

against whom a preventive detention order is passed comes to court at pre-execution stage and satisfies the court that such order is clearly illegal, there is no reason why the court should stay its hands and compel him to go to jail even though he is bound to be released subsequently because of illegality of such order. If a person, is sent to jail, then even if he is subsequently released, his reputation may be irreparably tarnished. Liberty of a persona is a precious fundamental right under article 21 and should not be lightly transgressed.

(c) Non-placement of retractions of confessional statement and other relevant material before detaining authority vitiates detention order even at pre-execution stage. Hence, on facts, it was held that, as relevant materials were not placed before detaining authority, it vitiated the detention order.

4. That, therefore, under these circumstances, it is respectfully submitted that the impugned detention order dated 10.09.2013 is highly illegal and a nullity in the eyes of law and the same is liable to be quashed on the following amongst other grounds which are without prejudice and in addition to each other.

GROUNDS

- A. Because though the impugned detention order was passed on 10.09.2013, but till date the same has not been executed, despite the fact that throughout this period the petitioner was available at home and was attending all his daily routine activities. Not only this, it is further respectfully submitted that, the petitioner was regularly appearing before the Trial Court in the prosecution proceedings, launched at the instance of the sponsoring authority. It is submitted that the long and undue delay in execution of the impugned detention order creates doubt about the genuineness qua subjective satisfaction of the detaining authority in detaining the petitioner preventively. Therefore, in view of the exceptions of the Alka Subhash Gadia's case the impugned detention order is liable to be quashed. Copies of the relevant order sheet of the Trial Court in prosecution proceedings is enclosed herewith as Annexure D.
- B. Because the petitioner says and submits that the alleged incident took place on 23/24.10.11, however, no detention order was passed till 10.09.13, which clearly shows that there has been long and undue delay in passing the impugned detention order, which has snatched the nexus between the purpose of detention and the allegations, as made in the grounds of detention. Therefore, it is apparent that the detention order has been passed on stale incident and on this ground also the impugned detention order is liable to be quashed, more particularly when similar detention orders under similar circumstances have already been revoked by the respondent no.2, on the recommendation of the Advisory Board, who did not find sufficient cause for issuance of those detention orders. Therefore, in view of the exceptions of the Alka Subhash Gadia's case the impugned detention order is liable to be quashed on this ground also.
- C. Because the petitioner says and submits that a bare perusal of the enclosed grounds of detention clearly reflect that Sponsoring Authority did not place before the Detaining

Authority following mentioned documents, which were very vital and material since they could have influenced the mind of the Detaining Authority one way or the other at the time of passing the impugned detention order. The Detaining Authority having failed to apply its mind to those documents rendered the impugned detention order illegal and void. These documents are as under:

It is submitted that in case these documents were placed before the Detaining Authority they were relied upon material and as such ought to have been part of the list of relied upon documents, which is not so. It is worth mentioning here that while demanding those documents, being relied upon documents, petitioner's co-accused/detenu had raised this ground in his representation dated 05.10.2013 (Annexure E). However, vide the memorandum dated 13.11.2013 (Annexure F), that representation was rejected casually and mechanically, which clearly substantiates abovementioned contention of the petitioner that the impugned detention order has been rendered illegal and void on account of non-placement of those documents. Therefore, in view of the exceptions of the Alka Subhash Gadia's case read with above mentioned Deepak Bajaj's judgment, the impugned detention order is liable to be quashed on this ground also.

- D. Because similar detention orders passed in respect of other co-accused persons in the matter have been found to be not issued for sufficient cause by the detaining authority and, therefore, were revoked at the instance of the Advisory Board, consisting of three Hon'ble Judges of this Hon'ble Court, by the respondent no.2. The petitioner is made to understand that the ground for revoking the detention orders in those cases was delay in passing the same. Under these circumstances, it is most humbly and respectfully submitted that, if the detention order passed against the petitioner also suffers from the same infirmity, no useful purpose would be served by compelling him to go to jail, even though he is bound to be released subsequently because of illegality of such order. Therefore, it is respectfully prayed to this Hon'ble Court that the respondents may kindly be directed to place on record all the material pertaining to this case, including the detention orders and their consequence in respect of other co-accused persons, so that the true facts may be brought to the notice of this Hon'ble Court. Therefore, on this ground also the impugned detention order may kindly be quashed.
- E. Because the petitioner / detenu says and submits that there is no nexus between the purpose of the detention and the allegations as made in the grounds of detention which clearly shows non application of mind on the part of detaining authority. Therefore on this ground also the impugned detention order is liable to be quashed.
- F. Because since the date of the passing of the impugned detention order, which is for a period of one year only, the petitioner has not come to the adverse notice of any law enforcing authority. Therefore, under these circumstances, purpose of the said detention order has already been served and nothing would be achieved by sending the petitioner into custody pursuant to the impugned detention order, which was passed about more than 1 ½ year back for his detention for a period of one year. It is respectfully submitted that, under these circumstances, purpose of passing the

impugned detention order is no more preventive. Therefore on this ground also the impugned detention order is liable to be quashed.

- G. Because the petitioner/ detenu is a poor person and has clean antecedents. Even in this case he has been falsely implicated at the instance of the persons, inimical to him. It is respectfully submitted that he is sole bread earner of his family, which includes his old ailing parents, wife and minor children. It is further submitted that grave injustice has been done to the petitioner by executing the impugned detention order, which is even otherwise very draconian in nature, being violative of principles of natural justice. It is submitted that, the impugned detention order is unconstitutional. It is further respectfully submitted that initiation of mere prosecution proceedings were sufficient to prevent the petitioner from indulging in the alleged prejudicial activities. Therefore, on this ground also the impugned detention order is liable to be quashed.
- H. Because it is enjoined upon the respondents to show to this Hon'ble Court that the impugned detention order is in conformity with the provisions of Constitution and is not illegal, failing which they would render the impugned detention order illegal and void.
- I. Because it is further enjoined upon the respondents to show to this Hon'ble Court that all the bare minimum safeguards, available in such kind of cases, seeking detention of the persons without trial, have been followed, failing which they would render the impugned detention order illegal and void.
- J. Because the impugned detention order is not only contrary to the facts of the case but also contrary to the settled principles of law.

5. That, the annexures annexed with this petition are true copies of their originals.
6. That, no similar petition has been filed either before this Hon'ble Court or any other Court including the Hon'ble Supreme Court of India.
7. That, the petitioner has no other efficacious remedy other than to file the present petition.

PRAYER

In view of foregoing it is most respectfully prayed that:

- (i) a writ of mandamus and/or any other appropriate writ, order and/or direction in the nature thereof may kindly be issued thereby directing the respondents to place on record the abovementioned detention order, issued under section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (in short Act) by the respondent no.2 against the petitioner dated 10.09.2013 alongwith the grounds of detention and relied upon documents, besides the similar material in respect of other co-accused/ detenus, who were detained earlier on the same set of facts and circumstances; and

(ii) further a writ of certiorari and/or any other appropriate writ, order and/or direction in the nature thereof may kindly be issued thereby quashing the abovementioned detention order dated 10.09.2013, passed by the respondent no.2; and/or

(iii) any other order, as may be deemed fit and proper under the facts and circumstances of the case may also be passed in the matter in favour of the petitioner and against the respondents.

New Delhi

Dated:

Through:

Petitioner

Advocates

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (CIVIL) No. OF 2016**

(From the Impugned Judgment and Final Order dated 19.12.2014 passed by the High Court for the State of Punjab and Haryana at Chandigarh in C.M. No. 8507-C-OF 2002 in R.A.No. 14-C of 2002 in R.S.A. No. 2543 of 2001).

IN THE MATTER OF:

Manohar

....

EXPECTED PETITIONERS

VERSUS

Improvement Trust Phagwara.

Distt. Kapurthala, Punjab

....

EXPECTED RESPONDENT/ CAVEATOR

CAVEAT UNDER ORDER XV OF THE SUPREME COURT RULES 2013

To,
The Registrar
Supreme Court of India
New Delhi

Sir,

Let nothing be done in the above mentioned matter without notice to the undersigned. The parties as arrayed in the High Court are the same in this Hon'ble Court.

Filed on _____

Yours faithfully

Advocate-on-Record for Caveator

Article 136 Of the Constitution of India vests the Supreme Court with the power to grant Special leave to appeal against any decree, order or judgement in any cause or matter passed by any court or tribunal in the country.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

ORDER XXI OF THE SUPREME COURT RULES 2013

SPECIAL LEAVE PETITION (CIVIL) No. OF 2016

(Arising out of Judgment and order dated 14.12.2015 passed in Writ Petition No. 5427 of 2004 by Hon'ble High Court of Judicature of Bombay Bench at Aurangabad)

Between	Position of the Parties	
	In the High Court	In this court
Vasant S/o Shankar Bhavsar Age: Major, Occu: Residing at & Post Faijpur, Taluka Yawal, Dist: Jalgaon. ...	Petitioner	Petitioner
AND		
1. D _____ S/o _____ R/o _____, ... Taluka: Bhusawal, Dist: _____	Contesting Respondent	Contesting Respondent
2. H _____ S/o _____, R/o _____, Taluka: Bhusawal, Dist: _____	Contesting Respondent	Contesting Respondent
3. C _____ S/o _____ R/o _____ Taluka: Bhusawal, Dist: _____	Contesting Respondent	Contesting Respondent
4. P _____ S/o _____ R/o: _____, ... Dist: _____	Contesting Respondent	Contesting Respondent

**SPECIAL LEAVE PETITION UNDER ARTICLE 136 OF
CONSTITUTION OF INDIA**

To

The Hon'ble Chief Justice of India and His
Companion Justice of the Supreme Court of India.

The humble petition of the petitioner above named

MOST RESPECTFULLY SHOWETH:

1. That the present petition has been filed seeking special leave to appeal in the final judgment and order dated 14.9.2012.201508 of the Hon'ble High Court of Judicature of Bombay Bench at Aurangabad in Civil Writ Petition No.5427 of 2004 titled "Vasant S/o Sh. Shankar Bhavsar Versus Digambar & Ors." which was dismissed by the Hon'ble High Court.

2. QUESTIONS OF LAW:

That the following questions of law arise for consideration herein:

a) Whether in the facts and circumstances of the case the Hon'ble High Court was justified in dismissing the Civil Writ Petition

3. Declaration in terms of Rule 4 (2):

That the Petitioner states that no other petition for special leave to appeal has been filed by him against the judgment and order impugned herein.

4. Declaration in terms of Rule 5:

The Petitioner states that the Annexures filed along with the special leave petition are true copies of the pleading's and documents which formed part of the records of the case in the court below against whose order the leave to appeal is sought for in this petition.

5. GROUNDS:

That the special leave to appeal is sought on the following grounds:

I) Because the High Court had erred in passing the impugned judgment.

II) Because the High Court could not have allowed the errors to prevail by dismissing the writ petition.

III) Because the impugned judgments and orders of Hon'ble High Court and of Maharashtra Revenue Tribunal, Mumbai, dated 24.10.1997, of the Sub-Divisional Officer, Bhusawal dated 31.3.1997, of Tehsildar and Agricultural Lands Tribunal, Yawal, dated 1.10.1996 suffer from error apparent on the face of record.

IV) Because the reasoning of the authorities mentioned above that the will executed by Vishnu on 7.1.1968, the original tenant and owner under the Bombay Tenancy Act; and the registered Hakka Sod Patrak dated 18.12.1981 executed by Digambar S/o Vishnu do not come in the definition of transfer as envisaged in Section -43 of the Bombay Tenancy Act, is unsustainable in law.

V) Because with respect to the Authorities below that the incidents of transfer mentioned in Section 43 of Bombay Tenancy Act viz. sale, Gift, Exchange, mortgage, lease, assignment or partition are not the only incidents of transfer to be considered in reference to Section 43 of the Act but they are only mentioned by way of examples. It does not mean the

other incidents of transfer like will or Hakka Sod Patrak do not amount to transfer and are not to be considered by the authorities under the Bombay Tenancy Act.

VI) Because the ground No. V above is further supported by other provisions of Bombay Tenancy Act. For example Section 32-R lays down that purchaser U/s. 32 of the Act is to be evicted if he fails to cultivate land personally. Section 43 of the Act lay down restrictions on the purchaser not to transfer the purchased land under the Act without the sanction of the Collector. Section 43 (2) of the Act says “any transfer or partition of land in contravention of Sub-Section (1) shall be invalid”. Section 70 (mb) lays down a duty on Mamlatdar to decide U/s. 48B or 84 C whether a transfer or acquisition of land is invalid and to dispose off land as provided in Section 84 C. Section 83 A (1) lays down that no person shall acquire land by transfer which is invalid under any of the provisions of the Act. Section 83 A(2) lays down that a persons acquiring land by invalid transfer shall be liable to consequences as laid down in Section 84 or 84 C of the Act. Section 84 of the Act provides for summary eviction of unauthorised or wrongful occupant of the land. Section 84 C of the Act gives authority to the Mamlatdar to hold enquiry of any such illegal transfer and to decide it accordingly. Section 84 C (3) lays down that land declared to be invalidly transferred to vest in the State. Section 84 C (1) gives the power to the Collector to dispose the land which are declared to be invalidly transferred.

VII) Because in the Section 32 R, 43 (1), 43 (2), Section 70 (mb), Section 83 A (1), 83 A (2), Section 84, 84 C, 84 C(3) and 84 CC (1) of the Bombay Tenancy Act, at many places the words “any transfer” are used as these sections are having wider scope covering all types of transfers, and not only to the six kinds of transfers mentioned in Section 43 of the Act. Therefore the reasoning of these authorities below that the will and Hakka Sod Patrak are not covered by Section 43 of the Act do not stand good in law.

VIII) Because the language and effect of the will and registered Hakka Sod Patrak are to be taken into consideration in reference to Section 43 and other provisions mentioned above of Bombay Tenancy Act. The three Authorities have failed to consider the effect of two documents viz, will and Hakka Sod Patrak.

IX) Because the will and registered Hakka Sod Patrak have resulted into permanent transfer in perpetuity of this land purchased by the tenant U/s 32 of the Act, without sanction from the Collector U/s. 43 of the Act and therefore the application filed U/s 43 read with section 84 C of the Act was liable to be allowed completely.

X) Because the very intention of the legislature in putting restriction on a tenant – purchaser under the Bombay Tenancy Act to transfer the land is that the tenant who has purchased the land U/s 32 of should be owner and cultivator and the unconcerned third persons should not be benefited. Obviously this is because of the social reform to be achieved by implementing Bombay Tenancy Act effectively. This intention is defeated because of the judgments and orders of the three authorities below after remand.

XII) Because the definition of transfer as given in Section 5 Chapter II in Transfer of property Act is totally neglected by the learned Three authorities below.

XII) Because the registered Hakka Sod Patrak (relinquishment Deed) is practically nothing but a sale as defined in Section 54, Chapter III of the Transfer of property Act

because Digamber s/o Original tenant purchaser has accepted a consideration of Rs.25,000/- from the transferee Govinda Telele.

XIII) Because that the original document i.e. the Will and Hakka Sod Patrak are never produced by the respondent Nos. 1 to 4 in evidence. In the absence of these documents the findings of authorities below that the will and Hakka Sod Patrak do not come in the definition of transfer are not justified in law.

XIV) Because the families of Vishnu and Govinda were never joint families. Except the contention of respondents no.1 to 4 no evidence has come up on record. Therefore transfer of land to Govinda is hit by the provisions of Bombay Tenancy Act.

XV) Because respondent No.2 Harchand S/o Govinda Telele in his deposition recorded before Tahsildar and Agricultural Lands Tribunal Yawal, recorded after remand by Maharashtra Revenue Tribunal Mumbai in his examination in chief has said that the status of joint family has come to an end in the year 1959. Therefore the contention of the petitioner that the families of Vishnu and Govinda were never joint is supported by evidence of Harchand.

XVI) Because the learned authorities below have not taken into consideration all the circumstances of this case while deciding the matter.

XVII) Because the prayer of petitioner that the land in question should have been allotted to him as he has no other land to cultivate should have been granted U/s 32 P (2) (b) of the Bombay Tenancy Act.

XVIII) Because Digamber, son of original Tenang Vishnu Telele, did not file any restoration application to set aside the judgment and order dated 5.1.1993 in Tenancy Case No. 68 of 1982, nor he filed any Revision before Maharashtra Revenue Tribunal Mumbai against judgment and order of Sub-Divisional Officer, Bhusawal dated 16.5.1994. Therefore, the judgment and order dated 5.1.1993 in Tenancy Case No. 68 of 1982 have become final against him. The respondent Nos. 2 to 4 who are the heirs of transferred from Vishnu and Digamber, have also all rights, title and interest in the land.

XIX) Because the judgments and orders of three authorities below are contrary to law and good conscience.

XX) The petitioner craves, leave of this Honorable Court to add, amend, alter the grounds raised in this petition

6. **GROUND FOR INTERIM RELIEF:**

A. That the petitioner apprehends that the respondents may sell, alienate or part with the property illegally.

7. **MAIN PRAYER:**

Wherefore, it is respectfully prayed that this Hon'ble Court may kindly be pleased to:

a) Grant the special leave petition from the final judgment and order dated 14.12.2015 of the Hon'ble High Court of Judicature of Bombay Bench at Aurangabad in Civil Writ

Petition No.5427 of 2015 titled “Vasant S/o Sh. Shankar Bhavsar Versus Digambar & Ors.”
And

b)Be pleased further to pass such other order or orders as deemed fit and proper in the facts, reasons and other attending circumstances of the case.

PRAYER FOR INTERIM RELIEF:

(a) It is prayed that interim directions be issued to the Respondent may be directed not to sell, alienate or part with the property. Gat No. 2752 comprising of Survey No. 638/1, 638/3-A, 639/1, 639/3 area measuring 2 Hectares 87 Ares situated at village Nhavi, Taluka Yawal.

(b)Be pleased further to pass such other order or orders as deemed fit and proper in the facts, reasons and other attending circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE PETITIONER SHALL EVER REMAIN
GRATEFUL AS IN DUTY BOUND

Drawn and Filed by:

New Delhi

Date of drawn :

Advocate for the Petitioner

Date of filing:

[NOTE : To be supported by an affidavit]

* * * * *

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2016**

IN THE MATTER OF :

X _____ ...PETITIONER
VERSUS
Y _____ ... RESPONDENT

COUNTER AFFIDAVIT

Y, _____ S/o _____ R/o _____ presently at Delhi, do hereby solemnly affirm and state as follows :

1. That the Deponent is respondent in the aforesaid Special Leave Petition and as such fully acquainted with the facts circumstances and records of the case. Hence competent to swear and affirm the present affidavit.

2. That before giving parawise reply to the Special Leave Petition the Deponent craves leave of this Hon'ble Court to bring certain facts on record which have not been mentioned in the Special Leave Petition by Petitioners.

3. That pursuant to the direction given by Hon'ble Single Judge, affirmed by the Division Bench of the Hon'ble High Court, the Deponent has been reinstated and has been working with effect from 1-6-2015. In these circumstances, the Special Leave Petition filed by Petitioners hereinabove has become infructuous and is liable to be rejected.

Even otherwise the said Special Leave Petition is not maintainable as Petitioners before the Division Bench have never raised any point which has been raised by Petitioners before this Hon'ble Court. Before the Division Bench of the Hon'ble High Court the Petitioners had contended only very limited point and rather they sought clarification in LPA of judgment and order passed by Hon'ble Single Judge. The Division Bench of the Hon'ble High Court disposed of the LPA accordingly. On this ground alone the Special Leave Petition is liable to be rejected.

PARAWISE REPLY

1. In reply to paragraph-1 of the Special Leave Petition, it is submitted that there is no merit in the Special Leave Petition filed by Petitioners and as such the SLP deserves to be out rightly rejected with costs in favour of the Deponent.

2. In reply to paragraph-2, the plea taken by Petitioners has no legal force and hence the Petitioners are not entitled to any relief in terms of misplaced assertions under paragraphs A and B. As regards assertions under sub paragraph C, it is most respectfully submitted that such a stand of Petitioners is in itself contradictory with their pleadings inasmuch as that they

have stated that since 42nd Amendment to Article 311 of the Constitution of India is not applicable to the State of Jammu and Kashmir, therefore, the opportunity by way of show cause notice in terms of decision of the Petitioners for removal of Deponent from Government service could not be issued. Such pleadings on the face of record do not entitle the Petitioners for any relief.

3. Paragraph-3 of the Special Leave does not merit any reply.

4. Paragraph-4 of the Special Leave does not call for any reply.

5A. In reply to Ground-A, the assertion of Petitioners holds no legal force and as such the Petitioners because of their conduct as highlighted heretofore are not entitled to any relief because of the established fact that all the issues have been minutely and carefully gone into by the Hon'ble High Court at its Single Bench level, which on facts and law, did not warrant any interference by the Division Bench of the Hon'ble High Court.

B. In reply to paragraph-B it is most respectfully submitted that without affording due opportunity, the Petitioners could not be permitted to remove Deponent from Government service and that too by an incompetent authority, namely, Petitioner No. 4, who is neither the appointing authority of Deponent nor any such powers stood delegated to him. It is in this context most respectfully submitted that avoid action by an incompetent authority remains void and illegal and void order cannot be resuscitated.

C. In reply to this Ground, it is most respectfully submitted that this aspect of the matter stood elaborately dealt with by the Hon'ble High Court of Jammu and Kashmir and as such no issue survives and hence the Petitioners are not entitled to any relief much less in terms of misplaced assertions to the Petitioners. When the Petitioners had full knowledge that the Deponent had applied for leave on health grounds and also that the records of Petitioners did establish that mother of the Deponent was suffering from cancer, still the Petitioners could not have treated the Deponent as on unauthorized absence. The Petitioners were expected to conduct themselves as custodian and guardians of their employees but unfortunately, they acted in violation of settled procedure and rules for satisfaction of their personal ego, administrative obstinacy and for their personal ends. Hence, they are not entitled to any relief.

D. In reply to Ground-D, the assertions of Petitioners under this Ground are also not tenable because action of Petitioners in transferring the Deponent firstly to Nowshera and then to Amritsar or Chandigarh was based merely to satisfy their ego, and was attributed to extraneous considerations and that is why the Petitioners 2, 3 and 4 have been resorting to such illegal practices with oblique motive of harassing the Deponent and likewise other employees including one Mr. Pradeep Sharma, as submitted heretofore.

6. In reply to paragraph-7 of the Special Leave Petition, the prayer of Petitioners under this paragraph cannot be granted in the light of facts and circumstances submitted heretofore. The petition of the Petitioners deserves to be dismissed with exemplary costs in favour of the Deponent.

7. In reply to paragraph-8 of the Special Leave Petition, the Petitioners are not entitled to any interim relief as prayed for and their prayer to this effect also merits to be rejected outrightly in interest of justice.

VERIFICATION

The above-named Deponent do hereby verify and declare that the facts stated in the foregoing paragraphs of my affidavit are true to my knowledge and nothing of it is false and nothing material has been concealed there from.

Verified at Delhi on this the 05th day of January, 2010.

DEPONENT

* * * * *

3. BRIEF FACTS

On the night intervening 11/12.2.2013 murder of Shri Bachna Ram, who was a cook and domestic servant of Shri Devinder Singh Brar, resident of house No. 53, Sector 28-A Chandigarh, was committed in the kitchen of his house when Shri Devinder Singh Brar and his sister Smt. Gurmail Kaur were in Aurngabad. The F.I.R. was registered on the statement of Capt Jagat Pal Singh PW-11 who resides in the neighborhood of house No. 53. The offence came into light when Smt. Babita the sweeper of House No. 53 informed Capt. Jagat Pal Singh PW-11 that on 11.2.2013 and again on 13.2.2013. Smt. Babita informed Capt. Jagat Pal Singh PW-11. On the information given by Captain Jagat pal Singh, PW-11 S.I. Puran Chand aforesaid recorded D.D.R. No. 46 dated 13.2.2013 in the Rojnamcha of the police-Station East, Chandigarh and formed a Police party and the came to House No. 53. The investigation of this case remained pending with S.I. Puran Chand up to 8.3.2013. The police remained unsuccessful in tracing out the crime till 8.4.2013. On that day, Balwan Singh S.I. PW-24 of the CIA staff, took over the investigation of this case. He along with members of the police party including S.I. Partap Sing PW-23 visited House No. 53. Sector 28-A Chandigarh where Mr. Devinder Singh Brar PW-12 was present. In his presence, appellant Gurdev Singh was interrogated and he made certain disclosures after which the further story unfolded. After completion of the investigation the accused were challaned on the charges under Section 120-B, 392/120-B, 302/34, 302/114, I.P.C. The accused pleaded not guilty to the charge framed against them and claimed trial. The Court of Sh. B.S.Bedi, Session Judge, Chandigarh convicted the accused U/s. 120-B, 302/34 and in alternative 302/114 IPC.

4. That the copy of the Trial Court judgment passed by Sessions Judge Chandigarh convicting and sentencing the petitioner in Sessions Case No.15 of 2013 U/s. 120-B, 302/34 and in alternative 302/114 IPC is Annexure P-1.

5. GROUNDS

Being aggrieved and dissatisfied with the impugned order, the Petitioner approaches this Hon'ble Court by way of Special Leave Petition on the following amongst other grounds:-

- A. Because the judgment and order dated 26.11.2015 passed by the Hon'ble High Court which dismissed the appeal of the appellant is contrary to law and facts and hence the same is liable to set aside both on the point of law and equity.
- B. Because the prosecution only produced the partisan or the interested persons as witnesses in order to prove the commission of crime by the petitioner. This fact doubts the truthfulness of the case of prosecution.
- C. Because the prosecution has suppressed the origin and genesis of the occurrence and has thus not presented the true version.
- D. Because the prosecution has miserably failed to prove its case beyond doubt against the petitioner.
- E. Because the witnesses have not deposed correctly and there is discrepancy in the depositions of witnesses and the conviction of the petitioner is bad.

F. Because the Hon'ble Court ignored the fact to be considered in the case was as to whether the evidence of PW-5 Gurpartap Singh, the approver, was reliable and if so whether there was corroboration to his evidence on material particulars so as to warrant conviction. It is high-lighted that it was a case of no evidence from the side of the prosecution and, therefore, the evidence of the approver and other circumstances, corroborated by his statement cannot be the base of conviction of the appellatant.

G. Because Gurpartap Singh PW-5 lost his status as an approver when he appeared before the learned Committing Magistrate and his statement was recorded as PW-1 on 11.9.1995. The relevant portion of the same is as follows:-

“Before 7.4.2012 I had no conversation with anybody. On 7.4.2012 my self, accused Subeg Singh and accused Nand Singh were coming from Rajpura to Chandigarh on a Motorcycle. I had come to Chandigarh on that date for the first time. When we crossed Zirakpur, we were apprehended on the first Chowk by the Chandigarh Police. From there we were apprehended and implicated in this case. I do not know where Sector 28 is. I was threatened by the Police that I should give a statement in favour of the Polcie otherwise I would be involved in a TADA case and should suffer imprisonment for whole of the life. In the Jail also, the police people used to visit me and threaten and intimidate me. I made statement before the Chief Judicial Magistrate on account of fear of the police. I have nothing more to say about this Case”

H. Because the above statement will show that the tender of pardon given to Gurpartap Singh by the Learned Chief Judicial Magistrate, Chandigarh on 1.5.2012 was no, more available and he lost the status of an approver. It is stated here that the Learned Committing Magistrate was entirely wrong in permitting the cross-examination of Gurpartap Singh by the prosecution by declaring him hostile. This could not have been done for the simple reason that he did not attain the status of a witness. This being so, all the proceedings after 11.9.2012 with regard to the examination of Gurpartap Singh as a witness by the Learned committing Magistrate or by the Learned Sessions Judge, Chandigarh stood vitiated being totally illegal. It is submitted that from the date 11.5.2012 when Gurpartap Singh made the above statement, he is to be taken as an accused and not an approver, he had made altogether different statement from the one alleged to have been made after alleged acceptance of tender of pardon.

6. That the Petitioner has not filed any other Special Leave Petition against the Impugned Order dated 26.09.2002 before the Hon'ble Supreme Court of India.

7. PRAYER

In the premises the Petitioner herein prays that this Hon'ble Court may graciously be pleased to:

- a) Grant special leave to appeal to the petitioner against judgment and order dated 26.11.2015 of the High Court of Punjab and Haryana at Chandigarh, in Criminal Appeal No. 305-DB of 2013, titled “Subeg Singh & Anr., versus The State Union Territory of Chandigarh”

- b) Pass any other order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in favour of the Petitioner.

NEW DELHI

DRAWN ON: _____

FILED ON: _____

[NOTE : To be supported by an affidavit]

DRAWN AND FILED BY
ADVOCATE FOR THE PETITIONER

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CURATIVE PETITION (CIVIL) NO. _____ OF 2016**

IN THE MATTER OF :

X _____ R/o _____ ... PETITIONER

VERSUS

Y _____ R/o _____ ... RESPONDENT

**CURATIVE PETITION UNDER ARTICLE 129, 137, 141 AND 142
OF CONSTITUTION OF INDIA READ WITH ORDER XLVIII OF SUPREME
COURT RULES 2013**

To

The Hon'ble Chief Justice of India
And His Lordships Companion Judges
of the Supreme Court of India.

The Humble Petition on behalf of Petitioner abovenamed.

MOST RESPECTFULLY SHOWETH :-

1. That the petitioner is desirous of filing the present Curative Petition against the Judgment and Final Order dated _____ passed in Review Petition (Civil) No. _____ in SLP (Civil) No. _____ which was dismissed by this Hon'ble Court vide Judgment and Final Order dated _____.

2. QUESTION OF LAW:

In the present Review Petition the following questions of law of general public importance arise for the consideration of this Hon'ble Court ;

- (a) Whether the Court is justified to refuse the decree for divorce when advocates appearing for both the sides argued and submitted that since 1976 there is no cohabitation between the parties and there is no chance of reunion and therefore there is no harm if the decree for divorce is passed in favour of the petitioner husband ?
- (b) Whether the courts below erred in holding that the petition filed by the petitioner was barred by the principle of resjudicata ?

- (c) Whether the High Court as well as the courts below erred in not appreciating the aspect that the marriage is irretrievably broken and there is no possibility of reunion and hence the decree for divorce is to be granted ?
- (d) Whether the courts below erred in holding that the ground of desertion is not proved and can not be taken ?
- (e) Whether efflux of time and admitted fact that the cohabitation is not resumed is not sufficient to grant decree of divorce ?

3. **FOUNDATIONS**

That the petitioner is filing the present Curative Petition on the following amongst other grounds :-

AB.....C..... D

The Grounds mentioned in the curative petition had been taken in the Review Petition and that it was dismissed by circulation; and that no new grounds have been taken in this curative petition.

4. **MAIN PRAYER :-**

It is therefore, most respectfully prays to this Hon'ble Court may graciously be pleased to :-

- (a) reconsider the Judgment and Final Order dated _____ passed by the Hon'ble Supreme Court of India in Review Petition No. _____.
- (b) Pass such other order or orders as this Hon'ble Court may deem fit and proper in the interest of justice.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVERY PRAY.

FILED BY :-

FILED ON :- _____ 2010
NEW DELHI

ADVOCATE FOR THE PETITIONER

[**NOTE** : To be supported by an affidavit]

* * * * *

NOTE: To be supported by affidavit of the petitioner and a certificate by **Senior Advocate**

CERTIFICATE

Certified that the Curative Petition has been examined by me and it appears to that following very strong grounds exists for facts of the curative parties

The curative Petition fulfils the requirements as laid down in the judgment dated _____ in the matter of Rupa Ashok Hurra Vs. Ashok Hurra [W.P. (C) No. 509/97 etc.] reported as 2002 (4) SCC 388, as the Review Petition was dismissed by Circulation and the grounds taken herein had been taken in the review petition and a specific averment has been made in the Curative Petition to this effect.

PLEADINGS UNDER CRIMINAL LAW

**IN THE COURT OF METROPOLITAN MAGISTRATE (DISTRICT _____),
DELHI**

BAIL APPLICATION NO. _____ OF 2017

IN THE MATTER OF :

STATE

COMPLAINANT

VERSUS

X _____ S/o _____ R/o _____

..... APPLICANT

FIR NO. _____

U/S _____

POLICE STATION _____

APPLICATION FOR GRANT OF BAIL UNDER SECTION 437 OF CR.P.C.

The accused above named most respectfully showeth :-

1. That the accused above named was arrested by the police on 1st January, 2010 and is in judicial custody since then. It is alleged that on 1st January, 2010, the accused was suspiciously moving on Baba Kharak Singh Marg, New Delhi when the police apprehended him, conducted the search and recovered 3 gms. of smack from his pocket.
2. That the accused has been falsely implicated in the instant case and he has nothing to do with the alleged offence.
3. That nothing was recovered from the possession of the accused or at his instance and the so called case property has been planted upon the accused.
4. That the accused is a law abiding citizen and belongs to a very respectable family. He has never indulged in any illegal activities and commands respect and admiration his locality.
5. That in November, 2015, the accused found some persons selling smack near Hanuman Mandir Cannaught Place, New Delhi. The accused immediately