

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
[ORDER XXII RULES 2(1) OF SCR 2013]

SPECIAL LEAVE PETITION
[UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA]

S.L.P. (CRL.) NO. _____ OF 2020
(WITH PRAYER OF INTERM RELIEF)

[ARISING OUT OF THE FINAL ORDER DATED 9 NOVEMBER 2020 PASSED BY THE HON'BLE DIVISION BENCH OF HIGH COURT OF JUDICATURE AT BOMBAY IN CRIMINAL APPLICATION STAMP NO.4278 OF 2020 IN CRIMINAL WRIT PETITION STAMP NO.4132 OF 2020]

IN THE MATTER OF:-	POSITION OF PARTIES	
	HIGH COURT	SUPREME COURT
ARNAB MANORANJAN GOSWAMI	PETITIONER	PETITIONER
VERSUS		
1. THE STATE OF MAHARASHTRA Through its Secretary Home Department Mantralaya MUMBAI – 400032 MAHARASHTRA	RESPONDENT NO.1	RESPONDENT NO.1
2. STATION HOUSE OFFICER Alibaug Police Station DISTRICT RAIGAD MAHARASHTRA	RESPONDENT NO.2	RESPONDENT NO.2
3. PARAM BIRSINGH Commissioner of Police Mumbai New Administrative Building 4 th Floor, LT Marg MUMBAI – 400001 MAHARASHTRA	RESPONDENT NO.3	RESPONDENT NO.3

4. UNION OF INDIA Through its Secretary Ministry of Home Affairs North Block NEW DELHI 110001 DELHI	RESPONDENT NO.4	RESPONDENT NO.4
5. AKSHAYATA ANVAY NAIK 901 Rishabh Tower, Senapati Bapat Marg, Opp. India Bulls Finance Centre Prabhadevi MUMBAI – 400 025 MAHARASHTRA	RESPONDENT NO.5	RESPONDENT NO.5

**TO
THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS
COMPANION JUSTICES OF THE HON'BLE SUPREME
COURT OF INDIA.**

**THE HUMBLE PETITION OF THE
PETITIONER ABOVE NAMED**

MOST RESPECTFULLY SHEWETH:

1. The present Special Leave Petition is being filed under Article 136 of the Constitution of India, inter alia, challenging the final Judgment and Order dated 9 November 2020 passed by the Division Bench of the Hon'ble High Court of Judicature at Bombay 9 November 2020 passed by the Division Bench of the Hon'ble High Court of Judicature at Bombay in Criminal Application Stamp No.4278 of 2020 in Criminal Writ Petition Stamp No.4132 of 2020 whereby the Hon'ble Bombay High Court rejected the prayer for ad-interim relief of the Petitioner for

bail in FIR, being CR No. 0059 of 2018, dated 5 May 2018, registered at Alibaug Police Station, Raigad, under Sections 306 and 34 of the Indian Penal Code, 1860 (**FIR No. 59 of 2018**).

2. QUESTIONS OF LAW

The present petition raises substantial question of law of general public importance which arise for consideration by this Hon'ble Court, inter alia as under:-

- (i) Whether the Hon'ble Bombay High Court by its order dated 9 November 2020 erred in law by refusing bail to the Petitioner in connection with FIR No. 59 of 2018, especially when the Petitioner's arrest was illegal, mala-fide and politically motivated as evident from the multifarious proceedings initiated against him, his news channels, Republic TV and R. Bharat at the behest of the political dispensation in the State of Maharashtra and the Respondent Nos. 1 and 3 ?
- (ii) Whether the Hon'ble Bombay High Court erred in law by refusing bail to the Petitioner by its order dated 9 November 2020, especially when the Ld. Chief Judicial

Magistrate, Raigad, Alibaug in its remand order dated 4 November 2020 had observed that the arrest of the Petitioner and other accused in FIR No. 59 of 2018 was illegal and there were no grounds made out for granting police custody of the Petitioner and other accused?

- (iii) Whether the Hon'ble Bombay High Court erred in law by refusing bail to the Petitioner by its order dated 9 November 2020, especially when investigation into FIR No. 59 of 2018 had been closed by a closure/ 'A' summary report filed by the police and accepted by the Ld. Chief Judicial Magistrate, Raigad, Alibaug by an order dated 16 April 2019?
- (iv) Whether the Petitioner could have been arrested for the offences alleged in FIR No. 59 of 2018 without any judicial order setting-aside of Ld. Chief Judicial Magistrate, Raigad, Alibaug's order dated 16 April 2019 by which the closure report was accepted in the matter or in the absence of any order directing reinvestigation or further investigation in the matter?
- (v) Whether the Petitioner could have been arrested in connection with FIR No. 59 of 2018 without any prior

summons or notice in the matter from the Mumbai police under the relevant provisions of law, especially when investigation into FIR No. 59 of 2018 was closed by the A summary report accepted by the Ld. Chief Judicial Magistrate?

- (vi) Whether the Hon'ble Bombay High Court in its order dated 9 November 2020 erred in law by omitting to consider the assembly discussions on the floor of the Maharashtra legislative assembly on 8 September 2020 wherein certain cabinet ministers had called for the arrest of the Petitioner in connection with FIR No. 59 of 2018, demonstrating that the arrest of the Petitioner was mala-fide and politically motivated?
- (vii) Whether the Hon'ble Bombay High Court in its order dated 9 November 2020 failed to consider the settled law and judicial precedents under Section 306 IPC in not appreciating that the Petitioner's detention is unjustified and the transaction was purely commercial between two corporate entities and there is nothing on record to suggest that the Petitioner had provoked or incited or encouraged the deceased (Mr. Anvay Naik) to commit

suicide, nor there is anything to show that the Petitioner had committed any act which was proximate to the demise of the Deceased?

- (viii) Whether the balance of convenience is in favour of the Petitioner being released on bail as his arrest and continued detention is illegal and there is no judicial order setting-aside the Ld. Chief Judicial Magistrate, Raigad, Alibaug's order dated 16 April 2019 by which the closure report was accepted or in the absence of an order directing reinvestigation or further investigation in the matter?
- (ix) Whether an investigation which is finally closed can be reopened by the State by an executive order, absent any judicial order?
- (x) Whether the Hon'ble High Court could have finally decided the question that investigation can be reopened even after closure of a matter without a judicial order?

3. **DECLARATION IN TERMS OF RULE 2(2)**

The Petitioner states that no other petition seeking leave to appeal has been filed by him against the interim Judgment and Order dated 9 November 2020 passed by the Division Bench of the Hon'ble High Court of Judicature at Bombay in Criminal Application Stamp No.4278 of 2020 in Criminal Writ Petition Stamp No.4132 of 2020.

4. **DECLARATION IN TERMS OF RULE 4**

The Annexures, being Annexure P/1 to Annexure P/10 produced along with the present Special Leave Petition are true copies of the pleadings/documents which formed part of the records of the instant case.

GROUND:

Leave to appeal is sought for on the following grounds:

- A. BECAUSE the Hon'ble High Court has finally decided the Writ Petition against the Petitioner even though it is titled as an interim order. On various aspects, the Hon'ble High Court has rendered final finding even though the only

prayer and arguments advanced were on the question of bail.

- B. BECAUSE the Hon'ble High Court erred in coming to the conclusion that power under Article 226 of the Constitution should not be exercised when there is an alternative efficacious remedy.
- C. BECAUSE the Hon'ble High Court erred in holding that in the case of ***State of Telangana*** it was not held that power under Article 226 of the Constitution cannot be exercised to grant bail to a petitioner in a case where the prayer is for quashing.
- D. BECAUSE the Hon'ble High Court has erroneously held based on a submission by the State that the Writ Petition was not maintainable because the Petitioner was in judicial custody at the time of filing the Habeas Corpus petition. In this regard, it is submitted that the prayer included a prayer for quashing the proceeding which is clearly maintainable.

- E. BECAUSE the Hon'ble High Court erred in relegating the Petitioner to a remedy under Section 439 of the CrPC when the case involves personal liberty and after giving final findings in the Writ Petition itself.
- F. BECAUSE the Hon'ble High Court erred that even at the interim stage final findings have been returned on the question of "A" Summary report and the Hon'ble High Court has held that even where a case is closed the power of investigation under Section 173(8) CrPC remains despite the order not being set aside by a judicial forum.
- G. BECAUSE the Hon'ble High Court having come to the conclusion that an investigation under Section 173(8) CrPC is possible even after the acceptance of the closure report, has therefore virtually concluded that the arrest of the Petitioner is legal.
- H. BECAUSE the Hon'ble High Court has relied on a noting by the Magistrate that she has "*seen and find*" the report of the Crime Investigation Branch, Alibag. This endorsement does not amount to setting aside the earlier

order dated 16.04.2019 and in any case, the Learned Magistrate could not have reviewed the order because of Section 362 CrPC.

- I. BECAUSE the Hon'ble High Court did not even advert to the judgments such as ***Vinay Tyagi v. Irshad Alia***; (2013) 5 SCC 762 (Para 40.6 and 49) which suggest that once a closure report is accepted, the curtains come down on the case. Therefore, it is an error to permit the police to reopen the investigation under Section 173(8) CrPC without a judicial order for reinvestigation.
- J. BECAUSE the Hon'ble High Court erred in not dealing with the order of the CJM, raigad, Alibaug which was placed in great detail at the time of final arguments.
- K. BECAUSE the entire investigation and consequent arrest of the Petitioner are completely illegal, and the illegality continues to perpetrate every moment constituting gross violations under Article 21 of the Constitution of India. The Hon'ble Bombay High Court by way of the impugned order has provided a stamp of approval to this illegal

investigation. The Petitioner submits therefore, unless this illegality is immediately interfered and set aside by this Hon'ble Court, this will result in a bail hearing only on facts being decided on the foundation of an illegal investigation.

L. BECAUSE in addition to the grossly illegal and invalid investigation and consequent arrest, the police has proceeded to pray for the Petitioner's police custody add insult to injury the Police have prayed for Police Custody because of this illegal investigation. This ground is only available now before this Hon'ble Court relying on the doctrine of alternative remedy not being an impediment where there are such violations of fundamental rights under Article 21 of the Constitution of India. The Petitioner has not prayed for bail on the ground of violation of Article 21 and cannot pray for bail before the Sessions Court on this ground. This illegality must stop just now.

M. BECAUSE the reasoning of the impugned judgment is from para 31 at Page 19 onwards. However, till para 37 at page 33, the Hon'ble Court has dealt with the Habeas

Corpus law when it was categorically made clear that we were not pressing that prayer and were interested only in the prayers for quashing of the case and the investigation and as a sequitur thereto for the grant of interim relief like bail.

N. BECAUSE despite the Judgments of ***Girish Suneja, Asian Resurfacing*** and ***Kartar Singh*** which specifically authorize the High Court to grant bail in Writ Jurisdiction, the High Court relies on the Judgment of ***State of Telangana vs Habib Abdulla Jeelani*** (2017) 2 SCC 779; and particularly paras 13, 14 and 20 to hold that proceedings under Article 226 of the Constitution of India are not to be converted into proceedings for Anticipatory Bail under section 438 of CrPC and that the same principle will apply to section 439 of CrPC (Paras 44 and 45 of the order at page 37 and 38) .

O. BECAUSE the Hon'ble High Court overlooked the fact that in fact that this view was completely wrong and the High Court ignored a binding precedent of a coordinate

bench in **Raju Ram Purohit vs UOI; 2018 SCC Online BOM 2262 (Paras 3 to 7 and particularly para 4).**

- P. **BECAUSE** in *UPSC vs Papaiah, (1997) 7 SCC 614*, this Hon'ble Court categorically dealt with a case where the first informant was not given notice or heard by the Magistrate while accepting A summary report and clearly took a view that the informant could approach the Magistrate under section 173 (8) of the CrPC and the passing of further Judicial orders was contemplated in a situation like this.
- Q. **BECAUSE** the Hon'ble Bombay High Court by its order dated 9 November 2020 erred in law by refusing interim bail to the Petitioner in connection with FIR No. 59 of 2018, especially when the Petitioner's arrest was illegal, mala-fide and politically motivated as evident from the multifarious proceedings initiated against him, his news channels, Republic TV and R. Bharat at the behest of the political dispensation in the state of Maharashtra and the Respondent Nos. 1 and 3.

- R. BECAUSE there is an error apparent on the face of the record in as much as the impugned order dated 9 November 2020 records that - *There is no dispute that as on the date of filing of the petition, there was already an order of the jurisdictional Magistrate for remand of the petitioner in custody.* – and proceeds to deal with the matter based on this erroneous understanding. The Hon'ble High Court has failed to appreciate that the arrest of the Petitioner on the morning of 4 November at around 7:45 A.M. in connection with the FIR No. 59 of 2018, was illegal, mala-fide and politically motivated, malicious and without due course to the process of law.
- S. BECAUSE the Hon'ble High Court in the impugned order dated 9 November 2020 has completely erred in law and facts in as much as it failed to appreciate that at the time of filing the writ petition before the Hon'ble High Court (2.30 PM on 4 November 2020), the Petitioner was not even produced before the Ld. CJM, Raigad and therefore the question of the existence of an order of the jurisdictional Magistrate for remand of the Petitioner in custody does not and cannot arise. In fact, the Petition

was filed on 4 November 2020 at around 2.30 PM and was mentioned for an urgent listing by the Petitioner's advocate at 4:30 P.M. This is absolutely contrary to the remand order dated 7 November 2020 passed by the Ld. Chief Judicial Magistrate, Alibaug, Raigad which clearly records that the Petitioner was produced before the said court at 5.15 P.M.

- T. BECAUSE the Hon'ble Bombay High Court in its impugned order dated 9 November 2020 erred in law by refusing interim bail to the Petitioner, especially when the Ld. Chief Judicial Magistrate, Raigad, Alibaug in its remand order dated 4 November 2020 had observed that the arrest of the Petitioner and other accused in FIR No. 59 of 2018 was *illegal* and there were no grounds made out for granting police custody of the Petitioner and other accused. Relevant portions of the remand order are extracted below:

"18. After taking note of the reasons of objections to police custody presented by accused 1 to 3, it seems that the arrest of the accused itself is illegal. After examining the documents closely, the incident that occurred, the death of the 2 people, the relation between the two people, also the relation with the accused should be

established before seeking police custody. If the sequence of the incident is constant only then can the accused be linked to the incident and the police custody can be accepted. If for the sake of arguments, we consider that accused number 1 to 3 were yet to pay up, and if contractors and others were lining up at deceased Anvay Naik's, then why did Kumudini Naik commit suicide? Did she even commit suicide? There is no satisfactory answer to this from the prosecution. **The reason behind Kumudini Naik's death, the connection with Anvay Naik's death and its link with the three accused - this chain has not been completely established.**

19. How was the previous investigation incomplete? What were the shortcomings in it? And why were there shortcomings? **There has been no strong reason or evidence from the prosecution over this and that's why police custody can't be justified.**

...

21. As per the existing laws, for the police custody, it is necessary to get strong evidence and important material must be recovered from the accused. **The evidence with which the accused has to be confronted in police custody, has to be with police and there should be strong evidence. But the reasons given to demand police custody of the accused, show that there is no material with which the accused will be confronted with. The reason mentioned in the remand application are of these nature - e-mail, folder, the forensic report, different work orders, list of vendors, Name and addresses, bank accounts and the details, three companies of the accused and deceased's company, the different contracts between them, the work orders, its evaluation, the financial transactions, debit notes, the letters exchanged, financial and business dealings. Applicant's demand for police custody**

is based on technical reasons and documents. No evidence has been presented to justify demand for police custody....

24. Like I said earlier, nothing has been recovered from the accused. Whatever has been recovered has been recovered from the deceased and the complainant. Prima facie, the background/basis if the crime cannot be established. Similarly, prima facie, the link between the incident and its connection to the accused cannot be established. On these basis, when there is no evidence in a case 'A' summary in the case is accepted. When the previous statement is in force, the applicant has restarted the investigation but there is no correct, independent and legal reason to grant police custody. Similarly, the role of each accused hasn't been mentioned. In that connection, it won't be correct to probe it vaguely. I would like to mention again that, because there was no solid evidence of the incident that took place in the year 2018, there was an 'A' summary report and that's why there is no solid legal ground to grant police custody of the three accused and that's why I think it would be correct to reject demand for police custody." **[emphasis supplied]**

- U. BECAUSE the Hon'ble High Bombay Court failed to appreciate that investigation into FIR No. 0059 of 2020 had already been closed as the Ld. Chief Judicial Magistrate, Raigad- Alibaug had accepted the closure/A summary report by an order dated 16 April 2019. Absent any judicial order directing reinvestigation in the matter or setting-aside the order dated 16 April 2019 by which A

summary report was accepted by the Ld. Chief Judicial Magistrate, Raigad, Alibaug, the reinvestigation of the matter by the Mumbai police and the arrest of the Petitioner was mala-fide, politically motivated and bad in law. As would appear from the facts of this case, the Respondent No. 3 at the behest of political dispensation in Maharashtra and in particular Mr. Anil Deshmukh, the incumbent Home Minister, has acted on the basis of his orders for reinvestigating the FIR No. 59 of 2018. The Petitioner humbly submits that the Home Minister or any member of the Executive is not empowered in law to order re-investigation of a case which has been closed by a judicial order. It is only a superior court which has the power to pass such a direction.

- V. BECAUSE the Hon'ble High Court has also completely erred in holding that:

"From the above provisions, it would thus be seen that exercise of supervisory powers of superintendence of the police force throughout the State of Maharashtra vests and is exercisable by the State Government and any control, direction exercisable by any officer or any member of the police force shall be subject to such superintendence. The State Government, therefore, in exercise of its powers directed the local Crime

Investigation Branch, Raigad – Alibag to conduct further investigation of the said offence. Though the learned Senior Advocate for the petitioner has pointed out that the State Government has issued directions for reinvestigating the matter, which, according to him, is not permissible, however, we find that when report was submitted before the jurisdictional Magistrate, the concerned Investigating Officer has correctly understood it to mean a further investigation and accordingly made the submission. The power of superintendence has been explained by the hon'ble Supreme Court in the case of State of Bihar vs. J.A.C. Saldanha. Paragraph 17 of the said case, which is relevant, reads thus:

....

55. Thus, there is no manner of doubt in our minds that the State Government can always direct a further investigation to the concerned police officers, as done in the present case.”

- W. BECAUSE the Hon'ble High Court failed to appreciate that on the face of it there could not have been a case made out under Section 306 IPC in as much as the underlying contract was between two corporate entitled and the accused was not even a contractual party to it. Such a fact should have been borne in mind while considering the grant of interim-relief as sought by the Hon'ble Court.

- X. BECAUSE the Hon'ble High Court also misread the judgment of this Hon'ble Court in ***Jagisha Arora v. State of UP*** (WP (Cri.) No. 164 of 2019) by restricting its application to only the relevant provisions of the IPC discussed in the said case as opposed to applying its principles as are equally applicable in the present case.
- Y. BECAUSE the Hon'ble High Court also ignored the apparent mala-fide of the state machinery in re-initiating an illegal investigation for the sole purpose of making an illegal arrest of the Petitioner.
- Z. BECAUSE the Hon'ble High Court ought to have exercised its jurisdiction to grant bail in the exercise of its powers under Article 226 of the Constitution as the Petitioner's arrest was illegal, politically motivated and bad in law and the Petitioner ought not to have been relegated to pursue his remedy under Section 439 CrPC. The Hon'ble High Court's power to grant bail in extraordinary circumstances is well recognized in law as held by this Hon'ble Court in ***Girish Kumar Surneja v. CBI*** (2017) 14 SCC 809 and ***Kartar Singh v. State of Punjab*** (1994) 3

SCC 569. The Hon'ble Bombay High Court failed to appreciate in cases of glaring cases of deprivation of liberty, courts can exercise their constitutional powers to grant bail.

AA. BECAUSE the Hon'ble Bombay High Court failed to appreciate that the Ld. Chief Judicial Magistrate, Raigad while remanding the Petitioner to judicial custody on 4 November 2020 had observed that the arrest of the Petitioner is illegal and police custody in the matter was not warranted.

BB. BECAUSE the Hon'ble High Court has failed to recognize the political vendetta with which the C.R No. 0059 of 2018 has been reopened and the arrest effected of the Petitioner, which is completely contrary to the process established by law.

CC. BECAUSE the Hon'ble High Court has failed to recognise the decisive manner in which the closed case C.R 0059 of 2018 has been reopened by the Mumbai police for the sole purpose of misusing power, concocting facts and

forcefully arresting the Petitioner in a prima facie act of revenge and vengeance for his news coverage which questioned those in power in the State of Maharashtra. Hence the present Application.

DD. BECAUSE the Hon'ble High Court has failed to appreciate that the Petitioner is reputed a member of the society and there is absolutely no chance of their absconding from justice had the bail as prayed been granted. Further, the Petitioner had cooperated with the police during the investigation stage completely and would have done the same had the police given a notice to the Petitioner regarding reopening of the case. Therefore, there is absolutely no need for custodial interrogation of the Petitioner.

EE. BECAUSE the Hon'ble Bombay High Court by its order dated 9 November 2020 and failed to grant bail to the Petitioner in exercise of its extra-ordinary powers under Article 226 of the Constitution of India as held by this Hon'ble Court in as held by this Hon'ble Court in **Girish**

Kumar Surneja v. CBI (2017) 14 SCC 809 and Kartar Singh v. State of Punjab (1994) 3 SCC 569.

FF. BECAUSE the Petitioner could not have been arrested for the offences alleged in FIR No. 59 of 2018 without any judicial order setting-aside of Ld. Chief Judicial Magistrate, Raigad, Alibaug's order dated 16 April 2019 by which the closure report was accepted in the matter or in the absence of any order directing reinvestigation or further investigation in the matter.

GG. BECAUSE the Petitioner could not have been arrested in connection with FIR No. 59 of 2018 without any prior summons or notice in the matter from the Mumbai police under the relevant provisions of law, especially when the investigation into FIR No. 59 of 2018 was closed by the A summary report accepted by the Ld. Chief Judicial Magistrate.

HH. BECAUSE the Hon'ble Bombay High Court in its order dated 9 November 2020 erred in law by omitting to consider the assembly discussions on the floor of the

Maharashtra legislative assembly on 8 September 2020 wherein certain cabinet ministers had called for the arrest of the Petitioner in connection with FIR No. 59 of 2018, demonstrating that the arrest of the Petitioner was mala-fide and politically motivated.

II. BECAUSE the Hon'ble Bombay High Court in its order dated 9 November 2020 failed to appreciate that Petitioner's detention in this matter is unjustified as there is nothing on record to suggest that the Petitioner had provoked or incited or encouraged the Deceased (Mr. Anvay Naik) to commit suicide, nor there is anything to show that the Petitioner had committed any act which was proximate to the demise of the Deceased.

JJ. BECAUSE the Hon'ble Bombay High Court failed to appreciate that the Petitioner's arrest and continued detention in connection with FIR No. 59 of 2018 is illegal and de hors the law as a closure/A summary report had been filed in the matter and accepted by the Ld. Chief Judicial Magistrate, Raigad, Alibaug by an order dated 16 April 2019.

KK. BECAUSE the Hon'ble Bombay High Court failed to appreciate that the Petitioner could not have been deprived of his liberty for the offences alleged in FIR No. 59 of 2018 without any judicial order setting-aside the Ld. Chief Judicial Magistrate, Raigad, Alibaug's order dated 16 April 2019 by which the closure report was accepted in the matter or in the absence of any judicial order directing re-investigation or further investigation in the matter.

LL. BECAUSE the Hon'ble Bombay High Court failed to appreciate that Section 34 IPC has been wrongly applied in FIR No. 59 of 2018 as there is nothing on record to suggest that the Petitioner knew the co-accused or had even interacted with them earlier, leave alone having a common intention to abet the suicide of the deceased, Mr. Anbay Naik.

MM. BECAUSE the Hon'ble Bombay High Court omitted to consider that the closure report filed by the police before the Ld. Chief Judicial Magistrate, Raigad, Alibaug, clearly mentions that Accused individuals (including the

Petitioner) are businessmen in different areas, different places and they do not have any relation between them. Hence, the registration of FIR under Section 34 IPC was and is bad in law.

NN. BECAUSE the closure report filed by the police clearly recorded that it would be impossible to convince that the accused 1 to 3 (including the Petitioner) would have aided and abetted the commission of suicide of the deceased. Once the Mumbai police had come to the conclusion that there was no evidence to suggest that the Petitioner had abetted the suicide of the deceased and the Mumbai police having failed to produce any news or compelling evidence to re-open the investigation, the Petitioner ought to have been granted bail by the Hon'ble Bombay High Court.

OO. BECAUSE the Hon'ble Bombay High Court by its orders dated 9 November 2020 and 7 November 2020 failed to take notice of the well-established principles of law that the High Court can grant bail in the exercise of its extraordinary powers under Article 226 of the Constitution of

India as held by this Hon'ble Court in ***Girish Kumar Surneja v. CBI (2017) 14 SCC 809*** and ***Kartar Singh v. State of Punjab (1994) 3 SCC 569***.

PP. BECAUSE the Hon'ble Bombay High Court ought to have exercised its extra-ordinary powers under Article 226 of the Constitution of India, 1950 by granting ad-interim bail to the Petitioner as the present case is a glaring case of deprivation of liberty of the Petitioner and the excessiveness of police action taken in the matter. The Hon'ble Court erred in law by omitting to consider the judgment in ***Jagisha Arora v. State of Uttar Pradesh (Writ Petition (Crl.) No. 164 of 2019)*** wherein the Petitioner was directed to be released on bail under the writ jurisdiction of this Hon'ble Court.

QQ. BECAUSE the Hon'ble Bombay High Court failed to appreciate that "A Summary" Closure Report was filed by the police before the Magistrate which was accepted on 16 April 2019. Admittedly this order is not challenged in any Superior Court nor has any party moved the Ld. Magistrate for setting aside the order or for an alteration of

the said order by way of a protest petition or an Application under Section 156(3) CrPC nor even by means of a complaint under Section 200 CrPC.

RR. BECAUSE the Hon'ble Bombay High Court failed to appreciate that the present case is totally and completely different from a case in which a charge-sheet is filed (and hence the case is alive and not dead). In such cases where a charge sheet is filed, obviously the police have a statutory right to further investigate by virtue of Section 173(8) CrPC, with or without the permission of the Magistrate. That situation is totally different, and the Hon'ble Bombay High Court was not dealing with such a case. It is settled law that as a legal practice, permission of the Magistrate is required under Section 173(8) CrPC, before the police further investigates a matter.

SS. BECAUSE the Hon'ble Bombay High Court failed to appreciate that the above position has been upheld by this Hon'ble Court in ***Bikash Rajan Raut v. State*** ; (2019) 5 SCC 542 (Para 6.3 and para 40.6) and ***Pathu Ranjan v/s State of T.N***; (2019) 4 SCC 771 (Paras 22 in that para

27) and ***Vinay Tyagi v. Irshad Alia***; (2013) 5 SCC 762 (Para 40.6 and 49).

TT. BECAUSE the Hon'ble Bombay High Court failed to appreciate that while an 'A-Summary' report which is accepted by the Magistrate by a Judicial Order is in force and not altered or set aside, the Police cannot on their own carry out further investigation in the same case under any provision of law much less under Section 173(8) of the CrPC.

UU. BECAUSE the Hon'ble Bombay High Court failed to appreciate that the investigation so carried out by the police post 15 October 2020 is thus completely illegal and all steps of investigation carried out on the basis of such an investigation including arrest is completely illegal and every second detention pursuant to the arrest made in such a matter is completely violative of the fundamental right of the Petitioner enshrined under Article 21 of the Constitution of India, 1950.

VV. BECAUSE the Hon'ble Bombay High Court failed to appreciate that once a negative report is submitted by the Police, the Learned Magistrate may (1) accept the report and close the case; or (2) disagree with the report and take cognizance; or (3) he has the power to issue directions for further investigation under Section 156(3) of The CrPC. This is the provision which in-fact is the source of the power of the Magistrate as a general rule of law. (See **Bhagwant Singh vs Commissioner of Police**; (1985) 2 SCC 537 – Para 4, **Gangadhar Janardhan Mhatre vs State of Maharashtra**; (2004) 7 SCC 768 - Para 9; Placitum (d - e), **Vishnu Kumar Tiwari vs State of UP**; (2019) 8 SCC 27 – Para 21, Placitum (d – e), **Bikash Ranjan Raut v. State** ; (2019) 5 SCC 542, **Vinubhai Haribhai Malaviya vs State**; (2019) SCC Online 1346 – Para 34).

WW. BECAUSE the Hon'ble Bombay High Court failed to appreciate that even if the order of closure has been passed without hearing the Respondent No. 5 (informant in FIR No. 59 of 2018), if objections are raised before the investigating agency by the Respondent No. 5 (informant

in FIR No. 59 of 2018) then the same is in the nature of a protest petition and it is essential that a further order of a competent court diluting the order of closure which is required to be passed by only by a competent Court after the informant approaches the competent court and it cannot be done *suo moto* by the police. See **UPSC vs Papaiah**; (1997) 7 SCC 614, **Vinubhai Haribhai Malaviya vs State**; (2019) SCC Online 1346 – Para 34, **Hemant Dashmaniya vs CBI** (2001) 7 SCC 536 (Para 16).

XX. BECAUSE the Hon'ble Bombay high court failed to appreciate that even in respect of a case where a positive report or charge sheet is filed and admittedly Section 173(8) CrPC applies, by virtue of Para 49 of **Vinubhai Malaviya** (supra), it is mandatory for the police to have the Magistrate's nod/ (permission) to exercise the power under Section 173(8).

YY. BECAUSE the Hon'ble Bombay High Court failed to appreciate that the impugned actions of the police in the present case tantamount to the police which is a limb of

the executive, setting aside or altering an order or the Magistrate which is completely illegal and beyond the scope of the powers of the police.

ZZ. BECAUSE the Hon'ble Bombay High Court failed to notice that the in the present case, the order of the Ld. Chief Judicial Magistrate, Raigad, Alibaug, accepting the closure report was deliberately and illegally ignored by the police.

AAA. BECAUSE the Hon'ble Bombay High Court failed to appreciate that unless the A-Summary Report is revived by a judicial order which has to be passed by a Court of competent jurisdiction, it continues to be dead and cannot be resurrected or revived by the police *suo moto* without recourse to a court of law by the Informant or victim, as was illegally and wrongfully done in the present case.

BBB. BECAUSE the Hon'ble Bombay High Court failed to appreciate that in consonance with the principle of law that except the High Court and the Supreme Court of India, the subordinate criminal courts and much less the

police have no inherent jurisdiction to alter the closure of a judicially accepted A-Summary Closure Report.

CCC.BECAUSE the Hon'ble Bombay High Court failed to appreciate that there is no provision by which the police could *suo moto* carry out further investigation when a case is closed and an Order is passed accepting the "A-Summary report".

DDD.BECAUSE the Hon'ble Bombay High Court failed to appreciate that the authority of the High Court to order stay of investigation is unquestionable and in such cases, the court ought not overlook the most important factor that is the administration of Justice.

EEE. BECAUSE the Hon'ble Bombay High Court failed to appreciate that the power to grant stay of investigation can be granted in extra-ordinary cases and the Court must exercise the power if there is a case of abuse of the process of the law or to promote the ends of justice.

FFF. BECAUSE the Hon'ble Bombay High Court failed to appreciate that in cases where the investigation is completely illegal and the illegality is pointed out at the threshold as has been done in the present case and when such investigation results in an arrest which is contrary to the procedure established by law and amounts to deprivation of personal liberty, such an illegal and wrongful investigation ought to be stayed forthwith. See i. ***Asian Resurfacing vs CBI***; (2018) 16 SCC 299 – Para 35, ***Imtiyaz Ahmed vs State of UP***; (2012) 2 SCC 688 – Para 55.

GGG. BECAUSE the Hon'ble High Court failed to appreciate that the plenary powers of the Hon'ble High Court under Article 226 of the Constitution of India, 1950 and the inherent powers of this Hon'ble Court under section 482 of the CrPC clearly authorize and empower the Hon'ble High Court to grant interim relief by way of bail, pending the hearing and final disposal of the Writ Petition as a logical sequitur, if it finds substance in the same or else simply adjourning or admitting the matter without interim relief.

HHH.BECAUSE the Hon'ble High Court failed to appreciate that in the present case, it will result in grave prejudice being caused to the Petitioner and will result in the highest form of travesty of justice.

III. BECAUSE the Hon'ble Bombay High Court failed to appreciate that this Hon'ble Court has relied on the judgment in a case under the Terrorist and Disruptive Activities Act 1987, where a Constitutional Bench of this Hon'ble Court in the context of that statute which barred any approach to the High Court from an order of the designated Court, by virtue of (Section 19 of that Act), yet held that, the jurisdiction of the Hon'ble High Courts to grant bail under Article 226 of the Constitution still remained intact and Paragraphs 359 and 368 of **Kartar Singh vs State of Punjab** (1994) 3 SCC 569 are quoted with approval in highlighting that even in such cases the power to grant bail in Writ Jurisdiction cannot be denied in rare and appropriate cases. (See **Girish Kumar Saneja vs CBI**; (2017) 14 SCC 809 – Para 40, **Asian Resurfacing vs CBI**; (2018) 16 SCC 299 – Para 64;

Page 41 and ***Kartar Singh vs State of Punjab***; (1994) 3 SCC 569 – Paragraphs 359 and 368).

JJJ. BECAUSE the Petitioner's arrest and illegal detention is in violation of his right to life and personal liberty guaranteed under Article 21 of the Constitution of India, 1950 and his rights to freedom of speech and expression (Petitioner being the Editor-in-Chief of Republic TV and Republic TV Bharat news channels) and right to practice his profession, guaranteed under Article 19 (1) (a) and Article 19 (1) (g) of the Constitution of India, 1950.

KKK. BECAUSE the Petitioner's arrest is politically motivated, malicious as the Respondent Nos. 1 to 3 harbour malice and ill-will against the Petitioner. Multifarious proceedings have been initiated against the Petitioner, his news channel, Republic TV and Republic Bharat and their employees at the behest of political dispensation in Maharashtra and the Maharashtra police.

LLL. BECAUSE certain cabinet Ministers in Maharashtra had called for Petitioner's arrest in connection with FIR No. 59

of 2018 on the floor of Maharashtra Legislative Assembly as evident from the discussions on the floor of the house on 8 September 2020 (part of the show-cause notice issued to the Petitioner in the breach of privilege proceedings). This shows the desperation, vendetta and personal animosity of the political dispensation of the Maharashtra government against the Petitioner.

MMM. BECAUSE the Hon'ble Bombay High Court failed to appreciate that the Petitioner had never met Mr. Anvay Naik, who had allegedly committed suicide in connection with certain alleged dues between ARG Outlier Media Private Limited (of which the Petitioner is the Managing Director) and the Concorde Designs Private Limited (Anvay Naik's company) for certain works done at the Republic TV studio in Mumbai.

NNN. BECAUSE the Hon'ble Bombay High Court failed to appreciate that there is nothing on record to suggest that the Petitioner aided or abetted the commission of Mr. Anvay Naik's suicide.

OOO. BECAUSE the Hon'ble Bombay High Court failed to consider the well-established principles of law in context of Section 306 of the Indian Penal Code, 1860 holding that there should be clear *mens rea* to commit the offence under Section 306 of the Indian Penal Code, 1860 and the offence requires the commission of a direct or active act by the accused which should have lead the deceased to commit suicide seeing no other option and such act must have been intended to push the victim in committing suicide. None of these ingredients are present in this case. (See ***M. Mohan v. State* (2011) 3 SCC 626; SS Cheena v. Bijay Kumar Mahajan and Anr. (2010) 12 SCC 190; Amlendu Pal v. State of West Bengal (2010) 1 SCC 707; Gurcharan Singh v. State of Punjab (Criminal Appeal No. 40 of 2011) and Rajesh v. State of Haryana (2019) SCC Online SC 44**).

PPP. BECAUSE the Hon'ble High Court failed to appreciate that the Petitioner is a reputed journalist of international repute and impeccable intergity, a reputed member of the society and there is absolutely no chance of his absconding from justice. The Petitioners has fully cooperated with the

police. Therefore, there is absolutely no need for continued detention of the Petitioner.

The Petitioner may be allowed to urge/alter/amend any ground (s) at the time of hearing of the present petition.

1. **GROUND FOR INTERIM RELIEF**

It is respectfully submitted that the Petitioner has an excellent *prima facie* case, for the reasons mentioned in the Grounds. It is submitted that the balance of convenience is also in favor of the Petitioner, and the Petitioner would suffer irreparable harm and injury if the operation of the impugned order is not stayed during the pendency of the present petition.

5. **MAIN PRAYER**

It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to –

(A) grant Special Leave to Appeal under Article 136 of the Constitution of India against the interim Judgment

and Order dated 9 November 2020 passed by the Division Bench of the Hon'ble High Court of Judicature at Bombay in Criminal Application Stamp No.4278 of 2020 in Criminal Writ Petition Stamp No.4132 of 2020; and/or

(B) pass such Order/(s) as this Hon'ble Court may deem fit and necessary.

6. INTERIM RELIEF

It is, therefore, respectfully prayed that this Hon'ble Court may graciously be pleased to –

(A) grant ex-parte stay of the interim Judgment and Order dated 9 November 2020 passed by the Division Bench of the Hon'ble High Court of Judicature at Bombay in Criminal Application Stamp No.4278 of 2020 in Criminal Writ Petition Stamp No.4132 of 2020; and/or

(B) pass such Order/(s) as this Hon'ble Court may deem fit and necessary.

**AND FOR THIS ACT OF KINDNESS, THE PETITIONER, AS
IN DUTY BOUND, SHALL EVER PRAY.**

FILED BY:

NIRNIMESH DUBE
(ADVOCATE-ON-RECORD
FOR THE PETITIONER)

PLACE: NEW DELHI
FILED ON: 09/11/2020