

**BEFORE THE SPECIAL COURT /ADDITIONAL SESSIONS JUDGE,  
MUMBAI  
POCSO SPL. C. 263 OF 2015**

The State of Through J.J. Marg Police Station

Vs.

Pankaj Arjun Koli



**Shri. Pankaj Arjunbhai Koli**

**...Applicant**

**APPLICATION FOR APPROPRIATE DIRECTION TO THE JAIL  
AUTHORITY TO INVESTIGATE AND LAUNCH PROSECUTION  
AGAINST THE PERSON RESPONSIBLE FOR FORCED  
VACCINATION OF ACCUSED AGAINST HIS WILL IN BRECH OF  
CENTRAL GOVERNMENT'S DIRECTIVES IN CONTEMPT OF  
HON'BLE SUPREME COURT & HIGH COURT JUDGMENTS AND IN  
VIOLATION OF FUNDAMENTAL RIGHTS AS MANDATE UNDER  
ARTICLE 21 OF THE CONSTITUTION OF INDIA.**

Most humbly submitted on behalf of applicant as under;

1. That in the present case the applicant was on bail since beginning.  
That accused belongs to Meghwar Caste and he is Hindu Dalit. His caste  
is under Schedule Caste Category.

2. That on 18.08.2021 this Hon'ble Court pronounced the judgment and convicted the Applicant.

By the same order this Hon'ble Court committed applicant to Judicial Custody.

3. That as per the said order the police officer took the Applicant in to custody and he was directed to be sent to Artur Road, Jail.
4. That the applicant was handcuffed from Court to Jail without any order from the Court.
5. That before taking the Applicant accused to jail he was taken to hospital and despite his strong refusal/oppose he is forcefully given the Corona-Vaccine by the concerned police officials and Doctors.

They threatened and warned the accused with dire consequences if Applicant oppose them and they said that it is State's law that every accused should be vaccinated.

6. That, there was no doctor present in the Hospital. The Applicant was not checked by any doctor. He was not consecrated regarding his allergic or any other ailments. He was not informed about the side-effects of the vaccines and only Nurse straightaway gave the vaccine. Furthermore despite the request by one Nurse to Police to wait for half an hour to see any side effects and then to take Applicant away, the police officer did not allowed the applicant to sit for half an hour and he was straightaway taken to the jail.
7. That, the above act on the part of concerned police officials and doctors is against the Central Government's own directives and also against the law laid down by Hon'ble Supreme Court and various High Court.



8. That as per law and as per Government of India's information and directives the vaccine's are experimental and having been used under **Emergency Use Authorization (EUA)**. The vaccination is voluntary and not mandatory.
9. The act of mandatory vaccination either directly or indirectly is held to violative of Article **14, 19, 21** of our Constitution of India.

The recent binding judgments are;

- i) Common Cause Vs. Union of India **(2018) 5 SCC 1.**
- ii) Aruna Ramachandra Shanbaug v. Union of India, **(2011) 4 SCC 454.**
- iii) K.S. Puttuwamy Vs. Union of India **(2017) 70 SCC 7.**
- iv) Montgomery Vs. Lanarshire Health Board **[2015] UK SC 11.**
- v) Webster Vs. Burton Hospitals NHS Foundation Trust **[2017] EWCA Civ 62.**
- vi) Airedale N.H.S. Trust Vs. Bland **(1993) 1 All ER 821 [9 Judge bench] (followed in India).**
- vii) Meghalaya Vs. State of Meghalaya **2021 SCC OnLine Megh 130.**
- viii) Re: Dintar Incident Aizawl Vs. State of Mizoram **2021 SCC OnLine Gau 1313.**
- ix) Osbert Khaling Vs State of Manipur **2021 SCC OnLine Mani 234.**
- x) Madan Mili Vs. UOI **2021 SCC OnLine Gau 1503.**
- xi) A. Varghese Vs. Union of India **2020 SCC OnLine Kar 2825.**

xii) Master Haridaan Kumar (Minor through Petitioners Anubhav Kumar and Mr. Abhinav Mukherji) Vs. Union of India, W.P.(C) 343/2019 & CM Nos.1604-1605/2019.

xiii) Baby Veda Kalaan & Others Vs. Director of Education & Others W.P.(C) 350/2019 & CM Nos. 1642-1644/2019.

10. On 23<sup>rd</sup> June, 2021 in the case between Registrar General, High Court of Meghalaya Vs. State of Meghalaya 2021 SCC OnLine Megh 130, it is ruled by High Court as under;

*“It has been brought to the notice of this High Court that the State of Meghalaya, through various orders of the Deputy Commissioners, has made it mandatory for shopkeepers, vendors, local taxi drivers and others to get themselves vaccinated before they can resume their businesses. Whether vaccination can at all be made mandatory and whether such mandatory action can adversely affect the right of a citizen to earn his/her livelihood, is an issue which requires consideration.*

*Thus, by use of force or through deception if an unwilling capable adult is made to have the „flu vaccine would be considered both a crime and tort or civil” wrong, as was ruled in Airedale NHS Trust v Bland reported at 1993 AC 789 = (1993) 2 WLR 316 = (1993) 1 All ER 821, around thirty years (30) ago. Thus, coercive element of vaccination has, since the early phases of the initiation of vaccination as a preventive measure against several diseases, have been*

time and again not only discouraged but also consistently ruled against by the Courts for over more than a century.

*Till now, there has been no legal mandate whatsoever with regard to coercive or mandatory vaccination in general and the Covid19 vaccination drive in particular that can prohibit or take away the livelihood of a citizen on that ground.*

*In the “frequently asked questions” (FAQs) on COVID-19 vaccine prepared and uploaded by the Ministry of Health and Family Welfare, Government of India, in its official website, the question which appears under serial number 3 reads, “Is it mandatory to take the vaccine?” The “potential response”, which is provided in the official website reads, “Vaccination for COVID-19 is voluntary.*

*In this context, around one hundred and seven (107) years ago, in Schloendorff v Society of New York Hospitals reported at (1914) 211 NY 125 = 105 NE 92; 1914 NY Justice Cardozo ruled that „every human being of adult years and sound mind has a right to determine what shall be done with their body“.*

*This finds mention in decisions of the European Commission and Court of Human Rights [X vs. Netherlands of 1978 (decision rendered on 4th December, 1978); X vs. Austria of 1979 (decision rendered on 13th December, 1979)] which has become truer in the present times across the world than ever before. Compulsorily administration of a vaccine without hampering one’s right to life and liberty based on informed choice and informed consent is one*

thing. However, if any compulsory vaccination drive is coercive by its very nature and spirit, it assumes a different proportion and character.

However, vaccination by force or being made mandatory by adopting coercive methods, vitiates the very fundamental purpose of the welfare attached to it.”

#### 11. DUTY OF THE DOCTOR TO OBTAIN INFORMED CONSENT:-

In Common Cause Vs. Union of India (2018) 5 SCC 1, it is ruled as under;

*169. In the context of health and medical care decisions, a person's exercise of self-determination and autonomy involves the exercise of his right to decide whether and to what extent he/she is willing to submit himself/herself to medical procedures and treatments, choosing amongst the available alternative treatments or, for that matter, opting for no treatment at all which, as per his or her own understanding, is in consonance with his or her own individual aspirations and values.*

#### ***Q. Conclusions in seriatim***

*202. In view of the aforesaid analysis, we record our conclusions in seriatim:*

*202.8. An inquiry into Common Law jurisdictions reveals that all adults with capacity to consent have the right of self-determination and autonomy. The said rights pave the way for the right to refuse medical treatment which has acclaimed universal recognition.*



*A competent person who has come of age has the right to refuse specific treatment or all treatment or opt for an alternative treatment, even if such decision entails a risk of death.* The “Emergency Principle” or the “Principle of Necessity” has to be given effect to only when it is not practicable to obtain the patient's consent for treatment and his/her life is in danger. But where a patient has already made a valid Advance Directive which is free from reasonable doubt and specifying that he/she does not wish to be treated, then such directive has to be given effect to.

202.9. Right to life and liberty as envisaged under Article 21 of the Constitution is meaningless unless it encompasses within its sphere individual dignity. With the passage of time, *this Court has expanded the spectrum of Article 21 to include within it the right to live with dignity as component of right to life and liberty.*

202.12. Though the sanctity of life has to be kept on the high pedestal yet in cases of terminally ill persons or PVS patients where there is no hope for revival, priority shall be given to the Advance Directive and the right of self-determination.

202.13. In the absence of Advance Directive, the procedure provided for the said category hereinbefore shall be applicable.

*202.14. When passive euthanasia as a situational palliative measure becomes applicable, the best interest of the patient shall override the State interest.*

*306. In addition to personal autonomy, other facets of human dignity, namely, “self-expression” and “right to determine” also support the argument that it is the choice of the patient to receive or not to receive treatment.*

*517. The entitlement of each individual to a dignified existence necessitates constitutional recognition of the principle that an individual possessed of a free and competent mental state is entitled to decide whether or not to accept medical treatment. The right of such an individual to refuse medical treatment is unconditional. Neither the law nor the Constitution compel an individual who is competent and able to take decisions, to disclose the reasons for refusing medical treatment nor is such a refusal subject to the supervisory control of an outside entity;*

12. On the similar line there is a judgment in Mantgomery’s case [2015] UKSC 11, where it is ruled as under;

*“77. These developments in society are reflected in professional practice. The court has been referred in particular to the guidance given to doctors by the General Medical Council, who participated as interveners in the present appeal. One of the documents currently in force (Good Medical Practice (2013)) states, under the heading*

*“The duties of a doctor registered with the General Medical Council”:*

*“Work in partnership with patients. Listen to, and respond to, their concerns and preferences. Give patients the information they want or need in a way they can understand. Respect patients’ right to reach decisions with you about their treatment and care.”*

78. Another current document (Consent: patients and doctors making decisions together (2008)) describes a basic model of partnership between doctor and patient:

*“The doctor explains the options to the patient, setting out the potential benefits, risks, burdens and side effects of each option, including the option to have no treatment. The doctor may recommend a particular option which they believe to be best for the patient, but they must not put pressure on the patient to accept their advice. The patient weighs up the potential benefits, risks and burdens of the various options as well as any non-clinical issues that are relevant to them. The patient decides whether to accept any of the options and, if so, which one.”* (para 5)

In relation to risks, in particular, the document advises that the doctor must tell patients if treatment might result in a serious adverse outcome, even if the risk is very small, and should also tell patients about less serious complications if they occur frequently (para 32). The submissions on behalf of the General Medical Council acknowledged, in relation to these documents, that an approach based upon the informed



*involvement of patients in their treatment, rather than their being passive and potentially reluctant recipients, can have therapeutic benefits, and is regarded as an integral aspect of professionalism in treatment.*

*80. In addition to these developments in society and in medical practice, there have also been developments in the law. Under the stimulus of the Human Rights Act 1998, the courts have become increasingly conscious of the extent to which the common law reflects fundamental values. As Lord Scarman pointed out in Sidaway's case, these include the value of self-determination (see, for example, S (An Infant) v S [1972] AC 24, 43 per Lord Reid; McColl v Strathclyde Regional Council 1983 SC 225, 241; Airedale NHS Trust v Bland [1993] AC 789, 864 per Lord Goff of Chieveley). As well as underlying aspects of the common law, that value also underlies the right to respect for private life protected by article 8 of the European Convention on Human Rights. The resulting duty to involve the patient in decisions relating to her treatment has been recognised in judgments of the European Court of Human Rights, such as Glass v United Kingdom (2004) EHRR 341 and Tysiac v Poland (2007) 45 EHRR 947, as well as in a number of decisions of courts in the United Kingdom. The same value is also reflected more specifically in other international instruments: see, in particular, article 5 of the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, concluded by the member*



states of the Council of Europe, other states and the European Community at Oviedo on 4 April 1997.

**82. In the law of negligence, this approach entails a duty on the part of doctors to take reasonable care to ensure that a patient is aware of material risks of injury that are inherent in treatment.** This can be understood, within the traditional framework of negligence, as a duty of care to avoid exposing a person to a risk of injury which she would otherwise have avoided, but it is also the counterpart of the patient's entitlement to decide whether or not to incur that risk. The existence of that entitlement, and the fact that its exercise does not depend exclusively on medical considerations, are important. They point to a fundamental distinction between, on the one hand, the doctor's role when considering possible investigatory or treatment options and, on the other, her role in discussing with the patient any recommended treatment and possible alternatives, and the risks of injury which may be involved.

**83.** The former role is an exercise of professional skill and judgment: what risks of injury are involved in an operation, for example, is a matter falling within the expertise of members of the medical profession. But it is a non sequitur to conclude that the question whether a risk of injury, or the availability of an alternative form of treatment, ought to be discussed with the patient is also a matter of purely professional judgment. The doctor's advisory role cannot be regarded as solely an exercise of medical skill without leaving out of account the patient's entitlement to decide on the risks

to her health which she is willing to run (a decision which may be influenced by non-medical considerations). Responsibility for determining the nature and extent of a person's rights rests with the courts, not with the medical professions.

87. The correct position, in relation to the risks of injury involved in treatment, can now be seen to be substantially that adopted in *Sidaway* by Lord Scarman, and by Lord Woolf MR in *Pearce*, subject to the refinement made by the High Court of Australia in *Rogers v Whitaker*, which we have discussed at paras 77-73. An adult person of sound mind is entitled to decide which, if any, of the available forms of treatment to undergo, and her consent must be obtained before treatment interfering with her bodily integrity is undertaken. The doctor is therefore under a duty to take reasonable care to ensure that the patient is aware of any material risks involved in any recommended treatment, and of any reasonable alternative or variant treatments. The test of materiality is whether, in the circumstances of the particular case, a reasonable person in the patient's position would be likely to attach significance to the risk, or the doctor is or should reasonably be aware that the particular patient would be likely to attach significance to it.

89. Three further points should be made. First, it follows from this approach that the assessment of whether a risk is material cannot be reduced to percentages. The significance of a given risk is likely to reflect a variety of factors besides its magnitude: for example, the nature of the risk, the effect which its occurrence would have upon the life of the patient,

*the importance to the patient of the benefits sought to be achieved by the treatment, the alternatives available, and the risks involved in those alternatives. The assessment is therefore fact-sensitive, and sensitive also to the characteristics of the patient.*

*90. Secondly, the doctor's advisory role involves dialogue, the aim of which is to ensure that the patient understands the seriousness of her condition, and the anticipated benefits and risks of the proposed treatment and any reasonable alternatives, so that she is then in a position to make an informed decision. This role will only be performed effectively if the information provided is comprehensible. The doctor's duty is not therefore fulfilled by bombarding the patient with technical information which she cannot reasonably be expected to grasp, let alone by routinely demanding her signature on a consent form.*

*116. As NICE (2011) puts it, "Pregnant women should be offered evidence-based information and support to enable them to make informed decisions about their care and treatment" (para 1.1.1.1). Gone are the days when it was thought that, on becoming pregnant, a woman lost, not only her capacity, but also her right to act as a genuinely autonomous human being."*

13. Also, in the case (W.P.(C) 343/2019 & CM Nos.1604-1605/2019) between Master Haridaan Kumar (Minor through Petitioners Anubhav Kumar and Mr. Abhinav Mukherji) Versus Union of India, & W.P.(C) 350/2019 & CM Nos. 1642-



**1644/2019 between Baby Veda Kalaan & Others Versus Director of Education & Others.**

The Hon'ble High Court of Delhi had observed that the authority is bound to advertise the side effects of the vaccines before getting their consent.

It is ruled as under;

*“The contention that indication of the side effects and contraindications in the advertisement would discourage parents or guardians from consenting to the MR campaign and, therefore, the same should be avoided, is unmerited. The entire object of issuing advertisements is to ensure that necessary information is available to all parents/guardians in order that they can take an informed decision. The respondents are not only required to indicate the benefits of the MR vaccine but also indicate the side effects or contraindications so that the parents/guardians can take an informed decision whether the vaccine is to be administered to their wards/ children.”*

The Hon'ble High Court of Delhi thus passed the following orders;

*“MR vaccines will not be administered to those students whose parents / guardians have declined to give their consent. The said vaccination will be administered only to those students whose parents have given their consent either by returning the consent forms or by conforming the same directly to the class teacher/nodal teacher and also to students whose parents/guardians cannot be contacted despite best efforts by the class teacher/nodal*



teacher and who have otherwise not indicated to the contrary”.

01- Further on the issue of informed consent, the Hon'ble High Court had clearly directed that:

“Directorate of Family Welfare shall issue quarter page advisements in various newspapers as indicated by the respondents... The advertisements shall also indicate that the vaccination shall be administered with Auto Disable Syringes to the eligible children by Auxiliary Nurse Midwifery. The advertisement shall also clearly indicate the side effects and contraindications as may be finalized by the Department of Preventive Medicine, All India Institute of Medical Sciences”.

14. In **Noida Entrepreneurs Assn. v. NOIDA, (2011) 6 SCC 508**, it is ruled that, **“Whenever a thing is prohibited, whether done directly or indirectly and authority cannot be permitted to evade law by Shift or Contrivance” what is not allowed to be done directly should not be allowed to be done indirectly.** It is ruled as under;

25. It is a settled proposition of law that whatever is prohibited by law to be done, cannot legally be affected by an indirect and circuitous contrivance on the principle of *quando aliquid prohibetur, prohibetur at omne per quod devenitur ad illud*, which means “whenever a thing is prohibited, it is prohibited whether done directly or indirectly”. (See *Swantraj v. State of Maharashtra [(1975) 3 SCC 322 : 1974 SCC (Cri) 930 : AIR 1974 SC 517]*, *CCE v. Acer India Ltd. [(2004) 8 SCC 173]* and *Sant Lal Gupta v. Modern Coop.*

*Group Housing Society Ltd. [(2010) 13 SCC 336 : (2010) 4 SCC (Civ) 904 : JT (2010) 11 SC 273] )*

*26. In Jagir Singh v. Ranbir Singh [(1979) 1 SCC 560 : 1979 SCC (Cri) 348 : AIR 1979 SC 381] this Court has observed that an authority cannot be permitted to evade a law by “shift or contrivance”. While deciding the said case, the Court placed reliance on the judgment in Fox v. Bishop of Chester [(1824) 2 B&C 635 : 107 ER 520] , wherein it has been observed as under: (Jagir Singh case [(1979) 1 SCC 560 : 1979 SCC (Cri) 348 : AIR 1979 SC 381] , SCC p. 565, para 5)*

*“5. ... ‘To carry out effectually the object of a statute, it must be so construed as to defeat all attempts to do, or avoid doing, in an indirect or circuitous manner that which it has prohibited or enjoined.’ [Ed.: As observed in Maxwell on the Interpretation of Statutes, 11th Edn., p. 109. See SCC p. 565, para 5 of Jagir Singh case, (1979) 1 SCC 560.] ”*

- 15. The relevant articles of Universal Declaration on Bioethics and Human Rights, 2005 (UDBHR) are as under;**

*“Article 3 – Human dignity and human rights*

*1. Human dignity, human rights and fundamental freedoms are to be fully respected.*

*2. The interests and welfare of the individual should have priority over the sole interest of science or society.*

*Article 6 – Consent*

1. Any preventive, diagnostic and therapeutic medical intervention is only to be carried out with the prior, free and informed consent of the person concerned, based on adequate information. The consent should, where appropriate, be express and may be withdrawn by the person concerned at any time and for any reason without disadvantage or prejudice.

2. Scientific research should only be carried out with the prior, free, express and informed consent of the person concerned. The information should be adequate, provided in a comprehensible form and should include modalities for withdrawal of consent. Consent may be withdrawn by the person concerned at any time and for any reason without any disadvantage or prejudice. Exceptions to this principle should be made only in accordance with ethical and legal standards adopted by States, consistent with the principles and provisions set out in this Declaration, in particular in Article 27, and international human rights law.

3. In appropriate cases of research carried out on a group of persons or a community, additional agreement of the legal representatives of the group or community concerned may be sought. In no case should a collective community agreement or the consent of a community leader or other authority substitute for an individual's informed consent.

#### ***Article 7 – Persons without the capacity to consent***

*In accordance with domestic law, special protection is to be given to persons who do not have the capacity to consent:*

*(a) authorization for research and medical practice should be obtained in accordance with the best interest of the person concerned and in accordance with domestic law. However, the person concerned should be involved to the greatest extent possible in the decision-making process of consent, as well as that of withdrawing consent;*

*(b) research should only be carried out for his or her direct health benefit, subject to the authorization and the protective conditions prescribed by law, and if there is no research alternative of comparable effectiveness with research participants able to consent. Research which does not have potential direct health benefit should only be undertaken by way of exception, with the utmost restraint, exposing the person only to a minimal risk and minimal burden and, if the research is expected to contribute to the health benefit of other persons in the same category, subject to the conditions prescribed by law and compatible with the protection of the individual's human rights. Refusal of such persons to take part in research should be respected.*

#### ***Article 8 – Respect for human vulnerability and personal integrity***

*In applying and advancing scientific knowledge, medical practice and associated technologies, human vulnerability should be taken into account. Individuals and groups of special vulnerability should be protected and the personal integrity of such individuals respected.*

#### ***Article 10 – Equality, justice and equity***



*The fundamental equality of all human beings in dignity and rights is to be respected so that they are treated justly and equitably.*

***Article 11 – Non-discrimination and non-stigmatization***

*No individual or group should be discriminated against or stigmatized on any grounds, in violation of human dignity, human rights and fundamental freedoms.*

***Article 16 – Protecting future generations***

*The impact of life sciences on future generations, including on their genetic constitution, should be given due regard.*

***Application of the principles***

***Article 18 – Decision-making and addressing bioethical issues***

*1. Professionalism, honesty, integrity and transparency in decision-making should be promoted, in particular declarations of all conflicts of interest and appropriate sharing of knowledge. Every endeavour should be made to use the best available scientific knowledge and methodology in addressing and periodically reviewing bioethical issues.*

*2. Persons and professionals concerned and society as a whole should be engaged in dialogue on a regular basis.*

*3. Opportunities for informed pluralistic public debate, seeking the expression of all relevant opinions, should be promoted.”*

16. That Article 7 of the International Covenant on Civil and Political Rights (ICCPR) prohibits any forced and involuntary medication.

It reads thus;

***“Article 7***

*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”*

17. Section 52 of Indian Penal Code reads thus;

***“Section 52 of Indian Penal Code***

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

18. Therefore, the concerned officials are liable for action under Section 188 etc. of Indian Penal Code and provisions of Disaster Management Act, 2005. The relevant provisions of Disaster Management Act, 2005 reads thus;

***“51. Punishment for obstruction:-***

*(b) refuses to comply with any direction given by or on behalf of the Central Government or the State Government or the National Executive Committee or the State Executive Committee or the District Authority under this Act, shall on conviction be punishable with imprisonment for a term which may extend to one year or with fine, or with both, and if such obstruction or refusal to comply with directions results in loss of lives or imminent danger thereof, shall on conviction be*

*punishable with imprisonment for a term which may extend to two years. notes on clauses Clauses 51 to 58 (Secs. 51 to 58) seeks to lay down what will constitute an offence in terms of obstruction of the functions under the Act, false claim for relief, misappropriation of relief material or funds, issuance of false warning, failure of an officer to perform the duty imposed on him under the Act without due permission or lawful excuse, or his connivance at contravention of the provisions of the Act. The clauses also provide for penalties for these offences.*

***55. Offences by Departments of the Government:-***

*(1) Where an offence under this Act has been committed by any Department of the Government, the head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. (1) Where an offence under this Act has been committed by any Department of the Government, the head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence."*

*(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a Department of the Government and it is proved that the*



*offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any officer, other than the head of the Department, such officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.*

**58. Offence by companies:-**

*(1) Where an offence under this Act has been committed by a company or body corporate, every person who at the time the offence was committed, was in charge of, and was responsible to, the company, for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly: —(1) Where an offence under this Act has been committed by a company or body corporate, every person who at the time the offence was committed, was in charge of, and was responsible to, the company, for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly\:" Provided that nothing in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised due diligence to prevent the commission of such offence.*

*(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company, and it is proved that the offence was committed with the consent or connivance of or is attributable to any neglect*

*on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also, be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation.—For the purpose of this section—*  
*(a) “company” means any body corporate and includes a firm or other association of individuals; and*  
*(b) “director”, in relation to a firm, means a partner in the firm.*

**61. Prohibition against discrimination:-**

*While providing compensation and relief to the victims of disaster, there shall be no discrimination on the ground of sex, caste, community, descent or religion.*

**62. Power to issue direction by Central Government:-**

*Notwithstanding anything contained in any other law for the time being in force, it shall be lawful for the Central Government to issue direction in writing to the Ministries or Departments of the Government of India, or the National Executive Committee or the State Government, State Authority, State Executive Committee, statutory bodies or any of its officers or employees, as the case may be, to facilitate or assist in the disaster management and such Ministry or Department or Government or Authority, Executive Committee, statutory body, officer or employee shall be bound to comply with such direction.*

***56. Failure of officer in duty or his connivance at the contravention of the provisions of this Act:-***

*Any officer, on whom any duty has been imposed by or under this Act and who ceases or refuses to perform or withdraws himself from the duties of his office shall, unless he has obtained the express written permission of his official superior or has other lawful excuse for so doing, be punishable with imprisonment for a term which may extend to one year or with fine. —Any officer, on whom any duty has been imposed by or under this Act and who ceases or refuses to perform or withdraws himself from the duties of his office shall, unless he has obtained the express written permission of his official superior or has other lawful excuse for so doing, be punishable with imprisonment for a term which may extend to one year or with fine.”*

**19. Handcuffing is violation of Hon’ble Supreme Court judgment in Re: M. P. Dwivedi’s case (1996) 4 SCC 152.**

**19.1.** That while getting the applicant to jail from this Court, the applicant was handcuff even though his hand is fractured earlier.

**19.2.** That Hon’ble Supreme Court in the case of Re: M. P. Dwivedi’s case (1996) 4 SCC 152, has prohibited any routine handcuffing without the judicial order from the Court.

It is ruled as under;

**“A) VIOLATION OF GUIDELINES LAID DOWN BY SUPREME COURT BY POLICE AND JUDGE OF SUBORDINATE COURTS – THEY ARE GUILTY OF CONTEMPT.**



*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, The contemner 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.”*

- 19.3. That the unauthorized handcuffing is an offence under Section 220, 166, of Indian Penal Code and under Section 145(2) of Maharashtra Police Act.**

**Section 220 of Indian Penal Code reads thus;**

*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.*

**Section 145(2) of Maharashtra Police Act reads thus;**

*(1) Any person who makes a false statement or uses a false document for the purpose of obtaining employment or release from employment as a Police officer, or*

*(2) Any Police officer who (a) is guilty of cowardice, or (b) resigns his office or withdraws himself from duties thereof in contravention of section 29, or (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.*

*Consequence of failure to return to duty after leave*

*(3) A Police Officer who being absent on leave fails, without reasonable cause, to report himself for duty on the expiration of such leave shall, for the purpose of clause (b) of sub-section (2), be deemed to withdraw himself from the duties of his office within the meaning of section 29.*

**20. Relevant provisions of Indian Penal Code reads thus;**

***“Section 336 in The Indian Penal Code***

*336. Act endangering life or personal safety of others.—  
Whoever does any act so rashly or negligently as to endanger*



*human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.*

### ***Section 323 in The Indian Penal Code***

*323. Punishment for voluntarily causing hurt.—Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.*

### ***Section 319 in The Indian Penal Code***

*319. Hurt.—Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.*

### ***Section 321 in The Indian Penal Code***

*321. Voluntarily causing hurt.—Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said “voluntarily to cause hurt”.*

### ***Section 307 in The Indian Penal Code***

*307. Attempt to murder.—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder,*

*shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to 1[imprisonment for life], or to such punishment as is hereinbefore mentioned. Attempts by life convicts.—2[When any person offending under this section is under sentence of 1[imprisonment for life], he may, if hurt is caused, be punished with death.]*

***Section 166 of Indian Penal Code reads thus;***

*166. Public servant disobeying law, with intent to cause injury to any person.—Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.*

***Section 120(B) in The Indian Penal Code***

*1. 120(B). Punishment of criminal conspiracy.—*

*(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, 2. imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.*

*(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.]*

### ***Section 34 in The Indian Penal Code***

*34. Acts done by several persons in furtherance of common intention.—When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.*

### ***Section 109 in The Indian Penal Code***

*109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.—Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence. Explanation.—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.”*



**21. PRAYER:-**

It is therefore humbly prayed that this Hon'ble Court may be pleased to;

- i) Call a report from Inspector-General of Police (IGP) and Incharge of Arthur Road, Jail;
- ii) Take appropriate action under **Section 220 of IPC** against concerned police official for handcuffing the Applicant-accused without any judicial order as has been mandated by Hon'ble Supreme Court in the case of **Re: M. P. Dwivedi's case (1996) 4 SCC 152.**
- iii) Forward a reference of Contempt to Hon'ble Supreme Court against guilty police officer and doctors involved in wilful disregard and defiance of Hon'ble Supreme Court direction in the case of **Common Cause Vs. Union of India (2018) 5 SCC 1**, which prohibits forced medication against the will of a person;
- iv) Direct appropriate action under provisions of **Prevention of (SC & ST) Atrocities Act** as the victim belongs to Schedule Caste Community.
- v) Direct competent authorities to initiate prosecution under **Section 52, 166, 336, 319, 321, 307 r/w 109, 120(B) & 34 of Indian Penal Code** and **Section 51, 54, 55, 56, 58** etc. of Disaster Management Act, 2005 against person, police officers, doctors and anyone who are directly or indirectly involved in the crime by their

act of commission and omission in acting against the directives of the Central Government and unlawfully doing the forced vaccination of the Applicant-accused against his will and without explaining him the death causing side effects of the vaccines and putting the life of applicant in danger.

- vi) Direct the authorities to not to force the Applicant-accused to take second or booster dose of vaccines;
- vii) If subsequently any life threatening side effects occurs then the concerned doctors and police officials be prosecuted under **Section 302, 120(B) & 34, 52 of Indian Penal Code.**
- viii) Direct the State Government to fix the responsibility on officials for granting adequate compensation to the Applicant-accused;
- ix) Give specific direction to the jail authority to insure the safety and protection of the applicant-accused and he shall not be subjected to any pressure for his complaint against the jail authorities and if anything happens to the Applicant then this complaint be treated as his dying declaration and the concerned officials be prosecuted;
- x) Pass any other order which this Hon'ble Court deems fit and proper in the facts and circumstances of the case;

- xi) Pass appropriate direction regarding interim compensation of Rs. 5 Crores to be paid by the State of Maharashtra to Accused;

**Place:** Mumbai

**Date:** 24.08.2021.

**Pankaj A. Koli**

**Through**

**Adv. Abhishek Mishra**

h/s for