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MOHAMMED ZUBAIR

v.

STATE OF NCT OF DELHI & ORS.

(Writ Petition (Criminal) No. 279 of 2022)

B

JULY 20, 2022

**[DR. DHANANJAYA Y CHANDRACHUD, SURYA KANT
AND A. S. BOPANNA, JJ.]**

C *Criminal Law – Multiplicity of proceedings – Penal Code, 1860 – ss.153-A, 295-A, 201, 120-B – Code of Criminal Procedure, 1973 – ss.437, 438, 482 – Constitution of India – Arts. 32, 226 – Foreign Contribution (Regulation) Act, 2010 – s.35 – FIR No.172 of 2022 was registered against Petitioner, co-founder of ALT News, a fact checking portal, at Special Cell of Delhi Police for alleged offences punishable u/ss.153-A, 295-A, 201 and 120-B, IPC –*
D *Offence u/s.35, FCRA added during course of investigation – Successive FIRs registered in diverse Police Stations in the State of Uttar Pradesh – Present petition filed for quashing of the five FIRs and in the alternative for the clubbing of the said FIRs alongwith FIR No. 226/2022 registered at PS Khairabad, Distt. Sitapur with FIR No. 172/2022– Held: Essentially, the allegations against the*
E *petitioner pertain to the tweets put out by him – Petitioner was granted regular bail in the proceedings arising out of FIR 172/2022 – Also, in the proceedings which had reached Supreme Court arising out of FIR No 226/2022, the petitioner was granted interim bail which was extended pending further orders – However, the*
F *petitioner is still embroiled in successive FIRs registered in diverse Police Stations in the State of Uttar Pradesh where he is in judicial custody and applications for the grant of bail are pending – Despite the fact that the same tweets allegedly gave rise to similar offences in the diverse FIRs, the petitioner was subjected to multiple*
G *investigations across the country – Machinery of criminal justice has been relentlessly employed against him – Further, merely because the complaints filed against the petitioner arise from posts made by him on a social media platform, a blanket anticipatory order preventing him from tweeting cannot be made – Such blanket order would be disproportionate to the purpose of imposing conditions*
H *on bail and would tantamount to a gag order – Gag orders have a*

chilling effect on the freedom of speech – Petitioner enlarged on interim bail in connection with the FIRs set out in paragraph (i) – Investigation into the said FIRs stands transferred from the Uttar Pradesh Police to the Special Cell of Delhi Police – SIT constituted by the DGP, Uttar Pradesh stand disbanded – Aforesaid directions stand extended to any other FIR which may be registered against the petitioner hereafter in respect of the same subject matter as the said FIRs – Further, proceedings in respect of Crime No.199 of 2021 registered at PS Charthawal, Muzaffarnagar transferred to the Chief Judicial Magistrate, Patiala House Courts – Order enlarging the petitioner on bail to remain in force – While, FIRs are not being quashed as prayed, but the Petitioner is at liberty to pursue his rights and remedies in proceedings u/Art. 226/s.482, CrPC before the High Court of Delhi in respect of the FIRs which have been or which may be registered against him.

Criminal Law – Power of arrest vis-à-vis exercise of the power of arrest – Code of Criminal Procedure, 1973 – s.41(1)(b)(ii) – Held: The existence of the power of arrest must be distinguished from the exercise of the power of arrest – The exercise of the power of arrest must be pursued sparingly – Police officers are vested with the power to arrest individuals at various stages of the criminal justice process – However, this power is not unbridled – In terms of s.41(1)(b)(ii), the police officer in question must be satisfied that such arrest is necessary – Police officers have a duty to apply their mind to the case before them and ensure that the condition(s) in s.41 are met before they conduct an arrest – Guidelines laid down in Arnesh Kumar must be followed, without exception.

Code of Criminal Procedure, 1973 – ss.437, 438 – Bail conditions – Held: Bail conditions imposed by the Court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them.

Partly allowing the Writ petition, the Court

HELD: 1.1 It is evident from the record that the investigation which has been conducted by the Special Cell of the Delhi Police is comprehensive in nature and extends across the gamut of tweets put out by the petitioner. The petitioner was granted regular bail in the proceedings arising out of FIR No 172/2022 by an order dated 15 July 2022 of the Additional

- A Sessions Judge at the Patiala House Courts. In the proceedings which reached this Court arising out of FIR No 226/2022 registered at PS Khairabad in the District of Sitapur, the petitioner was granted interim bail on 8 July 2022. The order granting interim bail has been extended pending further orders on 12 July 2022. The grant of bail, first by this Court on 12 July 2022 and
- B next by the Patiala House Courts on 15 July 2022, however, has not been sufficient to secure the personal liberty of the petitioner. The petitioner is still embroiled in successive FIRs which have been registered in diverse Police Stations in the State of Uttar Pradesh where he is in judicial custody and applications for the
- C grant of bail are pending. The prosecution seeks orders for police remand. [Para 17-19][507-G-H; 508-A-C]

- 1.2 Essentially, the allegations against the petitioner pertain to the tweets which have been put out by him. The three notices issued by Police Stations at Hathras Kotwali, Sikandra Rao, and
- D Khairabad under Section 91 CrPC are verbatim the same. Having found from the record that the petitioner has been subjected to a sustained investigation by the Delhi Police, there is no reason or justification for the deprivation of the liberty of the petitioner to persist any further. Consequently, the petitioner must be released
- E on interim bail in each of the FIRs which forms the subject matter of these proceedings, under Article 32 of the Constitution. The existence of the power of arrest must be distinguished from the exercise of the power of arrest. The exercise of the power of arrest must be pursued sparingly. In the present case, there is absolutely no justification to keep the petitioner in continued
- F custody any further and to subject him to an endless round of proceedings before diverse courts when the gravamen of the allegations in each of the said FIRs arises out of the tweets which have been put out by the petitioner, and which also form the subject matter of the investigation being conducted by the Delhi Police in FIR 172/2022. Further, this Court reiterated the role of
- G courts in protecting personal liberty and ensuring that investigations are not used as a tool of harassment. [Para 20, 21][508-C-F; 509-E]

Arnab Ranjan Goswami v. Union of India (2020) 14
SCC 12 – relied on.

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1.3 As regards the prayer for quashing of the FIRs, an essential aspect of the matter which must be noticed at this stage is that the investigation by the Special Cell of the Delhi Police in FIR No 172/2022 pertains to offences of a cognate nature to those which have been invoked in the FIRs which have been lodged before the Police Stations in Uttar Pradesh. Before this court can embark on an enquiry as to whether the FIRs should be quashed, it is appropriate that the petitioner pursues his remedies in accordance with the provisions of Article 226 of the Constitution and/or section 482 of the CrPC. However, a fair investigative process would require that the entirety of the investigation in all the FIRs should be consolidated and entrusted to one investigating authority. The overlap in the FIRs, emanating as they do from the tweets of the petitioner, only goes to emphasize the need for a consolidated, as opposed to piece-meal investigation by a diverse set of law enforcement agencies. The alternate prayer which has been adduced on behalf of the petitioner should be accepted, as a consequence of which all the FIRs which have been registered against the petitioner including the FIRs arising out of the Petitioner's tweets should be transferred for investigation to the Special Cell of the Delhi Police. As a consequence of the direction, the SIT which has been constituted by the Uttar Pradesh Police shall be rendered redundant and shall be disbanded. While this Court has not proceeded to quash the FIRs as sought in prayer (a), it is expressly clarified that the petitioner has been granted the liberty to move the High Court of Delhi in proceedings under Section 482 CrPC, in the event that he is advised to seek the quashing of the FIRs before the High Court of Delhi. All proceedings in connection with the FIRs shall lie before the High Court of Delhi for such remedies as are available in law. The direction for the transfer of the investigation of the FIRs which have been registered in Uttar Pradesh to the Special Cell of the Delhi Police shall apply to all the existing FIRs forming the subject matter of the tweets which have been put out by the petitioner and to any future FIRs which may be registered against him on the same subject matter. It is also ordered and directed that the petitioner shall be entitled to the protective order of interim bail which has been granted by this Court not only in respect of the FIRs which

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A have already been registered, but also in respect of the FIRs
which will hereafter be registered on the same subject matter in
regard to the tweets which have been put out by him. The
machinery of criminal justice has been relentlessly employed
against the petitioner. Despite the fact that the same tweets
allegedly gave rise to similar offences in the diverse FIRs
B mentioned, the petitioner was subjected to multiple investigations
across the country. Consequently, he would be required to hire
multiple advocates across districts, file multiple applications for
bail, travel to multiple districts spanning two states for the
purposes of investigation, and defend himself before multiple
C courts, all with respect to substantially the same alleged cause of
action. Resultantly, he is trapped in a vicious cycle of the criminal
process where the process has itself become the punishment. It
also appears that certain dormant FIRs from 2021 were activated
as certain new FIRs were registered, thereby compounding the
difficulties faced by the petitioner. [Para 22-25][510-C-H; 511-A-
D E]

1.4 Police officers are vested with the power to arrest
individuals at various stages of the criminal justice process,
including during the course of investigation. However, this power
is not unbridled. In terms of Section 41(1)(b)(ii) of the CrPC, the
E police officer in question must be satisfied that such arrest is
necessary to prevent the person sought to be arrested from
committing any further offence, for proper investigation of the
offence, to prevent the arrestee from tampering with or
destroying evidence, to prevent them from influencing or
F intimidating potential witnesses, or when it is not possible to
ensure their presence in court without arresting them. Police
officers have a duty to apply their mind to the case before them
and ensure that the condition(s) in Section 41 are met before
they conduct an arrest. This Court has time and again, reiterated
the importance of doing so. It is once again reiterated that the
G guidelines laid down in *Arnesh Kumar* must be followed, without
exception. The *raison d'être* of the powers of arrest in relation
to cognizable offences is laid down in Section 41. Arrest is not
meant to be and must not be used as a punitive tool because it
results in one of the gravest possible consequences emanating
H from criminal law: the loss of personal liberty. Individuals must

not be punished solely on the basis of allegations, and without a fair trial. When the power to arrest is exercised without application of mind and without due regard to the law, it amounts to an abuse of power. The criminal law and its processes ought not to be instrumentalized as a tool of harassment. Section 41 of the CrPC as well as the safeguards in criminal law exist in recognition of the reality that any criminal proceeding almost inevitably involves the might of the state, with unlimited resources at its disposal, against a lone individual. Section 438(2) stipulates that the High Court or the Court of Sessions can direct a person to be released on conditional bail. The provision provides that the Court shall impose conditions in the context of the facts of a particular case. The list of illustrative bail conditions stipulated in Sections 437 and 438 relate to the need to ensure a proper investigation and fair trial or to prevent the accused from committing an offence similar to the one he is suspected of, or in the interest of justice. The phrase ‘interest of justice’ has been interpreted in prior judgments of this Court where it has been held that the discretion of the Court in imposing conditions on bail must be exercised judiciously and to advance a fair trial. The bail conditions imposed by the Court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them. The courts while imposing bail conditions must balance the liberty of the accused and the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed. [Para 26-29][511-F-H; 512-C-G; 513-A-B]

Arnesh Kumar v. State of Bihar (2014) 8 SCC 273 : [2014] 8 SCR 128; *Parvez Noordin Lokhandwalla v. State of Maharashtra* (2020) 10 SCC 77 – relied on.

1.5 Merely because the complaints filed against the petitioner arise from posts that were made by him on a social media platform, a blanket anticipatory order preventing him from tweeting cannot be made. A blanket order directing the petitioner to not express his opinion - an opinion that he is rightfully entitled to hold as an active participating citizen - would be disproportionate to the purpose of imposing conditions on bail.

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- A The imposition of such a condition would tantamount to a gag order against the petitioner. Gag orders have a chilling effect on the freedom of speech. According to the petitioner, he is a journalist who is the co-founder of a fact checking website and he uses Twitter as a medium of communication to dispel false news and misinformation in this age of morphed images, clickbait, and
- B tailored videos. Passing an order restricting him from posting on social media would amount to an unjustified violation of the freedom of speech and expression, and the freedom to practice his profession. The petition is allowed in part in terms of the directions issued. [Para 30, 31][513-E-G; 514-A-B]
- C *Kunal Kumar Tiwari v. The State of Bihar*, (2018) 16 SCC 74; *Dataram Singh v. State of Uttar Pradesh*, (2013) 15 SCC 570; *Sumit Singh v. State (NCT of Delhi)* (2013) 15 SCC 570 : [2013] 10 SCR 125 – referred to.

Case Law Reference

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| D | [2014] 8 SCR 128 | relied on | Para 27 |
| | [2013] 10 SCR 125 | referred to | Para 29 |
| | (2020) 14 SCC 12 | relied on | Para 21 |
| | (2014) 8 SCC 273 | relied on | Para 27 |
| | (2020) 10 SCC 77 | relied on | Para 29 |
| E | (2018) 16 SCC 74 | referred to | Para 29 |
| | (2013) 15 SCC 570 | referred to | Para 29 |

CRIMINAL ORIGINAL JURISDICTION: Writ Petition (Criminal) No. 279 of 2022.

- F (UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)
 Ms. Vrinda Grover, Soutik Banerjee, Ms. Devika Tulsiani, Mannat Tipnis, Aakarsh Kamra, Advs. for the Petitioner.
 Ms. Garima Prashad, AAG, Adarsh Upadhyay, Harsh Mishra, Aman Pathak, Advs. for the Respondent.

- G The Judgment of the Court was delivered by
DR. DHANANJAYA Y CHANDRACHUD, J.

- H 1. The petitioner is the co-founder of ALT News, a fact checking portal which conducts its activities under the auspices of Pravda Media Foundation. ALT News was launched in February 2017. Pravda Media Foundation is a company registered under Section 8 of the Companies Act 2013.

2. On 20 June 2022, FIR 172 of 2022 was registered at the Special Cell of the Delhi Police for alleged offences punishable under Sections 153-A, 295-A, 201 and 120-B of the Indian Penal Code 1860¹. The offence under Section 35 of the Foreign Contribution (Regulation) Act 2010² was added during the course of investigation. The petitioner was arrested on 27 June 2022 and was remanded to police custody for a day by the order of the Duty Magistrate. The custodial order was extended for a further period of four days by the Chief Metropolitan Magistrate, Patiala House Courts, Delhi. On 30 June 2022, a search took place at the residential premises of the petitioner in Bangalore. The legality of the order of police remand has been challenged before the High Court of Delhi in which notice has been issued on 1 July 2022. On 2 July 2022, the petitioner was remanded to fourteen days of judicial custody and his application for bail was rejected by the Chief Metropolitan Magistrate at Patiala House Courts, Delhi. On 15 July 2022, he was granted regular bail by the Additional Sessions Judge.

3. The Delhi Police have submitted a status report on the course of the investigation, which has been carried out in pursuance of FIR No 172 of 2022, before the Additional Sessions Judge. The status report notes the course of the investigation which spans into tweets alleged to have been put out by the petitioner. According to the status report, “*for the purpose of recovery of the laptop and mobile phone used in committing this crime and for the purpose of interrogation of the accused to find out other tweets/posts and larger part of the conspiracy, if any, Mohd Zuber was arrested in this case on 27.06.22. He disclosed that he is co-founder of ALT News and in order to gain popularity he posts such contents/post that triggers religious sentiment and he remain trending in news/ social media and he can get recovered the laptop and mobile phone used in committing this crime*”.

4. The status report has also adverted to seven tweets put out by the petitioner on the basis of which the Police at the Special Cell is continuing its investigation. The extract from the status report submitted by the Delhi Police in regard to the above tweets reads as follows:

¹ “IPC”

² “FCRA”

- A “
- (i) Tweet 1:-against Mahant Bajrang Muni Ji of Rashtriya Hindu Sher Sena, Khairabad, Sitapur, Uttar Pradesh.
- (ii) Tweet 2:- Sanjay Showing facebook live video of Kurukshetra war of Mahabharat to Dhritrastra: Biplab Deb.
- B (iii) Tweet 3:- ‘Bajrang Bali’ ki aarti kama shuru karo, ‘hanuman chalisa’ ka path karo, bandar kabhi nuksaan nahin pahuchayega.
- (iv) Tweet 4:- Ancient laptops had no processors & RAM. It was later copied by Missionary Mathematician Charles Babage. Sanskrit learning was essential for computer literacy those days. Only Virat Hindus could operate computer as lower castes were never allowed to learn Sanskrit.
- C (v) Tweet 5:- Equality to all is Real Ram Rajya. Be it Donkey.
- D (vi) Tweet 6:- We Vishnu A Merry Krishna “POSTCARD NEWS” Christianity is Krishna Neeti and Vatican City was called as Vatika!!!!Subhash Chandra Bose’s assistant. The said tweet is present on the twitter account of Mohammed Zubair and posted on 25 Dec, 2017 at 1:20PM (1 PP)
- E (vii) Tweet 7 :- A tweet was posted by him on 30 Oct, 2021 at 3:03 PM in which two photos one of Vatican City and one of Shiva Lingam were shown and comparison between them are made. And he wrote This reminds me of @shanknaad post on Vatika-Vatican City. The said tweet is present on the twitter account of Mohammed Zubair.”
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5. Apart from the above FIR which has been registered at the Special Cell in Delhi, a series of FIRs have been registered against the petitioner, both before and after the FIR before the Special Cell. These FIRs are:

- G (i) FIR No 502/2021 dated 15 June 2021 registered at PS Loni Border, District Ghaziabad for offences punishable under Sections 153, 153-A, 295-A, 505, 120-B and 34 of IPC;
- (ii) FIR No 199/2021 dated 24 July 2021 registered at PS Charthawal, Muzaffarnagar for offences punishable under Sections 192, 504 and 506 of IPC;
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- (iii) FIR No 193/2021 dated 27 August 2021 registered at PS Chandauli for offences punishable under Section 67 of the Information Technology Act 2000³; A
- (iv) FIR No 511/2021, dated 18 September 2021 registered at PS Mohamadi District Lakhimpur for offences punishable under Sections 153-A, 153B/505(1)B and 505(2) of IPC; B
- (v) FIR No 226/2022 dated 1 June 2022 registered at PS Khairabad, District Sitapur for offences punishable under Section 295-A of IPC and Section 67 of the IT Act;
- (vi) FIR No 286/2022 dated 10 June 2022 registered at PS Sikandrara, Hathras for offences punishable under Sections 147, 149, 153A, 353, 188, 120-B of IPC and under Section 7 of the Criminal Law Amendment Act 1932⁴; and C
- (vii) FIR No 237/2022 dated 4 July 2022 registered at PS Hathras Kotwali for offences punishable under Sections 153-A, 295-A, 298 of IPC and section 67 of the IT Act. D

6. The status of the FIRs is indicated below:

- (i) In FIR No 199/2021 registered at Police Station Charthawal, the petitioner was granted bail on 30 July 2021 by the Judicial Magistrate; E
- (ii) In FIR No 511/2021 registered at Police Station Mohamadi, the petitioner was remanded on 11 July 2022 to fourteen days of judicial custody. An application seeking police custody was listed for submissions on 20 July 2022;
- (iii) In FIR No 226/2022 at Police Station Khairabad, the petitioner was remanded to judicial custody for 14 days by the JMFC-I, Sitapur on 4 July 2022 and to police custody between the period from 8 July 2022 until 14 July 2022. By an order of this Court dated 8 July 2022, the petitioner was granted interim bail in Special Leave Petition (Crl) No 6138 of 2022. The order of interim bail was extended on 12 July 2022 pending further orders; and F
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³ “IT Act”

⁴ “CLA”

A (iv) In FIR No 237/2022 registered at Police Station Hathras Kotwali, the petitioner has been remanded to fourteen days of judicial custody on 13 July 2022. On 15 July 2022, an application seeking fourteen days of police custody was filed.

B 7. In the meantime, arising out of the FIRs which have been registered at diverse Police Stations in the State of Uttar Pradesh, the petitioner as well as the Director of ALT News / Pravda Media Foundation (and the company) were served with notices under Section 41A of the Code of Criminal Procedure 1973⁵ or, as the case may be, under Section 91 of CrPC for the production of documents such as: (i) the balance sheet of the last three years; (ii) the income tax returns of the Director and co-founders; (iii) details with regard to the payment of corporate tax by ALT News / Pravda Media Foundation; (iv) PAN cards of ALT News / Pravda Media Foundation; (v) bank statements of ALT News / Pravda Media Foundation for the last three years; (vi) details of donations received since the inception of the ALT News website; and (vii) an undertaking in regard to the source of funds.

8. These proceedings invoke the jurisdiction under Article 32 of the Constitution of India. The relief which has been sought primarily is for the quashing of the following FIRs, namely:

- E (a) F.I.R no. 502/2021, dt. 15.06.2021, PS Loni Border, district Ghaziabad u/s 153, 153-A, 295-A, 505, 120-B and 34 of the Indian Penal Code, 1860.
- (b) Case Crime No. 199/2021, dt. 24.07.2021, PS Charthawal, Muzaffamagar u/Sec 192, 504, 5061PC.
- F (c) FIR no. 511/2021, dt. 18.09.2021, PS Mohamadi district Lakhimpur, u/Sec 153-A, 153B/505(1)8 and 505(2) IPC.
- (d) FIR no. 237/2022, dt. 04.07.2022, PS Hathras Kotwali on a complaint dt. 14.06.2022 u/Sec 153-A, 295-A, 298 IPC and section 67 of the IT Act.
- G (e) Case Crime no. 286/2022 dt. 10.06.2022, Hathras, PS Sikandraro, u/s 147, 149, 153A, 353, 188, 120-B of the Indian Penal Code, 1860 and u/s 7 of the CLA Act;”

H ⁵ “CrPC”

In the alternative, the petitioner seeks a direction that the above FIRs along with FIR No. 226/2022, PS Khairabad, Sitapur should be clubbed with FIR No 172/2022 which is under investigation by the Special Cell of Delhi Police. A

9. Office Memorandum No. DG-8-94-(30) of 2022⁶ has been issued on 10 July 2022, in terms of which a Special Investigation Team⁷ has been constituted by the Director General of Police, Uttar Pradesh for investigating the six FIRs which have been registered against the petitioner in Uttar Pradesh. B

10. Apart from the prayer for quashing the FIRs or, in the alternative, for clubbing the investigation of the six FIRs mentioned in the OM with the FIR which is pending investigation before the Special Cell in Delhi, the petitioner seeks interim release on bail in all the FIRs, which are set out above, and a protective order of this Court directing that no coercive steps be taken with respect to FIR 193 of 2021, PS Chandauli. C

11. The petition was mentioned before this Court for urgent orders on 18 July 2022 with the permission of the Hon'ble Chief Justice of India. While entertaining the petition on 18 July 2022, this Court directed that no precipitate steps shall be taken against the petitioner on the basis of the five FIRs which form the subject matter of these proceedings. Notice was issued by this Court on 18 July 2022. D

12. We have heard Ms Vrinda Grover, senior counsel appearing on behalf of the petitioner and Ms Garima Prashad, senior counsel and Additional Advocate General appearing on behalf of the State of Uttar Pradesh. E

13. Appearing on behalf of the petitioner, Ms Vrinda Grover submitted that: F

- (i) The tweets which have been put out by the petitioner are the subject matter of the FIRs which have been registered in Delhi and in Police Stations within different districts in the State of Uttar Pradesh; G
- (ii) All the FIRs, broadly speaking, implicate alleged offences punishable under the same provisions, namely, Sections

⁶ "OM"

⁷ "SIT"

- A 153A, 295A, 298 and 505 of IPC and Section 67 of the IT Act;
- (iii) In the FIR which has been registered at the Special Cell in Delhi, the petitioner was subjected to an order of remand, following which eventually he has been granted regular bail by the Additional Sessions Judge at the Patiala House Courts. The status report which has been submitted by the Delhi Police before the Additional Sessions Judge would indicate that the scope of the investigation has been widened so as to also include the provisions of the FCRA; and
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- (iv) Broadly speaking, the tweets which have been adverted to in the status report submitted by the Delhi Police before the Additional Sessions Judge also form the subject matter of the FIRs which have been registered in the diverse Police Stations in the State of Uttar Pradesh.
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14. On the above premises, counsel submitted that:
- (i) In none of the tweets has the petitioner even remotely used any language which is improper or which would amount to an offence with reference to which the provisions of the criminal law could be invoked;
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- (ii) On the contrary, in several of the tweets, the petitioner had tagged the Uttar Pradesh Police and had invited action by the law enforcement machinery consequent on speeches made by other persons which were found to be objectionable;
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- (iii) The gravamen of all the FIRs which have been registered against the petitioner essentially remains the same, arising out of the tweets by the petitioner;
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- (iv) The instrument of criminal law has been used to harass and silence the voice of the petitioner which would be apparent from the manner in which the petitioner has been made to face successive proceedings arising out of the FIRs which have been lodged in the State of Uttar Pradesh; and
- H

- (v) The petitioner has a real and genuine apprehension in regard to the safety and security of his life following the publication of several tweets which have administered threats and placed a bounty on his safety. A

15. Hence, it has been submitted that in the exercise of its jurisdiction under Article 32 of the Constitution, the Court should quash the FIRs since none of the tweets on the basis of which FIRs have been registered provokes hatred towards any community or is derogatory to any religion or a religious denomination. B

16. Opposing these submissions, Ms Garima Prashad submitted that: C

- (i) There is a genuine apprehension that the tweets which have been put out by the petitioner have spread hate;
(ii) The tweets which have been put out by the petitioner have a real potential to create a communal divide;
(iii) The SIT was formed by the State of Uttar Pradesh considering the gravity of the situation, in order to maintain peace and harmony; and D
(iv) The conduct of the petitioner in engaging in repeated acts of tweeting would justify the invocation of criminal law. E

17. The narration of facts in the prefatory part of the judgement would indicate that FIR No 172/2022 which has been registered on 20 June 2022 at the Special Cell of the Delhi Police invokes offences punishable under Sections 153-A, 295-A, 201 and 120-B of IPC, to which the investigating authority has added the provisions of Section 35 of FCRA. The Delhi Police have submitted a comprehensive status report before the Additional Sessions Judge at the Patiala House Courts bearing on the course of investigation, the tweets which form the subject matter of the investigation, and the search and seizure which has been carried out at the premises of the petitioner. In other words, it is evident from the record that the investigation which has been conducted by the Special Cell of the Delhi Police is comprehensive in nature and extends across the gamut of tweets put out by the petitioner. The petitioner was granted regular bail in the proceedings arising out of FIR No 172/2022 by an order dated 15 July 2022 of the Additional Sessions Judge at the Patiala House Courts. F
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A 18. In the proceedings which reached this Court arising out of
FIR No 226/2022 registered at PS Khairabad in the District of Sitapur,
the petitioner was granted interim bail on 8 July 2022. The order granting
interim bail has been extended pending further orders on 12 July 2022.

B 19. The grant of bail, first by this Court on 12 July 2022 and next
by the Patiala House Courts on 15 July 2022, however, has not been
sufficient to secure the personal liberty of the petitioner. The petitioner
is still embroiled in successive FIRs which have been registered in diverse
Police Stations in the State of Uttar Pradesh where he is in judicial
custody and applications for the grant of bail are pending. The prosecution
seeks orders for police remand.

C 20. Essentially, the allegations against the petitioner pertain to the
tweets which have been put out by him. The three notices issued by
Police Stations at Hathras Kotwali, Sikandra Rao, and Khairabad under
Section 91 CrPC are verbatim the same. Having found from the record
that the petitioner has been subjected to a sustained investigation by the
D Delhi Police, we find no reason or justification for the deprivation of the
liberty of the petitioner to persist any further. Consequently, we are of
the view that the petitioner must be released on interim bail in each of
the FIRs which forms the subject matter of these proceedings, under
Article 32 of the Constitution. The existence of the power of arrest must
E be distinguished from the exercise of the power of arrest. The exercise
of the power of arrest must be pursued sparingly. In the present case,
there is absolutely no justification to keep the petitioner in continued
custody any further and to subject him to an endless round of proceedings
before diverse courts when the gravamen of the allegations in each of
the said FIRs arises out of the tweets which have been put out by the
F petitioner, and which also form the subject matter of the investigation
being conducted by the Delhi Police in FIR 172/2022.

G 21. In **Arnab Ranjan Goswami v. Union of India**,⁸ while dealing
with the issue of a multiplicity of proceedings and harassment to the
accused, a two judge bench of which one of us (Dr DY Chandrachud)
was a part, held:

“32. Article 32 of the Constitution constitutes a recognition of the
constitutional duty entrusted to this Court to protect the fundamental
rights of citizens. The exercise of journalistic freedom lies at the

H ⁸ (2020) 14 SCC 12

core of speech and expression protected by Article 19(1)(a). The petitioner is a media journalist. The airing of views on television shows which he hosts is in the exercise of his fundamental right to speech and expression under Article 19(1)(a). **India's freedoms will rest safe as long as journalists can speak truth to power without being chilled by a threat of reprisal.** The exercise of that fundamental right is not absolute and is answerable to the legal regime enacted with reference to the provisions of Article 19(2). **But to allow a journalist to be subjected to multiple complaints and to the pursuit of remedies traversing multiple states and jurisdictions when faced with successive FIRs and complaints bearing the same foundation has a stifling effect on the exercise of that freedom.** This will effectively destroy the freedom of the citizen to know of the affairs of governance in the nation and the right of the journalist to ensure an informed society. Our decisions hold that the right of a journalist under Article 19(1)(a) is no higher than the right of the citizen to speak and express. But we must as a society never forget that one cannot exist without the other. Free citizens cannot exist when the news media is chained to adhere to one position.”

(emphasis supplied)

Further, this Court reiterated the role of courts in protecting personal liberty and ensuring that investigations are not used as a tool of harassment:

“60. [...] Courts must be alive to the need to safeguard the public interest in ensuring that the due enforcement of criminal law is not obstructed. The fair investigation of crime is an aid to it. Equally it is the duty of courts across the spectrum – the district judiciary, the High Courts and the Supreme Court – to ensure that the criminal law does not become a weapon for the selective harassment of citizens. **Courts should be alive to both ends of the spectrum – the need to ensure the proper enforcement of criminal law on the one hand and the need, on the other, of ensuring that the law does not become a ruse for targeted harassment.** Liberty across human eras is as tenuous as tenuous can be. Liberty survives by the vigilance of her citizens, on the cacophony of the media and in the dusty corridors of courts alive to the rule of (and not by) law. Yet, much too often, liberty is a casualty when one of these components is found wanting.

- A 61. [...] The doors of this Court cannot be closed to a citizen who is able to establish prima facie that the instrumentality of the State is being weaponized for using the force of criminal law. **Our courts must ensure that they continue to remain the first line of defense against the deprivation of the liberty of citizens. Deprivation of liberty even for a single day is one day too many.**
- B We must always be mindful of the deeper systemic implications of our decisions.”

(emphasis supplied)

- C 22. As regards the prayer for quashing of the FIRs, an essential aspect of the matter which must be noticed at this stage is that the investigation by the Special Cell of the Delhi Police in FIR No 172/2022 pertains to offences of a cognate nature to those which have been invoked in the FIRs which have been lodged before the Police Stations in Uttar Pradesh. Before this court can embark on an enquiry as to whether the FIRs should be quashed, it is appropriate that the
- D petitioner pursues his remedies in accordance with the provisions of Article 226 of the Constitution and/or section 482 of the CrPC. However, a fair investigative process would require that the entirety of the investigation in all the FIRs should be consolidated and entrusted to one investigating authority. The overlap in the FIRs, emanating as they
- E do from the tweets of the petitioner, only goes to emphasize the need for a consolidated, as opposed to piece-meal investigation by a diverse set of law enforcement agencies.

- F 23. We are accordingly of the view that the alternate prayer which has been adduced on behalf of the petitioner should be accepted, as a consequence of which all the FIRs which have been registered against the petitioner including the FIRs which have been noted above arising out of the Petitioner’s tweets should be transferred for investigation to the Special Cell of the Delhi Police. As a consequence of the above direction, the SIT which has been constituted by the Uttar Pradesh Police shall be rendered redundant and shall be disbanded. While we have not
- G proceeded to quash the FIRs as sought in prayer (a), we expressly clarify that we have granted liberty to the petitioner to move the High Court of Delhi in proceedings under Section 482 CrPC, in the event that he is advised to seek the quashing of the FIRs before the High Court of Delhi. All proceedings in connection with the FIRs shall lie before the High
- H Court of Delhi for such remedies as are available in law. The direction

for the transfer of the investigation of the FIRs which have been registered in Uttar Pradesh to the Special Cell of the Delhi Police shall apply to all the existing FIRs forming the subject matter of the tweets which have been put out by the petitioner and to any future FIRs which may be registered against him on the same subject matter. A

24. We also order and direct that the petitioner shall be entitled to the protective order of interim bail which has been granted by this Court not only in respect of the FIRs which have already been registered, but also in respect of the FIRs which will hereafter be registered on the same subject matter in regard to the tweets which have been put out by him. B

25. As evident from the facts narrated above, the machinery of criminal justice has been relentlessly employed against the petitioner. Despite the fact that the same tweets allegedly gave rise to similar offences in the diverse FIRs mentioned above, the petitioner was subjected to multiple investigations across the country. Consequently, he would be required to hire multiple advocates across districts, file multiple applications for bail, travel to multiple districts spanning two states for the purposes of investigation, and defend himself before multiple courts, all with respect to substantially the same alleged cause of action. Resultantly, he is trapped in a vicious cycle of the criminal process where the process has itself become the punishment. It also appears that certain dormant FIRs from 2021 were activated as certain new FIRs were registered, thereby compounding the difficulties faced by the petitioner. C D E

26. Police officers are vested with the power to arrest individuals at various stages of the criminal justice process, including during the course of investigation. However, this power is not unbridled. In terms of Section 41(1)(b)(ii) of the CrPC, the police officer in question must be satisfied that such arrest is necessary to prevent the person sought to be arrested from committing any further offence, for proper investigation of the offence, to prevent the arrestee from tampering with or destroying evidence, to prevent them from influencing or intimidating potential witnesses, or when it is not possible to ensure their presence in court without arresting them. F G

27. Police officers have a duty to apply their mind to the case before them and ensure that the condition(s) in Section 41 are met before H

A they conduct an arrest. This Court has time and again, reiterated the importance of doing so, including in **Arnesh Kumar v. State of Bihar**,⁹ where the Court observed:

B “6. [...] The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. Apart from power to arrest, the police officers must be able to justify the reasons thereof. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person...”

28. We once again have occasion to reiterate that the guidelines laid down in **Arnesh Kumar** (supra) must be followed, without exception.

C The *raison d’être* of the powers of arrest in relation to cognizable offences is laid down in Section 41. Arrest is not meant to be and must not be used as a punitive tool because it results in one of the gravest possible consequences emanating from criminal law: the loss of personal liberty. Individuals must not be punished solely on the basis of allegations, and without a fair trial. When the power to arrest is exercised without

D application of mind and without due regard to the law, it amounts to an abuse of power. The criminal law and its processes ought not to be instrumentalized as a tool of harassment. Section 41 of the CrPC as well as the safeguards in criminal law exist in recognition of the reality that any criminal proceeding almost inevitably involves the might of the state,

E with unlimited resources at its disposal, against a lone individual.

29. The counsel for the State of Uttar Pradesh attempted to persuade this Court that the petitioner must be barred from tweeting when he is on bail. Section 438(2) stipulates that the High Court or the Court of Sessions can direct a person to be released on conditional

F bail. The provision provides that the Court shall impose conditions in the context of the facts of a particular case. The list of illustrative bail conditions stipulated in Sections 437 and 438 relate to the need to ensure a proper investigation and fair trial¹⁰ or to prevent the accused from committing an offence similar to the one he is suspected of¹¹, or in the interest of justice¹². The phrase ‘interest of justice’ has been interpreted

G in prior judgments of this Court where it has been held that the discretion of the Court in imposing conditions on bail must be exercised judiciously

⁹ (2014) 8 SCC 273

¹⁰ Sections 438(2) and 437 (3)(c) of CrPC

¹¹ Section 437(3)(b) of CrPC

H ¹² Section 437 of CrPC

and to advance a fair trial.¹³ The bail conditions imposed by the Court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them. The courts while imposing bail conditions must balance the liberty of the accused and the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed. In the decision in **Parvez Noordin Lokhandwalla v. State of Maharashtra**¹⁴, a two-Judge Bench of this Court, of which one of us (Dr DY Chandrachud) was a part, it was observed that bail conditions must not be disproportionate to the purpose of imposing them:

“21. [...] The conditions which a court imposes for the grant of bail - in this case temporary bail - have to balance the public interest in the enforcement of criminal justice with the rights of the accused. The human right to dignity and the protection of constitutional safeguards should not become illusory by the imposition of conditions which are disproportionate to the need to secure the presence of the accused, the proper course of investigation and eventually to ensure a fair trial. The conditions which are imposed by the court must bear a proportional relationship to the purpose of imposing conditions. The nature of the risk which is posed by the grant of permission as sought in this case must be carefully evaluated in each case.”

30. Merely because the complaints filed against the petitioner arise from posts that were made by him on a social media platform, a blanket anticipatory order preventing him from tweeting cannot be made. A blanket order directing the petitioner to not express his opinion - an opinion that he is rightfully entitled to hold as an active participating citizen - would be disproportionate to the purpose of imposing conditions on bail. The imposition of such a condition would tantamount to a gag order against the petitioner. Gag orders have a chilling effect on the freedom of speech. According to the petitioner, he is a journalist who is the co-founder of a fact checking website and he uses Twitter as a medium of communication to dispel false news and misinformation in this age of morphed images, clickbait, and tailored videos. Passing an order restricting

¹³ Kunal Kumar Tiwari v. The State of Bihar, (2018) 16 SCC 74; Dataram Singh v. State of Uttar Pradesh, (2013) 15 SCC 570; Sumit Singh v. State (NCT of Delhi), (2013) 15 SCC 570.

¹⁴ (2020) 10 SCC 77

A him from posting on social media would amount to an unjustified violation of the freedom of speech and expression, and the freedom to practice his profession.

31. For the above reasons, we allow the petition in part in terms of the following directions:

- B (i) The petitioner shall stand enlarged on interim bail, subject to his filing a personal release bond in the amount of Rs 20,000 in connection with the following FIRs:
- C a) FIR No. 502/2021, dated 15.06.2021, PS Loni Border, district Ghaziabad u/s 153, 153-A, 295-A, 505, 120-B and 34 IPC.
- b) FIR No. 193/2021 dated 27.08.2021 registered at PS Chandauli for offences punishable under Section 67 of IT Act.
- D c) FIR No. 511/2021, dated 18.09.2021, PS Mohamadi district Lakhimpur, u/s 153-A, 153B/505(1)8 and 505(2) IPC.
- d) FIR No. 226/2022 dated 01.06.2022, PS Khairabad, district Sitapur, u/Sec 295-A(2) IPC and Section 67 of IT Act.
- E e) FIR No. 286/2022 dated 10.06.2022, PS Sikandraraao, Hathras, u/s 147, 149, 153A, 353, 188, 120-B of IPC and u/s 7 of the CLA Act; and
- F f) FIR No. 237/2022, dated 04.07.2022, PS Hathras Kotwali on a complaint dated 14.06.2022 u/Sec 153-A, 295-A, 298 IPC and section 67 of the IT Act;
- G (ii) As regards Crime No 199 of 2021 dated 24 July 2021 registered at PS Charthawal, Muzaffarnagar, the charge-sheet under Section 173 of CrPC has been filed. The proceedings in respect of the said Case Crime shall stand transferred to the Chief Judicial Magistrate, Patiala House Courts and shall be taken up from the stage that has been reached before the earlier Court. The petitioner has been enlarged on bail. The order enlarging the petitioner on bail shall continue to remain in force;
- H

- (iii) The investigation into the FIRs set out in paragraph (i) above shall stand transferred from the Uttar Pradesh Police to the Special Cell of the Delhi Police. As a consequence, the SIT which was constituted by the Director General of Police, Uttar Pradesh on 10 July 2022, shall stand disbanded; A
 - (iv) The directions contained in (i) and (iii) above shall stand extended to any other FIR which may be registered against the petitioner hereafter in respect of the same subject matter as the above FIRs in which event (a) the investigation of the FIR shall stand transferred to the Special Cell of the Delhi Police; (b) the petitioner shall be entitled to the order of interim bail, as set out above. B C
 - (v) The petitioner would be at liberty to pursue his rights and remedies in proceedings under Article 226 of the Constitution / Section 482 of CrPC before the High Court of Delhi in respect of the FIRs which have been or which may be registered against him, and in that event, nothing contained in this judgment shall amount to an expression of opinion on the merits of such proceedings; and D
 - (vi) The bail bonds in compliance with the above direction shall be presented before the Chief Judicial Magistrate at the Patiala House Courts, Delhi. Immediately upon the presentation of the bail bonds, the Superintendent at the Tihar Jail shall take necessary steps to ensure that the petitioner is released from judicial custody no later than by 6 pm today. E
32. Pending application, if any, stands disposed of. F