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**XVII K.K LUTHRA MEMORIAL MOOT COURT, 2021**

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*Before*

**THE SUPREME COURT OF OZALA**

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**W.P. — /2020**

**MS. QUANTISA.....PETITIONER**

**v.**

**UNION OF OZALA.....RESPONDENT 1**

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**SLP (CrI.) NO. — /2020**

**MS. QUANTISA.....PETITIONER**

**v.**

**STATE OF ASPAR..... RESPONDENT 2**

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**ABOVE MENTIONED PETITIONS HAVE BEEN CLUBBED ON DIRECTIVE OF  
HON'BLE SUPREME COURT OF OZALA**

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**MEMORIAL ON BEHALF OF THE RESPONDENTS**

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## **STATEMENT OF FACTS**

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### **Geography of Ozala and the outbreak of COVID 19**

Ozala is one of the most populous countries, with the state of Aspar as the eastern most state sharing its border with Yada. The Great Temple of Aspar is believed to be the birthplace of the founder of the Vishlip sect of Lopasis, a sect which is in minority in Ozala but in majority in Yada. The media reportage of the outbreak of COVID-19 and the fact that it is a communicable from human to human was suppressed by the authoritarian government of Yada.

### **Unfolding of the events**

**10 March 2020-** Ozala started thermal scanning at airports when it only had 15 cases.

**12 March 2020-** Ms. Quantisa developed flu-like symptoms and was advised to cancel her visit but she did not agree to it.

**13 March 2020-** The government of Aspar issued regulation which defines the term “Epidemic Disease” as “COVID-19” and the regulation prohibited gatherings of more than 15 persons within the state. The Code of Criminal Procedure, 1973 was amended and section 439A was introduced. Ms. Quantisa along with three officials arrived in Aspar for the annual congregation. It is to be noted that all permissions from State Government of Aspar for the event were taken previously. She took a test for COVID-19 as advised by the officials of Yada.

**14 March 2020-** Ceremony begins and attended by 58 visitors. She claimed that is not suffering from COVID 19 as she is practitioner of cosmic meditation. In the evening, Ms. Quantisa and the officials had to depart but Ms. Quantisa developed high fever and was hospitalized.

**16 March 2020-** Ms. Quantisa tested positive for COVID-19 along with the three attendees who reached Yada.

**19 -20 March 2020-** Government traced all attendees who had also tested positive for COVID-19. No deaths reported however, some were critical and needed ventilator. All attendees were from seven sister states where most of the population resided.

**22 March 2020-** Ms. Quantisa is arrested from hospital and FIR is registered u/s. 188,270,325,208 of Ozalan Penal Code, 1860 read with Section 3 of the Epidemic disease Act, 1897. Investigation report suggested that she received a message of her being COVID-19 immediately after the ceremony.

**26 April 2020-** Chargesheet is filed.

**10 May 2020-** Bail application was filed by Ms. Quantisa.

The High court rejected the bail application under Section 439A of Cr.PC, 1973 as was accused of a heinous offence and found no reasonable ground to release on bail because of her public stature and social media. Ms. Quantisa challenged the bail application in the Supreme Court and also challenged the constitutional validity of Section 439A of Cr.PC, 1973. Hence, the present matter.

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### ISSUES RAISED

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**ISSUE 1- Whether the additional conditions for grant of bail under Section 439A of the Code of Criminal Procedure that require a Court to be satisfied that there are “reasonable grounds for believing that a person is not guilty of an offence” and that the**



person “is not likely to commit any offence while on bail” violate fundamental rights guaranteed under the Constitution of Ozala?

**ISSUE 2- Whether Ms. Quantisa is entitled to be released on bail?**

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SUMMARY OF ARGUMENTS

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**Issue 1- Whether the additional conditions for grant of bail under Section 439A of the Code of Criminal Procedure that require a Court to be satisfied that there are “reasonable grounds for believing that a person is not guilty of an offence” and that the person “is not likely to commit any offence while on bail” violate fundamental rights guaranteed under the Constitution of Ozala?**

It is humbly submitted that the “additional conditions” for grant of bail under Section 439A of the Code does not violate Article 14 of the Constitution of Ozala as the classification is based on an intelligible differentia having an object sought to be achieved to protect the society from threats of the deadly disease. There is no scope for arbitrariness application since the precedents have given a clear meaning to its application. Also, Section 439A is a just, fair and reasonable ‘procedure established by law’ which is a fair procedure to deprive right to liberty with an aim of protection of society. Lastly, it is submitted that ‘right to fair trial’ is not diluted as far as ‘presumption of innocence’ and ‘burden of proof’ is concerned.

**Issue 2- Whether Ms. Quantisa is entitled to be released on bail?**

It is humbly submitted that Ms. Quantisa is not entitled to be released on bail. Section 439 provides for discretionary powers in the matters of bail however such discretion has to be balanced with the interests of the state. In the present instance, there are reasonable grounds to believe that the petitioner is guilty of ‘deliberately’ spreading COVID-19 and to believe that she will commit an offence on bail given her public stature and presence on social media. Moreover, she has committed a heinous crime which is a reasonable ground to refuse her bail considering the facts and circumstances. It is contended that the accused is liable u/s 188, 270, 308 and 325 of the Ozalan Penal Code, 1860 since she had the required mens rea and malice to commit the acts. Therefore, there are prima facie facts to prove her guilt under the said sections. Further, the accused has committed a crime which has risked the lives of most of the population of the country. Lastly, it is submitted that considering the national interests of the state while granting bail is equally important and hence bail should not be granted.

WRITTEN PLEADINGS

**A. THE ADDITIONAL CONDITIONS FOR GRANT OF BAIL UNDER SECTION 439A OF THE OZALAN CODE OF CRIMINAL PROCEDURE DOES NOT VIOLATE FUNDAMENTAL RIGHTS GUARANTEED UNDER THE CONSTITUTION OF OZALA?**

[¶1] It is humbly submitted before this Hon’ble Court that Ozalan Constitution (hereinafter referred as ‘Constitution’) guarantees the same set of fundamental rights as the Indian Constitution does.<sup>1</sup> The Indian Supreme Court while dealing with the question of constitutional validity of a statute has held that the presumption is always on the constitutionality and the burden is upon the person who attacks it to show that there has been transgression of constitutional principles.<sup>2</sup>

[¶2] Since, the counsel for the petitioner has contended that the “twin conditions” for grant of bail is violative of Article 14 and Article 21 of the Constitution therefore, the counsel for the respondents most humbly submits that the amendment which introduced Section 439A into the Code<sup>3</sup> having “twin conditions” to be satisfied before grant of bail does not violate Article 14 and Article 21 of the Constitution.

**1. Additional condition does not violate right to equality under Article 14**

[¶3] The counsel for the respondents most humbly submits that Section 439A of the Code does not violate right to equality since:

[1.1] the classification is based on an intelligible differentia

[1.2] the differentia has a rational nexus with the object sought to be achieved

[1.3] it is not arbitrary in its application

***1.1. The classification is based on an Intelligible differentia***

[¶4] It is humbly submitted before this Hon’ble Court that Article 14 forbids class legislation but it does not forbid reasonable classification for the purposes of legislation.<sup>4</sup> If it appears that the impugned legislation is based on a reasonable classification founded on intelligible

<sup>1</sup> Moot Problem, p.no. 7.

<sup>2</sup> *CST v. Radhakrishnan*, (1979) 2 SCC 249.

<sup>3</sup> Moot Problem, p.no. 2, para. 4.

<sup>4</sup> *Budhan Chaudhury v. The State of Bihar*, AIR 1955 SC 191.

differentia,<sup>5</sup> & that the said differentia have a rational relation to the object sought to be achieved by it then,<sup>6</sup> its validity cannot be successfully challenged under Article 14.<sup>7</sup> The doctrine of classification is a subsidiary rule evolved by the courts to give practical content to the doctrine of equality.<sup>8</sup>

[¶5] Differential treatment does not per se amount to violation of Article 14 of the Constitution and the intelligible differentia has to be conducive to the functioning of modern society.<sup>9</sup> The classification under Article 14 need not be of persons only; even offences of a serious nature may be treated as a class and tried in a way different from ordinary offences and dealt with by a drastic procedure without violating the equal protection clause.<sup>10</sup>

[¶6] It is humbly submitted before this Hon'ble Court that the legislature has classified an offence of deliberately spreading Covid-19 under section 439A of the Code and has provided for a separate bail provision on which the bail applications of person accused of such offence will be decided. Since, Covid-19 is an infectious disease transferred from human to human,<sup>11</sup> and is dangerous to life as it likely to cause death.<sup>12</sup> Therefore, it is necessary to classify people who are deliberately spreading it and risking public health at large. It is contended that the basis adopted for classification is the deliberate intention. It is specifically for those accused persons who have deliberately disobeyed the order relating to Coronavirus made under the authority of Epidemic Disease Act, 1897 (hereinafter referred as the 'Act') which has resulted into the spread of the disease.

***1.2. There is a rational nexus with the object sought to be achieved***

[¶7] The counsel most humbly submits that the differentia adopted as the basis of classification must have a rational or reasonable nexus with the object sought to be achieved by the statute in question.<sup>13</sup> It is settled law that differentiation is not always discriminatory.<sup>14</sup> If there is a rational nexus on the basis of which differentiation has been made with the object

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<sup>5</sup> *Laxmi Khandsari v. State of Uttar Pradesh*, AIR 1981 SC 873.

<sup>6</sup> *Javed v. State of Haryana*, (2003) 8 SCC 369.

<sup>7</sup> *Shri Ram Krishna Dalmia v. Justice S.R. Tendolkar*, AIR 1958 SC 538.

<sup>8</sup> *L.I.C. of India v. Consumer Education and Research Centre*, (1995) 5 SCC 482.

<sup>9</sup> *Transport & Dock Workers Union v. Mumbai Port Trust*, (2011) 2 SCC 575.

<sup>10</sup> *Rehman Sagoo v. State of J&K*, AIR 1960 SC 1.

<sup>11</sup> *People with Certain Medical Conditions*, available at: <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (last visited on November 5, 2020).

<sup>12</sup> Moot Problem, p.no. 4, para. 11.

<sup>13</sup> *Laxmi Khandsari v. State of Uttar Pradesh*, AIR 1981 SC 873.

<sup>14</sup> *Kathi Raning Rawat v. The State of Saurashtra*, AIR 1952 SC 123.

sought to be achieved by particular provision, then such differentiation is not discriminatory and does not violate the principles of Article 14 of the Constitution.<sup>15</sup>

[¶8] It is humbly submitted before this Hon'ble Court that the provisions of the Section carry stringent conditions to be satisfied before grant of bail which are generally found in legislations enacted to tackle serious crimes and save the society from inflictions of such crime.<sup>16</sup> In view of the Coronavirus pandemic and the seriousness of the disease, the classification has a rational nexus with the object of the amendment which prima facie discloses to be the protection of society from negligent and malignant act by the carrier of the disease, which has the effect of even taking the life of the person.<sup>17</sup>

### **1.3. The conditions are not arbitrary in application**

[¶9] Every State action must be informed by reason and it follows that an act uninformed by reason is per se arbitrary.<sup>18</sup> Arbitrariness on the possibility that a power may be abused, despite the guidelines, in the provisions providing for such power cannot be held to be arbitrary and unreasonable.<sup>19</sup> It is humbly submitted that there is no scope of such provision to function without reason or the discretionary power given to the Court may be abused since the interpretation in the precedents have given a wide meaning to similar provision as Section 439A of the Code.

#### **1.3.1. The role of Public Prosecutor is to aid the Court to reach at a satisfaction**

[¶10] It is humbly submitted before this Hon'ble Court that the Public Prosecutor has a vital role to play in the whole process of reaching the required satisfaction by the Court.<sup>20</sup> It is as much the duty of the prosecutor as of the court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice.<sup>21</sup> He has to show such material on record collected against the accused and oppose the application for bail by showing that no such reasonable grounds exist for believing that the applicant is not guilty of the offence charged.<sup>22</sup>

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<sup>15</sup> *Union of India v. M.V. Valliappan*, (1999) 6 SCC 259.

<sup>16</sup> The Narcotic Drugs and Psychotropic Substances Act, (Act 61 of 1985), s. 37; The Terrorism and Disruptive Activities Act, (Act 28 of 1987), s. 20(8); The Maharashtra Control of Organised Crime Act, (Act 30 of 1999), s. 21(4).

<sup>17</sup> *Supra* note 11.

<sup>18</sup> *Bannari Amman Sugars Ltd. v. CTO*, (2005) 1 SCC 625.

<sup>19</sup> *Commissioner of Central Excise Jamshedpur v. Dabur (India) Ltd.*, (2005) 3 SCC 64.

<sup>20</sup> *Prakash Kumbhar v. State of Orissa*, (2019) SCC OnLine Ori 18.

<sup>21</sup> *Ghirro v. Emperor*, 1933 Cri LJ Oudh 34.

<sup>22</sup> *Satyabrata v. State*, (1991) II OLR 475.

**1.3.2. Reasonable grounds to believe that the accused is ‘not guilty’ is to reach at a prima facie case**

[¶11] The Court granting bail under Section 439A is expected to exercise its discretion in a judicious manner and not as a matter of course.<sup>23</sup> Non-obstante clause in the section should not be construed as a blanket ban on the Court’s discretion to release an accused on bail.<sup>24</sup> The crux of the matter lies in reaching the satisfaction as contemplated by sub-section (ii) of section 439A.<sup>25</sup> The word ‘reasonable’ signifies in ‘accordance with reason’ which is a question of fact and depends upon the circumstances in a given situation.<sup>26</sup>

[¶12] It is most humbly urged that before a bail order is passed, the Court must be satisfied and the satisfaction must be based on reasonable grounds for believing that the applicant is not guilty of the offence charged. While considering the question of bail, to ensure that there is no prejudging and no prejudice, a brief examination of evidence is necessary for the Court to be satisfied about the existence of a prima facie case.<sup>27</sup> It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words ‘reasonable grounds for believing’ instead of ‘the evidence’ which means the court dealing with the grant of bail can only satisfy itself as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge.<sup>28</sup>

**1.3.3. The release or rejection of bail on these grounds does not mean acquittal or conviction respectively**

[¶13] It is humbly submitted before this Hon’ble Court that Section 439A of the Code is not to be equated with Section 235 of the Code which demands acquittal on finding of not guilty because the former is question of ‘belief’ while the latter is question of ‘finding’ and they should not confuse any Court.<sup>29</sup> The Court while considering an application for bail with reference to Section 439A of the Code is not called upon to record a finding of ‘not guilty’.

[¶14] It is for the limited purpose essentially confined to the question of releasing the accused on bail that the Court is called upon to see if there are reasonable grounds for believing that the accused is not guilty.<sup>30</sup> The degree of certainty of belief expected is far less than the degree of

<sup>23</sup> *Gudikanti Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh*, (1978) 1 SCC 240.

<sup>24</sup> *Mari Appa v. State of Madhya Pradesh*, 1990 Cri LJ 1990.

<sup>25</sup> *Kalyan Chandra Sarkar v. Rajesh Ranjan*, (2004) 7 SCC 528.

<sup>26</sup> *Municipal Corporation of Greater Mumbai v. Kamla Mills*, AIR 2003 SC 2998.

<sup>27</sup> *Ibid* at 25.

<sup>28</sup> *Prahlad Singh Bhati v. NCT*, (2001) 4 SCC 280.

<sup>29</sup> *Union of India v. Shiv Shankar Kesari*, (2007) 2 SCC 624.

<sup>30</sup> *Om Prakash Tekchand Batra v. State of Gujarat*, (1998) 3 GLR 2031.

conviction or acquittal which a Court is required to possess while finding a man guilty of an offence.<sup>31</sup> There is no need to consider the matter as if the Court is pronouncing a judgment of acquittal recording a finding of not guilty.<sup>32</sup>

**1.3.4. Reasonable grounds to believe that the accused is ‘not likely to commit any offence’ is to secure society from further threats**

[¶15] The conduct of an accused seeking bail in the context of his background and the nature of crime committed are to be evaluated before the concession of bail can be granted and that the evaluation is fundamentally from the point of view of unleashing a threat to the society during bail.<sup>33</sup> It is rational to enquire into the antecedents of a man who is applying for bail to find whether he has a record which suggests that he is likely to commit serious offences while on bail.<sup>34</sup> It is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the members of society.<sup>35</sup> Bail discretion, on the basis of evidence about the criminal record of a defendant, is therefore not an exercise in irrelevance.<sup>36</sup>

[¶16] It is humbly submitted that the past conduct or antecedent history of a person can be taken into account in making a detention order, and as a matter of fact, it is largely from prior events showing tendencies or inclinations of a man that an inference could be drawn whether he is likely even in the future to act in a manner prejudicial to the maintenance of public order.<sup>37</sup> In this connection, it is however, necessary to bear in mind that the past conduct or antecedent history of the person on which the authority purports to act, should ordinarily be proximate in point of time and should have a rational connection with the conclusion that the detention of the person is necessary.<sup>38</sup>

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**2. Additional conditions for grant of bail does not violate right to life and liberty**

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[¶17] It is humbly submitted before this Hon’ble Court that the liberty of an individual is precious but cannot be absolute in every situation.<sup>39</sup> Liberty is to be secured through process

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<sup>31</sup> *State v. Harbans Lal*, 1975 Cri LJ 1705.

<sup>32</sup> *Supra* note 29.

<sup>33</sup> *Kartar Singh v. State of Punjab*, (1994) 3 SCC 569.

<sup>34</sup> *G. Narasimhulu v. Public Prosecutor, A.P.*, AIR 1978 SC 429.

<sup>35</sup> *Babu Singh v. State of U.P.*, (1978) 1 SCC 579.

<sup>36</sup> *Ibid.*

<sup>37</sup> *Jagjit Singh v. The State of Punjab*, (1952) 1 SCR 756.

<sup>38</sup> *Rameshwar Shaw v. District Magistrate, Burdwan*, AIR 1964 SC 334.

<sup>39</sup> *Subhash Kashinath Mahajan v. The State of Maharashtra*, (2018) 4 SCALE 661.

of law, which is administered keeping in mind the collective interest of the community.<sup>40</sup> It is possible that in a given situation, the collective interest of the community may outweigh the right of personal liberty of the individual concerned.<sup>41</sup> Therefore, right of liberty of an individual and the interest of the society in general has to be balanced.<sup>42</sup> Section 439A of the Code has an effect of depriving life and liberty in the collective interest of the community and is permissible under Article 21 because:

[2.1] it is a 'procedure established by law' which is a fair procedure to deprive life and liberty

[2.2] it does not dilute the principles of fair trial

**2.1. 'Procedure established by law' is a fair procedure to deprive life and liberty**

[¶18] It is most humbly submitted that the significance and sweep of Article 21 make the deprivation of liberty a matter of grave concern and permissible only when the law authorising it is reasonable, even-handed and geared to the goals of community good and State necessity.<sup>43</sup> Before a person is deprived of his life and personal liberty, the procedure established by law must be strictly followed, and must not be departed from to the disadvantage of the person affected.<sup>44</sup> Liberty of a person should not ordinarily be interfered with unless there exist cogent grounds.<sup>45</sup> Therefore, Section 439A must be interpreted keeping in view the aforementioned salutary principles.

[¶19] Reasonableness postulates intelligent care and predicates that deprivation of freedom by refusal of bail is not for punitive purpose but for the bifocal interests of justice to the individual involved and society affected.<sup>46</sup> The UK Supreme Court has held that 'there is a need to maintain a fair balance between the general interest of the community and the personal right of the individual.'<sup>47</sup> All deprivation of liberty is validated by social defence.<sup>48</sup>

[¶20] It is well settled that the golden principle of bail jurisprudence is that 'bail is the rule and jail an exception.'<sup>49</sup> However, it is also to be noted that through the evolution of time,

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<sup>40</sup> *Shahzad Hasan Khan v. Ishtiaq Hasan Khan*, (1987) 2 SCC 684.

<sup>41</sup> *Masroor v. State of U.P.*, (2009) 14 SCC 286.

<sup>42</sup> *Rajesh Ranjan Yadav v. CBI*, AIR 2007 SC 451.

<sup>43</sup> *Supra* note 23.

<sup>44</sup> *Bashira v. State of Uttar Pradesh*, AIR 1968 SC 1313; *Narendra Purshotam Umrao v. B.B. Gujral*, AIR 1979 SC 420.

<sup>45</sup> *Narendra Singh v. State of M.P.*, 2004 Cri LJ 2842.

<sup>46</sup> *Supra* note 35.

<sup>47</sup> *Brown v. Stott*, 2001 (2) All ER 17 PC.

<sup>48</sup> *Supra* note 23.

<sup>49</sup> *State of Rajasthan v. Balchand*, AIR 1977 SC 2447; *State v. Anil Sharma*, AIR 1997 SC 3806.

without compromising the basic principles of bail jurisprudence, the Courts have also added the aspect of discretionary jurisdiction as regard bail jurisprudence, which calls for cautious exercise by balancing the valuable right of liberty of an individual and the interest of society in general.<sup>50</sup> Section 439A has the same effect of depriving the life and liberty through a procedure established by valid law with the requirements of the society for being shielded from the hazards of being exposed to the misadventures of a person alleged to have committed a serious crime.<sup>51</sup>

## **2.2. The procedure does not dilute the principles of 'fair trial'**

[¶21] The petitioner has challenged the twin condition as an anathema to any criminal justice system as far as it does not consider two basic principles of fair trial i.e. 'presumption of innocence until proven guilty' and reverses the 'burden of proof' from prosecution to the accused. The counsel for the respondents most humbly submits that the provision is justified in such deviations as 'presumption of innocence' is not operative at the stage of bail and it is not the burden but the 'onus of proof' which shifts.

### **2.2.1. 'Presumption of innocence' is not operative at the stage of bail**

[¶22] It is humbly submitted before this Hon'ble Court that the United States Supreme Court has adopted liberal interpretation of presumption of innocence and has held that the right to be presumed innocent until proven guilty is not operative at the stage of bail.<sup>52</sup> Right to bail does not stem from the presumption of innocence.<sup>53</sup> The Court also clarified that this principle must be applied at the stage of trial and not at the stage of bail because during bail, guilt or innocence is not determined.<sup>54</sup> Pre-trial detention in itself is not opposed to the basic presumptions of innocence.<sup>55</sup>

[¶23] The Supreme Court of India has in several cases upheld the constitutionality of statutes providing for such presumptions and has held the validity of provision which place the burden on the accused to rebut the statutory presumption as just, fair and reasonable and does not

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<sup>50</sup> M.R. Mallick, *Bail: Law and Practice* 8 (Eastern Law House, Kolkata, 2009).

<sup>51</sup> *Varman Narain v. State of Rajasthan*, (2009) 2 SCC 281.

<sup>52</sup> *Bell v. Wolfish*, (1979) 441 U.S. 520.

<sup>53</sup> Nico Steytler, *Constitutional Criminal Procedure: A Commentary on the Constitution of the Republic of South Africa* 134 (Butterworths, Durban, 1998).

<sup>54</sup> *R. v. Pearson*, (1992) 3 SCR 665.

<sup>55</sup> *State v. P. Sugathan*, 1988 Cri LJ 1036.



contravene Article 21 of the Constitution.<sup>56</sup> Section 439A being a similar provision for grant of bail which need not consider presumption of innocence at the stage of granting bail.

### 2.2.2. Reverse burden is permitted in serious threat issues

[¶24] A legal provision does not become unconstitutional only because it provides for a reverse burden.<sup>57</sup> Parliament is charged with the primary responsibility for deciding the best way of dealing with social problems.<sup>58</sup> Reverse burden is justifiable when the offence poses a threat to the society as the primary duty of the state is to protect the society.<sup>59</sup> The UK Supreme Court has held that if a sound policy reason exist for imposing a reverse legal burden, then the provision should be upheld.<sup>60</sup> The Indian Supreme Court held that reverse onus clauses were constitutional even when they impose a legal burden of establishing innocence upon the accused.<sup>61</sup> Thus, the constitutionality of a penal provision placing burden of proof on an accused, thus, must be tested on the anvil of the State's responsibility to protect innocent citizens.<sup>62</sup>

[¶25] Coronavirus is once in a century pandemic.<sup>63</sup> There has been massive loss of lives all over the world with numbers massively growing every day and the situation is continuously deteriorating because of no cure available.<sup>64</sup> Reports show that adults over age 60 and people who have severe underlying chronic medical conditions, like heart disease or lung disease or diabetes, seem to be at higher risk for developing more serious complications from the virus.<sup>65</sup> It appears to be more deadly than the Influenza flu virus,<sup>66</sup> and therefore the whole world is trying to deal with the deadly disease in their own possible ways. The US Justice Department

<sup>56</sup> *K. Veeraswamy v. Union of India*, (1991) 3 SCC 655.

<sup>57</sup> *Hiten P. Dalal v. Bratindranath Banerjee*, 2001 Cri LJ 4647; *M.S. Narayana Menon v. State of Kerala*, 2006 Cri LJ 4607.

<sup>58</sup> *Ghaidan v. Godin Mendoza*, (2004) UKHL 30.

<sup>59</sup> *R v. D.P.P. ex. P Kebilene*, (2000) 2 AC 326.

<sup>60</sup> *Brown v. Scott*, (2003) 1 AC 681.

<sup>61</sup> *Noor Agra v. State of Punjab*, 2008 Cri LR 655.

<sup>62</sup> *Ibid.*

<sup>63</sup> Bill Gates, "Responding to Covid-19 — A Once-in-a-Century Pandemic?" *The New England Journal of Medicine* (2020).

<sup>64</sup> Coronavirus disease (COVID-19) advice for the public: Mythbusters, available at: <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public/myth-busters> (last visited on November 10, 2020).

<sup>65</sup> How to Protect Yourself & Others, available at: [https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fprepare%2Fprevention.html](https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fprepare%2Fprevention.html) (last visited on November 7, 2020).

<sup>66</sup> Coronavirus disease (COVID-19): Similarities and differences with influenza, available at: <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/coronavirus-disease-covid-19-similarities-and-differences-with-influenza> (last visited on November 7, 2020).

decided that those who intentionally spread coronavirus could be charged as terrorists in United States.<sup>67</sup> Similarly, Ozala being a densely populated country and therefore is highly prone to spread of the disease places an onerous burden on the accused to prove his innocence through Section 439A(ii) of the Code and is justified in order to protect the society from serious threat.

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**B. MS. QUANTISA IS NOT ENTITLED TO BE RELEASED ON BAIL**

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[¶26] It is humbly submitted before this Hon'ble Court that the State is strongly opposed to the granting of bail to the petitioner on the following grounds:

- [1] The petitioner is not entitled to bail u/s. 439A of the Code
- [2] The petitioner is accused of committing a heinous crime
- [3] Act of petitioner prima facie attracts the charges in the chargesheet
- [4] The order of the High Court rejecting the bail application should be upheld

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**1. The petitioner is not entitled to bail u/s. 439A of the Code**

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[¶27] No person accused of an offence relating to deliberately spreading COVID-19 shall be released on bail or bail bond by any Court unless the "additional conditions" for grant of bail is satisfied.<sup>68</sup> It is humbly submitted that the appeal against the rejection of bail of the petitioner shall be adjudged under Section 439A of the Code since, the petitioner is sought to be proceeded against for commission of the offence relating to deliberately spreading COVID-19. Therefore, the petitioner ought not be released on bail because-

***1.1. There are reasonable grounds to believe that the petitioner is guilty of deliberately spreading COVID-19***

[¶28] Deliberate means not suddenly, not rashly, and requires that the doer considered the probable consequences of his or her act before doing the act.<sup>69</sup> The Supreme Court of Canada has held that the word deliberate in Criminal Code means that it should also carry its natural meaning of considered, not impulsive, slow in deciding, cautious, implying that the accused must take time to weigh the advantages and disadvantages of intended action.<sup>70</sup>

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<sup>67</sup> Those who intentionally spread coronavirus could be charged as terrorists in US, *available at: <https://www.politico.eu/article/those-who-intentionally-spread-coronavirus-could-be-charged-as-terrorists-in-us/>* (last visited on November 15, 2020).

<sup>68</sup> The Ozalan Code of Criminal Procedure, 1973, s. 439A.

<sup>69</sup> *State v. McGhee*, 742 NW 2d 497 (2007).

<sup>70</sup> *R. v. Nygaard*, (1989) 2 SCR 1074.

[¶29] The deliberate use of anti-pyretic drugs to clear the airport screening and the fact that Ms. Quantisa primarily made everyone believe that she cannot get infected with Coronavirus since she practiced Cosmic Meditation,<sup>71</sup> and then used her social status to harbour the belief that drinking holy water from her hands will make immunity against the disease stronger.<sup>72</sup> These acts were performed by her despite showing flu-like symptoms, which is one of the symptoms of COVID.<sup>73</sup> All of these acts were deliberately performed on part of the petitioner to hide her flu-like symptom which lead to the spread of the virus. Also, after receiving the message regarding getting tested positive for COVID-19, she did not inform anyone<sup>74</sup> and tried to flee the country keeping the information in isolation and the lives in danger.

**1.2. There are reasonable grounds to believe that the petitioner is likely to commit an offence while on bail**

[¶30] It is humbly submitted before this Hon'ble Court that the High Court of Aspar placing reliance on Section 439A of the Code rejected the bail application of the petitioner on the ground that she was likely to commit an offence especially because of her public stature and her presence on social media. The expression 'reasonable grounds' has not been defined in the Code but means something more than prima facie grounds.<sup>75</sup> Materials on record are to be seen and the antecedents of the accused is to be examined to enter such a satisfaction.<sup>76</sup> The Bombay High Court prohibited the use of Social media, which was used to create panic by disseminating false information.<sup>77</sup>

[¶31] Ms. Quantisa is believed to be the reincarnation of the founder of the sect.<sup>78</sup> She had influenced the people at the ceremony by saying that if people drank holy water from her hands, their immunity against the disease would become stronger.<sup>79</sup> Attendees of the congregation believed such view of Ms. Quantisa only because they thought that she had a graduate degree in Science and is a credible source of information.<sup>80</sup> This shows her status into the society that she was able to influence people with a superstitious belief which has no backing of Science.

<sup>71</sup> Moot Problem, p.no. 3, para. 8.

<sup>72</sup> Moot Problem, p.no. 3, para. 8.

<sup>73</sup> Coronavirus disease (COVID-19), available at: <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/q-a-coronaviruses> (last visited on October 15, 2020).

<sup>74</sup> Moot Problem, p.no. 4, para. 12.

<sup>75</sup> *Narcotics Control Bureau v. Dilip Pralhad Namade*, (2004) 3 SCC 619.

<sup>76</sup> *Satpal Singh v. State of Punjab*, (2018) 13 SCC 813.

<sup>77</sup> *Pankaj Rajmachikar v. State of Maharashtra*, PIL (Lodging) No. 24 of 2020.

<sup>78</sup> Moot Problem, p.no. 2, para 5.

<sup>79</sup> Moot Problem, p.no. 3, para. 8.

<sup>80</sup> Moot Problem, p.no. 3, para 8.

[¶32] The counsel for the respondents submits that materials on record show that Ms. Quantisa can act in a way to cause panic into the society by making people believe on such superstitious belief which she did at the congregation which resulted into the spread of the virus therefore, bail is not to be granted when there are circumstances creating trouble by repetition of offence.<sup>81</sup>

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## 2. The petitioner is accused of committing a heinous offence

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[¶33] It is humbly submitted that the accused has committed a heinous offence. Heinousness of an offence should be interpreted by considering the facts and circumstances of each case.<sup>82</sup> A simple offence can be aggravated if done in circumstances involving deliberate malice and motives.<sup>83</sup> The gravity is to be judged by the impact, the offence has, on the society and integrity of the country.<sup>84</sup> It is not a disputed fact that COVID-19 is a deadly disease<sup>85</sup> which is communicable through human to human.<sup>86</sup>

[¶34] The counsel submits that Aspar is a country with one of the highest populations and pollution density in the world.<sup>87</sup> The congregation was attended by people from all the seven sister states,<sup>88</sup> in which most of the population resided.<sup>89</sup> The probability of the outbreak of the virus is pretty high in such a country. Ms. Quantisa knowingly tried to put a large number of people at risk and exposing them to COVID-19. She had flu-like symptoms before arriving at Yada and she was suggested to cancel her visit.<sup>90</sup> This fact clearly shows that she had knowledge about her health conditions. She took anti-pyretic drugs, which is used to suppress fever<sup>91</sup> and cleared the airport screening.<sup>92</sup> This proves that she did an overt act to cover her symptoms of fever which could have debarred her from clearing the screenings.

[¶35] Covid-19 is a novel disease and hence requires increased standards of precautions and laws to control its spread. HIV can be taken to be the closest disease with such gravity. It is to be noted that HIV is a sexually transmitted disease and the liability for intentionally spreading

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<sup>81</sup> *Supra* note 49.

<sup>82</sup> *P. Chidambaram v. Directorate of Enforcement*, (2019) SCC OnLine SC 1549.

<sup>83</sup> Hari Singh Gaur, *Penal Law of India* 434 (11<sup>th</sup> edn., Law publishers, Allahabad, 1998).

<sup>84</sup> *Ibid* at 82.

<sup>85</sup> Moot Problem, p.no. 4, para. 11.

<sup>86</sup> Moot Problem, p.no. 1, para. 3.

<sup>87</sup> Moot Problem, p.no. 1, para. 1.

<sup>88</sup> Moot Problem, p.no. 3, para. 7.

<sup>89</sup> Moot Problem, p.no. 1, para. 1.

<sup>90</sup> Moot problem, p.no. 2, para. 6.

<sup>91</sup> D.M. Aronoff, E.G. Neilson, *Antipyretics: Mechanisms of action and clinical use in fever suppression*, (2001).

<sup>92</sup> Moot Problem, p.no. 2, para. 6.

makes it a heinous crime. The United States Court had convicted a person accused for exposing another human to HIV and was sentenced to thirty years in prison.<sup>93</sup> Similarly, the Colorado Court of Appeals held that a person's HIV positive status could be a deadly weapon because HIV is capable of causing significant injury.<sup>94</sup>

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### 3. Act of the petitioner prima facie attracts the charges in the chargesheet

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[¶36] It is humbly submitted before this Hon'ble Court that FIR was registered and subsequently the chargesheet has been filed against Ms. Quantisa under Sections 188, 270, 325 and 308 of Ozalan Penal Code, 1860 read with Section 3 of Epidemic Disease Act, 1897 for deliberately spreading COVID-19.<sup>95</sup> The counsel for the respondents submits that Ms. Quantisa's act and intention primarily attracts the offences under abovementioned provisions.

#### 3.1. Ms. Quantisa disobeyed the "Epidemic Disease Regulation"

[¶37] It is humbly submitted before this Hon'ble court that the term 'disobey' means 'to refuse to do something that you are told to do.'<sup>96</sup> Any person disobeying an order made under the authority of Epidemic Disease Act, 1897 shall be punished.<sup>97</sup> The Orissa High Court has also held that a person who disobey the regulations passed by the State Government would be punishable under Section 3 of the Act.<sup>98</sup>

[¶38] It is humbly submitted before this Hon'ble Court that the word "law" includes any regulation having the force of law within the territory or any part thereof.<sup>99</sup> Here, in the present instance, the state of Aspar had passed a regulation "Aspar Epidemic Disease COVID 19 Regulations, 2020".<sup>100</sup> Hence, the said regulation comes under the purview of law under Article 13(3)(a) of the Ozalan Constitution. In the present instance, Ms. Quantisa during the attended ceremony had violated the said regulation as there were more than 58 attendees but as per the regulation issued by State of Aspar, all gatherings with more than 15 persons were prohibited.<sup>101</sup>

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<sup>93</sup> *State v. Weaver*, 939 S.W. 2d 316.

<sup>94</sup> *People v. Shawn*, 107 P. 3d 1033.

<sup>95</sup> Queries and Clarification, A. 14.

<sup>96</sup> Disobey, available at: <https://dictionary.cambridge.org/dictionary/english/disobey> (last visited on October 16, 2020).

<sup>97</sup> The Epidemic Disease Act, (Act 3 of 1897), s. 3.

<sup>98</sup> *J. Choudhury v. The State*, 1963 Cri LJ 659.

<sup>99</sup> The Constitution of India, art. 13, cl. 3.

<sup>100</sup> Moot Problem, p.no. 2, para. 3.

<sup>101</sup> Moot Problem, p.no. 3, para. 7.

[¶39] It is humbly submitted before this Hon'ble court, that as per Section 188 of The Ozalan Penal Code, 1860, if any disobedience of any order causes or trends to cause danger to human life, health or safety, shall be punished. In the present instance, as it is established that Ms. Quantisa had violated the said regulation and caused danger to human life and health through her actions.<sup>102</sup> Therefore, disobeying the Epidemic Disease Regulation prima facie attracts Section 3 of Epidemic Disease Act, 1897 and Section 188 of Ozalan Penal Code, 1860 against Ms. Quantisa.

### **3.2. The offence under Section 270 of Ozalan Penal Code is primarily made out**

[¶40] It is humbly submitted before this Hon'ble Court that Section 270 of the Ozalan Penal Code provides punishment for performing a malignant act likely to spread infection of disease dangerous to life. The term 'malignantly' of the person refers to the Mens rea. The essential of this section is the use of malice in such acts.<sup>103</sup> To attract ingredients of Section 270, the person must commit any act which he knows is likely to spread infection of any disease which is dangerous to life.<sup>104</sup>

[¶41] In the present case, Ms. Quantisa tried to hide her flu-like conditions and took an anti-pyretic drug to suppress her symptoms.<sup>105</sup> She asked the attendees to drink holy water from her hands to increase immunity against the disease.<sup>106</sup> She knew the consequences of her acts since she had a science degree.<sup>107</sup> She also knew that since she is a well-known figure sect, people would be influenced by her.<sup>108</sup> Moreover, she did not disclose the message she received about her being tested for COVID-19 and tried to fly out of the country without informing everyone.<sup>109</sup> This act of her delayed the process of tracking the attendees of the ceremony and in fact increasing the chances of community transmission. All such acts are enough to show that she had malice in her acts and she did commit acts to spread the disease.

### **3.3. Prima facie attraction of Section 308 of Ozalan Penal Code**

[¶42] It is humbly submitted before this Hon'ble Court that Section 308 of Ozalan Penal Code punishes for any 'attempt' to commit culpable homicide. An attempt to commit a crime is an

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<sup>102</sup> Moot Problem, p.no. 3, para. 8; Moot Problem, p.no. 4, para. 11.

<sup>103</sup> X v. Hospital Z, (1998) 8 SCC 296.

<sup>104</sup> K.D. Gaur, *Textbook on Indian Penal Code* 609 (Lexis Nexis, 7<sup>th</sup>edn., 2020).

<sup>105</sup> Moot Problem, p.no. 2, para. 6.

<sup>106</sup> Moot problem, p.no. 3, para. 8.

<sup>107</sup> Moot problem, p.no. 3, para. 8.

<sup>108</sup> Moot problem, p.no. 2, para. 5.

<sup>109</sup> Moot problem, p.no. 4, para. 12.

act done with intent to commit that crime.<sup>110</sup> To invoke this section, intention to commit culpable homicide not amounting to murder must be established.<sup>111</sup> It follows therefore that a person commits an offence under Section 308 when he has an intention to commit culpable homicide not amounting to murder and in pursuance of that intention does an act towards the commission of that offence whether that act be the penultimate act or not.<sup>112</sup>

[¶43] It is humbly submitted before this Hon'ble court that to prove an offence under Section 308 of Ozalan Penal Code, the essential ingredients are required to be proved which are,<sup>113</sup>

[3.3.1] Accused committed an act

[3.3.2] Mens Rea (Intention or knowledge)

[3.3.3] Circumstances to cause Death

### **3.3.1. Ms. Quantisa committed an act which resulted into spread of the virus**

[¶44] It is humbly submitted before this Hon'ble court that in the present instance the act that the petitioner committed is that she asked all the attendees to drink holy water from her hands to increase their immunity.<sup>114</sup> She knew the consequences of her acts since she had a science degree; it was very likely for people to believe such a statement made by her.<sup>115</sup> The attendees readily agreed to drink water from her hands and in the pursuance of that they came in contact with Ms. Quantisa. It can be inferred that due to this act of Ms. Quantisa, the attendees who were present at the event tested positive for COVID-19.<sup>116</sup>

### **3.3.2. Ms. Quantisa had a requisite 'Mens rea'**

[¶45] It is humbly submitted before this Hon'ble court that mens rea is an essential element of crime.<sup>117</sup> In the Present instance, the mens rea has to be inferred by the conduct of the accused before and after the act. Before arriving at Aspar, certain officials suggested that they should cancel their visit to Ozala as Ms. Quantisa showed flu like symptoms but she did not agree.<sup>118</sup>

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<sup>110</sup> Ratanlal Dhirajlal, *Law of Crimes* 1555 (Lexis Nexis, 24<sup>th</sup> edn., 1998).

<sup>111</sup> *DPP v. Stonehouse*, (1977) All ER 909.

<sup>112</sup> *Om Parkash v. The State of Punjab*, AIR 1961 SC 1782; *Abhayanand Mishra v. The State of Bihar*, AIR 1961 SC 1698.

<sup>113</sup> *Behari v. State of Uttar Pradesh*, AIR 1953 All 203.

<sup>114</sup> Moot problem, p.no. 3, para. 8.

<sup>115</sup> Moot Problem, p.no. 3, para. 8.

<sup>116</sup> Moot problem, p.no. 4, para. 10.

<sup>117</sup> *Capt. Abdul Sattar Ahmed Pagarkar v. R.H. Mendsonsa, Commissioner of Police*, 2003 Cri LJ 379.

<sup>118</sup> Moot problem, p.no. 2, para. 6.

In order to suppress her flu-like symptoms<sup>119</sup> she took anti pyretic drug and cleared the screening.<sup>120</sup> This clearly shows that she did this act to deceive the screening process. Moreover, at her departure for Yada, she received a message about her being tested positive for COVID, but she did not disclose this fact.<sup>121</sup> This clearly shows that she wanted to get away with the situation. This is enough material to show her mens rea through her conduct.

### **3.3.3. There were chances to cause death**

[¶46] It is humbly submitted before this hon'ble court that from the above two essential it can be said that Ms. Quantisa committed the act with the intention to spread COVID-19. In the present instance, despite being tested positive for the virus there were no deaths. Only the two persons out of the total attendees (both aged above 80 years) were critically ill and required ventilator support but they managed to survive.<sup>122</sup> In the light of the above-mentioned established fact it can be said that COVID-19 is a disease which can also cause death to person. Therefore, we can infer that this act was likely to cause death to a person.

### **3.4. The act of petitioner also attracts Section 325 of Ozalan Penal Code, 1860**

[¶47] Section 325 of the Ozalan Penal Code provides punishment for “*voluntarily causing grievous hurt.*” The Code has attempted to classify certain kinds of hurt as grievous and provided for severe punishment depending upon the gravity of offence.<sup>123</sup> “Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits” would amount to grievous hurt.<sup>124</sup> Here the phrase “any hurt which endangers life” has to be considered. The Supreme court of India has held that the accused for being convicted under Section 325 should commit an act to ‘endanger life.’<sup>125</sup> An injury is said to endanger life if it may put the life of the injured in danger.<sup>126</sup>

[¶48] The counsel for the respondents humbly submits that Ms. Quantisa exposed the attendees to a disease which was likely to cause death, amounts to the act of endangering the life of the attendees. It can be inferred that the disease was deadly by the fact that two of the

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<sup>119</sup>Antipyretics: mechanisms of action and clinical use in fever suppression, *available at*: <https://pubmed.ncbi.nlm.nih.gov/11566461/> (last visited on October 13, 2020).

<sup>120</sup> Moot problem, p.no.2, para. 6.

<sup>121</sup> Moot problem, p.no. 4, para. 10.

<sup>122</sup> Moot problem, p.no. 4, para. 11.

<sup>123</sup> K.D. Gaur, *Textbook on Indian Penal Code* 960 (Lexis Nexis, 7<sup>th</sup>edn., 2020).

<sup>124</sup> The Ozalan Penal Code, (45 of 1860), s. 320, cl. 8.

<sup>125</sup> *Walke v. State of Madhya Pradesh*, AIR 1994 SC 951; *Lal Mandi v. State of West Bengal*, AIR 1995 SC 2265.

<sup>126</sup> *Ramla Re.*, (1963) 1 Cri LJ 387; *Govt. of Bombay v. Abdul Waheb*, AIR 1946 Bom 38.



attendees required ventilator support and the others managed to survive.<sup>127</sup> This proves that this act was in all probability enough to endanger the life of the attendees.

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#### 4. The order of the High Court rejecting the bail application should be upheld

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[¶49] It is humbly submitted before this Hon'ble Court that the provisions of the Code confer discretionary jurisdiction on Courts to grant bail. Since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing valuable right of liberty of an individual and the interest of the society in general.<sup>128</sup> Character, behaviour, means, position and standing of the accused are the matters to be considered in an application for bail.<sup>129</sup> If the accused is of such character that there is likelihood of the offence being repeated then bail ought to be refused.<sup>130</sup>

[¶50] The nature of accusation, supporting evidence,<sup>131</sup> prima facie satisfaction of the court in support of the charge,<sup>132</sup> and larger interest of the public,<sup>133</sup> *inter alia* are the factors to be considered before granting bail, which can be applied to a case for refusal of bail too.<sup>134</sup> The petitioner liberty is a relevant consideration however equally important consideration is the interest of the society. Thus, undoubtedly the courts have to adopt a cautious approach while considering bail applications of accused persons.<sup>135</sup>

[¶51] The fact that the incoming attendees getting infected by the act of Ms. Quantisa and then returning to their home states would have increased the chances of mass spreading of the virus, since the population density of the country is significantly high. The acts of Ms. Quantisa risks the life of almost all the population of the country. Her acts amount to the acts of terrorism and hence in the light of such facts, she should not be released. The counsel for the respondents humbly submits that there is a clear bar in granting bail, under Section 439A of the Ozalan Code of Criminal Procedure, once the accusation is found to be prima facie true and, on this ground, the petitioner does not deserve the privilege of bail

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<sup>127</sup> Moot Problem, p.no. 4, para. 11.

<sup>128</sup> *Sanjay Chandra v. CBI*, (2012) 1 SCC 40.

<sup>129</sup> *Gurcharan Singh v. State (Delhi Admn.)*, (1978) 1 SCC 118.

<sup>130</sup> *State of U.P. v. Amarmani Tripathi*, (2005) 8 SCC 21.

<sup>131</sup> *Ram Govind Upadhyay v. Sudarshan Singh*, (2002) 3 SCC 598.

<sup>132</sup> *Puran v. Rambilas*, (2001) 6 SCC 338.

<sup>133</sup> *Supra* note 28.

<sup>134</sup> *Julius Kitbok Dorphan v. State of Meghalaya*, 2020 SCC OnLine Megh 110.

<sup>135</sup> *State of Bihar v. Rajballabh Prasad*, (2017) 2 SCC 178.

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**PRAYER**

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WHEREFORE IN THE LIGHT OF THE ISSUES RAISED, ARGUMENTS ADVANCED AND AUTHORITIES CITED, IT IS HUMBLY PRAYED THAT THIS HON'BLE COURT MAY BE PLEASED TO:

1. Upheld the constitutional validity of "twin conditions" of Section 439A of the Ozalan Code of Criminal Procedure, 1973.
2. Upheld the order of the High Court denying bail to the petitioner in the larger interest of the society.

And pass any order, direction or relief that this Hon'ble Court may deem fit in the interest of justice, equity and good conscience.

All of which is humbly prayed,  
Counsels for the Respondents.