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(2005) 05 AHC CK 0306

In the Allahabad High Court

Case No : Writ Petition No. 2067 (M/B) of 2005

Akhand Pratap Singh — APPELLANT

Vs

Central Bureau of Investigation and Others — RESPONDENT

Date of Decision : 13-05-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 254(1), 254(2)
Criminal Procedure Code, 1973 (CrPC) — Section 156, 177, 180, 197, 438
Prevention of Corruption Act, 1988 — Section 13(1), 2

Citation : (2006) 1 ACR 1042

Hon'ble Judges : Y.R. Tripathi, J;Bhanwar Singh, J

Bench : Division Bench

Advocate : K.S. Pawar and V.K. Shahi, for the Appellant; Bireshwar Nath, for the Respondent

Judgement

Bhanwar Singh and Y.R. Tripathi, JJ.—This petition has been filed by Shri Akhand Pratap Singh, former Chief Secretary, Government of Uttar Pradesh praying for a writ in the nature of certiorari quashing the first information report dated 19th March, 2005, lodged by the Central Bureau of Investigation against him at Police Station CBI/SPE/LCU-(V) 2005, New Delhi, The said first information report reveals that the Petitioner has amassed wealth disproportionate to his known sources of income. The duration of income and acquiring assets, i.e., the check-period is shown to be from. 1.1.1978 to 31.5.1991. As recited in the said report, the Petitioner, who retired in December, 2003, has been leading a luxurious life with various properties having been acquired by him in his own name and in the names of his family members including his father, wife and daughters. According to the Superintendent of Police/ACU-V, CBI, New Delhi-the informant, the Petitioner earned through his known sources of income during the aforesaid period a total sum of Rs. 14,92,991 and the estimated price of the total assets acquired by him is Rs. 36,38,863. Latitude of Rs. 3,08,163 having been extended on the expenditures during the said period, the difference on account of the total price of the assets and the income comes to Rs. 21,45,872 stated to be the

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disproportionate assets (DA).

2. The Petitioner has questioned the first information report on the grounds that the properties acquired by his father have been wrongly included in the list of his assets and similarly, the properties acquired by M/s. Vinlab Exports Pvt. Ltd., M/s. Trident Agriculture Pvt. Ltd. and M/s. Angel Foods Pvt. Ltd. have been maliciously treated to be as his own. Further, it has been alleged that the first information report was lodged with false, baseless and fake allegations with a view to expose the Petitioner to media trial which is an endeavour on the part of the authorities in the direction of mala fide exercise of power. The raids conducted at his house and the residential and commercial apartments of his relatives were an abuse of the process of law which action on the part of the Central Bureau of Investigation led to the infringement of the fundamental rights of the Petitioner guaranteed under Articles 14 and 21 of the Constitution of India.

3. Assailing further, the validity of the first information report, the Petitioner has pleaded that the said report has been purposely and maliciously lodged at Delhi, while he stays at Lucknow and most of his properties are situated in the State of Uttar Pradesh. The jurisdiction for investigation and trial will be governed by Sections 156 and 177 to 180, Code of Criminal Procedure The Central Bureau of Investigation and the Courts at Delhi will not have any jurisdiction to investigate or try the offences merely because some evidence is said to be existing in Delhi. The purposeful motive of getting the first information report registered at Delhi was to evade and surpass the legal provisions, which postulate prior permission of the Uttar Pradesh Government as contained u/s 6 of the Delhi Special Police Establishment Act, 1946. As a matter of fact, the Central Government in past sought permission to register a case against the Petitioner but the Uttar Pradesh Government for valid reasons rejected such a request twice. The provisions of Section 2(c) of the Prevention of Corruption Act, 1988 have to be strictly construed and a Government servant, who is retired, will not fail within the ambit of the expression ''any person in service'' as used in the aforesaid provision. In fact, Section 13(e) does not create a new offence other than that of the provisions of Section 13(a) to (e) which create a presumption of misconduct upon the existence of particular fact/evidence. The said misconduct will relatively be confined to the definition of a public servant, a petition which the Petitioner does not presently occupy. Moreover, the misconduct would merely come into operation only when the Petitioner fails to account for his income and price of the assets and, if given an appropriate opportunity, he would explain everything, which would reject the contents of the first information report.

4. The Petitioner has also questioned the validity of Section 9 of U. P. Act No. 16 of 1976 which had deleted the provisions of Section 438, Code of Criminal Procedure containing a provision for anticipatory bail on the ground that the President of India while according his sanction did not apply his mind nor satisfied himself on the issue that the omission, being claimed was inconsistent with the Articles 14 and 21 of the Constitution of India. In other words, the

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Petitioner has contended that the assent of the President for the aforesaid Act is justiciable and subject to judicial review.

5. Alleging ill-motivation and mala fide on the part of the Central Bureau of Investigation, the Petitioner has explained about the properties referred to in the first information report. According to him, even the property, which was acquired by his father prior to his appointment in the year 1967 has been mischievously included in the list of assets. As a matter of fact, the properties referred to at Sl. Nos. 1 and 2 in para 5 of the first information report do not belong to him and the properties shown at Items No. 4 and 5 were purchased by the Petitioner by raising loans from the Government. The property at Sl. No. 6 is the commercial flat which was purchased out of the savings from his earnings during first decade of his career. The properties in the names of M/s. Vinlab Exports Pvt. Ltd. and M/s. Angel Foods Pvt. Ltd. and M/s. Trident Agriculture Pvt. Ltd. as detailed in para 9 of the first information report have been purchased out of the resources of these companies. The Petitioner''s two married daughters are the Directors of the said three companies and they have been looking the entire food and floral business of those companies with their annual turnover of crores. M/s. Angel Foods Pvt. Ltd., M/s. Vinlab Exports Pvt. Ltd. and M/s. Trident Agriculture Pvt. Ltd. arranged cash credit facility from Nationalized Banks for amounts of Rs. 1,98,00,000, Rs. 2,04,00,000 and Rs. 35,00,000 respectively. The Petitioner has no concern with the earnings and investments of these companies. The land measuring 3.824 hectares at village Bhirwa, district Bahraich was purchased by his wife Mrs. Neelam Singh through her personal income and savings. The Floriculture Farm House measuring 7.936 hectares at village Hardaurpur, Tehsil Bakshi Ka Talab, Sitapur Road, Lucknow, is neither owned nor occupied by the Petitioner. In fact, his daughter Ms. Jaya Singh purchased the said farm by raising a loan from Indian Overseas Bank. Likewise, the Farm House on ten acres of land at Plot No. A-2/1 and A-2/2, UPSIDC Industrial Area, Bhimtal, Nainital, Uttaranchal is on lease in favour of M/s. Vinlab Exports Pvt. Ltd. The Farm House of 15 acres at village Nisaula, Bhimtal, Nainilal, Uttaranchal too is on lease for floriculture in the name of M/s. Vinlab Exports Pvt. Ltd. Similarly, other properties situated in Uttaranchal State are of M/s. Vinlab Exports Pvt. Ltd. and M/s. Angel Foods Pvt. Ltd. The Flat No. 8, Poorvi Apartment, Vasant Vihar was purchased by the Petitioner''s father in the year 1997 and the Farm House No. 3, Shanti Kunj, behind Sector D-III, Vasant Kunj, New Delhi is the guesthouse of M/s. Angel Foods Pvt. Ltd.

6. The Central Bureau of Investigation has not conducted any preliminary enquiry in these averments of the Petitioner and this indicates the mala fide and prejudicial attitude of the authorities in lodging the first information report against him. It is with this bent of mind of the Central Bureau of Investigation''s sleuths that the value of the properties of plots No. 1/9, 1/10 and 1/11, Vishwas Khand and the house on the joint land of these plots on being inflated is shown to be as Rs. 30 lacs. The house was constructed by Prof. Govind Misra, a friend of the Petitioner, who had bequeahed it to the Petitioner''s daughter, Ms. Juhie

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Singh through a Will out of his affection for her.

7. As regards the cash amount of Rs. 19 lacs recovered by the Investigating Agency during search and raid, the Petitioner mentioned that this amount was to be utilized for purchasing stamp papers required for execution of some deeds in favour of SEER Foundation of which the Petitioner is the Managing Trustee. He had already got a loan for Rs. 13,60,00,000 sanctioned for running an Intermediate Boarding School and the Government of Uttaranchal State had already granted the requisite permission.

8. The check-period of the Petitioner''s income has been purposely selected and obviously, there is an inordinate delay of fourteen years in the first information report being lodged.

9. In this way, the Central Bureau of Investigation has without conducting a bona fide enquiry proceeded against the Petitioner with a pre-conceived notion and lodged the first information report which is sought to be quashed on the grounds mentioned above.

10. We have heard Mr. Rakesh Dwivedi, learned senior advocate for the Petitioner and Mr. Bireshwar Nath, learned senior advocate for Central Bureau of Investigation and perused the record.

11. Precisely, the following three points have been pressed into service on behalf of the Petitioner :

(i) The Central Bureau of Investigation cannot register and investigate a criminal case against the Petitioner unless the State Government''s prior sanction u/s 6 of Delhi Special Police Establishment Act, 1946 is obtained.

(ii) The deletion of Section 438, Code of Criminal Procedure by virtue of U. P. Act 16 of 1976 is violative of the Petitioner''s fundamental rights envisaged under Articles 14 and 21 of the Constitution of India. The President''s assent under Article 254(2) of the Constitution of India being justiciable is a subject-matter of judicial review.

(iii) The Central Bureau of Investigation cannot proceed to arrest the Petitioner unless it is satisfied that the allegations mentioned in the first information report have some substance and there is material to proceed against him and such a stage can be arrived only when the Petitioner even after an opportunity to explain, fails to account for the assets alleged to have been acquired by him.

12. To take the above points in seriatim, we would like to refer to Sections 5, 6 and 6(A) of the Delhi Special Police Establishment Act, 1946.

13. Section 5 postulates that the Central Government may by order extend to any area in a State the powers and jurisdiction of members of the Delhi Special Police Establishment for the investigation of any offences or classes of offences specified in a notification u/s 3. However, the provisions of Section 6 contains a non-obstante clause and provides that nothing contained in Section 5 shall be

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deemed to enable any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area without the consent of the Government of that State.

14. Learned Counsel appearing for the Petitioner has submitted that unless the Central Government obtained prior consent of the U.P. Government, it could not have asked the Central Bureau of Investigation nor the Central Bureau of Investigation could have proceeded to register and investigate a case at Delhi against the Petitioner. Supplementing his argument learned Counsel referred to the U. P. Government''s decision whereby permission sought for to investigate a similar complaint was refused. In support of his submission, a reference was made to the U. P. Government''s letter dated 16th September, 2002 (Annexure-SA (i)). A perusal of this letter appears to indicate that the U. P. Government was approached by the Central Government but the State Government decided to close the enquiry. However, no reasons for declining to proceed with the enquiry were disclosed. In a similar letter of 5/6th October, 2003, (Annexure-SA (ii)], it was revealed that the Government got the enquiry conducted into several allegations of corruption against the Petitioner but the allegations were found baseless. On the basis of the said enquiry the Government arrived at a conclusion to close the enquiry and therefore, permission sought for u/s 6 of Delhi Special Police Establishment Act, 1946 was not granted and the Central Government was informed accordingly.

15. Learned Counsel appearing for the Central Bureau of Investigation, counteracting the Petitioner''s argument for his protection under the provisions of the said Section submitted that since the Petitioner has already retired from service, he cannot be permitted to enjoy the status of a public servant so as to claim benefit of the provisions of the said Section. Perhaps, it was on account of his superannuation that the Central Government''s permission for the Delhi Special Police Establishment u/s 6A of the Delhi Special Police Establishment Act was also not required.

16. A reference was also made to a Notification by the learned Counsel for the C.B.I, and submitted that the State of Uttar Pradesh had consented vide that Notification of 15th June, 1989, for expansion, of the Delhi Special Police Establishment''s, territory for investigation of some offences. A copy of the Notification on record appears to indicate that the U. P. Government was pleased to accord permission to extend powers of the members of the Delhi Special Police Establishment in whole of the State of Uttar Pradesh. The Central Government notified on 23rd August, 1990, the classes of offences under Prevention of Corruption Act to be investigated by the Delhi Special Police Establishment. But since the Petitioner is no longer a public servant, the benefit of Section 6 of the Delhi Special Police Establishment Act would not be attracted to his advantage. There seems to be hardly any doubt that a Government servant, who has retired from service, can no longer be called a public servant as in his post-retirement period, he is neither in subordination of the said Government nor the latter can

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command him to do or not to do any act.

17. The case relied upon by the learned Counsel for the Petitioner in Surinder Singh Ahluwalia Vs. Delhi Special Police Establishment and others, , is not attracted as in the case, the Government of Nagaland having once permitted the Central Bureau of Investigation to expand its territory for investigation in the State of Nagaland had subsequently withdrawn its permission in relation to the accused of that case. In the case in hand, the general consent granted by the State of Uttar Pradesh vide order of 15th June, 1989, is in vogue even as on date.

18. It was also argued for the Petitioner that the Central Bureau of Investigation''s stand of the Petitioner being a public servant within the ambit of Prevention of Corruption Act is contradictory with the proposition that the U. P. Government''s general consent would be applicable even though the Petitioner has retired. The argument seems to be too technical and if it is accepted, any Government Servant/Public Servant having committed acts of commissions and omissions bringing him into the corruption-dykes would escape the clutches of law without any action, once he retires. Moreover, in the case of the Petitioner, the check-period pertains to the years from 1978 to 1991 and since his present status is that of a retired Government servant and the alleged charges against him pertain to the service period, there is nothing inconsistent so far as the offence u/s 13(1)(e) of the Prevention of Corruption Act is concerned as he was a public servant during the chek-period as defined u/s 2(c)(i) of Prevention of Corruption Act and the Delhi Special Police Establishment is competent to investigate such notified offences. It is not acceptable as submitted by the learned Counsel for the Petitioner that the constitutional compulsion originating from the limited legislative competence of Parliament under Entry 80 List I Seventh Schedule of the Constitution will still be required even after the Petitioner''s retirement.

19. The Hon''ble Supreme Court held in a decision in Kalicharan Mahapatra v. State of Orissa 1998 (2) ACR 1583 (SC): 1998 SCC 1455, that if a public servant ceases to be a public servant by the time of cognizance of an offence is taken, the Court can take cognizance of the offence without any sanction of the authority. In other words, his being a public servant is necessary when he commits the offence but it is not so, if he demits his office at the relevant time of cognizance. The sanction contemplated u/s 197 of the Code concerns a public servant, who is accused of any offence alleged to have been committed by him, while acting or purporting to act in the discharge of his official duty. The offences contemplated in the Prevention of Corruption Act are those which cannot be treated as acts either directly or even purportedly done in the discharge of his official duties. Therefore, if the offences in question are said to have committed under the Prevention of Corruption Act, the sanction for his prosecution is not necessary if he ceased to be the public servant by the relevant time, the Court can take cognizance. The Petitioner of the case in hand retired/superannuated in December, 2003, as a consequence, he ceased to be the public servant and once

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he demitted his office, the protection of Section 6 of Delhi Special Police Establishment Act would also wither away. We are, therefore, of the opinion that the provisions of Section 6 of the Delhi Special Police Establishment Act are no longer applicable to the case of the Petitioner and further since the U. P. Government had already allowed extension of powers of the Delhi Special Police Establishment Act throughout the State of Uttar Pradesh, the Central Government''s power under list I Entry 80 of Schedule VII cannot be questioned and with that, the monopoly of State Police by virtue of Entry 2 List II of the Schedule VII cannot be claimed for protection.

20. In fact, the principles of the law laid down in the Apex Court''s decisions in Kali Charan Mahapatra v. State of Orissa 1998 (2) ACR 1583 (SC): 1998 SCC 1455 and R.S. Nayak Vs. A.R. Antulay, , will be fully applicable and as held in both the decisions, sanction for prosecution after retirement is not at all required.

21. In view of the decisions held above, we are of the opinion that the cover of protection of Section 6 of Delhi Special Police Establishment Act, 1946 is not available to the Petitioner, as a consequence, the Central Bureau of Investigation need not wait or bank upon the State Government''s prior sanction to proceed to investigate case under the Prevention of Corruption Act to register against the Petitioner.

22. Now we may delve upon the point number two. Submitting a very fine argument as regards deletion of Section 438, Cr. P.C., Mr. Rakesh Dwivedi, learned senior counsel for the Petitioner contended that the abolition of the provision of interim bail in Uttar Pradesh by virtue of Section 9 of U. P. Act 16 of 1976 is in fact violative of the Petitioner''s fundamental rights as guaranteed under Articles 14 and 21 of the Constitution of India. We are afraid the contention is not sustainable in view of the Apex Court''s decision in Kartar Singh Vs. State of Punjab, . The Apex Court held in this decision that the deletion of Section 438, Code of Criminal Procedure in the State of Uttar Pradesh does not offend either Article 14 or Article 19 or Article 21 of the Constitution of India and the State Legislature is competent to delete that section, which is one of the matters enumerated in the Concurrent List (List III of the Seventh Schedule) and such deletion is valid under Article 254(2) of the Constitution of India.

23. Learned Counsel for the Petitioner conceding that the vires of U. P. Act No. 16 of 1976 have no doubt been upheld submitted with reference to the Apex Court''s decision in Kaiser-I-Hind Pvt. Ltd. and Others Vs. National Textile Corporation (Maharashtra North) Ltd. and Others, , that the President''s assent granted under Article 254(2) is still justiciable and it can be scrutinized as to whether the President signified the assent after applying his mind to the entire proposition of law sought to be deleted and the reasons justifying therefor. In our considered opinion, once the Hon''ble Supreme Court has in the above citation scanned the provisions of Article 254(1) as well as 254(2) and arrived at a conclusion that the assent granted by the President was rightly accorded, thereby deleting the provisions of Section 438, Cr. P.C., we are not required nor it

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would be justifiable for us to look into the said arena and have a different opinion than that of the Hon''ble Supreme Court. As a matter of fact, the word ''assent'' used in Clause (2) of Article 254 would mean in context as an expressed agreement of mind to what is proposed by the State. Therefore, we are not inclined to keep this petition or proposition alive and look into that aspect of the matter. Following the Apex Court''s decision in Kaiser-I-Hind Pvt. Ltd. (supra), we hold that deletion of 438, Code of Criminal Procedure by virtue of Act No. 16 of 1976 is not violative of the Petitioner''s fundamental right as guaranteed by Articles 14 and 21 of the Constitution of India nor, the validity of the assent of the President is now justiciable.

24. Adverting to the third and last point pressed into service by the Petitioner, we may consider the submissions of the learned Counsel for the Petitioner that the Central Bureau of Investigation before proceeding to register a case after lodging the first information report would have conducted a fair enquiry into the alleged allegations of amassing wealth / properties disproportionate to his known source of income and in the same sequence, the Petitioner should have been given an opportunity to explain or account for.

25. Learned Counsel relying upon the citation of M. Krishna Reddy Vs. State Deupty Superintendent of Police, Hyderabad, , submitted that it is not the acquisition of property which constitutes the offence but it is the failure to account for. It was further submitted that the charge cannot be said to be complete, as held in a decision of State By Central Bureau of Investigation v. S. Bangarappa 2000 (3) ACR 2783 (SC): (2001) 1 SCC 369, unless the delinquent official fails to account for the income said to be disproportionate the known sources.

26. Learned Counsel for the Petitioner also placed reliance upon the citations of K. Veeraswami Vs. Union of India (UOI) and Others, and R.S. Raghunath Vs. State of Karnataka and another, , wherein it was respectively held by the Apex Court that the Investigating Officer must call upon the accused to account for the properties acquired by the charged employee and there should be someone to suspect commission of offence and then availability of sufficient material for investigation.

27. Mr. Bireshwar Nath, learned Counsel for the Central Bureau of Investigation has also placed reliance upon the case of K. Veeraswami Vs. Union of India (UOI) and Others, , and contended that the expression "for which public servant cannot satisfactorily account" does not indicate that Investigating Officer is obliged to afford any opportunity to the pubic servant to explain the alleged disproportionality of his assets and to furnish his averments in the charge-sheet.

28. Further, a reference was also made to another decision of the Supreme Court in Union of India v. W. N. Chadha 1993 SCC 1171. It was held in this case that an accused cannot claim any right of prior notice or opportunity of being heard inclusive of his arrest or search of his residence or seizure of any property in his

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possession connected with the crime unless otherwise provided under the law. The reason for not giving an opportunity of this kind is that such a procedure would frustrate the proceedings/obstruct the taking of prompt action as law demands and is likely to defeat the ends of justice.

29. However, learned Counsel for the Central Bureau of Investigation submitted that the normal procedure for interrogating the Petitioner, before proceeding further, would be followed and during the said interrogation, he would be asked to submit explanation in all respects. This must satisfy the Petitioner who has submitted a chart before this Court giving details of the properties referred to in the first information report. According to him, some of his father''s properties have been included in the income while they devolved upon him as stated in the petition and mentioned in the early part of this judgment. He has no concern with the properties purchased in the name of three private limited companies, namely, M/s. Angel Foods Pvt. Ltd., M/s. Vinlab Exports Pvt. Ltd. and M/s. Trident Agriculture Pvt. Ltd. Also, he has endeavoured to explain that Prof. Govind Misra''s house which seems to be the main bone of contention as estimated at a price of Rs. 30,00,000 came on devolution by virtue of a Will in favour of his daughter. Similarly, certain properties purchased by the Petitioner''s wife out of her savings have been included in the list of the Petitioner''s assets. A detailed chart in respect of each property, as to how it was purchased and by whom, has been submitted by the learned Counsel for the Petitioner during the course of arguments and a copy thereof was handed over to the learned Counsel for the Central Bureau of Investigation. It is not the appropriate stage nor proper for this Court to look or decide about the validity of the sources of the properties being purchased because the Central Bureau of Investigation''s contention is that some of the properties were purchased ''benami'' by the Petitioner. Learned Counsel for the C.B.I. in this very sequence submitted during the course of arguments that the Petitioner''s case about his father''s properties having devolved upon him alone, despite his other brothers being there in the family, smack of unconvincing and unbelieveable explanation and similarly, the theory of Prof. Govind Misra''s palatial house having been bequeathed to the Petitioner''s daughter, while there are other legal heirs of Prof. Misra surviving, is not at all worthy of credit. Moreover, the C.B.I. is to examine the sources of investment and the genuineness thereof in acquiring the various properties. Similarly, connectivity of the recovered cash of Rs. 19 lacs with the SEER Foundation as alleged is to be scrutinized with reference to the documents.

30. In these circumstances, we are of the view that let the Central Bureau of Investigation look into the allegations levelled against the Petitioner and also the latter''s explanation during his interrogation including the IPRs of the Petitioner-of course, in the context of the bona fides thereof. His explanation vis-a-vis individual properties will certainly be scrutinized by the Central Bureau of Investigation and action taken on the basis of its conclusions drawn on the basis of the material on record. The contention of the learned Counsel for the Petitioner that since charge in the enquiry conducted by the State Government

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and in this case is one and the same, the Central Bureau of Investigation should be restrained from taking any action in criminal proceedings as in the enquiry the Government had exonerated him, is not sustainable.

31. In the above context, reliance was also placed on the Apex Court''s decision P.S. Rajya Vs. State of Bihar, , but the benefit of the citation cannot be extended to the Petitioner as in that case proper disciplinary proceedings were conducted and charge was framed in the departmental proceedings and there were serious discrepancies in the reports submitted by the valuers of the properties. In the case in hand, no departmental proceedings were ever held against the Petitioner; instead, as has been submitted before the Court, only some enquiries-the extent and nature of which are not at all known were held against him. Such concealed or hidden enquiries cannot be equated with the disciplinary proceedings held in accordance with the Rules applicable to a particular Government Servant. However, if some authority conducted some enquiry in accordance with the settled norms of law or Rules and submitted an enquiry report, the same may be examined by the Central Bureau of Investigation at its discretion.

32. Learned Counsel for the Petitioner then relied upon the Apex Court''s decision in Joginder Kumar Vs. State of U.P. and others, . In this case, the Supreme Court has laid down certain guidelines in the light of the sanctity the liberty of an individual/citizen. Learned Counsel quoted the following excerpt from the judgment :

...No arrest can be made because it is lawful for the Police Officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person''s complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commissioner merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officer issues notice to person to attend the Station House and not to leave the Station without permission would do.

33. The above guidelines are indeed clear and candid and the Central Bureau of Investigation which is the premier and prestigious Investigating Agency of our Country is expected to follow, all these guidelines in letter and spirit. Otherwise

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also, the Petitioner has held high positions during the tenure of his service in the State including that of the Chief Secretary as well as Central Government and since it is not borne out from any material on record that he is likely to abscond or evade the process of law, the Supreme Court''s instructions become all the more important. It is also obvious that this is not a grave offence like murder, dacoity, robbery or rape nor there is any terror stricken victim and, there is also no instance of his ever been of violent behaviour.

34. Keeping in view all what has been said above, though we decline to grant the interim relief of staying his arrest, yet we direct that the Central Bureau of Investigation before proceeding to make his arrest may collect a convincing and justifying material for proceeding in the said direction and while looking into the allegations may also look into the veracity of his version vis-a-vis the properties referred to in the first information report.

35. With these observations, we finally dispose of this writ petition.

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