OUT TODAY

ITEM N0.1 COURT NO.4 SECTION X

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s)(Criminal) No(s). 164/2019

JAGISHA ARORA Petitioner(s)

VERSUS

THE STATE OF UTTAR PRADESH & ANR. Respondent(s)

([ TO BE TAKEN UP AT THE TOP OF THE LIST ]
IA NO. 88069/2019 - EXEMPTION FROM FILING O.T.
IA NO. 88068/2019 - GRANT OF INTERIM RELIEF)

Date : 11-06-2019 This petition was called on for hearing today.

CORAM :
HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE AJAY RASTOGI
(VACATION BENCH)

For Petitioner(s) Ms. Nitya Ramakrishnan, Adv.
Mr. Shadan Farasat, AOR
Ms. Shruti Narayan, Adv.

For Respondent(s) Mr. Vikramjit Banerjee, Sr. Adv
Ms. Swarupama Chaturvedi, Adv.
Ms. Aparna Trivedi, Adv.
Mr. Mukesh Kumar, Adv.

UPON hearing the counsel the Court made the following

O R D E R

In this Writ Petition under Article 32 of the Constitution of India, the petitioner has challenged the arrest and incarceration of her husband - Prashant Kanojia against whom proceedings have been initiated under Sections 500 and 505 of the Indian Penal Code read with Section 67 of the Information Techonlogy Act. We need not comment on the nature of the posts/tweets for which the action has been taken. The question is whether the petitioner's husband-Prashant Kanojia ought to have been deprived of his

liberty for the offence alleged. The answer to that question is prima facie in the negative.

The fundamental rights guaranteed under the Constitution of India and in particular Articles 19 and 21 of the Constitution of India are non-negotiable.

The learned Additional Solicitor General appearing on behalf of the State has opposed this allegation on various technical grounds including the ground that there is an order of remand passed by the jurisdictional Magistrate. It is also contended that the High Court should have first be approached.

Citing the judgment of this Court in the State of Maharashtra and others versus Tasneem Rizwan Siddiquee reported in 2018 (9) SCC 745, the learned Additional Solicitor General argued that the question of whether a writ of habeas corpus could be maintained in respect of a person who was in police custody pursuant to a remand order passed by the jurisdictional Magistrate in connection with the offence under investigation, had already been settled by this Court. This application, is, therefore not maintainable. It was argued that the order of remand ought to be challenged in accordance with the provisions of the Criminal Procedure Code. It was also argued that this Court does not ordinarily entertain writ petitions unless the High Court has first been approached.

As a matter of self imposed discipline and considering the pressure of mounting cases on this Court, it has become

the practice of this Court to ordinarily direct that the High Court first be approached even in cases of violation of fundamental rights. However, Article 32 which is itself a fundamental right cannot be rendered nugatory in a glaring case of deprivation of liberty as in the instant case, where the jurisdictional Magistrate has passed an order of remand till 22.06.2019 which means that the petitioner's husband- Prashant Kanojia would be in custody for about 13/14 days for putting up posts/tweets on the social media.

We are not inclined to sit back on technical grounds. In exercise of power under Article 142 of the Constitution of India this Court can mould the reliefs to do complete justice.

We direct that the petitioner's husband be immediately released on bail on conditions to the satisfaction of the jurisdictional Chief Judicial Magistrate. It is made clear that this Order is not to be construed as an approval of the posts/tweets in the social media. This order is passed in view of the excessiveness of the action taken.

Needless to mention that the proceedings will take their own course in accordance with law.

The writ petition is disposed of accordingly.

Pending application(s) also stand disposed of.

(GEETA AHUJA)
COURT MASTER (SH)

(ANITA RANI AHUJA)
COURT MASTER (NSH)