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NARINDERJIT SINGH SAHNI AND ANR.

v.

UNION OF INDIA AND ORS.

OCTOBER 12, 2001

B

[G.B. PATTANAİK, UMESH C. BANERJEE AND S.N. VARIAVA, JJ.]

Constitution of India, 1950 :

C

*Articles 32 and 21—Petition under Article 32—Maintainability of —
Infraction of Article 21—Accused involved in criminal cases all over the
country—Bail granted in some cases—However, detained in jail custody in
view of production warrants in other cases—Held, in such a case petition is
maintainable as opportunity of being heard of doctrine of natural justice
warrants fair opportunity—However, factual matrix does not show infraction
of Article 21—Deprivation of personal liberty of the accused persons is in
accordance with law.*

D

*Article 32—Judicial Review—Power of—Implicit in the written
constitution—There is no fetter for such review—However, maintainability of
petition is an issue de hors the ultimate result in the petition.*

E

Code of Criminal Procedure, 1973 :

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*Section 438—Anticipatory bail—Grant of—Accused alleged to have
cheated millions of depositors—Criminal cases pending against them all over
the country—Bail granted in some cases but benefit not availed on account
of production warrants in other cases—Held, since no infraction of Article 21
is identified, petition for grant of anticipatory bail not sustainable.*

*Section 205—Exemption from personal appearance—Is the prerogative
of Magistrate and thus cannot be sought from Supreme Court.*

G

*Penal Code, 1860—Sections 120B and 420—Cheating—Different finance
companies alleged to have cheated depositors and criminal cases filed all over
the country—Held, as parties are different, amount of deposit and also period
of deposit is different, each individual deposit agreement is to be treated as
separate and individual transaction brought by allurement of finance company—*

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Thus each constitutes separate offence.

Words and Phrases :

Expression 'Personal liberty'—Meaning of in the context of Article 21, Constitution of India, 1950.

Petitioners are the finance investment companies, its directors and employees. They accepted depositors from large number of people but failed to make repayment and numerous cases were filed against them under the Penal Code and the negotiable Instruments Act which are pending in different States. Petitioners got bail in one case but detained by reason of production warrant in other cases and resultantly are languishing in jails, being deprived of order of grant of bail. Thus the petitioners contended infraction of Article 21 of the Constitution. Hence the present writ petitions.

The issues involved in these appeals are whether writ petitions are maintainable under Article 32 by reason of supposed infraction of Article 21 and whether order of anticipatory bail under Section 438 Cr.P.C. ought to be made available to the petitioners by reason of the deprivation of the liberty without there being any sanction of law in line with blanket order.

Dismissing the petitions, the Court

HELD : 1.1. Any person complaining of infraction of any fundamental right guaranteed by the Constitution is at liberty to move this Court but the rights that could be invoked under Article 32 must ordinarily be the rights of the petitioner himself who complains of the infraction of such rights and approaches the Court for relief and the proper subject for investigation would however be as to the nature of the rights that is stated to have been infringed. [143-C-D]

D.A.V. College, Bhatinda, etc. v. State of Punjab and Ors., [1971] 2 SCC 262, followed.

Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan & Ors., [1997] 11 SCC 121, relied on.

1.2. Incidentally, power of judicial review being implicit in written Constitution, question of there being any fetter for such review would not arise and specially in the 21st century there ought not to be thwarting of such a right nor even any hesitancy in that regard. Maintainability of the writ

A petition is an issue *de hors* the ultimate result in the petition - presently the justice oriented approach and set-up a standard in accordance therewith ought to be the guiding factor so far as the law courts are concerned. Refusal to entertain cannot be in tune with the present approach and rather acts contra. The requirement is a *prima facie* satisfaction on the basis of the available pleadings as to whether the judicial review prayed for under Article 32 needs consideration, if it does, there cannot be any doubt as regards its maintainability. [143-H; 144-A-C]

1.3. In the instant case, the records depict that thousands of innocent persons have fallen a prey in the methodology of working of finance companies and firms but that does not mean and imply a denial of an opportunity of being heard or considered. Doctrine of natural justice warrants a fair opportunity. The writ petitioners herein have come up with a petition on the ground that they have not been able to obtain benefit of the justice delivery system and thereby it has been alleged that Article 21 stands violated. Judicial review or maintainability of the petition under Article 32 cannot possibly be doubted in any way. [144-C-E]

1.4. Article 21 of the Constitution postulates that no person shall be deprived of his personal liberty except according to the procedure established by law. The expression 'personal liberty' admittedly is of widest possible amplitude and cannot in any way whatsoever be, curbed or restricted without offending the constitutional mandate. [123-F-G]

Unni Krishnan, J.P. & Ors. v. State of Andhra Pradesh and Ors., [1993] 1 SCC 645, relied on.

1.5. The protection of personal liberty stands expanded to make the right to life under Article 21 more meaningful, the language of the Article itself records an exception indicating thereby that a person may be deprived of his liberty in accordance with procedure established by law and it is in this sphere the Courts will scrupulously observe as to whether the same stands differently and contra as regards the procedure established by law and in the event it is not so done, it would be a plain exercise of judicial power to grant redress to the petitioner. [144-H; 145-A-B]

1.6. In the instant case, there is no difficulty in appreciating the grievance and grant of relief but facts are too insufficient to come to a

conclusion as regards the infraction of Article 21. Production warrants have been spoken of without any details whatsoever therefor - the reason offered is that the petitioners, in fact, are not in the know of things being behind the prison bar and it starts pouring in from all parts of the country and in the factual backdrop, it is a well-nigh impossibility to come to a finding as regards the infraction of Article 21 and since in the factual matrix, no infraction can be identified and thus question of sustaining the plea of infringement of Article 21 would not arise. In any event the liberty of the petitioners cannot be said to have been trifled with the absence of due process of law. Deprivation, if any cannot be claimed to be not in accordance with due process of law. [145-B-D]

1.7. An accused being involved in large number of criminal cases in different parts of the country, if is not able to be released from custody even on getting bail orders in some cases, itself would not tantamount to violation of the right of a citizen under Article 21. The object of Article 21 is to prevent encroachment upon personal liberty by the executive save in accordance with law, and in conformity with the provisions thereof. It is, therefore, imperative that before a person is deprived of his life or personal liberty, the procedure established by law must strictly be followed and must not be departed from, to the disadvantage of the person affected. Issuance of production warrants by the Court and the production of accused in Court, in cases where he is involved is a procedure established by law and consequently, the accused cannot be permitted to make a complaint of infraction of his rights under Article 21. [147-D; E; H; 148-A]

1.8. while in the contextual facts, a petition under Article 32 of the Constitution is maintainable but the petitioners are not entitled to any relief by reason of insufficiency of available materials on record as regards the issue of infraction of Article 21. [149-G]

2.1. Even though the accused is able to get orders for bail from different courts, where cases are pending but in view of the large number of cases against the accused throughout the country, it has physically not become possible to release the accused from the custody. If an accused facing a charge under Sections 406, 409, 420 and 120-B is ordinarily not entitled to invoke the provisions of Section 438 Cr.P.C. unless it is established that such criminal

A accusation is not a *bona fide* one, it is difficult to conceive that an accused who is involved in thousands of cases in different parts of the country by cheating millions of countrymen, can be given benefit of the privilege of anticipatory bail as a matter of routine. In the case of *JVG Group of Companies and Kuber Group of Companies**, on the basis of which the present batch of cases have been filed, relief was granted that in the event of the arrest of the petitioner in connection with any criminal case in his capacity as Managing Director/Director of the Group of Companies, the Arresting Officer shall release him on bail on his executing a bond to the satisfaction of the Arresting officer which tantamounts to an order, invoking the provisions of Section 438 Cr.P.C. In the manner in which these white-collared crimes are committed and the extent to which it has pervaded the society at large, cases decided by this Court earlier would not be of universal application and cannot be used as a precedent for availing of the privilege in the nature of an anticipatory bail. It would be a misplaced sympathy of the Court on such white-collared accused person whose acts of commission and omission has ruined a vast majority of poor citizens of this Country. Though in the instant case, Court may be justified in directing release of the accused, taking stock of the entire situation in the case and also that the petitioners could maintain a petition under Article 32, but it would not be justified in directing the release of such accused under a blanket order since such a course of action would perpetrate gross injustice. [146-H; 147-A-C; 148-A-C]

Gurbaksh Singh Sibbia v. State of Punjab, AIR (1980) SC 1632, followed.

F 2.2. Grant of anticipatory bail, under Section 438 of the Cr.P.C. is made applicable only in the event of there being an apprehension of arrest. In the instant case petitioners are all inside the prison bars upon arrest against all cognizable offences, therefore, question relieving the petitioners from unnecessary disgrace and harassment would not arise. Also, the petition cannot be sustained as regards the issue of anticipatory bail under Section 438 Cr. P.C. since no infraction can be identified. [145-E-F]

H *Kurtar Singh v. State of Punjab*, [1994] 3 SCC 569 and *Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India & Ors.*, [1994] 6 SCC 731, distinguished.

Shaheen Welfare Association v. Union of India & Ors., [1996] 2 SCC 616; *R.D. Upadhyay v. State of A.P. & Ors.*, [1996] 3 SCC 422 and “Common Cause” *A Registered Society, through its Director v. Union of India & Ors.*, [1996] 4 SCC 33, referred to.

3. Right of an accused to have speedy trial is now recognised as right under Article 21. The procedural fairness required by Article 21, including the right to a speedy trial has to be observed throughout and to be borne in mind. However, while no relief is granted to the accused persons Central Government should evolve certain formula or procedure, so that the accused will not complain of undue harassment on account of protraction of their cases and the persons deceived who have filed complaints, will be satisfied with the early conclusions of the trial. [148-D; F]

Sheela Barse and Anr. v. Union of India & Ors., AIR (1986) SC 1773, referred to.

4. Direction of exemption from personal appearance cannot be had from this Court since it is within the powers of the Magistrate and in his judicial discretion to dispense with the personal appearance of an accused and as such be it provided here that it would be open to the party to apply to the concerned trial/sessions court for such exemption and in the event of there being such an application, the same can be disposed of in accordance with law. [149-D]

M/s. Bhaskar Industries Ltd. v. M/s. Bhiwani Denim & Apparels Ltd. & Ors., JT (2001) 7 SC 127, referred to.

5. Each individual deposit agreement shall have to be treated as separate and individual transaction brought about by the allurement of the financial companies, since the parties are different, the amount of deposit is different as also the period for which the deposit was effected. It has all the characteristics of independent transactions and thus the contention of petitioners as regards the issue of single offence cannot be concurred with. [149-B]

CRIMINAL ORIGINAL JURISDICTION : Writ Petition (Crl.) Nos. 245-246 of 2000.

Under Article 32 of the Constitution of India.

A WITH

W.P. (Crl.) Nos. 249, 270, 405, 421, 433-435/2000, 57 and 63-64 of 2001.

B K.N. Raval, Additional Solicitor General, Shanti Bhushan, D.D. Thakur, S.S. Javali, P.P. Malhotra, S. Balakrishnan, K.T.S. Tulsi, S. Markandeya, R.S. Suri, Vikas Pahwa, Shally Bhasin Maheshwari, Rishi Maheshwari, S. Tabrez, R.K. Maheshwari, Bahar U. Barqi, Amit Dhingra, M. Choudhary, P.H. Parekh, Vipin Gogia, Jaspreet Gogia, T.S. Arora, D.K. Garg, N.P. Midha, Manjoor Ali, Ms. Ritu Puri, V.R. Thangavelu, Rajiv Nanda, Sushma Suri, Ashok Bhan for
 C D.S. Mahra, Smt. Revathi Raghavan, Ms. Shweta Garg, Sunitha Choudhary, (Sunil Kr. Jain, V. Hansaria,) for M/s. Jain Hansaria & Co., Mahabir Singh, D.N. Goburdhan, Ms. Suruchi Aggarwal, H. Wahi, Ms. Anu Sawhney, Smt. C. Markandeya, Anupam Tyagi, Sunil Kumar Bharti, Atul Kumar, Ranbir Yadav, Anil Hooda, V.G. Pragasam, Jayshree Anand, Addl. Adv. General for State of Punjab, G. Sivabalamurugan, Rajeev Sharma, S.S. Shinde, for S.V.
 D Deshpande, Ranji Thomas for Javed M. Rao, J.R. Das, D.P. Mohanty, K.K. Mahalik, Pramod Swarup, Praveen Swarup, Ms. Parveen Swarup, Prashant Choudhary, A.S. Pundir, V. Singh, Prakash Kumar Singh, V.K. Shukla, Anil Shrivastav, T.C. Sharma, Ms. A. Subhashini, G. Prakash, Ms. Kamini Jaiswal, Dr. Nafis A. Siddiqui, Applicant-in-Person, B.B. Singh, V. Krishna Murthy,
 E Ms. Vibha Dutta Makhija, Alok Bhachawat, Uma Nath Singh, Sanjay R. Hegde, S.M. Garg for the appearing parties.

The Judgment of the Court was delivered by

F **BANERJEE, J.** This batch of writ petitions under Article 32 of the Constitution by reason of supposed infraction of Article 21, were moved before this Court for the grant of an order for bail in the nature as prescribed under Section 438 Cr. P. Code, and in line with the orders dated 28.3.2000 in W.P. (Crl.) No. 256 of 1999 and dated 5.5.2000 in W.P. (Crl.) Nos. 72-75 of 2000 passed earlier by this Court. To crystalize the issue, the orders as passed earlier ought to be noticed at this juncture. The first of the two orders read as below
 G : (JVG Group of Companies : Writ Petition (Crl.) No. 256 of 1999)

H "It is not possible for us to order that all his cases pending in different States should be consolidated into one and brought before one court. That would impose unwarranted and unnecessary hardships on the witness and investigating agency spread over to those different States.

Nor are we inclined to order the Central Bureau of Investigation to take up the investigation in respect of all cases, and further that he would make himself available on any date when his presence is imperatively needed in that court.

3. We permit the petitioner to move the appropriate High Courts for bringing all the cases pending in different courts within the territorial jurisdiction of that High Court to one single court or more than one court (depending upon the number of cases or the width of the area of the State is concerned).

4. This order will come into effect only if the petitioner would surrender his passport in this court. Shri Shanti Bhushan, learned senior counsel expressed a doubt that petitioner would have already surrendered his passport before another court pursuant to the order passed. In that case he can satisfy the Registrar General of this Court by an affidavit of the situation and the Registrar General can intimate the jail authorities concerned of that position.

5. We make it clear that it is open to the investigating agency in any case to move for cancellation of bail if any such investigating agency finds that petitioner is misusing the liberty granted by this order.

In view of the above order we direct the jail authorities of the jail in which he is presently kept to release him forthwith on Registrar General of this Court intimating the jail authorities regarding the surrender of his passport as indicated above.

It is needless to say that this order will not be treated as a precedent and is passed only on the peculiar facts and circumstances of this case. The Writ Petition is disposed of accordingly."

This Court also on a petition under Article 32 of the Constitution in Kuber Group of Companies (Writ Petition Nos. 72-75 of 2000 being the 2nd order as noticed hereinbefore) also passed a similar order to the following effect:

"1. If the petitioner is arrested in connection with any criminal case in his capacity as managing director/director of JVG Group of companies the arresting officer shall release him on bail on his

- A executing a bond to the satisfaction of the arresting officer.
2. Such relief shall be made after getting an assurance from him that he will be present in the court concerned on the days when his case is posted. However, we make it clear that it is open to the petitioner to apply to the court concerned for exempting him from personal appearance on condition that a counsel on his behalf would be present on such posting dates and he would not dispute his identity as the particular accused in that case, and further that he would make himself available on any date when his presence is imperatively/needed in that court.
- B
3. We permit the petitioner to move the appropriate High Courts for bringing all the cases pending in different courts within the territorial jurisdiction of that High Court to one single court or more than one court (depending upon the number of cases or the width of the area of the State is concerned).
- C
4. This order will come into effect only if the petitioner would surrender his passport in this Court. Shri Shanti Bhushan, learned senior counsel expressed a doubt that petitioner would have already surrendered his passport before another court pursuant to the order passed. In that case he can satisfy the Registrar General of this court by an affidavit of the situation and the Registrar General can intimate the jail authorities concerned of that position.
- D
5. We make it clear that it is open to the investigating agency in any case to move for cancellation of bail if any such investigating agency find that petitioner is misusing the liberty granted by this order.
- E
- F

G AND THIS COURT has further ordered to the jail authorities of the jail in which petitioner/detenues P.K. Sharma S/o. Deep Chand Sharma (In Judicial Custody since 4.6.1999), Mrs. Roweena Sharma W/o. P.K. Sharma (In Judicial custody since 17.7.1999) and M.M. Sharma, S/o. Deep Chand Sharma (In judicial custody since 6.7.1999) confined in Central Jail No. 1, Tihar Jail, New Delhi, to release them forthwith as the condition of surrender of passports have been fulfilled to the satisfaction of learned Registrar General of the Hon'ble court

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who has perused the affidavit in this Registry to the above effect. AND THIS COURT has also observed that his order will not be treated as precedent and is passed only on the peculiar facts and circumstances of this case.

AND THIS COURT DOTH FURTHER ORDER THAT THIS ORDER be punctually observed and carried into execution by all concerned."

To put the records straight and complete, be it noted however that these matters were placed before this Court for similar orders, but since the Division Bench of two Hon'ble Judges of this Court delving into the matter, felt some difficulty to lend concurrence to the orders as above, the Bench referred the matter to the learned Chief Justice for constitution of a larger Bench and in terms therewith, this Bench stands constituted for disposal of this batch of petitions under Article 32 of the Constitution.

Incidentally, several writ petitions have been filed invoking jurisdiction under Article 32 of the Constitution of India by reason of supposed infraction of Article 21 with several identical prayers - the main being grant of a writ of mandamus or any other appropriate writ in the nature of an order under Section 438 of the Code of Criminal Procedure, directing that in the event the petitioner is arrested in connection with any criminal case, the arresting officer shall release him on bail on his execution a bond to the satisfaction of the arresting officer. As regards the other prayers, we shall defer it presently since the cardinal issue relates to the first prayer. As noticed above, supposed infraction of Article 21 was taken recourse to substantiate the invocation of Article 32.

Needless to record that Article 21 of the Constitution postulates that no person shall be deprived of his personal liberty except according to the procedure established by law. The expression 'personal liberty'; admittedly is of widest possible amplitude and cannot in any way whatsoever be, curbed or restricted without offending the constitutional mandate. The decision of this Court in *Unni Krishna* case (*Unni Krishnan, J.P. & Ors. v. State of Andhra Pradesh and Ors.*, [1993] 1 SCC 645) lends concurrence to the observations as above.

We are not called upon to deal with the true scope or the total ambit of Article 21: The petitioners have taken recourse to the Article stating therein

A that in the event they are not granted any relief as prayed for, the petitioners resultantly would suffer the consequences which stand negated by the constitutional mandate.

B The relief spoken of however pertains to Section 438 of Criminal Procedure Code. It is noteworthy that the 41st report of the Law Commission recommended for the first time inclusion of a provision of what is called anticipatory bail (vide Section 438 Cr. P.C.). Section 438 contemplates an application by a person on an apprehension of arrest in regard to the commission of a non-bailable offence: the object being to relieve a person from unnecessary harassment or disgrace and it is granted when the Court is otherwise convinced that there is no likelihood of misuser of the liberty granted since he would neither abscond nor take such step so as to avoid due process of law.

C In *Gurbaksh Singh Sibbia etc. v. State of Punjab*, AIR (1980) SC 1632, the Constitution bench of this Court very succinctly laid down the difference between right of an individual to his liberty and the right of the Police to investigate into crimes. This Court in paragraph 37 observed that a blanket order of anticipatory bail may cause some interference in the matter of investigation. This Court observed :

E "...A Blanket order of anticipatory bail is bound to cause serious interference with both the right and the duty of the police in the matter of investigation because, regardless of what kind of offence is alleged to have been committed by the applicant and when, an order of bail which comprehends allegedly unlawful activity of any description whatsoever, will prevent the police from arresting the applicant even if he commits, say, a murder in the presence of the public. Such an order can then become a charter of lawlessness and a weapon to stifle prompt investigation into offences which could not possibly be predicated when the order was passed. Therefore, the court which grants anticipatory bail must take care to specify the offence or offences in respect of which alone the order will be effective. The power should not be exercised in a vacuum."

F Having however, discussed the outlying features of the grant of anticipatory bail and upon due consideration of the caution exercised by this Court in *Gurbaksh Singh* (supra), let us advert to the factual score presently before this Court.

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The petitioners charged with offences under different provisions of law, are admittedly in custody: no complaint or grievance can be made against the issuance of charge-sheet by reason of the contextual facts of the writ petition. Facts relating to the charge-sheet as high lighted by both the parties during the course of hearing would be adverted to shortly, suffice however to record that the liability shall have to be adjudicated: The petitioner's culpability in the offence if any, shall have to be deciphered and if this be the foundation of launching of prosecution, the issue then as contended arises, viz., where is the scope of invoking Article 21 of the Constitution — Has the Article been incorporated in the Constitution to safeguard the offenders? These are few of the issues raised by the learned Additional Solicitor General, Mr. Rawal, appearing for the Union of India. The answer obviously cannot be in the affirmative provided however, there is due sanction of law in the matter of having the petitioners in the custody, but only upon scrutiny of facts. True, Section 438 stands included in the Code, but its applicability would be rather in rarity than generality.

It is at this juncture we feel it inclined to take recourse to a short tabular format (in W.P. (Crl.) Nos. 245-246 of 2000) depicting the factual score, rather than a longish narration form for appreciating the contentions advanced in the matter under consideration. The petition herein is involved as principal accused person in:

(1) (FIR No.)	(2) Charge under Section	(3) Police Station
1006/98	U/s 420 IPC	PS Tilak Nagar
149/98	U/s 420/406/409/120 IPC	PS Prasad Nagar
257/98	U/s 420/406/409/120 IPC	PS Karol Bagh
264/98	U/s 420/406/409/120 IPC	PS Prasad Nagar
209/98	U/s 420/406/120B IPC	PS K. Gate
407/98	U/s 420/406/409/120B IPC	PS K. Gate
355/99	U/s 420/406/409/120B IPC	PS K. Gate
16/2000	U/s 420/406/409/120B IPC	PS K. Gate

A Apart from the above, there are 142 other complaints against the petitioner filed under section 138 of the Negotiable Instruments Act with regard to which *production warrants* have been served in Tihar Jail. (Emphasised to high-light the same)

B There are further 10 FIRs pending investigation in Dehradun: Four matters are pending before the Consumer Forum at Delhi and 9 others just outside the Delhi Area: Apart therefrom complaint cases are pending in Aligarh, Mainpuri, Bulandsahar, Alwar, Bharatpur, Jaipur, Ludhiana, Gurgaon, Naham Dist. (H.P.) Dibrugarh (Assam), Faridabad, Jagadhari, Palwal. Besides however the FIRs mentioned above in Dehradun, there are 40 other complaints
C in Dehradun under section 138 of the Negotiable Instruments Act. There are also innumerable production warrants that have been served on the supdt., Tihar Jail, mainly under Section 138 of the Negotiable Instruments act. However, it is stated that the petitioner being in custody, has not been able to secure any information about the nature of cases and is totally dependent
D upon the authorities to produce him or not to produce him before a particular court. But why these proceedings? The answer however is not very far to seek. It appears that the Petitioner No. 1 happens to be the Managing Director of M/s. Okara Agro Group of Companies. The records depict that the petitioner No. 2 Okara Agro Industries Ltd., commenced its business w.e.f. 7.5.1993 upon
E incorporation under the provisions of Companies Act 1956. The records further depict that on 18th Dec., 1997 the Securities & Exchange Board of India (SEBI) issued a notice in the daily newspaper stating that the Central Government has decided an appropriate regulatory framework for regulating the entities issuing instruments such as Agro bonds, plantation bonds etc. The notice also prohibited investment scheme including mutual funds
F from sponsoring schemes till the regulations are notified by SEBI. It was provided further that till the regulations are notified, all collective schemes which were operating should continue with their operation till the regulations are notified.

G On 25.3.1998, a FIR bearing No. 149/98 was registered at P.S. Prasad Nagar under sections 420/406/409/120-B IPC against the company and its directors for accepting deposits from large number of people in different schemes and for failure to make repayment inspite of requests — charge-sheet was subsequently filed by the Crime Branch of Delhi Police in the Court of Metropolitan Magistrate, Tis Hazari. Subsequently, on 28.4.98 a FIR being No.
H 264/98 was registered at P.S. Prasad Nagar on the complaint of one Om Prakash

Mishra against the petitioner alleging that the latter had defrauded and cheated him and other members of his family in accepting money in various schemes of the company and when the complainant asked for the money, the post-dated cheques issued by the company were dishonoured since accounts were closed. It is in regard to the FIR 264/98 as noticed above that the petitioner No. 1 was arrested by the Crime Branch of Delhi Police on 29.6.1998.

The factual context further depict that in September, 1998, a Public Interest Litigation being No. CWP No. 3352 of 1998 (*S.D. Bhattacharya & Ors. v. SEBI & Ors.*) was filed in the Delhi High Court against 700 planation companies wherein the petitioner was added as party respondent as Respondent No. 8. In the Writ Petition the High Court however, passed an order on 7.10.1989 restraining the respondent companies from selling and disposing of or alienating their immovable properties and the same was also made applicable to the directors as well. The records depict that the petitioner on 19.12.98 was granted interim bail by the Additional Sessions Judge but the same stands stayed by the order of Delhi High Court dated 8th March, 1999.

The High Court however, on 26th May, 1999 during the course of hearing of Criminal Misc. Petition No. 4730 of 1998 stated that the bail to the petitioner could only be granted if sufficient money could be made available for the purposes of making repayments to the investors and in that context directed the petitioner to file a scheme for payment or proposal for payment and it is in that perspective that on 7th October, 1999, the petitioners moved Misc. Application seeking permission to sell certain properties of the petitioner to repay the amount to the investors. The Delhi High Court, however subsequently while disposing of the Crl. Miscellaneous Application directed the Commissioner of Police to hand over the investigation to a very senior police officer assisted by a team of sufficiently large number of investigating officers to easure the conclusion of the investigation within 4 months. The Crime Branch was also directed to file the list of 71 properties including the properties of sister concerns and the financial stability and the liquid assets of the company in the form of a report to the High Court within 6 weeks : Factual score thus very candidly exposed the popular English saying-ingenious are the ways, where the genius works!

It is on these set of facts that Mr. Tulsi, the learned senior Advocate appearing in support of some of these writ petitions contended that this long incarceration of the petitioners in jail cannot but be ascribed to be a situation

A which runs counter to the mandate of the Constitution under Article 21. Mr. Tulsi contended that the petitioner No. 1 being the Managing Director of M/s. Okara Group of Companies is sought to be charged under Section 420 IPC with the aid of Section 120B without there being any material to indicate that the petitioner had either the knowledge or the intention to assist the other accused in commission of the offence. In any event, it is submitted that the offence of conspiracy being in the nature of a continuing offence, its inclusion would be sufficient to establish the connection of one offence with the other for the purpose of converting all the offences into a single offence or in the alternative, into the kind of offence which could only have been committed in the course of the same transaction, within the meaning of section 220 of the Code of Criminal Procedure - Admittedly a submission of some effect and this is so irrespective of the factum of about 250 number of FIRs lodged throughout the country. We are however not making any observation in regard thereto presently. Incidentally, Mr. Shanti Bhushan appearing in support of some of the other petitions also contended more or less in the similar vein as regards the issue of single offence and we do deem it expedient to deal with the same at a stage later in the judgment since we do deem it fit to note some preliminary submissions, which are of some consequences as advanced by the Respondents at this juncture.

E Mr. D.N. Goburdhan, learned Advocate, appearing for the Investors' Forum, attributed the writ petition as a classic case of abuse of the process of law, since there is neither any violation of guaranteed right under Part III of the Constitution nor a relief under Section 438 Cr.P.C. can however be termed to be a guaranteed right. The writ petitioners' conduct as a matter of fact, it has been contended, disentitles him for any discretionary relief from the Court. Mr. Goburdhan with his usual felicity of expression was rather emphatic in contending that petition for bail under Sections 437 and 439 Cr.P.C. has been converted into a petition under Article 32. It has been contended that the petitioners' bail was rejected by the Magistrate's Court and the interim bail for 90 days granted by the learned Sessions Judge was also challenged in the High Court by the investors' forum and the same stands suspended - Secondly Mr. Goburdhan contended that whilst the petition is pending before the High Court this writ petition was filed. According to Mr. Goburdhan that the writ petitioner in connivance with his family who all were Directors of the company have totally siphoned off the monies collected from the public. The intention to cheat and the *actus rea* of cheating is complete

in all force. All other Directors who are family members are absconding and have been declared as proclaimed offenders by the Court.

In any event, Mr. Goburdhan contended that Articles 21 and 438 Cr.P.C. are not only mutually inconsistent with each other but cannot go hand in hand with each other and the methodology adopted in the garb of a petition under Article 32 for infraction of Article 21, cannot but be a handy work and ingenuity of the writ petitioners. The amount of money siphoned off from out of the deposits of the public in general by the petitioners does not permit the Court under Article 32 or under any other provision to grant any relief to the petitioners herein.

Mr. Rawal, the learned Additional Solicitor General opened up a new vesta in the matter and submitted that in an application for anticipatory bail the gravity of the offences involved ought to be the prime consideration since thousands of investors have lost their lives' savings, after being duped by the petitioners - It is an "economic murder" of an entire community of people and thus has necessarily to be dealt with utmost severity. The two earlier judgments of this Court spoken about cannot be the guiding feature, since the same were pronounced in the facts and circumstances of each case: Secondly in both the decisions this Court was cautious enough to record that the same would not be treated as a judicial precedent in any way whatsoever and in view of such express recording, question of the same or a similar order being passed in any other matter would not arise. Mr. Rawal contended that the gravity of massive economic genocide cannot be belittled by terming it as a major offence of cheating or depriving someone of his property. The victim is deprived of his economic life. The crime is no less heinous than putting an end to the life of a person. A large number of suicides which follow such white collared crime is indicative of the magnitude of the crime involved. Therefore, the fact that a maximum punishment of 7 years is prescribed for a single offence of cheating cannot be pressed into service by the petitioners for seeking relief. The activities of the concerned economic offenders are as a matter of fact spreading in several States. Very often after starting their operations in one State and by luring investors of high returns, to finance those returns fresh funds are raised in some other State. To pay the promised high returns in the second State, funds are raised in a third State and so the channel continues. Each act of cheating, therefore, constitutes a separate offence and the attempt to say that it is only one advertisement which results in to multitude of consequential deprivation of property is an endeavour to mis-lead this Court. Without

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A however, expressing any opinion in the matter presently, neither we should also, but the eloquence of Mr. Rawal seems to be of unmatched quality both as regards the legal issues as also on the factual context.

B As regards the issue of maintainability of the writ petition under Article 32 of the Constitution by reason of infraction of Article 21, it has been the contention of Mr. Rawal that there has been no violation of procedure established by law and thus taking recourse to the remedy of institution of the present writ petition on this score is wholly purposive and with motive not far to seek. Article 21 prohibits denial of liberty except according to the procedure established by law - in the contextual facts Mr. Rawal submitted
C that there is no denial of liberty except in accordance with the due process of law and infringement of Article 21 as has been drawn, is a myth and ought not to be countenanced by this Court in entertaining the petition under Article 32.

D Undoubtedly a situation which requires utmost consideration of this Court : On the one hand the constitutional mandate under Article 21 and its broad and lofty ideals involved therein and on the other to quote Mr. Rawal's language, there is existing an economic genocide - not only an issue interesting but its importance in the jurisprudence of the country cannot be lost sight of.
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Before, however, we are caught on to the details of the white-collared crime and its effect on the society, we deem it expedient to advert to the more or less similar fact-situations of other six matters placed before this Bench.

F *Re: Writ Petition No. 249 of 2000*

In the earlier writ petition Nos. 245-246 of 2000, we thought it expedient to take recourse to a tabulated format and thus avoided a other dull longish narration, but in the instant matter we do not think it proper to cut short the longish narration since we have already on record a version of the petitioner
G B.B. Sharma herein support of the writ petition as emphasised by Mr. Shanti Bhushan, the learned Senior Advocate in support of the petition and the other version available on record through the affidavit of one Raghuvir Singh and other notings available on record - the facts are rather interesting as also revealing and in that perspective the same shall have to be considered *vis-a-*
H *vis* the present petitions under Article 32: Needless to record that main trial

is yet to commence and as such our endeavour should and ought always be not to prejudice the trial in any way whatsoever. While it is true that detailed submissions have been made by both the petitioners as also the respondents, but we will in this judgment deal with only the basic facts as is required presently and that too without expression of any opinion thereon.

The instant petition under Article 32 has been at the instance of Shri B.B. Sharma who happened to be the Chairman and Managing Director of Hoffland group of Companies. The latter has been engaged in accepting deposits and giving loans to public. The petitioner as appears has promoted 40 firms companies having 50 branches all over the country. Till 1997 the petitioner company said to have made payment with interest on maturity but thereafter the company suffered huge losses because of downtrend in the business of financial - service companies and added together is the termination of registration as financial managers by SEBI - the problem according to the petitioner has been by reason of subsequent closure of company's A/cs by main banker viz., Oriental Bank of Commerce and post dated cheques of the Company where returned unpaid and resultantly several FIRs were lodged. In January, 1998 on the factual score, it appears that petitioner was arrested but subsequently released on bail in the month of February itself. Diverse criminal proceedings have started against the petitioner and the petitioner was behind the bars several times though the petitioner was granted bail in some FIRs in Delhi and also at Mumbai, Pune, Chandigarh, Udaipur, Gurgaon, Ghaziabad, Ludhiana, Dohradun and Ambala but could not avail such privilege to be released on bail as he was in judicial custody in similar FIRs by other depositors. The principal grievance of the petitioner being that though in judicial custody for the last 21 months but the petitioner can never be released as the situation presently stands by reason of several production warrants pending in different States like Uttar Pradesh, Rajasthan, Kerala, Punjab and Karnataka. It is petitioners definite case that imperative is the question of release as then only he can look after the interest of investor by evolving a scheme of revival. The petitioner as a matter of fact, it has been contended, has to be shuttled from one place to another all over the country as presence of the petitioner suddenly becomes mandatory at every other place and on every date of hearing. It is this state of affairs which Mr. Shanti Bhushan appearing in support of the petitioner highlighted and contended that the same is unjust and violative of the fundamental rights under Article 21 of the Constitution.

A It has been contended in support of the petition that all these cases initiated against the petitioner are basically under Section 420 read with Section 120 B of the IPC and such question is whether there are numerous cases of cheating or there is only one offence and one case and it is in this context reliance was placed upon Sections 2, 9, 34, 36 and 40 of the Indian Penal Code and it was contended that an offence denotes a thing made punishable by the Indian Penal Code and that an act or omission would constitute an offence. It was emphasized that the singular includes plural and *vice versa* and the language of Section 415 IPC was taken recourse to since the Section provides whoever deceives or induces a person to do or omit to do anything commits an offence. It was submitted that many persons may have been induced but since the act of deception was one and the act of deception being issuance of advertisement by the petitioner and his group of companies and there is only one act of deception even if several persons stand cheated. Diverse other provisions of the Cr. P. Code were referred to and we shall presently deal with the same but before adverting thereto, the facts as submitted by the

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D Investors' Association represented by Mr. Goburdhan as regards the issue of exercise of jurisdiction by this court Article 32 of the Constitution ought to be noticed at this juncture. Mr. Goburdhan contended that the present petitioner is a habitual criminal offender and is repeatedly changing his name after committing offences and after getting bail, unlike the other writ petitioners. Significantly, the present petitioner is also having a criminal background. His original name is B.B. Rai, and was working as Branch Manager with the Syndicate Bank, Bisawar (Distt. Mathura, U.P.) wherein in the year 1986, he had made an embezzlement of Rs. 20 lacs approximately. After making the said embezzlement he was taken into custody and was dismissed from the services and Sh. H.C. Bisht, Dy. S.P., CBI SPE Dehradun, had conducted the enquiry in regard to the said embezzlement, as the investigating officer and filed two FIRs being nos. RC-1/1987 & RC-2/1987 and the said cases are pending in the court of Spécial Judge Anti-Corruption, Dehradun.

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G Significantly, the FIRs, spoken of the RC-1/1987 is available on record and for convenience sake, the same reads as below:

“Delhi Special Police Establishment, Dehradun Branch

First Information Report

H (Recorded u/s 154 Cr.P.C.)

Crime No. RC-1/87	:	Date and time of Report 5.1.87 16.30 Hrs.	A
Place of occurrence with State	:	Bisavar, Distt. Mathura, (UP)	
Date and Time of occurrence	:	During 1986	
Name of Complainant or Informant with address	:	Source	B
Offence	:	120-B, 420 IPC and 5(2) r/w 5(1)(d) of Prevention of Corruption Act (Act-II of 1947)	C
Name and address of the Accused	:	1. Sh. B.B. Rai, Branch Manager Syndicate Bank, Bisavar, Distt. Mathura (Group B)	
		2. (Unknown persons).....	D
		3.	
Action taken	:	RC Registered.	
Investigating Officer	:	Sh. H.C. Bisht, Dy. S.P. CBI SPE Dehradun	E

Information

Information has been received that during the year 1986, Sh. B.B. Rai, while posted and functioning as Branch Manager, Syndicate Bank, Bisavar, Distt. Mathura entered into a criminal conspiracy with some unknown persons with the object to cheat the Syndicate Bank. In Pursuance of the said criminal conspiracy a Current Account No. 133 in the fake name of Sh. S.K. Verma was got opened at the said bank on 5.6.86. Various clean over-drafts were allowed by Sh. B.B. Rai, in this account on 7.6.86, 14.6.86, 17.6.86 and 21.6.86, thus there was a debit balance of Rs. 2,36,884 in this account on 8.7.86 when a cheque pertaining to Sh. Madan Lal having a Saving Bank Account with Oriental Bank of Commerce, Shahdara, Delhi amounting to Rs. 2,80,000 was purchased/discounted in the said bank at Bisavar and its proceeds were credited to the fake current account of Sh. S.K. Verma and on this basis Sh. B.B. Rai caused the closure of the said fake account. Actually *in the absence* of proper balances in the said account, the cheque mentioned above was

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A returned unpaid. The whole amount is since outstanding.

Thus Sh. B.B. Rai by corrupt or illegal means or by otherwise abusing his position as a public servant in conspiracy with others caused heavy pecuniary loss to the bank and corresponding pecuniary advantage to himself or others. These facts constitute offences punishable u/s 120-B, 420 IPC and Sec. 5(2) r/w Sec. 5(d) of the Prevention of Corruption Act.

A regular case is, therefore, registered and Sh. H.C. Bisht, Dy. S.P. is deputed to investigate it.

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Supdt. of Police
CBI Spe Dehradun"

Whereas the period of offence pertaining to crime RC-1/87 as noticed in the FIR appears to be between 5th January, 1986 to 21st January, 1986 and the period covered under RC-2/1987 stands between 8th July, 1986 to 13th September, 1986 wherein the Syndicate Bank has had to suffer a financial loss to the extent of approximately Rs. 20 lacs as the records depict.

It is after the above noted episode of the Bank and upon getting the bail, the petitioner is said to have absconded from the jurisdiction of the court and came to Delhi with a new name as B.B. Sharma and opened up Hoffland group of Companies and Mr. Goburdhan has been very emphatic that all the family members of the petitioner are absconding and the address given in the petition is also fake since nobody is living in the address noted. It has been further contended that the petitioner has not been able to obtain bail from any court except in 3 cases - one in the case of Gurgaon, Haryana due to non filing of challan under Section 167 Cr.P.C.: Another in the case of Ghaziabad wherein the agent has made a complaint and in the third case he was given bail from the High Court of Delhi by reason of wrong facts though however an appeal is pending in the said matter in the High Court itself. Significantly, Mr. Goburdhan further contended that the petitioner alias B.B. Rai after getting bail from the Additional Sessions Judge, Ghaziabad absconded from the jurisdiction of the said court and went to Varanasi. It has been stated that the petitioner this time changed his name to one Mr. B.B. Badal and lived in Surya Hotel from where however he was arrested on 20th August, 1998 with the help of one depositor viz., Mr. Raghbir Singh. Mr. Raghbir Singh's affidavit is annexed in the papers filed before this Court, the extracts of which are set out hereinbelow :

“1. That I accompanied the Delhi Police team which went to Varanasi to arrest the petitioner alias B.B. Rai who was staying in `Surya Hotel' by changing his name as “B.B. Badal”.

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2. That I have identified the Petitioner on 20.9.1998 in the said Hotel. I was accompanied by the officials of the team of 'Crime Branch - Delhi Police' headed by Shri Shyam Singh, the then Asstt. Commissioner of Police, Economic Offences Wing Crime Branch, Delhi.

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4. That I am one of the thousands of gullible investors and have lost my hard earned retirement benefits to tune 3,20,000 (Rupees Three lacs twenty thousand only) in the Hoffland Group and a such am well conversant with the facts and circumstances of the case and hence competent to swear this affidavit.

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5. That I have lodged FIR No. 340/1998 with Prasad Nagar Police Station and the trial in the said case is about to be completed in the Court of Tej Singh Kashyap the Learned Addl. Chief Metropolitan Magistrate, Tis Hazari Courts, Delhi.”

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The submission of Mr. Shanti Bhushan pertaining to the charges in the matters relate to Section 420 only - there seems however to be some amount of confusion by reason of the factum of initiation of a proceeding under Section 409 IPC in various cases in the court of New Delhi. The charge of Section 409 appears to have been framed by the learned Addl. Chief Metropolitan Magistrate, Delhi together with Sections 420 and 120-B of the IPC by an order dated 5th May, 2001.

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Another redeeming feature as contended by Mr. Goburdhan was that the petitioner has had no intention to honour the commitment which he has undertaken to different agencies. The Company Law Board passed an order on 21st October, 1998 as regards the scheme for repayment but the petitioner herein thought it fit not to comply with the same, question of the petitioner being in jail or outside the bar can be of no consequences as regards the desire to make the payment. A scheme for repayment of the investors' money was made available to the Company Law Board and the order was passed also therein on the basis of such assurance which stands in non compliance rather than compliance. Incidentally, the submission of Mr. Shanti Bhushan that compliance of scheme cannot be had by reason of the petitioner being in the

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A jail but the factum of payment of a sum of Rs. 2 lacs in the court of Metropolitan Magistrate Delhi through one of his nominee to a depositor viz., Major Gen. Ranjit Singh (Retd.) could easily be had, as such the plea of being behind the bars was not a factor to be reckoned with. Mr. Goburdhan further pointed out that question of clubbing of offence or consolidation of cases in a single court is not feasible and as such, this Court will be pleased not to pass such order as regards one charge and one offence. It has been contended by both the learned Additional Solicitor General appearing for the State and Mr. Goburdhan that the question of one offence and one charge does not and cannot arise. The representations were totally different in different States and people were cheated by adoption of a different methodology in different States of the country, as such, question of the same being treated as one charge or one offence would not arise. This is apart from the factum, it has been contended, that there are charges under Section 409 IPC which cannot thus be ignored.

D Investors' Forum have been rather vocal in the matter of even entertaining petition under Article 32 as regards the writ petition herein and Mr. Goburdhan contended that the writ jurisdiction of this court ought not to be meant to be that easily available to a person of such a heinous character for the reasons noticed above neither any bail or in the nature of anticipatory bail can or could be granted to the petitioner herein. The provision of bail, it has been contended E has been engrafted in the statute book and specific provisions are available to the petitioner if he is otherwise entitled to and selection of this Court for projection of the so-called plight of the petitioner was utterly motivated, and invocation of Article 21 is wholly wrong and in any event an offender of the nature of the petitioner herein cannot invoke such a plea as under Article 21. F The heinous nature of crime committed by the petitioner as it has been submitted does not warrant this Court to exercise the jurisdiction under Article 32 by reason of the so-called infraction of Article 21 of the Constitution. The petitioner richly deserves the treatment meted out and no credence ought to be placed on the submission of Mr. Shanti Bhusan since his client does not deserve any sympathy from any quarters far less the Apex Court of the Country.

G It is at this juncture the other writ petitions as filed before this Court and included in this batch of petitions ought to be noticed.

(1) *Writ Petition No. 405 of 2000*
(*M. Lal. v. Union of India & Ors.*)

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The petitioner herein has been an employee of Hoffland Finance Ltd. and similar are the prayers in the writ petition to wit: consolidation of proceedings and the grant of bail. The affidavit on behalf of Union of India & Ors. undoubtedly impleads the petitioner herein in the matter of perpetration of fraud and resultantly cheating the public to the tune of about 100 crores on the basis of false promises all over the country. An FIR No. 155/98 under Sections 406, 420, 120-B IPC was registered and investigation was taken up by the Crime Branch of Delhi Police. The details of the alleged misdeeds of the present petitioner has been noticed hereinbefore in the matter of Chairman-cum-Managing Director more fully and as such we need not dilate thereon excepting recording the submission of Mr. Rawal that the involvement of Shri M. Lal in the entire conspiracy and siphoning of large amount of public money from Hoffland Investment cannot in any way be doubted. He has been a close associate of Shri B.B. Sharma, and an instrument in the perpetration of fraud contended Mr. Rawal. Significantly, the petitioner herein however did not feel shy to record that Shri B.B. Sharma has been bailed out in most of the cases, the affidavit of the Union of India however records a contra state. For convenience sake, paragraph 7 (XXI) is set out herein below :

(xxi) That is incorrect to state that B.B. Sharma the Chairman cum Managing Director of Hoffland Group of Companies has been bailed out in most of the cases. That the fact is that Shri B.B. Sharma was granted bail only in one matter case FIR No. 113/98 by the Hon'ble High Court of Delhi due to misrepresentation of the facts and the state has gone in appeal against it in the Hon'ble High Court Delhi which is pending before the Hon'ble High Court and the next date is fixed for 16.1.2001. S/Sh. Kishan Chand Aggarwal, K.S. Kardam and D.B. Sharma have been granted bail by the Hon'ble High Court of Delhi because of their individual special circumstances like ill health etc. And the same can not be invoked as a general precedent as has been rightly ruled by the Hon'ble High Court while refusing bail to the accused petitioner vide order dated 31.1.2000.

The State of Rajasthan being a party in the proceeding has also filed an affidavit but has recorded its inability to deal with the allegations in a manner effective since no details have been furnished. We do feel it expedient to record our concurrence therewith as more fully detailed herein below in this judgment.

- A 2. *Writ Petition (Crl.) No. 270 of 2000*
(*Sufyan Ahmad v. Union of India & Ors.*)

B The petitioner herein claims some amount of indulgence being an engineering student at the undergraduate level. The petitioner claims that being the real brother of Shri Jawad Ahmad Siddiqui the Chairman of A1 Falah Group of Companies, he was made a Dormant Director in one of the Companies of the Group and his name has been wrongly included in the list of offenders of any fraud perpetrated by the Company. It has been the contention of the petitioner that he is in judicial custody since 29th January, 2000 and as such invoked jurisdiction of this Court under Article 32 for violation of his liberty as guaranteed under Article 21 of the Constitution. A contra affidavit filed however depicts a contra picture and in terms of the affidavit of Deputy Commissioner of Police Headquarter, Delhi, there are more than 250 complaints alleging mis-appropriation of an amount of more than Rs. 7 crores. While making no comments on the plea of the petitioner's as regards his status as a student but the affidavit is rather candid in recording that sufficient evidence is available that the petitioner was a full fledged Director of M/s. A1 Falah Finance Limited and was actively associated with its functioning right from the very beginning. As a matter of fact, the inducement to invest was effected by the petitioner only in different parts of the country and money siphoned off from the Accounts of the Company to his Personal Account. As a matter of fact, the petitioner was arrested in FIR No. 43/2000 under Sections 406, 420, 409, 468, 471 and 120-B IPC and it is on this score Mr. Rawal contended that question of non-involvement of the petitioner does not arise and seeking of sympathy of court by reason of his age and status as a student runs contra to the factual state and thus totally unwarranted. The First Information Report against petitioner being No. 43/2000 however, lends concurrence to the submissions of Mr. Rawal. The State of U.P. in more or less in similar vein contended that question of drawing sympathy as a student does not and cannot arise so far as the petitioner is concerned.

G Incidentally, in this Writ Petition, there is an application for impleadment by reason of failure to pay on the part of the Company and its Directors. We do not see any reason however to implead the applicant herein at this stage of the proceeding, as such we pass no order on the impleadment application being Crl. Misc. Petition No. 2618 of 2001 in Writ Petition (Crl.) No. 270 of 2000.

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3. *Writ Petition (Crl.) No. 433-435 of 2000*
(*Jawad Ahmad Siddiqui & Ors. v. Union of India & Ors.*)

The factual situation are more or less the same as that of Sufyan Ahmad in Writ Petition (Crl.) No. 270 of 2000 and hence we need not dilate on the same. The prayers are also identical in nature. Incidentally, the High Court of Delhi has appointed a Liquidator on 20th July, 2000 over the assets of Al Falah Group of Companies. Be it further noted that the Company has been a family concern and two of the Directors are absconding. The Depositors' Forum of Al Falah Group of Companies also moved an application for intervention, denouncing the effort to obtain the relief in the Writ Petition filed under Article 32 for the supposed infraction of the rights guaranteed under Article 21 of the Constitution. We however do not see any reason to allow the Intervention Application at this stage of the proceedings and as such we do not pass any order in Crl. M.P. No. 1223-25/2001 in W.P. (Crl.) No. 433-435 of 2000.

4. *Writ Petition (Crl.) No. 421 of 2000*
(*Shri M.N. Badam v. Union of India & Ors.*)

The petitioner herein has been a Director of Hoffland Finance Ltd. and it is stated that he was designated as one of the Directors purely looking after the formalities and to co-ordinate the official work with the Governmental agencies and as such was not involved with the day to day affairs of the Company's management. Significantly however, the petitioner retired as the Senior Superintendent of Police from the Intelligence Bureau on 30.4.1991 and said to have been awarded various awards including the Indian Police Medal in August, 1980. It has been the specific case of the petitioner that at least 36 commendation certificates were awarded to the petitioner and the petitioner was awarded some medals also in the war of 1971 with Pakistan. The principal submission on this factual score in support of the petition has been after serving the country for more than 35 years and in order to get himself engaged joined the Hoffland Finance Ltd. and he has been a victim of circumstances. The petitioner also prayed in the similar vein for consolidation of proceedings and the grant of bail. From the records however, it appears that there are altogether 31 proceedings against the petitioner herein including some under Sections 420, 406, 409, 120-B IPC and some under Section 138 of the Negotiable Instrument Act and one case under the Gangster Act (490/1999 under Section 3(2): Kotwali Dehradun, U.P.). The Senior Superintendent of Police Shri

A Kuldeep Singh in the counter affidavit on behalf of the Respondent No. 4 has stated that petitioner has been declared a proclaimed offender by the trial court of Ludhiana and he is also wanted in case FIR No. 58 dated 3.3.1999 under Sections 420 and 120-B IPC. It has been the contention of the respondent that the indulgence sought for by reason of the past records in the Police force ought not to permit the court to pass any orders since presently the petitioner cannot be termed to be a better substitute than the worst offender.

5. *Writ Petition (Crl.) No. 63-64 of 2001.*
(*P.C. Sharma & Anr. v. Union of India and Ors.*)

C The petitioner herein has been rather emphatic for enforcement of his fundamental rights. On his own accord, several proceedings are pending in the States of Rajasthan, Maharashtra, Delhi, Gujarat, Chandigarh, Madhya Pradesh, Punjab, Haryana and U.P. The petitioner herein also relied upon the two of the orders noticed above, passed by this Court and prayed in the similar vein for consolidation of proceedings and a separate application for the grant of anticipatory bail.

D Incidentally, the records depict that in a proceeding under Sections 120-B, 420, 409, 467, 468 and 471 IPC, the petitioner herein moved an application for bail before the Ist Additional Sessions Judge, Kanpur Nagar (Bail Application No. 1928/1997 : *P.C. Sharma v. State*). The learned Sessions Judge in his order dated 28th July, 1997 came to a definite conclusion that a clear case of Sections 420, 468 and 471 has been made out so also the case also under Section 409 IPC. The learned Sessions judge further observed that "the conduct of the company shows that the accused be not released on bail. He has not only influenced the I.O. when he was not in jail but has compelled the complainant also for giving false affidavit. Thus no case for bail is made out. The bail application, is, therefore, rejected."

F Subsequently, a Bail Petition was moved before the High Court at Allahabad wherein by an order dated 14th August, 1997 the learned Single Judge of the High Court was pleased to allow the Bail Application. In Criminal Misc. Application No. 5717 of 1997, a learned judge of the Allahabad High Court allowed the application of the petitioner under Section 482 and thereby released the latter on bail. While passing the order as noted lastly, the learned Judge observed: "That an accused cannot be refused to be released on bail on the ground of requisition issued by other Criminal court

to produce the accused particularly when the date for producing the accused has already expired.

Significantly, an earlier Writ Petition filed before this Court in the name of *Ashima Finance & Investment Co. Ltd. & Anr. v. State of U.P. & Anr.* wherein this Court has been pleased to observe :

“Having heard learned counsel, we are satisfied that the second petitioner, using as a shield the order dated 14th May, 1998, went into hiding to escape the processes of the law. His writ petition under Article 32 is an abuse of the process of this Court. Were it not for the possible delay to the other matters in which the petitioners are involved. We would have contemplated taking action against the second petitioner for contempt of Court.

The writ petition is dismissed. Consequent upon its dismissal, all those who have a claim against the petitioners shall be free to prosecute the same under the law. The Learned ASG submits that the police of several States have warrants of arrest against the second petitioner and that it would be in the interests of justice that the CBI should be permitted to retain him under arrest for 48 hours, to be handed over to such police authority as may arrest him. We think this is appropriate to secure the ends of justice in the circumstances and order accordingly. The CBI shall release the second petitioner into the custody of such police authority as he has a warrant for his arrest as soon as such arrest is made. If no arrest is made within 48 hours, ending at 12 Noon on 25th November, 1998, the second petitioner shall be released by the CBI.

W.P. (Crl.) Nos. 149-155/98, 124-131/98, 117-123/98

Having regard to the dismissal of W.P. (Crl.) No. 347-348/97, we are not inclined to entertain these matters. The petitioners therein shall be free to file the writ petitions in the High Courts concerned or pursue such other remedies as may be available to them under the law.

Obviously the present petition under Article 32 shall have to be decided on the basis of the facts situation of the matter in issue.

A 6. *Writ Petition (Crl.) No. 57 of 2001*
(*C. Natesan v. Union of India & Ors.*)

B The petitioner was the Chairman and Managing Director of Anubhav Plantations and Managing Partner of the partnership firm Anubhav Finance and Investments. Anubhav Plantations has been the flagship company of the Anubhav Group of Companies which consists of 9 other companies and financial firms. Admittedly, these financial firms collected about 125 crores from 40000 investors throughout the country and by reason of non payment to the depositors, the case of the petitioner and the reason addressed is the depressed market and allied problems of the company and the financial firms.

C petitioner's own showing depicts that there are about 254 partnership firms which form part of Anubhav Finance and Investments and Anubhav Dhana Viruksha. The records depicts that the petitioner has been granted bail in respect of cases pending at Chennai, Pune, Nagpur, Ahmedabad, Rajkot, Baroda, Hyderabad, Vishakapatnam and Jabalpur but the petitioner has not been able to avail all these bail orders and he is still in judicial custody in respect of similar FIR registered elsewhere on similar complaints of depositors. Petitioner further recites in the Application for Bail being Crl. M.P. No. 1807 of 2001 in Writ Petition (Crl.) No. 57 of 2001 the cases more or less identically situated and that of Col. (Retd.) T.S. Bhan and V.K. Sharma as also the other two orders as noticed hereinbefore in detail in this judgment. In support of his contention as in the case of other writ petitioners that by reason of the continued detention, the petitioner's rights stand violated under Article 21 of the Constitution and hence the petition under Article 32. The counter affidavits filed in the matter by the different States reveal that various proceedings are pending in various courts under Sections 407, 409, 420 and 120-B IPC against the petitioner. The methodology adopted have been stated in detail but we do not feel it expedient to record the same at this juncture save and except recording that the same depicts rather a dismal picture of the functioning of the petitioner herein. The records, as a matter of fact, depict that both Anubhav Plantation and Anubhav Finance & Investment firm have collected more than

G Rs. 400 crores from the investors throughout the country and there are various production warrants from various courts from U.P., Bihar Madhya Pradesh and other States, pending by reason wherefor and as noticed herein before, the petitioner in spite of obtaining the bail has not been able to utilise the bail order so obtained. As a matter of fact, the petitioner has not been able to even specify the number of complaints under Section 138 of the Negotiable

H Instrument Act.

The above noted are the writ petitions filed in this court invoking the jurisdiction under Article 32 of the Constitution and this Bench is confronted with the twin issues for consideration - of the two issues mentioned, the 1st issue pertains to the Maintainability of the petition under Article 32 and secondly, an order in the nature of an anticipatory bail ought to be made available to the petitioners herein by reason of the deprivation of the liberty without there being any sanction of law.

The incidental issue as regards the consolidation of proceeding though raised certain eye-brows from the depositors but the same would be dealt with later in this judgment. Presently however, turning on to the first of the twin issues namely, maintainability of the petition, be it noticed that any person complaining of infraction of any fundamental right guaranteed by the Constitution is at liberty to move this Court but the rights that could be invoked under Article 32 must ordinarily be the rights of the petitioner himself who complains of the infraction of such right and approaches the Court for relief and the proper subject for investigation would however be as to the nature of the rights that is stated to have been infringed. This Court in *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan & Ors.*, [1997] 11 SCC 121, reiterated the oft noted phraseology that judicial review is a basic structure of the Constitution and every citizen has a fundamental right to redress the perceived legal injury through judicial process. This Court went on to record : “..... the Constitutional Court, therefore, has a constitutional duty as sentinal on the *qui vive* to enforce the right of a citizen when he approaches the court for perceived legal injury, provided he establishes that he has a right to remedy.....”

The Constitution Bench decision of this Court in *D.A.V. College, Bhatinda, etc. v. State of Punjab and Ors.*, [1971] 2 SCC 261, has the following to state as regards the maintainability of the petition under 32 Article of the Constitution.

“.....a petition under Article 32 in which petitioners make out a *prima facie* case that their fundamental right are either threatened or violated will be entertained by this Court and that it is not necessary for any person who considers himself to be aggrieved to wait till the actual threat has taken place.....”

Incidentally, the power of judicial review being implicit in written Constitution, question of there being any fetter for such review would not arise

A and specially in the 21st century there ought not to be thwarting of such a right nor even any hesitancy in that regard. Be it noticed herein that maintainability of the writ petition is an issue *de hors* the ultimate result in the petition - presently the justice oriented approach and set-up a standard in accordance therewith ought to be the guiding factor so far as the law courts are concerned. Refusal to entertain cannot be in tune with the present approach and rather acts contra. The requirement is a *prima facie* satisfaction on the basis of the available pleadings as to whether the judicial review prayed for under Article 32 needs consideration, if it does, there cannot be any doubt as regards its maintainability.

C Let us, therefore, analyse the situation in totality and consider the plea as emphasised by the petitioners herein. The records depict that thousands of innocent persons have fallen a prey in the methodology of working of finance companies and firms but does that mean and imply a denial of an opportunity of being heard or considered - the answer however, cannot possibly be in the affirmative. Doctrine of natural justice warrants a fair opportunity - we do not wish even to adumbrate the issue of natural justice here but the fact remains the writ petitioners herein have come up with a petition on the ground that they have not been able to obtain benefit of the justice delivery system, reasons of which need not be dealt with presently but the factum of not being able to obtain the benefit and thereby it has been alleged that Article 21 stands violated : In our view, judicial review or in other words maintainability of the petition under Article 32 cannot possibly be doubted in any way and as such we are unable to record our concurrence with the submissions of the respondents in the matter.

F Let us however, try and analyse the grievance of the petitioners and consider as to whether there is any substance in such a grievance. Shortly put the petitioners' grievance, which stands identical in all the writ petitions, stand out to be that though the petitioners were favoured with an order of bail in one case but is being detained by reason of production warrant in another matter and resultantly the petitioners are languishing in the jails being deprived of the order of grant of bail, - this aspect of the matter has been stated to be violative of Article 21. In our view, however, the situation as noticed above does to ipso facto render it violative of Article 21. Article 21 of the Constitution postulates deprivation of life or personal liberty except according to the procedure established by law. Admittedly, the protection of personal liberty stands expanded to make the right to life under Article 21 more meaningful,

the language of the Article itself records an exception indicating thereby that a person may be deprived of his liberty in accordance with procedure established by law and it is in this sphere the courts will scrupulously observed as to whether the same stands differently and contra as regards the procedure established by law and in the event it is not so done, it would be a plain exercise of judicial power to grant redress to the petitioner. While there is no difficulty in appreciating the grievance and grant of relief in a given case but facts are too insufficient however, to come to a conclusion as regards the infraction of Article 21. Production warrants have been spoken of without any details whatsoever therefor - the reason offered is that the petitioners, in fact, are not in the know of things being behind the prison bars and it starts pouring in from all parts of the country and in the factual backdrop, as noticed above it is a well nigh impossibility to come to a finding as regards the infraction of Article 21 and since in the factual matrix, no infraction can be identified and thus question of sustaining the plea of infringement of Article 21 would not arise. In any event the liberty of the petitioners cannot said to have been trifled within the absence of due process of law. Deprivation, if any cannot claimed to be not in accordance with due process of law.

On the score of anticipatory bail, it is trite knowledge that Section 438 of the CrI. P. Code is made applicable only in the event of there being an apprehension of arrest - The petitioners in the writ petitions herein are all inside the prison bars upon arrest against all cognizable offences, and on the wake of the aforesaid question relieving the petitioners from unnecessary disgrace and harassment would not arise.

In that view of the matter and since no infraction can be identified, the petition also cannot be sustained as regards the issue of anticipatory bail under Section 438.

A large number of decisions have been relied upon as regards this long incarceration. We do however, feel it expedient to deal with some of them at this juncture since more or less identical issues have been dealt with in those judgments. The first in the line of decisions referred to is in regard to *Kartar Singh v. State of Punjab*, [1994] 3 SCC 569 wherein this Court in paragraph 351 of the report stated :

“No doubt, liberty of a citizen must be zealously safeguarded by the courts; nonetheless the courts while dispensing justice in cases like

A the one under the TADA act, should keep in mind not only the liberty of the accused but also the interest of the victim and their near and dear and above all the collective interest of the community and the safety of the nation so that the public may not loose faith in the system of judicial administration and indulge in private retribution.”

B The fact situation of the matter under consideration does not warrant further discussion more so by reason of the fact that the collective interest of the community is said to be affected. The decision thus does not lend any assistance to the petitioners herein.

C The decision of this Court in *Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India & Ors.*, [1994] 6 SCC 731 and the directions contained therein has no relevance in the instant case, as such we need not dilate on the issue or with the decision any further.

D In *Shaheen Welfare Association v. Union of India & Ors.*, [1996] 2 SCC 616; *R.D. Upadhyay v. State of A.P. & Ors.*, [1996] 3 SCC 422 and in “*Common Cause*” *A Registered Society through its Director v. Union of India & Ors.*, [1996] 4 SCC 33 and the direction issued to the High Courts to deal with the pending criminal proceedings regarding the offences involving corruption, misappropriation of public funds, cheating etc. for disposal of the cases on priority basis does not in fact have any impact in the present context - though, however, we also deem it fit to issue similar directives in the matter under consideration irrespective of the factum of our finding on infraction of Article 21 as also under Section 438 of the Code.

F It is no doubt true that this Court earlier on two occasions in Writ Petition (Crl.) No. 256/99 and Writ Petition (Crl.) Nos. 72-75/2000, has granted the relief that in the event of the arrest of the petitioner in connection with any criminal case in his capacity as Managing Director/Director of the Group of companies, the arresting officer shall release him on bail on his executing a bond to the satisfaction of the arresting officer. This order obviously tantamounts to an order, invoking the provisions of Section 438 of the Code of Criminal Procedure. The Court adopted the aforesaid procedure to find out a solution in the peculiar situation and being of the opinion that even though the accused is able to get orders bail from different Courts, where cases are pending, but in view of the large number of cases against the accused throughout the country, it has physically not become possible to release the accused from the custody. If an accused facing a charge under Sections 406, 409, 420 and 120-

B is ordinarily not entitled to invoke the provisions of Section 438 of the Criminal Procedure Code unless it is established that such criminal accusation is not a *bona fide* one, it is difficult to conceive that an accused who is involved in thousands of cases in different parts of the country by cheating millions of countrymen, can be given benefit of the privilege of anticipatory bail as a matter of routine, as was done in the two cases, on the basis of which the present batch of cases have been filed. In the manner in which these white-collared crimes are committed and the extent to which it has pervaded the society at large, we are of the considered opinion that the two cases decided by this Court earlier would not be of universal application and cannot be used as a precedent for availing of the privilege in the nature of an anticipatory bail. The Court itself was conscious of the peculiar situation and, therefore, noticed that the Court is exercising its discretion in the peculiar nature and facts of the case. We do not agree with the proposition that an accused being involved in large number of criminal cases in different parts of the country, if is not able to be released from custody even on getting bail orders in some cases, itself would tantamount to violation of the right of a citizen under Article 21 of the Constitution. The object of Article 21 is to prevent encroachment upon personal liberty by the Executive save in accordance with law, and in conformity with the provisions thereof. It is, therefore, imperative that before a person is deprived of his life or personal liberty, the procedure established by law must strictly be followed and must not be departed from, to the disadvantage of the person affected. In each case where a person complains of the deprivation of his life or personal liberty, the Court, in exercise of its constitutional power of judicial review, has to decide whether there is a law authorising such deprivation and whether in the given case, the procedure prescribed by such law is reasonable, fair and just, and not arbitrary, whimsical and fanciful. On account of liberal interpretation of the words 'life' and 'liberty' in Article 21, the said Article has now come to be invoked almost as a residuary right, even to an extent which the founding fathers of the Constitution never dreamt of. In a country like ours, if an accused is alleged to have deceived millions of countrymen, who have invested their entire life's saving in such fictitious and frivolous companies promoted by the accused and when thousands of cases are pending against an accused in different parts of the country, can an accused at all complain of infraction of Article 21, on the ground that he is not being able to be released out of jail custody in view of different production warrants issued by different Courts. Issuance of production warrants by the Court and the production of accused in Court, in cases where he is involved is a procedure established by law and consequently, the accused

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A cannot be permitted to make a complain of infraction of his rights under Article
21. In our considered opinion, it would be a misplaced sympathy of the Court
on such while-collared accused persons whose acts of commission and
omission has ruined a vast majority of poor citizens of this country. Though
we agree that in a given case, Court may be justified in directing release of
B the accused, taking a stock of the entire situation in the case. While, therefore,
we agree with the submissions of the counsel for the petitioners-accused that
an accused could maintain a petition under Article 32, but the Court would
not be justified in directing the release of such accused under a blanket order
like the one, which has been relied upon by the counsel for the accused persons
and such a course of action would perpetrate gross injustice.
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We are, therefore, unable to agree with the method adopted by this Court
in Writ Petition (Crl.) No. 256/99 and Writ Petition (Crl.) Nos. 72-75/2000
since in our opinion to adopt the method would be giving a premium to the
accused persons. Right of an accused to have speedy trial is now recognised
D as a right under Article 21. Even it has been extended to investigation of
offences against child offenders in the case of *Sheela Barse and Anr. v. Union
of India and Ors.*, AIR (1986) SC 1773. The procedural fairness required by
Article 21, including the right to a speedy trial, has, therefore to be observed
throughout and to be borne in mind. In course of hearing, we had requested
E the learned Additional Solicitor General to evolve a scheme for expeditious
disposal of criminal cases of the nature with which we are concerned in the
present batch of cases. But no concrete proposal came till the conclusion of
the hearing of these matters. While, therefore, we are not granting any relief
to the accused persons on the reasons already indicated, we would commend
upon the Central Government to evolve certain formula or procedure, so that
F the accused will not complain of undue harassment on account of protraction
of their cases and the persons deceived who have filed complaints, will be
satisfied with the early conclusions of the trial.

True, there are certain orders passed by this Court wherein special
directions have been given but this Court while passing the orders have not
G only been extremely careful but was cautious enough to record therein that
the order was passed on the special facts and the circumstances in the issue
and the same ought not to be treated as a precedent - on the wake of recording
of such a caution and the order being in the specific facts of the matter in
issue question of the same being treated as a judicial precedent would not arise,
H in any event in the view as noticed herein above, the said orders as a matter

of fact have lost its significance.

As regards the issue of a single-offence, we are afraid that the fact-situation of the matters under consideration would not permit to lend any credence to such as submission. Each individual deposit agreement shall have to be treated a separate and individual transaction brought about by the allurements of the financial companies, since the parties are different, the amount of deposit is different as also the period for which the deposit was effected. It has all the characteristics of independent transactions and we do not see any compelling reason to hold it otherwise. The plea as raised also cannot have our concurrence.

In almost all the petitions there has been a prayer for exemption from personal appearance - we are afraid that such a direction cannot be had from this Court since it is within the powers of the Magistrate and in his judicial discretion to dispense with the personal appearance of an accused and as such be it provided here that it would be open to the party to apply to the concerned trial/sessions court for such exemption and in the event of there being such an application, the same be disposed of in accordance with the law. (see in this context the decision of this Court in *M/s. Bhaskar Industries Ltd. v. M/s. Bhiwani Denim & Apparels Ltd. & Ors.*, JT (2001) 7 SC 127.

Another prayer which has been made in almost all the petitions is that the investigations of all cases should be transferred to the CBI. Such a prayer has been rejected in the earlier orders as relied upon by the petitioners herein and as such we do not feel it expedient to dilate on the issue excepting recording out concurrence with the earlier view expressed and thereby rejecting the same.

In that view of the matter, we conclude that while in the contextual fact, a petition under Article 32 is maintainable but the petitioners are not entitled to any relief by reason of insufficiency of available materials on record as regards the issue of infraction of Article 21. In regard to the prayer for consolidation the petitioner would be at liberty to approach the High Court in accordance with law. Similar is the situation as regards the orders of the Consumer Forum and the petitioner in the normal course of events would be at liberty to ventilate the grievance if any, before the Appellate Forum in accordance with law.

A By reason of the above, the writ petitions fail and are dismissed excepting to the extent as specifically noticed above.

B Be it placed on record that observations made in this judgment and order ought not to be treated as having any effect in the trial and each matter be dealt with in accordance with law and uninfluenced by the factum of rejection of these writ petitions.

N.J.

Petitions dismissed.