

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 3389 OF 2024

Shyamalendu Kumar Das

Age : 64 years, Occ: Retired
having his residential address
at Flat No.1701, I Wing, Marina
Enclave, Janakalyan Nagar, Malad
(West), Mumbai-400 095.

}Petitioner

: Versus :

**1. Union of India, through its Secretary
Ministry of Home Affairs, New Delhi-
110 001.**

**2. Union of India, through its Secretary,
Ministry of Labour and Employment,
Shram Shakti Bhavan, Rafi Marg,
New Delhi-110 001.**

**3. Central Bureau of Investigation, through
its Director, Central Bureau of Investigation
Plot No.5-B, 6th Floor, CGO Complex, Lodhi
Road, New Delhi-110 003.**

}Respondents

Dr. Abhinav Chandrachud *with Mr. Saurish Shetye, Mr. Pavan Kumar
Pandey, Mr. Pravin Pandey, Ms. Sneha Mishra i/b Mr. Prem Kumar
Pandey, for the Petitioner.*

Mr. Kuldeep S. Patil *with Mr. Ashish Kumar Srivastava, for the CBI.*

CORAM : SANDEEP V. MARNE, J.

Judgment Resd. On : 22 August 2024.

Judgment Pron. On : 6 September 2024.

JUDGMENT:

1) ***Rule.*** Rule is made returnable forthwith. With the consent of the learned counsel appearing for parties, petition is taken up for final hearing and disposal.

A. THE CHALLENGE

2) Petition raises challenge to Orders dated 9 March 2018 and 17 March 2018 passed by the Secretary, Ministry of Home Affairs, Government of India under provisions of Sub-section (2) of Section 5 of Indian Telegraphs Act, 1998 directing interception of telephonic messages to and from Petitioner's mobile phones numbers and disclosure thereof to Director, CBI.

B. FACTS

3) Narration of few basic facts, shorn of unnecessary details, as a prologue to the judgment would be necessary. Petitioner came to be appointed as Labour Enforcement Officer, (Central) in the year 1987. In 2017, he was posted as Deputy Chief Labour Commissioner (Central) at Dehradun, Uttarakhand. By order dated 9 October 2017, he was transferred to Mumbai where he joined on 11 October 2017 and started

functioning as Deputy Chief Labour Commissioner (Central). While working in Mumbai, the Petitioner had procured two mobile phone numbers, viz. 8218574304 and 9968004524. On 9 March 2018, first Respondent passed order authorising interception of any message from and to the mobile phone bearing No. 8218574304 relating to clandestine contact/movement/activity etc. The order was passed in exercise of powers by the Central Government under sub-section (2) of Section 5 of the Indian Telegraph Act, 1885 (**Telegraph Act**). On 17 March 2018, similar order was passed in respect of Petitioner's other mobile number i.e. 9968004524. It appears that in pursuance of the orders dated 9 March 2018 and 17 March 2018, certain messages of Petitioner were intercepted by the first Respondent and provided to CBI, based on which FIR bearing No. RC/BA1/2018/A0011 was registered against Petitioner and other officials working under him under Sections 7 and 12 of the Prevention of Corruption Act, 1988 and Section 120-B of the Indian Penal Code, 1860. It is alleged in the FIR that a reliable source information was received that Petitioner was indulging in corrupt and illegal activities and criminal conspiracy with other persons and staff working in the office of Deputy Chief Labour Commissioner (Central) and seeking illegal gratification for official acts/functions like processing of renewal/issuance of labour licenses, certificate of registration, building and other works, construction work certificates and deciding on inspection matters etc. The FIR alleges that the source information revealed that M/s. Som Projects Pvt. Ltd had undertaken project in Colaba, Mumbai and two personnel of the said Company were in regular touch of the Petitioner relating to the work of renewal/issuance of licenses and other pending works in the office of the Deputy Chief Labour Commissioner (Central), Mumbai. The FIR alleges that Petitioner demanded illegal gratification of Rs. 1,20,000/- in

three packets of Rs.70,000/-, Rs.30,000/- and Rs.20,000/- for himself and two other public servants. The FIR was registered after learning that the Company person was likely to deliver illegal gratification to the Petitioner and other two public servants. CBI alleges that a trap was conducted on 20 April 2018 in which the bribe amount was recovered from Petitioner and the bribe amounts of Rs. 70,000/- and Rs.20,000/- were recovered from Petitioner's cabin and the third bag of bribe amount of Rs.30,000/- was recovered from the backpack of another public servant. CBI also alleges recovery of license issued after delivery of bribe amount from the backpack of Shri. Pradeep Vishwakarma, employee of Som Projects Pvt. Ltd.

4) Petitioner was arrested on 20 April 2018 and was also placed under deemed suspension. He was released on bail on 2 May 2018. After completion of investigations, chargesheet has been filed against Petitioner, Smt. Jagriti Gupta-Labour Enforcement Officer (Accused No.2), Mukul Garg (Accused No.3), Ashish Aggarwal (Accused No.4) and Pradeep Vishwakarma (Accused No.5) under Section 120-B of the Indian Penal Code, 1860 read with Sections 7 and 12 read with Section 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988.

5) It appears that Petitioner filed application for discharge under Section 227 of the Code of Criminal Procedure, 1973 (**the Code**) at Exhibit-18, which came to be rejected by the learned Special Judge by order dated 23 September 2022. Petitioner preferred Criminal Revision Application No. 523 of 2022 challenging the order dated 23 September 2022 in this Court, which came to be withdrawn on 23 August 2023. Petitioner has now filed the present petition challenging the orders

dated 17 March 2018 and 9 March 2019 passed by the first Respondent under Section 5 (2) of the Indian Telegraph Act, 1885.

C. SUBMISSIONS

6) Dr. Chandrachud, the learned counsel appearing for the Petitioner would submit that the impugned orders passed by the first Respondent do not conform to the requirement of sub-section (2) of Section 5 of the Telegraph Act, which requires recording of reasons in writing for interception of messages. In the present case, perusal of the impugned orders would indicate that the first Respondent has merely recited the language used in sub-section (2) of Section 5 by virtually copying the words used in the said provision. He would submit that in a case like the present one, there is no element of public safety or public emergency and that in absence of demonstrable case of existence of public safety or public emergency, the impugned orders are routinely passed without application of mind. That the Apex Court has repeatedly frowned upon reciting the statutory provisions in the order instead of recording cogent reasons in writing. In support, he would rely upon Constitution Bench judgment in Barium Chemicals Ltd & Anr. Versus. Company Law Board & Ors.¹ wherein the Apex Court has deprecated repetition of words of Section in the order. Relying on the Constitution Bench Judgment of Apex Court in Mohinder Singh Gill & Anr. Versus. The Chief Election Commissioner, New Delhi & Ors.² he would contend that the validity of an order made by statutory authority must be judged by reasons mentioned in the order and order cannot be supplemented by fresh reason in the shape of Affidavit. He would rely

¹ 1966 SCC OnLine SC 53

² (1978) 1 SCC 405

upon judgment of the Apex Court in **Kranti Associates Private Limited & Anr. Versus. Masood Ahmed Khan & Ors.**³ in support of the contention that reasons must be cogent and not in the form of a mere 'rubber stamp'.

7) Dr. Chandrachud would further submit that power under the provisions of sub-section (2) of Section 5 cannot be exercised in a normal course and must demonstrate existence of public emergency. He would submit that the words '*public emergency*' must be read in conjunction with the words '*in the interest of public safety*' and in support he would rely upon judgment of the Apex Court in the case of **Anuradha Bhasin Versus. Union of India & Ors.**⁴. Dr. Chandrachud would submit that every case involving allegation of corruption may not essentially involve the element of public safety or public emergency. Giving the illustration of a Municipal Officer accepting bribe to issue Occupancy Certificate in respect of a building not constructed in accordance with sanctioned plans and endangering the lives of public at large, he would submit that such a case would involve an element of public safety, in contradistinction to a case involving acceptance of bribe by a Ticket Checker or Bus Conductor which may not necessarily involve the element of public safety or public emergency. That public emergency and public safety being *sine qua non* for exercise of powers under sub-section (2) of Section 5, in absence of reasons being recorded demonstrating existence of public safety and public emergency, the order would fall foul of mandatory requirements of Section 5(2).

³ (2010) 9 SCC 496

⁴ (2020) 3 SCC 637

8) Dr. Chandrachud would also rely upon Indian Telegraph Rules, 1951 (**Telegraph Rules**) and would invite my attention to Rule 419A, which according to him, again mandates recording of reasons. He would submit that under sub-rule (2) of Rule 419A, an order passed by the Competent Authority is required to be forwarded to the concerned Review Committee, constitution of which is provided under sub-rule (16). In the present case, there is nothing on record to indicate that the Review Committee is either constituted or that the impugned orders were sent within seven working days to the Review Committee. Relying on the provisions of sub-rule (17) of Rule 419A, Dr. Chandrachud would submit that the Review Committee can order destruction of copies of intercepted messages if it is found that the same is not recorded in accordance with the provisions of sub-section (2) of Section 5. That in absence of intercepted messages being placed before the Review Committee within the stipulated time and in absence of filing of procedure under sub-Rule 17 of Rule 419A, the intercepted messages cannot be used for any purposes.

9) Dr. Chandrachud would thereafter submit that the Division Bench of this Court in **Vinit Kumar Vs. Central Bureau of Investigation and others**⁵ has held that in absence of demonstration of element of public safety, the interception orders are invalid in law. He is fair enough in pointing out the Division Bench judgment in **Vinit Kumar** has been challenged by CBI before the Supreme Court and the order of the High Court has been stayed by the Supreme Court. He would however submit that grant of such stay by the Supreme Court would amount to stay of direction between the parties to the *lis* and that the ratio of the judgment cannot be stated to be stayed. He would also rely upon

⁵ 2019 SCC OnLine Bom 3155

judgment of Division Bench of this Court in **Cipla Limited Vs. Competent Authority and District Deputy Registrar, Co-operative Society & Ors.**⁶. In support of his contention, he would also rely upon judgment of Andhra Pradesh High Court in **Government of India, Rep. By the Secretary Versus. K.L.D. Nagasree and Others**⁷ and of Rajasthan High Court in **Shashikant Joshi Vs. State of Rajasthan, Through its Chief Secretary & Ors.**⁸ .

10) Dr. Chandrachud would also rely upon judgment of Single Judge of Karnataka High Court in **S.M. Mannan Vs. Central Bureau of Investigation**⁹ in which, according to him, the allegation of acceptance of illegal gratification is held to be not involving all the traits necessary under sub-section (2) of Section 5 of the Act as no element of public safety or public emergency is involved. In his usual fairness, Dr. Chandrachud would also invite attention of this Court to the judgment of the Delhi High Court in **Santosh Kumar Vs. Union of India & Anr.**¹⁰ in which the Delhi High Court has refused to set aside the interception orders on the ground that economic crimes ultimately affect the economic stability of the country and its citizens. He would also place before this Court, the judgment of Single Judge of Madras High Court in **Sanjay Bhandari Versus. Secretary of Govt. of India, Ministry of Home Affairs & Anr.**¹¹ in which again the Madras High Court has refused to set aside the interception orders involving case of corruption. He would however submit that the judgment of Division Bench of this Court in **Vineet Kumar** would bind this Court as against mere persuasive value of

⁶ 2021 SCC OnLine Bom 622

⁷ 2023 SCC OnLine AP 1834

⁸ 2023 SCC Online Raj 1108.

⁹ MANU/KA/1447/2024 (Bengaluru Bench)

¹⁰ 2022 SC OnLine Del 1774

¹¹ 2020 SCC OnLine Mad 28021

judgments of learned Single Judges of Delhi and Madras High Courts. . Dr. Chandrachud would pray for setting aside the impugned interception orders.

11) The petition is opposed by Mr. Kuldeep Patil, the learned counsel appearing for Respondent-CBI. Mr. Patil would raise a preliminary objection to the maintainability of the petition. He would submit that the Petitioner had filed discharge application before the learned Special Judge raising the very same issue of erroneous interception of telephonic message, which application came to be rejected by the learned Special Judge by order dated 23 September 2022. That when Petitioner sought to challenge the said order of the learned Special Judge before this Court, he chose to withdraw the said petition thereby resulting in finality to the order passed by the learned Special Judge. That therefore the Petitioner cannot now be permitted to turn around and file a fresh petition challenging the interception orders.

12) Mr. Patil would submit that the case has been built on secret information and is not based on any complaint. That therefore interception of messages became necessary and therefore permission was sought from the first Respondent. That without intercepting the messages, it was not possible to conduct a trap in the present case. That since element of public safety and public emergency is involved, the first Respondent has rightly appreciated the necessity for interception of telephonic messages. Mr. Patil would further submit that the ground of non-placement of interception order before the Review Committee is speculative in absence of any concrete material produced in that regard. That the procedure prescribed under Rule 419A has been

followed in the present case and in that regard, he would take me through the reply filed by the CBI. Mr. Patil would further submit that interception of the telephonic message was also necessary for preventing incitement to commission of offence as observed in the impugned orders. He would submit that in any case, the admissibility of the intercepted messages is a triable issue which can be raised by Petitioner during the course of the trial and that it is too premature to expect the said issue to be determined before commencement of the trial. Mr. Patil would pray for dismissal of the petition.

D. REASONS AND ANALYSIS

13) I have given anxious consideration to the submissions canvassed by the learned counsel appearing for rival parties. The broad points which arise for determination relate to allegation of absence of cogent reasons in the impugned orders, non-existence of elements of public emergency and/or public safety, failure to review the impugned orders by Review Committee and applicability of ratio of judgment of Division Bench of this Court in ***Vineet Kumar***. Mr. Patil has also raised preliminary objection to maintainability of the Petition.

D.1 PRELIMINARY OBJECTION TO MAINTAINABILITY

14) Before proceeding to decide the merits of contentions raised in the petition, it would be first necessary to deal with the preliminary objection of maintainability of the petition raised by Mr. Patil. It appears that the Petitioner filed application seeking discharge under Section 227 of the Code before the learned Special Judge at Exhibit-18, which has been rejected by order dated 23 September 2022.

Mr. Patil has contended that while seeking his discharge, Petitioner has urged the very same ground of defect in intercepted messages under Section 5(2) of the Telegraph Act and that the said issue has already been considered by the learned Judge while rejecting the application vide order dated 23 September 2022. The order rejecting application for discharge was tested by Petitioner before this Court by filing Criminal Revision Application No. 523 of 2022, which he withdrew on 23 August 2023. Thus, the issue of Petitioner's discharge from Special Case No.24/2019 has attained finality. According to Mr. Patil, since the issue of validity of interception orders passed under Section 5(2) of the Telegraph Act was a part of discharge application, Petitioner cannot have another bite at the cherry by filing independent petition challenging validity of the said orders.

15) Mr. Patil has placed on record copy of the Discharge Application filed at Exhibit-18. So far as the validity of orders permitting interception of the telephonic conversation is concerned, Petitioner raised following pleadings in the Discharge Application:

“Even otherwise interception of telephonic conversation is barred under Section 5(2) of the Indian Telegraph Act, 1885 except on the occurrence of any public emergency or in the interest of public safety. The said issue of admissibility of intercepted conversation was challenged in Vinit Kumar Vs. CBI before this Hon'ble Court which while deciding the matter directed to eschew the intercepted materials from consideration by the trial Court in dealing with a matter under the Prevention of Corruption Act, 1988. The Report of the Review Committee constituted under Rule 419-A (16) of the Indian Telegraph Rules, 1951 consisting of the Cabinet Secretary; Secretary, Legal Affairs and the Secretary, Telecommunications either confirming or setting aside the interception orders dated 9.3.2018 and 17.3.2018 issued by the Secretary, Home Affairs (D-13 of the charge-sheet at Page 357 and 258) has also not been brought on records by the CBI despite a lapse of more than four and half years although the same was required to be on records within two months at the most as per Rule 419-A (17) of the said Rules.

16) It does appear that Petitioner did raise the issue of validity of orders sanctioning interception of telephonic conversation in his discharge application. However, the issue raised by the Petitioner in the Discharge Application was about 'admissibility of intercepted conversation'. Petitioner could not have challenged the validity of orders dated 9 March 2018 and 17 March 2018 before the Special Judge who otherwise does not have jurisdiction to uphold or set aside the said orders, that too during pendency of the trial. In application filed under Section 227 of the Code, Petitioner attempted to seek his discharge from the said case by raising various grounds, including the ground of admissibility of intercepted telephonic conversation. The discharge was not sought only on the ground of admissibility of intercepted telephonic conversation and in the lengthy application running into 37 pages, various grounds, mainly the ground of non-availability of sufficient material for raising grave suspicion, were raised. The issue of admissibility of intercepted conversation was raised in just one paragraph. In my view, therefore mere raising of one stray ground in the application for discharge relating to admissibility of intercepted telephonic conversation would not preclude Petitioner from setting up an independent challenge to the orders dated 9 March 2018 and 17 March 2018 by filing Writ Petition invoking jurisdiction of this Court under Articles 226 and 227 of the Constitution of India. In the present petition, Petitioner is not seeking discharge from Special Case No.24 of 2019. Even if the petition is allowed, Petitioner's prosecution in the said Special Case would continue. I am therefore unable to uphold the preliminary objection raised by Mr. Patil to the maintainability of the petition and the same is accordingly repelled.

D. 2 REFLECTION OF COGENT REASONS IN IMPUGNED ORDERS

17) So far as the ground of non-reflection of cogent reasons in the impugned order is concerned, it would be sufficient to reproduce one of the impugned orders passed on 9 March 2018, since both the orders are identically worded. The order dated 9 March 2018 reads thus:

ORDER

Whereas as per provision in sub-rule (1) of Rule 419-A of the Indian Telegraph Rules, 1951 notified on 1.03.2007 as Indian Telegraph (Amendment) Rules, 2007 framed in exercise of the powers conferred by Section 7 of the Indian Telegraph Act, 1885 (13 of 1885), the Secretary, Ministry of Home Affairs, Government of India, has been authorised to exercise powers of the Central Government, under sub-Section (2) of Section 5 of the Indian Telegraph Act, 1885 (13 of 1885).

2. Now, therefore, I, Union Home Secretary, being satisfied that, for reasons of public safety, it is necessary and expedient so to in the interest of public order and for preventing incitement to the commission of an offence hereby direct that any telephone message relating to clandestine contact/movement/activity etc. to and from 82185-74304 shall be intercepted and disclosed to Director, CBI.

3. I am further satisfied that it is necessary to monitor this telephone as the information cannot be acquired through any other reasonable means.

4. This order shall remain in force for a period not exceeding 60 days from the date of issue.

18) The first paragraph of the order refers to authorisation of Secretary, Ministry of Home Affairs, Government of India to exercise powers of the Central Government under sub-section (2) of Section 5 of the Telegraph Act. The second paragraph of the impugned order records satisfaction of the Secretary about the necessity and expediency to intercept the messages on account of public safety and in the interest of public order and for preventing incitement to the commission of an offence. After recording such satisfaction, the

Secretary has directed interception of telephonic message relating to clandestine contact/movement/activity to and from the concerned telephone number and its disclosure to Director, CBI. In the third paragraph, the Secretary has recorded his satisfaction about necessity to monitor the telephone number as the information could not be acquired through any other reasonable means.

19) Dr. Chandrachud reads the impugned order to be mere recitation of the language employed under sub-section (2) of Section 5. According to him, since the provision requires recording of reasons in writing, what is expected from the authority is to record some reason relating to facts of the case rather than passing stereotype order or an order which is in the nature of a mere 'rubber stamp'.

20) Section 5 of Telegraph Act deals with power of Government to take possession of licensed telegraphs and to order interception of messages and Section 5 provides thus:

5. Power for Government to take possession of licensed telegraphs and to order interception of messages.

(1) On the occurrence of any public emergency, or in the interest of the public safety, the Central Government or a State Government or any officer specially authorized in this behalf by the Central Government or a State Government may, if satisfied that it is necessary or expedient so to do, take temporary possession (for so long as the public emergency exists or the interest of the public safety requires the taking of such action) of any telegraph established, maintained or worked by any person licensed under this Act.

(2) On the occurrence of any public emergency, or in the interest of the public safety, the Central Government or a State Government or any officer specially authorized in this behalf by the Central Government or a State Government may, if satisfied that it is necessary or expedient so to do in the interests of the sovereignty, and integrity of India, the security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of an offence, for reasons to be recorded in writing, by order, direct that any message or class of messages to or from

any person or class of persons, or relating to any particular subject, brought for transmission by or transmitted or received by any telegraph, shall not be transmitted, or shall be intercepted or detained, or shall be disclosed to the Government making the order or an officer thereof mentioned in the order:

Provided that press messages intended to be published in India of correspondents accredited to the Central Government or a State Government shall not be intercepted or detained, unless their transmission has been prohibited under this sub-section.

21) Under sub-section (3) of Section 3, the term ‘*message*’ is defined to mean any communications sent by telegraph or given to a telegraph officer to be sent by telegraph or to be delivered and the term ‘*telegraph*’ includes all appliances or instruments used for transmission of sound or writing.

22) Sub-section (2) of Section 5 mandates the officer authorised on behalf of the Central Government to record reasons in writing for directing interception of messages. The issue for consideration is whether the reasons recorded in paras-2 and 3 of the impugned orders conform to the requirement under sub-section (2) of Section 5 and whether this reason can be treated as the real reasons or mere recitation of the statutory provisions.

23) In *Barium Chemicals Ltd.* (supra), *His Lordship Justice Hidayatullah* has delivered one of the majority judgments as a part of Constitution Bench while determining validity of order passed by Company Law Board directing investigations into the affairs of the Company as a consequence of which, inspectors were appointed for carrying out searches. Under Section 237 of the Companies Act, 1956 the Central Government is empowered to appoint competent persons as inspectors, if in the opinion of the Central Government, circumstances

exist to suggest carrying on of business of the company with intent to defraud its creditors or persons concerned with formation of the Company are guilty of fraud, misfeasance or other misconduct towards the Company or towards any of its members or where the members of the company have failed to disclose correct information with regard to its affairs. The powers of the Central Government under Section 237(b) are delegated to the Company Law Board, in exercise of which the Board had passed the order under challenge for investigation of affairs of the Company. The Company challenged the order before the High Court of Punjab by filing Writ Petition and upon its dismissal, Appeal was filed before the Supreme Court by seeking Special Leave. One of the grounds raised while challenging the order of Company Law Board before the Supreme Court was about requirement to record reasons for forming an opinion about existence of circumstances under Section 237 of the Companies Act. In the light of the above factual background, *Justice Hidayatullah* in his majority judgment held as under:

33. In the other part of the affidavit the Chairman has merely repeated Section 237(b) but has not stated how he came to the conclusion and on what material. In other words, he has not disclosed anything from which it can be said that the inference which he has drawn that the Company was being conducted with intent to defraud its creditors, members and other persons or persons concerned in the management of the affairs of the Company were guilty of fraud, misfeasance and misconduct towards the company and its members was based on circumstances present before him. **In fact, paragraph 16 is no more than a mechanical repetition of the words of the section.**

(emphasis added)

24) According to Dr. Chandrachud, as was done in the case of *Barium Chemicals Ltd.*, the Secretary in the present case has also done mechanical repetition of words of section in the impugned orders. However, it must be observed that in *Barium Chemicals Ltd.*, the Apex

Court has also tested the order by considering validity of reasons disclosed in the Affidavit filed by the Chairman of the Company Law Board and not only on the by considering the reasons recorded in the order.

25) Reliance of Dr. Chandrachud on the judgment of the Constitution Bench judgment in ***Mohinder Singh Gill*** (supra), would be inapposite to the facts of the present case. In present case, this Court is concerned with the validity of the reasons recorded in the impugned orders and CBI has apparently not disclosed any additional reasons in its Affidavit. Therefore, the well settled principle by the Constitution Bench judgment in ***Mohinder Singh Gill*** delivered by *Justice Krishan Iyer* about testing of validity of statutory order on the basis of reasons stated therein and impermissibility to supplement the reasons in the form of Affidavit, would have no application to the facts of the present case.

26) In ***Kranti Associates Private Limited*** (supra), the Apex Court has reiterated the necessity of giving reasons by a body or authority in support of its decision. Referring to its decision in ***A.K. Kraipak Versus. Union of India***¹², the Apex Court held that the distinction between administrative orders and quasi-judicial orders, which was recognised at one point of time, got blurred and thinned out and virtually reached a vanishing point. It is held that the face of an order passed by a quasi-judicial or administrative authority affecting the rights of parties must speak and that it must not be like the 'inscrutable face of a sphinx'. It is further held that the reasons in support of decision must be cogent, clear and succinct and that 'rubber-stamp reasons' is not to be equated

¹² (1969) 2 SCC 262

with a valid decision-making process. The Apex Court held in paras-12, 15 and 47 as under :

12. The necessity of giving reason by a body or authority in support of its decision came up for consideration before this Court in several cases. Initially this Court recognized a sort of demarcation between administrative orders and quasijudicial orders but with the passage of time the distinction between the two got blurred and thinned out and virtually reached a vanishing point in the judgment of this Court in *A.K. Kraipak v. Union of India*.

15. This Court always opined that the face of an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of parties, must speak. It must not be like the “inscrutable face of a Sphinx”.

47. Summarizing the above discussion, this Court holds:

- (a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
- (b) A quasi-judicial authority must record reasons in support of its conclusions.
- (c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
- (d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
- (e) Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.
- (f) Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.
- (g) Reasons facilitate the process of judicial review by superior Courts.
- (h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.
- (i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

- (j) Insistence on reason is a requirement for both judicial accountability and transparency.
 - (k) If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.
 - (l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.**
 - (m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in *Defence of Judicial Candor*.)
 - (n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See *Ruiz Torjia v. Spain* EHRR, at 562 para 29 and *Anyia v. University of Oxford*, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".
 - (o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".
- (emphasis added)*

27) Having discussed the law about necessity for recording cogent reasons in support of administrative orders, I proceed to consider whether the reasons recorded by the first Respondent in the impugned orders pass the muster. As observed above, the Secretary to the Government of India has recorded his satisfaction that direction for interception of telephonic messages and its disclosure to CBI was necessary in the interest of public order and for preventing incitement to commission of an offence. The Secretary has also stated in his order that the satisfaction is recorded for reason of public safety. Additionally, it is also stated in the order that monitoring of the telephone was necessary as information could not be acquired through any other reasonable means. While it is true that the Secretary could

have made a brief reference to the facts of the case as to how it was not possible to acquire information through other reasonable means. Also, while recording satisfaction about existence of element of public safety and interest of public order, the Secretary could have elaborated in the order as to how the facts of the case involve the element of public safety and how interception of message would aid in preventing incitement to commission of an offence. The question is whether the failure on his part to do so would render the order void. To my mind, mere failure on the part of the Secretary to elaborate reasons in the order would not make the order fall foul of the requirement of recording reasons in writing as envisages under sub-section (2) of Section 5.

28) It must be borne in mind that the Secretary to the Government of India, who has been authorised under sub-rule (1) of Rule 419(A) of the Telegraph Rules to exercise powers of Central Government, performs administrative function not requiring grant of opportunity of hearing. True it is that even an administrative order must speak for itself. However, there is a distinction between recording of elaborate reasons and recording succinct reasons. An administrative order which conveys succinct reasons for exercise of statutory power cannot be branded as cryptic. In fact, in para-37(l) of its judgment in ***Kranti Associates Private Limited***, the Apex Court has held that though the reason must be cogent and clear, they also need to be succinct. It must also be borne in mind that the orders under sub-section (2) of Section 5 are required to be passed in most of the cases in urgent or emergent situations. The situations in which they are required to be passed involve element of secrecy. The issue therefore is whether the Secretary is expected to record elaborate reasons and pass a detailed order while granting permission for interception of telephonic message

under sub-section (2) of Section 5. The answer to the question, to my mind, appears to be in the negative. In fact, requirement of recording of detailed reasons with respect of facts of each case may frustrate the entire objective of passing such order as the emergent situation may cease to exist if the officer concerned is expected to spend time in gathering necessary material for recording detailed reasons.

29) In the present case, I am satisfied that recording of succinct reasons about existence of element of public safety as well as necessity for interception of telephonic message in the interest of public order and for preventing of incitement to commission of an offence meets the requirements under sub-section (2) of Section 5. What is more important is the reason recorded in the third paragraph about reaching a satisfaction by the Secretary that no other reasonable means were available for gathering of information except by monitoring the concerned telephone number. As rightly pointed out by Mr. Patil, the case was based on source information and not on the basis of the complaint of the person to whom demand of bribe was made. Recording of detailed reasons would expose the source of the information endangering the safety of the source. It appears that gathering of information for a laying a trap required monitoring of the concerned telephone and the Secretary has rightly observed in his order that except such monitoring, no other means were available for gathering the relevant information. I am unable to accept the submission of Dr. Chandrachud that no cogent reasons are recorded or that the reasons are mere recitation of statutory language or that the order contains merely 'rubber-stamp reasons'. The first objection for setting aside the impugned order is therefore rejected.

D. 3 ELEMENT OF PUBLIC EMERGENCY AND PUBLIC SAFETY

30) The second point raised by Dr. Chandrachud is about non-existence of element of ‘public safety’ and/or ‘public emergency’ for exercise of powers under sub-section (2) of Section 5 of the Telegraph Act. No doubt, occurrence of public emergency or existence of public interest is a *sine qua non* for exercise of power under sub-section (2) of Section 5. Dr. Chandrachud has contended that the emergency contemplated under the statutory provision is not a usual or normal emergency but what is contemplated is ‘public emergency’. The Apex Court has examined the concepts of ‘public emergency’ as well as ‘interest of public safety’ in its four judge Bench decision in *Hukam Chand Shyam Lal Versus. Union of India*¹³. It is held in para 13 of the judgment as under:

“13. Section 5(1) if properly construed, does not confer unguided and unbridled power on the Central Government/State Government/specially authorised officer to take possession of any telegraphs. **Firstly, the occurrence of a “public emergency” is the sine qua non for the exercise of power under this section.** As a preliminary step to the exercise of further jurisdiction under this section the Government or the authority concerned must record its satisfaction as to the existence of such an emergency. **Further, the existence of the emergency which is a prerequisite for the exercise of power under this section, must be a “public emergency” and not any other kind of emergency.** The expression public emergency has not been defined in the statute, but contours broadly delineating its scope and features are discernible from the section which has to be read as a whole. **In subsection (1) the phrase ‘occurrence of any public emergency’ is connected with and is immediately followed by the phrase “or in the interests of the public safety”.** These two phrases appear to take colour from each other. In the first part of subsection (2) those two phrases again occur in association with each other, and the context further clarifies with amplification that a “public emergency” within the contemplation of this section is one which raises problems concerning the interest of the public safety, the sovereignty and

¹³ (1976) 2 SCC 128

integrity of India, the security of the State, friendly relations with foreign States or public order or the prevention of incitement to the commission of an offence. It is in the context of these matters that the appropriate authority has to form an opinion with regard to the occurrence of a public emergency with a view to taking further action under this section.”

(emphasis supplied)

31) Thus, in ***Hukam Chand Shyam Lal*** (supra), the Apex Court has held that occurrence of a ‘public emergency’ is *sine qua non* for exercise of power under Section 5(2) and a preliminary step to exercise further jurisdiction under the provision is to record satisfaction about occurrence of public emergency. The Apex Court has further held that the emergency which is a prerequisite for exercise of power must be ‘public emergency’ and not any other kind of emergency. The Apex Court has further held that the phrase ‘*occurrence of a public emergency*’ is connected with and immediately followed by the phrase ‘*or in the interest of public safety*’ and that the two phrases take colour from each other. It is further held that a ‘public emergency’ must be the one which raises problems concerning the interest of public safety, sovereignty and integrity of India, security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of an offence.

32) In ***People's Union for Civil Liberties v. Union of India***¹⁴, (PUCL) the Supreme Court has held that in absence of occurrence of public emergency or interest of public safety, jurisdiction under Section 5(2) of the Telegraph Act cannot be exercised. The Court has held:

28. Section 5(2) of the Act permits the interception of messages in accordance with the provisions of the said Section. “Occurrence of any public emergency” or “in the interest of public safety” are the *sine qua non*. for the application of the provisions of Section 5(2) of

¹⁴ (1997) 1 SCC 301

the Act. Unless a public emergency has occurred or the interest of public safety demands, the authorities have no jurisdiction to exercise the powers under the said Section. Public emergency would mean the prevailing of a sudden condition or state of affairs affecting the people at large calling for immediate action. The expression “public safety” means the state or condition of freedom from danger or risk for the people at large. When either of these two conditions are not in existence, the Central Government or a State Government or the authorised officer cannot resort to telephone tapping even though there is satisfaction that it is necessary or expedient so to do in the interests of sovereignty and integrity of India etc. In other words, even if the Central Government is satisfied that it is necessary or expedient so to do in the interest of the sovereignty and integrity of India or the security of the State or friendly relations with sovereign States or public order or for preventing incitement to the commission of an offence, it cannot intercept the messages or resort to telephone tapping unless a public emergency has occurred or the interest of public safety or the existence of the interest of public safety requires. Neither the occurrence of public emergency nor the interest of public safety are secretive conditions or situations. Either of the situations would be apparent to a reasonable person.

29. The first step under Section 5(2) of the Act, therefore, is the occurrence of any public emergency or the existence of a public-safety interest. Thereafter the competent authority under Section 5(2) of the Act is empowered to pass an order of interception after recording its satisfaction that it is necessary or expedient so to do in the interest of (i) sovereignty and integrity of India, (ii) the security of the State, (iii) friendly relations with foreign States, (iv) public order or (v) for preventing incitement to the commission of an offence. When any of the five situations mentioned above to the satisfaction of the competent authority require then the said authority may pass the order for interception of messages by recording reasons in writing for doing so.

30. The above analysis of Section 5(2) of the Act shows that so far the power to intercept messages/conversations is concerned the Section clearly lays-down the situations/conditions under which it can be exercised. But the substantive law as laid down in Section 5(2) of the Act must have procedural backing so that the exercise of power is fair and reasonable. The said procedure itself must be just, fair and reasonable. It has been settled by this Court in *Maneka Gandhi v. Union of India*, that “procedure which deals with the modalities of regulating, restricting or even rejecting a fundamental right falling within Article 21 has to be fair, not foolish, carefully designed to effectuate, not to subvert, the substantive right itself”. Thus, understood, “procedure” must rule out anything arbitrary, freakish or bizarre. A valuable constitutional right can be canalised only by civilised processes”.

33) In *Anuradha Bhasin* (supra), the Apex Court has considered the judgments in *Hukam Chand Shyam Lal* and *PUCL* and it is held in paras-100 and 102 as under:

100. Keeping in mind the wordings of the section, and the above two pronouncements of this Court, what emerges is that the prerequisite for an order to be passed under this subsection, and therefore the Suspension Rules, is the occurrence of a “public emergency” or for it to be “in the interest of public safety”. Although the phrase “public emergency” has not been defined under the Telegraph Act, it has been clarified that the meaning of the phrase can be inferred from its usage in conjunction with the phrase “in the interest of public safety” following it. The *Hukam Chand Shyam Lal* case further clarifies that the scope of “public emergency” relates to the situations contemplated under the subsection pertaining to “*sovereignty and integrity of India, the security of the State, friendly relations with foreign states or public order or for preventing incitement to the commission of an offence*”.

101. The word “emergency” has various connotations. Everyday emergency, needs to be distinguished from the type of emergency wherein events which involve, or might involve, serious and sometimes widespread risk of injury or harm to members of the public or the destruction of, or serious damage to, property. Article 4 of the International Covenant on Civil and Political Rights, notes that ‘[I]n time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed...’. Comparable language has also been used in Article 15 of the European Convention on Human Rights which says “In time of war or other public emergency threatening the life of the nation”. We may only point out that the “public emergency” is required to be of serious nature, and needs to be determined on a case to case basis.

(emphasis added)

34) Thus, considering the law expounded by the Apex Court in its judgments in *Hukam Chand Shyam Lal* and *Anuradha Bhasin*, it appears to be now well settled that the phrases ‘public emergency’ and ‘in the interest of public safety’ are to be used in conjunction with each other and that the ‘emergency’ need not be everyday emergency as contradistinct from a ‘public emergency’. In *Anuradha Bhasin*, the Apex

Court the issue of abrogation of Article 370 of the Constitution of India where Government had suspended the internet services, phone networks in the State of Jammu and Kashmir in view of the said abrogation as a preventive measure to avoid any danger to national security. The above observations are made by the Apex Court in the context of the issues involved in the case, which did not include the issue of existence of element of public emergency or public safety in a case involving allegations of corruption. However, the judgments in *Hukam Chand Shyam Lal* and *Anuradha Bhasin*, undoubtedly interpret Section 5 of the Telegraph Act and both the judgments provide assistance for determination of the issue involved in the present case as well.

35) Dr. Chandrachud has contended that in every case involving allegations of corruption, occurrence of public emergency or existence of public safety cannot be inferred and the Competent Authority must apply its mind to the facts and circumstances of each case and it is only when it is satisfied about existence of elements of public emergency and public safety, power under sub-section (2) of Section 5 for interception of messages can be exercised. He has sought to distinguish cases involving corruption against municipal official issuing occupancy certificate in respect of dangerous construction and allegation of corruption against Ticket Checker or Bus Conductor and submits that in the former case, there could be an element of public safety but the same cannot be said to be involved in the latter category of cases. In my view however, it is not possible to put the cases involving elements of public emergency or public safety in a straitjacket formula. The expressions 'public emergency' and 'public safety' need to be considered from the angle of emergency or safety

relating to the public at large as contradistinct with an emergency or safety involving a particular individual. Corrupt activities of a public servant can pose threat to the public at large where he/she is accused of performing an act, which he/she is not supposed to perform, but performs on account of gratification offered. In some cases, a public servant may demand and accept gratification for performance of an act, which he/she is otherwise is duty bound to perform, like demand of gratification for sanction of TDS, which is otherwise sanctionable as per law. In other cases, what could not be done and what should not be done is done by him/her only on account of gratification offered to him. Governing the activities of State and its instrumentalities as per rule of law by eliminating corrupt activities of public servants is the larger public interest, as opposed to protection of private interest of any individual. When a public servant is prosecuted and punished for demanding and accepting bribe, it is not only the grievance of person to whom demand is made which gets vindicated, but such prosecution and conviction addresses larger public interest. Corrupt activities of public servants pose threat to the whole organization, which is being run for larger public interest. A railway ticket checker permitting passenger to travel ticketless and misappropriating the fare amount causes losses to railways and if railways does not curb such activities, its existence is put to threat thereby affecting the larger public, in whose interest the railway service is run. It is another matter that the illustration of ticket checker or bus conductor cited by Dr. Chandrachud would seldom require interception of telephone messages. Therefore whether interception of messages is warranted or not would depend on facts of each case.

36) As discussed above, a public servant can indulge in corrupt activities either to do a prohibited act or for performance of act permissible by law. When prosecuting agency requests for permission to intercept messages relating to corrupt activities of a public servant, it would be too farfetched to expect the Competent Authority to make a guesswork about the exact reason why demand for illegal gratification is being made-whether it is for doing a prohibited act or to do what is mandated by law? Also, what must be borne in mind is the broader objective of the State to weed out corruption from the system, for which assistance in the form of interception of messages is needed. In some cases, the prosecuting agency may want to keep a tap on the activities of a public servant, against whom no complaint is received in respect of a specified act. The prosecuting agency is not debarred from catching hold of a public servant indulging in corruption in absence of a complaint by bribe giver. In such circumstances, the monitoring of activities of public servant becomes necessary. It is inconceivable to contend that the elements of public safety or public emergency is not involved in such cases. The Prevention of Corruption Act, 1988 is a special legislation enacted to combat the menace of corruption. Corrupt activities of public servants pose a risk to the public at large, which also amounts to threat to public safety. Prosecuting a public servant indulging in corruption is in the interest of public at large. Existence of elements of public safety and/or public emergency in a particular case involving corruption allegations would depend on facts and circumstances of that case.

37) Coming back to the facts of the present case, the Petitioner in his capacity as Deputy Chief Labour Commissioner (Central), Mumbai was vested with powers and functions like processing of issuance of

labour licenses, certificate of registration, building and other construction work certificates and deciding on inspection matters, etc. The Petitioner faces an allegation that he was indulging in corrupt and illegal activities while performing the functions relating to the work of renewal/issuance of licenses to the Company for the project of Boat Repair Centre. It therefore cannot be contended that his alleged corrupt activities would not endanger public safety or that no element of public emergency is involved.

38) The matter can also be seen from another angle. The Competent Authority has recorded subjective satisfaction of existence of element of public safety in the present case. The Competent Authority has considered that for monitoring activities of the Petitioner relating to his alleged corrupt activities, interception of his telephonic messages is necessary. The authority has further recorded a reason that the requisite information could not be gathered by any other means. The issue is whether in exercise of writ jurisdiction, this Court would be in a position to question the correctness of such subjective satisfaction recorded by the Competent Authority and hold that in no case relating to allegations of corruption, element of public safety or public emergency can be involved or that other means were available to gather the requisite information. The answer to the question, to my mind, appears to be in the negative. The contours of jurisdiction of courts while determining correctness of subjective satisfaction recorded by a statutory authority about existence of public safety or public emergency would lie in narrow compass and courts cannot sit as an Appellate Authority over the satisfaction so recorded by the Authority for arriving at a conclusion different than the one reached by that authority.

39) What is vital in the present case is the reason recorded in the third paragraph of the impugned orders where the Secretary has recorded a satisfaction that monitoring of telephone of the Petitioner was necessary as it was not possible to acquire the requisite information through any other reasonable means. The entire action in the present case is initiated by CBI on the basis of source information that officials in the office of the Deputy Chief Labour Commissioner (Central), Mumbai were indulging in corrupt activities. In order to verify the correctness of the source information, in absence of any specific complaint, it became necessary for CBI to monitor the telephone of the Petitioner. Recording of elaborate reasons disclosing the details of source information in the present case would have posed a risk to the sources. In my view therefore element of public safety is clearly involved in the present case. It appears that monitoring of the telephone ultimately revealed that there was telephonic conversation on 19 April 2018 between Petitioner and Assistant Labour Commissioner relating to issuance of license to M/s. Som Projects Ltd. and the employee of M/s. Som Project Pvt. Ltd is allegedly found to have delivered the packets containing the bribe amount to the Petitioner and other officials. Therefore, the reason recorded in the third paragraph of the impugned order about impossibility of securing the requisite information through any other means appears to my mind as a cogent reason for permitting interception of messages on telephone number of the Petitioner.

D.4 VIEWS EXPRESSED BY VARIOUS HIGH COURTS

40) There appear to be cleavage of opinion about existence of elements of public emergency and public safety while making an order under Section 5(2) of the Telegraph Act in matters concerning allegations of corruption. While Division Bench of this Court and single Judge of Karnataka High Court have struck down interception orders, two judgments of single Judges of Madras and Delhi High Court have upheld the interception orders. It would be necessary to consider the views expressed by different High Courts.

41) In *Vinit Kumar* (supra), Division Bench of this Court has considered challenge by Petitioner therein to the orders directing interception of telephonic messages on the ground of violation of provisions of Section 5(2) of the Telegraph Act and non-compliance of the Rules made thereunder, as well as for being violative of fundamental rights guaranteed under Part-III of the Constitution of India. Petitioner before this Court was a businessman and arraigned as Accused No.2 in the Special CBI case. The CBI alleged that Petitioner was bribe giver who allegedly gave bribe to a public bank official for receiving certain credit related favours. In the above factual background, the Division Bench held in paras-17 to 20 as under:

17. We are of the view that as per Section 5(2) of the Act, an order for interception can be issued on either the occurrence of any public emergency or in the interest of the public safety. The impugned three interception orders were issued allegedly for the reason of 'public safety'. As held in *PUCL* (supra), unless a public emergency has occurred or the interest of public safety demands, the authorities have no jurisdiction to exercise the powers under the said section. The expression "Public Safety" as held in *PUCL* (supra) means the state or condition of freedom from danger or risk for the people at large. When either of two conditions are not in existence, it was impermissible to take resort to telephone tapping.

18. The Hon'ble Supreme Court in *PUCL* case (supra) has observed that neither the occurrence of public emergency nor the interest of public safety are secretive conditions or situations. Either of the situations would be apparent to the reasonable person.

19. Even at this stage, from the affidavits filed by the Respondents or the charge-sheet, the Respondents could not justify any ingredients of risk to the people at large or interest of the public safety, for having taken resort to the telephonic tapping by invading the right to privacy. Neither from the impugned orders nor from the record any situation showing interest of public safety is borne out.

20. We are satisfied that in peculiar fact of the instant case, the impugned three interception orders neither have sanction of law nor issued for legitimate aim, as sought to be suggested. The impugned three interception orders could not satisfy the test of "Principles of proportionality and legitimacy" as laid down by the nine judges' constitution bench decision in *K. T. Puttaswamy* (supra). We, therefore, have no hesitation in holding that all three impugned orders are liable to be set aside. Accordingly, we quash and set aside the same.

42) Perusal of the findings in judgment in *Vineet Kumar* would indicate that the Division Bench essentially proceeded to set aside the interception orders after recording finding that the impugned orders or the records before it did not disclose any situation bearing out interest of public safety. From the findings in the judgement, the exact reasons for which the interception order was made are not apparent. The judgment in *Vineet Kumar* is rendered in the facts of that case and cannot be cited in support of an absolute proposition that in every case involving allegations of corruption, element of public safety or public emergency is not involved. In the present case, I am satisfied that the impugned orders of interception are well supported by cogent reasons which not only bear out existence of element of public safety but more importantly the Secretary has rightly recorded a satisfaction that no

other reasonable means were available for gathering the information except by monitoring the telephone. It is also a matter of fact that the Division Bench judgment in ***Vineet Kumar*** has been challenged before the Supreme Court in Special Leave to Appeal (Cri.) No.902 of 2020 and the Supreme Court has passed following order on 10 February 2022:

Issue notice. Mr. Nikhil Goel, learned counsel, appears and accepts notice for the caveator (s). Until further orders, there shall be stay of operation of the impugned order passed by the High Court.

43) However, mere grant of stay to the operation of the order passed by the Division Bench in ***Vineet Kumar*** would obviously not amount to stay of the ratio in the judgment as such. It is well settled law that stay of operation of order does not amount to stay the ratio of the judgment. In ***Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association***¹⁵, the Apex Court has held that while considering the effect of an interim order staying the operation of the order under-challenge, a distinction has to be made between quashing of an order and stay of operation of an order. It is held that quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed, whereas stay of operation of an order does not lead to such a result. That stay order only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. In ***Cipla Limited*** (supra) Division Bench of this Court, relying on ***Shree Chamundi Mopeds***, has held in paras-184,185 and 186 as under :

¹⁵ (1992) 3 SCC 1

184. In so far as the judgment of this Court in the case of *Sarita Nagari Phase - 2 Co-operative Housing Society Ltd. v. The State of Maharashtra* (supra) is concerned, it is vehemently urged by the learned senior counsel for the petitioners that the Hon'ble Supreme Court has issued notice in Special Leave to Appeal filed by the aggrieved party in the said matter and has stayed the operation of the impugned judgment by its order dated 1st May 2018 passed in Special Leave to Appeal No.10215 of 2018 in the case of M/s. A.V. Bhat Housing Co. now known as *Belvalkar Housing Company v. Sarita Nagari Phase-2 Co-operative Housing Society Ltd. & Ors.* A perusal of the said order dated 1st May 2018 indicates that the Hon'ble Supreme Court has only granted stay of operation of the order passed by the High Court and directed the parties to maintain status-quo as it exists on the said order and not the judgment as sought to be canvassed by the learned senior counsel for the petitioner.

185. The judgment of Delhi High Court in the case of *Bristol Myers Squibb Company v. JD Joshi* (supra) has adverted to the judgment of the Hon'ble Supreme Court in the case of *Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association*, (1992) 3 SCC 1. The Hon'ble Supreme Court in the said judgment held that while considering the effect of an interim order staying the operation of the order under-challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. The principles of law laid down by the Supreme Court in the case of *Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association* (supra) apply to the facts of this case. We are in agreement with the views expressed by the Delhi High Court in the case of *Bristol Myers Squibb Company* (supra).

186. The judgment of Madras High Court in the case of *Viswapriya (India) Limited v. Government of Tamil Nadu* has adverted to the judgment of the Hon'ble Supreme Court in the case of *Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association*, (2015) 4 LW 33 and has held that the order of stay operates as between the parties to the lis and it does not constitute a declaration of law under Article 141 of the Constitution of India. The principles of law laid down by the Madras High Court in the case of *Shree*

Chamundi Mopeds Ltd. Vs. Church of South India Trust Association (supra) applies to the facts of this case. We are in respectful agreement with the views expressed by the Madras High Court in the said judgment. In our view, the principles of law laid down by the Division Bench of this Court in the cases of *Paul Parambi, Chief Promoter, Springs CHS Ltd. v. The Bombay Dyeing and Manufacturing Co. Ltd.* (supra) and *Sarita Nagari Phase - 2 Co-operative Housing Society Ltd. v. The State of Maharashtra* (supra) thus apply to the facts of this case and would be binding precedent on this Court for the reasons recorded aforesaid. We are respectfully bound by those judgments.

44) Therefore, mere grant of stay to the operation of the order by the Supreme Court in ***Vineet Kumar*** is not a ground for this Court to altogether ignore the ratio of that judgment. In fact, I am bound by the judgment rendered by the Division Bench. However, in my view, the judgment is rendered in the facts of that case and does not lay down an absolute proposition of law that in every case involving corruption allegations, power under Section 5(2) of the Telegraph Act for interception of messages cannot be exercised. In the present case, this Court is convinced that a demonstrable case of existence of element of public safety is made out in the present case for passing the impugned interception order. Therefore, the interception orders cannot be interfered with by relying on Division Bench judgment in ***Vineet Kumar***.

45) Dr. Chandrachud has also relied upon judgment of Karnataka High Court in ***S.M. Mannan*** (supra) in which FIR and chargesheet were under challenge and while deciding that challenge, the learned Single Judge of the Karnataka High Court has also considered the issue of validity of the interception order passed under Section 5(2) of the Telegraph Act and held as under :

15.... The order is dated 18-09-2019. It is this that has to be placed before the Review Committee. The order is passed invoking sub-section (2) of Section 5 of the Telegraph Act. The order reads that Union Home Secretary is satisfied that it was necessary and expedient in public safety to order inception. What public safety was involved in the case at hand is not known, and it is not discernible anywhere either in the order or in the case at hand. The allegation is with regard to acceptance of illegal gratification. **If that be so, a drastic measure of wiretapping could not have been permitted against the petitioner, as admittedly he did not involve any of the trait necessary under sub-section (2) of Section 5 of the Act and its interpretation by the Apex Court.** Therefore, wiretapping is loosely permitted against the petitioner. This finding that the act of wiretapping is illegal would cut at the root of the matter and obliterate all the acts or steps taken by the prosecution in its aftermath. I deem it appropriate to notice if there is semblance of merit in the allegation as well.

(emphasis and underling supplied)

46) The learned Single Judge of the Karnataka High Court thus held that the case ‘admittedly’ did not involve any of the traits necessary under sub-section (2) of Section 5 of the Act. The judgment is thus rendered in the facts of that case and would have no application to the present case. Here, Respondents do not admit that the factors necessary for exercise of power under sub-section (2) of Section 5 of the Telegraph Act do not exist in the present case.

47) As against the Division Bench judgment of this Court in **Vineet Kumar** and of Single Judge of Karnataka High Court in **S.M. Mannan**, Dr. Chandrachud has fairly placed before this Court two judgments of the learned Single Judges of Madras High Court and Delhi High Court, which have taken contray view holding that power of interception can be exercised under section 5(2) of the Telegraph Act in cases involving allegations of corruption. In **Sanjay Bhandari** (supra) the learned Single

Judge of Madras High Court has decided challenge to the interception order passed by the Secretary, Ministry of Home Affairs. The learned Singel Judge held in paras-12 and 15 of the judgment as under:

12. In the above, the action of the interception in the case on hand was for detection, prevention, investigation and the prosecution of corrupt activities. As such the contention of the petitioners that the Hon'ble Supreme Court of India in the case of PUCL (supra) has held that the telephone tapping cannot happen unless specific criteria as mentioned in Section 5(2) of Indian Telegraph Act or satisfied along with the criteria laid down is not applicable to the case on hand. **Further it is also seen that the first respondent passed the order with application of mind taking into consideration the circumstances prevailing in the matter after having satisfied on the basis of the material placed before the authority that the circumstances of the case warrants lawful interception.** The five circumstances laid under Section (5) (2) of the Indian Telegraph Act related to the public emergency or interest of the public safety. The authority is within the powers conferred by the Act to order for lawful interception. It would also be seen that not only the bodily injury to the members of the public or the injury to a minimum number of persons would constitute public safety. With the latest communication tools in the form of powerful mobile phones becoming available in every hand in the country which are equipped with applications ensuring encrypted communication. The available avenues with the potential criminals, have increased manifolds and it is becoming increasingly difficult to prevent and detect crime. Restricting the concept of public safety to the mere "situations that would be apparent to the reasonable persons" will exclude most of the actual threats which present the most grave circumstances like terrorist attacks, corruption at high places, economic and organised crimes, most of which are hatched in the most secretive of manners. **In most of the circumstances, threat to public safety is from hidden factor which are neither apparent nor obvious to the general public and members of the law enforcement community and the information about these circumstances and factors cannot be connected by any other reasonable means. In addition, most of such information, is sensitive in nature, which may not be circulated in the public domain. Therefore, the first respondent passed the order to intercept phone messages of the petitioners herein.**

15. That apart, in view of the above discussion the first respondent passed the orders for detection, prevention, investigation and prosecution of corrupt activities of the petitioners herein in accordance with the provision under Section 5(2) of the Indian Telegraph Act, 1885. Therefore, this Court finds no violation of Section 5(2) of the Telegraph Act and also it would not amount to violation of the right to privacy under Article 21 and freedom of speech and expression guaranteed under Article 19(1) and 19(2) of the Constitution of India. Therefore, these writ petitions are devoid of merits.

48) Thus, in *Sanjay Bhandari*, the Madras High Court held that in most circumstances public safety is a hidden factor which is neither apparent nor obvious to the general public and information about such circumstances cannot be connected by any other reasonable means. The judgment of Madras High Court in *Sanjay Bhandari* has been followed by Delhi High Court in *Santosh Kumar* (supra) in which it is held in paras-48, 49 and 54 as under :

48. The disclosure of elaborate reasons for interception orders would be against the modified disclosure requirements of procedural fairness which have been universally deemed acceptable for the protection of other facets of public including the source of information leading to the detection of crime or other wrong doing, sensitive intelligence information and other information supplied in confidence for the purpose of government or discharge of certain public functions. Furthermore, the Rule 419 A of the Telegraph Rules provide for extreme secrecy, utmost care and precaution in the matter of interception as it affects privacy.

49. The affidavits dated 23-9-2020 and 9-10-2020 filed by Senior Executives of the Union of India reflects that the order was forwarded to the Review Committee and no adverse direction was passed by them. Furthermore, the destruction of Minutes of the Review Committee was as per the procedure under sub-rule (18) of Rule 491A and hard disk and other records were retained for functional purpose.

54. It is pertinent to point that the present matter pertains to corruption and through the order of *Sanjay Bhandhari* case the same was held to be a matter which endangers public safety since economic

crimes ultimately affect the economic stability and safety of the country and its citizens.

(emphasis supplied)

49) The Special Leave Petition challenging the judgment of **Santosh Kumar** came to be withdrawn before the Apex Court on 4 November 2022.

50) I am in respectful agreement with the views expressed by the learned Single Judges of the Madras High Court in **Sanjay Bhandari** and Delhi High Court in **Santosh Kumar** that in cases involving corruption, it cannot be stated that there can be no element of public safety or public emergency.

D.5 REVIEW COMMITTEE UNDER RULE 419-A

51) Coming to the last aspect of violation of provisions of Rule 419A of the Telegraph Rules, the contentions raised by Petitioner are purely speculative in nature. In this regard, the averments raised by the Petitioner in the petition read thus:

I. Any order of interception passed by the Secretary to the Government of India in the Ministry of Home Affairs is not only required to contain reasons for the order but the said order is also required to be forwarded to a Review Committee within a period of seven working days. The said Review Committee is required to record its findings within a period of two months on whether the directions issued are in accordance with Section 5(2) of the Act or not and when the Review Committee is of the opinion that the directions are not in accordance with the said provision, direction or the order is required to be set aside and copies of the intercepted message are required to be destroyed as per law.

J. The Petitioner had filed an application under Section 227 of the Code of Criminal Procedure, 1973 ("**discharge application**") bearing CBI Special Case No. 100024 of 2019. In the said application the petitioner had specifically averred that order of the Review

Committee recording its finding had not been produced by the prosecution. The Petitioner in a separate application dated 18th March, 2023, preferred before the CBI Court had called upon the prosecution to produce a copy of the order of the Review Committee recording its finding. It is, therefore, submitted that either the orders have not been forwarded to the Review Committee by the Respondent or the Review Committee has not given its findings as required under law. Hence, the Respondent has failed to comply with the mandatory provisions of law. Even if it is assumed for the sake of argument that an order has been passed by the Review Committee endorsing the orders issued by the Respondent No. 1 i.e. Ld. Secretary, Home Affairs, the said order shall still be amenable to judicial scrutiny by this Hon'ble Court. Annexed herewith at Exhibit 'G' is a copy of the discharge application without its annexures and at Exhibit 'H' is a copy of the application dated 18th March, 2023 filed by the Petitioner in the proceeding before the CBI Court.

52) Thus, on account of non-receipt of response received by the Petitioner to application dated 18 March 2023 preferred before CBI Court for production of order of the Review Committee, Petitioner has raised a speculation that the interception orders are possibly not forwarded to the Review Committee or that the Review Committee has not recorded its findings as required under law. In absence of any concrete factual information, the Petitioner has raised an alternate submission that the order of the Review Committee, if passed, is amenable to judicial scrutiny. Thus, from the pleadings raised in the petition, it is clear that the contention of non-following of procedure under sub-rule (2) and (17) of the Rule 419A of Telegraph Rules is merely speculative in nature. Respondent-CBI has filed Affidavit-in-Reply in which it is contended in para-7 as under:

7. It is further submitted that as per Sub Rule 419A (2) of the Indian Telegraph Rules, 1951, all the interception orders issued during 2018 under Section 5(2) of the Indian Telegraph Act 1885 were forwarded to the Review Committee and reviewed by the Review Committee and did not merit any intervention of the Committee. Moreover, all the records pertaining to lawful interception have been

destroyed by the Ministry of Home Affairs as per provisions contained in Sub-rule 18 of Rule 419A of the Indian Telegraph Rules, 1951.

53) In absence of any concrete material being placed on record about failure to forward the interception orders to the Review Committee or the Review Committee not passing any order thereon, this Court would rely upon a statement made in the Affidavit-in-Reply of CBI that the impugned interception orders were forwarded to the Review Committee and have been reviewed by the said Committee.

E. CONCLUSIONS AND ORDER

54) After considering the overall conspectus of the case, I am unable to uphold the challenge to the impugned interception orders passed under the provisions of sub-section (2) of Section 5 of the Telegraph Act. The impugned interception orders are unexceptional and the petition therefore must fail. The Writ Petition is accordingly **dismissed**. However, it is clarified that the findings recorded in the judgment are only for determining validity of the impugned interception orders and the same would, in no manner, affect the trial before the learned Special Judge. Rule is discharged. There shall be no order as to costs.

NEETA
SHAILESH
SAWANT

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[SANDEEP V. MARNE, J.]