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IN THE COURT OF XXIV ADDL. CHIEF JUDICIAL MAGISTRATE:
AT BENGALURU CITY

Dated this the 25th day of July 2024

:Present:

Sri. VISHWANATH C GOWDAR., B.A.L., LL.M.,
Presiding Officer,
Special Court for Economic Offences,
C/c. XXIV ACJM, Bengaluru City

Cr. No.250/2024

State by : Kamakshipalya Police Station
(Reptd. By Spl. PP)

V/s. _____

Accused : Pavithra Gowda & others

Applicant/ : A-2 Dharshan Thoogdeep Srinivas
Accused No.2 S/o. Srinivas Thoogdeep,
Aged about 47 years,
No.217, "Thoogdeep Nilaya",
F-Road, IDEAL Homes,
Rajarajeshwarinagara,
Bengaluru - 560 098.

(Reptd. By Sri. PMT., Advocate)

ORDER ON IA FILED BY ACCUSED No.2 U/s.30 OF THE
KARNATAKA PRISONS ACT R/w. SECTION 167 OF Cr.P.C.

The instant application has been made by the accused No.2 seeking for a direction to the Prison Authority to permit the accused No.2 to access/procure Home Cooked



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Food/Outside Food and bedding etc., from his family members or other such orders as this court deems fit to meet the ends of justice.

2. The grounds urged by the accused No.2 in the instant IA in nutshell are as under:

The accused No.2, who is alleged to have committed the offences punishable U/s.302, 120B, 201, 364, 365, 384, 143, 147, 148 r/w Section 149 of IPC being in Judicial Custody since 22.06.2024 lodged at the Central Prison, Bengaluru has claimed to have lost several kilograms of weight on account of the food provided to him being not compatible to his digestive system and for lack of high protein food. It is also claimed that, the accused No.2 is suffering from stomach upsets and bouts of diarrhea. It is further claimed that, the accused No.2 being Cine Actor had been following a diet, which was rich in protein in order to maintain a fit physique and muscular body by consuming home cooked food. The accused No.2 made the oral requests to the Prison Authorities, approached the Hon'ble High Court of Karnataka by preferring a Writ Petition bearing W.P. No.18222/2024, seeking for necessary directions to the Prison Authorities to allow him to have home cooked food, clothing and bedding. The Hon'ble High Court of Karnataka directed the accused No.2/petitioner to approach this court by making necessary application and kept open all the rival contentions. Accordingly, the accused



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No.2 has made this instant IA claiming the relief U/s.30 of the Karnataka Prisons Act (hereinafter referred to as "the Act") and has also urged that, he is suffering from pain in right hip joint, left elbow, right forearm also also having an history of having fell down from the height around three months prior to being remanded to the judicial custody. The accused No.2 has also contended regarding having undergone the surgery on account of injury to his left hand. It is also categorically claimed that, the relief sought by the accused No.2 is very much as per the provisions of Chapter-VI of the Karnataka Prisons Act, 1963 and as per the Section 30 of the Karnataka Prisons Act, 1963 as well as the fundamental rights enshrined under Article 21 of the Indian Constitution. Amongst these grounds, the accused No.2 sought to allow the instant application.

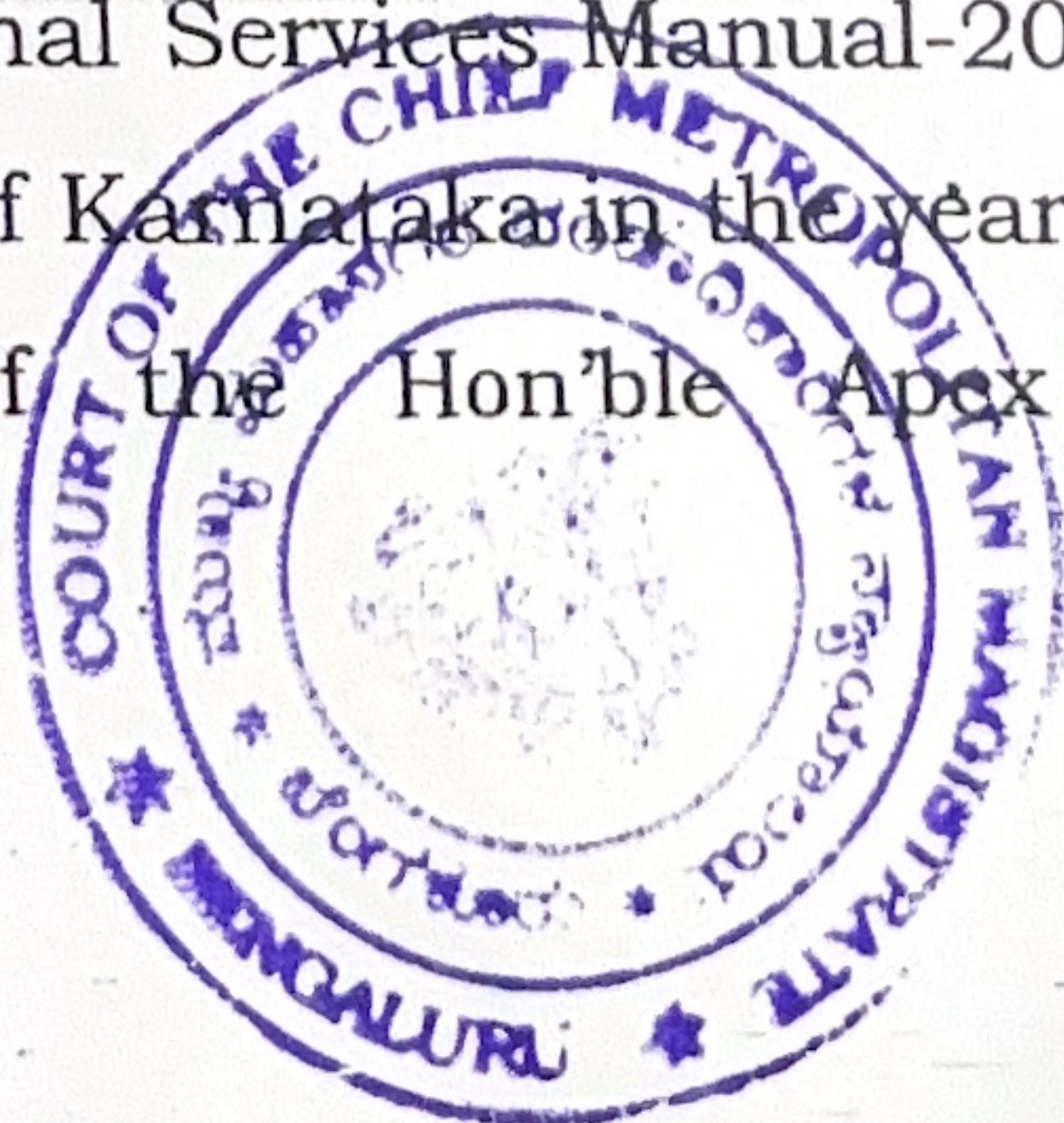
3. Per contra, the prosecution has filed its detailed objections contending that, the accused No.2 along with other accused persons being intercepted by the Investigating Agency and the investigation is under progress. It is claimed that, the role of the accused No.2 along with his accomplices has been forthcoming and the incriminating aspects against the accused persons is corroborated by the seizure of the articles and also clinching evidence. It has been specifically contended as to the accused No.2 has not at all complained regarding his ill-health before this court since 22.06.2024 and no any documents are produced by him, which warrant



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him to provide with the Special Diet or medical attention. It has been emphasized regarding the Chapter-XII of the Karnataka Prisons Rules, 1974 providing for an elaborate scaling with respect to dietary plan which has to be followed by the Prison Authorities. It is also highlighted regarding all the necessary and vital materials are including in the scale of the diet provided to each of the prisoner which is adequate for catering to the necessary health requirements of the prisoners. It is categorically contended as to Chapter-XXI of the Karnataka Prisons and Correctional Services Manual-2021 (hereinafter referred to as "the Prison Manual-2021") provides for special diet/extra diet to those prisoners, who are certified/recommended by the Medical Examiner after such medical examination. In such an event, the prisoner would be made available with such a diet as prescribed by the Medical Examiner. It has been also contended regarding the requirements of Section 30 of the Act has been subject to such regulations approved by the Inspector General of concerned prison. It is also categorically contended as to the accused No.2 has not made any such requests to the Inspector General of the Prisons, who is having discretionary power to consider the request by the prisoner.

4. It has been stressed regarding the Karnataka Prisons and Correctional Services Manual-2021 was approved by the Government of Karnataka in the year 2022 in compliance with the order of the Hon'ble Apex Court in WP (Civil)



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No.406/2023 wherein the infrastructure and all other conditions of the prisons are upgraded and basic requirements of prisoners are also catered. It is also emphasized as to Rule 728(i) of the aforesaid Manual categorically contemplates the provisions for retaining of their own clothing, bedding, footwear and eating as well as drinking vessels like plates, spoons, cups etc., for under trial prisoners other than those being alleged of having committed murder. It has been also contended as to in absence of necessary documents to show the ill-health of the accused No.2, the instant application seeking for access to home cooked food, bedding is contended to be devoid of merits. It has been urged that there is absolutely no necessity compelling the accused No.2 to be entitled to the relief sought in the application. It is also contended that, the claim of the accused No.2 unable to digest the food and having lost the weight in itself is not the grounds warranting to permit the accused No.2 to access the private sourced food, unless the same is corroborated by the medical records. It is also apprehended that, if the relief sought is granted in favour of the accused No.2, the Prison Authorities would find it difficult to ensure the safety and well being of the accused No.2 as the Prison Authorities are bound to conduct a mandatory routine check of the private sourced food. Amongst these grounds, the prosecution has sought to reject the instant application.



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5. Heard the learned counsel for the accused No.2 and the learned Spl. PP in support of the instant application. The learned counsel for the accused No.2 as well as Spl. PP have submitted the authorities in support their oral arguments.

6. The following points would arise for the consideration of this court, viz.,:

1. *Whether the accused No.2 has made out the grounds warranting him to permit to have access to home cooked food, clothing and bedding, as sought for in the application U/s.30 of the Act?*

2. *What order?*

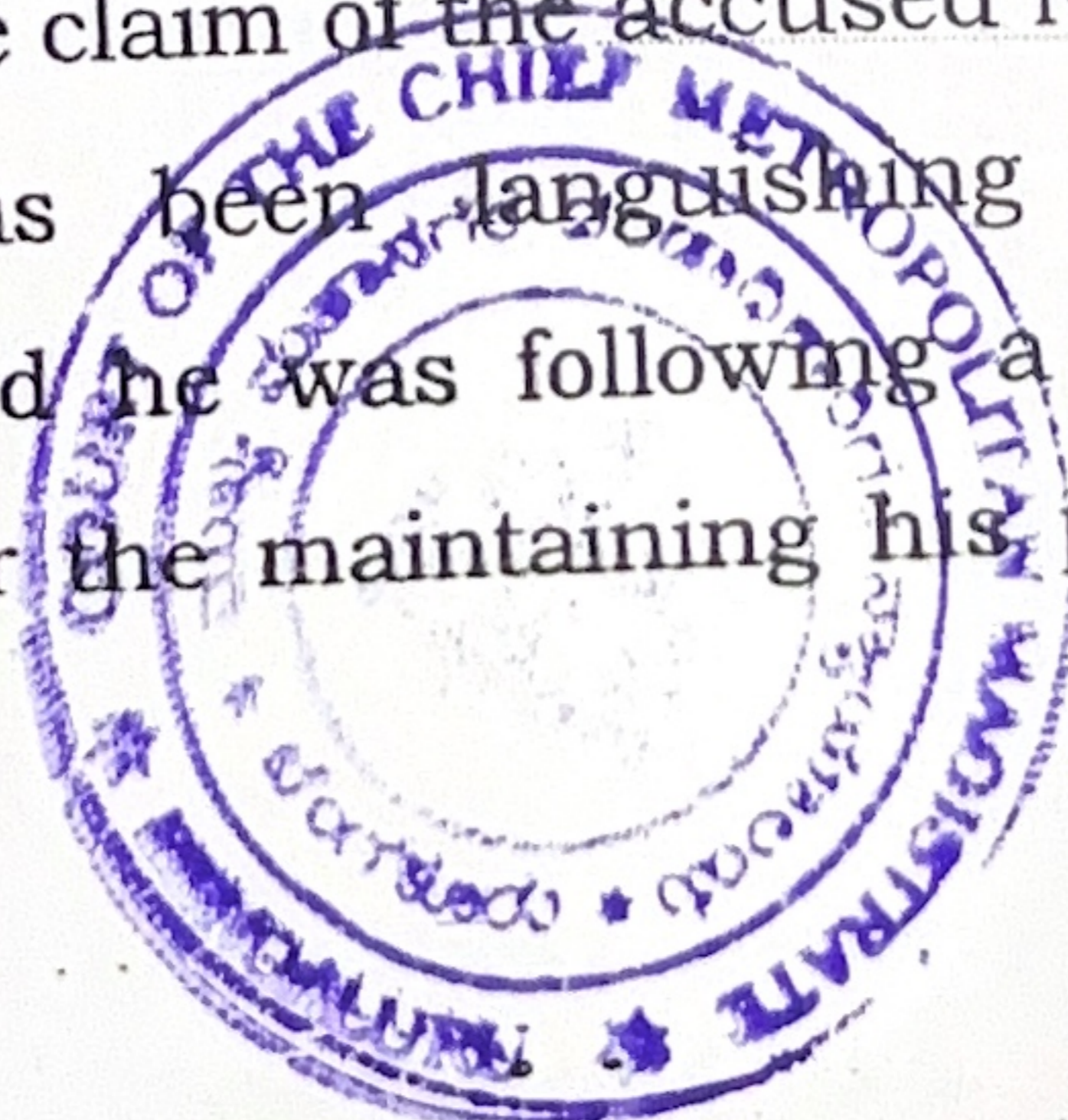
7. The findings of this court, on the above said points is as under:

Point No.1: In the *Negative*
Point No.2: As per final order
for the following:

REASONS

8. Point No.1: The prosecution has alleged that the accused No.2 along with his accomplices have committed offences punishable U/s.302, 120B, 201, 364, 355, 384, 143, 147, 148 r/w 149 of the IPC.

9. It is the claim of the accused No.2 as to he is the Cine Actor and has been languishing in the prison since 22.06.2024 and he was following a healthy diet with rich protein diet for the maintaining his physique and muscular



body. The food provided to the accused No.2 is not compatible to him and thereby he has suffered bouts of diarrhea and other digestive issues. As such, he has sought for the home cooked food, clothing and bedding.

10. The counsel for the accused No.2 vehemently argued on the instant IA and placed reliance upon the grounds in the IA wherein the accused No.2 is suffering from diarrhea/in digestion of the food and also emphasized regarding the provisions of Karnataka Prisons Act, 1963 by highlighting Sections 2C, 30, 32, & 63 as well as provisions of Karnataka Prison Rules, 1974 Rule 2J and Chapter-XI, XII, XX, XXI & XXXVIII of the Karnataka Prisons and Correctional Services Manual-2021. It has been emphatically argued that Article 21 of the Indian Constitution guarantees the fundamental rights to every citizens and same is also applicable the prisoners, who are languishing in the prisons. It is also emphasized regarding the accused No.2 being Cine Star is bound to maintain his physique and muscular body by following protein rich diet. By placing reliance upon the decisions of the Hon'ble Apex Court, it has been stressed as to accused No.2 is entitled to the relief sought for in the IA. In support of his arguments, he has placed reliance upon the following decisions viz.,

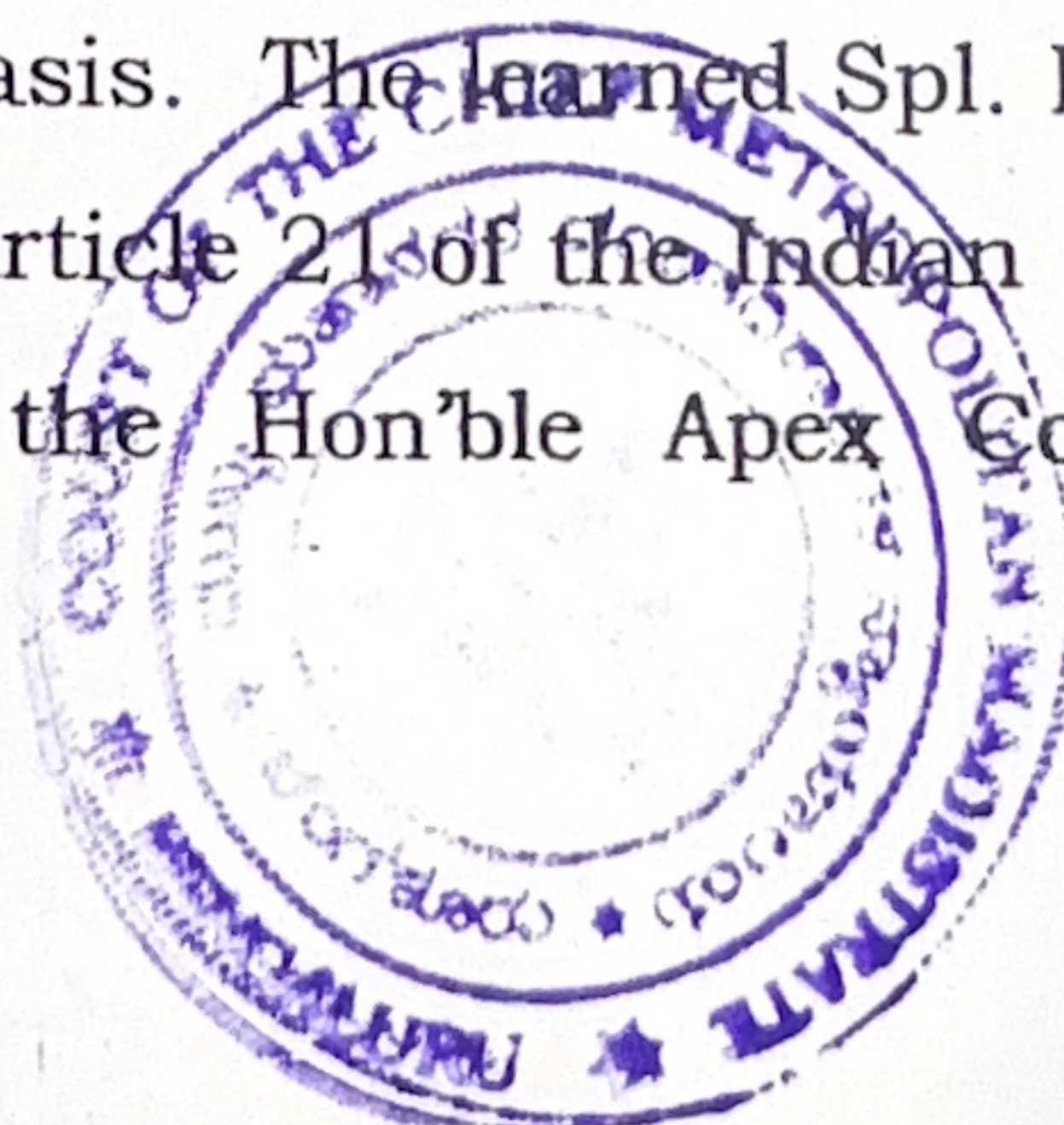
- a) *Order dated 14.05.2024 passed by Hon'ble Supreme Court in W.P. No.406/2013 - In Re. Inhuman Conditions in 1382 Prisons*



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- b) *State of A.P. V/s. Challa Ramkrishna Reddy, (200) 5 SCC 712*
- c) *Charles Sobraj V/s. Superintendent of Central Jail, (1978) 4 SCC 104*
- d) *Nilabati Behera V/s. State of Orissa, (1993) 2 SCC 746*
- e) *People's Union for Civil Liberties V/s. State of Maharashtra, (2014) 10 SCC 635*
- f) *Asgar Yusuf Mukadam & others V/s. State of Maharashtra and Another, 2004 SCC Online Bom 1221*

11. The learned Spl. PP has emphatically argued that, the accused No.2 cannot be given a special treatment as contrary to that of the Rules contemplated under the Karnataka Prisons and Correctional Services Manual-2021 only on account being influential person or being a Cine Actor pursuant to the report of the Chief Superintendent of Central Prison, which is accompanied by the report of the Chief Medical Officer, which no where contemplates the recommendation by the Chief Medical Officer to provide a special diet which is as contemplated in the Rules of the aforesaid manual. The learned Spl. PP has also expressed his apprehension that the Prison Authorities are obligated to maintain the safety and well being of the prisoners and in the guise of the permission obtained by this court the obligation upon the Prison Authorities increases in checking the said food on daily basis. The learned Spl. PP has also highlighted regarding the Article 21 of the Indian Constitution as well as the ratios of the Hon'ble Apex Court and pointed out



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regarding the said fundamental rights being subject to reasonable restrictions and the accused No.2 facing an allegations of having committed an offence U/s.302 of IPC certainly is entitled to the rights as guaranteed in the Article 21 of the Indian Constitution but at no stretch of the imagination the same be the extended the reliefs sought for in the IA as the said relief sought for by the accused No.2 is very much contrary to Rule 728 of the Prison Manual 2021.

12. In support of his said arguments, the Spl. PP has also highlighted the observation of the Hon'ble Apex Court in the decision cited by the accused No.2 reported in (1978) 4 SCC 104 in the case of Charles Sobraj V/s. Superintendent Central Jail, wherein the Hon'ble Apex Court has very much laid down that, there shall be no any differentiation on the basis of the status, caste, creed and the other aspects while extending the benefits in so far as the Article 21 of the Indian Constitution more particularly with respect to the benefits extended to the prisoners. Furthermore, he has also placed reliance upon the decision reported in (1981) 1 SCC 608 in the case of Francis Coralie Mullin V/s. Administrator, Union Territory of Delhi and Others, wherein it has been laid down regarding the rights of the prisoners being not stripped of his fundamental rights, save those which are inconsistent with his incarceration. Amongst these arguments, the Spl. PP representing the prosecution has sought to reject the instant application.



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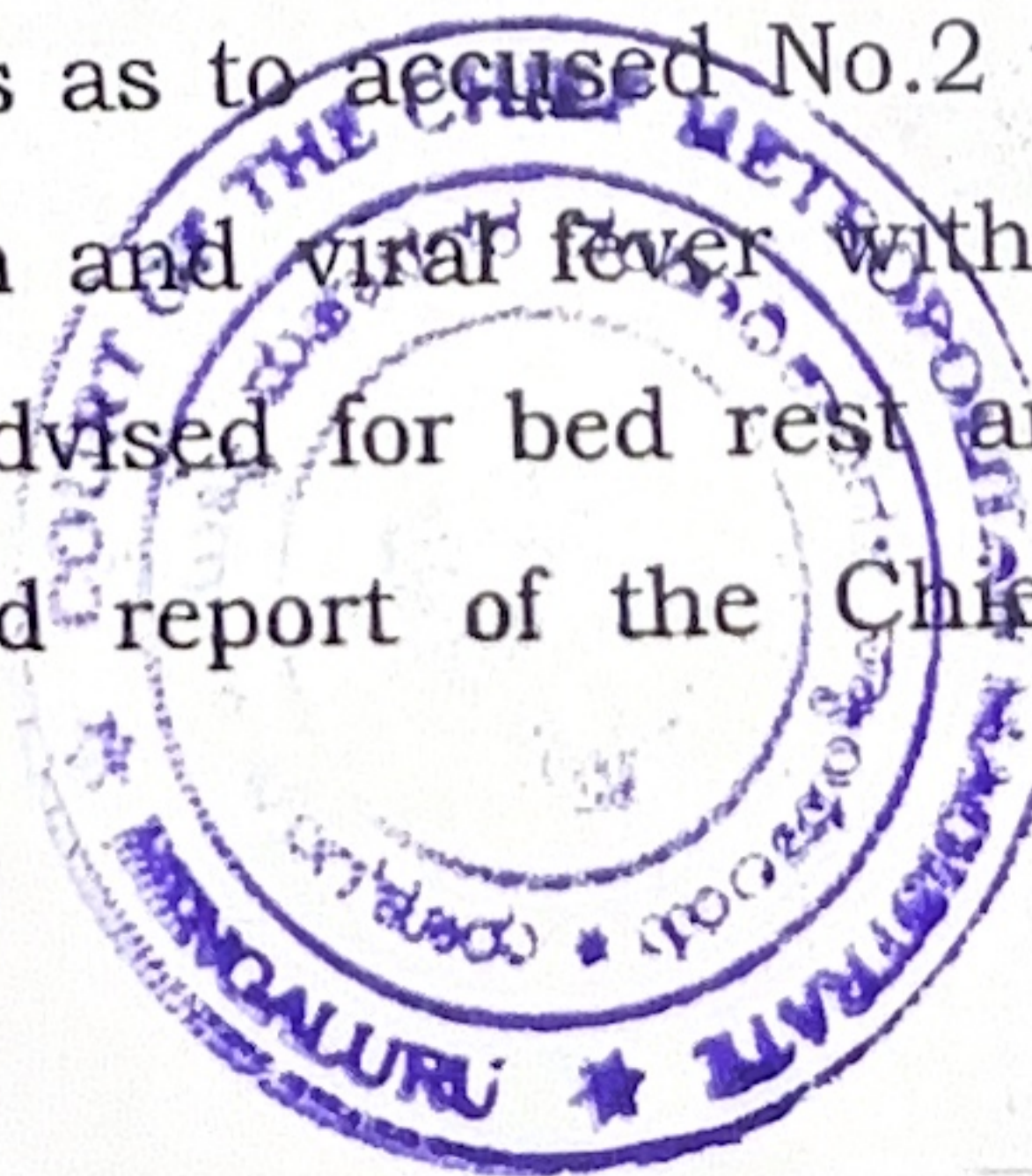
"Evaluation and Analysis of the grounds urged by the either parties"

13. Upon an anxious consideration of the contentions taken by the accused No.2 and the prosecution as well as the oral submissions of the either parties, based upon the report of the Chief Superintendent, Central Prison, Bengaluru, this court is constrained to consider the following aspects viz.,

(a) *Whether the relief sought for by the accused No.2 is permissible within the frame work of statutes governing the prisoners i.e., the Prisons Act, 1963 and the Karnataka Prisons and Correctional Services Manual-2021?*

(b) *Whether the accused No.2 can be given the benefit of Section 30 & 32 of the Karnataka Prisons Act in background of the Article 21 of the Indian Constitution? If so, on what conditions?*

14. It is pertinent to note that, this court certainly as to consider the application filed by the accused No.2 on the basis of the report of the Chief Medical Officer of the Central Prison, Bengaluru. The perusal of the said report dated 22.07.2024 transpires that, the accused No.2 has been treated for severe lower back pain radiating to right leg, pain in left and right forearms and the final impression of the Chief Medical Officer is as to accused No.2 is under treatment for severe back pain and viral fever with generalized weakness and has been advised for bed rest and nutritious diet. In light of the said report of the Chief Medical Officer, the



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examination of the Karnataka Prisons and Correctional Services Manual-2021, it is very much relevant to note that, the Chapter-XXI i.e., Rule 318 deals with the Scale of Diet, wherein; the scale of diet has been prescribed to all the categories of the prisoners based upon their nature of detention. Furthermore, Rule 321 as well as Rule 322 of the Manual very much contemplates regarding the diet of the individual prisoner permissible to be modified on the recommendation of the Medical Officer. So also, Rule 338 of the Manual contemplates regarding Hospital Diets on the advise of the Medical Officer. That apart, Rule 855 of the Manual also contemplates on the recommendation of the Medical Officer, the Special Diet for the prisoners may be provided considering the health conditions of the prisoner.

15. Furthermore, the claim of the accused No.2 as to having repeated stomach upsets, diarrhea in his IA is not forthcoming as per the report of the Chief Medical Officer dated 22.07.2024 as well as the earlier report of Chief Medical Officer dated 16.07.2024. That apart, the reports are neither containing an advice nor recommendation to provide protein diet as claimed in the instant IA.

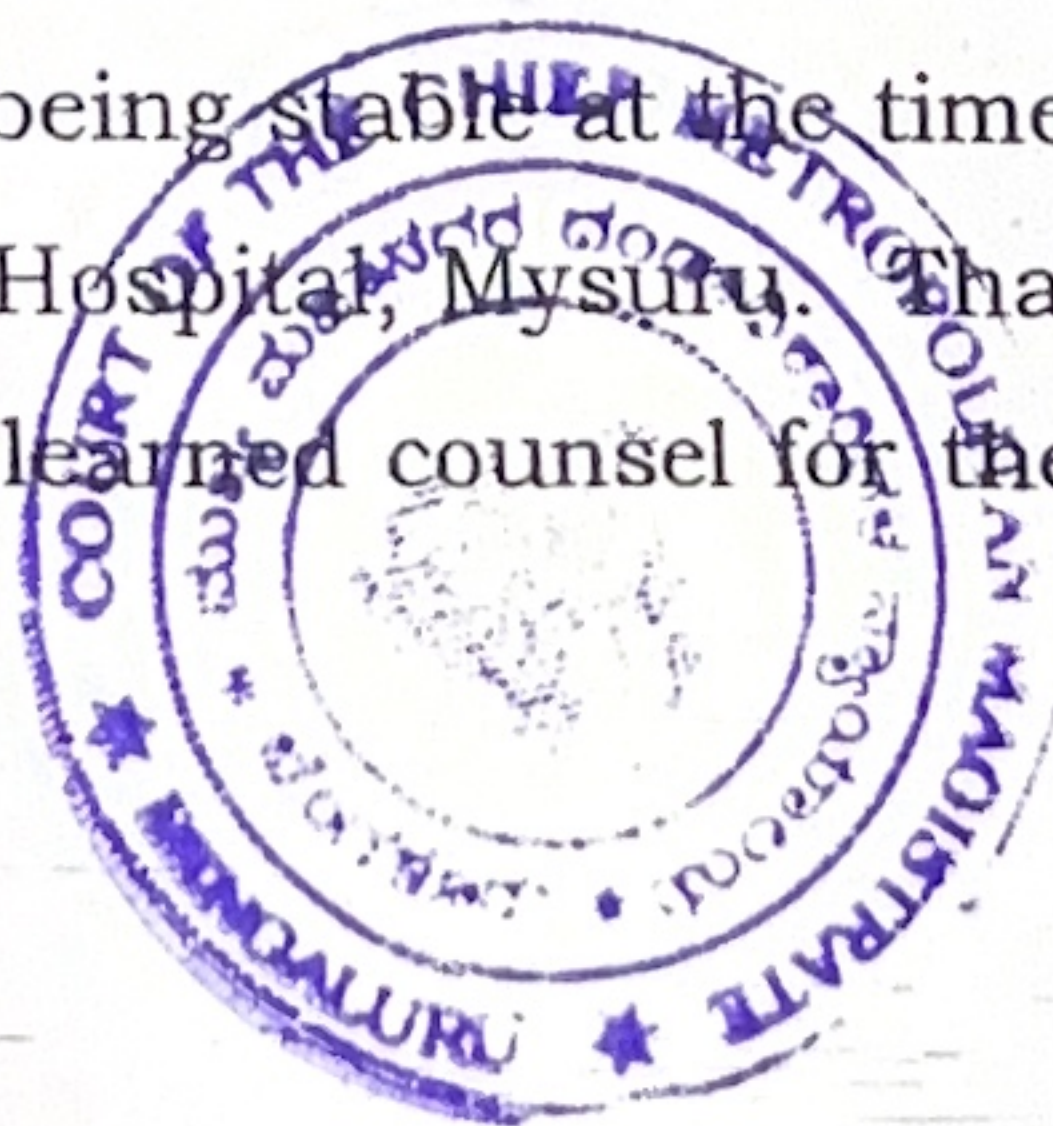
16. In the case on hand, having regard to the scale of diet as contemplated Rule 332 of Prison Manual, 2021 i.e., Diet Chart all prisoners are provided with the food as per their choice of food (i.e., vegetarian or non-vegetarian) and the said Diet Chart under Rule 332 of the Manual 2021 is very



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much subject to supervision and modification by the Government from time to time. Further, the examination of Rule 334 along with Rule 333 of the Manual 2021, it is very much clear that, the parameters of the Hon'ble Apex Court as ordered in W.P. No.406/2013 vide order dated 25.09.2018 is covered. In the case on hand, having regard to the report of the Chief Medical Officer dated 22.07.2024, except generalized weakness, with an a advice for continued medication under supervision, bed rest and nutritious diet, there is no any other recommendations by the Chief Medical Officer for special diet, hospital diet or other diet as envisaged in the Karnataka Prison Manual, 2021.

17. The arguments for the learned counsel for the accused No.2 as to the medical reports of accused No.2 annexed to the IA pertains to the treatment availed by the accused No.2 at the undisputed point of time and the same are only to bring to the notice of this court regarding his treatment in connection to his injuries, certainly needs to be evaluated and considered on the basis of the opinion expressed by the Medical Officer in the said report. The discharge summary of accused No.2 dated 06.04.2024 which is argued to be pertaining to accused No.2 in respect of his health conditions at undisputed point of time, discloses that the accused No.2 being stable at the time of being discharged from the Manipal Hospital, Mysuru. That being the case, the arguments of the learned counsel for the accused No.2 as to



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the said accused No.2 is facing health issues from the day on which, he was remanded to judicial custody since 22.06.2024 will not hold any water.

18. It is incumbent upon this court to give due consideration to the report of the Chief Medical Officer dated 22.07.2024. The overall examination of the Diet Chart as set out in Rule 332 of the Manual 2021, it is very much clear that the said chart discloses the nutritional diet being followed by the Prison Authorities in the food provided to the prisoners. The said food will suffice to meet the advice/recommendation by the Medical Officer as the same is only for nutritional diet with bed rest under supervision vide report dated 22.07.2024. It is needless to point out that, the accused No.2 is under continuous supervision on the basis of SOS by the Chief Medical Officer, who is placed in the Central Prison premises.

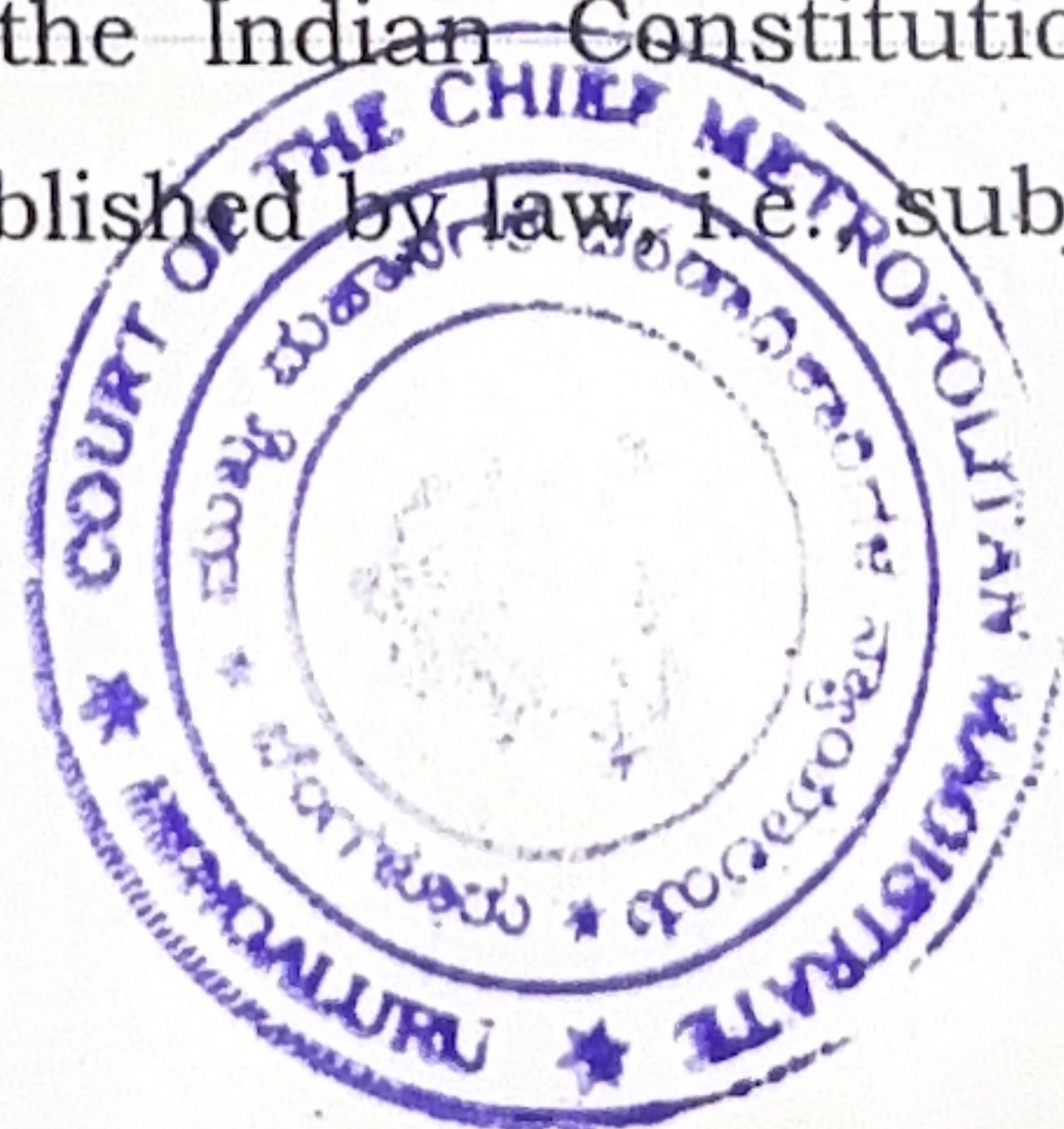
19. The arguments of the learned counsel representing accused No.2 as to the accused No.2 is entitled to home cooked food as per the ratio of *the Hon'ble Apex Court in W.P. No.406/2013 in the case of In Re. Inhuman Conditions in 1382 Prisons*, wherein, the Hon'ble Apex Court at paragraph No.42 has laid down the Rules with respect to the inmates of the prisons and their standards. With due respect to the Hon'ble Apex Court, the said decision very much mandates the State Governments to provide sufficient basic facilities for those housed in the prisons and the basic facilities provided to the prisoners are very much as guaranteed under Article 21 of



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the Indian Constitution. In the light of the said decision, in the case on hand, till date, except the representations by the accused No.2 on 10.07.2024 and 11.07.2024 to the Jail Authorities as well as Chief Medical Officer and to this court for home cooked food with protein diet, there is no any allegation or complaint as to the food or other basic facilities are substandard.

20. The other decisions of the Hon'ble Apex Court relied upon by the accused No.2 i.e., *State of A.P. V/s. Challa Ramkrishna Reddy, (200) 5 SCC 712; Nilabati Behera V/s. State of Orissa, (1993) 2 SCC 746, People's Union for Civil Liberties V/s. State of Maharashtra, (2014) 10 SCC 635 and Asgar Yusuf Mukadam & others V/s. State of Maharashtra and Another, 2004 SCC Online Bom 1221* have been anxiously examined by this court with due respect to the Hon'ble Apex Court the ratios laid down in the said decisions are very much considered wherein, the said decisions enunciates regarding the Article 21 of the Indian Constitution guaranteeing to the prisoners with the fundamental rights will not be ceased on the prisoner having lodged into the prison. However, the Hon'ble Apex Court in all the authorities relied upon by the counsel for the accused No.2 has very much provided as to the Undertrial Prisoner is entitled to the liberty as enshrined in Article 21 of the Indian Constitution in accordance with procedure established by law, i.e. subject to incarceration.



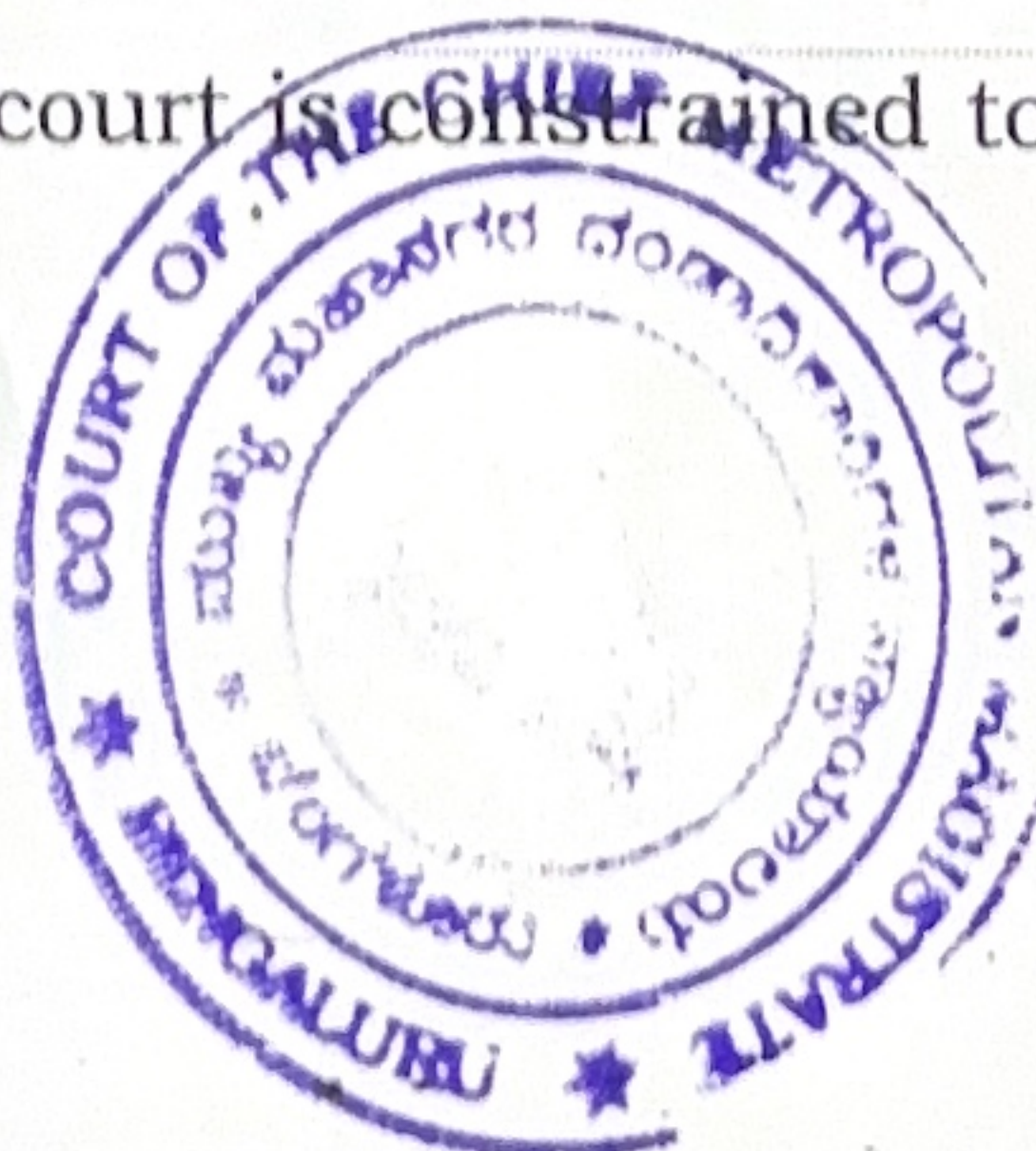
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21. It is also relevant to quote *the Hon'ble Apex court in Charles Sobraj V/s. Superintendent, Central Jail* as relied upon by the accused No.2 has very much cautioned the court as to the mere fact that a prisoner is a poor or rich, high born or ill bread is certainly irrational as a differentia in secular, social, republic. This view of the Hon'ble Apex court very much makes it clear that no fundamental rights can be extended to the citizen without reasonable restriction. In the light of the said ratio laid down by the Hon'ble Apex Court this court is justified to consider *the Rule 728 of the Karnataka Prisons and Correctional Services Manual-2021*, the same reads as under:

"728. Clothing and Bedding:

- i. Under trial prisoners other than those for murder, shall be permitted to retain their own clothing, bedding, foot wear and eating and drinking vessels like plates, spoons, cups and religious emblems.*
- ii.*
- iii.*
- iv.*
- v. The Prison clothing will be as prescribed rules;*

wherein, it prohibits the Undertrial Prisoners facing the allegations of murder from the claim of their own clothing, bedding, eating and drinking vessels from the Prison Authorities. Having regard to the contentions urged by the prosecution, this court is constrained to give conjoint reading



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of the aforesaid Rule 728 of the Prison Manual, 2021 with the Sections 30 & 32 of the Prisons Act, 1963.

"Conclusion"

22. This court is justified to hold that, prima facie, at this stage of proceedings, the report of Chief Medical Officer dated 22.07.2024 does not warrant the interference by this court with respect to the food being provided to him. That apart, this court is also of the considered view that, the accused No.2 is not entitled to the relief sought for in the IA pursuant Rule 728 of the Karnataka Prisons and Correctional Services Manual, 2021 as he is facing allegations of murder. Accordingly, this court without any hesitation proceeds to answer Point No.1. in the *Negative*.

23. Point No.2: In light of the discussion made supra in Point No.1, this court proceeds to pass the following:

ORDER

The application filed by the accused No.2
U/s.30 of the Karnataka Prisons Act, 1963
r/w 167 of Cr.P.C., stands rejected.

(Dictated to the Stenographer directly on computer, typed by him, corrected and then pronounced by me, in open court on this the 25th day of July 2024)



(VISHWANATH C GOWDAR)
Presiding Officer,
Special Court for Economic Offences,
C/c. XXIV Addl. Chief Judicial Magistrate,
Bengaluru City.

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