Cr.MMO No. 276 of 2014

19.12.2014 **Present**: Mr. Y.P.S. Dhaulta and Mr.Bhim Raj Sharma, Advocates, for the petitioner.

Ms.Meenakshi Sharma and Mr.Rupinder Singh, Additional Advocate Generals with Ms.Parul Negi, Deputy Advocate General, for respondents No. 1 to 4.

Democracy expects openness and openness is a concomitant of a free society and sunlight is the best disinfectant. It cannot be disputed that ordinary rule is that secrecy must be an exception, justifiable only when it is demanded by the requirement of public interest.

2. These observations are being made in context of the present petition which seeks quashment of FIR No. 145 of 2014, dated 29.11.2014, registered under Sections 447 and 341 of the Indian Penal Code (for short 'IPC'), registered at Police Station East, Chhota Shimla. However, the copy of the FIR has not been placed on record. In response to the query as to why the copy of FIR has not been placed on record, the petitioner, who is present in person, has stated that he is senior citizen of 70 years of age and retired as Assistant Commissioner from the Department of Excise and Taxation, Himachal Pradesh. Being a respectable person, he is too scared to go to the Police Station to get a copy of the FIR, because he may be arrested, since the complainant happens to be none other, than the Superintendent of Police at Shimla. He further apprised this Court that he has already applied for the copy of the same through his counsel on 4.12.2014 under the Right to Information Act, 2005, but the copy thereof has not been made

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Whether approved for reporting? Yes.

available to him ostensibly because as per the usual practice, the outer limit of 30 days for supplying information as provided under Section 7 of the Right to Information Act is always considered to be the inner limit by those in the helm of affairs.

3. Indisputably, for the present, there is no provision for providing First Information Report under the codified limit, but then the liberty of an individual is inextricably linked with his right to be aware how he has been booked, under which law and what are the allegations set out against him. Liberty in freedom is the strongest passion of men and many have sacrificed their lives for the cause of liberty.

4. At this stage, it would be appropriate to take note of the various provisions of the Code of Criminal Procedure (for short 'Code'):-

> "***154:- Information in cognizable cases:-***
>
> *(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.*
>
> *(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.*
>
> *(3) Any person, aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information*

discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence."

5. Section 154 of the Code provides for information as to the cognizable cases and investigation of such cases, whereas Section 156 of the Code provides for police officer's power to investigate cognizable cases. After investigation, final report is submitted by the police to the Magistrate having territorial jurisdiction. After completion of investigation and submission of charge-sheet, before trial, the accused is entitled to copies of the police report as provided in Section 207 of the Code. The said Section reads as follows:-

*"207. **Supply to the accused of copy of police report and other documents:-** In any case where the proceedings has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:-*

(i) the police report;

(ii) the first information report recorded under section 154;

(iii) the statements recorded under sub-section (3) of section 161 of all the persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under sub-section (6) of section 173;

(iv) the confessions and statements, if any, recorded under section 164;

(v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (5) of section 173;

Provided that the Magistrate may, after perusing any such part of a statement as is referred to in clause (iii) and considering the reasons given by the police officer for the

request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused.

Provided further that if the Magistrate is satisfied that any document referred to in clause (v) is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court."

6. Section 207 of the Code, therefore, mandates that after completion of investigation and submission of final form before the learned Magistrate, it is the duty of the learned Magistrate to furnish the accused a free copy of the documents, which includes police report, FIR, statements recorded under Sections 161 and 164 of the Code etc. However, this provision comes into play only after the investigation is over and after submission of the final form. Prior to that, as noted above, there is no provision under the Code for an accused to be supplied with a copy of the F.I.R.

7. Now in absence of copy of F.I.R., does the accused have an effective right to defend himself, especially when he is not in possession to know the nature of allegations so that he can approach an appropriate form for obtaining necessary relief for protecting his right and liberty. Is not the copy of FIR a public document?

8. Section 74 of the Indian Evidence Act (for short 'Act') deals with public documents and reads as follows:-

"***74. Public documents. The following documents are public documents:-***

(1) documents forming the acts, or records of the acts:-

(i) of the sovereign authority,

(ii) of official bodies and tribunals, and

(iii) of public officers, legislative, judicial and executive, (of any part of India or of the Commonwealth), or of a foreign country;

(2) public records kept (in any State) of private documents."

9. Section 76 of the 'Act' deals with certified copies of public documents and reads thus:-

*"76. **Certified copies of Public Documents-** Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal frees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies.*

Explanation- Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section."

10. A Division Bench of Allahabad High Court in ***Shyam Lal Vs. State of U.P. and others,*** 1998 Crl.L.J 2879 has ruled that the First Information Report is a public document.

11. In ***Chnnappa Andanappa Siddareddy and other Vs. State,*** 1980 Crl.L.J. 1022 has held thus:-

"The FIR being a record of the acts of the public officers prepared in discharge of the official duty is such a public document as defined under Section 74 of the Evidence Act. Under Section 76 of the Evidence Act, every public officer having the custody of a public document, which any person has a right to inspect is bound to give such person on demand a copy of it on payment of the legal fees therefor."

12. A Division bench of Madhya Pradesh High Court in ***Munna Singh Vs. State of M.P.,*** 1989 Crl.L.J. 580 has opined that a First Information Report is not a privilege document under the Evidence Act.

13. Learned Single Judge of the Calcutta High Court in ***Sardar Dapinder Singh Bath Vs. State of West Bengal*** writ petition (W) No. 5474 of 2007 has held that as soon as an FIR is registered, it becomes a public document and members of the public are entitled to have certified copy thereof. Thus there can be no trace of doubt that FIR is a public document as defined under Section 74 of the Evidence Act.

14. Now once it is concluded that FIR is a public document, then the accused at least should be entitled to the copy thereof. At this stage, it will be advantageous to make reference to a Division Bench of Delhi High Court in ***Court on its own Motion Vs. State,*** Writ Petition (Cr.) Nol. 468 of 2010, wherein the Court was seized with the same question and it was held as follows:-

> *"22. Presently, coming to the entitlement of the accused to get a copy of FIR, we may notice few decisions in the field.* ***In Dhanpat Singh v. Emperor****, AIR 1917 Patna 625, it has been held thus:*
>
> > *"… It is vitally necessary that an accused person should be granted a copy of the first information at the earliest possible state in order that he may get the benefit of legal advice. To put difficulties in the way of his obtaining such a copy is only creating a temptation in the way of the officers who are in possession of the originals."*
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> *23. The High Court of Calcutta in* ***Panchanan Mondal v. The State****, 1971 Crl.L.J. 875 has opined that the accused is entitled to a copy of the FIR on payment of legal fees at any stage. After*

so opining, the learned Judge proceeded to deal with the facet of prejudice in the following terms:

> *"The question of prejudice of the accused on account of the denial of the copy of the FIR at the earlier stage therefore assumes greater importance and on a proper consideration thereof, I hold that it is expedient in the interests of justice that a certified copy of the first information report, which is a public document, should be granted to the accused on his payment of the legal fees therefor at any stage even earlier than the stage of S.173(4) of the Code of Criminal Procedure. At the later stage of accused will have the right to have a free copy but the same would not take away the right he already has in law to have a certified copy of the first information report on payment of the legal fees."*

24. In ***Jayantibhai Lalubhai Patel v. The State of Gujarat****, 1992 Crl. L.J. 2377, the High Court of Gujarat has ruled thus:*

> *"6. …whenever FIR is registered against the accused, a copy of it is forwarded to the Court under provisions of the Code; Thus it becomes a public document. Considering (1) of the provisions of Art.21 of the Constitution of India, (2) First Information Report is a public document in view of S.74 of the Evidence Act; (3) Accused gets right as allegations are made against him under provisions of S.76 of the Indian Evidence Act, and (4) FIR is a document to which S.162 of the Code does not apply and is of considerable value as on that basis investigation commenced and that is the first version of the prosecution, as and when application is made by accused for a certified copy of the complaint, the Court to which it is forwarded should give certified copy of the FIR, if the application and legal fees thereof have been tendered for the same in the Court of law..."*

25. The situation can be viewed from the constitutional perspective. Article 21 of the Constitution of India uses the expression 'personal liberty'. The said expression is not restricted to freedom from physical restraint but Includes a full range of rights which has been interpreted and conferred by the Apex Court in a host of decisions. It is worth noting, the great philosopher Socrates gave immense emphasis on 'personal liberty'. The State has a sacrosanct duty to preserve the liberties of citizens and every act touching the liberty of a citizen has to be tested on the anvil and touchstone of Article 21 of the Constitution of India, both substantive and also on the canons of procedural or adjective law. Article 22 of the Constitution of India also has significant relevance in the present context inasmuch as it deals with protection against

arrest and detention in certain cases. For the sake of completeness, we think it apposite to reproduce Articles 21 and 22 of the Constitution of India:

> *"21. Protection of life and personal liberty- No person shall be deprived of his life or personal liberty except according to procedure established by law.*
>
> *22. Protection against arrest and detention in certain cases –*
>
> *(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.*
>
> *(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.*
>
> *(3) Nothing in clauses (1) and (2) shall apply-*
>
> *(a) to any person who for the time being is an enemy alien; or*
>
> *(b) to any person who is arrested or detained under any law providing for preventive detention.*
>
> *(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless-(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:*
>
> > *Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or*
>
> *(b) such person is detained in accordance with the provisions of any law made by Parliament under subclauses (a) and (b) of clause (7).*
>
> *(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.*

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7) Parliament may by law prescribe-

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

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

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

26. The Constitution Bench in ***Shri Gurbaksh Singh Sibbia and others v. State of Punjab****, (1980) 2 SCC 565 has held thus:*

> *"26. … No doubt can linger after the decision in Maneka Gandhi v. Union of India, (1978) 1 SCC 248, that in order to meet the challenge of Article 21 of the Constitution, the procedure established by law for depriving a person of his liberty must be fair, just and reasonable. Section 438, in the form in which it is conceived by the legislature, is open to no exception on the ground that it prescribes a procedure which is unjust or unfair. We ought, at all costs, to avoid throwing it open to a Constitutional challenge by reading words in it which are not to be found therein."*

27. In ***Gudikanti Narasimhulu v. Public Prosecutor****, (1978) 1 SCC 240, it has been held thus:*

> *"…the issue of bail is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process…. After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of procedure established by law. The last four words of Article 21 are the life of that human right."*

28. In ***Ranjitsing Brahmajeetsingh Sharma v. State of Maharashtra and another****, (2005) 5 SCC 294, while reiterating that presumption of innocence is a human right, the three-Judge Bench has held thus:*

> *"35. …Article 21 in view of its expansive meaning not only protects life and liberty but also envisages a fair procedure. Liberty of a person should not ordinarily be interfered with unless there exit cogent grounds therefor."*

29. In ***State of West Bengal and others v. Committee for Protection of Democratic Rights, West Bengal and others****, (2010) 3 SCC 571, the Apex Court has expressed thus:*

> *"68(ii) Article 21 of the Constitution in its broad perspective seeks to protect the persons of their lives and personal liberties except according to the procedure established by law. The said article in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim. The State has a duty to enforce the human rights of a citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers. In certain situations even a witness to the crime may seek for and shall be granted protection by the State."*

30. In ***Narendra Singh and another v. State of M.P.****, (2004) 10 SCC 699, the Apex Court has observed that presumption of innocence is a human right.*

31. In this context, we may refer with profit the decision in Som ***Mittal v. Government of Karnataka****, (2008) 3 SCC 753, wherein it has been stated thus:*

> *"46. The right of liberty under Article 21 of the Constitution is a valuable right, and hence should not be lightly interfered with. It was won by the people of Europe and America after tremendous historical struggles and sacrifices. One is reminded to Charles Dickens's novel A Tale of Two Cities in which Dr. Manette was incarcerated in the Bastille for 18 years on a mere lettre de cachet of a French aristocrat, although he was innocent."*

32. The Apex Court in ***D.K. Basu v. State of West Bengal****, AIR 1997 SC 610, while emphasizing on personal liberty in a civilized society on the backdrop of constitutional philosophy especially enshrined under Articles 21 and 22(1) of the Constitution of India, has expressed thus:*

> *"22. … The rights inherent in Articles 21 and 22(1) of the Constitution require to be jealously and scrupulously protected. We cannot wish away the problem. Any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. If the functionaries of the Government become law breakers, it is bound to breed contempt for law and would encourage lawlessness and every man would have the tendency to become law unto himself thereby leading to anarchism. No civilised nation can permit that to happen. Does a citizen shed off his fundamental right to*

> *life, the moment a policeman arrests him? Can the right to life of a citizen be put in abeyance on his arrest? These questions touch the spinal cord of human rights jurisprudence. The answer, indeed, has to be an emphatic 'No'. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, undertrials, detenus and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by law."*

In the said case, regard being had to the difficulties faced by the accused persons and keeping in view the concept that the action of the State must be "right, just and fair" and that there should not be any kind of torture, their Lordships issued the following directions:

> *"36. We, therefore, consider it appropriate to issue the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures:*
>
> *(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.*
>
> *(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.*
>
> *(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation center or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.*
>
> *(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.*
>
> *(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.*

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any, present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory, Director, Health Services should prepare such a penal for all Tehsils and Districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and state headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board."

33. Recently, in the decision rendered in ***Siddharam Satlingappa Mhetre v. State of Maharashtra and others*** *(Criminal Appeal No.2271/2010 decided on 2.12.2010), the Apex Court, while dealing with the concept of liberty, has opined thus:*

"41. All human beings are born with some unalienable rights like life, liberty and pursuit of happiness. The importance of these natural rights can be found in the fact that these are fundamental for their proper existence and no other right can be enjoyed without the presence of right to life and liberty.

42. Life bereft of liberty would be without honour and dignity and it would lose all significance and meaning and the life itself would not be worth living. That is why "liberty" is called the very quintessence of a civilized existence.

> *43. Origin of "liberty"' can be traced in the ancient Greek civilization. The Greeks distinguished between the liberty of the group and the liberty of the individual. In 431 B.C., an Athenian statesman described that the concept of liberty was the outcome of two notions, firstly, protection of group from attack and secondly, the ambition of the group to realize itself as fully as possible through the self-realization of the individual by way of human reason. Greeks assigned the duty of protecting their liberties to the State. According to Aristotle, as the state was a means to fulfil certain fundamental needs of human nature and was a means for development of individuals' personality in association of fellow citizens so it was natural and necessary to man. Plato found his "republic" as the best source for the achievement of the self-realization of the people."*

After so holding, their Lordships referred to various jurisprudential thought expounded by eminent jurists which we think it condign to reproduce:

> *"53. Roscoe Pound, an eminent and one of the greatest American Law Professors aptly observed in his book 'The Development of Constitutional Guarantee of Liberty" that whatever, `liberty' may mean today, the liberty is guaranteed by our bills of rights, "is a reservation to the individual of certain fundamental reasonable expectations involved in life in civilized society and a freedom from arbitrary and unreasonable exercise of the power and authority of those who are designated or chosen in a politically organized society to adjust that society to individuals."*
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> *54. Blackstone in "Commentaries on the Laws of England", Vol.I, p.134 aptly observed that "Personal liberty consists in the power of locomotion, of changing situation or moving one's person to whatsoever place one's own inclination may direct, without imprisonment or restraint unless by due process of law".*
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> *X X X X X X X X*
>
> *57. Eminent former Judge of this Court, Justice H.R. Khanna in a speech as published in 2 IJIL, Vol.18 (1978), p.133 observed that "liberty postulates the creation of a climate wherein there is no suppression of the human spirits, wherein, there is no denial of the opportunity for the full growth of human personality, wherein head is held high and there is no servility of the human mind or enslavement of the human body".*

Thereafter, their Lordships referred to life and liberty under our Constitution and opined thus:

> *"61. Life and personal liberty are the most prized possessions of an individual. The inner urge for freedom is a natural phenomenon of every human being. Respect for life, liberty and property is not merely a norm or*

> *a policy of the State but an essential requirement of any civilized society."*

In this regard, we think it seemly to reproduce paragraphs 71 and 72 of the said decision:

> *"71. The object of Article 21 is to prevent encroachment upon personal liberty in any manner. Article 21 is repository of all human rights essentially for a person or a citizen. A fruitful and meaningful life presupposes full of dignity, honour, health and welfare. In the modern "Welfare Philosophy", it is for the State to ensure these essentials of life to all its citizens, and if possible to non-citizens. While invoking the provisions of Article 21, and by referring to the oft-quoted statement of Joseph Addision, "Better to die ten thousand deaths than wound my honour", the Apex court in Khedat Mazdoor Chetana Sangath v. State of M.P. and Others (1994) 6 SCC 260 posed to itself a question "If dignity or honour vanishes what remains of life"? This is the significance of the Right to Life and Personal Liberty guaranteed under the Constitution of India in its third part.*
>
> *72. This court in Central Inland Water Transport Corporation Ltd. and Another v. Brojo Nath Ganguly and Another (1986) 3 SCC 156 observed that the law must respond and be responsive to the felt and discernible compulsions of circumstances that would be equitable, fair and justice, and unless there is anything to the contrary in the statute, Court must take cognizance of that fact and act accordingly."*

34. From the aforesaid enunciation of law, it is graphically vivid that fair and impartial investigation is a facet of Article 21 of the Constitution of India and presumption as regards the innocence of an accused is a human right. Therefore, a person who is booked under criminal law has a right to know the nature of allegations so that he can take necessary steps to safeguard his liberty. It is imperative in a country governed by Rule of Law as crusaders of liberty have pronounced 'Give me liberty, or give me death'. Not for nothing it has been said that when a dent is created in t he spine of liberty, it leads to a rainbow of chaos.

35. At this juncture, we may profitably refer to a part of the first Menon & Pai Foundation Law Lecture delivered at Cochin by Lord David Pannick, Queen's Counsel, wherein he has spoken thus:

> *"We should respect human rights in difficult times as well as in tolerable times because we are battling against terrorism precisely so that we can maintain a*

> *democratic society in which we enjoy individual liberty, the right to debate and dissent, and all the other freedoms that we cherish and which the terrorists abhor. To discard those values even temporarily, devalues all of us. And it would hand a victory to the terrorists, part of whose goal is to destroy the values we cherish and they despise"*

The aforesaid luminously throws the laser beam on the cherished value of liberty.

36. In this context, it is apt to note that the right to know has its own signification. The protagonists of modern democracy plead and preach with immense enthusiasm and rationally support the principle that the collective has a basic and fundamental right to know about things which are supposed to be known by the society. In ***The State of Uttar Pradesh v. Raj Narain and others****, AIR 1975 SC 865, while dealing with a claim of privilege under Section 123 of the Evidence Act, their Lordships have held as follows:*

> *"41. The several decisions to which reference has already been made establish that the foundation of the law behind Sections 123 and 162 of the Evidence Act is the same as in English law. It is that injury to public interest is the reason for the exclusion from disclosure of documents whose contents if disclosed would injure public and national interest. Public interest which demands that evidence be withheld is to be weighed against the public interest in the administration of justice that courts should have the fullest possible access to all relevant materials. When public interest outweighs the latter, the evidence cannot be admitted. The court will proprio motu exclude evidence the production of which is contrary to public interest. It is in public interest that confidentiality shall be safeguarded. The reason is that such documents become subject to privilege by reason of their contents. Confidentiality is not a head of privilege. It is a consideration to bear in mind. It is not that the contents contain material which it would be damaging to the national interest to divulge but rather that the documents would be of class which demand protection. (See 1973 AC 388 (supra) at p. 40). To illustrate, the class of documents would embrace Cabinet papers, Foreign Office dispatches, papers regarding the security to the State and high level inter-departmental minutes. In the ultimate analysis the contents of the document are so described that it could be seen at once that in the public interest the documents are to be withheld. (See Merricks v. Nott Bower. [1964] 1 All ER 717."*

We have referred to the same only to show how a larger interest will prevail over the private interest. It is basically in the realm of the doctrine of striking of balance.

37. In ***S.P. Gupta v. Union of India and others****, AIR 1982 SC 149, their Lordships opined thus:*

> *"73. …Now we agree with the learned counsel on behalf of the petitioners that this immunity should not be lightly extended to any other class of documents, but, at the same time, boundaries cannot be regarded as immutably fixed. The principle is that whenever it is clearly contrary to the public interest for a document to be disclosed, then it is in law immune from disclosure. If a new class comes into existence to which this principle applies, then that class would enjoy the same immunity."*

Thereafter, their Lordships proceeded to state as follows:

> *"74. …It is necessary to repeat and re-emphasize that this claim of immunity can be justifiably made only, if it is felt that the disclosure of the document would be injurious to public interest. Where the State is a party to an action in which disclosure of a document is sought by the opposite party, it is possible that the decision to withhold the document may be influenced by the apprehension that such disclosure may adversely affect the head of the department or the department itself or the minister or even the Government or that it may provoke public criticism or censure in the legislature or in the press, but it is essential that such considerations should be totally kept out in reaching the decision whether or not to disclose the document. So also the effect of the document on the ultimate course of the litigation whether its disclosure would hurt the State in its defence - should have no relevance in making a claim for immunity against disclosure. <u>The sole and only consideration must be whether the disclosure of the document would be detrimental to public interest in the particular case before the Court."</u>*
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> *[Emphasis supplied]*

38. In ***Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers Bombay Pvt. Ltd. and others****, AIR 1989 SC 190, their Lordships, while dealing with the said issue, have ruled thus:*

> *"9. Elaborate arguments were advanced by counsel for both sides. It was contended that there was no contempt of Courts involved herein and furthermore, it was contended that pre-stoppage of newspaper article or publication on matters of public importance was uncalled for and contrary to freedom of Press enshrined in our Constitution and in our laws. The publication was on a public matter, so public debate cannot and should not be stopped. On the other hand, it was submitted that due administration of justice must be unimpaired. We have to balance in the words of Lord Scarman in the House of WP(Crl.) No.468/2010 Page 26 of 35 Lords in Attorney-*

> *General v. British Broadcasting Corporation, 1981 A.C. 303 at page 354, between the two interests of great public importance, freedom of speech and administration of justice. A balance, in our opinion, has to be struck between the requirements of free press and fair trial in the words of the Justice Black in Harry Bridges v. State of California, (86 Led 252 at page 260).”*

39. Thereafter, their Lordships referred to the decisions rendered in ***Express Newspapers (Pvt.) Ltd. v. The Union of India****, AIR 1958 SC 578,* ***State of Bombay v. R.M.D. Chamarbaugwala,*** *AIR 1957 SC 699,* ***In Re:*** *P.C. Sen, AIR 1970 SC 1821,* ***C.K. Daphtary v. O.P. Gupta****, AIR 1971 SC 1132,* ***Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India****, AIR 1986 SC 515,* ***Harry Bridges v. State of California****, 1941-86 Law ed 192,* ***Abrams v. United States****, (1918) 63 Law ed 1173,* ***John D. Pennekamp v. State of Flordia,*** *(1945) 90 Law ed 1295,* ***Nebraska Press Association v. Hugh Stuart,*** *(1976) 49 Law ed 2d 683,* ***Attorney General v. British Broadcasting Corpn****., (1979) 3 All ER 45,* ***Attorney General v. B.B.C.****, 1981 AC 303,* ***Attorney General v. Times Newspapers Ltd.,*** *(1974) AC 273,* ***Bread Manufacturers Ltd.****., (1937) 37 SR (NSW) 242 and eventually came to hold as under:*

> *“38. In this peculiar situation our task has been difficult and complex. The task of a modern Judge, as has been said, is increasingly becoming complex. Furthermore, the lot of a democratic Judge is heavier and thus nobler. We cannot escape the burden of individual responsibilities in a particular situation in view of the peculiar facts and circumstances of the case. There is no escape in absolute. Having regard, however, to different aspects of law and the several decisions, by which though we are not bound, except the decisions of this Court referred to hereinbefore, about which we have mentioned, there is no decision dealing with this particular problem, we are of the opinion that as the Issue is not going to affect the general public or public life nor any jury is involved, it would be proper and legal, on an appraisal of the balance of convenience between the risk which will be caused by the publication of the article and the damage to the fundamental right of freedom of knowledge of the people concerned and the obligation of Press to keep people informed, that the injunction should not continue any further.”*

40. In ***Dinesh Trivedi, M.P. and others v. Union of India and others****, (1997) 4 SCC 306, while dealing with the facet of right to know, their Lordships have expressed thus:*

> *“16. In modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the Government which, having been*

elected by them, seeks to formulate sound policies of governance aimed at their welfare. However, like all other rights, even this right has recognised limitations; it is, by no means, absolute. This Court has had many an opportunity to express itself upon this issue. In the case of State of U.P. v. Raj Narain, (1975) 4 SCC 428, Mathew, J. eloquently expressed this proposition in the following words:

> *"In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. To cover with veil of secrecy, the common routine business, is not in the interest of the public. Such secrecy can seldom be legitimately desired. It is generally desired for the purpose of parties and politics or personal selfinterest or bureaucratic routine. The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption."*
>
> *[Emphasis added]*

41. Be it noted, in the said case, their Lordships referred to the decision in S.P. Gupta (supra) opining that the ordinary rule is that secrecy must be an exception, justifiable only when it is demanded by the requirement of public interest and eventually came to hold that to ensure the continued participation of the people in the democratic process, they must be kept informed of the vital decisions taken by the Government and the basis thereof. Democracy, therefore, expects openness and openness is a concomitant of a free society and sunlight is the best disinfectant. After so stating, their Lordships have proceeded to state as follows:

> *"19. But it is equally important to be alive to the dangers that lie ahead. It is important to realise that undue popular pressure brought to bear on decision-makers in Government can have frightening side-effects. If every action taken by the political or executive functionary is transformed into a public controversy and made subject to an enquiry to soothe popular sentiments, it will undoubtedly have a chilling effect on the independence of the decision-maker who may find it safer not to take any decision. It will paralyse the entire system and bring it to a grinding halt. So we have two conflicting situations almost*

enigmatic and we think the answer is to maintain a fine balance which would serve public interest."

15. Articles 21 and 22 of the Constitution of India provide that liberty of a citizen cannot be interfered or curtailed lightly by the authorities, which reads as follows:-

*"21. **Protection of life and personal liberty:-** No person shall be deprived of his life or personal liberty except according to procedure established by law.*

*22. **Protection against arrest and detention in certain cases-***

(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

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

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

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

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

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

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

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

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

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

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7) Parliament may by law prescribe-

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

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

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

16. The expression 'personal liberty' is not restricted to freedom from physical restraint but includes a full range of rights which has been interpreted and conferred by the Apex Court in a host of decisions. The State has a sacrosanct duty to preserve the liberties of citizens and every act touching the liberty of a citizen has to be tested on the anvil and touchstone of Article 21 of the Constitution of India, both substantive and also on the cannons of procedural or adjective law.

17. At this stage, it has be to be noted that a Right to Information Act, 2005 is in place, which has been enacted in order to ensure secure and more effective access to information. It is an act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authorities. It is specifically stated that democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed.

18. The Division bench of Delhi High court after taking into consideration large number of cases and Rules, has held that the accused is entitled to receive a copy of FIR even from the police, since FIR was a public document and therefore, persons who is in custody of the same is liable to give a copy thereof to the person who has interest in the same or whose interest is adversely affected by the same.

19. The Delhi High Court then issued directions regarding making available copy of First Information Report to the accused at an earlier state, as prescribed under Section 207 Cr.P.C. and also uploading the copies of FIR on the official website of the police. The decision of Delhi High Court inturn was followed by a Division Bench of Orrisa High Court in ***Arun Kumar Budhia Vs. State of Orissa and another*** (W.P.(Crl.) No. 1096 of 2011), and based on those two decisions, the Maharashtra Chief Information Commissioner (SCIC)

directed the Director General of Police to publish all the First Information Reports (FIRs) except those decided by an Officer of Deputy Superintendent of Police level on its website. The Division Bench judgment of Delhi High Court has subsequently been followed by the Punjab and Haryana High Court and directions were issued to upload the FIRs on the official website of Police Department w.e.f. 1st July, 2013.

20. Now once it cannot be disputed that FIR is a public document, then why the same should be kept out from public domain. Notably, the FIRs are already uploaded on the official website of the Police Department, but with restrictive usage for intra departmental purpose only. Being a public document, the FIR cannot be withheld from public domain and would not only lend credence but would bring transparency in the working of the Police Department in case the same is put in public domain.

21. In this background, it has become imperative that certain directions be issued. Therefore, taking cue from the judgment passed by the learned Division Bench of Delhi High Court, the following directions are issued:-

(i) The accused is entitled to get a copy of the First Information report at an earlier stage as prescribed under Section 207 of the Cr.P.C.

(ii) An accused who has reasons to suspect that he has been roped in a criminal case and his name may be finding place in a First Information Report can submit an application through his representative/agent/parokar for grant of a certified copy before the concerned police officer or to the Superintendent of Police on payment of such fee which is payable for obtaining such a copy

from the court. On such application being made, the copy shall be supplied within twenty-four hours.

(iii) Once the First Information Report is forwarded by the police station to the concerned Magistrate or any Special Judge, on an application being filed for certified copy on behalf of the accused, the same shall be given by the court concerned within two working days. The aforesaid direction has nothing to do with the statutory mandate inhered under Section 207 of the Cr.P.C.

(iv) The copies of FIR, unless reasons recorded regard being had to the nature of the offence that the same is sensitive in nature, should be uploaded on the Himachal Pradesh Police website within twenty-four hours of lodging of the FIR so that the accused or any person connected with the same can download the FIR and file appropriate application before the court as per law for redressal of his grievances.

(v) The decision not to upload the copy of the FIR on the website of H.P. Police shall not be taken by an officer below the rank of Deputy Superintendent of Police and that too by way of a speaking order. A decision so taken by the Deputy Superintendent of Police shall also be duly communicated to the Area magistrate.

(vi) The word 'sensitive' apart from the other aspects which may be thought of being sensitive by the competent authority as stated hereinbefore would also include concept of privacy regard being had to the nature of the FIR.

(vii) In case a copy of the FIR is not provided on the ground of sensitive nature of the case, a person grieved by the said action, after disclosing his identity, can submit a representation with the Superintendent of Police who

shall constitute a committee of three high officers and the committee shall deal with the said grievance within three days from the date of receipt of the representation and communicate it to the grieved person.

(viii) The Superintendent of Police shall constitute the committee within eight weeks from today.

(ix) In cases wherein decisions have been taken not to give copies of the FIR regard being had to the sensitive nature of the case, it will be open to the accused/his authorized representative/parokar to file an application for grant of certified copy before the court to which the FIR has been sent and the same shall be provided in quite promptitude by the concerned court not beyond three days of the submission of the application.

(x) The directions for uploading the FIR on the website of H.P. Police shall be given effect from 26.01.2015.

22. A copy of this order be sent to the Chief Secretary, Principal Secretary (Home) and the Director General of Police to take appropriate action to effectuate the directions in an apposite manner so that grievances of this nature do not travel to Court.

23. Compliance report on behalf of the Chief Secretary to the Government of Himachal Pradesh be filed before this Court on or before ***30.1.2015*** when the case for this purpose shall be listed before the Hon'ble Vacation Judge.

Notice to respondent No. 5 returnable on ***8.1.2015*** be issued. Steps for service of said respondent be taken within one day.

(Tarlok Singh Chauhan),
Judge.

19th December, 2014
(KRS)