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**(2016) 07 AHC CK 0033**  
**In the Allahabad High Court**  
**Case No : Misc. Bench No. 15277 of 2016**

Azad Vikram Singh

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

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**Date of Decision :** 05-07-2016

**Acts Referred:**

Uttar Pradesh Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 — Section 13, 81

**Citation :** (2016) 5 AILLJ 449 : (2016) 132 RD 652 : (2016) 2 RJ 1451 : (2016) 3 UPLBEC 1815

**Hon'ble Judges :** Amreshwar Pratap Sahi and Dr. Vijay Laxmi, JJ.

**Bench :** Division Bench

**Advocate :** Rajendra Prasad Mishra, Advocate, for the Appellant; C.S.C, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Dr. Vijay Laxmi, J.— Heard Shri R.P. Mishra, learned counsel for the petitioner and learned Standing Counsel for the State.

2. A perennial question of intriguing constitutional importance that touches upon the ongoing debate of morality and law in this writ petition, namely, whether the petitioner, a Block Pramukh of Kshetra Panchayat, who is an undertrial prisoner for the commission of offences under Section 147, 148, 149, 302 read with Section 34 IPC, shall be allowed to participate in the meetings of the Kshetra Panchayat and to perform his duties as Block Pramukh (Chairperson) under the various provisions of the U.P. Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961, (hereinafter referred to the 1961 Act).

3. The petitioner prays for a mandamus commanding the respondents to allow the petitioner to participate in the meetings of the Kshetra Panchayat, Block Mankapur, Tehsil Mankapur, District Gonda and perform his duties as Block Pramukh (Chairperson) under the provisions of the Act, 1961 in police custody as and when required.

4. The petitioner has filed his nomination papers as a candidate for being elected as a Member of the Kshettra Panchayat while he was in jail. He was elected as a Member of the Kshettra Panchayat from Gram Panchayat Madhai Pur, Ward No.23, Block Mankapur, Tehsil Mankapur, District Gonda. The election of Block Pramukh took place on 07.02.2016 in which the petitioner having obtained 53 votes as against his rival Sandhya Singh who has obtained 37 votes, came to be elected by a margin of 16 votes.

5. The petitioner is facing trial and is still under valid judicial custody in Sessions Trial No.84 of 2015 (State v. Rajesh Vikram Singh & others) arising out of Case Crime No.254 of 2014 under Sections 147, 148, 149, 302/34 IPC relating to Police Station Wazirganj, District Gonda. The case is pending in the Court of Additional Sessions Judge/FTC-I, Gonda. On administrative grounds, the petitioner was transferred from District Jail, Gonda to District Jail, Orai.

6. The petitioner filed Writ Petition No.1544 (M/B) of 2016 (Azad Vikram Singh v. State of U.P. & ors.) for directing the authorities to allow the petitioner to cast his vote and to contest the election of the Block Pramukh, Block Mankapur, District Gonda. The High Court permitted the petitioner to contest the election and cast his vote vide order dated 02.02.2016 extracted hereunder:-

"Heard Sri R.P. Misra, learned counsel for the petitioner, learned Addl. Chief Standing Counsel for the respondents no. 1, 2, 4 and 5 and Ms. Aprajita Bansal for the respondent no. 3 for the State Election Commission.

The petitioner is an under-trial and is in custody and presently lodged in District Jail, Orai.

The petitioner has filed this writ petition for the exercise of his voting rights in the elections of the post of Block Pramukh of Block Mankapur, District Gonda as he is the elected member of the Kshettra Panchayat from Ward No. 23, Madhaipur, Block Mankapur, District Gonda.

The petitioner was elected as a member of the Kshettra Panchayat while remaining in custody and was in jail. He, therefore, contends that the right to cast his vote vests in him and he cannot be divested of the same as such he may be permitted to cast his vote while in custody. He also proposes to contest the election of Block Pramukh and, therefore, prays that he should be permitted to file the nomination paper as well.

Sri Misra has invited the attention of the Court to Rule 8 of U.P. Kshettra Panchayat (Election of Pramukh and Up-Pramukh and Settlement of Election disputed) Rules, 1994 to urge that the petitioner should be permitted file his nomination as there is no prohibition against an under-trial, moreso in the background of the petitioner himself who has been elected while in custody as a member of the Kshettra Panchayat. He, therefore, submits that he should be permitted to file his nomination papers and be also allowed to cast vote. The last date of filing of nominations is 5.2.2016 and the date of election is 7.2.2016.

Learned counsel for the Election Commission and the learned Addl. Chief Standing Counsel both contend that the petitioner neither has any fundamental right nor is there any statutory prohibition so as to allow him to cast his vote as an under-trial while being in custody. They contend that even if there is no such provision, the ordinary rights of the citizen stands curtailed if he is in lawful custody. They, therefore, submit that the petitioner cannot claim his right to cast his vote and to contest the elections in the aforesaid background.

Having considered the aforesaid submissions, let a counter affidavit be filed by the respondents within two weeks and the matter thereafter shall be listed on 18.2.2016.

As an interim measure, we provide that the petitioner shall be permitted to file his nomination papers from jail itself and for that purpose it shall be open to the Jail Superintendent, District Jail, Orai to verify the signatures of the petitioner. The nomination papers shall be presented as per Rule 8 of the 1994 Rules along with a proposer and another member as a seconder, subject to scrutiny by the returning officer. The permission grant by us will not mean acceptance of the nomination paper but is only a direction for filing of nomination papers. Acceptance or otherwise of the nomination papers shall be subject to the result of scrutiny.

In the event, the petitioner's nomination papers are accepted and he is allowed to contest the elections, then in that event, we direct the District Magistrate, Gonda and the Superintendent, District Jail, Orai to ensure that the petitioner is allowed to cast his vote in custody on 7.2.2016.

In the event, the petitioner is not a candidate himself for any reason, then the petitioner will be allowed to cast his vote but in that event if the result of the election would depend only on casting of one vote, then the outcome of the election shall be dependent upon the final outcome of the writ petition.

Copy of this order be issued by tomorrow. "

7. Sri Mishra urged that since the petitioner had been elected as Block Pramukh of Block Mankapur he has to participate in the meetings and also to carry out the duties and responsibilities as provided under the Act 1961. Learned counsel has invited the attention of the Court to Section 81 read with Section 84 of Act 1961 and urged that the meetings of the Kshettra Panchayat have to be convened, which should be at least once within two months. The Block Pramukh has to preside over the meetings where financial decisions are taken and superintend the executive administration. According to Section 86 of this Act, schemes are to be formulated for the development and welfare of the panchayatas of the Block. Section 87 of the Act provides for formation of various committees. The utilisation of Rs. 15 lakh in the bank account for the development schemes under the various heads of Kshettra Panchayat cannot be made in the absence of the petitioner. The members who have elected the petitioner should not be deprived of the valuable rights of development and other benefits provided under the Act

of 1961. The petitioner is in jail and it is desirable in the interest of justice that the opposite party be directed to allow the petitioner to participate in the meetings of Kshettra Panchayat and also to perform his duties and obligations as Block Pramukh.

8. Learned Standing Counsel for the respondents contended that the petitioner has no fundamental right nor there is any statutory provision so as to command the respondents to allow the petitioner to participate in the meetings of the Kshettra Panchayat as an under trial while being in custody. He contends that the rights of a citizen stand curtailed if he is in lawful custody and the petitioner cannot be permitted to attend the meetings of Kshettra Panchayat in the aforesaid background.

9. We have considered the aforesaid submissions and have gone through the records. To appreciate the contentions, it is necessary to first examine the relevant provisions of the Act of 1961 and the constitutional scheme. Section 9 of the Act 1961 provides the term of the Pramukh which reads as under:-

"Term of Pramukh and [xxx].- [(1)] Save as otherwise provided in this Act the term of office of a Pramukh or [xxx] of a Kshettra Panchayat shall commence upon his election and shall extend up to the term of the Kshettra Panchayat.

2. [x x x]

3. [(2)] Where the office of the Pramukh is vacant, the District Magistrate may, by order, make such arrangement as he thinks fit for the discharge of the functions of the Pramukh, till the Pramukh is elected.)

[9-A. Temporary arrangement in certain cases.- When the Pramukh is unable to discharge his functions owing to absence, illness or any Magistrate may, by order, make such discharge of the functions of the Pramukh until the date on which the Pramukh resumes his duties.]"

10. Section 13 of Act 1961 prescribes disqualifications for membership of Kshettra Panchayat in its Sub-clauses (a) to (o) and enumerates different sort of disqualifications. There are some disqualifications like holding any office of profit under a State Government or the Central Government or a local authority, or a Nyaya Panchayat established under Section 42 of the United Provinces Panchayat Raj Act, 1947 or being in arrears of any tax fee rate or any other dues payable by him to the Grame Panchayat, Kshettra Panchayat or Zila Panchayat for such period as may be prescribed, or has been convicted of an offence involving moral turpitude etc. Section 13 of the Adhiniyam of 1961 provides as under:-

"13. Disqualifications for membership of Kshettra Panchayat.-- A person shall be disqualified for being chosen as and for being a member of a Kshettra Panchayat, if he -

(a) is so disqualified by or under any law for the time being in force for the purpose of election of the State Legislature:

Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years;

(b) holds any office of profit under a State Government or the Central Government or a local authority, or a Nyaya Panchayat established under Section 42 of the United Provinces Panchayat Raj Act, 1947;

(c) has been dismissed from the service of a State Government, the Central Government or a local authority, or a Nyaya Panchayat established under Section 42 of the United Provinces Panchayat Raj Act, 1947;

(d) is in arrears of any tax, fee rate or any other dues payable by him to the Gram Panchayat, Kshettra Panchayat or Zila Panchayat for such period as may be prescribed, or has, in spite of being required to do so by the Gram Panchayat or Zila Panchayat failed to deliver to in any record or property belonging to it which had come into his possession by virtue of his holding any office under it;

(e) is an undischarged solvent;

(f) has been convicted of an offence involving moral turpitude;

(g) has been sentenced to imprisonment for a term exceeding three months for contravention of any order made under the Essential Commodities Act, 1955;

(h) has been sentenced to imprisonment for a term exceeding six months or to transportation for contravention of any order made under the Essential Supplies (Temporary Powers) Act, 1946 or the U.P. Control of Supplies (Temporary Powers) Act, 1947;

(i) has been sentenced to imprisonment for a term exceeding three months under the U.P. Excise Act, 1910;

(j) has been convicted for an offence under the Narcotic Drugs and Psychotropic Substances Act, 1985;

(k) has been convicted of an election offence;

(l) has been convicted of an offence under the U.P. Removal of Social Disabilities Act, 1947 or the Protection of Civil Rights Act, 1955;

(m) is debarred from practising as a legal practitioner by order of any Competent Authority;

(n) has been declared under Section 23 to have committed any corrupt practise within the meaning of that section and such declaration continues to be effective; or

(o) is not registered in the electoral rolls for any territorial constituency of the Kshettra Panchayat:

Provided that the period of disqualification under Clauses (c), (e), (f), (g), (h), (i), (j), (k) or (l) shall be five years from such date as may be prescribed:

Provided further that the disqualification under Clause (d) shall cease upon payment of arrears or deliver of the record or property, as the case may be:

Provided also that a disqualification under any of the clauses referred to in the first proviso may, in the manner prescribed, be removed by the State Government."

11. Section 81 of the Act provides about the duties of the Block Pramukh as under:-

"81. Duties of Pramukh.-- It shall be the duty of Pramukh-

i. to convene and preside at all meetings of the Kshettra Panchayat and of such of its Committees as may be prescribed in this behalf; and

ii. otherwise to control in accordance with any regulation made in this behalf the transaction of business at all meetings of the Kshettra Panchayat.

(b) to watch over the financial and superintend the executive administration of the Kshettra Panchayat, and bring to the notice of the Kshettra Panchayat any defect therein, and]

(c) to perform such other duties as are required or imposed on him under this Act or the rules made thereunder or any other law for the time being in force."

12. In the instant case, the petitioner being an under trial prisoner is not covered within the ambit of Section 13 of the said Act. The petitioner being in jail is unable to attend the said meetings and to discharge his functions as Block Pramukh as mention under Section 81 and other relevant provisions of the Act. However, in order to meet such a situation, Section 9A of the Act makes a provision that when the Pramukh is unable to discharge his functions due to his absence, the District Magistrate may make such arrangements, as he thinks fit.

13. Now coming to the constitutional Scheme, in case of a person who has come in conflict with law and, in particular, in conflict with law on offences involving moral turpitude, the question arises about their allegiance to the Constitution of India, faithful and conscientious discharge of the duties, doing right to people and about the duties of the courts under such situations. Under criminal jurisprudence, a person is presumed to be innocent unless proved otherwise and convicted by a Court of law. Thus, in strict legal parlance, a criminal may be one who has been convicted of crime by a Court of law. But a common man perceives otherwise. The common man perceives criminalisation of politics if he experiences a history-sheeter or a notorious bad character involved, though perhaps not finally convicted, in various crimes of heinous nature like murder, dacoity or rape, contesting elections and getting elected. In *Manoj Narula v. Union of India and Ors.*, (2014) 9 SCC 01/64 the Apex Court observed in this regard as under:-

"The law does not hold a person guilty or deem or brand a person as a criminal only because an allegation is made against that person of having committed a

criminal offence-be it in the form of an off-the-cuff allegation or an allegation in the form of a First Information Report or a complaint or an accusation in a final report under Section 173 of the Code of Criminal procedure or even on charges being framed by a competent Court. The reason for this is fundamental to criminal jurisprudence, the rule of law and is quite simple, although it is often forgotten or overlooked-a person is innocent until proven guilty. This would apply to a person accused of one or multiple offences. At law, he or she is not a criminal-that person may stand "condemned" in the public eye."

14. There has been mounting corruption in all walks of public life. People are generally lured to enter politics or contest elections for getting rich over night the public eye. It is widely believed that there is a growing nexus between the political parties and anti-social elements, which is leading to criminalization of politics, where the criminal themselves are now joining election fray and often even getting elected in the process. Some of them have even adorned ministerial berths and, thus, law breakers have become law makers. The 18th Report presented to the Rajya Sabha on 15th March, 2007 by the Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law And Justice on Electoral Reforms (Disqualification of Persons From Contesting Elections on Framing of Charges Against Them For Certain Offences acknowledged the criminalization of our polity and the necessity of cleansing the political climate where it was reported as under:

"...the Committee is deeply conscious of the criminalization of our polity and the fast erosion of confidence of the people at large in our political process of the day. This will certainly weaken our democracy and will render the democratic institutions sterile. The Committee therefore feels that politics should be cleansed of persons with established criminal background. The objective is to prevent criminalisation of politics and maintain probity in elections. Criminalization of politics is the bane of society and negation of democracy."

15. The rule of law and representative parliamentary democracy are essential features of our Constitution. The people of the country, the organs of the government, Legislature, executive and judiciary are all bound by the Constitution. The Constitution is the supreme lex in our country and beyond the pale of any controversy. All organs of the State derive their authority, jurisdiction and powers from the Constitution and owe allegiance to it. This includes this Court also which represents the judicial organ. In the celebrated case of *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225, this Court found certain basic features of the Constitution that include, besides supremacy of the Constitutional, the republican and democratic form of Government, and the separation of powers between the legislature, the executive and the judiciary. The principle of supremacy of the Constitution has been reiterated by this Court post *Kesavananda Bharati* in case after case including to name just some of them, *Indira Nehru Gandhi v. Raj Narain*, 1975 Supp. SCC 1; AIR 1975 SC 2299, *Minerva Mills Ltd., v. Union of India*, (1980) 3 SCC 625: AIR 1980 SC 1789, Sub-

Committee on Judicial Accountability v. Union of India, (1991) 4 SCC 699, I. Manilal Singh v. Dr. H. Borobabu Singh, 1994 Supp. (1) SCC 718, Union of India v. Assn. For Democratic Reforms, (2002) 5 SCC 294, Special Reference No.1 of 2002, In re (2002) 8 SCC 237, (Gujarat Assembly Election Matter), People's Union for Civil Liberties v. Union of India (2003) 4 SCC 399, Pratap Singh v. State of Jharkhand (2005) 3 SCC 551, Rameshwar Prasad (VI) v. Union of India (2006) 2 SCC 1 and Kuldip Nayar v. Union of India (2006) 7 SCC 1. The court has been ascribed the duty of interpreting the Constitution and when the Court finds that manifestly there is an unauthorised exercise of power under the Constitution, it would be the solemn duty of the court to intervene. Here it would be relevant to quote the observations of the Apex Court about the role of the courts in Manoj Narula (Supra):-

"143. Court is the conscience of the Constitution of India. Conscience is the moral sense of right and wrong of a person (Ref.: Oxford English dictionary). Right or wrong, for court, not in the ethical sense of morality but in the constitutional sense. Conscience does not speak to endorse one's good conduct; but when things go wrong, it always speaks; whether you listen or not. It is a gentle and sweet reminder for rectitude. That is the function of conscience. When things go wrong constitutionally, unless the conscience speaks, it is not good conscience; it will be accused of as numb conscience."

16. It is urged on behalf of the respondents that the Court should decline to interpret the constitutional provisions in a manner which would attribute to the founding fathers an intention to permit persons who have committed grave criminal offences involving moral turpitude to head the Government at the Centre or in the States or at grass root level. Such an interpretation would strike at the roots of democracy and the rule of law and should be eschewed. The Apex Court in Manoj Narula (Supra) observed about good governance as follows:-

"140. Good governance is only in the hands of good men. No doubt, what is good or bad is not for the court to decide: but the court can always indicate the constitutional ethos on goodness, good governance and purity in administration and remind the constitutional functionaries to preserve, protect and promote the same. Those ethos are the unwritten words in our Constitution. However, as the Constitution makers stated, there is a presumption that the Prime Minister/Chief Minister would be well advised and guided by such unwritten yet constitutional principles as well. According to Dr. B.R. Ambedkar, as specifically referred to by my learned brother at paragraph-70 of the leading judgment, such things were only to be left to the good sense of the Prime Minister, and for that matter, the Chief Minister of State, since it was expected that the two great constitutional functionaries would not dare to do any infamous thing by inducting an otherwise unfit person to the Council of Ministers. It appears, over a period of time, at least in some cases, it was only a story of great expectations. Some of the instances pointed out in the writ petition indicate that Dr. Ambedkar and other great visionaries in the Constituent Assembly have been bailed out. Qualification has

been wrongly understood as the mere absence of prescribed disqualification. Hence, it has become the bounden duty of the court to remind the Prime Minister and the Chief Minister of the State of their duty to act in accordance with the constitutional aspirations. To quote Dr. Ambedkar:

However, good a Constitution may be, it is sure to turn out bad because those who are called to work it happen to be a bad lot. However, bad a Constitution may be, it may turn out to be good if those who are called to work it happen to be a good lot. The working of a Constitution does not depend wholly upon the nature of the Constitution.

141. Fortunately for us, our Constitution has stood the test of time and is acclaimed to be one of the best in the world. Problem has been with the other part, though sporadically. Kautilya, one of the great Indian exponents of art of government, has dealt with qualification of king and his councillors at Chapter IX in Arthashastra, said to be compiled between BC 321- 296. To quote relevant portion:

#### Chapter IX

The Creation of Councillors And Priests Native, born of high family, influential, well trained in arts, possessed of foresight, wise, of strong memory, bold, eloquent, skillful, intelligent, possessed of enthusiasm, dignity and endurance, pure in character, affable, firm in loyal devotion, endowed with excellent conduct, strength, health and bravery, free from procrastination and fickle mindedness, affectionate, , and free from such qualities as excite hatred and enmity these are the qualifications of a ministerial officer.

The attempt made by this Court in the above background history of our country and Constitution is only to plug some of the bleeding points in the working of our Constitution so that the high constitutional functionaries may work it well and not wreck it. Beauty of democracy depends on the proper exercise of duty by those who work it.

17. In *Gadakh Yashwantrao Kankarrao v. E.V. alias Balasaheb Vikhe Patil and Ors.* AIR 1994 SC 678, the Supreme Court observed that the best available men should be chosen as people's representatives for proper governance of the country. It was held by the Supreme Court that the real education of the electorate contemplates informing them of the past achievements and future plans of the political parties and their candidates' qualifications. To quote the relevant extract (at p. 691 and 692 of AIR) :-

".....For democracy to survive, rule of law must prevail, and it is necessary that the best available men should be chosen as people's representatives for proper governance of the country. This can be best achieved through men of high moral and ethical values who win the elections on a positive vote obtained on their own merit and not by the negative vote of process of elimination based on comparative demerits of the candidates. It is also necessary that the impact of money power which has eliminated from electoral contest many men of

undoubted ability and credibility for want of requisite financial support should be able to re-enter the field to make the people's choice meaningful. This can be achieved only if elections are contested on a positive vote and the comparison is between the merits and abilities of the contestant without the influence of power and pelf and not between their comparative demerits and the support of money power. Apart from the other adverse consequences, the growing influence of money power has also the effect of promoting criminalization of politics.

18. In *Association for Democratic Reforms v. Union of India (UOI) and Ors.* the Supreme Court observed that for making a right choice of the candidate it is essential that the past of the candidate should not be kept in dark as it is not in the interest of the democracy and well being of the country. The antecedents of a person standing for election must be placed under public gaze and that is possible only when all wraps covering information about him are cast away. For the survival of democracy it is essential that the voter casts an educated vote based upon his knowledge derived from information supplied to him about the candidates.

19. It would be pertinent to point out that the Gram Panchayat is a democratic body at the village level and is endowed with powers by the Constitution to function as "institutions of Self Government". Similarly, in 3-tier Panchayat Level System, the next tier is that of the Kshetra Panchayat headed by the Block Pramukh and at the District Level is the Zila Panchayat headed by the Adhyaksh. It is incumbent upon this Court to see that respect for the Constitution, democracy and the Rule of Law is maintained. Under Article 226 of the Constitution, the High Court is required to act as a sentinel on the qui vive to guard against the violations of the fundamental rights of the citizens. It is the obligation of this Court to enforce their fundamental rights.

20. It would be appropriate to examine another line of decisions where such issues had been raised before this Court in the case of *Raghu Raj Pratap Singh alias Raja Bhaiya v. State of U.P. And others* [2003 (3) AWC 2106]. The petitioner therein was under judicial custody under the Prevention of Terrorism Act, 2002 and other criminal cases including under the Gangster and Anti-Social Activities (Prevention) Act. The prayer made by the petitioner was that he should have been permitted to participate in the session of the State Legislative Assembly as he had already been elected as the Member of the Legislative Assembly and during the session, he should also be transferred to Lucknow Jail, the capital city of the State. The Court went on to discuss the entire law of the Representation of the People Act and the constitutional provisions as well as other statutory laws and after a consideration of various judgments of the Supreme Court and other Courts, came to the conclusion as follows:-

"32. We are of the view that the arguments advanced in this connection are not well placed. Unless the two Legislators convince us that they have any enforceable right to participate in the session of the House even they are lawfully detained under orders of the Courts. The rights and obligation are being referred

to by the learned counsel for the petitioners are the rights and privileges inside the House and if they are detained by a valid order, it is implied that they cannot enjoy those privileges and rights so long as they are under detention.

35. We are of the view that so long as the two Legislators are detained under valid detention order, they have no right or privilege to participate in the session of the House. We do not agree with Dr. Mishra on the point that this Court is bound to permit any such Legislator to participate in the session. Power under Article 226 of the Constitution is discretionary one and no one can say that this Court will have no option but to act in a particular manner.

36. Arguments of the learned counsel for the petitioners that if a detained person can contest election, can cast vote and if elected can take oath, then why the detained Legislator cannot participate in the session of the House does not appeal to us because the logic does not work in every case. Right to vote, right to contest election of the Assembly or Parliament or right to take oath as Legislator or a Parliamentarian, are different rights. Right to vote and right to contest elections are the statutory rights and are governed by the statutes. There may be provision where person in jail may file nomination without being present before the authority concerned and there may be provision where a person can cast his vote in the manner given in the law and rules. Therefore, those are not the arguments, which help the two Legislators or Vimla Devi and others to say that these two detained Legislators should be permitted to participate in the House."

21. The writ petition was ultimately dismissed with the aforesaid observations holding that the right of participation not being an enforceable right during a valid judicial custody, the prayer made by the petitioner cannot be grant.

22. In the instant case also, the petitioner is seeking a similar right which for the above mention reasons and the ratio of decisions here-in-above and here-in-after cannot be extended.

23. A very illustrative judgment of a Division Bench of the Patna High Court also deals with the issue of criminalisation in politics in the case of Jan Chaukidar (Peoples Watch) v. Union of India and others [2004 (2) BLJR 988]. Paragraph ? 5 of the said judgment posed the following question:-

"5. These two cases concern (a) criminals in politics, and the question; (b) if the candidate is imprisoned and has no vote, may he stand for election?"

24. The Court then went on to discuss the provisions of Section 62 (5) of the Representation of the People Act and then posed another question in paragraph ? 9 as follows:-

"9. The further question arising in this case is "though the man behind bars may not vote, may he stand for election? What is wrong with prisoners conducting their election campaigns while in custody?"

25. The Court then went on to quote the Constitution Bench judgment in the case of N.P. Ponnuswami v. Returning Officer [AIR 1952 SC 64 and extracted the following lines:-

"The right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it."

26. The aforesaid judgment vis-a-vis disqualification and the inherent right of a voter was under consideration. The Court posed the following question in paragraph ? 15:-

"15. This Court is dealing with the aspect of crime. The expression "crime" as it occurs in the Constitution in reference to elections is not an empty word nor a platitude. The expression is short, and used without elaboration, but it has been used by the founding fathers with much meaning. Crime may mean conviction, and yet it may also be understood as criminality. The Constitution does not spell out the details and expects the Law to provide for it. Has the Law provided for it is the issue before the Court."

27. While making observations, the Court went on to consider the Supreme Court decisions and proceeded to rule on the expression "crime". When crime is a stigma that can attract disqualification, for how long or how short a period, that may be permitted under the law. The Court however held as follows in paragraph ? 20:-

"... Elections are controlled by the law of the Legislature, the Constitution of India does not provide all the rules of the game. But the rules of the game have to be as strict as those of any game which kicks up a hysteria. It's like a leg before wicket ruling, where you're neither bowled out nor caught out. Cover a wicket and get a ball on your leg pads and you're out. It's not fair to cover a wicket. Why is this rule of the game so strict? A fair opportunity must exist to get the player out if he presents an occasion. It's a foul to cover a wicket. Criminality is also a foul in elections. It is not a qualification. It is certainly a disqualification."

28. In paragraph ? 22 of the judgment, the Court while considering the impact of Sub-section (5) of Section 62 of the Representation of the People Act held as under:-

"22. The debate before the Court is particularly on Sub-section (5) of Section 62. To understand its true import one needs to understand that this right conferred, whether on a voter or on a candidate who has to be a voter, recognises the qualification as a generality of all who come within the arena of elections. Suffice it to say that it is not any body's case that a person who will stand for election, call him a candidate or an "election" will not have the inherent qualification, call it generic or otherwise, of being a voter first. But Sub-section (5) is about those accused of crime, imprisoned, under trials, convicts or transportation or

otherwise, or in the lawful custody of police. This section is like an anaesthesia given to a certain category of those who wish to participate in an election, to keep them out of the election arena for as long as it has its effect. The anaesthesia in election law is known as being disenfranchised, legally deprived of the right to vote."

29. Not only this, in paragraph ? 27, the Court went on to hold that an elector is a person legally entitled to vote, but if he is in prison then he is debarred from voting. Thus, an under trial under legal detention is not entitled to vote at that point of time and consequently, a prisoner is not an elector and cannot stand for office.

30. In paragraph ? 33, the Court explained that the law temporarily takes away the power of any such person to go anywhere near the election scene and the privilege to vote is taken away when in lawful custody.

31. The necessity to mention the aforesaid judgment has arisen because the aforesaid judgment went up before the Apex Court on a challenge raised by the Chief Election Commissioner. The said decision is reported in 2013 (7) SCC 507, Chief Election Commissioner and others v. Jan Chaukidar (Peoples Watch) and others.

32. Approving the judgment of the High Court, Civil Appeals were dismissed by a speaking judgment. The judgment, therefore, became a cause of concern and the Parliament immediately swung into action to overcome the said decision by enacting the Representation of the People (Amendment and Validation) Act, 2013. An amendment was brought about in Section 62 of the principal Act in Sub-section (5) and a validating clause, which are as follows:-

"3. In section 62 of the principal Act, after the proviso to sub-section (5), the following proviso shall be inserted namely:-

"Provided further that by reason of the prohibition to vote under this sub-section, a person whose name has been entered in the electoral roll shall not cease to be an elector."

4. Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, the provisions of the Representation of the People Act, 1951, as amended by this Court, shall have and shall be deemed always to have effect for all purposes as if the provisions of this Act had been in force at all material times."

33. It can thus be seen that in spite of judicial pronouncements, the Parliament did make such provisions so as to dilute the cause that had been taken up by the Courts.

34. There is yet another judgment of our Court by a Division Bench in the case of Shekhar Tiwari v. State of U.P. And others [2009 (4) AWC 3181] where also a Member of the Legislative Assembly was detained, facing criminal charges

including that of murder. A mandamus was prayed by him to participate in the Assembly proceedings which was clearly denied by concluding as follows:-

"29. The judgments in the cases of Pillalamarri Venkateswarlu and Ansumali Majumdar (supra) lays down a similar proposition and fully supports the view that a M.L.A. Detained in a prison has no right or privilege to claim participation in the proceedings of the assembly. The submission of the counsel for the petitioner that in case the petitioner is not permitted to participate in the proceedings of the assembly then his constituency shall remain unrepresented also has no substance.

30. Non-participation in the proceedings of the assembly by the petitioner is a natural consequence of his detention in prison on criminal charges. Right of participation in the proceedings of the assembly by a member and the privileges in the assembly given to members are rights and privileges of those members who are participating in the proceedings. When the petitioner is detained in prison by lawful order, he cannot claim a writ of mandamus permitting him to participate in the proceedings of the Assembly. The judgment of the Apex Court in Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav and another, 2005 (3) SCC 311: 2005 (1) ACR 1002 (SC), also deserves to be noted in which case the petitioner was detained in Tihar Jail an elected M.P. was permitted by the Apex Court to take oath in the House as a Member of Parliament. The said case was with a different prayer and has no bearing on the right of a M.L.A. or M.P. to participate in the proceedings of the Parliament or Assembly. The Apex Court in the said judgment in the facts of that case permitted the petitioner to take oath and it does not help the petitioner in the present case.

31. In view of the foregoing discussions, the petitioner is not entitled for the relief claim in the writ petition. The writ petition is dismissed."

35. The sum and substance of all these judgments has its genesis in the pronouncement of the Apex Court as early as in the case of K. Ananda Nambiar v. Chief Secretary to the Government of Madras [AIR 1966 SC page 657] which also approved of the earlier judgments of the Madras High Court in the case of Venkateswarlu v. District Magistrate, Guntur [AIR 1951 Madras 269] in re: Ananda Nambiar [AIR 1952 Madras 117].

36. On a consideration of the entire law on this subject, we find substantial legal support for our conclusions from the ratio of the decisions referred to here-in-above. Even assuming for the sake of arguments that an under trial had a right to contest elections or vote would not necessarily lead to the conclusion that he can be permitted to participate in the proceedings of the local body to which he is elected as a matter of right during valid judicial custody. This interpretation can be supported by the doctrine of legitimate deduction as explained in the case of Manoj Narula (supra). We therefore do not find the petitioner to be entitled to enforce such a right through the discretionary jurisdiction of this Court under Article 226 of the Constitution of India.

37. In this view of the matter, where the question is of enforcing the fundamental rights guaranteed to the citizens vis-a-vis the claim of the petitioner, the Block Pramukh, who is an under trial prisoner facing trial of heinous crime of murder, we are of the considered opinion that no mandamus can be grant to the petitioner as prayed for to perform his duties as Block Pramukh particularly when he is detained in prison under a valid judicial process and the Act 1961 contains a specific provision under Section 9A for making an alternative arrangement under such circumstances.

38. The appropriate course in case of the petitioner, the under trail prisoner for offences u/s147/148/149/302 r/w 34 IPC, is to seek a direction for the Sessions Court concerned that the case be fast tracked. The petitioner being an under trial prisoner cannot be permitted by the court to participate in the deliberations of the meetings of Kshettra Panchayat in the background of what has been observed above. On being tried, if the petitioner is convicted, he becomes disqualified for continuing as a Block Pramukh u/s 13 of Act 1961. If, he is acquitted, he is entitled to continue as Block Pramukh. Though this may sound cumbersome, that apparently is what the Constitution and the Statute intends.

39. In view of these circumstances, we do not find this case to be a case for exercise of discretionary jurisdiction as no prejudice would be caused either to the functioning of the Kshetra Panchayat nor it would impede the same any way. In the result, for the foregoing reasons all the contentions urged by the petitioner in support of his claim fail.

40. The writ petition is accordingly dismissed.