.10,000/- to the petitioner as compensation. The State is directed to pay the amount of Rs.10,000/- to the petitioner within a period of four weeks, or deposit the same in this Court. We are also granting cost to the petitioner quantified to Rs.5000/-. It will be open for the State to recover the amount so awarded from the monetary benefits/pension, the delinquent clerk/his family is entitled to receive or will be receiving on his death. Rule made absolute in the aforesaid terms. Certified copy expedited.*

12. Additional Registrar, to circulate the copy of this order to all the District & Sessions Judges, for being

circulated to Judicial Officers working within their jurisdiction.”

In **New Delhi Municipal Council Vs. M/S Prominent Hotels Limited2015 SCC Online Del 11910** it is ruled as under ;

“(i) Failure to follow Higher Court’s decision and passing order by ignoring law declared by higher Courts, makes the Judge liable for action under Contempt, (ii) Filing false affidavit is Contempt, (iii) Deterrent action require to uphold the majesty of law. Maximum Punishment be given to dishonest litigants (iv) Imposition of costs for frivolous and vexatious litigations, (v) No limit for imposing costs, (vi) Cost includes Lawyers fees (vi) Law of precedents reiterated.

Judgments/case laws pronounced by Higher Courts are binding on all including the Licensee/Plaintiff who could not bypass or disregarded them otherwise he is liable for action of contempt of this Court - The plaintiff misled the Trial Court to disregard well settled law

Brief Facts:

This is a classic case in which the Licensee instituted a frivolous suit and succeeded in obtaining an interim order – Various judgments were submitted and relied upon at the time of final hearing by NDMC in the written submissions. However, the Trial Court did not even consider and discuss the aforesaid judgments in the impugned judgment. The impugned judgment rendered by the leaned Trial Court in violation of the binding precedents of the higher Courts and in particular the Apex Court is a nullity. Reliance is placed on Dwarikesh Sugar Industries ltd. Vrs. Prem Heavy Engineering Works (P) Ltd. & Ors.1997 (6) SCC 450.

While setting aside the judgment of Trial Court and passing strictures against the Trail Court's Judge , and imposing cost against the Plaintiff, High Court held as Follows;

RATIO:

(i) Judgments/case laws pronounced by Higher Courts are binding on all including the Licensee/Plaintiff who could not bypass or disregarded them otherwise he is liable for action of contempt of this Court - The plaintiff misled the Trial Court to disregard well settled law - *The Trial Court has dared to disregard and deliberately ignore the judgments - The impugned judgment and decree is vitiated on account of conscious disregard of the well settled law -*

30.26. The impugned judgement and decree is vitiated on account of conscious disregard of the well settled law by the Trial Court. The Trial Court, who was obliged to apply law and adjudicate claims according to law, is found to have thrown to winds all such basic and fundamental principles of law. The Trial Court did not even consider and apply its mind to the judgments cited by NDMC at the time of hearing. The judicial discipline demands that the Trial Court should have followed the well settled law. The judicial discipline is one of the fundamental pillars on which judicial edifice rests and if such discipline is routed, the entire edifice will be affected. It cannot be gainsaid that the judgments mentioned below are binding on the Licensee who could not have bypassed or disregarded them except at the peril of contempt of this Court. This cannot be said to be a mere lapse. The Trial Court has dared to disregard and deliberately ignore the judgments"

19. Hon'ble Supreme Court In **R.R. Parekh Vs. High Court of Gujrat (2016) 14 SCC 1,** it is ruled as under;

"A Judge passing an order against provisions of

law in bail matter is said to have been actuated by an oblique motive or corrupt practice - breach of the governing principles of law or procedure by a Judge is indicative of judicial officer has been actuated by an oblique motive or corrupt practice - No direct evidence is necessary - A charge of misconduct against a Judge has to be established on a preponderance of probabilities - The Appellant had absolutely no convincing explanation for this course of conduct - Punishment of compulsory retirement directed.

A wanton breach of the governing principles of law or procedure by a Judge is indicative of judicial officer has been actuated by an oblique motive or corrupt practice. In the absence of a cogent explanation to the contrary, it is for the disciplinary authority to determine whether a pattern has emerged on the basis of which an inference that the judicial officer was actuated by extraneous considerations can be drawn - It is not the correctness of the verdict but the conduct of the officer which is in question- . There is on the one hand a genuine public interest in protecting fearless and honest officers of the district judiciary from motivated criticism and attack. Equally there is a genuine public interest in holding a person who is guilty of wrong doing responsible for his or his actions. Neither aspect of public interest can be ignored. Both are vital to the preservation of the integrity of the administration of justice - A charge of misconduct against a Judge has to be established on a preponderance of probabilities - No reasons appear from the record of the judgment, for We have duly perused the judgments rendered by the Appellant and find merit in the finding of the High Court that the Appellant paid no heed whatsoever to the provisions of Section 135 under which the sentence of imprisonment shall not be less than three years, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court. Most significant is the fact that the Appellant imposed

a sentence in the case of each accused in such a manner that after the order was passed no accused would remain in jail any longer. Two of the accused were handed down sentences of five months and three months in such a manner that after taking account of the set-off of the period during which they had remained as under-trial prisoners, they would be released from jail. The Appellant had absolutely no convincing explanation for this course of conduct.

10.3 JUDICIAL BIAS IS A GROUND TO DISMISS THE JUDGE :- With this context the operative portion of the Federal Court's Report to the Governor-General is being given below:

Charge No. 1, however, has been established in respect of the Judge's decision and conduct in connection with what have been referred to as the Padrauna case and Murarilal case. ***In our opinion, in those two cases he was actuated by extrajudicial considerations in arriving at his conclusions. We consider that his conduct in the two cases, viewed in the light of proved facts, cannot be explained as an honest error of judgment. We are, therefore, constrained to report that, though only two instances of judicial misbehaviour during a career of four years of the respondent as a Judge have been proved, they are of such a nature that his continuance in office will be prejudicial to the administration of justice and to the public interest. We, therefore, think that he should be removed from his office as Judge.***

The above case is also illustrative of the scope of judicial bias and judicial misbehaviour."

20. In **Union of India Vs. K. K. Dhawan (1993) 2 SCC 56 (Full Bench)** it is ruled as under;

"***If any Judge acts negligently or recklessly or in order to confer undue favour on a person is not acting as a Judge. And he can be proceeded for passing unlawful order apart from the fact that the order is appealable. Action for violation of Conduct Rules is must for proper administration.***

"***28.*** *Certainly, therefore, the officer who exercises judicial or quasi - judicial powers acts negligently or*

recklessly or in order to confer undue favour on a person is not acting as a Judge. Accordingly, the contention of the respondent has to be rejected. It is important to bear in mind that in the present case, we are not concerned with the correctness or legality of the decision of the respondent but the conduct of the respondent in discharge of his duties as an officer. The legality of the orders with reference to the nine assessments may be questioned in appeal or revision under the Act. But we have no doubt in our mind that the Government is not precluded from taking the disciplinary action for violation of the Conduct Rules. Thus, we conclude that the disciplinary action can be taken in the following cases:

(i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;

(ii)if there is prima facie material to show recklessness or misconduct in the discharge of his duty;

(iii)if he has acted in a manner which is unbecoming of a government servant;

(iv)if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

(v) if he had acted in order to unduly favour a party-,

(vi) if he had been actuated by corrupt motive however, small the bribe may be because Lord Coke said long ago "though the bribe may be small, yet the fault is great."

"17. In this context reference may be made to the following observations of Lopes, L.J. in Pearce v. Foster.
"If a servant conducts himself in a way inconsistent with the faithful discharge of his duty in the service, it is misconduct which justifies immediate dismissal. That misconduct, according to my view, need not be

misconduct in the carrying on of the service of the business. It is sufficient if it is conduct which is prejudicial or is likely to be prejudicial to the interests or to the reputation of the master, and the master will be justified, not only if he discovers it at the time, but also if he discovers it afterwards, in dismissing that servant."

21. In **Umesh Chandra Vs. State 2006 (5) AWC 4519 ALL** it is ruled as under;

"If Judge is passing illegal order either due to negligence or extraneous consideration giving undue advantage to the party then that Judge is liable for action in spite of the fact that an order can be corrected in appellate/revisional jurisdiction - The acceptability of the judgment depends upon the creditability of the conduct, honesty, integrity and character of the officer and since the confidence of the litigant public gets affected or shaken by the lack of integrity and character of the Judicial Officer, in such cases imposition of penalty of dismissal from service is well justified

The order was passed giving undue advantage to the main accused - grave negligence is also a misconduct and warrant initiation of disciplinary proceedings - in spite of the fact that an order can be corrected in appellate/revisional jurisdiction but if the order smacks of any corrupt motive or reflects on the integrity of the judicial officer, enquiry can be held .

JUDICIAL OFFICERS - has to be examined in the light of a different standard that of other administrative officers. There is much requirement of credibility of the conduct and integrity of judicial officers - the acceptability of the judgment depends upon the creditability of the conduct, honesty, integrity and character of the officer and since the confidence of the litigant public gets affected or shaken by the

lack of integrity and character of the judicial officer, in such cases imposition of penalty of dismissal from service is well justified - Judges perform a "function that is utterly divine" and officers of the subordinate judiciary have the responsibility of building up of the case appropriately to answer the cause of justice. "The personality, knowledge, judicial restrain, capacity to maintain dignity" are the additional aspects which go into making the Courts functioning successfully - the judiciary is the repository of public faith. It is the trustee of the people. It is the last hope of the people. After every knock of all the doors fail, people approach the judiciary as a last resort. It is the only temple worshipped by every citizen of this nation, regardless of religion, caste, sex or place of birth because of the power he wields. A Judge is being judged with more strictness than others. Integrity is the hallmark of judicial discipline, apart from others. It is high time the judiciary must take utmost care to see that the temple of justice does not crack from inside which will lead to a catastrophe in the justice delivery system resulting in the failure of public confidence in the system. We must remember woodpeckers inside pose larger threat than the storm outside

The Inquiry Judge has held that even if the petitioner was competent to grant bail, he passed the order giving undue advantage of discharge to the main accused and did not keep in mind the gravity of the charge. This finding requires to be considered in view of the settled proposition of law that grave negligence is also a misconduct and warrant initiation of disciplinary proceedings.

The petitioner, an officer of the Judicial Services of this State, has challenged the order of the High Court on the administrative side dated 11.02.2005

(Annex.11) whereby the petitioner has been deprived of three increments by withholding the same with cumulative effect.

The petitioner, while working as Additional Chief Metropolitan Magistrate, Kanpur, granted bail on 29.06.1993 to an accused named Atul Mehrotra in Crime Case No. 3240 of 1992 under Section 420, 467, 468, I.P.C. Not only this, an application was moved by the said accused under Section 239, Cr.P.C. for discharge which was also allowed within 10 days vide order dated 06.08.1993. The said order of discharge was however reversed in a revision filed by the State According to the prosecution case, the accused was liable to be punished for imprisonment with life on such charges being proved, and as such, the officer concerned committed a gross error of jurisdiction by extending the benefit of bail to the accused on the same day when he surrendered before the Court. Further, this was not a case where the accused ought to have been discharged and the order passed by the officer was, therefore, an act of undue haste.

The then Chief Manager, Punjab National Bank, Birhana Road Branch, Kanpur Nagar made a complaint on the administrative side on 11.11.1995 to the then Hon'ble Chief Justice of this Court. The matter was entrusted to the Vigilance Department to enquire and report. After almost four and half years, the vigilance inquiry report was submitted on 14.03.2002 and on the basis of the same the petitioner was suspended on 30th April, 2002 and it was resolved to initiate disciplinary proceedings against the petitioner. A charge sheet was issued to the petitioner on 6th September, 2002 to which he submitted a reply on 22.10.2002. The enquiry was entrusted to Hon'ble Justice Pradeep Kant, who conducted the enquiry and submitted a detailed report dated 06.02.2002 (Annex-8). A show cause notice was issued to the petitioner along with a copy of the enquiry report to which the petitioner submitted his reply on 19.05.2004 (Annex.10). The enquiry report was accepted by the Administrative Committee and

the Full Court ultimately resolved to reinstate the petitioner but imposed the punishment of withholding of three annual grade increments with cumulative effect which order is under challenge in the present writ petition.

B) JUDICIAL OFFICERS - has to be examined in the light of a different standard that of other administrative officers. There is much requirement of credibility of the conduct and integrity of judicial officers - the acceptability of the judgment depends upon the creditability of the conduct, honesty, integrity and character of the officer and since the confidence of the litigant public gets affected or shaken by the lack of integrity and character of the judicial officer, in such cases imposition of penalty of dismissal from service is well justified - Judges perform a "function that is utterly divine" and officers of the subordinate judiciary have the responsibility of building up of the case appropriately to answer the cause of justice. "The personality, knowledge, judicial restrain, capacity to maintain dignity" are the additional aspects which go into making the Courts functioning successfully - the judiciary is the repository of public faith. It is the trustee of the people. It is the last hope of the people. After every knock of all the doors fail, people approach the judiciary as a last resort. It is the only temple worshipped by every citizen of this nation, regardless of religion, caste, sex or place of birth because of the power he wields. A Judge is being judged with more strictness than others. Integrity is the hallmark of judicial discipline, apart from others. It is high time the judiciary must take utmost care to see that the temple of justice does not crack from inside which will lead to a catastrophe in the justice delivery system resulting in the failure of public confidence in the system. We must remember

woodpeckers inside pose larger threat than the storm outside."

22. Sec. 219 of IPC reads as under;

"***Public servant in judicial proceeding corruptly making report, etc., contrary to law***.—*Whoever, being a public servant, corruptly or maliciously makes or pronounces in any stage of a judicial proceeding, any report, order, verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.*"

23. Hon'ble Supreme Court in the case of **Ravindra Saxena Vs. State Of Rajasthan 2010 Mh.L.J.(Cri.)(1) 283** it is ruled as under;

"Bail – Cr. P.C. SS. 438 - The defence put forward by accused cannot be ignored – The plea of accused that the dispute between him and complainant is purely of a Civil nature – Anticipatory bail is therefore granted to the petitioner.

But Metropolitian Magistrate Judge & Sessions Judge failed to consider the same.

24. Hon'ble Supreme Court in the case of **Nikesh Shah Vs. UOI (2018) 11 SCC 1** it is ruled as under;

"Constitution of India – Article 21 & 14 – Right to bail – origin of, traced – Right to pre-trial bail can be traced back to cl.39, Magna Carta – A Presumably innocent person is entitled to freedom and evey opportunity to look after his own case – Bail enbles such person to properly defend himself than if he were in custody – Therefore, grant of bail is rule and refusal is an exception, and the judicial verdict regarding this depends upon the cumulative effect of various circumstances specific to each case – Criminal Procedure Code, 1973, Ss. 436 to 439."

When two views are possible then the view favourable to the accused should be adopted and the bail should be granted. But Ld. Addl. Sessions Judge rejected the bail of Karan Oberoi in B.A. No. 503 of 2019 on 17th May, 2019 by ignoring his defence. The Para 10,11,12,13 of the order by Sessions Judge S.U Baghlele proves his poor level of understanding acted against the said law and adopted the view favourable to the Complainant.

> "***Para 10.*** *The story in respect of sexual intercourse, by administering intoxicating substance is difficult to be believed, for the reason that the informant is said to have left for her house, soon after the incident. The Story in respect of extortion, under the intimidation to make the vedio viral, is also difficult to be believed, looking to the fact that the informant continued to give gifts to the applicant from time to time, and also, looking to the whatsapp messages, showing their continues cordial relationship.*
>
> ***Para 11.*** *However, the fact, which cannot be lost sight of, is the factum of gifting of costly articles by the informant to the applicant and his relatives and also, the factum of transfer of huge sum of money by the informant to the bank account of the applicant.*
>
> ***Para 12****. A prudent person can understand a one sided love, wherein one may be prepared to give up everything blindly for someone else. However, the acceptance of several valuable things and money by another person would cause one to think in a different direction. The applicant, as a prudent person, cannot be expected to have accepted the same, unless the relationship between the applicant and the informant was a committed relationship, thereby inclined to get united together as life partners. In that View of the matter, though this court finds it prima facie difficult to believe the initial story of rape, the continued sexual intercourse appears to have taken place, either by expressly or by impliedly pretending an intention of marriage, which amounts to rape, as the intention appears to be otherwise than to get married since the inception.*

Para 13. *Looking to the overall circumstances, as dealt with hereinabove, and the factum of incomplete investigation as on date, this Court is of the Opinion that it would not be appropriate to enlarge the applicant on bail at this stage. Thus, I proceed to pass the following order."*

This shows lack of basic knowledge on the part of the Addl. Sessions Judge S.U.Baghele.

25. Hon'ble Supreme Court in **Superintendent of Central Excise Vs. Somabhai Ranchhodhbhai Patel AIR 2001 SC 1975** , ruled as under;

"(A) ***Contempt of Courts Act (70 of 1971), S.2 – Misinterpritation of judgment of Hon'ble Supreme Court. The level of judicial officer's understanding can have serious impact on other litigants-***

Misinterpretation of order of Supreme Court - Civil Judge of Senior Division erred in reading and understanding the Order of Supreme Court - Contempt proceedings initiated against the Judge - Judge tendered unconditional apology saying that with his limited understanding, he could not read the order correctly. While passing the Order, he inadvertently erred in reading and understanding the Order of Supreme Court - Supreme Court issued severe reprimand – Held, The officer is holding a responsible position of a Civil Judge of Senior Division. Even a new entrant to judicial service would not commit such mistake assuming it was a mistake - It cannot be ignored that the level of judicial officer's understanding can have serious impact on other litigants. There is no manner of doubt that the officer has acted in most negligent manner without any caution or care whatsoever- Without any further comment, we would leave this aspect to the disciplinary authority for appropriate action, if any, taking into consideration all relevant facts. We do not know whether present is an isolated case of such an understanding? We do not know what has been his

past record? In this view, we direct that a copy of the order shall be sent forthwith to the Registrar General of the High Court. ".

26. The case laws relied by the advocate of Karan Oberoi were not properly appreciated for granting bail.

Hon'ble High Court in the case of **Dattani and Co. Vs. Income Tax Officer 2013 SCC OnLine Guj 8841** had ruled that;

> ***"Precedents - Applicabilty of case Law -*** *Held, whenever any decision has been relied upon and/or cited by any party, the authority/tribunal is bound to consider and/or deal with the same and opine whether in the facts and circumstances of the particular case, the same will be applicable or not.*
>
> *In the instant case, the tribunal has failed to consider and/or deal with the aforesaid decision cited and relied upon by the assessee. Under the circumstances, all these appeals are required to be remanded to the tribunal."*

Hon'ble High Court in the case of **Adarsh Gramin Sahakari Pat Vs. Shri Dattu Ramdasji Paithankar 2010 SCC OnLine Bom 53** had ruled that;

> ***"COURT BOUND TO EXPLAIN RATIO DECIDENDI NOT FOLLOWING RATIO IN THE CITATION IS ILLEGAL -*** *Simply listening judgment without going through ratio decidendi is illegal."*

Hon'ble Supreme Court of India in the case **Pradip J. Mehta vs. Commissioner of Income-tax, Ahmedabad(2008)14 SCC 283** it is ruled as under;

> ***"Precedent - View taken by other High Court though not binding have persuasive value -***
>
> *Another High Court would be within its right to differ with the view taken by the other High Courts, but, in all fairness, the High Court should record its dissent with reasons therefor. Thus, the judgment of the other High Court, though not binding, have persuasive value which should be taken note of and dissented from by recording its own reasons."*

Hon'ble High Court in the case of **G. B. Gore, Food Inspector, Nanded Vs. Rajaram Padamwarit 2011 SCC OnLine Bom 2021** is ruled as under;

> ***"JUDICIAL DISCIPLINE – Judgement of another High court – Observations of trial Magistrate that the judgement of Kerala High Court is not binding on him – Further observing the legality and correctness of the judgement of another High Court is against the judicial discipline and propriety – Registrar General directed to take suitable action against concerned Judge."***

But the Judge acted against the law

27. Hon'ble Supreme Court of India in **Prabha Sharma Vs. Sunil Goyal and Ors. (2017) 11 SCC 77** it was rule das under;

> *"Article 141 of the Constitution of India - disciplinary proceedings against Additional District Judge for not following the Judgments of the High Court and Supreme Court - judicial officers are bound to follow the Judgments of the High Court and also the binding nature of the Judgments of this Court in terms of Article 141 of the Constitution of India. We make it clear that the High Court is at liberty to proceed with the disciplinary proceedings and arrive at an independent decision.*
>
> *BRIEF HISTORY (From:(MANU/RH/1195/2011))*
> *High Court initiated disciplinary proceedings against Appellant who is working as Additional District Judge, Jaipur City for not following the Judgments of the High Court and Supreme Court. Appellant filed SLP before Supreme Court - Supreme Court dismissed the petition.*
> *Held, the judgment, has mainly stated the legal position, making it clear that the judicial officers are bound to follow the Judgments of the High Court and also the binding nature of the Judgments of this Court in terms of Article 141 of the Constitution of India. We do not find any observation in the impugned judgment which reflects on the integrity of the Appellant. Therefore, it is not necessary to expunge any of the*

observations in the impugned Judgment and to finalise the same expeditiously.

Based on this Judgment, disciplinary proceedings have been initiated against the Appellant by the High Court. We make it clear that the High Court is at liberty to proceed with the disciplinary proceedings and arrive at an independent decision and to finalise the same expeditiously."

28. Hon'ble High Court in **Dhanuben Lallubhai Patel Vs. Oil And Natural Gas Corporation Of India 2014 SCC OnLine Guj 15949** it is stated as under;

"REASONED ORDER:

A] *The Court cannot lose sight of the fact that a losing litigant has a cause to plead and a right to challenge the order if it is adverse to him. Opinion of the Court alone can explain the cause which led to passing of the final order.* ***Whether an argument was rejected validly or otherwise, reasoning of the order alone can show. To evaluate the submissions is obligation of the Court and to know the reasons for rejection of its contention is a legitimate expectation on the part of the litigant. Another facet of providing reasoning is to give it a value of precedent which can help in reduction of frivolous litigation.***

B] "The giving of reasons is one of the fundamentals of good administration." In Alexander Machinery (Dudley) Ltd. v. Crabtree it was observed: "Failure to give reasons amounts to denial of justice." "Reasons are live links between the mind of the decision- taker to the controversy in question and the decision or conclusion arrived at." Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it C/LPA/1190/2013 ORDER virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an

indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made; in other words, a speaking-out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance.

"56... "Reason" is a ground or motive for a belief or a course of action, a statement in justification or explanation of belief or action.

The contractual stipulation of reasons means, as held in Poyser and Mills' Arbitration in Re, `proper adequate reasons'. Such reasons shall not only be intelligible but shall be a reason connected with the case which the Court can see is proper. Contradictory reasons are equal to lack of reasons. ..."

where providing reasons for proposed supersession were essential, then it could not be held to be a valid reason that the concerned officer's record was not such as to justify his selection was not contemplated and thus was not legal.

"18.... "Reasons" are the links between the materials on which certain conclusions are based and the actual conclusions.

The requirement of recording reasons is applicable with greater rigor to the judicial proceedings. The orders of the Court must reflect what weighed with the Court in granting or declining the relief claimed by the applicant. In this regard we may refer to certain judgments of this Court.

Absence of reasoning did not find favour with the Supreme Court. The Supreme Court also stated the principle that powers of the High Court were

circumscribed by limitations discussed and declared by judicial decision and it cannot transgress the limits on the basis of whims or subjective opinion varying from Judge to Judge.

That even when the petition under Article 226 is dismissed in limini, it is expected of the High Court to pass a speaking order,may be briefly.

"reason is the heartbeat of every conclusion, and without the same it becomes lifeless."

18. Providing of reasons in orders is of essence in judicial proceedings. Every litigant who approaches the Court with a prayer is entitled to know the reasons for acceptance or rejection of such request. Either of the parties to the lis has a right of appeal and, therefore, it is essential for them to know the considered opinion of C/LPA/1190/2013 ORDER the Court to make the remedy of appeal meaningful. It is the reasoning which ultimately culminates into final decision which may be subject to examination of the appellate or other higher Courts. It is not only desirable but, in view of the consistent position of law, mandatory for the Court to pass orders while recording reasons in support thereof, however, brief they may be. Brevity in reasoning cannot be understood in legal parlance as absence of reasons. While no reasoning in support of judicial orders is impermissible, the brief reasoning would suffice to meet the ends of justice at least at the interlocutory stages and would render the remedy of appeal purposeful and meaningful. It is a settled canon of legal jurisprudence that the Courts are vested with discretionary powers but such powers are to be exercised judiciously, equitably and in consonance with the settled principles of law. Whether or not, such judicial discretion has been exercised in accordance with the accepted norms, can only be reflected by the reasons recorded in the order impugned before the higher Court. Often it is said that absence of reasoning may ipso facto indicate

whimsical exercise of judicial discretion. Patricia Wald, Chief Justice of the D.C. Circuit Court of Appeals in the Article, Blackrobed Bureaucracy Or Collegiality Under Challenge, (42 MD.L. REV. 766, 782 (1983), observed as under:-

"My own guiding principle is that virtually every appellate decision C/LPA/1190/2013 ORDER requires some statement of reasons. The discipline of writing even a few sentences or paragraphs explaining the basis for the judgment insures a level of thought and scrutiny by the Court that a bare signal of affirmance, dismissal, or reversal does not."

19. ***The Court cannot lose sight of the fact that a losing litigant has a cause to plead and a right to challenge the order if it is adverse to him. Opinion of the Court alone can explain the cause which led to passing of the final order. Whether an argument was rejected validly or otherwise, reasoning of the order alone can show. To evaluate the submissions is obligation of the Court and to know the reasons for rejection of its contention is a legitimate expectation on the part of the litigant. Another facet of providing reasoning is to give it a value of precedent which can help in reduction of frivolous litigation.Paul D. Carrington, Daniel J Meador and Maurice Rosenburg, Justice on Appeal 10 (West 1976), observed as under:-***

"When reasons are announced and can be weighed, the public can have assurance that the correcting process is working. Announcing reasons can also provide public understanding of how the numerous decisions of the system are integrated. In a busy Court, the reasons are an essential demonstration that the Court did in fact fix its mind on the case at hand. An unreasoned decision has very little claim to acceptance by the defeated party, and is difficult or impossible to accept as an act reflecting

systematic application of legal principles. Moreover, the necessity of stating reasons not infrequently changes the results by forcing the judges to come to grips with nettlesome facts or issues which their normal instincts would otherwise cause them to avoid."

20. The reasoning in the opinion of the Court, thus, can effectively be analysed or scrutinized by the Appellate Court. The reasons indicated by the Court could be accepted by the Appellate Court without presuming what weighed with the Court while coming to the impugned decision. The cause of expeditious and effective disposal would be furthered by such an approach. A right of appeal could be created by a special statute or under the provisions of the Code governing the procedure. In either of them, absence of reasoning may have the effect of negating the purpose or right of appeal and, thus, may not achieve the ends of justice.

21. It will be useful to refer words of Justice Roslyn Atkinson, Supreme Court of Queensland, at AIJA Conference at Brisbane on September 13, 2002 in relation to Judgment Writing. Describing that some judgment could be complex, in distinction to routine judgments, where one requires deeper thoughts, and the other could be disposed of easily but in either cases, reasonsC/LPA/1190/2013 ORDER they must have. While speaking about purpose of the judgment, he said, "The first matter to consider is the purpose of the judgment. To my mind there are four purposes for any judgment that is written: -

(1) to clarify your own thoughts; (2) to explain your decision to the parties;

(3) to communicate the reasons for the decision to the public; and (4) to provide reasons for an appeal Court to consider."

22. Clarity of thought leads to proper reasoning and proper reasoning is the foundation of a just and fair

decision. In Alexander Machinery (Dudley) Ltd. v. Crabtree 1974 ICR 120, the Court went to the extent of observing that "Failure to give reasons amounts to denial of justice". Reasons are really linchpin to administration of justice. They are link between the mind of the decision taker and the controversy in question. To justify our conclusion, reasons are essential. Absence of reasoning would render the judicial order liable to interference by the higher Court. Reasons are the soul of the decision and its absence would render the order open to judicial chastism. The consistent judicial opinion is that every order determining rights of the parties in a Court of law ought not to be recorded without supportive reasons. Issuing reasoned order is not only beneficial to the higher Courts but is even of great utility for C/LPA/1190/2013 ORDER providing public understanding of law and imposing self- discipline in the Judge as their discretion is controlled by well established norms. The contention raised before us that absence of reasoning in the impugned order would render the order liable to be set aside, particularly, in face of the fact that the learned Judge found merit in the writ petition and issued rule, therefore, needs to be accepted. We have already noticed that orders even at interlocutory stages may not be as detailed as judgments but should be supported by reason howsoever briefly stated.

Absence of reasoning is impermissible in judicial pronouncement. It cannot be disputed that the order in question substantially affect the rights of the parties. There is an award in favour of the workmen and the management had prayed for stay of the operation of the award. The Court has to consider such a plea keeping in view the provisions of Section 17-B of the Industrial Disputes Act, where such a prayer is neither impermissible nor improper. The contentions raised by the parties in support of their respective claims are expected to be dealt with by reasoned orders. We are not intentionally expressing

any opinion on the merits of the contentions alleged to have been raised by respective parties before the learned single Judge. Suffice it to note that the impugned order is silent in this regard. According to the learned Counsel appearing for the appellant, various contentionsC/LPA/1190/2013 ORDER were raised in support of the reliefs claimed but all apparently, have found no favour with the learned Judge and that too for no reasons, as is demonstrated from the order impugned in the present appeals."

5. The Apex Court in another decision in the case of "U.P. STATE ROAD TRANSPORT CORPORATION V. SURESH CHAND SHARMA", (2010) 6 SCC 555 has observed as under in paragraph-20:-

"20. Therefore, the law on the issue can be summarized to the effect that, while deciding the case, court is under an obligation to record reasons, however, brief, the same may be as it is a requirement of principles of natural justice. Nonobservance of the said principle would vitiate the judicial order. Thus, in view of the above, the judgment and order of the High Court impugned herein is liable to be set aside."

6. The Apex Court in the case of "EAST COAST RAILWAY AND ANOTHER V. MAHADEV APPA RAO AND OTHERS", (2010) 7 SCC 678, wherein in paragraph 9, the Apex Court observed as under :-

"9. There is no quarrel with the well- settled proposition of law that an order passed by a public authority exercising administrative/executive or statutory powers must be judged by the reasons stated in the order or any record or file contemporaneously maintained. It follows that the infirmity arising out C/LPA/1190/2013 ORDER of the absence of reasons cannot be cured by the authority passing the order stating such reasons in an affidavit filed before the Court where the validity of any such order is under challenge. The legal position in this regard is settled by the decisions of this Court

in Commissioner of Police, Bombay v. Gordhandas Bhanji (AIR 1952 SC16) wherein this Court observed :

"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. "

7. The Apex Court in the case of "MAYA DEVI (DEAD) THROUGH LRS. V. RAJ KUMARI BATRA (DEAD) THROUGH LRS. AND OTHERS", (2010) 9 SCC 486, held in paragraphs 22 to 27 and 30 as under :-

"22. The juristic basis underlying the requirement that Courts and indeed all such authorities, as exercise the power to determine the rights and obligations of individuals must give reasons in support of their orders has been examined in a long line of decisions rendered by this Court. In Hindustan Times Limited v. Union of India & Ors.C/LPA/1190/2013 ORDER 1998 (2) SCC 242 the need to give reasons has been held to arise out of the need to minimize chances of arbitrariness and induce clarity.

23. In Arun s/o Mahadeorao Damka v. Addl. Inspector General of Police & Anr. 1986 (3) SCC 696 the recording of reasons in support of the order passed by the High Court has been held to inspire public confidence in administration of justice, and help the Apex Court to dispose of appeals filed against such orders.

24. In Union of India & Ors. v. Jai Prakash Singh & Anr. 2007 (10) SCC 712, reasons were held to be live links between the mind of the decision maker and the controversy in question as also the decision or conclusion arrived at.

25. In Secretary and Curator, Victoria Memorial Hall v.

Howrah Ganatantrik Nagrik Samity & Ors. 2010 (3) SCC 732, reasons were held to be the heartbeat of every conclusion, apart from being an essential feature of the principles of natural justice, that ensure transparency and fairness, in the decision making process.

26. In Ram Phal v. State of Haryana & Ors. 2009 (3) SCC 258, giving of satisfactory reasons was held to be a requirement arising out of an ordinary man's sense of justice and a healthy discipline for all those who exercise power over others.

27. In Director, Horticulture Punjab & Ors. v. Jagjivan Parshad 2008 (5) SCC 539, the recording of reasons was held to be indicative of application of mind specially when the order is amenable to further avenues of challenge."

But Addl. Sessions Judge failed to appreciate the case laws & argumentsof advocate for accuse in legal and proper perspective.

29. Hon'ble Supreme Court in **Sanjay Chandra Vs. C.B.I. (2012) 1 SCC 40** the law of the bail and the law of discretion is explained as under;

"25. *……* ***In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognized, then it may lead to chaotic situation and would jeopardize the personal liberty of an individual.***

29. *In the case of Gudikanti Narasimhulu v. Public Prosecutor, (1978) 1 SCC 240, V.R. Krishna Iyer,J., sitting as Chamber Judge, enunciated the principles of bail thus:*

"3. What, then, is "judicial discretion" in this bail context? In the elegant words of Benjamin Cardozo: "The Judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a

knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to "the primordial necessity of order in the social life". Wide enough in all conscience is the field of discretion that remains."

Even so it is useful to notice the tart terms of Lord Camden that:

"the discretion of a Judge is the law of tyrants: it is always unknown, it is different in different men; it is casual, and depends upon constitution, temper and passion. In the best, it is oftentimes caprice; in the worst, it is every vice, folly and passion to which human nature is liable...."

30. Hon'ble High Court in **Farooq Abdul Gani Surve Vs. State 2012 Bom CR (Cri.) 85** it is ruled as under;

"ACTION UNDER CONTEMPT AGAINST JUDGE FOR NOT GRANTING BAIL EVEN IF CASE LAW IS GIVEN – Arrest of accused – Non compliance of direction by High Court and Apex Court – Non granting bail to accused – The Session Judge was shown with the order passed by the Supreme Court and Bombay High Court but the Sessions Judge did not follow the guidelines without justifiable reasons or recording any reason in writing - Held, if any Sessions Judge is found not to follow the directions besides taking administrative action against such learned Sessions Judge, he shall be liable for contempt of this Court."

31. Section 219 of IPC reads as under:

"***Public servant in judicial proceeding corruptly making report, etc., contrary to law***.—*Whoever, being a public servant, corruptly or maliciously makes*

or pronounces in any stage of a judicial proceeding, any report, order, verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

32. Section 52 of IPC reads as under;

"**Good faith**".—Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention."

32.1. Hon'ble High Court in the case of **Noor Mohamed Mohd. Shah R. Patel Vs. Nadirshah Patel 2004 ALL MR (CRI.) 42 ,** it was held that;

"It has to be kept in mind that nothing can be said to be done in good faith which is not done with due care and caution. If these ingredients are indicated by the complaint, the Magistrate is obliged to take the cognizance of the complaint so presented before him unless there are the other grounds for acting otherwise which has to be justified by reasons recorded in writing. "

33. Hon'ble High Court in the case of **Sailajanand Pande Vs. Suresh Chandra Gupta 1968 SCC OnLine Pat 49** it is ruled as under;

"A] Action against Judicial Officer causing illegal arrest – Magistrate acting illegally and without jurisdiction in the matter of arrest is not protected – Magistrate has no absolute protection regard to his act of illegal arrest.

B]First class Magistrate issued letter to appear and directed to show cause against prosecution on the petition filed by another person – When petitioner appeared he was detained to custody – The bail bond furnished by the petitioner were rejected by the Magistrate deliberately – Petitioner claimed that due to such illegal, unauthorized and malafide conduct of the Magistrate in arresting him, he has lowered in the estimation of the public and claimed for the damage –

The action of the Magistrate by putting the petitioner under arrest for realinsing the certificate dues by adopting questionable and unlawful method is highly deplorable – It was unbecoming of a Magistrate – It is relevant to investigate to find out the motive, the propriety and the legality of the action of the Magistrate in arresting the petitioner – It is not a judicial act although exercised during the Judicial proceedings – The Magistrate exercised its power with the ulterior object of coercing the petitioner.

C] At page 178 of the 14th Edition of Salmond on Torts it is said -

"The wrong of false imprisonment consists in the act of arresting or imprisoning any person without lawful justification, or otherwise preventing him without lawful justification from exercising his right of leaving the place in which he is."

In my opinion, defendant No. 1 has committed the wrong of false imprisonment in this case.

D] But - "Wherever protection of the exercise of judicial powers applies, it is so absolute that no allegation that the acts or words complained of were done or spoken mala fide, maliciously, corruptly, or without reasonable or probable cause suffices to found an action." Further it has been pointed out under the title "Liability of Magistrates" at page 160 of Volume 25 of Halsbury's Laws of England, 3rd Edition, that -

"Protection is afforded by common law and by statute to justices in respect of acts done in the execution of their duty as such; but this protection does not extend to cases where they have acted either maliciously and without reasonable and probable cause, or without or in excess of their jurisdiction, and in such cases they are liable to an action for damages at the suit of the party "aggrieved,"

A similar passage occurs at page 768 of Volume 38 of the Halsbury's Laws of England, 3rd Edition -

A Magistrate or other person acting In a judicial capacity is not liable for acts done within his

jurisdiction, but he is liable to an action for false imprisonment If he unlawfully commits a person to prison in a matter in which he has no jurisdiction, provided that he has knowledge, or the means of knowledge of the facts which show that he has no jurisdiction."

34. <u>ROLE OF THE PUBLIC PUBLIC PROSECUTOR :-</u>

34.1. Hon'ble Supreme Court in the case of **<u>Shiv Kumar Vs. Hukam Chand (1999) 7 SCC 467</u>** had ruled that;

"Criminal Procedure Code, 1973 — Ss. 301, 302 and 225 & 24 — Duty of the Public Prosecutor to act fairly and not merely to obtain conviction by any means fair or foul — <u>If the accused is entitled to any legitimate benefit the Public Prosecutor should make it available to him or inform the court even if the defence counsel overlooked it.</u>

13.The legislature reminds the State that the policy must strictly conform to fairness in the trial of an accused. A Public Prosecutor is not expected to show a thirst to reach the case in the conviction of the accused somehow or the other irrespective of the true facts-involved in the case. The expected attitude of the Public Prosecutor while conducting prosecution must be couched in fairness not only to the court and to the investigating agencies but to the accused as well. If an accusedis entitled to any legitimate benefit during trial the Public Prosecutor should not scuttle or conceal it On the contrary, it is the duty of the Public Prosecutor to winch it to the fore and make it available to the accused. Even if the defence counsel overlooked it, the Public Prosecutor has the added responsibility to bring it to the notice of the court if it comes this knowledge. A private counsel, if

allowed a free hand to conduct prosecution, would focus on bringing the case to conviction even if it is not a fit case to be so convicted. That is the reason why Parliament applied a bridle on him and subjected his role strictly to the instructions given by the Public Prosecutor.

34.2. Hon'ble supreme Court in the cae of **Deepak Aggarwal Vs. Keshav Kaushik(2013) 5 SCC 277** had ruled that;

*"**Public Prosecutor: Role of Public Prosecutor is no different. He has at all times to ensure that an accused is tried fairly. He should consider the views, legitimate interests and possible concern of witnesses and victims.** He is supposed to refuse to use evidence reasonably believed to have been obtained through recourse to unlawful methods. His acts should always serve and protect the public interest. The State being a Prosecutor, the Public Prosecutor carries a primary position. He is not a mouthpiece of the investigating agency. In Chapter II of the BCI Rules, it is stated that an advocate appearing for the prosecution of a criminal trial shall so conduct the prosecution that it does not lead to conviction of the innocent; he should scrupulously avoid suppression of material capable of establishing the innocence of the accused."*

34.3. Hon'ble High Court in the case of **Barelal Vs. State 1959 SCC OnLine MP 3** it is ruled that;

***"DUTY OF PUBLIC PROSECUTOR: -** It is duty of public Prosecutor to conduct case fairly – He should therefore place before the Court all evidence and should not withhold certain evidence."*

34.4. Hon'ble High Court in the case of **Harsha Sisodia Vs. State of A.P. and Anr. 2009 SCC OnLine AP 898** it is ruled that;

> *"It is the duty of the State to protect the life and properties of its citizens and to prevent the crime and to punish the accused in accordance with law. As a part of criminal justice delivery system, the Courts have been established and the Public Prosecutors have been appointed to assist the Courts in conducting trials and other criminal proceedings. The Public Prosecutors and the Advocates are the officers of the Court. They have to assist the Court and place all the facts before the Court. The Public Prosecutors must present the facts without any bias and without undue emphasis on any aspect of the case leaving the decision to the Court. They have to act independently and in the interest of justice. The Public Prosecutors are not the representatives of the investigating officers and the investigating agency. When a defect in the investigation or in the prosecution case is noticed by Public Prosecutor, it is his duty to bring the same to the notice of the Court. They have to make fair submissions with regard to the facts and circumstances of the case and also legal position."*

Hence concerned public prosecutors are also liable to be prosecuted.

35. Request: It is humbly requested for;

A. Taking action under Sction 211, 220, 167, 469 r/w 120 (B) and 34 of IPC and under Section 145 (2), 146, 147 of Police Act against Shri. D.P. Sonawane, Sr. P.I, Oshiwara Police Station and Ors in view evidence available on record and of conclusion drawn by Hon'ble Bombay High Court in B.A. No. 1518 pf 2019 vide order dated 7th June, 2019 it is ex-facie proved that the registration of FIR and arrest of accused was illegal and actuated with ulterior motive and malafide intention.

B. Taking action against Metropolitan Magistrate Shri. Imran R. Marchiya for not granting Bail and sending accused to custody without considering the material on record and acting against the law laid down by Hon'ble Supreme Court in **Sanjay Chandra Vs C.B.I. (2012) 1**

SCC 40, Nikesh Shah(2018) 11 SCC 1, Siddharam Mhetre Vs State AIR 2011 SC 312 and thereby violating the fundamental rights of the accused.

C. Action against Shri. S.U.Baghele, Addl. Sessions Judge, Borivali Division, Dindoshi, Mumbai for unlawful rejection of bail of accused on 7th May, 2019 surmises and conjectures and failure to perform the duty as mandated by the Hon'ble Supreme Court in **Sanjay Chandra Vs C.B.I. (2012) 1 SCC 40, (2018) SCC, Khemlo Sakharam Sawant Vs. State 2002 BCR (1) 689** where it was ruled that the accused should be presumed innocent till proved guilty and bail is rule and exception. Accused should be released in all cases and committed to custody in exceptional cases.

D. Action under Contempt of Court Act laid as per law and ratio laid down in **Re: M.P Dwivedi AIR 1996 SC 2299, New Delhi Municipal Council Vs. M/s Prominent Hotels Limited 2015 SCC Online Del 11910, Farooq Abdul Gani Surve Vs. State of Maharashtra 2012 Bom CR (Cri.) 85** against:

1.Shri D.P Sonawane, Sr. Police Inspector 2) Shri. Imran R. Marchiya, Metropolitan Magistrate 3) Shri. S.U Baghlele, Addl. Sessions Judge, Borivali Division, Dindoshi for their willful disregards and defiance of law laid down in **1)Antonio S. Mervyn Vs. State 2008 ALL MR (CRI) 2432 2) Dinkarrao R. Pole Vs. State of Maharashtra 2004 (1) Crimes 1 (Bom) (DB) 3) Joginder Kumar vs. State of U.P. &Ors. (1994) 4 SCC 260 (Full Bench) 4) Nambiar 5) Siddharam Mhetre Vs. State AIR 2011 SC 312 6) Jairajsinh Temubha Jadeja Vs. State of Gujarat 7) Sanjay Chandra Vs C.B.I. (2012) 1 SCC 40 8) Harsh Sawhney AIR 1978 SC 10169**) **Ravindra Saxena Vs. State Of Rajasthan 2010 (I) SCC (Cri) 884.**

E) Direction for action under section **167, 192, 220, 466, 474, 469 r/w 120 (B) and 34 etc. of IPC** against Senior Police Inspector,Oshiwara Police Station for filing false and misleading say on **06.06.2019** before Hon'ble High Court being **"O.W No. 5139 of 2019"** with ulterior motive to keep Karan Oberoi in jail in a false case.

F) Departmental action against Shri. S.U. Baghele, Addl. Sessions Judge & Shri. Imran R. Marchiya, Metropolitan Magistrate immediate dismissal of said Judges as per law laid down in **R.R. Parekh Vs. High Court of Gujrat (2016) 14 SCC 1**, **Umesh Chandra Vs. State 2006 (5) AWC 4519 ALL**, **Union of India Vs. K. K. Dhawan (1993) 2 SCC 56 (Full Bench)**, **Bharat Devdan Salvi Vs. State 2016 ALL MR (Cri) 1239**

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VIJAY KURLE
STATE PRESIDENT
MAHARASHTRA & GOA