



2024 INSC 588

REPORTABLE

IN THE SUPREME COURT OF INDIA

INHERENT/CRIMINAL APPELLATE JURISDICTION

CONTEMPT PETITION(CIVIL) NO(S). OF 2024
(D. No. 1106 OF 2024)

IN

SPECIAL LEAVE PETITION(CRL.) NO(S). 14489 OF 2023

TUSHARBHAI RAJNIKANTBHAI SHAHPETITIONER(S)

VERSUS

KAMAL DAYANI & ORS.

**...RESPONDENT(S)/
ALLEGED CONTEMNOR(S)**

WITH

SPECIAL LEAVE PETITION(CRL.) NO(S). 14489 OF 2023

SPECIAL LEAVE PETITION(CRL.) NO(S). 537 OF 2024

SPECIAL LEAVE PETITION(CRL.) NO(S). 1116 OF 2024

J U D G M E N T

By the Court

Contempt Petition(Civil) No(s).of 2024(D.No. 1106 of 2024) in SLP(Crl.) No(s). 14489 of 2023

1. The instant petition under Section 12 of the Contempt of Courts Act, 1971 read with Article 129 of the Constitution of India has been filed by the petitioner alleging wilful disobedience by the respondents-contemnors of the order dated 8th December, 2023 passed by this Court in SLP(Crl.) No. 14489 of 2023.

Brief facts: -

2. The petitioner, along with other co-accused, was arraigned as an accused in FIR No. 11210068230266 dated 21st July, 2023 filed by the contemnor-respondent No. 6 herein(the complainant), with an allegation that the petitioner had received a sum of Rs.1.65 crores in cash from the complainant towards the sale of 15 shops but the possession thereof was not handed over to the complainant despite the assurance given by the accused at the time of entering into an oral agreement.

3. The petitioner, apprehending his arrest in connection with the said FIR, sought anticipatory bail from the Sessions Court, which was denied whereafter, an application for anticipatory bail was filed before the High Court, which also came to be rejected.

Being aggrieved, the petitioner approached this Court by filing SLP(Crl.) No. 14489 of 2023 seeking anticipatory bail.

4. This Court granted interim anticipatory bail to the petitioner *vide* order dated 8th December, 2023(hereinafter being referred to as ‘the order under contempt’), which is reproduced hereinbelow:-

- “1. Perusal of the impugned order would reveal that the High Court has not even considered the case on merits.
2. In that view of the matter, issue notice, returnable in four weeks.
3. In addition to the usual mode, liberty is granted to the petitioner to serve notice through the Standing Counsel for the respondent/State.
4. By way of ad interim order, in the event of arrest petitioner be released on bail in connection with FIR being No.11210068230266 dated 21.07.2023 registered with Vesu Police Station, Surat City, subject to him executing personal bonds for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only), with one or more sureties in the like amount.
5. However, the petitioner is directed to cooperate with the investigation and report to the Investigating Officer as and when directed to do so.”

5. The petitioner appeared at Vesu Police Station on 11th December, 2023 with a copy of the order under contempt dated 8th December, 2023 intending to join and cooperate with the investigation. Shri R.Y. Raval, Investigating Officer(contemnor-respondent No. 4) arrested the petitioner and thereafter, released him on bail upon execution of the requisite bail bonds in terms of order dated 8th December, 2023. On the very same day, the petitioner was served with a notice under Section 41A of the Code

of Criminal Procedure, 1973(hereinafter being referred to as 'CrPC') requiring him to remain present at the police station before the Investigating Officer for recording of further statement. When the petitioner appeared at the police station, another notice dated 12th December, 2023 was served upon him requiring him to remain present before the Court of concerned Additional Chief Judicial Magistrate for the purpose of seeking remand. The contents of the notice dated 12th December, 2023 are relevant and shall have a material bearing on the outcome of the instant contempt petition and hence, the same are reproduced below for the sake of ready reference: -

“

NOTICE

It is hereby given to you this notice in written form that, for the matter of offence committed u/s. 420, 120(b) of Indian Penal Code registered before Vesu Police Station vide Part-A-11210068230366/2023 Complainant Abhishek Vinodkumar Goswami aged: 28 years, occupation: Business Real Estate Residing at C/405, Surya Palace, Ct Light, Surat City Mobile No 9879215044 filed a complaint against you and others for which you are remained present as per order passed by Hon'ble Supreme Court of India in the matter of Special Leave Application No.14489/2023 on 08/12/2023 and you were arrested on 11/12/2023 at 2100 hrs and thereafter, released on bail on basis of the order of the court. During course of investigation proceedings of the offence, you are hereby informed to remain in(*sic*) present by yourself or through your advocate on 13/12/2023 at 1500 hrs before 5th Additional Senior Civil Judge and ACJM Surat Court No 608, New Court Building, Athwalines Surat for the matter of remand which please note seriously.

Date 12/12/2023

R.Y. Raval
Police Inspector
Vesu Police Station
Surat City

To,
Tushar Rajnikant Shah
Residing at
Flat No E/902, Florence Building,
Opp Rajhans Cinema, VIP Road,
Vesu, Surat City Mobile No 9825038475”

6. It is apposite to note that this notice makes a distinct reference to the order dated 8th December, 2023 passed by this Court. However, the notice is blissfully silent on the aspect that the petitioner had not cooperated with the investigation.

7. In compliance of the said notice, the petitioner appeared before learned 6th Additional Chief Judicial Magistrate, Surat(‘contemnor-respondent No.7’) on 13th December, 2023 on which date, the Investigating Officer, filed an application seeking his police custody remand for seven days. When the remand application was taken up, learned counsel representing the petitioner produced a copy of the order under contempt dated 8th December, 2023 and made a fervent submission that the Supreme Court, while providing interim protection to the petitioner had not granted any liberty to the Investigating Officer to seek police custody remand and thus, the application seeking remand ought to be rejected. However, the 6th ACJM, Ms. Deepaben Sanjaykumar Thakar, the contemnor-respondent No. 7 in gross

derision to the order dated 8th December, 2023 passed by this Court granting interim protection to the petitioner, observed that the order of Supreme Court did not indicate that the Investigating Officer could not seek remand of the accused or that the Court cannot grant remand and accordingly, she proceeded to remand the petitioner to police custody till 16th December, 2023. The order dated 13th December, 2023 which is the foundation of these contempt proceedings is reproduced hereinbelow: -

“ORDER PASSED BELOW APPLICATION TO AVAIL POLICE CUSTODY REMAND OF THE ACCUSED TUSHAR RAJNIKANT SHAH IN THE MATTER OF VESU POLICE STATION CRIMINAL BEARING REGISTER NO. 11210068230266/2023.

1. Application produced is taken into consideration similarly; the record of the matter is also taken into consideration. Heard arguments advanced by Learned APP Shri S.P. Chauhan for Prosecution side and Learned Advocate Shri Dipesh Dalal for Accused Person.

2. It is the representation of Learned APP Shri Saurabhbbhai Chauhan that, an offence against accused person for offence committed u/s. 420, 120[b] of Indian Penal code is registered for maximum sentence of seven years in which the main role played by the present accused and total of 15 shops were shown to be present along with Accused No. Sumit Goyenka and gave the information that he is the builder and accordingly the Complainant and witness obtained A sum of Rs. 1,65,00,000/- as consideration and also by way of cheque a sum of Rs.54,00,000/- also obtained and in that regard accused no.5, 6 and 7 given payment Diaries and then planned delinquency by the accused Conspirator committed the offense of cheating [deception] fraud. According to the ground for remand, they submit that the main accused has taken total of 9 cheques from the complainant which cheques are important for the present matter and same are required to be collected for the purpose of investigation proceedings. Recovery of Rs. 1,65,00,000/- is pending and in furtherance, addition of other offence of Umra Police Station First Criminal Register No 62/2019 for offence

committed u/s. 447, 448, 451, 427, 114 of Indian Penal Code is registered and accordingly, accused person having criminal history and does not cooperate with police investigations. The other co-accused are absconding, and hence, requested to allow police custody remand of Days-7.

3. On 05/10/2023, Learned Advocate Shri Dipesh Dalal on behalf of accused person produced copy of order of R/Criminal Misc. Appln [For Anticipatory Bail] No 15242/2023 and order passed by Hon'ble Supreme Court in the matter of Special Leave to Appeal [Cri] No 14489/2023 dated 05/12/2023 **submitted and it was submitted that there is an order to release the bail if the accused is detained and there is no mention of remand. In furtherance, they submit that the petitioner has cooperated with the police investigation and will continue to cooperate in the future as well so there is no need for remand.** In furtherance, they submit that the provision of maximum punishment in the present matter is seven years, therefore, in the matter of Satender Antil versus CBI of the Hon'ble Supreme Court A remand application cannot be granted mechanically as held in the judgment of the further submit that the accused has been present in the police station frequently and has cooperated fully in the investigation, hence the said application is proposed to be rejected.

4. Heard, on 21/7/2023 for the present matter, the complainant filed u/s 420, 120[b] of Indian Penal Code against a total 7 accused in Vesu Police Station. A complaint under section 4RO, 120(b) is lodged which provides for a maximum sentence of seven years. In the present matter, the co-accused is yet to be arrested, if we take the matter diary regarding the behavior of the accused Tushar Rajinikanth Shah mentioned in the remand petition. they will be called on 8/12/2023 for the matter of Special Leave to Appeal No 14486/2023 is not present at the police station for investigation till the order of "releasing the applicant from bail due to arrest" is passed. The facts of the matter diary become significant. The police have visited the house of the main accused, issued notices and reminders under section 41(A) but the accused himself was not found present at the house, his wife or his mother was present and replied that he was there for the last two months. Not present means the accused person did not cooperate with the police investigation proceedings. Taking into consideration the matter diary dated 11/12/2023, appeared after the order of the Hon'ble Supreme Court and wrote his answer which answer taking into account the facts of the main complaint, it is prima facie evident on the record that the present accused has been dealt with other co-accused, the prime of the present matter. Accused Sumit Goenka is yet to be arrested, other accused are yet to be arrested, police investigation is pending in that direction. In the

present matter it is pending investigation as to which accused took the paid compensation of the project property; the main accused has admitted in his statement that the diary was written by him. So, it becomes clear that their criminal role is there and if we note the extreme importance, in the present matter the prosecution has made serious allegations of pre-planned and criminal conspiracy, then a thorough investigation is pending in that regard. In the present matter it becomes necessary to bring the modus operandi of the accused on record. At this stage, it is to be noted that in the present time, the amount of offence related to property like land and houses has increased, in which most of the builder level people are also involved, while in the present matter, there is a deal of 15 shops, so the compensation amount is Rs. 1,65,00,000/- paid, thorough investigation of the offence becomes necessary so the reasons stated in the remand application are true. The present application is eligible to be granted if the co-accused is investigated properly and the modus operandi of the offence is placed on record. In furtherance at this stage there is truth in the reasons stated. The present application is eligible to be granted if the co-accused is investigated properly and the modus operandi of the crime is placed on record. **In furtherance, it is to be noted at this stage that Learned Advocate Shri Dipesh Dalal has emphasized on the order of the Hon'ble Supreme Court but in that order no order has been made that the investigating officer cannot ask for remand or the court here cannot grant remand so the Hon'ble Supreme Court in the matter of Satender Antil versus CBI All the principles laid down in the judgment have been followed by this Court.** In the present matter Remand application not automatically but taking into consideration the circumstances of the matter, diary and conduct of the accused, I consider the following order to be appropriate just and appropriate in the interest of justice.

(emphasis supplied)

//ORDER //

Remand application is partly allowed.

Police custody remand of Accused Tushar Rajnikant Shah is granted till 16/12/2023 at 1500 hrs.

Signature of accused person and Investigation Officer shall be obtained below order passed.

Investigation Officer shall strictly adhere [follow] the guideline of Hon'ble Supreme Court and send a copy of this order to Chief Judicial Magistrate.

Pronounced this order on 13/12/2023 in the open court.

13/12/2023
Surat

Deepaben Sanjaykumar Thakar
6th Addl. Chief Judicial city
Surat [GJ00943]

Seen
Sign Illegible

Seen
Sign Illegible

Accused is taken into custody
And remand order copy is received.
Sign Illegible

Today explanation of remand order is received,
Sign Illegible”

8. The petitioner has alleged that during the period of police custody remand, he was tortured by the Deputy Commissioner of Police(contemnor-respondent No. 3) and the Police Inspector(contemnor-respondent No. 4). It is further alleged that upon completion of the period of remand, the petitioner was compelled by the 6th ACJM, i.e., contemnor-respondent No. 7 to move a regular bail application under Section 437 CrPC which was objected to by the learned Assistant Public Prosecutor(in short ‘APP’). The 6th ACJM(contemnor-respondent No. 7) proceeded to allow the application for bail *vide* order dated 16th December, 2023.

9. On 16th December, 2023, when the petitioner was presented before the 6th ACJM(contemnor-respondent No. 7) at the end of the remand period, he made a complaint regarding torture in police custody which fact was noted by the 6th ACJM(contemnor-respondent No. 7) in the order sheet dated 16th December, 2023. The 6th ACJM(contemnor-respondent No. 7) proceeded to record the statement of the petitioner virtually as if he was being cross-examined. She also undertook an exercise of self-observation of the legs of the accused-petitioner and made a remark in the proceeding sheet that no signs of beating were visible thereupon. These proceedings are relevant to the issue at hand in a limited sphere and thus, the same are reproduced hereinbelow for the sake of ready reference:-

“My name is Tushar Rajnikant Shah, I am 43 years old. I want to say many things, but my mental condition is not proper so that I can properly dictate everything.

Question:	What is your complaint against police?
Answer:	Yes, I am beaten a lot, tortured also.
Question:	On which part of body beaten?
Answer:	Allowing me to sit and on the bottom of the leg beaten and beaten with belt written as Satyashodahk Yantra.
Question:	Who has beaten?
Answer:	Three officers were there, (1) ACP Gurjar Saheb, IPS and other two I can identify if I see them and they were in simple dress and name plate was not there. I have not given food since I went there. Complainant Abhishek or Akhilesh on whose face black spot is there was doing torturing arriving there.
Question:	What torturing was done?
Answer:	To give money, do settlement, this all belongs to my father and will not spare you.

Question:	Except this what is your complaint?
Answer:	Now I will state after taking lunch peacefully.
Question:	You are standing on your legs?
Answer:	Yes
Question:	Do you have any problem in standing?
Answer:	In left leg I feel more problem.
Question:	Do you came walking on your leg in the court?
Answer:	Yes
Question:	Any other thing you want to say against police now?
Answer:	Nothing now
Above statement is read by me and thereafter I put my signature.	
After taking said statement of the accused on bottom portion of the leg of the accused I have done self-observation wherein no sign of beating is found.	
Before me Sd/- Illegible 16/12/23 (Kum. D.S. Thaker)	

Today, the accused who is present after completion of remand, made a complaint against the police stating that they have ill-treated him which has been registered as per the said statement of the accused. However, after a detailed checking from the bottom of the legs of the accused, no signs are found, as alleged. It is the complaint of the accused that he is beaten by "Satyashodhak Yantra written belt", however, it is to be noted that the clothes the accused was wearing on the day when remand was granted to the accused are different from the clothes he is wearing today after three days of remand, it could be seen that the same is clean and proper. Even looking at the physical condition of the accused, it could be concluded that he was kept in good condition and he was provided with clean clothes by his family which was handed over to the accused by the police. It is the submission of the accused that he had not been provided with food on the day when he went on remand. Even if the statement of the accused is to be noted and believed to be correct, it could not be possible that after beaten with the belt, as alleged, the accused could stand properly on his leg today. Therefore, the statement made by him that he has not been provided with food cannot be believed. The accused in the beginning had stated that, he has a lot of things to say but due his mental condition, he has not been able to express everything clearly. However, it is peculiar to note that during the aforesaid statement made by the accused, he was frequently looking at his Ld. Advocate while giving reply due to which the

accused was asked that, “*why are you looking at your Advocate and giving reply, ill-treatment is done with you then you must be aware what has happened and it is you who have to give your statement.*” Thereafter, he has given his statement. The accused has not complained that he is mentally tortured. At this stage, it is notable to mention that the accused is working as a builder having a reputation in society and in such condition and circumstances, remaining in police custody for interrogation, could have been uncomfortable to him. Taking into consideration the mental state of the accused, the serious allegations made by him against the police could not be found reasonable and justifiable in view of the present case and circumstances. All the aforesaid observations and evaluations made today is noted by directly observing the accused.

Sd/-Illegible
16/12/23
6th Add. Sr. Civil Judge &
A.C.J.M., Surat.”

10. It is noteworthy that pursuant to the order dated 16th December, 2023 granting regular bail, the petitioner was compelled to file fresh bail bonds and was ultimately released from custody on 18th December, 2023. Apparently thus, the petitioner was kept in confinement for a period of nearly 48 hours even after the period of police custody remand had come to an end. Immediately after being released from custody, the petitioner filed a complaint(Annexure P-10) to the Commissioner of Police alleging torture by the Deputy Commissioner of Police(contemnor-respondent No. 3), Police Inspector(contemnor-respondent No. 4), Police Constable(contemnor-respondent No. 5) and other police officials of Vesu Police Station. A prayer was made in said

complaint to call for and preserve the CCTV footage of the police station, lest the police officials of Vesu Police Station tamper with the evidence in form of the recording and thereby, cause grave prejudice to the petitioner's complaint case. The Commissioner of Police, however, did not take any cognizance of the said complaint of the petitioner whereupon, the petitioner filed a private complaint against contemnor-respondent Nos. 3, 4 and 5 as well as the complainant i.e. contemnor-respondent No. 6. The petitioner categorically alleged in the complaint that he was tortured in Vesu police station, where the complainant of the case was also present, and was pressurised to make payment to the complainant and compromise the matter.

11. Since the 6th ACJM(contemnor-respondent No. 7) was on leave, the learned Magistrate on duty (8th Additional Chief Judicial Magistrate) took cognizance of the said complaint *vide* order dated 21st December, 2023, with a clear finding that the acts complained of were not committed by the concerned police officials while discharging official duties and therefore, sanction to prosecute was not required under Section 197 CrPC. The complaint was kept for verification on 3rd January, 2024.

12. Later, the 6th ACJM(contemnor-respondent No.7) took up the complaint and proceeded to reject the same *vide* order dated 6th January, 2024 without recording the statements of the complainant and his witnesses as mandated by Sections 200 and 202 CrPC. The contents of this order are also considered germane for the purpose of adjudication of the instant contempt petition since the same has a direct bearing upon the conduct of contemnor-respondent No. 7 and hence, the same are being reproduced hereinbelow for the sake of ready reference: -

“Criminal Inquiry No. 280/2023

ORDER BELOW EX-1

1. The said private complaint is filed by complainant Tushar Rajnikant Shah against police officers u/s 323, 342, 344, 363, 384, 504, 506(2), 120(b) of IPC. It is submitted in complainants application that against him in Vesu Police Station A-part CR No.11210068230266/23 is filed u/s 420, 120(b) on date 21.7.2023 wherein he was mentioned as accused no. 4. Investigation officer has taken his statement. The complainant has filed in the Hon'ble Court of Principal District and Sessions Judge at Surat Anticipatory bail application no. 5922/2023 on date 27.7.2023 which was rejected on date 1.8.2023. Thereafter he has filled in the Hon'ble Gujarat High Court CRMA No. 15242/2023 and made order partly allowing the same, being aggrieved by it the complainant filed SLP in Hon'ble Supreme Court on date 5.10.2023 bearing No. 14489/2023 and order was passed allowing his anticipatory bail application. Pursuance to the said order complainant has given his statement on date 11.12.2023 in Vesu Police Station as an accused no. 4 and given bail bond and surety. Thereafter I.O, has Issued notice on date 12.12.2023 to remain present and therefore on date 12.12.2023 remained present at 1/00 and till night up to 10/00 given his reply. Thereafter, on date 13.12.2023 LO. has demanded 7 days remand for him and Hon'ble Lower Court made order allowing 3 days remand. It is submitted by him that during police remand

custody with Satyashodhak Yantra belt beating 35 to 40 belt and to do compromise made, him physically uneasy have done unbearable coercion and therefore he became mentally unwell and family members gave courage and he filed present complaint. The complainant has prayed to do legal Inquiry against accused.

2.As per complaint of the complainant on date 3.1.2024 verification is taken and in the said verification he has not stated facts as per his complaint. He has not stated fact about which police officer has beaten him. Compare to complaint application in his verification different facts are coming out like " one person was standing on leg and beat me in bottom of the leg ". As this one person which police officer was there no such facts are stated. Asking about who used to come to give clothes, no one has come from his home, his friend Rajendranbhai Rawal came, such facts he has stated but no such friend's name is mentioned by him as his witness or such witness affidavit as a documentary evidence list is produced along with original complaint. The said complainant has not made satisfactory clarification about any person coming from his family to give clothes. Thereafter he was clearly asked that on completion of remand prior to bringing him in this Court he was taken to medical checkup and its reply is given by him in affirmative. At this stage it is notable that in said original case i.e. Vesu Police Station A-part CR No. 11210068230266/23 medical checkup produced it is clearly mentioned that on body portion of the said accused no apparent injury is there. Further it is notable that he during checkup ha not submitted to the Doctor that he has been assaulted. And in reference to the question he has stated that, " I am not allowed to speak such", but at that time the said complaint accused paikee which accused did not allow him to speak such, no such facts are stated. Thereafter he was clearly asked that on completion of remand and on producing in this Court he has stated his facts willingly as per his desire which is replied by him in affirmative. Thereafter he was asked that this Court has at the same time ask him to sit down and checked his bottom of the legs but no signs of beating was found such is stated and he gave his reply in affirmative. Thus, said verification considering entirely with the complaint in Vesu Police Station A-part CR No.11210068230266/23, the accused has filed ill-treatment complaint and therefore in the present separately given complaint nothing remains to be done. Main notable facts is such that in medical certificate of the accused no signs of assault are seen and this Court has personally done observation but no such signs are seen. **Further, this Court has on the same day after observing the accused personally in details of observation and**

evaluation noted and considering it the complainant's private complaint is not maintainable. The accused naturally remained in police custody and in police lock up, have dissatisfaction against police employees which is very casual and natural reaction. No person would like to remain in police custody and therefore the said complaint is prima facie is filed keeping grudge against the police with a feeling of revenge is made self-clear. As per the said complaint no facts are recorded by accused after completion of remand immediately is not stated in his ill-treatment and therefore the said complaint is not valid and tenable and therefore following order I understand is reasonable and justified.

(emphasis supplied)

ORDER

1. The order is made to cancel the said complaint u/s. 203 of Cr. P.C.

Order declared today on date 06.01.2023 in open Court.

Date: 06.01.2024

Surat.

Seen

Sd/- Illegible

Sd/- Illegible 6.1.24
(Kum. Deepaben Sanjaykumar Thaker)
6th Add. Chief. Judi. Magistrate
Surat (GJ00943)

13. A perusal of the order reveals that the 6th ACJM(contemnor-respndent No.7) proceeded to deal with the complaint in a pre-determined manner and rejected the same without recording the statements of the petitioner(complainant) and his witnesses as per the mandate of Sections 200 and 202 CrPC. Acting purely on her own whims and fancies, the contemnor-Respondent No.7 concluded that *ex facie* the complaint was filed keeping grudge

against the police and with the feeling of seeking revenge. The order dated 6th January, 2024 passed by 6th ACJM(contemnor-respondent No.7) has been set aside by the High Court of Gujarat and rightly so, in our opinion, *vide* order dated 22nd February, 2024 while accepting the revision petition filed by the petitioner, being R/Criminal Revision Application No. 273 of 2024. Relevant observations made by the High Court are reproduced hereinbelow:-

“11. As per Section 203 of the Code, the learned Magistrate ought to have recorded the statement on oath of the complainant and of the witnesses and when in-charge Magistrate has directed the complainant to remain present with his witnesses and the witnesses were present before the learned Magistrate, learned Magistrate without giving any reasons for not recording the statements of the witnesses has dismissed the complaint which is illegal and improper. That if the statements of the witnesses were recorded, learned Magistrate could have applied her mind and form the judgment whether there is sufficient ground for proceeding against the accused or not. That learned Magistrate has acted erroneously and has passed the impugned order which is illegal and improper and hence, the same is required to be set aside.

12. On perusal of the impugned order, it appears that the complainant was directed to remain present with his witnesses and as per the submission of the learned senior advocate for the applicant, witnesses were present before the learned Magistrate, but their statements have not been recorded. No reasons have been given by the learned Magistrate for non-recording of the statements of the witnesses and hence, the applicant original complainant has not been given full opportunity for putting up his case before the learned Magistrate. That the impugned order is improper and perverse and is required to be set aside.

Learned(sic)

13. Under the circumstances, the application is allowed. The impugned order dated 6.1.2024 passed below Exh.1 in

Criminal Inquiry No.280 of 2023 is quashed and set aside. The learned Magistrate is directed to record the statements of the witnesses and then after applying judicial mind to the material placed before the Court, form the judgment whether or not, there is sufficient ground to proceed.”

14. It is in the aforesaid backdrop, that the petitioner has approached this Court by way of the instant contempt petition with a prayer seeking prosecution of the respondents and to convict and sentence them for wilful disobedience and gross contempt of this Court’s order dated 8th December, 2023.

15. Notice of the contempt proceedings was issued to the respondents on 10th January, 2024.

16. The High Court of Gujarat was subsequently impleaded in the matter *vide* order dated 29th January, 2024.

17. Reply affidavits in response to the notice for contempt, have been filed on behalf of the respondents arraigned in the contempt petition. The petitioner has also filed separate rejoinder affidavits.

Submissions on behalf of the petitioner: -

18. Mr. Iqbal Syed, learned senior counsel appearing for the petitioner advanced the following pertinent submissions: -

18.1 That the order dated 8th December, 2023 passed by this Court was explicit to the effect that the petitioner was to be released on bail in event of his arrest. No liberty was ever granted by this Court to

the Investigating Officer to seek police custody remand of the petitioner while he was under the protective umbrella of the interim anticipatory bail order passed by this Court.

18.2 That the SLP seeking anticipatory bail filed by the petitioner was still pending consideration before this Court and thus, if at all, the Investigating Officer desired to seek police custody remand of the petitioner on the alleged ground of non-cooperation in investigation, then the appropriate procedure would have been to move an application before this Court to seek such liberty.

18.3 That the Investigating Officer had already accepted the bail bonds of the petitioner on 11th December, 2023 and hence, there could not have been any occasion for grant of police custody remand of the petitioner because such course of action resulted into fresh arrest of the petitioner which is clearly in teeth of the order passed by this Court.

18.4 That a pertinent objection was raised before the 6th ACJM(contemnor-respondent No. 7) that there

was no scope for granting police custody remand of the petitioner in view of this Court's order, but the 6th ACJM No. 6(contemnor-respondent No. 7) totally glossed over the interim order passed by this Court and granted 3 days' police custody remand of the petitioner by assigning a totally flimsy justification that this Court had not precluded the Investigating Officer from seeking police custody remand of the petitioner nor was the Magistrate prohibited from exercising such power. In support of the submission that there was no scope to remand the petitioner to police custody, learned senior counsel for the petitioner placed reliance on the judgment passed by this Court in the case of ***Siddhram Satlingappa Mhetre v. State of Maharashtra***¹.

18.5 He urged that in spite of the interim order of anticipatory bail granted by this Court being in currency, the petitioner was not released from custody even at the end of the police remand period, and rather, he was compelled to file a regular bail

¹ (2011) 1 SCC 694

application under Section 437 CrPC to which the learned Assistant Public Prosecutor(APP) objected. However, the application was allowed, and the bail bonds of the petitioner were accepted, and he was released from custody on 18th December, 2023 which aggravates the contemptuous acts of the contemnor-respondent No. 7 because the petitioner was kept in illegal custody for more than 48 hours.

As per learned senior counsel, it is a clear case of the petitioner being kept in illegal custody for a period of 6 days in teeth of the interim order granted by this Court and that too, during pendency of the special leave petition.

18.6 He urged that the biased, pre-determined and prejudiced bent of mind of the 6th ACJM(contemnor-respondent No.7) is fortified from the fact that when the petitioner made a complaint regarding torture in police custody on being produced before the Court at the end of the remand period, the 6th ACJM(contemnor-respondent No. 7) proceeded to record a calculated finding that the accused-petitioner

was not having signs of injury by even going to the extent of personally examining the feet of the petitioner which procedure was purely within the domain of a Medical Expert.

18.7 Over and above this, the private complaint filed by the petitioner alleging torture in police custody was rejected in an arbitrary and high-handed fashion even without recording the statements of the complainant(petitioner herein) and the witnesses under Sections 200 and 202 CrPC which is the mandate of law.

The High Court of Gujarat, *vide* order dated 22nd February, 2024 while reversing the order passed by the 6th ACJM(contemnor-respondent No.7) rejecting the complaint has taken note of the fact that learned Magistrate committed grave legal error in ignoring the provisions of CrPC while rejecting the complaint filed by the petitioner.

18.8 That the petitioner after being released from custody lodged a prompt complaint to the Commissioner of Police, Surat(contemnor-respondent

No.2) on 20th December, 2023 with a pertinent prayer to preserve the CCTV footage of Vesu Police Station. However, no action was forthcoming on the said complaint, and it is only after this Court took cognizance of the contempt proceedings and issued notice that an inquiry was initiated in this regard.

18.9 That the Commissioner of Police, Surat (contemnor-respondent No. 2) has admitted in his affidavit that CCTV cameras installed at Vesu Police Station by a private agency were not functional and this fact was brought to notice of Mr. R.Y. Raval, Police Inspector(contemnor-respondent No. 4) by the PSO in charge on 21st December, 2023. He contended that the clear omission and negligence on part of the concerned police officials in not ensuring the functioning of the CCTV cameras is in sheer disobedience of the mandate of this Court's judgment in the case of ***Paramvir Singh Saini v. Baljit Singh and Another***².

18.10 That as per the reply affidavit filed by the Commissioner of Police, Surat(contemnor-respondent

² (2021) 1 SCC 184

No. 2), the FSL examination carried out on the internal storage(hard disk) and the DVR reveals that the CCTV footage of Vesu Police Station from 13th December, 2023 to 16th December, 2023 was not found in hard disk which clearly establishes that the police officials had tampered with the DVR and deleted the data saved between 13th December, 2023 to 16th December, 2023, in order to destroy the evidence of custodial violence committed upon the petitioner.

18.11 That the very fact, that the police officials registered the FIR on the basis of complaint filed by complainant(contemnor-respondent No. 6), being FIR No. 11210068230266 for allegations which *ex facie* disclose a civil dispute plain and simple, reflects their *mala fide* and biased approach.

On these grounds, the learned senior counsel implored the Court to prosecute and suitably punish the respondents while holding them guilty of wilful disobedience/gross contempt of this Court's order dated 8th December, 2023. He also prayed that the interim protection granted to the petitioner *vide* order dated 8th

December, 2023 passed in SLP(Crl.) No. 14489 of 2023 may be made absolute.

Submissions on behalf of the respondents: -

19. Shri R. Basant, learned senior counsel appearing for the freshly impleaded respondent, the High Court of Gujarat (respondent No. 8) advanced the following submissions: -

19.1 The contention of learned counsel for the petitioner that the Investigating Officer could not have sought remand of the petitioner is misplaced since, the judgment relied upon by the petitioner i.e. ***Siddhram Satlingappa Mhetre***(*supra*) wherein, it was held that tenure of anticipatory bail order cannot be limited has been explicitly overruled by a larger Bench of this Court in the case of ***Sushila Aggarwal v. State(NCT of Delhi)***³. He placed reliance on the following paras from the above judgment in support of this contention:-

“92.6- An order of anticipatory bail should not be “blanket” in the sense that it should not enable the accused to commit further offences and claim relief of indefinite protection from arrest. It should be confined to the offence or incident, for which apprehension of arrest is sought, in relation to a specific incident. It cannot operate in respect of a future incident that involves commission of an offence.

³ (2020) 5 SCC 1

92.7- An order of anticipatory bail does not in any manner limit or restrict the rights or duties of the police or investigating agency, to investigate into the charges against the person who seeks and is granted pre-arrest bail.”

19.2 He submitted that the Courts in Gujarat based on the view taken by the Division Bench of High Court of Gujarat in the case of **Sunilbhai Sudhirbhai Kothari v. State of Gujarat**⁴, have been following a consistent practice of incorporating a condition in the orders granting anticipatory bail that the Investigating Officer would be entitled to seek police custody remand of the accused as and when required. In **Sunilbhai Sudhirbhai Kothari**(surpa), the reference was made to the Division Bench to answer the following question of law: -

“Whether the Investigating Agency has power to get police custody under Section 167 of the Code of Criminal Procedure, 1973, when an accused is already granted bail under the provision of Section 438 of the Code of Criminal Procedure, 1973.”

The Division Bench answered the reference in affirmative and thus, there was no impediment for the Investigating Officer to have sought police custody remand of the petitioner and that the

⁴ 2014 SCC OnLine Guj 14451

learned Magistrate was also acting well within the jurisdiction conferred upon her by CrPC while granting police remand of the petitioner.

20. The learned counsel representing the contemnor-respondent Nos. 2 to 7 submitted in cohesion that all the contemnors have tendered unconditional apology in their reply affidavits for the alleged contumacious acts. They urged that the contemnors had no intention whatsoever to disobey or disregard this Court's order dated 8th December, 2023 and the infraction, if any, in this regard is purely unintentional and thus, a lenient view may be taken and the contempt notices may be discharged.

21. Mr. S.V. Raju, learned ASG appearing on behalf of Commissioner of Police, Surat(contemnor-respondent No. 2) advanced the following submissions: -

21.1 That respondent No. 2 has no direct role in the contempt proceedings and thus the contempt notice issued to him may be discharged.

21.2 That Commissioner of Police(contemnor-respondent No. 2) has tendered an unconditional apology for any of the alleged action/omission which

may have resulted in contempt of this Court's order dated 8th December, 2023.

21.3 That Vesu Police Station was a newly established police station and thus, CCTV cameras installed in the police station were not properly functional.

21.4 That the DVR and hard disks of the CCTV cameras installed in the police station were forwarded for analysis to the FSL, from where a report has been received that there was some technical defect in the DVR and that the video footage from 13th December, 2023 to 16th December, 2023 could not be preserved therein. The fact regarding the technical defect in the DVR was not brought to the knowledge of the Commissioner of Police(contemnor-respondent No.2) and hence, he cannot be held guilty of wilful negligence in discharge of duties.

21.5 That Commissioner of Police(contemnor-respondent No. 2) has already initiated departmental proceedings against the erring police officials. The Police Inspector/Investigating Officer(contemnor-

respondent No. 4) and Police Constable(contemnor-respondent No. 5) have been placed under suspension.

He thus implored the Court to discharge the contempt notice issued to the Commissioner of Police, Surat(contemnor-respondent No.2).

22. Ms. Aishwarya Bhati, learned ASG, appearing on behalf of Deputy Commissioner of Police, Surat(contemnor-respondent No. 3) advanced the following submissions: -

22.1 That the said contemnor has tendered an unconditional apology for any act or omission which may have contributed to the non-compliance/contempt of this Court's order dated 8th December, 2003. Learned ASG reiterated the averments made in the reply affidavit filed on behalf of the officer and urged that he was, in no manner, connected with the investigation of the subject FIR and thus he cannot be held responsible for the contumacious acts. She fervently contended that the contemnor-respondent No. 3 had no role to play either in the investigation of the case or the custodial torture allegedly meted out to the petitioner during the period

of police custody. She also urged that no injuries were found on the person of the petitioner as per the medical report.

22.2 Regarding the issue of the non-functioning of the CCTV cameras in the Vesu Police Station, she submitted that the CCTV cameras had been installed some time back and were functional but there was some problem with the DVR storage not just during the 3 days of custodial period of the petitioner but was persisting since November, 2023. On these grounds, Ms. Bhati, learned ASG implored the Court to accept the unconditional apology filed on behalf of contemnor-respondent No.3 and discharge the contempt notice issued to him.

23. Mr. K. Parameshwar, learned counsel appearing on behalf of Shri R.Y. Raval, Police Inspector(contemnor-respondent No. 4) urged that the officer had no intention whatsoever to disregard or wilfully disobey this Court's order. He advanced the following submissions: -

23.1 At the outset, Investigating Officer(contemnor-respondent No. 4) in his reply

affidavit has tendered an unconditional apology for any contumacious act/conduct arising of inadvertent action/omission attributed to him in the contempt proceedings.

23.2 That when the petitioner appeared at the police station with the order of this Court dated 8th December, 2023, he was immediately released on bail by accepting his bail bonds. However, the petitioner gave evasive replies upon being interrogated and was totally non-cooperative in the process of investigation and thus, the Investigating Officer, contemnor-respondent No. 4 felt a genuine requirement to seek police custody remand of the petitioner to effect discovery of incriminating evidence.

23.3 That there prevails a long-standing practice being followed by all the Courts in the State of Gujarat whereby the Investigating Officer is given liberty to seek police custody remand in orders granting anticipatory bail to the accused. Swayed by this misconception based on the practice consistently being followed in the State, the Inspector *bona fide*

moved the application for police custody remand of the petitioner herein.

23.4 That even the learned Magistrate misconstrued this Court's order and granted police custody remand of the petitioner and hence, the Inspector cannot be faulted and punished for contempt just for moving the remand application.

23.5 That no maltreatment was ever meted out to the petitioner during the period of police custody which fact is borne out from the observations made in the proceedings recorded by the learned Magistrate on 16th December, 2023.

23.6 That the Police Inspector(contemnor-respondent No.4) had joined Vesu Police Station on 5th October, 2023 and thus, the allegation that he was hands in glove with the complainant(contemnor-respondent No. 6) is totally misplaced.

23.7 That contemnor-respondent No.4 was sincerely discharging his official duties while investigating the FIR No. 11210068230266 dated 21st July, 2023 wherein, the petitioner was alleged to have

cheated the complainant of a huge sum of money running into more than Rs. 1.65 crores and thus, he cannot be attributed the motive of colluding with the complainant.

23.8 That the cheques given by the complainant to the accused-petitioner were illegally retained and, the recovery thereof was imperative for fair investigation of the case and therefore, the Police Inspector had sought police custody remand of the petitioner herein in an absolutely *bona fide* and unbiased manner.

23.9 That the petitioner's claim of being tortured during the period of police custody is yet to be adjudicated in the complaint filed by the petitioner which is pending enquiry.

23.10 In addition to above, learned counsel submitted that contemnor-respondent No.4 is already facing departmental proceedings in relation to these very allegations and hence, these contempt proceedings would tantamount to double jeopardy.

On strength of the above submissions, learned counsel implored the Court to take a sympathetic view and discharge the contempt notice issued to contemnor-respondent No. 4.

24. Learned senior counsel, Mr. D.N. Ray, representing 6th ACJM No.6(contemnor-respondent No. 7), at the outset, submitted that the judicial officer is having an impeccable service record. She had no intention whatsoever of committing wilful or intentional disobedience of this Court's order and that the judicial officer has expressed unconditional and unqualified apology for the acts done in discharge of judicial functions which are wrongly branded as contumacious by the petitioner. He advanced the following submissions: -

24.1 On perusing the remand application filed by the Investigating Officer, the contemnor-respondent No.7 inculcated a reasonable belief that the petitioner was not cooperating with the investigation in terms of the order passed by this Court.

24.2 She was also guided by the long prevailing practice being followed in the State of Gujarat wherein, the Courts, while granting anticipatory bail, incorporate a condition that in case the accused in

whose favour the order of anticipatory bail has been passed does not cooperate in investigation then, the concerned Magistrate would be empowered to direct police custody remand of such accused.

24.3 He submitted that it is purely based on this long-standing practice prevalent in the State of Gujarat that 6th ACJM(contemnor-respondent No. 7), in *bona fide* discharge of her judicial functions allowed the application filed by the Investigating Officer and remanded the petitioner to three days' police custody. He urged that at the end of the remand period, the petitioner voluntarily filed an application under Section 437 CrPC seeking bail, which was routed through the Registry of the Court and that is why the Magistrate, was left with no other option but to pass an order on the said application requiring the accused petitioner to furnish bail bonds in lieu of release on bail.

However, on a pertinent query being put, Mr. Ray, was not in a position to dispute the fact that the petitioner herein was released from custody after a delay of nearly 48 hours from the date i.e. 16th

December, 2023, the period when the police custody remand had come to an end.

24.4 Regarding the proceedings taken on the complaint of custodial violence made by the petitioner, learned counsel urged that contemnor-respondent No. 7 was acting well within her jurisdiction by virtue of provisions contained in CrPC when she questioned the petitioner and also conducted preliminary body examination so as to take note of the injuries, if any, suffered by him owing to the alleged custodial violence. These facts were recorded in the court order sheet as per the observations made during the course of judicial proceedings. The formal complaint was dismissed by the contemnor while exercising judicial discretion conferred upon a Magistrate by virtue of Section 203 CrPC. The order rejecting the complaint has already been set aside by the High Court and since the said complaint is *sub judice*, any expression by this Court on this issue may have an adverse reflection on the service record of the contemnor.

24.5 Mr. Ray reiterated that 6th ACJM(contemnor-respondent No. 7) was deluded by the prevailing practice referred to *supra* while passing the order of police custody remand. She had no intention whatsoever to flout or disregard the order passed by this Court and that she tenders unconditional apology for any act or omission committed by her which may be construed to be in disregard to the order dated 8th December, 2023.

On these submissions, he implored the Court to condone the unintentional act of the contemnor-respondent No.7 and to discharge the contempt notice issued to her.

25. By way of additional submissions, Shri S.V. Raju, learned ASG appearing on behalf of Kamal Dayani, Additional Chief Secretary, Government of Gujarat(contemnor-respondent No. 1) and Shri R. Basant, learned senior counsel appearing on behalf of the High Court of Gujarat(respondent No. 8) tried to persuade the Court that no contempt was committed by any of the contemnors, by harping upon the prevailing practice in the State of Gujarat that the Courts, be it the Sessions Court or the High Court while passing pre-arrest bail orders under Section 438 CrPC, invariably

incorporate a clause to the effect that in case the Investigating Officer wants to seek police custody of the accused, an application in this regard may be filed before the concerned Magistrate who would be empowered to direct that the accused in whose favour the anticipatory bail order is passed, could be detained in police custody under valid order of the concerned Magistrate. Learned counsels thus, urged that the contemnors-respondent Nos. 1 and 8 who were acting under this misconception based on a long-standing practice formed by virtue of the Division Bench judgment in **Sunilbhai Sudhirbhai Kothari**(*supra*) may not be castigated as having acted in wilful disobedience of this Court's order and therefore, the contempt notices may be discharged while accepting the unconditional apology tendered on behalf of them.

26. So far as contemnor-respondent Nos. 1 and 6 are concerned, they have neither filed any affidavits nor any significant contest was made on behalf of these contemnors-respondents to the contempt proceedings presumably because the thrust of the petitioner's allegations regarding non-compliance/flouting of this Court's order is directed against the other respondents.

27. We have given our thoughtful consideration to the submissions advanced at bar and have gone through the material available on record.

Discussion: -

28. Before proceeding to consider the rival submissions, at the outset, we may note that a bare perusal of the order under contempt dated 8th December, 2023 would leave no room for doubt that the interim protection of anticipatory bail granted by this Court to the petitioner was absolute, until modified or altered upon final disposal of the Special Leave Petition(Crl.) No. 14489 of 2023 which is still pending consideration before this Court. The language of the order was clear and unambiguous, hence, none of the contemnors-respondents could have entertained any doubt in their minds nor was there any scope for the interpretation that the petitioner could be remanded to police custody during the currency of the interim order dated 8th December, 2023.

29. Shri Ajay Kumar Tomar, Commissioner of Police, Surat(contemnor-respondent No. 2) had no role to play in the investigation or the proceedings pertaining to the remand of the petitioner and thus, *prima facie*, he cannot be held responsible for the contumacious acts. His role is limited to the aspect of non-

functionality of the CCTV cameras, and we would be dealing with this aspect later.

The contempt notice issued to contemnor-respondent No.2 is thus, discharged.

30. Shri Vijaysinh Gurjar, contemnor-respondent No. 3 being the Deputy Commissioner of Police, Zone-4, Surat has sworn an affidavit tendering unconditional apology for any of the acts/omissions which may have led to the order of this Court being flouted.

31. We may note that the reply affidavit of this Officer(contemnor-respondent No.3) is relevant only in context of non-functioning of the CCTV cameras and the custodial torture allegedly meted out to the petitioner during police custody for the period between 13th December, 2023 and 16th December, 2023, wherein it is alleged that the petitioner was beaten in the presence of the said contemnor. The following averments are made in the reply affidavit filed by contemnor-respondent No. 3:-

31.1 At para 6 of the reply affidavit, it has been stated that the respondent was busy in the preparation and deployment on account of visit of the Hon'ble Prime Minister of India in Surat on 17th December, 2023. In

connection with the said preparations, he had briefly visited Vesu Police Station on 13th December, 2023. He has denied having any role to play in the investigation of the FIR lodged against the petitioner.

The issue regarding custodial violence allegedly meted out to the petitioner is subject matter of departmental proceedings and is also *sub judice* in proceedings of the criminal complaint filed by the petitioner. Thus, it is neither necessary nor justified to make any observation thereupon because the said aspect has no live link to the contempt proceedings.

31.2 Regarding the aspect of non-functioning of CCTV cameras installed at Vesu Police Station and storage thereof, the contemnor-respondent No. 3 has come out with the following details in para 7 of the reply affidavit:-

7. “That in so far as the CCTV footage of the Vesu Police Station for the period 13.12.2023 to 16.12.2023 is concerned, it is humbly that my office has received the FSL Report dated 25.01.2024 sent by the Directorate of Forensic Science, Gujarat State, Gandhinagar, regarding the recording of the CCTV cameras installed at the Vesu Police Station, which has inter-alia opined that the DVR and the Hard disc of the CCTV cameras were not physically damaged and were found in working condition and that One lakh four thousand seven hundred ninety-nine(1,04,799) CCTV video footages and clips were found present in the Hard disk, which occupied the entire space of the hard disk i.e. 1.81 TB/1.81 T. The footages shows the time period from 09.01.2000 to 13.01.2000, 29.05.2020 to 20.07.2020,

23.10.2023 to 28.11.2023 and 12.01.2024 to 12.01.2024. However, “the CCTV video footage(s)/ clip(S) having date stamp i.e. 13.12.2023 to 16.12.2023 were not found in the Hard disk Exh-H1 of the DVR Exh-1”.

32. Going by the above averments, it is clear that the mandate to install and ensure functionality of CCTV cameras in all police stations by virtue of this Court’s judgment in the case of **Paramvir Singh Saini**(*supra*) has not been complied in letter and spirit by the concerned police officials. Even if we accept the fact that CCTV cameras were installed in some parts of Vesu Police Station and it is the DVR which was not functional, the fact remains that no CCTV camera was installed in the interrogation room of the police station which is an admitted position as evident from the record. However, we feel that these shortcomings should be dealt with at the departmental level rather than being made subject of these contempt proceedings.

The contempt notice issued to contemnor-respondent No.3 is thus, discharged.

33. The language of the remand application filed by the Investigating Officer, Shri R.Y. Raval(contemnor-respondent No.4) would be relevant for dealing with his case and hence, the same is reproduced hereinbelow: -

“To
5th Additional Senior Civil Judge and
Additional Civil Judicial Magistrate,
New Court Building, Surat City

SUB TO ALLOW REMAND FOR DAYS-7 OF ACCUSED
PERSON

I, R.Y.Rawal, I/c Police Inspector Vesu Police Station Surat City respectfully submitting that,

On 21/07/2023 Complainant Abhishek Vinodkumar Goswami Aged: 28 years Occupation: Business of Real Estate residing at C/405, Surya Palace, City Light, Surat City Mobile No 9879215044 preferred complaint before Vesu Police Station Part A 11210068230266/2023 for offence committed under Section 420,120(B) of Indian Penal Code against Accused persons (1) Partners of Shrestha Group Developers Bhavinbhai Durhabhbhai Patel Resident of Navi Colony Sarthana Village Surat Mobile No 9925112073 (2) Pradip Tamakuwala Mobile No 9227906150 (3) Vasant Patel (4) Tusharbhai Rajnikantbhai Shah Mobile No 9825038475 (5) Sumit Goenka Mobile No 7710827133 (6) Rajsing Mobile No 6353949599 (7) Omkarsing Mobile No 9106115519 and the facts of the compliant are that,

On 28/01/2023 at around 1600 hrs Accused person no 4 and 5 of the matter shown shop no 204, 301, 302, 303, 304, 305, 306, 307, 308, 309, 404, 405, 407, 408, 409 in total 15 shops situated at Vesu VIP Road, Solarium Business Center and accused no 4 Tushar Shah himself informed that he was the builder and assured that the project was his, the Complainant and witness Akhil Ramanuj Bhattar were ready to buy 15 shops and paid Rs. 1,65,00,000/- (in words One Crore Five Sixty Lakh only) was paid to accused no. 4 and cheque of Rs. 54,00,000/- (in words Rupees Fifty four lakhs only) was also paid, after which a diary of full payment was also produced in presence of accused no. 5, 6, 7 and even after frequently informing all the accused of this matter neither the Deed of shops executed nor returning the money and committed the offence by making pre-planned criminal conspiracy by accused person against complainant and witness.

For said matter accused in the above offence, Tushar Rajinikanth Shah, aged: 43 years Occupation: Business Residing at Flat No. E/902, Florence Building, Opposite Rajhans Cinema, VIP Road, Vesu Suraj City having Mobile No 9825038475 was arrested on 11/12/2023 at 2100 hrs and on 08/12/2023 the accused allowed anticipatory bail application vide order passed by Hon'ble Supreme Court of India Special in the matter of Leave Application No. 14489/2023 so that the accused in this matter released on

bail on furnishing suitable sureties based on the order of the Supreme Court of India and they While obtaining a detailed statement, they are concealing the truth during the investigation proceedings so that the accused should be remanded in police custody for day-07 to investigate the offence.

GROUND FOR REMAND

1. During course of investigations proceeding of this matter, on prima facie evidence found against the accused Tusharbhai Shah in which the complainant himself stated to be the builder of said Builder which is the fact that the present accused had prima facie intention with the accused in a pre-planned manner with the other accused in this matter. It was found that there is disloyalty [betrayal] of the complainant so that it is necessary to investigate the entire pre-planned conspiracy with the other accused so that the present accused is required to be in police custody.

2. Accused person of this matter Tushar Shah issued cheques to the complainant of Kotak Mahindra Bank, Kumbhariya Cheque No. (1) 000394 dated 31/01/2023 signed in the name of authorized signatory of Branch, Surat for a sum of Rs. 2,00,000/- and (2) 000395 dated 31/01/2023 for a sum of Rs. 2,00,000/- (3) 000396 dated 31/01/23 a sum of Rs. 2,00,000/- (4) 000397 dated 31/01/2023 a sum of Rs. 2,00,000/- (5) 000398 31/01/2023 a sum of Rs. 2,00,000/- (6) 000022 14/02/2023 a sum of Rs. 11,00,000/- (7) 000021 10/02/2023 a sum of Rs. 11,00,000/- (8) 000023 dated 18/02/2023 a sum of Rs. 11,00,000/- (9) 000024 dated 20/02/23 a sum of Rs. 11,00,000/- and with regard to said cheques, Accused have not disclosed any material fact that they are not cooperating with the investigation proceedings regarding the places where the Cheques are kept and also all the above Cheques are important circumstantial evidences which have to be grabbed [seized] for the purpose of investigation proceedings so the presence of the accused in the police custody is required.

3. The complainant and the witness paid a sum of Rs. 1,65,00,000/- (in words Rupees One Crore Sixty Lakh only) to the accused in various installments which they have not admitted to have taken even in cash and what was the use of such a huge amount. Investigation proceedings are to be conducted so that the presence of the accused in the police custody is required.

4. Against the accused of this matter, Umra Police Station First Criminal Register No. 62/2019 for offence committed u/s 447, 448, 451, 427, 114 of Indian Penal Code registered so that the accused has a criminal history apart from this how many other offences have they committed while during course of interrogation, they are passing the time by giving wayward replies

and many important information from this inquiry may come out during the course of investigation proceedings which cannot be obtained without presence during their investigation so the police custody of accused person is essential.

5. Ever since the offence was filed against the accused in this matter, he is on the run till date and the other co-accused in this matter are hiding information about them, which also needs to be investigated so that the police custody of accused person is essentially required.

Considering the above grounds, we request to approve the police custody remand of the accused on Day-07. A copy of the diary is enclosed herewith which please note by Your Honor.

13/12/2023
Police Inspector
I/c Vesu Police Station
Surat City”

R.Y Raval

34. At para No. 3 of the remand application, the Investigating Officer(contemnor-respondent No.4) has noted that the accused-petitioner did not admit having taken cash to the tune of Rs. 1.65 crores which the complainant claims to have paid to the accused-petitioner in various instalments. Para No. 4 of the application reads that Crime No. 62/2019 had been registered against the accused at P.S. Umra for the offences punishable under Sections 447, 448, 451, 427 and 114 of the Indian Penal Code, 1860 and it was imputed that the accused had a criminal history and that he was giving evasive replies to the questions being put to him. However, it is pertinent to note that the Investigating Officer never made any effort to re-summon the accused for investigation even

for a single time after 12th December, 2023 when abruptly a notice to appear before the Additional Chief Judicial Magistrate was given to the accused for seeking his police remand. The language of the notice has been reproduced at para 5(*supra*) and it does not give a whisper of indication that the accused was not cooperating in the investigation.

35. We are of the firm opinion that non-cooperation by the accused is one matter and the accused refusing to confess to the crime is another. There would be no obligation upon the accused that on being interrogated, he must confess to the crime and only thereafter, would the Investigating Officer be satisfied that the accused has cooperated with the investigation. As a matter of fact, any confession made by the accused before a police officer is inadmissible in evidence and cannot even form a part of the record.

36. This Court *vide* order dated 12th July, 2024 passed in ***Petition for Special Leave to Appeal (Crl.) No.10536/2023*** titled as '***Sanuj Bansal v. The State of Uttar Pradesh & Anr.***' has held that such confessions recorded in the interrogation notes of the accused cannot form part of the charge sheet.

37. Looking at the allegations in the FIR, we are of the firm view that the Investigating Officer should have, at the first instance, put

the complainant to serious questioning and strict proof because while alleging in FIR that he had given a huge sum of Rs. 1.65 crores to the accused-petitioner, the complainant(contemnor-respondent No. 6) himself had acted in gross contravention of the provisions of the Income Tax Act, 1961 and the Prevention of Money Laundering Act, 2002(for short 'PMLA'). By blindly placing reliance on the unverified allegations of the complainant based on a huge cash transaction and registering the FIR without even making a basic enquiry on this vital aspect, the police officials to be specific, the Investigating Officer(contemnor-respondent No. 4) clearly colluded with the complainant(contemnor-respondent No. 6) by trying to give the civil dispute, based on allegation of breach of oral agreement, the colour of a crime.

38. The complainant(contemnor-respondent No. 6) categorically stated in the FIR that it was he who had given cheques of about Rs. 54 lakhs to the petitioner and it was agreed that on clearance of the cheques, the accused-petitioner would execute the registered sale deed in respect of the subject property in favour of the complainant. In clear contradiction to this allegation of the complainant, the Investigating Officer at para No. 2 of the remand application(*supra*) noted that the cheques of Kotak Mahindra Bank

had been signed by accused-petitioner for being given to the complainant(contemnor-respondent No. 6) and that he was not getting the same recovered. The above statement made in the remand application seems to be at sheer variance with the allegation set out in the FIR that the cheques were given by the complainant to the petitioner i.e., Tusharbhai Shah and not *vice versa*. The assertion made in the FIR, that the accused-petitioner was not lodging the cheques of the complainant(contemnor-respondent No. 6) in his bank and was holding on to the same was clearly a wishful allegation created somehow or the other for framing the accused in a criminal case, rather than resorting to civil proceedings. It is not even the stated case of the complainant that before lodging the FIR, he had asked the accused-petitioner to return the cheques to him.

39. We may also state, had the accused-petitioner suffered an information under Section 27 of the Indian Evidence Act, 1872, which gave rise to a reasonable belief that such information could lead to discovery of an incriminating fact, perhaps the remand application could have been justified to some extent. However, that is not the situation in the case at hand.

40. The narration made in the remand application that the Investigating Officer wanted to find out about the criminal antecedents of the accused is also fanciful on the face of it. With the digitisation of the records, the criminal antecedents/records of accused would be readily available on CCTNS i.e., Crime and Criminal Tracking Network System and thus, the Investigating Officer could not have sought police custody remand of the accused in order to find out his criminal antecedents.

41. Apparently thus, the Investigating Officer(contemnor-respondent No. 4), while filing the remand application, made blatant misinterpretations and procured the police custody of the accused-petitioner who was under the protective umbrella of this Court's order dated 8th December, 2023.

42. If at all, by any stretch of imagination, the Investigating Officer felt genuine and *bona fide* requirement to seek police custody remand of the petitioner, then the proper course of action would have been to move this Court for seeking appropriate directions rather than moving the Magistrate by way of the remand application, which was tainted, malicious and a contemptuous act on the face of the record.

43. Now, we shall take up the case of the contemnor-respondent No. 7 being the 6th Additional Chief Judicial Magistrate, Surat who passed the order dated 13th December, 2023 granting police custody remand of the petitioner. The contemnor has made the following averments in her reply affidavit: -

43.1 At para No. 2 of the reply affidavit, the officer has offered unconditional apology for what has been termed to be a *bona fide* mistake in interpretation of the order of this Court.

43.2 In para No. 3 of the reply affidavit, the contemnor-respondent No. 7 has emphatically stated that this Court had granted ad-interim relief to the petitioner subject to the condition of cooperating with the Investigating Agency and being the Court of 6th ACJM, the officer was vested with the jurisdiction under Section 167 CrPC to grant police custody remand of the accused. The officer has projected in the reply affidavit that by granting police remand of the accused-petitioner, she rather ensured the compliance of this Court's order with *bona fide* objective of ensuring that the investigation is carried out fairly.

43.3 At para No. 3.1 of the reply affidavit, the contemnor-respondent No. 7 has sworn that upon receiving the remand application from the Investigating Agency, alleging non-cooperation in the investigation by the petitioner, she merely followed the practice and procedure prevalent in the State of Gujarat, wherein the Courts issue anticipatory bail orders with a direction to the accused-petitioner to cooperate with investigation and upon failure to do so, liberty is given to the Investigating Officer to seek police remand. The contemnor-respondent No. 7 has annexed certain orders of the High Court of Gujarat to buttress this plea taken in the affidavit in reply to the contempt notice.

43.4 That the petitioner was served with the notice directing him to remain present before the Court of 6th ACJM for the purpose of seeking his police remand. This notice was at the behest of the Investigating Officer and was routed through the Assistant Public Prosecutor(APP). The Investigating Officer sought 7 days remand of the petitioner on the ground that he was not cooperating with the investigation as directed by this

Court. The petitioner, neither filed any written protest nor any affidavit to oppose the remand application. He also did not make an affirmative statement of having cooperated with the Investigating Agency by providing information and documents in his possession. An emphatic denial has been given by the contemnor-respondent No. 7 to the plea of the petitioner that the order granting police remand was passed without providing a fair opportunity of hearing to the petitioner or his Advocate.

43.5 At para No. 5.3 of the reply affidavit, the contemnor-respondent No. 7 has reiterated that this Court *vide* order dated 8th December, 2023, granted ad-interim relief in favour of the petitioner with a direction to the petitioner to cooperate with the investigation and thus, order of remand was passed considering the purport of para 5 of the order(*supra*) dated 8th December, 2023.

43.6 At para No. 5.4 of the reply affidavit, contemnor-respondent No. 7 has stated that as the order of this Court was not being complied with by the petitioner and

since investigation was permitted to be continued, the contemnor was under a *bona fide* belief of having the power to hear and allow the remand application. It is in the course of exercise of judicial discretion conferred on the officer by law, that the order dated 13th December, 2023 came to be passed.

43.7 The complaint of ill-treatment made by the petitioner was dealt with by the contemnor-respondent No. 7 by following the procedure prescribed in para 14 of the Criminal Manual, Gujarat High Court. Since the petitioner made a complaint of ill-treatment by police in presence of his Advocates, the contemnor-respondent No.7 proceeded to make physical observation of the petitioner wherein no external injury or mark of violence was found on his body which fact was recorded in the statement of the petitioner which was also signed by him.

43.8 At para No. 7 of the reply affidavit, it is stated that the petitioner filed a bail application under Section 437 CrPC without there being any order taking him in judicial custody. The said application was submitted

before the Registry of the Court and was registered in the Central Filing System and thereafter, placed before the Court. The Assistant Public Prosecutor(APP) objected to the prayer for bail, but the contemnor-respondent No. 7 considering the facts and circumstances of the case and the ad-interim relief granted to the petitioner by this Court, directed his release on bail.

43.9 At para No. 8 of the reply affidavit, it has been stated that 8th Additional Chief Judicial Magistrate, Surat passed an order to keep the complaint filed by the petitioner alleging ill-treatment in police custody for verification, but since the petitioner had admitted that his complaint of custodial violence had already been recorded by the contemnor-respondent No.7 on the very date of the completion of the remand period, i.e., 16th December, 2023, she thought it fit to pass a detailed order dismissing the complaint on 6th January, 2024 by exercising jurisdiction under Section 203 CrPC. The contemnor-respondent No. 7 has pleaded that to her knowledge, the petitioner has not challenged the said judicial order.

At this stage, it would be apposite to note that the contemnor-respondent No. 7 has assigned no reasons in the reply affidavit as to how the order dated 21st December, 2023 passed by the predecessor, i.e., 8th Additional Chief Judicial Magistrate directing that the complaint should be placed for verification which would mean recording the statements under Sections 200 and 202 CrPC could have been reviewed by her. Be that as it may, the order dated 6th January, 2024 passed by the contemnor-respondent No. 7 has already been set aside by the High Court of Gujarat by exercising revisional jurisdiction *vide* order dated 22nd December, 2024 passed in R/Criminal Revision Application No. 273 of 2024.

43.10 At para Nos. 10 and 10.1 of the reply affidavit, it has been pleaded that the contemnor-respondent has served the judiciary honestly, sincerely and with total commitment since 2010 and that she continues to discharge her duties within the four corners of law. She had *bona fide* misinterpreted the order of this Court and her sole intention was to secure the interest of justice and hence, the acts alleged should not be termed to be wilful and deliberate disobedience of this Court's order dated 8th December, 2023 as alleged by the petitioner.

44. The contemnor-respondent No. 7 has placed emphatic reliance on the following lines from this Court's order dated 8th December, 2023: -

“5. However, the petitioner is directed to cooperate with the investigation and report to the Investigating Officer as and when directed to do so.”

It was contended on her behalf that by directing the petitioner to cooperate with the investigation, this Court had given liberty to the Investigating Officer to seek his police custody, in case, he did not cooperate with the investigation. She tried to make out a case that by passing the order granting police custody remand of the petitioner, she rather ensured the compliance of the above direction issued by this Court.

45. The 6th ACJM(contemnor-respondent No.7) has laid much stress in her affidavit upon the fact that the Investigating Officer had noted in his application that the accused-petitioner was not cooperating with the investigation. We fail to comprehend as to what could be construed to be cooperation in a criminal case based on allegations which *prima facie* appear to be in relation to a civil dispute. The transaction *inter se* between the parties pertained to sale and purchase of property. However, there was no written agreement for documenting the alleged sale transaction.

Undisputedly, the accused-petitioner had appeared before the Investigating Officer on 11th December, 2023 with the copy of the order under contempt, immediately upon being summoned, at the police station. Thus, there was neither *bona fide* nor genuine need for grant of police custody of the petitioner.

46. The contemnor-respondent No. 7 in her reply affidavit has tried to explain that the order granting police custody was passed on the basis of a perception arising from the practice being followed in the State of Gujarat based on the Division Bench judgment of the High Court of Gujarat in the case of **Sunilbhai Sudhirbhai Kothari**(*supra*). The said explanation is neither convincing nor tenable in view of the fact that it is not a case wherein a Court in Gujarat had passed an order of anticipatory bail under Section 438 CrPC which was vague or open to different interpretations or contained a stipulation that the Investigating Officer could seek police remand of the accused. The order under contempt dated 8th December, 2023 was passed by this Court while exercising its jurisdiction under Article 136 of the Constitution of India wherein there was no such stipulation that the accused could be remanded to police custody. The approach of contemnor-respondent No. 7 in first granting police custody of the petitioner on a clearly frivolous

and *mala fide* remand application filed by Investigating Officer(contemnor-respondent No. 4), and in trying to justify the same in her reply affidavit, that it was based on so called prevalent practice in the State of Gujarat cannot be countenanced. It is noteworthy that despite the period of police custody remand having come to an end on 16th December, 2023, the accused petitioner was further detained till 18th December, 2023 on which date, he was released on bail upon furnishing fresh bail bonds, which is clearly in teeth of this Court's order dated 8th December, 2023. The contemnor-respondent No. 7 has clearly stated in the reply affidavit that no order was passed remanding the accused-petitioner to judicial custody. In this background, detention of the accused till 18th December, 2023 was absolutely unconstitutional and contrary to the letter and spirit of Articles 20 and 21 of the Constitution of India. This Court has placed the individual freedom and right to liberty at the highest pedestal in numerous decisions. Reference in this regard may be to the decision of this Court in the case of ***Rekha v. State of T.N.***,⁵ wherein it was held as under:-

“14. Article 21 is the most important of the fundamental rights guaranteed by the Constitution of India. Liberty of a citizen is a most important right won by our forefathers after long,

⁵ (2011) 5 SCC 244

historical and arduous struggles. Our Founding Fathers realised its value because they had seen during the freedom struggle civil liberties of our countrymen being trampled upon by foreigners, and that is why they were determined that **the right to individual liberty would be placed on the highest pedestal along with the right to life as the basic right of the people of India.**”

(emphasis supplied)

47. If the order granting police custody remand was passed *bona fide* based on some misconception, then, the contemnor-respondent No. 7 should have ensured that the accused-petitioner be released from custody immediately at the end of the period of police custody remand without imposing any further conditions and without any delay. The special leave petition filed on behalf of the petitioner had not been finally decided and was still pending adjudication, when the remand application was entertained and hence, there was no occasion for the 6th ACJM(contemnor-respondent No. 7) to have proceeded to interpret this Court’s order in a fanciful manner and that too while acting on a tainted remand application filed by the Investigating Officer.

48. Criminal jurisprudence requires that before exercising the power to grant police custody remand, the Courts must apply judicial mind to the facts of the case so as to arrive at a satisfaction as to whether the police custody remand of the accused is genuinely required. The Courts are not expected to act as

messengers of the investigating agencies and the remand applications should not be allowed in a routine manner.

49. As discussed above, the FIR against the accused-petitioner was pertaining to a dispute which *prima facie* appears to be of a civil nature and hence, the learned Magistrate ought not to have toed the line of the Investigating Officer while granting police custody remand of the accused-petitioner.

50. As a matter of fact, the application seeking police custody remand of the petitioner could not have been entertained without seeking permission of this Court as observed in the case of ***Sushila Agarwal***(*supra*).

51. In this regard, we are benefitted by the judgment of this Court in the case of ***Ashok Kumar v. Union Territory of Chandigarh***⁶ wherein, it has been held that a mere assertion on the part of the State while opposing the plea for anticipatory bail that custodial investigation is required would not be sufficient. The State would have to show or indicate more than *prima facie* case as to why custodial investigation of the accused is required for the purpose of investigation.

⁶ 2024 SCC OnLine SC 274

52. Moving further, it must be noted that at the end of the remand period, the 6th ACJM(contemnor-respondent No. 7) entertained an application filed on behalf of the accused-petitioner under Section 437 CrPC and directed his release on bail on furnishing bail bonds. Indisputably, the accused had already furnished bail bonds to the Investigating Officer pursuant to his appearance on 11th December, 2023 and hence, the direction given by the contemnor-respondent No. 7 in requiring the accused to furnish a fresh set of bail bonds for his release from custody was improper and clearly contumacious. The explanation sought to be offered regarding the misconception that had played in the mind of contemnor-respondent No. 7 may have been accepted, had the accused been released without insisting for fresh bail and bonds. However, the fact that a formal application was taken under Section 437 CrPC and only thereafter, the accused-petitioner was released on bail is in clear defiance of this Court's order dated 8th December, 2023. The period between the culmination of the police custody remand and the release of the accused-petitioner upon furnishing bail bonds i.e. from 16th December, 2023 to 18th December, 2023 is a grey area in which there was no order

authorising the custody of the petitioner and thus clearly the petitioner was illegally detained for nearly 48 hours.

53. It is pertinent to note that the learned senior counsel appearing for the petitioner had taken a strong exception to the remand application which fact is noted in the proceedings sheet dated 13th December, 2023. However, the contemnor-respondent No. 7 brushed aside the said objection which according to us, was bound to be sustained without any exception, since this Court's order was unambiguous and only possible interpretation was that the petitioner should be released on bail, in the event of his arrest.

54. We, *prima facie* feel that the contemnor-respondent No. 7 seems to have acted in defence of the police officials when she made a note on the complaint of custodial violence made by the petitioner on 16th December, 2023, that after personally examining the feet of the accused, she did not find any injury thereupon. Law requires that the moment the accused had made a complaint of torture in police custody, it was incumbent upon the concerned Magistrate to have got the accused subjected to medical examination as per the mandate of Section 54 CrPC. The formal complaint lodged by the petitioner herein was proceeded with by 8th Additional Chief Judicial Magistrate who took cognizance

thereof on 22nd December, 2023 and directed that the complaint be posted for verification. The only permissible action as per law after cognizance had been taken on a private complaint, would be to record the statements of the complainant and his witnesses by taking recourse to the mandatory procedure prescribed under Sections 200 and 202 CrPC. However, in sheer disregard to the order dated 22nd December, 2023 passed by 8th Additional Chief Judicial Magistrate, the 6th ACJM(contemnor-respondent No.7) dismissed the complaint filed by the petitioner *vide* order dated 6th January, 2024 which has been rightly reversed by the High Court of Gujarat *vide* order dated 22nd February, 2024 passed in R/Criminal Revision Application No. 273 of 2024. This conduct of contemnor-respondent No. 7 gives a strong indication of her biased approach in the matter.

55. The arguments advanced by learned senior counsel appearing for the Additional Chief Secretary, Government of Gujarat as well as the High Court of Gujarat about the long-standing practice prevailing in the State, that the Investigating Officer(s) are given liberty to seek police custody remand of the accused after competent Court has granted anticipatory bail does not appeal to us for a moment. Such an interpretation does not appear to be in

consonance with the unambiguous position of law. The provisions of anticipatory bail enumerated under Section 438 CrPC or the newly enacted Section 482 of the Bhartiya Nagarik Suraksha Sanhita, 2023(hereinafter being referred to as 'BNSS'), which has come into force with effect from 1st July, 2024, do not contemplate any such liberty to the Investigating Officer. However, the Court adjudicating an application for anticipatory bail may, in a given case, restrict the tenure of anticipatory bail in view of the law laid down by this Court in the case of **Sushila Agarwal**(*supra*) and may also impose suitable conditions in light thereof. However, it does not stand to reason that as a matter of course, the High Court or the Court of Sessions, as the case may be, while exercising anticipatory bail jurisdiction, grants pre-arrest bail to the accused and yet, invariably the Investigating Officer is given blanket liberty to keep the accused in custody for prolonged periods in a routine manner. This would virtually frustrate the very purpose and intent behind the grant of anticipatory bail to an accused. The relevant excerpts in this regard from the Constitution Bench judgment of this Court in the case of **Sushila Agarwal**(*supra*) are reproduced below for the sake of ready reference: -

“85.3. Section 438 CrPC does not compel or oblige courts to impose conditions limiting relief in terms of time, or upon filing

of FIR, or recording of statement of any witness, by the police, during investigation or inquiry, etc. While weighing and considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc. The courts would be justified — and ought to impose conditions spelt out in Section 437(3) CrPC [by virtue of Section 438(2)]. The necessity to impose other restrictive conditions, would have to be weighed on a case-by-case basis, and depending upon the materials produced by the State or the investigating agency. **Such special or other restrictive conditions may be imposed if the case or cases warrant, but should not be imposed in a routine manner, in all cases.** Likewise, conditions which limit the grant of anticipatory bail may be granted, if they are required in the facts of any case or cases; however, such limiting conditions may not be invariably imposed.

85.4-85.7.....

85.8. It is open to the police or the investigating agency to move the court concerned, which granted anticipatory bail, in the first instance, for a direction under Section 439(2) to arrest the accused, in the event of violation of any term, such as absconding, non-cooperating during investigation, evasion, intimidation or inducement to witnesses with a view to influence outcome of the investigation or trial, etc. The court, in this context, is the court which grants anticipatory bail, in the first instance, according to prevailing authorities.”

(emphasis supplied)

56. The ratio of the above judgment makes it clear that Section 438 CrPC does not compel or oblige courts to impose conditions limiting relief in terms of time, or upon filing of FIR, or recording of statement of any witness, by the police, during investigation or inquiry, etc. The necessity to impose restrictive conditions other than those spelt out in Section 437(3) CrPC would have to be

weighed on a case-by-case basis and depending upon the materials produced by the State or the Investigating Agency. Such special or other restrictive conditions may be imposed if the factual context of the case warrants but should not be imposed in a routine manner and the Court would have to act with circumspection depending on the particular facts of each case before endeavouring to impose such conditions.

57. This Court has time and again held that the discretion to grant pre-arrest bail should be exercised with great degree of circumspection. Reference in this regard may be made to **P. Chidambaram v. Directorate of Enforcement**⁷.

58. Thus, the power to grant anticipatory bail is not to be exercised in a routine manner and the Courts are expected to use this provision with a great degree of circumspection. Once, a Court bearing in mind the strict parameters applicable to grant of anticipatory bail exercises such power, then in such a situation, giving a handle to the Investigating Officer to seek police custody remand of the accused, would virtually negate and frustrate the very purpose behind the order of anticipatory bail. Hence, we have no hesitation in holding that the practice prevalent in the State of

⁷ (2019) 9 SCC 24

Gujarat that the Courts while dealing with the anticipatory bail application routinely impose the restrictive condition whereby, the Investigating Officers are granted blanket permission to seek police custody remand of the accused, in whose favour the order of anticipatory bail is passed, is in direct contravention to the ratio of the Constitution Bench judgment of this Court in the case of **Sushila Agarwal**(*supra*). The Division Bench judgment of the Gujarat High Court in the case of **Sunilbhai Sudhirbhai Kothari**(*supra*) does not hold good in law as the same runs contrary to the ratio of **Sushila Agarwal**(*supra*) and thus, the same stands impliedly overruled.

Conclusion: -

59. Having considered the rival submissions and upon a threadbare discussion of the material available on record, we conclude as below:-

59.1 Having considered the role attributed to contemnor-respondent No. 2, the Commissioner of Police, Surat, we find that there is not even a whisper of an allegation against the said officer other than the aspect relating to the non-functioning of the CCTV cameras at the Vesu Police Station. Thus, the said

respondent cannot be held responsible for the non-compliance/contempt of this Court's order dated 8th December, 2023 and hence, the contempt notice issued to the contemnor-respondent No.2 i.e, Ajay Kumar Tomar, Commissioner of Police, Surat, is discharged.

59.2 That contemnor-respondent No.3, Deputy Commissioner, Surat, is not directly responsible for non-compliance of this Court's order dated 8th December, 2023. However, his role in failing to ensure proper installation and maintenance of CCTV cameras in the police station can be made a subject matter of enquiry at a departmental level, if so desired. Thus, the contempt notice issued to contemnor-respondent No. 3, Vijaysinh Gurjar, Deputy Commissioner of Police, Zone-4, Surat, is discharged.

59.3 That the Investigating Officer, contemnor-respondent No. 4, Police Inspector acted in flagrant defiance and gross contempt of this Court's order dated 8th December, 2023 by applying for police custody remand of the petitioner herein. The portrayal

made by the Investigating Officer in the remand application to claim that the accused-petitioner was not cooperating in the investigation was totally cooked up and a clear attempt to draw wool over the Court's eyes. During subsistence of this Court's order dated 8th December, 2023, there was neither any authority with the Investigating Officer to seek police custody remand of the accused nor was the prayer for remand justified in the backdrop of the fact that the FIR itself was lodged in relation to a civil dispute which arose from an oral agreement for sale of property. A clear misrepresentation was made in the remand application wherein, the Investigating Officer projected that the cheques issued by the accused-petitioner had to be recovered. It is an admitted position as per the FIR, that the cheques had been issued by the complainant to the accused-petitioner and not *vice versa*. By failing to test the truth of the complainant's allegations regarding transmission of huge cash amount to the tune of Rs. 1.65 crores to the accused, the Investigating Officer acted in sheer ignorance to

the mandate of the Income Tax Act, 1961 as well as the provisions of PMLA. Admittedly, the Investigating Officer(contemnor-respondent No. 4) had only made investigation from the accused for a few hours on 12th December, 2023 and immediately thereafter, the police custody remand application came to be submitted. The notice for remand to the accused on 12th December 2023 does not indicate that he had not cooperated in the investigation.

We are, therefore, inclined to hold that there was not even a shred of *bona fide* in the actions of the Investigating Officer(contemnor-respondent No.4) while seeking police custody remand of the accused on the purported ground of non-cooperation in investigation. The exercise of seeking police custody remand during currency of the interim protection granted to the petitioner was in sheer defiance of this Court's order dated 8th December, 2023 and tantamounts to contempt on the face of the record. Hence, we have no hesitation in holding that while seeking for and procuring the police custody remand

of the accused in the teeth of the order dated 8th December, 2023, the Investigating Officer, R.Y. Raval, Police Inspector, Vesu Police Station, Surat(contemnor-respondent No. 4) is guilty of gross contempt.

59.4 That the explanation offered by 6th ACJM(contemnor-respondent No.7), that the order dated 13th December, 2023 granting police custody remand of the petitioner was passed in the *bona fide* exercise of jurisdiction, based on a genuine misunderstanding of the legal position does not appeal to us. In view of the findings recorded in preceding paras, it is clear that contemnor-respondent No. 7 acted with bias and in a high-handed manner while granting police custody remand of the accused. The reason offered by her that she was acting under a misconception owing to settled and prevailing practice in the State of Gujarat, is clearly in disregard to the order passed by this Court. The said plea does not hold water since the order under contempt dated 8th December, 2023 allowed only one interpretation i.e.

the accused-petitioner had to be released on bail in the event of arrest. The action of the contemnor-respondent No.7 in granting police custody remand of the petitioner and in failing to release him upon completion of the aforesaid period is clearly in teeth of this Court's order dated 8th December, 2023 and tantamounts to contempt. The contemnor-respondent No. 7's contumacious actions also contributed to the illegal detention of the petitioner for almost 48 hours after the period of police remand had come to an end.

60. Accordingly, the contempt notices issued to respondent Nos. 2 i.e., Ajay Kumar Tomar, Commissioner of Police, Surat, respondent No. 3 i.e., Vijaysinh Gurjar, Deputy Commissioner of Police, Zone-4, Surat and respondent No. 6 i.e., Abhishek Vinodkumar Goswami(complainant) stand discharged.

61. As a result of the above discussion, we hold R.Y. Raval, Police Inspector, Vesu Police Station, Surat(contemnor-respondent No.4) and Deepaben Sanjaykumar Thakar, 6th Additional Chief Judicial Magistrate, Surat(contemnor-respondent No.7) guilty of having committed contempt of this Court's order dated 8th December, 2023.

Special Leave Petition (Crl.) No(s). 14489 of 2023, 537 of 2024 and 1116 of 2024

62. The orders dated 8th December, 2023, 11th January, 2024 and 23rd January, 2024 passed by this Court in SLP Nos. 14489 of 2023, 537 of 2024 and 1116 of 2024, respectively are made absolute and it is directed that the ad-interim anticipatory bail granted to the petitioners shall enure till culmination of the proceedings from the FIR No. 11210068230266 of 2023 dated 21st July, 2023.

63. The special leave petitions are accordingly disposed of.

64. Pending application(s), if any, shall stand disposed of.

.....**J.**
(B.R. GAVAI)

.....**J.**
(SANDEEP MEHTA)

New Delhi;
August 07, 2024