

(2011) 08 DEL CK 0442
In the Delhi High Court
Case No : LPA 707 of 2011

Suresh Kalmadi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 30-08-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 135(A)
Constitution of India, 1950 — Article 105, 118, 121, 14, 19(1)
Criminal Procedure Code, 1973 (CrPC) — Section 439
Penal Code, 1860 (IPC) — Section 120(B), 420, 467, 468, 471
Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

Citation : (2012) 1 RCR(Criminal) 543

Hon'ble Judges : Dipak Misra, C.J.;Sanjiv Khanna, J

Bench : Division Bench

Advocate : Ashok Desai, Mitesh Jain, Siddharth Aggarwal, Diya Kapur and Shyel Trehan, for the Appellant; A.S. Chandhiok, ASG, Maneesha Dhir, Mithu Jain, Preeti Dalal, Bhagat Singh, Vidit Gupta and Yashwardhan Tiwari for UOI, N. Waziri and Shoaib Haider for GNCTD, Dayan Krishnan and Gautam Narayan for CBI, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, C.J.—In the present intra-Court appeal, the Appellant has called in question the legal pregnability of the order dated 5th August, 2011 passed by the learned single Judge in WP(C) No. 5367/2011.

2. The facts which are necessitous to be exposted for the purpose of adjudication of the appeal are that the Appellant, a Member of the Parliament for last seven terms covering a span of 28 years, has been booked in RC No. DAI-2010-A-0044 registered by the CBI/ACB/New Delhi on 29th November, 2010 for offences punishable under Sections 420/467/468/471 read with Section 120B of the Indian Penal Code (for short, "Indian Penal Code") and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (for short, "the PC Act"). The Appellant after being taken into custody moved an application u/s

439 of the Code of Criminal Procedure and the learned Special Judge rejected the application for bail after referring to the material brought on record. We think it appropriate to reproduce the ultimate conclusion arrived at by the learned Special Judge, CBI, ACB, New Delhi. It reads as follows:

On the basis of the aforesaid discussion and in view of the applicant being an influential person who was exercising full control over the Organizing Committee as its Chairman and most of the witnesses are his appointees/employees of the Organizing Committee, vendors or employees of the vendors who were given contracts for various works by the applicant or other persons close to him; gravity of offence being of very serious nature for causing loss to Government of India and unlawful gain to a private vendor to the tune of more than Rs. 95 Crores and the nature and character of evidence collected by CBI, I am of the view that accused is not entitled to bail at this stage and his bail application is dismissed.

3. Thereafter, the Appellant has not approached any superior forum for enlargement on bail.

4. When the matter stood thus, the Appellant invoked the jurisdiction of this Court under Article 226 of the Constitution of India for issue of a direction for permission to attend the Parliament as the President of India has summoned the Parliament to session on 14th July, 2011 and he has been issued the intimation to attend the 8th session of the 15th Lok Sabha commencing 1st August, 2011. In the said communication, it was stated that as he is in prison, he can seek permission from the competent court of law and attend the parliamentary session.

5. Before the writ court, it was asserted that the Appellant-Petitioner has a constitutional right to participate in the parliamentary proceedings and right to vote as an elective representative; that the parliamentary democracy is the basic feature of the Constitution of India and to sustain the same in proper perspective, the participation of the Appellant in the Parliament and, if necessary, to cast his vote was imperative; that the Pune constituency of which he is the elected representative would go without a voice unless he is permitted to represent the cause of the constituency in the Parliament in case there is necessity to do so; that the Appellant has the constitutional obligation and duty to attend the sittings in the Parliament and if the permission is not granted, the privilege conferred on a Member of Parliament under Article 105 of the Constitution would be defeated; that though a Member of Parliament can be arrested and taken into custody for criminal offences, yet he has been exempted from arrest u/s 135A of CPC and the same would go a long way to show how the Legislature has granted certain privileges to Parliamentarians; that in case the Appellant is not allowed to attend the parliamentary session, there is a possibility of forfeiture of his membership of the Lok Sabha; and that in fitness of things, it is requisite that the Appellant should be extended the benefit subject to imposition of certain reasonable conditions.

6. The writ petition filed by the Appellant-Petitioner was combated by the Union of India as well as the Central Bureau of Investigation contending, inter alia, that when the Petitioner has been arrayed as an accused in a case having tremendous gravity, it would not be appropriate to grant him permission to attend the parliamentary session; that the writ Petitioner has No. indefeasible right to attend the Parliament; that though democracy is the basic feature of the Constitution of India, yet it is nowhere envisaged that a Member of Parliament who is facing a trial for grave offences pertaining to corruption can be allowed or granted permission to attend the parliamentary session; that the Petitioner, before his incarceration, had not been attending the Parliament in a regular manner and, therefore, the plea advanced for grant of permission is not bona fide. Be it noted, the CBI, while resisting the prayer, submitted that if the Court thinks it appropriate to pass an order granting permission under Article 226 of the Constitution, the same has to be with certain riders and the said conditions were mentioned in the counter affidavit.

7. The learned Single Judge appreciated the factual matrix in entirety, referred to certain decisions in the field, adverted to the basic concept of democracy and eventually came to hold that the Petitioner had No. right in law to attend the Parliament and further there was No. justification to grant him the permission.

8. Mr. Ashok Desai, learned senior counsel appearing for the Appellant, assailing the order passed by the learned Single Judge, has raised the following contentions:

(a) The learned Single Judge has fallen into grave error by expressing the opinion that the Appellant had No. indefeasible right to attend the parliamentary session whereas the case at its fundamental base was pyramided on the foundation that he had a constitutional obligation to attend the parliamentary proceedings.

(b) If the anatomy of Article 105 of the Constitution of India is scanned in proper perspective, it would be clear as day that certain privileges are conferred on a Member of Parliament and the said privileges have sacrosanct nexus and insegregable connection with the obligation cast on a member but the learned Single Judge has failed to appreciate the same as a consequence of which the denial of permission has ensued.

(c) A Member of Parliament does not stand on a higher pedestal than a citizen of the country but because of the constitutional framework, he has a constitutional obligation imposed on him and if he is not allowed to participate, that will tantamount to travesty of justice.

(d) Under the constitutional scheme, the parliamentary democracy is the basic feature and if for some reason barring disqualification a Member of Parliament is disentitled from participating in the Parliament, the same affects the representation of the whole constituency which is not conceivable.

(e) The Appellant is an accused and an accused stands on a different footing than a convict and, therefore, the conception of disqualification under the Constitution is not attracted and, hence, the permission can be sought from the Court to attend the session remaining within the boundaries of law. That apart, the Central Bureau of Investigation had accepted the prayer for grant of permission on certain conditions and, therefore, the learned Single Judge should have been well advised to grant permission.

9. Mr. A.S. Chandhiok, learned Additional Solicitor General, on the contrary, has propounded the following submissions:

(i) The Appellant does not have an existing right to claim participation in the parliamentary session and in the absence of such a right, No. writ of mandamus can be issued.

(ii) The privilege that has been claimed by the Appellant is restricted inside the Parliament and the privilege that has been conceived of by the founding fathers of the Constitution is only to confer the privilege and immunity in respect of speeches and other aspects that have been restricted to conduct/speeches/statements inside the House but that, in No. way, creates a right in favour of the Appellant to claim participation on a nebulous foundation that unless he attends the parliamentary session, his constituency shall go unrepresented.

(iii) The theory of constitutional obligation which has been edified by the Appellant has No. legs to stand upon inasmuch as a right and an obligation are correlated and once the Appellant does not possess the right, he cannot build up a structure exclusively on the ground that he has an obligation.

10. Mr. Dayan Krishnan, learned Counsel appearing for the Central Bureau of Investigation, submitted that the submission of the Appellant is misconceived since at No. point of time, the CBI had accepted that the Appellant can be permitted to attend the parliamentary sessions subject to certain conditions, which was only a part of the counter affidavit as an alternative facet. The learned Counsel would further submit that the assertions and asseverations made in the writ petition were categorically rebutted by the CBI and, therefore, No. advantage can be taken from the alternative assertions incorporated therein.

11. At the very outset, we may state with profit that the learned Counsel for the parties have referred to various Articles of the Constitution of India and certain decisions in the field and we shall dwell upon the same in the course of our decision. The basic infrastructure that has been built by Mr. Desai, learned senior counsel, is rested on the base of Article 105 of the Constitution. The said Article occurs in Chapter II dealing with Parliament. It reads as under:

105. Powers, privileges, etc., of the Houses of Parliament and of the members and committees thereof.?

(1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech

in Parliament.

(2) No. member of Parliament shall be liable to any proceedings in any court in respect of any thing said or any vote given by him in Parliament or any committee thereof, and No. person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, [shall be those of that House and of its members and committees immediately before the coming into force of Section 15 of the Constitution (Forty-fourth Amendment) Act, 1978].

(4) The provisions of Clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to members of Parliament.

Be it noted, under the heading of the Article, it is mentioned Powers, Privileges and Immunities of Parliament and its Members.

12. In *M.S.M. Sharma Vs. Sri Krishna Sinha and Others*, , the Apex Court referred to Article 194 of the Constitution which deals with powers, privileges, etc. of the House of Legislatures and of the members and committees thereof. It is worth noting that Article 194 deals with the freedom of speech and other aspects as far as a member of the Legislative Assembly is concerned. While dealing with Article 194, their Lordships have opined thus:

25. Article 194 has already been quoted in extenso. It is quite clear that the subject-matter of each of its four clauses is different. Clause (1) confers on the members freedom of speech in the Legislature, subject, of course, to certain provisions therein referred to. Clause (2) gives immunity to the members or any person authorised by the House to publish any report etc. from legal proceedings. Clause (3) confers certain powers, privileges and immunities on the House of the Legislature of a State and on the members and the committees thereof and finally Clause (4) extends the provisions of Clauses (1) to (3) to persons who are not members of the House, but who, by virtue of the Constitution, have the right to speak and otherwise to take part in the proceedings of the House or any committee thereof. In the second place, the fact that Clause (1) has been expressly made subject to the provisions of the Constitution but Clauses (2) to (4) have not been stated to be so subject indicates that the Constitution-makers did not intend Clauses (2) to (4) to be subject to the provisions of the Constitution. If the Constitution-makers wanted that the provisions of all the clauses should be subject to the provisions of the Constitution, then the Article would have been drafted in a different way, namely, it would have started with the words: "Subject to the provisions of this

Constitution and the rules and standing orders regulating the procedure of the legislature -" and then the subject-matter of the four clauses would have been set out as Sub-clauses (i), (ii), (iii) and (iv) so as to indicate that the overriding provisions of the opening words qualified each of the sub-clauses. In the third place, it may well be argued that the words "regulating the procedure of the Legislature" occurring in Clause (1) of Article 194 should be read as governing both "the provisions of the Constitution" and "the rules and standing orders". So read freedom of speech in the Legislature becomes subject to the provisions of the Constitution regulating the procedure of the Legislature, that is to say, subject to the Articles relating to procedure in Part VI including Articles 208 and 211, just as freedom of speech in Parliament under Article 105(1), on a similar construction, will become subject to the Articles relating to procedure in Part V including Articles 118 and 121. The argument that the whole of Article 194 is subject to Article 19(1)(a) overlooks the provisions of Clause (2) of Article 194. The right conferred on a citizen under Article 19(1)(a) can be restricted by law which falls within Clause (2) of that Article and he may be made liable in a court of law for breach of such law, but Clause (2) of Article 194 categorically lays down that No. member of the Legislature is to be made liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or in committees thereof and that No. person will be liable in respect of the publication by or under the authority of the House of such a Legislature of any report, paper or proceedings. The provisions of Clause (2) of Article 194, therefore, indicate that the freedom of speech referred to in Clause (1) is different from the freedom of speech and expression guaranteed under Article 19(1)(a) and cannot be cut down in any way by any law contemplated by Clause (2) of Article 19.

On a perusal of the aforesaid decision, it is clear as crystal that the freedom of speech mentioned in the said Article is different from the freedom of speech and expression guaranteed under Article 19(1)(a) and cannot be cut down in any way by any law contemplated by Clause (2) of Article 19.

13. The learned senior counsel has commended us to the decision in *Sakal Papers (P) Ltd. and Others Vs. The Union of India (UOI)*, wherein it has been opined that the Constitution must be interpreted in a broad way and not in a narrow and pedantic sense. He has drawn inspiration from paragraphs 29 and 39 of the aforesaid decision. They read as follows:

29. It must be borne in mind that the Constitution must be interpreted in a broad way and not in a narrow and pedantic sense. Certain rights have been enshrined in our Constitution as fundamental and, therefore, while considering the nature and content of those rights the Court must not be too astute to interpret the language of the Constitution in so literal a sense as to whittle them down. On the other hand the Court must interpret the Constitution in a manner which would enable the citizen to enjoy the rights guaranteed by it in the fullest measure subject, of course, to permissible restrictions. Bearing this principle in mind it

would be clear that the right to freedom of speech and expression carries with it the right to publish and circulate one's ideas, opinions and views with complete freedom and by resorting to any available means of publication, subject again to such restrictions as could be legitimately imposed under Clause (2) of Article 19. The first decision of this Court in which this was recognized is *Romesh Thappar Vs. The State of Madras*, There, this Court held that freedom of speech and expression includes freedom of propagation of ideas and that this freedom is ensured by the freedom of circulation. In that case this Court has also pointed out that freedom of speech and expression are the foundation of all democratic organisations and are essential for the proper functioning of the processes of democracy. There and in other cases this Court pointed out that very narrow and stringent limits have been set to permissible legislative abridgment of the right of freedom of speech and expression. In *State of Madras Vs. V.G. Row*, the question of the reasonableness of restrictions which could be imposed upon a fundamental right has been considered. This Court has pointed out that the nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and scope of the evil sought to be remedied thereby, the disproportion of the imposition and the prevailing conditions at that time should all enter into the judicial verdict. In *Dwarkadas Shrinivas of Bombay Vs. The Sholapur Spinning and Weaving Co. Ltd. and Others*, this Court has pointed out that in construing the Constitution it is the substance and the practical result of the act of the State that should be considered rather than its purely legal aspect. The correct approach in such cases should be to enquire as to what in substance is the loss or injury caused to the citizen and not merely what manner and method has been adopted by the State in placing the restriction. In *Virendra Vs. The State of Punjab and Another*, this Court has observed at p. 319 (of SCR): (at p.900 of AIR), as follows:

It is certainly a serious encroachment on the valuable and cherished right of freedom of speech and expression if a newspaper is prevented from publishing its own or the views of its correspondents relating to or concerning what may be the burning topic of the day.

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39. The only question that would then remain would be whether the impugned enactment directly impinges on the guarantee of freedom of speech and expression. It would directly impinge on this freedom either by placing restraint upon it or by placing restraint upon something which is an essential part of that freedom. The freedom of a newspaper to publish any number of pages or to circulate it to any number of persons is each an integral part of the freedom of speech and expression. A restraint placed upon either of them would be a direct infringement of the right of freedom of speech and expression. Perhaps an illustration would make the point clear. Let us suppose that the enactment had said that newspaper "A" or newspaper "B" (ignoring for the moment the objection to the illustration based upon Article 14 shall not have more than a

specified number of subscribers. Could such a law be valid in the face of the guarantee under Article 19(1)(a) - The answer must unhesitatingly be no, because such a law would be recognized as directly impinging upon the freedom of expression which encompasses freedom of circulation and to restrain the citizen from propagating his views to any other beyond the limit or number prescribed by the statute. If this were so, the fact that the legislation achieves the same result by means of the schedule of rates makes no difference and the impact on the freedom would still be direct notwithstanding that it does not appear so on its face.

14. On a perusal of the aforesaid decision, it is perceivable that the same related to the concept of freedom under Article 19(1)(a) of the Constitution of India. The learned senior counsel would submit that the concept of freedom engrafted therein has been given a broader interpretation and the action of the Government to make an indirect endeavor to curb the same was not appreciated on the ground that the said expression of freedom cannot be whittled down.

15. In the matter of: Under Article 143 of the Constitution of India, a question arose regarding the powers, privileges and immunity of the State Legislature and its members. Emphasis was laid on the concept of freedom of speech in the legislative assembly. Their Lordships, interpreting Article 194(1), ruled that had the legislators been entitled only to freedom of speech and expression as enshrined under Article 19(1)(a), conferment of the same right in the manner adopted by Article 194(1) would have been unnecessary and, therefore, concluded that Article 19(1)(a) was not one of the provisions of the Constitution which controlled the first part of Clause (1) of Article 194. It was further held that it was due to the importance attached to the necessity of absolute freedom in debates within the legislative chambers by the Constitution-makers that they thought it necessary to confer complete immunity on the legislators from any action in any court in respect of their speech including votes in the legislative chambers in the wide terms prescribed by Clause (2). Thus, Clause (1) conferred freedom of speech on legislators within the legislative chamber and the same was made literally absolute and unfettered by virtue of Clause (2).

16. In *Tej Kiran Jain and Ors. v. N. Sanjiva Reddy and Ors.* (1970) 2 SCC 270, the Apex Court has laid down the following principles with regard to participation:

8. ...The article confers immunity inter alia in respect of "anything said...in Parliament". The word "anything" is of the widest import and is equivalent to "everything". The only limitation arises from the words "in Parliament" which means during the sitting of Parliament and in the course of the business of Parliament. We are concerned only with speeches in Lok Sabha. Once it was proved that Parliament was sitting and its business was being transacted, anything said during the course of that business was immune from proceedings in any Court. This immunity is not only complete but is as it should be. It is of the essence of parliamentary system of Government that people's

representatives should be free to express themselves without fear of legal consequences. What they say is only subject to the discipline of the rules of Parliament, the good sense of the members and the control of proceedings by the Speaker. The Courts have No. say in the matter and should really have none.

17. The learned senior counsel would further submit that the freedom of speech is absolute and unfettered and it is extremely necessary to have absolute freedom within the legislative chambers and that confers the complete immunity on a legislator. Pyramiding the said submission, it is canvassed by him that the attendance of an elected Parliamentarian becomes more significant as he would be in a position to participate in an extremely free atmosphere, express his views and render contribution.

18. While dealing with the concept of freedom of speech and participation, the learned senior counsel has further submitted that the same is an inseparable facet of the collective function of a parliamentary democracy or representative democracy which is the basic feature of the Constitution of India. To buttress the said stand, he has placed reliance on P.V. Narsimha Rao Vs. State (CBI/SPE), In the said case, the Apex Court referred to Clause 3 of Article 105 which has been amended by the Constitution (Forty-fourth Amendment) Act, 1978. Dealing with the intent and purpose of the aforesaid Article, their Lordships have stated thus:

27. Clause (1) secures freedom of speech in Parliament to its Members. The said freedom is "subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament.

The words "subject to the provisions of this Constitution" have been construed to mean subject to the provisions of the Constitution which regulate the procedure of Parliament, viz., Articles 118 and 121. (See: M.S.M. Sharma Vs. Sri Krishna Sinha and Others, and In the matter of: Under Article 143 of the Constitution of India, also known as the Legislative Privileges case (1965) 1 SCR 413 at p. 441. The freedom of speech that is available to Members of Parliament under Article 105(1) is wider in amplitude than the right to freedom of speech and expression guaranteed under Article 19(1)(a) since the freedom of speech under Article 105(1) is not subject to the limitations contained in Article 19(2).

28. Clause (2) confers immunity in relation to proceedings in courts. It can be divided into two parts. In the first part immunity from liability under any proceedings in any court is conferred on a Member of Parliament in respect of anything said or any vote given by him in Parliament or any committee thereof. In the second part such immunity is conferred on a person in respect of publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings. This immunity that has been conferred under Clause (2) in respect of anything said or any vote given by a Member in Parliament or any committee thereof and in respect of publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings, ensures that the freedom of speech that is granted under Clause (1) of Article 105 is

totally absolute and unfettered. (See: Legislative Privileges case pp. 441, 442.)

29. Having secured the freedom of speech in Parliament to the Members under Clauses (1) and (2), the Constitution, in Clause (3) of Article 105, deals with powers, privileges and immunities of the House of Parliament and of the Members and the committees thereof in other respects. The said clause is in two parts. The first part empowers Parliament to define, by law, the powers, privileges and immunities of each House of Parliament and of the Members and the committees of each House. In the second part, which was intended to be transitional in nature, it was provided that until they are so defined by law the said powers, privileges and immunities shall be those of the House of Commons in the United Kingdom and of its Members and committees at the commencement of the Constitution. This part of the provision was on the same lines as the provisions contained in Section 49 of the Australian Constitution and Section 18 of the Canadian Constitution. Clause (3), as substituted by the Forty-fourth Amendment of the Constitution, does not make any change in the content and it only seeks to omit future reference to the House of Commons of Parliament in the United Kingdom while preserving the position as it stood on the date of the coming into force of the said amendment.

30. Clause (4) of Article 105 makes the privileges and immunities secured under Clauses (1), (2) and (3) applicable to persons who by virtue of the Constitution have the right to speak in and otherwise to take part in the proceedings of a House of Parliament or any committee thereof as they apply in relation to Members of Parliament.

19. Mr. Desai has also drawn our attention to the decision in *Raja Ram Pal Vs. The Hon'ble Speaker, Lok Sabha and Others*, specifically paragraph 126, which, in essence, lays down that the amendment brought into force in 1979 does not turn the clock ahead. The powers and privileges available to the members of the Parliament before the amendment were the powers and privileges of the House of Commons of the Parliament of the United Kingdom as on the date of commencement of the Constitution of India and the same continues to be available post-amendment.

20. The said passage was emphasized upon to show the effect of the 44th amendment. Be it noted, in the said case, the Apex Court referred to the In the matter of: Under Article 143 of the Constitution of India, for the purpose of appreciating the concept of power, privilege and immunity. A reference was made to the *Parliamentary Privilege - First Report* by Lord Nicholas wherein it has been observed that the parliamentary privilege consists of the rights and immunities which the two Houses of Parliament and their Members and officers possess to enable them to carry out their parliamentary functions effectively. In the said decision, a passage from Sir Erskine May's *Parliamentary Practice*, 20th Edition, was quoted which we reproduce with profit:

472. The *raison d'être* for these privileges is again succinctly explained by Sir

Erskine May thus:

The distinctive mark of a privilege is its ancillary character. The privileges of Parliament are rights which are "absolutely necessary for the due execution of its powers". They are enjoyed by individual Members, because the House cannot perform its functions without unimpeded use of the services of its Members; and by each House for the protection of its Members and the vindication of its own authority and dignity.

Elected representatives, however, are not placed above the law by way of parliamentary privileges; they are simply granted certain advantages and basic exemptions from legal process in order that the House may function independently, efficiently and fearlessly. This is in the interest of the nation as a whole.

In paragraph 473, it has been stated as follows:

473. Elected representatives, however, are not placed above the law by way of parliamentary privileges; they are simply granted certain advantages and basic exemptions from legal process in order that the House may function independently, efficiently and fearlessly. This is in the interest of the nation as a whole.

21. Relying on *Kuldip Nayar Vs. Union of India (UOI) and Others*, the learned senior counsel emphasized that existence of political parties is the essential feature in a parliamentary democracy and the role of the parties cannot be marginalized. In paragraphs 451 and 452 of the said decision, it has been highlighted that it could be a matter of concern for the Parliament if it found that the electors were resorting to cross-voting and flouting party discipline, (which is) an essential feature of the purity of elections in case of indirect elections, in the name of secrecy of voting and therefore, the context in which general elections are held wherein secrecy of vote is necessary in order to exercise the right to vote in a free and fair manner and maintain purity of the electoral system cannot be equated with that of a voter who is elected on the ticket of a political party.

22. We will be failing in our duty if we do not take note that the learned senior counsel has commended us to the aforesaid decision only to highlight that in the constitutional framework and keeping in view the concept of parliamentary democracy which is the marrow of the Constitution, a Parliamentarian has a sacrosanct constitutional obligation and the same should not be marginalized. The learned senior counsel would further contend that the attendance for the purpose of oath, participating in a serious debate, canvassing the cause of the constituency in relevant matters and on certain occasions to give an input regard being had to one's experience cannot be ostracized and allowed to take a back seat. In this regard, he has drawn inspiration from the decision in *Rajesh Ranjan v. State of Bihar and Anr.*, (2000) 9 SCC 222 wherein the Apex Court granted permission to the Petitioner therein to attend the proceedings of the Parliament

on the date the oath was administered. Mr. Desai has also invited our attention to an order passed in *Rajesh Ranjan @ Pappu Yadav v. Union of India and Anr.*, WP(C) No. 854/2009 wherein the learned Single Judge of this Court had permitted a Member to attend the parliamentary session from 12.2.2009 to 26.2.2009. It is also contended by him that the High Court of Jharkhand has allowed Madhu Koda, another Member of Parliament, to attend the Parliament. The submission of Mr. Desai is that constitutional responsibility cast on a Parliamentarian should be respected and he should be allowed to fulfill his obligations and his right should not be destroyed or defeated as the Petitioner is only an accused who is deemed to be innocent.

23. In this regard, we may profitably refer to a Division Bench decision of the High Court of Madras in *The State of Tamil Nadu v. VAIKO*, rendered in Writ Appeal No. 4065/2003, decided on 15.12.2003 wherein the Division Bench was considering a question whether during the pendency of trial for which a charge-sheet had been filed and in the absence of an order directing the Respondent to be released on bail, he should be specifically allowed to participate in the deliberations and discussions of the Parliament and to cast his vote on the bill on the ground that the said bill was of extreme importance to the Respondent in his own personal matter. Answering in the negative, the Division Bench came to hold that merely because the Respondent himself was an aggrieved person, that by itself would not create a right in him to attend the parliamentary proceedings and to cast his vote, in absence of any express provision.

24. ...It is worth noting that Mr. Chandiok, while relying on the said decision, submitted that a person in custody has No. legal right to seek permission to attend the parliamentary session. From the ratio of the said decision, it is clear that the Court declined to exercise the discretionary power under Article 226 of the Constitution. However, the Division Bench also opined that there is No. right to extend such benefit. In *Raghu Raj Pratap Singh alias Raja Bhaiya v. State of UP and Ors.*, Writ Petition No. 1107(MB) of 2003 decided on 13.3.2003, a Division Bench of the High Court of Allahabad (Lucknow Bench) declined the permission by stating that the rights and obligations under Article 194 being referred to by the learned Counsel for the Petitioners were the rights and privileges inside the House and, if they were detained by a valid order, it was implied that they cannot enjoy those privileges and rights so long as they were under detention. It was further held that the right to vote, right to contest election of the Assembly or Parliament or right to take oath as a Legislator or a Parliamentarian were different rights and do not particularly help the case of the Petitioners.

25. The High Court of Jharkhand in *Kameshwar Baitha v. State of Jharkhand and Ors.*, Writ Petition (Criminal) No. 427/2009 decided on 4.12.2009, declined to grant permission to the Petitioner therein to attend the Parliament.

26. In this context, we may refer to the decision in *Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another*, wherein it has been clearly laid down that the

composition of Parliament is not affected by absence of a particular member. The majority has expressed the view that the validity of a proceeding before the Parliament does not get affected because of reason of non-attendance. In the said decision, it has been opined that power to summon the House is not affected solely because some members of either House or both Houses are not available because of conviction or detention.

27. At this juncture, we may fruitfully refer to Articles 101 and 102 of the Constitution that deal with disqualifications of members. Article 102 reads as follows:

102. Disqualifications for membership. - (1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament?

(a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State;

(e) if he is so disqualified by or under any law made by Parliament.

[Explanation. - For the purposes of this clause] a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister either for the Union or for such State.

[(2) A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule.]

28. The submission of Mr. Desai is that when the Appellant is an accused and the innocence of an accused is recognized in law, he is not debarred or disqualified to attend the Parliament. There is a subtle distinction between disqualifications for membership and grant of permission to attend the proceedings in a parliamentary session. Once a person is disqualified, he cannot participate or attend the parliamentary sessions. The Court at that juncture has No. discretion whatsoever. As has been evincible from the case of Rajesh Ranjan (*supra*), the Apex Court exercised the discretion and granted permission to take oath. Thus, the discretion is exercisable in certain circumstances to permit an accused to attend the parliamentary session but, a significant one, No. discretion is left when someone is convicted as he is disqualified.

29. Thus, the hub of the matter is whether this Court, in exercise of the power under Article 226 of the Constitution of India, should grant permission to the Appellant to attend the parliamentary session. The Appellant has been involved

in offences by which loss to the Government to the tune of Rs. 95 Crores is alleged to have been caused. His detention is in respect of the offences which are quite grave in nature. He has not been admitted to bail because of the nature of the offences. He does not have a right under the Constitution to claim that inspite of being in custody, he has to be allowed to attend the Parliament. In the case of K. Anandan Nambiar and Another Vs. Chief Secretary, Government of Madras and Others, , it has been clearly held that if the order of detention is validly passed and this prevents a member from attending a session of the Parliament, No. occasion arises for exercise of the right to freedom of speech and No. complaint can be made that the said right has been invalidly invaded. We must fairly state that Mr. Desai has not really founded his case on the basis of any constitutional or statutory right but on the basis of the conception that the participation becomes imperative as a constitutional obligation is cast regard being had to the spectrum of parliamentary democracy which is one of the basic features of the Constitution of India. As has been stated earlier, in the case at hand, the arrest and incarceration is valid in law and the Appellant has not been enlarged on bail. True it is, in the case of K. Ananda Nambiar (supra), the Apex Court was dealing with preventive detention but the present case relates to arrest and custody. When the Appellant's custody is valid and the allegations are of great magnitude, it would be totally inappropriate to exercise the discretion under Article 226 of the Constitution of India to grant him the permission to attend the parliamentary session solely on the foundation that he has the freedom of speech inside the Parliament or on the foundation that he enjoys exclusive privilege in the Parliament as its Member or on the substratum that he has to participate in the proceedings to meet the Constitutional obligation. In our considered opinion, though the submission as regards the constitutional obligation has been extremely adroitly edified, yet the same has to founder inasmuch as grant of permission in the present case to attend the parliamentary session would be an anathema to the exercise of power under judicial review that is inherent under Article 226 of the Constitution of India.

30. Before we part with the case, we may hasten to clarify that any observation made in this order is only in the context of refusal of permission. The observations made hereinabove shall have No. impact on any kind of adjudication by the criminal courts.

31. Ex consequenti, we do not perceive any merit in this appeal and, accordingly, the same stands dismissed without any order as to costs.