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IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(Cr.) No. 158 of 2024

1. Babu Lal Marandi, aged about 65 years, s/o late Chhotu Marndi, r/o Village Kodaibank, Chandouri, P.O. and P.S. Tasri, District-Giridih

2. Sanjay Seth, aged about 64 years, s/o late Chand Narayan Seth, r/o Karuna Sadan, West End Park, Near SIRD, Hehal, PO and PS Hehal, District Ranchi

3. Navin Jaiswal, aged about 51 years, s/o Shiv Shankar Prasad Jaiswal R/o 13 Church Road, Near Kali Mandir, P.O. GPO PS Hindpiri, District Ranchi

4. Amit Kumar Mandal, aged about 40 years, s/o Raghu Nandan Mandal, R/o Village Post Korkaghat, House No.77 Pathargram PO and PS Korkaghat, District Godda

5. Biranchi Narayan @ Biranchi Narayan Singh, aged about 52 years s/o Sadanand Prasad R/o Quarter No.220 Sector 1/B MLA House PO and PS BS City, District Bokaro

6. Pradip Kumar Varma @ Pradip Kumar Verma @ Pradeep Kumar Verma, aged about 40 years, s/o Seth Ram Autar Prasad, R/o 313, Ranchi Purulia Road, Birla Campus, PO and PS Mahilong, District Ranchi

7. Ravindra Kumar Ray, aged about 65 years, s/o Jai Narayan Rai, R/o Harmu Housing Colony, Harmu, PO and PS Doranda, District Ranchi

8. Dr. Yadunath Pandey aged about 68 years s/o Swami Nath Pandey R/o House No.1145A, Kali Babu Street, Mahabir Chowk, Upper Bazar, PO GPO PS Kotwali, District Ranchi

9. Shivshankar Oraon, aged about 60 years, s/o late Thuchi Oraon, R/o Dumri, PO and PS Dumri, District Gumla

10. Lalit Ojha @ Pandit Lalit Narayan Ojha, aged about 42 years, s/o Ram Narayan Ojha, R/o House No.101, Devi Mandap Road, Hesal Sukhdeonagar, PO and PS

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Sukhdeonagar, District Ranchi.

11. Ramesh Kumar Singh, aged about 47 years, s/o late Manager Singh, r/o Indrapuri, Road No.13, Ratu Road, PO and PS ratu Road, District Ranchi

12. Kameshwar Singh aged about 58 years S/o Jainath Singh, R/o Quarter No.P.H.2, Sector 9, Dhurwa, PO Dhuwra, PS. Jaganathpur, District Ranchi

13. Umesh Kumar, aged about 34 years, s/o Kamla Yadav, R/o House No.108, Jhopri, Kamla Khatal, Dhurwa, PO Dhurwa, PS Jaganathpur, District Ranchi.

14. Nilam Choudhary @ Neelam Choudhary, aged about 52 years, w/o Bikas Kumar Choudahary, R/o Quarter No.B/1489, HEC, Sector -II, Side-4, Dhurwa, PO Dhurwa, PS Jaganathpur, District Ranchi

15. Amit Kumar aged about 48 years, s/o Ram Naresh Singh, R/o Sarv Mangala Apartment, Sukhdeonagar, Ratu Road, Near Reliance Fresh P.O. and P.S Hehal, District Ranchi

16. Krishna Kumar Gupta, aged about 49 years, s/o Ishwari Prasad Gupta, R/o Lake Road, Kishoreganj, Big Lake, PO and PS Kishoreganj, District Ranchi

17. Ashok Kumar Baraik, aged about 35 years s/o Mahendra Baraik R/o House No.10/B Kachyap Vihar Ashok Nagar Road, No.3., Near Green Home Nursery, PO Doranda PS Argora, District Ranchi

18. Arti Kujur, aged about 48 years d/o Umrao Sadho Kujur, r/o Khijri PO and PS Namkum, District Ranchi

19. Samri Lal aged about 61 years s/o late Mishri Lal Balmiki R/o House No.354 RIMS Staff Qrt. PO and PS Bariatu District Ranchi

20. Chandreshwar Prasad Singh, aged about 67 years, s/o late Jai Mohan Singh R/o Dipty Para PO and PS Lalpur, Dist. Ranchi

21. Dulu Mahto, aged about 48 years s/o late Puna Mahto, r/o Villge Chaitahi Tundu Near Lake, PO and PS

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Barora Tundu, District Dhanbad

22. Aditya Prasad aged about 60 years s/o Chatur Saw R/o Kuchu PO and PS Ormanjhi, Dist.Ranchi

23. Deepak Prakash aged about 63 years, s/o late Bipin Bihari Prasad R/o House No.231 Ashok Kunj, Near Lions' Club Ashok Nagar, PO Doranda PS Argora District Ranchi

24. Sadhu Manjhi, aged about 73 years, s/o Amrit Manjhi R/o Village Kamat, PO Tetrain, PS Panki Dist Palamau

25. Kushwaha Shashi Bhushan Mehta @ Kushwaha Shashi Bhushan aged about 67 years s/o Shivlochan Mehta, R/o House No.66 Village Koiripatra, PO and PS Palamau District Palamau

26. Shatrudhan Singh aged about 56 years, s/o Girvar Singh R/o Village Kamat PO Tetrain, PS Panki, Dist. Palamau.

..... … Petitioners

Versus

1. The State of Jharkhand through the Director General of Police, officiating from his office at Nepal House, P.O and P.S- Doranda, Ranchi-834002.

2. Upendra Kumar S/o A.M Ram R/o Dinnanath Nagar, P.O and P.S-Lalpur, Dist- Ranchi officiating from his office at O/o the Executive Magistrate, Sadar, P.O-Kotwali, P.S-GPO, Dist-Ranchi.

..... … Respondents

with

W.P.(Cr.) No. 270 of 2024

Arjun Munda, S/o late Ganesh Munda aged about 56 years, r/o Ghorbandha, Jamshedpur PO Luabasa PS Govindpur Dist East Singhum.

..... … Petitioner

Versus

1. The State of Jharkhand through the Director General of Police, officiating from his office at Nepal House, P.O and

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P.S- Doranda, Ranchi-834002.

2. Upendra Kumar S/o A.M Ram R/o Dinnanath Nagar, P.O and P.S-Lalpur, Dist- Ranchi officiating from his office at O/o the Executive Magistrate, Sadar, P.O-Kotwali, P.S-GPO, Dist-Ranchi.

..... … Respondents

with

W.P.(Cr.) No. 224 of 2023

Dr. Nishikant Dubey, aged about 51 years, s/o Shri Radhey Shyam Dubey R/o 18 G.R.G. Road, PO and PS GRG Road New Delhi.

..... … Petitioner

Versus

1. The State of Jharkhand through the Director General of Police, officiating from his office at Nepal House, P.O and P.S- Doranda, Ranchi-834002.

2. Upendra Kumar S/o A.M Ram R/o Dinnanath Nagar, P.O and P.S-Lalpur, Dist- Ranchi officiating from his office at O/o the Executive Magistrate, Sadar, P.O-Kotwali, P.S-GPO, Dist-Ranchi.

..... … Respondents

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioners : Mr. Prashant Pallav, Advocate.
: Mr. Parth Jalan, Advocate.
For the State : Mr. Rajiv Ranjan, A.G.
: Mr. Deepankar, A.C. to G.A.-III.

07/ 14.08.2024 Heard Mr. Prashant Pallav, learned counsel appearing for the petitioners and Mr. Rajiv Ranjan, learned Advocate General appearing for the respondents-State.

2. In all these writ petitions, common questions of fact and law are involved, that's why all these petitions have been heard together with the consent of the parties.

3. In all these petitions, prayers are made for quashing of the entire criminal proceedings arising out of Dhurwa P.S. Case No. 107 of

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2023, registered under Sections 147, 148, 188, 109, 353, 332, 427 and 323 of the Indian Penal Code, pending in the court of learned Judicial Magistrate, Ranchi.

4. The said Dhurwa P.S. Case No. 107 of 2023 was registered alleging therein that the political party Bhartiya Janta Party, had organized a protest against the Government of Jharkhand near the Project Bhawan (Government of Jharkhand). The District administration, in order to maintain law and order, had directed deployed additional police force and magistrate in the city of Ranchi. The informant was deployed along near the Dhurwa Gollambar (cross road) on the road leading from Dhurwa Gollambar (cross road) to Prabhat Tara field along with Binod Prajapati, Circle Officer Namkum Ranchi; Mrs. Mohal Rajpurohit, Assistant Police Superintendent Headquarters-I, Mr. Animesh Nouthani, Police Deputy Superintendent, Khehlari and Awdesh Thakur, Police Inspector Mandar Anchal and tear gas team, fire brigade, riot control team with water cannon and ambulance. In accordance with the direction of the Deputy Commissioner, Ranchi a company of Rapid Action Force was also deployed.

It is mentioned that considering the huge congregation of the workers, politicians and supports of the Bhartiya Janta Party, the Ld. Sub- Divisional Officer had passed an order enforcing the restriction under Section 144 of the Code of Criminal Procedure, 1973 from 8:30 AM in the morning to 11:00 PM on 11th of April 2023. It has been further alleged that on 11th of April 2023 at about 1:30 PM, a huge crowd of 5,000 (five thousand) people assembled in violation of the order passed under Section 144 of the Code of Criminal Procedure, 1973. The group started to raise slogans against the working of the incumbent government. The entire group started to move towards Dhurva Gollambar (cross

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road) and tried to break through the barricade. It has been further alleged that time and again the government official, made announcement that restriction under Section 144 of the Code of Criminal Procedure, 1973 is in force. However, it has been alleged that the crowd got increasingly violent and started throwing bottles and stones. The official made attempts to stop the protestors from breaking the barricades and moving towards 'Project Bhawan' however they became further violent and started pelting stones and sticks and injured Mr. Deepak Dubey, Sub-Divisional Officer, Sadar, Ranchi; Vimal Nandam Singh, Station In-charge Dhurva; Narayan Soren, Police Sub-Inspector, Manish Kumar, Santosh Kumar Sharma, Anil Kumar Mahto along without police officials. It has been further alleged that several journalists were also injured. When the official were left with no alternative, they had to use the water cannon to disperse the crowd. After some time, still certain person tried to instigate the crowd due to which tear gas had to be produced. It has been further stated that minimal force was used on the crowd.

On the basis of the aforesaid allegation, the First Information Report was registered against several leaders of the Bhartiya Janta Party. The name of the remaining Petitioners which is not mentioned in the FIR has been included during the course of investigation.

5. Mr. Prashant Pallav, learned counsel appearing for the petitioners submits that in the first case, there are 26 petitioners and in other two cases, one petitioner in each case is there. He submits that these petitioners happened to be the leaders of opposition party in the State of Jharkhand. He then submits that the allegations so far as these petitioners are concerned, who are top leaders of the opposition party in the State of Jharkhand have planned to demonstrate peacefully

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against the policy of the Government of Jharkhand and for that an intimation was made to the district administration and thereafter they were proceeded on silent march on 11.04.2023, pursuant to that these petitioners were only addressing the workers of the said party, in the meantime, the allegations are made that some of the people assembled there have gone violent. He submits that the allegations are made that the said assembly marched towards the Secretariat and it is alleged that when the police tried to stop them, they have tried to break the barricade and have pelted the stones and water bottles. He further submits that so far as these allegations are concerned, that is not against these petitioners and these allegations are vague in the FIR and the allegations are made that 5000 people were proceeding towards the Secretariat. In these backgrounds, so far as these petitioners are concerned, who happened to be the top leaders of the opposition party in the State of Jharkhand have been maliciously dragged in the FIR. He further submits that one or two petitioners are even the Cabinet Ministers of the Government of India, some are the Members of Parliament and Members of Rajya Sabha and some are the Members of Legislative Assembly of the State of Jharkhand, one accused is the Governor of Orissa, three accused persons are the Ex-Chief Ministers of the State of Jharkhand and all have been implicated in the present case. He then submits that maliciously and at the behest of highest of the State of Jharkhand, these petitioners have been implicated in the FIR. He further submits that the allegations of breaking the barricade and pelting stones and throwing water bottles are not against these petitioners. He submits that on the fateful day, it was announced that promulgation under Section 144 Cr.P.C. has been made, however, prior to that no intimation was made about that the said promulgation by the district administration. He further submits that the said demonstration was peaceful against the Government policy, as such,

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it cannot be said that the petitioners were unlawfully assembled there.

6. Learned counsel appearing for the petitioners draws the attention of the court to Section 141 of the Indian Penal Code and submits that ingredients of unlawful assembly so far these petitioners are concerned, are not made out. He further draws the attention of the court towards Sections 146 and 188 of the Indian Penal Code and submits that rioting is defined therein and Section 148 speaks of rioting armed with deadly weapon, however, there is no allegation against any of the petitioners that they were armed with deadly weapon. He then submits that Section 188 of the Indian Penal Code is not attracted, as for invoking Section 188 of the Indian Penal Code, Section 195 Cr.P.C. is required to be followed in absence of the any complaint by any public authority, who has promulgated the said Section 144 Cr.P.C. promulgation, Section 188 of the Indian Penal Code cannot be inserted in the FIR. He further submits that so far Section 109 of the Indian Penal Code is concerned, against these petitioners, the case is not made out, if any case is made out that is against the persons, who have tried to break the barricades and pelted the stones and also thrown the water bottles, as these allegations are not against these petitioners.

7. He further draws the attention of the court towards para-16 of the counter affidavit, filed on behalf of the respondents-State, wherein it has been stated that the videography has been done, however, it is not stated that in the said videography anything has been found against these petitioners, who are the top leaders of one of the political party. On these backgrounds, he submits that so far as these petitioners are concerned, to allow the proceeding is malicious and their fundamental rights have been infringed in light of Articles 19 and 21 of the Constitution of India. He relied in the case of ***Anuradha Bhasin Versus Union of India & Ors.***, reported in **(2020) 3 SCC 637** and he refers to paras-141 and 148 of the said judgment, which

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reads as under:-

> *"141. In a situation where fundamental rights of the citizens are being curtailed, the same cannot be done through an arbitrary exercise of power; rather it should be based on objective facts. The preventive/remedial measures under Section 144 CrPC should be based on the type of exigency, extent of territoriality, nature of restriction and the duration of the same. In a situation of urgency, the authority is required to satisfy itself of such material to base its opinion on for the immediate imposition of restrictions or measures which are preventive/remedial. However, if the authority is to consider imposition of restrictions over a larger territorial area or for a longer duration, the threshold requirement is relatively higher.*
>
> *148. Before parting we summarise the legal position on Section 144 CrPC as follows:*
>
> *148.1. The power under Section 144 CrPC, being remedial as well as preventive, is exercisable not only where there exists present danger, but also when there is an apprehension of danger. However, the danger contemplated should be in the nature of an "emergency" and for the purpose of preventing obstruction and annoyance or injury to any person lawfully employed.*
>
> *148.2. The power under Section 144 CrPC cannot be used to suppress legitimate expression of opinion or grievance or exercise of any democratic rights.*
>
> *148.3. An order passed under Section 144 CrPC should state the material facts to enable judicial review of the same. The power should be exercised in a bona fide and reasonable manner, and the same should be passed by relying on the*

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> *material facts, indicative of application of mind. This will enable judicial scrutiny of the aforesaid order.*
> *148.4. While exercising the power under Section 144 CrPC, the Magistrate is duty-bound to balance the rights and restrictions based on the principles of proportionality and thereafter apply the least intrusive measure.*
> *148.5. Repetitive orders under Section 144 CrPC would be an abuse of power."*

8. Relying on the above judgment, he submits that even the promulgation of Section 144 Cr.P.C. is there, in a situation, the fundamental right of the citizens are being curtailed, the same can be through an arbitrary exercise of power. In view of that the case of the petitioners are fully covered, as such, the entire criminal proceedings against them may kindly be quashed.

9. Learned counsel appearing for the petitioners further submits that in light of Section 195 Cr.P.C., only on the complaint, Section 188 of the Indian Penal Code can be maintained. According to him, in light of Section 195 Cr.P.C., only the complaint can be maintained in light of the judgment of Patna High Court in the case of ***Dharmesh Prasad Verma Versus The State of Bihar***, reported in **(2017) 1 PLJR 401** and he refers to para-17 of the said judgment, which reads as under:-

> *"17. The provision prescribed under Section 195 of the CrPC has been carved out as an exception to the general rule contained under Section 190 of the CrPC that any person can set the law into motion by making a complaint, as it prohibits the Court from taking cognizance of certain offences until and unless a complaint has been made by some particular authority or person. The legislative intention appears to be clear from the language of Section 195 of the CrPC which clearly prescribes*

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> *that where an offence is committed under Section 188 IPC, it would be obligatory that the public servant before whom such an offence is committed, should file a complaint before the jurisdictional Magistrate either orally or in writing. Hence, it would not be within the domain of the police to register a case for an offence alleged under Section 188 of the IPC and investigate the same, as registration of an FIR for an offence under Section 188 IPC is not permitted by the CrPC."*

10. Relying on the above judgment, he submits that the entire criminal proceeding may kindly be quashed.

11. Learned counsel appearing for the petitioners by way of drawing the attention of the court to Section 353 of the Indian Penal Code submits that the said Section speaks about the assault or criminal force to deter public servant from discharge of his duty, in view of that the ingredients of that Section is not attracted. To buttress his argument, he relied in the case of ***Manik Taneja Versus State of Karnataka***, reported in **(2015) 7 SCC 423** and he refers to para-12 and 14 of the said judgment, which reads as thus:-

> ***"12.*** *In the instant case, the allegation is that the appellants have abused the complainant and obstructed the second respondent from discharging his public duties and spoiled the integrity of the second respondent. It is the intention of the accused that has to be considered in deciding as to whether what he has stated comes within the meaning of "criminal intimidation". The threat must be with intention to cause alarm to the complainant to cause that person to do or omit to do any work. Mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of this section. But*

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> *material has to be placed on record to show that the intention is to cause alarm to the complainant. From the facts and circumstances of the case, it appears that there was no intention on the part of the appellants to cause alarm in the mind of the second respondent causing obstruction in discharge of his duty. As far as the comments posted on Facebook are concerned, it appears that it is a public forum meant for helping the public and the act of the appellants posting a comment on Facebook may not attract ingredients of criminal intimidation in Section 503 IPC.*
>
> ***14.** In the result, the impugned order of the High Court in Manik Taneja v. State of Karnataka [2014 SCC OnLine Kar 4237] dated 24-4-2014 is set aside and this appeal is allowed and the FIR in Crime No. 174 of 2013 registered against the appellants is quashed."*

12. By way of referring that judgment, he submits that there was no act of threatening to any person or causing any injury to any public servant, and in view of that the case of the petitioners are fully covered in light of the above judgment of ***Manik Taneja (Supra).***

13. He further submits that the object of the assembly was never unlawful and in view of that in light of ingredients of Section 141 of the Indian Penal Code, the same is not made out so far as these petitioners are concerned and for the act done by other persons, who were assembled there, the liability cannot be fastened upon the petitioners, who happened to be the top leaders of the opposition party in the State of Jharkhand.

14. Learned counsel appearing for the petitioners further submits that Article 19 of the Constitution of India provides right to every citizen of India to protest peacefully and in support thereof, he relied in the case of ***Anita Thakur & Ors. Versus Government of***

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Jammu & Kashmir, reported in **(2016) 15 SCC 525** and he refers to Paras-12 and 15 of the said judgment, which reads as under:-

> *"12. We can appreciate that holding peaceful demonstration in order to air their grievances and to see that their voice is heard in the relevant quarters is the right of the people. Such a right can be traced to the fundamental freedom that is guaranteed under Articles 19(1)(a), 19(1)(b) and 19(1)(c) of the Constitution. Article 19(1)(a) confers freedom of speech to the citizens of this country and, thus, this provision ensures that the petitioners could raise slogan, albeit in a peaceful and orderly manner, without using offensive language. Article 19(1)(b) confers the right to assemble and, thus, guarantees that all citizens have the right to assemble peacefully and without arms. Right to move freely given under Article 19(1)(d), again, ensures that the petitioners could take out peaceful march. The "right to assemble" is beautifully captured in an eloquent statement that "an unarmed, peaceful protest procession in the land of "salt satyagraha", fast-unto-death and "do or die" is no jural anathema". It hardly needs elaboration that a distinguishing feature of any democracy is the space offered for legitimate dissent. One cherished and valuable aspect of political life in India is a tradition to express grievances through direct action or peaceful protest. Organised, non-violent protest marches were a key weapon in the struggle for Independence, and the right to peaceful protest is now recognised as a fundamental right in the Constitution.*
>
> *15. Thus, while on the one hand, citizens are guaranteed fundamental right of speech, right to assemble for the purpose of carrying peaceful protest processions*

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> *and right of free movement, on the other hand, reasonable restrictions on such right can be put by law. Provisions of IPC and CrPC, discussed above, are in the form of statutory provisions giving powers to the State to ensure that such public assemblies, protests, dharnas or marches are peaceful and they do not become "unlawful". At the same time, while exercising such powers, the authorities are supposed to act within the limits of law and cannot indulge into excesses. How legal powers should be used to disperse an unruly crowd has been succinctly put by the Punjab and Haryana High Court in Karam Singh v. Hardayal Singh [Karam Singh v. Hardayal Singh, 1979 Cri LJ 1211 : 1979 SCC OnLine P&H 180] wherein the High Court held that three prerequisites must be satisfied before a Magistrate can order use of force to disperse a crowd: First, there should be an unlawful assembly with the object of committing violence or an assembly of five or more persons likely to cause a disturbance of the public peace. Second, an Executive Magistrate should order the assembly to disperse. Third, in spite of such orders, the people do not move away."*

15. Relying on the above judgment, he submits that the freedom of speech and peaceful march are covered under Article 19 of the Constitution of India. He submits that the peaceful march is there in light of the constitutional mandate, maliciously these petitioners have been implicated in this case.

16. Learned counsel appearing for the petitioners further submits that in the identical situation, this court has interfered in the case of ***Nishikant Dubey Versus State of Jharkhand*** in **Cr.M.P. No. 2113 of 2018**, which was allowed by order dated 09.02.2024. On these

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grounds, he submits that the entire criminal proceedings are malicious one, as such, the entire criminal proceedings may kindly be quashed so far as these petitioners are concerned.

17. Per contra, Mr. Rajiv Ranjan, learned Advocate General appearing for the respondents-State by way of drawing the attention of the court to the contents of the FIR submits that there are allegations against these petitioners of instigating the others and pursuant to that the said mob has turned unlawful, as such, the case is made out. He submits that on the loudspeaker, it was announced that Section 144 Cr.P.C. proceeding is there, in view of that people were directed to restrain themselves to proceed further, however, they have tried to break the barricading and have pelted the stone and water bottles, which clearly suggests that the case is made out. He then submits that in these petitions, nowhere stated that these petitioners were not present, as such, their presence are proved, in view of that the case is made out. He draws the attention of the court to Annexure-A of the counter affidavit and submits that promulgation on 10.04.2023 under Section 144 Cr.P.C. was made so far as 200 meters from Dhurwa Golchakkar to Project Bhawan and connecting road to Chandni Chowk, Hatia are concerned. By way of referring Annexure-B of the counter affidavit, he submits that the police force and the Executive Magistrates were posted for maintaining the law and order. He further submits that in the FIR, the allegation are made of receiving the injuries by the persons, who were on duty. He draws the attention of the court to Section 141 of the Indian Penal Code and submits that unlawful assembly definition is there and in view of the aforesaid facts, the case of making unlawful assembly is made out against these petitioners.

18. Learned Advocate General appearing for the respondents-State refers to Sections 143, 146 and 147 of the Indian Penal Code and

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submits that the rioting punishment is defined with regard to unlawful assembly as well as rioting and punishment for rioting in this Section. He draws the attention of the court to Section 349 of the Indian Penal Code and submits that the force is described in the said Section and by way of referring that Section, he submits that if any cause of motion is made that itself suggests that the force was made. On these backgrounds, he submits that no case of interference is made out.

19. Learned Advocate General appearing for the respondents-State submits that so far Section 195 of the Cr.P.C. is concerned, that cannot be the subject matter at the initial stage and at the time of cognizance only, that can be looked into by the learned Court and to buttress his argument, he relied in the case of ***State of Punjab Versus Raj Singh & Anr.***, reported in **(1998) 2 SCC 391**. On the same line, he further relied in the case of ***M. Narayandas Versus State of Karnataka & Ors***., reported in **(2003) 11 SCC 251**.

20. Relying on the above judgments, he submits that the registration of the FIR it is not the bar and at the time of cognizance only, Section 195 Cr.P.C. will come, in view of that the argument of learned counsel appearing for the petitioners is not sustainable.

21. Learned Advocate General appearing for the respondents-State further submits that in the case of ***Ramlila Maidan Incident IN RE***, reported in **(2012) 5 SCC 1**, it has been held by the Hon'ble Supreme Court that any person, who was present and indulged in such act came within the purview to unlawful assembly and to buttress his argument, he relied at paras-270, 271, 272, 283 and 284 of the said judgment, which are as under:-

> *"**270.** Once an order under Section 144 CrPC is passed by the competent authority and such order directs certain acts to be done or abstains (sic abstention) from doing certain acts*

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and such order is in force, any assembly, which initially might have been a lawful assembly, would become an unlawful assembly and the people so assembled would be required to disperse in furtherance to such order. A person can not only be held responsible for his own act, but, in the light of Section 149 IPC, if the offence is committed by any member of the unlawful assembly in prosecution of a common object of that assembly, every member of such assembly would become member of the unlawful assembly.

271. *Obedience of lawful orders is the duty of every citizen. Every action is to follow its prescribed course in law actio quaelibet it sua via. The course prescribed in law has to culminate to its final stage in accordance with law. In that process there might be either a clear disobedience or a contributory disobedience. In either way, it may tantamount to being negligent. Thus, the principle of contributory negligence can be applied against parties to an action or even a non-party. The rule of identification would be applied in cases where a situation of the present kind arises. Before this Court, it is the stand of the police authorities that Baba Ramdev, members of the Trust and their followers refused to obey the order and, in fact, they created a situation which resulted in inflictment of injuries not only to the members of the public, but even to police personnel. In fact, they placed the entire burden upon Respondent 4.*

272. *The members of the public as well as Respondent 4 claimed that there was damage to their person and property as a result of the action of the police. Thus, this Court will have to see the fault of the party and the effective cause of the*

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ensuing injury. Also it has to be seen that in the "agony of the moment", would the situation have been different and safe, had the people concerned acted differently and as to who was majorly responsible for creation of such a dilemma. Under the English law, it has been accepted that once a statute has enjoined a pattern of behaviour as a duty, no individual can absolve another from having to obey it. Thus, as a matter of public policy, volenti *cannot erase the duty or breach of it. (Ref. Clerk and Lindsell on Torts, 20th Edn., p. 246)*

283. *Keeping in view the stature and respect that Baba Ramdev enjoyed with his followers, he ought to have exercised the moral authority of his office in the welfare of the people present. There exists a clear constitutional duty, legal liability and moral responsibility to ensure due implementation of lawful orders and to maintain the basic rule of law. It would have served the greater public purpose and even the purpose of the protests for which the rally was being held, if Baba Ramdev had requested his followers to instantaneously leave the Ramlila Maidan peacefully or had assured the authorities that the morning yoga programme or protest programme would be cancelled and the people would be requested to leave for their respective places. Absence of performance of this duty and the gesture of Baba Ramdev led to an avoidable lacerating episode.*

284. *Even if the Court takes the view that there was undue haste, adamancy and negligence on the part of the police authorities, then also it cannot escape to mention that to this negligence, there is a contribution by Respondent 4 as well. The role of Baba Ramdev at that crucial juncture could have turned the tide and*

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> *probably brought a peaceful end rather than the heart-rending end of injuries and unfortunate death. Even if it is assumed that the action of the police was wrong in law, it gave no right to others to commit any offence injuria non excusat injuriam."*

22. Relying on the above judgments, he submits that the petitioners were admittedly present at the spot, as such, they are also liable for prosecution.

23. Learned Advocate General appearing for the respondents-State further relied in the case of ***Lakshman Singh Versus State of Bihar (Now Jharkhand)***, reported in **(2021) 9 SCC 191** and submits that the said case was also arising out of a proceeding under Section 144 Cr.P.C. and the Hon'ble Supreme Court has held that meticulously, this is not possible in a case, where the large persons are present to state specific act done by a person and the evidence of injured witnesses are greater evidentiary value.

24. On the point of quashing of the proceeding, he relied in the case of ***Neeharika Infrastructure Pvt. Ltd. Versus State of Maharashtra & Ors.***, reported in **(2021) SCC OnLine SC 315**. Relying on the said judgment particularly at para-80, he submits that guidelines have been made therein, in view of that the case of quashing is not made out. Para-80 of that judgment is quoted hereinbelow:-

> *80. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under Section 482CrPC and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified*

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in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/charge-sheet is filed under Section 173CrPC, while dismissing/ disposing of/not entertaining/ not quashing the criminal proceedings /complaint/FIR in exercise of powers under Section 482CrPC and/or under Article 226 of the Constitution of India, our final conclusions are as under:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence.

ii) Courts would not thwart any investigation into the cognizable offences.

iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on.

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the "rarest of rare cases" (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint.

vi) Criminal proceedings ought not to be scuttled at the initial stage.

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule.

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere.

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ix) The functions of the judiciary and the police are complementary, not overlapping.
x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences.
xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice.
xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure.
xiii) The power under Section 482CrPC is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court.
xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in R.P. Kapur [R.P. Kapur v. State of Punjab, 1960 SCC

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OnLine SC 21 : AIR 1960 SC 866] and Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , has the jurisdiction to quash the FIR/complaint.

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482CrPC, only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR.

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482CrPC and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438CrPC before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or

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> *till the final report/charge-sheet is filed under Section 173CrPC, while dismissing /disposing of the quashing petition under Section 482CrPC and/or under Article 226 of the Constitution of India.*
> *xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482CrPC and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.*
> *xviii) Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied.*

25. Relying on the above judgments, learned Advocate General appearing for the respondents-State submits that at this stage, this court may not interfere with the entire proceedings and that can be the subject matter of trial and the investigation is still going on and in view of that these petitions may kindly be dismissed.

26. In view of the above submissions of the respective parties, the court has gone through the materials on record and finds that it is an admitted position that 26 petitioners in W.P.(Cr.) No. 158 of 2024 as well as other two petitioners, who are petitioners in W.P.(Cr.) No. 270 of 2024 and W.P.(Cr.) No. 224 of 2023 respectively, are the Members

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of a particular political party in the State of Jharkhand. In course of the argument, it was pointed out that some of the petitioners are even the Cabinet Ministers of the Union of India, some are the Members of Parliament and Rajya Sabha, three accused persons are Ex-Chief Ministers of the State of Jharkhand and some are the members of the State Legislative Assembly. It is further an admitted position that prior information was made to the district administration about the peaceful march towards the Secretariat in the State of Jharkhand. Section 144 Cr.P.C. promulgation was not intimated prior to these petitioners, however, at the time of proceeding towards the Secretariat, it is alleged in the FIR that by way of loudspeaker, it was intimated that Section 144 Cr.P.C. proceeding is there and they were directed to restrain themselves to proceed further.

27. Looking into the contents of the FIR, the court finds that so far as these petitioners are concerned, there are no allegations against them that they have tried to break the barricade, or they have pelted the stones and the water bottles, however, the allegations are there against the other persons of doing such thing and if that is there, for the acts of the others, the petitioners, who happened to be the top leaders of the opposition party in the State of Jharkhand, the liability cannot be fastened upon them, particularly in the facts and circumstances of the present case.

28. The right of people to hold peaceful protests and demonstrations, etc. is a fundamental right guaranteed under Articles 19(1)(a) and 19(1)(b) of the Constitution of India. Right to protest is recognized as a fundamental right under the Constitution of India. Further, this right is crucial in a democracy which rests on participation of an informed citizenry in governance and it strengthens representative democracy by enabling direct participation in public affairs where individuals and groups are able to express dissent and grievances, expose the flaws in governance and demand accountability

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from the State authorities as well as powerful entities.

29. Undoubtedly, holding peaceful demonstrations by the citizenry in order to air its grievances and to ensure that these grievances are heard in the relevant quarters, is its fundamental right. This right is specifically enshrined under Article 19(1)(a) and 19(1)(b) of the Constitution of India. Article 19(1)(a) confers a vary valuable right on the citizens, namely, right of free speech. Likewise, Article 19(1)(b) gives right to assemble peacefully and without arms. Together, both these rights ensure that the people of this country have right to assemble peacefully and protest against any of the actions or the decisions taken by the Government or other governmental authorities which are not to the liking. Legitimate dissent is a distinguishable feature of any democracy. Question is not as to whether the issue raised by the protestors is right or wrong or it is justified or unjustified. The fundamental aspect is the right which is conferred upon the affected people in a democracy to voice their grievances. Dissenters may be in minority. They have a right to express their views. A particular cause which, in the first instance, may appear to be insignificant or irrelevant may gain momentum and acceptability when it is duly voiced and debated. That is the reason that the Hon'ble Supreme Court has always protected the valuable right of peaceful and orderly demonstrations and protests. This has been held by the Hon'ble Supreme Court in the case of ***Mazdoor Kisan Shakti Sangathan Versus Union of India & Anr.***, reported in **(2018) 17 SCC 324**.

30. When there is a protest against police action or inaction, the possibility of violation of fundamental rights is maximum because police is licensed to carry arms for protecting people. Misuse of such power can taken place due to mistaken belief in the absolutism of the police power or on account of lack of sensitivity to the democratic rights. On the other it is also true that none can paralyse State machinery in the name of public protest. Rights without duties tend to

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degenerate into license for misuse of rights. Right to protest/demonstrate are there and further it has to be looked whether the police used excessive force against the demonstrators infringing their right to life of dignity.

31. In the case of ***Javed Ahmad Hajam Versus State of Maharashtra & Anr.***, reported in **(2024) 4 SCC 156**, it has been held by the Hon'ble Supreme Court that the right to dissent, peacefully protest against, and peacefully protest against, and criticise Government decisions, in legitimate and lawful manner, held, integral and essential part of democracy under Article 19(1) and right to lead dignified life under Artcile-21, however, the caution is there, as the protest or dissent must be within fours of modes permissible in a democracy and the said right is subject to reasonable restrictions imposed in accordance with Article-19(2) of the Constitution of India.

32. In these backgrounds, the court is required to examined whether the petitioners were indulged in such hooliganism as alleged in the FIR or not and what has been stated hereinabove in the FIR, the Court has discussed hereinabove. There is no direct allegation against these petitioners that they were indulged in breaking the barricade or in pelting stones or water bottles. The call was against the Government policy by the opposition leader of the State of Jharkhand. Admittedly, the intention of assembly was not intended to harm anybody, so far as these petitioners are concerned and if a fundamental right is involved, protests are there against the Government policy, as such, on that line, the judgment relied by the learned counsel appearing for the petitioners in the case of ***Anuradha Bhasin (Supra)*** is coming to aid these petitioners.

33. In the case of ***Manik Taneja (Supra)***, if a criminal force is not there, Section 353 of the Indian Penal Code is not attracted and it is well settled and on that ground, the Hon'ble Supreme Court has interfered in the case of ***Manik Taneja (Supra)***.

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34. So far as Section 188 of the Indian Penal Code is concerned, the court is in agreement with the argument of learned Advocate General, who is appearing for the respondents-State that Section 195 Cr.P.C. comes only when the learned court will apply its mind for taking the cognizance and for registration of the FIR and investigation is not bar, however, in the facts of the present case, the way, in which, the FIR has been registered against all the top leaders of a particular political party for a demonstration, which is coming within Article 19 of the Constitution of India, to allow the proceeding so far as these petitioners are concerned, particularly for the acts of the others, who were indulged in the said hooliganism, will amount to an abuse of the process of law.

35. The case relied by the learned Advocate General in the case of ***Raj Singh (Supra),*** is on the different footing, as in that case, criminal offences are originated from the civil suit and the fact of the case in hand is otherwise, as such, this judgment is not helping the respondents-State.

36. Further the case relied by the learned Advocate General in the case of ***M. Narayandas (Supra),*** it is well settled that Section 482 of the Cr.P.C., powers of quashing must be exercised, very sparingly, and with circumspection and that too in the rarest of the rare case, the case in hand, materials available on the record suggests that F.I.R. was mala fidely lodged against the top leaders of the opposition by their names by the police personnel, when they were protesting against the policy of the Ruling Party and just to remove the crowd of protestor, the present case was lodged.

37. The case relied by the learned Advocate General in the case of ***Lakshman Singh (Supra)***, the issue was with regard to snatching the voters slip and to caste bogus voting and that was in an election, and in that background, that has been held. Article 19 of the Constitution of India was not the subject matter in that proceeding

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before the Hon'ble Supreme Court. The cases are required to be decided on the facts of the each case.

38. The court is further in agreement with the argument of the learned Advocate General so far the principles of quashing is concerned and it is well settled that the High Court under Article 226 of the Constitution of India and under Section 482 Cr.P.C., it is not required to rove into to come to a conclusion that no case is made out, however, if a case is found to be malicious, not interfering by the High Court will also amount to an abuse of the process of law. If the malicious prosecution is initiated, every care is taken to make out the ingredients of particular Section and if such fact is before the High Court, the High court is having more responsibility to examine the things more cautiously for that the court is required to read the things in between the lines. Reference may be made to the case of ***Haji Iqbal @ Bala through SPOA Versus State of Uttar Pradesh,*** reported in **(2023) SCC Online (SC) 946.**

39. In view of the above facts, reasons and analysis, so far as these petitioners are concerned, to allow the proceeding to continue will amount to an abuse of the process of law. Accordingly, the entire criminal proceedings arising out of Dhurwa P.S. Case No. 107 of 2023, registered under Sections 147, 148, 188, 109, 353, 332, 427 and 323 of the Indian Penal Code, pending in the court of learned Judicial Magistrate, Ranchi, are hereby, quashed so far as these petitioners are concerned.

40. All these writ petitions are allowed and disposed of. Pending I.A., if any, stands disposed of.

41. It is made clear that this court has not interfered with the entire criminal proceedings so far as other persons are concerned, as the allegations are there that 5000 persons were there in the said march and the investigation against them will proceed in accordance with law.

40. In the case of ***Mazdoor Kisan Shakti Sangathan (Supra),***

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the Hon'ble Supreme Court has considered the process of demonstration under Section 144 Cr.P.C. nearabout the Parliament Street, New Delhi with regard to said promulgation as that area was near the Parliament House, North and South Blocks, Central Vista Launge and its surroundings and locality. In para-68, it was held that there is no absolute prohibition from holding public meetings, processions, demonstrations, etc. Such activities are to be restricted in larger public interest and, therefore, before any group of persons or person wants to carry out any such processions and dharnas, it has to take prior written permission, meaning thereby, whenever such a request is made, the authority is to examine the same and take a decision as to whether it should allow the proposed demonstration, public meeting etc. or not, keeping in view its likely effect, namely, whether it would cause any obstruction to traffic or danger to human safety or disturbance to public tranquility etc. If requests made are considered and then allowed or rejected keeping in view the aforesaid considerations, there cannot be any quarrel as to the validity of such an order made under Section 144 of the Cr.P.C. That is, however, not the ground reality.

41. Para-70 of the said judgment is quoted hereinbelow for the ready reference:-

> *"70. In the aforesaid conspectus, here also the Commissioner of Police, New Delhi and other official respondents can frame proper guidelines for regulating such protests, demonstrations, etc. As noted above, the orders issued under Section 144 prohibit certain activities in the nature of demonstrations etc. 'without permission', meaning thereby permission can be granted in certain cases. There can, therefore, be proper guidelines laying down the parameters under which permission can be granted in the Boat Club area. It can be a very restrictive and limited use, because of*

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the sensitivities pointed out by the respondents and also keeping in mind that Ramlila Maidan is available and Jantar Mantar Road in a regulated manner shall be available as well, in a couple of months. Thus, the proposed guidelines may include the provisions for regulating the numbers of persons intending to participate in such demonstrations, prescribing the minimum distance from the Parliament House, North and South Blocks, Supreme Court, residences of dignitaries etc. within which no such demonstrations would be allowed; imposing restrictions on certain routes where normally the Prime Minister, Central Ministers, Judges etc pass through; not permitting any demonstrations when foreign dignitaries are visiting a particular place or pass through the particular route; not allowing firearms, lathis, spears, swords, etc. to be carried by demonstrators; not allowing them to bring animals or pitch tents or stay overnight; prescribing time limits for such demonstrations; and placing restrictions on such demonstrations, etc. during peak traffic hours. To begin with, authorities can permit those processions and demonstrations which are innocuous by their very nature. Illustratively, school children carrying out procession to advance some social cause or candle march by peace loving group of persons against a social evil or tragic incident. These are some of the examples given by us to signify that such demonstrations can be effectively regulated by adopting various measures instead of banning them altogether by rejecting every request for such demonstrations. We, therefore, feel that in respect of this area as well the authorities can formulate proper and requisite guidelines. We direct the Commissioner of Police, New Delhi, to undertake this exercise, in consultation with other authorities, within two months from

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today."

42. In view of the above guidelines of the Hon'ble Supreme Court, the Chief Secretary, the Home Secretary, Government of Jharkhand and the Director General of Police, Government of Jharkhand and other concerned officials are directed to frame the guidelines, which may include the provisions for regulating the numbers of persons intending to participate in such demonstrations, prescribing the minimum distance from the State Legislature, High Court, Schools, Hospitals, residences of dignitaries etc., within which, no such demonstration would be allowed. All these institutions are situated in Dhurwa (Ranchi) and would be allowed of imposing certain restrictions.

43. Let a copy of this order be communicated to the Chief Secretary, the Home Secretary, Government of Jharkhand and the Director General of Police, Government of Jharkhand, for the needful.

(Sanjay Kumar Dwivedi, J.)

Amitesh/-

[A.F.R.]