
XVII K.K LUTHRA MEMORIAL MOOT COURT, 2021

Before

THE SUPREME COURT OF OZALA

W.P. ___/2020

Ms. QUANTISA.....PETITIONER

v.

UNION OF OZALA.....RESPONDENT 1

SLP (CrI.) NO. ___/2020

Ms. QUANTISA.....PETITIONER

v.

STATE OF ASPAR.....RESPONDENT 2

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

MEMORIAL ON BEHALF OF THE PETITIONER

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STATEMENT OF FACTS

Geography of Ozala and the outbreak of COVID 19

Ozala is one of the most populous countries in the world, 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 had only 15 cases.

12 March 2020- Ms. Quantisa developed flu-like symptoms and was advised to take test for COVID-19, to which she agreed.

13 March 2020- The government of Aspar issued regulation which defined 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- The ceremony began and was attended by 58 visitors. She claimed that she firmly believed that she was not suffering from COVID-19 since she was a regular practitioner of cosmic meditation. In the evening of the same day, 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 had reached Yada.

19 -20 March 2020- Government traced all the attendees who had also tested positive for COVID-19. There were no deaths for the same.

22 March 2020- Ms. Quantisa was arrested from hospital and FIR was 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 had ended.

26 April 2020- Charge sheet was submitted, however trial had not started due to COVID-19.

10 May 2020- Bail application was filed by Ms. Quantisa, asserting that she would surrender her passport and stay at temple. The High court rejected the bail under section 439A of Code of Criminal Procedure as she was accused of a heinous offence and it found no reasonable grounds to release her on bail because of her public stature and social media. Ms. Quantisa challenged the refusal of her bail application in the Supreme court and also challenged the constitutional validity of section 439A of Criminal Procedure Code as it is against the presumption of innocence during bail proceeding. Hence, the present matter.

ISSUES RAISED

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?

SUMMARY OF ARGUMENTS

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 before this Hon’ble Court that the “twin conditions” in Section 439A of the Ozalan Code of Criminal Procedure, 1973 is violative of ‘right to equality’ as far as it does not classify the test of reasonable classification. The provision provides unreasonable discretion to the Court in matters of grant bail, which has an effect of arbitrary application. The ‘right to life and personal liberty’ of accused persons is also violated since it does not satisfy the requirement of just, fair and reasonable ‘procedure established by law’.

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

Section 439 of the Ozalan Code of Criminal Procedure provides for discretionary powers to the High Court in the matters of bail. This includes considering factors such as the gravity of the offences, probability of escaping trial and tampering the evidence. In the present instance, there are prima facie facts that Ms. Quantisa would not flee the trial and cannot tamper the evidence. Moreover, it has been held that the graveness of the offence cannot be the sole criteria to reject the bail of an accused. It is also contented that public stature and social media presence should not be taken as a ground to refuse bail. There is uncertainty in the beginning of the trial which obstructs the liberty of the petitioner. Finally, she is not liable under the alleged charges.

WRITTEN PLEADINGS

A. THE ADDITIONAL CONDITIONS FOR GRANT OF BAIL UNDER SECTION 439A THE OZALAN CODE OF CRIMINAL PROCEDURE VIOLATE FUNDAMENTAL RIGHTS GUARANTEED UNDER THE CONSTITUTION OF OZALA.

[¶1] It is humbly submitted before this Hon’ble Court that the Constitution of Ozala guarantees the same set of Fundamental Rights to persons as the Indian Constitution does.¹ The amendment into the Ozalan Code of Criminal Procedure, 1973 (hereinafter referred as the ‘Code’) which introduced Section 439A into the Code,² having “twin conditions” for grant of bail stands violative of Article 14 and Article 21 of the Ozalan Constitution. Article 14 and 21 is available against state action which includes legislatures and enactments made by it.³ The protection has been given to citizens as well as non-citizens.⁴ Therefore, a writ to enforce the same is maintainable before this Court.⁵

1. Additional conditions are violative of Article 14

[¶2] Article 14 of the Ozalan Constitution provides right to equality to every person whether citizen or not.⁶ Every human being is entitled to equality before the law and the equal protection of the laws within its territory.⁷ Article 14 thus means that ‘equals should be treated alike.’⁸ This provision corresponds to the equal protection clause of the 14th Amendment of the U.S. Constitution and adheres to the same concept of equality as in the UDHR.⁹

[¶3] The concept of equality allows differential treatment but it prevents distinctions that are not properly justified.¹⁰ Differential treatment does not *per se* amount to violation of Article 14 of the Constitution; however, it is violated only when there is no reasonable basis.¹¹ Section 439A of the Code does not stand the validity of Article 14 as far as the provision is:

[1.1] Not based on an intelligible differentia

¹ Moot Problem, p.no.7.

² Moot Problem, p.no. 4, para. 4.

³ *Dwarkadas v. Board of Trustees*, (1989) 3 SCC 293.

⁴ *Louis De Raedt v. Union of India*, (1991) 3 SCC 554.

⁵ The Constitution of Ozala, art. 32.

⁶ *In Re Special Reference No. 1 of 2012*, (2012) 10 SCC 1.

⁷ *Faridabad CT. Scan Centre v. D.G. Health Services*, (1997) 7 SCC 752.

⁸ *M. Jagdish Vyas v. Union of India*, (2010) 4 SCC 150.

⁹ The Universal Declaration of Human Rights, 1948, art. 7.

¹⁰ *M. Nagaraj v. Union of India*, (2006) 8 SCC 212.

¹¹ *State of Rajasthan v. Shankar Lal Parmar*, (2011) 14 SCC 235.

[1.2] There is no rational nexus with the object

[1.3] Arbitrary in application

1.1. The provision is not based on an intelligible differentia

[¶4] A legislature is entitled to make reasonable classification for purposes of legislation.¹² The courts have evolved the concept of equality that if the law in question is based on reasonable classification it is not regarded as discriminatory.¹³ Article 14 condemns discrimination not only by a substantive law but also by a law of procedure.¹⁴ The Indian Supreme Court has held in this regard that all litigants similarly situated are entitled to avail themselves of the same procedural rights for relief, and for defence with like protection and without discrimination.¹⁵

[¶5] This means that if special procedure is laid down for a ‘class of people’ as distinguished from others then ‘the class’ must be based on an intelligible differentia which is based upon some real and substantial distinction.¹⁶ Section 3 of the Epidemic Disease Act, 1897 (hereinafter referred as the ‘Act’) talks about penalty and punishment under Section 188 of CrPc for violation of any order or regulation made under the authority of the Act. Since, the Act does not contain any express provision like any other special law regarding this offence to be bailable or non-bailable therefore, reference needs to be made to the Code which classifies Section 3 as a bailable offence under Part II of Schedule I.

[¶6] Section 439A of the Code has an effect of making a bailable offence to be non-bailable only for violating the order related to COVID-19 made under the Act. This means that any person disobeying ‘any order’ made under ‘the Act’, will be accused for an offence under Section 3 of the Act, for which the offence will be a bailable, while any other person who has disobeyed an ‘order related to COVID-19’ made under the this Act, will be accused for the same but the offence will not remain a bailable offence for the accused due to the new amendment. Hence ‘bail as a matter of right of the accused’,¹⁷ will get seized by the virtue of Section 439A, which differentiated the accused charged under the same offence and created a class of accused persons (relating to deliberately spreading COVID-19) for which a bailable offence will be a non-bailable offence.

¹² *R.K. Garg v. Union of India*, (1981) 4 SCC 676.

¹³ *Ashutosh Gupta v. State of Rajasthan*, (2002) 4 SCC 34.

¹⁴ *Charan Lal Sahu v. Union of India*, (1990) 1 SCC 613.

¹⁵ *Shri Meenakshi Mills Ltd., Madurai v. A.V. Visvantha Sastri*, AIR 1955 SC 13.

¹⁶ *Dinesh Kumar v. State of Madhya Pradesh*, (2004) 8 SCC 770.

¹⁷ The Ozaal Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 436.

[¶7] This classification of accused persons is not based on an intelligible differentia because, *firstly*, Section 3 of the Act talks about penalty and punishment under Section 188 of IPC for violation of any order made under the Act irrespective of what the order relates to. *Secondly*, it contains two different set of rules for the persons accused under the same offence. *Thirdly*, a provision related to a special law incorporated into the general procedural law requiring it to deal with ‘a class of accused persons’ in a separate way from the ‘other accused persons’ accused of the same offence is not sustainable. *Fourthly*, an offence which is expressly bailable under Schedule I of the Code cannot bear provision regarding conditions to be satisfied before the bail is granted,¹⁸ since bail is a matter of right for the accused in such a case.¹⁹

1.2. *There is no rational nexus with the object*

[¶8] It is a settled law that differentiation is not always discriminatory.²⁰ If there is a rational nexus on the basis of which differentiation has been made with the object sought to be achieved by a particular provision, then such differentiation is not discriminatory and does not violate the principles of Article 14 of the Constitution.²¹ To find out the reasons and the justification for the classification, the court has guided to refer to the objects and reasons appended to a Bill.²²

[¶9] The object of the provision is to obviate serious threat posed by coronavirus over health of the individual in general. But the provision is merely regressive on the purpose and is not an adequate alternative because *firstly*, the disease carries hidden symptoms and is sometimes unknown even to the person infected.²³ *Secondly*, in such a case, it has an effect of curtailing the liberty even of the innocent. *Thirdly*, the provision does not meet the object which the Code seeks to achieve.

[¶10] The Statement of Objects and Reasons as appended with the Code makes it crystal clear that the object of the Code is to ensure for the accused a full and fair trial in accordance with the accepted principles of natural justice.²⁴ The Supreme Court has observed that the object should not be frustrated by introduction of endless technicalities.²⁵ *Arguendo*, considering the

¹⁸ *Hasmukhlal Kalidas Choksi v. State of Gujarat*, (2007) 2 GLH 12.

¹⁹ *Rasiklal v. Kishore s/o Khanchand Wadhvani*, AIR 2019 SC 1341.

²⁰ *Laxmi Khandsari v. State of Uttar Pradesh*, AIR 1981 SC 873.

²¹ *Union of India v. M.V. Valliappan*, (1999) 6 SCC 259.

²² *State of Jammu & Kashmir v. T.N. Khosa*, (1974) 1 SCC 19.

²³ UN World Health Organisation, *Coronavirus Disease 2019 (COVID-19)*, UN Doc Situation Report-73 (April 2, 2020).

²⁴ The Statement of Objects and Reasons appended to the Code of Criminal Procedure Bill, 1970, para 3; *Raghava Nadar Reghu v. State*, 1988 Cri LJ 1364.

²⁵ *Iqbal Ismail Sodawala v. State of Maharashtra*, (1975) 3 SCC 140.

classification to be based on an intelligible differentia yet there is no rational nexus with the object, since any provision incorporated into the Code has to meet the object which the Code seeks to achieve.²⁶ Section 439A transgresses these principles by incorporating stringent conditions for the grant of bail which are not found in any of the provisions of this Code.

1.3. The provision is arbitrary in its application

[¶11] It is humbly submitted before this Hon'ble court that the test of manifest arbitrariness has been laid down to invalidate plenary legislation under Article 14.²⁷ The Indian Supreme Court has held that any legislation which is excessive and disproportionate in nature will be manifestly arbitrary.²⁸ The United States Supreme Court decided that the action by the any organ of the government which is unreasonable²⁹ or arbitrary³⁰ is declared to be unconstitutional.³¹ It is humbly submitted before this Hon'ble court that the provision stands manifestly arbitrary in its application because *firstly*, there are chances of curtailing liberty even of the innocent. *Secondly*, initially the discretion to grant or to not grant bail is vested in the public prosecutor. *Thirdly*, the term 'reasonable grounds' is ambiguous as far as it is unguided.

1.3.1. The provision has an effect of trapping even the innocent

[¶12] The Supreme Court of US had held that where no reasonable standards are laid down to define 'guilt' in a section which creates an offence, and where no clear guidance is given to either law abiding citizens or to authorities and courts, then a section which creates such an offence, which is vague must be struck down as being arbitrary and unreasonable.³² It is emphasized that the laws should give the person of 'ordinary intelligence' a 'reasonable opportunity' to know what is prohibited so that he may act accordingly.³³ Also, those who administer the law must know what offence has been committed so that arbitrary and discriminatory enforcement of the law does not take place.³⁴

²⁶ *Union of India v. S. Srinivasan*, (2012) 7 SCC 683.

²⁷ *Indian express Newspaper Ltd. v. Union of India*, (1985) 1 SCC 641.

²⁸ *Shayara Bano v. Union of India*, (2017) 9 SCC 1; *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684.

²⁹ *Eubank v. Richmond*, (1912) 226 U.S. 137.

³⁰ *Adair v. United States*, (1908) 208 U.S. 161.

³¹ *Lochner v. New York*, (1905) 198 U.S. 45.

³² *Musser v. Utah*, 92 L. Ed. 562.

³³ *Abdul Majeed Kalathil v. The District Collector*, (2009) SCC OnLine Ker 3440.

³⁴ *Shreya Singhal v. Union of India*, (2013) 12 SCC 73.

[¶13] COVID-19 is an epidemic disease which is communicable from human to human,³⁵ and sometimes emerges with hidden symptoms,³⁶ where it can only be accurately identified through a clinical evaluation.³⁷ The usage of word ‘deliberately spreading COVID-19’ in section 439A of the Code implies uncertainty on the part of legislature and creates vagueness because there is no hard and fast method or guideline to identify whether the person who has been detained was engaged in spreading the disease ‘deliberately’ or not as it will be impossible for a person to detect the same without going through any clinical evaluation before.³⁸ The spreading of the disease might also occur ‘unintentionally’ without taking into consideration the repercussions for the same. Therefore, such vague laws may trap the innocent by not providing a fair warning. Such a law impermissibly delegates basic policy matters to policemen and also judges for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.³⁹

1.3.2. Initially the discretion is vested in the public prosecutor

[¶14] It is humbly submitted before this Hon’ble Court that a crime can be bailable or non-bailable. In the former, bail can be claimed by the accused as a matter of right.⁴⁰ In the latter, bail is at the discretion of the Court.⁴¹ It is contended that Section 439A of the Code provides for a bail application to be primarily opposed by the public prosecutor and if the application gets opposed, only then the role of judicial discretion would come into play. It means that the conditions for grant of bail are applicable only if the public prosecutor so desires. If the public prosecutor does not oppose the bail application, then the court is not required to apply its mind. Hence, the application of condition mentioned in Section 439A(ii) becomes dependent upon the sole discretion of the public prosecutor. This discretion is unreasonable because there are no safeguards in favour of the accused and affects the judicial discretion which renders the entire process to be disproportionate and arbitrary.

1.3.3. The term ‘reasonable grounds’ is unguided

³⁵ Moot Problem, p.no. 1, para. 3.

³⁶ *Supra* note 23.

³⁷ Coronavirus Disease (COVID-19), available at: <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/coronavirus-disease-covid-19> (last visited on November 5, 2020).

³⁸ *Ibid.*

³⁹ *Kartar Singh v. State of Punjab*, (1994) 3 SCC 569.

⁴⁰ *Santh Prakash v. Bhagwandas Sahni*, 1969 MLW (Cri) 88.

⁴¹ *Guruchran Singh v. State*, (1978) 1 SCC 118.

[¶15] The expression ‘reasonable grounds’ means something more than prima facie grounds.⁴² It connotes substantial probable cause for believing that the accused is not guilty of some offence charged and this reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in them to justify recording of satisfaction that the accused is not guilty of the offence charged.⁴³ The reason must have a rational connection or relevant bearing to the formation of belief.⁴⁴

[¶16] It is humbly submitted before this Hon’ble Court that despite such interpretations, there are instances where the High Court has rejected the bail applications while the Apex Court has granted bail to the accused relying on same grounds.⁴⁵ Similarly, the High Court has granted bail to the accused while the Supreme Court has reversed the order citing infirmities.⁴⁶ This suffers from non-application of mind because of absence of any guided principle into the provision which has been held to be a facet of arbitrary exercise of power.⁴⁷

[¶17] *Arguendo*, even if we assume that the bail applicant succeeds in establishing the reasonable grounds, it would be hard to convince the Court that the accused is not likely to commit any offence while on bail. The words ‘any offence’ would mean that the bail applicant should be able to carry conviction with the court that, while out on bail, he would not commit even the most trivial of infractions of the law.⁴⁸ Going by the letter of the law, the term ‘any offence’ includes, in its sweep, not only offences under the OZALAN Penal Code, 1860 (hereinafter referred as ‘OPC’) but any offence under the hundreds of national and local laws legislated at the central and state level from time to time.⁴⁹

2. Additional conditions violate fundamental right under Article 21

[¶18] It is humbly submitted before this Hon’ble Court that Article 21 of the OZALAN Constitution provides protection to life and personal liberty to all the persons, which can only be deprived of by any ‘procedure established by law’. The word ‘law’ in Article 21 does not mean merely ‘enacted law’ but incorporates principles of natural justice so that a law to deprive a person of his life or personal liberty cannot be valid unless it incorporates these principles in

⁴² *Narcotics Control Bureau v. Dilip Pralhad Namade*, (2004) 3 SCC 619.

⁴³ *Lawrance D’Souza v. State of Maharashtra*, (1992) Cri LJ 399.

⁴⁴ *A.S. Narayan Appa v. Commissioner of Income Tax, Bangalore*, AIR 1967 SC 523.

⁴⁵ *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra*, (2005) 5 SCC 294; *Prasad Shrikant Purohit v. State of Maharashtra*, (2015) 7 SCC 440.

⁴⁶ *The State of Maharashtra v. Vishwanath Maranna Shetty*, (2012) 10 SCC 561.

⁴⁷ *Onkar Lal Bajaj v. Union of India*, (2003) 2 SCC 673.

⁴⁸ R.K. Naroola & Udayan Mukerji, *Law of Bail* 100 (Oak Bridge Publishing Pvt. Ltd., Gurugram, 2020).

⁴⁹ *Ibid.*

the procedure laid down by it.⁵⁰ The protection is not only against the executive action but also against a legislation, unless the law for deprivation is reasonable, just and fair both procedurally and substantially.⁵¹

2.1. The law does not follow the established principles of “procedure established by law”

[¶19] Personal liberty of an accused or convict is fundamental,⁵² therefore the Indian Supreme Court has held that no accused or convict shall be deprived of his ‘life or personal liberty’ except according to ‘fair’, ‘just’ and ‘reasonable procedure’ established by valid law.⁵³ In the present instance, the amended section did not provide guidelines to detain a person engaged in spreading Covid-19 which makes it vague and unfair to the innocent citizen. Not only this but also providing excessive burden to a person to prove his guilt at the time of bail without examining proper evidence which is unreasonable. Therefore, it can be inferred that the additional conditions in Section 439A of the Code creates an overgenerous infusion of constraints and restrictions as well as unreasonable restrictions which are not found in any of the bail provisions of this Code. This has made this provision as prescribing a procedure which is unjust, unfair and unreasonable.

2.2. The object of the law is immaterial

[¶20] The importance of the ‘object’ of the law cannot be made a ground to trample the right of life and liberty guaranteed to the petitioner.⁵⁴ It is not the ‘object’ of the state action or the ‘form’ thereof, which is material, it is the ‘direct effect’ upon the right of the individual which shall be the ‘determining factor’ for judging the constitutional validity of the state action.⁵⁵ The Supreme Court has clarified that even if the object of the legislation is ‘good’, the means to achieve that object cannot be violative of fundamental rights.⁵⁶ No Court would be justified in ignoring the personal liberty of the accused in preference to the object of the law.⁵⁷ The intention of the legislature to have such harsh conditions to be fulfilled before grant of bail to protect the health of people cannot be made at the expense of the liberty of the individuals. Therefore, this object shall not sustain because the law does not provide due recognition to the personal liberty of the accused.

⁵⁰ *Union of India v. J.N. Sinha*, (1970) 2 SCC 458.

⁵¹ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

⁵² *Gudikanti Narasimhulu v. Public Prosecutor, High Court of A.P.*, (1978) 1 SCC 240.

⁵³ *Supra* note 28.

⁵⁴ *Nikesh Tarachand Shah v. Union of India*, (2018) 11 SCC 1.

⁵⁵ *R.C. Cooper v. Union of India*, (1970) 2 SCC 298; *Bennett Coleman v. Union of India*, (1972) 2 SCC 788.

⁵⁶ *Supra* note 27.

⁵⁷ *Mari Appa v. State of Madhya Pradesh*, 1990 MPLJ 621.

2.3. The law denies ‘right to fair trial’ of the accused

[¶21] It is humbly submitted before this Hon’ble Court that the Ozalan Constitution expands ‘right to life and personal liberty’ to include ‘right to fair trial’ to the accused.⁵⁸ The Supreme Court of India observed that each person has an inbuilt right to be dealt with fairly in a criminal trial.⁵⁹ Presumption of innocence and the duty of the prosecution to prove the guilt *inter alia* are the two general principles of fair trial,⁶⁰ which stands reversed in this provision.

[¶22] The Courts have opined that the ‘presumption of innocence’ would be effective by favoring bail.⁶¹ The guideline that ‘bail should be the general rule and jail an exception’ is the logical and consistent adaptation of the principle of presumption of innocence to the pre-trial stage.⁶² Any procedure which directly takes away this presumption goes diametrically contrary to that principle.⁶³ The mandatory requirement at the stage of grant of bail about the petitioner not being guilty of offence accused, militates against the presumption of the innocence.⁶⁴ This principle is inverted by the ‘twin conditions’ specified in Section 439A, whereas for the grant of ordinary bail the ‘presumption of innocence’ attaches.

[¶23] The Code follows the ‘adversary system’ based on the accusatorial method in which the ‘onus of proving that the accused is guilty’ is on the prosecutor.⁶⁵ The prosecution is required to prove the guilt of the accused beyond reasonable doubt.⁶⁶ Clause (ii) of Section 439A not only put the onus on the accused of proving his innocence in order to be able to assert his right to be released on bail but also requires the Court to be further satisfied that, when on bail the accused would not commit any offence. This makes the grant of bail as an impossible one since the accused will have to disclose his defense at a point in time when they are unable to do so.

⁵⁸ *Moti Lal Saraf v. State of Jammu and Kashmir*, (2007) 1 SCC (Cri) 180.

⁵⁹ *Zahira Habibullah Sheikh v. State of Gujarat*, (2006) 3 SCC 374.

⁶⁰ *Woolmington v. Director of Public Prosecutions*, (1935) UKHL 1; *Golbar Husain v. State of Assam*, (2015) 11 SCC 242; *Vinod Kumar v. State of Haryana*, (2015) 3 SCC 138.

⁶¹ *Siddharam Satlingappa Mhetre v. State of Maharashtra*, (2011) 1 SCC 694; *Roshan Lal v. State of Himachal Pradesh*, (2020) SCC OnLine HP 1974; *R. v. Hall*, (2002) 3 SCR 309.

⁶² Christoph J. M. Safferling, *Towards an International Criminal Procedure* 46 (Oxford University Press, Oxford, 2001).

⁶³ *Ankush Kumar v. State of Punjab*, (2018) SCC OnLine P&H 1259.

⁶⁴ *Union of India v. Sanjeev V. Deshpande*, (2014) 13 SCC 1; *Narendra Singh v. State of Madhya Pradesh*, 2004 Cri LJ 2842; *State of U.P. v. Naresh*, (2001) 4 SCC 324.

⁶⁵ R.V. Kelkar, *Criminal Procedure* 346 (Eastern Book Company, Lucknow, 6thedn., 2014).

⁶⁶ *Noor Aga v. State of Punjab*, (2008) 16 SCC 417; *Kali Ram v. State of H.P.*, (1973) 2 SCC 808.

B. MS. QUANTISA IS ENTITLED TO BE RELEASED ON BAIL

[¶24] It is humbly submitted before this Hon'ble Court that the High Court has erroneously rejected the bail application and has not appreciated the basic rule laid down by this Court that 'grant of bail is the rule and its denial is the exception'.⁶⁷ Therefore, Ms. Quantisa is ought to be released on bail:

- [1] by the virtue of Section 439 of the Code
- [2] because there is an uncertain delay in the trial
- [3] there are reasonable grounds to believe that she is not guilty of the offences accused

1. Bail should be granted under Section 439 of the Code

[¶25] In every bailable offence, bail is a matter of right and not a favour on the accused.⁶⁸ However, in case of non-bailable offence, bail is a matter of judicial discretion,⁶⁹ which has to be exercised in a judicious manner and not as a matter of course.⁷⁰ Section 439 of the Code provides that the High Court has been given wide discretionary powers in matters of granting bail.⁷¹ The discretion depends upon factors ranging from gravity of offence, the probability of escaping the trial or tampering the evidence to various others which the court may deem fit⁷² and should be exercised carefully.⁷³

1.1. Gravity of the offence cannot be a ground to refuse bail

[¶26] Gravity or the heinousness of the offence cannot be the criteria for refusal of bail⁷⁴ and therefore grant of bail cannot be thwarted merely by asserting that offence is grave.⁷⁵ The graveness of the offence has to be interpreted by considering the facts and circumstances of each case⁷⁶ and the term of sentence prescribed for the offence alleged.⁷⁷ In the present case, Ms. Quantisa is charged for offences under the sections 188, 270 and 325, which are bailable offences and Section 308, which is a non-bailable offence under the Code.⁷⁸ The maximum

⁶⁷ *State of Rajasthan v. Balchand*, (1977) 4 SCC 308.

⁶⁸ *Anwar Hussian v. State*, 1995 Cri LJ 863.

⁶⁹ *Anil Mahajan v. Commissioner of Customs & Anr.*, 2000 Cri LJ 2094.

⁷⁰ *Supra* note 52.

⁷¹ M.R. Malik, *Bail Law & Practice* 172 (Eastern Law House Pvt. Ltd., 5th edn., 2014).

⁷² *Sanjay Chandra v. CBI*, (2012) 1 SCC 40.

⁷³ *Kashmira Singh v. State of Punjab*, AIR 1931 All 504.

⁷⁴ *P. Chidambaram v. Directorate of Enforcement*, (2019) SCC OnLine SC 1549.

⁷⁵ *Hitesh Gandhi v. Central Bureau of Investigation*, (2020) SCC OnLine HP 1416.

⁷⁶ *Ibid.*

⁷⁷ *Court on Its Own Motion v. Central Bureau of Investigation*, (2004) SCC OnLine Del 53.

⁷⁸ Moot Problem, p.no. 4, para. 12.

punishment prescribed for the offences she has been charged under is seven years and fine or both.⁷⁹ Thus, the offence is not a 'grave' or 'serious' in terms of punishment.⁸⁰

[¶27] However, even if the allegation is for one of the grave offences, it is not a rule that bail should be denied if other factors favour the accused.⁸¹ The rationale behind the jurisprudence is to secure appearance of the accused in the trial and therefore is neither punitive nor preventive.⁸² It is submitted that the High Court has refused the bail of Ms. Quantisa on the grounds that the crime is heinous, which is contrary to the precedents where the Court has held that gravity cannot be the sole justification for rejecting bail of an accused.⁸³

1.2. Ms. Quantisa has asserted not to escape the trial

[¶28] It has been held that one of the main considerations while granting bail can be whether the accused would abscond from the trial or not.⁸⁴ It was held that while granting or rejecting the bail of an accused, the Court should apply its mind to the probability of the accused appearing for the trial rather than just the seriousness of the accusation.⁸⁵ If the court is convinced that the accused would appear for his trial and not escape, the court may grant bail to such accused.⁸⁶ It is humbly submitted that Ms. Quantisa has voluntarily undertook to surrender her passport to avoid any apprehensions of her escaping the trial and has also asserted to reside in the Great Temple of Aspar till the trials are concluded.⁸⁷

1.3. There are no chances of Ms. Quantisa tampering with the evidence

[¶29] It is humbly submitted before this Hon'ble Court that one of the factors that the court might consider in granting the bail to the accused is whether that the accused can tamper the evidence if granted bail.⁸⁸ The Indian Court in a case granted bail to the accused has held that 'the investigation was complete and there was very less chance of fleeing.'⁸⁹ There is no reason to believe that Ms. Quantisa will tamper the evidence if granted bail, since the charge sheet has

⁷⁹ The Ozalan Penal Code, 1860 (Act 45 of 1860), s.188, 270, 308, 325.

⁸⁰ *Supra* note 72.

⁸¹ *Supra* note 74.

⁸² *Supra* note 72; *Jayendra Saraswati Swamigal v. State of Tamil Nadu*, AIR 2005 SC 716.

⁸³ *Shivinder Mohan Singh v. Directorate of Enforcement*, (2020) SCC OnLine Del 766; *Md. Anwar v. State of NCT*, (2020) SCC OnLine Del 900; *Prabhakar Tiwari v. State of U.P. & Anr.*, (2020) SCC OnLine SC 75; *Supra* note 72.

⁸⁴ *Pramod Chandra v. State*, 1969 Cri LJ 1534.

⁸⁵ *Kishan Singh v. State of Punjab*, 1960 Cri LJ 850.

⁸⁶ *Nagangomlboton Singh v. State*, 1969 Cri LJ 128.

⁸⁷ Moot Problem, p.no. 5, para 14.

⁸⁸ *M.P. Jauaraj v. State*, 1977 Cri LJ 1724; *M.P. Ramesh v. State*, 1991 Cri LJ 1298; *Kalyan Chandra Sarkar v. Rajesh Ranjan*, (2004) 7 SCC 528.

⁸⁹ *Zakir Hussain v. UT of Ladakh through DGP & Ors.*, (2020) SCC OnLine J&K 484.

already been filed.⁹⁰ Therefore, the question of tampering the evidence by the accused does not arise.⁹¹

1.4. Social status and social media presence not be considered while deciding bail

[¶30] It is humbly submitted before this Hon'ble court that High Court rejected the bail application of Ms. Quantisa because of her public stature and her presence on social media.⁹² Public Stature means the amount of public respect or popularity that someone has.⁹³ Social Media can be used to influence people and their opinions,⁹⁴ but the assumption that Ms. Quantisa might use it to commit an offence is merely an assumption without any evidence.

[¶31] It has been held that the rejection of application of bail, the social status of the accused should never be taken into consideration.⁹⁵ The rejection of the bail on the ground of presence on social media is not a relevant ground to reject bail.⁹⁶ Therefore, the presumption that Ms. Quantisa is likely to commit an offence based on her public stature and social media presence is contrary to the established precedents.

2. Trial is delayed and there is uncertainty for its beginning

[¶32] It is humbly submitted before this Hon'ble Court that the criminal jurisprudence of United States,⁹⁷ England⁹⁸ and India⁹⁹ stresses upon the importance of speedy trial for the accused to safeguard him from the mental agony of the prolonged trial. Article 21 of the Ozalan Constitution provides that speedy trial is an extension of right to liberty.¹⁰⁰ It was held that 'the accused cannot be saddled with the responsibility of the delay in trial and should be released on bail for the reason that there has been undue and inordinate delay in the trial of the case.'¹⁰¹ The counsel submits that due to the suspension of normal functioning of the court, the charges have not been framed and the trial has not started till date.¹⁰² Considering the prevailing

⁹⁰ Moot Problem, p.no. 4, para. 13.

⁹¹ *Julius Kitbok Dorphan v. State of Meghalaya*, (2020) SCC OnLine Megh 110.

⁹² Moot Problem, p.no. 5, para 14.

⁹³ Stature, Macmillan Dictionary, available at: <https://www.macmillandictionary.com/dictionary/british/stature> (November 2, 2020).

⁹⁴ Vollenbroek, Wouter, "Identification of influence in Social Media Communities" 10 *International Journal of Web Based Communities* 280-297 (2014).

⁹⁵ *Fazal Nawaz Jung v. State of Hyderabad*, 1952 Cri LJ 873.

⁹⁶ *State of U.P. v. Amarmani Tripathi*, (2005) 8 SCC 21.

⁹⁷ *Strunk v. United States*, (1973) 41 U.S. 434.

⁹⁸ The Magna Carta, 1215, cl. 39; The Petition of Rights, 1682; The Bill of Rights, 1989.

⁹⁹ *Hussanaira Khatoon v. State of Bihar*, AIR 1979 SC 1369.

¹⁰⁰ *Supra* note 39.

¹⁰¹ *Mohammed Mian v. State*, 1993 Cri LJ 2621; *Phool Singh v. State of MP*, (2020) SCC OnLine MP; *Harish v. State (Govt. of NCT)*, Bail Appl. 1675/2020; *A.R. Antulay v. R.S. Nayak & Anr*, (1988) 2 SCC 602.

¹⁰² Moot Problem, p.no. 4, para. 12.

situation of pandemic there is no likelihood of trial proceedings in the near future and it will not be in the interest of justice that accused should be in jail for an indefinite period.¹⁰³ Therefore, due to the uncertain delay of the trial, Ms. Quantisa should be released on bail.

3. There are reasonable grounds to believe that she is not guilty of the offences accused

[¶33] It is humbly submitted before this Hon’ble Court that Ms. Quantisa has been accused and subsequently arrested for the offences under Section 188, 270, 325 and 308 of Ozalan Penal Code, 1870 read with Section 3 of Epidemic Disease Act, 1897.¹⁰⁴ It is contended that no prima facie case is established against the accused as none of the ingredients of the offences accused of is satisfied by the conduct of Ms. Quantisa.

3.1. No prima facie should be made for disobeying the ‘Epidemic Disease Regulation’

[¶34] Many common law countries have taken a position that mistake of law should be a defence.¹⁰⁵ Mistake of law relates to a provision of a rule, bye-law, order or notification made under an Act and the accused person’s mistake is of such a nature that if at the time of such contravention the accused could not have with due diligence been aware of the said provision.¹⁰⁶ The Indian Court has held if a statute provides that certain knowledge-involving elements of law on the part of the accused is an essential ingredient of the offence, mistake of law in good faith can be taken as a good defence to a charge of a criminal offence.¹⁰⁷

[¶35] The counsel for the petitioner most humbly submits that the ‘Epidemic Diseases Regulation’ was issued on the same day when Ms. Quantisa arrived.¹⁰⁸ It is contended that she did not have any knowledge about the novel regulation. It is a herculean task for any reasonable person and it is quite impractical to have knowledge of every regulation¹⁰⁹ passed while her flying to another country. The maxim ‘*Ignorantia Juris Non Excusat*’ seems to be a fiction¹¹⁰ and therefore Ms. Quantisa should be presumed to be not violating any regulation and hence not liable under Section 3 of the Act and subsequently under Section 188 of OPC.

¹⁰³ *Supra* note 72.

¹⁰⁴ Moot Problem, p.no. 4, para. 12.

¹⁰⁵ *S v. De Blom*, (1977) 3 S.A. 513; *Lim Chin Aik v. R.*, (1963) AC 160.

¹⁰⁶ Law Commission of India, “42nd Report on The Indian Penal Code” 405 (June, 1971).

¹⁰⁷ *Emperor v. Nanak Chand*, AIR 1943 Lah 208.

¹⁰⁸ Moot Problem, p.no. 2, para. 4; para. 5.

¹⁰⁹ R.L. Narasimham, “Ignorantia Juris Non-Excussat: Ignorance of Law Is No Excuse” 13 *Journal of the Indian Law Institute* 70-78 (1971).

¹¹⁰ *Ibid.*

**3.2. Criminal liability cannot be invoked against Ms. Quantisa under Section 188 of
Ozalan Penal Code**

[¶36] Section 195(a) of the Code provides that ‘no court shall take cognizance of any offence punishable under Section 172 to 188 of the OPC except on a written complaint of the public servant concerned or of his superior.’¹¹¹ Provisions of section 195 of the Code are mandatory and no court has jurisdiction to take cognizance of any of the offences mentioned therein unless there is a complaint in writing as required under that section.¹¹² In the absence of such a complaint, the trial and conviction will be void ab initio being without jurisdiction.¹¹³ In the present case, there is no complaint in writing by the public servant concerned or by some other public servant but it was only by certain Gamus politicians at whose behest the FIR was filed.¹¹⁴ It has been held that merely filing an FIR is not sufficient to invoke a criminal liability under Section 188 of the OPC.¹¹⁵

3.3. Ms. Quantisa is not liable for deliberately spreading COVID-19

[¶37] It has been held by the US Supreme Court¹¹⁶ as well as the Indian Supreme Court¹¹⁷ that mens rea of an offender is necessary to prove the guilt;¹¹⁸ the absence of it would absolve the offender.¹¹⁹ The word ‘deliberately’ in Section 439A of the Code is synonymous with ‘intentionally or with deliberate intent.’¹²⁰ It is contended on behalf of the petitioner that Ms. Quantisa is not liable for spreading Covid-19 because her act was not done ‘deliberately’ but rather in good faith. Good faith is said to be something done with due care and attention.¹²¹ In the determination of good faith, a reference to the ‘capacity’, ‘intelligence’ and ‘position of the accused’ as well as the ‘circumstances’ under which he acts becomes a relevant consideration.¹²² The Indian Supreme court has held that ‘good faith’ is always a question of fact.¹²³

¹¹¹ *Jeevanandham v. State*, (2019) 1 Mad LJ 36.

¹¹² *M.S. Ahlawat v. State of Haryana*, (2000) 1 SCC 278.

¹¹³ *C. Muniappan v. State of T.N.*, (2010) 9 SCC 567.

¹¹⁴ Moot Problem, p.no. 5, para. 14.

¹¹⁵ *Raj Mangal Ram v. State of Bihar*, (1993) SCC OnLine Pat 290.

¹¹⁶ *Staples v. United States*, (1994) 511 U.S. 600.

¹¹⁷ *R. Balakrishna Pillai v. State of Kerala*, (1996) SCC 1 478.

¹¹⁸ *Surjitsingh Bhagatsingh Gambhir v. State of Maharashtra*, (2019) 4 Bom CR 791.

¹¹⁹ *Capt. Abdul Sattar Ahmed Pagarkar v. R.H. Mendsonsa, Commissioner of Police*, 2003 Cri LJ 379.

¹²⁰ K.I. Vibhute, *PSA Pillai's Criminal Law* 45 (Lexis Nexis, New Delhi, 14th edn., 2019).

¹²¹ The Ozalan Penal Code, 1860 (Act 45 of 1860), s. 52.

¹²² *Bhawoo Jiwa Ji v. Mulji Dayal*, (1888) 12 ILR Bom 377; *State of Orissa v. Ram Bahadur Thapa*, AIR 1960 Ori 161.

¹²³ *Harbhajan Singh v. State of Punjab*, AIR 1966 SC 97; *Baburao v. S.K. Biban*, (1984) Cri LJ 350.

[¶38] In the present case, Ms. Quantisa had firm believe that she was not infected until the congregation came to an end.¹²⁴ Therefore, it cannot be inferred that she had intention or prior knowledge after which she deliberately planned her actions to spread the disease. Also, she did not cancel her flight even after having flu- like symptoms to upheld the beliefs of her sect.¹²⁵ The fact that she took antipyretic drug during her flight,¹²⁶ was for the convenience of her journey and not to hide her symptoms since at the time of her flight and even after that she had a firm belief that she had not contracted Covid-19 but it was only a mild flu. Hence, it clearly shows that Ms. Quantisa always acted in good faith and therefore making her criminal liable for grave offences is not justified.

3.4. No prima facie case is established under Section 308 of Ozalan Penal Code

[¶39] Section 308 punishes attempt to commit culpable homicide not amounting to murder. The Supreme Court of India held that ‘attempt to commit an offence’ is a series of acts that is done, if not prevented would result in the commission of the crime.¹²⁷ A person is said to commit an offence under this section, if he does an act with such intention or knowledge.¹²⁸ To invoke this section, intention to commit culpable homicide not amounting to murder must be established.¹²⁹ Intention or the mental element is a question of fact.¹³⁰ These facts are to be checked on the conduct of the accused before and after the offence.

[¶40] It is submitted that Ms. Quantisa did not have any mental element required to commit the offence. This is shown by the fact that Ms. Quantisa readily agreed to get tested for COVID-19 on her day of departure.¹³¹ She had a firm belief that her flu-like symptoms were not a cause to be worried as she practiced cosmic meditation regularly.¹³² Moreover, she received the message about her being positive for COVID-19 only after the ceremony was over and not before that. These actions clearly show that Ms. Quantisa had no intention whatsoever to cause death to any person attending the ceremony.

¹²⁴ Moot Problem, p.no. 3, para. 8.

¹²⁵ Moot problem, p.no.2, para. 6.

¹²⁶ Moot problem, p.no.3, para. 6.

¹²⁷ *Aman Kumar v. State of Haryana*, (2004) 4 SCC 379.

¹²⁸ *Bishan Singh & Anr. v. State*, (2007) 13 SCC 65.

¹²⁹ *Om Prakash v. State of Punjab*, AIR 1961 SC 1782.

¹³⁰ *Kesar Singh v. State of Haryana*, (2008) 15 SCC 753.

¹³¹ Moot Problem, p.no. 2, para. 6.

¹³² Moot Problem, p.no. 2, para. 6.

3.5. No prima facie case is made under Section 270 of Ozalan Penal Code

[¶41] 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.¹³³ 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.¹³⁴

[¶42] It is not in dispute that Ms. Quantisa had no mens rea. She did not know about the disease being communicable as Yada had suppressed the media reportage.¹³⁵ Also, she had undergone COVID-19 test on the day of her departure which shows her good intention.¹³⁶ Therefore, it cannot be inferred that she had malice intention to spread Covid-19. Hence, it is also not possible to infer that her act amounted to offence punishable under section 270 of Ozalan Penal Code.

3.6. No offence is made under Section 325 of the Ozalan Penal Code

[¶43] The essential component of this section is causing grievous hurt ‘voluntarily’ and which would be done with the ‘intention’ to cause hurt, or the ‘knowledge’ that the act is likely to cause hurt.¹³⁷ If ‘intention’ or ‘knowledge’ is absent, then it will not amount to ‘voluntarily’ causing hurt. Causing hurt refers to causing bodily pain, disease or infirmity.¹³⁸ ‘Causing disease’ means communicating a disease to another person.¹³⁹ The counsel submits that Ms. Quantisa lacked the knowledge about the disease to be communicable since the reportage was suppressed,¹⁴⁰ and her actions does not prove that she had any intention or mental element to cause hurt to anyone. In the case of absence of this essential, the said section cannot be attracted.

¹³³ *X v. Hospital Z*, (1998) 8 SCC 296.

¹³⁴ K.D. Gaur, *Textbook on Indian Penal Code* 609 (Lexis Nexis, 7thedn., 2020).

¹³⁵ Moot problem, pg.no.1, para 6.

¹³⁶ Moot problem, pg.no.2, para 6.

¹³⁷ The Ozalan Penal Code, 1860 (Act 45 of 1860), s. 325.

¹³⁸ The Ozalan Penal Code, 1860 (Act 45 of 1860), s. 319.

¹³⁹ K.I. Vibhute, *PSA Pillai’s Criminal Law* 762 (Lexis Nexis, New Delhi, 14th edn., 2019).

¹⁴⁰ Moot problem, p.no.1, para. 3.

PRAYER

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. Issue a writ of mandamus or any other appropriate writ/direction/order in the nature of a writ directing that the conditions imposed under Section 439(ii) of the Code for release on bail is violative of Article 14 and Article 21 of the Constitution and thus declare as being unconstitutional.
2. Enlarge the petitioner on bail with any reasonable condition which will be abided by the petitioner.

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

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