

IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLATE SIDE

Present:  
Hon'ble Justice Shampa Sarkar

**WPA 7882 of 2022**

***Sunita Shukla***

***vs.***

***The State of West Bengal & Ors.***

For the petitioner: Mr. Pratik Dhar, Sr. Adv.  
Mr. Koustav Bagchi,  
Mr. Anirudhya Bhattacharyya,  
Mr. Debayan Ghosh,  
Ms. Priti Kar,  
Ms. Cardina Roy.

For the State: Mr. Amitesh Banerjee, Sr. Standing Counsel  
Ms. Ipsita Banerjee,  
Mr. Suddhadev Adak.

For the CBI: Mr. Billwadal Bhattacharyya, Dy. Solicitor Gen.  
Mr. Kallol Mondal.

Hearing concluded on: 20.01.2023

Judgment on: 25.04.2023

**Shampa Sarkar, J.:-**

1. The prime concern and endeavour of law should be to secure justice on the basis of truth, which ought to be unearthed through a committed and competent investigating agency.

**2.** The writ petition is a plea of a mother who alleges that her son Vishal was a victim of police atrocities and was subjected to abuse of power by the police when he was illegally detained in Titagarh Police Station on March 9, 2022. The family lives together in a joint mess.

**3.** Vishal, is an accused against whom Titagarh Police Station Case No.181 of 2022 dated March 10, 2022 under Section 21(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short NDPS Act), was registered. It was alleged that due to political reasons the officers of Titagarh Police Station being hand in gloves with the ruling dispensation in the State of West Bengal, had forcefully taken Vishal into custody, on March 9, 2022. Thereafter, Vishal was falsely implicated in a criminal case on the charge of commission of an offence punishable under the NDPS Act. The FIR was registered on March 10, 2022 at 6.15 hours. Aggrieved by the mala fide exercise of power by the police authority the petitioner approached this Court under Article 226 of the Constitution of India, seeking enforcement of the right to personal liberty and dignity guaranteed under Article 21 of the Constitution. The petitioner, as one of the family members of the victim, was aggrieved by the abuse of powers by the police authority which subjected not only her son but also the family members

to indignity, mortification and social embarrassment on account of the alleged wrongful confinement of Vishal by implicating Vishal in a false criminal case.

4. The petitioner approached the Court with prayers for investigation by an independent agency beyond the control of the State of West Bengal, for a court monitored investigation of the NDPS case and for seizure and preservation of CCTV footages of Titagarh Police Station dated March 9, 2022 and March 10, 2022. Further prayer for quashing Titagarh Police Station Case No.181 of 2022 dated March 10, 2022, had also been made.

5. The allegations of deprivation of the right to dignity, personal liberty and denial of a free and fair investigation, are the issues for adjudication by this Court.

6. In the matter of ***Bhagalpur Blinding case [Khatri (II) v. State of Bihar***, reported in ***1981 Cri LJ 597***], speaking for the bench, Bhagwati J., while considering the relief that could be granted by a court for violation of the constitutional rights guaranteed in Article 21, posed the following question:-

“...but if life or personal liberty is violated otherwise than in accordance with such procedure, is the Court helpless to grant relief to the person who has suffered such deprivation? Why should the court not be prepared to forge new tools and devise new remedies for the purpose of vindicating the most precious of the precious fundamental right to life and personal liberty?”

**7.** The petitioner contented that Vishal's participation in the municipal elections of 2022 as an election agent of his cousin Rakesh Shukla, a candidate backed by the Indian National Congress, made Vishal a victim of political vendetta. Vishal had been constantly threatened by the police. He was even warned that he would be implicated in a criminal case if he did not withdraw his support for his cousin. After the declaration of the result on March 2, 2022, it was business as usual for all.

**8.** Suddenly, on March 9, 2022 at about 12.37 p.m., two persons claiming to be officers from Titagarh Police Station went to the jewellery shop owned by the petitioner's husband (Vishal's father). Vishal was assisting his father in the family business. The police personnel were not in uniform. They picked up Vishal and took him to Titagarh Police Station in a Mahindra Scorpio Car bearing No. WB24AE4973. Vishal's father telephoned the Officer-in-charge but he was not provided with any answers. The incident was captured by the CCTV installed in the said shop. Vishal's father went to the police station and demanded certain answers. Ultimately, in the early hours of March 10, 2022 at about 5.00 a.m., Vishal was placed inside the police lock up. Vishal intimated his father that he had been physically assaulted and made to sign on various documents without being given an opportunity to go through the contents of

the same. Later, the petitioner and the other family members got to know that Vishal was charged with an offence punishable under Section 21(c) of the NDPS Act. An FIR was registered on the basis of a suo motu complaint of the respondent No.6, who was a Sub-Inspector of Titagarh Police Station. Allegations had been made that Vishal was detained in the police station throughout the entire day on March 9, 2022 and kept either in the PC party room or in the room adjacent to the police lock up.

**9.** The crux of the complaint giving rise to the NDPS case was that on March 10, 2022 at about 1.13 hours, the respondent No.6 received a secret information that a person was waiting at Koyla Depot Math, within the jurisdiction of the Titagarh Police Station with large quantity of phensedyl. The de facto complainant noted the same vide a GDE, being Titagarh Police Station GDE No.648 of 2022 dated March 10, 2022 and informed the respondent No.4 i.e. the Officer-in-Charge, Titagarh Police Station. The police authorities proceeded to the spot and arrested Vishal. 2.5 kgs of codeine mixture was found in Vishal's possession. All formalities were maintained. The seized items were labelled and inventorized. The arrest took place allegedly at about 4.55 hours on March 10, 2022.

**10.** The petitioner contended that her son had been framed in the NDPS case out of political vengeance. The police acted in collusion with a local political leader belonging to the present political dispensation. Further contention was that Vishal was picked up from the shop, taken to the police station, detained at the police station for the whole of March 9, 2022 and thereafter in the early hours of March 10, 2022 shown to be arrested in connection with the NDPS case. It was alleged that Vishal was never allowed to leave the police station on March 9, 2022 and the FIR had been falsely registered.

**11.** In the affidavit-in-opposition filed by the respondent No.4, certain facts were disclosed from the side of the respondents. It was stated that one Ramesh Shaw, lodged a complaint that Vishal and his associates had assaulted and threatened Bimal Shaw son of Ramesh Shaw. On the basis of such complaint, Titagarh Police Station Case No.129 of 2022 dated February 14, 2022 under Sections 341, 325 and 34 of the IPC had been registered. On March 9, 2022, Ramesh Shaw intimated the police that Vishal had threatened Ramesh Shaw and others with dire consequences if they did not withdraw the pending criminal case. Consequently, Titagarh Police Station GDE No.606 of 2022 was diarized on March 9, 2022 and S.I. Sanjay Naskar was endorsed with the enquiry. Sanjay Naskar visited Nataraj Jewellers and met Vishal. Vishal

allegedly displayed bad behaviour, non-cooperation and unwillingness to answer the questions of the police officer. Sanjay Naskar was compelled to arrest Vishal under Section 151 of Cr.P.C. in order to prevent commission of a cognizable offence. An arrest memo was issued. The persons available on spot refused to sign the same. Vishal was taken to the police station, handed over to the table duty officer by S.I. Sanjay Naskar and sent for medical examination. The entire matter was informed to the Officer-in-Charge, Titagarh Police Station, and Titagarh Police Station GDE No.611 of 2022 dated March 9, 2022 was diarized. Soon thereafter, a bail bond was submitted by a clerk, seeking Vishal's release. Vishal was released upon acceptance of a bail bond as also a PR Bond. Both the bonds were furnished simultaneously. The release had been diarized as GDE No.626 dated March 9, 2022. The allegations that Vishal was forced to sign blank papers in the police station and that the police authorities went to the shop in plain clothes and without displaying their names on the uniform, have not been specifically denied in the opposition.

**12.** The police authorities further stated that upon furnishing a bail bond as well as a P.R. bond, Vishal was released at 3.45 p.m. on March 9, 2022. Vishal's signature was obtained on the bail bond and P.R. Bond. The police authorities placed strong reliance on the same. It had been further averred in

the affidavit-in-opposition that a report with regard to Vishal's arrest and release on March 9, 2022 along with all connected documents were forwarded to the learned Additional Chief Judicial Magistrate, Barrackpore on March 9, 2022. A prayer was made seeking permission for further enquiry. Such prayer was allowed by the learned jurisdictional magistrate. After Vishal's release, on the next day i.e., March 10, 2022 at about 1.13 hours, the respondent No.6 received secret information that someone was waiting at Koyla Depot Math within the jurisdiction of Titagarh Police Station, with huge quantity of phensedyl. On receipt of such information, the matter was diarized as GDE No.648 dated March 10, 2022. After receiving orders from the Officer-in-Charge, Titagarh Police Station, the respondent No.6 along with police personnel went to the spot. At the site, codeine mixture was seized from the exclusive possession of Vishal under a proper seizure list. Titagarh Police Station Case No.181 of 2022 dated March 10, 2022 under Section 21(c) of the NDPS Act, was registered. On the following day, Vishal was forwarded to the learned Additional Sessions Judge, 1<sup>st</sup> Court, Barrackpore. The Additional Sessions Judge, First Court, at Barrackpore, directed the police authorities to collect the CCTV footages of Nataraj Jewellers. Allegedly, Vishal's father did not allow the police authorities to seize the storage device of the CCTV footage



(DVR). The respondent No.6 was compelled to prepare a NIL seizure list.

Vishal's prayer for bail was refused.

**13.** The primary contention of the petitioner was that truth should be unearthed. Her son had been wrongly incarcerated and had not been released from the police station on March 9, 2022. She urged that Vishal was a victim of police excesses and the CCTV footages of Titagarh Police Station dated March 9, 2022 and March 10, 2022, would establish the truth in her allegations against the police. Vishal was never allowed to leave the police station on March 9, 2022 and he could not have been present with codeine mixture on March 10, 2022, in the wee hours of the morning.

**14.** On April 7, 2022, the petitioner made a representation via e-mail to the respondent Nos. 1, 2 and 3 seeking preservation of the CCTV footages of Titagarh Police Station dated March 9, 2022. According to the petitioner, the footage would substantiate the fact that her son had been falsely implicated in the NDPS case.

**15.** In the course of hearing of the writ petition, this Court directed the Commissioner of Police, Barrackpore Commissionerate to take necessary steps to obtain the pin point location of Vishal Shukla on March 9 and 10, 2022. The Commissioner was further directed to indicate whether the direction of the

Supreme Court with regard to preservation of CCTV footages had been complied with by Titagarh Police Station and other police stations under the administrative control of the said commissionerate, or not. Although, the pin point location of the telephone of Vishal could not be traced from the CDR report given by Reliance Jio, yet the fact that Vishal had moved from the tower at Titagarh M.G. road (location of the shop) to the neighbouring tower at A.P. Devi Road (location near the police station) on March 9, 2022 between 12.00 hours to 13.00 hours, was available. From the details of the location as supplied with the report and the call records, it appeared that no calls were either received or made by Vishal between March 9, 2022 1.06 p.m. to March 12, 2022 (last date of the call record) and the tower location of A.P. Devi Road (one near the police station), did not change.

**16.** With regard to the Court's query as to whether the series of directions of the Hon'ble Supreme Court with regard to installation of CCTV cameras in the police stations and preservation of the footages had been complied with by the Titagarh Police Station or not, the Commissioner specifically stated that the Assistant Commissioner of Police (Head Quarters) Barrackpore Police Commissionerate had been appointed as the nodal officer in the district to supervise the process and progress of the installation work of CCTVs. The

works of installation of CCTV cameras with one year back up capacity to keep records of the stored footages, were in progress. The installations were being carried out in a phased manner, under the supervision of the State Level Oversight Committee. Once such work was complete, the direction of the Hon'ble Supreme Court would be strictly complied with. It had been categorically stated that the CCTVs which were functioning in Titagarh Police Station at the relevant point of time, had one month back up capacity. Video footages and recordings were automatically erased/deleted after a month. Thus, the report clearly stated that the video footages of the incidents which took place on March 9, 2022 and March 10, 2022, at Titagarh police station, were not available. The report dated August 11, 2022, forms part of the records.

**17.** Mr. Dhar, learned Senior Advocate appearing on behalf of the petitioner submitted that the CCTV footages were valuable piece of evidence which would demolish the charge that Vishal had committed an offence under the NDPS Act on March 10, 2022. Learned Advocate submitted that the petitioner had written a letter to the Officer-in-charge of the police station on April 7, 2022 with the allegation of wrongful detention and had asked for the footages. The police authorities did not make any endeavour to store the same, although a

letter had been written within a month from March 9, 2022, that is, within the backup period.

**18.** Learned Advocate submitted that the First Information Report dated March 10, 2022, did not make any reference to the earlier incident which took place on March 9, 2022, although such incident would be a relevant piece of information in the subsequent First Information Report. Learned Advocate urged the Court to note that Vishal was falsely implicated in the NDPS case. Vishal was never released from the police station on March 9, 2022. Learned Advocate further submitted that the NDPS case should be investigated by an independent agency, as the conduct of the police authorities were unfair and in violation of the legal provisions relating to arrest.

**19.** According to Mr. Dhar, the least that the family of the accused could expect from the investigating agency, was a fair and impartial investigation.

**20.** Mr Dhar, submitted that the theory of last seen together would be applicable in this case. Vishal was last seen at the police station and by application of the theory, the court should arrive at the conclusion that Vishal did not leave the police station on March 9, 2022.

**21.** Mr. Dhar further submitted that although an FIR was pending vide Titagarh Police Station Case No.129 of 2022 dated February 14, 2022 under Sections 341, 325 and 34 of the Indian Penal Code, Vishal was never questioned by the police authorities at any relevant point of time. No notice under Section 41A of the Code of Criminal Procedure had been served on Vishal. Mr. Dhar further urged that the arrest under Section 151 Cr.P.C. on March 9, 2022 for prevention of commission of a cognizable offence, was not preceded by an enquiry.

**22.** From the records of the police station, it did not transpire that the police authorities had satisfied themselves that a situation existed which would require preventive detention of Vishal. According to Mr. Dhar, Vishal's detention on March 9, 2022 for the whole day and false implication of Vishal in an NDPS case on the following day, were in gross violation of Article 21 of the Constitution of India.

**23.** Reliance had been placed by Mr. Dhar, on the following decisions:-

***(i) Paramvir Singh Saini vs Baljit Singh and Ors, reported in (2021) 1 SCC 184***

***(ii) D.K.Basu vs State of West Bengal and Ors., reported in (2015) 8 SCC 744***

***(iii) Lalita Kumari v. Govt. of U.P. & ors., reported in (2014) 2 SCC 1***

***(iv) State of W.B. v. Committee for Protection of Democratic Rights, West Bengal & ors., reported in (2010) 3 SCC 571***

***(iv) Rini Johar v. State of M.P. & ors., reported in (2016) 11 SCC 703***

***(v) Arnesh Kumar v. State of Bihar & anr., reported in (2014) 8 SCC 273***

***(vi) Youth Bar Assn. of India v. Union of India, reported in (2016) 9 SCC 473***

***(vii) D.K. Basu v. State of W.B., reported in (1997) 1 SCC 416***

***(viii) Pooja Pal v. Union of India & ors., reported in (2016) 3 SCC 135***

**24.** Mr. Amitesh Banerjee, learned senior standing counsel who was appearing for the respondents, relied on the bail bond and PR Bond. Learned Advocate submitted that Vishal had signed the P.R. Bond. Vishal's signatures on the bonds were evidence of Vishal's release on march 9, 2022. Further reliance was placed on the permission granted by the learned ACJM Barrackpore, permitting the police to make an enquiry. Reliance had been placed on Sections 151, 155(2) and 155(3) of the Code of Criminal Procedure. Mr. Banerjee urged that the offence committed by Vishal on March 9, 2022 being non-cognizable, permission from the ACJM was mandatory for further enquiry.

**25.** Learned Advocate further submitted that the accused could not choose the investigating agency and hence the prayer of the petitioner for appointment of an independent investigating agency for investigation of the NDPS case, should not be allowed. Learned Advocate submitted that the investigation in the NDPS case had been completed and charge-sheet had been filed. The prayer for quashing the criminal case would not arise and the remedy of the accused would be under the Code of Criminal Procedure. A writ court should not enter into the domain of criminal law, thereby converting itself to a special Court which was empowered by law to try an offence under the NDPS Act.

**26.** According to Mr Banerjee, the mobile tower location of Vishal's phone, was not clinching evidence. The same was not completely trustworthy. The exact location of Vishal could not be traced from the last location of the tower. The contention of the petitioner that the last location of the tower was near Titagarh police station, could not be a ground for the writ court to accept the contention that Vishal had not been released from custody on March 9, 2013.

**27.** The deletion of the CCTV footages of Titagarh police station of March 9 and 10, 2022, could not also be a ground for the Court to presume that Vishal had not been released from the police station on March 9, 2022. The police

authorities had followed the norms laid down in ***D.K. Basu (Supra)*** and arrested Vishal on March 9 2022 from the shop, by issuing proper arrest memo. None of the persons present, were willing to sign. Vishal was taken into police custody and then sent for medical check-up. Thereafter, Vishal was released on a Bail Bond as well as a PR Bond.

**28.** According to learned Advocate, the factual aspects were matters of trial. The writ court should not decide such issues. The charge-sheet filed in the NDPS case clearly indicated that Vishal was in possession of codeine mixture, a contraband psychotropic substance. The seizure was made from Vishal's personal possession.

**29.** Mr Banerjee emphasized that the theory of last seen together would not be applicable in this case. In cases of murder, when the duration between the time when the accused and the deceased were last seen alive and when the victim was found dead was so small that the possibility of any person other than the accused being the author of the crime became impossible, the theory was applied. Mr. Banerjee submitted that the writ court should not direct investigation by the Central Bureau of Investigation (CBI) or by any other independent investigating agency, on the mere asking. An aggrieved person could only claim that the offence in respect of which he had been implicated,



be investigated properly. He did not have a right to claim that the investigation be conducted by any particular agency of his choice. The law had been well settled that the extraordinary powers of the Constitutional Courts directing CBI to conduct investigation should be exercised sparingly and under very special circumstances, namely, when there was lack of confidence in the investigating agency or in cases of national interest or in order to do complete justice.

**30.** Learned Advocate urged the court to keep in mind the self imposed limitation while exercising the extraordinary powers under Article 226 of Constitution of India. It was vehemently urged that the accused was found in possession of psychotropic substances and the facts were not so exceptional that investigation by an independent agency was warranted. The case did not either have national or international ramifications. The investigation was not against influential persons or against police officers who could prevail upon the investigating agency. Vague and unsubstantiated assertion by the petitioner that her son has not been released from the police station on March 9, 2022, was not enough reason for the writ court to intervene and change the investigating agency or direct further investigation by another agency, especially when the investigation had already been completed and charge sheet had been filed. The manner in which the arrest was made in the NDPS case,

the case diary as also the entire records of the investigation, were available before the criminal court.

**31.** According to Mr Banerjee, the power of transferring an investigation or ordering re-investigation by an independent agency like the CBI, could be exercised in the constitutional jurisdiction only where high officials of the state authorities were involved in the alleged crime or the accused himself was an official of the investigating agency and there was, prima facie, evidence that he could influence the investigation.

**32.** Reliance had been placed by Mr. Banerjee on the following decisions:-

***(i) State of Goa v. Sanjay Thakran & anr., reported in (2007) 3 SCC 755***

***(ii) State of U.P. v. Satish, reported in (2005) 3 SCC 114***

***(iii) Jaswant Gir v. State of Punjab, reported in (2005) 12 SCC 438***

***(iv) Sakiri Vasu v. State of U.P. & ors., reported in (2008) 2 SCC 409***

***(v) Sujatha Ravi Kiran v. State of Kerala & ors., reported in (2016) 7 SCC 597***

***(vi) Shree Shree Ram Janki Ji Asthan Tapovan Mandir & anr. v. State of Jharkhand & ors., reported in (2019) 6 SCC 777***

***(vii) Romila Thapar & ors. v. Union of India & ors., reported in (2018) 10 SCC 753***

***(viii) State of W.B. & ors. v. Committee for Protection of Democratic Rights, West Bengal & ors. reported in (2010) 3 SCC 571***

***(ix) Himanshu Kumar & ors v. State of Chhattisgarh & ors., reported in 2022 SCC OnLine SC 884***

**33.** For the record, Vishal was granted bail by a Division Bench of this Court on October 11, 2022. The relevant portion of the order is quoted below:-

“We have considered the materials on record. Admittedly, the petitioner had been arrested and brought to Titagarh Police Station on 09.03.2022 around 12.40 hours. Whether he was subsequently released on execution of P.R. bond is the moot question to determine the truthfulness of the allegation regarding recovery of narcotics from his possession on 10.03.2022 at 4.55 hours.

Petitioner has filed a proceeding under Article 226 of the Constitution of India being WPA 7882 of 2022 alleging illegal arrest and detention. A report was filed in the said proceeding wherein call detail records of the mobile of the petitioner is enclosed. We have perused the call detail records (CDRs) of the mobile of the petitioner which shows that the mobile phone of the petitioner was used at premises no. 24/20A, A.P. Devi Road, that is, Titagarh Police Station on and from 13.06 hours on 09.03.2022 and even after his alleged release on PR bond.

These circumstances, prima facie improbabilise the allegation that the petitioner was a free agent at the time when is said to be re-arrested for the possession of narcotic.

In view of the aforesaid circumstances, we are of the opinion that the petitioner has been able to rebut the statutory restrictions under Section 37 of the N.D.P.S. Act and he may be granted bail.

Accordingly, the petitioner shall be released on bail upon furnishing a bond of Rs.20,000/- with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Additional Chief Judicial Magistrate, Barrackpore, North 24 Parganas under N.D.P.S. Act, North 24 Parganas subject to condition that he shall appear before the trial court on every date of hearing until further orders and shall not intimidate witnesses or tamper with evidence in any many whatsoever and shall not enter the jurisdiction of North 24 Parganas and shall report and address the officer-in-charge of the Titagarh Police Station. It is further argued that the release of the petitioner on bail was duly reported to the jurisdictional Magistrate.”

**34.** Having heard the Learned advocates for the respective parties, the Court arrives at the following conclusions:-

- (i) Mother of the accused has a right to approach the constitutional court for protection of the right to dignity and personal liberty

guaranteed to her son under Article 21 of the Constitution and also to uphold the dignity of the family members. She has the right to seek a fair and impartial investigation so that truth can be unearthed.

**(ii)** Right to life and personal liberty and also the right to dignity enshrined under Article 21 of Constitution of India have a much wider connotation and the right to fair and impartial investigation is an important ingredient of such right.

**(iii)** In **D.K. Basu (Supra)** the Hon'ble Apex Court observed as follows:-

**“17.** Fundamental Rights occupy a place of pride in the Indian Constitution. Article 21 provides “no person shall be deprived of his life or personal liberty except according to procedure established by law”. Personal liberty, thus, is a sacred and cherished right under the Constitution. The expression “life or personal liberty” has been held to include the right to live with human dignity and thus it would also include within itself a guarantee against torture and assault by the State or its functionaries. Article 22 guarantees protection against arrest and detention in certain cases and declares that no person who is arrested shall be detained in custody without being informed of the grounds of such arrest and he shall not be denied the right to consult and defend himself by a legal practitioner of his choice.”

**(iv)** Observing that the worst case of violation of human rights took place during investigation, the Hon'ble Apex Court in **D.K. Basu (Supra)** further observed:-

**“20.** In **Joginder Kumar v. State of U.P. [(1994) 4 SCC 260 : 1994 SCC (Cri) 1172]** considered the dynamics of misuse of police power of arrest and opined:

“No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. ... 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.”

**21.** \*\*\*\*\*A realistic approach should be made in this direction. The law of arrest is one of balancing individual rights, liberties and privileges on the one hand, and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which comes first — the criminal or society, the law violator or the law abider ....”

(v) In ***Nilabati Behera v. State of Orissa [(1993) 2 SCC 746 :***

***1993 SCC (Cri) 527 : 1993 Cri LJ 2899]*** the Apex Court pointed out

that prisoners and detenues were not denuded of their fundamental

rights under Article 21. Restrictions, as were permitted by law, could

be imposed. It was observed:- (SCC p. 767, para 31)

“It is axiomatic that convicts, prisoners or undertrials are not denuded of their fundamental rights under Article 21 and it is only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental right by such persons. It is an obligation of the State to ensure that there is no infringement of the infeasible rights of a citizen to life, except in accordance with law, while the citizen is in its custody. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, undertrials or other prisoners in custody, except according to procedure established by law. There is a great responsibility on the police or prison authorities to

ensure that the citizen in its custody is not deprived of his right to life. His liberty is in the very nature of things circumscribed by the very fact of his confinement and therefore his interest in the limited liberty left to him is rather precious. The duty of care on the part of the State is strict and admits of no exceptions. The wrongdoer is accountable and the State is responsible if the person in custody of the police is deprived of his life except according to the procedure established by law.”

(vi) In the matter of **Romila Thapar (Supra)**, His Lordship, Dr D.Y. Chandrachud, J. (dissenting) reiterated the principles of fair investigation and discussed various decisions:-

“84. In *E. Sivakumar v. Union of India* [*E. Sivakumar v. Union of India*, (2018) 7 SCC 365 : (2018) 3 SCC (Cri) 49] , the petitioner was named in an FIR which was being investigated in regard to the illegal manufacture and sale of pan masala and gutkha containing tobacco and/or nicotine. The petitioner challenged the decision [*J. Anbazhagan v. Union of India*, 2018 SCC OnLine Mad 1231 : (2018) 3 CTC 449] of the High Court to transfer the investigation of the criminal case to the Central Bureau of Investigation. One of us (Khanwilkar, J.) who authored the judgment on behalf of this Bench held : (*E. Sivakumar case* [*E. Sivakumar v. Union of India*, (2018) 7 SCC 365 : (2018) 3 SCC (Cri) 49] , SCC p. 368, para 5)

“5. ... the High Court has cogitated over all the issues exhaustively and being fully satisfied about the necessity to ensure fair investigation of the crime in question, justly issued a writ of mandamus to transfer the investigation to CBI.”

The judgment [*J. Anbazhagan v. Union of India*, 2018 SCC OnLine Mad 1231 : (2018) 3 CTC 449] of the High Court was upheld on the following ground : (*E. Sivakumar case* [*E. Sivakumar v. Union of India*, (2018) 7 SCC 365 : (2018) 3 SCC (Cri) 49] , SCC p. 370, para 9)

“9. ... the question regarding the necessity to ensure a fair and impartial investigation of the crime, whose tentacles were not limited to the State of Tamil Nadu but transcended beyond to other States and may be overseas besides involving high ranking officials of the State as well as the Central Government, has now been directly answered. For instilling confidence in the

minds of the victims as well as the public at large, the High Court predicated that it was but necessary to entrust the investigation of such a crime to CBI. Viewed thus, there is no infirmity in the conclusion reached by the High Court in the impugned judgment, for having entrusted the investigation to CBI.”

Drawing attention to the duty of this Court as adjudicator, it was also observed : (E. Sivakumar case [E. Sivakumar v. Union of India, (2018) 7 SCC 365.

“13. ... ‘25. ... It is the bounden duty of a court of law to uphold the truth and truth means absence of deceit, absence of fraud and in a criminal investigation a real and fair investigation, not an investigation that reveals itself as a sham one. It is not acceptable. It has to be kept uppermost in mind that impartial and truthful investigation is imperative. ... If a grave suspicion arises with regard to the investigation, should a constitutional court close its hands and accept the proposition that as the trial has commenced, the matter is beyond it?’ [Ed. : As observed in Dharam Pal v. State of Haryana, (2016) 4 SCC 160, p. 71, para 25.] ”

The above observations are a significant reminder of the function of this Court, as the protector of the fundamental rights of citizens. These rights must be safeguarded particularly when there is a possibility that failure to take a position may lead to a denial of justice.”

**(vii)** The writ court can enquire as to whether there had been any violation of Vishal’s right to personal liberty, and human dignity, by the overt actions of the police authorities. Dignity of the family members is also a guaranteed right. As a sentinel of the constitution, the writ court can enquire into a citizen's complaint of infringement of fundamental rights enshrined under Article 21 of Constitution of India. A responsibility has been cast on the State, as the guardian of

law and the court can play an active part to enquire whether such role had been discharged with responsibility. The State is always accountable to the citizens, for any lapse.

(viii) In the matter of ***State of W.B. v. Committee for Protection of Democratic Rights***, reported in ***(2010) 3 SCC 571***, the Hon'ble Apex Court held as follows:-

**45.** The Constitution is a living and organic document. It cannot remain static and must grow with the nation. The constitutional provisions have to be construed broadly and liberally having regard to the changed circumstances and the needs of time and polity.

**46.** In *Kehar Singh v. Union of India* [(1989) 1 SCC 204 : 1989 SCC (Cri) 86] , speaking for the Constitution Bench, R.S. Pathak, C.J. held that in keeping with modern constitutional practice, the Constitution of India is a constitutive document, fundamental to the governance of the country, whereby the people of India have provided a constitutional polity consisting of certain primary organs, institutions and functionaries with the intention of working out, maintaining and operating a constitutional order.

**47.** On the aspect of interpretation of a Constitution, the following observations of Dickson, J. of the Supreme Court of Canada in *Hunter v. Southam Inc.* [(1984) 2 SCR 145 (Can SC)] are quite apposite:

“The task of expounding a constitution is crucially different from that of construing a statute. A statute defines present rights and obligations. It is easily enacted and as easily repealed. A constitution, by contrast, is drafted with an eye to the future. Its function is to provide a continuing framework for the legitimate exercise of governmental power and, when joined by a Bill or a charter of rights, for the unremitting protection of individual rights and liberties. Once enacted, its provisions cannot easily be repealed or amended. It must, therefore, be capable of growth and development over time to meet new social, political and historical realities often unimagined by its framers. The



judiciary is the guardian of the constitution and must, in interpreting its provisions, bear these considerations in mind.”

**48.** In *M. Nagaraj v. Union of India* [(2006) 8 SCC 212] , speaking for the Constitution Bench, S.H. Kapadia, J. observed as under: (SCC pp. 240-41, para 19)

“19. The Constitution is not an ephemeral legal document embodying a set of legal rules for the passing hour. It sets out principles for an expanding future and is intended to endure for ages to come and consequently to be adapted to the various crisis of human affairs. Therefore, a purposive rather than a strict literal approach to the interpretation should be adopted. A constitutional provision must be construed not in a narrow and constricted sense but in a wide and liberal manner so as to anticipate and take account of changing conditions and purposes so that a constitutional provision does not get fossilised but remains flexible enough to meet the newly emerging problems and challenges.”

(emphasis supplied)

**49.** Recently, in *I.R. Coelho* [(2007) 2 SCC 1] , noticing the principles relevant for the interpretation of constitutional provisions, Y.K. Sabharwal, C.J., speaking for the Bench of nine Judges of this Court, observed as follows: (SCC p. 79, para 43)

“43. The principle of constitutionalism is now a legal principle which requires control over the exercise of governmental power to ensure that it does not destroy the democratic principles upon which it is based. These democratic principles include the protection of fundamental rights. The principle of constitutionalism advocates a check and balance model of the separation of powers; it requires a diffusion of powers, necessitating different independent centres of decision-making. The principle of constitutionalism underpins the principle of legality which requires the courts to interpret legislation on the assumption that Parliament would not wish to legislate contrary to fundamental rights. The legislature can restrict fundamental rights but it is impossible for laws protecting fundamental rights to be impliedly repealed by future statutes.”

**(ix)** In the present case, the decision of the Hon'ble Apex Court in the matter of *Paramvir (Supra)* with regard to use of videography

in the crime scene and preservation of CCTV footages for a period of 18 months, had not been complied with by the police authorities.

(x) The Apex Court, by order dated December 2, 2020, in the matter of **Paramvir (Supra)** had impleaded all the States and Union Territories in order to find out the exact position of CCTV cameras in different police stations in those states. The Apex Court wanted to ascertain whether an Oversight Committee, in accordance with the order dated April 3, 2018 passed by the Hon'ble Apex Court in **Shafhi Mohammad vs. State of H.P.**, reported in **(2018) 2 SCC (Cri) 704**, had been constituted. Compliance affidavit and action taken report were filed by the State of West Bengal in the proceeding before the Hon'ble Apex Court. The Apex Court did not find the steps adopted by any of the states, to be satisfactory and observed:-

**6.** This Court, vide order dated 16-9-2020 [Paramvir Singh Saini v. Baljit Singh, 2020 SCC OnLine SC 999] , impleaded all the States and Union Territories to find out the exact position of CCTV cameras qua each police station as well as the constitution of Oversight Committees in accordance with the order dated 3-4-2018 of this Court in Shafhi Mohammad [Shafhi Mohammad v. State of H.P., (2018) 5 SCC 311 : (2018) 2 SCC (Cri) 704] .

**7.** Pursuant to the said directions of this Court, compliance affidavits and Action-Taken Reports were filed by 14 States (till 24-11-2020), namely, West Bengal, Chhattisgarh, Tamil Nadu, Punjab, Nagaland, Karnataka,

Tripura, Uttar Pradesh, Assam, Sikkim, Mizoram, Madhya Pradesh, Meghalaya, Manipur; and 2 Union Territories, namely, Andaman & Nicobar Islands and Puducherry.

**8.** The majority of the compliance affidavits and Action-Taken Reports fail to disclose the exact position of CCTV cameras qua each police station. The affidavits are bereft of details with respect to the total number of police stations functioning in the respective State and Union Territory; total number of CCTV cameras installed in each and every police station; the positioning of the CCTV cameras already installed; working condition of the CCTV cameras; whether the CCTV cameras have a recording facility, if yes, then for how many days/hours, have not been disclosed. Further, the position qua constitution of Oversight Committees in accordance with the order dated 3-4-2018 [Shafhi Mohammad v. State of H.P., (2018) 5 SCC 311 : (2018) 2 SCC (Cri) 704] , and/or details with respect to the Oversight Committees already constituted in the respective States and Union Territories have also not been disclosed.

**9.** Compliance affidavits by all the States and Union Territories are to be filed, as has been stated earlier, by either the Principal Secretary of the State or the Secretary, Home Department of the States/Union Territories. This is to be done by all the States and Union Territories, including those who have filed so-called compliance affidavits till date, stating the details mentioned in para 8 of this order. These affidavits are to be filed within a period of six weeks from today.

**(xi)** The observation in ***Shafhi Mohammad (Supra)*** of the Apex Court with regard to videography had not been complied with by the police authorities. The Apex Court opined as follows:-

**“9.** We are in agreement with the Report of the Committee of Experts that videography of the crime scene during investigation is of immense value in improving administration of criminal justice. A Constitution Bench of this Court in Karnail Singh v. State of Haryana [Karnail Singh v. State of Haryana, (2009) 8 SCC 539 : (2009) 3 SCC (Cri) 887] , SCC para 34 noted that technology is an important part in the system of police administration. It has also been noted in the decisions quoted in the earlier

part of this order that new techniques and devices have evidentiary advantages, subject to the safeguards to be adopted. Such techniques and devices are the order of the day. Technology is a great tool in investigation [Ram Singh v. Ram Singh, 1985 Supp SCC 611; R. v. MaqsdAli, (1966) 1 QB 688 : (1965) 3 WLR 229 : (1965) 2 All ER 464 (CCA); R. v. Robson, (1972) 1 WLR 651 : (1972) 2 All ER 699 (CCC); Tukaram S. Dighole v. Manikrao Shivaji Kokate, (2010) 4 SCC 329 : (2010) 2 SCC (Civ) 112 : (2010) 2 SCC (Cri) 826; Tomaso Bruno v. State of U.P., (2015) 7 SCC 178 : (2015) 3 SCC (Cri) 54; Mohd. Ajmal Amir Kasab v. State of Maharashtra, (2012) 9 SCC 1 : (2012) 3 SCC (Cri) 481; State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600 : 2005 SCC (Cri) 1715] . By the videography, crucial evidence can be captured and presented in a credible manner.

**10.** Thus, we are of the considered view that notwithstanding the fact that as of now investigating agencies in India are not fully equipped and prepared for the use of videography, the time is ripe that steps are taken to introduce videography in investigation, particularly for crime scene as desirable and acceptable best practice as suggested by the Committee of the MHA to strengthen the Rule of Law. We approve the Centrally Driven Plan of Action prepared by the Committee and the timeline as mentioned above. Let the consequential steps for implementation thereof be taken at the earliest.

**13.** We may also refer to a connected issue already dealt with by this Court in D.K. Basu v. State of W.B. [D.K. Basu v. State of W.B., (2015) 8 SCC 744 : (2015) 3 SCC (Cri) 824] This Court directed that with a view to check human rights abuse CCTV cameras be installed in all police stations as well as in prisons. There is need for a further direction that in every State an oversight mechanism be created whereby an independent committee can study the CCTV camera footages and periodically publish report of its observations. Let the COB issue appropriate instructions in this regard at the earliest. The COB may also compile information as to compliance of such instructions in the next three months and give a report to this Court.”

(xii) Here, it appears that the CCTV cameras installed at Titagarh police station did not have a backup of more than a month. In ***Paramvir (Supra)***, the Hon'ble Apex Court directed that storage of CCTV camera footage should be for a period of 18 months or at least one year, as the case may be. The relevant portion is quoted below:-

**“17.** CCTV systems that have to be installed must be equipped with night vision and must necessarily consist of audio as well as video footage. In areas in which there is either no electricity and/or internet, it shall be the duty of the States/Union Territories to provide the same as expeditiously as possible using any mode of providing electricity, including solar/wind power. The internet systems that are provided must also be systems which provide clear image resolutions and audio. Most important of all is the storage of CCTV camera footage which can be done in digital video recorders and/or network video recorders. CCTV cameras must then be installed with such recording systems so that the data that is stored thereon shall be preserved for a period of 18 months. If the recording equipment, available in the market today, does not have the capacity to keep the recording for 18 months but for a lesser period of time, it shall be mandatory for all States, Union Territories and the Central Government to purchase one which allows storage for the maximum period possible, and, in any case, not below 1 year. It is also made clear that this will be reviewed by all the States so as to purchase equipment which is able to store the data for 18 months as soon as it is commercially available in the market. The affidavit of compliance to be filed by all States and Union Territories and Central Government shall clearly indicate that the best equipment available as of date has been purchased.”

(xiii) Even after two years from the delivery of the judgment by the Hon'ble Apex Court, the CCTV camera installed at Titagarh Police Station had only one month back up. It was the duty of the Officer-

In-Charge to preserve the footage as the petitioner had already approached the police within a month from March 9, 2022 (date of the first arrest). Relevant paragraph of the ***Paramvir (Supra)*** is quoted below:-

“14. The duty and responsibility for the working, maintenance and recording of CCTVs shall be that of the SHO of the police station concerned. It shall be the duty and obligation of the SHO to immediately report to the DLOC any fault with the equipment or malfunctioning of CCTVs. If the CCTVs are not functioning in a particular police station, the SHO concerned shall inform the DLOC of the arrest/interrogations carried out in that police station during the said period and forward the said record to the DLOC. If the SHO concerned has reported malfunctioning or non-functioning of CCTVs of a particular police station, the DLOC shall immediately request the SLOC for repair and purchase of the equipment, which shall be done immediately.”

**(xiv)** By not following the mandate of the Hon’ble Apex Court and by not ensuring preservation of the CCTV footages of March 9, 2022 and March 10, 2022 in any storage device either pen drive or hard disk etc, valuable piece of evidence was lost. Such evidence would help the petitioner to establish that her son had not been released from the police station on March 9, 2022 and was not involved with the dealing in narcotics, as was alleged. The CCTV footage would indicate whether Vishal continued to remain in the police station till

March 10, 2022 when the NDPS case was registered against him or had been released, but later apprehended in connection with the NDPS case.

**(xv)** The CCTV footage would serve as an evidentiary advantage also to the prosecution, to prove the contrary.

**(xvi)** The method and the manner in which the petitioner's son was taken into custody and the records which were available with regard to such action by the police authority, from the arrest to purported release of the petitioner's son on March 9, 2022, have several discrepancies.

**(xvii)** Had Vishal been arrested on March 9 2022 in order to prevent commission of a cognizable offence as alleged by the police, the knowledge of the police authorities of a design to commit a cognizable offence, should have been recorded. As per the police, soon after Vishal came back from medical examination on March 9, 2022, a surety allegedly appeared before the police authority who wanted to release Vishal by offering bail bond. The offence as per the GDE was criminal intimidation. The affidavit in opposition states that Vishal was unwilling to co-operate with the police when they

questioned him at his shop on March 9, 2022, hence he was arrested.

**(xviii)** There is no averment in the affidavit-in-opposition that the police authorities were in the knowledge of the fact that the accused had made any attempt to commit a cognizable offence, which compelled S.I. Sanjoy Naskar to invoke the provisions of Section 151 of the Cr.P.C. Chapter XI of the Code of Criminal Procedure deals with preventive jurisdiction of the police. The police cannot arrest a person merely on an apprehension of the breach of peace or on an apprehension that an offence was likely to be committed. What is required under this Section is that the officer concerned must have knowledge that the person was designing to commit a cognizable offence and in order to stop such attempt, Section 151 of the Cr.P.C. had to be invoked.

**(xix)** In the absence of any input from the arresting officer to show that the accused person was designing to commit any cognizable offence, curtailment of the liberty of Vishal Shukla by arresting him on March 9, 2022, demonstrates abuse of power by the police.



Hon'ble Apex Court in **Ahmed Noormohmed Bhatti vs. State of**

**Gujrat & ors.** reported in **AIR 2005 SC 2115** held as follows:-

“A mere perusal of Section 151 of the Code of Criminal Procedure makes it clear that the conditions under which a police officer may arrest a person without an order from a Magistrate and without a warrant, have been laid down in Section 151. He can do so only if he has come to know of a design of the person concerned to commit any cognizable offence. A further condition for the exercise of such power, which must also be fulfilled, is that the arrest should be made only if it appears to the police officer concerned that the commission of the offence cannot be otherwise prevented. The Section, therefore, expressly lays down the requirements for the exercise of the power to arrest without an order from a Magistrate and without warrant. If these conditions are not fulfilled and, a person is arrested under Section 151 of the Code of Criminal Procedure, the arresting authority may be exposed to proceedings under the law. Sub-section (2) lays down the rule that normally a person so arrested shall be detained in custody not for a period exceeding 24 hours. It, therefore, follows that in the absence of anything else, on expiry of 24 hours, he must be released. The release, however, is not insisted upon only when his further detention is required or authorized under any other provision of the Code of any other law for the time being in force. It, therefore, follows that if before the expiry of 24 hours of detention it is found that the person concerned is required to be detained under any other provision of the Code of Criminal Procedure, or of any other law for the time being in force, he may not be released and his detention may continue under such law or such provision of the Code. The detention thereafter is not under Section 151 of the Code of Criminal Procedure but under the relevant provision of the Code or any other law for the time being in force as the case may be....”

**(xx)** Section 151 Cr.P.C is quoted below:-

**151.** Arrest to prevent the commission of cognizable offences.

**(1)** A police officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

**(2)** No person arrested under sub- section (1) shall be detained in custody for a period exceeding twenty- four hours from the time of his arrest unless his further detention is required or authorised under any other provisions of this Code or of any other law for the time being in force.

**(xxi)** There was no need for the police to obtain a surety bond and a PR bond. Moreover, both the bonds had specifically provided that Vishal would make himself available on March 23, 2022 before the learned ACJM, when there was neither a registered FIR nor a criminal case.

**(xxii)** If the police was satisfied that Vishal could be released, there was no plausible reason why the police authority took an undertaking from the surety and from Vishal that Vishal would appear before the learned ACJM on March 23, 2022. No case had been registered at that time.

**(xxiii)** Finally, the reason as to why the police authority sent all the documents after Vishal's release on P.R. Bond and bail bond to the learned ACJM, is also unanswered. Permission would be required only when a non cognizable offence had been committed and the

police wanted to investigate it further. For enquiry by police, no such permission would be necessary. The expressions 'inquiry' and 'investigation' have been defined in the Code of Criminal Procedure:-

**(xxiv)** Inquiry and investigation are not synonymous, but have different connotations. Provisions of Sections 2(g) and 2(h) of the Code of Criminal Procedure, are quoted below:-

(g) " inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court;

(h) " investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf;

Section 155 of the Code of Criminal Procedure deals with information as to non- cognizable cases and investigation of such cases. It states:-

\* \* \*

**(2)** No police officer shall investigate a non- cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

**(3)** Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

Thus, the police authorities did not require any order from the learned ACJM to make any enquiry. Such enquiry must have preceded the decision to arrest Vishal and then release Vishal on a Bail Bond and a PR Bond.

(xxv) However, the Court accepts the contention of Mr. Banerjee that an accused cannot choose the investigating agency. In the matter of **Romila Thapar (Supra)**, The Apex Court in the majority view, held as follows:-

**“24.** Turning to the first point, we are of the considered opinion that the issue is no more res integra. In *Narmada Bai v. State of Gujarat* [*Narmada Bai v. State of Gujarat*, (2011) 5 SCC 79 : (2011) 2 SCC (Cri) 526] , in para 64, this Court restated that it is trite law that the accused persons do not have a say in the matter of appointment of investigating agency. Further, the accused persons cannot choose as to which investigating agency must investigate the offence committed by them. Para 64 of this decision reads thus : (SCC p. 100)

“64. ... It is trite law that the accused persons do not have a say in the matter of appointment of an investigating agency. The accused persons cannot choose as to which investigating agency must investigate the alleged offence committed by them.”

**25.** Again in *Sanjiv Rajendra Bhatt v. Union of India* [*Sanjiv Rajendra Bhatt v. Union of India*, (2016) 1 SCC 1 : (2016) 1 SCC (Cri) 193 : (2016) 1 SCC (L&S) 1] , the Court restated that the accused had no right with reference to the manner of investigation or mode of prosecution. Para 68 of this judgment reads thus : (SCC p. 40)

“68. The accused has no right with reference to the manner of investigation or mode of prosecution. Similar is the law laid down by this Court in *Union of India v. W.N. Chadha* [*Union of India v. W.N. Chadha*, 1993 Supp (4) SCC 260 : 1993 SCC (Cri) 1171] , *Mayawati v. Union of India* [*Mayawati v. Union of India*, (2012) 8 SCC 106 : (2012) 3 SCC (Cri) 801] , *Dinubhai Boghabhai Solanki v. State of Gujarat* [*Dinubhai Boghabhai Solanki v. State of Gujarat*, (2014) 4 SCC 626 : (2014) 2 SCC (Cri) 384] , *CBI v. Rajesh Gandhi* [*CBI v. Rajesh Gandhi*, (1996) 11 SCC 253 : 1997 SCC (Cri) 88] , *CCI v. SAIL* [*CCI v. SAIL*, (2010) 10 SCC 744] and *Janata Dal v. H.S. Chowdhary* [*Janata Dal v. H.S. Chowdhary*, (1991) 3 SCC 756 : 1991 SCC (Cri) 933] .”

**(xxvi)** This Court is of the view that once the investigation in the NDPS case is complete and charge sheet has been filed, the question of transferring the investigation to any other investigating agency does not arise. Moreover, the writ petition does not deal with the investigation in the NDPS case.

**(xxvii)** The Hon'ble Apex Court in the matter of ***Sujatha Ravi Kiran v. State of Kerala***, reported in ***(2016) 7 SCC 597***, held as follows:-

“9. It is well settled that the extraordinary power of the constitutional courts in directing CBI to conduct investigation in a case must be exercised rarely in exceptional circumstances, especially, when there is lack of confidence in the investigating agency or in the national interest and for doing complete justice in the matter. A Constitution Bench of this Court in *State of W.B. v. Committee for Protection of Democratic Rights* [State of W.B. v. Committee for Protection of Democratic Rights, (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401] held as under: (SCC p. 602, paras 69-71)

“69. In the final analysis, our answer to the question referred is that a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly.

70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32

and 226 of the Constitution, while passing any order, the Courts, must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.”

**(xxviii)** The accused is always at liberty to raise all these points discussed hereinabove at the appropriate stage in the criminal proceeding. Every trial is a voyage of discovery, in which truth is the quest.

**35.** The question of quashing the charge-sheet does not arise as neither the registration of the FIR under Section 21(c) of the NDPS, nor the investigation by the police, were the subject matters of this proceeding.

**36.** Several remedies are available to Vishal under the provisions of the Code of Criminal Procedure. All the points can also be urged at the trial. This court,

under Article 226 of the Constitution of India, does not deem it fit and proper to quash the charge sheet. Vishal has an effective alternative remedy.

**37.** However, the sequence of events and the discrepancies and irregularities which have been pointed out hereinabove indicate that the police authorities failed to discharge their duty in accordance with law. Disturbing features have been noticed by the court in the process of arrest of Vishal on March 9, 2022, and further arrest on March 10, 2022 for commission of offence under the NDPS Act. There is no evidence of his release apart from the two bonds which have been discussed earlier. There are irregularities in the procedure adopted by the police while arresting and purportedly releasing Vishal on March 9, 2022.

**38.** The inconsistencies in the actions taken by the police authorities compels this court to conclude that there is substance in the contentions of the petitioner.

**39.** In *Jones v. National Coal Board* reported in **(1957) 2 ALL ER 155 (CA)**, Lord Denning observed that:-

“It’s all very well to paint justice blind, but she does better without a bandage round her eyes. She should be blind indeed to favour or prejudice, but clear to see which way lies the truth”

**40.** In the matter of ***B.R. Ramabhadriah v. Secy., Food and Agriculture Deptt.***, reported in ***(1981) 3 SCC 528*** , the Hon'ble Apex Court observed that the Court could undoubtedly take note of changed circumstances and suitably mould the relief to be granted to the party concerned in order to do complete justice. As far as possible, the anxiety and endeavor of the Court should be to remedy an injustice when it was brought to its notice rather than deny relief to an aggrieved party on purely technical and narrow procedural grounds.

**41.** In the matter of ***Food Corpn. of India v. S.N. Nagarkar***, reported in ***(2002) 2 SCC 475***, the Hon'ble Apex Court also observed that in exercise of writ jurisdiction, the court may mould the relief having regard to the facts of the case and in the interest of justice.

**42.** This Court can mould the relief and award compensation to the affected parties for various lapses and for failure of the State to uphold the dignity and personal liberty of an individual, as enshrined in Article 21 of the Constitution. Some of such lapses are summarized below:-

**(a)** Non compliance of the direction of the Hon'ble Apex Court with regard to the installation and preservation of CCTV footages and data, upto 18 months.



**(b)** Proceeding in a manner not authorised by law, by detaining Vishal under Section 151 of the Cr.P.C. without recording any knowledge or design of commission of a cognizable offence. Release of Vishal on both Bail bond and PR Bond, with an undertaking that Vishal would appear before the learned jurisdictional court on March 23, 2022. No case had been registered.

**(c)** Records do not reveal that a situation existed and Vishal was required to be arrested on March 9, 2022 in order to prevent commission of a cognizable offence. That there was no other way to prevent the alleged cognizable offence, except by arresting Vishal. Only allegation against Vishal was that of criminal intimidation.

**(d)** An FIR was already pending against Vishal vide Titagarh Police Station Case No. 129 of 2022 dated February 14, 2022 under Sections 341, 325, and 34 of the Indian Penal Code, but no steps had been taken by the police authorities in progress of such investigation.

**(e)** Destruction of valuable piece of evidence namely, the CCTV footages of March 9, and 10, 2022, which were important evidence in support of the petitioner's contention.

**(f)** Failure to videograph the arrest and search and seizure in the early morning of March 10, 2022. This would be the desirable and acceptable best practice, when neither independent witnesses were available nor was any magistrate present during such search and seizure. Reference to the observation of the Apex Court in **Shafhi Mohammad (supra)** is relevant. The direction in Shafi Mohammed (Supra) was issued in 2018.

**(g)** In the matter of **Kalu Sk. @Kuran and Kabir Sk. Vs. State of West Bengal decided in C.R.M (NDPS) 492 of 2022 with C.R.M.(NDPS) 493 of 2022**, Hon'ble Division Bench of this High Court held as follows:-

“Accordingly, we direct as follows:-

(i) In all cases involving recovery of narcotic substance particularly recovery of narcotic above commercial quantity, seizing officers shall make a video recording of the entire procedure unless for reasons beyond the control of seizing officers, they are unable to do so;

(ii) Reasons for failing to videograph the recovery proceeding must be specifically recorded in the investigation records particularly contemporaneous documents including seizure/inventory list;

(iii) Superior Police Officer not lower than the rank of Additional Superintendent of Police shall monitor recovery of narcotic substance above commercial quantity within their territorial jurisdiction and ensure due compliance of statutory provisions regarding search and seizure including compliance of the directives (i) and (ii) relating to videography of recovery and/or recording of adequate reasons for departure from such procedure;

(iv) Non-compliance of the directives (i) and (ii) relating to videography of recovery and/or failure to record just reasons in contemporaneous documents for its noncompliance would attract departmental proceeding so far as the seizing officer is concerned;

(v) Director General of Police shall issue necessary directions for due compliance with the aforesaid directives;

(vi) Superintendent of Police/Commissioner of Police in each district/commissionerate shall undertake training programmes to spread awareness and capacity building of officers regarding compliance of statutory requirements in the matter of search and seizure of narcotic substance under NDPS Act and compliance of the aforesaid directives relating to videograph of recovery including collection, preservation and production of such electronic evidence in Court.

**43.** In the decision of *Prempal v. Commissioner of Police*, reported in **2010 SCC OnLine Del 1315** the Hon'ble Delhi High Court allowed compensation, and held as follows: -

**“26. In Rudul Sah v. State of Bihar, (1983) 4 SCC 141 : AIR 1983 SC 1086 the Supreme Court ordered compensation to be paid by the state to a person who had to undergo wrongful incarceration for several years. It held:**

**“10. ...The petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial, in the sense that a civil court may or may not have upheld his claim. But we have no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in his favour. In these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders to release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its**

**violaters in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt.** The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this country as it has perished in some others too well-known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair **the damage done by its officers to the petitioner's rights. It may have recourse against those officers."**

**27.1 Nilabati Behera v. State of Orissa, (1993) 2 SCC 746: AIR 1993 SC 1960**

"16. In this context, it is sufficient to say that the decision of this Court in *Kasturilal* upholding the State's plea of sovereign immunity for tortuous acts of its servants is confined to the sphere of liability in tort, which is distinct from the State's liability for contravention of fundamental rights to which the doctrine of sovereign immunity has no application in the constitutional scheme, and is no defence to the constitutional remedy under Articles 32 and 226 of the Constitution which enables award of compensation for contravention of fundamental rights, when the only practicable mode of enforcement of the fundamental rights can be the award of compensation. The decisions of this Court in *Rudul Sah* and others in that line relate to award of compensation for contravention of fundamental rights, in the constitutional remedy under Articles 32 and 226 of the Constitution. On the other hand, *Kasturilal* related to value of goods seized and not returned to the owner due to the fault of Government servants, the claim being of damages for the tort of conversion under the ordinary process, and not a claim for compensation for violation of fundamental rights. *Kasturilal* is, therefore, inapplicable in this context and distinguishable."

**44.** If the State becomes a law breaker, the writ court should not hesitate to compensate for the laches and the lapses. Every accused and his next of kin have a right to expect a free and fair investigation. For such an investigation,

the parameters laid down by the Hon'ble Apex Court from time to time, must be followed.

**45.** The award of compensation in a proceeding under Article 226 of the Constitution of India is a remedy available in public law, based on strict liability, for contravention of law and for violation of the rights guaranteed by the Constitution of India. It is separate from the private law remedy of damages. Thus the court is not required to quantify the damage. A lump sum amount can be awarded for the afore-mentioned irregularities, as a palliative. There is a need to remind ourselves that rights of individuals is the citadel of democracy and every violation would be an attack on civilized society. Thus, while the reliefs prayed for in the writ petition are denied, the Court awards compensation of Rs.2,00,000/- to the entire family for the stigma, social embarrassment and indignity suffered by each of them and especially Vishal as also for destruction of evidence (CCTV footages). The cheque shall be issued in the name of the petitioner who will receive the same on behalf of the family. Such compensation is "a balm on the wound" for violation of human dignity and for the failure of the police to instill confidence that the investigation was fair, impartial and a quest for the truth. Such amount shall be paid by the State within two months. Liberty is granted to the state agency and the

appropriate department to recover the same from the erring police official after an enquiry is made by the Commissioner of Barrackpore Commissionerate, and the responsibility is fixed. CCTV cameras should be installed within two months in all police stations and units of the said commissionerate with at least one year back up capacity for the time being. Videography of seizure of commercial quantity of narcotics in all cases should be mandatorily done.

**46.** The accused can raise all the points at every stage of the criminal proceeding and avail of other remedies available under the Code of Criminal Procedure, before the competent courts of law.

**47.** The writ petition is disposed of.

**48.** There will be no order as to costs.

**49.** Parties are directed to act on the server copy of this judgment.

**(Shampa Sarkar, J.)**

**LATER**

Mr. Banerjee, Learned Senior Standing Counsel prays for stay of the operation of this judgment and order. Prayer considered and refused.

The GD Entry copies have been returned to the learned Advocate for the state authorities.

**(Shampa Sarkar, J.)**