



2024:DHC:8099



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 21.10.2024

+ **BAIL APPLN. 3985/2023**

AKASH TANWAR

.....Applicant

versus

STATE OF DELHI & ORS.

.....Respondents

+ **W.P.(CRL) 1350/2024**

AKASH TANWAR

.....Petitioner

versus

**GNCT OF DELHI THORUGH SHO PS. FATEHPUR BERI
& ORS. & ORS.**

.....Respondents

Advocates who appeared in this case:

For the Applicant :Mr. Sumit Mishra, Mr. Ankit Siwach,
Mr. Kapil Tanwar & Mr. Pawan Gupta,
Advocates.

For the Respondent :Mr. Amol Sinha, ASC (Crl.)for the
State alongwith Mr. Kshitiz Garg,
Advocate.

Ms. Rupali Bandhopadhyia, ASC (Crl.)
for the State with Mr. Abhijeet Kumar,
Advocate.

Ms. K. Enatoli Sema, Mr. Amit Kumar
Singh, Mr. Prang Newmai& Ms.
Chubalemla Chang, Advocate for R-2.

SI Sachin Panwar (P.S. Fatehpur
Beri).



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CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

JUDGMENT

BAIL APPLN. 3985/2023

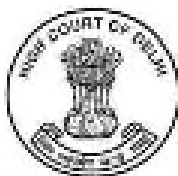
1. The present application is filed seeking grant of bail in FIR No. 69/2023 dated 28.08.2023 registered at Police Station Dimapur for offences under Sections 153A/153B/505(1) & (2) of the Indian Penal Code, 1860 ('**IPC**') and Section 3(1)(r)/(s)/(u) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('**SC/ST Act**').

Brief Facts

2. Briefly stated, the allegations in the FIR stem from a social media post allegedly made by the applicant, which is claimed to incite communal hatred, enmity, and disharmony between different groups based on religion, caste, or race and target members of the Scheduled Castes and Scheduled Tribes.

3. On 18.11.2023, the Nagaland Police arrested the applicant from his residence in New Delhi. The applicant was taken to the Special Judge, SC/ST Act, South, Saket Courts, New Delhi, for transit remand. However, the Court declined to grant transit remand and instead granted interim bail for 10 days, pending further proceedings.

4. It is alleged that the arrest of the applicant was illegal due to non-compliance with procedural safeguards under Section 41A of the CrPC, as no notice was served prior to the arrest.



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Submissions

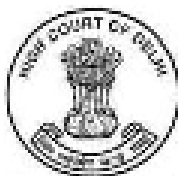
5. The learned counsel for the applicant/petitioner argued that the arrest of the applicant by the Nagaland Police was illegal, given the violation of Section 41A of the CrPC, which mandates that notice be served to the accused in cases where the alleged offence carries a punishment of imprisonment less than seven years. The learned counsel contended that no such notice was served, and thus the arrest was in contravention of the procedural safeguards as laid down by the Hon'ble Apex Court in ***Arnesh Kumar v. State of Bihar : (2014) 8 SCC 273.***

6. He submitted that the allegations in the FIR are based on a social media post and that the applicant has fully cooperated with the police authorities. His laptop and mobile phone have been seized, and there is no chance of tampering with the evidence or influencing witnesses.

7. He submitted that the applicant is entitled to transit bail to enable him to approach the court of competent jurisdiction in Nagaland.

8. It is also submitted that the applicant does not pose a flight risk and has deep roots in society, being a social worker involved in the welfare of stray animals.

9. He submitted that the FIR is filed with malicious intent and further seeks its quashing in W.P.(CRL) 1350/2024 on the grounds that no case is made out. It is also contended that the petitioner, Akash Tanwar, is a resident of Delhi and that the alleged offence—an Instagram post—was made while he was residing in



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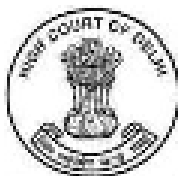


Delhi. Therefore, it is submitted that the cause of action substantially arose in Delhi, where the petitioner resided and posted the content in question.

10. He submitted that since the post was allegedly circulated *via* social media, which operates in cyberspace – the accessibility of the post in Nagaland does not automatically confer jurisdiction to the authorities there. The petitioner relied on the Supreme Court's judgment in *Navinchandra N. Majithia v. State of Maharashtra* : (2000) 7 SCC 640, where it was held that the High Court could exercise jurisdiction to quash an FIR if a substantial part of the cause of action arose within its territorial limits. Based on this precedent, the petitioner had contended that the Delhi High Court has jurisdiction to quash the FIR, as the alleged offence originated in Delhi.

11. Moreover, the learned counsel submitted that the registration of the FIR in Nagaland was an abuse of the legal process and an act of harassment, as the petitioner had no connection to the state of Nagaland. The learned counsel argued that the FIR was lodged merely because the complainant, who is based in Nagaland, was offended by the content, even though the actions leading to the post took place in Delhi.

12. He submitted that the offences under Sections 3(r), 3(s), and 3(u) of the SC/ST Act, are erroneously invoked in the present FIR and are not applicable to the facts of the case. He submitted that the petitioner's alleged social media post did not specifically or intentionally target any individual or community falling under the



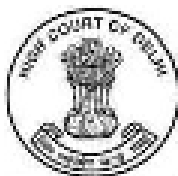
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Scheduled Castes or Scheduled Tribes categories. The learned counsel submitted that a necessary condition for invoking the provisions of the SC/ST Act is that the accused must have deliberately insulted or humiliated a member of these communities with the intent to degrade them because of their caste or tribal identity. In this case, it is contended that the petitioner's post was general in nature and did not refer to any particular person's caste or tribe.

13. He submitted that a bare perusal of the transcript/video of the words uttered by the petitioner shows that he has not named any Scheduled Tribe as notified by the Government of India or the State of Nagaland. The offences under Sections 3(r), 3(s), and 3(u) of the SC/ST Act necessarily require the existence of a member of the Scheduled Tribe or the act of promoting enmity, hatred or ill will against members of Scheduled Tribe and there is absence of both in the present case. He argued that the use of the word '*Naga*' cannot be stretched to bring the words uttered by the petitioner within the ambit of the SC/ST Act and the same would be an abuse of process of law.

14. He submitted that the use of the slur '*chinki*' and the naming of the Scheduled Tribe '*Naga*' has been falsely alleged by the complainant. The subject video, when seen in its entire context makes it clear that no Scheduled Tribe has been named with a view to commit any atrocity *per se* under Section 3 of the SC/ST Act. He submitted that mere abusive language or derogatory comments without reference to caste, in public view or otherwise, does not



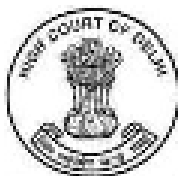
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constitute an offence under the SC/ST Act. The petitioner argued that by applying this principle, the FIR under the SC/ST Act was unsustainable, as the alleged post did not meet the legal standards necessary for invoking the provisions of the Act. (Ref : ***Hitesh Verma v. State of Uttarakhand : (2020) 10 SCC 710***)

15. He further contended that *mens rea* or the intention to cause disorder or incite violence is an essential ingredient for establishing an offence under Section 153-A of the IPC and such intent must be demonstrated by the prosecution at the outset. He argued that, in the present case, there was no disruption or even an indication of disturbance to law and order, public peace, or tranquillity, as the applicant merely uploaded a video on Instagram, which was removed within 24 hours. As a result, the mere utterance of words, without any further aggravating circumstances, does not constitute a threat to the Government of India, nor does it incite feelings of enmity or hatred between groups.

16. He submitted that the applicant runs his account on social media which is listed as a 'Non-Profit Organisation' and has uploaded more than 1800 social media posts demonstrating/spreading awareness for the protection/welfare of various fauna, including dogs. In this context, the applicant had uttered words in this Instagram video showing explicit manhandling/cruelty against dogs in the state of Nagaland- therefore, not having referred to any group/class of persons, the



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applicant merely pointed those persons out who commit such acts of cruelty against dogs.

17. The learned counsel for the applicant submitted that the applicant is fully aware that Nagaland is an integral part of India, and the term “Chinese people” used in the video refers to individuals of Chinese origin (citizens of the People’s Republic of China) who are allegedly residing in Nagaland and committing certain acts in India. He emphasized that this expression, while factually debatable and ignorant of the demographic realities of Nagaland, cannot be interpreted as a slur or a derogatory statement against the citizens of India.

18. He further submitted that there is no evidence to suggest that the applicant had any *mens rea* to incite enmity or hatred against any community or citizen of India. The words, when viewed in the broader context of the video and the circumstances surrounding its creation, do not indicate any deliberate attempt to provoke disorder or violence. Therefore, the essential element of *mens rea*, required for an offence under Section 153-A of the IPC, is absent in this case.

19. He also submitted that the applicant, by uploading the video on 10.05.2023, was exercising his fundamental right to freedom of speech and expression under Article 19(1)(a) of the Constitution of India. He argued that the applicant’s right to free expression can only be curtailed based on the reasonable restrictions outlined in Article 19(2) of the Constitution of India. He contended that the video, in essence, was an attempt to raise awareness about the



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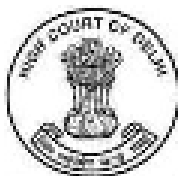
cruelty inflicted upon dogs in certain parts of India and cannot be construed as a statement prejudicial to national integration. The learned counsel argued that the petitioner was well within his rights to highlight issues concerning animal cruelty, and such statements do not threaten the unity or integrity of the nation, nor do they fall under the exceptions listed under Article 19(2) of the Constitution of India.

20. The learned counsel lastly contended that the petitioner and the private respondent have entered into a compromise and settled their disputes amicably by way of the Settlement Deed dated 24.04.2024.

21. *Per Contra*, the learned Additional Standing Counsel for the State along with the learned counsel for the State of Nagaland opposed the grant of bail, arguing that the allegations against the applicant are serious in nature and involve provisions under the SC/ST Act, which prescribes stringent punishment.

22. The learned counsel for Respondent No.2/State of Nagaland stated that the video made by the petitioner directly targets the people belonging to Nagaland and has caused enmity between communities by commenting on the food habits of the Naga people in a highly offensive and discriminatory manner.

23. It is submitted that the applicant shall approach the court having territorial jurisdiction over Police Station Dimapur West. (Ref: *Priya Indoria v. State of Karnataka and Ors. : 2023 SCC OnLine SC 1484*)



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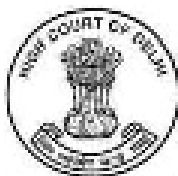


24. It is further submitted that the applicant is already enjoying the benefit of interim relief and is not in custody. In such circumstances, the prayer for grant of regular bail is not maintainable.

25. Lastly, the learned counsel for the State of Nagaland submitted that the Hon'ble Apex Court in ***Ramawatar v. State of Madhya Pradesh : (2022) 13 SCC 635***, while examining the scope of inherent powers of the Hon'ble Apex Court under Article 142 of the Constitution of India and of the High Courts under Section 482 of the CrPC in the context of SC/ST Act held that the Court shall be extremely circumspect in its approach since the SC/ST Act has been specifically enacted to deter acts of indignity, humiliation and harassment against the members of Scheduled Castes and Scheduled Tribes. She submitted that the complainant in the present case is merely an informant, and the alleged offence, therefore, cannot be considered *in personam* but rather pertains to broader societal implications.

Analysis

26. At this juncture, it may be noted the present bail application was filed on 21.11.2023. It is contended by the learned counsel for the State of Nagaland that for entertaining a bail application under, it is necessary that the applicant should be in judicial custody, and unless the applicant surrenders the bail application cannot be heard. The applicant was granted interim relief of transit bail by the learned Trial Court on 18.11.2023 and was further extended by this Court by order dated 01.12.2023.



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27. Considering the nature of the criminal law regime in India, entwined with various state-specific amendments, courts must be cautious of the potential for forum shopping when exercising jurisdiction to grant bail across territorial boundaries. It is important to acknowledge that interstate arrests may invoke the extraordinary jurisdiction of a High Court, particularly when the accused resides or is located outside the jurisdiction where the crime was registered. Generally, the power to grant bail is limited to the territorial jurisdiction of the Court, and that power cannot be usurped by disregarding the principle of territorial jurisdiction. Having said that, it is also important to emphasize that temporary relief to protect liberty and avoid immediate arrest can be provided by this Court.

28. The Hon'ble Apex Court in *Sushila Aggarwal v. NCT of Delhi* : (2020) 5 SCC 1, enunciated the approach of 'transit anticipatory bail' and 'interim protection' that balanced the right to life and personal liberty under Article 19(1)(d) of the Constitution of India with the fundamental scheme of administration of criminal justice, as prescribed in the CrPC. The purpose of interim protection in the form of transit bail is to allow the accused to approach the appropriate Court that has jurisdiction over the matter. It cannot be ignored that in an age where the movement of a citizen is frequent and fast, an offender may apprehend arrest even with respect to a complaint made by the complainant in one State, though the offended person may be residing in another State.



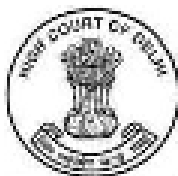
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29. Further, the Hon'ble Apex Court in ***Priya Indoria v. State of Karnataka & Ors.*** (*supra*), held that transit bail can be granted to an accused to enable them to approach the appropriate court in the state where the FIR is lodged. In the said case, it was observed that the concept of transit bail ensures access to justice and safeguards the liberty of the accused, especially when the accused is residing in a different state from where the FIR has been registered. The relevant portion is reproduced hereunder :

“96. We shall now revert to our illustration given at the beginning of this judgment. In the illustration, we have stated that if a person commits an offence in one State and the FIR is lodged within the jurisdiction where the offence was committed but the accused resides in another State he can approach the court in the other State and seek transit anticipatory bail of limited duration. We have held that the accused could approach the competent court in the State where he is residing or is visiting for a legitimate purpose and seek the relief of limited transit anticipatory bail although the FIR is not filed in the territorial jurisdiction of the district or State in which the accused resides, or is present depending upon the facts and circumstances of each case. Conversely, the offence may be committed in one State, the FIR may be lodged in another State and the accused may reside in a third State. In which of the courts of the three States would the accused approach for grant of anticipatory bail? We feel that having regard to the salutary concept of access to justice, the accused can seek limited transit anticipatory bail or limited interim protection from the court in the State in which he resides but in such an event, a “regular” or full-fledged anticipatory bail could be sought from the competent court in the State in which the FIR is filed. “

30. It is also pertinent to take note of the fact that upon a *prima facie* perusal of the facts presented and the evidence placed on record, this Court finds merit in the argument raised by the petitioner that the provisions of the SC/ST Act are not attracted. The petitioner's alleged social media post, while offensive to



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certain communities, does not appear to target individuals based on their caste or tribal identity. Furthermore, there is no evidence to suggest that the petitioner intended to humiliate or degrade any specific individual or group on the basis of caste.

31. It is the duty of the courts to ascertain the *prima facie* existence of an offence to ensure that no undue harm or humiliation is caused to the accused. Courts must not hesitate to conduct a preliminary inquiry into whether the facts presented in the complaint or FIR genuinely disclose the necessary ingredients of the alleged offence under the relevant statute, such as the SC/ST Act. It is imperative that the courts exercise their judicial discretion and mindfully assess whether, on a plain reading of the allegations, the essential elements constituting the offence are made out. This ensures that only cases with legitimate merit proceed, safeguarding the accused from unwarranted prosecution.

32. The SC/ST Act is a special statute aimed at protecting members of Scheduled Castes and Scheduled Tribes from atrocities and discrimination. For an offence under this Act to be made out, it must be established that the alleged insult or intimidation was on account of the victim's caste. The prosecution has failed to demonstrate that the accused's alleged actions were motivated by the complainant's caste or that the casteist remarks were made with the intent to humiliate her specifically because of her caste. The Hon'ble Apex Court in ***Ramesh Chandra Vaishya v. State of Uttar Pradesh & Anr.***: 2023 SCC OnLine SC 668 held that every insult or intimidation would not amount to an



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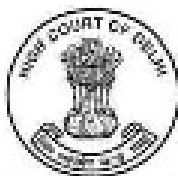


offence under Section 3(1)(x) of the SC/ST Act unless such insult or intimidation is targeted at the victim because he is a member of a particular Scheduled Caste or Scheduled Tribe.

33. That being said, the present case is of a distinctive nature, as the rise of the internet and social media platforms will likely lead to more cases of this kind being brought before courts. In the matter at hand, the foundation of the FIR is an Instagram video allegedly posted by the applicant in the public domain. The entirety of the incriminating content, which forms the basis of the complaint, was accessible to the public through its upload on a social media platform. This Court, had the occasion to threadbare go through the transcript of the Instagram video.

34. In the opinion of this Court, there is nothing in the transcript of the video that *prima facie* indicates the remarks were made by the applicant solely because the complainant/people of Nagaland belong to a Scheduled Caste. While the act of the applicant may have the impact of maligning the people residing in Nagaland, the same *prima facie* does not appear to be for the reason that the complainant belongs to a Scheduled Caste.

35. In view thereof, the applicant should be afforded the opportunity to seek appropriate remedies before the court having proper territorial and subject-matter jurisdiction over the case. Given that the FIR was registered in Nagaland alleging that the applicant, with the intent to incite communal hatred, enmity, and disharmony made a video pertaining to the people in Nagaland and posted it on social media. Therefore, an application seeking bail in



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terms of law laid down by *Priya Indoria v. State of Karnataka & Ors.* (*supra*) would have to be filed before the concerned court in Nagaland. It is only fair and in the interest of justice and judicial propriety that the applicant be permitted to pursue the legal recourse available to him in that forum.

36. Therefore, this Court deems it proper to grant transit bail to the petitioner for a limited period, to facilitate the petitioner's access to the appropriate legal remedies in Nagaland.

W.P. (CRL) 1350/2024

37. The petitioner also seeks quashing of FIR NO.69/2023, including all consequential proceedings arising therefrom.

38. The learned counsel for Respondent No. 2/State of Nagaland has raised a preliminary objection, arguing that this petition is not maintainable before this Court, as the cause of action arose entirely within the State of Nagaland.

39. In response, the learned counsel for the petitioner contended that, in view of the judgment passed by the Hon'ble Apex Court in *Navinchandra N. Majithia v. State of Maharashtra* (*supra*), the High Court can exercise jurisdiction if any part of the cause of action arises within its territorial limits.

40. It would be appropriate to first examine the law with respect to the territorial jurisdiction of the High Courts under Article 226 of the Constitution of India, which reads as under:

"226. Power of High Courts to issue writs. – (1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including



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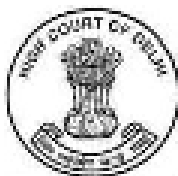
writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

*(3)-(4) * * * * .”*

41. In terms of clause (2) of Article 226 of the Constitution of India, undisputably, the maintainability of a writ petition in a High Court depends on whether the cause of action, either wholly or in part, arose within the territorial jurisdiction of that court. The term “cause of action” in legal parlance refers to a state of facts or circumstances that entitles an individual to seek relief in a court or tribunal. It encompasses the operative facts that form the basis for filing a legal action and entitles one party to seek a remedy against another. The existence of territorial jurisdiction is the undergrid of the institution of any case before a Court of law.

42. However, it is well established that the mere residence of the petitioner or the existence of part of the cause of action does not alone determine the jurisdiction of the High Court. The High Court must carefully examine where the material cause of action occurred, in addition to considering the doctrine of *forum conveniens*—a principle that ensures that the case is heard in the most appropriate and convenient forum. This principle also factors in the location of evidence, witnesses, and the convenience of the parties involved.



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43. While a part of the cause of action may have arisen within this Court's territorial jurisdiction, the Court must balance the interests of all parties and consider whether this Court is the appropriate forum to exercise jurisdiction. The convenience of hearing this case in Nagaland, where the alleged offence caused harm, and where the FIR was filed by the complainant, outweighs the convenience of the petitioner. Therefore, Nagaland is the appropriate forum for adjudicating this matter.

44. From the aforesaid, it is apparent that the concept of *forum conveniens* has been recognised by the Courts and the cause of action for determining territorial jurisdiction has been held to be a bundle of facts which the petitioner must prove to entitle him to a judgment in his favour.

45. It is undeniable that the alleged offence had significant consequences in Nagaland, giving the Courts their valid jurisdiction. Therefore, both this Court and the Courts in Nagaland would have the jurisdiction to adjudicate this matter. At the same time, this Court must prioritize the convenience of all parties and avoid conflicting rulings from multiple jurisdictions.

46. In legal proceedings, when concurrent jurisdiction is vested in multiple courts, there arises a potential for conflicting views. Such a situation arises when two or more courts are competent to hear and decide on a particular case or issue, either because the cause of action spans across different territorial jurisdictions or because different elements of the case, such as parties or events, are connected to separate courts. The issue of conflicting rulings



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arises when courts render divergent interpretations of the law or reach differing conclusions on similar facts, leading to inconsistent decisions.

47. Such conflicts are detrimental to the principles of legal certainty and judicial integrity. Conflicting decisions may result in confusion, disrupt the orderly administration of justice, and impair the uniform enforcement of rights. To avoid such issues, courts often rely on the doctrine of *forum conveniens* and the principle of *judicial comity*. *Forum conveniens* allow a court to decline the exercise of jurisdiction when another forum is more appropriate to resolve the dispute, thus preventing parallel proceedings and conflicting decisions. Additionally, the principle of *judicial comity*—mutual respect between courts of equal standing—encourages courts to avoid conflicting rulings, particularly in cases of shared jurisdiction, to uphold fairness in the judicial process.

48. Moreover, the petitioner has been given the liberty to file an appropriate application seeking grant of bail before the concerned Court in Nagaland in terms of the judgment passed by the Hon'ble Apex Court in ***Priya Indoria v. State of Karnataka & Ors.*** (*supra*).

49. This Court, therefore, does not consider it apposite to entertain the present petition. The Writ petition being W.P. (CRL) 1350/2024, is, therefore dismissed with liberty to file appropriate petition seeking quashing of the subject FIR before the concerned Court.



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Conclusion

50. Considering the above, the applicant is granted transit bail for a period of two weeks (14 days) from the date of this order on the strength of the same personal bond deposited by the applicant before the learned Trial Court subject to the applicant not indulging in any activities that may obstruct the ongoing investigation and on the following conditions :

- a. The applicant shall join and cooperate with the investigation as and when directed by the concerned IO;
- b. The applicant shall not leave the boundaries of the country without the permission of the concerned Court;
- c. The applicant shall not contact the witnesses or tamper with the evidence in any manner;
- d. The applicant shall give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times;
- e. The applicant shall provide the address of his residence to the concerned IO/SHO and shall not change the same without informing the IO/SHO.
- f. The applicant is directed to surrender before the appropriate court in Nagaland within the stipulated period and seek further legal recourse as required.

51. The present application and petition are disposed of in the aforesaid terms.



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52. A copy of this order shall be sent to the Resident Commissioner of Nagaland in New Delhi for necessary compliance.

AMIT MAHAJAN, J

OCTOBER 21, 2024