

**STATE OF UTTAR PRADESH**  
**v.**  
**JAIL SUPERINTENDENT (ROPAR) & ORS.**

(Writ Petition (Criminal) No. 409 of 2020)

MARCH 26, 2021

**[ASHOK BHUSHAN AND R. SUBHASH REDDY,\* JJ.]**

*Constitution of India/ Code of Criminal Procedure, 1973: Art. 32/s.406 – Petition u/Art. 32 read with s. 406 – Maintainability of – On facts, various criminal cases filed against sitting MLA from Mau District, UP – Ten criminal cases pending trial against him, transferred to Special Court and accused lodged in District Jail, Banda, UP, pursuant to order of Special Judge – Meanwhile case registered against accused in District Mohali, Punjab u/ss. 386 and 506 IPC – Pursuant to the issuance of production warrant, Superintendent of District Jail, Banda, UP, without permission from the Court of Special Judge (MPs/MLAs), Allahabad gave custody of the accused to the Judicial Magistrate, Mohali, Punjab – Thereafter, on passing of remand order, accused lodged in District Jail, Roopnagar, Punjab, and since then, he is continuing in the said jail – For last two years, number of warrants issued for production of accused before the various Courts in UP but Jail Authorities, Roopnagar, Punjab refused to give custody on the pretext that the accused was unwell – Writ Petition u/Art. 32 rw s. 406 by State of UP seeking directions to the State of Punjab and Judicial Magistrate, Mohali, Punjab, to transfer the criminal proceedings and trial in the criminal case pending before the Judicial Magistrate, Mohali, to the Court of Special Judge (MP/MLA), Allahabad, UP, and directions to Jail Superintendent, Roopnagar and State of Punjab to handover the custody of the accused from Roopnagar Jail, District Ropar, Punjab to District Jail Banda, UP – Held: The State, being a prosecuting agency in the Criminal Administration, is vitally interested in such administration, as such, the State is considered as a “party interested” within the meaning of Sub-Section (2) of s. 406 and petition u/s. 406 is maintainable – However, relief sought for transfer of the case is not granted, since in the criminal case on the file of Police Station Mathaur, District Mohali, Punjab, no final report is filed by the Police and it is at the stage of investigation and as such, s. 406 Cr.P.C. cannot be pressed into*

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*service – As regards, the transfer from one prison to another, a convict or an undertrial prisoner, who disobeys the law of the land, cannot oppose his transfer from one prison to another – Courts are not to be a helpless bystander, when the rule of law is being challenged with impunity – Arms of law are long enough to remedy the situation – In such situations, this Court can exercise power u/ Art. 142 to order transfer of prisoner from one prison to another, thus, issuance of directions to the Jail Superintendent Roopnagar and State of Punjab, to handover custody of the accused to the State of UP, within a period of two weeks, so as to lodge him in District Jail, Banda in UP where the Jail Authorities would extend the necessary medical facilities to accused.*

*Code of Criminal Procedure, 1973: s. 406 – Power under – Words “party interested” – Interpretation of – Held: s. 406 confers power on this Court to transfer of cases and appeals on the application filed by the Attorney-General of India or by a party interested – In the criminal administration system, State is the prosecuting agency, working for and on behalf of the people of the State, as such the State can be said to be a party interested within the meaning of s. 406(2) of the Code – Words “party interested” are of a wide import and, thus, have to be interpreted by giving a wider meaning – Statute must be interpreted to advance the cause of the Statute and not to defeat the same – Interpretation of statutes.*

**Partly allowing the writ petition and dismissing the transfer petitions, the Court Held:**

- 1.1 The instant petition, filed under Article 32 of the Constitution of India / Section 406 of the Code of Criminal Procedure, 1973, is held to be maintainable under Section 406 of the Code. The relief, sought for transfer of the case-transfer the criminal proceedings and trial in the criminal case pending against the 3<sup>rd</sup> Respondent-sitting MLA from Mau District, UP, before the Judicial Magistrate, Mohali, to the Court of Special Judge (MP/MLA), Allahabad, UP is not granted, inasmuch as the case in Crime No.05 of 2019, on the file of Police Station Mathaur, District Mohali, Punjab, is at the stage of investigation, as such, Section 406 of the Cr.P.C. cannot be pressed into service. At the same time, in exercise of power under Article 142 of the Constitution of India, directions are issued directing the Respondent no. 1 - Jail Superintendent, Roopnagar and Respondent no. 2 - State of Punjab , to handover custody of**

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the 3<sup>rd</sup> Respondent to the State of Uttar Pradesh, within the stipulated period so as to lodge him in District Jail, Banda in the State of Uttar Pradesh. It is open for the Special Court, constituted for MPs/MLAs at Allahabad to continue him either in the District Jail at Banda or shift to any other Jail in the State of Uttar Pradesh, if any need arises. The Superintendent of Jail, District Jail Banda, Uttar Pradesh is directed to extend the necessary medical facilities to the 3<sup>rd</sup> Respondent. It is made clear that if any specialty treatment is required to the 3<sup>rd</sup> Respondent, the Jail Superintendent of District Jail, Banda, Uttar Pradesh shall take necessary steps to extend such medical care also, by following the Jail Manual. [Para 28]

- 1.2 From a plain reading of Section 406 of the Code of Criminal Procedure, 1973, it is clear that power is conferred on this Court to transfer of cases and appeals on the application filed by the Attorney-General of India or by a party interested. The submission that the petitioner-State is not a party interested cannot be accepted. It is well said that a crime against an individual is to be considered as a crime against a State and public, at large. In the criminal administration system, State is the prosecuting agency, working for and on behalf of the people of the State. It is to be noticed that “party interested” has not been defined under the Code of Criminal Procedure, 1973. The words “party interested” are of a wide import and, therefore, have to be interpreted by giving a wider meaning. The words such as “aggrieved party”, “party to the proceedings” and “party interested” are used in various Statutes. If the words used are to the effect “party to the proceedings” or “party to a case”, it can be given a restricted meaning. In such cases, the intention of the legislature is clear to give restricted meaning. But, at the same time, the words used as “party interested”, which are not defined under the Code of Criminal Procedure, have to be given a wider meaning. As a prosecuting agency in the Criminal Administration, the State can be said to be a party interested within the meaning of Section 406(2) of the Code. It is a well settled principle of law that the Statute must be interpreted to advance the cause of the Statute and not to defeat the same. The petitioner-State, being a prosecuting agency in the Criminal Administration, is vitally interested in such administration, as such, the State is considered as a “party interested” within the meaning of

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Sub-Section (2) of Section 406 of the Code. This petition, as filed under section 406 of the Code of Criminal Procedure, is maintainable at the instance of the State. It is not necessary to decide the issue as to maintainability of this petition under Article 32 of the Constitution of India. [Para 18, 19]

*K. Anbazhagan v. Superintendent of Police & Ors.* 2004 (3) SCC 76 7: [\[2003\] 5 Suppl. SCR 610](#) - relied on.

- 1.3 As the investigation in crime no.05 of 2019 on the file of Police Station Mathaur, District Mohali, State of Punjab is still at the stage of investigation and in absence of filing of Final Report, no case is made out by the petitioner, seeking transfer under Section 406 of the Code of Criminal Procedure, which relief is sought for in the writ petition. [Para 21]

*Ram Chander Singh Sagar (DR.) v. State of Tamil Nadu* 1978 (2) SCC 35: [\[1978\] 2 SCR 604](#) - referred to.

- 1.4 It is evidently a fit case to invoke our power under Article 142 of the Constitution of India for grant of relief to the extent, as sought for, under Para-26(B) of the petition, to order transfer of the custody of the 3<sup>rd</sup> Respondent from Roopnagar Jail, District Ropar, Punjab to District Jail, Banda, Uttar Pradesh. It is not in dispute that with regard to the cases and status, which are pending trial before the Special Judge, MPs/MLAs, Allahabad, a perusal of the chart which is furnished by the petitioner, indicates that the 3<sup>rd</sup> Respondent is involved in various cases of attempt to murder, murder, cheating, conspiracy, etc., apart from offences under Gangsters Act. The said cases, as mentioned by the petitioner, number in Ten, are at various stages of trial. Further, the petitioner has furnished the cases, where warrants were issued by the Courts in various crimes, registered in the Districts of Mau, etc., and when the police went to seek custody, the 1<sup>st</sup> respondent had refused to handover the custody on medical grounds. The reasons for non- production are mentioned in a tabular form. During the period from 14.02.2019 to 14.02.2020, custody is denied to the police of Uttar Pradesh by the 1<sup>st</sup> Respondent on twenty six occasions. A perusal of the reasons for not giving custody shows that it is mainly on the medical grounds referring to diabetes mellitus, skin allergy, hypertension, backache, throat infection, etc. Though, it is the case of the petitioner, that the very registration of crime

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in Crime no.05 of 2019 on the file of Police Station Mathaur, District Mohali, Punjab is a part of conspiracy at the instance of the 3<sup>rd</sup> Respondent so as to continue in the jail at Punjab, by protracting the trials, which are pending in the Special Court and to deny his presence in various other crimes, registered against him for completing the investigation. No finding is recorded on such allegation of conspiracy at this stage, but, at the same time, this Court is satisfied that the custody is denied to the Police of Uttar Pradesh at every time on trivial grounds under guise of medical grounds by mentioning ordinary diseases like diabetes mellitus, skin allergy, hypertension, backache, throat infection, etc. In addition to the same, it gives any amount of suspicion on the conduct of the 3<sup>rd</sup> Respondent in not even applying for grant of default bail, for not filing Final Report (Charge-sheet) by the Police, Police Station Mathaur, District Mohali, Punjab within the statutory period. Though, it is the case of the 3<sup>rd</sup> Respondent, opposing the relief sought for, on the ground that he is permitted in majority of the cases to appear by video conferencing, but the same, by itself, is no ground to oppose the relief sought for. Though, the earlier cases were pending in various Sessions Courts and only to fast track the cases, Special Court is constituted for trial of cases of MPs/MLAs in the year 2018 by the State of Uttar Pradesh. On such constitution, all the cases where the 3<sup>rd</sup> Respondent is involved for serious offences under IPC and Gangsters Act, were transferred to the Special Court and all are pending trial at various stages. Pursuant to the orders of the Special Court, only the 3<sup>rd</sup> Respondent was kept in jail at Banda in the State of Uttar Pradesh, so as to order his presence, as and when required. Therefore, a convict or an undertrial prisoner, who disobeys the law of the land, cannot oppose his transfer from one prison to another, be a convict or an undertrial prisoner, Courts are not to be a helpless bystander, when the rule of law is being challenged with impunity. In such situations, this Court can exercise power under Article 142 of the Constitution of India to order transfer of prisoner from one prison to another. Though, there is a separate enactment called The Transfer of Prisoners Act, 1950, which permits transfer of a prisoner from one State to another by the Government, but, the same is circumscribed under Section

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3 of the Act, as such, the claim of the petitioner will not fit into the same. Even then this Court, in exercise of power under Article 142, can consider for transfer of the prisoner in the circumstances, as pleaded by the petitioner. The arms of law are long enough to remedy the situation. If there are any medical ailments to the petitioner, every care shall be taken by the Jail Authorities but, at the same time, on the spacious plea of ill health by referring to minor ailments, the accused / 3<sup>rd</sup> Respondent cannot oppose the relief, as sought for in the writ petition. [Para 25]

*Asha Ranjan v. State of Bihar* 2017 (4) SCC 397: [\[2017\] 1 SCR 945](#) – relied on.

*Union of India v. V. Sriharan* 2016 (7) SCC 1 : [\[2015\] 14 SCR 613](#); *A.P. Christian Medical Educational Society v. Govt. of A.P.* 1986 (2) SCC 667 : [\[1986\] 2 SCR 749](#); *Ujjam Bai v. State of Uttar Pradesh* [\[1963\] 1 SCR 778](#); *State Trading Corporation of India Ltd. v. Commercial Tax Officer* [\[1964\] 4 SCR 99](#) ; *Coffee Board Bangalore v. Jt. Commercial Tax Officer Madras* 1969 (3) SCC 349 : [\[1970\] 3 SCR 147](#); *A.B. Bhaskara Rao v. CBI* 2011 (10) SCC 259 : [\[2011\] 12 SCR 718](#); *State of Haryana v. Sumitra Devi* 2004 (12) SCC 322 : [\[2003\] 5 Suppl. SCR 351](#); *Saihiba Ali v. State of Maharashtra* 2003 (7) SCC 250; *Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav & Anr.* 2005 (3) SCC 284 – referred to.

CRIMINAL ORIGINAL JURISDICTION: Writ Petition (Criminal)  
No.409 of 2020

(Under Article 32 of the Constitution of India)

With

Transfer Petition (Criminal) No. 104-114 of 2021

Tushar Mehta, SG, Mukul Rohatgi, V.K. Shukla, Dushyant Dave, Sr. Advs., Ms. Garima Prashad, Kanu Agrawal, Sanjay Agrawal, Ms. Astha Deep, Ms. Parul Shukla, Ms. Devanshi Popat, Ms. Ranjeeta Rohatgi, Ms. Neha Sangwan, Ms. Samten Doma, Advs. for the appearing parties.

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The Judgment of the Court was delivered by

**R. SUBHASH REDDY, J.**

**(Writ Petition (Crl.) No. 409 of 2020)**

This Writ Petition is filed under Article 32 of the Constitution of India, read with Section 406 of the Code of Criminal Procedure, 1973 (Cr.P.C.) by the State of Uttar Pradesh, seeking Writ of *Mandamus*, seeking appropriate directions, directing the respondent-State of Punjab and the Learned Judicial Magistrate-I, Mohali, State of Punjab, to transfer the criminal proceedings and trial in the Case Crime No.05 of 2019, titled as *State of Punjab v. Mukhtar Ansari*, pending before the Judicial Magistrate-I, Mohali, State of Punjab, to the Court of Special Judge (MP/MLA), Allahabad, Uttar Pradesh and with a further direction to the Respondent Nos.1 and 2 to handover the custody of the accused / 3<sup>rd</sup> Respondent from Roopnagar Jail, District Ropar, Punjab to District Jail Banda, Uttar Pradesh.

2. The case of the petitioner-State, as averred in the Writ Petition, is as follows:
  - I. The 3<sup>rd</sup> Respondent herein, is sitting MLA from District Mau in the State of Uttar Pradesh. It is the case of the petitioner-State that large number of criminal cases have been registered against the accused / Respondent No.3, namely Mohd. Mukhtar Ansari in various Districts of the State of Uttar Pradesh in the past. Further, in addition to the same, there are presently ten criminal cases pending trial against him. In pursuance of the directions, issued by this Court in Writ Petition (Civil) No.699/2016, titled as ***Ashwini Kumar Upadhyay & Ors. v. Union of India & Ors.***, vide orders dated 10.09.2020 and 16.09.2020, all the pending criminal cases against the MPs and MLAs, pending in various Courts, have been transferred to the Special Court, constituted to deal with the cases of MPs and MLAs. The ten criminal cases, which are pending trial against the accused / 3<sup>rd</sup> Respondent, were transferred from various Districts to the Special Court and pursuant to the order passed by the Special Court, the accused / 3<sup>rd</sup> Respondent was lodged in District Jail, Banda, Uttar Pradesh, so as to be produced before the Court, as and when required. Thereafter, every effort is made to fast track the cases and some cases have reached the stage of arguments.

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- II. It is the case of the petitioner-State that in view of the conspiracy, hatched by the accused / 3<sup>rd</sup> Respondent, a Case in Crime No.05 of 2019 is registered against the 3<sup>rd</sup> Respondent for the offences punishable under Sections 386 & 506 of the IPC on the file of Police Station Mathaur, District Mohali, State of Punjab. The said crime is registered based on an anonymous call, allegedly made by one Ms. Rizwana Bano. Pursuant to registration of Crime No.05 of 2019 in Police Station Mohali, Punjab, on 19.01.2019, the Judicial Magistrate-I, Mohali, Punjab issued a production warrant under Section 267 of Cr.P.C., and in execution of the same, Senior Superintendent of District Jail, Banda, Uttar Pradesh, without seeking permission from the Special Court (MPs/MLAs), Allahabad gave custody of the accused / 3<sup>rd</sup> Respondent to the Judicial Magistrate, Mohali, State of Punjab. Pursuant to a remand order, made by the Judicial Magistrate-I, Mohali, Punjab, 3<sup>rd</sup> Respondent is lodged in Roopnagar Jail, State of Punjab.
- III. It is stated that the action taken by the Jail Superintendent, District Jail, Banda, Uttar Pradesh was in violation of Section 267(2) of Cr.P.C. and consequently, a departmental inquiry is initiated against him and the same is pending.
- IV. It is alleged that the Judicial Magistrate-I, Mohali, Punjab, instead of sending the accused / 3<sup>rd</sup> Respondent back to the District Jail, Banda, Uttar Pradesh, after he was produced in the Court, sent him to the District Jail, Roopnagar, Punjab on 24.01.2019 and since then, he is continuing in the same Jail. It is stated that neither the Charge-sheet has been filed nor the 3<sup>rd</sup> Respondent applied for default bail, as contemplated under Section 167(2) of Cr.P.C.
- V. It is the case of the petitioner that the accused / 3<sup>rd</sup> Respondent is making every effort to continue in the Jail at Punjab. Though, from the last two years, number of warrants have been issued to bring the accused / 3<sup>rd</sup> respondent from Roopnagar Jail, District Ropar, Punjab for production before the various Courts in the State of Uttar Pradesh, all efforts made by the Police were futile as every time the Jail Authorities refused to give custody on the pretext that the accused was unwell. The medical reports dated 17.08.2019, 27.08.2019, 29.08.2019, 02.09.2019, 04.09.2019,



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08.09.2019, 11.09.2019, 13.09.2019, 20.09.2019, 26.09.2019, 27.09.2019, 29.09.2019 and 02.10.2019 were prepared showing that the accused / 3<sup>rd</sup> respondent was unwell. Though the medical reports do not reveal any serious ailments except ailments like diabetes, skin allergy, hypertension, backache, etc., but custody of the 3<sup>rd</sup> Respondent is denied on such health grounds.

- VI. It is alleged that though the State has made every effort to produce the accused / 3<sup>rd</sup> Respondent before various Courts in the State of Uttar Pradesh, where his appearance is required, it could not produce the 3<sup>rd</sup> Respondent as he was denied custody by the Jail Authorities at Punjab and as such, production warrants are not being executed on one pretext or the other.
  - VII. Precisely, it is the case of the petitioner that the accused / 3<sup>rd</sup> Respondent is making every effort to continue his incarceration outside the State of Uttar Pradesh (in Punjab) and is avoiding his presence in the Special Court and other Courts, where number of criminal cases have come up for appearance/trial/arguments.
3. Counter Affidavit is filed on behalf of the Superintendent of District Jail, Roopnagar, Punjab (1<sup>st</sup> Respondent) and the State of Punjab (2<sup>nd</sup> Respondent). While denying various allegations, made in the Writ Petition, the case of the Respondent Nos.1 & 2 is as under:
- I. The Writ Petition, as filed under Article 32 of the Constitution of India read with Section 406 of the Code of Criminal Procedure, 1973 is not maintainable, inasmuch as there is no infringement of fundamental rights of the petitioner-State of Uttar Pradesh and further, the Writ Petition is also not maintainable under Section 406 of Cr.P.C. It is stated under Section 406 of Cr.P.C. the transfer petition is maintainable only on the application, made by the Attorney-General of India or by a party interested, as such, the petitioner-State of Uttar Pradesh cannot maintain a petition, as filed, seeking transfer of Case No.05 of 2019, pending before the Judicial Magistrate-I, Mohali, State of Punjab to any other Court in the State of Uttar Pradesh.
  - II. The accused / 3<sup>rd</sup> Respondent is presently confined in District Jail, Roopnagar, Punjab in connection with the FIR No.05 of 2019 dated 08.01.2019 under Sections 386 and 506 of IPC, Police Station Mathaur, District SAS Nagar (Mohali), State of

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Punjab. Learned Magistrate has issued production warrants under Section 267 of the Cr.P.C. and in view of the said warrants, the accused was taken into custody from District Jail, Banda, State of Uttar Pradesh on 22.01.2019 and is presently lodged in District Jail, Roopnagar, Punjab, pursuant to a remand order, passed by the Judicial Magistrate-I, Mohali, State of Punjab in the aforesaid case on 24.01.2019.

- III. It is stated that the said case is registered in view of the complaint of Mr. Umang Jindal, C.E.O., Homeland Hights, Mohali, Punjab, where it is alleged that there was a call from Mobile No.6390407709, demanding ransom of Rs.10 crores. As per the information, the accused / 3<sup>rd</sup> Respondent has called him on 07.01.2019, as such, the case was registered and he was taken into custody in connection with the said case. Further, it is stated that the accused / 3<sup>rd</sup> Respondent Mohd. Mukhtar Ansari was also figured as an accused in case FIR No.252 dated 26.11.2014 for the offences punishable under Section 302 read with 34 of IPC, on the file of P.S. Morinda and in connection with the said case, he is not yet arrested.
- IV. It is stated that as per the jail records, 14 other cases are pending against the accused / 3<sup>rd</sup> Respondent in different Courts in the State of Uttar Pradesh and out of the said cases, in 06 cases, the concerned Trial Courts have permitted the accused / 3<sup>rd</sup> Respondent to appear through video conferencing and the accused / 3<sup>rd</sup> Respondent is already appearing in those cases. The details of cases against the accused/3<sup>rd</sup> Respondent, pending in the State of Uttar Pradesh are given in tabular form. Further, it is stated that vide order dated 10.02.2020, the Presiding Officer, Special Court MPs/MLAs, Allahabad, Uttar Pradesh had desired to verify the report sent by the Jail Authorities, and had directed the Additional Chief Secretary, Home Affairs, State of Punjab to constitute a committee of three doctors to evaluate the ailments of the accused / 3<sup>rd</sup> Respondent. Pursuant to the same, a committee of doctors was constituted and medical report was submitted vide letter dated 27.02.2020. Further, it is stated that the accused / 3<sup>rd</sup> Respondent / under-trial prisoner Mohd. Mukhtar Ansari, had been undergoing treatment at the jail hospital and at other secondary and tertiary hospitals, from time to time, since

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his date of admission to District Jail, Roopnagar, Punjab i.e. 24.01.2019. Details of medical examinations (date-wise) are furnished in a tabular form.

- V. It is stated that in view of the aforesaid reasons, the accused / 3<sup>rd</sup> Respondent could not be handed over to the petitioner-State of Uttar Pradesh due to the specific advice of medical authorities / medical board / specialists, from time to time, and in view of the legal obligations on the answering respondent, as per Section 269 of Code of Criminal Procedure, 1973. While denying the allegation of conspiracy, it is stated that accused / 3<sup>rd</sup> Respondent is lodged in Roopnagar Jail, State of Punjab, pursuant to a case registered in Crime no.05 of 2019.
- VI. It is stated that as per the record, available in the office of the deponent, neither chargesheet has been submitted nor the accused / 3<sup>rd</sup> Respondent has applied for bail. While denying that the deponent is bound to follow provisions under Section 269 of Cr.P.C., it is stated that in view of the medical conditions of the accused / 3<sup>rd</sup> Respondent, he could not be handed over to the petitioner-State of Uttar Pradesh.

With the aforesaid pleas, in the counter affidavit, Respondent Nos.1 and 2 prayed for dismissal of the Writ Petition.

4. A separate counter affidavit is filed by the accused / 3<sup>rd</sup> respondent Mohd. Mukhtar Ansari. While denying the various allegations made in the Writ Petition, the case, as averred in the counter affidavit, is as under:
- I. The accused / Respondent No.3 is a sitting MLA from MAU Constituency from Bahujan Samaj Party (BSP). On account of his long political career, the ruling party in the State of Uttar Pradesh, has acrimonious political rivalry against him. There were several attempts on his life by the person inimically deposed against him, in view of political affiliations, including Shri Brijesh Singh, who is currently a sitting MLA from Ruling Party). The accused / 3<sup>rd</sup> Respondent has been in jail since 25.10.2005 i.e. over 15 years and is himself desirous of early and expeditious disposal of trial in pending cases. He has been taken into custody in connection with the case, registered in Crime No.05 of 2019 in Police Station Mathaur, District Mohali, State of Punjab and pursuant to a remand order, passed by the learned Judicial

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Magistrate, he is remanded and presently lodged in Jail at Roopnagar in the State of Punjab on 08.01.2019. He has won last three elections from jail, which goes to show the support of the people in eastern Uttar Pradesh towards him. Out of the pending ten cases, referred in the Writ Petition, he is already granted permission to appear through video conferencing by the Trial Court in nine cases and he is appearing regularly. For the remaining one case i.e. S.T. No.22 of 2005 (i.e. at Serial No.05 of the table at Page-D), the application for permission to appear through video conferencing is pending before the Special Court (MP/MLA). The status of each of the cases, in the tabular form, is shown, and it is stated that he is regularly appearing through video conferencing in trials in the State of Uttar Pradesh.

- II. With reference to the allegations made in the Writ Petition, it is stated that the Writ Petition, as filed, is not maintainable, inasmuch as the rights, guaranteed under Articles 14 and 21 of the Constitution of India, are to 'persons' as against actions of the 'State', as such, the State of Uttar Pradesh cannot invoke the writ jurisdiction under Article 32 of the Constitution of India. As he is continuously participating in the pending cases in the State of Uttar Pradesh, the petitioner-State cannot seek relief, as sought in the Writ Petition.
- III. While referring to the provision under Section 406 of Cr.P.C., it is stated that the said application can be maintained only at the instance of the Attorney-General Of India or a party interested, as such, the present petitioner-State of Uttar Pradesh cannot be considered as a party interested, so as to invoke power under Section 406 of Cr.P.C. The Petitioner has suppressed various orders passed by the competent Court in the State of Uttar Pradesh, granting permission to the accused / 3<sup>rd</sup> Respondent to appear through video conferencing, and sought relief, as such, the same is to be rejected on the said grounds also.
- IV. It is stated that the accused / 3<sup>rd</sup> Respondent is appearing through video conferencing in all the cases, pending in the State of Uttar Pradesh, even after after his incarceration in the jail at Punjab. He, himself, is interested in an expeditious trial through video conferencing so that all the false cases, filed against him, could be brought to an end.

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- V. While referring to his appearance through video conferencing, it is stated that three of the cases, where he has appeared through video conferencing, are already acquitted. He is also permitted to appear through video conferencing in new cases, lodged against him.
- VI. With regard to his medical conditions, it is stated that he is around 65 years old and is suffering from diseases like high blood pressure, diabetes and also has undergone angiography. In view of his medical conditions, the doctors and medical board, had advised him to take complete rest for several months, which is also approved by PGI, Chandigarh.
- VII. While referring to his political background, it is stated that he has come from a respectable family and in view of political rivalry, there have been several attempts on his life on multiple occasions. The counter affidavit has referred to certain instances, where attacks were made on him on 15.07.2001 & 13.01.2014. It is, further, stated that there is a political rivalry between Shri Brijesh Singh and the accused / 3<sup>rd</sup> Respondent, and the same is well known in the State of Uttar Pradesh. It is, further, stated that there were open threats made by the members of the ruling party in the State of Uttar Pradesh and it is alleged that the political opponents of the petitioner were exerting pressure through various State Agencies to ensure that there was a constant interference in the case of the respondent and hanging threats to his life. Referring to certain complaints filed by him to various authorities, it is stated that in view of the undue harassment, being caused to the members of his family, his family members were constrained to move out of the State of Uttar Pradesh on account of the malicious prosecutions being carried out.
- VIII. It is stated that in view of the apprehension in the mind of the accused / 3<sup>rd</sup> Respondent, he has also sought transfer of his cases from the State of Uttar Pradesh and stated that every possible attempt is made to inconvenience him.
- IX. It is stated that in view of the threat to his life, as he is already permitted to appear through video conferencing by the competent Court, there is no reason to seek transfer, as prayed for. Further, in view of the threat to his life in all the trials, he is allowed to

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appear through video conferencing and further, in view of the ailments, which he is suffering, there is no merit in the Writ Petition filed by the petitioner-State to seek transfer as prayed for. It is stated that he himself is interested in expeditious disposal of the cases and every attempt is made by him for expeditious disposal of cases registered against him.

With the aforesaid averments in the counter affidavit, 3<sup>rd</sup> Respondent prayed for dismissal of writ petition.

6. We have heard Mr. Tushar Mehta, learned Solicitor General, appearing for the petitioner and Shri Dushyant Dave, learned senior counsel, appearing for Respondents 1 & 2; and Shri Mukul Rohatgi, learned senior counsel, appearing for the 3<sup>rd</sup> Respondent.
7. Shri Tushar Mehta, learned senior counsel, has contended that accused no.3 is involved in several cases, where serious charges of murder, extortion, cheating, fraud and offences under Gangsters Act, etc., are pending trial and all the cases are transferred to the Special Court, constituted by the High Court of Allahabad, to try the cases of MPs/MLAs. The learned Special Judge has ordered to incarcerate respondent no.3 in District Jail, Banda, Uttar Pradesh so that Respondent No.3 could be produced before the Court on every date in each case and trials be concluded expeditiously. It is submitted that in connection with the case in Crime No.05 of 2019, registered for offences punishable under Sections 386 and 506 of the IPC on the file of Police Station Mathaur, District Mohali in the State of Punjab, the Judicial Magistrate-I, Mohali issued Production Warrant under Section 267 of Code of Criminal Procedure and in view of the same, the Senior Superintendent of District Jail, Banda, Uttar Pradesh, without any approval / order from the Court of Special Judge (MPs/MLAs), Allahabad, gave custody of the 3<sup>rd</sup> Respondent, and the same was in utter disregard to the provision under Section 267(2) of the Code of Criminal Procedure. It is submitted that learned Judicial Magistrate-I, Mohali, instead of sending back respondent No.3 to District Jail, Banda in Uttar Pradesh, sent him to District Jail, Roopnagar, Punjab on 24.01.2019. It is submitted that large number of warrants have been issued by the Special Judge (MPs/MLAs) Court and several Courts in the State of Uttar Pradesh to bring 3<sup>rd</sup> Respondent from District Jail, Roopnagar, Punjab, but all efforts for securing the custody of 3<sup>rd</sup> Respondent proved futile for

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the reason that every time the Jail Superintendent refused to give custody of the 3<sup>rd</sup> Respondent on the ground of ill health of the 3<sup>rd</sup> Respondent. The reports of ill health do not indicate any severe ailment and only to avoid to give his custody to the petitioner-State of Uttar Pradesh, such reports are prepared.

8. It is submitted that the Writ Petition, filed by the State, is certainly maintainable under Article 32 of the Constitution of India, for the reason that the administration of Criminal Justice is bestowed upon the State on behalf of the victims of crime and also, on the premise that a crime against a citizen is a crime against the State. To maintain the petition under Article 32 of the Constitution of India, learned counsel placed reliance on the judgment in case of [\*Union of India v. V. Sriharan\*](#)<sup>1</sup>. Further, it is submitted that in any event, the petition is filed not only under Article 32 of the Constitution of India, but the same is filed under Section 406 of Code of Criminal Procedure. It is contended that the word “Party Interested”, used in Section 406 (2) of the Code of Criminal Procedure, is to be interpreted widely by giving wide connotation. It is submitted that the words “Party Interested” are of a wide import, therefore, wider meaning is to be given to include the State also as much as purpose of Criminal Justice Administration is to preserve and protect the rule of law. To support his arguments, learned counsel placed reliance on the judgments of this Court in the case of [\*K. Anbazhagan v. Superintendent of Police & Ors.\*](#)<sup>2</sup>.
9. It is, further, submitted that in any event, this Court may invoke powers under Article 142 of the Constitution of India for doing complete justice, inasmuch as several cases involving the 3<sup>rd</sup> Respondent, with serious charges, are under trial in the State of Uttar Pradesh.
10. It is, further, submitted that accused / Respondent no.3 is also operating his illegal activities in the State of Uttar Pradesh from the Jail in Punjab, inasmuch as on 05.04.2020, FIR No.04 of 2020 is registered in Police Station Dakshin Tola, Mau, Uttar Pradesh for the offences under Sections 419, 420, 467, 468, 471, 120-B of the IPC and Section 7 of the Arms Act. It is submitted that the alleged medical ailments, mentioned in the counter affidavits, are not of serious nature. Further, it is submitted that the ailments shown in the medical reports

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1      2016 (7) SCC 1

2      2004 (3) SCC 767

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by the respondents are not new, he was having such ailments since the year 2008, and the same is evident from the medical certificate issued from the Superintendent, District Jail, Gazipur. It is submitted that the transfer of 3<sup>rd</sup> Respondent is imperative from District Jail, Roopnagar, State of Punjab to District Jail, Banda, Uttar Pradesh and the appearance through video conferencing would not serve the purpose, in view of the fact that the attendance could not be secured at several times in the past. Resultantly, there is abnormal delay in the trials, pending in Special Court in Uttar Pradesh. The alleged threat of the 3<sup>rd</sup> Respondent to his life is also unsustainable and cannot be a ground for not handing over custody of the 3<sup>rd</sup> Respondent. The rivalry with another accused namely Shri Brijesh Singh is without any substance, inasmuch as Shri Brijesh Singh is also lodged in the Jail of Uttar Pradesh, since past more than 10 years. Further, the 3<sup>rd</sup> Respondent had been safely lodged in the District Jail, Banda, Uttar Pradesh from the last more than fifteen years and he was duly provided the required medical care.

11. Shri Dushyant Dave, learned senior counsel, appearing for Respondent Nos. 1 & 2, at the outset, has contended that the petition, as filed by the State of Uttar Pradesh under Article 32 of the Constitution of India read with Section 406 of the Code of Criminal Procedure, 1973, is not maintainable. It is submitted that the sole objective of Article 32 of the Constitution of India is for enforcement of fundamental rights, guaranteed under Part-III of the Constitution of India, as such, the petitioner, being a State, cannot agitate violation of fundamental rights, guaranteed under Part-III of the Constitution of India. Learned senior counsel, to support his contention, relied on judgment of this Court in [\*A.P. Christian Medical Educational Society v. Govt. of A.P.\*](#)<sup>3</sup> and judgment in the case of [\*Ujjam Bai v. State of Uttar Pradesh\*](#)<sup>4</sup> and judgment in the case of [\*State Trading Corporation of India Ltd. v. Commercial Tax Officer\*](#)<sup>5</sup> and judgment in the case of [\*Coffee Board Bangalore v. Jt. Commercial Tax Officer Madras\*](#)<sup>6</sup>.
12. Further submissions of the learned senior counsel are that as the case is at investigation stage, as such, the petitioner is virtually seeking

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3 1986(2)SCC 667

4 [1963\(1\)SCR 778](#)

5 [1964\(4\)SCR 99](#)

6 1969(3)SCC 349



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transfer of investigation from one police station to another in the country and the same is impermissible. To support this contention, reliance is also placed on the judgment of this Court in the case of *Ram Chander Singh Sagar (DR.) v. State of Tamil Nadu*<sup>7</sup>. Further, by referring to Section 406 of the Cr.P.C., it is submitted by the learned senior counsel that this Court's power to act under this Section is confined to cases, where the application is filed by the Attorney-General of India or by a Party Interested. It is submitted that in absence of any such application by the Attorney-General of India or Party Interested, petitioner-State cannot seek transfer even under Section 406 of the Cr.P.C. Lastly, it is submitted that the petitioner also cannot seek invoking of Article 142 of the Constitution of India by this Court, inasmuch as no direction can be issued, which will run contrary to the substantive statutory provisions.

13. Shri Mukul Rohatgi, learned senior counsel, appearing for the 3<sup>rd</sup> Respondent has contended that the writ petition, as filed by the petitioner-State of Uttar Pradesh is not maintainable, inasmuch as the petitioner-State cannot complain violation of any fundamental rights, as guaranteed under Part-III of the Constitution of India. It is submitted that none of the victims/complainants have approached this Court seeking the relief, in absence of which, the petitioner-State is not entitled for the relief, as sought for. It is submitted that the fair trial, guaranteed under Article 21 of the Constitution of India, is meant to protect the interest of accused and the witnesses and it is not open for the State to allege that fair trial requires custodial presence of the accused/3<sup>rd</sup> Respondent. Further, referring to provisions under Section 406 of the Code of Criminal Procedure, it is also submitted that only in cases where application is filed by the Attorney-General of India or by a Party Interested, this Court can act under Section 406 of Cr.P.C., but not at the instance of the State. It is submitted that the powers under Article 32 of the Constitution of India also cannot be utilised to take away a citizen's fundamental rights. It is submitted that Respondent No.3 is lodged in Jail since 2005, as such, no delay can be attributed to him for delaying the trials. Further, it is submitted that the 3<sup>rd</sup> Respondent is regularly appearing through video conferencing in cases mentioned by the petitioner, as such, there is no impediment for proceeding with the

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trials. It is submitted that in view of the political rivalry and serious threats to the 3<sup>rd</sup> Respondent, this Court may not grant any relief, as prayed for. It is submitted that not only the 3<sup>rd</sup> Respondent, all the family members of the 3<sup>rd</sup> Respondent are harassed by registering false cases. Lastly, it is submitted that the 3<sup>rd</sup> Respondent may be permitted to continue to appear through video conferencing in all the trials, which are pending trial in the State of Uttar Pradesh and this Writ Petition, which is devoid of merits, be dismissed.

14. We have considered submissions made by the learned counsels on both the sides and perused the material available on record.
15. The 3<sup>rd</sup> Respondent/accused is sitting MLA in the State of Uttar Pradesh. It is the case of the petitioner-State that, he is involved in several cases where serious charges are framed against him, and several such cases were transferred to Special Court, constituted to try the cases of MPs/MLAs in Allahabad. It is specifically stated in the petition that in order to fast track the cases, after creation of Special Court for trial of cases of MPs/MLAs in the year 2018, all the cases were consolidated by the High Court of Allahabad. The 3<sup>rd</sup> Respondent was lodged in District Jail, Banda, Uttar Pradesh, pursuant to order of the learned Special Judge. The cases which are at the stage of trial, as stated in the writ petition, by indicating the status of the case is given in a tabular form which reads as under:

Sl. No.	P.S./District	CASE No.	SECTIONS	STATUS OF CASE
1.	South Tola, Mau	399/2010, S.T. No.130/2010	302, 307, 120 &, 34 IPC 25/27 Arms Act & 7 CLA	Argument
2.	South Tola, Mau	891/2010 S.T. No. 6200002/2012	3(1) U.P. Gangster Act	Framing of Charges
3.	Mohammadabad, Ghazipur	1182/2009 S.T. No.10/2010	307, 506, 120B IPC	Evidence
4.	Mohammadabad, Ghazipur	1051/2007 S.T. No. 6200090/2012	3(1) Gangster Act	Evidence
5.	Mohammadabad, Ghazipur	263/1990 S.T. No.22/2005	420, 467, 468, 120B IPC 7/13 Prevention of Corruption Act	Framing of Charges
6.	Bhelupur, Varanasi	377/1997 S.T. No.3541/2011	506 IPC (Rs.1.25 crore extortion case)	Framing of Charges

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7.	Chetganj, Varanasi	229/1991 S.T. No.265/2007	147, 148, 149, 302 IPC	For Evidence
8.	Karanda, Ghazipur	482/2010 S.T. No.557/2012	3(1) Gangster Act	Evidence
9.	Kotwali, Ghazipur	192/1996 S.T. No. 620007/2012	3(1) Gangster Act	Evidence
10.	Tarwa, Azamgarh	20/2014 S.T. No. 6200195/2018	302, 307, 147, 148, 149, 120B, 506 IPC & 7 CLA	Framing of Charges

When the aforesaid cases were in trial, it appears, a case is registered in Crime No.05 of 2019 in Police Station Mathaur, District Mohali, State of Punjab, under Sections 386 & 506 of the IPC. The concerned Judicial Magistrate issued a production warrant under Section 267 of the Cr.P.C., and it is stated that pursuant to the same, he was released from the custody by the Superintendent of District Jail, Banda, Uttar Pradesh without any counter signature / permission from the Court of Special Judge (MPs/MLAs), Allahabad. Thereafter, he was produced before the Judicial Magistrate-I, Mohali, State of Punjab and was remanded to District Jail, Roopnagar, Punjab on 24.01.2019, since then, he is continuing in the said jail. It is stated that during the period from 14.02.2019 to 14.02.2020, large number of warrants have been issued for production of the 3<sup>rd</sup> Respondent, who is lodged in District Jail Roopnagar, Punjab to produce before the various Courts in the State of Uttar Pradesh, but, efforts made by Uttar Pradesh Police to secure the custody of the 3<sup>rd</sup> Respondent were futile inasmuch as, every time Jail Authorities of Roopnagar Jail, Punjab refused to give custody on the pretext that the accused was unwell. It appears that various medical reports are made basis to deny the custody to the Uttar Pradesh Police. It is the specific case of the petitioner that number of warrants issued against the 3<sup>rd</sup> Respondent in connection with the crimes registered in various Police Stations in Uttar Pradesh during the period from 14.02.2019 to 14.02.2020 could not be executed as the Jail Authorities of Roopnagar Jail, Punjab have refused to give custody on the ground that the accused / 3<sup>rd</sup> Respondent is not medically fit. Date of issuing of warrants in connection with several cases in various crimes in Police Stations of Uttar Pradesh; and reasons for non-production are also stated in the petition, in a tabular form, which reads as under:

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DATE OF ISSUE OF B- WARRANT	DUE DATE FOR THE ACCUSED TO APPEAR	S.T. NO. / CASE CRIME NO./P.S.	REASON FOR NON- PRODUCTION
14.02.2019	21.02.2019	130/10 399/10 South Tola, Mau	Court informed that accused not medically fit. Unwell
07.03.2019	08.03.2019	130/10 399/10 South Tola, Mau	Court informed that accused not medically fit. Unwell
28.03.2019	30.03.2019	130/10 399/10 South Tola, Mau	Court informed that accused not medically fit. Unwell
10.04.2019	11.04.2019	130/10 399/10 South Tola, Mau	Court informed that accused not medically fit. Unwell
29.04.2019	30.04.2019	130/10 399/10 South Tola, Mau	Court informed that accused not medically fit. Unwell
22.06.2019	24.06.2019	130/10 399/10 South Tola, Mau	Court informed that accused not medically fit. Unwell
27.06.2019 (sic)	28.06.2019	130/10 399/10 South Tola, Mau	Court informed that accused not medically fit. Unwell
04.07.2019	05.07.2019	130/10 399/10 South Tola, Mau	Court informed that accused not medically fit. Unwell
20.07.2019	22.07.2019	130/10 399/10 South Tola, Mau	Court informed that accused not medically fit. Unwell
23.07.2019	26.07.2019	130/10 399/10 South Tola, Mau	Accused suffering from diabetes mellitus, PIVD, Skin allergy, Hypertension.
17.07.2019	22.07.2019	130/10 399/10 South Tola, Mau	Accused having high grade fever, sore throat, backache & chest pain.
27.07.2019	30.07.2019	130/10 399/10 South Tola, Mau	Accused suffering from diabetes mellitus, PIVD, Skin allergy, Hypertension, severe backache, high grade fever, sore throat, backache, chest pain
30.07.2019	01.08.2019	130/10 399/10 South Tola, Mau	Accused got slip in bathroom and suffering from injury on his back and unable to walk
02.08.2019	05.08.2019	130/10 399/10 South Tola, Mau	Accused suffering from Diabetes mellitus, PIVD, Skin allergy, Hypertension, needs bedrest till 25.08.19.

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05.08.2019	08.08.2019	130/10 399/10 South Tola, Mau	Court informed that accused not medically fit. Unwell
10.08.2019	25.08.2019	130/10 399/10 South Tola, Mau	Accused not medically fit.
17.08.2019	25.08.2019	130/10 399/10	Accused not medically fit.
27.08.2019	02.10.2019	130/10 399/12	Accused not medically fit.
02.10.2019	12.10.2019	130/10 399/14	Accused examined by Board of Doctors ( <i>sic</i> ) at Civil Hospital Roopnagar. Prescribed medication and strict bed rest from 03.10.19 to 02.01.2020. Difficulty bearing weight on legs.
12.10.2019	22.10.2019	130/10 399/15	Accused not medically fit and advised bed rest.
26.10.2019	04.11.2019	130/10 399/15	Accused not medically fit and advised bed rest.
01.11.2019	02.01.2020	130/10 399/16	Accused not medically fit and advised bed rest.
03.01.2020	13.01.2020	3541/12 377/98	Accused not medically fit and advised bed rest.
27.01.2020	07.02.2020	3541/12 377/99	Accused having severe backache. Advised bedrest w.e.f. 21.01.2020 to 20.04.2020
07.02.2020	10.02.2020	3541/12 377/99	Accused advised three months bed rest by Neurology, PGIMER Chandigarh
14.02.2020	17.02.2020	3541/12 377/100	Accused advised bedrest w.e.f. 21.01.2020 to 20.04.2020 by Neurology, PGIMER

By referring to reasons indicated in the above chart, it is the case of the petitioner that the reasons assigned for not giving the custody are not true and only at the instance of the 3<sup>rd</sup> Respondent, by referring to minor ailments such as diabetes mellitus, skin allergy, hypertension, backache, throat infection, etc. the Uttar Pradesh Police has denied the custody, only to protract the trials, which are pending in Special Court constituted for trial of MPs/MLAs in Allahabad. It is specifically pleaded by the petitioner-State that though crime No.05

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of 2019 was registered on 08.01.2019 by the Police Station Mathaur, District Mohali, State of Punjab, no Final Report is submitted by completing the investigation within the statutory period, even then, the 3<sup>rd</sup> Respondent has not chosen to apply for grant of bail, so as to avoid his appearance in various cases in the State of Uttar Pradesh.

16. On the other hand, respondent-State as well as the 3<sup>rd</sup> Respondent is contesting the maintainability of this petition, filed under Article 32 of the Constitution of India and Section 406 of the Code of Criminal Procedure. It is submitted that the petitioner, being a State, cannot complain of violation of any fundamental rights, guaranteed under Part-III of the Constitution of India, so as to seek relief by filing the petition under Article 32 of the Constitution of India. So also is the case of the respondents that this petition also is not maintainable under Section 406 of the Code of Criminal Procedure. It is the case of the respondents that power under Section 406 of Cr.P.C. is conferred on this Court to transfer cases and appeals, only in the event of an application by the Attorney-General of India or by a party interested.
17. This petition is filed under Article 32 of the Constitution of India read with Section 406 of the Code of Criminal Procedure. Chapter XXXI of the Code of Criminal Procedure, 1973 is a chapter dealing with Transfer of Criminal Cases. Section 406 of the Code of Criminal Procedure, 1973 reads as under:

***“406. Power of Supreme Court to transfer cases and appeals.—(1) Whenever it is made to appear to the Supreme Court that an order under this section is expedient for the ends of justice, it may direct that any particular case or appeal be transferred from one High Court to another High Court or from a Criminal Court subordinate to one High Court to another Criminal Court of equal or superior jurisdiction subordinate to another High Court.***

***(2) The Supreme Court may act under this section only on the application of the Attorney-General of India or of a party interested, and every such application shall be made by motion, which shall, except when the applicant is the Attorney-General of India or the Advocate-General of the State, be supported by affidavit or affirmation.***

***(3) Where any application for the exercise of the powers conferred by this section is dismissed, the Supreme Court may, if it is of***

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***opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may consider appropriate in the circumstances of the case.”***

18. From a plain reading of the aforesaid Section 406 of the Code of Criminal Procedure, 1973, it is clear that power is conferred on this Court to transfer of cases and appeals on the application filed by the Attorney-General of India or by a party interested. According to the learned senior counsels, appearing for the respondents, the petitioner-State cannot be termed as a “party interested”. It is difficult to accept the submissions of the respondents to say that the petitioner-State is not a party interested. It is well said that a crime against an individual is to be considered as a crime against a State and public, at large. In the criminal administration system, State is the prosecuting agency, working for and on behalf of the people of the State. It is to be noticed that “party interested” has not been defined under the Code of Criminal Procedure, 1973. The words “party interested” are of a wide import and, therefore, have to be interpreted by giving a wider meaning. The words such as “aggrieved party”, “party to the proceedings” and “party interested” are used in various Statutes. If the words used are to the effect “party to the proceedings” or “party to a case”, it can be given a restricted meaning. In such cases, the intention of the legislature is clear to give restricted meaning. But, at the same time, the words used as “party interested”, which are not defined under the Code of Criminal Procedure, have to be given a wider meaning. As a prosecuting agency in the Criminal Administration, the State can be said to be a party interested within the meaning of Section 406(2) of the Code of Criminal Procedure, 1973. It is a well settled principle of law that the Statute must be interpreted to advance the cause of the Statute and not to defeat the same. The petitioner-State, being a prosecuting agency in the Criminal Administration, is vitally interested in such administration, as such, we are of the view that the State is considered as a “party interested” within the meaning of Sub-Section (2) of Section 406 of the Code. The judgment of this Court in the case of [\*K. Anbazhagan v. Superintendent of Police & Ors.\*](#)<sup>2</sup> also supports the case of the petitioner-State to accept the said plea that they are party interested within the meaning of

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Section 406(2) of the Code of Criminal Procedure. Thus, we hold that this petition, as filed under section 406 of the Code of Criminal Procedure, is maintainable.

19. Inasmuch as, we are of the view that this petition, as filed under Section 406 of the Code of Criminal Procedure, is maintainable at the instance of the State, it is not necessary for us to decide the issue as to maintainability of this petition under Article 32 of the Constitution of India.
20. Nextly, we proceed to examine on the plea of the petitioner for grant of reliefs, as prayed for in the Writ Petition. Reliefs, as sought for in the Writ Petition under Para-26(A) of the same, the petitioner is seeking directions, commanding the respondent-State and the Judicial Magistrate-I, Mohali, State of Punjab to transfer the criminal proceedings and trial in the case no.05 of 2019, titled as ***State of Punjab v. Mukhtar Ansari***, pending before the Judicial Magistrate-I, Mohali. Further, under Para-26(B) of the Writ Petition, the petitioner is seeking directions, directing the Respondents 1 & 2, to hand over the custody of the 3<sup>rd</sup> Respondent from Roopnagar Jail, District Ropar, State of Punjab, so as to keep him in District Jail, Banda in the State of Uttar Pradesh. Opposing relief sought for in the writ petition, while contesting on the maintainability, it is also the case of the respondents that as no case is registered so far in any competent Court of law and as a crime registered in case no.05 of 2019 is at the stage of investigation, no relief can be granted in exercise of power under Section 406 of the Code of Criminal Procedure, 1973. Learned counsel Shri Dushyant Dave, appearing for the respondents 1 & 2, has placed reliance on the judgment in the case of [\*Ram Chander Singh Sagar \(DR.\) v. State of Tamil Nadu\*](#)<sup>7</sup>. In the aforesaid judgment, this Court has held that the Code of Criminal Procedure clothes this Court with power under Section 406 of the Code of Criminal Procedure to transfer a case or appeal from one High Court or a Court subordinate to one High Court to another High Court or to a Court subordinate thereto. But, it does not clothe this Court with the power to transfer at the stage of investigation.
21. Even, according to the case of the petitioner, that in crime no.05 of 2019, registered on the file of Police Station Mathaur, District Mohali, State of Punjab, for offences punishable under Sections 386 and 506 of the IPC, no Final Report is filed by the Police and



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the case is at the stage of investigation. A copy of FIR is placed on record in which FIR number is mentioned as FIR No.05 and it was registered on 08.01.2019. As the investigation in crime no.05 of 2019 on the file of Police Station Mathaur, District Mohali, State of Punjab is still at the stage of investigation and in absence of filing of Final Report, we are in agreement with the submissions of the learned senior counsel, appearing for the respondents that no case is made out by the petitioner, seeking transfer under Section 406 of the Code of Criminal Procedure, which relief is sought for in Para-26(A) of the writ petition. The judgment of this Court in the case of [Ram Chander Singh Sagar \(DR.\) v. State of Tamil Nadu](#)<sup>7</sup>, relied on by Shri Dushyant Dave, learned senior counsel, appearing for the respondents, supports the case of the respondents. The relevant portion of the said judgment, reads as under:

***“The Code of Criminal Procedure clothes this Court with power under Section 406 to transfer a case or appeal from one High Court or a Court subordinate to one High Court to another High Court or to a Court subordinate thereto. But it does not clothe this Court with the power to transfer investigations from one police station to another in the country simply because the first information or a remand report is forwarded to a Court. The application before us stems from a misconception about the scope of Section 406. There is as yet no case pending before any Court as has been made clear in the counter affidavit of the State of Tamil Nadu. In the light of this counter affidavit, nothing can be done except to dismiss this petition.”***

In view of the aforesaid reasoning of ours, no relief can be granted, as sought for under Para-26(A) of the writ petition, by this Court in exercise of power under Section 406 of the Code of Criminal Procedure, 1973.

22. At the same time, learned Solicitor General, Shri Tushar Mehta, appearing for the petitioner has submitted that if, at all, no relief is to be granted by this Court in exercise of power under Section 406 of the Code of Criminal Procedure, it is evidently a fit case to exercise power under Article 142 of the Constitution of India by this Court, having regard to the facts of the case, to do complete justice. It is submitted that more than ten criminal cases involving the 3<sup>rd</sup> Respondent for serious offences are at various stages of trial before the Special Court constituted for trial of cases of MPs/MLAs

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in the State of Uttar Pradesh. In spite of the same, the custody of the 3<sup>rd</sup> Respondent is taken pursuant to one case, registered in the State of Punjab and presently and continuously, he is lodged in the Roopnagar Jail in the State of Punjab since 24.01.2019. It is submitted that apart from the aforesaid cases, which are pending trial in the Special Court constituted for trial of MPs/MLAs in Allahabad, in various crimes, registered against the 3<sup>rd</sup> Respondent in several police stations in the State of Uttar Pradesh, warrants are returned and unexecuted for one reason or the other. It is submitted that by showing minor ailments, the custody of the 3<sup>rd</sup> Respondent is denied by the Jail Superintendent of Roopnagar Jail, District Ropar, Punjab. It is, further, submitted that though in the crime registered in Crime No.05 of 2019 on the file of Police Station Mathaur, District Mohali, State of Punjab, which is registered for offences punishable under Sections 386 & 506 of the IPC, there is no progress in the investigation and Final Report is not submitted yet, even then the 3<sup>rd</sup> Respondent has not even applied for grant of default bail, as he is entitled to. It is submitted that the very conduct of the 3<sup>rd</sup> Respondent indicates that he is trying to protract the trials which are pending in Special Court for MPs/MLAs in the State of Uttar Pradesh and to avoid his appearance in other Courts, where his presence is required.

23. Shri Dushyant Dave, learned senior counsel, appearing for Respondents 1 & 2 and Shri Mukul Rohatgi, learned senior counsel, appearing for the 3<sup>rd</sup> Respondent, strenuously contended that no case is made out for grant of any relief by this Court, invoking the power under Article 142 of the Constitution of India. It is submitted that though Article 142 of the Constitution of India gives wider power to this Court and not restricted by statutory enactments, however, this Court would not pass any order under Article 142 of the Constitution of India, which would amount to supplanting the substantive law applicable or ignoring the statutory provisions dealing with the subject. In support of this argument, learned senior counsel, appearing for the respondents, relied on judgments of this Court in the case of [\*A.B. Bhaskara Rao v. CB\*](#)<sup>8</sup> and in the case of [\*State of Haryana v. Sumitra Devi\*](#)<sup>9</sup>.

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8 2011 (10) SCC 259

9 2004 (12) SCC 322

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24. Learned Solicitor General, Shri Tushar Mehta, appearing for the petitioner-State, submitted that though all the cases were transferred to Special Court, constituted for trial of cases of MPs/MLAs, Allahabad to fast track the same, continuation of the 3<sup>rd</sup> Respondent in jail, which is at far off place in a different State, has become an impediment to proceed with the trials. It is submitted that in addition to the pending trials in the Special Court against the 3<sup>rd</sup> Respondent, the appearance of the 3<sup>rd</sup> Respondent is also necessary in connection with various other cases, where serious charges are leveled against the 3<sup>rd</sup> Respondent, which are at the stage of investigation in several police stations in the State of Uttar Pradesh and in spite of the same, warrants issued by the competent Court are returned by Jail Superintendent of Roopnagar Jail, Punjab, every time by showing the ill health of the 3<sup>rd</sup> Respondent. To substantiate his plea that it is a fit case to invoke power by this Court under Article 142 of the Constitution of India, Shri Tushar Mehta, learned Solicitor General, appearing for the petitioner-State, has placed reliance on judgments of this Court in the Case of *Saihbha Ali v. State of Maharashtra*<sup>10</sup>, in the case of *Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav & Anr.*<sup>11</sup> and in the case of *Asha Ranjan v. State of Bihar*<sup>12</sup>.
25. Having considered the submission of the learned Solicitor General, appearing for the petitioner-State, as well as learned senior counsels, appearing for the respondents, on the plea that whether it is a fit case to invoke power under Article 142 of the Constitution of India or not, we have carefully considered the submissions and the material placed on record and we are of the considered view that it is evidently a fit case to invoke our power under Article 142 of the Constitution of India for grant of relief to the extent, as sought for, under Para-26(B) of the petition, to order transfer the custody of the 3<sup>rd</sup> Respondent from Roopnagar Jail, District Ropar, Punjab to District Jail, Banda, Uttar Pradesh. It is not in dispute that with regard to the cases and status, which are pending trial before the Special Judge, MPs/MLAs, Allahabad, a perusal of the chart which is furnished by the petitioner, indicates that the 3<sup>rd</sup> Respondent is involved in various cases of attempt to murder, murder, cheating,

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10 2003 (7) SCC 250

11 2005 (3) SCC 284

12 2017 (4) SCC 397

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conspiracy, etc., apart from offences under Gangsters Act. The said cases, as mentioned by the petitioner, number in Ten, are various stages of trial. Further, the petitioner has furnished the cases, where warrants were issued by the Courts in various crimes, registered in the Districts of Mau, etc., and when the police went to seek custody, the 1<sup>st</sup> respondent had refused to handover the custody on medical grounds. The reasons for non-production are mentioned in a tabular form. During the period from 14.02.2019 to 14.02.2020, custody is denied to the police of Uttar Pradesh by the 1<sup>st</sup> Respondent on twenty six occasions. A perusal of the reasons for not giving custody shows that it is mainly on the medical grounds referring to diabetes mellitus, skin allergy, hypertension, backache, throat infection, etc. Though, it is the case of the petitioner, that the very registration of crime in Crime no.05 of 2019 on the file of Police Station Mathaur, District Mohali, Punjab is a part of conspiracy at the instance of the 3<sup>rd</sup> Respondent so as to continue in the jail at Punjab, by protracting the trials, which are pending in the Special Court and to deny his presence in various other crimes, registered against him for completing the investigation. We do not wish to record any finding on such allegation of conspiracy at this stage, but, at the same time, we are satisfied that the custody is denied to the Police of Uttar Pradesh at every time on trivial grounds under guise of medical grounds by mentioning ordinary diseases like diabetes mellitus, skin allergy, hypertension, backache, throat infection, etc. In addition to the same, it gives any amount of suspicion on the conduct of the 3<sup>rd</sup> Respondent in not even applying for grant of default bail, for not filing Final Report (Charge-sheet) by the Police, Police Station Mathaur, District Mohali, Punjab within the statutory period. Though, it is the case of the 3<sup>rd</sup> Respondent, opposing the relief sought for, on the ground that he is permitted in majority of the cases to appear by video conferencing, but the same, by itself, is no ground to oppose the relief sought for. Though, the earlier cases were pending in various Sessions Courts and only to fast track the cases, Special Court is constituted for trial of cases of MPs/MLAs in the year 2018 by the State of Uttar Pradesh. On such constitution, all the cases where the 3<sup>rd</sup> Respondent is involved for serious offences under IPC and Gangsters Act, were transferred to the Special Court and all are pending trial at various stages. Pursuant to the orders of the Special Court, only the 3<sup>rd</sup> Respondent was kept in jail at Banda in the State of Uttar Pradesh, so as to order his presence, as and when

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required. Therefore, in our opinion, a convict or an undertrial prisoner, who disobeys the law of the land, cannot oppose his transfer from one prison to another, be a convict or an undertrial prisoner, Courts are not to be a helpless bystander, when the rule of law is being challenged with impunity. In such situations, this Court can exercise power under Article 142 of the Constitution of India to order transfer of prisoner from one prison to another. Though, there is a separate enactment called The Transfer of Prisoners Act, 1950, which permits transfer of a prisoner from one State to another by the Government, but, the same is circumscribed under Section 3 of the Act, as such, the claim of the petitioner will not fit into the same. Even then this Court, in exercise of power under Article 142 of the Constitution of India, can consider for transfer of the prisoner in the circumstances, as pleaded by the petitioner. The arms of law are long enough to remedy the situation. If there are any medical ailments to the petitioner, every care shall be taken by the Jail Authorities but, at the same time, on the spacious plea of ill health by referring to minor ailments, the accused / 3rd Respondent cannot oppose the relief, as sought for in the writ petition. It is true that in the case of [\*A.B. Bhaskara Rao v. CBI\*](#)<sup>8</sup> and in the case of [\*State of Haryana v. Sumitra Devi\*](#)<sup>9</sup>, this Court has held that in exercise of power under Article 142 of the Constitution of India, no order can be passed, which shall run contrary to the statute or statutory rules. The transfer of a prisoner from one prison to another prison in different States is covered by the provisions of The Transfer of Prisoners Act, 1950. Section 3 of the Act reads as *“the Government of that State with the consent of the Government of any other State, by order, provide for removal of the prisoner from that prison to any prison in the other State.”* It is clear that there does not appear to be any provision for transfer of an under trial prisoner. There being no statutory provision, covering the transfer of prisoner from one State to another, having regard to the facts of the case on hand, this Court, certainly in exercise of jurisdiction under Article 142 of the Constitution of India, may issue necessary directions in the given circumstances. The judgments relied on by the learned counsels for the respondents, as referred above, would not render any support to their plea in this case. In the judgment in the case of [\*Saihbha Ali v. State of Maharashtra\*](#)<sup>10</sup>, it is held that this Court can pass appropriate on the facts to do complete justice, even if the writ petition filed is not maintainable. Transfer of a prisoner from one State to another State also fell for

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consideration by this Court, in the case of [\*Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav & Anr.\*](#)<sup>11</sup>, where this Court has held that power to transfer a prisoner or detenu, either on his own motion or otherwise, can be ordered by this Court, in exercise of power under Article 142 of the Constitution of India. Para 23, 24 & 25 of the said judgment, which are relevant paragraphs to this case, read as under:

***“.....23. Therefore, in our opinion, a convict or an undertrial who disobeys the law of the land, cannot contend that it is not permissible to transfer him from one jail to another because the Jail Manual does not provide for it. If the factual situation requires the transfer of a prisoner from one prison to another be he a convict or an undertrial, courts are not to be a helpless bystander when the rule of law is being challenged with impunity. The arms of law are long enough to remedy the situation even by transferring a prisoner from one prison to another, that is by assuming that the Jail Manual concerned does not provide such a transfer. In our opinion, the argument of the learned counsel, as noted above, undermines the authority and majesty of law. The facts narrated hereinabove clearly show that the respondent has time and gain flouted the law even while he was in custody and sometimes even when he was on bail. We must note herein with all seriousness that the authorities manning Beur Jail and the doctors concerned of Patna Medical College Hospital, for their own reasons, either willingly or otherwise, have enabled the respondent to flout the law. In this process, we think the authorities concerned, especially the authorities at Beur Central Jail, Patna, are not in a position to control the illegal activities of the respondent. Therefore, it is imperative that the respondent be transferred outside Bihar.***

***24<sup>13\*</sup>. The matter relating to inter-State transfer of prisoners is governed by the Transfer of Prisoners Act, 1950. Section 3 of the said Act reads thus:***

***‘3. Removal of prisoners from one State to another.-(1) Where any person is confined in a prison in a State,-***

***(a) under sentence of death, or***

<sup>13\*</sup> Ed. Para 24 corrected vide Official Corrigendum No.F.3/Ed.B.J./25/2005 dated 18-3-2005.

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- (b) under, or in lieu of, a sentence of imprisonment or transportation, or**
- (c) in default of payment of a fine, or**
- (d) in default of giving security for keeping the peace or for maintaining good behaviour;**

**the Government of that State may, with the consent of the Government of any other State, by order, provide for the removal of the prisoner from that prison to any prison in the other State.'**

**25. A bare perusal of the aforementioned provision would clearly go to show that there does not exist any provision for transfer of an undertrial prisoner. The prayer for inter-State transfer of a detenu came up for consideration before this Court in *David Patrick Ward v. Union of India*<sup>14</sup> where in a preventive detention matter the petitioner therein was lodged in Naini Jail at Allahabad. The petitioner made a prayer for his transfer to Tihar Jail, Delhi inter alia on the ground that the Consular Officers had the right to visit a national of the sending State who is in prison or under detention in terms of Article 36 of the Vienna Convention on Consular Relations. The authorities of Naini Jail having indicated that whenever visits are desired by the officers of the British Consular Relations, proper arrangement therefor would be made, this Court refused to concede to the said request. But, this decision is a pointer to the fact that in an appropriate case, such request can also be made by an undertrial prisoner or a detenu and there being no statutory provisions contrary thereto, this Court in exercise of its jurisdiction under Article 142 of the Constitution may issue necessary direction."**

26. The concept of fair trial and transfer of a prisoner from one jail to another jail is also considered elaborately by this Court in the case of *Asha Ranjan v. State of Bihar*<sup>12</sup>. While analysing the concept of fair trial as a facet of Article 21 of the Constitution of India, this Court held that it covers interest of the accused, prosecution and the victim. It is, further, held that victim may be a singular person who has suffered, but the injury suffered by singular is likely to affect the community interest. The relevant paragraphs of the judgment covered by Paragraphs 86.4, 86.5, 86.6 & 86.7 reads as under:

<sup>14</sup> (1992) 4 SCC 154 : 1992 SCC (Cri) 814

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**"...86.4    *The weighing of balance between the two perspectives in case of fair trial would depend upon the facts and circumstances weighed on the scale of constitutional norms and sensibility and larger public interest.***

**86.5        *Section 3 of the 1950 Act does not create an impediment on the part of the Court to pass an order of transfer of an accused or a convict from one jail in a State to another prison in another State because it creates a bar on the exercise of power on the executive only.***

**86.6        *The Court in exercise of power under Article 142 of the Constitution cannot curtail the fundamental rights of the citizens conferred under the Constitution and pass orders in violation of substantive provisions which are based on fundamental policy principles, yet when a case of the present nature arises, it may issue appropriate directions so that criminal trial is conducted in accordance with law. It is the obligation and duty of this Court to ensure free and fair trial.***

**86.7        *The submission that this Court in exercise of equity jurisdiction under Article 142 of the Constitution cannot transfer the accused from Siwan Jail to any other jail in another State is unacceptable as the basic premise of the said argument is erroneous, for while addressing the issue of fair trial, the Court is not exercising any kind of jurisdiction in equity."***

27. In addition to the reasons which we have already assigned above, the case law, which is referred above by the learned Solicitor General, appearing for the petitioner, also supports the case of the petitioner for grant of relief to the extent as sought for in Para-26(B) of the writ petition.
28. For the aforesaid reasons, as indicated above, this Writ Petition is allowed in part with the following directions and observations:
  - i. This petition, filed under Article 32 of the Constitution of India / Section 406 of the Code of Criminal Procedure, 1973, is held to be maintainable under Section 406 of the Code of Criminal Procedure, 1973.



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- ii. The relief, sought for transfer of the case, in terms of of Para-26(A) of this petition is not granted, inasmuch as the case in Crime No.05 of 2019, on the file of Police Station Mathaur, District Mohali, Punjab, is at the stage of investigation, as such, Section 406 of the Cr.P.C. cannot be pressed into service.
- iii. At the same time, in exercise of power under Article 142 of the Constitution of India, we issue directions, directing the Respondent Nos.1 & 2, to handover custody of the 3rd Respondent to the State of Uttar Pradesh, within a period of two weeks from today, so as to lodge him in District Jail, Banda in the State of Uttar Pradesh.
- iv. It is open for the Special Court, constituted for MPs/MLAs at Allahabad to continue him either in the District Jail at Banda or shift to any other Jail in the State of Uttar Pradesh, if any need arises.
- v. There shall be a direction to the Superintendent of Jail, District Jail Banda, Uttar Pradesh to extend the necessary medical facilities to the 3rd Respondent. It is made clear that if any specialty treatment is required to the 3rd Respondent, the Jail Superintendent of District Jail, Banda, Uttar Pradesh shall take necessary steps to extend such medical care also, by following the Jail Manual.

***[Transfer Petition (Crl.) no.104-114 of 2021]***

29. In view of the above order passed in Writ Petition (Crl.) No.409 of 2020 and further, this Court has already rejected the claim of the petitioner for transfer of the cases, as such, we do not find any merit in these Transfer Petitions, and the same are accordingly dismissed.

*Headnotes prepared by: Nidhi Jain*

*Result of the case:*  
Writ Petition partly allowed and  
Transfer Petitions dismissed.