**** THE HONOURABLE SRI JUSTICE P. NAVEEN RAO***

+ WRIT PETITION No.23081 OF 2020

% 23.12.2020

Guguloth Santosh Naik
S/o.Guguloth Bhandru, aged about 33 years,
Occ:Newspaper Reporter,
R/o.H.No.5-82/56, Road No.4, BSR colony,
Patancheru Mandal, Patelguda, Sanga Reddy District,
Telangana 502319.

.. Petitioner

And

$ The State of Telangana, rep.by its
Principal Secretary,
Home Department, Secretariat, Secretariat,
Hyderabad and others.

.. Respondents

! Counsel for the petitioner : M/s.Umesh Chadra PVG

Counsel for respondents : Learned Assistant Government Pleader for Home for respondent Nos 1 to 4.

Sri N.Naveen Kumar, learned counsel for respondent No.5.

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> Head Note : --

? Citations:

1. 2020 SCC online SC 462
2. 1992 Supp(1)SCC 335
3. (2014)2 Supreme Court cases 1
4. (2008) 2 SCC 409
5. (2018) 6 SCC 454
6. (2020)4 SCC 761
7. (2020) 4 SCC 727

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.23081 of 2020

Date:23.12.2020

Between:
Guguloth Santosh Naik
S/o.Guguloth Bhandru, aged about 33 years,
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R/o.H.No.5-82/56, Road No.4, BSR colony,
Patancheru Mandal, Patelguda, Sanga Reddy District,
Telangana 502319.

.....Petitioner

And

The State of Telangana
rep by its Principal Secretary,
Home Department, Secretariat,
Hyderabad and others.

.....Respondents

The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.23081 of 2020

ORDER:

Heard learned counsel for the petitioner, learned Assistant Government Pleader for Home and learned counsel for 5th respondent.

2. Petitioner is working as Journalist in Vaartha Telugu vernacular daily. He belongs to Scheduled caste (Lambada) community. On 08.12.2020 news item was reported in Vaartha newspaper based on his inputs alleging that fifth respondent, who is a member of Legislative Assembly representing Patancheru Assembly constituency, and his henchmen grabbed prime lands, adjacent to main roads and pointed out lapses of the local administration in restraining the alleged grabbing of lands by fifth respondent and his henchmen. Petitioner alleges that infuriated with said report, fifth respondent telephoned the petitioner and threatened him with dire consequences, abused him and his parents using filthy language and in the name of his caste in an uncivilized manner and directed him to appear before him. The entire conversation was recorded. Concerned with the kind of threat exerted on the petitioner, use of abusive language on caste lines and threatening him with dire consequences, petitioner lodged complaint with the respondent-police. On the complaint lodged by the petitioner, crime No.331 of 2020 was registered on 08.12.2020 under Sections 448, 504, 506 read with Section 109 IPC and Section 3(2) (va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the Act, 1989) in Ameenpur Police Station.

3. In this writ petition, petitioner alleges that so far, Police have not arrested the fifth respondent and there is no progress made in the crime reported by the petitioner. Fifth respondent committed heinous crime against a Journalist and stringent action has to be taken against him. Petitioner alleges that if there is delay in arrest of fifth respondent, it would vitiate whole process of investigation, undermine the confidence reposed by people belonging to Scheduled caste and Scheduled Tribes in the State. Petitioner challenges the inaction of respondent-police in taking immediate action on the complaint lodged by the petitioner to arrest 5th respondent. In the writ petition paper book petitioner enclosed photographs showing damage caused to his property by henchmen of 5th respondent, demolition of illegal constructions made in response to his report published in the Vaartha Daily Newspaper and also enclosed C.D. in which the alleged conversation between 5th respondent and petitioner was recorded.

4.1. Extensive submissions are made by learned counsel for the petitioner. Learned counsel for the petitioner submits that this is a fit case, where the Court should exercise extraordinary jurisdiction and direct the respondent-police to forthwith arrest the fifth respondent. According to learned counsel for the petitioner, fifth respondent has criminal antecedents. He submits that photographs enclosed to the writ petition would demonstrate that on the issue covered by him and published in the newspaper, the police have taken action to demolish the illegal structures. This was not liking to the fifth respondent and his henchmen and therefore, they have resorted to coercive action on petitioner, his

relatives and family members and there is threat to life of the petitioner and his family members.

4.2. By placing reliance on the judgment rendered by the Hon'ble Supreme Court in **Arnab Ranjan Goswami v. Union of India**[1] [W.P.(Crl.)No.130 of 2020, dated 19.05.2020], learned counsel for the petitioner submits that the constitution entrusts duty on the Constitutional Courts to protect the Fundamental Rights of the Citizens and more particularly journalists and that in the instant case also, the Fundamental Right guaranteed on the citizen, who is a journalist to express his opinion as freelance Journalist reporting the alleged illegal and unauthorized occupation of public properties by the fifth respondent and his henchmen, is threatened and the petitioner was assaulted while he was acting as per his conscience to expose the illegal activities. There is grave danger to his life and it is mandatory for the respondent-State to protect the life and liberty of the journalists from such people, to ensure that journalists continue to discharge their responsibilities as conscious keepers in reporting fair and proper manner of things happening in the society and in bringing forth illegalities committed by the public representatives. There is clear infraction on the right of a journalist in discharging his solemn duty and there is perceived threat to freedom of expression, liberty and the democratic values in this country. Thus, the writ Court should step in and mandate the respondent-Police to act against the 5th respondent.

[1] 2020 SCC Online SC 462

4.3. He would submit that the action of police in not arresting the 5th respondent amounts to dereliction of their solemn duties and in not rising to the occasion by taking action against a public representative, when he was victimizing, harassing and threatening the petitioner with dire consequences, merely because petitioner has reported in a fearless manner the illegalities committed by him and his henchmen. More particularly, the petitioner belongs to Scheduled Tribe category and the Act, 1989 protects the scheduled tribes from such kind of humiliation and harassment. Such kind of humiliation and harassment by the public representatives has to be dealt with firmly and if immediate action is not taken against public representatives, it would send wrong signals to the public at large. Time and again the constitutional Courts have been emphasizing the importance of freedom to express more particularly when a person belonging to downtrodden community seeks to expose the nefarious activities of public representative, if no immediate action is taken, the very object of promulgating the Act, 1989 gets defeated.

5. In substance, the grievance of the petitioner is even though fifth respondent committed heinous crime against a journalist belonging to Scheduled Tribe, so far he is not arrested.

6. The issue for consideration in this writ petition is in narrow compass, i.e., whether the action of Police in not arresting the 5th respondent in connection with Crime No.331 of 2020 on the file of Ameenpur Police Station warrant exercise of extraordinary jurisdiction of this Court and to issue mandamus.

7. Once a crime is reported, the Code of Criminal Procedure (Cr.P.C.) lays down detailed procedure how to register the crime, how to conduct investigation, how to prepare final report, submission of final report before the competent Court and taking cognizance of the crime and placing the accused for trial before the competent Court. It is settled principle of law, once cognizable crime is reported, police have to register the crime and investigate into the crime. Such investigation has to be taken-up immediately, collect the evidence and then take steps to finalize the investigation and file the final report. As the existing provisions of law are not redressing the grievance of people belonging to the Scheduled Castes and Scheduled Tribes and atrocities against them are continued, the Indian Parliament enacted the Act, 1989 incorporating more stringent provisions, in addition to what is envisaged in the Cr.P.C and I.P.C. As against the procedure envisaged in the Code of Criminal Procedure, where power is vested in the Magistrate, to monitor investigation of a crime under the Act, 1989 and take cognizance of the crime, the power is now vested in the Special Court. The Special Court is vested with the power to take cognizance of offence under the Act. The Act prescribes time limit for completion of investigation and filing of final report. It also prescribes penal consequences on the Police officers if the investigation is not completed within the time prescribed and are negligent in conducting investigation.

8. On the issue of the scope of power of police to conduct investigation, arrest of accused, grant of bail, and the role of Constitutional Courts in such matters was extensively considered

by the Hon'ble Supreme Court in ***state of Haryana v. Bhajan Lal***[2]**.** The Hon'ble Supreme Court held as under:

> **"38.** "The Privy Council in *Emperor* v. *Khwaja Nazir Ahmad* [AIR 1945 PC 18 : 71 IA 203 : 46 Cri LJ 413] while dealing with the statutory right of the police under Sections 154 and 156 of the Code within its province of investigation of a cognizable offence has made the following observation: (AIR p. 22)
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> > "... so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes upon them the duty of enquiry. In India as has been shown there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the court. The functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the court to intervene in an appropriate case when moved under Section 491, Cr PC to give directions in the nature of habeas corpus. In such a case as the present, however, the court's functions begin when a charge is preferred before it and not until then."
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> **40.** The core of the above sections namely 156, 157 and 159 of the Code is that if a police officer has reason to suspect the commission of a cognizable offence, he must either proceed with the investigation or cause an investigation to be proceeded with by his subordinate; that in a case where the police officer sees no sufficient ground for investigation, he can dispense with the investigation altogether; that the field of investigation of any cognizable offence is exclusively within the domain of the investigating agencies over which the courts cannot have control and have no power to stifle or impinge upon the proceedings in the

[2] 1992 Supp (1) SCC 335

investigation so long as the investigation proceeds in compliance with the provisions relating to investigation and that it is only in a case wherein a police officer decides not to investigate an offence, the concerned Magistrate can intervene and either direct an investigation or in the alternative, if he thinks fit, he himself can, at once proceed or depute any Magistrate subordinate to him to proceed to hold a preliminary inquiry into or otherwise to dispose of the case in the manner provided in the Code.

60. ***The sum and substance of the above deliberation results in a conclusion that the investigation of an offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions falling under Chapter XII of the Code and the courts are not justified in obliterating the track of investigation when the investigating agencies are well within their legal bounds as aforementioned. Indeed, a noticeable feature of the scheme under Chapter XIV of the Code is that a Magistrate is kept in the picture at all stages of the police investigation but he is not authorised to interfere with the actual investigation or to direct the police how that investigation is to be conducted.*** But if a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provision causing serious prejudice to the personal liberty and also property of a citizen, then the court on being approached by the person aggrieved for the redress of any grievance, has to consider the nature and extent of the breach and pass appropriate orders as may be called for without leaving the citizens to the mercy of police echelons since human dignity is a dear value of our Constitution. It needs no emphasis that no one can demand absolute immunity even if he is wrong and claim unquestionable right and unlimited powers exercisable up to unfathomable cosmos. Any recognition of such power will be tantamount to recognition of 'Divine Power' which no authority on earth can enjoy." (emphasis supplied)

8.1. An identical issue was considered by the Hon'ble Supreme Court in **Lalitha kumari v.Government of Uttar Pradesh and others[3].** The Hon'ble Supreme Court held as under:

[3] (2014) 2 Supreme Court Cases 1

"107. While registration of FIR is mandatory, arrest of the accused immediately on registration of FIR is not at all mandatory. In fact, registration of FIR and arrest of an accused person are two entirely different concepts under the law, and there are several safeguards available against arrest. Moreover, it is also pertinent to mention that an accused person also has a right to apply for "anticipatory bail" under the provisions of Section 438 of the Code if the conditions mentioned therein are satisfied. Thus, in appropriate cases, he can avoid the arrest under that provision by obtaining an order from the court.

108. It is also relevant to note that in *Joginder Kumar* v. *State of U.P.* [(1994) 4 SCC 260 : 1994 SCC (Cri) 1172] , this Court has held that arrest cannot be made by the police in a routine manner. Some important observations are reproduced as under: (SCC pp. 267-68, para 20)

> "*20.* ... No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officer issues notice to person to attend the Station House and not to leave the Station without permission would do."

109. The registration of FIR under Section 154 of the Code and arrest of an accused person under Section 41 are two entirely different things. It is not correct to say that just because FIR is registered, the accused person can be arrested immediately. It is the imaginary fear that "merely because FIR has been registered,

> it would require arrest of the accused and thereby leading to loss of his reputation" and it should not be allowed by this Court to hold that registration of FIR is not mandatory to avoid such inconvenience to some persons. The remedy lies in strictly enforcing the safeguards available against arbitrary arrests made by the police and not in allowing the police to avoid mandatory registration of FIR when the information discloses commission of a cognizable offence.
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> **110.** This can also be seen from the fact that Section 151 of the Code allows a police officer to arrest a person, even before the commission of a cognizable offence, in order to prevent the commission of that offence, if it cannot be prevented otherwise. Such preventive arrests can be valid for 24 hours. However, a Maharashtra State amendment to Section 151 allows the custody of a person in that State even for up to a period of 30 days (with the order of the Judicial Magistrate) even before a cognizable offence is committed in order to prevent commission of such offence. Thus, the arrest of a person and registration of FIR are not directly and/or irreversibly linked and they are entirely different concepts operating under entirely different parameters. On the other hand, if a police officer misuses his power of arrest, he can be tried and punished under Section 166 IPC."
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> (emphasis supplied)

8.2. The above two judgments and subsequent decisions of the Hon'ble Supreme Court, including the decision in **Sakiri Vasu v. State of Uttar Pradesh**[4] emphasize that ordinarily the writ Court should not interfere, unless in the peculiar facts of a case, Court notices grave illegalities committed by police and that police were negligent in investigating into the crime and allowing the accused to go Scot-free or not preventing the accused from committing more crimes.

9. The Code of Criminal Procedure vests power in the Magistrates to monitor the investigation, to give directions wherever the investigation is not properly conducted to mandate

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[4] (2008) 2 SCC 409

the police to conduct investigation properly and also initiate action against erring officials. All these aspects were delineated in **Sakiri Vasu.** As noticed above, the Act, 1989 vests more powers in the Special Court in addition to powers traceable to Cr.P.C. A cumulative reading of provisions of the Code of Criminal Procedure read with the Act, 1989, it is clear that the Special Court can take all measures required to ensure proper investigation is conducted by the police into the crimes reported under the Act, 1989.

10. Coming back to the facts of this case, on 08.12.2020, crime was reported and crime was registered under various provisions of IPC and also under the Act, 1989. Police have taken up investigation. As held by the Hon'ble Supreme Court in **Lalitha Kumari** on mere registration of crime, it is not necessary that person should be arrested.

11. The scope of provisions of the Act, 1989 came up for consideration before the Hon'ble Supreme Court in **Subhash Kashinath Mahajan v. State of Maharashtra**[5]**.** The Supreme Court held that merely because a crime is reported under the Act, 1989, it need not be registered automatically and to avoid false implication of an innocent person, a preliminary enquiry may be conducted by the Deputy Superintendent of Police concerned to find out whether allegations in the complaint made out a case to proceed under the Atrocities Act, and that the person need not be arrested. In paragraph No.79 the Hon'ble Supreme Court recorded its conclusions. In paragraph No.79.2, the Hon'ble Supreme Court

[5] (2018) 6 SCC 454

held that there is no bar against granting anticipatory bail and in paragraph Nos.79.3 and 79.4 the Supreme Court held that arrest of public servant can only be affected after approval of appointing authority and in case of non-public servant after approval by the SSP as the case may be, which may be granted in appropriate cases. Paragraph No.79 reads as under:

> ***"Conclusions***
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> **79.** Our conclusions are as follows:
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> **79.1.** Proceedings in the present case are clear abuse of process of court and are quashed.
>
> **79.2.** There is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide. We approve the view taken and approach of the Gujarat High Court in *Pankaj D. Suthar* [*Pankaj D. Suthar* v. *State of Gujarat*, (1992) 1 Guj LR 405] and *N.T. Desai* [*N.T. Desai* v. *State of Gujarat*, (1997) 2 Guj LR 942] and clarify the judgments of this Court in *Balothia* [*State of M.P.* v. *Ram Kishna Balothia*, (1995) 3 SCC 221 : 1995 SCC (Cri) 439] and *Manju Devi* [*Manju Devi* v. *Onkarjit Singh Ahluwalia*, (2017) 13 SCC 439 : (2017) 4 SCC (Cri) 662] ;
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> **79.3.** In view of acknowledged abuse of law of arrest in cases under the Atrocities Act, arrest of a public servant can only be after approval of the appointing authority and of a non-public servant after approval by the SSP which may be granted in appropriate cases if considered necessary for reasons recorded. Such reasons must be scrutinised by the Magistrate for permitting further detention.
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> **79.4.** To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act and that the allegations are not frivolous or motivated.
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> **79.5.** Any violation of Directions 79.3 and 79.4 will be actionable by way of disciplinary action as well as contempt.
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> **79.6.** The above directions are prospective."

12. In **Union of India** v.**State of Maharashtra**[6]**,** the Hon'ble Supreme Court reviewed the said directions issued in **Subhash Kashinath Mahajan** (supra) and the Hon'ble Supreme Court

[6] (2020)4SCC 761

deleted directions in paragraphs in 79.3, 79.4 and 79.5. The Hon'ble Supreme Court held as under:

> **"19.** It is apparent from the decision in *Lalita Kumari* [*Lalita Kumari* v. *State of U.P.*, (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] that FIR has to be registered forthwith in case it relates to the commission of the cognizable offence. There is no discretion on the officer in-charge of the police station for embarking upon a preliminary inquiry before registration of the FIR. Preliminary inquiry can only be held in a case where it has to be ascertained whether a cognizable offence has been committed or not. If the information discloses the commission of a cognizable offence, it is mandatory to register the FIR under Section 154 CrPC, and no preliminary inquiry is permissible in such a situation. This Court in *Lalita Kumari* [*Lalita Kumari* v. *State of U.P.*, (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] observed as under : (SCC p. 36, para 54)
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> > "*54*. Therefore, the context in which the word "shall" appears in Section 154(1) of the Code, the object for which it has been used and the consequences that will follow from the infringement of the direction to register FIRs, all these factors clearly show that the word "shall" used in Section 154(1) needs to be given its ordinary meaning of being of "mandatory" character. The provisions of Section 154(1) of the Code, read in the light of the statutory scheme, do not admit of conferring any discretion on the officer in charge of the police station for embarking upon a preliminary inquiry prior to the registration of an FIR. It is settled position of law that if the provision is unambiguous and the legislative intent is clear, the court need not call into it any other rules of construction."
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> Concerning the question of arrest, in *Lalita Kumari* [*Lalita Kumari* v. *State of U.P.*, (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] this Court has considered the safeguard in respect of arrest of an accused person. This Court affirmed the principle that arrest cannot be made routinely on the mere allegation of commission of an offence. The question arises as to justification to create a special dispensation applicable only to complaints under the Atrocities Act because of safeguards applicable generally.
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> **57.** The guidelines in paras 79.3 and 79.4 appear to have been issued in view of the provisions contained in Section 18 of the 1989

> Act; whereas adequate safeguards have been provided by a purposive interpretation by this Court in *State of M.P.* v. *Ram Kishna Balothia* [*State of M.P.* v. *Ram Kishna Balothia*, (1995) 3 SCC 221 : 1995 SCC (Cri) 439] . The consistent view of this Court that if prima facie case has not been made out attracting the provisions of the SC/ST Act of 1989 in that case, the bar created under Section 18 on the grant of anticipatory bail is not attracted. Thus, misuse of the provisions of the Act is intended to be taken care of by the decision above. In *Kartar Singh* [*Kartar Singh* v. *State of Punjab*, (1994) 3 SCC 569 : 1994 SCC (Cri) 899] , a Constitution Bench of this Court has laid down that taking away the said right of anticipatory bail would not amount to a violation of Article 21 of the Constitution of India. Thus, prima facie it appears that in the case of misuse of provisions, adequate safeguards are provided in the decision mentioned above.
>
> **70.** We do not doubt that directions encroach upon the field reserved for the legislature and against the concept of protective discrimination in favour of downtrodden classes under Article 15(4) of the Constitution and also impermissible within the parameters laid down by this Court for exercise of powers under Article 142 of the Constitution of India. Resultantly, we are of the considered opinion that Directions 79.3 and 79.4 issued by this Court deserve to be and are hereby recalled and consequently we hold that Direction 79.5, also vanishes. The review petitions are allowed to the extent mentioned above.

13. It is pertinent to note from the above judgments that consistent view of the Hon'ble Supreme Court is that if *prima facie* case is not made out attracting the provisions of SC/ST Act of 1989, the bar created under Section 18 on the grant of anticipatory bail is not attracted.

14. The very issue has come-up for consideration before the Hon'ble the Supreme Court in **Prathvi Raj Chauhan v. Union of India**[7]. After extensively referring to view taken by the Hon'ble Supreme Court in **Union of India** v.**State of Maharashtra** the Hon'ble Supreme Court observed as under:

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[7] (2020)4 SCC 727

> **"9.** Concerning the provisions contained in Section 18-A, suffice it to observe that with respect to preliminary inquiry for registration of FIR, we have already recalled the general Directions 79.3 and 79.4 issued in *Subhash Kashinath case* [*Subhash Kashinath Mahajan* v. *State of Maharashtra*, (2018) 6 SCC 454 : (2018) 3 SCC (Cri) 124] . A preliminary inquiry is permissible only in the circumstances as per the law laid down by a Constitution Bench of this Court in *Lalita Kumari* v. *State of U.P.* [*Lalita Kumari* v. *State of U.P.*, (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] , shall hold good as explained in the order passed by this Court in the review petitions on 1-10-2019 [*Union of India* v. *State of Maharashtra*, (2020) 4 SCC 761] and the amended provisions of Section 18-A have to be interpreted accordingly.
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> **10 [Ed. : Para 10 corrected vide Official Corrigendum No. F.3/Ed.B.J./2/2020 dated 25-2-2020.] .** Section 18-A(*i*) was inserted owing to the decision of this Court in *Subhash Kashinath* [*Subhash Kashinath Mahajan* v. *State of Maharashtra*, (2018) 6 SCC 454 : (2018) 3 SCC (Cri) 124] , which made it necessary to obtain the approval of the appointing authority concerning a public servant and the SSP in the case of arrest of accused persons. This Court has also recalled that direction on Review Petition (Crl.) No. 228 of 2018 decided on 1-10-2019 [*Union of India* v. *State of Maharashtra*, (2020) 4 SCC 761] . Thus, the provisions which have been made in Section 18-A are rendered of academic use as they were enacted to take care of mandate issued in *Subhash Kashinath* [*Subhash Kashinath Mahajan* v. *State of Maharashtra*, (2018) 6 SCC 454 : (2018) 3 SCC (Cri) 124] which no more prevails. The provisions were already in Section 18 of the Act with respect to anticipatory bail."

15. Freedom of expression is core to democratic values and is imbedded in our rich culture. Free and fair journalism is epitome of this expression. Fearless journalism is as vital to democracy as any other organ of the society. There are no two opinions on need to ensure and preserve these values. However, having regard to the law laid down by the Hon'ble Supreme Court and having regard to the fact that the writ petition was instituted within four days of reporting crime, it cannot be said that police have not acted diligently in investigating into the crime and in not arresting the

fifth respondent. Thus, it is premature for this Court, at this stage, to hold the action of respondent-police in not arresting fifth respondent as amounting to abuse or misuse of power or dereliction of their solemn duty. Having regard to the law laid down by the Hon'ble Supreme Court, the provisions of Cr.P.C. and the scope and objects of the Act, 1989, it cannot be said that merely because crime is reported under the Act, straightaway accused has to be arrested.

16. However, it is made clear that these observations are made having regard to the fact that this writ petition is instituted immediately after the crime is reported. It is made clear that in the process of investigation into the crime, it is open to Police to take all measures as required by law against accused, if so warranted, arresting the fifth respondent, requiring them adopting such course.

17. At this stage, learned counsel for petitioner contends that having regard to the position held by fifth respondent, his criminal background, and several henchmen with criminal record who have developed vested interest under 5th respondent, having regard to the steps taken by various authorities in demolishing certain illegal constructions based on the news item published in Vartha Daily Newspaper as reported by him, are hell bent on harassing and causing harm to the petitioner and therefore, police ought to have extended protection to his life.

18. With reference to this aspect, as fairly submitted by learned counsel for petitioner, there is no specific pleading in the writ petition on threat to life and property, except alleged damage to his

property by some miscreants; Further, no relief is sought on protection and in the complaint lodged with the police he was only alleging that his henchmen frightened the labour working in his property and were sent of from work.

19. Chapter IV-A was introduced by way of Amendment Act 2016. Section 15-A is inserted in chapter IV-A. It deals with rights of victims and witnesses. On going through said provision, it is clear that enough safeguards are provided under this Chapter and in the given circumstances, it is open to the victim to seek appropriate protection from police.

20. Having regard to the mandate of this provision, liberty is granted to the petitioner to make appropriate application to the Deputy Superintendent of Police (4th respondent) enlisting the alleged threat perception of the petitioner to his person, family and property and requesting to provide protection to him. If such application is made, the 4th respondent is directed to consider the same and if satisfied with threat perception, to provide protection sought by the petitioner.

21. Subject to above observations, the Writ Petition is disposed of. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

23rd December, 2020
Nvl/tvk/kkm
Note: L.R. copy to be marked-Yes.
B/o.tvk.

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.23081 of 2020

Date: 23.12.2020

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