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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.2937 OF 2017

Shri Ramesh Nagnath Kadam

..Petitioner

Vs.

**1]The State of Maharashtra
through APP for the State.**

**2]The Jail Superintendent,
Byculla Jail. Mumbai.**

..Respondents.

Mr. Rajiv Chavan, Senior Advocate i/b Sachin R. Pawar for Petitioner.
Mr. P.P. Chavan, Special P.P. for State.

**CORAM: SHRI RANJIT MORE &
A.S. GADKARI, J.J.**

DATE : 02 AUGUST 2017.

P.C.

1] By the present petition under Article 226 and 227 of the Constitution of India, the petitioner is seeking a relief that this Court be pleased to issue a writ of certiorari and/or writ of mandamus or directive thereby directing the respondents to allow the petitioner to participate for one week in the monsoon session of Maharashtra State Legislative

Assembly commencing from 24.7.2017 for inviting the attention of the assembly on the issue of public importance.

2] Heard Mr. Rajiv Chavan, the learned Senior Counsel for the petitioner and Mr. P.P. Chavan, the learned Special P.P. for the State and also perused the record produced before us.

3] The petitioner is elected from the Mohol constituency as a member of Maharashtra State Legislative Assembly. The petitioner is an accused in CR No.336 of 2015 originally registered with Dahisar Police Station and subsequently investigated by the State C.I.D. for the offences punishable under the provisions of Prevention of Corruption Act and the Indian Penal Code. It is the allegation of the prosecution against the petitioner that, the petitioner while holding the post of Chairman of Sahitya Ratna Annabhau Sathe Development Corporation has defalcated huge funds to the tune of Rs.312/- Crores of the Government.

4] The present petition proceeds in the premise that the petitioner being a witness of alleged custodial death of a woman prisoner in Byculla Jail/Mumbai Central Prison and for raising vital aspects pertaining to the said murder and being an elected member of the Legislative Assembly his presence in the monsoon session of the Legislative Assembly is necessary.

5] Mr. Chavan, the learned Senior Counsel for the petitioner submitted that, the petitioner is a witness to the alleged attack and for destruction of evidence by the jail authority in the case of custodial death of a woman prisoner which took place at Byculla Jail/Mumbai Central Prison and being an elected representative of people, it is necessary for the petitioner to raise the issue relating to governance and administration of the jails in the Maharashtra State Legislative Assembly. He further submitted that by virtue of Article 194(1) of the Constitution of India, the petitioner is having constitutional right of freedom of speech in the Legislature. By relying on a decision of the Supreme Court in the case of ***Alagaapuram R. Mohanraj & Ors. Vs. Tamil Nadu Legislative Assembly [(2016) 6 SCC 82]***, he submitted that in view of Article 194 of the Constitution of India, a constitutional declaration that freedom of speech in the legislative bodies creates a constitutional right in favour of the members of such Legislative Bodies. That no citizen can be deprived of its citizenship and therefore the fundamental right under Article 19(1)(a) is inalienable. By relying on the said decision, he further submitted that the scope and amplitude of freedom of speech inhering in a citizen and available to a member of the Legislative body are totally different. That no citizen has a right to enter the

legislative bodies and exercise his freedom of speech unless he first gets elected to such a legislative body in accordance with law. He further submitted that in the presidential election which took place in the year 2017, the learned Single Judge of this Court in Criminal Writ Petition No.2638 of 2017 by its Order dated 14th July 2017 permitted the petitioner to cast vote at the venue i.e. Vidhan Bhavan, Mumbai and the petitioner did abide by the conditions imposed by said Order and had returned to the jail authority within stipulated period. Mr. Chavan further submitted that the petitioner is an accused and innocence of an accused is recognized in law, he is not de-barred from attending the Legislative Assembly. He therefore prayed that the petitioner may be permitted to attend the monsoon session of Maharashtra State Legislative Assembly, at least for a period of 5 days.

6] The record clearly indicates that, the successive Bail Applications preferred by the applicant before the Trial Court as well as before this Court, have been turned down and the applicant is not granted bail till today. The application filed below Exh.271 by the petitioner seeking permission to attend the present monsoon session of Legislative Assembly is rejected by the Special Judge (Under the Prevention of Corruption Act), Greater Mumbai by its Order dated 3rd July 2017 and the

said Order as of toady holds the field.

7] Article 194 (1) of the Constitution of India reads as under:

“194: Powers, privileges, etc. of the House of Legislative and of the members and committees thereof – (1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State.”

Plain reading of the said Article makes it absolutely clear that subject to the other provisions of the Constitution, there shall be freedom of speech in the Legislature of every State. It is to be noted here that, the petitioner is detained in the judicial custody for the aforesated offences after following the due procedure established by law, as contemplated under Article 21 of the Constitution of India and in view of Article 194(1) of the Constitution of India, the said freedom of speech in the legislature would arise only if the petitioner is present inside the Assembly.

8] In the case of Alagaapuram R. Mohanraj & Ors. Vs. Tamil Nadu Legislative Assembly (supra), the Supreme Court in para-20 has hold as under:

“20] No doubt, when a legislator is prevented from

participating in the proceedings of the House during the currency of the membership by virtue of some proceedings taken against such a legislator, there would be a curtailment of the legislator's constitutional right of free speech in the House of which such legislator is a member. But such curtailment is sanctioned by the Constitution in view of the fact that such a right is made subject to other provisions of the Constitution, the Rules and Standing Orders regulating the procedure of the legislative bodies.”

It is thus clear that the freedom of speech in the legislature will come into play provided the petitioner is permitted to attend the said sessions of assembly. If the liberty of the petitioner to attend the said sessions of legislature is curtailed and/or eclipsed by following due procedure established by law, then the petitioner cannot claim such a privilege as contemplated under Article 194(1) of the Constitution of India.

9] It is to be noted here that, the rights and obligations under Article 194(1) of the Constitution of India referred to, by Mr. Chavan the learned Senior Counsel for the petitioner, are the rights and privileges bestowed in a Member of the Legislative Assembly inside the House and if the petitioner is detained by a valid order, it is implied that the petitioner

cannot enjoy those privileges and rights so long as he is in detention.

10] Thus the gravamen of the matter is whether this Court, in exercise of the power under Article 226 of the Constitution of India, should grant permission to the petitioner to attend the sessions of Legislative Assembly. As stated earlier, the petitioner is alleged to have been involved in the offence by which the Government exchequer has suffered huge loss of about Rs.313/- Crores, as alleged by the prosecution. The detention of the petitioner is in respect of offences which are quite grave in nature. He has been not admitted to bail because of the nature of the offences. While deciding the earlier application for temporary bail preferred by the petitioner bearing Bail Application No.505 of 2017 one of us (Shri A.S. Gadkari, J.), in the said Order has observed that, the said application preferred by the applicant, may only be construed as an attempt to come out of the jail for a temporary period to have fresh air outside the prison wall. We feel that the present petition is also an attempt of the petitioner to come out of the jail for a temporary period for the same reason.

11] My that as it may be, the petitioner does not have right under the Constitution to claim that inspite of being in the custody he has to be

allowed to attend the Legislative Assembly. The Constitutional Bench of the Supreme Court in the case of K. Ananda Nambiar Vs. Chief Secretary to the Government of Madras & Ors. [AIR 1966 SC 657], has clearly held that if the order of detention is validly passed and this prevents a member from attending a session of the Parliament, no occasion arises for exercise of the right to freedom of speech and no complaint can be made that the said right has been invalidly invaded.

12] As stated earlier, in the present case, the arrest and incarceration of the petitioner is valid in law and the petitioner has not been enlarged on bail. In our view, when the petitioner is validly detained in the custody and when the allegations against the petitioner are of great magnitude, it would be totally inappropriate to exercise the discretion under Article 226 of the Constitution of India to grant him permission to attend the session of Legislative Assembly solely on the foundation that he has the freedom of speech inside the Legislative Assembly or on the foundation that he enjoys exclusive privilege in the Legislative Assembly as its Member or on the substratum that he has to participate in the proceedings to meet the Constitutional obligation. In our considered view, though the submission of the learned Senior Counsel for the petitioner

appears to be attractive, granting permission to the petitioner to attend the monsoon session of Maharashtra State Legislative Assembly shall be an anathema to the exercise of the power under Article 226 of the Constitution of India.

In view thereof, we are of the clear opinion that by filing the present petition, the petitioner has made a feeble attempt to circumvent the judicial orders which hold field thereby denying bail and/or temporary relief.

13] Before we part with the Order, we may note here that, if the petitioner is really interested to putting forward his version, being an eye-witness to the alleged custodial death of a women prisoner in Byculla Prison/Mumbai Central Prison, the petitioner is at liberty to record his statement before the Investigating Agency, if he so advised, however on the said ground he cannot be permitted to use the present judicial proceedings as a tool to come out of jail.

14] In view of the above, we are of the considered view that the present petition is devoid of any merits and is accordingly dismissed.

(A.S. GADKARI,J.)

(RANJIT MORE, J.)