Copy of the letter No. 129/16/21-AVD. I. dated the 26th March, 81, from the Under-Secretary to Govt. of India, Ministry of Home Affairs, Deptt. of Personnel & Administrative Reforms, New Delhi, addressed to the Chief Secretary. Madhya Pradesh Government, General Administration Department, Bhopal, etc. etc.

Subject :—**Circumstances in which a Government servant may be placed under suspension—observations of the Suprsme Court regarding.**

I am directed to refer to your letter No. 287/767/1/3/80 dated the 7th July, 1980 on the subject noted above and to forward herewith for information a copy of this Departments Office Memorandum of even number dated 29-3-81 addressed to all the Ministries and Departments of the Central Government issued in this matter.

No. 11/10/81-2GS-III Dated Chandigarh, the 11-5-81.

A copy with, enclosures, is forwarded for information and guidance to :—

1) All Heads of Departments, Commissioners of Ambala and Hissar Divisions, all Deputy Commissioners and all Sub-Divisional Officers (Civil) in Haryana; and

2) the Registrar, Punjab and Haryana High Court.

Sd/-
Joint Secretary General Administration,
for Chief Secretary to Government, Haryana.

Copy of the letter No. 129/16/81-AVD. I, dated 23rd March, 1981 from the Under Secretary to Govt. of India, Ministry of Home Affairs, Deptt. of Personnel & Admiuietrative Reforms, New Delhi addressed to All the Ministers and Departments of the Government of India etc. etc.

OFFICE MEMORANDUM

Subject :—**Circumstances in which a Government servant may be placed under suspension-observations of the Supreme Court regarding.**

The undersigned is directed to state that the Supreme Court in the case Niranjan Singh and others Vs. Prabhakar Rajaram Kharote and others (SLP) No. 393 of 1980) have made some observations about the need/desirability of placing a Government servant under suspension against whom serious charges have been framed by a criminal court, unless exceptional circumstances suggesting a contrary course exist. The Supreme Court has further directed the Government to take suitable sensitized measures to pre-empt recurrence of the error highlighted in the judgement. A copy of the Supreme Court's judgement in the case is enclosed.

2. Rule 10(1) (b) of the CCS(CCA) Rules, 1965, already provides that the competent disciplinary authority may place a Government servant under suspension where a case against him in respect of any criminal offence is under investigation, inquiry of trial. Similar provision exist under the All India Services (Discipline & Appeal) Rules, 1969 and other corresponding rules. In this Department's O.M. No. 43/56/64-AVD dated the 22nd October, 1964 certain guidelines relating to the circumstances in which a disciplinary authority may consider it appropriate to place a Government servant under suspension have been broadly indicated. It will be seen therefrom that the "public interest" should be the guiding factor in deciding the question of placing a Government servant under suspension. Thus, the existing rules instructions on the subject already cover the cases which the Supreme Court have in view. Neverth.l.ss the Supreme Court's judgement, the existing rules/instructionr on the subject and the contents of this O.M. may kindly be brought to the notice of allconcerned.

3. As and when criminal charges are framed by a competent court against a Government servant, the disciplinary authority should consider and decide due desirability of placing such a Government Servant under suspension in accordance with the rules, if he is already not under suspension, or otherwise. If the Government servant is already under suspension or is placed under suspension, the competent authority should also review the case from time to time, in accordance with the instructions on the subject and take a decision about the desirability of keeping him under suspension till the disposal of he case by the court.

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETTITION (CRIMINAL) NO. 393 OF 1980

Niranjan Singh & Anr. — Petitioners

Vs.

Prabhakar Rajaram Kharote & Ors. — Respondents.

ORDER

KRISHNA IYER J.

"No one shall be subjected to torture or to cruels, in human or degradine treatment or punishment is a part of the Universal Declaration of Human Rights. The content of Act 21 of our Constitution, read in the light of Art. 19 is similarly elevating. But romance about human rights and rhetoric about constitutional mandates lose credibility if, in practice, the protectors of law and unions of the State become engineers of terror and panic people into fear. We are constrained to make these observations as our eonsience is in consternation when we read the facts of the case which have given rise to the order challenged before us in this petition for special leave.

The petioner, who has appeared in person, is the complainant in a criminal case where the accused are 2 Sub-Inspectors and 8 Constables attached to the City Police Station, Ahmadnagar. The charges against them as disclosed in the private complaint, are of murder and allied offences under as 302, 341, 395, 404 read with as 34 and 180 (3) of the Penal Code. The blood-curdling plot disclosed in the complaint is that pursuant to a conspiracy the brother of the complainant was waylaid by the police party on August 27, 1978, as he was proceeding to Shirdi. He had with him some gold ornaments and cash. He was caught and removed from the truck in which he was travelling, tied with a rope to a neam tree nearby, thus rendering him a motionless target to a macabra shooting. One of the Sub-Inspectors fired two shots from his revolver on the chest of the deceased at close range and killed him instantaneously. The policemen, having perpetrated this vallany, vanished from the scene. No action was taken by the State against the criminals. How could they when the preservers of the peace and investigators of crime themselves become plained executor of murders ? The victim's brother was an advocate and he filed a private complaint. The learned magistrate ordered an inquiry under section 202 Cr.P.C., took oral evidence of witness at some l ngth and held : "Thus taking an overall survey of evidence produced before me, I am of the opinion that there is sufficient grounds to proceed against all the accused for the offences under as 302, 323, 342, read with section 34 I.P.C." Non-bailable warrants were issued for production of the accused and the magistrate who refused bail, stayed the issuance of the warrants although we are unable to find any provision to end him to do so. The police accused moved the sessions court for bail and a elaborate order the sessions court granted bail subject to certain directions and conditions. The High Court, which was moved by the complainant for reversal of the order enlarging accused on bail, declined to interfer in revision but added additiodal conditions to ensure that the bail was not abused and the course of justice was not thwarted.

It is fair to state that the case complaint. verified under s. 202 Cr.P.C. to have some varacity, does not make us leap to a conclusion of guilt or refusal of bail. On the contrary, the accused policemen have a version that the victim was himself a criminal and was sought to be arrested. An encounter ensued, both sides sustained injuries and the deceased succumbed to a firearm shot even as some of the police party sustained revolver wounds but survived. May be, the defence case, if reasonable true, may absolve them of the crime, although the story of encounters during arrest and unwitting injuries resulting in casualities, sometimes become a mask to hide easy liquidation of human life by heartless policemen when some one allergice to Authori-resists their vices. The Police have the advantage that they prep the preliminary record which may 'kill' the case against them. The disquieting syndrome of policemen committing crimes of killing and making up perfect paperwork cases of innocent discharge of duty should not be ruled out when courts examine rival versions. Indeed we must emphasis that the trial judge shall not be influenced by what we have said and shall confine himself to the evidence in the case when adjudging the guilt of the accused. We were constrained to make the observations above because the Sessions Judge, quite unwarrantedly, discussed at prolix length the probabilities of the police party's exculpatory case and held :

"So it is reasonable in hand that there was a scuffle and resistance suffered by the victim Amarjeet Singh before shots were fired at his person by the accused No. 1."

avoided while passing orders on bail applications. No party should have the impression that his case has been prejudiced. To be satisfied about a prima facie case is needed but it is not the same as an exhaustive exploration of the merits in order itself.

Grant of bail is within the jurisdiction of the Sessions Judge but the court must not in grave cases, gulliphy dismiss the possibility of police-accused intimidating the witnesses with cavalier case. In our country, intimidation by policemen, when they are themselves accused of offences, is not an unknown phenomenon and the judicial process will carry credibility with the community only if it views impartially and with commonsense the pros and cons, undeterred by the psychic pressure of police presence as indicates.

Let us now get to grips with the two legal submissions made by the petitioner. The first jurisdictional hurdle in the grant of bail, argues the petitioner, is that the accused must fulfil the two conditions specified in S. 439 Cr. P. C. before they can seek bail justice. That provision reads.

439. (1) A High Court for Court of Sessions may direct ;—

(a) that any persons accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section ;

(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified.

Here the respondents were accused of offences but were not in custody, argues the petitioner, so no bail, since this basic condition of being in jail is not fulfilled. This submission has been rightly rejected by the Courts below. We agree that, in one view, an outlaws cannot ask for the benefit of law and he who flees justice cannot claim justice. But here the position is different. The accused were not absconding but had appeared and surrendered before the Sessions Judge. Judicial jurisdiction arises only when persons are already in custody and seek the process of the Court to be enlarged. We agree that no person accused of an offence can move the Court for bail under S. 439 Cr. P. C. unless he is in custody.

When is a person in custody, within the meaning of S. 439 Cr. P. C. ? When he is in duress either because he is held by the investigating agency or other police or allied authority or is under the control of the court having been remanded by judicial order, or having offered himself to the court's jurisdiction and submitted to its orders by physical presence. No lexical dexterity nor precedential profusion is needed to case to the realistic conclusion that he who is under the control of the court or is in the physical hold of an officer with coercive power is in custody for the purpose of S. 439. This word is of elastic semantics but its core meaning is that the law has taken control of the person. The equivocatory quibblings and hide-and-seek-niceties sometimes heared in court that the police have taken a man into formal custody but not arrested him, have detained and other like interogation but not taken him into formal custody and other like cerminological dubieties are unfair evasions of the straight forwardness of the law. We need not dilate on this shady facet here because we are satisfied that the accused did physically submit before the Sessions Judge and the jurisdiction to grant bail thus arose.

Custody, in the context of S. 439, (we are not, be it noted, dealing with anticipatory bail under S. 438) is physical control or at least physical presence of the accused in court coupled with submission to the jurisdiction and orders of the court. He can be in custody not merely when the police arrests him, produces him before a Magistrate and gets a remand to judical or other custody. He can be stated to be in judical custody when he surrenders before the court and submits to its directions. In the present case, the police officers applied for bail before a Magistrate who refused bail and still the accused, without surrendering before the Magistrate, obtained an order for stay to move the Sessions Court. This direction of the Magistrate was wholly irregular and may be, enabled the accused persons to circumvent the principle of S. 439 Cr. P. C. We might have taken a serious view of such a course, indifferent to mandatory provisions, by the subordinate magistacy but for the fact that in the present case the accused made up for it by surrender before the Sessions Court. Thus, the Sessions Court acquired jurisdiction to consider the bail application. It could have refused bail and remanded the accused to custody, but, in the circumstances and for the reasons mentioned to custody, but in the jurisdiction in favour of grant of bail. The High Court added to the conditions subject to which bail was to be granted and mentioned that the accused had submitted to the custody of the court. We, therefore, do not proceed to upset the order on this ground. Had the circumstances been different we could have demolished the order for bail. We may frankly state that had

We are apprehensive that the accused being police officers should not abuse their freedom and emphasise that the Inspeetor General of Police of the state of Maharashtra will take particular care of to take two steps. He should have a close watch on the functioning of the concerned police officers lest the rule of law be brought into discredit by officers of the law being allowed a larger liberty than other people, especially because the allegations in the present case are grave and, even if a fragment of it be true, does little credit to the police force. It must be remembered that the allegations are that the deceased was dragged out of a truck to a secluded place, later tied to a tree and shot and killed by the police officer concerned.

We hasten to make it clear that these are one sided allegations and the accused have a counter version of their own and we do not wish to make any implications for or against either version. The accused policemen are entitled to an unprejudiced trial without any bias against the 'unformed' force which has difficult tasks to perform.

We conclude this order on a note of anguish. The complainant has been protesting against the state's bias and police threats. We must remember that a democratic state is the custodian of people's interests and not only police interests. Then how come this that the team of ten policemen against whom a magistrate, after the enquiry, found a case to be proceeded with and grave charges, including for murder, were framed continue on duty without so much as being suspended from service until disposal of the pending sessions trial ? On whose side is the state ? The rule of law is not a one-way traffic and the authority of the State is not for the police and against the people. A responsible Government, responsive to appearances of justice, would have placed police officers against whom serious charges had been framed by a criminal court, under suspension unless exceptional circumstances suggesting a contrary course exists. After all, a gesture of justice to courts of justice is the least that a government does to the governed.

We are confident that this inadvertance will be made good and the State of Maharashtra will disprove by deeds Henry Clay's famous censure :

"The art of powers and its minions are the same in all countries and in all ages. It marks its victim denounces it, and exeltex the public odium and the public hatred, to conceal its own abuses and encroachments."

The observations that we have made in the concluding portion of the order are of our oment, not merely to the State of Maharashtra but also to the Other States in the country and to the Union of India, that we deem it necessary to direct that a copy of this judgement be sent to the Home Ministry in the Government of India for suitable sensitized measures to pre-empt recurrence of the error we have highlighted."

New Delhi
March 19, 1980.

Sd/—V. R. Krishna Iyer, J,
Sd/—A. P. Sen,