

Aman Kumar Singh Vs State Of Chhattisgarh

Court: Chhattisgarh High Court

Date of Decision: Jan. 10, 2022

Acts Referred: Constitution Of India, 1950 " Article 20(3), 21, 225, 226, 227

Code Of Criminal Procedure, 1973 " Section 154, 155(2), 156(1), 157, 173(8), 211, 439, 482

Indian Penal Code, 1860 " Section 120B, 211

Prevention of Corruption Act, 1988 " Section 13(1)(b), 13(1)(e), 13(2), 17A

Hon'ble Judges: Narendra Kumar Vyas, J

Bench: Single Bench

Advocate: Ravindra Shrivastava, Abhishek Sinha, Navin Prakash, Apoorv Kurup, Bhawna Tiwari, Harneet Kaur Khanuja, Aditya Pandey, Ojaswa Pathak, Samarth Singh Marhas, Dayan Krishnan, Sanjeev Seshadri, Sunil Otmani, Sukrit Seth, Sudeep Agrawal, Anjali Singh Chouhan, Aditya Chopra, Shubhank Tiwari

Final Decision: Allowed

Judgement

1. Since same set of facts are involved in all the petitions, therefore, they are heard analogously and are being disposed of by this common order.

2. Learned Senior counsel for the petitioner has raised objection with regard to hearing of this matter by this Bench contending that the matters are

presently part heard before Coordinate Bench of this Court, therefore, in the interest of propriety, it is settled law that all the part heard matters should

be placed before the Bench, who has already heard the matter, so that Bench can decide whether the same should be released. He would further

submit that appropriate course of action would be that the matter should be placed before the other Coordinate Bench, who has partly heard the

matter, so that he can decide whether he would wish to hear the matters or release them to be placed before the roster bench.

3. This issue is decided first as it goes to the route of the matter. I have heard learned Senior counsel for the petitioner as well as learned Senior

counsel for the State and perused the order-sheets of the case recorded on 28.02.2020, 03.03.2020, 05.05.2020, 09.10.2020 & 19.10.2020, wherein

nowhere mentioned in the order-sheet that the matter is 'part heard', thereafter, after reopening of Court after Summer Vacation, Hon'ble Acting

Chief Justice has amended the Roster and the Roster related to Writ Petition (Cr.) filed under Article 226 of the Constitution of India as well as the

petition under Section 482 of the Cr.P.C. have been allocated to this Bench, therefore, this matter is being heard by this Bench, as such, the

submission of learned Senior Counsel for the State is that the matter was 'part heard' by the Coordinate Bench of this Court, is incorrect statement,

therefore, the same is rejected and now the matter is being decided by this Bench on its own merits.

WPCR No. 88 of 2020

4. The petitioner has filed the present writ petition under Article 226 of the Constitution of India challenging order dated 21.10.2019 passed by

respondent No. 2/ General Administration Department (GAD) and also institution of Preliminary Enquiry bearing No. 35/2019 dated 11.11.2019 by the

State Government against the petitioner.

5. The brief facts, as projected by the petitioner, are that the petitioner is former Principal Secretary to the Government of Chhattisgarh, who was

employed with the State Government until he voluntarily resigned i.e. on 12.12.2018. The petitioner has filed the present petition as respondent State

Government and the Economic Offences Wing (EOW)/ respondent No. 3 have colluded with respondent No. 4 to maliciously prosecute and falsely

implicate the petitioner at the behest of political dispensation in the State Government. The respondent No. 2 has issued order No. 1085/2019/1-7 dated

21.10.2019 (Annexure P/1) to respondent No. 3 to enquire into a false and baseless complaint dated 11.10.2019 made by Uchit Sharma-respondent

No. 4 against the petitioner and his family members and the same was sent to Hon'ble the Chief Minister of Chhattisgarh. The said complaint was

endorsed by Hon'ble the Chief Minister of Chhattisgarh himself, in which, it has been mentioned that "CS/EOW se jaanchkarayein"

thereafter, preliminary enquiry was initiated vide order No. 35/2019 dated 11.11.2019 against the petitioner.

6. Learned counsel for the petitioner would submit that Hon'ble the Chief Minister's direction was thereafter communicated by respondent No. 2/

GAD to respondent No. 3/(EOW) vide order dated 21.10.2019 (Annexure P/1). The petitioner came to know that respondent No. 3 has sought and

obtained income tax records of the petitioner and his family members including bank details. Respondent No. 3 vide its letter dated 14.11.2019

(Annexure P/2) asked the Income Tax Department, Ministry of Finance, Raipur to provide Aay Ka Vivaran, All Information Report (AIR).

Respondent No. 3 vide its letter dated 19.11.2019 requisitioned the ICICI Bank, Civil Lines, Raipur to provide certified copy of Account Opening

Form, all KYC documents taken, statement from inception and all the manual vouchers of all persons/non-persons pertaining to the petitioner and his

family members.

7. It has been further contended that respondent No. 3 has instituted preliminary enquiry bearing No. 35 of 2019 against the petitioner ignoring

provisions of Section 17A of the Prevention of Corruption Act, 1988 (for short "the Act, 1988") (amended 2018). Respondent No. 3 has not taken

requisite permission under Section 17A of the Act, 1988. Moreover, since Hon'ble the Chief Minister has himself directed EOW to conduct such an

enquiry, any such permission, if at all taken, would be perfunctory and per se violative of Section 17A of the Act, 1988. He would further submit that

neither GAD's order dated 21.10.2019 nor the EOW's communication dated 14.11.2019 and 19.11.2019 specify the legal basis or provision of law for

conducting such an enquiry including one which authorizes respondents to obtain the personal details of the petitioner. Such an enquiry is impermissible

in law and the State and its agencies cannot obtain the private details/ documents of the petitioner either under the Cr.P.C. or the Income Tax or for

that matter, under any other law in force.

8. He would further submit that respondent No. 3 is actually conducting an investigation in the garb of a preliminary enquiry. Such an enquiry is

impermissible because it is settled law that a preliminary enquiry is conducted merely to determine whether a complaint makes out a cognizable

offence and does not entail an investigation as envisaged in the Cr.P.C. Moreover, the State EOW cannot conduct an investigation in order to improve

upon the complaint dated 11.10.2019 in order to make out a cognizable offence where none exists. He would further submit that such conduct on the

part of the State EOW at the behest of the State Government also violates the petitioner's fundamental right to privacy as his income tax returns, bank

account details and related documents are confidential documents and personal information which cannot be obtained without due process.

9. Learned Senior counsel for the petitioner would further submit that the complaint made by respondent No. 4 is false, frivolous and malicious. He

would further submit that earlier one Nanki Ram Kanwar filed a complaint dated 05.09.2017 (Annexure P/4) to Hon'ble the Prime Minister's Office

and the same was duly enquired into by the State Government and even a reply was also called for from the petitioner, which was furnished on

05.12.2017 (Annexure P/5). After considering the allegations and the explanation given by the petitioner, the State Government decided to reject the

complaint vide letter dated 13.12.2017 (Annexure P/6), which was then informed not only to the Ministry of Personnel, Public Grievance and Pensions

Government of India, but also to the Ministry of Home Affairs, the Central Board of Direct Taxes, the Central Board of Excise and Customs and to

Hon'ble the Prime Minister's Office. He would further submit that the respondent State and its law enforcement agencies to harass, malign and falsely

implicate the petitioner on one pretext or other using complaints that are manufactured by individuals who are and have been acting only as fronts for

the political dispensation in the State Government. The first attempt was made in February 2019 when the newly elected State Government hurriedly

formed a Special Investigation Team (SIT) to probe a false and baseless complaint dated 04.01.2019 made by one Shri Vijay Mishra, even though the

said complaint failed to disclose even a prima facie case of economic offence under the Act, 1988. The petitioner immediately challenged the State

Government's order dated 06.02.2019 to illegally constitute such SIT vide WPC No. 447 of 2019, which was heard by this Hon'ble Court on

13.02.2019 and following order was passed:-

“Having given thoughtful consideration to the submission made by the parties, particularly, in view of the observations made by the Supreme Court

in the matters of Committee for Protection of Democratic Rights, West Bengal and Divine Retreat Centre (Supra), I am convinced that the present is

a case where ad interim relief is required to be granted in favour of the petitioner.

Accordingly, it is directed that no further steps be taken pursuant to the impugned order of formation of SIT till the next date of hearing.

10. It has been further contended that the State Government vide its order dated 10.05.2019 initiated an enquiry against the petitioner's wife- Smt.

Yasmin Singh on the basis of another false complaint made by different individual one Shri Vikas Tiwari, who is also a spokesperson of the

Chhattisgarh Unit of Indian National Congress. The said enquiry was a veiled attempt by the State Government to target the petitioner because the

complaint dated 12.04.2019 made by Vikas Tiwari included allegations against the petitioner as well. This order of State Government was also

challenged by the petitioner's wife in Writ Petition (S) No. 6521 of 2019, which was heard by this Hon'ble Court on 21.10.2019 and following order

was passed:-

“By application of such principles, when the petitioner was appointed on contract basis for a limited period and has resigned and the agreement too

contains an arbitration clause, under what jurisdiction the such notices and the contemplated action were set forth at this stage the State is unable to

canvas. Therefore, the petitioner cannot be said to depose the facts which is in the domain of the State and any information cannot be used in future

against the petitioner as it would be offending to Article 20 (3) and Article 21 of the Constitution of India. The fact that the petitioner was professional

Kathak dancer cannot be attached as a stigma or amalgamated to the job. The petitioner as a citizen had an independent right to do so irrespective

of her contractual obligation. Consequently, at this stage I am inclined to allow the interim application in the above narrated facts. In a result, it is

directed that the effect and operation of the order dated 03.10.2019 (Annexure P-25) shall remain stayed.

Consequently, no coercive steps shall be taken pursuant to the notice dated 10.05.2019 (Annexure P-16) against the petitioner till the next date of

hearing.

Accordingly, the application for grant of interim relief stands allowed.

11. It has been further contended that when petitioner's wife came to know that the latest complaint dated 11.10.2019 made by respondent No. 4

contained false and frivolous allegation against her that were similar to those dealt with by this Hon'ble Court's order dated 21.10.2019 in WP(S) No.

6521 of 2019 (Yasmin Singh Vs. State of Chhattisgarh & others), she preferred an application for ad-interim relief against the very same actions of

respondent No. 3/EOW to illegally obtain her income tax returns, bank accounts details and related documents. This application was heard by this

Hon'ble Court on 16.01.2020 (Annexure P/9) and following order was passed:-

"A fresh application has been filed by the petitioner for interim relief and it is contended that despite the interim order dated 21.10.2019, again the

investigation are being carried out by circumvent the order dated 21.10.2019 passed by this Court. It has been stated that in the same series of fact, the

investigation is being carried out for which restraint order exists. He referred to the documents and would submit that on the another set of complaint

as appears the same enquiry is being reopened for which the judicial restrain is in operation.

After primary perusal, State is directed to file its reply.

In the meanwhile, till the reply is filed, the State shall not proceed against the petitioner to prejudice her right as per order dated 21.10.2019.

Interim relief granted earlier to continue, till the next date of hearing.

12. It has been further contended that the petitioner has been falsely implicated in the allegations and false complaint has been lodged against the

petitioner to become victimize, therefore, the petitioner has filed the present petition and prayed for following reliefs:-

(i) Call for the entire record (s) of the order (No./1085/2019/1- 7), dated 21.10.2019, issued by the General Administration Department

(Respondent No. 2) of the Government of Chhattisgarh (Respondent No. 1), as well as the Economic Offences Wing (Respondent No. 3), pursuant to

the complaint dated 11.10.2019 made by the Respondent No. 4; and/or

(ii) Issue a writ, order or direction in the nature of mandamus for quashing of the Order dated 21.10.2019 issued by the Government of Chhattisgarh

(Respondent No. 2), as well as any consequential step (s) and/or actions taken by the Respondent No. 2 and 3, including the Preliminary Enquiry (No.

35/2019), dated 11.11.2019 registered at ACB/EOW, Raipur by the Respondent No. 3 (Economic Offences Wing of the Government of Chhattisgarh)

and the letters dated 14.11.2019 and 19.11.2019 issued by the Respondent No. 3 insofar as it pertains to the Petitioner, and/or

(iii) Direct the Respondent Nos. 2 & 3 to return all the documents and/or information, including the income tax returns, bank account details and

related documents pertaining to the Petitioner which have been illegally obtained by the Respondent No. 3 pursuant to the order dated 21.10.2019 of

the Respondent No. 2 referenced above, and to refrain from using or retaining said documents/ information or making copies thereof for any purpose

(s) or in many manner whatsoever; and/or

(iv) Issue a writ, order or direction in the nature of mandamus to the Respondent No. 1 to 3 to restrain them from taking any illegal action against the

Petitioner and/or from subjecting the Petitioner to illegal enquiries/ investigations on the basis of the complaint dated 11.10.2019, resulting in harm and

injury to his reputation and/or the violation of his fundamental rights; and/or

(v) Direct the appropriate authorities to prosecute the Respondent No. 4 under Section 211 of the Cr.P.C.; and/or

(vi) Any other relief which this Hon'ble Court deems fit in the facts and circumstances of the case along with costs of the petition be awarded.

13. Learned State counsel on 14.02.2020 filed preliminary objections mainly contending that the present petition is not maintainable as no FIR has been

registered against the petitioner and the petitioner is at the highest a perspective accused who is not to be heard at this stage, therefore, the petition is

premature and the same is liable to be dismissed by this Court. He would further submit that the allegations of malafide against high constitutional

functionaries is totally contrary to the record and is but a bid of scandalize and sensationalize the present proceedings. He would further submit that

complaint against the petitioner by Uchit Sharma addressed to Hon'ble the Chief Minister was received in the General Administration Department

on 15.1.2019 seeking enquiry into disproportionate assets and various scams/money laundering activities by the petitioner. The complaint was duly

processed in the ordinary course and put up to the office of Chief Secretary and subsequently Hon'ble the Chief Minister who has simply directed the

Chief Secretary, to get an enquiry done by the competent investigating agency, which in this case happened to the Economic Offences Wing. Hon'ble

the Chief Minister as a matter of fact, has not directed the registration of a preliminary enquiry. The decision for preliminary enquiry has been taken

by the State Economic Offences Wing on the basis of its own satisfaction. He would further submit that the allegation regarding malafide is entirely

unsubstantiated as is evident from the conduct of the State Economic Offences Wing. The preliminary enquiry has been registered in terms of the

judgment rendered by Hon'ble the Supreme Court in Lalita Kumari Vs. Government of Uttar Pradesh & others (2014) 2 SCC 1 in order to verify the

allegations made in the complaint dated 11.10.2019 instead of directly registering an FIR. He would further submit that the allegation of political

vendetta and malafides are scurrilous and contrary to the record and there is no requirement of sanction under Section 17A of the Act, 1988 (as

amended 2018), however, as a measure of abundant caution, the same has been obtained by the State EOW. He would further submit that the

allegations in the complaint dated 11.10.2019 relate to disproportionate assets of the petitioner and his family as well as the money laundering,

acquiring benami properties out of disproportionate assets. It is further contended that no sanction under Section 17A of the Act, 1988 was required in

the instant case in terms of the judgment passed by Hon'ble Delhi High Court in Rakesh Asthana Vs. Central Bureau of Investigation (2019) SCC

OnLine Del 6482, which has been approved by Division Bench of this Hon'ble Court in Satish Pandey Vs. Union of India Review Petition No.

43/2020 (Decided on 06.02.2020), as the allegation of disproportionate assets in terms of the Act, 1988 is not related to any recommendation or

decision taken by the petitioner.

14. He would further submit that in pursuance of the complaint made by Uchit Sharma dated 11.10.2019, the matter was sent to the competent

authority for grant of sanction, who in turn vide its order dated 31.10.2019 has already granted sanction. The purported exoneration of the petitioner in

relation to the allegation contained in the complaint dated 05.09.2017 made by Nanki Ram Kanwar is absolutely irrelevant to the present proceeding,

therefore, the present petition is liable to be dismissed by this Court. He would further submit that this Court vide order dated 28.02.2020 has directed

that no coercive steps shall be taken against the petitioner till the next date of hearing, thereafter the FIR has been registered against the petitioner and

his wife bearing Crime No. 09/2020 at Police Station-EOW/ACB, District- Raipur for the offence punishable under Section 13(1)(b), 13(2) of the Act,

1988 (amended 2018) & Section 120B of IPC.

15. The petitioner vide his application dated 28.02.2020 sought relief of quashing of the said FIR mainly contending that from bare perusal for the FIR,

it does not disclose the ingredients of alleged offence under Sections 13(1)(b), 13(2) of the Act, 1988 (as amended in 2018), Section 120B of IPC. The

FIR contains baseless and immaterial allegations against the petitioner, which deserves to be quashed by this Court. He would further submit that the

FIR is an abuse of police and State power. It is outcome of personal animosity of Hon'ble the Chief Minister of the State against the petitioner. From

bare perusal of the FIR, the alleged offence of disproportionate assets is a hasty misconceived and completely untenable, against the petitioner.

16. He would further submit that the allegation in the FIR, the check period for the petitioner's disproportionate assets is 2004-2018 on the selection of

this check period is unsupported by any logic and is arbitrary in the extreme. The FIR is vitiated on this count also. The income of the petitioner has

been clubbed with that of his wife. This clubbing is permissible when the wife is financially dependent on the husband and has no independent source

of income. In the instance case, the petitioner's wife is an independent income earner deriving income under a contract with the Chhattisgarh

Government as well as from dance performance being a professional classical dancer, the clubbing of income is both irrational and illegal. Even the

figures pertaining to the clubbed known source of income of the petitioner and his wife with the FIR and the expenditure and assets of to the check

period, do not disclose a case of disproportionate assets, but indicate a case of income in surplus of assets, savings and expenses. In any case, as per

law of variation of at least 10% of the assets over known source of income renders the case as one not disclosing disproportionate assets.

17. He would further submit that a case of disproportionate assets is only made out when the public servant concerned cannot satisfactorily account

for his possession of pecuniary resources or property being in excess to his known sources of income. At no stage during the conduct of preliminary

enquiry by respondent No. 3, the petitioner has been summoned for his alleged disproportionate assets. This renders the preliminary enquiry and the

subsequent FIR liable to be quashed as the essential ingredient of the offence i.e. "which the public servant cannot satisfactorily account for" is

not made out. In addition to failure to summon the petitioner for his explanation during preliminary enquiry, is evidence of malafides on the part of

respondent No. 3. He would pray for following amendment in the relief clause of the petition:-

"(vii) Issue a writ, order or direction in nature of mandamus or any other similar writ to Quash/set aside the FIR bearing Crime No. 09/2020

registered at Police Station- EOW/ACB, District-Raipur for the offence under Sections 13(1)(b), 13(2) of the Prevention of Corruption Act, 1988 (As

Amended in 2018), Section 120B of IPC (Annexure P/13) and the investigation and all consequential actions/steps there under.

18. The petitioner has filed I.A. No. 07/2020 on 05.11.2020, which is an application for bringing on record the relevant corresponding documents and

submission relating to the averment/figures mentioned in the FIR and would submit that all the anomalies indicated with respect to the income and

assets figures are pertaining to the petitioner, who as a government employee has complied with all the requirements of relevant conduct Rules

through regular intimations and APRs disclosing all the relevant details. Copies of the said intimations and APRs were already with the respondent-

EOW as they were taken from GAD during the preliminary enquiry. The respondent-EOW also have with them copies of all the ITRs and bank

statements of the petitioner and his wife for the check period, therefore, it is clear that despite having all the relevant information the respondent/EOW

has deliberately used the information available with them selectively to suppress the income on one hand inflate the assets on the other to make out a

case for disproportionate assets only to harass the petitioner and his wife.

19. It has been further contended that Hon'ble High Courts across the country have been pleased to quash FIRs in disproportionate assets cases if the

contents of the FIRs fail to make out even a prima facie case against the accused. If the application is not allowed, it will cause great prejudice to the

petitioner and he prays for allowing the application. He would further submit that the impugned FIR dated 25.02.2020 is a patent fabrication and the

allegations therein, even if taken at their face value and accepted in their entirety do not constitute or make out even a prima facie offence or case

against the petitioner and his wife. Thus, the said FIR deserves to be quashed and set aside.

20. This Court vide its order dated 12.08.2021 directed the State counsel to file reply to the application for bringing on record the relevant

corresponding documents and submission relating to the averment/figures mentioned in the FIR and fixed the case for 25.08.2021. On 25.08.2021,

State counsel again sought time to file reply to the said application and this Court fixed the case on 06.09.2021. On 06.09.2021, State counsel was

directed to produce case diary of the case and also the figures in tabulated form showing income and expenditure of the petitioners for perusal for this

Court whether there is disproportionate income or not and fixed the case on 24.09.2021.

21. Learned State counsel filed reply dated 27.08.2021 on behalf of State/ respondent No. 1 contending that as no adverse allegation has been made

by the petitioner against respondent No. 1, therefore, all the grounds urged by the petitioner in the instant petition are not tenable against respondent

No. 1 and prays for dismissal for the petition. Thereafter, the State counsel has filed interim application on 22.09.2021 for seeking exemption from

submission of tabulated form showing income and expenditure as per order dated 06.09.2021 reiterating the steps taken by the State for investigation

the matter, referring to the judgment passed by Hon'ble the Supreme Court in Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra & others

AIR 2021 SC 1918/ 2021 SCC Online SC 315 and would submit that since no coercive steps order has been passed, the petitioner is not cooperating

with the prosecution despite ample opportunity given to them. He would further submit that this is a case, where no coercive steps should have not

been ordered as per the law laid down by Hon'ble the Supreme Court in case of Neeharika (Supra). He would further submit that various

documents and figures supplied by the petitioner are concerned, it is submitted that the same cannot be gone into at this stage when the investigation is

still at its nascent stage. He would further submit that an FIR is not an encyclopedia of facts and at present the investigation is going on in the matter

and various communications have been issued to statutory authorities and the process for issuing Mutual Legal Assistance Treaties requests as there

is allegation in the FIR that the petitioner had procured assets in foreign countries and all the allegations are being verified, but no documents with

regard to the action purported to have been taken by them, have been filed with this reply to substantiate their submission prima facie to be correct.

22. It has been further contended that the ongoing Covid-19 pandemic has undoubtedly impacted the pace of investigation. He would further submit

that the attempt of the petitioner to exonerate himself on the basis of some facetious, one-sided explanation cannot be countenanced and should not be

entertained by this Hon'ble Court. He would further submit that the petitioner and his family have been totally non-cooperative in the ongoing

investigation and the State craves liberty to file an appropriate application in this respect if so require.

23. He would further submit that the State was directed to produce the case diary and also to submit the figures showing income and expenditure of

the petitioner in tabulation chart for perusal of this Court. The case diary of the said case is made available for perusal of this Court, however, since

the investigation is still in progress and the investigation authority is still in process of investigation into the disproportionate assets, as such, they are not

in a position to submit a tabulation showing income and expenditure at this stage of investigation. He would further submit that at the present stage the

preparation of such a tabular chart is not possible on account of the act omission and commission on behalf of the accused persons as the petitioners

are taking advantage of the interim order passed by this Court and would pray that the State may be exempted from submission of income and

expenditure in tabulated form as directed by this Court on 06.09.2021.

24. On 22.09.2021, State has also filed application on behalf of State/ respondent No. 1 to 3 for seeking vacation of interim order dated 28.02.2020

passed by this Court in favour of the petitioner reiterating the facts which have already been mentioned in the application seeking exemption from

submission of tabulated form showing income and expenditure as per order 06.09.2021 passed by this Court.

25. On 22.09.2021, learned counsel for the petitioner has filed rejoinder to the reply filed on behalf of State/ respondent No. 1 to 3 stating that an

allegation is being made by the respondents to cover up their malafides and harassment that is being meted out to the petitioner and his family in gross

disregard for the rule of law. Such malicious conduct by the respondents will be evident from the very fact that as soon as this Court directed the

present matters to be listed on 25.08.2021 vide order dated 12.08.2021, the ACB/EOW suddenly issued notices dated 16.08.2021 to the petitioner/s

brother Mr. Arun Singh and Mr. Aseem Singh asking them to physically appear before the agency in less than 5 days. These notices were issued

even though the ACB/EOW is well aware that the petitioner does not have any direct or indirect financial or business relations with any of his

brothers, one of whom incidentally is physically disabled. Therefore, the petitioner's brothers responded to the said notices vide emails dated

21.08.2021 & 22.08.2021 respectively expressing that they were unfamiliar with the investigation and requested the EOW for a copy of the FIR and

15 days time to study the contents of the same. He would further submit that time of these notices to the petitioner's brothers only shows that the

respondent has amplified its efforts in this political witch-hunt in the garb of an investigation only after this Hon'ble Court has directed the present writ

present and connected matter to be listed for hearing in the interest of justice.

26. To decide whether the FIR registered against the petitioner constitutes prima facie allegation of commission of offence under Section 13 (1)(b), 13

(2) of the Act, 1988 (as amended 2018) and Section 120B of IPC is made out or not, it is apt for this Court to extract the relevant paragraph of the

FIR, which is as under:-

27. Learned counsel for the petitioner would submit that the allegation contained in first part of the FIR does not disclose any offence which lies

cognizable offence and there is no obligation of the petitioner to disclose immovable property acquired by his wife as she acquired these properties in

her own name and income as well. The EOW/ACB has collected the facts regarding the income of the petitioner and his wife from lawful sources

and arrived at a figure for the check period. The FIR not only strangely but deliberately avoids giving a comparison between these two i.e. income &

assets in any manner whatsoever to show prima facie the pivotal and fundamental element of disproportionate of assets, which is sine qua non for an

offence under the Act, 1988. This was minimum requirement of the allegation to constitute a cognizable offence of possession of disproportionate

assets as per the FIR. He would further submit that the allegations in the FIR do not even prima facie constitute an offence, even if those allegations

are taken at their face value. He would further submit Hon'ble the Supreme Court in State of West Bengal Vs. Swapan Kumar Guha (1982) 1 SCC

561, held that the condition precedent to the commencement of investigation under Section 157 of the Code is that the F.I.R. must disclose, prima

facie, that a cognizable offence has been committed. It is wrong to suppose that the police have an unfettered discretion to commence investigation

under Section 157 of the Cr.P.C. Their right of inquiry as conditioned by the existence of reason to suspect the commission of a cognizable offence

and they cannot, reasonably, have reason so to suspect unless the F.I.R. prima facie, discloses the commission of such offence. It has been further

held that if no offence is disclosed, an investigation cannot be permitted, as any investigation, in absence of any offence being disclosed, will result in

unnecessary harassment to a party, whose liberty and property may be put to jeopardy for nothing. The liberty and property of any individual are

sacred and sacrosanct and the Court zealously guards them and protects them.

28. He would further submit that Hon'ble the Supreme Court in State of Haryana Vs. Bhajan Lal & others 1992 Supp. (1) SCC 335, held that where

the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not

prima facie constitute any offence or make out a case against the accused.

29. Learned Senior counsel for the petitioner would further submit that the FIR does not disclose the basic ingredient of Section 13(1)(b) of the Act,

1988 & Section 120B of IPC are as under:-

“An offence under Section 13(1)(b) of the Act, 1988 is made out only if the accused 'intentionally enriches himself illicitly' during the period of his

office. Therefore, the Respondents must show that the impugned FIR discloses that the petitioners have enriched themselves illicitly, and the extent of

such enrichment (either in figures or as a percentage)“

30. The ingredients of Section 120B of IPC is as under:-

“(i) There must be an agreement between two or more persons;

(ii) For committing an illegal act, or an act by illegal means; and,

(iii) Such agreement must be to commit an offence.“

31. He would further submit that the object and purpose of the preliminary enquiry in the instant case was not only to ascertain the veracity of the

allegations in the complaint made by Uchit Sharma, but also the collection of material that is not permissible as per judgment rendered by Hon'ble the

Supreme Court in Charansingh Vs. State of Maharashtra (2021) 5 SCC 469, which EOW/ACB ostensibly did. This is evident from the comparative

perusal of the complaint and the impugned FIR. He would further submit that instead the impugned FIR is based on extremely casual mention of a

Sambhavana or sheer conjectural possibility of finding some more assets in future, which is wholly impermissible. For entertaining a bonafide belief of

possibility of finding more assets, there must exist disclosable material on record in the nature of some clue and link. A mere mention of a single word

Sambhavana will not entitle the EOW/ACB to lodge an FIR. It is well settled that the FIR must as it stands, disclose a cognizable offence, which

means it must disclose perceptible facts of some basic value and relevance and not mere ipse dixit of Sambhavana. Otherwise, an FIR based on

Sambhavana will become a tool of witch-hunting and consequently harassment in violation of Article 21 of the Constitution of India.

32. He would further submit that while the FIR purports to provide factual details (such as the bank balances of the petitioners, the values of certain

immovable properties held and sold by them, the amount of salary and interest received by them and the amounts held in their provident fund

accounts), the FIR is completely silent as to the extent of the disproportionate assets held by the petitioners (either in figures or as a percentage), nor

there is even a whisper regarding the alleged 'criminal conspiracy' between the petitioner and his wife to justify charging them under Section 120B of

the IPC. On the contrary, after narrating various details regarding the bank balances, immovable properties, salaries etc. the FIR vaguely claims at the

end that between 2004 and December 2018, the petitioner and his wife had lawfully received an income of INR Rs. 3,33,71,290/- and that in

comparison they allegedly hold 'disproportionate assets'.

33. He would further submit that having failed to identify any disproportionate assets, let alone the extent thereof, the maker of the FIR attempts to

overcome this fatal flaw by misleadingly portraying known facts as if they were discoveries made by the EOW/ACB (e.g. details of the land owned

by the petitioner's wife, Smt. Yasmin Singh, at Kachna in Raipur, Chhattisgarh which was already publicly available in the land records) and by

recklessly and irresponsibly claiming that there is a need for investigation because there is supposedly a 'possibility' that the petitioners may have

undisclosed property and investments. It is submitted that an FIR cannot be lodged on such basis and certainly not on mere conjectures or suspicion

and surmises i.e. the 'possibility' of an offence- the FIR must show that the commission of an actual offence has been reported. Even more

shockingly, the FIR alleges that there could be wrongdoing simply because the petitioner's wife has received monies in her bank account from certain

companies, without stating any basis at all for doubting the legality of these transactions.

34. He would further submit that apart from the above, it is a case where the documents collected during preliminary enquiry and available with

ACB/EOB itself in the impugned FIR would show that by no stretch of imagination can it be said that the petitioners hold any assets disproportionate

to their known source of income. He would further submit that the FIR does not even identify the actual check period for assessing an offence under

Section 13(1)(b) of the Act, 1988 read with Section 120B of IPC. In fact, the FIR is vaguely and hastily drafted that at various places it merely

identifies the check period as "year 2004 to December, 2018", but at another place it suggests that the check period commences on

"December 2004" when it states that the petitioner had an opening bank balance of Rs. 2,18,240.82/- at that time. This shows that the maker of

the FIR is himself not clear regarding the check period during which the alleged offence was committed. He would further submit that Hon'ble the

Supreme Court in recent judgment Central Bureau of Investigation & another Vs. V. Thommandru Hannah Vijayalakshmi @ T.H. Vijayalakshmi &

another Criminal Appeal No. 1045 of 2021 (Decided on 08.10.2021), does not in any manner contradict the aforesaid submissions of the petitioner

because in the judgment only reiterates the settled test that while adjudicating a petition seeking quashing of an FIR, the High Court should consider

'whether the contents of the FIR- as they stand and on their fact- prima facie make out a cognizable offence'. He would further submit that Hon'ble

the Supreme Court in Neeharika Infrastructure (Supra), which is clearly not applicable since the petitioners are not seeking interim relief, but final

relief for which the present batch of writ petitions have been reserved for judgment. He would further submit that the specious defence also deserves

to be rejected in limine because an investigation is only the consequence of the lodging of an FIR, therefore, the investigation of the allegations in the

FIR may kindly be set aside.

35. He would further submit that the respondents' reliance upon this Court's judgment dated 21.05.2020 in WP (C) No. 447 of 2019 (Aman Kumar

Singh Vs. State of Chhattisgarh & others) to plead that there cannot be any interference with the investigation is impleaded because the said judgment

was not delivered in a case where the State had lodged an FIR or was conducting an investigation and the petitioner had challenged a decision dated

06.02.2019 of the State Government's General Administration Department whereby the EOW was asked to enquire into allegation made by one Vijay

Mishra against the petitioner. He would further submit that the facts in WP (C) No. 447 of 2019 were very different from the present case in which

the petitioners are praying for quashing an FIR and the consequent investigation and the observation of this Court regarding a pre-FIR stage are not

relevant for adjudicating a case where an FIR has already been lodged.

36. Learned Senior counsel for the petitioner placed reliance upon the judgment rendered by Hon'ble the Supreme Court in Charansingh (Supra), in

which, it has been held at paragraph 15.1 as under:-

“15.1.....an enquiry at pre-FIR stage is held to be permissible and not only permissible but desirable, more particularly in cases where the

allegations are of misconduct of corrupt practice acquiring the assets/properties disproportionate to his known sources of income. After the

enquiry/enquiry at pre-registration of FIR stage/preliminary enquiry, if, on the basis of the material collected during such enquiry, it is found that the

complaint is vexatious and/or there is no substance at all in the complaint, the FIR shall not be lodged. However, if the material discloses prima facie a

commission of the offence alleged, the FIR will be lodged and the criminal proceedings will be put in motion and the further investigation will be

carried out in terms of the Code of Criminal Procedure. Therefore, such a preliminary enquiry would be permissible only to ascertain whether

cognizable offence is disclosed or not and only thereafter FIR would be registered. Therefore, such a preliminary enquiry would be in the interest of

the alleged accused also against whom the complaint is made.”

37. Learned Senior counsel for the petitioner has further placed reliance upon the judgments rendered by Hon'ble the Supreme Court in State of West

Bengal Vs. Swapan Kumar Guha (1982) 1 SCC 561, State of Haryana & others Vs. Bhajan Lal & others (1992) Supp. 1 SCC 335, Charansingh Vs.

State of Maharashtra & others (2021) 5 SCC 469, Sajjan Singh Vs. State of Punjab (1964) 4 SCR 630, Anup Singh Dahiya Vs. State through C.B.I.

CRLA. 285/2007 (Decided on 30.09.2016), Krishnanand Agnihotri Vs. The State of Madhya Pradesh (1977) 1 SCC 816, M. Krishna Reddy Vs. State

Deputy Superintendent of Police, Hyderabad (1992) 4 SCC 45, Vincent George Vs. CBI (2014) SCC OnLine Del. 7537, Vineet Narain & others Vs.

Union of India & another (1998) 1 SCC 226, Central Bureau of Investigation Vs. Ashok Kumar Aggarwal (2014) 14 SCC 295, Central Bureau of

Investigation (CBI) & another Vs. Thommandru Hannah Vijayalakshmi alias T.H. Vijayalakshmi & another 2021 SCC OnLine SC 923, Neeharika

Infrastructure Pvt. Ltd. Vs. State of Maharashtra & others (2021) SCC OnLine SC 315, Babubhai Vs. State of Gujarat & others (2010) 12 SCC 254,

State by Lokayuktha Police Vs. H. Srinivas (2018) 7 SCC 572 & Lalita Kumari Vs. Government of Uttar Pradesh & others (2014) 2 SCC 1.

38. Learned Senior counsel for the State/respondent No. 1 to 3 has filed their written submission reiterating the stand already taken by them and

would submit that the FIR No. 09/2020 has been registered on 25.02.2020 (Annexure P/13) for committing offence punishable under Sections 13 (1)

(b), 13 (2) of the Act, 1988 read with Section 120-B of IPC against the petitioner in WPCR No. 88/2020 & his wife Yasmin Singh-petitioner in

WPCR No. 154/2020. The FIR has been registered subsequent to a Preliminary Enquiry No. 35/2019 registered on 11.11.2019, which is based on the

complaint made by one Uchit Sharma on 11.10.2019. He would further submit that this Court in exercise of its power jurisdiction under Section 482 of

the Cr.P.C. and Article 226 of the Constitution of India, would not evaluate annexures as if it were evidence and on that basis interdict an investigation

which though at a nascent stage, has already revealed serious cognizable offences. During course of preliminary enquiry, the investigating agency

should have accepted their documents as being true and not registered the FIR, is contrary to well settled legal position which has been reiterated by

the latest judgment rendered by Hon'ble the Supreme Court in Vijayalakshmi (Supra). The investigation at a nascent stage has already revealed

disproportionate assets amounting to nearly 20% more than the known sources of income of the petitioners. He would further submit that no

cognizable offence is made out is contrary to the record and facetious. He would further submit that institution of impugned FIR actuated by

malafides, is scurrilous and entirely contrary to the record. In any event, there is more than one judgment of Hon'ble the Supreme Court, it is held that

whatever be in the nature of initiation of an investigation, if investigation is for the purpose of ascertaining whether a cognizable offence has been

committed, such investigation cannot be quashed.

39. Learned Senior counsel for the State placed reliance upon the judgments rendered by Hon'ble the Supreme Court in Minakshi Bala Vs. Sudhir

Kumar & others (1994) 4 SCC 142, State Anti Corruption Bureau, Hyderabad & another Vs. P. Suryaprakasam (2008) 14 SCC 13, State of Bihar &

another Vs. P.P. Sharma IAS & another 1992 Supp. (1) SCC 222, State of Rajasthan Vs. Rajkumar Agarwal & another (2012) 8 SCC 616, State of

Orissa & others Vs. Ujjal Kumar Burdhan (2012) 4 SCC 547, Rajiv Thapar & others Vs. Madan Lal Kapoor (2013) 3 SCC 330, State of Telangana

Vs. Habib Abdullah Jeelani & others (2017) 2 SCC 779, The King Emperor Vs. Khawaja Nazir Ahmad AIR 1945 PC 18, State of Bihar & another

Vs. J.A.C. Saldanha & another (1980) 1 SCC 554, Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra & others 2021 SCC Online SC 315,

Vijayalakshmi (Supra), State of Haryana & others Vs. Bhajan Lal & others 1992 Supp. (1) SCC 335, Parkash Singh Badal & another Vs. State of

Punjab & others (2007) 1 SCC 1, Umesh Kumar Vs. State of Andhra Pradesh & another (2013) 10 SCC 591, State through SPE & CBI, Andhra

Pradesh Vs. M. Krishna Mohan & another (2007) 14 SCC 667, State (NCT of Delhi) Vs. Ajay Kumar Tyagi (2012) 9 SCC 685, Aman Kumar Singh

Vs. State of Chhattisgarh, General Administration Department through Its Secretary (2020) SCC Online Chh. 2420, State of Telangana Vs.

Managipet alias Mangipet Sarveshwar Reddy (2019) 19 SCC 87, K. Veeraswami Vs. Union of India & others (1991) 3 SCC 655, B. Srinivasa Reddy

Vs. State of Karnataka 2012 SCC Online Kar 3455, Lalita Kumari Vs. Government of Uttar Pradesh & others (2014) 2 SCC 1, Lalita Kumari Vs.

Govt. of U.P. & others Cr.M.P. No. 5029 of 2014 in WP (Crl.) No. 68 of 2008 (Order dated 05.03.2014), H.N. Rishbud & Inder Singh Vs. State of

Delhi AIR 1955 SC 196 & High Court of A.P. Vs. Spl. Deputy Collector (LA), A.P. & others Civil Appeal No. 4662 of 2004 (Decided on

21.03.2007).

40. It has been further contended in the written submission that since Hon'ble the Supreme Court has passed the judgment on 08.10.2021 in

Vijayalakshmi (Supra) after closure of the case for orders, therefore, they have filed application for rehearing of the matter, which is still pending. He

would further rely upon the judgment rendered by Hon'ble the Supreme Court in Charansingh (Supra) and would submit that an FIR will not stand

vitiated because a preliminary enquiry was not conducted. It bears mentioning that the entire case of the petitioner is to say that the preliminary

enquiry should have been conducted in a particular manner, wherein contention has been rejected by Hon'ble the Supreme Court. He would further

submit that the investigation which is already revealed disproportionate to the known source of income to the extent of more than 20% of the

petitioner, as such, the contention that no cognizable offence is made out is contrary to the record and deserves to be rejected by this Court.

41. He would further submit that the power of superintendence exercised by the State Government is wide and would imply administrative control

enabling the Government to give directions to the State Police for discharging its duties. He would further submit that Hon'ble the Supreme Court in

J.A.C. Saldanha (Supra), has held that the power of superintendence exercisable by the State would enable the State to give directions to the public

to conduct further investigation in terms of Section 173 (8). It is further submitted that by analogy the State would even have power to direct the police

to investigate in terms of Section 154 of the Cr.P.C. He would next submit that Hon'ble the Chief Minister has not directed the State EOW to register

a preliminary enquiry or any other proceedings and he has simply said that "CS/EOW se jaanchkarayein". He would further submit that identical

allegation of political malafides is raised by the petitioner and the same has been rejected by Coordinate Bench of this Court in Aman Kumar Singh

(Supra). He would again submit that the exoneration by GAD of the petitioner on the complaint made by Nanki Ram Kanwar dated 05.09.2017 by

letter dated 13.12.2017 would not preclude a criminal investigation to be continued. He would further submit that in the instant case, no departmental

enquiry was conducted on the complaint dated 05.09.2017 as is evident from the communication dated 13.12.2017 which only accepts the responses

of the petitioner without any further evidence or enquiry.

42. He would further submit that the petitioner has not joined the investigation even on a single day and on this short count alone has disintitiled himself

to any order from this Hon'ble Court. The summons were issued to the petitioner on various dates right from 21.09.2020, but he remained absent,

which clearly demonstrates that the petitioner is extremely influential and is interfering with the investigation by attempting to influence officers as well

as the machinery of the State.

43. Learned counsel for the State has filed I.A. No. 08/2021 application for rehearing of the matter on behalf of respondent No. 1 to 3 in view of the

judgment passed by Hon'ble the Supreme Court in Vijayalakshmi (Supra) & Charansingh (Supra) whereby the order passed by High Court of

Telangana has been quashed.

44. Learned counsel for petitioners has also filed reply to the said application wherein it has been stated that the said application has been filed to delay

the proceeding only and the petitioner has enclosed judgment passed by Hon'ble the Supreme Court in Vijayalakshmi (Supra) & Charansingh (Supra).

Since both the parties are relying upon the judgment of Hon'ble the Supreme Court in case of Vijayalakshmi (Supra), it is not required for this

Court to rehear the matter, accordingly, I.A. No. 08/2021 is disposed of.

45. It has been further contended by learned Senior counsel for the State that this Court has directed the State to submit reply to the application and to

controvert the self assessment done by the petitioner to demonstrate that the income is not disproportionate. The State has filed their reply showing

their inability to file affidavit in filing the reply despite the order of this Court to submit details in tabulation form. It has been further submitted that the

case diary of the said case is made available for perusal of this Hon'ble Court, however, since the investigation is still in progress and the investigating

authority is still in the process of investigating into the disproportionate assets, the State is not in a position to submit a tabulation showing income and

expenditure at this stage of investigation.

46. I have heard learned counsel for the parties and perused the documents as well as the case diary called by this Court with utmost satisfaction.

47. Learned Senior counsel for the petitioner while referring to the income tax return would submit that there is no disproportionate income. The

reliance upon the income tax return by the petitioner filed with the Income Tax Department and copy of the same enclosed with the petition has

seriously been objected by the learned Senior counsel for the respondents and he would submit that this is the defence of the petitioner, which cannot

be looked into at this juncture in light of judgment passed by Hon'ble the Supreme Court in Vijayalakshmi (Supra). The law laid down by Hon'ble

the Supreme Court on 08.10.2021 in case of Vijayalakshmi (Supra), is not disputed by the either side, therefore, this Court while examining the case

only considered the contents of the FIR, which prima facie discloses commission of the offence or not. Rest of the issues raised in the writ petition, in

the return filed by the State, are not examined by this Court in light of Vijayalakshmi (Supra). Hon'ble the Supreme Court in case of Vijayalakshmi

(Supra) while examining the scope of power of the High Court to quash the FIR has held that the High Court should not conduct a mini-trial or a

roving enquiry while exercising its power under Section 482 of the Cr.P.C. or Article 226 of the Constitution which is obviously impermissible.

48. Hon'ble the Supreme Court in Vijayalakshmi (Supra) has held as under:-

“40. From the above, it becomes evident that the Single Judge of the Telangana High Court has acted completely beyond the settled parameters

which govern the power to quash an FIR. The Single Judge has donned the role of a Chartered Accountant. The Single Judge has completely ignored

that the Court was not at the stage of trial or considering an appeal against a verdict in a trial. The Single Judge has enquired into the material adduced

by the respondents, compared it with the information provided by the CBI in the FIR and their counter-affidavit, and then pronounced a verdict on the

merits of each individual allegation raised by the respondents largely relying upon the documents filed by them (by considering them to be known

sources of income within the meaning of Section 13(1)(e) of the PC Act). This exercised has been justified on account of the appellant not

having conducted a Preliminary Enquiry and hence, not having addressed the respondents' PART E objections relying upon the documents

adduced by them. The reasons provided by the Single Judge for entering into the merits of the dispute while quashing the FIR are specious, especially

so considering our finding that the CBI need not hold a Preliminary Enquiry mandatorily. While exercising its jurisdiction under Article 226 of the

Constitution to adjudicate on a petition seeking the quashing of an FIR, the High Court should have only considered whether the contents of the FIR

"as they stand and on their face" prima facie make out a cognizable offence. However, it is evident that in a judgment spanning a hundred and

seven pages (of the paper-book in this appeal) the Single Judge has conducted a mini-trial, overlooking binding principles which govern a plea for

quashing an FIR.

41. The judgment of a two Judge Bench of this Court in *Gunmala Sales (P) Ltd. v. Anu Mehta* 61 makes it abundantly clear that the High Court does

not conduct a mini-trial or a roving inquiry while exercising its powers under Section 482 of the CrPC. Justice Ranjana P Desai held:

“34.4. No restriction can be placed on the High Court's powers under Section 482 of the Code. The High Court always uses and must use this

power sparingly and with great circumspection to prevent inter alia the abuse of the process of the court. There are no fixed formulae to be followed

by the High Court in this regard and the exercise of this power depends upon the facts and circumstances of each case. The High Court at that stage

does not conduct a mini trial or roving inquiry, but nothing prevents it from taking unimpeachable evidence or totally acceptable circumstances into

account which may lead it to conclude that no trial is necessary qua a particular Director.” (2015) 1 SCC 103 PART E This principle also applies

squarely to the exercise of powers by a High Court under Article 226 of the Constitution while considering a writ petition for quashing an FIR.

Further, in numerous judgments of this Court it has been held that a court cannot conduct a mini-trial at the stage of framing of charges 62. Hence,

doing so at the stage of considering a petition for quashing an FIR under Section 482 of the CrPC or Article 226 of the Constitution is obviously also

impermissible. Therefore, we disapprove of the reasoning provided by the Telangana High Court in its impugned judgment dated 11 February 2020 for

quashing the FIR.”

49. From bare perusal for the FIR, the allegation of disproportionate income is made out or not, it is expedient for this Court to examine whether from

bare perusal of the contents of FIR, offence said to have been committed is made out or not, then only the FIR can be quashed by this Court.

Therefore, whether the prima facie case is made out or not, has to be seen. This Court in foregoing paragraphs has extensively quoted the FIR, which

clearly demonstrates that the FIR is based on probabilities with regard to disproportionate income. The FIR is silent with regard to quantum of the

disproportionate income, which is the paramount factors for involving any person in implicating any person for commission of offence under Section 13

(1)(b), 13 (2) of the Act, 1988. These basic ingredients are not reflected from the bare perusal of the FIR.

50. The FIR contains that the petitioner has not disclosed information with regard to the ancestral property. The non-disclosure of the ancestral

property cannot be any offence under Section 13 (1)(b) & 13 (2) of the Act, 1988. In the FIR, it has also been mentioned that the petitioner and his

wife have earned Rs. 1,67,70,000/- from sale of property and total income of the petitioner and his wife from the year 2004 to 2018 is Rs.

3,33,71,290/-. It cannot be said that sale of property cannot be termed as unknown source of income, as such, it cannot be said to be disproportionate

income as the source of income is known i.e. by sale of the land as mentioned in the FIR itself.

51. This Court in view of the judgment passed by Hon'ble the Supreme Court in Vijayalakshmi (Supra), can only examine the contents of the FIR to

examine whether the offence under Section 13 (1)(b), 13 (2) of the Act, 1988 read with Section 120B of IPC is made out or not. The relevant

Sections thereof are extracted below:-

“Section 13(1)(b) of the Act, 1988- if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person,

any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to

be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official

functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the

person so concerned; or

“Section 13 (2) of Act, 1988- Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be

not less than one year but which may extend to seven years and shall also be liable to fine.

“Section 120B of IPC - (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, [imprisonment for life] or

rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a

conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with

imprisonment of either description for a term not exceeding six months, or with fine or with both.

52. The FIR has been registered on the basis of complaint made by one Uchit Sharma for alleged disproportionate property against the petitioners and

involvement of the petitioner in various scam and money laundering, but the FIR does not speak about how the petitioner involved in the alleged scam

as mentioned in the FIR. It has also been stated in the FIR that the petitioner was working in various posts of profit and working as influential person

and the fact is not in dispute that the petitioner was on deputation and worked as Joint Secretary with the Government of Chhattisgarh, definitely he

has posted in the office of Chief Minister of State, therefore, merely his working as Joint Secretary cannot be said to have been commission of

offence under Section 13 (1)(b), 13 (2) of the Act, 1988 and Section 120B of IPC, thus, the registration of FIR is nothing but an abuse of process of

law.

53. Hon'ble the Supreme in Bhajan Lal & others (Supra), has held as under:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law

enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under

section 482 of the code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such

power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible

to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad

kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety

do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence,

justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section

155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the

commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted

by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever

reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is

instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing

efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for

wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

54. Hon'ble the Supreme Court in M/s Neeharika Infrastructure (Supra) has held as under:-

"10 (iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit

an investigation to go on;

55. Hon'ble the Supreme in the matter of Kartar Singh Vs. State of Punjab reported in (1994) 3 SCC 569, held as under:-

"459. Law on the subject is fairly settled. In State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 : 1992 SCC (Cri.) 426 a Bench of this Court

of which one of us (Pandian, J.) was a member, after detailed examination of the judicial decisions held, "where the allegations made in the first

information report or the complaint, even if they were taken at their face value and accepted in their entirety did not prima facie constitute any offence

or make out a case against the accused", or "where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis

of which no prudent person could ever reach a just conclusion that there was sufficient ground for proceeding against the accused", or "where a

criminal proceeding was manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking

vengeance on the accused and with a view to spite him due to private and personal grudge", then the proceedings were liable to be quashed. In

Usmanbhai Dawoodbhai Memon and Others Vs. State of Gujarat, it was conceded that a petition under Article 226 was maintainable. It was urged

that the observation made by this Court in Usmanbhai Dawoodbhai Memon and Others Vs. State of Gujarat, in relation to exclusion of High Court's

jurisdiction under Sections 439 and 482 were squarely applicable to Article 226. Reliance was placed on Narcotics Control Bureau Vs. Kishan Lal and

others, also. It was urged that as far back as Waryam Singh and Another Vs. Amarnath and Another, it having been observed by this Court that

power of superintendence conferred by Article 227 was to be exercised most sparingly and only in appropriate cases in order to keep the subordinate

courts within the bounds and their authority and not in correcting errors. The High Court should not be permitted to entertain a petition against

rejection of bail under Article 226 and 227. Reliance was also placed on State of Gujarat etc. Vs. Vakhtsinghji Sursinghji Vaghela and Others etc., and

Mohd. Yunus Vs. Mohd. Mustaqim and Others, . The power given to High Court under Article 226 is an extraordinary power not only to correct the

manifest error but also to exercise it for sake of justice. Under the scheme of the Constitution a High Court is the highest court for purposes of

exercising civil, appellate, criminal or even constitutional jurisdiction so far that State is concerned. The jurisdiction possessed by it before coming into

force of the Constitution was preserved by Article 225 and by Articles 226 and 227 an extraordinary jurisdiction was conferred on it to ensure that the

subordinate authorities act not only in accordance with law but they also function within the framework of law. That jurisdiction of the High Court has

not been taken away and in fact could not be taken away by legislation. In England even in absence of Constitution whenever an attempt was made

by Parliament to provide that the order was final and no writ of certiorari would lie the High Court always struck down the provision. Since the High

Court under the Constitution is a forum for enforcement of fundamental right of a citizen it cannot be denied the power to entertain a petition by a

citizen claiming that the State machinery was abusing its power and was acting in violation of the constitutional guarantee. Rather it has a

constitutional duty and responsibility to ensure that the State machinery was acting fairly and not on extraneous considerations. In State of

Maharashtra Vs. Abdul Hamid Haji Mohammed, this Court after examining the principle laid down in Kharak Singh Vs. The State of U.P. and

Others, and Paras Ram Vs. State of Haryana, held that the High Court has jurisdiction to entertain a petition under Article 226 in extreme cases.

What are such extreme cases cannot be put in a strait-jacket. But the few on which there can be hardly any dispute are if the High Court is of opinion

that the proceedings under TADA were an abuse of process of court or taken for extraneous considerations or there was no material on record that a

case under TADA was made out. If it be so then there is no reason why should the High Court not exercise its jurisdiction and grant bail to the

accused in those cases where one or the other exceptional ground is made out.

56. The FIR further states that there is possibility of having various properties in the name of the petitioner and his wife. The FIR further states that

there is reasonable possibility that the petitioner has invested himself for his wife and other dependent family members and it was also stated that there

is a possibility that a huge amount of money is being deposited in the bank account of his wife. The FIR nowhere discloses commission of any offence

with definite facts and figures. The FIR is based upon probabilities. As per the Act, 1988, it is for the prosecution to establish prima facie offence

under Section 13 (1)(b) read with Section 13 (2) of the Act, 1988 against Government servant by reflecting in the FIR, which is initiation of

prosecution, then only, prosecution can be started to investigate the offence as mentioned in the FIR. In absence of any specific allegation made in the

FIR, merely on probability, the petitioner cannot be prosecuted. The FIR has been registered on the basis of complaint made by one Uchit Sharma.

The allegation in the FIR that the petitioner has not filed a single APR while being employed with the Government of Chhattisgarh due to fear that his

disproportionate assets will get exposed. It may seriously violate all the conduct rules of Government of India and Chhattisgarh Civil Services

(Conduct) Rules, 1965, but the petitioner cannot be prosecuted for commission of offence under Section 13 (1)(b) read with Section 13 (2) of the Act,

1988 for non-submission of APR with the department. The FIR is not disclosing the fact that even not disclosing the APR with the Government what

disproportionate income, the petitioner has earned during the period from 2004 to 2018.

57. The FIR further reflects that the petitioner has invested black money earned by him during his tenure and invested in Y.N. Singh Memorial

Foundation (Trust). His involvement in the said Foundation is evident from the documents recovered from Ministry of Corporate Affairs. He holds one

third shares in this foundation along with his two brothers Aseem Singh and Arun Singh. He is using it to park his assets in this foundation. He has also

registered as trust under Public Trusts and Charitable Institutions Act, 1952 to park his ill gotten wealth. Thorough enquiry will reveal the truth. The

respondents in their application (I.A. No. 09/2021) seeking exemption from submission of tabulated form showing income and expenditure, have

mentioned the fact that the petitioner has procured assets in foreign countries outside the India and the allegation has been verified, but no document to

substantiate such statement of facts, has been filed by them. This clearly shows that no exercise for collection of materials before registration of FIR,

has been carried out, but FIR has been registered on the basis of complaint by one Uchit Sharma, which is nothing but an abuse of process of law.

58. It is not in dispute that truthfulness of allegation has to be examined on evidence, but at least it is incumbent on the part of the prosecution that the

FIR should prima facie disclose commission of offence under Section 13 (1)(b) read with Section 13 (2) of the Act, 1988 and Section 120B of IPC,

but all the allegations levelled against the petitioner are prima facie based upon probabilities and on the basis of probability any person cannot be

prosecuted.

59. Since from bare perusal of the FIR, offence under Section 13 (1) (b), 13 (2) of the Act, 1988 is not made out, offence under Section 120B of IPC,

will also be not made out against the petitioner.

60. In view of the above discussion, considering the law laid down by Hon'ble the Supreme Court, the FIR bearing Crime No. 09/2020 registered

against the petitioner and his wife at Police Station-EOW/ACB, District- Raipur for committing offence punishable under Section 13(1)(b), 13(2) of

the Act, 1988 & Section 120B of IPC, is liable to be and is hereby quashed.

WPCR No. 154 of 2020

61. The petitioner has filed the instant writ petition under Article 226 of the Constitution of India for quashing the FIR bearing No. 09/2020 registered

against the petitioners at Police Station-EOW/ACB, District- Raipur for the offence under Sections 13(1) (b), 13(2) of the Act, 1988 & Section 120B

of IPC on the same facts and grounds mentioned in WPCR No. 88 of 2020 and prayed for following reliefs:-

“(i) Quash the FIR (No. 09 of 2020), dated 25.02.2020 lodged at PS. EOW-ACB, District-Raipur, and/ or

(ii) Direct the Respondent Nos. 2 & 3 to return all the documents, and/or information, including the income tax returns, bank account details and

related documents pertaining to the Petitioner which have been illegally obtained by the Respondent No. 3 pursuant to the order dated 21.10.2019 of

the Respondent No. 2 referenced above, and to refrain from using or retaining said documents/ information or making copies thereof for any purpose

(s) or in any manner whatsoever, and/or

(iii) Direct the appropriate authorities to prosecute the Respondent Nos. 4 and 5 under Section 211 of the Cr.P.C., and/or

(iv) Any other relief which this Hon'ble Court deems fit in the facts and circumstances of the case along with costs of the petition be awarded.

62. This Court while hearing the petition vide its order dated 03.03.2020 has directed that no coercive steps shall be taken against the petitioner till the

next date of hearing and adjourned the case for 19.03.2020 and also adjourned the case on 05.05.2020, 09.10.2020, 19.10.2020, 12.08.2021,

25.08.2021, 06.09.2021, 24.09.2021 and continued the interim relief granted by this Court on 03.03.2020. On 04.10.2021, the matter was finally heard

and reserved for orders by this Court.

63. This Court while hearing WPCR No. 88 of 2020 has already quashed the FIR bearing No. 09/2020 registered against the petitioners at Police

Station- EOW/ACB, District- Raipur (C.G.), therefore, no further direction is required to be passed by this Court as per the relief sought by the

petitioner in this case. The relief sought by the petitioner in this case has lost its significance. The prayer of the petitioner to prosecute respondent No.

4 & 5 under Section 211 of the IPC is also not liable to be examined by this Court as this Court has not considered the material adduced by the

petitioner or the respondent while examining the FIR, but has only examined whether from bare perusal of the FIR, any offence under 13(1) (b), 13(2)

of the Prevention of Corruption Act, 1988 & Section 120B of IPC is made out or not, therefore, this petition is liable to be allowed in terms of

quashment of FIR and the rest part of the prayer, is rejected.

64. Accordingly, WPCR No. 154 of 2020 is partly allowed.

WPCR No. 206 of 2020

65. The petitioners have filed the instant writ petition under Article 226 of the Constitution of India on the same set of facts as projected in WPCR No.

88 of 2020 for quashing the FIR bearing Crime No. 09/2020 registered against the petitioners at Police Station- EOW/ACB, District- Raipur for the

offence under Sections 13(1)(b), 13(2) of the Act, 1988. The petitioner has also challenged the subsequent investigation initiated by the prosecution

including notice issued by respondent No. 5- HDFC Bank, Delhi regarding holding the salary accounts of the petitioners. The instant petition has been

filed by the petitioners praying for following relief:-

“ (i) This Hon'ble Court may be pleased to pass appropriate order (s) to list W.P. (Cr.) No. 88 of 2020 and W.P. (Cr.) No. 154 of 2020 pending

before this Hon'ble Court for final hearing immediately upon the resumption of the normal functioning of this Hon'ble Court which is currently curtailed

due to the Covid-19 pandemic.

(ii) To declare the action of Respondent No. 3 void and illegal in directing Respondent No. 5 put a hold on the funds in the salary account No. 50100

28338 9868 of the Petitioner No. 1.”

66. This Court while hearing this petition on 20.04.2020, admitted the petition and passed the following orders:-

“Considering the interim relief already allowed by this Court in the above mentioned WPCRs, it is directed that no coercive action be taken against

the petitioners in the subject crime, which are pending considering in the above WPCRs, till the next date of hearing and the petitioners shall be

allowed to operate their salary account(s) with the respondent No. 5.”

67. This Court has continued the interim order passed on 20.04.2020 vide its order dated 27.04.2020, 05.05.2020, 12.08.2021, 25.08.2021, 06.09.2021,

24.09.2021 and on 04.10.2021, the matter was finally heard and reserved for orders by this Court.

68. Learned Senior counsel for the petitioner would submit that vide email dated 13.04.2020 (Annexure P/16) HDFC Bank has informed the petitioner

that the ACB has sent them notice, which was advised them to block the amount and the petitioners have also requested the bank to supply the

reasons holding the funds in my account on holding since the same is directly impacted his livelihood, but no response has been taken place thereafter,

they have filed this petition on 15.04.2020.

69. The facts and grounds raised by the petitioners in this petition are one and same, which have already been considered by this Court while deciding

WPCR No. 88 of 2020.

70. Since this Court while hearing WPCR No. 88 of 2020 has already quashed the FIR bearing No. 09/2020 registered against the petitioners at Police

Station- EOW/ACB, District- Raipur (C.G.), therefore, the relief sought in this petition has lost its significance and the bank account No. 50100 28338

9868 of petitioner No. 1 shall inoperative after quashing the FIR in WPCR No. 88 of 2020, therefore, no further direction is required to be passed.

71. Accordingly, WPCR No. 206 of 2020 is allowed.

72. Since the FIR does not disclose prima facie commission of offence under Section 13 (1)(b), 13(2) of the Act, 1988 and Section 120B of IPC and in

light of law laid down by Hon'ble the Supreme Court, WPCR No. 88 of 2020 is allowed, WPCR No. 154 of 2020 is partly allowed & WPCR No.

206 of 2020 is also allowed.